
(2012) 03 BOM CK 0123

In the Bombay High Court

Case No : Misc. Civil Appliation No. 590 of 2010 in Writ Petition No. 403 of 2007

People's Movement of Civic Action and Goa Foundation

APPELLANT

Vs

Goa Coastal Zone Management Authority, with office at
Saligao Seminary, Saligao-Goa and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 6 Rule 11, 11

Constitution of India, 1950 — Article 32

Environment (Protection) Rules, 1986 — Rule 5(d)

Goa, Daman and Diu Village Panchayat (Regulation of Buildings) Rules, 1971 — Rule 3

Citation : (2012) 03 BOM CK 0123

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

Bench : Division Bench

Advocate : N. Alvares and Ms. Norma Alvares, for the Appellant; S. Mordekar, A.G.A for Respondent Nos. 1, 3 and 4, Ms. Sudha Pai Kir for Respondent No. 2, Mr. C.A. Ferreira, Assistant Solicitor General for Respondent No. 5, Mr. S.U. Kamdar with Mr. M.S. Sonak, J. Supekar and Ms. Pooja Patil for Original Respondent Nos. 6 and 7, Mr. Ans Nadkarni with Mr. H.D. Naik for Intervenor, Mr. Ans Nadkarni, Sr Advocate and Mr. H.D. Naik for Original, Respondent Nos. 1 and 2, Mr. S.U. Kamdar with Mr. M.S. Sonak and Mr. J. Supekar and Ms. Pooja Patil for Respondent No. 3, Mr. C.A. Ferreira, Assistant Solicitor General for Respondent Nos. 5 to 7, Ms. Sudha Pai Kir for Respondent No. 8 and Mr. J. Godinho, for the Respondent

Judgement

S.C. Dharmadhikari, J.—Misc. Civil Application No. 590 of 2010 is by the original respondent Nos. 6 and 7 for dismissal of the Writ Petition No. 403 of 2007. It is their case that the issues raised in this petition do not survive for consideration. This plea is based on the decision of the Hon'ble Supreme Court of India in the case of Goan Real Estate and Construction Ltd. and Another Vs. Union of India (UOI) through Secretary, Ministry of Environment and Others, . It is stated that the original petitioners before this Court and the present applicants were parties to the proceedings before the Hon'ble Supreme Court and, therefore, this judgment of the Hon'ble Supreme Court is interparties and would bind each one

of them. The issue which is now concluded by the Hon''ble Supreme Court cannot be re-opened and re-agitated and in their submission, it stands wholly concluded and decided by the above decision.

2. Before appreciating this contention of the applicants-original respondent Nos. 6 and 7, it would be necessary to refer to the memo of the writ petition and the prayers therein.

3. The petition is filed by two petitioners in public interest. Both of these petitioners are organisations working towards Protection and Prevention of Environment and Ecology. They are registered bodies. They have initiated proceedings earlier in public interest so as to prevent the ecological and environmental degradation in the State of Goa. The 2nd petitioner has filed more than 80 (eighty) Public Interest Litigations, according to it, for espousing public causes and in public interest.

4. The respondent No. 1 is the authority set up by the Ministry of Environment and Forest, Government of India. Respondent No. 2 is the Panchayat within whose jurisdiction the work impugned in the petition is being carried on and whose permissions are challenged by the petitioners. The respondent Nos. 3 and 4 are the State of Goa and Chief Town Planner, respectively, whereas respondent Nos. 6 and 7 who are the applicants in this application are carrying on the said construction. Respondent No. 5 is the Department of Environment and Forests, Government of India.

5. It is the case of the petitioners that they have filed this petition to challenge the development and construction work carried on in the 100 mtrs "No Development Zone" of Survey Nos. 12/1 and 99/2 of Bambolim village, Tiswadi Taluka by respondent Nos. 6 and 7.

6. It is, therefore, their case that they came to know of this work some time in December 2006 and that when it came to the notice of the petitioners, they immediately moved the Goa Coastal Zone Management Authority (GCZMA for short), which issued a stop work order on 22nd December 2006 to the District Collector. The construction at site, therefore, did not proceed. It is the case of the petitioners that the development was being carried out in the 100 mtrs Coastal Regulation Zone (CRZ for short) of Bambolim along the Zuari Estuary, which is a No Development Zone.

7. However, a writ petition being Writ Petition No. 365 of 2007 was filed by respondent Nos. 6 and 7 and on account of an order made therein on 24th July 2007, the stop work notices came to be withdrawn and the work has recommenced and that is why this writ petition has been filed to challenge the permissions granted by the statutory authorities permitting construction in the 100 mtrs No Development Zone.

8. It is the case of the petitioners that the respondent Nos. 6 and 7 purchased the property in 1993 after the CRZ notification came into force. At the time of

the notification, the CRZ along the sea and along the estuaries was 500 mtrs from the High Tide Line with No Development Zone of 200 mtrs from the High Tide Line and restrictions on class of constructions permissible between the 200-500 mtrs., zone from the High Tide Line. The petitioners further state that in the case of rivers, the CRZ was 100 mtrs or the breadth of the river if less than 100 mtrs. The Gazette Notification dated 1.4.1993 permitting the land use change of 1,33,995 sq.mtrs out of a total of 1,63,250 sq.mtrs from A1 to A2 to settlement explicitly records: "To the extent of the area within permissible gradient, clearance should be obtained from GSCE since the property falls within the Estuarine Control area". The petitioner states that despite this being the legal position, there was no reference made to the GSCE for permission to develop the said area.

9. The petitioners further state that the conversion sanad for the entire area of 1,63,250 sq.mtrs was issued on 31st March 1994 and it appears that even the area within 100 mtrs of High Tide Line was also converted, which is not permissible as the area was No Development Zone.

10. The petitioners state that the Town and Country Planning Department first granted approval for the project with a 100 mtrs setback on 29th October 1993. Subsequently, after the Supreme Court struck down the 50 mtrs relaxation as unconstitutional and illegal, the Town and Country Planning Department once again issued approval for the project on 31st May 1996 with 100 mtrs setback.

11. It is further stated by the petitioners that based on the approval from Town and Country Planning Department, the Village Panchayat issued a series of permissions dated 26th November 1993 (Permission No. VP/CBT/CONTN.lic/9/325/93-94) for construction of the Bambolim Residential Complex beyond 100 mtrs of the High Tide Line. Some of these licences were suspended by a Panchayat resolution dated 23rd February 1994 and this decision was communicated to the respondents on 17th March 1994. Subsequently, these permissions were renewed on 6th November 1996.

12. It is further stated by the petitioners that in 1994 the CRZ notification was amended, relaxing the 100 mtrs zone along rivers to 50 mtrs. The respondent Nos. 6 and 7 immediately filed a fresh proposal for construction of bungalows in 50-100 mtrs zone. No Objection Certificate was granted by the Town Planning and subsequently, by its order dated 31st July 1995 (Panchayat Permission No. DE/5453/119), the Village Panchayat of Bambolim approved the construction (Relocation) of 18 blocks-Residential Complex (Ground plus two) in Survey No. 12/1 and 99/2 at Bambolim.

13. The petitioners further state that pursuant to the 1995 permission, the respondent-Company began construction within the 100 mtrs zone. Three plinths were erected in the area between 50-100 mtrs. However, construction did not progress beyond that stage and subsequently respondents gave up the construction activity in this area (i.e 50 to 100 mtrs zone). It is clearly

documented and verified in the report of the surveyor of the Goa Government dated 4th May 2007, that in the year 2007, this was the status of the construction in the 50-100 mtrs CRZ as per the 1995 permission.

14. It is further the case of the petitioners that on 18th April 1996, on an application filed in the Hon"ble Supreme Court by the Goa Foundation (petitioner No. 2 herein) and two other Goan NGOs in an on-going matter, the Apex Court struck down the 50 mtrs relaxation in the CRZ along the rivers and restored the 100 mtrs CRZ and directed that the 100 mtrs would be a No Development Zone. The petitioner further submit that on the passing of this order, no further development would be possible in the 100 mtrs CRZ along the rivers. In fact, the respondent Authorities were duty bound to stop the work, if any, going on in the CRZ area between 50-100 mtrs along the rivers. Once a statute has been declared unconstitutional and illegal by a Court of Law, the permissions granted on the basis of that law also become invalid and illegal.

15. It is stated by the petitioners that by its letter dated 31st October 1996, and pursuant to the judgment of the Apex Court dated 18th April 1996, the Town and Country Planning Department cancelled its 1995 permission No. DE/5453/119 dated 31st May 1995, while issuing fresh approval for some of the survey numbers not attracted by the Apex Court order.

16. It is the case of the petitioners that on 21st September 1996, Panchayat officials conducted a site inspection in respect of five letters addressed to the Panchayat by the respondents and filed an inspection report on 25th September 1996. Four of the five letters do not relate to survey Nos. 12/1 and 99/2. Although the fifth letter refers to the aforesaid two survey numbers, it is with reference to the Panchayat's 1993 permission (i.e the area beyond 100 mtrs) and not the 1995 permission (i.e the areas within 50 to 100 mtrs). The petitioners state that even according to the inspection report itself, the place being visited is Pira Bata (Survey No. 15/1) whereas Survey Nos. 12/1 and 99/2 are referred to as Vodlem Bhat and Vodlem Bhat Almache, respectively in the Form I and XIV records.

17. The petitioners state that the 1995 permission expired on 30th June 1998. On 28th August 1998 the respondent Nos. 6 and 7 applied for revalidation and by its order dated 8th October 1998 the Panchayat granted an extension of three years from 30th June 1998 to 30th June 2001. It is further stated by the petitioners that the revalidation was an illegal extension of the 1995 permission as 100 mtrs was now the No Development Zone in the area. The petitioners submit that not only do the Panchayat Building Rules 1971 clearly stipulate that at the time of extension or revalidation, the rules existing at the time of extension or revalidation would apply but even if these Rules did not exist, it is well settled law that when a matter comes for "renewal" or "revalidation", the law prevailing at the time shall apply. At the time of revalidation, the 100 mtrs No Development Zone was already in force by the Apex Court's order dated 18th April 1996 and, therefore, the Panchayat's 1995 permission could not have been

either extended or renewed .The petitioners submit that the revalidation done by the Panchayat was unconstitutional, illegal, without authority of law, contrary to the order of the Apex Court and is, therefore, liable to be quashed and set aside.

18. It is further stated by the petitioners that three years later, i.e, in 2001, the respondents again addressed a series of letters to the Panchayat seeking another revalidation of the 1995 permission (validated till 30th June 2001). They also asked for merger of the 1993 permission with the 1995 permission.

19. The petitioners further state that on 21st July 2004, the respondent-company addressed a letter to the Goa Coastal Zone Management Authority asking the Authority to demarcate the 100 mtrs No Development Zone from the High Tide Line on some of their properties. The Goan Coastal Zone Management Authority replied by its letter dated 9th June 2005 and annexed a survey plan with the 100 mtrs No Development Zone marked on Survey No. 12/1 on the plan.

20. The petitioners state that the 1995 permission (revalidated in 1998 and 2001) once again expired on 31st August 2004 and was not renewed. The respondents wrote to the Panchayat on 27th August 2004 requesting for renewal of "Residential Complex and Hotel Project" under Survey Nos. 12/1 and 99/2. It may be noted that the 1995 permission was for a Residential Complex (relocation of 18 blocks) and the Conversion Sanad issued in respect of Survey Nos. 12/1 and 99/2 was for the purpose of "residential housing" only. The request for renewal was reported on 22nd July 2005, by which time the revalidated 1995 permission was already dead for a full year.

21. It is further stated by the petitioners that on 17th September 2005, the Panchayat issued a fresh construction licence No. VP/CBT/Renewal/2005-06/613 to the respondents valid from 17th September 2005 for three years. Fees for the licence for the project now approved as "Residential Complex and Hotel Project" were also collected from the respondent.

22. For the purposes of clarity the petitioners have given in summary form, the dates of revalidation/extension of approvals granted by the Panchayat in relation to its 1995 permission No. VP/CBT/Contrn.Lic/95-96 (I.e the 50-100 mtrs Zone of Survey Nos. 12/1 and 99/2), which is as follows:

31st July 1995 : Construction License for 3 years from

31st July 1995 to 30th June 1998;

8th October 1998 : Extension of 3 years from 30th June

1998 to 30th June 2001;

1st September 2001 : Extension of 3 years from 1st

September 2001 to 1st September 2004;

17th September 2005 : Fresh construction licence for 3

years from 17th September 2005

23. It is further submitted by the petitioners that in the year 2006 the respondents attempted to commence development work in the 50 to 100 mtrs zone of the CRZ. When this was discovered petitioner No. 1 complained to the Chief Secretary and the Goa Coastal Zone Management Authority examined the matter and thereafter, the work was stayed by order of the Goa Coastal Zone Management Authority and the Government of Goa as it was in violation of CRZ provisions.

24. It is further submitted by the petitioners that by letter dated 12th January 2007, the respondent-company wrote to the Goa Coastal Zone Management Authority requesting it to get the statusquo order of the Additional Collector revoked or modified as it was observing the No Development Zone on Survey No. 12/1 as was demarcated by the Goa Coastal Zone Management Authority and all its development activities were in the permitted development area of Survey No. 12/1 and that no activity was taking place on Survey No. 99/2.

25. The petitioners further submitted that subsequently the Goa Coastal Zone Management Authority considered the matter at its meeting held on 13th March 2007 and took a decision that the construction was in violation of the CRZ notification and recommended to the Collector that after proper survey and examination of the documents, construction beyond 100 mtrs zone may be permitted.

26. It is further stated that while initially stop work order was in respect of the entire Survey Nos. 12/1 and 99/2, subsequently, pursuant to the letter of Goa Coastal Zone Management Authority dated 28th July 2007 and after the Director of Settlement and Land Records demarcated the No Development Zone of 100 mtrs from the river bank, by order dated 23rd May 2007, the Collector discharged the stop work order dated 22nd December 2006 to the extent that the constructions beyond the 100 mtrs line could be restarted. The said order made it clear that any further construction on the three plinths existing within 100 mtrs could not be started as they are within the No Development Zone.

27. The petitioners state that they have had access to copy of Writ Petition No. 365 of 2007. From it, they have seen that after the stop work orders were issued, the respondent Company wrote to the Central Government, several letters claiming that their construction was an "on-going" project and, therefore, exempted from the order of the Supreme Court and the restoration of the 100 mtrs limit. They apparently also produced the site inspection of the Panchayat dated 25th September 1996 which was for plots outside the 100 mtrs line and not the constructions in the CRZ. The respondents were successful in influencing the respondent No. 5 and were able to get three letters issued by the Ministry of Environment and Forests.

28. Therefore, the petitioners allege that there is a widespread fraud in the matter of approvals. Therefore, the constructions which are reflected in the plan

do not tally with the plan dated 31st May 1995. It is alleged that an affidavit has been filed on 19th November 2007 stating that the original files are missing from the Town and Country Planning Department and Panchayat of Bambolim. Once the files have disappeared in collusion with the Authorities, the apprehension is that the construction would remain unregulated and uncontrolled. A reference is made to the Government Circular amending Rule 3(a) of the Village Panchayat (Regulation of Buildings) Rules, 1971 and, therefore, on various grounds as narrated in para 8 of the petition, the construction is challenged and the approvals and permissions are impugned. In these circumstances, the petitioners have prayed for quashing the orders of respondent No. 2 dated 31st July 1997, 8th October 1998, 1st September 2001 and 17th September 2005 and further prayed that respondent Nos. 6 and 7 be directed to restore the original nature of the land.

29. This writ petition has been admitted by this Court and our attention is invited to the ad-interim orders dated 20th August 2007, the detailed order of admission dated 17th September 2007 and the further orders dated 4th December 2007, 5th December 2007 allowing amendments and to the subsequent orders which are granting certain interim prayers.

30. The Misc.Civil Application proceeds on the basis that the Supreme Court had passed an order in Civil Appeal No. 5282 of 2008, which appeal was filed by the very applicants herein challenging an order dated 5th August 2008 in Misc. Civil Application No. 595 of 2008 filed in this writ petition under which the parties were directed to maintain status-quo in respect of construction within 50 to 100 mtrs of the High Tide Line on Survey Nos. 11/1 and 101/1 of Bambolim village, Goa, till the matter is finally heard by this Court.

31. After referring to the facts as narrated in the petition, what has been referred to by the Hon'ble Supreme Court is an affidavit of the Ministry of Environment and Forest, based on which this Court rejected the application made in Public Interest Litigation for interim relief on 12th September 2007. This Court declined to grant interim relief noting that the Central Government had itself referred the matter to National Coastal Zone Management Authority. The Authority, therefore, was directed to consider the matter after giving personal hearing to all parties. The hearing was given by the Authority and it has treated the project of the applicants as an ongoing project. However, this Court directed the parties to maintain status-quo as there was no construction activity from 1997 to 2005. The Supreme Court order proceeds on the basis that if the decision dated 30th October 2007 rendered by the National Coastal Zone Management Authority treats the applicants project as an on-going project, then, the validity of the said directions of the Authority having not being considered, the interim relief could not have been granted. The Supreme Court held that grant of stay of construction activity would result into considerable loss to the applicants who have invested huge amount in the project. In the facts and circumstances of the case, the Supreme Court, therefore, vacated the interim order passed by this

Court and permitted the applicants to complete the incomplete construction at their own risk and costs. The Supreme Court directed by its order dated 28th August 2008 that the main writ petition shall be heard without the High Court being inhibited by the order of the Supreme Court granting interim relief to the applicants.

32. Then reference is made to another order of the Hon''ble Supreme Court in Civil Appeal No. 5281 of 2008, which came to be filed by these very applicants against the order dated 10th July 2008 of this Court in Misc. Civil Application No. 866 of 2007. However, this appeal was erroneously treated as having been decided by the judgment dated 28th August 2008. That judgment also decide Civil Appeal No. 5282 of 2008 which was in fact the appeal against the order dated 5th August 2008. Civil Appeal No. 5281 of 2008 was directed against the order dated 10th July 2008 passed in Misc. Civil Application No. 861 of 2007 in Writ Petition No. 403 of 2007. That was the order of status-quo whereas the order dated 5th August 2008 was an order permitting amendment to the writ petition and that was passed in a distinct Misc. Civil Application. However, the mistake came to be corrected by the Supreme Court and by its further order passed in I.A No. 2 of 2008 in Civil Appeal Nos. 5281 of 2008 and 5282 of 2008 dated 31st March 2010, the Hon''ble Supreme Court disposed off Civil Appeal No. 5282 of 2008, as being f infructuous. It is observed by the Hon''ble Supreme Court that once the National Coastal Zone Management Authority passed order dated 30th October 2007, which has been upheld by the Hon''ble Supreme Court in judgment delivered in Writ Petition (Civil) No. 329 of 2008, then, the amendment to challenge this order could not have been granted by this Court and, therefore, the order permitting amendment is required to be set aside. The Civil Appeal No. 5282 of 2008 was disposed off as infructuous in the light of the judgment delivered in Writ Petition (Civil) No. 329 of 2008 by the Hon''ble Supreme Court.

33. Thereafter, there is a reference made to Writ Petition No. 329 of 2008, which writ petition was filed by the very applicants in the Hon''ble Supreme Court of India seeking a declaration that the building plans sanctioned and the construction made pursuant to the CRZ Notification dated 19th February 1991, as amended by the Notification dated 16th August 1994, is valid. In that writ petition, the stand of the petitioners who are the applicants before us, was stated thus:

The petitioner No. 1 is owner of the land situated near river Zuari at Goa. It submitted plans in the year 1993 for construction of a hotel and residential complex. The Central Government, through Ministry of Environment and Forests (MOEF for short), issued Coastal Regulation Zone Notification dated February 19, 1991 in exercise of powers under Rule 5(d) of the Environment (Protection) Rules, 1986. As per the said notification, the area upto 100 mtrs from the High Tide Line was earmarked as "No Development Zone" and no construction was permitted within this zone except for repairs etc. However, the Central

Government issued another notification on August 16, 1994 amending notification dated February 19, 1991 and relaxing the "No Development Zone" to 50 mtrs from 100 mtrs. In view of the said relaxation, the petitioners who had earlier obtained construction permissions in respect of a project beyond 100 mtrs, submitted an additional proposal to the Panchayat of village Curca, Bambolim and Taloulim, Taluka Tiswadi, Goa for construction of 18 blocks between 50 mtrs and 100 mtrs. The Village Panchayat referred the matter to the Town and Country Planning Authority, as required under the Rules for technical evaluation. The Town and Country Planning Authority approved the abovementioned additional construction to be made between 50 mtrs and 100 mtrs vide order dated July 31, 1995. Based on this approval, vide its order dated July 31, 1995, the Village Panchayat sanctioned the plans and granted permission to construct. It is the case of the petitioners that they had commenced construction in accordance with newly approved plans which revalidated from time to time and are valid till this date.

An NGO by the name of Indian Council for Enviro-Legal Action filed a public interest litigation in this Court under Article 32 of the Constitution against the Union of India making prayer to direct the Central Government to implement notification dated February 19, 1991 by which CRZs were formed and restrictions on development were placed. The grievance made was that the non-implementation of the said notification had led to continued degradation of ecology. In the said petition, Goa Foundation, a society registered under the Societies Registration Act, 1960 filed an application challenging the vires of notification dated August 16, 1994 by which main notification dated February 19, 1991 was amended. This Court took into consideration the salient features of the main notification dated February 19, 1991 and noticed that the said notification was issued to ensure that the development activities were consistent with the environmental guidelines for beaches and coastal areas and, therefore, by the said Notification, restrictions on the setting up of industries which had detrimental effect on the coastal environment were imposed. The Court thereafter proceeded to examine validity of notification dated August 16, 1994. After noticing that six amendments were made in the main notification, this Court found that reduction of the ban on construction from 100 meters to 50 meters was illegal and power given to the Central Government for relaxation of developmental activities in the entire 6,000 kilometers long coast line was unbridled and capable of being abused. Thus, by judgment dated April 18, 1996 which is reported as Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, , the abovementioned two amendments were held to be bad in law by this Court. From the final directions given by this Court in paragraph 47 of the judgment, it is evident that this Court partly accepted the petition by striking down two amendments which were introduced by notification dated August 16, 1994. From paragraph 39 of the judgment, it transpires that during the course of arguments, the learned Additional Solicitor General of India brought to the notice of this Court, the fact that construction had already taken

place along such rivers, creeks etc. at a distance of 50 meters and more. This Court observed that there could not have been uniform basis for demarcating "No Development Zone" and it would depend upon the requirements by each State Authority concerned in their own management plan, but no reason had been given as to why in relation to tidal rivers, there was a reduction of the ban on construction from 100 meters to 50 meters. This Court also took into consideration the fact that no explanation had been given in the affidavit filed on behalf of the Union of India as to why the construction was permitted at a distance of 50 meters and more along rivers, creeks etc. This Court found that reduction of the ban on construction from 100 meters to 50 meters would permit new constructions to take place and, therefore, the reduction could not be regarded as a protection only to the existing structures. Further, this Court noticed that there was absence of a categorical statement in the affidavit to the effect that such reduction would not be harmful or result in serious ecological imbalance. The Court expressed its inability to conclude that the amendment was made in the larger public interest and was valid. The said amendment was held to be contrary to the object of the Environment Act and found not to have been made for any valid reason. Thus, the two amendments out of six amendments introduced by the amending Notification were declared to be illegal.

From the record, it becomes clear that the petitioners had made an application to the Panchayat to inspect the construction made on Survey No. 12/1 and 99/2 which were stretches of lands lying between 50 meters and 100 meters. In view of the contents of the said letter, a Panchayat official had inspected the site on September 25, 1996 and prepared a site inspection report. The said report indicated that the petitioners had completed foundation work up to the plinth level and in some of the areas of the property, the construction work of the building was complete and ready for occupation.

However, People's Movement for Civic Action, i.e., Respondent No. 4 herein made a complaint to the local Goa Coastal Zone Management Authority, i.e., the respondent No. 3 regarding constructions made by the petitioners between 50 meters and 100 meters. Pursuant to the said complaint, the Goa Coastal Zone Management Authority on October 22, 2006 issued communication through its Secretary, to the Additional Collector stating that on a joint inspection of the site at Survey Nos. 99/2, 12/1 and 96, it was found that the construction work was going on in violation of CRZ Guidelines inasmuch as construction was made between 50 meters to 100 meters of "High Tide Line". By the said letter, the respondent No. 3 requested the Additional Collector to ascertain whether clearance under CRZ had been obtained. On October 22, 2006, an order was passed by the Collector, North Goa District directing the petitioner to stop the construction at the site. Based on a complaint by Goa Bachao Abhiyan to the Chief Secretary regarding alleged violation of CRZ norms, the Additional Collector, North Goa issued a stop work order dated December 22, 2006 and directed the Police and Town Planning Authority to maintain the status quo at the site. On December 28, 2006, petitioner No. 1 made a representation to the MOEF

to issue clarification that the project of the petitioner No. 1 was an on-going project and as the same was sanctioned according to the rules and regulations then applicable, the stop work notice by the Additional Collector was illegal. The Central Government, through the Ministry of Environment and Forests ("MOEF" for short) vide letter dated January 24, 2007 addressed to the petitioner with copy to the Director and Joint Secretary, Department of Science, Technology and Environment, Government of Goa, clarified that new developmental activities to be carried out in the zone between 50 meters and 100 meters in the High Tide Line along with inland tidal water bodies would attract the provisions of CRZ notification of 1991 from the date of the order of the Supreme Court, i.e., from April 18, 1996. In spite of the receipt of abovementioned communication, the Goa Coastal Zone Management Authority did not act upon the directions issued by the MOEF. Therefore, the Petitioner No. 1 made another representation to the Central Government with a request to issue necessary clarifications to the authorities. A further clarification dated February 13, 2007 was issued by the Additional Director of the MOEF. In the said clarification, earlier communication dated January 24, 2007 was referred to and it was clarified that any developmental activity which had been initiated between August 16, 1994 and April 18, 1996 after obtaining all the requisite clearances from concerned agencies including the Town and Country Planning Authority should be construed as an on-going project. Even after this clarification, the stop work order was not lifted. The Goa Coastal Zone Management Authority ("GCZMA", for short) addressed a communication dated March 28, 2007 to the Additional Collector stating that it was decided that on the property of the petitioner No. 1, "No Development Zone" should be marked at 100 meters and the stop work order, if any, in operation beyond such "No Development Zone" should be vacated. On receipt of communication dated March 28, 2007 from Goa Coastal Zone Management Authority, the Additional Collector, Goa, passed an order dated May 23, 2007 purporting to vacate the stop work order dated December 12, 2006 but, in fact, permitting the construction beyond 100 meters and not 50 meters. The petitioners, therefore, made third representation to MOEF and requested to issue fresh clarifications. The petitioners had also annexed copy of the letter dated March 28, 2007 addressed by the G.C.Z.M. Authority to the Additional Collector. On receipt of the said representation, the MOEF, Government of India, issued clarification dated May 16, 2007. A reference was made to its earlier letter dated February 13, 2007, it was mentioned therein that it was not clear as to why GCZMA had not taken into consideration the clarification dated February 13, 2007 of MOEF before addressing letter dated March 28, 2007 to the Additional Collector, Goa in relation to the development made in property bearing Survey No. 12/1 (pt.) 12/2 and 99/2 of Village Bambolim Taluka Tiswadi, Goa. By the said communication, the Member-Secretary, Department of Science, Technology and Environment of Government of Goa was requested to get the matter examined by the Goa Coastal Zone Management Authority keeping in view the clarifications issued by the Ministry vide letter dated February 13, 2007.

In spite of the receipt of the communication from MOEF, the stop work orders were not lifted and allowed to operate. Therefore, the petitioners filed writ petition No. 365 of 2007 in the High Court of Bombay at Goa challenging the stop work orders dated December 22, 2006 and May 23, 2007 passed by the Additional Collector, Goa. During the course of hearing of the writ petition on July 24, 2007, the learned Additional Solicitor General appearing for the MOEF made a statement before the Court that from the records it was clear that the project of the petitioners had been treated by the Central Government acting through the MOEF as an ongoing project. In view of this statement made on behalf of the Central Government, the learned Advocate-General appearing for the Goa Coastal Zone Management Authority and for the State of Goa stated at the Bar that the State of Goa would withdraw the stop work orders dated December 22, 2006 and May 23, 2007 to the extent, they imposed an embargo on construction between 50 meters and 100 meters and that the withdrawal letter would be issued to the petitioners within a period of one week from the date of the order. The record shows that the statements made at the Bar by the learned Additional Solicitor General and learned Advocate-General were accepted by the Court and, therefore, the petitioners had not pressed the said writ petition. The writ petition was accordingly disposed of by order dated July 24, 2007.

The record further shows that thereafter writ petition No. 403 of 2007 was filed by People's Movement for Civic Action and Goa Foundation, a society registered under the Societies Registration Act challenging the order dated October 8, 1998 passed by the Panchayat of Curca, Bambolim and Talaulim, Goa by which permission to construct was renewed in favour of the petitioners. Initially, the Court had directed the parties to maintain status quo. The Court had also directed the Secretary, MOEF to place the stand of the Environment Ministry of the Central Government on the record by filing an affidavit. The record shows that in compliance of the said direction, an affidavit affirmed on September 12, 2007 by Mr. K. Uppily, Additional Director in the MOEF, Government of India was filed expressing the view of the Ministry that any developmental activity which had been initiated between August 16, 1994 and April 18, 1996 after obtaining all the requisite clearances from the concerned agencies including the Town and Country Planning Development should be construed as an ongoing project. In the said affidavit, it was also mentioned that the Ministry had decided to place the matter before the National Coastal Zone Management Authority in its meeting which was scheduled to be held in October 2007 and the contentions of the People's Movement for Civic Action etc. as also the communications dated July 17, 2007 of Goa Coastal Zone Management Authority and the contentions of the petitioners would be examined by the said Authority.

In the light of the facts mentioned in the affidavit filed on behalf of the Ministry, the High Court directed the National Coastal Zone Management Authority to consider the matter referred to it by the Ministry and submit a report to the Court after giving a personal hearing to all the concerned parties. The High Court clarified that the National Coastal Zone Management Authority should decide the

matter on merits without being influenced in any way by the filing of writ petition or the observations made by the Court. It was also clarified that if the order was adverse to the petitioners, they would be at liberty to challenge the same. Further, the Goa Coastal Management was directed to take action in accordance with law subject to the rights of the petitioners to challenge the said report. The Court further stated in its order that the Peoples Movement for Civic Action and Goa Foundation would also be at liberty to move the court for appropriate relief in case the report of National Coastal Zone Management Authority was adverse to it.

The record shows that the National Coastal Zone Management Authority considered the matter in detail in its meeting held on October 30, 2007. The Authority, after detailed discussions, was of the view that there would be several cases all over the coast wherein there would be some instances indicating that constructions work had been completed or was in progress pursuant to the Notification dated August 16, 1994. Therefore, the Authority concluded that the stand taken by the MOEF vide letters dated January 24, 2007, February 13, 2007 and May 16, 2007 was correct one and was in accordance with the CRZ notification of 1991. The Authority also noticed that the clarification given by the MOEF was applicable to all cases in the coastal areas of the country. What was reported by the said Authority was that this Court while setting aside two out of six amendments dated August 16, 1994 in Writ Petition No. 664 of 1993 had not passed any orders with regard to cases in which the construction had been completed or was in progress and, therefore, all the properties and assets constructed or under construction in the period between August 16, 1994 and April 18, 1996 during which the set back line was changed from 100 meters to 50 meters was valid. The Authority noted that if it would have been otherwise, this Court would have passed specific orders. The Authority ultimately expressed the view that the interpretation of phrase "on-going" by the Goa Coastal Zone Management Authority was incorrect and all the properties and assets constructed or under construction during the period between August 16, 1994 and April 18, 1996 should be maintained and should not be destroyed.

34. The Hon''ble Supreme Court was, therefore, considering the question as to whether completed constructions or on-going, pursuant to plan sanctioned on the basis of a Notification dated 16th August 1994, would be affected by the judgment of the Hon''ble Supreme Court in the case of Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, .

35. After considering the rival contentions and perusing the judgments so also the Notification, what the Hon''ble Supreme Court concluded is thus:

On perusal of the judgment in entirety, it is abundantly clear that the judgment is in form of directions to the Central Government and other authorities formed within the purview of Environment Act, 1986 and those directions are to be followed in future.

While interpreting the judgment, it is important to take into consideration the view expressed over the matter in controversy by various Governmental Authorities formed under the purview of Environment Act, 1986 to implement the provisions of Environment Act, 1986 although such view or opinion is not binding on the Court. By communication dated January 24, 2007, February 13, 2007 and May 16, 2007 issued by Additional Director of Ministry of Environment and Forests and decision of National Coastal Zone Management Authority dated October 30, 2007, it is brought on record that all the authorities unanimously opined that judgment of this Court dated April 18, 1996 will operate prospectively and further clarified that any developmental activity which has been initiated between August 16, 1994 and April 18, 1996 after obtaining all requisite clearances from the concerned agencies including the Town and Country Planning should be construed as on-going projects and are not hit by the judgment of this Court dated April 18, 1996.

It is pertinent to note that while interpreting the judgment, public interest should be taken into consideration. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, this Court considered the factors which are to be taken into consideration while giving prospective operation to a judgment. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the Court to decide, on a balance of all relevant considerations, whether a decision which unsettles the previous position of law should be applied retrospectively or not. The Court would look into the justifiable reliance on the previous position by the Administration; ability to effectuate the new rule adopted in the overruling case without doing injustice, whether its operation is likely to burden the administration of justice substantially or would retard the purpose. All these factors are to be taken into account while determining whether a judgment is prospective or otherwise. The Court would adopt either the retroactive or non-retroactive effect of a decision after evaluating the merits and demerits of a particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard the object of the judgment. The purpose of the old rule, the mischief sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment has prospective or retrospective operation. It is well known that the courts do make the law to prevent administrative chaos and to meet ends of justice. Taking into consideration all these factors, this Court refuses to interpret the 1996 judgment in a manner which would give it a retrospective effect. It is clear from the tenor of judgment and from other background circumstances, more importantly in view of decisions of NCZMA which is a statutory body that Three Judge Bench decision in 1996 case intended to give it prospective effect.

The contention of Mr. K.K. Venugopal, learned senior counsel for the respondents

that decision should not have been taken by the NCZMA on October 30, 2007 stating that all the properties and assets constructed or under construction during the period between August 16, 1994 and April 18, 1996 when the set back line stood changed from 100 meters to 50 meters, is valid and the said authority should have directed the parties to approach the High Court for appropriate orders, cannot be accepted. As observed earlier, the whole matter was reconsidered by the NCZMA pursuant to the order passed by the Division Bench of the Bombay High Court. It is well to remember that the said order was never challenged by the respondents before higher forum and by their conduct, the respondents had permitted the said order to attain finality.

The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court in Indian Council for Enviro-Legal Action (supra) but incomplete construction cannot be permitted to be completed is devoid of merits. Two amendments made in the year 1994 were declared to be illegal vide judgment dated April 18, 1996. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallized by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amending notification was declared illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever.

The plea that the petitioner would get benefit of interpretation placed by statutory bodies and others would not get any benefit and, therefore, the petition should be dismissed has no substance. A bare glance at the minutes of the 16th meeting of the NCZMA held on October 30, 2007 makes it more than clear that it was concluded by the authority that the stand taken by the Ministry vide letters dated January 24, 2007, February 13, 2007 and May 16, 2007 was correct and was in accordance with Coastal Regulation Zone Notification of 1991. What is relevant to notice is that the said authority has in terms held that the clarification given by the MOEF is applicable to all such cases in the coastal areas of the country. Therefore, the plea that only petitioners have been favoured by the authority and, therefore, the petition should be dismissed cannot be accepted.

On the facts and in the circumstances of the case, this Court is of the opinion that a good case has been made out by the petitioners for issuance of a declaration that the judgment dated April 18, 1996 rendered in the case of Indian Council for Enviro-Legal Action (supra) will not affect the on-going 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 this Court.

36. Concluding on the aforesaid lines and for the reasons assigned, it was held by the Hon'ble Supreme Court in the case of Indian Council for Enviro-Legal

Action (supra), declaring part of the amending Notification dated 16th August 1994 to be illegal, will not affect the completed or the on-going constructions being undertaken pursuant to the said notification. Rule was made absolute in these terms.

37. It is on the above material that Mr. Kamdar, learned senior counsel appearing on behalf of the applicants submits that this is a judgment between the same parties. The applicants are not relying upon the observations and conclusions as if this judgment of the Supreme Court is a precedent for some other case. It is the facts of the very case and between the same parties and noting their rival stands, that the Supreme Court held as above. This judgment of the Hon''ble Supreme Court will, therefore, bind both, the applicants as well as the original petitioners and other respondents. Now, if the writ petition is perused together with its annexures, it would be apparent that this event being subsequent and dealing with the same controversy, nothing survives for determination of this Court in the writ petition. The writ petition is, therefore, liable to be dismissed.

38. Mr. Kamdar has invoked the principles of res judicata and constructive res judicata in this case. Therefore, he was at pains to point out that we should not only look at what has been held by the Hon''ble Supreme Court in this judgment, but also peruse the affidavit that was filed by the original petitioners who opposed the writ petition and the other applications before the Supreme Court, in this behalf. He invites our attention to the affidavit in reply filed by the Goa Foundation to the writ petition. This affidavit in reply was filed in the Hon''ble Supreme Court by the Goa Foundation while dealing with Writ Petition No. 329 of 2008. This affidavit is verified and affirmed on 19th October 2009. Mr. Kamdar has taken us through this affidavit in some what extenso to urge that in paras 5, 16, 18, 22, 23, 30, 31, 33 and 38 of this affidavit in reply, the gamut of the controversy raised in present Writ Petition No. 403 of 2007 was placed before the Supreme Court. The examination of the further paras, viz., paras 40 to 42 of this affidavit would show that even the documents, some of which are annexures to the instant writ petition, have been referred to with their contents. Therefore, this is a case where whatever has been raised and could have been raised while dealing with the allegations and statements in the Writ Petition No. 329 of 2008 before the Hon''ble Supreme Court has been raised and what ought to have been raised, also is deemed to be raised and duly considered. This is a principle of res judicata and constructive res judicata, which is clearly applicable in the facts of this case. Mr. Kamdar, therefore, submits that this is an application invoking powers of this Court akin to Order VII Rule 11 (d) of the Code of Civil Procedure, 1908, to seek dismissal of the writ petition. Therefore, even if it is admitted, that is no bar for entertaining and deciding the instant application.

39. In support of his submissions Mr. Kamdar has placed heavy reliance on a following chart handed over by him together with the note and the decisions in the following cases:

(1) (1985) 2 CCC 670 - Daman Singh & Others vs. State of Punjab & Others;

- (2) Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ;
- (3) (2004) 5 SCC 222 - Common Cause vs. Union of India & Others;
- (4) T.P. Moideen Koya Vs. Government of Kerala and Others,
- (5) Joydeep Mukharjee Vs. State of West Bengal and Others, .

40. The chart according to the learned senior counsel demonstrates para-wise the allegations in the Writ Petition No. 403 of 2007 and the Supreme Court judgment in Writ Petition (Civil) No. 329 of 2008 where they are required. Mr. Kamdar submits that above principles apply even to a Public Interest Litigation. Hence, there is a legal bar now to the maintainability of the writ petition and it must be dismissed. Allowing it to remain on file for being proceeded further would be abuse of the process of this Court and undue and uncalled for harassment and embarrassment to the applicants. Now, the construction having been held to be legal and substantially completed, all the more the application deserves to be allowed.

41. The stand taken by Mr. Kamdar has been duly supported by the learned Advocate General and other senior counsel appearing for the private parties. It is also supported by the applicants in Misc.Civil Application No. 703 of 2011. Mr. A.N.S Nadkarni, learned senior counsel appearing for the applicants in that application additionally invited our attention to the affidavit of Goa Foundation (original respondent No. 5 in Writ Petition No. 329 of 2008 before the Hon"ble the Supreme Court of India), so also the finding of the Hon"ble Supreme Court in para 14 of its judgment delivered in that Writ Petition on 31st March 2010. It is submitted by Mr. Nadkarni that certain false statements have been made in the writ petition and, therefore, all the more the writ petition deserves to be dismissed. In that behalf, he invited our attention to the prayers in this Misc.Civil Application and the paras 4 and 5 of the memo of the Writ Petition No. 659 of 2010. He also submits that para 7 contains a false statement that the revised NOC"s, construction permission, completion certificate and occupation certificate for hotel project within the CRZ of Bambolim were granted during the period 2008 and 2010 by the Town and Country Planning Department and by the Village Panchayat. It is further false to state that the previous permissions had been granted to respondent No. 3, there is no CRZ clearance from the Ministry of Environment, in the files. Mr. Nadkarni submits that even the statement made in para 27 is completely false and in any event is covered by the judgment and order of the Hon"ble Supreme Court in the above writ petition. For all these reasons, this is also not a surviving controversy, but must be held to be concluded by the Supreme Court decision.

42. On the other hand Ms.Norma Alvares appearing on behalf of the original petitioner-Goa Foundation submits that the writ petition must be seen in its entirety. At this stage, these applications which have been filed, must be dealt with on the basis that the applicants assume all the statements and allegations in the writ petition to be true and yet, seek dismissal of the writ petition on the

grounds of res judicata and constructive res judicata. However, once the writ petition is perused in its entirety, it will be clear that firstly the controversy still survives. The controversy would survive as far as the issue as to whether the construction within the specified distance is valid and legal. In this behalf, she submits that the Hon''ble Supreme Court has not transferred the Writ Petition No. 403 of 2007 to it for hearing and final disposal. She submits that Transfer Petition (Civil) No. 758 of 2008 was filed by these very applicants before the Hon''ble Supreme Court for transfer of PIL Writ Petition No. 403 of 2007, which was pending before this Court, to the Supreme Court and to be heard alongwith SLP (Civil) No. 16728 of 2008. She hands over a memo of this transfer petition and submits that the prayer therein was to transfer the proceedings PIL Writ Petition No. 403 of 2007 to the Supreme Court but this transfer petition has not been allowed. The Hon''ble Supreme Court in fact directed that Writ Petition No. 403 of 2007 be decided expeditiously and that direction issued earlier has not been varied or altered in any manner by the subsequent orders or the judgment delivered in Writ Petition No. 329 of 2008. Even otherwise the Supreme Court judgment in Writ Petition No. 329 of 2008 must be read as a whole. The Writ Petition No. 329 of 2008 has not been allowed in its entirety by the Hon''ble Supreme Court. The prayer in the said writ petition reads thus:

(a) Declare that the building plans sanctioned pursuant to the amended notification dated 16th August 1994 in the year 1995 duly revalidated till date are valid and subsisting and that the construction pursuant to the said building plans is also valid; and

(b)for ad-interim reliefs in terms of prayer (a) above;

43. In this behalf, Ms.Alvares invites our attention to paras 2 to 5 of the Supreme Court''s judgment and submits that the issue whether the construction by the applicants is a residential complex or a hotel, is still at large. There is no order of the Hon''ble Supreme Court revalidating the plans as prayed by the applicants. In these circumstances, this writ petition cannot be dismissed. In this behalf, she has invited our attention to paras 2 to 5 of the order of the Hon''ble Supreme Court in the Writ Petition No. 329 of 2008 dated 31st March 2010. She has then contended that the Hon''ble Supreme Court has restricted itself to the interpretation of the judgment rendered by it earlier in 1996 and that would be apparent if paras 16 to 18 of the order in the writ petition are carefully perused. She submits that there is no seal of approval on the construction made by the applicants in the present case. In other words, the challenge to the construction commenced, the legality and validity of the permissions granted, the other controversy including whether the permissions and approvals already granted are revalidated and, therefore, in force and to what extent and for what duration, are all matters which cannot be said to be concluded and decided by the Supreme Court. That is a logical conclusion which is sought to be drawn by the applicants counsel. It may be that the Writ Petition (Civil) No. 329 of 2008, was filed seeking validation and authorisation to the construction of the applicants before

us. However, that larger relief is not granted nor such grant can be otherwise inferred in this case. Therefore, inferences and possible conclusions cannot be said to be decisive. That would mean that every judgment is binding not for what it actually decides and concludes, but what could logically be inferred and possible from the same. The rule of precedents cannot be read in such a manner. A judgment is binding and conclusive for what it actually considers and decides and not what logically follows from it. In these circumstances, the Misc. Civil Applications cannot be granted. She submits that at the most what could be held to be concluded, is a fact that if the construction was commenced prior to the Supreme Court's judgment dated 18th April 1996 by the applicants, within the prohibited area, that would not be affected. If para 17 of the Supreme Court judgment is read, it is clear that the on-going or completed constructions pursuant to plans sanctioned under the amending Notification of 1994 till the two clauses of the same were set aside by the Supreme Court, would not be affected by the judgment of the Hon"ble Supreme Court in the case of Indian Council of Enviro-Legal Action (supra). However, whether that construction which commenced with a permission granted prior to the said date can continue without the permissions or approvals being revalidated or not or if revalidated, the period or duration of said revalidation having come to an end, could they be termed as illegal and unauthorised, are matters which cannot be said to be concluded by the decision in Writ Petition (Civil) No. 329 of 2008 rendered by the Hon"ble Supreme Court on 31st March 2010.

44. Ms.Alvares submits that the permissions are relied upon post the decision in Indian Council of Enviro-Legal Action (decided on 18th April 1996), cannot be said to be revalidated permissions or approvals. She has relied upon certain observations in the interim orders of this Court about missing files from the office of the Town Planning and contended that once there are distinct requirements under distinct laws, for construction of the nature carried out by the applicants, then, whether those approvals, permissions and licenses have been granted validly or assuming granted validly, whether the revalidation is in fact sought and done, are issues which will survive. She submits that the approvals/permissions for 1997, 1998 and 2005 are not revalidated permissions at all. There is no Town Planning approval, leave alone the revalidation/renewal. Further, importantly, there is construction of the applicants, which is not at all in accordance with the plan of 1995 and assuming it is so commenced, yet, this plan has not been approved after 2005. Thus, in the crucial period between 1995 to 2005 whether the construction during the same could be stated to be legal and authorised, are matters and issues still pending for consideration. The writ petition cannot be dismissed in the garb of allowing an application of the instant nature and particularly invoking Order VII Rule 11(d) of the Code of Civil Procedure, 1908. Therefore, she submits that the Misc.Civil Applications be dismissed.

45. With the assistance of Mr. Kamdar, Mr. Nadkarni and Ms.Alvares, we have perused the applications and all annexures thereto, including the Hon"ble Supreme Court's orders in the field. We have also perused very carefully the

memos in the writ petition which are public interest litigations and the prayers and the reliefs therein. We have also perused the decisions that have been brought to our notice.

46. For properly appreciating the rival contentions, it would be advantageous to note that Order VII Rule 11(d) of the Code of Civil Procedure, 1908 contains provisions wherein a plaint can be rejected in the cases set out under clauses (a) to (f) and in this case, we are concerned with clause (d) which states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. That principle or something analogous thereto is sought to be invoked in this case. The law that is pressed into service is section 11 of the Code of Civil Procedure, 1908, which speaks of *res judicata*. What is essentially argued before us is that the substantive provision together with Explanation IV, V and VI can be invoked in this case. While it may be true that in a given case this principle can be invoked even in writ jurisdiction and can also be applied to a Public Interest Litigation, yet, the facts and circumstances of each case would have to be considered before granting any relief under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 or analogous provisions.

47. In the instant case, we have proceeded on the agreed basis that the contents of the Writ Petition No. 403 of 2007 and Writ Petition No. 659 of 2010, are not disputed. The allegations and averments are contested only on a demurrer. A demurrer means without accepting the same to be true and correct but proceeding on the premise and assumption as above, there is no cause of action disclosed or surviving and, therefore, these Public Interest Litigations be dismissed.

48. Once such is the agreed basis, then, all that we have to see is what the writ petition projects. The writ petition projects a grievance of the public that M/s. Goan Real Estate and Construction Ltd and Goan Hotel and Clubs Pvt Ltd had carried out construction in the CRZ of Bambolim and the allegation is that this was done when there was a complete ban. When the petition was filed, the allegations proceeded on the basis that development work in the 100 mtrs No Development Zone of the concerned survey numbers is not permissible in law. We have perused the averments in the writ petition and particularly the clauses or sub paras of para 7, which would it make clear that the construction activity or development prior to 18th April 1996 has been put in issue on the footing that the Supreme Court judgment in the case of Indian Council for Enviro- Legal Action (*supra*) is retrospectively applicable. However, what emerges from the allegations and factual foundation is, that the construction had commenced based on the approval from the Town and Country Planning Department, Village Panchayat and these may be series of permissions commencing from 1993 and styled "1993 permissions" for construction of a particular type or nature. However, these licenses which were issued, came to be suspended by the Panchayat Resolution. Subsequently, the permissions were renewed in November 1996. Thereafter, the Town and Country Planning Department cancelled the 1995

permission dated 31st May 1995 and thereafter on 21st September 1996 Panchayat Officials conducted a site inspection in respect of five letters addressed to the Panchayat by the respondents to the writ petition. Four of the five letters do not relate to Survey No. 12/1 and 99/2, which are subject matter of Writ Petition No. 403 of 2007. Then there are allegations with regard to one of the letters (fifth letter), but that is with reference to Panchayat 1993 permission and not the 1995 permission, namely, areas within 50 to 100 mtrs. The inspection reports dated 25th September 1996 and the letter dated 5th December 1995 have been relied upon, including the map of the construction and the inspection report.

49. Para 7(h) of the memo of the writ petition, however, is very crucial and that would indicate that the controversy very much survives for determination and consideration. The controversy must be seen in a proper perspective and as a whole and whether there was a valid and legal permission to construct within 50 to 100 mtrs as is emphasised, because the property was purchased in the year 1993 after the CRZ Notification came into force. At the time of notification, CRZ along the sea and along the estuaries was 500 mtrs from the High Tide Line with No Development Zone of 200 mtrs from the High Tide Line and restriction on class of constructions permissible between the 200 to 500 mtrs zone from the High Tide Line. In the case of rivers, the CRZ was 100 mtrs or the breadth of the river if less than 100 mtrs. The Gazette Notification of 1st April 1993 is relied upon and it is argued that even the area within 100 mtrs of the High Tide Line was also converted by the exercise of land use change and that is not permissible as it is the No Development Zone. The Town and Country Planning Department granted approval for the project with 100 mtrs set back on 29th October 1993. Subsequently, after the Supreme Court struck down the 50% as unconstitutional and illegal, the Town and Country Planning Department once again issued the approval with 100 mtrs set back.

50. The allegation is that the CRZ Notification was amended in 1994, relaxing the 100 mtrs zone along the rivers to 50 mtrs. The applicants- private respondents immediately filed a fresh proposal for construction of bungalows in 50 to 100 mtrs zone. The No Objection Certificate was granted by the Town Planning Department and subsequently by order dated 31st July 1995, the Village Panchayat of Bambolim approved the construction (relocation of 18 blocks) and all these permissions are extensively referred to. It is stated that in the report of the surveyor of the Government of Goa dated 4th May 2007, the status of construction was stated to be three plinths which were erected in the area between 50 to 100 mtrs and the construction did not progress beyond that stage and subsequently, the applicants gave up the construction activity in this area.

51. Then the Supreme Court judgment is relied upon. At best it could be said that by judgment and order dated 31st March 2010 in Writ Petition (Civil) No. 329 of 2008, part of the controversy may stand concluded and would not survive. However, to what extent and in relation to which part of the controversy

a judgment interparties and law laid down therein would apply, will still have to be ascertained and considered. Once what is put in issue is the construction within the prohibited line or area and construction which even though commenced can be said to be on-going or completed so as to hold that it is completely legal and authorised on account of subsequent developments or not, are matters which cannot be summarily decided and by accepting the factual narration in the orders of the Supreme Court relied upon. The factual narration in the judgment is to emphasise the ultimate conclusion rendered about the retrospectively or otherwise of the earlier in the case of Indian Council for Enviro-Legal Action (supra). At best the construction within the prohibited zone may be on-going and not hit by the earlier judgment but post commencement and further developments particularly after 1996 cannot be said to be concluded even going by the applicants' assertions.

52. In any event, if the permission of 1995 is stated to have expired on 30th June 1998 and when respondent Nos. 6 and 7 have applied for revalidation, that the Panchayat granted an extension by order dated 8th October 1998 for three years, the controversy whether this revalidation was an illegal extension of 1995 permission or whether the revalidation was permissible in law but not effected in accordance with the procedure prescribed therein, are matters which will have to be looked into by us. The controversy in Paras 7(h), (I), (ii) and paras 7(j) and (mm) cannot be said to be concluded by the judgment and order of the Supreme Court in Writ Petition (Civil) No. 329 of 2008 decided on 31st March 2010.

53. Even if what is put in is issue in relation to National Coastal Zone Management Authority's order passed on directions of this Court and that could be stated to be concluded in terms of the Supreme Court judgment, yet, what essentially then falls for consideration is whether the allegations of fraud which are levelled and which are serious in nature, can be brushed aside by us at this stage itself.

54. In this behalf, para 7(c) and 7(d) of the writ petition at page 15, are eloquent enough.

55. It is in these circumstances, that some of the reliefs and particularly as claimed in para 8(1aa) and the challenge to the orders dated 8th October 1998, 1st September 2001 and 17th September 2005 of the Panchayat of Bambolim and Talauim would still very much survive.

56. However, reliance is placed on the corrected orders made in Civil Appeal No. 5281 of 2008 and Civil Appeal No. 5282 of 2008. Therein, the interim orders granting status-quo and amendments to the memo in this writ petition passed by this Court were challenged. The Hon'ble the Supreme Court noted the facts and also the orders passed by this Court in a certain Writ Petition (Civil) No. 365 of 2007, which was filed by the applicants herein challenging the stop work orders dated 22nd December 2006 and 23rd May 2007 passed by the Additional Collector, Goa and held that earlier the High Court had rejected an application for

interim relief noting that the Central Government had itself referred the matter to National Coastal Zone Management Authority. While declining the interim relief by its order dated 12th September 2007, this Court directed the said Authority to consider the matter after giving personal hearing to all parties. The record shows that the Authority gave hearing to all parties and treated the project of the appellants as an on-going project. Thereafter, a decision was rendered by the National Coastal Zone Management Authority on 30th October 2007, which was challenged by the original petitioners-Goa Foundation by amending the PIL Writ Petition No. 403 of 2007. The Hon'ble Supreme Court in the companion Appeal bearing No. 5282 of 2008 held that the validity of the order dated 30th October 2007 passed by the National Coastal Zone Management Authority is upheld by this Court by the judgment delivered in Writ Petition (Civil) No. 329 of 2008. Therefore, the order dated 5th August 2008 passed by this Court permitting the original petitioners to amend the PIL Writ Petition No. 403 of 2007 so as to enable them to challenge the legality of order dated 30th October 2007, has become infructuous. Civil Appeal No. 5282 of 2008 was disposed off accordingly.

57. As far as Civil Appeal No. 5281 of 2008 is concerned, the Hon'ble the Supreme Court held that the order of status-quo dated 10th July 2008 could not have been passed by this Court because of the clarification given by the National Coastal Zone Management Authority. It has clarified that its decision is applicable to all such or similar cases in the coastal areas of the country. In such circumstances and when the validity of the order of the National Coastal Zone Management Authority having not been considered would mean that there will be considerable loss to the applicants if the construction is stopped. They have invested huge amount in the project and, therefore, the interim order could not have been passed. Thus, the interim order passed by this Court on 10th July 2008 was vacated and set aside and the applicants were permitted to complete the incomplete construction at their own risk and costs. At the same time, in the order passed on 28th August 2008 in this appeal, the Supreme Court clarified that the main writ petition should be disposed off on merits without being inhibited by the order granting interim relief. This order coupled with the fact that the PIL Writ Petition having not been transferred for disposal to it by the Supreme Court although specifically requested, would support our conclusion that the writ petition was still to be disposed off on its own merits and in accordance with law. The order passed on 31st March 2010 on Transfer Petition (Civil) No. 758 of 2008 once again clarifies that the PIL Writ Petition is pending before this Court since long and no case is made out by the very applicants before us to withdraw this and transfer the said writ petition to the Supreme Court and decide it alongwith the SLP filed in the Hon'ble Supreme Court. This order is subsequent to the order dated 28th August 2008 passed in Civil Appeal No. 5281 of 2008 and Civil Appeal No. 5282 of 2008.

58. Therefore, we see some substance in the contentions of Ms.Alvares that the writ petition cannot be dismissed straightaway. The writ petition cannot be dismissed and it would survive for consideration and atleast in relation to the

factual aspects and partial reliefs surviving after the Supreme Court judgment in Writ Petition (Civil) No. 329 of 2008. The clarificatory judgment in this writ petition may be at the instance of the present applicants and in relation to the facts and circumstances in this very PIL, but the Supreme Court has not held that the writ petition itself would be rendered infructuous. The subsequent developments were sought to be brought on record including the order of National Coastal Zone Management Authority, but that course has not been approved of and the order permitting amendment of the writ petition to that extent has been set aside. That does not mean that the writ petition itself will not survive. Once the factual position as has been narrated in the writ petition is only to be taken into account by us at this stage, then, it will not be permissible to hold that by the principles of res judicata or constructive res judicata, this writ petition deserves to be dismissed. It is pertinent to note that we have proceeded on the agreed basis that at this stage all the allegations as set out in the memo of the writ petition are taken as true and correct. Once such is the agreed position on which we had proceeded, then, it will have to be considered as to whether all the orders of the Supreme Court noted by us above result in a situation wherein the writ petition can be dismissed without a final hearing of the same. For that conclusion to be reached, we must hold that nothing survives for determination on the merits of the controversy raised in the writ petition.

59. We are of the opinion that we cannot reach that conclusion and we have given our reasons for the same.

60. This Court while admitting the writ petition had also noted that the controversy in the petition is that the renewals granted after 1998 must be subject to the rules in force as contemplated by Rule 7 of the Goa, Daman and Diu Village Panchayat (Regulations of Buildings) Rules, 1971. It was argued on behalf of the Panchayat as well as the State that the terms subject to the rules in force occurring in the Panchayat Rules only mean "the rules" made under the Village Panchayat Regulations to regulate construction and cannot be expanded and construed to mean that the renewal should be subject to the law in force. That argument has been noted but interim relief was declined for other reasons. However, we do not find any final expression or opinion on this aspect of the matter in any of the orders noted by us.

61. Similarly, we cannot lose sight of another order that has been passed by this Court on the controversy with regard to the missing files and records. On 19th March 2008 an affidavit has been filed by respondent No. 4 to the writ petition, namely, the Chief Town Planner, Panaji, Goa stating that no records/files are available with the Department and they are not in possession of any of the maps, i.e sanctioned plans or drawings which were submitted by these very applicants and/or sanctioned by the competent Authority. The petitioners at that time filed original maps which were obtained from different departments. That file was taken on record and statement of the applicants-original respondent Nos. 6 and 7 holding that they would file the original plans in their possession, was

recorded. The matter was stood over to 1st April 2008 and on 1st April 2008, the following order came to be made:

We have heard the learned Counsel appearing for the parties at some length. Various contentions have been raised which would be required to be mentioned by the Court before any determinative order can be passed by this Court. However, the order sheet of the Writ Petition shows that this case has peculiar history and the facts and circumstances of the case are exceptional to the extent that the records from all the Government Departments as well as the Panchayat are missing. The inquiry conducted by the Administration has so far not reached at any conclusion. The learned counsel appearing for the petitioner has reiterated their stand that they got the plans at pages 115 and 117 from the office of the Town Planner through one Kamal Pereira on 22/11/2007. They received the copy of the plan at page 122 of the file from the office of the Panchayat in September 2007. These were received while exercising their right under the Right to Information Act. It is some what strange that if the documents are filed in different Departments, how come they disappear and till date nothing constructive have come to the notice of the concerned Authority. Be that as it may, in the meanwhile, Officers of the Town Planning Department have also submitted a report to this Court stating that the construction being raised at the site in question is not in conformity with the plans. However, according to the learned counsel appearing for respondents No. 6 and 7, they have submitted revised plan for the consideration of the competent Authority which is their right in terms of regulation 3.6. However, according to the learned counsel appearing for respondent Nos. 6 and 7, they have submitted revised plan for the consideration of the competent Authority which is their right in terms of regulation 3.6. However, according to the learned counsel appearing for the petitioner, no right is vested in the said respondents to ask for revised plan in relation to construction between 50 to 100 mtrs of the HTL, in as much as, they have to abide by the plans which were approved in the year 1995. Be that as it may, without prejudice to the respective contentions of the parties, we pass the following directions:

(a) There is a serious dispute between the parties in regard to the plans which have been sanctioned and as per which the construction being raised by the respondents No. 6 and 7 is to be examined. It was noticed in the earlier orders that in respect of the three plans at pages 115, 117 and 122 of the paper book, there is a report of the Town Planning Department which relates to the plan at page 122.

(b) We direct the Town Planning Department to submit before this Court also stating on record what are the deviations in terms of the plans at page 116, sanctioned in the year 1993, page 117 alleged to have been sanctioned in the year 1995 and if there is any other report in relation to the plan at page 122. The report should positively be submitted within two weeks from today. In the meanwhile, we issue notice to show cause why the Court should not direct

investigation by an expert agency like CBI in relation to the missing files.

(c) The affidavit shall be filed by the respondent Nos. 6 and 7 clearly stating whether they had received the letter approving the plan indicated at page 122 and, if so, whether they have the copy of the said letter in their power and possession. If the answer is in affirmative, copy thereof should be filed. Without prejudice to the contentions raised by the petitioner, that the Authority has not jurisdiction to consider revised plan in relation to the construction between 50 to 100 mtrs, the Government in its discretion may disclose its stand in the plan at page 122.

62. A perusal of this order would indicate that there was a serious view taken of the matter inasmuch as records from all the Government Departments as well as Panchayat, are stated to be missing. The enquiry has not reached any conclusion. The plans that are produced by the petitioners after obtaining information under the Right to Information Act, 2005, were referred to and what this Court observed is that if the documents are filed in different departments, how they are disappearing, has not been clarified at all. At the same time, these very applicants before us made reference to the fact of submission of revised plan for consideration of the competent Authority which is done according to these applicants in terms of the right conferred by Regulation 3.6. However, it is challenged by the petitioners and argued that no assistance can be taken of the so called revised plans. Without prejudice to these respective contentions, the Court issued the above recorded directions.

63. Later on, the matter was placed on 28th April 2008 and the affidavit of the Town Planner which was filed, came to be referred together with the explanation offered therein and the Division Bench comprising of the then Hon"ble the Chief Justice Swatanter Kumar and N.A. Britto, J, as His Lordship then was, held that they were not satisfied with the explanation rendered and gave one more opportunity and placed the matter for final hearing and arguments on 21st June 2008.

64. It is thereafter that the interim order dated 10th July 2008 was passed. Ordinarily, the above interim order and direction having not been set aside by the Hon"ble the Supreme Court any findings in another order of the Supreme Court on the question of grant of interim relief, would not assist the applicants. However, what is to be noted is, that even para 9 of the order dated 10th July 2008 passed by this Court in Misc.Civil Application No. 866 of 2007 in the above writ petition refers to the investigation relating to files pertaining to the project and stated to be missing from the office of the Town Planner and the Village Panchayat and the request of the counsel for the petitioners to transfer the investigation to CBI. Once again, this Court sought a progress report in respect of investigation into the missing records.

65. It is in these circumstances, that we cannot hold that nothing survives in the writ petition at all. It is not something that is possible to be concluded when the

contours of the controversies are as noted above. This conclusion of ours is re-inforced by the order passed on 25th November 2009 in Misc.Civil Application No. 798 of 2009 in Writ Petition No. 403 of 2007. This Court in this order clearly observed that its earlier directions with regard to tracing the missing documents and making investigation into the allegation of the records and files being misplaced, is required to be pursued further. These orders are in force and they have to be taken to the logical conclusion one way or other. This Court clearly held that even if its interim orders dated 10th July 2008 and 28th August 2008 in the Writ Petition are quashed and set aside by the Hon"ble Supreme Court, the previous orders are still in full force and effect. It made a reference to the orders and directions dated 28th April 2008, which we have reproduced hereinabove. Noting thus, the Division Bench by its order of this date, viz., 25th November 2009, directed the State to file a final report in a sealed cover showing progress of investigation. Thereafter, nothing has been shown to us which would indicate that this issue will not survive. This issue assumes significance because of the fact that the Supreme Court has itself clarified that its order in the Civil Appeal No. 5281 of 2008 will not inhibit this Court in any manner in deciding the writ petition finally.

66. We have also noted that the order dated 31st March 2010 in Writ Petition (Civil) No. 329 of 2008 does not in any manner conclude the aforementioned issues, but at the most may conclude the limited controversy raised in this writ petition. In these circumstances, we are of the view that the Misc.Civil Application and the relief prayed therein, cannot be granted. It is accordingly dismissed.

67. The other Misc.Civil Application, namely, Misc. Civil Application No. 703 of 2011 is in Writ Petition No. 659 of 2010. Admittedly, this writ petition has been admitted on 29th September 2010. A perusal of the Misc. Civil Application filed therein would demonstrate that the controversy in that writ petition cannot be said to be concluded on the own showing of the parties by the order dated 31st March 2010 in Writ Petition (Civil) No. 329 of 2008. All that the memo of the Misc. Civil Application in that writ petition does, is to reproduce the same facts and circumstances including the findings in the Hon"ble Supreme Court's judgment, but what is pleaded therein is estoppel and the bar under Order II Rule 2 of the Code of Civil Procedure, 1908 or principles analogous thereto. Once we are of the opinion that neither Order VII Rule 11(d) nor principles analogous thereto and the explanations referred by us below Section 11 of the CPC are applicable, then, no relief can be granted on this Misc. Civil Application as well. In this case, what the applicants are alleging is that the writ petition be dismissed because there is suppression of material facts. However, that cannot be a ground to dismiss the admitted writ petition. It is the assertion of the applicants- respondent Nos. 1 to 3 in the writ petition that they have completed the construction as per the sanctioned plans duly approved by the Town and Country Planning Department and construction licence which was extended for further three years from 4th-5th October 2008 and they have also obtained occupation certificate on 11th July 2010. The hotel has already commenced

commercial operations and some has tie-up with the world renowned Hyatt Hotel Chain for bringing its top brand, the "Grand Hyatt".

68. The applicants-respondent Nos. 1 to 3 are also seeking dismissal of the writ petition also on the ground of delay and laches. Surely, all such matters pertain to the final relief that could be granted and if indeed this Court observes that there is any suppression of the material facts on the part of M/s.Goa Foundation or that the relief is barred by delay/laches, it will not grant the final reliefs or may grant them to a limited extent. Today, it cannot be speculated by and the writ petition cannot be dismissed without adjudication on merits, on the grounds permissible and available in law. That would mean that the writ petition which is duly admitted must be dismissed without proper trial and hearing and on preliminary points even though such course is impermissible in law. Therefore, keeping open the contentions raised by the applicants in the memo of this Misc. Civil Application and without prejudice to their rights in relation thereto, this civil application is dismissed.

69. We are inclined to dismiss this Misc. Civil Application because what is challenged by the petitioners M/s.Goa Foundation in that writ petition, is the revised construction licence and the occupancy certificate to the hotel project, which are all issued by the Village Panchayat. Various grounds have been raised to challenge them and we cannot brush them aside, particularly when the basis on which we have proceeded with is that all that is stated and averred is true and correct. The application for dismissal is based on a demurrer of the allegations. In these circumstances, it is all the more not possible to conclude that no part of the controversy would survive as claimed. Therefore, this Civil Misc. Application too stands dismissed.

70. There will be no order as to costs in both these Misc.Civil Applications. We at once clarify that our observations should not influence the Court at the time of hearing of the writ petition. Our orders do not in any manner conclude any of the issues and the controversy so also the entitlement to the relief. All contentions in that behalf of all the parties are kept open. Finally, what remains is a reference to the decisions that have been cited by Mr. Kamdar. We are of the opinion that on the basic principle that the explanation u/s 11 of the Code of Civil Procedure, 1908, which has been pressed into service by Mr. Kamdar, can definitely be invoked by the Court when it is considering the issue of summary dismissal of a Public Interest Litigation or even otherwise in relation to writ proceedings. However, the bar of res judicata or constructive res judicata will apply if there is a finality attached to the earlier decision. If we hold that the decision taken by the Court of competent jurisdiction has not finally determined the controversy so as to bind this Court, then, the applicability of the principle to the given facts and circumstances is always something which cannot be ignored. Therefore, each of the decisions which have been pressed into service would have to be seen in the peculiar backdrop of those cases and the facts and circumstances emerging from the record therein. Once there is a complete and effective adjudication not only

in individual petitions but in a writ petition raising the larger question, then, the principle of finality and fairness has been invoked and applied. Therefore, even applicability of the test of finality of judgments and public policy, which is the foundation on which rests the principle of res judicata and constructive res judicata, is ruled out in the facts of this case. All the decisions are, therefore, distinguishable. The plea of constructive res judicata is based on some of the paragraphs of the affidavit in reply filed by M/s.Goa Foundation in Writ Petition (Civil) No. 329 of 2008 before the Hon"ble the Supreme Court of India. It may be that those grounds and contentions were raised in the reply. It may be that it is not the law that the Supreme Court must specifically deal with them. They are deemed to have been noted and duly considered according to Mr. Kamdar. However, assuming that to be true, yet, the final order in the very writ petition, delivered on 31st March 2010, does not conclude the controversy in relation to the petitioners, but only clarifies the position in law, that earlier judgment of the Supreme Court in the case of Indian Council of Enviro-Legal Action (supra), will not have a retrospective effect. That will apply prospectively. However, whether the clarification would assist the petitioners in the facts of this case or it would be the position other way around and the applicants before us can derive any benefit therefrom, are all matters which would be left open and are indeed left open. Therefore, based on this principle as well, we cannot dismiss the writ petitions.