

**Collin Curry and Others Vs. Goa Coastal Zone Management Authority,
Through Its Member Secretary and Others**

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Court : Mumbai Goa

Decided On : Dec-24-2014

Judge : R.M. Borde & F.M. Reis

Appeal No. : Writ Petition No. 245 of 2007

Appellant : Collin Curry and Others

Respondent : Goa Coastal Zone Management Authority, Through Its Member Secretary and Others

Judgement :

F.M. Reis, J.

1. Heard Shri Supekar, learned Counsel appearing for the Petitioners, Mr. Salkar, learned Government Advocate appearing for the Respondent nos. 1, 4 and 7, Mr. Naik, learned Counsel appearing for the Respondent nos. 2 and 3 and Shri Sudin Usgaonkar, learned Counsel appearing for the Respondent no. 5.

2. The above Petition under Article 226 and 227 of the Constitution of India essentially seeks for a writ of mandamus or a writ in a nature of mandamus commanding the Respondent nos. 1 to 4 and 6 to inter alia take action against the

Respondent no. 5 to demolish/remove the structures put up on Vainguinim beach in the form of a Jetty, Shed for the Water Sports Activities, etc., to remove the constructions and the development carried out by the Respondent no. 4 in the Public Nallah between the properties surveyed under nos. 803 and 804; to order the removal and demolition of the structures referred to in the sketch marked as annexure 'F' in survey no. 246/2; to forthwith stop the user of the Vainguinim beach for the purpose of commercial activity; and for other reliefs including to call for the records from the Respondent nos. 1 to 10 and quash and set aside the permission dated 17.10.2000 and NOC dated 04.05.2004.

3. We have extensively heard the learned Counsel appearing for the Petitioners as well as the Respondents in connection with the subsisting grievances in the above Writ Petition. Both the learned Counsel have also brought to our notice the Orders passed by this Court in the present Writ Petition as well as in other Writ Petitions whereby the issues raised in the present Petition are under consideration. After hearing the learned Counsel and perusing the notes of submissions produced on record, we find that the above Petition can be conveniently disposed of by issuing directions to the concerned authorities to decide the pending grievances of the Petitioners.

4. With regard to the grievances of the Petitioners in respect of the removal of (a) Jetty, (b) Shed for operation of Water Sport Activity; (c) Shed for the installation of generator and (d) platform, it is the contention of the Respondent no. 5 that such Jetty was in existence prior to February 1991 when the CRZ Notification 1991 came into force. It is also the case of the Respondent no. 5 that there is sufficient material with that regard on record including the Order dated 15.04.1988 by the then PPDA as well as the permission dated 11.08.2000 of the Deputy Conservator, MPT. The legality of the said Jetty has also been disputed by the Respondent no. 9. The only dispute raised by Respondent no. 9 is that the permission dated 11.08.2000 granted by the Deputy Conservator on behalf of MPT, is not proper and, therefore, the same is not valid. The issue with that regard is pending consideration before the Civil Court in Special Civil Suit no. 93 of 2007 filed by the Respondent no. 5. As such, as far as such grievances is concerned, the concerned authorities will take action with regard to such Jetty

after the disposal of the Special Civil Suit no. 93 of 2007 filed by the Respondent no. 5.

5. With regard to the grievances in connection with the service shed, for operation of Water Sports, it is brought to our notice by the learned Counsel appearing for Respondent no. 5 that the Order passed by the Respondent nos. 1 dated 12.05.2005, was challenged before this Court in Writ Petition no. 56 of 2005 wherein the said Order was quashed and set aside by Judgment dated 26.11.2012 and the matter was remanded back to the Respondent no. 1 for re-consideration. The grievances of the Petitioners with that regard can be redressed by directing the Respondent no. 1 to decide the legality of the said shed in terms of the directions of this Court dated 26.11.2012 in Writ Petition no. 56 of 2005 as expeditiously as possible and in any event within six months from today.

6. With regard to the shed allegedly installed by the Respondent no. 5 for installation of a Generator, it is the contention of the Petitioners that it is a shed for the purpose of boat repairs and is also in existence prior to the coming into force of CRZ Notification, 1991. It is also their case that it is located in the private property of the Respondent no. 5 and was erected on 23.05.1990 pursuant to the permission of the local Panchayat. The said aspect was also subject matter of the said Writ Petition no. 56 of 2005 and, as such, the Respondent no. 1 would also have to examine the legality of such shed within a period of six months from today.

7. With regard to the grievances of the Petitioners in connection with the platform, it is the contention of Respondent no. 5 that it is not a platform but a linear retaining wall along the boundary property of the Respondent. So also the dispute with regard to the existence of a huge structure/tank, it is the contention of Respondent no. 5 that such tank was in existence prior to the CRZ Notification 1991. Taking note of the said disputes which are questions of facts, we find it proper to direct the Respondent no. 1 to examine the said allegations in respect of the platform and the structure after hearing the Respondent no. 5 within a period of six months from today in accordance with law.

8. So also the grievances of the Petitioners about the existence of the chambers in the Nallah, it is contended that such chambers were erected by the Respondent no. 5 and were in existence much prior to the coming into force of the CRZ Notification 1991. Hence, the Respondent no. 1 shall examine the said aspect after hearing the Respondent no. 5 in accordance with law.

9. With regard to the grievances of the Petitioners in seeking prayer clause (3), all the structures referred to therein are stated to have been already demolished by the Respondent no. 5 which were existing in the property surveyed under nos. 803 and 804. These structures consists of the main laundry, boiler room, laundry extension, store, barbeque platform and bar. The structures are stated to have been removed on 19.04.2004 and the same were reported to the North Goa Planning and Development Authority on 20.04.2009. Such removal was also verified by this Court pursuant to the directions issued by this Court for such demolition. Hence, the said prayer would not survive.

10. With regard to the prayer clause (4), such grievances have been taken care of in Writ Petition no. 167 of 2007 with regard to the regulations of deck beds on the beaches. Hence, no further Orders are required in connection with such prayer.

11. With regard to prayer clause A(a), the same also does not survive and, as such, no direction with that regard are necessary. Similar is the situation in connection with the reliefs A a) introduced by the Petitioners which does not survive. With regard to the prayer clause (B), such relief does not survive in view of the Consent Decree claimed to have been passed in Special Civil No. 89 of 2007 dated 20.02.2014. Hence, no further directions would be required with that regard.

12. With regard to prayer clause B(b)(b), the grievances raised therein were challenged by the Respondent no. 5 in Panchayat Appeal no. 67 of 2007 before the Appellate Authority. In the meanwhile, a show cause notice was also issued by the Respondent no. 3 in that connection on 11.10.2007 referring to the same structures. It was the case of Respondent no. 5 that two structures had permissions dated 15.04.1998 and the semi structures and the remaining semi structures were temporary structures to be removed upon construction of the new

project. An application was also filed by the Respondent no. 5 for retention of said structures before the Respondent no. 1. The issue with that regard is challenged in Writ Petition no. 494 of 2008 which is admitted and is pending before the learned Single Judge.

13. Taking note of the above, we find that the above Writ Petition can be disposed of by making the rule absolute in terms of the directions issued herein above. The Respondent no. 1 and 3 as such is directed to examine the grievances referred to herein above within a period of six months from today in accordance with law and file a compliance report in this Court thereafter.

14. Rule stands disposed of accordingly, with no Orders as to costs.

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