

Item No. 1

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Original Application No. 15/2023(WZ)

Alchemist Asset Reconstruction Company Ltd.

.....Applicant

Versus

GCZMA & Ors.

....Respondent(s)

Date of hearing: 21.02.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Nikhil Nayyar, Sr. Advocate along-with Mr. Karan
Batura, Advocate

ORDER

1. This Application has been filed under Section 14 & 15 read with Section 18 of the National Green Tribunal Act, 2010 seeking direction to set aside the permission granted by the Respondent No. 1/GCZMA in favour of Respondent No. 3/Mr. Selso Fernandes with respect to the property in question located at Survey No. 100/10 situated in Village: Agonda, Canacona, Taluka: Goa; further it is prayed that Respondent No. 1/GCZMA be directed to take appropriate action to demolish all the illegal constructions/developments of the Resort, Bar and Restaurant/ Resort under the name and style of "Dream Discovery Sea View Resort & Beach Cage"; heavy penalty be levied from the Respondent No. 2 as the said construction has been raised by cutting sand dunes, natural vegetation and by doing levelling and ground filling of the said area and constructing permanent structure using RCC, concrete base and pre-fabricated steel structures.

2. The brief facts of this case are that the Applicant's Company is an Asset Reconstruction Company, which has acquired debts from original lenders of a company namely "Dugal Projects Development Company Pvt. Ltd. (DPDCL)", therefore, the Applicant now is the sole financial lender of DPDCL with whom parcels of land aggregating 3,58,814 sq. mtrs. at Village Agonda, Canacona, Goa are mortgaged, which are owned by DPDCL. The DPDCL has mortgaged to the Appellant the original title deeds of the said land. The details of the land owned by the DPDCL are mentioned in para no. 3.4 of the application. Within the said mortgaged property, there exists the property at Survey No. 100/10, admeasuring 5350 sq. mtrs. (disputed property) in the Village Agonda (out of total land admeasuring 5350 sq. mtrs. in Survey No. 100/10, DPDCL is the owner of 5300 sq. mtrs., which has been acquired by DPDCL vide registered Sale Deed No. 142/82 dated 28.06.1982). The remaining property i.e. area 50 sq. mtrs. in Survey No. 100/10 is a property, abutting the Agonda beach, which is a designated turtle nesting ground. The Applicant is aggrieved by encroachments and illegal erection and commercial operations being run by unauthorized persons. One of such encroachment and illegal construction is Resort situated at Survey No. 101/1 and 101/3 of Village Agonda, regarding which, a Writ Petition No. 184 of 2021 was filed by the Applicant before the Hon'ble High Court of Bombay at Goa. The violators undertook to demolish the said illegal structures on their own in the said case and the Hon'ble High Court had noted in that Judgment that the same was ecologically sensitive area, where such construction should not have been raised. In the meantime, the violators have again applied for permission for construction from the Respondent No. 1 on Survey No. 101/1 and 101/3 but surprisingly the Respondent No. 1 granted permission on 09.05.2022 and 11.05.2022. Feeling compelled, the Applicant approached this Tribunal by filing two

appeals bearing Appeal No. 22 of 2022 and Appeal No. 23 of 2022 and vide common order dated 05.09.2022, this Tribunal quashed the said permissions dated 09.05.2022 and 11.05.2022.

3. Further, it is mentioned that the violations have been carried out by Respondent No. 2-M/s. Dream Discovery in collusion with Respondent Nos. 3 & 4 by raising multiple illegal structures admeasuring approximately the area of 35,000 sq. ft., which is being presently run in the name and style of “Dream Discovery Sea View Resort and Beach Cafe”. The sale deed dated 28.06.1982 executed by one Mrs. Janaki Devappa Dessai and 4 other persons in favour of “Elbee Dugal Engineering Co. pvt. Ltd. (presently known as DPDCL) in respect of Survey No. 100/14 and 100/10 admeasuring 7200 sq. mtrs. but that sale deed does not mention existence of any structure or any house existing thereon, rather describes the property as beach property with some trees and plants thereon. By virtue of this sale deed, DPDCL became the owner of the 5300 sq. mtrs. of the said property. Therefore, on the remainder of 50 sq. mtrs. of the property, there apparently existed only one small structure occupied by one ‘Mrs. Maria Fernandes (mother of Respondent No. 3)’. The Respondent No. 4 is the daughter in law of Mrs. Maria Fernandes. The Applicant noticed the huge structure first time in the month of June, 2022 in the form of beachfront Resort, which runs full-fledged Bar and Restaurant, which has been constructed out of cutting sand dunes and filling the land. The total area of the said structures is 386.96 sq. mtrs. Although the land available on site was only 50 sq. mtrs, therefore, in no way, the Respondent No. 2 could have obtained permission for construction of two such huge structures of 193.48 sq. mtrs. each. The Respondent No. 3 and Respondent No. 4 had leased their land to the Respondent No. 2 i.e. so-called House Nos. 438 and 439 in the said property. These two structures bearing House Nos.

438 and 439, admeasuring 193 sq. mtrs. each along-with a well between the said two houses. The Minutes of the Meeting dated 21.03.2017 of the Respondent No. 1/GCZMA would show that permission for reconstruction of the house was granted by the Respondent No. 3 under the garb of being a member of the traditional toddy tapper community, which was allowed on the pretext of reconstruction of his dwelling unit, who had applied for reconstruction of the said house. The Applicant has disputed the existence of the said two structures on the basis of DSLR plan, which shows no such structure to be there. In the 144th Meeting of the Respondent No. 1/GCZMA, the application for seeking permission for re-construction of the said house was rejected and in the 137th Meeting, it was recorded by the Respondent No. 1 that on the basis of Expert Member's inspection, the said property was found to exist in No Development Zone i.e. within 200 meters from HTL. The Respondent No. 1 has granted the permission in violation of the provisions under para no. 8 (III) A (ii) read with CRZ of Goa sub-clause (ii) of the CRZ Notification, 2011, which are reproduced here-in below:-

“Para 8 (III) A (ii) of the CRZ Notification, 2011:-

No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification including facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities including fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF;

CRZ of Goa sub-clause (ii) of the CRZ Notification, 2011:-

reconstruction, repair works of the structures of local communities including fishermen community shall be permissible in CRZ.”

4. Further, it is submitted that Respondent Nos. 3 & 4 has been wrongly granted permission by the Respondent No. 1/GCZMA for raising reconstruction because the said dwelling house fell within less than 100 mtrs. from HTL.

5. Further, it is submitted that after the said property was leased out to Respondent No. 2 by the Respondent No. 3, the same has been further expanded in a big bar and restaurant illegally, which could not have been permitted as per the CRZ Notification, 2011 as the said area was falling within 200 mtrs. of HTL.

6. During argument, learned Counsel for the Applicant has drawn our attention to page nos. 356-357 of the paper book, which is a private Survey Report got conducted at his own end, which shows that three structures which have been raised by the Respondent No. 2 i.e. structure A, B & C lie within 4 mtrs., 39 mtrs. and 51 mtrs. from HTL respectively. Hence the above prayers have been made.

7. We find that substantial question relating to environment appears to have been made out in the present case, therefore, we deem it proper to admit this application.

8. Registry is directed to issue Notice to the Respondents, returnable within 04(four) weeks.

9. Applicant is directed to provide copy of the application and relevant documents to the Respondents within a week.

10. Respondents are directed to submit their reply within 04(four) weeks providing copies of the same to the other parties in advance.

11. Applicant is also directed to take necessary steps for service upon the Respondents by both ways and also through available e-mail.

12. We deem it just and proper to call for a report on the matter in issue in present application from a Joint Committee comprising one member each of:-

- (i) The Goa Coastal Zone Management Authority(GCZMA),
- (ii) The Goa State Pollution Control Board (GSPCB) &
- (iii) The District Magistrate, South Goa

13. The Committee is directed to visit the site and submit a factual and action taken report with regard to the violation, if any action taken thereon, within one month.

14. The Goa Coastal Zone Management Authority (GCZMA) shall be the nodal agency for coordination and logistic support.

15. The report in the matter be filed by the Committee by e-mail at ngt-pune@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

16. Applicant is directed to supply the required documents and copy of the application to the Members of the Committee within three days from today.

17. A copy of this order be communicated to the above-mentioned Committee forth-with for compliance.

Put up this matter on 14.04.2023

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 21, 2023
Original Application No. 15/2023(WZ)
P.Kr