

Item No.3

(Pune Bench)

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

(By Video Conferencing)

ORIGINAL APPLICATION NO.116 OF 2022 (WZ)

Mr. Wenceslau Francis D'souza and another Applicants

Versus

State of Goa and othersRespondents

Date of hearing: 02.01.2023

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

Applicant : Mr. Jagannath Mulgaonkar, Advocate

Respondents : ---

ORDER

1. This Original Application has been filed with a prayer to direct Goa Coastal Management Authority (GCZMA) to conduct the site inspection relating to all illegal construction in property bearing survey no.242/1-C of village Calungate, Taluka Bardez, State of Goa and to issue immediate orders of demolition pertaining to structures which are found to be in violation of the CRZ notification. Further it is prayed that a direction be issued to GCZMA to submit a report about the structures which are claimed to be approved stating the details of documents relating to such approvals. It is further prayed that the issue relating to illegality and legality of the construction made in survey no.242/1-C of village Calungate, Taluka Bardez, State of Goa be decided finally by reasoned orders.

2. We find from the record that PIL Writ Petition No.4 of 2020 was preferred before the Hon'ble High Court of Bombay at Goa in respect of the property bearing survey No.242/1 of village Calangute, Taluka Bardez, Goa, claiming the same to fall within the No Development Zone (NDZ) i.e. within 200 mtrs of the High Tide Line wherein the constructions were said to have been illegally raised by respondent Nos.7 and 8 of that writ petition and the prayer made in that petition was that a mandamus be issued to demolish the said offending structure. The Hon'ble High Court had passed following order on 24.09.2021 in that PIL Writ Petition:-

"3. The findings and recommendations relevant for the present petition read as follows:

FINDINGS AND RECOMMENDATIONS :

39. The two demolition orders of Village Panchayat of Calangute dated 28.01.2010 and 12.10.2012 have been fully complied with by the R7 Nalini da Rosa Fernandes.

40. The structures within the NDZ of larger property under Survey No. 242/1 of Village Calangute owned by R7 and R8 indicated by the petitioner's during inspection prima facie appear to be legal and existing prior to February 1991 on basis of documents made available and other reference material accessed and cited by us.

41. The structure claimed to be owned by R12 Lalan Jacques is outside the NDZ. Besides, it appears to be built between 1994 and 1998 on land that was converted under LRC for commercial purposes prior to 1991.

4. As recorded in the order dated 17.09.2021, the petitioners have not been appearing in this Petition. In fact, in the said order, it was recorded that the present Petition would be taken up for final disposal today.

5. Even today, when the Petition is called for hearing, none has appeared on behalf of the petitioners.

6. The site inspection report submitted by the GCZA does indicate that the structures in respect of which allegations were made in the present Petition, have been found to be in compliance with the requirements of law. There are no objections raised by the petitioners. Hence, we are of the opinion that the present Petition need not remain pending before this Court. By taking the findings and recommendations of the GCZMA on record as aforesaid, the present petition is dismissed. Needless to say that the petitioners would be at liberty to take such steps as available in law in respect of the aforesaid report submitted by the GCZMA."

3. Thereafter, the applicants had moved review/recall application and as there was delay in filing the review/recall application, an application for condonation of delay was moved by the applicants, which too was allowed by the Hon'ble High Court vide order dated 15.10.2022, which is at pages 72 and 73 of the paper-book. In paragraph 15 of the present Original Application, we find mention that by another order, the application for recall was withdrawn on the same date though neither the said application nor the copy of that order have been annexed with the memo of Original Application.

4. The learned counsel for the applicants has relied upon the text of paragraph No.6 of the order dated 24.09.2021 passed by the Hon'ble High Court in PIL Writ Petition No.4 of 2020, which says, "Needless to say that the petitioners would be at liberty to take such steps as available in law in respect of the aforesaid report submitted by the GCZMA".

5. Having relied on the above text, this Tribunal has been approached by the applicants with the above mentioned prayers.

6. We are of the view that the order dated 24.09.2021 passed by the Hon'ble High Court appears to have been passed on merits taking into consideration the inspection report which was got submitted from GCZMA at their instance and after having relied upon the same, the said PIL Writ Petition was dismissed. Thereafter, application for its recall was also moved but the same was not pressed. Therefore, now to say that the liberty has been granted by the Hon'ble High Court to approach this Tribunal for seeking relief with respect to the inspection report submitted by the GCZMA does not appear to be logical. There is no clarity in the order placed before us saying that the Hon'ble High Court has granted liberty to the applicants to approach this Tribunal.

7. At this stage, the learned counsel for the applicants has prayed that he may be granted some time to seek instructions from the applicants and thereafter, he would decide whether to press this Original Application or not. In view of the prayer made by the learned counsel for the applicants, we grant him seven days' time as prayed.

8. Put up this matter for admission on 09.01.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 02, 2023
O.A. No.116 of 2022 (WZ)
Npj