

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

(By Video Conferencing)

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Appeal No. 16/2022(WZ)  
Caveat No. 05/2022(WZ)  
I.A. No. 50/2022(WZ) & I.A. No. 99/2022(WZ)

**IN THE MATTER OF:**

**MR. ARMAND CARDOZO**

**(Since deceased), through**

- 1. MR. JOVEK CARDOZO,**  
Resident of House No. 107/A,  
Ambeaxir Ward, Sernabatim,  
Colva, Salcete, Goa- 403 708.
- 2. MRS. MARIA LETICIA CARDOZO**  
Ambeaxir Ward, Sernabatim,  
Colva, Salcete, Goa- 403 708.

**.....Appellant(s)**

Versus

- 1. Goa Coastal Zone Management Authority**  
Through its Member Secretary  
Office at C/o. Department of Science, Technology,  
& Environment, Government of Goa,  
Opposite Saligao Seminary, P.O.  
Saligao, Bardez, Goa- 403 511.
- 2. The Collector & District Magistrate,**  
Office at 3<sup>rd</sup> floor, Matanna Saldana,  
Administrative Complex, Near KTC Bus Stand,  
Margao, Goa- 403 601.
- 3. The Dy. Collector,**  
Office at 1<sup>st</sup> floor, Matanna Saldana,  
Administrative Complex,  
Near KTC Bus Stand, Margao,  
Goa- 403 601.
- 4. The Secretary**  
Village Panchayat of Sernabatim,  
Velim, Colva and Gaudaulim,  
Pin code- 403708.
- 5. Mr. Suvarn Bandekar,**  
Resident of Swatantra Path,  
P.O. Box No. 11, Vasco-da-Gama,  
Goa- 403 802.

**.....Respondent(s)**

**Counsel for Appellant(s):**

Mr.Parag Rao, Advocate along-with Mr. Shivshankar Swaminathan,  
Advocates

**Counsel for Respondent(s):**

Mr. Surjendu S. Das, Advocate for R-1, 2 & 3  
Mr. Shailesh Henriques, Advocate for R-5

**PRESENT:**

**Hon'bleMr. Justice Dinesh Kumar Singh (Judicial Member)**

**Hon'bleDr. Vijay Kulkarni (Expert Member)**

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**Reserved on : 06.09.2022**

**Pronounced on : 21.10.2022**

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**JUDGMENT**

1. The present Appeal has been filed by the Appellant under Section 16 read with Section 18(1) of the National Green Tribunal Act, 2010 against the order dated 25.03.2022 passed by Respondent No.1/GCZMA directing demolition of all existing structures located in Survey No. 16/7, Sernabatim Village, Salcete Taluka, Goa and restore the land to its original condition.

2. The facts in brief of this Appeal as per the Appellants are as follows:-

(i) On account of disputes having arisen between the Appellants and Respondent No. 6 in the present case Mr. Suvarn Bandekar (the Complainant before GCZMA) in respect of property bearing Survey No. 76/1, admeasuring approximately 43,600 sq. mtrs., the Complainant has been targeting the Appellants in respect of their structures existing on the said survey number. In fact, the said structures are argued to be in existence since 1984.

(ii) Earlier, the Complainant had filed two suits regarding the same land before Civil Judge Senior Division at Margao-Goa, alleging that fresh construction/new construction was being done by the

Appellants/their predecessor-in-title Mr. Armando Cardozo (father of the Appellant No.1).

(iii) The Appellant No.2 was a Mundkar of a residential house in the said property and with the permission of the father of complainant, other structures such as distillery, storage for toddy, storage for wood, cow shed and pigsty were permitted to be constructed by the predecessor-in-title of the Appellants.

(iv) The complainant had tried to seek demolition of additional structures except the residential house by instituting the above suits. In the entire suit, there was no mention about existence of any bar and restaurant or the father of the Appellant No.1 running a bar and restaurant from varandha of the residential house. The structures mentioned in the said suits have nothing to do with the structures existing in Survey No.16/7.

(v) According to Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, a Mundkar can construct in the property of Bhatkar that is landlord, with his permission and there is protection granted to such Mundkar from such eviction and he is entitled to purchase the dwelling house along with the area which may extend to about 300 sq.mtrs. in a village and 200 sq. mtrs in Municipal area. The late father of Appellant took defense of Mundkarship in the said suits and resultantly the issue of Mundkarship was referred to the Mamlatdar and the suits were stayed.

(vi) Further, it is submitted that by an application dated 17.04.1981, Mrs. Bertha Fernandes applied for re-survey of the Survey No.16/2. After an inquiry, order dated 25.03.1982 was passed in DC Case No. 43, inter-alia holding that as on the date Survey No.16/7 should be surveyed in the name of the late father of the Appellant No.1, having an area of 6400 sq. mtrs., house being 25

sq. mtrs. and well being sq. 25 mtrs. there-on. This is public document as the order is passed by the Public Officer, which could not be placed by inadvertence before the GCZMA/Respondent No.1. However, GCZMA had relied on an order dated 05.07.2001 passed by the Deputy Collector, which is being read out of context. Hence, the Appellants have sought leave to place on record the order dated 25.03.1982.

(vii) Further, it is submitted that the impugned order has been obtained by the complainant from Respondent No.1 submitting wrong facts to the effect that the father of the Appellant No.1 was running a bar and restaurant on Survey No. 76/1 from the varandha of his residential house and that this very license was used by the father of the Appellant No.1, for obtaining excise license in respect of Survey No. 16/7 at Sernabatim Beach (property in question).

(viii) Further, it is submitted that Respondent No.1 had issued show cause notice to the Appellant on 29.01.2014, based on complaint of Respondent No.5 (complainant) that unauthorized structures were constructed in Survey No.16/7.

(ix) The complainant had not placed on record such excise license before the Authority deliberately in order to conceal facts. The Respondent No.1 ought to have drawn adverse inference regarding such license in respect of Survey No.76/1 being in existence and the entire case that the license of Survey No.76/1 was being used for Survey No.16/7 ought to have been rejected at the very threshold.

(x) In response to the show cause notice, the Appellant had placed unimpeachable public document such as resolution passed by the Panchayat in which it resolved to grant NOC to Armando Cardozo in Survey No.16/7, pursuance to an application of NOC dated 30.11.1984 in respect of the structures in Survey No.16/7.

Survey plan of Survey No.16/7 was annexed with the said application which depicted the structures. He had also placed on record an application dated 29.03.1985 made to the excise department for granting excise license in respect of bar and restaurant in Survey No.16/7 which was issued on 20.08.1986.

(xi) Apart from this, documents such as house tax receipts, trade license, electricity bills, renewal of excise license, were all of prior to 1991 period, which were placed on record.

(xii) Further, it is submitted that based on the reply submitted by the Appellants, the Respondent No.1 referred the matter to the Inquiry Committee directing it to submit a report in respect of the structures existing in Survey No.16/7, which filed a detailed report on 12.08.2014. The Inquiry Committee took a survey plan prepared by Directorate of Settlement and Land Records (DSLRL) in the year 2014 as the base plan and depicted there-in the structures by marking the same under different letters, it marked bar and restaurant with shed under letter B, the cottages with rooms were designated as C, C1 and C2. Other structures such as shed, pump house, water tanks and wells were identified by describing the same. The Inquiry Committee after comparing the documents, the plans including the plan of the year 1984, 1985 and DSLRL plan of 2014 categorically held as follows:-

*“Since the structure shown in the site plan of the report were existing at the time, the sketch was drawn in the year 1984 and in the year 1985, the structure B, Bar and Restaurant, structures C, C1 and C2 cottages with rooms and other structures namely shed, pump House, water tank, wells which are necessary for the activities of structure B, C, C1 and C2, those structures were existing prior to CRZ Notification 19 February 1991 and does not call for any interference from the Authority”.*

(xiii) It is further submitted that the structures as depicted in the plan of Survey No. 16/7 by the Appellants in the year 1984, in the year 1985 and the plan prepared by the DSLR in the year 2014 based on the existence of the structures as on that date, are identical in terms of numbers and shape.

(xiv) Further, it is submitted that the Respondent No.1 did not accept the Inquiry Committee's Report and held following in its meeting dated 18.11.2014:-

*"...authority on perusal of documents available decided not to accept the findings of the Inquiry Committee since the licensee/permissions that is for sale of liquor, electricity and water" obtained by late Mr. Armando Cardozo is for operation of a bar at his residential place situated in Survey no. 76/1, Ambeshir at Sernabatim where he used to run a Bar in the varandha of his residential house and now the same license is being used for 11 structures situated in Survey No. 16/7 situated at Praya, Sernabatim village in ADZ area. In view of such set discrepancies, the authority after discussion and deliberation decided to call the parties for personal hearing before the authority seeking clarification in the matter and decide thereafter".*

(xv) Thereafter, the Respondent No.1 passed an order dated 05.12.2014 holding that the Appellants had failed to submit any document such as construction license/permission, approved plans, original survey plans records/plans or convergence sanad to prove that the structures marked in the Inquiry Committee Report by letters C, C1 and C2 which are cottages with rooms and other structures, toilet, store room, pump house and two wells and storage tanks were in existence prior to 19.02.1991 and accepted that the bar and restaurant existed in Survey No. 16/7 and directed demolition of all other structures except the bar and the restaurant.

(xvi) Against the above order, the Appellants filed Appeal No. 43/2014 before the National Green Tribunal, Western Zone, Pune

which was later on transferred to the National Green Tribunal Principal Bench, New Delhi where it was re-numbered as Appeal No. 128/2018 and after hearing of the matter, vide order dated 20.12.2018, the matter was remanded to the Respondent No. 1, directing to consider the material on record.

(xvii) The Respondent No.1 after giving opportunity of hearing, passed the impugned order, ordering demolition of the entire structures existing on Survey No.16/7.

3. The grounds on the basis of which the challenge is made in the present Appeal is that:-

(i) Despite the Inquiry Committee having certified the existence of the structures, which was also accepted by the Respondent No.1 at least to the extent of the bar and restaurant, the other structures having been found to be existing next to the Bar and Restaurant, the finding was written that the sketches do not correspond to the property bearing Survey No. 16/7, which is uncalled for.

(ii) Respondent No.1 failed to appreciate that the Panchayat and the excise department had conducted inspections before issuing NOC and excise license in respect of Survey No. 16/7 was issued which was later on renewed five times between 1986 to 1991, that is prior to 19.02.1991.

(iii) The Respondent No. 1, merely on the basis of the fact that the main Sernabatim Colva road was shown on a location plan on the eastern side and by referring to its distance as 450 meters, erroneously held that the structures were in Survey No. 76/1 and that the license issued for Bar and Restaurant also related to Survey No. 76/1 and not to Survey No. 16/7.

(iv) The Respondent No. 1 failed to appreciate that the mud road was shown as touching the Survey No. 16/7, on its southern side, which in fact is the road, which was passing through the property of the Respondent No. 5, which was allegedly dug up by the father of

the Appellant No. 1, for which proceedings were initiated under OA No. 23/2014 by the Respondent No.5 before this Tribunal. The existence of mud road clearly concludes the issue that the structures existed in Survey No. 16/7 and the license was also issued in respect of the same survey number.

(v) The Respondent No.1 failed to appreciate Rule 100 of the Goa Excise Duty Act, 1964 and Rules which provides that no Bar can be allowed to operate from a house or a part of the house. Therefore, there was no question of any license being issued in respect of the dwelling house of the Appellants in Survey No. 76/1.

(vi) It was incumbent upon the Appellant under Rule 90 of the Goa Excise Duty Act, 1964 and Rules, to show existence of the structures in the property in a plan, while applying for Excise License. Accordingly, the Appellant in its application dated 29.03.1985, had annexed the plan of Survey No. 16/7, where-in apart from the Bar and Restaurant all other structures were also depicted, which has been ignored by the Respondent No.1.

(vii) It is urged that the finding to the effect by Respondent No.1 that the structures shown in the plan of 1984 pertain to some other location/structure, by contending that road was shown on the eastern side or that the distance was mentioned as 450 meters in the length, is on the face of it, inferential. The Appellants has to submit in this regard that only 2 survey numbers which were discussed in the proceedings, were 16/7 and 76/1. In terms of area, location and size, the said 2 survey numbers are distinct and separate. Therefore, conclusion drawn that the structures are existing elsewhere i.e. in Survey No. 76/1 and the license in respect of Bar and Restaurant was also in Survey No. 76/1, which was being used for structures in Survey No.16/7, is a false finding.

(viii) The electricity bills were annexed which showed power consumption. Apart from that house tax receipts were filed in

respect of existing structures but all were discarded erroneously by the Respondent No.1. Had there been no structure existing why the electricity connection would have been taken and its bill would have been paid. The electric meter, in respect of Xavier Bar and Restaurant, is admittedly in Survey No. 16/7.

(ix) The Respondent No. 1 has committed the same mistake which it had committed in passing the earlier order dated 05.12.2014 by recording that the Appellants have failed to produce any document which could be considered as a permission/license/approval and or/conversion sanad from the competent authority to establish the legality of the structures existing in the property in question admeasuring more than 750 sq. mtrs.

(x) If at all, the Respondent No.1 had any doubts regarding the existence of the structures on Survey No. 16/7 or Survey No. 76/1, it was incumbent upon it to get an inspection carried out which would have brought correct position of the spot. The house number was also allotted in 1986, which would be sufficient to infer that license was granted in Survey No. 76/1, Ambeaxir which is 400 mtrs. away from the beach as stated in the letter dated 26.08.1985 of the excise department, hence, it is prayed that impugned order be set aside.

4. The stand taken by **Respondent No.1/GCZMA** in its Affidavit dated 19.08.2022 is as follows:-

(i) The Appellants are the owners of the property bearing Survey No. 16/7, admeasuring approximately more than 3200 sq. mtrs. (Subject Property) and are also owners of the property bearing Survey No. 76/1, wherein they are running Bar and Restaurant since prior to 1991 with requisite licenses/approvals/ permissions. However, the Appellants have not only been using the aforesaid licenses for the Subject

Property (Survey No. 16/7) but have also undertaken additional structures there-on after 1991, without obtaining prior approvals/permissions/licenses which is in violation of the Coastal Regulation Zone Notification, 2011.

- (ii) The Subject Property lies entirely within 200 meters of the High Tide Line (HTL), hence, falls in No Development Zone (NDZ) of the CRZ Area which is evident from three plans prepared by the Directorate of Settlement and Land Records (DSLRL) dated 16.12.2010, 05.09.2012 and 27.03.2014. Therefore, no construction shall be permitted within the said area.
- (iii) The Answering Respondent had issued to the Appellants various show cause notices for unauthorized structures and thereafter had referred the matter to the Inquiry Committee which conducted inspection and submitted its report on 12.08.2014 but its recommendations were not accepted for the reasons mentioned in the notice of personal hearing dated 05.12.2014 issued to the Appellants and ordered Appellants to demolish all the structures (except one structure) found identified on the subject property. The said order was challenged before the NGT and was set aside vide its order dated 20.12.2018, remanding the matter back to Respondent No.1 for reconsideration. Thereafter, again after hearing the parties and perusing the documents on record, the answering Respondent passed the impugned order directing the Appellant to demolish all the existing structures on the subject property and restore the land to its original condition.
- (iv) During the proceedings, the Respondent No.1 had given various opportunities to the Appellant to produce documents showing permission/license/approval and/or Conversion Sanad from a competent authority to establish the legality of the said structures but it had failed to provide the same.

- (v) The Appellants placed reliance on documents such as, application dated 29.03.1985 made to the Excise Department for Excise License, Excise License dated 20.08.1986, Application dated 30.11.1984 to the Panchayat for NOC for Bar and Restaurant which was decided on 02.11.1984, Government Survey Plan, plans prepared by the DSLR, receipts and licenses, but all these neither establish the legality of the structures nor do they prove that the structures existed from 1984 i.e. prior to 1991.
- (vi) It is further submitted that Appellants did not mention the survey numbers in respect of which the Electricity Bills, Trade Tax, House and Lighting Tax Receipts, NOC, Excise License etc. had been issued. Moreover, the plans made by DSLR between the years 2010 and 2014 show that the structures had varied in size and dimensions but the Appellants failed to produce any permission/license/approval for the said changes. In view of this, it was inconceivable to hold that the Appellants would not have a single construction license from the Village Panchayat prior to the year 1991 for the said structures.
- (vii) Even the Plans submitted by the Appellant did not correspond to the subject property as there was no main road touching the subject property nor is there any mention made of any structure existing on the subject property, in the sale deed.
- (viii) The averment of the Appellants that by inadvertence they could not place the order dated 25.03.1982 passed by the DC in case no. 43, which was in respect of re-survey of the subject property is erroneous. However, it is evident from the said order that there were only two structures existing on the Subject Property i.e. (i) House admeasuring 25 sq. mtrs.; and (ii) Well admeasuring 25 sq. mtrs.

- (ix) Further, it is submitted that license for Bar and Restaurant was granted on 02.12.1984, however, the house number found on the subject structure, where-in the Bar and Restaurant was to be operated, was granted on 16.11.1986, i.e. after two years from the date of NOC. It shows that the structure for which the license was granted existed in Survey No.76/1 and not in the subject property (Survey No. 16/7).
- (x) Even the Electricity Bills and the Receipts which have produced by the Appellants mentioned the name of field 'Ambeaxir', i.e. Survey No. 76/1. This is also mentioned in Form I and XIV at Page 443 of the Application. The said documents submitted by the Appellants pertain to the location of the Bar and Restaurant and the same is inconsistent with the plan annexed to the Applications dated 30.11.1984 and 20.03.1985.
- (xi) Based on the above facts, the demolition order was passed correctly, therefore, the appeal should be rejected.

5. The stand of the **Respondent No. 5** is as follows:-

- (i) The Appellants have failed to produce even a single permission/ license/approval from any of the competent authorities in respect of the 09 to 11 independent illegal structures of different sizes in survey no. 16/7. In fact one of the aforesaid illegal structure the "Xavier Bar and Restaurant" touches the Sernabatim Beach Coast, with all the other structures admeasuring 762 sq. mtrs. or there-about falling fully within 200 meters of the High Tide Line (HTL) and in fact 85% of the property bearing Survey No. 16/7 itself falls within the HTL.
- (ii) The survey no. 16/7 in fact is about 220 meters in length from the HTL (West to East) and admeasuring 3200 sq. mtrs., the sale deed which has been relied upon by the Appellant, by

which they have said to have purchased the property in question has no mention of any existing structure.

- (iii) A correction application was moved by the Appellant before the Deputy Collector, who vide order dated 05.07.2001, after holding an enquiry, found in existence over the said survey number 16/7, a well in existence as well as a house admeasuring 25 sq. mtrs.
- (iv) The sketch maps which were annexed with the application for NOC dated 30.11.1984 before Panchayat/Respondent No.4 and the application dated 29.03.1985 moved before the Commissioner of Excise for license, are not survey plans. The said sketch maps show that there is main road for Sernabatim to Colva on the eastern boundary of the property in question, whereas in fact Sernabatim-Colva main road does not at all touch Survey No. 16/7. Moreover, the length of the property in the east-west direction is shown to be 450 sq. mtrs. which is at variance with the actual distance and therefore, the said document cannot be relied upon and in fact they appeared to have been submitted with respect to obtaining NOC and license on some other property/survey number.
- (v) The illegal constructions were first noticed in the year, 2000 by the Deputy Collector, consequent to proceedings in Writ Petition No. 126/1996 made its communication to Respondent No.1, where-after Respondent No. 1 issued notices to the Appellants as well as Respondent No.4. Thereafter, Respondent No.1 carried out first site inspection and it was found that structures admeasured 762 sq. mtrs. consisting of restaurant, cottages and a building. Thereafter, Respondent No.1 issued a show cause notice to the Appellants with a direction to demolish the constructions which were in blatant violation of CRZ Notification. Thereafter, Respondent No.1 issued another notice

to the predecessor of the Appellants on 09.09.2003 and after personal hearing, passed an order on 20.05.2005, directing demolition of all the structures within one month. The Appellant's predecessor challenged the said order before the Hon'ble High Court of Bombay at Goa taking a plea that Collector's Report and Panchnama were not furnished to him, where-on Respondent No.1 was directed to hear the matter once again, by order dated 20.07.2005 passed by Hon'ble High Court.

(vi) Further, it is submitted that in Suo Moto Writ Petition No. 02/2006, the Hon'ble High Court of Bombay at Goa issued directions in respect of Survey No.16/7, for survey to be conducted by Directorate of Settlement and Land Records (DSLRL), where-after the plan dated 16.12.2010 was prepared by the DSLR showing 09 structures of various sizes in NDZ within 200 mtrs. from the HTL in the said survey land. Thereafter, Respondent No.4/Panchayat issued show cause notice for demolition of the said structures in the year 2008. Later on the Panchayat justified some of those structures finding them legal and decided to cancel the notice. The Panchayat is hand-in-glove with the Appellants, as it held that the old structures existed since prior to liberation of Goa when the same were purchased in 1997. The predecessor of the Appellant has produced license dated 04.12.1985 along with the sketch pertaining to a residential bungalow which has also been used to cover up for the illegal structures. The said bungalow does not lie in the land bearing Survey No.16/7 and is located somewhere close to the boundary of Benaulim Village.

(vii) The Respondent No. 4 has helped the Appellants in manipulating the documents and for this, it is submitted that a certificate was issued on 22.10.1986 to the effect that Armando

Cardozo is a resident of Sernabatim, Ambeaxir bearing house no. 107/2 and that the Panchayat had no objection to him to do minor repairs in the existing house bearing no. 107/2 at Ambeaxir Sernabtain. The certificate dated 19.06.2005 certifies that the House No. 107/3 is registered in the Panchayat Office record in the name of Armando Cardozo from the year 1987-88. However, it is seen that the said House No. 107/3 is changed to House No.107/2 in the year 1992-93 as per new assessment of houses and the necessary house taxes have been paid till 31.03.2005.

- (viii) The third certificate pertains to no-dues dated 09.07.2003 which says that Smt. Bertha E. Fernandes, Proprietor of M/s. Camilson Beach Resort is running business activities of lodging units, Bar & Restaurant in premises bearing H.No.107/3 situated at Ambeaxir, Sernabatim and has no due outstanding.
- (ix) From the above certificates, it is apparent that there are contradiction in those certificates as the predecessor of the Appellant Mr. Cardozo is a resident of Ambeaxir, bearing House No. 107/2 and has been issued a license to run Bar & Restaurant under Resolution No. 7 (b) dated 16.11.1986. As against this, the Certificate dated 19.06.2005 states that House No.107/3 is registered in the name of Mr. Cardozo, in year 1987-88 and is changed in the year 1992-93 from 107/3 to 107/2. When the House No.107/2 already existed on 22.10.1986 as per certificate dated 22.10.1986, where was the question of changing it again in the year 1992-93 as stated in the certificate dated 19.06.2005. Moreover, there is no reason given to change the House No. 107/3 to 107/2.
- (x) Mr. Cardozo claimed that initially the house number which was allotted to the said structures/cottages was house no. 107/6 and that soon thereafter he set up Tourist Home in the said

structure after obtaining electricity connection for the said structures.

- (xi) In replies dated 12.01.2001 and 22.10.2003 to the Respondent No. 4 in show cause notice notices dated 26.12.2000 & 18.10.2003, the predecessor-Mr. Cardozo has stated that one of the other structures situated in his said land and bearing House No. 107/7 is used for lodging of the guest for which electricity was required to be released, which stands changed to 107/4. This clearly shows that there is no co-relation between House Nos.107/7, 107/6 and 107/4. Further, Resolution No. 7(b) dated 16.11.1986 which finds mention in certificate dated 19.06.2005, does not refer to run Bar and Restaurant but refers to issuing House Number to his structure where the Bar and Restaurant is situated at Sernabatim beach, Ambeaxir. Instead, Resolution No. 3(f) dated 02.12.1984 refers to license from Bar and Restaurant at South Colva Beach proposed by Mr. Cardozo from Ambeaxir.
- (xii) It is pertinent to note that the original structure of 25 sq. mtrs. which was allotted to the predecessor of the Appellant, Mr. Cardozo, got converted into massive structures thereafter, though there is not a single NOC and/or approval produced by the Appellants from any of the Authorities like the Town and Country Planning etc. nor is there is any conversion sanad.
- (xiii) Further, it is submitted that in Survey No. 16/7 inspection was made on four different occasions by the Survey Department right from 2010 to 2020 either on High Court's directions or otherwise and each report/plan depicts a continuous change in shape and/or increase in size of the structures and for which no permission/approval/license was produced which was required under law which is in consonance with the directions issued by the Tribunal vide order dated 20.12.2018. In fact the

sketches produced by the Appellants alleged to be of the years 1984 and 1985 tally with the location of the house in the property bearing Survey No.76/1, where the bar and restaurant was situated for which license was originally granted. Even, the license issued by Food and Drug Authority on 12.03.1994 shows that it was granted for his residential structure. The documents filed by Appellants do not support the case of the Appellants as the same do not tally with the situation at the site. Moreover, the permissions/approvals which ought to have been produced, have not been produced.

(xiv) The Appellants solely relied on application dated 29.03.1985 and Letter dated 30.11.1984 while failing miserably to clarify the clear inconsistency in the said documents which is fatal in respect of the facts mentioned above. The various structures admeasuring 762 sq. mts. are independent structures having only one house number and not a single license/ permission/ approval from any of the competent authorities has been filed.

(xv) There has been an attempt on the part of the Appellant's predecessor i.e. Mr. Armando Cardozo and his legal heirs to pass off documents and various records pertaining to mundkarial house belonging to late Mr. Armando Cardozo located in Survey No. 76/1 of Sernabatim Village as if the same pertains to structures in property Survey No. 16/7. In fact property bearing Survey No. 76/1 of Sernabatim Village is called 'AMBEAXIR' and not a mundkarial house which is belonging to late Mr. Armando Cardozo, where-in he ran Xavier Bar & Restaurant.

(xvi) In contrast, contrast, the property bearing Survey No. 16/7 is called "PRAYA". The Survey No. 76/1 of Sernabatim Village is located about 500 to 1000 meters away from the Sernabatim Beach, whereas Survey No. 16/7 is located adjacent to the

Beach. Most of the documents relied upon by Mr. Armando Cardozo and his legal heirs are in respect of structures located in Survey No. 76/1 and the permissions are in respect of structures located at AMBEAXIR.

(xvii) In a lot of the bills/ receipts and other documents produced, the word Ambeaxir is found mentioned which would lead to the conclusion that the said record pertains to a structure in the property known as Ambeaxir which is property bearing Survey No. 76/1. The road leading to the Sernabatim Beach where the property bearing Survey No. 16/7 exists, itself was constructed between the years 1992 to 1996, prior to which there was only a footpath. The depiction of the structure on a plan is required for obtaining an Excise License but in the present case, the same does not tally with the plan produced, coupled with the letter dated 26.08.1985, where-in it is specifically stated that the structure/premises is 400 mtrs. away from the Sernabatim Beach. The electricity bills, house and lighting tax receipts or any other such documents cannot be considered, as already held by the Respondent No. 1 in a number of decisions to be taken as proof of valid permission for construction. In the case at hand as many as 9 to 11 structures are found to have been raised which are independent structures, yet having on a single house number while admeasuring more than 762 sq. mtrs. and yet not having a single license/permission/approval from any Competent Authority and all these structures are existing within 200 meters of High Tide Line.

(xviii) It is further submitted that number of inspections of the property in question have been conducted by Respondent No. 1/GCZMA right from 2001 onwards and from 2010 onwards

by Survey Department, which clearly shows that the illegalities have continued unabated, therefore, there is no question of another inspection being carried out by Respondent No. 1 as is being prayed by the Appellant as that would not serve any purpose. Even the DSLR has carried out inspections and said plans of 2010, 2012, 2014 and 2020 clearly show a clear variation of the structures and even in respect of the said changes, no permissions have been produced. The record shows that on 25.03.1982, there existed only one structure admeasuring 25 sq. mtrs. in the property bearing Survey No. 16/7 while it is claimed that within a period of 2 years, the said structure increased by 762 odd sq. mtrs. and that too without land conversion or any approvals or NOCs from any of the competent Authorities.

6. On the basis of the above pleadings, the only question that needs to be answered by us is whether the structures in the property bearing Survey No. 16/7, Sernabatim, Goa existed prior to 19.02.1991 ?

7. We have heard the arguments of the Learned Counsels for the parties and perused the record.

8. The Learned Counsel for the Appellants has vehemently argued that the Respondent No. 1/Authority has passed an order of demolition again without considering the documents produced by it in appropriate manner, ignoring the direction given by the NGT vide order dated 20/12/2018.

9. Our attention is drawn to the said order of this Tribunal dated 20.12.2018 where-in it is recorded that the Appellant did not produce any documents such as construction license permission, approved plan, original survey record/plan and conversion deed etc. to the Respondent No. 1 while the Appellant had placed before the Respondent No. 1 as well as the enquiring committee, the license granted by Excise Department

with maps attached to it and based on that, the enquiry committee submitted report in its favour yet the same was over looked without giving any reason by the Respondent No. 1 and therefore, the matter was remanded for re-consideration but instead of appropriate re-consideration, an illegal demolition order has been passed.

10. He drew our attention to the sale deed where-by the said property was purchased and thereafter attention has been drawn to the map prepared by the Directorate of Settlement and Land Records, Government of Goa annexed at page 394 of the paper book and indicated Survey No. 16/7 where-in the structures of the Appellants were existing. These structures were found in existence on 27.03.2014 and the survey maps with the structures shown in a map annexed with the application dated 30.11.1984, moved by Mr. Armando Cardozo before Sarpanch, Kolva, for grant of NOC for bar and restaurant license in Survey No. 16/7 in Sernabatim matched with these map annexed with an application given to the Commissioner of Excise on 29.03.1985, seeking license for retail sale of Indian made foreign liquor, hence it was argued by him that all these structures were there in the year 1985 and they were also shown in the Survey map of Directorate of Settlement and Land Records dated 27.03.2014. Therefore, these structures should be taken to have existed prior to 1991, hence cannot be demolished because CRZ Notification would not be applicable on them.

11. This argument was rebutted from the side of the Respondent No. 5 stating that the said map which has been annexed with the application dated 30.11.1984 and 19.03.1985 do not relate to the Survey No. 16/7 because on the eastern side of the said property, there is shown Sernabatim main road which is not shown in the map dated 27.03.2014 of DSLR.

12. Apart from that, the Appellant has also drawn our attention to the receipts on pages from 369 to 379 of the paper book which appear to be of the electricity bill receipts, house tax receipts and trade tax receipts etc. which all belong to the period prior to 1991 and are being stated to be of the house situated on the property in question and it is argued that it is enough proof to hold that the said structures were existing prior to 1991 and therefore, should not have been ordered to be demolished.

13. The Learned Counsel for the Respondent No. 5 as well as Respondent No. 1 vehemently argued that the said properties on the Survey Number in question were constructed post 1991 without any permission from competent authority and are falling within NDZ and therefore, no construction could have been done because of the said construction being in violation of CRZ Notification, 2011, hence they have been rightly been ordered to be demolished.

14. We have gone through the impugned Judgment carefully and find that the main question which was framed for consideration was whether structures in property bearing Survey No. 16/7, Sernabatim, Goa existed prior to 1991? It is the same question which we have also framed for consideration before us and the said question has been answered in negative by the authority after thorough consideration of the respective submissions. In fact whatever arguments have been raised before us have already been raised before the GCZMA, therefore, we have to see whether the findings given by the GCZMA in this matter are contrary to the evidence on record or are they in consonance with it?

15. The Authority has observed in the impugned order that it has found that the Survey No. 16/7 would fall almost entirely within 200 mtrs. of HTL which is seen demarcated on three plans prepared by the Directorate of Settlement and Land Records, a perusal of the plan would indicate that the structures in question were within 200 mtrs. of HTL. The Appellant

failed to produce any document which could have been considered as a permission/license/approval or conversion from the competent authority so as to establish that the structures were legally made which admeasured more than 750 sq. mtrs. and are independent structures. The total area of the said Survey Number is 3200 sq. mtrs. and in terms of the plans from Directorate of Settlement and Land Records, there were found large number of structures and the said property which are independent, which measures to be 750 sq. mtrs. in all in-conceivable that such huge structure would not have even a single construction license from the Village Panchayat prior to 1991.

16. The Appellant is relying upon the applications made to the Village Panchayat in 1984 and an application dated 29.03.1985 made to Commissioner of Excise, both of which have a sketch annexed to it. The Authority meticulously compared the aforesaid sketches viz-a-viz the Government Survey Plan and the plans prepared by the Directorate of Settlement and Land Records and found apparent that the said sketches did not correspond to the property bearing Survey No. 16/7 as there was no main road touching the property bearing Survey No. 16/7 nor did the property admeasure 450 sq. mtrs. in length as stated in the aforesaid sketches. In fact the Survey plan as well as the DSLR plans showed existence of private property on three sides with the Arabian Sea on the western side, therefore, they appear to be pertaining to some other location/structure and on that basis the Appellant was not found to have established that the structures in question existed prior to 1984.

17. We are also fully in agreement with this finding because it is only these above mentioned two documents which have been taken into consideration by the Authority which were vehemently pressed before us also and based on that, it was urged that the sketches annexed with the application moved before Village Panchayat in 1984 and the application dated 29.03.1985 moved before the Commissioner of Excise, both were

identical and established the correct position of the structures located in Survey No. 16/7, when compared with the map prepared by the Directorate of Settlement and Land Records on 27.03.2014. Therefore, all these structures which were found to be there in 1984-85 were also found existence in the year 2014 when the DSLR prepared this map and on that basis, the said structures should be treated to have been in existence prior to 1991 in the said survey number. We do not find the said argument convincing on the same ground which has been relied upon by the authorities as we also find that there two sketch maps annexed with the application moved before Village Panchayat and Commissioner of Excise, do not show Sernabatim main road to Colva towards the eastern side of the said Survey number while the said road is not shown in the survey map of 2014 and 2017. Therefore, we also arrive on the same conclusion that the sketch maps which are shown of the property in question do not appear to be of the disputed structure as there is difference in its boundary towards eastern side and accordingly, these pieces of evidences appear to have been rightly discarded by the authority.

18. The authority has also taken into consideration the undisputed fact that the subject matter property was purchased in the year 1977 but there is no mention made in the concerned sale deed of structures existing in Survey No. 16/7. The said property after it's purchase, was the subject matter of re-survey vide application dated 17.04.1981 and it was found then that there was only one structure existing in it admeasuring 25 sq. mtrs. How that structure came to be expanded to 750 sq. mtrs. later on, has not been explained properly by the Appellants as no permission from any Competent Authority has been shown to have been obtained for additional construction in order to add to the existing structure which was 25 sq. mtrs. earlier. The burden to proof this as to how the said structure came to be expanded to 750 sq. mtrs. lay upon the Appellants, which they have failed to discharge.

19. The authority has also noted that the application dated 30.11.1984 for NOC for bar and restaurant, was decided on 02.12.1984 and the license for bar was granted, which shows interestingly that the house number to the structure in which the bar and restaurant was to be operated, was granted on 16.11.1986 i.e. two years after the NOC having been granted, which is not inconsonance with law. Therefore, it can safely be assumed that the structure for which the license was granted, existed in Survey No. 76/1 (AMBEAXIR) which is 400 mtrs. away from the beach as is stated by the letter dated 26.08.1985 by the Excise Department.

20. As regards the reliance placed by the Appellants on the electricity bills, trade tax, house tax and lighting bill receipts, NOC from Panchayat, excise challans etc. which have been placed on record to prove that the structures in the Survey No. 16/7 existed prior to 1991, the Authority has mentioned in impugned order that they are not satisfied by the said documentary evidence as they do not mention the survey number or location in respect of which the said electricity bills, trade tax, house and lighting bill receipts and other documents have been issued and therefore, they were discarded as insufficient proof to hold that the structures in question existed prior to 1991 at the said place. We are totally in agreement with the said view/interpretation made by the Authority and hold that only on the basis of these documentary evidences it cannot be held that the disputed structures existed prior to 1991. The Learned Counsel for the Appellant has taken us through all these documents in detail but we find that these documents do not help the case of the Appellants in proving that the said structure existed since prior to 1991.

21. The final argument placed before us, was that after the remand order passed by this Tribunal for re-considering the matter all afresh and pass orders on merits, the same has not been done in letter and spirit, rather the authority has reproduced the same order which had been passed earlier regarding demolition. The said argument is not agreeable to

us because on comparing the two orders, we find that all the documents which were laid during the subsequent hearing before the authority, were considered in depth and a logical and well-reasoned order has been passed by it. We do not find any sufficient reason to interfere in the impugned order and find that this Appeal deserves to be rejected and is accordingly rejected.

22. All the connected applications also stands disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

23. After pronouncement of the above order, Mr. Parag Rao, Learned Counsel for the Appellant prays that the above order may be kept in abeyance for a period of one month as he has to file appeal before the Hon'ble Supreme Court. Accordingly, at his request, the above order shall remain in abeyance for one month from today.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 21, 2022  
Appeal No. 16/2022(WZ)  
Caveat No. 05/2022(WZ)  
I.A. No. 50/2022(WZ) & I.A. No. 99/2022(WZ)  
P.kr & JG