Goan Real Estate & Constrn.Ld.& Anr vs Union Of India Tr.Sec.Min.Of Env.& Ors on 31 March, 2010

Equivalent citations: 2010 AIR SCW 2671, 2010 (5) SCC 388, 2010 (3) AIR BOM R 659, (2010) 3 SCALE 512, (2010) 4 BOM CR 762

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Bench: K.G. Balakrishnan, J.M. Panchal

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.329 OF 2008

Goan Real Estate &
Construction Ltd. & Anr. ... Petitioners

Versus

Union of India through Secretary,
Ministry of Environment & Ors. ... Respondents

JUDGMENT

J.M. Panchal, J.

1. By filing this petition under Article 32 of the Constitution, the petitioners have prayed to declare that the building plans sanctioned and constructions made and on- going constructions pursuant to the Coastal Regulation Zone Notification dated February 19, 1991 as amended by the Notification dated August 16, 1994 issued by the Central Government are valid.

2. The relevant facts emerging from the records of the case are as under :

> The Petitioner No.1 is owner of the land situated near river Zuari at Goa. It submitted plans in the year 1993 for construction of a hotel and residential complex. The Central Government, through Ministry of Environment and Forests (`MOEF', for short), issued Coastal Regulation Zone Notification dated February 19, 1991 in exercise of powers under Rule 5(d) of the Environment (Protection) Rules, 1986. As

per the said notification, the area upto 100 meters from the High Tide Line was earmarked as `No Development Zone' and no construction was permitted within this zone except for repairs etc. However, the Central Government issued another notification on August 16, 1994 amending notification dated February 19, 1991 and relaxing the `No Development Zone' to 50 meters from 100 meters. In view of the said relaxation, the petitioners who had earlier obtained construction permissions in respect of a project beyond 100 meters, submitted an additional proposal to the Panchayat of Village Curca, Bambolim & Taloulim, Taluka Tiswadi, Goa for construction of 18 blocks between 50 meters and 100 meters. The Village Panchayat referred the matter to the Town and Country Planning Authority, as required under the Rules for technical evaluation. The Town and Country Planning Authority approved the abovementioned additional construction to be made between 50 meters and 100 meters vide order dated July 31, 1995. Based on this approval, vide its order dated July 31, 1995, the Village Panchayat sanctioned the plans and granted permission to construct. It is the case of the petitioners that they had commenced construction in accordance with newly approved plans which were revalidated from time to time and are valid till this date.

3. An NGO by the name of Indian Council for Enviro-Legal Action filed a public interest litigation in this Court under Article 32 of the Constitution against the Union of India making prayer to direct the Central Government to implement notification dated February 19, 1991 by which CRZs were formed and restrictions on development were placed. The grievance made was that the non-implementation of the said notification had led to continued degradation of ecology. In the said petition, Goa Foundation, a society registered under the Societies Registration Act, 1960 filed an application challenging the vires of notification dated August 16, 1994 by which main notification dated February 19, 1991 was amended. This Court took into consideration the salient features of the main notification dated February 19, 1991 and noticed that the said notification was issued to ensure that the development activities were consistent with the environmental guidelines for beaches and coastal areas and, therefore, by the said Notification, restrictions on the setting up of industries which had detrimental effect on the coastal environment were imposed. The Court thereafter proceeded to examine validity of notification dated August 16, 1994. After noticing that six amendments were made in the main notification, this Court found that reduction of the ban on construction from 100 meters to 50 meters was illegal and power given to the Central Government for relaxation of developmental activities in the entire 6,000 kilometers long coast line was unbridled and capable of being abused. Thus, by judgment dated April 18, 1996 which is reported as Indian Council for Enviro-Legal Action vs. Union of India, (1996) 5 SCC 281, the abovementioned two amendments were held to be bad in law by this Court. From the final directions given by this Court in paragraph 47 of the judgment, it is evident that this Court partly accepted the petition by striking down two amendments which were introduced by notification dated August 16, 1994. From paragraph 39 of the judgment, it transpires that during the course of arguments, the learned Additional Solicitor General of India brought to the notice of this Court, the fact that construction had already taken place along such rivers, creeks etc. at a distance of 50 meters and more. This Court observed that there could not have been uniform basis for demarcating `No Development Zone' and it would depend upon the requirements by each State Authority concerned in their own

management plan, but no reason had been given as to why in relation to tidal rivers, there was a reduction of the ban on construction from 100 meters to 50 meters. This Court also took into consideration the fact that no explanation had been given in the affidavit filed on behalf of the Union of India as to why the construction was permitted at a distance of 50 meters and more along rivers, creeks etc. This Court found that reduction of the ban on construction from 100 meters to 50 meters would permit new constructions to take place and, therefore, the reduction could not be regarded as a protection only to the existing structures. Further, this Court noticed that there was absence of a categorical statement in the affidavit to the effect that such reduction would not be harmful or result in serious ecological imbalance. The Court expressed its inability to conclude that the amendment was made in the larger public interest and was valid. The said amendment was held to be contrary to the object of the Environment Act and found not to have been made for any valid reason. Thus, the two amendments out of six amendments introduced by the amending Notification were declared to be illegal.

4. From the record, it becomes clear that the petitioners had made an application to the Panchayat to inspect the construction made on Survey No.12/1 and 99/2 which were stretches of lands lying between 50 meters and 100 meters. In view of the contents of the said letter, a Panchayat official had inspected the site on September 25, 1996 and prepared a site inspection report. The said report indicated that the petitioners had completed foundation work up to the plinth level and in some of the areas of the property, the construction work of the building was complete and ready for occupation.

5. However, People's Movement for Civic Action, i.e., Respondent No.4 herein made a complaint to the local Goa Coastal Zone Management Authority, i.e., the respondent No.3 regarding constructions made by the petitioners between 50 meters and 100 meters. Pursuant to the said complaint, the Goa Coastal Zone Management Authority on October 22, 2006 issued communication through its Secretary, to the Additional Collector stating that on a joint inspection of the site at Survey Nos.99/2, 12/1 and 96, it was found that the construction work was going on in violation of CRZ Guidelines inasmuch as construction was made between 50 meters to 100 meters of `High Tide Line'. By the said letter, the respondent No.3 requested the Additional Collector to ascertain whether clearance under CRZ had been obtained. On October 22, 2006, an order was passed by the Collector, North Goa District directing the petitioner to stop the construction at the site. Based on a complaint by Goa Bachao Abhiyan to the Chief Secretary regarding alleged violation of CRZ norms, the Additional Collector, North Goa issued a stop work order dated December 22, 2006 and directed the Police and Town Planning Authority to maintain the status quo at the site. On December 28, 2006, petitioner No.1 made a representation to the MOEF to issue clarification that the project of the petitioner No.1 was an on-going project and as the same was sanctioned according to the rules and regulations then applicable, the stop work notice by the Additional Collector was illegal. The Central Government, through the Ministry of Environment and Forests (`MOEF' for short) vide letter dated January 24, 2007 addressed to the petitioner with copy to the Director and Joint Secretary, Department of Science, Technology and Environment, Government of Goa, clarified that new developmental activities to be carried out in the zone between 50 meters and 100 meters in the High Tide Line along with inland tidal water bodies would attract the provisions of CRZ notification of 1991 from the date of the order of the Supreme Court, i.e., from April 18, 1996. In

spite of the receipt of abovementioned communication, the Goa Coastal Zone Management Authority did not act upon the directions issued by the MOEF. Therefore, the Petitioner No.1 made another representation to the Central Government with a request to issue necessary clarifications to the authorities. A further clarification dated February 13, 2007 was issued by the Additional Director of the MOEF. In the said clarification, earlier communication dated January 24, 2007 was referred to and it was clarified that any developmental activity which had been initiated between August 16, 1994 and April 18, 1996 after obtaining all the requisite clearances from concerned agencies including the Town and Country Planning Authority should be construed as an on-going project. Even after this clarification, the stop work order was not lifted. The Goa Coastal Zone Management Authority (`GCZMA', for short) addressed a communication dated March 28, 2007 to the Additional Collector stating that it was decided that on the property of the petitioner No.l, `No Development Zone' should be marked at 100 meters and the stop work order, if any, in operation beyond such `No Development Zone' should be vacated. On receipt of communication dated March 28, 2007 from Goa Coastal Zone Management Authority, the Additional Collector, Goa, passed an order dated May 23, 2007 purporting to vacate the stop work order dated December 12, 2006 but, in fact, permitting the construction beyond 100 meters and not 50 meters. The petitioners, therefore, made third representation to MOEF and requested to issue fresh clarifications. The petitioners had also annexed copy of the letter dated March 28, 2007 addressed by the G.C.Z.M. Authority to the Additional Collector. On receipt of the said representation, the MOEF, Government of India, issued clarification dated May 16, 2007. A reference was made to its earlier letter dated February 13, 2007, it was mentioned therein that it was not clear as to why GCZMA had not taken into consideration the clarification dated February 13, 2007 of MOEF before addressing letter dated March 28, 2007 to the Additional Collector, Goa in relation to the development made in property bearing Survey No.12/1 (pt.) 12/2 and 99/2 of Village Bambolim Taluka Tiswadi, Goa. By the said communication, the Member-Secretary, Department of Science, Technology and Environment of Government of Goa was requested to get the matter examined by the Goa Coastal Zone Management Authority keeping in view the clarifications issued by the Ministry vide letter dated February 13, 2007.

6. In spite of the receipt of the communication from MOEF, the stop work orders were not lifted and allowed to operate. Therefore, the petitioners filed writ petition No.365 of 2007 in the High Court of Bombay at Goa challenging the stop work orders dated December 22, 2006 and May 23, 2007 passed by the Additional Collector, Goa. During the course of hearing of the writ petition on July 24, 2007, the learned Additional Solicitor General appearing for the MOEF made a statement before the Court that from the records it was clear that the project of the petitioners had been treated by the Central Government acting through the MOEF as an on-going project. In view of this statement made on behalf of the Central Government, the learned Advocate-General appearing for the Goa Coastal Zone Management Authority and for the State of Goa stated at the Bar that the State of Goa would withdraw the stop work orders dated December 22, 2006 and May 23, 2007 to the extent, they imposed an embargo on construction between 50 meters and 100 meters and that the withdrawal letter would be issued to the petitioners within a period of one week from the date of the order. The record shows that the statements made at the Bar by the learned Additional Solicitor General and learned Advocate-General were accepted by the Court and, therefore, the petitioners had not pressed the said writ petition. The writ petition was accordingly disposed of by order dated July 24, 2007.

7. The record further shows that thereafter writ petition No.403 of 2007 was filed by People's Movement for Civic Action and Goa Foundation, a society registered under the Societies Registration Act challenging the order dated October 8, 1998 passed by the Panchayat of Curca, bambolim and Talaulim, Goa by which permission to construct was renewed in favour of the petitioners. Initially, the Court had directed the parties to maintain status quo. The Court had also directed the Secretary, MOEF to place the stand of the Environment Ministry of the Central Government on the record by filing an affidavit. The record shows that in compliance of the said direction, an affidavit affirmed on September 12, 2007 by Mr. K. Uppily, Additional Director in the MOEF, Government of India was filed expressing the view of the Ministry that any developmental activity which had been initiated between August 16, 1994 and April 18, 1996 after obtaining all the requisite clearances from the concerned agencies including the Town and Country Planning Development should be construed as an on-going project. In the said affidavit, it was also mentioned that the Ministry had decided to place the matter before the National Coastal Zone Management Authority in its meeting which was scheduled to be held in October 2007 and the contentions of the People's Movement for Civic Action etc. as also the communications dated July 17, 2007 of Goa Coastal Zone Management Authority and the contentions of the petitioners would be examined by the said Authority.

In the light of the facts mentioned in the affidavit filed on behalf of the Ministry, the High Court directed the National Coastal Zone Management Authority to consider the matter referred to it by the Ministry and submit a report to the Court after giving a personal hearing to all the concerned parties. The High Court clarified that the National Coastal Zone Management Authority should decide the matter on merits without being influenced in any way by the filing of writ petition or the observations made by the Court. It was also clarified that if the order was adverse to the petitioners, they would be at liberty to challenge the same. Further, the Goa Coastal Management was directed to take action in accordance with law subject to the rights of the petitioners to challenge the said report. The Court further stated in its order that the Peoples Movement for Civic Action and Goa Foundation would also be at liberty to move the court for appropriate relief in case the report of National Coastal Zone Management Authority was adverse to it.

8. The record shows that the National Coastal Zone Management Authority considered the matter in detail in its meeting held on October 30, 2007. The Authority, after detailed discussions, was of the view that there would be several cases all over the coast wherein there would be some instances indicating that constructions work had been completed or was in progress pursuant to the Notification dated August 16, 1994. Therefore, the Authority concluded that the stand taken by the MOEF vide letters dated January 24, 2007, February 13, 2007 and May 16, 2007 was correct one and was in accordance with the CRZ notification of 1991. The Authority also noticed that the clarification given by the MOEF was applicable to all cases in the coastal areas of the country. What was reported by the said Authority was that this Court while setting aside two out of six amendments dated August 16, 1994 in Writ Petition No.664 of 1993 had not passed any orders with regard to cases in which the construction had been completed or was in progress and, therefore, all the properties and assets constructed or under construction in the period between August 16, 1994 and April 18, 1996 during which the set back line was changed from 100 meters to 50 meters was valid. The Authority noted that if it would have been otherwise, this Court would have passed

specific orders. The Authority ultimately expressed the view that the interpretation of phrase `on-going' by the Goa Coastal Zone Management Authority was incorrect and all the properties and assets constructed or under construction during the period between August 16, 1994 and April 18, 1996 should be maintained and should not be destroyed.

Thereafter, the public interest Litigation was placed for final hearing before the High Court. The Court was of the opinion that as the Supreme Court had struck down the notification amending the earlier notification, ordinarily all activities between 50 meters and 100 meters from the high tide line must cease. Having expressed this view, the Court considered the report of the National Coastal Zone Management Authority (`NCZMA' for short) and noticed that the said report/order was not challenged by the petitioners who had instituted the public interest litigation. On the request of the petitioners, the Court permitted them to amend the petition so as to enable them to challenge the order of the NCZMA. The said order permitting the original petitioners to amend the petition was challenged by the present petitioners by filing SLP (C) No.16728 of 2008 before this Court.

9. The petitioners were also directed to maintain status quo and, therefore, feeling aggrieved by the said order, they have preferred SLP (C) No.19767 of 2008 which is also heard along with this writ petition.

10. The case of the petitioners is that this Court in its judgment dated April 18, 1996 had not specifically directed demolition of the existing structures nor the directions of the Court had affected the on-going constructions which were coming up as per plans sanctioned during the period when the said amending notification dated August 16, 1994 was valid and in force. It is mentioned by the petitioners that the Central Government and thereafter NCZMA after considering the facts and circumstances of the case and in the larger public interest had concluded that the stand taken by the MOEF vide its letters dated January 24, 2007, February 13, 2007 and May 16, 2007 was correct and, therefore, a case is made out for issuance of a clarification that the judgment of this Court rendered in Indian Council for Inviro-Legal Action (supra) on April 18, 1996 does not prejudice or affect either the completed construction or on-going construction. Under the circumstances, the petitioners have filed the instant petition and claimed the relief to which reference is made earlier.

11. On service of notice, Dr. A Senthil Vel, Additional Director, Ministry of Environment and Forest has filed reply affidavit and supported the case of the petitioners. After filing of Additional Affidavit by the petitioners, Mr. Claude Alvares, has filed affidavit in opposition on behalf of the respondent No.5 whereas affidavit in rejoinder is filed by Mr. Vijender Kumar Sharma, on behalf of the petitioners.

12. This Court has heard the learned counsel for the parties at great length and in detail. This Court has also considered the documents forming part of the petition and other proceedings.

13. The question which falls for consideration is whether the constructions made or on-going pursuant to the plans sanctioned on the basis of Notification dated August 16, 1994 would be affected or not. For this purpose, it will be necessary to construe the judgment rendered in Indian Council for Enviro-Legal Action (supra). A critical study of the judgment in Indian Council For

Enviro-Legal Action (supra) makes it clear that this Court had examined validity of six amendments made by Notification dated August 16, 1994 in the Notification dated February 19, 1991. Two out of the six amendments were found by this Court to be arbitrary and illegal and, therefore, they were struck down. When one part of the Notification was found to be legal and another part of the said Notification to be bad in law, it would not be proper to construe the judgment affecting past transactions.

Tenor of the judgment indicates that this Court intended to give prospective effect to the judgment dated April 18, 1996 rendered in the case of Indian Council for Enviro-Legal Action (supra). It is to be noted that this Court in its judgment dated April 18, 1996 had not specifically directed demolition of existing structures. It is also pertinent to note that this Court had not stated as to what will be the fate of ongoing constructions which were coming up or on-going as per sanctions during the period when the said amending Notification dated August 16, 1994 was valid and in force. In view of the circumstances, now it has become essential to understand the real intention of this Court ingrained in the judgment dated April 18, 1996. It is well settled that an order of Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should be read in isolation and out of context. On perusal of paragraph 10 of the judgment, it is abundantly clear that even under 1991 Notification which is the main Notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the Management Plans are approved. Thus, the intention of legislature while issuing Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of 1991 Notification.

In paragraph 39 of the judgment, this Court considered the argument proposed by the learned Additional Solicitor General that construction has already taken place along such rivers, creeks etc. at a distance of 50 meters and more. This plea was specifically answered by observing that even if this be so, such reduction would permit new constructions to take place and this reduction could not be regarded as a protection only to the existing structures. Thus, on perusal of the above statement, it is clear that this Court had quashed the amendment because the amendment would permit new constructions to take place which was contrary to the provisions of the Environment Act, 1986 and not because of the reason that there was evidence before the Court that constructions already made or on-going pursuant to the plans sanctioned on the basis of Notification of 1994 had, in fact, frustrated the object of the Act. Thus, paragraph 39 clearly reflects intention of this Court that Court wanted to give the judgment prospective effect.

On perusal of the judgment in entirety, it is abundantly clear that the judgment is in form of directions to the Central Government and other authorities formed within the purview of Environment Act, 1986 and those directions are to be followed in future.

While interpreting the judgment, it is important to take into consideration the view expressed over the matter in controversy by various Governmental Authorities formed under the purview of Environment Act, 1986 to implement the provisions of Environment Act, 1986 although such view or opinion is not binding on the Court. By communication dated January 24, 2007, February 13, 2007 and May 16, 2007 issued by Additional Director of Ministry of Environment and Forests and decision of National Coastal Zone Management Authority dated October 30, 2007, it is brought on record that all the authorities unanimously opined that judgment of this Court dated April 18, 1996 will operate prospectively and further clarified that any developmental activity which has been initiated between August 16, 1994 and April 18, 1996 after obtaining all requisite clearances from the concerned agencies including the Town and Country Planning should be construed as on-going projects and are not hit by the judgment of this Court dated April 18, 1996.

It is pertinent to note that while interpreting the judgment, public interest should be taken into consideration. In Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (1993) 4 SCC 727, this Court considered the factors which are to be taken into consideration while giving prospective operation to a judgment. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the Court to decide, on a balance of all relevant considerations, whether a decision which unsettles the previous position of law should be applied retrospectively or not. The Court would look into the justifiable reliance on the previous position by the Administration; ability to effectuate the new rule adopted in the overruling case without doing injustice, whether its operation is likely to burden the administration of justice substantially or would retard the purpose. All these factors are to be taken into account while determining whether a judgment is prospective or otherwise. The Court would adopt either the retroactive or non-retroactive effect of a decision after evaluating the merits and demerits of a particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard the object of the judgment. The purpose of the old rule, the mischief sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment has prospective or retrospective operation. It is well known that the courts do make the law to prevent administrative chaos and to meet ends of justice. Taking into consideration all these factors, this Court refuses to interpret the 1996 judgment in a manner which would give it a retrospective effect. It is clear from the tenor of judgment and from other background circumstances, more importantly in view of decisions of NCZMA which is a statutory body that Three Judge Bench decision in 1996 case intended to give it prospective effect.

14. The contention of Mr. K.K. Venugopal, learned senior counsel for the respondents that decision should not have been taken by the NCZMA on October 30, 2007 stating that all the properties and assets constructed or under construction during the period between August 16, 1994 and April 18, 1996 when the set back line stood changed from 100 meters to 50 meters, is valid and the said authority should have directed the parties to approach the High Court for appropriate orders, cannot be accepted. As observed earlier, the whole matter was reconsidered by the NCZMA pursuant to the order passed by the Division Bench of the Bombay High Court. It is well to

remember that the said order was never challenged by the respondents before higher forum and by their conduct, the respondents had permitted the said order to attain finality.

15. The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court in Indian Council for Enviro-Legal Action (supra) but incomplete construction cannot be permitted to be completed is devoid of merits. Two amendments made in the year1994 were declared to be illegal vide judgment dated April 18, 1996. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallized by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amending notification was declared illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever.

16. The plea that the petitioner would get benefit of interpretation placed by statutory bodies and others would not get any benefit and, therefore, the petition should be dismissed has no substance. A bare glance at the minutes of the 16th meeting of the NCZMA held on October 30, 2007 makes it more than clear that it was concluded by the authority that the stand taken by the Ministry vide letters dated January 24, 2007, February 13, 2007 and May 16, 2007 was correct and was in accordance with Coastal Regulation Zone Notification of 1991. What is relevant to notice is that the said authority has in terms held that the clarification given by the MOEF is applicable to all such cases in the coastal areas of the country. Therefore, the plea that only petitioners have been favoured by the authority and, therefore, the petition should be dismissed cannot be accepted.

17. On the facts and in the circumstances of the case, this Court is of the opinion that a good case has been made out by the petitioners for issuance of a declaration that the judgment dated April 18, 1996 rendered in the case of Indian Council for Enviro-Legal Action (supra) will not affect the on-going constructions or completed constructions pursuant to the plans sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by this Court.

18. For the foregoing reasons, the petition partly succeeds. It is declared that the judgment dated April 18, 1996 in Indian Council for Enviro-Legal Action vs. Union of India, (1996) 5 SCC 281, declaring part of the amending Notification dated August 16, 1994 to be illegal, will not affect the completed or the on-going constructions being undertaken pursuant to the said Notification The rule is made absolute to the extent indicated hereinabove. There shall be no order as to costs.

.....CJI.

.....J. [J.M. Panchal] New Delhi;

March 31, 2010.