

(2012) 03 BOM CK 0145

In the Bombay High Court

Case No : Public Interest Litigation NO. 29 of 2011

Goa Foundation

APPELLANT

Vs

Goa Coastal Zone Management Authority, State of Goa and
The Secretary, Ministry of Environment and Forest,
Paryavaran Bhavan and Goa Chamber of Commerce and
Industry

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2012) 03 BOM CK 0145

Hon'ble Judges : U.V. Bakre, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : Norma Alvares, for the Appellant; S.S. Kantak, Advocate General with Mr. A. Kamat, Additional Government Advocate for respondent Nos. 1 and 2, Mr. C.A. Ferreira, Assistant Solicitor General for respondent No.3 and Mr. Nitin Sardessai, for the Respondent

Judgement

S.C. Dharmadhikari, J

1. The petition by Goa Foundation through its secretary Dr. Claude Alvares, seeks a writ in the nature of certiorari or any other appropriate writ quashing the policy approved on 10.6.2011 and notified on 16.6.2011. It is also seeking a direction to the respondent NO. 1 to modify the said policy in accordance with the Coastal Regulation Zone ("CRZ" for short) Notification and the judgment of this Court in Writ Petition Nos. 422/1998 and 99/1999. The petitioner is an environmental NGO based in Goa, who has taken up issues in relation to environment. It has approached this Court and Hon'ble Supreme Court of India time and again over past two decades, in public Interest, for enforcement of the provisions of environment, wildlife, Forest Laws and the CRZ Notification. The petitioner states that the judgment dated 13.10.2006 delivered in the above Writ Petitions by this Court directed the State of Goa, amongst other things, to identify the open plots in the CRZ-III zone which are available for construction of hotels and to frame

appropriate policy/regulation for utilization thereof. This was directed to be done prior to plots of land being utilized for such activities.

2. Pursuant to the judgment, the Government has taken approximately four years to formulate its policy relating to location of beach resorts in the State of Goa in terms of CRZ Notification. Now, a copy of the policy has been filed in this Court on 4.7.2011. Annexure "D" to this Writ Petition is policy, whereas prior annexure "C" is order of this Court.

3. It is the case of the petitioner that as per the maps annexed to the policy, the Government has decided to demarcate all plots in excess of 4000 square metres as permissible for development of beach resorts. The policy indicates that development of beach resorts is subject to these open plots not falling in forest areas, sand dune areas and cultivated areas. In no case, however, identification has been done of such areas and the policy shows all the plots as permissible for use as resorts. Even in coastal stretches designated as CRZ-I, for example turtle nesting sites, the plots above 4000 square metres are shown in the notified policy as permissible for location of resorts, even though there is explicit bar as per the provisions of the CRZ Notification dated 6.1.2011.

4. This Court's order has also protected turtle nesting designated stretches from development activities. After referring to paragraphs 12, 13, 18, 20 and 30 of the Judgment of this Court dated 13.10.2006, it is submitted that this Judgment is very clear on the aspect of location of resorts in CRZ-III. This Court has observed that the authority had violated CRZ Notification by permitting hotels to be located any where in the CRZ-III, without paying proper attention to the provisions of CRZ Notification.

5. In paragraph 20, a reference is made to the expression "vacant plots" and it is submitted that area between 200 - 500 metres is essentially for dwelling houses within the ambit of traditional rights and customary uses such as existing fishing villages and Gaothan. Therefore, what this Court has observed is that beach resorts and hotels are the exceptions and are permitted in vacant plots of the said zone. People in the village usually prefer to live in reasonable proximity to each other and thus the settlement or Gaothan area in the village is developed consequent to the habitation of the villagers constructing their dwelling units. Therefore, what is alleged is that the present notification ignores the judgment of this Court.

6. Construction of resorts and all dwelling units is required to be in mutually exclusive areas of the same CRZ-II Zone. In these circumstances, this Court issued specific direction to the authorities to identify the open plots in the CRZ-III zone which are available for construction of hotels and to frame appropriate policy for their utilization. Inviting our attention to the fact that areas having vacant plots must be first selected/identified for the purpose of construction of resort and they must be demarcated/designated for the said purpose. In other words, all vacant plots in CRZ-III cannot be made available for construction of

resorts. The areas for hotels must be selected and the plots must be specified/ designated accordingly. No resorts in any case are permitted within the village Gaothan/dwelling locality of the village. The impugned policy, however, shows all vacant plots as available for construction of hotels. There are no specified/ designated zones for hotel construction. Secondly, the policy has notified several plots within the dwelling locality areas as permissible for resort construction. Some maps from the policy document are annexed as annexure "E" to this petition. According to Ms. Alvares, appearing for the petitioner these maps would indicate resorts being permitted within the dwelling locality areas/Gaothan of CRZ-III. In addition, the policy also shows plots in CRZ-I areas as permissible for resorts.

7. This is nothing but legitimising the earlier practice of permitting construction of resorts indiscriminately any where in the State, even in residential areas without examining the ecological features or carrying capacity. It is in these circumstances the apprehension is that if this policy would come into force, it would have adverse effect on the environment and ecology and would lead to degradation of the coastal areas in totality. The policy is likely to result in, all coastal areas of the State of Goa, pollution because of sewage discharge, loud music, continuous vehicular traffic, blockage of traditional access etc, which are presently witnessed only in some villages where hotels and dwelling houses lie in close proximity of each other. Ms. Alvares, therefore submitted that for these reasons, the petitioner has approached this Court and brought to its notice the errors and deficiencies in the impugned policy. Ms. Alvares has taken us through the petition and the annexures thereto including the judgment of this Court in the earlier Writ petition in extenso.

8. On the other hand, learned Advocate General appearing on behalf of the respondents invited our attention to the affidavit of the Member Secretary of Goa Coastal Zone Management Authority, ("GCZMA" for short) and submitted that no challenge to the policy decision is permissible in law except if the policy contravenes any provisions of law and violates mandate of Articles 14 and 21 of the constitution of India. The policy can be challenged only on limited grounds such as arbitrariness, discrimination and malice.

9. He submits that in the present case, the petitioner is proceeding on the basis that there is no identification or delineating open vacant plots above an area of 4000 square metres in CRZ-III along coastal line of the State. In fact this process has been done by handing over the assignment to M/s Remote Sensing Instruments (RSI), Hyderabad. The process of identification and delineation of contiguous open plots above 4000 square metres in CRZ-III areas was completed by such agency. This agency has prepared Geo referred revenue maps and the locations of such of the open plots in terms of survey numbers and sub-divisions and their broad land use pattern has also been tabulated. The details are available on the website. It is incorrect to state that all vacant plots have been identified as available for construction of hotels/beach resorts irrespective of they

being in CRZ-I area having sand dunes, forest areas, cultivated areas and also located within dwelling locality areas. The policy must be seen as a whole and the identification of the vacant plots cannot be looked at in isolation. Learned Advocate General submits that various lands feature like forest, sand dunes, cultivable areas/status etc., would be identified separately during the site inspection to determine the suitability of use of land for the purpose of hotel/beach resort.

10. Learned Advocate General submits that policy has taken into account the new CRZ Notification 2011 and guidelines for development of beach resorts or hotels in designated areas of CRZ-III and CRZ-II for occupation of tourist or visitors with the prior approval of the Ministry of Environment and Forest, as contained in annexure-III of the CRZ Notification 2011. These are further subject to the State Government Development and Planning Regulation and Policy. Learned Advocate General submits that the challenge to the policy is completely premature because even the provisions contained in Regional Plan for Goa 2021 and the classification thereunder as Eco-Sensitive Zone (Eco-1), Development of hotels/beach resorts as per the guidelines would be permissible only in Eco-II and only in such areas that are identified as settlement. The CRZ-I areas which includes mangroves, sand dunes, mudflats, salt marshes, turtle nesting grounds are well protected. Inviting our attention to paragraph 7 of the policy guidelines, learned Advocate General submits that the conditions prescribed for project/proposal for hotel/beach resort in CRZ-III areas are restrictive. At every level there is check and balance provided in the process of approving any proposal. This is the first stage in the assessment. At the level of Goa-State Expert Appraisal Committee, where additional terms of reference would be given, assessment done, proposal appraised after due site inspection with verifications of Environmental Impact Assessment Report etc. Therefore, after the proposal is forwarded to the GCZMA for its consideration and its approval, in the third stage, the Goa State Environmental Impact Assessment Authority would be assessing the project. Only on receipt of favourable recommendation, the State Government during the fourth stage of assessment would take up for consideration the project proposal. After compliance with what is provided in CRZ Notification, the proposal would, then, be forwarded to Ministry of Environment and Forest for its consideration.

11. In view of this and such detailed process of analysis, assessment and appraisal, there should not be any fear in the mind of the petitioner. Mr. Kantak, learned Advocate General clarified the role of all the three authorities and the Government towards environment protection and any hotel project that is detrimental to the sustainable growth protection and development cannot be considered. Mr. Kantak, learned Advocate General has invited our attention to the reply and has submitted that several steps have been taken as enumerated therein. Till these steps are taken the data and mapping done of Eco-I and Eco-II areas in RPG-21 would be utilized for the purpose of dealing with the project proposal before the assessing authority. In any case only a detailed site

inspection and verification as mandated in the hotel policy is carried out. The petitioner need not have rushed to this Court. For all these reasons, he submits that the petition be dismissed.

12. Ms. Alvares, has invited our attention to the rejoinder affidavit of the petitioner and has submitted that the judgment of this Court directs GCZMA to identify the open plots in CRZ-III which are available for construction of hotels/resorts and thereafter frame Regulation and Policy for commercial use thereof. GCZMA in this case has issued policy for utilisation of open plots and as far as identification is concerned, that exercise is only commissioned and the identification is not complete. Therefore, it is incumbent upon the respondent to identify the specific location where it is permissible for hotels to be constructed as this is the mandate flowing from the judgment of this Court. By the present policy, resorts will come every where along the coast and not in stipulated areas in CRZ-III. Let the open spaces in which hotels to be allowed be first identified then only proposal for construction of hotel may be considered. She has invited our attention to Exh. P-1 to the rejoinder affidavit and submitted that Mandrem Village is designated as CRZ-I and it is turtle nesting site. However, the Regional plan for Mandrem panchayat does not designate the Mandrem CRZ as Eco-I. Similar is the case with other three turtle nesting sites of Morjim, Galgibaga and Agonda CRZ. Thus the affidavit in reply would show that hotels are permitted in Eco-II areas, but in reality they are CRZ-I and therefore should be Eco-I. In these circumstances what was done earlier and found faulty by this court is again repeated with some marginal changes by the impugned policy and therefore this Court should strike it down.

13. With the assistance of Mr. Alvares and Mr. Kantak, we have perused the petition, annexures thereto, and affidavits placed on record. We have also perused the relevant CRZ Notification.

14. The challenge in Writ Petition NO. 422/1998 filed by very Goa Foundation and Writ Petition NO. 99/1999 was to the permission granted by State and other authorities for construction of new residential units for development in CRZ-III Zone which was contrary to the provisions comprised under clause 6(2) CRZ-III of Annexure-I of CRZ Notification dated 19.2.1991 as amended.

15. It was brought to the notice of this Court that the construction in CRZ-III zone in village Candolim and Calangute would show that they are between 200-500 metres of High Tide Line, which is a "No Development Zone". The construction activities within this zone are restricted for residential purpose subject to the conditions incorporated in above referred clause which prohibits construction in excess of dwelling house twice the number of units existing in the said zone on 19.2.1991. After giving details of the dwelling units in the concerned village what has been stated before this Court in earlier Writ Petition is that in violation of the clause of the CRZ Notification several approvals have been granted for construction of dwelling units. This Court, therefore, considered this grievance in the light of the Notification brought to its notice and held that

clause (ii) of CRZ-II undoubtedly permitted construction of hotels/beach resorts for temporal occupation of tourists/visitors subject to the condition stipulated in the guidelines at Annexure-II of the Notification. In addition, this clause refers to development of vacant plots between 200-500 metres of High Tide Line. In this context, the expression "vacant plots" is referred to by this Court and it was held that while regulating the construction activities of dwelling units in coastal areas the intention of the law maker is that the construction activities of dwelling units have to be within the ambit of traditional right and customary uses prevalent and practiced in the concerned locality. The purpose would be to enable the persons engaged in traditional occupation in such locality in the coastal areas such as fishing, toddy tapping, plantation etc., to construct dwelling units at the same time when construction of hotels/beach resorts are permissible in vacant plots in the said notification. As far as clause (iii) is concerned that does not relate to construction activities otherwise than dwelling units. Therefore this court observed that framers of law did not contemplate any construction activities within the area of 200 to 500 metres of High Tide Line otherwise than one specifically stated in clause (iii) of the Notification and they are dwelling units with one exception in favour of hotels and beach resorts but only in vacant plots in the said zone. These would not justify any construction activities in said zone and they would not include construction of buildings by the builders or developers for commercial purposes. While completely interpreting the then CRZ Notification and observing that there have been certain violations and breaches with regard to construction activities in the two villages what the Division Bench held is that the construction of hotels and beach resorts would not be permissible within the existing dwelling units.

Hotel construction would be permissible only in vacant plots situated within the said zone. It is in these circumstances and facts that it was held that the permission violates CRZ Notification and this was with reference to the construction permitted and emphasized by Ms. Alvares.

16. Thereafter, while clearly referring to this Judgment the Department of Science, Technology and Environment has framed a policy for available open plots in CRZ-III Zone for the purpose of constructing hotels/beach resorts. After making a detailed reference to the Judgment of this Court, the impugned policy makes reference to the study and exercise of RSI, Hyderabad, the provisions of new CRZ Notification 2011, under which the Ministry of Environment and Forest, Government of India modified new CRZ Notification 2011. Annexure "III" to this Notification of 2011 defines revised guidelines for development of beach resorts or hotels in designated areas of CRZ-III and CRZ-II for occupation of tourist or visitors with prior approval of Ministry of Environment and Forests. Appendix-I of the Notification is then referred in the policy and it is stated that for any new development of hotels/beach resorts/motels with any structure and rooms for the purpose of occupation of visiting tourists to be undertaken within 200- 500 metres, detailed guidelines would have to be followed and this is subject to the State Government Development and Planning Regulation and Policy. Thus, the

impugned Notification refers to the provisions contained in Regional Plan for Goa, 2021 and guidelines for considering the project proposal for hotels/beach resorts in CRZ-III areas and one of the requirements therein is that all guidelines prescribed in CRZ Notification 2011 shall be strictly followed.

17. After having perused all these materials including taking note of the statements in affidavit in reply what we find is that the petitioner has rushed to this Court without the exercise that is directed in the judgment of this Court and the CRZ Notification 2011 having been completed. It has been clarified in the affidavit in reply by the respondents that the detailed guidelines for considering the project proposal for hotels/beach resorts in CRZ-III areas have been notified. There are various checks and balances therein including assessment and appraisal by expert bodies and authorities particularly in charge of Environment and Ecology.

18. In paragraphs 11 to 13 of the Affidavit in reply this is what is stated:-

Para 11:- I say that as per the provisions of CRZ Notification, 2011; Clause 8 (i) (V) (3) CRZ of Goa, the State Government has to identify and map sand dunes mangroves, Khazan Lands and prepare management plans for turtle nesting sites at Mandrem, Morjim, Galgibag and Agonda.

Para 12:- I say that a project proposal has been received from M/s. RSI, Hyderabad, the agency which carried out the task of identification of structures existing as in 1991 and those which came up subsequently, by temporal study of satellite imagery between 1991 and 2006, followed by field checks as per directions of the Hon"ble High Court in Writ Petition NO. 422 of 1998 and Writ Petition NO. 99 of 1999. The project proposal is in respect of identification and mapping of areas of sand dunes, khazan lands and mangroves along Goa coast. This has been considered in the 59th GCZMA meeting held on 25.5.2011 and additional terms of reference have been given to include estuaries and riverine areas of the State. A detailed proposal is awaited and the State Government will consider the proposal, make adequate fund provision, so that the project is completed within 09 months.

Para13:- I say that in the meanwhile the data and mapping done of Eco-I and Eco-2 areas in RPG-21 would be utilized for the purpose while dealing with the project proposal before the assessing authorities. In any case a detailed site inspection and verification as mandated in the hotel policy would bring clarity on all issues viz. Eco sensitive areas, cultivable status, number of dwelling units in vicinity, infrastructural facilities, sanitation etc. and all other customary utilization by traditional communities within areas, also that their traditional livelihood mean if any are not affected."

19. When such statements are made before this court and they are made on affidavit, which has been affirmed by Member Secretary of GCZMA, we have no doubt in our mind that they are in the nature of undertakings to this Court. Once we accept these statements as undertakings to this Court and find that they

indicate that detailed site inspection and verification as required in the hotel policy, is yet not carried out and that exercise has been completed only for a particular period, then, there is no question of any proposal or project being approved and permitted unless these steps and measures as stated and recorded above have been undertaken and completed. It has been clarified that M/s RSI has forwarded a project proposal for carrying out the task of identification. It had earlier carried out task of identification of structures existing as in the year 1991 and those which came up subsequently. However, they have not forwarded even a project proposal for identification and mapping of sand dunes, Khazan lands, mangrove among Goa Coastal zone. Now, GCZMA while considering the proposal of M/s RSI has incorporated additional terms of reference. The response to all this is awaited and thereafter the exercise would be completed.

20. We are, therefore, of the opinion that the challenge to the policy is premature and at this stage when all requisite measures and steps have yet to be undertaken, leave alone completed, we will not be in a position to hold that the petitioner's apprehension is well founded. The material in that behalf is not complete. Merely because there are certain directions issued in the judgment of this Court which have to be implemented and executed, we cannot proceed on the basis that the same have not been implemented on the basis of available material. We would therefore, dispose of this petition by holding that it is premature and particularly when specific instances and specific projects, which have allegedly been approved and permitted on account of the new policy, being not brought to our notice. Therefore, when petition is disposed of as premature and we refuse to examine the merits of rival contentions, at this stage, we grant liberty to the petitioner to approach this Court after all the steps and measures as stated and undertaken in affidavit in reply are put in place. This writ petition is disposed of with no order as to costs.