

Item No. 02 (Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(Through Video Conferencing)

Appeal No. 56/2019(WZ)
(I.A. No. 40/2019, I.A. No. 115/2019 & I.A. No. 28/2020)

Luciano Joao Fernandes alias Luis Joao Fernandes Appellant(s)

Versus

The Goa Coastal Zone Management Authority & Ors. Respondent(s)

Date of hearing: 06.10.2020

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

For Appellant (s) : Mr. Ivo D' Costa and Mr. Shivshankar
Swaminathan, Advocates

For Respondent(s): Mrs. Fawia M. Mesquita, Advocate for R -1

ORDER

1. Hon'ble the High Court of Judicature at Bombay in Writ Petition No. 422 of 1998 has directed to conduct an enquiry and fix responsibility for the violation of the CRZ Notification and further illegal constructions which are in violation of CRZ Notification must be removed within a time frame and report must be placed before the Court before June 2007. The Notification issued in 1991 has not been complied with till date and with the conspiracy aid and assistance of Goa Coastal Zone Management Authority (GCZMA), the polluters and violators of law are still continuing their activities. When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom

public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act.

2. The action and construction is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and expending the budget in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorized if it is done negligently carelessly and in violation of the law. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. Any act by any officer in violation of the rules is abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and

agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty *mala-fidely* and not in accordance with the guidelines, when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

3. Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is. If decision is taken without any principle or without any rule, it is unpredictable and such decision is the anti-thesis of a decision taken in accordance with the Rule of Law. Even where there is no

ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.

4. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.

5. Again, the matter was taken up in the Bombay High Court in *Suo-Moto Writ Petition No. 2 of 2006* and it was directed that the land records be verified and corrected and thus, structures existed as of 19.02.1991 must be identified and illegal and unauthorized construction must be removed within a time frame, has not been complied with herewith. The order reveals that the final decision must be taken within 90 days and demolition must be completed within 60 days. There was a condition that if there is appeal pending, the decision should be awaited. On the guise of this pending appeal, the GCZMA promotes only appeal, fails to submit

the reply and continuously delaying in filing the reply and thus, indirectly helping the illegal construction and this has become the business of GCZMA. In so many cases, we see that old cases are pending and no action is being taken by the GCZMA and reply is not being filed. This is highly objectionable and in violation of CRZ Rules.

6. Hon'ble the High Court of Bombay vide order dated 26.09.2017 has directed the authorities concerned to finalize the existence of the structure prior to 19.02.1991 and further directed that the structure in respect of Clause 3 will be demolished in case no stay has been obtained in any statutory appeal/appeals or any other legal remedy and these demolition will be completed within a period of 60 days from the date of the service of the final decision upon the owners and occupants and further hearing was listed before Hon'ble the High Court on 3rd week of April 2008. It is surprising that the Notification of 1991 and several orders of Hon'ble the High Court and Hon'ble the Supreme Court had not been complied with and the CRZ Notification has not been acted upon till date due to various reasons. The pendency of the appeals can never be made a ground for non-compliance of the order and the tendency to adjourn the appeal is taken by the litigants. In the present appeal, the appellant has also requested some time. The learned counsel appearing the GCZMA has submitted that the matter may be posted for final hearing. Parties are at liberty to file their written submissions before the date of listing.
7. We deem it just and proper to transfer this case to the Principal Bench of this Tribunal at New Delhi. Accordingly, we direct and

request the Registry to place the matter before Hon'ble the Chairperson for transferring this case from this Bench to Principal Bench of this Tribunal at New Delhi.

8. List it on 16.10.2020 for hearing or for listing for hearing.

Sheo Kumar Singh, JM

Dr. Satyawan Singh Garbyal, EM

October 06, 2020
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