

(2011) 02 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 271 of 2010

Shri Vikas Bhagat

APPELLANT

Vs

Goa Coastal Zone Management Authority and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 02 BOM CK 0013

Hon'ble Judges : S.B. Deshmukh, J;F.M. Reis, J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; S.G. Dessai with Mr. V. Parsekar, S.S. Kantak, Advocate General with Mr. M. Salkar, Additional Government Advocate for Respondents Nos. 1 to 4, for the Respondent

Judgement

F.M. Reis, J.—The above Writ Petition is filed essentially on the ground that on Palolem beach of Canacona Taluka there has been rampant violation of the CRZ notification and that the shacks have been erected right in the sea water. It is further the case of the petitioner that Palolem beach is a small beach, which is occupied by more than eight shacks and the number of shacks which have come up on the said beach have made it impossible for the common people to go to the beach. It is further his case that the shacks have occupied the entire beach and the shack owners have placed excess number of deck beds on the beach. It is further the case of the petitioner that he has learnt that liquor and alcohol is being sold on the said beach without permission from the Excise Department and that they have illegally erected Tandoor Bhattis right on the beach. It is further his case that the above activities are totally illegal and that there is complete commercialisation of Palolem beach and that the beach is a public property and that the respondents are holding the said property in trust for the benefit of the public and that the activities carried out at the said beach are not permissible under the CRZ notification. For such reasons, the petitioner has prayed for a writ of mandamus or any other appropriate writ directing the respondents to remove all the shacks from Palolem beach. By an order passed by this Court on 19/04/2010, it was stated therein that although the tourist season may be

coming to an end considering the facts of the case, it is necessary to monitor the situation specially in view of the fact that the activities have been going on every time which, prima facie, appears that there is no access to the beach whatsoever in view of the impugned erection of the shacks. As such, the petition was fixed on 6/09/2010.

2. On 4/10/2010, this Court after perusing the affidavit dated 30/09/2010 of the Member Secretary of the Goa Coastal Zone Management Authority (GCZMA) and considering that the said GCZMA and the department of Tourism would carry out joint inspection during the last week of October, 2010 at Palolem beach, to study the conditions of the beach and ascertain whether there is sufficient space available on the beach to erect eight shacks and considering that as per the photographs the shacks were located at the High Tide Level, where the water touches the bottom of the shacks, passed an order that no permissions shall be granted to erect the shacks up till such inspection is carried out till 15/11/2010. The report of joint inspection was directed to be filed on or before the said date.

3. Subsequently, the report was filed by the Member Secretary along with the affidavit dated 15/11/2010. On perusal of the said report dated 8/11/2010, it was stated therein that there is sufficient place to put up Government shacks i.e. for shacks nos.1 to 5. The distance from the water line and the private shacks i.e. the width of the beach was approximately 30 to 40 metres. It was further stated that the length of the shacks could be restricted to 10 metres so that the sea water even during High Tide does not touch the shacks. It was also stated that shack nos.6 & 7, if at all are granted, have to be monitored in the month of December and January when the locals have informed water level reaches quite high.

4. In affidavit-in-rejoinder filed by the petitioner, it was contended that as per the said report it is proposed to permit the setting up of beach shack on the seaward side of the High Tide Line and between the Low Tide Line and High Tide Line, which is impossible. It was further stated that the opinion expressed in the report dated 8/11/2010 is under pressure of the beach shack lobby. It was further stated that the Department of Tourism almost never monitors the structure after the permission to erect the shacks are granted. Thereafter, another affidavit came to be filed dated 15/12/2010 to place on record the sketch indicating the location of the space available for putting up eight shacks at Palolem beach. The Member Secretary has further stated that the distance of 45 metres mentioned in earlier affidavit is at the location of the shacks nos.1 to 5 and again near the location of shack no.8. Thereafter, a rejoinder was filed by the petitioner wherein a dispute was raised about the existence of the said distance of 45 metres as contended by the Member Secretary of the GCZMA. It was further stated that in the area lying between the High Tide Line and the Low Tide Line the respondent no.1 cannot grant permission for the erection of shacks. Photographs were also attached to the said affidavit. Thereafter, an affidavit came to be filed dated 20/12/2010 by the Member Secretary Shri Michael M.

D'Souza, who has stated that the shacks are permitted to be erected on various identified beaches of Goa for the last nearly 15 years pursuant to the directions of the High Court in Suo Motu Writ Petition No.2/2006 and that the Government has framed a policy for allotment of shacks on the beach stretches for the year 2006-2007 and since that year shacks are being allotted pursuant to a policy framed for a particular year. It was further stated that at the time of determining the number of shacks and their location, the location of the Low Tide Line and High Tide Line is not taken into consideration, because the shacks are erected during the fair weather season.

5. Mr. M.S. Sonak, the learned Counsel appearing for the petitioner has strongly objected to the erection of shacks at Palolem beach and submitted that such commercial activities are not permissible on the beaches which is a public property. The learned Counsel further pointed out that the shacks are being erected between the seaward side of the High Tide Line which is not permitted under the CRZ notification. The learned Counsel took us through the CRZ notification of the year 1991 and pointed out that no construction can be done between the High Tide Line and the Low Tide Line. The learned Counsel further pointed out that all the activities being carried out by the respondents in allotting shacks at Palolem beach are illegal. The learned Counsel took us through the affidavit of the Member Secretary, which was initially filed on 30/09/2010 and pointed out that the GCZMA had taken a decision not to allow any shacks at Palolem beach between the Low Tide Line and High Tide Line. The learned Counsel further submitted that the subsequent affidavit which was filed are personal opinions of the Member Secretary which are not binding on the GCZMA. He further pointed out that unless and until GCZMA had taken a fresh decision to allot shacks at Palolem Beach the question of granting any permission for such shacks would not arise. He, accordingly, submitted that respondents should be restrained from erecting any shacks at Palolem beach.

6. On the other hand, Shri S.S. Kantak, the learned Advocate General appearing for respondents nos.1 to 4 has pointed out that there is a shack policy in place in the State of Goa which does not prevent the Tourism Department from erecting shacks on beaches after consultation with the GCZMA. The learned Advocate General further pointed out that the earlier order passed by this Court directing that no permission should be granted until the inspection report was filed was an ad interim order and after the report was presented in this Court, after the joint inspection between the Tourism Department and the members of the GCZMA, the directions given by this Court should be vacated. Learned Counsel took us through the report and pointed out that as per the said report these shacks which are sought to be located do not in any way hamper the movement of the public at the said beach and as far as the remaining two shacks are concerned the authorities would monitor the situation and ensure that no illegal activities are carried out which would cause any obstruction to the free movement of the public on the said beach. The learned Advocate General further submitted that as per the shack policy such temporary structures are erected and used during the

tourist season on the beach and are removed after the season is over. The learned Counsel further submitted that erection of such shacks cannot be considered to be a construction activity which is not permitted under CRZ notification of 1991. Learned Counsel has further submitted that in Suo Motu Writ Petition and another Writ Petition which is pending before this Court in connection with the shack policy no interim relief has been granted restraining the State from erecting of shacks on the beaches. The learned Counsel further submitted that in any event a new CRZ notification has been issued by the Ministry of Environment and Forest and published in the Official Gazette which has come into force on 6/01/2011 which makes a special mention as far as the State of Goa is concerned, and such temporary structures are permissible within the CRZ area during the tourist season. The learned Counsel as such submitted that there is no substance in the contention of the learned Counsel appearing for the petitioner and as such the above Writ Petition deserves to be dismissed and interim order vacated.

7. Shri S.G. Dessai, learned Senior Counsel appearing for the intervenor has pointed out that all the beaches in Goa already have shacks erected on the beaches and only one beach at Palolem has been deprived of such shacks, in view of the order passed by this Court, in the above petition. The learned Senior Counsel further submitted that there is no illegality at all in erection of shacks on the beaches considering the shack policy which is in place in the State of Goa. Learned Counsel further submitted that the petition is motivated and, as such, it does not deserve to be entertained. Learned Counsel supported the contention of learned Advocate General with regard to the CRZ notification.

8. On perusal of the records and after carefully considering the submissions of the Counsel appearing for the parties, we find that in the affidavit filed by Shri Machael M. D'Souza, the Member Secretary of GCZMA has transcribed in his affidavit dated 30/09/2010 at para 6 thereof a portion of order passed by this Court in Suo Motu Writ Petition No.2/2006 wherein this Court, inter alia, has directed the Tourism Department to formulate its policy for grant of permission for shacks on the beaches in Goa including identification of the beaches where shacks may be permitted and other relevant aspects in consultation with the GCZMA so that the permissions are granted harmoniously with the object of preserving the beaches. It is further stated at para 7 that since the year 2007, the Department of Tourism has been finalizing its beach shack policy in consultation with the GCZMA. The affidavit further discloses at para 18 that the GCZMA had considered the request of the Tourism Department for the purpose of allotting shacks at Palolem beach and that the members of GCZMA were of the view that such a situation of shacks in Low Tide Line and High Tide Line should not be allowed. The affidavit further states at para 21 that the GCZMA and the Department of Tourism would carry a joint inspection during the last week of October, 2010 at Palolem beach to study the condition of the beach and to ascertain whether there is sufficient space available on the beach to erect the eight shacks. In the subsequent affidavit filed by the said Member Secretary on

15/11/2010, it has been stated, inter alia, that the joint inspection was held and that the site inspection report was also prepared with regard to the locations of the shacks at Palolem beach.

9. In the additional affidavit filed by the said Member Secretary on 20/12/2010, he has stated that at the time of determining the number of shacks and their location the factors referred to at para 4 of the affidavit are taken into consideration along with the space available and the locality, and that the location of the Low Tide Line and High Tide Line is not taken into consideration.

10. Admittedly, the shacks are temporary structures which are erected during the tourist season and a shack policy is stated to have been framed by the State Government and is in place in the State of Goa for the last few years. It is admitted position that in Suo Motu Writ Petition pending before this Court, no interim relief has been granted with regard to the erection of the shack on the beaches of Goa. It is stated that pursuant to the joint inspection report prepared by the officials of the Tourism Department and GCZMA, some places have been identified for erecting shacks at Palolem beach. The said shacks cannot be considered to be constructions of permanent nature, as such temporary structures are allowed to be erected only during the tourist season.

11. We have perused the minutes book of the meetings of the GCZMA and we have noted that after the 56th meeting which was held with regard to the erection of shacks at Palolem beach, there were no subsequent meetings with regard to this aspect specially after the joint inspection report was filed by the officials of the Tourism Department and the GCZMA. It is alleged that the new CRZ notification is stated to be in force. Considering the overall aspects of the matter, we feel it appropriate that the GCZMA should deliberate the erection of shacks at Palolem beach after considering the material on record and in accordance with law. In view of the above, the Writ Petition stands disposed of by directing the GCZMA - respondent no.1 to decide about the erection of shacks at Palolem beach afresh after considering the said report, and other material and in accordance with law. The petition stands disposed of accordingly with no order as to costs. Interim/ad interim relief, if granted earlier by this Court, stands vacated.