Item No.9 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No. 15/2023(WZ)
I.A. No. 159/2023(WZ)

Alchemist Asset Reconstruction Company Ltd.

.....Applicant

Versus

GCZMA & Ors.

....Respondent(s)

Date of hearing: 27.07.2023

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

Applicant	:	Mr. Karan Batura, Advocate and Mr. Jayant Karn, Advocate
Respondent(s)	:	Ms. Supriya Dangare, Advocate for R-1/GCZMA Mr. Saket Mone, Advocate along-with Mr. Jatin Ramaiya, Advocate and Mr. Aprameya Shivade, Advocate for R-2/PP Mr. Shivan Desai along-with Mr. S. Swaminathan, Advocates for R-3 & 4/Pvt. Respondents

ORDER

1. From the side of applicant, learned Counsel Mr. Karan Batura has appeared.

2. At the very outset, today this case is listed for final arguments. The learned Counsel for applicant has argued partly. He pointed out the first relief, claimed in the present application, relates to setting aside the permission dated 04.04.2017 granted by the respondent No.1/GCZMA, where-by the respondent No.1 has allowed the respondent No.3/Mr. Selso Fernandes to re-construct the existing house bearing House No. 439 located in Survey No. 110/10, of Agonda Village, Canacone Taluka, subject to the following conditions:-

" 1. *All the provisions of the CRZ Notification 2011, as amended should be strictly complied with.*

2. *This NOC/Approval is issued without prejudice to any other permission as required under the law including that of ownership of house, court case etc. As such, prior to the commencement of the 're-construction' work, it will be incumbent upon the applicant to obtain permission for any other authority as required under the law including from the local authority, Town and Country Planning Department, Revenue Authority etc.,*

3. *Traditional access/easement shall not be blocked. No construction should be carried out in the NDZ area between 0-200 mts. from the High Tide Line.*

4. ***The structure should not be used for commercial purpose and not to be sold or transferred to the non-traditional community.***

5. *This permission is liable to be revoked, if it is found, at any stage, that the application contained false information / wrong plans / calculations / documents / misleading or false information, etc. or account of violation of aforementioned conditions."*

3. Vide order dated 21.02.2023, we had constituted a Joint Committee to submit factual and action taken report in this matter before us, pursuance to which the Joint Committee has submitted its report, which is annexed at page nos. 371 to 373 of the paper book, where-in it is submitted that the property in question is lying in CRZ-III (NDZ) area as per CZMP-2011 and that the said property has been identified by letters A, B and C as per site plan, which has been annexed at page no. 384 of the paper book. The said property is enclosed on 3 sides with masonry compound wall of approx. height 1.20m and open access to sea.

4. With regard to the structures A, B & C, following has been submitted in the Joint Committee Report:-

> *"For structure 'A' house bearing H. No.: 438, Selso A .P. Fernandes has relied upon Panchayat NOC letter dated 09/05/1984 (copy enclosed) to contended that the said structure has existence prior to 1991 and the same structure is reconstructed based on GCZMA permission dated 04/04/2017. As observed, the structure `A' is permanent in nature with only ground floor and as reflected on ISLR survey plan.*
>
> *For structure `B' House bearing H. No.: 439, Selso A. P. Fernandes has relied upon Panchayat NOC letter dated 30/03/1985 (copy*

enclosed) to contend that the said structure has existence prior to 1991 and the same structure is reconstructed based on GCZMA permission dated 04/04/2017. As observed, the structure `B' is permanent in nature with only ground floor and as shown on ISLR survey plan. Attached to structure `B', there is a wooden shed which is constructed with wooden & MS sections with concrete flooring.

For structure `C' is concerned, Selso A. P. Fernandes has not shown any approval /NOC and appears to be constructed of GI tubes/ pipes shades. As observed. the structure `C' is temporary in nature."

5. Further, it is mentioned that 'M/s. Dream Discovery'/respondent No.2 is operating its unit without consent from the State Pollution Control Board. However, an application for the same is stated to have been applied.

6. We find from the details of these properties mentioned in the map, which is annexed at page no. 384 of the paper book that they are shown to be lying within 100m of the HTL. But it is admitted by the parties that the same is lying in CRZ-III area where obviously with the permission, construction can be raised, as is laid down in CRZ Notification 2011, relevant provision is quoted herein below:-

"III. CRZ-III-

A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as "No Development Zone (NDZ)",-

(i). the NDZ shall not be applicable in such area falling within any notified port limits;

(ii). ***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 [especially]*21 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 [especially]*22 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;"

7. The respondent No.3/Mr. Selso Fernandes, who is alleged to have raised construction, the demolition of which is being prayed for by the applicant, is claiming that his case is covered under that provision quoted above because it provides that the kind of construction i.e. repairs or re-construction of existing authorized structure not exceeding Floor Space Index (FSI), existing plinth area and existing density and for permissible activity under the Notification, can be permitted to be constructed.

8. Now, we would like to have a clear reply from the side of respondent No.1/GCZMA as to whether the constructions, which are found to be there on the site in question, are covered in this category and whether there is any violation of the clearance granted by the impugned order dated 04.04.2017. In this regard, the respondent No.1/GCZMA shall submit its reply within a period of two weeks.

Put up this matter for final hearing on 29.09.2023

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 27, 2023
Original Application No. 15/2023(WZ)
I.A. No. 159/2023(WZ)
P.Kr