
(2011) 04 BOM CK 0143

In the Bombay High Court

Case No : Public Interest Litigation W.P. NO. 3 of 2011

Franky Monteiro and Another

APPELLANT

Vs

The Goa Coastal Zone Management Authority and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Citation : (2011) 04 BOM CK 0143

Hon'ble Judges : S.C. Dharmadhikari, J;F.M. Reis, J

Bench : Division Bench

Advocate : Norma Alvares, for the Appellant; S.S. Kantak, Advocate General with Mr. A. Kamat, Additional Govt. Advocate for Respondent Nos. 1 and 2, Mr. S.D. Padiyar, Advocate for Respondent NO. 3, Mr. A.N.S. Nadkarni with Mr. H.D. Naik, Advocate for Respondent NO. 4, Mr. C.A. Ferreira, Assistant Solicitor General for Respondent NO. 5, Mr. A.D. Bhobe, Advocate for Respondent NO. 6, Mr. M.S. Sonak, Advocate for Respondent NO. 7, Mr. Nitin Sardesai, Advocate for Respondent NO. 9, Mr. S.D. Lotlikar with Mr. H. Kankonkar, Advocate for Respondent NO. 10, Mr. Sudin Usgaonkar, Advocate for Respondent Nos. 11, 16, 18 and 19 and Mr. Ryan Menezes, Advocate for Respondent Nos. 15 and 20., for the Respondent

Judgement

1. By this Public Interest Litigation, the petitioners are seeking writ of mandamus directing Respondent Nos. 1, 2 and 3 to demolish all illegal workshops, yards, jetties and other unapproved construction including encroachments in the no development zone and in an area between low tide line and high tide line in the Loutolim village. There are further prayers in pursuance of the main prayers. They are that the Coastal Regulation Zone Notifications do not permit the acts that are being carried on by Respondent Nos. 6 to 21. Therefore, they are completely illegal and should be stopped forthwith.

2. An affidavit is filed on behalf of the Authority in 3 Management Authority (for short "the GCZMA") has already issued show cause notice to the Respondents except Respondent Nos. 12,13,14 and 17, pursuant to the complaint and report from the Goa State Pollution Control Board (for short "the Board") as well as

inspection carried out by the GCZMA. It is stated that the Authority is in process of issuing show cause notice even to Respondent Nos. 12,13,14 and 17.

3. In paragraphs 4 to 6 of this affidavit at pages 685 and 686, the following is set out:

4. I say that even though the area in question on which the shipyards i.e. Respondents 6 to 21 are located, is falling within the Port limits notified by the Captain of Ports, the Respondent Nos. 6 to 21 have to obtain prior approvals of the Appropriate Authorities including the GCZMA and CRZ Notification is applicable. I say that the GCZMA has already initiated action by issuing Show Cause Notices to the shipyards i.e. Respondent Nos. 6 to 11,15,16 and 18 to 4 21, details of which are given in the chart annexed hereto and marked as Exhibit A.

5. I say that some of the Respondents have replied to the Show Cause Notices and inquiry as regard the same is in progress. I say that in two cases, the report from the Deputy Collector has been obtained whereas in 10 cases, the reports are still awaited.

6. I say that in the case of M/s Faleiro Engineers i.e. Respondent NO. 20 after receipt of the reply and the Authority being satisfied that there was no illegality, the Show Cause Notice has been dropped.

4. Learned Advocate General on behalf of the Authority states that action being having initiated, nothing survives in this petition and it may be disposed off. He states that the Authority will require six months time to complete the exercise pursuant to the show cause notices. On instructions, he makes further statement that the GCZMA will examine the records and documents as whether stop work order needs to be issued, pending adjudication of the show cause notices and even that step would be taken as expeditiously as possible.

5. Learned Senior Counsel, Mr. Nadkarni appearing on behalf of the Board, on instructions, makes a statement that the Board will also initiate action against such entities, which have no permission namely for Barge repair or Barge construction workshop in the Loutolim village. He further states that necessary steps in law would be taken as expeditiously as possible.

6. Learned Counsel for the Petitioners states that notices have been issued way back in 2007 to some of the units but no action has been taken till date, therefore, the period of six months would be too long. However, she submits that immediate action is also necessary, therefore, appropriate Interim Orders in this behalf be made by the Authority and this Court should direct them accordingly.

7. Having examined the grievance and upon perusal of the record, we are of the opinion that we should dispose of this petition in the light of the affidavit filed by Member Secretary, GCZMA and in view of statement made by learned Advocate General. Moreover, statements made by Mr. Nadkarni, learned Senior Counsel also adequately take care of the grievance of the public interest litigants.

However, we are of the view that the period sought by the learned Advocate General is far too long bearing in mind that action at site has been going on as stated in affidavit filed by the private respondents and in such circumstances, expeditious decisions should be taken by the Authority. Accordingly, we direct the GCZMA to pass necessary order in accordance with law, pursuant to show cause notice that has been issued, within a period of four months from the date of receipt of a copy of this order. However, within a period of four weeks from today the said Authority should take a decision as to whether stop work notice needs to be issued to all units or such of them found to be committing gross violations and further necessary steps should be taken in that behalf, within two weeks from the issuance of the requisite notice.

8. We also direct the Goa State Pollution Control Board to initiate necessary action at their end within a period of two months from today. Even, that Authority should examine the issue whether temporary order stopping the activities needs to be passed.

9. We hasten to state that the rival contentions on merits are kept open and our order should not be considered as expression of opinion on violation of CRZ Regulations or law and all pleas of parties are kept open. The Authority should pass necessary order in accordance with law by considering the cause shown by each of the Respondents to whom the show cause notices, stop work orders and even temporary orders have been issued, uninfluenced by these directions.

10. We direct that bearing in mind the peculiar facts of this case and since the grievances are vital in public interest, the Petitioners should also be permitted to remain present before the Authority and make their submissions.

11. We take note of statement made by learned Counsel Mr. Padiyar appearing on behalf of the Village Panchayat, Loutolim that even Village Panchayat, Loutolim will take necessary steps and pass requisite orders on notices issued by the Panchayat and the same shall be done within the above stipulated time period. Equally, the Collector, Deputy Collector should examine the units operating without conversion sanad and the Authority shall take action against those units in accordance with law on this grievance. This action may also be taken within the above stipulated period.

12. Needless to clarify that the Authority will give an opportunity to the affected units to place all material in support of their reply or file additional reply. But, the Authority must ensure that the time stipulated in this order is adhered to by all concerned. The Petition stands disposed off in these terms.