Item No. 2 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(Through Video Conferencing)

Appeal No. 2/2020 (WZ)

M/s Shrem Resorts Pvt. Ltd. Appellant(s)

Versus

GCZMA Authority & Ors. Respondent(s)

Date of hearing: 17.08.2020

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER

For Appellant(s) : Mr. Shivan Desai alongwith Mr. Shivshankar Swaminathan, Advocates

For Respondent(s) : Ms. Anamika Gode, Advocate

ORDER

1. The appellant has filed the present appeal against the order dated 10.12.2019 which is alleged to be without giving an opportunity of hearing and which is in exercise of jurisdiction with material irregularity whilst directing the Appellant to demolish the pergola, compound wall, metallic staircase as well as the internal changes in the authorized structure within 30 days from the receipt of the order. A Show Cause Notice cum Staff Work Order dated 22.10.2018 was issued by the respondent no. 1 in pursuance of the complaint filed by the respondent no. 2 and on the basis of the inspection report dated 04.10.2018 carried out by the officials of the GCZMA. The said property was in CRZ-III Zone. On

Aggrieved by the demolition order, the appellant moved the Writ Petition bearing No. STM/1915/2019 before the Hon'ble High Court of Bombay at Goa and vide order dated 22.05.2019, the respondent no. 1 was directed to take a decision afresh in accordance of law and principles of natural justice. Later on, a fresh hearing initiated and the appellant was given an opportunity of hearing and he participated in the proceeding and also filed the written arguments before the respondent no. 1. In the 215th meeting conducted by the respondent no. 1 held on 22.10.2019, a decision was taken to demolish the pergola, metallic staircase and the internal changes to the authorized structure.

2. Again a PIL Writ Petition bearing No. STM/3749/2019 was filed before the Hon'ble the High Court of Bombay at Goa and **Appellant Filed Affidavit-in-reply before the Hon'ble High Court of Bombay at Goa to the effect that the pergola and the compound wall shall be demolished within a period of 30 days** and after submission of this affidavit, the Writ Petition was finally disposed of vide order dated 18.12.2019.

3. Being aggrieved by the impugned order to the extent that the respondent no. 1 has directed the appellant to demolish the internal changes made to the authorized structure and also to remove the metallic staircase attached to the said authorized structure this appeal has been preferred. The grounds as taken by the learned counsel for the appellant states that the matter was

which was given by the appellant before the Hon'ble High Court that the said illegal structure will be demolished within 30 days has not been undertaken and not be complied with. It is a mischief and fraudulent act on the part of the appellant. It may be taken as filing false affidavit before the Court or defrauding the proceedings of the Court by way of filing the affidavit.

4. It is called forum hunting and it is intended to continue till the appellant does not achieve a desired goal. The platform of the Tribunal or the Courts cannot be made a platform to compel the opposite party to pass a desired order. The matter cannot be agitated and to be continued till infinity and it should come at rest. The Hon'ble Supreme Court in *Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687*, the Hon'ble Supreme Court has observed as under:-

> *"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."*
>
> *Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.*
>
> *In Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr. AIR 1997 SC 1005 the Hon'ble Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.*
>
> *In Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC*

being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law."

"It is well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. However, the Apex Court added the words of caution that such a rule must give way where the language of the statute is plain and unambiguous. Similarly, in Collector of Central Excise, Bombay-I & Anr. Vs. M/s. Parle Export (P) Ltd., AIR 1980 SC 644, the Hon'ble Supreme Court observed that the words used in the provision should be understood in the same way in which they have been understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In Indian Metals and Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise, Bhubaneshwar, AIR 1991 SC 1028, the Hon'ble Supreme Court has applied the same rule of interpretation by holding that "contemporanea expositio by the administrative authority is a very useful and relevant guide to the interpretation of the expression used in a statutory instrument." Same view has been taken by the Hon'ble Supreme Court in State of Madhya Pradesh Vs. G.S. Daal and Flour Mills (Supra); and Y.P. Chawla & Ors. Vs. M.P. Tiwari and Anr., AIR 1992 SC 1360. In N. Suresh Nathan & Ors. Vs. Union of India & Ors, 1992 (Suppl) 1 SCC 584; and M.B. Joshi & Ors. Vs. Satish Kumar Pandey & Ors., 1993 (Suppl.) 2 SCC 419, the Apex Court observed that construction in consonance with long-standing practice prevailing in the concerned department is to be preferred."

5. In *M/s. J.K. Cotton Spinning & Weaving Mills Ltd. & Anr. Vs. Union of India & Ors., AIR 1988 SC 191*, it has been held that the maxim is applicable in construing ancient statute but not to interpret Acts which are comparatively modern and an interpretation should be given to the words used in context of the new facts and situation, if the words are capable of comprehending them. Similar view had been taken by the Apex Court in *Senior Electric Inspector & Ors. Vs. Laxminarayan Chopra & Anr., AIR 1962 SC 159*.

document by reference to the exposition it has received from Competent Authority can be invoked though the same will not always be decisive of the question of construction. The administrative construction, i.e. the contemporaneous construction placed by administrative or executive officers responsible for execution of the Act/Rules etc. generally should be clearly wrong before it is over-turned. Such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight and is highly persuasive. However, it may be disregarded for cogent reasons. In a clear case of error the Court should, without hesitation refuse to follow such construction for the reason that "wrong practice does not make the law." (Vide *Municipal Corporation for City of Pune & Anr. Vs. Bharat Forge Co. Ltd. & Ors., AIR 1996 SC 2856*). In *D. Stephen Joseph Vs. Union of India & Ors., (1997) 4 SCC 753*, the Hon'ble Supreme Court has held that "past practice should not be upset provided such practice conforms to the rules" but must be ignored if it is found to be de hors the rules.

7. However, in *Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr., AIR 2003 SC 3502*, the Apex Court held that "the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter".

"When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. (Vide The Ramjas Foundation & Ors. Vs. Union of India & Ors., AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & Ors., (1994) 6 SCC 620). Thus, who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem", means that it is a law of nature that one should not be enriched by the loss or injury to another."

8. In *Nooruddin Vs. (Dr.) K.L. Anand (1995) 1 SCC 242*, the Hon'ble Supreme Court observed as under:

".....Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice."-

Similarly, in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors., AIR 1997 SC 1236, the Hon'ble Apex Court observed as under:-

"The power under Art. 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point..... the interest of justice and public interest coalesce. They are very often one and the same. ..... The Courts have to weight the public interest vis-à-vis the private interest while exercising the power under Art. 226..... indeed any of their discretionary powers. (Emphasis added)"

In Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under:-

"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy, access to justice should not be misused as a

Distillery, AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court."

9. In *Agriculture & Process Food Products Vs. Oswal Agro Furane & Ors., AIR 1996 SC 1947*, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts". While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in *King Vs. General Commissioner, (1917) 1 KB 486*, wherein it has been observed as under:-

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....."

In Abdul Rahman Vs. Prasony Bai & Anr., AIR 2003 SC 718; and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors., (2004) 7 SCC 166, the Hon'ble Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to

10. This Tribunal deals the environment matters and Clause a of the sub-section 2 of the Environment (Protection) Act, 1986 defines environment which reads that the environment includes water, air and land and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property.

11. Environmental matter was taken up in Bombay Environmental Action Group v. State of Maharashtra, 2018 SCC OnLine Bom 2680 and it was held as follows:

> *"**35**. Section 3(1) of the said Act of 1986 reads thus:*
> *"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT*
> *(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."*
>
> ***36.** A notification dated 19 February 1991 was issued by the Government of India which is known as CRZ notification of 1991 in exercise of powers under Section 3(1) and Section 3(2)(v) of the said Act of 1986. The notification lays down what constitutes a "Coastal Regulation Zone" (for short "CRZ"). The material part of the said CRZ notification declaring CRZ reads thus:—*
>
> *"Now, therefore, in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said*
> *Coastal Regulation zone (CRZ). For purposes of this Notification, the High Tide Line (HTL) will be defined as the line upto which the*

*(i) Areas that are ecologically sensitive and important, such as national parks marine parks, sanctuaries, reserve forests, wildlife habitats, **mangroves**, corals coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty historical heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.*

(ii) Area between the Low Tide Line and the High Tide Line."

***38.** Thus, mangroves fall in CRZ-I category. Annexure-I further lays down that no new structure shall be permitted within 500 meters from the High Tide Line (HTL) and no construction activities except as listed in sub-clause (xii) of clause 2 of the CRZ notification are permitted in CRZ-I area. Sub-clause (xii) of clause 2 reads thus:—*

"(xii) ..... facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and"

***39.** The CRZ notification of 1991 was further amended by a notification dated 18th August 1994. The relevant modification is in clause (a) which reads thus:*

"(a) in paragraph 1, for the portion beginning with the words "For purposes of this notification, the High Tide Line" and ending with the words "width of the creek, river or back water whichever is less", the following shall be submitted, namely:—

"For the purposes of this notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India.

NOTE:—

The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and back waters and may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 50 metres or the width of the creek, river or back-water whichever is less. The distance upto which development along rivers, creeks and back-waters is to be regulated shall be governed by the distance upto which the tidal effect of sea is experienced in rivers, creeks or back-

Maharashtra was submitted to the Government of India on 22nd November 1995. By a letter/order dated 27th September 1996, the Ministry of Environment and Forest of the Government of India communicated to the Chief Secretary of the Government of Maharashtra grant of approval to the CZMP subject to conditions incorporated therein.

Condition No.(xiii) reads thus:—

> *"(xiii) All mangroves with an area of 1000 square metres or more would be classified as CRZ-I with a buffer zone of at least 50 metres."*

41. *The Mangroves were already included in CRZ-I in the CRZ notification of 19th February 1991. By the aforesaid order dated 27 September 1996, in case of mangroves with an area of 1000 square metres or more, a buffer zone of at least 50 metres along the mangroves was ordered to be included in CRZ-I in addition to mangroves.*

42. *An order was issued on 19th January 2000 by the Government of India providing that 50 meter buffer zone around mangroves of area of 1000 square meters and above, will not be required on the landward side, provided a road abutting such mangroves was constructed prior to February, 1991. Thus, under the 1991 notification, mangroves were included in CRZ-I. In the CRZ notification of 1991, there was no provision for a buffer zone. The said provision came for the first time by virtue of the order dated 27th September 1996 which was amended by the order dated 9th January 2000.*

43. *The CRZ notification of 6th January 2011 was issued under section3(1) of the said Act of 1986 which superseded the earlier CRZ notification of 1991. Relevant part of paragraph 7 reads thus:*

> *"7. Classification of the CRZ - For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:—*
>
> (i) CRZ-I,-

*A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-**(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50 meters along the mangroves shall be provided;***

(b) Corals and coral reefs and associated biodiversity;

(c) Sand Dunes;

(d) Mudflats which are biologically active;

(e) National parks, marine parks, sanctuaries……"

44. *Clause (xi) of paragraph 3 provides that all construction*

(c) facilities that are essential for activities permissible under CRZ-I;

(d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

(e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.

(f) development of green field airport already approved at only Navi Mumbai;

(ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:—

(a) exploration and extraction of natural gas;

(b) construction of dispensaries, schools, public rain-shelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere reserves after obtaining approval from concerned CZMA.

(c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;

(d) salt harvesting by solar evaporation of seawater;

(e) desalination plants;

(f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;

(g) construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water."

45. *In the Guidelines for preparation for CZMP incorporated in the said notification of 2011, it is stated thus:*

"3. Buffer zone along mangrove areas of more than 1000 sq mts shall be stipulated with a different colour distinguishing from the mangrove area.

4. The buffer zone shall also be classified as CRZ-I area."

46. *In 1991 CRZ notification, it was provided that all mangrove areas will fall in CRZ-I. By virtue of the order dated 27 September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZ-I. By order dated 9 January 2000, it was provided that 50 meter buffer zone will not be required to be maintained, provided a road abutting the mangroves was constructed prior to February 1991 (prior to the date on which CRZ notification of 1991 was issued). Under the 2011 notification, all mangroves area fall in CRZ-I irrespective of its area and in case the said area is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of CRZ-I. Thus, the buffer zone of 50 meters abutting mangroves having an area of 1000 square meters or*

with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 will have to be construed as an order or direction under the said Act of 1986 as CZMP is required to be approved by the Central government in view of the clause 3(i) in the CRZ notification of 1991. Hence, if there is any violation of the condition in the letter dated 27 September 1996 about the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986."

EFFECT OF THE DIRECTIVE PRINCIPLES OF STATE POLICYAND THE FUNDAMENTAL DUTIES OF CITIZENS

48. *Article 48-A in Chapter IV under the title Directive Principles of State Policy of the Constitution of India reads thus:—*

*"48-A. Protection and improvement of environment and safeguarding of forests and wild life.—**The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.**"*

49. *Article 48-A lays down that it is the duty of the State to make an endeavour to protect and improve environment and to safeguard forests. As stated earlier, environment includes plants. Mangroves are essential part of the environment. The land covered by mangroves is be covered by the concept of forest. Under Article 51(A)(g) of the Constitution, it is the fundamental duty of every citizen of India to protect and improve the natural environment including forests, rivers and wildlife and to have compassion for living creatures. In view of the constitutional mandate under Article 51 (A)(g), it is the fundamental duty of every citizen to protect and improve natural environment including forest which will include mangroves. If this is the obligation of every citizen, the public bodies which are constituted by the citizens are bound by the fundamental duties under Article 51(A). Thus, it is the duty of the State and citizens to ensure that the mangroves are preserved and protected."*

12. Hon'ble the Apex Court in *2004 (3) SCC 445, Piedade Filomena Gonsalves vs. State of Goa And Ors.* dated 11th March, 2004 held as follows:

"6. The Coastal Regulation Zone Notifications have been issued in the interest of protecting environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found

"10. We find that when the appellant purchased the subject plot vide registered sale deed dated 3-8-1992, only a small structure at the corner of the said plot was in existence and was used as a garage and which was indisputably within 100 m from the high tide line. On this finding, it necessarily follows, that the structure as it exists now is quite different — both in shape, size and location being in the middle of the plot. Obviously, it is an unauthorised structure constructed after 19-2-1991. The CRZ Policy dated 19-2-1991 prohibits any construction up to 200 m from the high tide line. It is to be treated as "No Development Zone", except for repairs of existing "authorised structures" not exceeding specific permissible FSI, plinth area and other norms for permissible activities including facilities essential for such activity under the Notification.

11. The relevant clause in the said Notification, dealing with land area falling within CRZ (III) area reads thus:
"...
CRZ-III
(i) The area up to 200 m from the high tide line is to be earmarked as "No Development Zone". No construction shall be permitted within this zone except for repairs of existing authorised structure not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the Notification including facilities essential for such certificates. An 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 used (sic users) may be permissible in this zone: agriculture, horticulture, gardens, pasmres, parks, play fields, forestry and salt manufacturing from sea water.
(ii) Development of vacant plots between 200 and 500 m of high tide line in designated areas of CRZ (III) with prior approval of Ministry of Environment and Forests (MoEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in guidelines at Annexure II.
(iii) Construction/Reconstruction of dwelling units between 200 and 500 m of the high tide line 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 m and

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 facilities.

(iv) Reconstruction/Alterations of an existing authorised building permitted subject to (i) to (iii) above."

14. The fact remains that the structure directed to be demolished by the Tribunal, was obviously erected after 19-2-1991. That being an unauthorised structure within the meaning of sub-clause (i) quoted above, could not be used for any purpose whatsoever and was required to be demolished. Therefore, the finding recorded by the Tribunal and the consequential directions given in that behalf are unassailable.

15. In this view of the matter, it is not necessary for us to dilate on the argument as to whether the CRZ Policy prohibits change of user of the structure which was in existence on 19-2-1991, so as to be used as a restaurant and bar. In our opinion, on the facts of the present case, no substantial question of law much less of great public importance arises for our consideration.

16. Hence, this appeal must fail and the same is, therefore, dismissed with no order as to costs."

14. In *Vamika Island Resorts (P) Ltd. Vs. Union of India,* 2013 (8) SCC 760, it was held:

"28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves V. State of Goa, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned."

15. In *Kerala State Coastal Zone Management Authority Vs. State of Kerala* 2019 (7) SCC 248, it was held:

"The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly

of backwaters. The Coastal Zone Management Plan (CZMP) has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.

As per the appellant, these construction activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The Panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self-Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the bodies concerned to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (the 1999 Rules).

It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority i.e. Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. Judicial notice is taken of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity."

12. *It is also relevant to take note of Rule 23(4) of the 1999 Rules which is extracted below*:

> *"23. (4) Any land development or redevelopment or building construction or reconstruction in any area notified by the Government of India as a coastal regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time."*

14. The Court in Vaamika Island (Green Lagoon Resort) v. Union of India has observed: (SCC pp. 767-68, paras 26-28)

judgment in paras 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification hence, action has to be taken for the removal of the same. The Director of Panchayat also vide letters dated 7-3-1995, 17-7-1996 directed all the Panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to the 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Council for Science, Technology and Environment (KSCSTE) was accepted.

27. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ notifications are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. State of Goa, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.

lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument."

17. We find that the view taken by the Kerala High Court in the aforesaid decision is appropriate.

18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

16. It is argued that the order issued by the respondent no. 1 is without jurisdiction and without application of the mind and thus is not to be complied with. It is to be noted that even if the order as stated by the appellant is without application of the mind but it was contested for more than two times before the Hon'ble High Court and it was passed by a competent authority having jurisdiction to decide it, the appellant is bound to follow the orders especially the directions issued by the Hon'ble High Court.

17. In a case reported in *2011 (3) SCC 364, Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, it was held as follows:

"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Man jeri Manikoth Naduvil, (1996) 1 SCC 435, Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443, M. Meenakshi v. Metadin Agarwal and Sneh Gupta v. Devi Sarup,

deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC, wherein Lord Radchiffe observed: (AC pp. 769-70)

> *"...An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity (on) its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

18. In Sultan Sadik v. Sanjay Raj Subba, (2004) 2 SCC 1377, this court took a view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

18. After considering above all facts, we dispose of this appeal as follows:

i. The appeal is dismissed at the admission stage.

ii. The GCZMA is directed to ensure that the order of Hon'ble High Court of Bombay at Goa passed in Writ Petition as mentioned above vide order dated 18.12.2019 and the affidavit to the effect

iii. In case the order of the High Court has not been complied till date, the GCZMA is directed to execute immediately. In light of the facts that the matter was raised before the Hon'ble the High Court for more than two times and it was decided by the GCZMA for more than two times and as stated by the appellant that vide order dated 18.12.2019, the petition pending before the Hon'ble High Court was disposed of and thereafter stating that aggrieved by the impugned order, the appellant has filed this appeal before this Tribunal, we deem it just and proper to impose a special cost of Rs. 1 lakh to be paid by the appellant to the GCZMA as a cost of litigation. This cost may be utilized for the environmental purposes by the respondent no. 1.

19. The Appeal No. 2/2020 (WZ) is decided accordingly.

Sheo Kumar Singh, JM

Dr. Satyawan Singh Garbyal, EM

August 17, 2020
Appeal No. 2/2020 (WZ)
R