

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

**SHOW CAUSE NOTICE**

**IN**

**APPLICATION NO.125 OF 2015**

**(Decided on 25-01-2017)**

**CORAM:**

**HON'BLE U.D.SALVI**  
**(JUDICIAL MEMBER)**

**HON'BLE PROF. (DR.) P.C.MISHRA,**  
**(EXPERT MEMBER)**

**In the matter of:**

**1. KASHINATH JAIRAM SHETYE,**

Son of Mr. Jairam Shetye,  
Major of age, Indian national,  
Having permanent residence at  
A-102, Raj Excellency,  
Patto Ribandar, Goa,  
Mobile No.9420689997.  
2444444, 2443333, 2444499, 2414242  
Email: [shetyebabu@yahoo.com](mailto:shetyebabu@yahoo.com)

**2. MR. KETAN GOVEKAR**

Son of Santikar Govekar  
Major of age, Indian national,  
Having permanent residence at  
3<sup>rd</sup> Floor, Wadji Building,  
St. Inez Panjim Goa,  
Mobile 0-9420819016  
Email: [ksgovekar@yahoo.co.in](mailto:ksgovekar@yahoo.co.in)

**3. SHRI SUDIP TAMANKAR**

Son of Narayan Tamankar  
Major of age, Indian national,  
Having permanent residence at  
C-5, Harbans Vihar,  
Old Goa Kadamba Bypass Road  
Near Saibaba Temple,  
Ribandar, Goa  
Occupation: Business  
Tel (Mobile): 9552565679

**4. Ms.SONIA SATERDEKAR**

Daughter Dynaweshar Saterdekar  
Major of age, Indian National.  
Having permanent residence at  
House No.605, Butki Wado  
SUccoro Porvorim, Bardez, Goa  
Occupation: Service,  
Tel. (Mobile): 7030971520.  
Email: [soniasataradekar@gmail.com](mailto:soniasataradekar@gmail.com)

.....**APPLICANTS**

**VERSUS**

**1. JAIPRAKASH A. SHIRSAIKAR**

308, Welcome rest  
Chapora Bardez Goa  
Pin Code-403 509.

**2. ELIANO PEREIRA**

Son of Pascol Pereira  
Resident of H.No.236/2, Vagator  
Anjuna Bardez Goa,  
Pin code 403509.

**3. THE MEMBER SECRETARY,  
GCZMA,**

Dempo Towers, Patto Plaza,

Patto, Panaji Goa.  
Pin code 403001.

**4. THE DEPUTY COLLECTOR (BARDEZ),**

Bardez, Goa  
Mapusa Goa  
Pin code 403507.

**5. THE CHIEF TOWN PLANNER,**

EDC Complex,  
Dempo Towers, Patto  
Panjim Goa.  
Pin code-403001.



.....**RESPONDENTS**

**Counsel for Applicant (s):**

In person.

**Counsel for Respondent (s):**

Ms Shilpa Pratap, Varsha Waghole for Respondent No.1.

Mr Nitin Sardesai Sr. Advocate, Mr Vibhu Amonkar for Respondent No.2.

Mr. Pundalik V. Khorjuvekar, Dy Collector & SDM, Mapusa,

Mr. Madhu G. Narvekar (In person)

Mr. Fletcher Fernandez, Technical Officer, GCZMA (In person)

Fawia M. Mesquita, Madhu G. Marrekar, M.Fletcher Fernandez, Mr. Amogh V. Prabhudesai Addl. Govt Adv. Susan Linhares Costa, for Respondent Nos. 3,4.

Mr. Aurobindo G. Pereira, Mr. Raghavendra Kanankutkar for Respondent Nos. for Respondent Nos. 3-5.

**DATE: May 2<sup>nd</sup>, 2017**

**J U D G M E N T**

**1.** While disposing of Application No.125 of 2015 initiated for directions to demolish remains of illegal structures in property bearing Survey Nos. 213/23-A of village Anjuna-Bardez, Goa, we issued Notices to

**1.** Respondent No.2 Mr Eliano Pereira,

**2.** Mr. Pundalik M. Khorjuvekar, Dy Collector and  
SDM Mapusa,

**3.** Mr.Madhu G. Narvekar, Mamlatdar of Bardez  
Taluq Mapusa Goa and

**4.** Mr. Fletcher Fernandez, Technical Officer,  
GCZMA, Panaji,

to show-cause as to why prosecution under Section 193 and 219 of the Indian Penal Code, 1860 (IPC) should not be initiated against them.

**2.** The Noticees responded to the Notice with their respective replies and they were heard.

**3.** Acting upon the complaint filed by Respondent No.1 – Jayprakash Shirsaiakar on 20<sup>th</sup> April, 2015 that construction work of structures/cottages was being carried out in Survey No.213/23A in an area falling in No Development Zone (NDZ) at Vagator- Anjuna-Badez by hill cutting without any approval from the competent authority- GCZMA, a show-cause Notice

dated 5<sup>th</sup> May,2015 was issued by GCZMA and upon considering reply of Respondent No.2 Eliano Pereira, an order of demolition dated 6<sup>th</sup> August, 2015 directing demolition of illegal construction of cottages located in the said property came to be passed. Respondent No.2 Eliano Pereira made a statement before the Tribunal in person that he had complied with the directions of GCZMA requiring demolition of structures vide order dated 13<sup>th</sup> August, 2015 in Application No.60 of 2015 (Mr. Jaiprakash A. Shirsakar Vs State of Goa & Ors). Applicant Mr. Jaiprakash A. Shirsakar, who was present in person made a statement through his Advocate Mr Kundaikar that he was satisfied with the compliance which Respondent No.2 Eliano Pereira herein declared before the Tribunal. In such circumstances, Application No.60 of 2015 was disposed of on the premise that nothing remained in the Application vide order dated 13<sup>th</sup> August, 2015. However, the Applicant in present Original Application No.125 of 2015 Mr. Kashinath Shetye moved the present Application seeking directions to Respondent No.3 GCZMA and Respondent No.4- Deputy Collector, Bardez to demolish remaining illegal structures in the said property. According to him, Respondent No.1 Jaiprakash A. Shirsakar and Respondent No.2 Eliano Pereira herein put up a show before this Tribunal on 13<sup>th</sup> August, 2015 by making a statement that the order of Respondent No.3- GCZMA was complied with and they got Application No.60 of 2015 moved by Respondent No.1 Jaiprakash A. Shirsakar for action in that



regard disposed off. He pointed out that demolition of structures had not taken place and partial demolition occurred later on i.e. on 14<sup>th</sup> September, 2015 and this prompted Applicant No.1 Kashinath Shetye herein to move an Application dated 24<sup>th</sup> August, 2014 before Respondent NO.3-GCZMA complaining failure to demolish the said structures; and Respondent No.3 GCZMA thereupon had directed Respondent No.2 Eliano Pereira to demolish illegal cottages/structures located in the said property and restore the land to its original condition within seven (7) days vide order of 25<sup>th</sup> August, 2015; and failure on the part of Respondent No.2 Eliano Pereira to demolish cottages/structures, the Deputy Collector and SDM Mapusa-Bardez, Goa was to remove the said cottages/structures and recover expenses incurred for from Respondent No.2 Eliano Pereira.

**4.** Respondent No.1 Jaiprakash Sirsaikar contended before us in the present Application vide reply dated 7<sup>th</sup> December, 2015 that he was misled by the compliance report dated 10<sup>th</sup> August, 2015 filed by Respondent No.2 Eliano Pereira before Respondent No.3- GCZMA and was prompted to make a statement on 13<sup>th</sup> August, 2015 before the Tribunal that the directions dated 6<sup>th</sup> August, 2015 passed by Respondent No.3 were complied with. He further explained that after making such statement before the Tribunal he happened to pass by the said property when he had noticed that Respondent No.2 Eliano Pereira had not fully complied with the

said directions and had therefore immediately complained to Respondent No.3-GCZMA and also initiated Application under Section 26 of the National Green Tribunal Act, 2010 (M.A.No.204 of 2015) and had also lodged complaint before the JMFC Court against Respondent No.2 Eliano Pereira as per liberty granted while disposing off M.A.No.204 of 2015.

**5.** Respondent No.2 Eliano Pereira filed reply dated 10<sup>th</sup> May, 2016 in the said Application. According to him, the staircase and structure of the restaurant, which was found existing even after the so called compliance order passed by GCZMA existed in the property since the time of his ancestors i.e., prior 1991 and other structures of temporary nature were demolished and dismantled. He further explained that only stones were used for levelling and mud-masonry work raised was plastered by concrete.

**6.** Respondent NO.3-GCZMA gave reply dated 15<sup>th</sup> March, 2016, wherein GCZMA besides placing the facts concerning entire course of proceedings, more particularly, made a reference to partial demolition of the structures on 14<sup>th</sup> September, 2015 and communication received from Respondent No.4-Deputy Collector, and SDM Bardez regarding demolition carried out on 8<sup>th</sup> December, 2015.

**7.** The pleadings before us begged a short question as to whether all cottages/structures in the said property, which

were ordered to be demolished were actually and completely demolished or not?

8. This question was answered by us after hearing the parties and upon considering the record particularly the Commissioner's Report and replies of Respondent No.2 Eliano Pereira, both to the Show-cause Notice issued by GCZMA and the Application before us. We particularly noted that there was clear admission of fact by Respondent No.2 Eliano Pereira that he had inherited the said property as 'Bagayat' lands without any construction and in the year 2004-2005 he had to begin with temporary seasonal hut for tourism purposes. We also noticed that any cottage could be used as restaurant or inn, and restaurant which Respondent No.2 Eliano Pereira claims to be in existence prior to 1991 could not have been excluded from the order of demolition of the cottages referred to in the order dated 6<sup>th</sup> August, 2015. We particularly observed as follows:

***“16. Significantly, what was ordered to be demolished vide direction/order dated 6<sup>th</sup> August 2015 were all cottages on the said property with no distinction being made as to its user. Nothing existed even going by his own (i.e. Respondent No.2 Eleino Pereira) showing prior to 2004-05 on the said property and the entire property was a garden (Bagayat)”.***

9. We had appointed the Registrar to act as a Court Commissioner to carry out local investigation at the site and his Report dated 18<sup>th</sup> February, 2016 in respect of local



investigation carried out by him revealed what was not demolished in the following terms:

***“1. Two wooden sheds of restaurants having concrete base upto plinth level are not demolished. The furniture of restaurant like chairs, tables and other articles like refrigerator, fans etc. are lying there which can be seen in Photographs 1,3 to 8 & 16.***

***2. South-North hill cutting which has divided the disputed site into two parts i.e upper part and lower part are still as it is. The stair cases to approach the lower part of the disputed site are not demolished. The said hill cutting, two stair cases and the Southern & Northern compound walls are not demolished which can be seen in Photographs 2 & 9 to 15. The South-North hill cutting is not restored to its original position, which can be seen in those photographs.***

***3. The Northern compound wall and adjacent staircase to it in disputed site are not demolished which can be seen in Photograph 11.***

***4. The cottages are demolished/removed but the concrete/paka structure upto the plinth level and the flooring of cottages as well as restaurant basement are not demolished/removed which can be seen in Photographs 5,7 to 13 & 19.***

***5. Paka/concrete structure of the Eastern, Western and other compound walls upto the plinth level is not demolished which can be seen in Photographs 2 & 17 to 19”.***

**10.** Palpably we had reason to believe that Respondent No.2 Eliano Pereira had intentionally made a false statement before us on 13<sup>th</sup> August, 2015. As regards role of public servant- Mr. Fletcher Fernandez, Technical officer, GCZMA, Panaji, we were prompted by contents of the Panchnama dated

8th December, 2015, which recorded full compliance of the order of GCZMA on removal of cottages/structures. We are *prima facie* of the view that there was material to proceed against the said Public servants for the commission of offence under Section 219 of IPC. Show-cause notice as aforesaid to the concerned Notices were therefore issued vide order dated 25<sup>th</sup> January, 2017.

**11.** Show-cause Notice was responded to by Noticees with their respective affidavit in replies, namely; affidavit in reply dated 20<sup>th</sup> February, 2017 of Respondent Nos. 3 and 4, affidavit in reply dated 9<sup>th</sup> March 2017 of Respondent No.2 Eliano Pereira, affidavit in reply dated 28<sup>th</sup> February, 2017 of Mr. Fletcher Fernandez, Technical Officer, GCZMA, Panaji. Replies were rejoined by the Applicant with his rejoinder dated 22<sup>nd</sup> March, 2017. Respondent No.2 Eliano Pereira reserved his right to file further detailed affidavit in reply on 10 March, 2017. However, he did not file any further reply. We have considered the entire record including these replies and heard parties.

**12.** Learned Counsel appearing on behalf of Respondent No.3 GCZMA submitted that the order dated 6<sup>th</sup> August, 2015 of demolition of illegal cottages/structures standing on Survey No213/23-A at Vagator, village Anjuna-Bardez, Goa was an outcome of the complaint made by Respondent No.1 Jaiprakash A. Shirsaiakar on 20<sup>th</sup> April, 2015 and the order of demolition dated 25<sup>th</sup> August, 2015 of illegal construction of

cottages/structures issued in wake of the complaint made by Applicant Mr. Kashinath Shetye that the directions of GCZMA dated 6<sup>th</sup> August, 2015 were not complied with as represented before us on 13<sup>th</sup> August, 2015 reiterated the order of demolition of cottages and structures on the said property. She submits that all throughout the proceedings beginning with the complaint dated 20<sup>th</sup> April, 2015 of Respondent No.1 Jaiprakash Shirsaiakar till issuance of the order of demolition lastly being 25<sup>th</sup> August, 2015 GCZMA had not carried out any site inspection of the said property and had merely considered the record including requests of Respondent No.2 Eliano Pereira and passed the orders. In such circumstances, she submitted that there existed a room for bonafide error in reading of the demolition order. Taking a cue from these submissions, Mr Khorjuvekar then Deputy Collector and SDM Mapusa and Mr. Narvekar, Mamletdar, the Members of demolition squad which carried out demolition of the structures on 8.12.2015 submitted that they had called for assistance of GCZMA in identifying the structures to be demolished and it was Mr. Fletcher Fernandez, Technical Officer of GCZMA, who had instructed them and Respondent No.2 Eliano Pereira the owner of the cottages had made statement that all the cottages/structures required to be removed as per the order of GCZMA had been removed and Mr. Fletcher Fernandez had expressed satisfaction regarding compliance of directions of GCZMA. They submitted that they acted bonafide and made

report of compliance of the GCZMA directions as per communication dated 10<sup>th</sup> December, 2015 addressed to GCZMA.

**13.** Learned Counsel appearing on behalf of Respondent No.2 Eliano Pereira submitted that Respondent No.2 Eliano Pereira had filed compliance report dated 10<sup>th</sup> August, 2015 and asked for permission to erect temporary huts in his private property; and Respondent No.2 Eliano Pereira had not made any false statement before the Tribunal on 13<sup>th</sup> August, 2015; and on appreciation of facts, this Tribunal is of the opinion that a false statement was made by him such statement has never been made intentionally and was result of inadvertence and/or misconstruction of the terms of the order. Pertinently, the order dated 6<sup>th</sup> August, 2015 in unequivocal terms made record of the facts as under:

***“AND WHEREAS, taking into consideration the Complaint filed by Mr. Jaiprakash Sirsaikar, and the documents annexed to it and the Judgment dated 17/12/2014 passed in Application No.03/2014, it is seen/noted that all the structures/cottages constructed by hill cutting are in violation of CRZ Notification, 1991/2011 and do not possess prior permission under the Notification. As such, it is concluded that the cottages under reference are illegal and unauthorized and decided to issue order of demolition to all the cottages under reference under Section 5 of the Environment Protection Act read with other enabling provisions to Mr.***



***Eliano Pereira, and accordingly file a compliance report to the office of GCZMA”.***

**14.** There was therefore, no reason to misconstrue the Order dated 6.8.2015. Moreover, Respondent No.2 Eliano Pereira defended undemolished structures by contending that said structures existed prior to 1991 and we have dealt with the said contention adequately and overruled it with our findings in the Judgment passed in Application No.125 of 2015 dated 27<sup>th</sup> January, 2017. This only shows that Respondent No.2 Eliano Pereira who was in complete know of the facts about construction raised on the said land had deliberately made a false statement before us on 13<sup>th</sup> August, 2015 saying that the directions passed by GCZMA for demolition of structures were complied with.

**15.** Learned Counsel appearing on behalf of Respondent No.2 Eliano Pereira relied upon the Judgment of Hon'ble Apex Court delivered in **Mutha Karuppan's Case, [(2011)5 SCC 496 : Mutha Karuppan, Commissioner of Police Chennai Vs Parthi Ilamvazhuthi and Anr]** and **Dr. S. P. Kohli's case [(1979) 1 SCC 212 : Dr. S.P.Kohli, Civil Surgeon, Ferozpur Vs High Court of Punjab & Haryana, through Registrar.]**

He submitted that before commencing prosecution for giving false evidence the Courts should be satisfied that there is reasonable foundation for the charge and there is *prima facie* case of deliberate falsehood on a matter of substance as mere suspicion cannot bring home the charge of making false



statement, and more so, the Court has to determine on facts whether it is expedient in the interest of justice to enquire into an offence which appears to have been committed. He invited our attention to paras-15 and 16 of the Judgment delivered by the Hon'ble Apex Court in Muthu Karuppan's case (Supra) in that regard. He added that the prosecution for perjury should be sanctioned by the Courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely, and invited our attention to the observations of Hon'ble Apex Court made at para 16 and 17 of the Judgment delivered in Dr. S.P.Kohli's case in that regard. We humbly bow down to the observations made by the Hon'ble Apex Court in the aforesaid cases. However, from the facts before us it is very much clear that Respondent No.2 Eliano Pereira had made deliberate and conscious statement about demolition of the structures/cottages on the said landed property on 13<sup>th</sup> August, 2015 when he knew that all the structures were not demolished. The existence of structures became evident with the Commissioner's Report dated 18<sup>th</sup> February, 2016. Obviously, Respondent No.2 Eliano Pereira made a false statement before us on 13<sup>th</sup> August, 2015. In the given facts and circumstances, we reject the plea of Respondent No.2 Eliano Pereira that he made the statement upon misconception of the order of demolition passed by GCZMA. The record before us offers distinct evidence of commission of

an offence of perjury committed by Respondent No.2 Eliano Pereira.

**16.** In our considered opinion therefore there are sufficient and reasonable grounds for setting the machinery of criminal law in motion for the offence of perjury committed by Respondent No.2 Eliano Pereira and we have reason to believe that trial of Respondent No.2 Eliano Pereira will end in dispensing justice not only to Respondent No.2 Eliano Pereira but also to all the concerned in the present case. However, in the given facts and circumstances, we accept the plea of Mr. Pundalik M. Khorjuvekar, Dy Collector and SDM Mapusa, Mr.Madhu G. Narvekar, Mamlatdar of Bardez Taluq Mapusa Goa and Mr. Fletcher Fernandez, Technical Officer, GCZMA, Panaji.

**17.** Rule 24 of the National Green Tribunal (Practices & Procedure) Rules, 2011 enables us to pass such orders or give such directions as may be necessary to give effect to its order to secure the ends of justice. It is therefore necessary to direct State of Goa to give all such legal, ministerial and logistical assistance as may be felt necessary by our Registrar to initiate prosecution against Respondent No.2 Eliano Pereira for commission of offence punishable under Section 193 of IPC, and pursue the same to its logical end. We, therefore, pass the following order.

1. Sanction is granted to prosecute Respondent No.2 Eliano Pereira for the commission of offence punishable under Section 193 of the Indian Penal Code, 1860 as aforesaid.
2. Registrar is directed to initiate prosecution against Respondent No.2 Eliano Pereira for having committed an offence punishable under Section 193 of the Indian Penal Code, 1860, as observed herein above and pursue the same to its logical end.
3. State of Goa is directed to give all legal, ministerial and logistical assistance to the Registrar, (WZB) NGT at Pune as may be felt necessary by him to give effect to this order.
4. Respondent No.2 Eliano Pereira is liable to bear expenses incurred by the State of Goa for giving necessary assistance as directed and State of Goa shall recover the said expenses incurred from Respondent No.2 Eliano Pereira as arrears of land revenue.

.....JM  
(Justice U.D. Salvi)

....., EM  
(Prof. (Dr.) P.C. Mishra)

**PUNE**

**DATE: May 2<sup>nd</sup>, 2017.**

hkk