

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL NO. 33 OF 2014 (WZ)
WITH
APPEAL NO. 35 OF 2014 (WZ)**

CORAM:

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

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

APPEAL NO. 33 OF 2014 (WZ)

In the matter of :

- 1. MRS. MARIA FILOMENA FURTADO,**
Aged 76, widow of Antonio Jose Furtado
And sons:
- 2. MR. SILSTON FORTADO,**
Aged 51;
- 3. MR. PIO FURTADO,**
Aged 40;
- 4. MR. JOAO INACIO FURTADO, aged 55;**
All residents of 93, Ambeaxir,
Sernabatim, Colva, Salcete, Goa.

.....**APPELLANT**

Versus

- 1. GOA COASTAL ZONE MANAGEMENT AUTHORITY**
Through its Member Secretary, having its
Office at 3rd Floor, Dempo Towers, Patto,
Panaji Goa-403 001.
- 2. MR RABINDRA DIAS,**
Major, Resident of Dr.Pires Colony,

Block B, Santa Cruz, Ilhas, Tiswadi, Goa,

- 3. MR. SANTANA PIEDADE AFONSO,**
Major, resident of 518(263), Comba
Central, Cuncolim, Salcete, Goa.

RESPONDENTS

Counsel for Applicant(s)

Mr. Radharao F. Gracias

Counsel for Respondent(s):

F.M.Mesquita for Respondent No.1.

Mr. Manish Salkar for Respondent No.2.

Mr. Nighel D. Costa Frias for Respondent Nos. 2,3.

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APPEAL NO. 35 OF 2014 (WZ)

In the matter of :

- 1. MR. RABINDRA DIAS,**

Son of late Dr. Emerciano Lucio

Francisco Leonardo Dias,

60 years of age,

R/o Dr. Pires Colony, Block B.

Santa Cruz, Ilhas Goa.

- 2. MR. SANTA PIEDADE AFONSO,**

Son of Sebastiao Domingos Floriano Afonso,

51 years of age,

Residing at H. o.518 (263),

Comba Central, Cuncolim,

Salcete-Goa.

.....APPELANTS

Versus

**1. THE VILLAGE PANCHAYAT OF COLVA,
VANELIM, SERNABATIM AND GQAUNDALIM**

Through its Sarpanch,
Colva, Salcete-Goa.

2. THE COA COASTAL ZONE MANAGEMENT AUTHORITY,

Through its Member Secretary
Saligao, Bardez-Goa.

3. THE COMMISSIONER OF EXCISE,

Government of Goa,
Panaji-Goa.

4. THE DIRECTOR OF TOURISM,

Government of Goa,
Panaji-Goa.

5. THE DIRECTOR OF FOOD & DRUGS,

Food & Drugs Administration,
Government of Goa,
Panaji Goa.

6. THE ASSISTANT ENGINEER,

Division IV-Sub Division-I,
Electricity Department,
First Floor, Vidyut Bhavan,
Aquem, Margao Goa,

7. STATE OF GOA

Through its Chief Secretary;
Government of Goa,
Secretariat, Porvorim, Goa.

8. MRS MARIA FILOMENA FURTADO,

9. MR. SHILSTON FURTADO,

10. MR. PIO FURTADO,

11. MR. JOAO INACIO FURTADO,

All Major, resident of H. No.93,
Ambexir, Sernabatim, Colva,
Salcete-Goa.

RESPONDENTS

Counsel for Appellants

Mr Nighel D Costa Frias.

Counsel for Respondent(s):

F.M.Mesquita for Respondent No.1.

Mr. Manish Salkar for Respondent No. 2.

Mr. Santana Afoso for Respondent No.3.

DATE: JULY 2nd , 2015

COMMON JUDGMENT

1. Both these Appeals are being decided together, inasmuch as they arise out of same order passed by the Goa Coastal Zone Management Authority (GCZMA). By passing the impugned order dated 11.9.2014, the GCZMA, issued certain directions under Section 5 of the Environment (Protection) Act, 1986, in pursuance to order dated December 23, 2013, passed in PIL (WP) No. 94 of 2013, by the Hon'ble High Court of Bombay at Goa in the matter of "Rabindra Dias and Anr vs The Village Panchayat of Colva, Vanelim, Sernabetim and Gaundalim and ten (10) Ors."

2. The Respondent No1. GCZMA vide impugned order decided as follows:

“ The GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment Protection Rules, 1986 delegated to the GCZMA, the GCZMA hereby directs Mrs. Maria Filomena Furtado. Mr. Shilston Furtado, Mr. Pio Furtado & Mr. Joao Inacio Furtado to demolish the retaining wall constructed along the sea, concrete rings constructed along the coconut trees and parking lot comprises of concrete balusters constructed in survey no.12/1 to 12/5 of village Sernabatim, Salcete Taluka-Goa and restore the land to its original condition, within thirty days from the date of receipt of this order failing which the concerned Deputy Collector of South to verify if the structure is removed and in the event it is not removed as per these directions, then the Deputy Collector shall remove the said structure after the stipulated time of two weeks and recover the expenses incurred from the violators i.e. Mrs. Maria Filomena Furtado, Mr. Shilston Furtado, Mr. Pio Furtado & Mr. Joao Inacio Furtado, including order of disconnection of water/power supply without any further notice; as though they were arrears of Land Revenue and report to this office in compliance of the directions%o

3. Rabindra Dias and William Rebellio had filed Writ Petition No.58 of 2010, before the Hon'ble High Court of Bombay at Goa, alleging several violations of CRZ Notification, 1991 by Maria Filomena Furtado and her family members. They averred in the said Writ Petition that Maria Furtado and her family members carried out certain constructions within No Development Zone (NDZ) in land Survey No.12/1 to Survey No.12/5 of village Sernabatim,

within CRZ-III (NDZ) area. The details of such constructions were given by them in the following manner:

Sr No.	Name of the party	Survey No/Village	Type of construction	Distance from HTL
1	(i) Mrs. Maria Fllomena Furtado, (ii) Mr. Shilston Furtado, (iii) Mr. Pio Furtado (iv) Mr. Joao Inacio Furtado,	12/1, Sernabatim	Concrete Platform (10-15 sq.mts) Concrete fence with a gate on northern side	Within NDZ
2	(i) Mrs. Maria Fllomena Furtado, (ii) Mr. Shilston Furtado, (iii) Mr. Pio Furtado (iv) Mr. Joao Inacio Furtado,	12/2, Sernabatim	Concrete Platform (10-15 sq.mts) cemented pathway leading to Sy. No.12/1 and 12/4 and ground + one structure of cement concrete (10sq.mts approximately)	Within NDZ
3	(i) Mrs. Maria Fllomena Furtado, (ii) Mr. Shilston Furtado, (iii) Mr. Pio Furtado (iv) Mr. Joao Inacio Furtado,	12/3, Sernabatim	Permanent structure over 100 sq.mts known as Furtado's Rest House used as tourist cottages constructed without any approvals.	Within NDZ
4	Joao Inacio Furtado	12/4, Sernabatim	Concrete platform occupying an area of 150-200 sq.mtrs	Within NDZ
5	(i) Mrs. Maria Fllomena Furtado, (ii) Mr. Shilston Furtado, (iii) Mr. Pio Furtado (iv) Mr. Joao Inacio Furtado,	12/5, Sernabatim	Open air restaurant known as Furtado's Beach House-Room & Restaurant which is having concrete tiled platform, some portion of which extends in sy. No.12/2. Construction of toilet and Kitchen.	Within NDZ
6	(i) Mrs. Maria Fllomena Furtado, (ii) Mr. Shilston Furtado, (iii) Mr. Pio Furtado (iv) Mr. Joao Inacio Furtado,	12/4 and 12/2, Sernabatim	Soak pit of the illegal toilet constructed in Sy. No.12/4 with waste water and sewage flowing Temporary structure of wood with a concrete floor.	Within NDZ
7	(i) Mrs. Maria Fllomena Furtado, (ii) Mr. Shilston Furtado, (iii) Mr. Pio Furtado (iv) Mr. Joao Inacio Furtado,	12/4, Sernabatim	The restaurant constructed has been elevated to a height of about 03 mts from ground level using stones, cement and mud over the illegal platform.	Within NDZ

4. Undisputedly land Survey No.12, is in the proximity of Arabian Sea Beach. There is no dispute about the fact that alleged constructions if are proved to be illegal, come within CRZ-III area (NDZ), are liable to be demolished/dismantled. The GCZMA, however, held that only a retaining wall constructed by Maria Furtado and her family members seaward side in Survey No.12/1 to 12/5 by means of

concrete rings adjoining the Coconut trees and parking lot, comprising of concrete balusters in Survey Nos. 12/1 to 12/5, is the part of illegal construction and is, therefore, required to be demolished. Consequently, the Deputy Collector, South Goa, was directed to remove such part of the retaining wall.

5. Being aggrieved by the said order of recording findings that all other constructions pointed out by Rabindra Dias and another, were legal and proper, which were not directed to be demolished and only retaining wall, subject matter of removal order, original complainant Rabindra Dias, along with one Santana Piedade Afonso, have preferred Appeal No.35 of 2014.

6. Being dissatisfied with order of demolition in respect of retaining wall constructed alongside the Coconut plants by constructing cement rings, as per the impugned order, Maria Furtado and her family members in their Appeal No.33 of 2014.

7. As stated before, both the parties are challenging the same order, but different parts thereof. These are, in common parlance, cross Appeals filed against the same order. Obviously, in order to avoid conflict of opinion and overlapping discussion of the same evidence, or reasoning, the Appeals are being dealt with together vide this common decision.

8. The case of Appellant Rabindra Dias and another original NGO in the Writ Petition No.35 of 2014, was that Rabindra Dias owns land Survey Nos. 11/3, 12/9 and 12/2, called “Adampoi-Prias” in village Sernabatim, which are close to the seashore. His access to beach is from Survey No.12/2. Original Respondent Nos. 8 to 11, hereinafter referred to as ‘Members of Furtado family’, purchased or otherwise acquired lands Survey Nos. 12/1 to 12/5 of village Sernabatim on northern side of Survey No.12/1. They erected a gate by making construction of common foundation and fixing retaining wall across the area adjacent to the Coconut trees in the land. The said construction is illegal and is in NDZ area. They also constructed a platform of Kadappa stone in the NDZ area and constructed a tar road (Path-way). They further constructed structure of 200sqm. Ground+1 floor, subsequent to CRZ Notification of 1991 in NDZ area. They have constructed ten (10) rooms in NDZ area without permission of the competent authority. They run hotel cum Rest-House on the beach in the name and style “Furtado’s Beach House- Rooms and Restaurant”. Attached thereto, they have also constructed kitchen and tiles as well as soak pit in the NDZ area without having any legal authority/permission. The rooms constructed by them are being used for commercial purposes. They let out the said rooms to tourists, who want to reside in the proximity of

beach-sea. The Director of Settlement had surveyed the area in November, 2006 and prepared a plan of settlement at the relevant time. No structure was shown in that plan, except a small part of Furtado Rest-House in Survey No.12/3. In fact, there existed no residential structure prior to 1991 in Survey No.12/1 and no permission of repairs/renovations was obtained by the Members of Furtado family, who had no concern with the property at the relevant time.

9. It may be, however, stated that during course of hearing of the Writ Petition No.58 of 2010, the Director of Tourism filed his affidavit stating that only temporary sheds were permitted to be erected as seasonal activity in view of tourism policy, which existed at the relevant time and one of the shed was demolished on December 31st, 2008, which was in Survey No.12/1, whereas, another shed was given seasonal permit till May, 2010, which also would be demolished after said period would elapse. Needless to say, the question regarding two (2) temporary sheds was put to an end during course of hearing of the Writ Petition No.58 of 2010. So also, an affidavit was filed by the Member Secretary of GCZMA that necessary enquiry will be conducted and findings will be arrived at by giving both the parties due opportunity to place on record relevant documents and after hearing them.

10. By order dated June 22nd, 2010, the Writ Petition No.58 of 2010, was disposed of. Relevant part of final order passed by the Hon'ble High Court may be reproduced for ready reference as follows:

There is an affidavit filed by Mr. Michael M. D'Souza, Member Secretary, Goa Coastal Zone Management Authority. The said affidavit dated 22nd March, 2010 discloses that a show cause notice dated 9th February, 2010 has been issued under the provisions of Section 5 of the Environment (Protection) Act, 1986 to the 1st to 4th Respondents. Learned Government Advocate on instructions stated that the entire process on the basis of the show cause notice shall be completed and an order shall be made within a period of three months from today. Our attention is invited to the affidavit filed by the 8th Respondent (Director of Tourism) dated 1st February, 2010. Our attention is invited to paragraph 6 to 8 of the said affidavit. Learned Counsel appearing for the 5th Respondent- Village Panchayat states that within a period of four weeks, an action will be initiated for demolition of the structures referred to in the said paragraphs. We accept the aforesaid statement made by the learned Government Advocate on behalf of the 6th Respondent. We also accept the statement made by the learned Counsel for the 5th Respondent. In view of the statements, the Petition need not be kept pending and we dispose of the petition by issuing the following directions:

- (a) The 6th Respondent shall complete the process initiated on the basis of show cause notice dated 9th February, 2010 and shall pass appropriate order in accordance with law within a period of three months from today.

(b) We direct the 5th Respondent- Village Panchayat to initiate action of demolition as regards the structures referred to in paragraph 6 to 8 of the affidavit dated 1st February, 2010 of the 8th Respondent within a period of four weeks from today. We direct the 5th Respondent to complete the action within a period of three months from today in accordance with law.

(c) We clarify that where there is already an order of demolition passed by the authorities, the said order shall be complied forthwith.

(d) As far as the show cause notice issued by the 6th Respondent is concerned, we keep contentions of all the parties including 1st to 4th Respondents open.+

11. In the meanwhile, a Suo-Moto Writ Petition was entertained by the Hon'ble High Court of Bombay at Goa. The Hon'ble Division Bench noted that 133 illegal structures were identified at Village Panchayat Candolim and several illegal structures were found to have been constructed at various villages. Therefore, directions were given to all the Village Panchayats to examine the record and juxta position of the constructions in order to find out whether certain illegal structures are standing in NDZ area.

12. Coming to the impugned order, which is rendered after hearing both the parties and after much confusion attempted to be created by Furtado and family in the context of record about nature of construction as well

as by the authorities like, the orders passed by the Deputy Collector, NOC issued by the Village Panchayat, so on and so forth, it is necessary to appreciate the evidence afresh. Because the impugned order is end product of fact finding process and as such, it is essential to commence probe from the bottom to come up with the reality on the surface. We mean to say, if truth is to prevail, churning process of record cannot be avoided without taking deep dive for examination of situation, in the context of present Appeals, in respect of constructions, if any, preceding to CRZ Notification dated 19th February, 1991. In other words, we cannot go simply by the report of one Committee or another.

13. Common questions to be determined in these Appeals are stated as below:

- i) Whether the impugned order is legal, proper and correct, if examined from basis of available record?
- ii) Whether the Appellants in either Appeal have been able to show that the part of impugned order, which they have challenged is incorrect and, therefore, to that extent it is liable to be set aside?
- iii) Whether Members of Furtado family committed violation of CRZ Notification, 1991 as alleged and whether order of the Additional Director of village Panchayat-I, Margao-Goa, passed in Appeal No. MAR-I/70/2009. amounts to Estoppel against Rabindra Dias and another in challenging legality of such construction map, any part thereof?

14. Before we proceed to consider what was the nature of construction prior to 1991, at the place where now Furtado Rest-House stands, it would be appropriate to examine recitals of probably first Application-form submitted for renewal of licence of Furtado Rest-House. A copy of Application form dated 8.12.2010, is placed on record. The recitals of said document are not denied by Members of Furtado family. The Application shows that on 8.12.2010, number of rooms in the Rest-House were four (4) with eight (8) beds. Obviously, it may be inferred that there were four (4) rooms, each with accommodation of two beds/persons. Admittedly, now there are ten (10) rooms in the Rest-House. The next form of application for renewal dated 23.9.2011, reveals that number of rooms was shown as eight (8) and number of beds were shown as ten. How expansion of the rooms was done and how construction was done, is known only to the family members of Furtado. After receiving such Application, three Member Committee of the Directorate of Tourism visited the Rest-House. They prepared Inspection Report dated February 15, 2013. We deem it proper to reproduce inspection Report as follows:

The M/s. Furtado's Guest House at Sernabtim, Ambeaxir, Colva, Salcete-Goa was inspected on 15th February, 2013. It was found that, they have a restaurant with kitchen; service counter/bar counter with 38 tables and cover 152 pax. They have another 20 tables in the open space with a dance floor.

It was found that there were 28 numbers of rooms. It was stated by the owner Shri. Shilston Furtado that this Guest House belongs to him were his share is only the Restaurant and 15 number of rooms. He further stated that the remaining rooms belong to the Furtado's Family- his mother and two other brothers- S.Mt. Maria Filomena Furtado, Shri. Pio Furtado, Shri. Joao Inacio Furtado respectively.

A ground plus one block in the complex houses four shops on the ground floor and four rooms on the first floor. The other rooms are in the L-shaped structure with some more rooms behind this along with a restaurant/kitchen.

From our records it is found that M/s Furtado's Guest House originally has 3 rooms with 6 beds. In 2010/11 (March) and 2011/12 (March) 4 and 8 rooms respectively as per the application form for Renewal of a Hotel Keeper (Application Form). It is informed that no document or plans were furnished to substantiate the additional rooms.

15. Thereafter demolition Notice was served on Members of Furtado Family. True, Maria Furtado challenged demolition Notice dated 21.7.2009, issued to her in regard to certain constructions standing in the Survey No.12/4 by filing Village Panchayat Appeal No.MAR-I/70/2009. The subject matter in that litigation pertains to same property called 'Furtado Beach Resort'. The Deputy Collector, South Goa, held that construction of farm-house was carried out by Furtado family with due permission of Village Panchayat, as per permission order dated 28.10.1987 and, therefore, demolition Notice was required to be quashed. It is argued that in view of such finding of the Additional

Director of Village Panchayat-I, Margao-Goa in Panchayat Appeal No. MAR-I/70/2009, now, the construction of Furtado Beach Resort (Rest-House), cannot be in any way, branded as illegal and improper. It is argued by learned Advocate appearing on behalf of the Appellant's - family member of Furtado that said order of the Additional Director of Panchayat-I, was passed on 3rd day of November, 2009 and was never challenged by Rabindra Dias and another in any manner, nor it was reviewed. So the said order attained finality and amounts to estoppel by record. We do not agree. First, Rabindra Dias and another i.e. Appellants of Appeal No.35 of 2014, were not parties to the said Appeal filed before the Additional Director of Panchayat-I. The Appeal was only between Maria Furtado and the Village Panchayat through its Sarpanch. Secondly, the case of Maria Furtado was that there was old house constructed in 1979 with permission of the Village Panchayat, but permission issued to her late husband Antonio Joao Furtado, had been lost when the house was damaged during monsoon in the year 1987. Thus, she never came with a case that it was a farm-house and contention was basically that permission issued by the Village Panchayat was lost. The loss of such construction permission was not reported to the Village Panchayat or the police. No attempt was made to obtain certified copy thereof. It is stated that she tried to obtain records of the

Village Panchayat but was informed that the records were not traceable since 1979 as most of the records of Village Panchayat Colva had been eaten by white ants. The order to which Rabindra Dias was not a party, nor had any opportunity to participate in the proceedings, would not amount to estoppel under Section 115 of the Indian Evidence Act. We do not find any substance in the arguments that said order has created impediment in the fact finding process of the present Appeals. Thirdly, we cannot and shall not overlook that the impugned order is rendered in the wake of directions issued by the Hon'ble High Court of Bombay at Goa in the Writ Petition No.04 of 2013, and, therefore, the GCZMA was called upon to decide the matter afresh by giving fair opportunity to both the parties. The directions of Hon'ble High Court of Bombay at Goa, would, therefore take away all the force from the aforesaid contention of learned Advocate appearing for members of Furtado family, as regards legal impact of record in Panchayat Appeal No. MAR-I/70/2009 before the Additional Director of Village Panchayat-I, Margao-Goa.

16. We shall, now take brief survey of legal position in the context of CRZ Notification, 1991. The Notification empowers GCZMA as 'Regulatory Authority'. The Coastal Regulatory Management authority is creature of the Environment (Protection) Act, 1986. It appears that the members of Furtado and family seek advantage of available

‘exemption’ in CRZ Notification, which permits activity of repairs/renovations of traditional structures used by the fishermen folk and other persons living on beach for earning livelihood before CRZ Notification, 1991. From the record, we do not find any such exemption made available to erstwhile owners of the land Survey No.12/1 to 12/5, in any case after CRZ Notification. The GCZMA is the only Regulatory Authority. Therefore the Judgment of Deputy Collector, which was rendered in 2009 has no bearing on the merits of present Appeals.

17. The expression “Regulate” is clear from the dictums in

“Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupesh Kumar Sheth, (1984) 4 Supreme Court Cases 27,

K.Ramanathan Vs. State of Tamilnadu & Another, (1985) 2 Supreme Court Cases 116, Asa Ram Vs. District Board, AIR 1959 Supreme Court 480.

18. From the discussion made above, it is amply clear that the GCZMA, is under obligation to protect coastal zones and ensure that no illegal constructions are permitted or continued in any NDZ area. The members of Furtado family could not produce any document to show that existence of residential accommodation or traditional place of storage in those lands before 1991. By order dated 26th September, 2007, passed in Suo-Moto Writ Petition

No.2 of 2006, the Hon'ble High Court of Bombay at Goa, directed each Panchayat to submit details of action taken in respect of structures existing as per survey plans prepared under the Land Revenue Code, on basis of permissions/licences issued by the Panchayats/Municipalities. The Village Panchayats were directed to file affidavits in the said matter. The repairs/renovations of house or traditional shack used by fishermen within CRZ area only could be permitted prior to CRZ Notification, 1991. The record about Furtado Rest-House shows that in the Village Panchayat, it is recorded vide entry No.472/-D, and existing in or about 2006 of which licence was up till 23.9.2011. Thus, prior to 2006, how could members of Furtado family lawfully have constructed house and how previous owner, if might have constructed it before 1991, passed over the same to them, is not explained. It is not acceptable as a fact proved from the record. A convenient story of loss of such construction permission during Monsoon period is put forth, the record of Village Panchayat also is said to be unavailable due to eating of white ants, and no other record is available to go back beyond 1991 Notification, except so called order of the Deputy Collector in Appeal passed in 2009, to show that the construction of Furtado Rest-House has any legal basis. As stated before, the order passed in the said Appeal is also of no much avail because it has been passed after CRZ

Notification came into force and is between only Maria Furtado and the Village Panchayat. They appear to be not real opponents due to loss of record, which is said to be eaten by white ants.

19. What appears from the record is that as per request of the Member Secretary of GCZMA, the Superintendent of Survey and Land records, Panjim Goa, conducted survey between 2nd May to 4th May, 2012, in respect of structures existing in remaining part of Survey No.12/1 to 12/5. He categorically stated that he had not informed regarding duration of constructions i.e. whether they were constructed prior to 1991 or after 1991. Still, however, the constructions were indicated in the sketch map, which was drawn on 7-6-2012 by the competent authority i.e. the Superintendent of Survey and Land Records. There is no reason to dislodge the said map. Perusal of the map shows that new structures of Furtado Rest-House had come up in NDZ. Learned Advocate for members of Furtado family invited our attention to the Inspection Report dated March 14th, 2014, prepared under the chairmanship of Afonso Arajo. The report shows that structure of Restaurant and Bar of members of Furtado family is legal, because it was assessed for tax payment and the Deputy Collector, Goa held that Notice of demolition issued by the Village Panchayat was illegal.

20. Perusal of DSLR plan prepared in 2006, reveals that there was small structure in Survey No.12. However, DSLR plan revised in 2014, indicates several structures built up after 2006. Thus, the area was developed gradually with construction of buildings in CRZ and expansions are carried out in Survey Nos. 12/1 to 12/5, without legal permission.

21. It is most significant to note that a copy of deed of sale, dated February 20th, 2003, is placed on record. This property was purchased by Maria Filomena Furtado from one Joao Serbastiao Rodrigues alias John Rodrigues. This deed of sale, does not show any structure existing in the said land. A copy of revenue assessment register is placed on record also does not show existence of any house property at any time in those lands. In her Application dated 27th October, 2007, the vendor also informed the Member Secretary, GCZMA that he had not done any construction in the property bearing Survey No.12/1, which was sold to Furtado family. Copies of record produced from civil litigation, would make it amply clear that Furtado family members have attempted to create a mountain out of mole-hill. There is absolutely no tangible, reliable and acceptable evidence to show existence of any house property in land Survey No.12/1 to 12/5, before February 1991 i.e. prior to CRZ Notification. Nor any permission is available to show that such house was

allowed to be repaired/renovated by the earlier owner. The manipulative and creative record of so called prior existence of house property before CRZ Notification, 1991, is stretched out of proportion and is unacceptable by applying rule of prudence.

22. Considering reasons discussed hereinabove, there is no escape from conclusion that the members of Furtado family could not show existence of any structure in existence prior to CRZ Notification, 1991. Their claim is untrue on all counts. It is obvious, therefore, that the Appeal filed by Rabindra Dias and another (Appeal No.35 of 2014) must succeed and will have to be allowed. The question, however, remains whether the constructions in questions of members of Furtado family maybe allowed to be continued by applying the principle of '*fait accompli*'.

23. So far as construction of Furtado's Guest House, is concerned, it is significant to note that originally there was no construction made by anyone/traditional occupant of the land Survey Nos.12/1 to 12/5. There is no document to show that permission was accorded to such erstwhile owner, nor any kind of permission was obtained by the members of Furtado family for construction of 'Guest House'. In our opinion, under guise of so called repairs, the members of Furtado family, entrenched the tentacles like 'occupant octopuses' for expansion of construction activity on sand beach itself, in order to earn easy money. In fact,

they have continued to earn such easy money by doing illegal business of running the guest house from at least 2006-07, till the date. We are of the opinion that maintaining construction at the place will permit continuity of violation of CRZ Notifications. The violators cannot be encouraged by applying the principle of '*fait accompli*' in such a situation where the CRZ Regulations are violated in blatant manner and the authorities have violated directions of the Hon'ble High Court issued in the Writ Petition No.58 of 2010, as well as in Suo-Moto Writ Petition No.2 of 2006. This is not a case in which environmental degradation can be allowed to be continued and violator may be directed to only pay amount of certain compensation, which will tantamount to encouragement to similar violators for committing breach of the CRZ Notifications and then to get away scot-free merely by making payment of some amount towards compensation for damage caused to environment. In the present case, the sand dunes have disappeared, the flora and fauna is seriously affected and endangered. The conduct of members of Furtado family is dubious since the time they acquired said property. Nay, they were obstinate and continued with illegal construction under guise of so called NOC of the Village Panchayat. Under peculiar circumstances of the present matter, we find it difficult to consider plea of protection by applying the principle of '*fait accompli*'. Having regard to the fact that the members of

Furtado family illegally expanded the construction activities after CRZ Notification, 1991, knowing very well that construction of the Guest House required CRZ Clearance, shows their utter disregard for the Law. They are not entitled for any protection, therefore, as the damage caused to the coastal eco-system is irretrievable but for relief of restitution. In such a case the principle of '*fait accompli*' is not applicable.

24. Taking a stock of forgoing discussion and reasons, we hold that the impugned order of GCZMA, is illegal, improper and incorrect. It is illegal as regards dismissal of the case put forth by Rabindra Dias and others (Appeal No.35 of 2014) and is legal one to the extent of part of demolition of boundary wall comprising concrete boulders and retaining wall of mesh. Consequently, the Appeal preferred by Mrs. Maria Furtado and others (Appeal No.33 of 2014), is dismissed with costs of Rs.50,000/- payable to Respondent No.2 Rabindra Dias and Respondent No.3- Mr. Santana Piedade Afonso, the Appellants in Appeal No.35 of 2014. Accordingly, the Appeal No.35 of 2014, is allowed. The impugned order is set aside. Instead of impugned order, we direct that the entire construction of the house property and retaining wall, around the house property, Guest-house, called 'Furtado Guest House' as well all other constructions standing in land Survey Nos.12/1 to 12/5, within NDZ of Sernabatim village, shall be demolished

