

(2015) 01 BOM CK 0124

In the Bombay High Court

Case No : Writ Petitions Nos. 403 of 2007 and 659 of 2010

People's Movement for Civic Action

APPELLANT

Vs

Goa Coastal Zone Management Authority

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 98(2)
Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 3(1), 3(2)(v)

Citation : (2015) 01 BOM CK 0124

Hon'ble Judges : U.V. Bakre, J.

Bench : Single Bench

Advocate : Norma Alvares, for the Appellant; Prasad K. Dhakephalkar, Senior Advocate and Manish Salkar, Government Advocate, Advocates for the Respondent

Judgement

U.V. Bakre, J.—Heard learned Counsel for the parties.

2. The above petitions have been referred to me by the Honourable the Chief Justice, in accordance with the provisions of Section 98(2) of the Civil Procedure Code, 1908, for decision on the point of difference between my learned sister and brother Judges, Smt. Justice Roshan Dalvi and Shri Justice F.M. Reis, in the common judgment dated 26.02.2014, passed in the above petitions. The said point of difference, as stated by learned brother Reis, J, in paragraph 66 of the said Judgment, reads as under:

"Although I agree with my learned sister Smt. R.S. Dalvi, J that the plan which is at page 117 is the plan which was duly approved on 31.05.1995 and not the plan at page 122 as claimed by the respondent nos. 6 and 7, for the reasons stated in the judgment, I deeply regret my inability to agree with the findings in the judgment with regard to the effect of the judgment passed by the Hon'ble Supreme Court while disposing of Writ Petition (C) No. 329 of 2008 dated 31.03.2010 and the relief which can be granted in the above Writ Petitions."

3. In Writ Petition No. 403/2007, the petitioners, inter alia, have prayed for a writ or order quashing the orders of the Respondent No. 2 dated 31.07.1995, 08.10.1998, 01.09.2001 and 17.09.2005 and for an order or writ directing the Respondent Nos. 6 and 7 to restore the original nature of the land in the Coastal Regulation Zone (CRZ). Respondent No. 2, in said Writ Petition No. 403/2007, is the Village Panchayat of Curca, Bambolim and Talaulim; respondent no. 6 is Goan Real Estate and Construction Ltd., Aldeia de Goa; and respondent no. 7 is Goan Hotels and Clubs Pvt. Ltd. The order dated 31.07.1995 is permission No. VP/CBT/Contn. Lic/95-96/149 issued by the respondent no. 2 to respondent no. 6 for construction (Re-location) of 18 (eighteen Blocks)-(Residential Complex), GR + 2, in Survey Nos. 12/1 and 99/2 at Bambolim of Village Curca, Bambolim and Talaulim, Tiswadi-Goa, in terms of the resolution No. 3(1) taken in the Panchayat meeting dated 26.07.1995, as per the plans dated 13.04.1995, in triplicate/duplicate attached to the application and under conditions specified in the said order. The order dated 08.10.1998 is the NOC for grant of extension of 3 (Three) years, from 30.06.1998 to 30.06.2001, to the said permission dated 31.07.1995, issued by the respondent no. 2, approved vide resolution no. 3(iv) dated 15.09.1998. The order dated 1.09.2001 is further renewal/extension for said building construction in Survey Nos. 12/1 and 99/2 of village Bambolim for a period of 3 years from 01.09.2001 to 01.09.2004, issued by the respondent no. 2, approved vide resolution no. 4(17) dated 14.08.2001. Lastly, the order dated 17.09.2005 is Construction Licence: VP/CBT/Renewal/2005-06/613 thereby granting renewal of construction licence for the construction of Residential Complex and Hotel project under Survey Nos. 12/1 and 99/2 of Bambolim Village, Tiswadi-Goa, issued by the respondent no. 2 in favour of the respondent no. 6, in terms of resolution No. 4(13) taken in the Panchayat meeting dated 30.07.2005, as per the plans in triplicate/duplicate attached to the application under inward No. PPO/VP/Plans 458 dated 22.07.2005, under conditions as specified in the said order. In Writ Petition No. 659/2010, the petitioners have, inter alia, prayed for a writ or order quashing the NOCs dated 16.09.2008, 05.07.2010 and 06.07.2010 issued by the Town and Country Planning Department; the construction licenses dated 04.10.2008 and 11.07.2010; and the Occupancy Certificate dated 11.07.2010, all issued by the Village Panchayat. In this Petition, Goan Hotels and Clubs Pvt. Ltd., Aldeia de Goa is respondent no. 2; Hotel "Grand Hyatt" is respondent no. 1, with the association of which the respondent no. 2 was scheduled to commence hotel operations; Goan Real Estate and Construction Ltd. is the respondent no. 3; the Town and Country Planning Department is respondent no. 7 and Village Panchayat of Curca, Bambolim and Talaulim is respondent no. 8. NOCs dated 16.09.2008 and 05.07.2010 are for proposed construction of revised plans of Hotel and Residential complex in Survey Nos. 12/1, 12/2 and 99/2 of Village Bambolim, Taluka Tiswadi, issued to respondent no. 2, whereas the NOC dated 06.07.2010 is for issuing occupancy certificate to the respondent no. 2, for said Hotel and Residence complex, except block no. 2, 2-A and 2B constructed in plots no. 12/1, 12/2 and 99/2 of Bambolim Village, Tiswadi Taluka, all issued by the respondent

no. 7. Construction Licences dated 04.10.2008 and 11.07.2010 are Revised Construction Licences respectively bearing No. VP/CBT/2008-09/Const/983 and VP/CBT/2010-11/Const/35/667, issued by the respondent no. 8, to the said respondent no. 2 for construction (Revised Plans) of Hotel and Residential complex in Survey Nos. 12/1, 12/2 and 99/2 of Bambolim Village, respectively in terms of resolution no. 3(A) taken in the Panchayat meeting dated 30.09.2008, as per the plans in triplicate attached to the application under inward no. 1221 dated 15.02.2008, under the conditions as specified in the said licence dated 04.10.2008 and resolution No. 3(F) taken in Panchayat meeting dated 11.07.2010, as per the plan in two attached to the application of respondent no. 2 under inward No. 560 dated 19.06.2010, under the conditions as specified in the said licence dated 11.07.2010. Lastly, the occupancy certificate dated 11.07.2010 is issued by the respondent no. 8 in favour of the respondent no. 2, in respect of the said Hotel and Residential complex in the property bearing Survey Nos. 12/1, 12/2 and 99/2 of Bambolim Village, Tiswadi Taluka, except block No. 2, 2-A and 2B.

The relief as granted by learned sister, Smt. R.S. Dalvi, J, is contained in paragraph 63 of the judgment, which is as under:

"63. Respondent Nos. 6 and 7 in Writ Petition No. 403 of 2007 and respondent Nos. 1 to 3 in Writ Petition No. 659 of 2010 shall remove the entire construction put up within 100m of the HTL of the River Bank being the NDZ. Respondent Nos. 4 to 8 in Writ Petition No. 659 of 2010 shall demolish the construction put up by the respondent Nos. 1 to 3 in Writ Petition No. 659 of 2010."

The relief as granted by learned brother, Shri F.M. Reis, J is contained, inter alia, in paragraphs 78, 79 and 80 which read as under:

"78.....Considering the observations of this Court referred to hereinabove and the overall facts and circumstances of the case as stated hereinabove, I find it appropriate to quash the N.O.C. dated 16.09.2008 issued by the Town and Country Planning Authority as well as the construction licence dated 4.10.2008 and direct the said authorities to examine the revision/re-validation of the plan afresh on the basis of the plan at page 117 in the light of the observations made hereinabove in accordance with law. Directing the demolition of the structures put up by the private respondents in the writ jurisdiction without such adjudication which requires technical and specialised knowledge would be wholly unreasonable for the reasons stated above. It is made clear that in case the construction put up by the private respondent nos. 6 and 7 or any part thereof does not satisfy the requirements of the said regulation, the authorities would have to take immediate action with that regard in accordance with law.

79. For the reasons stated hereinabove, the plan at page 122 was not the approved plan of the year 1995. The records also reveal that both the plans at page 117 and 122 have emanated from the office of the private respondents and

have an approved seal of the statutory authority. In such circumstances, it was expected of the private respondent nos. 6 and 7 to explain the circumstances in which the said two plans have the endorsement of the statutory authorities approving such plans. The attitude of resiling from the truth on the part of the private respondents deserves to be deprecated and this Court cannot countenance such abusive stand by the respondents. The said conduct of the respondent nos. 6 and 7 in not explaining how such plans have surfaced resulted in a prolonged litigation between the parties. As such, I find it appropriate to award exemplary and punitive costs on the respondent nos. 6 and 7. Such costs are fixed at Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only), out of which a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) shall be paid to the petitioners herein. The remaining sum of Rs. 20,00,000/- shall be deposited with the State Government so that such amount can be used by the State Government to avoid environmental and ecological degradation of the coastal belt of the State of Goa.

80. The grievance of the petitioners with regard to the running of the hotel activity in the disputed structure would be re-examined by the GCZMA after the Town and Country Planning and the Village Panchayat authorities consider the legality of the construction put up by the private respondents in the said area between 50 to 100 metres from the High Tide Line in the light of the observations made hereinabove in accordance with law."

4. Thus, the difference of opinion is on following issues:

(i) The effect of the Judgment dated 31.03.2010, of the Hon'ble Supreme Court, in the case of Goan Real Estate and Construction Ltd. and Another Vs. Union of India (UOI) through Secretary, Ministry of Environment and Others,

(ii) The relief's to be granted in the Writ Petitions.

5. Besides the oral submissions made by the respective Counsel for the parties, the parties have also filed written submissions. I perused the records and considered all the said submissions of the parties and the judgments relied upon.

6. The respondent 6 in writ petition no. 403/2007, which is respondent no. 3 in writ petition no. 659/2010, i.e. Goan Real Estate and Construction Ltd. (hereinafter called as respondent-company), the owner of the land situated at Bambolim, near the river Zuari, had submitted plans in the year 1993 for construction of hotel and residential complex in the said land. Vide the CRZ Notification dated 19.02.1991, under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986, issued by the Central Government through the Ministry of Environment and Forests ("MoEF", for short), in the exercise of powers under Rule 5(3)(d) of the Environment (Protection) Rules, 1986, the area up to 100 metres from the High Tide Line (HTL, for short), inter alia, of the river or the width of the river, whichever is less, was earmarked as "No Development Zone" (NDZ) and no construction was permitted within the said Zone except for repairs, etc. However, vide another Notification dated 18.08.1994, the MoEF amended the Notification dated 19.02.1991, thereby relaxing the NDZ from 100

metres to 50 metres or the width of the river, whichever is less. On account of this fresh Notification, the respondent-company, which had earlier obtained construction permissions in respect of the project beyond 100 metres from HTL of river Zuari, submitted an additional proposal, to the Village Panchayat of Curca, Bambolim and Talaulim, for construction of 18 blocks between 50 metres and 100 metres from HTL of said river. As per the rules in force, the Village Panchayat referred the matter to the Town and Country Planning Authority, for technical evaluation. The Town and Country Planning Authority approved the said additional construction to be made between 50 metres and 100 metres, vide order dated 31.07.1995. Based on this approval, vide its order dated 31.07.1995, the Village Panchayat granted permission to construct. It is the case of the respondent-company that they had commenced construction in accordance with newly approved plans which were re-validated from time to time. The Indian Council for Enviro-Legal Action had filed a public interest litigation before the Hon''ble Supreme Court against the Union of India and others [Writ Petition (C) No. 664 of 1993] thereby praying to direct the Central Government to implement Notification dated 19.02.1991 by which the CRZs were formed and restrictions on development were imposed. In the said public interest litigation petition, the petitioner No. 2 of the present writ petitions i.e. Goa Foundation had filed an application challenging the vires of the Notification dated 18.08.1994, by which the Notification dated 19.02.1991 was amended. Vide judgment dated 18.04.1996, passed in the said case of Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court, inter alia, declared that the amendment dated 16.08.1994, insofar as relaxation of NDZ for rivers, creeks and backwaters which was 100 metres from HTL to 50 metres, was bad in law. The said amendment of 1994 was struck down. The respondent-company filed the Writ Petition (C) No. 329/2008 before the Hon''ble Apex Court praying to declare that the building plans sanctioned and further renewals and re-validation till the date of petition and constructions made and ongoing constructions pursuant to CRZ Notification dated 19.02.1991 as amended by the Notification dated 16.08.1994 issued by the Central Government, are valid. Thus, the fate of constructions permitted during the period from 16.08.1994 to 18.04.1996 and completed or ongoing was before the Apex Court. The Hon''ble Supreme Court vide Judgment dated 31.03.2010, in the said case of "Goan Real Estate And Construction Ltd. And Anr." (supra), declared that the judgment dated 18.04.1996 in the case of "Indian Council for Enviro-Legal Action" (supra), declaring part of the amending Notification dated 16.08.1994 to be illegal, will not affect the completed or ongoing constructions being undertaken pursuant to the said Notification.

7. There is no dispute that there is no construction made by the respondent-company in the area within 50 metres from HTL of Zuari estuary or within the area that makes the width of the said estuary. There is also no dispute that the construction done within the area between 50 metres and 100 metres from HTL had started after the CRZ Notification dated 18.08.1994 relaxing the limit from

100 metres to 50 metres, had come into existence. Also, there can be no dispute that the total construction is not in excess of the construction sanctioned. In paragraph 47 of the judgment, learned sister, Smt. Dalvi, J has observed that this Court would have countenanced and conceded to the construction of respondent-company had it been in accordance with the 117 plan as ongoing construction permitted by the Supreme Court on 31st March 2010 in Writ petition No. 329 of 2008. In paragraph 48, it is further observed that though only such construction was allowed by the Supreme Court, the respondent has unabashedly put up a wholly different construction under 122 plan which was never approved. It is further observed that this Court had allowed the respondent-company to carry on the construction at its risk and costs and the TP had granted NOC subject to the first of these petitions and therefore the respondent must bear the risk and the cost of the construction which is impermissible and cannot be allowed by the Court. Learned brother, Shri Reis, J, has agreed that the plan which is at page 117 is the one duly approved on 31.05.1995 and not the plan at page no. 122 and he imposed costs of Rs. 25,00,000/- upon the respondent nos. 6 and 7 on account of the attitude of resiling truth from the Court as to how the said plan at page no. 122 has an approved seal of the statutory authority.

8. It was contended by the learned Senior Counsel appearing for respondent-company and for Goan Hotels and Clubs Pvt. Ltd. that the Division Bench did not frame the points of difference and therefore all the questions and issues based on facts and law involved in the petitions are open for the opinion of this Court. He relied upon the judgment dated 01.08.2002 of this Court (Third Judge) on reference in the case of "Shri Luizinho Joaquim Faleiro Vs. The State of Goa, Through Its Chief Secretary", reported in [2002 (2) MhLJ 334]. Learned Senior Counsel further pointed out that the respondent-Company had preferred an IA No. 3 of 2014 before the Hon"ble Supreme Court during the pendency of the above writ petitions for clarifications as prayed therein and the Division Bench was informed about the pendency of the same, but the Division Bench, however proceeded to hear and conclude the matter. Learned Counsel submitted that thereafter the said IA No. 3 of 2014 got listed before the Apex Court and the respondent-company sought leave to withdraw the said application. By order dated 07.04.2014, the Hon"ble Supreme Court disposed of the matter by making the following observation:

"Needless to say, all the points which have been raised in this petition can be raised before the third judge and we are sure that the same will be considered by the third judge in accordance with law. In view of the above, I.A. No. 3/14 is disposed of as withdrawn."

The learned Senior Counsel for the respondent-Company, submitted that in view of the above order of the Apex Court, this Court will have to also consider all the points which have been raised in IA No. 3/2014. The learned Counsel for the respondent-company and for Goan Hotels and Clubs Pvt. Ltd., contended that

there is no finding by any Judge that the plan at page No. 122 is fraudulent. According to him, there is much to be said in favour of the said 122 plan and that this Court, in the exercise of jurisdiction under Article 226 of the Constitution of India, will take into consideration the same. Learned senior Counsel, in the oral submissions as well as in the written arguments, has, in detail, tried to impress upon this Court that it is established beyond doubt from the records that the plan at page no. 122 was always in existence prior to the filing of the above petitions. In this regard, it is seen from the judgment dated 26.02.2014, that learned sister, Smt. R.S. Dalvi, J, has specifically held that the plan which is at page no. 117 is the plan which was duly approved on 31.05.1995 and not the plan at page no. 122 as claimed by the respondent-company and Goan Hotels and Clubs Pvt. Ltd.. This has been fully agreed to by learned brother Shri F.M. Reis, J.. There is thus concurrent finding, with regard to the plan and there is no point of difference in this regard. Be that as it may, I fully agree with the view taken by the learned Division Bench, with regard to the plans at pages no. 117 and 122. It is seen that in the present case, the point of difference is stated in paragraph 66 of the judgment and the same has been specifically referred to this Court by the Honourable the Chief Justice. In view of the procedure laid down in Section 98(2) of the Code of Civil procedure, 1908, this Court is bound to hear the petitions only on the said point of difference. Of course, the points which were raised in IA No. 3/2014, insofar as they relate to the point of difference, will have to be considered.

9. Smt. Alvares, learned Counsel for the petitioners, submitted that fraud was committed on the Court by the respondent-company by pleading that the plan at page no. 122 was the approved plan. She urged that the direction of demolition of construction, as given by Smt. R.S. Dalvi, J, is correct whereas the directions given by Shri F.M. Reis, J, are wrong. She urged that there was an incorrect fraudulent plan which was at page no. 122, which had no approval/permission, the effect of which rightly influenced the mind of Justice Smt. Dalvi to order demolition. Learned Counsel relied upon the judgment of the Supreme Court in the case of Ram Chandra Singh Vs. Savitri Devi and Others, , in which the meaning and effect of fraud on Court has been explained. According to the learned Counsel, the sum of Rs. 25,00,000/- imposed as punitive costs is nothing for a big company, which would gladly suffer the same. Learned Counsel submitted that the enormity of the offence committed by the respondent-company in deliberately lying to the Court on the veracity of the 122 plan did not deserve mere monetary penalty, but demolition of illegal construction. In my considered view, there is no force in the above submission of learned Counsel for the petitioners.

10. In the case of "Ram Chandra Singh" (supra), the Hon"ble Supreme Court has, inter alia, observed that fraud as is well-known vitiates every solemn act and that fraud and justice never dwell together. It is observed that it is well settled that misrepresentation itself amounts to fraud and a fraudulent misrepresentation is called deceit and consists in leading a man into damage by

willfully or recklessly causing him to believe and act on falsehood. It is observed that it is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. It is further observed that an act of fraud on Court is always viewed seriously and a collusion or conspiracy with a view to deprive the rights of the others in relation to a property would, render the transaction void ab initio. However, the Hon"ble Supreme Court has referred to "Derry V. Peek, (1889) 14 AC 337, wherein it was held:

"In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit."

In the case supra, there was a collusion or conspiracy with a view to deprive the rights of others in relation to a property. In the present case the property concerned admittedly belongs to the respondent-company. In the present case, none of the two learned members of the Division Bench has held that there is fraud played by the respondent-company on the Court. Learned brother, Shri F.M. Reis, J. has observed that directing the demolition of such construction within 50 to 100 metres from HTL when the Apex Court held that the project was an ongoing project wherein some construction had already been put up and a part was incomplete, would be very harsh and inequitable in the facts of the case. In fact, the learned Assistant Solicitor General appearing for MoEF had submitted that as per the MoEF, there was no breach of any CRZ Notification of 1991. Since both the plans at page no. 117 and 122 had emanated from the office of the private respondents and had an approved seal of the statutory authority, learned brother, Shri Reis, J. observed that it was expected of the private respondents to explain the circumstances in which the said two plans have the endorsement of the statutory authorities approving such plans. It is observed that the attitude of resiling from the truth on the private respondents deserves to be deprecated and this Court cannot countenance such abusive stand by the respondents. Such conduct of the said private respondents in not explaining how such plans have surfaced resulted in a prolonged litigation between the parties. Therefore, learned brother, Shri Reis, J. imposed punitive costs of Rs. 25,00,000/- upon the said private respondents. In any case, demolition of construction is like death penalty, as contended by the learned Senior Counsel for the respondent-company. One should not be punished for producing a false document/plan. Though the petitioners had contended that the plan at page no. 122 was a complete fabrication and a forgery and consequently a fraud on the Court, in view of reliance of the respondent-company upon such a plan to save its construction, however, there is no finding that the respondent-company

deliberately misrepresented the Court on the veracity of the 122 plan and that fraud has been committed on the Court. It is pertinent to note that before the Division Bench as well as before this Court, the respondent-company vehemently tried its best to convince that the plan at page no. 122 was the correct plan. It was thus a bona fide claim of the respondent-company that the plan at page no. 122 was the relevant plan. The demolition of construction ordered by learned sister, Smt. R.S. Dalvi, J, is not on the ground that fraud was played on the Court, but on the ground that the construction was in excess of the leeway granted by the Supreme Court Judgment dated 31.03.2010, for ongoing construction as per sanctioned plans and without their re-validation. The Judgment in the case of "Ram Chandra Singh" (supra) is not applicable to the facts and circumstances of the present case. Merely on the ground of it being established that the plan at page 117 is the correct sanctioned plan and not the one at page 122, it would never be proper to order demolition of the construction which is beyond the scope of the plan at page no. 117.

11. Learned Counsel for the petitioners submitted that the Hon'ble Supreme Court vide judgment dated 31.03.2010 has saved only those constructions which were made in accordance with the sanctioned plans and the constructions not sanctioned by the relevant authorities in the window period are not saved. She contended that nowhere in the said judgment of 2010 has the Supreme Court observed that 50 metres setback will be retained forever on those plots where construction approved in window period was completed or is ongoing. Counsel urged that the Supreme Court did not grant any declaration in respect of re-validation of plans, despite specific prayer by the respondent-company and what is not granted must be taken as rejected and therefore, question of re-validation, revision or modification of the sanctioned plans does not at all arise. Learned Counsel for the petitioners submitted that the Judgment of 2010 has to be read in harmony with the judgment of 1996 and it may be that during the interregnum period from 18.08.1994 to 18.04.1996, the CRZ Notification was not applicable but in 1996, it came back into power. Learned counsel urged that re-validation or renewal, even if made, would have to be in accordance with the law in force which in the present case is the law relating to the 100 metres setback line in NDZ and not as per the law which governed at the time when the initial plan was sanctioned or when the construction had commenced. Learned Counsel for the petitioners argued that nowhere in the 2010 judgment, has the supreme Court stated that 50 metres setback will be retained forever on those plots where construction approved in the window period was completed or is ongoing. She pointed out from the plans at pages no. 117 and 122 as to how an entirely new construction has been made which has no resemblance to the 69 bungalows or the 18 residential blocks with a hotel structure which was earlier sanctioned. She submitted that the contention that the revised plans have reduced FAR and coverage and hence must be allowed would tantamount to re-validating the sanctioned plan which would go against the mandate of the Supreme Court and such contention may have been attractive had there been no capping of

construction as per the Supreme Court order. According to her, demolition of the construction was the only order that could be passed. Learned Counsel submitted that the directions issued by Shri F.M. Reis, J, are incorrect, they being contrary to the 2010 judgment of the Apex Court and against the CRZ Notification. Learned counsel for the petitioners submitted that the Judgments in the case of Kisan Mehta and Others Vs. State of Maharashtra and Others, , and Suresh Estates Pvt. Ltd. and Others Vs. Municipal Corp. of Greater Mumbai and Others, , which are relied upon by Shri F.M. Reis, J, both pertain to CRZ-II and therefore are not applicable to the present case. She submitted that in CRZ-III, only repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density is permissible. She pointed out that there is no mention of Town and Country Planning Development Act or Regulations, in CRZ-III. She also pointed out that the Town and Country Planning Department has also stated that the plan at page no. 122 is the correct plan. She therefore questioned as to how adjudication can be ordered to be done by the same authority. Learned counsel pointed out that the construction was done at the own risk and cost of the respondent-company and since the same is illegal, it should be demolished.

12. In my considered view, the above submissions of learned Counsel for the petitioners are not well founded. There is no capping of construction, in the manner, as contended by the learned Counsel for the petitioners. Court cannot assume that the Apex court has capped the construction. In Writ Petition No. 329 of 2008, what the respondent-Company had, inter alia, prayed was to declare that the building plans sanctioned and constructions made and ongoing constructions pursuant to the CRZ Notification dated 19.02.1991 as amended by the Notification dated 16.08.1994 issued by the Central Government are valid. In paragraph 28 of the Judgment dated 31.03.2010, in said Goan Real Estate and Construction Ltd. and Another Vs. Union of India (UOI) through Secretary, Ministry of Environment and Others, , the Hon''ble Supreme Court made it clear that the question which fell for consideration was whether the constructions made or ongoing pursuant to the plans sanctioned on the basis of the Notification dated 16.08.1994 would be affected or not. The said plans were sanctioned under the provisions of the local laws, rules and regulations generally applicable to constructions. The Hon''ble Supreme Court did not consider the question whether the said local laws would or would not be applicable to the said constructions. The Supreme Court has not held that no revalidation would be permitted or no revision of the plans would be permitted. The Apex Court, in paragraph 40 of the judgment dated 31.03.2010, observed that on the facts and in the circumstances of the case it was of the opinion that a good case has been made out by the petitioners for issuance of a declaration that the judgment dated 18.04.1996 rendered in "Indian Council for Enviro-Legal Action" will not affect the ongoing constructions or completed constructions pursuant to the plans sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by it. What is relevant is the final relief granted by the Apex

Court. It has been declared that the judgment dated 18.04.1996 in "Indian Council for Enviro-Legal Action V. Union of India" declaring part of the amending Notification dated 16.08.1994 to be illegal, will not affect the completed or the ongoing constructions being undertaken pursuant to the said Notification. The Hon"ble Supreme Court, in paragraph 36 of the Judgment dated 31.03.2010, inter alia, observed that taking into consideration all the factors, it refuses to interpret the 1996 judgment in a manner which would give it a retrospective effect. Thus, only a prospective effect is given to the Judgment dated 18.04.1994. It is not declared that only those construction which would be strictly in conformity with sanctioned plans shall not be affected by the judgment dated 18.04.1996 and that no law, if any, permitting re-validation or deviation/alteration would be applicable. Only if a specific direction as above had been issued, then it could have been said that there was capping of construction, in the manner as contended by the learned Counsel for the petitioners. The view of NCZMA was that the ongoing construction activity of the respondent-company will not be affected by the judgment dated 18.04.1996. The Hon"ble Supreme Court has upheld the view of NCZMA. In the case of " Gulf Goans Hotels Company Ltd. Vs. Union of India (UOI)--> , the Hon"ble Supreme Court has referred to a portion of paragraph 31 of the Judgment dated 31.03.2010 in the case of "Goan Real Estate and Construction Ltd." (supra), which reads as under:

"31. ... Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification."

The Apex Court has also referred to the relief granted in the said case, whereby the construction which had commenced after the amendments made in the year 1994 to the Notification dated 19.02.1991 till the same were declared illegal on 18.04.1996, were protected by holding that though the amending notification was declared illegal by it, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever. The Hon"ble Supreme Court did not observe that in the case of "Goan Real Estate and Construction Ltd." (supra), it had declared that only the said constructions which were in accordance with sanctioned plans were saved.

13. Prior to 18.08.1994, in view of the CRZ Notification dated 19.02.1991, insofar as rivers are concerned, NDZ was upto 100 metres from HTL or the width of the river, whichever was less. Beyond 100 metres of HTL of river, the development regulations under CRZ Notification were not applicable and the constructions beyond that area were regulated by local laws and rules. However, on account of the CRZ Notification dated 18.08.1994, as from 18.08.1994, CRZ Notification regarding NDZ was not applicable to construction beyond 50 metres from HTL of river. In other words, local laws, rules and regulations governing constructions were applicable to constructions beyond 50 metres from HTL of river. The respondent-company then submitted an additional proposal for construction of 18 blocks between 50 metres and 100 metres and got approval

dated 31.07.1995 from the Town and Country Planning Authority and sanction of plans and permission dated 31.07.1995 to construct from Village Panchayat. The respondent-company commenced the additional construction. By the judgment dated 18.04.1996, passed in "Indian Council for Enviro-Legal Action" (supra), it was, inter alia, declared that the said amendment of 1994 was bad in law. This in other words meant that the said amendment of 1994 was struck down. On account of the said Judgment dated 18.04.1996, again as from 18.04.1996, the CRZ Notification regarding NDZ became not applicable only to those constructions beyond 100 metres from HTL of river, which means that again the constructions beyond the area of 100 metres from HTL of river were regulated by local laws and rules. The question arose about the construction commenced by the respondent-Company during the intervening period of 18.08.1994 to 18.04.1996, within 50 to 100 metres of HTL from river Zuari. But, by judgment dated 31.03.2010, passed in Writ Petition No. 329 of 2008, the Apex Court declared that the striking down of Notification dated 16.08.1994 would not affect the completed or ongoing construction, being undertaken pursuant to the said Notification dated 16.08.1994. In other words, the Notification dated 18.08.1994 reducing the NDZ to 50 metres from 100 metres became applicable to the constructions started after 18.08.1994 and completed or still ongoing. In other words, such ongoing constructions or completed constructions being undertaken pursuant to the Notification dated 18.08.1994, though they were within 50 to 100 metres of HTL of river, were to be considered as if they were beyond NDZ. Learned brother, Reis, J, has quoted relevant paragraphs no. 29, 30, 31, 33, 38, 39, 40 and 41 of the Judgment dated 31.03.2010, in paragraph 68 of the judgment. The rights of the respondent-company to carry out constructions in the area between 50 and 100 metres of HTL of the river had crystallized provided, of course, that such constructions did not violate the statutory regulations governing the field at the relevant time. As such, the said construction was outside the purview of CRZ Notification. As already stated above, the judgment dated 31.03.2010 does not declare that local laws applicable to the constructions shall not be applicable to such constructions. All laws as applicable to the constructions beyond the area of 100 metres from HTL of the river or beyond the area of the width of the river, are applicable to the construction of the respondent-Company, though part of the construction is in the area between 50 to 100 metres of HTL. If it has to be interpreted that only those constructions sanctioned during interregnum period were saved then it would mean that if the sanctioned plan had expired by efflux of time, then the ongoing constructions had to be stopped and would remain incomplete. The Judgment of the Supreme Court, in such circumstances, would not be useful for ongoing constructions. Such cannot be the interpretation of the said judgment. The construction licence was issued on 31/07/1995. First renewal was granted in 1998, second in 2001 and the third on 17/09/2005. This fact was known to the Apex Court. Such licence would have expired on 16/09/2008. In spite of the above, the Hon"ble Apex Court allowed completion of incomplete constructions.

14. As has been held by learned brother, Shri F.M. Reis, J, in paragraph 73 of the judgment, there is no dispute that the Planning and Development Authority (Development) Plan Regulations, 1989 (Regulations of 1989, for short) would govern the construction activities of the respondent-company. Since the construction activity was permissible in the area beyond 50 metres from HTL of river, the said construction has to be in accordance with the Regulations of 1989. In terms of Regulation No. 8 of the Regulations of 1989, as quoted by learned brother, Shri Reis, J, deviations and alterations are permissible provided the construction is within the frame work of the Regulations of 1989 and revised plan is approved before obtaining the occupancy certificate. There may be a case where some construction was illegally sanctioned in violation of the Regulations of 1989, during the window period. If the Judgment dated 31.03.2010 of the Apex Court is to be interpreted to mean that only those constructions which were sanctioned pursuant to Notification dated 18.08.1994, until 18.04.1996, as per the sanctioned plans, were saved, then it may mean that even if the said sanctioned plans were actually in violation of the Regulations of 1989, were saved. That cannot be the interpretation. All laws pertaining to constructions beyond the area covered by CRZ Notification, unless specifically excluded, would apply and the Hon''ble Supreme Court has not excluded such laws and regulations. Thus, if the construction put up by the respondent-company or any part thereof does not satisfy the requirement of the Regulations of 1989, the Authorities will not permit the same and shall take action, in accordance with law. It should be kept in mind that the project of the respondent-company within 50 to 100 metres from HTL of the river was an extension of the original project and was not a separate project. The project of the respondent-company was ongoing project which had not been completed and it is not a totally new construction. The discussion made by learned brother, Shri F.M. Reis, J, on CRZ norms, in paragraph 72 of the judgment, is to know their object and to bring on record the restrictions of construction activities in CRZ areas and to show what is permissible in spite of those restrictions. Learned brother, Shri Reis, J. has merely considered the issue assuming for the time being that CRZ Regulations are applicable. It has been clearly held by learned brother, Shri Reis, J, that CRZ Notification is not applicable and that it is the Planning and Development Authority (Development Plan) Regulations, 1989 which are applicable.

15. In the case of Syed Muzaffar Ali and Others Vs. Municipal Corporation of Delhi, , the Hon''ble Supreme Court, inter alia, held that mere departure from the authorised plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. It has been observed that there are cases and cases of such unauthorized constructions some of which are amenable to compounding and some may not be and there may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition. It has been held that these are matters for the authorities to consider at the appropriate time having regard to the nature of the transgressions and it

is open to the petitioners to move the authorities for such relief as may be available to them at law. Learned brother, Shri F.M. Reis, J., in paragraph 76 of the judgment has quoted paragraphs 33, 34, 57, 59 and 60 of the judgment of the Apex Court in the case of Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Others, . The above observations in "Syed Muzaffar Ali's" case (supra) are contained in paragraph 34 of the said judgment in the case of "Muni Suvrar-Swami Jain" (supra) and are confirmed in paragraph 59 of the said judgment. As pointed out by learned Counsel for the petitioners, the above judgment in "Syed Muzaffar Ali's" case (supra) is with reference to a construction in Delhi, which is not CRZ area and where the Planning Regulations permit discretion, condonation and compounding. In the present case also, the construction of the respondent-company is outside the scope of CRZ Notification, to which, the Regulations of 1989 are applicable, in the facts and circumstances of the case and as already stated earlier Regulation 8 permits deviation during development or change and even revocation of permission. The observations of the Hon'ble Supreme Court in the case of "Syed Muzaffar Ali" (supra) are fully applicable to the facts of the present case. Merely because GCZMA has also been directed to consider the legality of the hotel project, it cannot be said that CRZ Notification has been held to be applicable.

16. In view of the discussion supra, I agree with the findings of my learned brother, Shri F.M. Reis, J, on the effect of the judgment dated 31.03.2010, in Writ Petition (C) No. 329/2008 on the status of the impugned construction and with the relief's granted by brother Shri F.M. Reis, J. Reference, therefore, is answered accordingly.

17. The view taken by me may be placed before the learned Division Bench, in terms of Rule 15, Ch. XVII of the Bombay High Court Appellate Side Rules.