BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

APPEAL NO.31/2015(WZ)

CORAM:

Hon'ble Dr. Justice Jawad Rahim,
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)

B E T W E E N:

ALCON REAL ESTATES (P) LTD.
Through its Director,
Mr. V.M. Alburquerque, Age : Major,
Occn : Business, Alcon Chambers,
D.B. Marg, Panaji, Goa

.....**Appellant**

A N D

1. **The Goa Coastal Zone Management Authority,** Through : Member Secretary,
Dept. of Science, Technology and
Environment, Govt. of Goa,
3rd floor, Dempo Towers, Patto
Panaji, Goa 403 001

2. **Annapurna G. Naik,**
Age : Major, R/o. House No.109,
Sonarbhat, Verem,
Bardez, Goa 403 001

3. The State of Goa

Through : Chief Secretary,
Govt. Secretariate, Alto Betim,
Bardez, Goa-402 531

.....Respondents

Counsel for Applicants

Mr. Nitin Sardessai, Sr. Adv.
Mr. Sushant Adelkar, Adv.

Counsel for Respondent No.1 :

Mrs.F.M. Mesquita, Adv.
Mr. P. Dangui, Adv.

Counsel for Respondent No.2 :

Mr. Gopal A. Naik, Adv.

Date: April 7th, 2016

J U D G M E N T

1. The Appellant who is the project proponent has filed this Appeal contesting directions passed under Section 5 of the Environment (Protection) Act, 1986 by Goa Coastal Zone Management Authority GCZMA vide communication dated 14th May 2015 (impugned order). The Appellant submits that there is some civil property dispute between the Appellant and Respondent No.2 which is pending before the Civil Court and Respondent No.2 had filed a complaint with the CRZ authorities, with ulterior motives against the construction activities of the project being developed by the Appellant. GCZMA, through its Enquiry Committee has

conducted the inquiry and by its report dated 18th August 2014, and the Enquiry Committee gave to the following findings:

> *"Taking into consideration that the affected party obtained the approvals and licence for construction prior to CRZ Notification 19th February 1991, the construction of remaining eight (8) villas are legal valid and does not call for any interference from the said authority".*

2. Subsequently, the site was visited by the Expert Member of GCZMA on 20th February 2015 and thereafter, GCZMA, in its 115th meeting held on 4th May 2015, has decided to issue the impugned directions.

3. It is settled legal position that the Appeal proceedings have to be dealt with limited conspectus of testing the impugned order on its legality, propriety and application of mind, besides principles of natural justice.

4. It is the case of Appellant that the property is located at S.No.77/1 of village Reis Mogos, Verem, Bardez, Goa and the construction of 36 villas was approved by Planning and Development Authority (PDA) vide order dated 13th March 1984, much before coming into force of CRZ Notification 1991. Subsequently, Ecological Development Council of the Goa also approved the said plan as communicated by Town and Country Planning Department

by their letter dated 14th January 1986. Subsequently, all necessary approvals were obtained by the Appellant and thereafter construction commenced. Appellant could construct 28 (twenty eight) villas, in terms of approved plan and Village Panchyat also issued the occupancy certificates on 13th March 1990 and 12th April 1991. Appellant further states that thereafter he undertook the construction of some of the remaining villas, however, due to the complaints and opposition of Respondent No.2 and her family, the work could not be completed.

5. Appellant has challenged the impugned order, mainly on the ground that the construction activity of the remaining 8 (eight) villas is a on-going construction, as per judgment of the Apex Court in Writ Petition No. 329/2008 delivered on 31st March 2010. Learned Sr. Counsel Mr. Nitin Sardessai appearing for the Appellant placed strong reliance on this judgment and submitted that GCZMA has committed a serious error of interpretation while passing the impugned order, in view of the fact that the project in question had necessary permissions from the Planning Authorities. He also submitted that the Enquiry Committee of GCZMA has elaborately examined all aspects related to the project and investigated the complaint before submitting their report to the GCZMA wherein they have categorically submitted that the construction of remaining 8

villas is legal and valid. He submits that the GCZMA, however, has misinterpreted the fact position and observed that the licence granted by the Planning and Development Authority was valid for period of three (3) years unless renewed and such valid documents were not produced before GCZMA and therefore, the Authority noted in the present context that the prevailing Law and the Rules are Applicable and under no circumstances the present construction work could be on-going work. He argued that the GCZMA is required to take a position on the provisions of the CRZ Notification 1991/2011 and whether the planning licence is revalidated or not, cannot be the basis of decision on which such directions can be issued. He contended that the construction of 8 villas in question is on-going and the findings of the Apex Court in the above Writ Petition are squarely applicable in the present case. He further submits that GCZMA has not considered such aspects in the right perspective. He therefore, prayed for quashing of the directions issued by impugned order.

6. Countering this argument, learned counsel for GCZMA, Shri Dangui submits that GCZMA will rely on the documents rather than filing a separate affidavit. He states that the said judgment of the Apex Court regarding on-going construction is not applicable in the present case as the permissions of the planning authorities were obtained

prior to 1991 i.e. in 1984 and the permission had expired on its validity as on 19th February 1991 when CRZ Notification came into force. As such, such permissions are *non-est* in the eyes of Law as on 19.2.1991 i.e. date of CRZ notification, 1991. He elaborated that the Apex Court had considered the issue of permissions granted in the interregnum period between 16th August 1994, when certain amendments were notified in CRZ Notification,1991 and the judgment of the Apex Court in Writ Petition filed by Indian Council for Enviro-Legal Action dated 18th April 1996, wherein two amendments were held to be bad in Law. The Apex Court, while examining the issue, facts and status of the permissions granted based on the quashed amendments in the interregnum period, held that such directions which have received necessary approvals are on-going constructions. He contended that this is not the fact position in the present case. The permissions are prior to 1991 and that too not from GCZMA and the same have already expired before 1991 nor the Appellant has produced any re-validation/extension of such permissions, before the GCZMA which has carefully gone through the documents, available legal advice and have taken a considered decision as per the provisions of CRZ Notification by giving due opportunity of hearing to the Appellant. He therefore,

submits that there is no merit in the Appeal and it should be dismissed.

7. Considering the heavy reliance placed by the Sr. counsel appearing for the Appellant, we have carefully gone through the judgment of Apex Court in Writ Petition (Civil) No. 329/2008. In para 2 of the judgment, the relevant facts emerging from the record are referred which indicates that the Central Government issued another amendment to CRZ Notification,1991 on 16th August 1994 relaxing the No Development Zone to 50m from 100m. In view of the said relaxation, the petitioners in the said petition sought permission for additional construction between 50m to 100m which was granted to them. Subsequently, such notification relaxing the NDZ was challenged before the Apex Court and by judgment dated 18th April 1996 referred in "*Indian Council for Enviro-Legal Action Vrs. Union of India, (1996) 5 SCC 281*", two amendments are regarding reduction of the ban on construction from 100m to 50m and powers given to Central Government for relaxation of the developmental activities along the coastal land were held to be bad in Law. The Court also considered the question of constructions that have already taken place along such rivers/creeks at a distance of 50m and more. The relevant paragraphs of the judgment are reproduced below :

15. The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court in Indian Council for Enviro-Legal (supra) but incomplete construction cannot be permitted to be completed is devoid of merits. Two amendments made in the year 1994 were declared to be illegal vide judgment dated April 18, 1996. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallized by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amendment notification was declared illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever.

16. ……..

17. On the facts and in the circumstances of the case, this Court is of the opinion that a good case has been made out by the petitioners for issuance of a declaration that the judgment dated April 18, 1996 rendered in the case of Indian Council for Enviro-Legal Action (supra) will not affect the on-going constructions or completed constructions pursuant to the plants sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by this Court.

18. For the foregoing reasons, the petition partly succeeds. It is declared that the judgment dated April 18, 1996 in Indian Council for Enviro-Legal Action V/s. Union of India, (1996) 5 SCC 281, declaring part of the amending Notification dated August 16, 1994 to be illegal, will not affect the completed or the on-going constructions being undertaken pursuant to the said Notification. The rule is made absolute to the extent indicated hereinabove."

8. The findings of the Apex Court are clear and unambiguous where it is held that the completed or on-

going constructions being undertaken pursuant to the said Notification (dated 16th August 1994), will not be affected. It is nobody's case that the construction of 8 villas in the present matter is pursuant to such amendment and being carried out with necessary permissions under CRZ Notification under the said amendments, and therefore, in our considered opinion the findings of Apex Court in Writ Petition No.329/2008 are not applicable in the present case which can assist the case of Appellant.

9. We have also perused the impugned directions and observed that though the Enquiry Committee has taken a particular view but, it cannot be denied that GCZMA is the statutory authority which is required to take a decision based on various documents, records, and reports as per the provisions of the CRZ Notification. In the decision making process, the authority which is responsible for taking decision, may or may not agree with some of the reports placed before it. In the instant case, we find that the GCZMA has exercised its powers and authority independently by giving due opportunity by the Appellant. The Appellant has not come out with contradictory facts than what are referred in the impugned order.

10. We had also specifically enquired with the counsel of Appellant about any saving provisions in the CRZ Notification which the learned counsel could not provide.

However, we have noted such saving provision in the note appended to clause 8(1) of CRZ Notification, which is reproduced below :

"*The word (existing, used) hereinafter in relation to existence of various features or existence of regularisation or norms shall mean existence of these features or regularisation or norms as on 19-2-1991 (when the CRZ Notification, 1991) was notified.*"

11. It is an admitted fact that these structures do not exist even today and it is proposed to construct them. Therefore, this saving clause will also be not useful for the case of Appellant.

12. In view of the above discussions, we do not find any merit in the Appeal preferred by the Appellant. And therefore, the **Appeal is dismissed** with no order as to costs.

....., JM
(Dr. Justice Jawad Rahim)

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

Date : 7th April, 2016

ajp