

Item No. 5

(Pune Bench)

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

(WITH HYBRID OPTION)

Appeal No. 35/2022(WZ)
I.A. No. 108/2022

Francis Francisco Rodrigues

.....Appellant

Versus

Goa Coastal Zone Management Authority & Ors.

....Respondent(s)

Date of hearing: 19.04.2023

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

Appellant : Mr. Pankaj Vernekar along-with Mr. Shivshankar
Swaminathan, Advocates
Respondent(s) : Mr. Dhruv Tank, Advocate for R-1/GCZMA
Mr. P.A. Kamat along-with Mrs. Pranita Gawandi, Advocates
for R-3 & 4/Pvt. Party

ORDER

1. This appeal has been filed against the order dated 25.07.2022 passed by the Respondent No. 1/GCZMA, by which the Appellant is directed to demolish the structure standing in Sy. No. 158/2 and remove the road standing in Sy. No. 158/4 and 158/6 of Calangute, Bardez, Goa and restore the land to its original condition within a period of 30 days from the receipt of the order.

2. At the very outset, the learned Counsel for the Appellant has made it clear that he has nothing to do with the road but he is concerned with the direction given for demolition of the structures standing at Survey No. 158/2.

3. By our previous order dated 05.04.2022, we had directed the Respondent No. 1/GCZMA to clarify the discrepancy, which we had found

because it was stated in the inspection report, annexed at page no. 83 of the paper book, that a new house was being constructed while impugned order had directed for demolition of the structures already standing.

4. Today, from the side of Respondent No. 1/GCZMA, a letter dated 29.01.2020 written by the Dy. Collector & Sub-Divisional Officer, Mapusa Sub-Division, Mapusa, Goa addressed to the Member Secretary, Goa Coastal Zone Management Authority(GCZMA) has been submitted before us relating to the construction of house in Survey No. 158/2 and the construction of road in Survey No. 158/6 and 158/2 of Calangute Village, where-in a report dated 28.01.2020 received from Mamlatdar of Bardez, Mapusa, Goa along-with the enclosure has been annexed. In the said report, Mamlatdar on the basis of report of Talathi of Calangute, it is submitted that a new road construction was found to be there of length 80 mtrs. x 3 mtrs. width and also a new house construction having an area of 30 sq. mtrs. approximately. With that, a sketch has also been annexed, showing a small construction of house as well as the road which passes through Survey No. 158/2 and also through Survey Nos. 158/4 and 158/6. Probably, the learned Counsel for the Respondent No. 1 wants to convince us that it is the structure, which is shown in this sketch as Survey No. 158/2, which is found by them to be illegal, hence it has been ordered to be demolished because according to them, the same has been found to be constructed after 1991 without permission.

5. On the other hand, our attention is drawn by the learned Counsel for the Appellant to the sale deed dated 20.11.2019, which is annexed at page nos. 135-161 of the paper book, it has been executed by four persons, where-in four persons have sold their portion of land at Survey No. 152/2 admeasuring 438 sq. mtrs. out of 2300 sq. mtrs. of the Village of Canangute, Taluka and Sub-District of Bardez, North District of the

State of Goa. The boundaries of the said plot have also been indicated, which appear to match with the boundary of three sides from the boundary given at page no. 358 of the paper book, which is a part of the same sale deed and based on this, it is being asserted that the structure, which is shown on the same Survey Number built on 438 sq. mtrs. area, which is a part of the said area, which was old construction of prior to 1991, hence it could not have been ordered to be demolished.

6. In order to show what is the area of the said construction, our attention is drawn by the learned Counsel for the Appellant to page no. 107 and 113 to 114 of the paper book, which is a part of the application for seeking permission to repair the house, in which the area is recorded at page no. 107 to be 204 sq. mtrs. and at page no. 113 also, the survey number is shown as 158/2 and the sketch map is given at page no. 114 of the paper book, which shows the total area to be near about 204 sq. mtrs. Having drawn our attention to these evidences, it is argued by the learned Counsel for the Appellant that the area which the Respondent No. 1 is showing of the said construction, is much less i.e. 30 sq. mtrs., as shown by the Talathi in its report but it is not actually 30 sq. mtrs., rather it is 204 sq. mtrs., therefore, it appears that the Talathi has submitted its report with respect to some other property and not of the property, which is being claimed by the Appellant to be theirs. The photographs of the said property have also been annexed by the Appellant at page no. 115 of the paper book.

7. Thereafter, the learned Counsel for the Appellant has drawn our attention to page no. 83 of the paper book, which is site inspection report conducted by the GCZMA on 17.02.2020 and at serial no. 4 of the said report, it is recorded that "it has been observed that a new house is being constructed in Survey No. 158/2 of Village Calangute, Bardez. The

construction is in its advance stages”. In this regard, photograph is also shown in the said report. It is further pointed out by the learned Counsel at point no. 5 of this report that “both the road and the house fall within 200 to 500 meter of CRZ notified area”, whereas the Talathi has stated that the same is within 200 sq. mtrs. of the HTL, which is a discrepancy and also points towards the fact that some different property is reported above. The said site inspection report has also a map, which has been annexed at page no. 206 of the paper book, where-in no structure has been shown to be there at Survey No. 158/2, which is very strange because the Respondent No. 1 has clearly stated that there was illegal structure being raised by the Appellant and the Appellant has also claimed that the structure is quite big i.e. of 204 sq. mtrs., therefore, how it is possible that the said structure has not been shown in the survey, which was conducted on 17.02.2020.

8. We are of the view that before ordering demolition, the GCZMA ought to have got the property identified as to where the same was lying, regarding which the demolition order has been passed but it is quite apparent from the site inspection report dated 17.02.2020 that no such exercise has been done and yet demolition order has been passed only on the basis of report of Talathi.

9. As regards the case laws from the side of the Respondent No. 1, reliance is placed on the case of *Anil Hoble v. Kashinath Jairam Shetye & Ors.* [(2016) 10 SCC 701], where-in apart from other paragraphs, para no. 13 has been relied upon, which is to the following effect:-

“The moot question then is: whether the structure as it existed when the respondents moved the Tribunal complaining about violation within the CRZ area was the same structure as on 19th February, 1991 when the CRZ Policy came into being? That finding of fact has been answered against the appellant by the Tribunal and we must agree with the same. For, the structure

as it existed when the plot was purchased by the appellant on 3rd August, 1992 was a small structure at the corner of the subject plot and was used only as a garage or for repairs of vehicles and allied activity. The structure in respect of which complaint has been made before the Tribunal was completely different in shape, size and also location for which reason the Tribunal issued direction to remove the same.....”

10. Based on the above, it is argued by the learned Counsel for the Respondent No. 1 that in this Judgment also, Hon’ble Apex Court has relied upon the sale deed in order to ascertain the structure, direction for removal of which was given. Therefore, he has argued that in the present case as well, the sale deed which has been annexed by the Appellant, does not show any structure to be there on the Survey number in question and therefore, the structure which has been raised by them, is of subsequent period i.e post 1991, which needs to be demolished. He has also read out before us the relevant portion of the order passed by the GCZMA at page no. 78 onwards, relevant part of the same is quoted here-in below:-

“The Authority noted that the Respondent in his reply has relied on the Gut Book to prove that the structure in Sy No. 158/2 is legal. However, the Authority is of the opinion that, the Extract of the GUT Book, which is in the possession of the Talathi of the Village of Calangute has been produced for the property bearing Survey No. 158/2 of Calangute Village which shows that a structure stands therein; However, the structure in dispute standing in the property is not the same position as shown in the gut book

Incidentally, the GUT book maintained by the Talathi does not have any legal bearing and is only a referential book given to the concerned Office of the local Panchayat Talathi for mere reference. If the structure was standing and was subsequently inserted there are no details furnished to this Authority to prove beyond doubt as to when were the details of the structure inserted. The Talathi has also not mentioned nor given any details to show how and when the said disputed structure was inserted Therefore, the GUT book being a sketch book given to the Talathi, does not have any legal bearing and cannot be considered as a document to be relied upon to prove the legality of the structure. moreover, there seems to be some glaring and major discrepancy in the GUT Books produced of the same Village and the Survey Plan of the same property bearing the same survey number and that too maintained by two different

Government Departments; as a result of which information in the GUT Book cannot be relied upon and as such the Authority refuses to rely on the GutBook as evidence for the legality of the Structure in dispute as the survey were promulgated in the year 1971-1974 and was kept open to the public for suggestion and objection. There is nothing on record to show that Respondent had objected for promulgation of the records in respect of Sy. No. 158/2 of Village Calangute Bardez Goa. The Authority noted that if the structure is shown on the gutbook then it should have figured on the Survey plan. The Respondent has also not filed any application to the respective departments to include the house in the survey plan although it was showing in the Gut book Prima facie it appears that since the Respondent is the Sarpanch of the Village Panchayat of Calangute and since the gut book was in the custody of the Talathi attached to the Village Panchayat there has been interference in records to prove the legality of the structure in view of the above the reliance placed on the Gut Book cannot be taken into consideration while deciding on the legality of the Structure.

The Authority noted that the survey plan does not show any existing structure therein and neither did the Respondent produce any permission or approvals to prove that the structure was erected after 1971 and prior to the CRZ Notification 1991. The Authority further noted that the Respondent had also failed to produce any approvals, licenses or permission from any competent authority seeking permission for erecting the structure.

The Authority noted that the Respondent has relied on a Document which the Respondent claims to be a receipt connected to the particular illegal structure. On perusal of the submitted Receipt the Authority noted that the receipt in particular does not give any clarity nor any relation to the Said Structure for which purpose the same was issued and now furnished to this Authority. Further, this submitted Receipt it does not bear any rubber stamp nor any Receipt Head of the issuing Authority. The Authority noted that the Respondent has relied on the Application for Permission for repairs of house in-warded in the Office of Village Panchayat of Calangute, under in-ward no 3618 dated 10/07/2019; wherein the Authority declined to consider this document, as this Authority noted some major discrepancies in this document: Firstly, the Respondent sought for repairs of the house bearing house no 3/86D. This house number is an after sought sub-divided house number which is a bifurcated house number from the original main house number and as such neither this house number issued by the Authorities of the Village Panchayat of Calangute nor this house can be considered as an old house existing prior to CRZ Notification 1991. Secondly, the dimensions of the house in the application for repairs given on the sketch does not corroborate with the photographs produced on record. Thirdly, the Authority also concluded to the obvious glaring discrepancy that the estimate given is grossly undervalued and this document is

deliberately created only to generate documents to protect the illegal Structure.”

11. It is emphasized by the learned Counsel for the Respondent No. 1 that the GCZMA has considered the entire evidences placed before it by the Appellant in great detail and came to the right conclusion that the impugned structure was constructed post 1991 without permission. Therefore, it has been rightly ordered to be demolished.

12. From the side of Appellant, learned Counsel has placed reliance upon the Judgment of Hon’ble High Court of Bombay at Goa passed in *Writ Petition No. 235 of 2016 (Milton Marquis vs. State of Goa & Ors.)*, where-in relevant para no. 11 is quoted here-in below:-

“It is not in dispute that the GCZMA did not conduct any site inspection nor any panchnama was drawn about the location, nature and extent of the structures, which were subject matter of the complaint, lodged by the fifth respondent. It appears that the GCZMA has merely acted on the basis of the complaint, without first verifying what is the nature of the construction and its exact location. Normally, it would be expected from the GCZMA to first conduct a site inspection, draw a proper panchanama and then initiate action, if the subject structures are found to be illegal or unauthorized and having erected in breach of the CRZ Notification. That does not appear to have been done in this case. A perusal of the show cause notice would indicate that the GCZMA had referred to a ground + 1 storied structure with 7 to 8 permanent cottages and a restaurant and permanent structures along with staircase leading to the beach, constructed in the property bearing Survey No. 223/1A. Had the GCZMA conducted an inspection, the exact nature, location and the number of structures could have been set out in the show cause notice.....”

13. We are fully in agreement with the Judgment which has been relied upon by the learned Counsel for the Appellant and find that in the present case, the GCZMA did not conduct site inspection appropriately to show as to where the alleged illegal structure, which has been ordered to be demolished, was existing as we do not find the same to have been shown in the site inspection report and yet they have gone ahead

ordering demolition of the same, which we find not appropriate and in view of this, we find that impugned order deserves to be set aside and is accordingly set aside. Although we give liberty to the Respondent No. 1 to make fresh exercise in order to ascertain, if there is any illegal construction made by the Appellant and GCZMA can proceed in accordance with law against the same, if there exists the same and not regarding the road.

14. We dispose of this application accordingly,

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 19, 2023
Appeal No. 35/2022(WZ)
I.A. No. 108/2022
P.Kr