

(2008) 08 SC CK 0076

In the Supreme Court Of India

Case No : Civil Appeal No. 5282 of 2008 (Arising out of S.L.P. (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 : 28-08-2008

Acts Referred:

Citation : (2008) 11 SCALE 686 : (2008) 12 SCC 574

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

Bench : Division Bench

Advocate : H.N. Salve, Mukul Rohtagi and Ranjit Kumar, E.C. Agrawala, Mahesh Aggarwal, Rishi Aggarwal, Mohd. Himayatullah and Gaurav Goel, for the Appellant; Indira Jai Singh Sanjay Parikh, A. N. Singh, Mamta Saxena, Gaurav Tyagi and Anitha Shenoy, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.
2. This Court has heard the learned Counsel for the parties regarding relief claimed by the appellants.
3. The appeal is directed against order dated August 5, 2008, rendered by the High Court of Bombay at Goa in Miscellaneous Civil Application No. 595 of 2008, which was filed in Writ Petition No. 403 of 2007 by which the parties have been directed to maintain status quo in respect of construction within 50 to 100 meters of High Tide Line on survey Nos. 11/1 and 101/1 of Bambolim village, Goa, till the matter is finally heard by the Court.
4. The record would indicate that after purchase of the lands in question the appellants applied to the Panchayat for sanction of plans for construction of hotel. The permission was granted by the village Panchayat on November 26, 1993. The Ministry of Environment and Forests had issued a notification called Coastal Regulation Zone for regulating the development of areas within 500

meters of the coast. The said notification was amended on August 16, 1994 reducing the "No Development Zone" to 50 meters from 100 meters. The appellant No. 1 had submitted amended plans seeking permission to put up construction leaving 50 meters "No Development Zone". The Village Panchayat had granted the permission sought for. In 264104 this Court held that the amendment reducing the No Development Zone from 100 meters to 50 meters was illegal. The case of the appellants is that in view of financial constraints and depressed market conditions, the construction was not actively progressed but building plans were revalidated by the Panchayat from time to time and the respondent No. 4 has granted extension for a period of three years from September 17, 2005. It may be mentioned that the Ministry of Environment and Forests had clarified on January 24, 2007 that the construction activities in the zone between 50 to 100 meters would attract the provisions of CRZ Notification from the date of judgment of the Supreme Court. Though the appellants had commenced construction prior to the date of pronouncement of judgment by the Supreme Court the Additional Collector had not vacated the stop work order passed on December 22, 2006. The respondent No. 1 has filed Public Interest Litigation for quashing the revalidating and grant of extension for a period of 3 years to enable the appellants to put up the construction of the plans granted to the appellants. Similarly, the appellants have filed petition challenging the validity of order by which they were directed to stop construction work. The Bombay High Court at Goa had recorded the statement of Additional Solicitor General, appearing for MOEF, Union of India in the petition filed by the appellants to the effect that the project of the appellant No. 1 was treated by MOEF as an ongoing project. In view of the said statement the learned Advocate General, appearing for the State, had withdrawn the impugned orders by which the appellants were directed to stop the construction work.

5. It may be mentioned here that in the Public Interest Litigation MOEF has filed reply confirming its stand taken in the petition filed by the appellants and, therefore, the High Court rejected the application made in PIL for interim relief on September 12, 2007. The High Court declined to grant interim relief noting that the Central Government had itself referred the matter to National Coastal Zone Management Authority. The Court, while declining to grant interim relief, directed the said Authority to consider the matter after giving personal hearing to all parties. The record shows that the said Authority gave hearing to all the parties and has treated the project of the appellants as an ongoing project. By the impugned order the High Court has directed the parties to maintain status quo regarding construction because according to the High Court it was admitted by one of the directors of the appellants that from 1997 to 2005 there was no construction activity and the Apex Court has struck down amendment restricting the NDZ to 50 meters only.

6. As noted earlier, the project of the appellants is treated to be an ongoing project. The decision dated October 30, 2007 rendered by the National Coastal Zone Management Authority is in favour of the appellants, which is now

challenged by the respondents in PIL by amending the petition. Without considering the validity of the same the impugned interim direction should not have been granted, more particularly, when interim relief was earlier refused to the respondent. Grant of stay of construction activity would result into considerable loss to the appellants who have invested huge amount in the project. On the facts and in the circumstances of the case this Court is of the opinion that interest of justice would be served if the appellants are permitted to complete incomplete construction at their own risk and cost.

7. For the foregoing reasons the appeal partly succeeds. The impugned order is set aside. During the pendency of the petition before the High Court, the appellants are permitted to complete the incomplete construction work done by them at their own risk and cost. The High Court is requested to dispose of the matter on merits without being inhibited by this order granting interim relief to the appellants as early as possible and without any avoidable delay.

8. No costs.