

(2010) 03 SC CK 0017

In the Supreme Court Of India

Case No : I.A. No. 2 of 2008 in Civil Appeal No. 5281 of 2008 (Arising out of SLP (C) No's. 16728 and 19767 of 2008) and Civil Appeal No. 5282 of 2008 (Arising out of SLP (C) No. 19767 of 2008)

Goan Real Estate and Construction Ltd. and Another	APPELLANT
Vs	
People's Movement for Civic Action and Others	RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Citation : (2010) 4 BomCR 827 : (2010) 5 SCC 440

Hon'ble Judges : K. G. Balakrishnan, C.J.; J. M. Panchal, J

Bench : Division Bench

Advocate : G.E. Vahanvati, A.G. of India, Mukul Rohtagi and K.K. Venugopal, Mahesh Agarwal, Rishi Agrawala, Mohammed Himayatullah, Saurabh Kirpal and Rohma Hammed, for E.C. Agrawala, Anitha Shenoy, Noma Alvares, Mamta Saxena, Gopal Shankar Narayana, Sanjay Parikh, Anish R. Shah, Manjula Gupta, Mihir Chatterjee and Devdatt Kamat, for the Appellant;

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—By filing this application, the respondents, i.e., People's Movement for Civic Action and others have prayed to clarify that the order dated August 28, 2008 passed in Civil Appeal No. 5282 of 2008 which arose out of SLP (C) No. 19767 of 2008 was directed against the order of status quo granted by the High Court of Bombay at Goa on July 10, 2008 and was not directed against the order dated August 5, 2008 by which original petitioners were permitted to amend Writ Petition (C) No. 403 of 2007 to enable them to challenge the order dated October 30, 2007 passed by National Coastal Zone Management Authority. It is further prayed that in view of the order dated August 28, 2008, it be declared that the Transfer Petition No. 758 of 2008 and the Writ Petition (C) No. 329 of 2008 which, according to the respondents are on the same subject matter, have become infructuous and would not come in the way of the High Court in deciding the pending writ petition at the earliest.

2. This Court has heard the learned Counsel for the parties and considered the record of Civil Appeal No. 5281 of 2008 and Civil Appeal No. 5282 of 2008.

3. Civil Appeal No. 5281 of 2008 arose out of SLP (C) No. 16728 of 2008 which was directed against order dated July 10, 2008 rendered by the High Court of Bombay at Goa in Miscellaneous Civil Application No. 861 of 2007 which was filed in writ petition No. 403 of 2007 by which the parties were directed to maintain status quo in respect of construction within 50 meter to 100 meters of High Tide Line on survey No. 12/1 and 99/2 situated near river Juara at Goa till the matter was finally heard by the Court.

4. After hearing the learned Counsel for the parties, Civil Appeal No. 5281 of 2008 was decided by judgment dated August 28, 2008 and the appeal was partly allowed. The order impugned in the appeal was set aside and the appellants were permitted to complete the incomplete construction work done by them at their own risk and cost during the pendency of the petition before the High Court of Bombay at Goa. Further the High Court was requested to dispose of the matter on merits without being inhibited by the order of this Court granting interim relief to the appellants, as early as possible and without any avoidable delay. The record would indicate that Civil Appeal No. 5282 of 2008 arising out of SLP (C) No. 19767 of 2008 was directed against the order dated August 5, 2008 by which the writ petitioners before the High Court were permitted to amend Writ Petition No. 403 of 2007 so as to enable them to challenge the legality of order dated October 30, 2007 passed by the National Coastal Zone Management Authority. After hearing the learned Counsel for the parties, judgment in Civil Appeal No. 5282 of 2008 was pronounced on August 28, 2008. The copy of the judgment in Civil Appeal No. 5282 of 2008, annexed by the petitioners along with the instant application indicates that by mistake it was mentioned in the judgment that the appeal was directed against order passed by the High Court requiring the parties to maintain status quo. There is no manner of doubt that factually an incorrect statement has crept in the judgment rendered in Civil Appeal No. 5282 of 2008. Therefore, the application will have to be accepted in part by making necessary clarifications. The prayer made by the petitioners in the instant application to declare that in view of the order dated August 28, 2008, the Transfer Petition No. 758 of 2008 and the Writ Petition Civil No. 329 of 2008 have become infructuous and would not come in the way of the High Court while deciding the pending writ petition, cannot be granted. As observed earlier, Civil Appeal No. 5281 of 2008 was directed against the order dated July 10, 2008 requiring the parties to maintain status quo. Writ Petition Civil No. 329 of 2008 was instituted seeking a declaration that the building plans sanctioned and constructions made as well as on-going constructions, pursuant to the Coastal Regulation Zone Notification dated February 19, 1991 as amended by the Notification dated August 16, 1994 issued by the Central Government are valid. By filing Transfer Petition (C) No. 758 of 2008, Goan Real Estate and Constructions Ltd. and Another have prayed to transfer the proceedings of PIL Writ Petition No. 403 of 2007 titled as People's Movement for Civic Action and Anr. v. Goa Coastal Management Authority and

Ors. pending before the High Court of Judicature at Bombay, Bench at Goa, Panaji to this Court and to hear the said Writ Petition along with SLP (Civil) No. 16728 of 2008 which was pending before this Court. This Court notices that the subject matters of all the proceedings are different. Writ Petition (C) No. 329 of 2008 has been heard and disposed of by a reasoned judgment. Having regard to the facts of the case, this Court is of the opinion that it is wrong to suggest that Transfer Petition No. 758 of 2008 and Writ Petition (C) No. 329 of 2008 have become infructuous in view of the order dated August 28, 2008 passed by this Court in Civil Appeal No. 5281 of 2008. Therefore, the second prayer made in the instant application is liable to be dismissed.

5. For the foregoing reasons, the application is partly allowed. The order dated August 28, 2008, passed by this Court in Civil Appeal No. 5282 of 2008, is hereby recalled and it is clarified that Civil Appeal No. 5281 of 2008 dealt with order dated July 10, 2008 passed by the High Court of Bombay at Goa in Miscellaneous Civil Application No. 866 of 2007 which was filed in writ petition No. 403 of 2007 requiring the parties to maintain status quo whereas Civil Appeal No. 5282 of 2008 dealt with order dated August 5, 2008 rendered by the High Court of Bombay at Goa in Civil Miscellaneous Application No. 595 of 2008, which was filed in writ petition No. 403 of 2007 permitting the original petitioners to amend the Writ Petition No. 403 of 2007 so as to enable them to challenge order dated October 30, 2007 passed by National Coastal Zone Management Authority. The second prayer made in the application is rejected.

6. In view of the abovementioned clarification, the order dated August 28, 2008 passed in Civil Appeal No. 5282 of 2008 is recalled. Once the said order is recalled, this Court will have to consider the question whether the order dated August 5, 2008 permitting the original petitioners to amend the petition so as to enable them to challenge order dated October 30, 2007 passed by National Coastal Zone Management Authority, which was challenged in Civil Appeal No. 5282 of 2008, should be upheld by this Court. However, this Court notices that validity of order dated October 30, 2007, passed by the National Coastal Zone Management Authority, is upheld by this Court in the judgment delivered in Writ Petition (Civil) No. 329 of 2008. Therefore, the order dated August 5, 2008, passed by the High Court, permitting the original petitioners to amend Writ Petition No. 403 of 2007, so as to enable them to challenge the legality of order dated October 30, 2007, passed by the National Coastal Zone Management Authority has become infructuous and Civil Appeal No. 5282 of 2008 also will have to be disposed of accordingly.

7. For the foregoing reasons, Civil Appeal No. 5282 of 2008 is disposed of as having become infructuous. The application as well as Civil Appeal No. 5282 of 2008 stand accordingly disposed of. There shall be no order as to costs in both the proceedings.