

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

APPEAL NO. 06 OF 2015 (WZ)

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)

HON'BLE DR. AJAY A. DESHPANDE
(EXPERT MEMBER)

In the matter of:

- 1. MRS. ANAMIKA AMERKAR,**
- 2. SHRI. GURUDAS AMERKAR,**

Both major of age, Indian Nationals
R/o H.No.416/3,4th Ward, Colva
Salcete, Goa-403708.

.....APPELLANTS

Versus

- 1. GOA COASTAL ZONE MANAGEMENT AUTHORITY,**

Through its Member Secretary,
C/o Department of Science, Technology
& Environment, Government of Goa,
Opp. Saligao Seminary, P.O.
Saligao, Bardez, Goa-404 511.

- 2. STATE OF GOA,**

Through the Chief Secretary,
Having office at Secretariate,
Porvorim, Bardez, Goa-403521.

3. JUDITH ALMEIDA,

House No.257/1, Ward 3,
Colva, Salcete,
Goa-403708.

4. VILLAGE PANCHAYAT COLVA,

Colva Salcete Goa-403708.
Through its Sarpanch.

RESPONDENTS

Counsel for Applicant(s)

Mr. Abhijit Gosavi a/w Mr. Amay Phadte.

Counsel for Respondent(s):

Fawia M.Mesquita for Respondent Nos.1,2.

Judith Almeida for Respondent No.3.

DATE: 1st OCTOBER, 2015

JUDGMENT

1. By this Appeal, Appellants impugn legality and correctness of order dated February 19th, 2015, passed by Respondent No.1- Goa Coastal Zone Management Authority (GCZMA) in proceedings bearing No. GCZMA/NGT/APPL No.15/2014/WZ/1767.

2. Briefly stated, case put forth by the Appellants is that they are members of traditional fishermen community. By order dated March 13th, 1990, the Mamletdar of Salecete Taluka, declared Appellant No.2- Gurudas, who is the

husband of Appellant No.1- Anamika, as 'agricultural-tenant' of 1/3rd part of land Survey No.35/19 of village Colva, Salcete under Section 18 of Goa, Daman and Diu Agricultural Tenancy Act, 1964. So, he became a deemed owner as being 'protected tenant' of 1/3rd part of the land Survey No.35/19. The Appellants were married under the erstwhile regime of Communion of Assets. On April 25th, 2000, a Notice was served by the Administrator of Comunidade, South Goa, purportedly under Article 371(2) r/w Article 372 of the Code of Comunidades, directing them to vacate the property and calling upon Gurudas to show-cause as to why he should not be evicted from the property and why small structure, which was erected in the land be not dismantled. This action was unfortunately followed without any Notice or warning and was executed by use of force. The Deputy Collector, Margao, demolished two (2) parts of structures standing in the property Survey No.35/19. That action was challenged before the Hon'ble High Court at Goa by filing Writ Petition No.314 of 2000. The Hon'ble High Court granted ad-interim stay by order dated September 27th, 2000. Subsequently, that Writ Petition was disposed of on the ground that only questions of facts were required to be determined and, therefore, the Appellants were at liberty to approach the Civil Court for ventilating their grievances. They were granted further protection from demolition for a period of

one month, after disposal of the Writ Petition i.e. till 27.12.2000.

3. They filed Civil Suit on 27.12.2000, bearing Special Civil Suit No.221 of 2000/1 (old) before the 2nd Additional Civil Judge, (Senior Division) Margao, for perpetual injunction and damages. That suit was partly decreed against the Administrator.

4. Respondent No.3- Judith Almeida, claims to be a Civil Worker. She filed a complaint with the office of Respondent No.1- GCZMA, alleging that the Appellants had raised new construction within CRZ area, between 200 to 500 HTL/LTL without obtaining prior permissions of the Competent Authorities. In pursuance of her complaint, a Show-cause Notice was served on Appellant No.2- Gurudas and thereafter demolition order was passed on 9.8.2012. The demolition-order was challenged before the National Green Tribunal, (Principal Bench) New Delhi vide Appeal No.15 of 2014. The Appeal was disposed of vide order dated November 14th, 2014, with certain directions, particularly, for giving opportunity to the Appellants to appear before the GCZMA and granting opportunity of personal hearing and thereafter to decide the relevant issues. With this order dated November 14th, 2014, 3rd round of litigation came to an end.

5. The matter did not stop at that point. The GCZMA again issued Notice to the Appellants and original complainant –Judith Almeida and heard them. The record was again reassessed and the GCZMA came to the same conclusion, which was arrived at in the earlier round of litigation. The order for demolition of impugned structures was passed by the GCZMA on 21.12.2012, as a result of such decision.

6. Both the Appellants again preferred Appeal No.75 of 2012, against the said order before the NGT (PB) New Delhi. The Appeal had to be decided on technical and procedural deficiency for non-compliance of Rule-XI of the MoEF order dated 9.4.2010, because that impugned decision was taken by the GCZMA, without “required quorum” (Members). The Appeal had to be allowed again and the matter came to be remanded to the GCZMA. This required re-hearing after availability of due quorum at the level of GCZMA. The 4th round of litigation was, therefore, put to an end on technical ground.

7. Coming to 5th round of litigation, which gave rise to the impugned order, it may be now noted that original complaint of Respondent No.3- Judith Almeida, filed against Respondent No.4 and all other relevant documents were indicated in the Show-cause Notice, which was issued to the Appellants by the GCZMA, bearing No. GCZMA/ NGT/ Appln.No. 15/2014/WZ/1832 dated January 19th,

2015. They were called for personal hearing before the GCZMA on January 28th, 2015. They were heard after they were given an opportunity of filing their replies to the Notice of Show-cause. Considering the available material, Respondent No.1- GCZMA, held that construction of structures carried out by the Appellants, is illegal/unauthorized, inasmuch as that falls within CRZ area and no prior permission was obtained under the CRZ Notifications of 1991/2011. Consequently, the GCZMA decided to issue a fresh order of demolition of illegal structures standing in land Survey No.35/19, of village Colva, Salcete-Goa under Section 5 of the Environment (Protection) Act, 1986 read with other enabling provisions. Feeling aggrieved with the said order dated February 9th, 2015, the Appellants have preferred the instant Appeal.

8. We have heard learned Advocate Shri. Abhijit Gosavi, for the Appellants, learned Advocate F.M.Mesquita for GCZMA and Judith Almeida in person. We also granted an opportunity to the parties to file re-joinder as per their request, notwithstanding the fact that in Appeal proceedings, the Appeal Memorandum does not require such a procedure to file rejoinder. Still, however, such an opportunity was given, inasmuch of earlier the Appellants were found to raise one or more grounds and particularly, in respect of denial of fair opportunity, which we desired to set right, out of the scope, once for all. We have carefully

gone through the record. Before considering merits of the matter, it may be noted that earlier two rounds of litigation before the National Green Tribunal are of no much relevance, inasmuch as no issue pertaining to merits was decided in those two (2) Appeals. Nor, the proceedings in a 'suit' have any bearing of merits on the matter, because the suit was filed by Appellant No.2 Gurudas only against the Administrator of Comunidade, South Goa and Comunidade of Colva. That Civil Suit (Special Civil Suit No.221 of 200-I (old) Regular Civil Suit No.300 of 2010-II (new) was a suit for perpetual injunction, - recovery of damages and compensation, alleging that Gurudas was 'agricultural tenant' of the land under the Goa Agricultural Tenancy Act, 1964, to the extent of 1/3rd area of the land Survey No.35/19, which belonged to Comunidade of Colva and was declared as such and became owner thereof. Thus, he admitted that the land Survey No.35/19, was and is owned by Comunidade of Colva and Salcete. He claimed limited right of tenancy to the extent of 1/3rd area. At this juncture, it is pertinent to note that he categorically claimed that the 1/3rd land was being used for agricultural purpose as a 'tenant' and he had put up a farmhouse, consisting of three parts in which one part was being used for residence, one part was being used for store and one was being used for running a Restaurant. His witnesses stated before the Civil Court that Gurudas was cultivating

the land as 'Paddy field' being tenant and had put a structure of farmhouse, consisting of three parts, which could be permitted under Section 33 of the Agrarian Law. It was for such a reason and because of the fact that defendants in that suit, namely; the Administrators of Comunidade and Comunidade of Colva remained absent that the said suit was partly decreed. Needless to say, none of the Respondents in the present Appeal were parties to that suit. The suit was not fully decreed, but was decreed in part, considering injunction against those two (2) defendants from interfering with possession of plaintiff – Gurudas in respect of suit property, which is described as 'agricultural land', without due process of law. Obviously, only that 1/3rd part of "agricultural land" was said to be in possession of Gurudas, as a protected tenant under the Tenancy Act. The right claimed in that suit emanated from provisions of the Goa Agricultural Tenancy Act, 1964. In the said suit proceedings, Gurudas never claimed that any construction permission was sought from Comunidade or the Village Panchayat for construction of alleged farmhouse. In fact, the order issued under the Tenancy Act (Annexure –A-1) dated 30th Mach, 1990, by the Mamletdar of Salcete, reveals that name of Guruds was directed to be entered in the revenue record, as 'declared tenant' of Paddy Field to the extent of 1/3rd out of the land survey No.35/19, under Section 7 read with Section 14 of the Goa, Daman,

Diu Agricultural Tenancy Act, 1964. The change in relevant record was, thus, ordered accordingly. It is explicit, therefore, that the land Survey No.35/19, was a Paddy Field and was not open plot available for raising any construction as such. It may be that the Appellants were recognized as fishermen folks, but were “protected tenants” qua the said land. They were cultivators of the said land since long prior to declaration of ownership and as such, subsequent averment that they belong to ‘fishermen community’ and, therefore, residential premises could be protected in view of paragraph 6(d) of the CRZ Notification, 2011, is absolutely without any merit. For, they were never engaged in fishing activity and all the while in the earlier suit claimed to be agriculturists.

9. We may now deal with the grievances of the Appellants, which were put forth vide Writ Petition No.314 of 2000, filed in the Hon’ble High Court of Bombay at Goa. The said Writ Petition was not entertained at all by the Hon’ble Division Bench of the High Court. The Hon’ble High Court observed:

“The petitioner is not entitled to any protection, as per the provisions of the Goa Land Use (Regulation) Act, 1991, as admittedly, the land is required to be used for only agricultural purposes and admittedly he is also a tenant. However, in the interests of justice, one structure which is yet

to be demolished (two are already demolished) not to be demolished by the respondents for a period of one month from today, till the petitioner approaches the civil court, for obtaining appropriate relief, if he so desires. In the meantime, the petitioner not to carry out any construction in the said agricultural land. in view of this Writ Petition No.314/2000 is disposed of in the above terms".

10. Perusal of above order dated November 27, 2000, clearly reveals that two (2) structures standing in the land Survey No.35/19, were demolished before filing of the Writ Petition and only one structure had remained to be demolished. The Hon'ble Division Bench directed that remaining structure may be protected from demolition for one month till Gurudas approached the Civil Court for obtaining appropriate relief. He was, however, further directed that he shall not carry out any further construction in the said land. The last such direction is of much significance, inasmuch as inspite of direction of the Hon'ble High Court, admittedly, again three (3) structures were found at the site and there are two (2) structures newly built up by the Appellants and one is renovated. All those three (3) structures are being used for commercial purposes. The order of Hon'ble High Court also shows that the land is required to be used "only for agricultural

purpose”, which means that the Appellant cannot use the land or any part of the land for raising any construction, particularly, for commercial use thereof. In flagrant violation of the order of the Hon’ble High Court, the Appellants had put up two (2) more structures without any permission of the competent authorities.

11. Be that may as it is, pleadings in the memorandum of Appeal, would indicate that the Appellants have made an attempt to take undue advantage of the ex-parte decree passed by the Civil Court, Margao to which the Respondents were not parties. The Respondents are not bound by that decree. The issues in that suit and the issue regarding violation of CRZ Notifications are quite different issues. Moreover, the Hon’ble High Court’s order banned the Appellants from putting up any further construction yet, they proceeded with construction activity in respect of two (2) other constructions. Undaunted by the fact that they were having knowledge that the impugned constructions were illegal, they proceeded to construct further. The Appellants filed an Application before the GCZMA on 17th December, 2012, seeking regularization of construction. Once, the Hon’ble High Court clamped injunction, how could such a request be made for regularization and particularly, when the Appellants were held as ‘tenants’ and there was absolutely no reference to their status as traditional fishermen folks. This kind of

approach of the Appellants, go to show their litigious mentality, absence of respect for Law and tendency to abuse the legal process. They want to protect the impugned constructions by hook or crook. What happened in the meanwhile also may be taken note of. Appellant Gurudas applied for NOC to run a Restaurant at 4th Ward, Colva from office of the village Panchayat, Sarnabatim, Vanelim Colva & Gandaulim, Salcete Goa by communication dated 1.9.1998. The acting Sarpanch informed him that the Village Panchayat has no objection to run a Restaurant in his house No.461/3 situated in 4th Ward Colva, Salcete-Goa. It appears that Gurudas had requested for regularization and permitting unauthorized encroachment of land, including construction standing over 750sqm. of the tenanted area to be regularized. By letter dated 11.6.2004, the Administrator Comunidade rejected the said request. The GCZMA has placed on record authentic map prepared by the Director of Settlement of Land Records. The site-plan shows that impugned constructions are within CRZ area between 200-500 HTL and LTL. The inspection report prepared by the GCZMA clearly shows that impugned constructions are erected in contravention to provisions of the CRZ Notifications. Consequently, impugned order of demolition of structures/bungalow and restoration of land to the original condition, is legal, proper and correct. As a matter of fact, what appears on perusal of

record, is that Appellant No.2 Gurudas was declared as 'protected tenant' in respect of part of Paddy field out of the land Survey No.35/19. The said land was being cultivated by him and there was absolutely no legal construction standing on it. The case of Appellants that they are the members of traditional fishermen folk category and, therefore, are entitled to protect the structures, is totally after thought and regularization sought under Section 6(d) of the CRZ Notification, 2011, is a new case made out by them, which cannot be permitted in the teeth of earlier orders of the Civil Court and Hon'ble High Court. The scope of instant Appeal cannot be enlarged as the Appellants wish, in order to further spread over cobweb of next round of litigation in order to protect their illegal structures.

12. The impugned order is passed by the GCZMA in exercise of powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with Rule (3) (a) of Rule-4 of the Environment (Protection) Act, 1986 and powers vested with GCZMA vide order S.O. No.2264 (E) dated 22.7.2014, issued by the MoEF, directing demolition of illegal structures/construction located in land Survey No.35/19 of village Colva, Salcete- Goa and restore the land to its original position. Before consciously considering above fact situation, let it be noted that this litigation is classic example of how a litigation may be again and again churned, whirled around same facts for one or other

reasons and how legal process is utilized for protraction of litigation.

13. In the result, we do not find any merit in the instant Appeal. The Appeal is, accordingly, dismissed with costs of Rs.20Lakhs (Twenty Lakhs) as exemplary costs payable within four (4) weeks. The costs amount be deposited in the account of Collector, Goa to utilize the same for environmental reliefs, up-gradation of MSW plants and like activities, out of which amount of Rs.2Lakh be paid to original complainant - Judith Almeida, as litigation costs.

The Appeal is accordingly disposed of as dismissed, in above terms.

..õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ , **JM**
(Justice V. R. Kingaonkar)

õ .õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ , **EM**
(Dr.Ajay A. Deshpande)

DATE: 1ST OCTOBER, 2015
PUNE.

Hkk

NGT