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

**APPLICATION NO.51 OF 2014**

**CORAM:**

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR**
**(Judicial Member)**
**HON'BLE DR. AJAY A.DESHPANDE**
**(Expert Member)**

**In the matter of:**

1. **KASHINATH JAIRAM SHETYE,**
   A-102, Raj Excellency,
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   Ph No.2444444,2443333,2444499,2414242
   Mobile No.9420689997.
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2. **Dr. KETAN GOAVEKAR**
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4. **SANJAY SARMALKAR**
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………**APPLICANTS**

**VERSUS**

1. **SHRI SRINET KOTWLAE,**
   Member Secretary,
   CRZMA C/o Science & Technology & Environment
   Dempo Towers, Panjim Goa
   Pin code 403 001.

2. **THE CHIEF SECRETARY,**
   Secretariat, State of Goa,
   Porvorim Goa
   Pin code 403 521.

3. **ANIL HOBLE,**
   R/o H.No.345 Wadi,
   Merces Tiswadi, Goa,
   Pin code 403005.

………**RESPONDENTS**

**Counsel for Applicant (s):**

**Mr. Asim Sarode, Alka Babaladi, T.A.Godbole,**

**Counsel for Respondent (s):**

**Mr. Dattaprasad Lawande F.M.Mesquita for Respondent Nos. 1,2.**
**Mr. Nitin Sardessai a/w Mr Aprameya, Atul Huble for Respondent No.3.**

**DATE: MAY 29TH, 2015.**

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

**1.** By this Application, the Applicants named above, seek following reliefs:

> **1.** Order for forthwith stay of all commercial activities like Restaurant, wine shop, lubricant shop and any other commercial activities in the Chalta No.1/PTS no.10 of Panjim city and S. No.65/1-A Village Marambio Grande in Merces Panchayat which is done by filling the salt pans in No Development Zone (NDZ) of CRZ-III area by ANIL HOBLE 7 MERCES GOA.
>
> **2.** To take a hearing on the Applicants complaint and pass necessary orders thereof.
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> **3.** To produce the sale-deed dated 03.08.1992 which is a conclusive proof of Built up area which is suppressed to avoid action.
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> **4.** To demolish the construction done after 19.02.1991 without taking permission of CRZMA and GSPCB Chalta no 1/PTS no 10 of Panjim city and S.No. 65/1-A village Marambio Grande in Merces Panchayat in No Development Zone (NDZ) of CRZ-III area by ANIL HOBLE 7 MERCES GOA.
>
> **5.** To remove the mud put on the stream which flows from Panjim to Ribandar on the side

of Old NH 4-A to make entrance for vehicles by filling.

**6.** To bring the mangroves cut to their original position.

**7.** To bring the salt pans filed back to original position.

**2.** The Application is filed under Section 14(1) read with Section 14(3) of the National Green Tribunal Act, 2010. The Applicants seek restoration of environment, demolition of construction done of commercial premises by Respondent No.3 – Anil bearing house No.345 in CRZ-III area, (NDZ), without following due procedure, encroachment, as well as by use of political power under guise of sale-deed dated 3.8.1992.

**3.** It is the case of Applicants that they are interested in the cause of environment. They noticed diminition of flora and fauna within their area. They also noticed destruction of mangroves which obviously affected bio-diversity in the area. There was salt pan and river creek of which the use was made for proper and natural flow of water and maintenance of water level. Respondent No.3 – Anil, destructed the river creek and salt pans while making illegal construction over land bearing Survey No.65/1-A of village Morombio Grande in Merces Panchayat by filling salt

pan. He started a restaurant, wine shop, lubricant shop and other commercial activities in the said developed and constructed area without any legal authority. The GCZMA, did grant permission dated 8.12.2008 for re-roofing and re-flooring, without showing any specific area and plans, and without verification of such plans with ulterior motive. The then Member Secretary by name Levinson Martin granted permission for extraneous considerations. The Applicants made various complaints to the authorities against illegal constructions made by Respondent No.3 Anil. They filed Writ Petition in the Hon'ble High Court and thereafter filed Contempt Petition No.21 of 2012 and Contempt Petition No.22 of 2012, in which Notices have been issued by the Hon'ble High Court of Bombay at Goa. On 22.3.2012, Goa State Pollution Control Board (GSPCB), issued order for inspection of the property in question. On 25.5.2012, Notice under section 5 of the Environment (Protection) Act, 1986, was served on Respondent No.3 Anil by GCZMA/CRZ authority. The inspection was carried out by the Superintendent of Survey and Records and also by the Assistant Engineer of GSPCB, which shows that no permission was taken by Respondent No.3 Anil, for construction of commercial building, standing on the

plot in question. The Applicants allege that Respondent No.3, Anil is carrying out expansions and modifications to the earlier temporary structure of guarange so as to make it a completely new and permanent building for Bar and Restaurant. This is detrimental to coastal eco system and river eco system, excessive vegetation and will cause pollution of river water due to pouring in sewage generated from Bar and Restaurant, without any permission. The authorities have maintained silence due to political pressure of Respondent No.3 Anil. Consequently the Applicants have filed this Application.

**4.** By filing affidavit in reply, Respondent No.3 Anil resisted the Application. He contended that the Application is, in fact, by way of an Appeal under Section 16, of the NGT Act, 2010 and therefore, is untenable. He has further contended that the Applicants have not complied with Rule 13(7) of the NGT (Practices & procedure) Rules, 2011 and, therefore, the Application is liable to be dismissed.

**5.** According to him, the Application is barred by limitation, inasmuch as construction activity was going on since 2011 and cause of action had arisen much prior to six (6) months of filing of the Application.

Therefore, the application deserves to be dismissed, as the same is barred by limitation. Apart from such preliminary objection, he alleges that in context of Writ Petition No.1 of 2013, filed by Applicant No.1 Kashinath Shetye, all the allegations made against the then Chief Minister had been withdrawn and, therefore, the said Writ Petition was allowed to be withdrawn as per order of the Hon'ble High Court dated January 21st, 2013. He denied that he is politically influential person and has caused environmental damage by making any construction in NDZ area. He admits that on 31.3.2014, he started running Bar and Restaurant after completing necessary formalities of permission and approval as required by law. According to him, there was old structure existing prior to CRZ Notification, 19991 in the property which he got repaired and roofed with due permission of the local authority. He denied that he had done work of construction by filling salt pan and water creek situated adjacent to Mandovi River on opposite side of the road by causing encroachment. The case of Respondent No.3 Anil is that report of Talaulikar does not show whether salt pan was legal or illegal. In other words, it is his case that earlier construction existed before 1991 and that post 1991,

there was certain repairs and renovations carried out by him after necessary permission issued by the local authority. He denied that he had purchased standing structure from anyone vide sale-deed dated 3.8.1992. According to him, omission to indicate area of re-flooring and re-roofing at the time of repairs of old structure and renovation is of no significance. He, therefore, denied that existing structure in the properties bear Survey Nos. 83/2-A, 83/-A, and 63/1-A of village Morombi-O-Grande, are illegal. He says that the old structures did exist prior to 1967 and have been only improved/repaired/re-roofed, in accordance with the Rules and that too with due permissions of authorities. He, therefore, sought dismissal of the Application.

**6.** Other Respondents did not file reply affidavits for the reasons best known to them.

**7.** For the purpose of preliminary objections, non-compliance of Rule 17 of the NGT (Practices and Procedure) Rules, 2011, we may only state that there is no penal consequence provided for in the N.G.T.Act. The Application cannot be dismissed for want of such non-compliances. The procedural non-compliances can be done away with in view of power to mould the

procedure under Section 19 of the NGT Act, 2010. The Rules are for convenience of the parties and the Tribunal. The objections could have been raised by the Respondent No.3, before the Registrar, NGT (WZ) at the earliest and could be pressed before the matter was taken up for final hearing. We do not think that this a serious objection which would entail any serious consequence like dismissal of the Application, and as such, the objection is discarded.

**8.** This takes us to the objection raised regarding limitation available under Section 14 of the NGT Act, 2010. In this context, we may take note of the fact that the Applicants are making complaints since long to various authorities. The complaints were addressed by GCZMA and other authorities recently. By order dated 2.4.2014, GCZMA, directed that licence of Respondent No.3 Anil shall be kept in abeyance. By order dated 17.4.2012, the GCZMA, called the parties for personal hearing. In the said proceedings before the GCZMA, Respondent No.3 Anil filed his reply dated 8.4.2014. An Enquiry Committee gave report dated 30.4.2014. The last communication of GCZMA, is dated 2.5.2014. The Present Application is filed within one week thereafter, i.e. on 8-5-2014.

**9.** In the circumstances stated above, it is necessary to see when the 'first cause of action' had arisen for filing of the Application. The Applicants may know that illegal acts were being done by Respondent No.3 Anil at the NDZ site. Still, however, that itself does not give them cause of action as such, unless they were aware that such kind of work is being done in violation of CRZ Notification. For such purpose, Respondent No.3 Anil is required to show that the Applicants were having complete knowledge in respect of alleged violations and yet they had maintained meaningful silence.

**10.** In ***"J. Mehta vs Union of India and Ors"*** (**M.A.Nos.507,509,644 and 649/2013, in Application No.88/2013**) of the **National Green Tribunal (PB)**, considered the question of limitation in following way:

> *"**53**. Thus, it is clear that the cause of action should have a direct nexus with the matters relating to environment. In the present case, the respondents can hardly be heard to contend that since they have been flouting with impunity, the law, the terms and conditions of the EC for long, and therefore, every person is expected to know such violations or unauthorized use, and as such, the application would be barred by limitation. Respondent No. 9 has not come to the Tribunal with clean hands and disclosed complete details, which were exclusively*

*within their knowledge and possession. In the normal course of business, Respondent No. 9 would have first entered into agreements with other persons for providing these premises, either on sale or lease, as the case may be. Then such buyers/lessees would start making constructional changes and provide infrastructure necessary for using the parking and services area for commercial purposes. Then alone, such persons would have started using the premises for such purposes. All these facts have been withheld by Respondent No. 9. Therefore, the Tribunal would be entitled to draw adverse inference against Respondent No. 9 in that behalf. In any case, Respondent No. 9 and other private respondents have converted the user of the premises contrary to the specified purpose and in violation of law and terms and conditions of the EC. Thus, even such an approach would support the case of the applicant and in any case the respondents cannot be permitted to take advantage of their own wrong or default.*

***54**. The cause of action is not restricted to 'in personam' but is an action available to any person in terms of Section 14 of the NGT Act. It empowers any person aggrieved to raise a substantial question relating to environment including enforcement of any legal right relating thereto. Every citizen is entitled to a clean and decent environment in terms of Article 21 of the Constitution and the term 'cause of action <u>first arose' must be understood in that sense and context. The applicant has been able to establish that he first came to know about the misuser and change of user, particularly with regard to adverse environmental impact, only in the middle of December, 2012 and immediately thereafter, he</u>*

*took steps retuning the authorities concerned to take action as per law but to no avail. Then 'he filed the present application within the prescribed period of six months. The respondents have not been able to rebut successfully the factual matrix stated by the applicant. As already stated, they have withheld relevant facts and information from the Tribunal.*

***55**. A cause of action is a bundle of facts which should give, in its composite form, right to a plaintiff against the defendant to approach a court or Tribunal for a legal remedy or redressed of his grievance. Thus, the existence of a legal remedy to the plaintiff is a sine qua non for an actionable cause of action. In view of the above reasoning, we have no hesitation in concluding that the present application is not barred by time.*

***56**. Lastly but most importantly, now we have to deal with the question as to whether the breach of conditions of EC is likely to cause environmental and health hazards or not. We have already held that Respondent No. 9 has not only violated the specific terms and conditions of the EC dated 27th November, 2006 but has also miserably failed to submit an application for reappraisal of the project. Furthermore, the said Respondent No. 9 has committed breach of the bye laws, fire safety measures, Corporation laws, etc. All the public authorities have specifically taken the stand that at no point of time, did they accord any permission or sanction for conversion of the parking area for commercial purposes and its misuser or unauthorized construction. In fact, according to them, they have taken appropriate steps against Respondent No. 9 in accordance with law. We have already noticed that this Tribunal is not concerned with the violations and breaches committed by*

*<u>Respondent No. 9 with regard to other laws in force but for environmental laws in terms of Schedule I to the NGT Act</u> and its adverse impact on environment and public health.*

***57****. It has come on record that approximately 59 of commercial area has been increased by such unauthorized conversion and misuser. The terms and conditions of the EC have specifically provided that in the event of any change in the scope of the project, Respondent No.9 was expected to take steps for reappraisal of the project and take fresh EC, which admittedly, has not been done by Respondent No. 9 despite lapse of considerable time. These violations would consequently have a direct impact on traffic congestion, ambient air quality, contamination of underground water, sewage disposal and municipal solid waste disposal besides other adverse impact on population density in the area. With the significant change of commercial area by 59, the EC itself would be substantially affected and it would be for the authorities concerned to examine whether the EC can be continued or requires to be recalled. There is a drastic change in PSY with change in sq.ft. area as the EC was not intended for such area to which Respondent No. 9 has now expanded its activity. Furthermore, assessment of water requirement is based upon the number of users and other services in the area and this substantial change has fundamentally been altered and would have drastic and adverse effects on all these aspects. The EIA Report submitted by Respondent No. 9 itself shows that these are the various aspects, the variation of which is bound to alter the entire basis for grant of the EC. For instance, the parking for 1772 cars was to be*

> *provided in the project in terms of EIA report. For this purpose, the basement, lower ground floor in one block and the multi-level car parking in the Block 2P had been provided. Major part of this area had been converted and used by Respondent No. 9 and other private respondents for commercial purposes. It is not even the case of Respondent No. 9 that the required number of cars can be parked in that building. The cars which could have been parked in the building now would have to be parked on the public roads/places leading to lowering the road capacity resulting in lowering the average speed of the vehicle, consequently increasing the air pollution.*"

(***Emphasis by Us)***

The term 'cause of action' is a bundle of facts. There cannot be two opinion about legal position that once the 'cause of action' starts running, then it cannot be stopped. In case of violation of Law, particularly, like CRZ Notification, violation continues, when the construction activity goes on without hindrance. As stated before, the competent authority directed the Respondent No.9, to stop construction activity and therefore, the construction work now has come to halt. It appears *prima facie* that the question regarding alleged violation of CRZ, Notification, is yet to be determined by GCZMA. Under the circumstances, the Application cannot be held as totally barred by limitation, inasmuch as the 'cause of action' is continuous and still remains unabated. In

our opinion, question of *locus* as well as question of limitation ought to be decided on case to case basis.

**11.** Before adverting to merits of the matter, it is worthwhile to note that the Hon'ble High Court of Bombay at Goa, in Writ Petition No.422 of 1998-1999 (Goa Foundation v, Panchayat of Candolim and Panchayat of Calangute & Ors.) analyzed the issue regarding rule of non-permissibility of construction carried out in CRZ area after 19th February,1991. The relevant observations of the Hon'ble High Court, may be reproduced as follows:

> "The clause (iii) thereof refers to "construction/reconstruction of dwelling units between 200 and 500 metres of the HTL". In other words, while the clause (iii) specifically refers to the development of an area lying between 200 and 500 metres of HTL exclusively for construction or reconstruction of the dwelling units, the open plots in such area are allowed to be utilized for construction of the hotels in terms of the clause (ii) thereof. The expression "construction /reconstruction of dwelling" in clause (iii) further refers to "within the ambit of traditional rights and customary uses such as existing fishing village and gaothans". It is settled principle of law of interpretation that no word in a statutory provision

including the one in the subordinate legislation can be presumed to be redundant or unintentional. Reference to the "traditional rights" and "customary uses" while regulating construction activities of dwelling units in the coastal area is neither unintentional nor insignificant but evidently it discloses the intention of the framers of the law that the construction activities of dwelling units have to be "within the ambit of traditional rights and customary uses" prevalent and practiced in the concerned locality i.e. coastal area. Obviously, it will relate to the persons engaged in traditional occupation in such locality in the coastal area which would include fishing, toddy tapping, plantation etc. otherwise the framers of the law would not have occasion to restrict the activity of construction of dwelling unit "within the ambit of traditional rights and customary uses". The said expression essentially discloses that the law makers have considered the importance and necessity of and have, therefore, granted recognition to the activities of the nature of traditional occupation in such coastal area and that has been described as the ambit of extent to which the construction activities can be permitted to have the dwelling units in the said area".

**12.** The Hon'ble High Court summarized findings and gave directions in paragraph 32 as follows:

(A) To conduct survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III zone in Goa, village or town wise as on 19th February,1991 and increase in number thereof thereafter, date-wise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19th February, 1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February, 1991 in the locality comprised of the dwelling units and to take action against the same for their demolition in accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof before they are being allowed to be utilized for such construction activities.

(E) Till the until the survey and inquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and

inquiry to be held as directed above and this should be specifically stated in the licences to be granted for the purpose of repairs and/or renovation of the existing houses.

(F) The respondent No.5 to conduct inquiry and fix responsibility for the violation of the CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and the inquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30th May,200, and report in that regard should be placed before this Court in the first week after the Summer vacation of 2007, for necessary further order,,

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

(J) The respondent Nos. 3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public available to the public and in that regard a web-site should be opened and the entire material

should be displayed on the web-site. The respondent No.3 should ensure due compliance of this direction by 10th June2007.

(L) The respondent nos. 1 and 3 shall pay costs of Rs,10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in above terms.

**13.** From the directions of the Hon'ble High Court, it is explicit that unless survey and enquiry is completed the authority could not have given licence for any type of construction in CRZ-III, area, except for the purpose of renovations of existing houses. Moreover, identification of all types of structures and constructions made in CRZ-III area in respect dwelling units, constructed after 1991 actions were directed to be taken. Third and most important observation noted by the Hon'ble High Court is that the construction work in CRZ-III area specifically were referable only to dwelling units "within impact of traditional rights and customary uses, such as existing fishing villages and Gaothans". Thus, it was not permissible for renovations or repairing of the house and utilize it for commercial purposes, especially to establish a Restaurant and Hotel.

**14.** The inspection report submitted by the Enquiry Committee of GCZMA in case No. GCZMA / ILLE / GMPL/14-15/01, reveals that the suit property falls within area of 100m from bank of river Mandovi. The report shows that no construction activity is permissible within NDZ area except for repairs/reconstruction of structure with existing plinth (platform) area. It is stated that the existing property is situated within NDZ. The report shows that Respondent No.3 – Anil claims that business of repairs of motor-vehicles was being carried out by him in the name and style of "Khapro Garage /Workshop" since 2.3.1967. The certificate dated 28.6.1981 issued by the Directorate of Industries and Mines, go to show that Khapro guarage /Workshop was registered with the department of Industries and Mines on 2.3.1967. The report shows that Respondent No.3 Anil carried out business of liquor vending, which he was doing earlier in 1967 by obtaining necessary permissions due to change of business and extended it by commencement of restaurant activity for which permission was granted by the authority on 8.12.2008. Therefore, there was no destruction of mangroves and hence, the complaint of the Applicant was directed to be filed.

**15.** Clinching question is whether Respondent No.3 Anil was in possession of any construction permission prior to 1991, or that the prior owner from whom the property was transferred, was in such construction possession?

**16.** Now, it is essential therefore to know location of the guarage which allegedly was in existence before 1991 in one of the land. First, the location of Restaurant and Bar is now said to be within Panjim city and obviously, in middle of survey No.65. The ownership of Respondent No.3 Anil emerges from the sale deed dated 3.8.1992. A copy of sale-deed is obtained by Applicant No.1 from office of the Sub-Registrar, under provisions of the R.T.I. Act. The significant fact appearing from recitals of the sale-deed is that Respondent No.3 Anil is a purchaser of the property from Ms. Alda Caldeira, daughter of G. Caldeira and Mr. Abilio Fuptado so of Furtado. Both the vendors categorically mentioned in the sale-deed that the property was having a guarage on Chalta No.1/P.T.Sheet No.10. The schedule of the property is also given at the bottom of the sale-deed. The schedule shows that small guarage was in the corner side of north-east of Survey No.83/2-A, which is described as Survey No.65/1-A. It is crystal clear, therefore that

there existed no house property in the middle portion of Survey No.65 and there was only a small guarage at corner of north-east side of the land. The pleadings of Respondent No.3 Anil, in para-30 would show that a structure was used as Khapru guarage/workshop.

**17.** Respondent No.3 Anil, in para 31 and 32 of his pleadings, expanded his case as follows:

> "The structure existing in the said properties were divided over the years into different units since I and my family started different businesses. I say that the structure was allotted different House numbers and I have been regularly paying House Tax and other Taxes to the local authorities from time to time".
>
> "I had started different business of sale of lubricants, sale of IMFL and CL and repairs of vehicles in different units of the same structure."

**18.** In view of intention of CRZ Notification, 1991, which is analyzed and duly explained by the Hon'ble High Court of Bombay in case of ***Goa Foundation v. The Panchayat of Candolim and Panchayat of Calangute,*** referred to above, the legal position is very clear. Permission in NDZ area for repairs and renovations could be granted only in respect of

‘residential houses’ which were being used by the traditional inhabitants and not for “commercial” purposes. There existed no house property where the Restaurant and Bar (wine vending shop) and other structures are now standing. There was only small guarage in north-east corner of land Survey No.83/2-A, prior to 1991. This fact also can be gathered from the revenue entries, which are in Form No.I and IV. The revenue entries in respect of agricultural lands do not show existence of any plinth or construction of any part of land. Moreover, why should one keep only unconstructed plinth in the middle of a land, where a guarage was being used at the corner. Respondent No.3 Anil, seeks to rely upon communication of village Marambio Grande in Merces Panchayat dated 20.10.2008, which shows that it has no objection for re-roofing and re-flooring of existing structure bearing No.62/3, located at Waddi Merces Tiswadi-Goa. The settlement and land records map ( P-1, 3/1), shows that Restaurant and Bar is in the midst of Survey No.65/1-A. There is no co-relation between NOC granted by village Panchayat Merces in context of Survey No.62/3. Because the land is of Vaddy Marces, whereas, Survey No.65/1-A, is at village Morambio Grande. All said and done, attempts made by Respondent No.3 Anil, are nothing but to create confusion in the context of locations of structure, which is alleged to had

existed prior to 1991. His stand is inconsistent with each other. There is Inspection Report of the Member Secretary of GSPCB dated 2.5.2012. This report shows that there is cut down (slit?) of lubricating oil at the site operating in the name of "M/s. Ansa Marketing". It is stated that on enquiry Respondent No.3 Anil, informed that he did not know who was involved in the act of filling of the creek. The Committee found that the work of retaining wall was undertaken by Respondent No.3 Anil. Construction debris was seen dumped at the creek, near old Bardez-Panjim highway by side of Mandovi River. These observations certainly show that Respondent No.3 Anil tried to shift his responsibility and avoided to explain as to how the creek was filled up and salt pans were also filled up. Copy of licence issued by the Corporation of City of Panjim, shows that licence for Restaurant is obtained in the name of wife of Respondent No.3, to run a restaurant in the name and style as "Hotel River Lounge". Thus, entire record shows that except an old guarage in a corner of agricultural land bearing Survey No.62/1A there existed no structure in the area of all three (3) lands. The guarage was not a residential property which could be allowed to be repaired and renovated, as per the Judgment of Hon'ble High Court of Bombay in the case of ***Goa Foundation v. The Panchayat of Candolim and Panchayat of Calangute*** , as well as provisions of CRZ Notification, 1991. In our opinion, the authorities either knowingly

or purposefully avoided to consider proper location of the guarage vis-à-vis the nature of existing property. Not only that the authorities completely ignored that Respondent No.3- Anil become owner of the property agricultural land/properties by virtue of sale-deed executed by prior owners on 3.8.1992, which was after CRZ Notification came into force. It is enough to show that Respondent No.3 – Anil could not have been lawfully granted permission of re-roofing for any residential house and he could not have done so because, in fact, there existed no residential house at all in the property, nor it is shown in the sale-deed too. When the previous owners particularly had shown existence of guarage, there was no reason to withhold the information regarding pre-existence of residential house. Under these circumstances, only deducible conclusion is that Respondent No.3 – Anil, manipulated so called permissions/NOCs and other permissions for the purpose of running a Restaurant and Bar at the place in Survey No.65 of village Morambio Grande.

**19.** From the discussion and reasons stated above, it can be gathered that originally there was no structure of house property/residential premises in Survey No.65/1-A, prior to CRZ-1991. It follows that

subsequent construction of Restaurant and Bar and other commercial units in the area have been illegally constructed, notwithstanding directions of the Hon'ble High Court in Writ Petition No. 422 of 1998 and Writ Petition No.99 of 1999, as well as though CRZ Notification, 1991, prohibited construction activity, except repairs of dwelling units, owned by traditional residents, which had existed before coming into force of the said Notification. The illegal and unauthorized constructions are, therefore, liable to be demolished as they are in violation of CRZ Notification, 1991, 1994 and 2011.

**20.** Hence we allow the Application and direct; therefore that:

**21.** **a**) All the structures, including Restaurant and Bar/Pub and allied structures standing in land Survey No.65/1-, or in Survey No.83/2-A, of village Morambio Grande, shall be demolished by Deputy Collector, South Goa, within period of six (6) weeks.

**b)** We direct the Respondent No.3- Anil to pay amount of Rs.20 (Twenty) Lakhs as costs of degradation of environment and violation of CRZ Notification, 1991, within six (6) weeksto the

Environment Department, Govt. of Goa along with costs of Rs.5000/-,(five thousand) as litigation costs, which be equally disbursed in favour of all the Applicants.

**c)** The GCZMA, is directed to hold enquiry regarding all such illegal structures in CRZ area about which permission might have been obtained without following due procedure and to take appropriate action against the violators of CRZ Notifications.

**d)** The compliances about demolition of illegal structures of Respondent No.3 and costs payment of costs, shall be reported to the Tribunal within six (6) weeks.

**e)** The Application is accordingly disposed of.

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

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

**DATE: MAY 29TH 2015.**

hkk