

Item No.1

(Pune Bench)

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

[Through Physical Hearing (with Hybrid Option)]

**REVIEW APPLICATION NO.11 OF 2023 (WZ)
(DIARY NO.2704137003162023)**

The Colva Civic & Consumer Forum

.... Applicant

Versus

GCZMA & Ors.

.... Respondents

Date of hearing : 27.09.2023

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

Applicant : Mr. Nigel Da Costa Frias, Advocate along with
the applicant in person through VC

ORDER

1. This Review Application has been moved seeking review of the judgment dated 20.04.2023, passed by us in Appeal No.48 of 2022, alleging that respondent No.8 and her son Mr. Joao Inacio Furtado, vide their replies dated 30.10.2007 and 20.11.2007, have admitted that the structures are temporary structures constructed in Survey No.12/6 and can be regularized. According to the applicant, this admission that the permanent construction is an illegal construction has not been considered by this Tribunal. As per Remote Sensing Instruments (RSI) report, there were no structures existing in the CRZ-III area of village Semabatim within the NDZ (i.e. 200 mtrs from High Tide Line) and there was one structure existing in Survey No.44/2 of village Sernabatim between 200 to 500 mtrs from the HTLas in 1991. Thereafter, the number of structures within 200 – 500 mtrs zone have increased as can

be seen in the table at Annexure-2 of the report of year 2006. The RSI report indicates that CRZ-III area was mapped by digital mapping using satellite imagery, aerial photography and ground truthing was carried out by making local inquiries. This area was not only restricted to only 200 – 500 mtrs from the HTL as has been misrepresented by the GCZMA in its affidavit dated 19.04.2023 filed before this Tribunal. This is clearly a false statement made by the GCZMA to mislead this Tribunal.

2. It is averred in the memo of this Review Application that this Tribunal has held in its judgment that the RSI report may not be attached much value to the survey map annexed to the report. The report in its entirety has not been considered by this Tribunal, particularly the finding in the report that there was no structure existing in Sernabatim village in the NDZ area in the year 1991. Hence, it is submitted by the applicant that the judgment needs to be reviewed.

3. We would like to reproduce here the reasoning part, which we have adopted in the light of the arguments raised at the time of final arguments in Appeal No.48 of 2022, in paragraph Nos.19 to 25, as follows:

“19. It is argued that it shows that this structure did exist prior to 1991 because for repair of the same, permission was granted as far back as on 09.08.1965 by the concerned Sarpanch. With respect to No Objection Certificate of Village Panchayat at page No. 56 of the paper book dated 01.10.1985 also, it is stated that a criminal case has been lodged in respect of the said document having been forged which was registered at PSI Colva Crime No. 57/99 under Section 468 IPC, in which after investigation final report has been submitted which is annexed at Page No. 97-A of the paper book submitted to the Magistrate concerned and on the basis of it, it is argued that the contention of the appellant is that the Respondent No.1/GCZMA rendered wrong finding about the disputed structure being of the year prior to 1991 stands nullified because the said NOC was not found to be forged by the police after investigation.

20. It was also argued that simply because the appellant had right to obtain copy of the said NOC from the Office of Village Panchayat Sernabatim under RTI where response was given that the same was not available with them, cannot be interpreted to mean that the said document was forged one. In our estimation also, for proving a document to be forged, it was essential to verify from the Village Sarpanch as to whether the same had been signed by him or not and that in case he stated that signature to be forged, specimen signature should have been obtained and its comparison with the disputed signature should have been made by an expert. Thereafter, after giving an opportunity of hearing, finding could have been rendered about the same being forged, but in the case in hand, we do not find this to have been done and even if Village Sarpanch was not available, but his admitted signatures were available in the record, with that comparison could have been made of the disputed signature taking services of expert in this field, which does not appear to have been done.

21. It may also be emphasised here that the burden of proof would lie on person who is claiming the signature to be forged, which in this case is the appellant, therefore it was the burden upon appellant to give the evidence on record for assisting this Tribunal, which burden he has not discharged.

22. We find that the appellant has submitted rejoinder affidavit dated 5th April, 2023, wherewith he has annexed as Annexure D an open plot identification on CRZ-III area of Goa which is dated 5th April, 2023, issued by the Remote Sensing Instruments, India to the Member Secretary Goa Coastal Zone Management Authority, Goa, wherewith map is annexed showing survey numbers in question not having any structure in them. It is quite surprising that this survey map which is prepared by M/s Remote Sensing Instruments in April, 2011 is not showing any structure to be there in the survey numbers in question, while admittedly the appellant as well as the Respondent are claiming that there exist structures which the appellant is claiming to be illegal being within 200 mt of HTL while the Private Respondent are claiming it to be legal because the same had been constructed prior to 1991. Therefore, in our opinion this survey map may not be attached much value in view of admitted facts of this case.

23. After having heard the argument of the learned counsel for the parties, we are of the view that the appellant has failed to establish on the basis of its evidence that the structures in question were not of the

period prior to year 1991. The sole basis of argument of the learned counsel for the appellant is that the map which has been prepared by the Directorate of Settlement and Land Records Panji-Goa in the year 1972 did not show any structure on the survey numbers in question while the map of subsequent period i.e. in the year 2006 and 2011 by Directorate of Settlement and Land Records Panji-Goa have shown that there were structures existing by name of 'SUNDANCE' therefore, it should be treated to have come up after 1991 and should not be treated to be of period prior to 1991.

24. We have already observed that there is no date mentioned on map which it is alleged to have been prepared in the year 1972, therefore, no reliance can be placed on the said map. But as regards the subsequent maps of year 2006 and 2011, they have certainly indicated the said structures to be there which the Private Respondents are claiming to be of period prior to 1991, based on NOC issued by the Village Panchayat in the year 1985 which we find to be not forged document because of the reasons we have already mentioned above. Moreover, the survey conducted by Neelesh G. Laad approved Valuer on 2nd April, 2013 has also concluded on the basis of house repair certificate having been issued on 9.08.1965 in favour of father of Respondent Nos. 5,6,7,9 &11 and husband of Respondent No.8 for repair of the ancestral house in Sernabatim in the Matriz No. 421 which include the survey numbers in question, shows that these structures were there and that the said structures existed as far back as on 09.08.1965, for repair of which certificate has been issued. We are relying on these documents because had there been no ancestral house, why such certificate would have been issued by Village Sarpanch. This also proves that the structure in question appears to be of the period prior to 1991.

25. Based on our perusal of the impugned order passed by the GCZMA, the evidence on record and in the light of the arguments made by learned counsel for the parties, we are of the firm opinion that there is no infirmity in the impugned order and that the same deserves to be upheld and appeal deserves to be dismissed and is accordingly dismissed, having no force. No order as to costs. “

4. All the points, which are now being raised, had already been well considered by us earlier while passing the impugned judgment. We do

not see any clerical error or an error on the face of record of this judgment which needs to be corrected by reviewing the judgment.

5. In the result, the Review Application is rejected.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 27, 2023
R.A. No.11/2023(WZ)
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