
(2016) 06 BOM CK 0169
In the Bombay High Court
Case No : Writ Petition No. 2 of 2006

Suo Motu

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226 & 227

Citation : (2017) 2 AIRBomR 726 : (2016) 5 BCR 179

Hon'ble Judges : F. M. Reis and Nutan D. Sardesai, JJ.

Bench : Division Bench

Advocate : Ms. Norma Alvares, Amicus Curiae, for the Petitioner; Mr. P. Faldesai, Addl. Government Advocate, for the Respondent Nos. 2 and 3; Mr. P. Korgaonkar, Advocate, for the Respondent No. 9; Mr. K. More holding for Mr. H. D. Naik, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

F. M. Reis, J. (Oral)—Heard the learned counsel appearing for both the parties.

2. Rule. Heard forthwith with the consent of the learned counsel appearing for the parties.

3. The learned counsel appearing for the respective respondents waive service.

4. A Suo Motu cognizance was taken by this Court based on the news item in the local news paper by an order dated 31.07.2006 and accordingly notices were issued to the concerned Government Authorities. Thereafter, by order dated 08.08.2006 the learned Amicus Curiae appointed by this Court brought to the notice of this Court the various orders and the guidelines issued in different other petitions in connection with the structures which mushroomed within the NDZ area and subject to the CRZ Regulations, 1991. Accordingly, this Court by order dated 08.08.2006 passed the following directions.

"6. Having heard Mrs. Alvares, it has become necessary to issue following

directions to the State Government.

(a) The Chief Secretary State of Goa and the Goa Coastal Zone Management Authority, is directed to indicate on oath as to how many cases of illegal construction were detected in last three years, in how many cases the steps were taken to remove them and how many of them were actually removed.

(b) The State of Goa is directed to disclose on oath as to what facilities are placed at the door of the Goa Coastal Zone Management Authority, so as to enable them to discharge their duties effectively, amongst others leading to removal of illegal construction.

(c) The Goa Coastal Zone Management Authority is directed to disclose on oath with complete details and particulars as to in how many cases as on date, the interim injunctions and/or the stay orders granted by the Civil Courts are operating against them.

(d) The State Government and the Goa Coastal Zone Management Authorities are directed to disclose details with particulars as to how many shacks were put up pursuant to the permission granted by them, how many of them were removed and how many of them are yet to be removed. They are also expected to disclose as to whether or not those shacks, which are still in existence, would interfere with the sand dunes and whether their existence is necessary to prevent erosion of sand dunes."

5. Subsequently, the matter was examined by this Court on 16.07.2007 wherein it was noted that there were structures existing in the NDZ area, some of which might have come up prior to the coming into force of the CRZ Regulations, 1991 and in order to identify such structures the Village Panchayats along the Coastal Belts were ordered to be impleaded. Accordingly, directions were issued to all such concerned Panchayats. Thereafter, the matter was taken up on 26.09.2007 wherein the concerned Panchayats also appeared and after perusing the entire records, this Court passed the following directions.

"(1) Each Panchayat/Municipality which has been served with a copy of the survey map prepared by the Directorate of Settlement and Land Records, shall identify from the survey maps given to it, those structures existing as on 19-2-1991 after excluding such structures in respect of which the CRZ Authorities had initiated the action but such action was discharged for any action whatsoever. This may be done by reference to the existing survey plans prepared under the Land Revenue Code or on the basis of permissions/licenses issued by the respective Panchayats/Municipalities. This exercise will be completed by each of the Panchayats/Municipalities by 31st January, 2008.

(2) In respect of other structures shown on the survey maps prepared by the Directorate of Settlement and Land Records i.e. those which are not identified as existing prior to 1991 as contemplated by Direction 1 herein above, the Panchayats/Municipalities shall issue notices to the owners and the occupants of

those structures to show cause as to why the said structure should not be demolished as having been constructed in the NDZ area. Such notices shall be issued latest by 29-2-2008.

(3) On perusal of the reply and after giving opportunity to the owners and occupants of giving them a personal hearing, the Panchayats/Municipalities shall take a decision on the existence of the structure prior to 19-2- 1991. This final decision shall be taken by the Panchayats/Municipalities within a period of ninety days from the date on which all the owners/occupants have been served.

(4) The structure in respect of Clause 3 will be demolished in case no stay has been obtained in any statutory appeal/appeals or any other legal remedy and this demolition will be completed within a period of sixty days from the date of the service of the final decision upon the owners and occupants.

(5) We are informed by the learned Advocate General that seven Panchayats and one Municipality has not been served with a copy of survey map as yet and that the same is likely to be served within a period of two weeks from today. In respect of the aforesaid seven Panchayats and one Municipality the schedule which is given for the issuance of notice in Clauses 1 to 4 herein above as contemplated in Clause 2 will stand extended to 15-3-2008.

(6) If the Panchayats/Municipalities observe any structures in the NDZ area which are not shown in the survey map it will be at liberty to include these structures in the steps described herein above.

(7) It is made clear that these directions only extend to areas which fall within CRZ III.

(8) The Panchayats/Municipalities are directed to regularly monitor the NDZ area to ensure that no additional structures in the 200 meters zone will be permitted to be constructed as indicated in the survey maps. If any new construction is detected the Panchayats/Municipalities shall immediately take action against the same in accordance with law.

(9) It is further made clear that these directions will also not apply to structures which have been held to be validly constructed or repaired with permission of the CRZ Authorities and to structures in respect of which action has already been initiated by the CRZ Authorities/Panchayats/Municipalities before the date of the passing of this order."

6. Based on the directions issued by this Court, the concerned Panchayats carried out the exercise of identifying the structures which were located in the NDZ area and also whether any of such structures were in existence prior to the coming into force of the CRZ Regulations, 1991 and the exercise with that regard was carried out from time to time and as and when there was any default or breach in carrying out such exercise, this Court issued directions to ensure that the exercise would be expeditiously completed.

7. The records however reveal that as far as Village Panchayat of Colva is concerned, there were doubts about the averments in the affidavit about the action already taken and as such by an order dated 15.01.2013 the GCZMA was directed to carry out an inspection and submit a report. Accordingly, a report was submitted inter-alia identifying the number of structures which were existing in the NDZ area and it was pointed out that the issue about such structures was under consideration before the Inquiry Committee constituted by the GCZMA. It appears that the directions issued by this Court to examine the structures identified in the inspection report and under consideration before the Inquiry Committee have not yet been completed as reflected in the affidavit filed by the respondent no.2/GCZMA dated 11.04.2016 that the action is proposed to be taken with regard to such structures as referred to by the local Village Panchayat. There is no compliance report filed with regard to such structures by the Village Panchayat of Colva.

8. The records also reveal that as far as the Village Panchayat of Anjuna is concerned, the action initiated in respect of the structures existing in the NDZ area have not attained finality which can be seen from their compliance report/ affidavit dated 20.06.2016 which interalia suggest that the exercise is still in progress.

9. Mr. S. Desai, learned counsel appearing for the proposed intervenors contends that there are existing structures in the area which were within the jurisdiction of Colva Panchayat on which count the intervention application has been filed. The learned counsel further points out that though actions are taken as against the existing structures pursuant to the directions issued by GCZMA and the matter is pending before the learned NGT, nevertheless, as the issue with regard to such structures within NDZ area is under consideration in the above petition, it would be appropriate that the legality or otherwise of such structures of the proposed intervenors be also examined by this Court. The learned counsel as such points out that the application for intervention be allowed and the matter be accordingly examined by this Court.

10. Mr. Nigel Da Costa Frias, learned counsel appearing for the intervenor however submits that as far as such structures of the proposed intervenors are concerned there is already an order of demolition passed by the GCZMA and the appeal has been preferred by the proposed intervenors. The learned counsel further pointed out that a review petition filed by the proposed intervenors is also under consideration before the learned NGT. As the matter is already under consideration before the NGT, the question of considering the legality or otherwise of such structures in the present petition would not at all be justified.

11. The present petition is limited to direct the concerned authorities to generally perform their statutory functions and initiate action against the defaulters in accordance with law. The legality or propriety of such action by the concerned Panchayats and GCZMA is a matter which would have to be independently examined in appropriate cases by the concerned authorities in accordance with

law. In the present petition, it would not be possible to consider individual aspect which would require even evidence to be led and the documents to be examined. In such circumstances, the present petition is limited only to generally direct the concerned authorities to perform the statutory functions to proceed to take the action against any illegal constructions which are existing in the NDZ area as defined under the CRZ Regulations. This is not a petition where a specific default of any particular party has been examined by this Court. The grievance of individual parties affected by such general direction would have to be examined independently in accordance with law.

12. As pointed out herein above, we find that most of the concerned Panchayats had already initiated action against such structures existing in the NDZ area in violation of the CRZ Regulations. But however, as far as Colva and Anjuna Panchayats are concerned, we find that the authorities would have to proceed to take necessary action in connection with the existing structures in violation of the CRZ Regulations in the NDZ area.

13. In such circumstances, it would be appropriate to dispose of the above petition in terms of the interim directions issued by this Court by order dated 08.08.2006 and 26.09.2007.

14. Besides the above directions, the Anjuna as well as the Colva Panchayats namely respondent nos. 9 and 19 and the GCZMA are directed to take necessary action with regard to the structures identified in the report of the GCZMA and proceed to take necessary action in accordance with law within three months from today and file a compliance report with that regard.

15. We record our appreciation to the efforts and services rendered by the learned Amicus Curiae in assisting the Court in taking a view in the above Writ Petition in public interest. We accordingly fix a token amount payable to the learned Amicus Curiae which is quantified at Rs.80,000/-. The Registry is directed to pay the learned Amicus Curiae a sum of Rs.30,000/- deposited in the Registry pursuant to the orders passed in the above petition. The remaining such of Rs.50,000/- shall be paid by the State Government ? respondent no. 3 within four weeks from today. Rule is made absolute in the above terms. The petition stands disposed of accordingly.