

IN THE NATIONAL GREEN TRIBUNAL, WESTERN
ZONE, PUNE BENCH

APPEAL NO. 04/2024(WZ)

Chandan Suryakanat Khorjuvekar

.... Appellant

v/s.

Goa Coastal Zone Management
Authority & Ors.

... Respondents

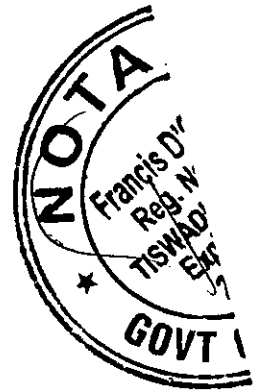
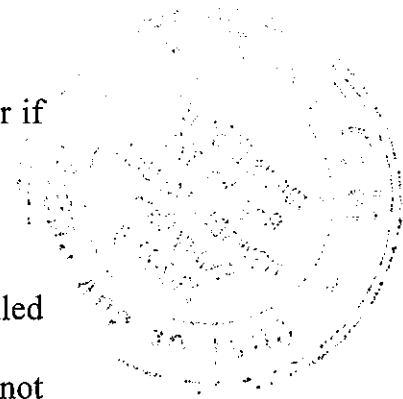
REPLY ON BEHALF OF RESPONDENT NO. 3, 4 AND 5

MAY IT PLEASE THIS HON'BLE TRIBUNAL:

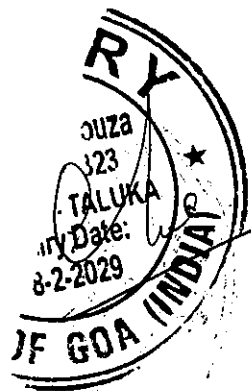
1. The present reply is being filed on behalf of respondent No. 3, 4 and 5 ("answering respondents"), in response to the captioned Appeal. At the outset, the answering respondents state that nothing contained in this Appeal along with the grounds therein is deemed to be admitted for want of specific traverse. All the contentions and submissions made by the Appellant are categorically denied in totality.
2. The answering respondents are filing the present reply for the limited purpose of opposing admission of the Appeal and/or grant of any kind of interim relief in the captioned

matter and seek leave to file detailed reply in the matter if need arises.

3. The answering respondents state that present Appeal filed under section 16(g) of the NGT Act, 2010 is not maintainable inasmuch as there is no 'direction' under challenge in the present Appeal. Consequently, the present Appeal filed under section 16(g) of the NGT Act, 2010 is not maintainable. Admittedly, as pleaded by the Appellant himself, the present Appeal challenges 'decision' taken by the Goa Coastal Zone Management Authority (GCZMA) during its 364th meeting held on 23.10.2023 in Case No.1.11, wherein it decided to partly discharge the show cause notice issued to the answering respondents herein, to the extent of discharge *qua* (a) Cottage Blocks-15 and (b) Restaurant-1 built on Survey No.211/2A of Village Ashvem, Mandrem, Pernem Goa.
4. Considering the aforesaid facts that what is sought to be challenged is not a 'direction' as contemplated under Section 16(g) of the NGT Act, 2010, the Appeal is not maintainable.



5. The present Appeal is not maintainable under Section 16(g) of the National Green Tribunal Act, 2010 inasmuch as the decision of discharge of show cause notice would not fall under the category of 'direction' under Section 16(g) of the NGT Act, 2010.



6. Section 16 (g) of the NGT Act, 2010 stipulates an Appeal only against a 'direction' issued under Section 5 of the Environment Protection Act, 1986. In view of the clear wording of Section 16(g) of the NGT Act, 2010, no Appeal can be held maintainable against any 'order' or 'decision' taken by the authority, including discharging the proposed directions while exercising such authority vested in it under section 5 of the Environment Protection Act, 1986, which clearly doesn't fall within the ambit of 'directions'.

7. For sake of convenience Section 16 of the National Green Tribunal Act, 2010 is reproduced hereinbelow:

"16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

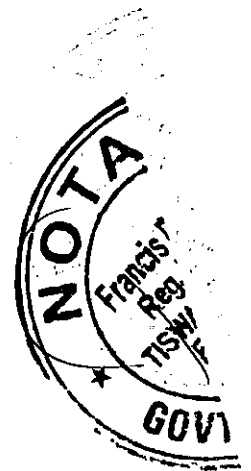
(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);



(i) *an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);*

(j) *any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003), may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:*

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."



8. From a bare perusal of Section 16 of the NGT Act, 2010 it is apparent that a clear distinction has been made by the lawmakers between the words 'order', 'decision', and 'direction' issued by the authority. Pertinently, the words 'order' or 'decision' as is found in clause (a), (b), (d), (e), (f), (h), (i) and (j) of section 16 have been specifically omitted in clause (g) of the Section 16, Therefore, it is evident that Section 16 stipulates an appeal only against a 'direction' issued under Section 5 of the Environment Protection Act, 1986 and not against any 'order' or 'decision' taken by the

authority including discharging the proposed directions while exercising such authority vested in it under section 5 of the Environment Protection Act, 1986.

9. The decision discharging proceedings against the Appellants cannot be termed as a 'direction' as there is no action to be taken any person, officer or authority vide pursuant to such Order in compliance of such Order.

10. For this purpose, Section 5 of the Environment Protection Act, 1986 is reproduced hereinbelow for ready reference:

"5. POWER TO GIVE DIRECTIONS.-
Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions

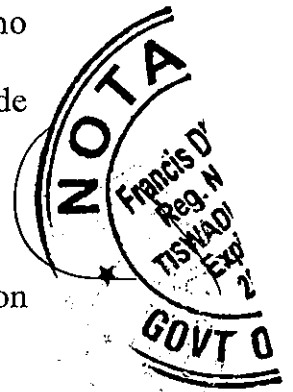
Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or*
- (b) stoppage or regulation of the supply of electricity or water or any other service."*

11. The same is also evident from Rule 4 of the Environment Protection Rules which are relevant in this regard:

"4. DIRECTIONS

(1) Any direction issued under section 5 shall be in writing.



(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given...

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction."



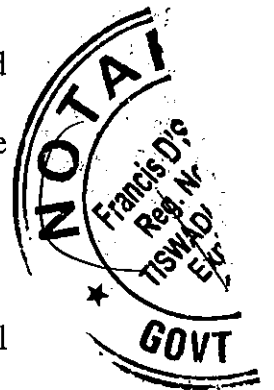
12. That Rule 4 sub-rule 2 of the Environment Protection Rules 1986 makes is clear that a direction shall specify the nature of the action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given. As stated supra, since no action has been specified to be taken vide decision under challenge, the same cannot be -termed as a direction. Further, under sub rule (4) it is categorically provided that Authority may after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to 'be recorded in writing, confirm, modify or decide not to issue the proposed direction. It is

submitted that the decision to not issue proposed direction cannot be termed as a 'direction' but only a 'decision'.

13. The Hon'ble Supreme Court in matter of *T.N. Pollution Control Board v. Sterlite industries (I) Ltd.* (2019)19 SCC 479, whilst holding that an Appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute, the terms 'directions' and 'orders' are distinct terms used in the statutory scheme under the NGT Act.

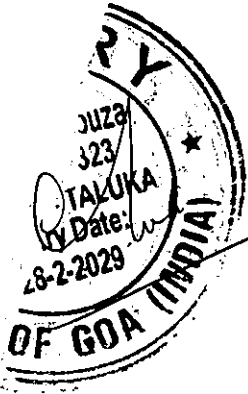
14. This Hon'ble Tribunal in its judgement in Appeal No. 03/2017 in the matter of *Austin Francis D 'Souza vs Secretary Environment Department and Ors.* had categorically held no appeal would lie against letter issued under Section 16(g) of the NGT Act, 2010 being a decision taken by the authority under Section 5 of the Environment Protection Act, 1986.

15. In the above conspectus, it is clear that the present Appeal which is filed under section 16(g) of the NGT Act, challenging the decision of discharge of show cause notice taken in GCZMA's 364th meeting held on 23.10.2023, is not



maintainable and liable to be dismissed on this ground alone.

16. As regards the challenge incorporated vide amendment carried out dated 09.04.2024 whereby prayer clause (F) was incorporated in the Appeal challenging the direction issued dated 05.01.2024 to the extent the discharged show cause notice to the extent of 15 cottages and 1 restaurant, it is submitted that, firstly, the said challenge is not maintainable under section. 16(g) of the NGT Act and secondly, in any event of the matter such a challenge is barred by prescribed limitation in terms of sec 16 of the NGT Act. It is stated that challenge incorporated in the form of payer clause (F) vide amendment dated 09.04.2024 is barred by limitation.



Para wise comments

17. In respect of para 1 and 2, it is stated that the present appeal challenging the decision of the GCZMA discharging the show cause notice is not maintainable under section 16(g) of the NGT Act and consequently, the present Appeal is liable to be dismissed on this ground alone.
18. In respect of para 3, it is stated that, the contents therein are matter of facts and as a matter of fact the GCZMA had

granted permission dated 09.06.2021 to set up 15 huts/cottages and 2 shacks in property bearing survey no.211/2 -A plot "P" of village Mandrem, Pernem Goa. It is stated that pursuant to the permission granted, the structures which are *at loco* have been erected, in this context, it may be relevant to state that the Respondent No. 2 herein sold the aforesaid plot "P" having an area of 5925 sq mts forming portion of property bearing survey no.211/2-A, Mandrem village to the answering respondents by three separate deed of sale dated 16.08.2022, 13.03.2022 and 16.06.2022 duly registered in the office of Sub-Registrar of Pernem-Goa.



19. As regards the contents of para 4 to 10, the contents therein are denied in the manner they have been stated. The photographs which have been enclosed therein does not relate to the structure of the answering respondents and appears to have been attached by the answering respondents to create prejudice against the answering respondents. The answering respondents most respectfully states and submits that structures belonging to the answering respondents situated on survey no.211/2-A Plot "P" of village Mandrem

are strictly in accordance with the approval dated 09.06.2021 granted by the GCZMA.

20. In respect of para 11, the answering respondents state that the answering respondents were duly made as parties in the proceedings before the GCZMA, in which proceedings the answering respondents duly filed their reply dated 05.04.2023 demonstrating the factual position and liberty the allegations made by the Appellants herein, the GCZMA after detailed scrutiny was pleased to partly discharge the show cause notice as stated by the answering respondents in para 11 of the Appeal.



Copy of the Reply filed by the Answering Respondents dated 05.04.2023 before the GCZMA is annexed hereto and marked as ANNEXURE A.

21. With respect to the contents of Para 12, the same are denied for want of knowledge and the appellant is put to strict proof thereof. Further, it is relevant to state that, pursuant to the decision taken during 364th meeting of GCZMA issued direction dated 15.01.2024.

22. With respect to the grounds raised in the appeal, the same are without any merits or substance.

23. In respect of ground 13.1, it is most respectfully submitted that the impugned decision does not suffer from any infirmity and all the relevant factors are duly taken into consideration by the GCZMA whilst arriving at the decision dated 23.10.2023.

24. In respect of ground 13.2, it is stated that there was no violation of the conditions of the GCZMA approval dated 09.06.2021 by the answering respondents and consequently the allegations of the Appellant to the extent that the GCZMA erred in not taking cognizance of the violations of the conditions of the GCZMA approval dated 09.06.2021 is wholly without any merit. It is stated that the answering respondent has not violated any of the conditions of the approval dated 09.06.2021.

25. In respect of ground 13.3, it is submitted that the purported photographic evidence submitted by the Appellant, firstly, did not depict the correct factual position *at loco* and most importantly it did not relate to the structures of the



answering respondents. The photographs/pictures shown by the Appellant to the GCZMA did not relate to the structures of the answering respondents.

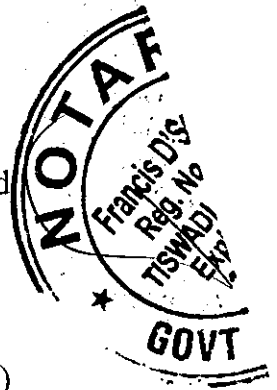
26. In respect of the ground 13.4 and 13.5, the answering respondent states that the GCZMA has conducted the proceedings in accordance with law and the allegations made at ground 13.4 are without any merits or basis.



27. In respect of ground 13.6 and 13.7, the same are wholly out of context and not relevant for the adjudication of the present Appeal. It is apparent that the allegations made therein are made only with an attempt to create prejudice against the answering respondent, it is specifically denied that the site in question is 'No Take Zone' of designated turtle nesting site in Mandrem beach. It is apparent that such allegations are made without any substantiating basis and that the subject matter area is not designated as turtle nesting site. It is further stated that the area in which the permission has been granted does not fall within the designated turtle nesting site. Further it is categorically denied that Mandrem beach (2.6 km stretch approximately) is designated as turtle nesting site in terms of CRZ Notification, 2011. In this

regard, the Hon'ble High Court of Bombay at Goa in its detailed judgment has negated such contention that the entire Mandrem beach has been designated as turtle nesting site and further clarified that only a particular area has been designated as the turtle nesting site. The answering respondent reiterates the fact that the property of the answering respondent does not fall within the designated turtle nesting site.

28. The contents of ground at para 13.8 to 13.12 are denied and do not reflect the correct position of facts and/or law.
29. In respect to para 14, it is stated that the prayer clause (F) incorporated in the appeal memo vide amendment dated 09.04.2024, is barred by limitation. The Appellant have not filed any Application seeking condonation of delay and consequently, the Appeal is liable to be dismissed on this ground inasmuch as challenge incorporated in terms of prayer (F) is barred by limitation.
30. In the above conspectus, the answering respondents humbly submit that the Appeal filed by the Appellant has no substance and merit and be dismissed.



Place: Panaji, Goa

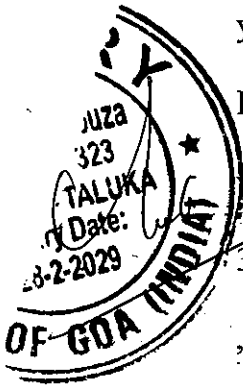
Date: 22.08.2024

Arum

Respondent
SHRI. ARUN BHALLA

VERIFICATION

I, **SHRI. ARUN BHALLA**, son of Shri. Bhim Sain Bhalla, age 68 years, Resident of House No. C-94, Sector 44, Noida, Gautam Buddha Nagar, Uttar Pradesh, the Respondent No. 5; do hereby verify that the contents of the paragraphs namely para 1, 2, 3(part), 4 (part), 5(part), 6(part),7(part),8(part), 9(part), 10(part), 11(part), 12(part), 13(part), 14(part), 15(part), 16(part), 18, 19, 20, 21, 22, 23, 24(part), 25, 26(part), 27(part), 28(part), 29(part) of the reply are true to my knowledge and/or as per the records available and what is stated in the remaining paragraphs 3(part), 4 (part), 5(part), 6(part),7(part),8(part), 9(part), 10(part), 11(part), 12(part), 13(part), 14(part), 15(part), 16(part), 17, 24(part), 25, 26(part), 27(part), 28(part), 29(part) are in the nature of legal submissions and/or inferences of facts which I believe to be true and that I have not suppressed any material fact.



Solemnly Verified at Panaji, Goa

On this 22th August, 2024

Francis D'Souza

DEPONENT

IDENTIFIED BY

[Signature]

ADV. FOR THE RESPONDENT NO. 3, 4 & 5



[Signature]
BEFORE ME
SHRI FRANCIS D'SOUZA
NOTARY FOR TISWADI TALUKA
STATE OF GOA (INDIA)

I hereby attest the above signature of
Shri/Smt/Miss. *Arjun Bhatta*
deponent
above named

Who has been identified before me
by *Adv. A. D'Souza*
who is personally known to me
registered under No. *1220/2024*

22/08/2024
[Signature]

ADV. FRANCIS D'SOUZA
NOTARY
KAMAKSHI PRASAD BLDG
THIRD FLOOR, FLAT NO. 304
PATTO, PANAJI
TISWADI GOA - 403 001

ANNEXURE A

1

From,

1. Mr. Rohit Kher,
Resident of C-401, Ward No.2,
Dhoran Khas, Doon Trafalgar Apartments,
Gujara, Dehradun, Uttarakhand
2. Mr. Anil Sharma,
resident of Matralio, Paonta Sahib,
Paonta Hights Kunja,
Kunja, Siramaur, Himachal Pradesh
3. Mr. Arun Bhalla,
Resident of C-94, Sector 44, Noida,
Gautam Buddha Nagar, Uttar Pradesh

Date:-05/04/2023

To,

The Member Secretary,
Goa Coastal Zone Management Authority,
4th Floor, Dempo Towers, Patto,
Panjim – Goa

Sub:- Reply to the Show Cause Notice dated 18/10/2022
issued to Mr. Satyam Thakral.

Madam/Sir,

We respectfully state and submit as under :-

1. We received notice titled as Personal Hearing Notice dated 10/03/2023 issued to Mr. Satyam Thakral at our resort named as “Dallas Beach Resort”.

2. Pursuant to Notice, we filed our application dated 21/03/2023 and placed on record documents stating that we have purchased the Plot of land identified as Plot P admeasuring an area of 5925 square metres forming portion of the property bearing Survey No.211/2-A, Mandrem village, Pernem Taluka from Mr. Satyam Thakral by three independent and separate deeds of sale dated 16/08/2022, 13/03/2022 and 16/06/2022 duly registered in the office of Sub Registrar of Pernem at Pernem, Goa.
3. On 21/03/2023, the Show Cause Notice dated 18/10/2022 was served to us which is issued to Mr. Satyam Thakral .
4. Upon perusal of the said Notice it can be seen that the said notice is a common notice issued to four different persons namely, M/s Lucky Realtech Pvt Ltd, Pankaj Chopra , Goldy Chopra and Satyam Thakral . It is submitted that separate / individual show cause notice/s ought to have been issued instead of a common notice.
5. The aforesaid Show Cause Notice is not issued in accordance with law and without compliance of principles of Natural Justice and therefore the Show Cause Notice is liable to be withdrawn .
6. The Show Cause Notice dated 18/10/2022 issued to Mr. Satyam Thakral and not to us despite of intimation of facts at the time of inspection carried out on 10/08/2022 by your office that the property/plot is sold by Mr. Satyam Thakral to us and the same is in possession and owned by us as lawful owners thereof.
7. Annexure A to the aforesaid Show Cause Notice is the complaint dated 14/07/2022 of Mr. Chandan Suryakant Khorjuvekar. Mr. Chandan Khorjuvekar has made averments in the complaint that Mr. Satyam Thakral is owner of

Margarit Beach Resort and operating the resort in the property bearing Survey No.211/2A, Mandrem village.

8. It is submitted that Mr. Satyam Thakral is not the owner of Margarit Beach Resort however he had obtained the permission from Goa Coastal Zone Management Authority dated 09/06/2021 for erection of temporary 2 shacks and 15 Huts/Cottages consisting of 30 rooms in the Plot of land identified as Plot P admeasuring an area of 5925 square metres forming portion of the property bearing Survey No.211/2-A, Mandrem village, Pernem Taluka. Copy of permission issued by GCZMA is annexed hereto as EXHIBIT 1.
9. The said Satyam Thakral sold the plot identified as Plot P having an area of 5925 square metres forming portion of the property bearing Survey No.211/2-A, Mandrem village to us by three separate Deeds of sale dated 16/08/2022, 13/03/2022 and 16/06/2022 duly registered in the office of Sub Registrar of Pernem. Copies of the aforesaid three Deeds of Sale are already produced on record alongiwth our application dated 21/03/2023.
10. Complaint dated 14/07/2022 filed by Mr .Chandan Khorjuvekar is filed with fabricated and false facts/averments against Mr. Satyam Thakral.
11. The inspection was carried out by the officers of your office on 10/08/2022 without any notice to Mr. Satyam Thakral or to us to remain present and to produce the documents on record at the time of inspection.
12. However at the time of inspection on 10/08/2022, Mr. Arun Bhalla was co-incidentally present and informed to your officer that We have purchased the Plot of land identified as Plot P from Mr. Satyam Thakral and obtained the

permission from GCZMA for erection of cottages and shacks. Copy of permissions of GCZMA and title deeds could not be produced on record as We were not intimated of inspection and were unaware about the inspection.

13. We state that We have carried out the erection of cottages and shacks in terms of permissions dated 09/06/2022 and the same is not in violation of CRZ rules/Notification. We have complied with all terms and conditions as mentioned in permission dated 09/06/2022.
14. We state that We have not constructed/erected any illegal and unauthorized structure as alleged in the Show Cause Notice at page 2 in column 3 point (c) to (f). The structures existing on Plot P are erected as per terms and conditions laid down in permission dated 09/06/2022. Hence the present proceedings is liable to be dropped or withdrawn.

In view of above, We, hereby request you to withdraw or drop the proceeding against us or Satyam Thakral and proceedings be closed accordingly.

Yours faithfully,

.....
Mr. Rohit Kher

.....
Mr. Anil Sharma

.....
Mr. Arun Bhalla