

The Goa Foundation and Another Vs. The North Goa Planning and Development Authority and Others

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Court : Mumbai Goa

Decided On : Jun-29-2015

Judge : F.M. Reis & K.L. Wadane

Appeal No. : Writ Petition No. 333 of 1993

Appellant : The Goa Foundation and Another

Respondent : The North Goa Planning and Development Authority and Others

Judgement :

F.M. Reis, J.

1. The above Writ Petition filed by the petitioners inter-alia prays for an appropriate writ to call for the records relating to the sanctions granted vide order dated 29.11.1991 and subsequent revisions/ extensions dated 27.3.1995, 1.10.1996 and 16.07.1997 to the construction of the respondent no.7 and after going through the legality of such permissions to build, if any, quash and set aside the same. The petitioners have also sought for a relief to quash the approval of the respondent no.3 dated 14.06.1991 and also for a direction to the respondent nos. 1, 2 and 5 to demolish any construction raised on the said plot as a consequence of such permissions.

2. Briefly, the facts of the case based on the record in the above Petition are that the respondent no.2 - Government of Goa issued an advertisement inviting offers for the construction of a hotel in Panaji at Gaspar Dias beach on 07.03.1977. On 28.03.1977, M/s. V. M. Salgaonkar Private Limited submitted a proposal for the construction of a luxury hotel at Gaspar Dias beach at Panaji and sought for additional land for that purpose. The lease deed was executed on 30.04.1979 by the respondent no.2 with M/s Palm Hotels (India) Ltd., for 99 years for an annual rent of Rs.43,277.30 paise for an area of 15,666 square metres at Gaspar Dias beach. The Government thereafter acquired additional plots for the construction of the hotel on 25.06.1981. Thereafter, on 30.01.1984, the then Lt. Governor of Goa raised an objection to the construction of a hotel at the site as the land was required for a public recreation and that the hotel building would be close to the water of Mandovi river. Subsequently, an agreement was signed between the respondent no.2 and Palm Hotels (India) Ltd.,- respondent no.7 regarding the construction of a luxury hotel which inter-alia stipulated that the company shall undertake the construction of a hotel within one year from the date on which the possession of the land was given. It is also contemplated therein that the respondent no.7 shall conform to all the rules and guidelines made by the Government from time to time for the preservation of the ecology and the environment and fulfill other statutory requirements existing in law. Thereafter, somewhere on 09.02.1987, the Captain of Ports wrote to the Chief Town Planner that he expects that the hotel building will be beyond the highest high tide water marks and further that he is concerned that the hotel building should not cause hindrance to navigation and an undertaking should be taken from the hotel promoter to make appropriate changes. The Panjim Draft Outline Development Plan (ODP) was notified for the public objections and the hotel area was zoned as recreational somewhere on 27.02.1987. The respondent no.7 raised an objection for the zoning and requested that the zone be earmarked as commercial. The Ecological Development Council on 04.03.1987 approved the hotel project in principle provided the zone is changed under the draft ODP. The said committee was a high powered council constituted in 1982 to scrutinize the proposals for development from environment point of view. The Town and Country Planning Board on 17.08.1987 appointed a sub-committee to scrutinize the objections to the

draft ODP and the Panjim final ODP was notified on 11.01.1990 whereby the hotel site is zoned as commercial. The respondent no.2 constituted the Goa State Committee on Environment (GSCE) which replaced the EDC and ECC on 26.07.1990 and their decisions were placed for review before the GSCE. It is further the contention of the petitioners that on 19.02.1991, CRZ Notification was issued under the Environment Protection Act, 1986 whereby the areas within 500 metres of the High Tide Line on the sea coast and within 100 metres from the banks of the tidal rivers were declared as CRZ and are subject to the norms of the CRZ Notification. It is further the contention of the petitioners that the hotel of the respondent no.7 is within 100 metres of the High Tide Line on the bank of the river Mandovi. On 14.06.1991 the application of the respondent no.7 is approved in principle by GSCE and listed under any other item in the agenda of the 4th meeting of GSCE. The Town and Country Planning Board approves a 10 metres wide road along river Mandovi from Youth Hostel to Yatri Niwas on 20.06.1991. The Ministry of Environment objects to GSCE's decision to approve the hotel project of the respondent no.7 on 26.08.1991 and requested that the case be deferred and the details of the project be made available to the Ministry of Environment and Forests to look into the violations and overall environmental management. But however, GSCE rejects the request of the Ministry of Environment and Forests for details of the hotel project and the approval has been conveyed to the party and the plans were approved as the site falls in CRZ II of Panaji. The Panjim Planning and Development Authority (PPDA) grants development permission to the respondent no.7 for the construction of a hotel on Chalta Nos.14(p), 16(p), 17, 18, 1(p) of P.T. Sheet Nos. 98 and 116 of Miramar on 29.11.1991. The Panjim Municipal Council issued a construction licence on 20.12.1991 and the Tree Officer granted permission for felling of trees on the plot on 29.06.1992. The conversion sanad was thereafter issued on 24.07.1992 wherein according to the petitioners the land is described as sandy and part of Campal beach. The construction was thereafter started in September, 1992 and there were protests on 15.04.1993 by the Miramar residents with the Captain of Ports. Thereafter on 23.06.1993 the above Writ Petition came to be filed along with Writ Petition Nos. 331 and 332 of 1993. It is further the contention of the petitioners that the Chief Town Planner filed his affidavit on 03.08.1993 to which

two maps were filed as annexures, both of which are highly misleading. It is further their contention that the Chief Town Planner deliberately showed the Palm Hotel to be outside CRZ although the joint site inspection report has shown the distance of the building as 23 metres from the High Tide Line. It is further also brought to our notice that the Writ Petition was admitted by this Court on 30.08.1993 and the Court directed that a separate application be filed for interim relief and accordingly, Civil Application No. 180/1993 came to be filed for stay of the construction which was rejected on 16.09.1993. It is also their case that the interim order has observed that the plan produced by the Chief Town Planner shows the site of the hotel as away from the High Tide Line of the Arabian Sea though the order also records that the construction is at a primary stage. A SLP was filed before the Apex Court by the petitioners which came to be dismissed by order dated 10.01.1994 and the order records that any observation made by the learned Judges or this Court for not interfering with the matter may not be construed to have any prejudice to the stand taken by the petitioners at the time of the final disposal of the petition. The CRZ amendment came on 18.08.1994 reducing CRZ along tidal rivers to 50 metres from the High Tide Line. In view of the complaints from the residents of Miramar, the Captain of Ports inspected the Palm hotel's plot and it is the contention of the petitioners that it was noticed that the excavated sand was dumped between the high water level and low water level and due to dumping of the sand the access from the Youth Hostel to Miramar was blocked. Thereafter, the Ministry of Environment and Forests constituted a committee comprising of the officers from the Ministry of Goa Government and two NGOs to inspect the violations of CRZ Notification in Goa and submitted a report and the interim site visit report was submitted to the Ministry of Environment and Forests on 30.10.1994 which according to the petitioners records the spot observations and discussions with the concerned State Authorities. It is further their case that the report discloses that the construction of the respondent no.7 is abutting the waterfront and the site is categorized as a beach and affected by tidal action and that the construction is coming up on the seaward side of an existing block of the residential buildings and that there is no road between sea and the construction site. The report discloses that the construction extended right up to and within the High Tide Line and as such the wave impact was impeded by the building walls of

one part of the construction. Thereafter, the petitioners filed M.C.A. No. 403/94 for stay of the construction in the above Writ Petition and this Court dismissed the said application on 20.02.1995 once again noting the stand of the Goa Government that the High Tide Line is about 1.5 km from the site of the project of the respondent no.7 and hence the hotel does not lie within the CRZ. The Goa Planning Development Authority thereafter renewed the permission on 27.03.1995 for the project and the Apex Court declared the clause in the Notification reducing CRZ along the rivers to 50 metres as illegal on 18.04.1996. The Coastal Zone Management Plans for Goa is approved on 27.09.1996 and the area of the hotel site is zoned as CRZ- II. The revised plans were thereafter approved on 01.10.1996. On 16.07.1997, NGPDA approved the revised plans of the project subject to a condition that no construction on the western side of the existing building line towards the Mandovi river and thereafter on 16.09.1997, referred the application to construct the retaining wall filed by the respondent no.7 along Mandovi river bank to the Goa State Committee of Coastal Environment. Another application was filed on 29.01.1997 for stay of the construction and this Court observed in the order dated 25.07.1997 that it is necessary to have a location map on record which would correctly show the location of the disputed project vis-a-vis the existing structure on the bank of the river Mandovi including Yatri Niwas, Youth hostel, Indoor Stadium and Kala Academy so as to examine the disputed construction coming towards the seaward side or landward side. Accordingly, a Commissioner was appointed to make a report with that regard. As the previous Commissioner expressed some difficulty, a new Commissioner was appointed on 24.11.1997. The report was submitted on 12.12.1997 along with location plan and the Writ Petition was posted for hearing on 23.06.1998. Thereafter, the learned counsel of the petitioners prayed that all CRZ matters be taken up together and this Court delivered a judgment on 13.07.2000 in Gulf Goans Hotel V/s Union of India. The said judgment was challenged before the Apex Court in Special Leave Petition and thereafter on 04.02.2002 at the request of the learned counsel, the above Writ Petition was adjourned sine die. The request of the petitioners to fix the matter for hearing was also rejected on 05.10.2012 and ultimately, the Apex Court delivered a judgment on 22.09.2014 in the matter of Gulf Goans case thereby setting aside the judgment of this Court.

3. Mrs. N. Alvares, the learned counsel for the petitioners has raised the following contentions. The learned counsel has pointed out that the construction put up by the respondent no.7 violates the CRZ Notification of 1991 as according to her admittedly the application for such development was filed by the respondent no.7 after the coming into force of the CRZ Notification of 1991 in February, 1991 and as such, as the hotel construction project comes within a distance of 100 metres from river bank, the requirements of CRZ- II have not been complied with by the hotel project of the respondent no.7. The learned counsel has also taken us through the affidavit filed by the Government Officials as well as the submissions at the time of the disposal of the interim application to point out that the authorities have committed a fraud in the interpretation of the relevant provisions of the Notification of 1991 which clearly discloses the illegal malice of the Government Authorities to manipulate the consideration applicable to the project within CRZ areas in order to grant permissions to the respondent no.7. The learned counsel further pointed out that there was collusion between the Government/respondent no.2 and the respondent no.7 in misleading the correct facts in issue by filing documents and affidavits. The learned counsel further pointed out that the Government Officers have deliberately feigned the correct position by claiming that the hotel project comes within a distance of 1.5 km from the High Tide Line overlooking the provisions of the Regulations as well as the intention in constituting CRZ areas to allow the hotel project of the respondent no.7. The learned counsel further pointed out that by the development carried out by the respondent no.7, the access of the public to the Miramar beach has been obstructed. The learned counsel further pointed out that for the construction of a hotel project the sand dunes have been removed thereby affecting and degrading the area which is ecologically fragile for erosion. The learned counsel further pointed out that even the vegetation at the site discloses that the said dunes have been malafidely removed by the respondent no.7 so that the evidence with that regard would vanish. The learned counsel has minutely and elaborately taken us through the relevant provisions of the CRZ Notification as well as different judgments of the Apex Court and this Court to advance her contention that the Government Authorities have fraudulently granted permission for the hotel project in violation of the relevant provisions of law. The learned counsel further pointed

out that while disposing of the application for interim relief, this Court was misled to accept the contention of the respondents that CRZ restrictions were only applicable to 500 metres from the High Tide Line of the Arabian sea. The learned counsel further pointed out that this Court appointed a Commissioner to find out the situation at loco. The learned counsel has taken us through the Commissioner's report to point out that the swimming pool constructed by the respondent no.7 is hardly at a distance of less than 20 metres from the High Tide Line from the bank of the river. The learned counsel has also pointed out that even the construction of a hotel is at a distance of 30 metres from the bank of the river which clearly shows that the construction put up by the respondent no.7 is illegal and cannot be allowed to stand. The learned counsel has thereafter pointed out that the Town Planning Authorities have approved the plans of the respondent no.7 on the basis that the areas were coming within CRZ -II but however, the learned counsel has thereafter taken us through the plans produced on record to point out that in between the hotel project and the river a proposed road is being shown which is not existing nor was approved by the concerned authorities. The learned counsel further pointed out that this itself is a fraud committed by the respondent no.7 to mislead the authorities to obtain the permissions for the hotel project at the site. The learned counsel thereafter pointed out that as there was no approved road towards the seaward side of the hotel, the question of contending that the construction is within the norms of CRZ II is totally farfetched. The learned counsel further pointed out that there is no existing authorised structure towards the seaward side of the hotel project of the respondent no.7 and as such the permissions granted in favour of the respondent no.7 totally violate the CRZ Notification and consequently, the respondent no.7 deserves to be ordered to demolish the construction. The learned counsel has relied upon different judgments of this Court as well as taken us through the material on record to contend that the reliefs sought by the petitioners deserve to be granted.

4. On the other hand, Mr. R. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 has disputed all the contentions advanced by the learned counsel appearing for the petitioners. The learned Senior Counsel has pointed out that the project of the respondent no.7 was sanctioned prior to the coming into force of the Notification of 1991. It is the contention of the learned Senior Counsel

that the process was conceived on 30.04.1979 when the lease in favour of the respondent no.7 was registered at the instance of the respondent no.2. It is further his case that the project of the respondent no.7 was approved and cleared prior to 19.02.1991 and that all the projects approved prior to the said date from the environmental point of view are not affected by the CRZ Notification of 1991. It is further his contention that once the project has started then 1991 Notification would have no application. The learned Senior Counsel further pointed out that the interpretation of the Notification of 1991 by the Government of Goa inter-alia was that the restrictions in the Notification would not apply to any project which was beyond 500 metres from the High Tide Line i.e. from the point where the sea enters the mouth of the river. The learned Senior Counsel has taken us through the affidavit of the Town Planner N. Pandalai as well as of R. N. Ray to point out that the State Government had always taken a stand that the hotel project of the respondent no.7 was not affected by the CRZ Notification. The learned Senior Counsel further pointed out that the State Government was the appropriate authority in the matter of granting development permission under the Notification 1991 and as such the approvals are valid till CZMP was approved. The learned Senior Counsel further pointed out that the exposition of law by the authorities who are required to implement the Notification is given high degree of weightage by the Court and in support of his submission, the learned Senior Counsel has relied upon the judgment of the Apex Court. The learned Senior Counsel further pointed out that the State would require to prepare Coastal Zone Management Plans (CZMP) to implement the CRZ Notification of 1991 and during the interim period the State Government was the appropriate authority to grant such permission. The learned Senior Counsel further pointed out that the approval of the CZMP does not come in the way of the State Government for re-validating a plan or granting a deviation. The learned Senior Counsel thereafter has taken us through the amendment of the CRZ Notification on 16.08.1994 and the salient features of the amendment was that the High Tide Line was required to be demarcated uniformly in all parts of the country. The learned Senior Counsel further pointed out that the distance up to which the development along the rivers, creeks and backwaters is to be regulated would be governed by the distance up to which the tidal effect of sea is experienced in the rivers, creeks or backwaters, as the case may be which

should be clearly identified in the Coastal Zone Management Plans. It is further his contention that the permission to the respondent no.7 was granted prior to the amendment of 16.04.1994. The learned Senior Counsel further pointed out that the interpretation of law by the Government found favour with this Court while disposing of the interim application. The learned Senior Counsel thereafter pointed out that the petitioners themselves have filed a Writ Petition No. 115 of 1992 wherein the petitioners have challenged the decision in the meeting of 20.11.1991 and that at the time of issuing Rule this Court gave the petitioners leave to add parties which the petitioners for reasons best known to them failed to add any parties to the said petition. The learned Senior Counsel further pointed out that this Court by judgment dated 15.07.1998 decided the said Writ Petition and the petitioners did not raise any contention with regard to the validity of the decision taken on 20.11.1991 and as such, it has to be assumed that the petitioners had given up their challenge to the decision of the Government of Goa in the meeting of 20.11.1991 to the project of the respondent no.7. The learned Senior Counsel further pointed out that the conduct of the petitioners is not bonafide and has taken us through the affidavit of Mr. Mukerjee on behalf of respondent no.7 to point out the averments therein that the petitioners have been selective in choosing to file petitions challenging the development projects. The learned Senior Counsel has also pointed out that there is no reference in the above petition with regard to the filing of the earlier petition in the year 1992 which would show that the petitioners have accepted that the projects on the Mandovi river were approved by the decision of the Government on 20.11.1991 by relying upon its own interpretation of the CRZ Notification of 1991 which was valid till CZMP was approved. The learned Senior Counsel has thereafter taken us through the petition to point out that there are no particulars of the alleged fraud brought by the petitioners. The learned Senior Counsel also submits that the interim report of the Ministry of Environment and Forests cannot be relied upon as it is contrary to the principles of natural justice. The learned Senior Counsel further pointed out that the contention of the petitioners that there is a violation of the norms prescribed for CRZ II is totally erroneous as according to him there is an authorised structure between the hotel project of the respondent no.7 and Mandovi river which clearly suggests that the whole construction activity carried out by the respondent no.7 is in accordance

with law and the sanctioned plans. The learned Senior Counsel has thereafter minutely taken us through the relevant provisions of law as well as the situation at loco which we shall deal with while examining the contentions of the learned counsel of the parties, to point out that all the requirements of CRZ II are duly complied with by the hotel project of the respondent no.7. The learned Senior Counsel further justifies the re-validation or revision of the plans dated 27.03.1995, 01.10.1996 and 16.07.1997 on the basis of **Indian Council for Enviro-Legal Action** case. The learned Senior Counsel has also pointed out that even the swimming pool and compound wall constructed by the respondent no.7 which have been duly approved by the statutory authorities do not create any breach of the provisions of the CRZ Notification. The learned Senior Counsel further pointed out that in any event the construction activity carried out by the respondent no.7 is with a colour of a legal permissions and as such the question of directing the demolition of such construction activity is totally absurd and cannot be accepted. The learned Senior Counsel has also pointed out that the respondent nos. 7 and 9 have incurred heavy expenditure in putting up such project and even the interim relief was refused and as such grave injustice would occasion to the said respondents in case any relief is granted to the petitioners. The learned Senior Counsel as such submits that the petition be rejected.

5. Mr. D. Lawande, learned Government Advocate appearing for respondent no.2 has pointed out that the area comes within the CRZ II area and according to him the permissions have been duly granted by the authorities. The learned counsel further pointed out that the interpretation of the provisions at the stage of granting of permission is in consonance with the stand taken by the State Government with regard to CRZ areas along river having tidal effect. The learned counsel further pointed out that the permissions have been duly granted and the construction has already been completed and as such according to him the question of directing the demolition of the construction would not arise at all. The learned Government Advocate however did not dispute that the permissions were granted to the respondent no.7 based on the norms of CRZ II in terms of CRZ Notification of 1991.

6. Mr. H. D. Naik, learned counsel appearing for respondent no.1 has also supported the contention of Mr. D. Lawande, learned Government Advocate appearing for the respondent no.2. The learned counsel has also produced the plan of the concerned construction at the time of revision in the year 1996. The learned counsel as such submits that no case is made out by the petitioners for any relief.

7. Mrs. N. Alvares, learned counsel appearing for the petitioners has disputed the contention of the learned Senior Counsel appearing for the respondent nos. 7 and 9 by pointing out that even during the pendency of the earlier petition in 1992 when the petitioners learnt about the development activities intended by the respondent no.7 the petitioners immediately in the year 1993 filed the present petition. The learned counsel further pointed out that this itself suggest that the petitioners have not delayed as no development had in fact started when the petition was filed. The learned counsel further pointed out that the contention that the petitioners are selective is totally erroneous as according to her the petitioners have filed petitions after the disposal of the Writ Petition of the year 1992 against most of the hotels which were contrary and in breach of the CRZ Notification. The learned counsel further pointed out that as far as the respondent no.7 is concerned, as the petition was already filed and pending adjudication there was no need of filing another petition. Without prejudice to the above submission, the learned counsel has pointed out that even assuming that for the purpose of finding out an authorised legal structure one can see on both sides of the plot of the respondent no.7, evidently, according to her the swimming pool and compound wall comes within the no development zone of the CRZ area. The learned counsel further pointed out that even the hotel structure itself comes within the no development zone area but however considering that the hotel has already been constructed, the question of allowing the swimming pool and compound wall in the no development zone in the CRZ area would be totally contrary to the environment laws. The learned counsel further pointed out that as such this Court should ensure that the access of the public along the Miramar beach abutting the Mandovi river is not at all jeopardize and further that all the constructions put up in the no development zone in CRZ area along the river bank are ordered to be removed.

8. Before we proceed to examine the main rival contention with regard to the claim of the petitioners that there was an infringement of the CRZ Regulations of 1991, we shall deal with the preliminary contentions raised by Mr. R. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9.

9. The first contention of the learned Senior Counsel is that in view of the earlier Writ Petition No. 115 of 1992 filed by the petitioners, the above petition is barred by principle of res judicata. The learned Senior Counsel has pointed out that there was a challenge to the decision in the meeting of 28.11.1991 of the respondent no.3 wherein the project of the respondent no.7 was also approved. The learned Senior Counsel has further submitted that there were averments in the said Writ Petition to suggest that the petitioners were also raising a grievance with regard to 10 metres set back being fixed by the concerned authorities. The learned Senior Counsel as such submits that the issue with regard to the licence for the project of the respondent no.7 could very well be raised by the petitioners in the earlier petition and as such according to him the present petition is barred by principle of constructive res judicata in terms of Section 11 of the Civil Procedure Code.

10. It is not disputed that the present petition was filed immediately after the petitioners obtained an information about the plans which were sanctioned by the concerned authorities in respect of the hotel project of the respondent no.7. The respondent nos. 7 and 9 admittedly were not parties to the earlier petition. The petitioner no.2 also was not a party to the said petition. Even before the above Writ Petition No. 115 of 1992 was finally disposed of on 15.07.1998, the petitioners filed the present Writ Petition on 23.06.1993. Apart from that, on perusal of the earlier judgment passed by this Court dated 15.07.1998, it is clearly stated therein that the grievance of the petitioners was the approval of the projects along the coastal line without preparing the coastal zone management plan. As in the meanwhile, the Central Government had approved the management plan on 27.09.1996, this Court disposed of the said Writ Petition. In such circumstances, the contention of Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 that the contentions sought to be raised by the petitioners in the present Writ Petition were directly and substantially in issue in the said Writ Petition cannot be accepted. Apart from that, as already pointed out herein above,

the respondent nos. 7 and 9 nor the petitioner no.2 were parties to the said Writ Petition. Besides, the petitioners filed the above Writ Petition by raising the claims during the pendency of the earlier Writ Petition. In such circumstances, the judgment of the Apex Court relied upon by the learned Senior Counsel appearing for respondent nos. 7 and 9 reported in **1985(2) SCC 670** in the case of **Daman Singh and others Vs State of Punjab** is not applicable to the facts in the present case. The Apex Court in the judgment reported in **AIR 2001 SC 2134** in the case of **M/s International Woollen Mills V/s M/s. Standard Wool (U.K.) Ltd.**, has observed at para 10 thus:

10.Mr. Hingorani however submitted that this case would be covered by Explanation IV to Section 11 of the Code of Civil Procedure. He submitted that in the earlier Application the defence regarding non-compliance of Section 13(b) could have been taken but had not been taken. He submitted that it was not open to the Appellants to take such a defence in a subsequent Application. In our view there is no substance in this submission. Explanation IV to Section 11 of the Code of Civil procedure would have come into play only if some decision had been finally given before the second Application was filed. In that event it could have been urged that all available points should have been urged before that decision was given. In this case the second Application was filed before any decision on the first Application was given. The Appellants could have, instead of filing a second Application, amended their first Application and taken these pleas in that Application itself. Had they amended the first Application there would be no bar of res-judicata or constructive res judicata. If that be so one fails to understand how the second Application was barred by principles of res-judicata or constructive res-judicata. To be remembered that the Orders were passed after hearing arguments on both the Applications. Under such circumstances no question arises of their being any res-judicata or constructive res-judicata.?

Admittedly, the present Writ Petition was filed disputing the permissions granted to the respondent no.7 much prior to the disposal of the earlier Writ Petition when there was no final decision therein and as such the question of contending that the present Writ Petition is barred by principle of constructive res judicata cannot be accepted. It is also to be noted that the respondent no.7 did not take any steps, if

at all they were so interested to take up the above Writ Petition along with the said Writ Petition No. 115 of 1992 though from the records in the present petition they had knowledge about the pendency of such petition. The judgment of the Apex Court relied upon by Mr. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 reported in **(1986) 1 SCC 100** in the case of **Forward Construction Co. and others Vs Prabhat Mandal (Regd.) Andheri and others** is not at all applicable to the facts of the present case. The facts therein are that after an earlier petition was finally disposed of, another petition came to be filed by some parties under Article 226 of the Constitution of India seeking almost the same relief. As pointed out herein above, in the present case, the reliefs are different. Besides, the respondent nos. 7 and 9 nor petitioner no.2 were parties to the earlier petition. The infringements pointed out by the petitioners in the present Writ Petition were not directly and substantially in issue nor adjudicated in the said Writ Petition No. 115 of 1992. The principles of res judicata are not otherwise ordinarily applicable to Public Interest Litigation and in such circumstances, we find that the contention of Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 that the above Writ Petition is barred by principle of res judicata cannot be accepted.

11. Before we proceed further, we would like to deal with the contention of Mr. R. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 with regard to his submission that the petition filed by the petitioners is hopelessly barred by laches. In the present case, the permissions were obtained in November, 1991. The Municipality licence was obtained subsequently. The petition was filed in the year 1993 and the records reveal that when the petition was filed, the construction activities were at a primary stage. Apart from that, it is also the contention of Mr. R. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 that the petitioners themselves had already initiated proceedings in the year 1992 with regard to the permissions which were granted despite of the fact that the Coastal Zone Management Plan was not prepared. The licences which were granted on the said date were for different projects along the sea front. It appears that the project of the respondent no.7 was also added to the agenda during the course of the meeting on the said date. Mrs. N. Alvares, learned counsel appearing for the petitioners has pointed out that there was an order of status quo operating in the

said earlier petition but however, the fact remains that essentially the grievance of the petitioners in the said petition was to the projects which were approved along the Arabian sea by the authorities. It is also pointed out by Mrs. N. Alvares, learned counsel appearing for the petitioners that immediately after the Coastal Management Zone Plan was prepared and the earlier petition was disposed of, the petitioners had also filed a petition challenging the permissions granted to the hotel project put up along the sea. But however, in the present case, the petitioners chose to file the above petition as early as in the year 1993 and at the time of the disposal of the interim relief, the Apex Court had clearly noted that the refusal of such interim relief would not affect the contention of the petitioners at the time of the final hearing of the above Writ Petition. As such, it cannot be said that the above Writ Petition is barred by laches.

12. We shall now proceed to examine the contentions of Mrs. N. Alvares, learned counsel appearing for the petitioners that the hotel construction is in violation of the provisions of the CRZ Notification of 1991. In this connection, the first contention of Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 is that the CRZ Notification of 1991 is not applicable to the present case as according to him the project was sanctioned prior to the coming into force of the CRZ Notification of 1991 on 19.02.1991. Admittedly, prior to the said date there were no sanctions obtained by the respondent no. 7 from the Town and Country Planning Authorities and the Panaji Municipality for any construction activity. In the judgment of the Division Bench of this Court reported in **1989 (1) Goa Law Times 189** in the case of **Jimmy Jal Gazdar V/s Panjim Planning and Development Authority and two others**, it has been inter-alia observed that construction of a building comes within the ambit of the expression development? and that Sections 43 and 44 of the Goa, Daman and Diu Town and Country Planning Act, 1974 makes it abundantly clear that in case of all constructions/developments carried out after the Act becomes applicable to the area, permission under Section 44 of the said Act must be obtained. The permission or approval obtained for such development under any other law would not be sufficient and a permission under Section 44 of the said Act would be required for such construction activity. In the present case, it is not disputed that the permission under Section 44 of the Town and Country Planning Act, 1974 was obtained on 29.11.1991 and the application

was made on 10.05.1991. In such circumstances, the development was permitted after the coming into force of the CRZ notification of 1991 and as such the contention of Mr. R. Dada, learned Senior Counsel that the permissions were obtained much before the coming into force of the CRZ Notification cannot be accepted. The Apex Court in the judgment reported in **Judgments Today 1992(4) S.C. 538** in the case of **UsmanGani J. Khatri of Bombay V/s Cantonment Board and others**, the Apex Court has observed at para 24 thus :

24. It appears from the record that the Union Ministry of Environment, State of Maharashtra, National Commission on Urbanization and expert working group on Cantonment areas took notice of this problem in the city of Pune and suggested schemes which took the shape of orders issued by the G.O.C.-in: Chief, Southern Command and amendments in the bye-laws by the Cantonment Board. The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned installments and getting conversion of their land in free-hold tenure. The first scheme of restrictions was brought into force long back on 24th December, 1982 and the second on 26th March, 1984. The petitioners did not submit any fresh building plans in accordance with the first or the second scheme of restrictions. Many of the petitioners have not paid a single pie towards the conversion charges, some of them have paid only few installments but not according to the schedule. In any case, the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30th April, 1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now.....?

13. Taking note of the said observations of the Apex Court, we find that in the present case the Goa State Committee of Environment at the 4th meeting held on 14.06.1991 considered the proposal of the respondent no.7 to put up a hotel project in the subject property. This is reflected at para 17 of the affidavit of Mr. N. Pandalai, Chief Town Planner of the State of Goa. At para 18 of the said affidavit,

the Town Planner further states that at the said meeting, the effect of the notification of the Government of India concerning the coastal area classification and development regulations framed under Section 3(1) and 3(2) of the Environment Protection Act and Rules 5(3) of Environment (Protection) Rules, 1986 was also considered and it was deliberate to follow the set back line of 10 metres along the river and creeks. By a letter dated 10.10.1991 the Chief Town Planner informed the respondent no.7 that the proposal for construction of hotel was considered and approved by the Goa State Committee Environment in the said meeting and that there is no objection from the planning point of view to construct the hotel with condition that the conversion sanad, development permission and licence from the Dy. Collector, Member Secretary of CPDA and Panaji Municipal Council should be obtained prior to the commencement of the construction. The order granting permission in terms of Section 44 of the Town and Country Planning Act is dated 29.11.1991 and it clearly states that the application for approval was filed by the respondent no.7 on 10.05.1991. The Panjim Municipal Council granted the requisite permission to put up a hotel project in the subject property on 28.12.1991. The sanad of conversion issued by the Collector under the provisions of Land Revenue Code is dated 24.07.1992. On perusal of the said sanad, it clearly inter-alia discloses that the land in question in Chalta No. 18 of P. T. Sheet No. 98 is sandy and the part of Campal beach is having 218 cassurina forest trees. The said material on record clearly shows that the permissions were applied by the respondent no.7 only after the coming into force of the CRZ Notification of 1991 and consequently, the contention of Mr. R. Dada, learned Senior Counsel appearing for the respondent no.7 that the subject project does not come within the ambit of the CRZ Notification of 1991 cannot be accepted merely because the lease agreement for the project was approved in principle by the concerned authority. The record do not reveal that any application for any permission from the statutory authorities came to be issued in favour of the respondent no.7 prior to the coming into force of the CRZ Notification of 1991 on 19.02.1991. As such, the restrictions as provided under the CRZ Notification of 1991 would clearly be applicable to the subject project put up by the respondent no.7 in the said property.

14. Mr. R. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 earnestly submitted that there was a lease agreement executed in favour of the respondent no.7 pursuant to which the hotel project was initiated. No doubt, the lease agreement was executed in favour of the respondent no.7 but however, on perusal of the terms of such agreement, it clearly provided that the hotel project would have to be put up after obtaining all the requisite statutory sanctions including the environment permissions. In such circumstances, the respondent no.7 was expected to have the permissions to carry out the development in accordance with the statutory regulations including the CRZ Notification of 1991 which had then come into force.

15. Para 3(3)(i) of the CRZ Notification of 1991 inter-alia provides that the Coastal States/Union Territory Administrations shall prepare within a period of one year from the date of such Notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the said Notification. Clause (3) (3) (iii) of the said Notification of 1991 further provides that in the interim period till the Coastal Zone Management Plans mentioned in para (3)(3) (i) are prepared and approved, all the development activities within the CRZ shall not violate the provisions of the Notification. The State Governments and Union Territory Administrations as such had to ensure adherence to these Regulations and violations, if any, would be subject to the provisions of the Environment (Protection) Act, 1986. The said provisions clearly provides that until the Coastal Zone Management Plan is prepared and approved in terms of the said provisions, during the interim period all development activities within the CRZ should not violate the provisions of the said Notification. In the present case, when the project of the respondent no.7 was approved by the authorities in the year 1991, the management plan was not prepared and consequently, any development could not violate the said CRZ Notification of 1991. As such the decision of the Goa State Committee of Environment to maintain a distance of 10 metres from the river bank is clearly in violation of the provisions of the CRZ Notification of 1991.

16. CRZ Notification dated 19.02.1991 came to be issued under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986. By the said Notification,

the Government of India, brought into force the Rules/Regulations restricting the development and construction activities in the area known as Coastal Regulation Zone as defined in the said Notification. The statements, objections and reasons proceeded on footing that the said Act of 1986 shows growing concern of the Central Government about the decline in the Environmental quality as evidenced by increase in the pollution, loss of vegetal coverage and biological diversity and excessive concentration of chemicals in the atmosphere. Section 5 of the said Act gives special power to the Central Government to issue direction in writing from time to time to any person or any authority in connection with the Act which such person is bound to comply with. Under the Act, the Central Government is authorised to monitor the implementation of the Act. CRZ Notification was accordingly issued in the year 1991 in exercise of power conferred under Rule 5(3) of the Environment (Protection) Act, 1986. The Notification came to be issued to protect the ecological balance in the coastal area. Rule 5 provides for prohibition and restrictions of locating of the industries. The Notification constitutes a recognition of the fact that coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action up to 500 meters from High Tide Line and the land between the Low Tide Line and High Tide Line are ecologically vulnerable and require special measures of protection against the environmental degradation. The natural resources are held in trust by the community for the benefit of not merely the present generation but for succeeding generations as well. The uncontrolled march of urbanization poses serious dangers to the preservation of the environment. The policy makers undoubtedly have to preserve the balance between the urgent need for economic development and the preservation of the natural resources against the rapacious denudation. The CRZ Notification makes that balance and dwells upon a specific part of the environment, and an important one at that which is defined as the Coastal Regulation Zone. Within the Coastal Regulation Zone any development either by a private or a public body must be in accordance with the provisions of the notification. The burden must lie on the developer to establish entitlement before the authority before whom he seeks a sanction. The law imposes an absolute and unconditional obligation upon the developer to make a full, fair and candid disclosure to the sanctioning authority of all the features of the proposed

development and to demonstrate that the development will not have a deleterious effect on the environment. The material disclosed to the authority constitutes the basis for the grant of sanction or permission. Consequently, a failure to disclose all the relevant material and information will invalidate the grant of sanction. The provisions such as CRZ Notification of 1991 are conceived in the public interest, the interest which protects the welfare not merely of the society as it exists, but the society of the morrow. The CRZ Notification has provided a categorisation of coastal stretches into CRZ I, II, III and IV which would apply even pending the sanction of the Coastal Zone Management Plan.

17. Before we proceed to examine whether the subject land comes within the Coastal Regulation Zone, we have to note that the CRZ Notification of 1991 clearly declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by the tidal action (in the landward side) up to 500 metres from the High Tide Line and the land between the Low Tide Line and High Tide line as Coastal Regulation Zone and imposes with effect from the date of the Notification the restrictions provided therein. It further provides in the note that the proposed regulation in case of rivers, creeks and backwaters may be modified on case to case basis for the reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 100 metres or the width of the creeks, rivers or backwaters whichever is less. On going through the said Notification, the Coastal Regulation Zone as far as the seas are concerned is 500 metres from the High Tide Line whereas, as far as rivers are concerned such distance shall not be less than 100 metres from the High Tide Line. The term High Tide Line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm?. Hence, the High Tide Line is the line of intersection of land

with the water surface. Thus, the stand of the State Government that the distance stipulated in the CRZ has to be drawn from the Arabian Sea is totally erroneous and not in accordance with the CRZ Notification of 1991. The construction of the Notification by the State Government to mean that such Coastal Regulation Zone is only at a distance of 100 metres from the mouth of the river is also unsustainable as the Notification clearly stipulates a distance of 100 metres for the rivers from the High Tide Line to be a Coastal Regulation Zone. The fact that the project of the respondent no.7 is abutting the Mandovi river which is subjected to tidal effect of the sea is not disputed. In such circumstances, the High Tide Line will be the line on the land up to where the highest high tide reaches at spring tide.

18. In the affidavit filed by Mr. S. K. Mukerjee on behalf of the respondent no.7 he has accepted at para 8 that the impugned planning permission dated 29.11.1991 and the clearance by GSCE dated 14.6.1991 are based on the interpretation, placed on the Coastal Zone Regulation by the said bodies. He has further stated that it is nobody's case that the said regulations have been relaxed in favour of the 7th respondent. He has also stated that in all cases where the proposed development is beyond 500 metres of the High Tide Line as explained in the GSCE decision of its meeting held on 28.11.1991, the said regulations have not been complied with. He has further stated that the interpretation is correct and the Coastal Regulations of 1991 do not apply to the present case as well as other similar situated project on the bank of Mandovi river. He has also stated in para 6 of the said affidavit that on plain reading of 1991 Regulations, it is clear that GCMP is to be prepared in respect of rivers and estuaries falling within the coastal zone of 500 metres from the High Tide Line and not in respect of the river falling outside the coastal zone. He has also stated that the hotel project is at a distance of southern bank of Mandovi river outside the coastal zone. He has also highlighted the averments of the Chief Town Planner in his affidavit who has stated that the set back from the river front kept by the respondent no.7 is of 23 metres from the plinth which has been constructed. He has also stated at para 9 of the said affidavit which is dated 04.09.1993 that the letter of Additional Magistrate is based on misrepresentation of both the facts and law as merely because the project is at a distance of 23 metres from the bank of river Mandovi does not bring it under the provisions of the CRZ. He has also reiterated that the said regulation pertain to the

coastal stretches and not river bank more than 500 metres from the High Tide Line. Thus, the stand taken by the respondent is that CRZ Regulations are not applicable to the projects which are located along the river bank though subject to tidal effect and that in any event it does not affect the projects which are located 500 metres from the Arabian Sea. This stand of the respondent cannot be accepted as it is by misreading the said Notification of 1991 and the note referred to therein. On going through the CRZ Notification of 1991 and the note therein it provides that the restrictions in terms of CRZ Notification of 1991 would also apply to the project at a distance of 100 metres from the High Tide Line of the river subject to the conditions stipulated therein.

19. Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 has however relied upon the judgment of the Apex Court reported in **(1979) 4 SCC 565** in the case of **DeshBandhu Gupta and Co. and Others Vs Delhi Stock Exchange Association Ltd.**, to advance his contention that the exposition of law by the authorities is given high degree of weightage by the Court. But however, at para 9 of the said judgment, it is observed thus:-

9.In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-395) it has been stated that administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. In *Baleshwar Bagarti v. Bhagirathi Dass* the principle, which was reiterated in *Mathura Mohan Saha v. Ram Kumar Saha* has been stated by Mukerjee J. thus:

"It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it..... I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction." (emphasis

supplied)

Of course, even without the aid of these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the Notification the proviso permitted the closing out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, byelaws and regulations of the respondent.?

Hence, the construction by the State Government of the CRZ Notification as such does not bind the Court if it is found that the executive construction is not in accordance with the CRZ Notification and is a clear case of error. Thus, when the executive construction of the provisions are totally erroneous and on its plain reading are not in accordance with the provisions of the Notification, the question of giving any weightage to such construction would not arise. Such a construction by the respondents is unsupportable on the touchstone of an acknowledged or acceptable principle of law though the decision makers may not have a role of actual malice at work in his mind. A person who inflicts an erroneous view on the public in contravention and contrary to the law, is not allowed to say that he did so with an innocence mind. He is taken to know the law and can only act within the laws. It can be described as an act well done with an oblique or indirect object. It is well settled that the State is under an obligation to act fairly, without ill will or malice. Thus, something done without lawful excuse, disregarding the rights of the public and the objects for which such laws have been enacted, can be termed to be with indirect object. It is an act done wrongfully, without reasonable or probable cause. Considering the said aspects in the present case, we find that while examining the environmental aspect for the project of the respondent No.7, though the provisions of CRZ Notification of 1991 were in fact clearly noted, the respondent No.3 chose to direct the concerned Department to change the distance of the No Development Zone and make changes in the plan though the Notification itself provided that until the coastal management plan is approved by the Central Government, all the restrictions imposed under the CRZ Notification of 1991 have to be complied with. It is also to be noted that the representative of the Ministry of Environment had, in fact, brought to the notice of the respondent No.3 that the hotel project of the respondent No.7 would violate the CRZ Notification of

1991. Apart from that the concerned Authorities, while granting the permissions for such constructions, have clearly noted that the project was coming within the CRZ-II area. In such circumstances, the whole exercise by the respondents to take a stand contrary to the express provision of the CRZ Notification of 1991 and assume that the hotel project of the respondent no.7 did not fall within the Coastal Regulation Zone is not at all justified. It is also to be noted that while granting sanction, the Dy. Collector has clearly noted that the substantial part of the land is sandy and that cassurina forest trees which are normally grown on sandy and beach areas are found therein. In such circumstances, the action by the authorities to permit the hotel project without complying with the restrictions of the CRZ Regulations is not at all justified as the said project was within 100 metres from the High Tide Line of the river.

20. Mr. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 has thereafter pointed out that at the time of deciding the interim relief, this Court had accepted the stand of the Government that the project of the respondent no.7 does not come within the area restricted by the CRZ Notification. But however, the Apex Court while disposing of Special Leave Petition No. 20221 of 1993 by order dated 10.01.1994 has observed that any observation made by the learned Judges or by the Apex Court not interfering with the matter may not be construed to have any prejudice to the stand taken by the petitioners at the time of the disposal of the petition. Even while disposing of M.C.A. No. 403 of 1994, this Court has observed at para 5 that it does not propose to make any observation with regard to the question as to whether the suit construction lies in the Coastal Regulation Zone or not or whether the same is located either on the beach or sea front or along the bank of Mandovi river. Similarly, this Court has observed that it is not concerned at this stage as to whether the suit construction falls in an estuarian area or in the bay being therefore subject to tidal action which by itself would imply that it may be covered by the Coastal Regulation Zone within the meaning of Notification of 1991. In such circumstances, this Court had not examined at that stage whether the hotel project of the respondent no.7 was within the Coastal Regulation Zone. As already pointed out herein above, on the basis of the material on record, it cannot be disputed that the subject project is within the Coastal Regulation Zone. It is also pertinent to note that the stand taken by the State Government at the time

of filing of the Writ Petition has not been now supported by the learned Government Advocate appearing for the respondent no.1 who has fairly stated that the hotel project has been examined on the basis that the subject land is within the CRZ II area. No submissions as such in support of such stand based on the CRZ Notification were advanced by the learned Government Advocate.

21. In this connection, we would also like to note the conduct of the statutory authorities while granting the permission to the respondent no.7 for the subject construction. As already observed herein above, the stand of the State Government, which prima facie influenced this Court to refuse an interim relief, that the subject land was beyond 500 metres from the Arabian Sea and as such not covered by the CRZ Regulations is not in conformity with the provisions of the Notification of 1991. We have also taken note of what is the meaning of High Tide Line and that as far as rivers are concerned, the restrictions under the CRZ Notification would apply to a distance of 100 metres from the High Tide Line. Mrs. N. Alvares, learned counsel appearing for the petitioners also brought to our notice that at the time when the permissions were granted to the respondent no.7 there was another permission issued by the same authorities somewhere in the year 1992 for another project which was the subject matter in the case of **People's Movement for Civic Action through its General Secretary and Anr V/s Goa Coastal Zone Management Authority and others reported in 2014(3) Bom. C. R. 12**. While examining the plans therein in respect of a project which was abutting the Zuari river which is another main river of the State of Goa and is also subject to tidal effects of the Sea, the project was examined in the context of maintaining a set back of 100 metres from the High Tide Line of such river. It was sought to be contended by Mr. Lawande, learned Government Advocate appearing for the respondent no.1 that the distance from the Arabian Sea and the said project might have been less than 500 metres. But however, common knowledge would show otherwise. Though at the time of the meeting of the committee to examine the subject project, the restrictions of the CRZ Notification were noticed, the then Chairman of the Committee observed that for the State of Goa, 10 metres set back would be sufficient and directed the Ministry to make guidelines accordingly. This was contrary to the CRZ Notification of 1991. Even when the MOEF raised an objection to the project of the respondent no.7 inter-alia on the ground that the set

back as provided in the CRZ Notification of 1991 has not been adhered to, the committee found that the project was being considered on the basis that it came within CRZ II classification. This would also have to be examined in the context that the plans which have been produced on record at the time of the revisions of the plans in the year 1996 and/or 1997 disclosed a proposed road between the hotel project and the river Mandovi. Admittedly, such proposed road was not shown in the Coastal Zone Management Plan which came to be approved in the year 1996. The said road was not an existing road and consequently the depiction by the respondent no.7 of such road is to divert the concerned authorities of the situation at loco. Thus the stand of the respondent nos. 1 to 4 with regard to the CRZ Notification subverts the norms as provided in the CRZ Notification of 1991.

22. Though Mrs. N. Alvares, learned counsel appearing for the petitioners had attributed malafides and malice on the part of officers of the respondents but however the particulars of such allegations against such officials have not been disclosed in the petition nor are they parties to the above petition. But however, it is well settled that the pleadings are not statute and to examine the legalism of an action taken by the statutory authorities would not rest on elaborate pleadings averred in the petition. On perusal of the averments in the petition, we find that at para 19, there is a specific averment that the decisions of the respondent no.4 with regard to the alleged proposed road was deliberately concealed from the public. There is also material on record of the objections of the Central Government in connection with the subject project. The petitioners also contend that the sanctions were obtained by fraud and manipulation and contrary to the CRZ Regulations. These aspects, read with the facts as enumerated herein above can be taken note of to examine the legality or the malice in law by the authorities in issuing the concerned sanctions to the respondent no.7. Based on the material on record, the Court can draw inferences and conclusions to ascertain as to whether there is any erroneous appreciation of the relevant provisions of law or a gross breach of the restrictions imposed by the concerned Notification. Thus, we find that the conduct of the concerned authorities of the State Government in complying with the well recognized aims and objects of the Environment (Protection) Act and the CRZ Notification of 1991 are found wanting by acting in breach of such enactments. The whole conduct appears to be to allow a hotel project of the respondent no.7

without examining the norms as provided in the CRZ Notification of 1991. Though it is noted by the authorities that the project is considered as being in CRZ II area nevertheless, an authorised structure has not been identified nor disclosed by the authorities while examining the impugned sanctions. Even in the affidavit filed by the respondents no particulars to that effect have been stated. As the matter is pending from the year 1993, we accordingly found it expedient to locate an authorised structure on the basis of the plans prepared by the Court Commissioner. When malice is attributed to the State, it may not be a case of personal ill-will or spite on the part of the State. The authorities which are the custodians of power cannot be influenced in its exercise by considerations other than that for which the power is vested in them in the first place. Authorities cannot be swayed by any other motive other than exercise its power in accordance with law. The expression legal malice means and implies an action of the State or the authorities not for the purpose of the Act. The conduct of the respondent nos. 1 to 4 and the concerned authorities appears to be aimed solely to enable the respondent no.7 to put up the subject hotel project in the said property without examining the relevant provisions of law. In order to attain such objective, the authorities have indulged in legal stimulation to achieve their goal to allow the hotel project to come up without examining whether the norms of the CRZ II areas have been strictly adhered to. We are accordingly satisfied that the sanctions granted to the respondent no.7 for the hotel project are vitiated by malice in law and colourable exercise of power as the whole exercise was to reach an end different from the one for which the power has been entrusted to the said authorities.

23. In this context, the Apex Court in the judgment reported in **(1980) 2 SCC 471** in the case of **State of Punjab and another V/s Gurdial Singh and others** has held at para 9 thus:

9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the

sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat.....that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist".

Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice- laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act.?

24. With this background, we shall now examine whether the hotel project put up by the respondent no.7 violates any of the norms and restrictions as provided in the CRZ II areas in terms of Notification of 1991. The categorization of CRZ II provides thus:

The areas that have already been developed up to or close to the shoreline. For this purpose, developed area? is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.?

The norms for Regulation of construction activities in CRZ II reads thus:

(i) Building shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor

on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed road/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI/FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject to the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

It would thus appear that development and/or construction activity is permitted only on the landward side of the existing road or road proposed in the approved Coastal Zone Management Plan of the area or the landward side of the existing authorised structure. But however, no such activity is permissible on the seaward side of such road or authorised structure. Thus, having regard to the said restrictions in CRZ II area the question which arises in the present Writ Petition is to examine whether the hotel project of the respondent no.7 would violate the provisions of CRZ Notification as applicable to CRZ II area. The no development zone as such in a CRZ II area would be from an authorized structure to the H.T.L. of the river.

25. This Court by an order dated 24.11.1997 appointed Mr. F. C. Ribeiro, Chartered Surveyor and Valuer as Court Commissioner in the above Writ Petition inter-alia to submit a map which correctly shows the location of the disputed property/structure - Palm Hotel in Miramar area vis-a-vis existing structures on the bank of river Mandovi including Yatri Niwas, Youth Hostel, Indoor Stadium and Kala Academy so as to examine whether the disputed structure is coming towards the seaward side or it is towards landward side and make a report on the above points. Accordingly, the report was submitted on 12.12.1997 by the said Court Commissioner. On perusal of the plan attached to the said report, we find that the hotel project of the respondent no.7 is shown to be at a distance of about 22.30 metres and 20.50 metres from the river bank. The plan also discloses an authorised structure in the land adjoining the subject property which is shown as Youth Hostel which is at a distance of 37.8 metres from the river bank. A Light

House which is also located in the same adjoining land is shown to be at a distance of approximately 18.00 to 20.00 metres from the river bank. A swimming pool is shown of the subject hotel project very close to the river bank.

26. The Division Bench of this Court in the judgment reported in **2000(4) Mh.L.J. 708** in the case of **Kisan Mehta and others V/s State of Maharashtra and others**, has observed at paras 28 and 32 thus:

28. Counsel for the petitioners as well as respondent No. 7 urged before us that the CRZ Notification should be interpreted in the background of the objective which is sought to be achieved. Commenting on the imaginary line being drawn, it was submitted that if an imaginary line is drawn parallel to the High Tide Line connecting two authorised structures, it may be that if a large tract of land lies between two authorised structures, building activity may be permitted on the entire tract of land, completely defeating the objective of the Notification. It was also submitted on behalf of the petitioners and respondent No. 7 that even if such an imaginary line could be drawn, the plot in question must lie within two authorised structures adjacent to it on either side, and consequently in a cause where an authorised structure existed only on one side, such an imaginary line could not be drawn and no development work or even re-construction could be permitted on such a plot. Counsel for the Bombay Municipal Corporation and the builders on the other hand submitted that such is not the position, if the letter of 8th September, 1998 is carefully read and given meaning. It was submitted that the clarification contained in the letter dated 27th March, 1998 did give an impression that construction of building can be permitted on the landward side of the imaginary line drawn along the existing authorised structures, meaning thereby that it presupposed existence of authorised structures on both sides of the plot in question. This, however, was further clarified in the letter dated 8th September, 1998, from which it is quite clear that it is not necessary that authorised structures must exist on either side of the plot. He further submitted that an imaginary line drawn in accordance with the Notification and the aforesaid clarifications cannot extend beyond the plot in question, which must be adjacent to an authorised structure at least on one side. In the instant case, therefore, an imaginary line should be drawn from the point closest to the sea of the authorised structure on

the adjacent plot belonging to the Bombay Municipal Corporation and such a line should be drawn parallel to the High Tide Line. This imaginary line shall not be drawn beyond the plot in question. If such an imaginary line is drawn as contemplated by the clarifications, it will be found that the building in question is on the landward side of the said imaginary line.

32. The decision of the Madras High Court, as pointed out by Counsel appearing on behalf of respondent No. 7, does not refer to any imaginary line, but proceeds on the basis that if to the South-East of the scheme area as well as to its South-West, there were developed areas nearer to the sea than the scheme area, the latter must be considered to be on the landward side of the authorised construction.?

27. It is sought to be contended by Mr. R. Dada, learned Senior Counsel appearing for the respondent no.7 that the remnants of stones in the river has to be considered as an authorised structure. We are not at all able to accept the said contention of the learned Senior Counsel appearing for the respondent no.7. It is well settled that when the legislature uses same words in different parts of the same section or statute there is a presumption that the word is used in the same sense throughout. When the draftsman has used the same word or phrase in similar context, it must be presumed to intend it in each place to bear the same meaning. Keeping this in mind, we find that on perusal of clause (i) of CRZ III, it inter-alia provides that the area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone' and that no construction shall be permitted within such Zone except for repairs of existing authorised structures not exceeding the existing FSI, existing plinth area and existing density. This clearly suggest that the authorised structure itself should have a FSI, plinth area and subscribe to the norms of density. Mere remnants of stones or concrete piers on the shore to avoid sand erosion can by no stretch of imagination be considered to have a FSI, plinth area or density. Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 thereafter relied upon the observations at para 35 in the judgment of the Division Bench of this Court in the case of Kisan Mehta and others (supra) to contend that even a retaining wall can be treated to be an authorised structure. But however, on going through para 36 of the judgment, the Division Bench held

that it was not necessary to consider such question. As such, the contention of Mr. Dada that the Division Bench had held that a retaining wall was an authorised structure in terms of the CRZ Regulations cannot be accepted. In any event, there is no material on record to establish the existence of a retaining wall on the seaward side of the concerned property as on the date of the coming into force of the CRZ Notification of 1991.

28. In such circumstances, the only authorised structure as noted on the basis of the plan produced by the Court Commissioner in the proximity of the subject land and adjoining thereto is the Light House located close to the Youth Hostel. The fact that the Light House is a covered structure with a plinth and FSI has not been disputed by the learned counsel appearing for the respective parties. Taking note of the judgment of this Court and the Madras High Court, referred to herein above, once an authorised structure in the adjacent land is found between the impugned construction and the High Tide of the river, there is no bar for carrying out any construction activity on the landward side of such existing authorised structure. The fact that the Light House was existing much before the coming into force of the Notification of 1991 cannot be disputed. Taking note of the said judgment of this Court though arrived on the basis of the letter/clarification issued by M.O.E.F., with regard to the construction activity within the coastal area of Mumbai Municipal Council nevertheless, in view of the judgment of the Madras High Court referred to herein above, which came to be passed much before such clarification and approved by the Division Bench of this Court, we find that an imaginary line can be drawn parallel to the High Tide Line of the river from the existing authorised structure and any development towards the landward side of such line would not infringe the provisions of the CRZ Notification of 1991. But however, in case any structures/development is located on the seaward side of such line it would violate the provisions of the CRZ Notification of 1991 as such development would be in the no development zone of CRZ II area.

29. We have already observed herein above, that the burden is on the builder “ respondent no.7 herein to disclose fairly all the material which would justify the sanctions in accordance with law. In the present case, we find that the respondent no.7 have been fashioning their stand on different basis. At one stage, they claim

that the CRZ Notification of 1991 is not applicable to the subject hotel project as the development started much prior to the coming into force of the CRZ of 1991. We have already rejected such contention for the reasons herein above. The next contention is based on the stand taken by the State Government that the set back from the river bank should be 10 metres and that the restrictions under CRZ Notification are only at a distance of 500 metres from the Arabian Sea. While examining the said aspect, we have already taken note of the fact that the executive construction of the provisions of the Notification by the State Government are erroneous and contrary to the express and plain reading of the provisions of the CRZ Notification of 1991. Thereafter, the respondent no.7 takes a stand that the remnants in the river are to be considered to be an authorised structure which aspect has also been rejected by us for the reasons stated herein above. This divergent stands of the respondent no.7 would have to be examined in the context that the original application or permission of the construction licence which came to be granted in November, 1991 has not been produced either by the respondent no.7 nor by the concerned authorities. Such divergent stand taken by the respondent no.7 would clearly indicate that the respondent no.7 are trying to play a game of hide and seek and did not come in a straight forward manner accepting the legal position and disclosing the requisite material to ascertain whether the provisions of the CRZ Notification of 1991 have been violated by the respondent no.7. The respondent no.7 has failed to make a full, fair and candid disclosure of all the facts to discharge the burden that they were entitled for such sanction. As such, we cannot be oblivious to the fact of trust of the population of all urban cities to ensure that the norms of the law as provided in the CRZ Notification of 1991 are strictly followed as directed by the Apex Court in the judgment of **Indian Council for Enviro-Legal Action V/s Union of India reported in 1996(5) SCC 281**. Even along with the affidavit filed by the respondent no.7 no such application nor construction licence have been produced. There are only references to such licence in the affidavit. Based on such references and documents produced by the petitioners, we have already found that the permissions were granted on the assumption that the subject land was within CRZ II area. The CRZ Notification has been introduced to put severe restrictions on untrammelled depredation of environment resource. Many of the State did not

prepare the coastal zone management plan for considerable length of period and Supreme Court was required to step in and direct the States to submit during this interregnum i.e. prior to the preparation of the coastal zone management plan, the sanctions could be issued strictly in accordance with the restrictions imposed in the CRZ Notification of 1991.

30. The permissions granted to the subject hotel project of the respondent no.7 based on the plan submitted by the respondent no.7 appears to be on the basis of a proposed road from Yatri Niwas to Youth Hostel along river Mandovi. In fact this proposed road which is reflected in the said plan is also seen in the plan and now produced by the respondent no.1 after the hearing. The contention of the authorities that the road was approved after GSCE granted NOC for hotel cannot be accepted. As the road was not even proposed or existing before the hotel project was approved, such depiction of the road on the plan submitted by the respondent no.7 become questionable. Apart from that, the CRZ Notification stipulates that the construction can be permitted only on the landward side of the existing road or a road proposed in the coastal zone management plan. Admittedly, the alleged proposed road depicted in the plan does not satisfy both the said requirements and as such the stand of the authorities that the subject hotel project was on the landward side of the proposed road is totally without any substance. As already pointed out herein above, CZMP was not approved by the Central Government at that stage and as such the restrictions as imposed under the CRZ Notification of 1991 had to be complied with and the respondent could not arbitrarily grant a sanction to the respondent no.7 to put up the structures which were contravening to the provisions of the CRZ Notification of 1991.

31. Apart from that, we have also on the basis of the Commissioner Report found that the only structure which can be considered to be an authorised structure between the hotel project of the respondent no.7 and the High Tide Line of the river in the adjoining land is the Light House. Based on these findings, the authorities will have to examine whether any development/construction activity at the site from the line referred to above would violate the norms of CRZ II area in the CRZ Notification of 1991. We have to keep in mind that the provisions of the CRZ Notification have been conceived to maintain high public purpose to subserve

in protecting the ecology and conserving the environment. The Division Bench of this Court in the case of **Overseas Chinese Cuisine (India) Pvt. Ltd., and another V/s The Municipal Corporation of Greater Bombay and others, reported in 2000(1) Bom. C. R. 341** held that the CRZ Notification embodied the principle of containment? and toleration? and that the building activity permitted under the Notification in CRZ II area shall be frozen to the laws and norms existing on the date of the Notification. In such circumstances, the only authorised structure which was in existence as on the date of the Notification can be the Light House as depicted in the plan attached to the Court Commissioner's report.

32. No consideration should be shown to the builder or any other person when the construction is illegal and unauthorised. This dicta is now almost a rule of law. The stress was laid by the respondent no.7 to exercise jurisdiction by moulding the relief and avoid any demolition of the hotel project of the respondent no.7. Such discretion cannot be exercised which would encourage illegality or perpetual illegal unauthorised construction. The Judicial discretion cannot be guided contrary to law. The Judicial discretion whenever exercised has to be in accordance with law and settled legal principle. In the present case, the respondent no.7 proceeded with the hotel project as the interim relief was refused by this Court. It may be correct that the respondent no.7 has invested a considerable amount on the construction which by every standard appears to be to a starred construction. The respondent no.7 has taken such a risk though the interim order was made specific that such order would not come in the way of deciding the petition on its own merits. This itself shows that the construction activities carried out by the respondent no.7 was at its own risk. The primary concern of the Court is to eliminate the negative impact. The construction activity which comes within the CRZ area has to be eliminated as otherwise it would affect the environmental conditions in ecologically vulnerable areas and deprive the citizen of Panjim from moving into the picturesque Miramar beach situated adjoining the subject hotel project. In case any construction has been put up by the respondent no.7 towards the river side of a line to be drawn from the Light House parallel to the High Tide Line, such construction is contrary to the restrictions imposed in the CRZ Notification which this Court cannot condense as there should be no judicial tolerance to illegal and unauthorised construction. As such, the authorities would

have to comply with the directions herein to ensure that if any construction activity is located towards the river side, of such imaginary line to be drawn, such construction activity being illegal cannot be allowed to continue and action would have to be taken to restore the said area to its original condition.

33. The Apex Court in the judgment reported in **AIR 2013 SC page 927** in the case of **DipakKumar Mukherjee Vs Kolkata Municipal Corporation and others** has held at paras 8 and 9 thus:-

8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, ~the Corporation™) have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, ~the 1980 Act™) and the rules framed thereunder for demolition of illegal construction raised by respondent No.7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal

and unauthorised constructions and those indulging in such activities will not be spared.?

34. Considering the view taken by us, we prima facie find that there is development/ construction activity carried out by the respondent no.7 which may include the swimming pool and the compound wall towards the seaward side of the imaginary line to be drawn from the Light House referred to in the said plan. It is pertinent to note that at para 6 of the affidavit of Mr. E. R. Godinho who was a Member Secretary of the North Goa Planning and Development Authorities he has stated that on 16.06.1997 the respondent no.7 sought development permission for construction of a retaining wall/compound wall around the said property. As such wall was coming along the bank of Mandovi river the matter was referred to the Goa State Committee of Coastal Environment “ respondent no.3 herein. Pursuant thereto such wall came to be constructed. The permission granted in the year 1997 is after the Coastal Management Plan was already approved by the Central Government and the compound wall was allowed to be constructed in CRZ II area. In such circumstances, allowing the construction of such wall without examining whether it comes on the seaward side of an existing authorised structure as existing in 1991 would totally violate the restrictions and norms of the CRZ Notification of 1991.

35. Another aspect to be noted is that as per the affidavit of the Chief Town Planner, the distance from the Bank to the hotel building is shown to be 23 metres. Even in the inspection report submitted by the Court Commissioner, the distance is more or less the same. But, however, as per the plans which were revised in the year 1997, there are structures including swimming pool, retaining walls, etc, which are prima facie situated within the said distance of 23 metres. The permissions to that effect appear to have been granted in the year 1997 based on the plans produced by Shri H.D. Naik, learned Counsel appearing for the respondent No.1. Such permissions, prima facie, did not meet the restrictions imposed by the CRZ Notification of 1991. In such circumstances, we find that the concerned Authorities including the respondent No.3, now the Goa Coastal Zone Management Authority would have to re-examine the constructions put up by the respondent No.7 in the area towards the river side of an imaginary line to be

drawn from the Light House, parallel to the High Tide Line, along the river, across the subject land where the hotel project of the respondent No.7 is located. We have no sufficient material on record to clearly identify the High Tide Line at loco to conclusively ascertain whether any building/structure put up by the respondent no.7 is located towards the river side of such line to be drawn from the Light House parallel to the High Tide Line. If any construction activity is carried out on the river side it would have to be dealt with by the respondent Nos.1 to 4, after hearing the respondent No.7 in accordance with law, as necessary action would have to be taken in case any such structure violates the CRZ Notification of 1991. As such, we find that the concerned authorities namely the respondent nos. 1 to 4 or now GCZMA would have to re-examine whether the swimming pool, the compound wall or any other development/construction activity carried out by the respondent no.7 is located towards the seaward side of such line drawn parallel to the High Tide Line from the Light House as pointed out herein above and take necessary action accordingly in accordance with law. To that extent, the said sanction dated 29.11.1991 and the subject revisions stand vitiated.

36. Mrs. N. Alvares, learned counsel appearing for the petitioners has also brought to our notice the fact that the respondent no.7 has kept a path to access the beach between the Youth Hostel and the subject hotel project for the benefit of the public. Such access cannot be obstructed and has to remain open to make the beach accessible to the public at large. It was also pointed out that there are some difficulties to access the beach from such path. The respondent no.2 shall as such take necessary measures to make such path accessible to the public in accordance with law.

37. In view of the above, we pass the following:

ORDER

(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to

take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

(ii) The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly with costs.

At this stage, Shri J. Supekar, learned Counsel appearing for the Respondent nos. 7 and 9, seeks stay of the Judgment passed today for a period of eight weeks.

2. Mrs. Alvares, learned Counsel appearing for the Petitioners, objects.

3. But, however, in the facts and circumstances of the case, the operation of the Judgment passed today is stayed for a period of eight weeks from today.

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