
(2019) 06 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 751 Of 2008, 469 Of 2014

Theodore Fernandes And Anr

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 20-06-2019

Acts Referred:

State Financial Corporation, 1951 — Section 29

Citation : (2019) 06 BOM CK 0110

Hon'ble Judges : S.C. Gupte, J; Prithviraj K. Chavan, J

Bench : Division Bench

Advocate : Rayan Menezes, Gina Almeida, N. Fernandes, Pravin Faldessai, G. Teles, Rafiq Dada, Preetam Talaulikar, Gaurish Agni, Tanmai Gawas, C. A. Pereira

Final Decision : Dismissed/ Disposed Off

Judgement

S.C. Gupte, J

1. In this Writ Petition (Writ Petition No.751/2008), the Petitioners pray for a writ of mandamus for cancellation and revocation of various sanctions

and permissions granted in the matter of repairs, renovations and alternations carried out to a beach resort at Colva, Salcete Taluka in the State of

Goa. These sanctions and permissions have been granted under various statutory instruments, including CRZ Notifications, 1991 and 2011, Goa,

Daman and Diu Town and Country Planning Act, 1974 and the Rules and Regulations framed thereunder, and the Goa Panchayat Raj Act, 1994 and

the Rules framed thereunder.

2. The Petitioners claim to be espousing public interest in seeking quashing of these permissions and sanctions. Petitioner No.2 claims to be an

association of like minded citizens from South Goa, who are particularly residing in coastal areas of Colva, Sernabatim, and other places, and who

have formed it, for the purpose of espousing public causes. Petitioner No.1 claims to be the Secretary of Petitioner No.2-Association.

3. The Petitioners have come to the Court with a case that in the property surveyed under Nos.23/13 and 23/17, there existed five cottages, one house

structure, one building, one swimming pool, one open restaurant with four sit-outs. These were used as a beach resort under the name and style of

Penthouse Beach Resort. The resort was lying in an abandoned condition for the last several years. In or around the first week of September 2008,

the Petitioners noticed survey operations being carried out in the property. Upon inquiries made and information sought from authorities, including the

Panchayat of Colva, Goa Coastal Zone Management Authority (GCZMA), and Town and Country Planning Department of the State, the Petitioners

claim to have learnt that in the guise of sanctions obtained from the authorities for repairs/alternations /renovations, Respondent No.5 (who had in or

about 2008 acquired rights to the property) was reconstructing or newly constructing a beach resort at site; the plans of such construction showed

total deviation from the plinth of existing structures. Whereas the existing covered area of five cottages and one house was 843.76 sq. metres, the six

buildings proposed in their place would have a covered area of 1324.86 sq. metres. So also, the floor area of 1822.08 sq. metres of the existing

structures was being increased to 2537.22 sq. metres. It is the Petitioners' case that even the existing structures, which were purportedly being

repaired/altered/renovated, were unauthorised and did not have the requisite approvals from the authorities. The Petitioners claim to have applied to

the concerned statutory authorities (Respondent Nos. 2, 3 and 4) for revoking and withdrawing the permissions and since they did not receive positive

response, filed the present Petition.

4. The main grievance of the Petitioners is, thus, violation of CRZ Notification,1991 in the matter of permissions accorded to Respondent No.5 for

repairs/renovations/alterations to the beach resort. It is submitted that the resort comes within 200 meters from the High Tide Line, that is to say,

within CRZ-III. It is submitted that CRZ-III is earmarked as 'no development zone' under Annexure I to the CRZ Notification, 1991, entitled 'Coastal

Area Classification and Development Regulations'. No construction can be permitted on CRZ-III, except for repairs of existing authorised structures

and that too without exceeding existing FSI, existing plinth area and existing density. It is submitted that though the original permission applied for was for repairs/renovations of existing authorised structures, the final permission granted by GCZMA, followed by permissions of the planning authority and Panchayat, and the actual construction carried out by Respondent No.5 in pursuance thereof, make it clear that the construction was different from and outside the existing plinth used by the hotel of Respondent No.5. It is submitted that the authorities, whilst granting the impugned permissions, appear to have merely considered the sanctions/authorisations for the construction existing as of the date of CRZ Notification, 1991, but without reference to any particular plan. It is submitted that if the plans which have been brought out on record by the Petitioners were to be considered, it would clearly appear that the structures, claimed by Respondent No. 5 as existing structures, did not have a proper authorisation and thus would not qualify as 'existing authorised structures' within the meaning of the CRZ Notification.

5. Learned Counsel for the Petitioners has taken us through the plans submitted by Respondent No.5 to GCZMA of the existing structures whilst seeking its permission for repairs/renovation in 2006 and 2008 and contrasted them with the plan approved by the Planning and Development Authority in 1986 in respect of the beach resort. Learned Counsel has also taken us through the report of the Surveyor appointed by the Petitioners to indicate the existing areas, that is to say, the areas of the structures existing as on the date of the first application, i.e. the application for the first phase development of 2006. Learned Counsel has placed strong reliance on the superimposition of the three sets of plans, i.e. approved plan of 1986, approved plans of 2006 and 2008, and finally approved plan of 2012, carried out by an Architect appointed by the Panchayat. Learned Counsel submits that the superimposition shows that the footprints as well as alignments of various structures forming part of the resort have been materially altered by Respondent No.5 and this aspect was completely lost sight of by the authorities all throughout.

6. Mr. Dada, learned Senior Counsel appearing for Respondent No.5, on the other hand, has taken us through various dates and events, firstly, to allege that the Petitioners are not espousing any public interest, but are in fact seeking to redress their private grievances. Learned Senior Counsel has

also taken us through various events both prior to 2005 and post-2005 when the present owners, i.e. Respondent No.5, stepped into the shoes of the erstwhile owners of the beach resort, to indicate that at all stages the statutory authorities had duly applied their mind to the conditions existing at site and invoked correctly the applicable provisions of law for granting statutory permissions/authorisations to Respondent No.5 for its project of repairs/renovations/alterations of the beach resort.

7. In support of his case of the Petitioners seeking to redress their private grievances under the guise of a PIL, Mr. Dada relied on the history for the suit property and litigation over it. The suit property was once owned by Pent House Builders Pvt. Ltd. In or about January 2001, the property was taken over by Economic Development Corporation ('EDC'), a deemed state financial corporation, under Section 29 of State Financial Corporation, 1951, and put to auction. It was purchased in auction by one R.G. Bakhle and others. Around that time, the attachment and taking over of the property was challenged by Pent House Builders by filing a writ petition (Writ Petition No.311 of 2001). This was followed by a suit for declaration and perpetual injunction filed by Pent House Builders against M/s. R.G. Bakhle, challenging the auction sale. The application of Pent House Builders for temporary injunction concerning transfer of title to M/s. R.G. Bakhle came to be dismissed. After the present work of repairs/renovations/alterations was undertaken by Respondent No.5 herein, after taking over the property from M/s. R.G. Bakhle, a fresh application for temporary injunction was filed, seeking to restrain Respondent No.5 from undertaking any demolition work or new construction on the property. A status quo order was passed by the Civil Court on that application. Around the time that order was vacated by the Court, Petitioner No.2 Society was registered by Petitioner No.1 and others. Petitioner No.1, who is the President of the Society, was the advocate of Pent House Builders in the aforesaid litigation. Within a few days of the Civil Court vacating the status quo orders, the present Petition, challenging the construction work in the property, was filed by the Petitioners.

8. These facts do suggest a private interest element in the matter. We, however, do not propose to go further into these and other circumstances which bear on the Petitioners' locus and interest. Considering that the Petition

raises substantial questions arising under CRZ law, and considering that the matter has travelled this far resulting into several orders and exercises undertaken by authorities pursuant to these orders, we would rather consider the merits of the controversy and rule on them.

9. On merits, at the very outset, it is important to consider two crucial aspects of the matter. Firstly, it is necessary to consider the mandate of CRZ

Notification, 1991, as also of 2011 (the final permission to the project having been accorded by GCZMA under the Regulations of 2011) so far as the

permissible activity thereunder is concerned - Whether it is permissible merely to repair an existing authorised structure or is it permissible to renovate

the structure, if necessary by alternation and even reconstruct the same and what are the conditions to be observed for such permissible activity.

Secondly, it is necessary to consider what is meant by the expression 'not exceeding the existing plinth area' used in CRZ Notifications of 1991 and

2011- Whether it means area exceeding the total plinth area of an existing authorised structure or area outside the existing plinth area, that is to say,

outside the existing foot print of the plinth.

10. Mr. Menezes, learned Counsel appearing for the Petitioners, contends that what is permissible is merely repairs to an existing authorised structure.

Learned Counsel submits that at the most one may make an allowance for renovation, but only so long as the same is within the footprint of the

existing structure. In particular, learned Counsel insists on the existing plinth area being reckoned with reference to the location and alignment of the

area and not necessarily only to its area in quantity.

11. On the other hand, Mr. Dada, learned Senior Counsel appearing for Respondent No.5 contends that not only the repairs or renovations, for that

matter, which are permissible under the Notifications, but even reconstruction or alteration of an existing authorised structure, is perfectly permissible;

the only caveat being that even in that case the conditions prescribed for repairs of an existing structure in Clauses (i), (ii) and (iii) of CRZ Regulation

in respect of CRZ-III have to be satisfied.

12. Annexure 1 to CRZ Notification, 1991, containing coastal area classification and development regulations, make the following provisions for

CRZ III :

CRZ-III

i) The area upto 200 metres from the HTL is to be earmarked as 'No Development Zone'. [No construction shall be permitted within this zone except

for repairs of existing authorised structures not exceeding existing FS1, existing plinth area and existing density, and for permissible activities under the

notification including facilities essential for such activities. A authority designated by the State Government/Union Territory Administration may permit

construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants]. However, the following uses may be

permissible in this zone"-agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.

(ii) Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of

Environment and Forests (MEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the

conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the HTL permitted so long it is within the ambit of traditional rights

and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the

conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not

exceed 33 per cent of the plot size ; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors

(ground floor plus one floor).

[Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State

Government/Union Territory Administration may permit Constitution of public rain shelters, community toilets, water supply, drainage, sewerage, roads

and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the

major part of which falls within CRZ if no other area is available for construction of such faculties].

(iv) Re construction/alterations of an existing authorised building permitted subject to (i) to (iii) above.

13. On its plain terms, the Regulation makes it clear that what is permissible under CRZ III is not merely repairs or renovation of an existing authorised structure or building, but even reconstruction or alteration of an existing authorised structure or building. In either case, be it a proposal for repairs or renovation or a proposal for reconstruction or alteration, what is necessary is to maintain, that is to say, not to exceed 'existing FSI', 'existing plinth area' and 'existing density'. There is nothing in the Regulation to suggest that exceeding of plinth area within the meaning of the relevant stipulation, implies either alteration of the plinth or its location or orientation. Learned Counsel for the Petitioners implores us to construe the expression 'not to exceed the existing plinth area', as not to alter the contours of the plinth or change the footprint of the structure in terms of contours or orientation. That, we are afraid, would amount to reading of words into the statute, which is clearly impermissible. When the words used in the statute are clear in themselves, it is not permissible to read words into it and construe the same differently. 'Plinth area' is always measured in square feet or square metres and exceeding the existing plinth area would, by a plain grammatical meaning, imply exceeding the total quantity of plinth area in terms of square feet or square metres, as the case may be. There is no scope to construe this expression as meaning a restriction on change of contours of the plinth or its location or orientation.

14. It may not be out of place to mention here that the National Green Tribunal, concerning itself with environmental laws and, in particular, the coastal zone regulations, has taken a similar view consistently in a couple of matters. In *Pritidas M. Sawant vs. Goa Coastal Zone Management Authority and ors.* (Appeal No.67/2016(WZ)), the National Green Tribunal has observed as follows :

15. The Respondent No.1-GCZMA while applying the said provision to the facts and circumstances in the present case ought to have considered whether the permission sought by the Appellant for the proposed development or reconstruction of existing authorised structure exceeded existing FSI, existing plinth area and existing density keeping in mind that nowhere this provision made any utterance about the location save only 'within NDZ area in CRZ-III'. Pertinently, restrictive term used in the said provision is 'not exceeding' but not the term 'not beyond'. Use of term

not exceeding restricts quantity of existing FSI, existing plinth area and existing density but not as it would have restricted spatial limit with the

use of term not beyond - the location in reference to the said phrase. The Respondent No.1 GCZMA was also expected to consider

whether shifting of the location is within NDZ area and such shifting would in any way be invitation to dangers of natural hazards in coastal area or

promote sea level rise due to global warming, and further ought to have analysed the entire issue on scientific principles governing the same.

This statement of law to be found in *Pritidas M. Sawant vs. Goa Coastal Zone Management Authority and ors.* (supra) has been reiterated by the

National Green Tribunal in the case of *Cedric Bosco Savio Lobo vs. State of Goa and ors.* (Application No.27/2014). The complaint before the

National Green Tribunal in *Cedric Bosco Savio Lobo* (supra) was about the shape of the structure being changed in the course of reconstruction.

Whereas the original structure had stepped shape, the reconstructed structure had a rectangular shape meaning thereby that there had been change in

the shape of the plinth and shifting in its location. This change was countenanced by the National Green Tribunal as within the law, relying on its own

observations in the case of *Pritidas M. Sawant* (supra).

15. In the present case, the record of the case clearly bears out that the plinth area of the new construction does not exceed the plinth area of the

originally authorised existing structures. The plan submitted by Respondent No.5 for repairs/renovations/alterations of the existing structures and

which was approved by GCZMA in August 2006, shows six cottages of type B admeasuring a total plinth area of 1324.86 sq. metres. In addition to

these cottages, there were two more structures referred to as type A and type C, respectively, admeasuring 605 sq. metres and 102.46 sq. metres,

making the total existing plinth area as 2032.32 sq. mtres. There is substantial material on record, and which appears to have been considered by the

authorities whilst approving the subject plan, putting the total plinth area at 2032.32 sq. metres. When the initial construction plan (Phase-I) was before

the authorities for consideration around the year 1986, the Eco Control Committee (ECC) of the State had scrutinized the plan and observed that the

project was fulfilling the guidelines and norms prescribed by Eco Development Council (EDC) and decided to recommend the project for final

decision. There is also on record a letter addressed by the Chief Town Planner to the Member Secretary of EDC, confirming that the project fulfilled the guidelines and norms specified by EDC and forwarding the file containing construction plans for the latter's approval. It is also on record that the original Phase I development was approved subject to the condition that the remaining land in the northern part of the plot shall be ceded to the Government. On that condition, the approval was conveyed to the predecessor of Respondent No.5 in 1986. The predecessor of Respondent No.5, thereafter, submitted plans for Phase II development, which was proposed within that part which was required to be ceded to the Government according to the original sanction. An in-principle approval was granted by EDC/ECC to this proposal, which was conveyed to the applicant sometime in 1988-1989. The minutes of meeting of EDC in this behalf (minutes of 28th ECC meeting held on 28th April, 1988) are on record. So also, is on record a communication of the Senior Town Planner, communicating such in-principle approval to the predecessor of Respondent No.5. Also on record is a letter of the Under Secretary to the Government of Goa (Tourism Department) informing the Chief Town Planner that the Government had decided to withdraw the condition regarding ceding of land (originally made part of the sanction for Phase I development). There is a communication from the Chief Town Planner, in turn, to Respondent No.4 about the Government decision to withdraw the condition regarding ceding of land. All this does show that further construction of Phase II development in respect of the areas denoted as A and C types was sanctioned by the authorities. In other words, there is ample material on record to show that these two types of structures, which were claimed as existing authorised structures, in fact did have authorisation.

16. Apart from this authorisation, there is also evidence of lawful existence of the structures acknowledged by statutory authorities and, in fact, the structures being assessed to Panchayat tax on that basis. There is on record a house tax assessment on the part of Respondent No.4-Panchayat, showing construction of House No.424 in 1986 and House No.424(1) later, clearly suggesting that not only were B type structures existing as authorised structures, but even the structures designated as A and C types had always existed, as authorised structures, much prior to 1991. There are

on record aerial photographs of Colva village in respect of the particular area where the beach resort was situate, showing all these structures as of

1991 and 1993. The existing structures find an endorsement on the part of GSCCE in its meeting (8th Meeting) dated 30.6.1995. Then there is a letter

addressed to the Chief Engineer, Irrigation Department, by the Chief Town Planner on 12th March, 1996 indicating that the resort had been in

existence since 1987 along with the site plan showing all structures. This communication was followed by a communication from the Director of

Tourism to the Chief Town Planner conveying compliance of environmental guidelines by the beach resort and its construction in accordance with the

permissions obtained from EDC/ECC from time to time. There is, accordingly, preponderance of evidence to suggest that not only were all structures,

claimed in the plans submitted by Respondent No.5 in 2006, in existence, but they were also authorised.

17. As regards the plinth area of the existing authorised structures, there is once again abundance of material to show that the area was at least 2030

sq. metres plus swimming pool of 115 sq. metres. There is a survey report by Government of Goa, Directorate of Settlement and Land Records,

(DSLR) Panaji, Goa giving plinth area details according to (i) the survey conducted on 4th July, 2009 (stating the area to be 2117 sq. metres), (ii) as

per the survey conducted on 15th December, 2011 (as 2030 sq. metres) and (iii) as per verification survey conducted on 25th July, 2012 (as 2030 sq.

mtres.). Even the Petitioners' own surveyor's report shows that buildings A and C and the swimming pool in the construction licence were

substantially in conformity with the existing structures. All this material shows not only authorisation of B type structures, which is a matter of

admission on the part of the Petitioners (in para 18 of the rejoinder, the Petitioners have accepted this), but even the other structures designated as A

and C and the swimming pool were also existing at site and were duly sanctioned by the concerned authorities and that the plinth area of the

structures in all was 2030 sq. metres.

18. It is nobody's case that the plinth of the new structures, which are finally sanctioned by the Chief Town Planner in 2012, exceeds 2030 sq. mtres.

In other words, the work of repairs/ renovations/alterations carried out by Respondent No.5 at site, does not exceed the plinth area of the existing

authorised structures. The only real grievance, if at all, in this behalf, as noted above, is that the location of the plinth and in particular, its orientation vis-a-vis the plot has been changed. That, as we have noted above, does not amount to any breach or violation of either of the two CRZ Notifications of 1991 and 2011.

19. The other submission of learned Counsel for the Petitioners is that there is no authorisation of GCZMA so far as the plans submitted by

Respondent No.5 in 2012, based on actual construction carried out at site, are concerned. It is submitted that GCZMA, in its communication dated 23

August 2012, had simply considered a DSLR report of mapping of the exiting structures, i.e. the structures actually constructed at site and existing in

2012. It is submitted that the DSLR Report merely confirms what was actually repaired/renovated/alterd and was existing at site. The submission is

that there is no reference to the decision taken by the body on whether or not to allow revision of plans, that is to say, the alteration between

sanctioned plans of 2006 and 2008, on the one hand, and those submitted in 2012 in accordance with the actual construction, on the other. A letter

addressed by GCZMA to Respondent No.5 on 23rd August, 2012 clearly belies this submission. The letter explicitly states that the project has been

approved by GCZMA in terms of clause (8)(i),(iii)(CRZ-III)(A)(ii) of the CRZ Notification, 2011, (earlier Notification, 1991). In other words, not only

has GCZMA considered the report of DSLR showing actually constructed structures at site to be in accordance with the plan of 2012, but that there

was a consideration of whether the plans should be approved and that approval was duly accorded by GCZMA in terms of the applicable notification.

20. The correctness and propriety of the plans submitted by Respondent No.5 have been scrutinized by the authorities on a number of occasions and

found to be in order. The plans were first approved for structures B and swimming pool by GCZMA on 18th May, 2006. This was after the decisions

were duly taken in the meeting of GCZMA, minutes of which are on record. In its 38th meeting held on 12.12.2007, GCZMA granted approval for

repairs and renovation of the structures marked as blocks A and C. Communication of such grant of approval by GCZMA to Respondent No. 5 is of

30-31st January, 2008. A saga of show cause notices/demolition notices, appears to have followed thereafter, presumably at the instance of the

Petitioners herein and other interested parties. Respondent No.4-Panchayat issued show cause notices and even passed demolition orders. Whilst all this was being debated and the matter was already in Court, Respondent No.5 had proceeded to obtain a technical approval from PWD (15.5.2009), inspection report by the Senior Town Planner (15.5.2008), NOC of the Town Planner (19.5.2009), licence for repairs/alterations/ renovations granted by the Panchayat (11.06.2008). Notices issued by Respondent No.4-Panchayat were withdrawn on 15 June 2009. This was followed by a complaint made by Goa Foundation to GCZMA, alleging that the construction was being carried out without environmental clearance. At that stage, GCZMA directed DSLR to conduct an inspection of the site and verify whether the structures were being constructed as per the plinth area originally in existence. This was by a communication dated 5.12.2011. The DSLR appears to have conducted the survey of the structures and the plinth area was found to be 2030 sq. metres. The DSLR, by its communication dated 26th December, 2011, confirmed, based on its survey, that the construction was within the plinth area originally existing. It was after all these considerations that GCZMA granted its final approval to revised plan as of 30th August, 2012. There is nothing to suggest that all this was done without following due process of law.

21. Even after this, there was a further show cause notice issued by the Respondent Panchayat, on the basis of a complaint by Respondent No.3 in the companion petition (Writ Petition No.469/2014). A reply was filed to that show cause notice by Respondent No.5. This was followed by a Misc.

Civil Application in Suo Motu Writ Petition No.2/2006 by Respondent No.3-Colva Civic and Consumer Forum. Once again, in response, a show cause

notice was issued by the Panchayat to Respondent No.5, which led to rejection of the construction licence and its renewal by Respondent No.4

Panchayat and a demolition order in pursuance thereof. This was challenged by Respondent No.5 before the Additional Director of Panchayats, who

directed Respondent No.4 Panchayat to maintain status quo at site. The matter was once again heard at length by the Additional Director, who, by his

order dated 29th August, 2013, passed an order quashing the show cause notices and demolition orders issued by Respondent No.4-Panchayat.

22. In the meantime, there were (i) technical clearance order by the Department of Town and Country Planning (15.4.2013) and (ii) completion order

by the Department of Town and Country Planning (16.4.2013).

23. Even thereafter, the matter was carried by Respondent No.3 to the companion Petition before the National Green Tribunal.

The National Green Tribunal, by its order dated 3rd May, 2013, directed the Ministry of Environment and Forests to constitute an inquiry committee.

The committee was duly constituted. It heard the parties at length, allowing them to produce material before it, and finally, by its report dated 19th

October, 2015, observed that the approvals were in order; that the construction was carried out in accordance with the approvals; and that the

structures were existing and in accordance with law. The inquiry committee's report was considered by GCZMA. Once again, at that stage, all

stakeholders were heard at length by GCZMA. (The Petitioners in Writ Petition No.751/2008 were not parties before the Authority, at that stage).

In its 181st Meeting, GCZMA accepted the inquiry committee report and noted that the reconstruction/repairs were duly carried out of authorised

structures existing prior to 1991 within the area of 200 metres from the High Tide Line in CRZ III area and the plinth area was within the existing

plinth area. The Petitioners submit that the inquiry committee did not go back to 1986, or before 1991 and concerned itself merely with what happened

after 2006. We are not impressed by this argument. The matters of sanction of B type structures in Phase I and of A and C type structures in Phase

II prior to 1991, were debated before the committee and were taken into account by it whilst preparing its report.

24. An upshot of the above discussion is that matters such as (i) character of the existing structures as of the date of CRZ Notification, 1991 â?

whether in existence and whether authorised or unauthorised, (ii) compliance by the owner in the work of repairs/renovations/alterations with the CRZ

Notifications, 1991 and 2011 and, in particular, the restriction of the renovated/ altered structures having to be within the existing plinth area; (iii)

change of the footprint or alignment or orientation of the original plinth â?" whether it made any difference in the matter, were all considered by the

concerned authorities from time to time and after hearing all concerned parties and assessing relative merits of the rival cases at length.

25. As a writ Court, we are not expected to minutely scrutinize the rival contentions of the parties on merits of the decision as a civil Court would

normally be expected to do. The Petitioners herein make allegations regarding authenticity of plans relied upon by Respondent No.5 for the work of repairs/renovations/alterations. For example, they submit that the plan relied upon for Phase II development (structures of A and C types) does not bear the stamp of the authority approving it or reference number. We are not going to make this type of inquiry; that really would entail taking of evidence. For our purposes, it is sufficient that there is abundance of material to show, even otherwise, that 'A' and 'C' type of structures were authorised and were in existence, as we have indicated above. This material clearly suggests that the conclusion of the authorities is fair and reasonable, capable of being sustained in any judicial review by the writ court. We have to merely apply Wednesbury principles to the decisions of the authorities. We have to simply see if the authorities have duly considered all relevant and germane materials and circumstances, whether any irrelevant or non-germane material or circumstance has been considered and whether the view taken by the authorities can be termed as perverse or whether it is a possible view. By all these yardsticks, we do not find any infirmity in the orders impugned before us. All relevant and germane materials and circumstances appear to have been duly considered and no irrelevant or non-germane material or circumstance appears to have been taken into account whilst deciding the matters and the decisions themselves are perfectly possible views and do not suggest any perversity.

26. Before we close this order, we must note one more important aspect of the matter. The Petition is claimed to have been filed in bona fide public interest. As a writ court, as we have noted above, our mandate is to scrutinize if the authorities have acted within the bounds of their jurisdiction and not rendered a perverse decision whilst so acting. Additionally, as a constitutional Court considering a PIL, our attention must be focused on the public interest aspect urged before us. The Supreme Court in its felicitous judgment in *State of Uttaranchal vs. Balwant Singh Chaufal*, reported in (2010) 3 SCC 402, has held that the Courts, before entertaining a PIL, should ensure that the PIL is aimed at redressal of genuine public harm or injury. As our Court observed in *Sadanand s. Varde vs. State of Maharashtra*, reported in 2001 (1) Bom. C.R. 261: 2000 (4) ALL M.R. 510, a Public Interest Litigation is not adversary in nature, but is intended to focus on the public interest aspect before the Court; if the Court is apprised of substantial injury

to public interest, the Court is empowered and duty bound to interfere to do justice to the inarticulate public whose interest is projected as affected.

Let us guide our gaze to this particular aspect of the matter. As noted above, the long and short of the Petitioners' objection seems to be nothing but a

slight changing of the location and alignment of the originally existing plinth of structures authorised and existing since before 1991, i.e. the date when

the first CRZ Notification came into force. As we have shown above, the constructed area is within the total area occupied by the earlier plinth. The

structures have now been fully constructed and the resort has been operating. (No doubt, the petition was filed when the construction was on-going,

but, anyway, the Court did not deem it fit to stop it and instead allowed it to proceed, but subject to final orders in the Petition.) We wonder what

public interest would be served to now order demolition of the resort on the mere ground that its plinth is slightly relocated and differently oriented to

the plot than what was earlier existing at site, though within the overall area in terms of square metres. The construction now existing at site does not

fall foul of either of the three requirements of CRZ Notification; it does not exceed the existing plinth area or existing FSI or the existing density. Is

there any adverse effect on public interest or genuine public harm or injury, then, if the resort is allowed to function on the basis of all sanctions and

permissions obtained so far. We find none and that is one more reason why we ought not to interfere with the sanctions and permissions.

27. In the premises, we do not find any merit in the challenge to the various decisions of the authorities impugned before us. No interference is,

accordingly, warranted.

28. The companion Petition (Writ Petition No.469/2014) is filed by Respondent No.5 to the main Petition discussed above. It seeks to challenge

basically continuation of the appeal filed by Respondent No.3 to the Petition before the National Green Tribunal. The challenge is, inter alia, on the

basis that the National Green Tribunal has no jurisdiction to rule on matters other than environmental issues, i.e. only those matters which are covered

under Schedule I of the National Green Tribunal Act, 2010. Mr. Dada, learned Senior Counsel appearing for Respondent No.5 (in the companion

petition) relies on a judgment of a Division Bench of our Court in the case of Parshuram Uparkar vs. Union of India and ors. (Public Interest Litigation

No.49/2013) in support of his submission.

29. Since we have examined the merits of the controversy and have ruled on the entire controversy involved in the present petition (Writ Petition No.

751/2008), we do not deem it fit to pass any order in the companion petition (Writ Petition No.469/2014) filed by Respondent No.5. It will be for

Respondent No.5 to now approach the National Green Tribunal and seek disposal of the appeal based on the observations of this Court above. The

Petition may be disposed of by reserving such liberty.

30. In the premises, Writ Petition No.751/2008 is dismissed.

Ad hoc deposit of costs, made by the Petitioners in terms of the order passed by this Court on 11th August, 2009, shall be appropriated as costs and

made over to the Goa State Legal Services Authority.

31. The companion Petition (Writ Petition No.469/2014) is disposed of, by reserving liberty to the Petitioners to seek disposal of the pending appeal

from the National Green Tribunal on the basis of the order passed herein, as noted above.