

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA  
WRIT PETITION NO.293 OF 2019**

Mr. Nandlal Khemka,  
son of late Rameshwarlal Khemka  
81 years of age, businessman,  
married. Indian National,  
Karta of Nandalal Khemka HUF,  
Residing at A-6, Kalindi,  
New Delhi, duly represented herein by His  
constituted attorney, Mr. Thomas Matthew,  
Son of K.V. Matthew, 53 years of age,  
Resident of 199, Second Floor, BDS Garden,  
4th Cross, Geddalahalli Kothanur,  
Bangalore-560 077.

..... Petitioner

v/s.

1. State of Goa through its Revenue Secretary,  
With office at Secretariat, Porvorim,  
Goa.
  2. The Collector and District Magistrate,  
North Goa, Office of The District  
Collector, Panaji, Goa.
  3. The Dy. Collector and SDO of Bardez,  
with office at the Collectorate Building,  
Mapusa, Bardez, Goa.
  4. Goa Coastal Zone Management  
Authority  
C/o. Department of Science,  
Technology and Environment, (Govt. of  
Goa), 1<sup>st</sup> Floor, Pt. Deendayal Upadhyay  
Bhavan, Pundalik Nagar, Alto  
Porvorim, Bardez- Goa- 403 521.
  5. Hanumant G. Kandolkar  
r/o. H. No.463 Vaddi,  
Candolim. Bardez, Goa.
- ...Respondents

**AND**  
**WRIT PETITION NO.308 OF 2019**

Mr. Nandlal Khemka,  
son of late Rameshwarlal Khemka  
81 years of age, businessman,  
married. Indian National,  
Karta of Nandalal Khemka HUF,  
Residing at A-6, Kalindi,  
New Delhi, duly represented herein by His  
constituted attorney, Mr. Thomas Matthew,  
Son of K.V. Matthew, 53 years of age,  
Resident of 199, Second Floor, BDS Garden,  
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v/s.

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With office at Secretariat, Porvorim,  
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2. The Collector and District Magistrate,  
North Goa, Office of The District Collector, Panaji, Goa.
3. The Dy. Collector and SDO of Bardez,  
with office at the Collectorate Building,  
Mapusa, Bardez, Goa.
4. Goa Coastal Zone Management Authority  
C/o. Department of Science,  
Technology and Environment, (Govt. of Goa), 1<sup>st</sup> Floor, Pt. Deendayal Upadhyay Bhavan, Pundalik Nagar, Alto Porvorim, Bardez- Goa- 403 521.
5. Deepak Ramesh Kandolkar  
r/o. H. No.463 A Vaddi,  
Candolim. Bardez, Goa.

...Respondents

**AND**

**WRIT PETITION NO.294 OF 2019**

Mr. Nandlal Khemka,  
son of late Rameshwarlal Khemka  
81 years of age, businessman,  
married. Indian National,  
Karta of Nandalal Khemka HUF,  
Residing at A-6, Kalindi,  
New Delhi, duly represented herein by His  
constituted attorney, Mr. Thomas Matthew,  
Son of K.V. Matthew, 53 years of age,  
Resident of 199, Second Floor, BDS Garden,  
4th Cross, Geddalahalli Kothanur, Bangalore-  
560 077.

..... Petitioner

v/s.

1. State of Goa through its Revenue Secretary,  
With office at Secretariat, Porvorim,  
Goa.
2. The Collector and District Magistrate,  
North Goa, Office of The District Collector, Panaji, Goa.
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C/o. Department of Science,  
Technology and Environment, (Govt. of Goa), 1<sup>st</sup> Floor, Pt. Deendayal Upadhyay Bhavan, Pundalik Nagar, Alto Porvorim, Bardez- Goa- 403 521.
5. Hanumant G. Kandolkar (since deceased) (Through his LRS)  
r/o. H. No.463 Vaddi,  
Candolim. Bardez, Goa.
- 5a Deepak Ramesh Candolkar,  
Resident of House No.463A,  
Vaddi Candolim, Bardez- Goa.

- 5b Govind Ramesh Candolkar,  
Resident of House No.463A,  
Vaddi Candolim, Bardez- Goa.
- 5c Dilip Ramesh Candolkar,  
Resident of House No.462,  
Vaddi Candolim, Bardez- Goa.
- 5d Usha Uday Wadkar,  
Resident of House No.63,  
Gokulwadi, Sanquelim- Goa
- 5e Karishma Vasudev Govenkar,  
Resident of House No.693,  
Mayem, Ardhwada,  
Bicholim, Goa
- ...Respondents

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Veldson Braganza, Mr. Vilas Pavithran and Mr. Sagar Rivankar, Advocates for the Petitioner in all the Petitions.

Mr. D.J. Pangam, Advocate General with Ms. Sapna Mordekar, Additional Government Advocate for Respondent Nos. 1 to 4 in WP 293 of 2019.

Mr. D.J. Pangam, Advocate General with Ms. Amira Razaq, Government Advocate (through VC) for Respondent Nos. 1 to 4 in WP No. 294 of 2019.

Mr. D.J. Pangam, Advocate General with Mr. Shividatt P. Munj, Additional Government Advocate for Respondent Nos. 1 to 4 in WP No. 308 of 2019.

Mr. Jitendra P. Supekar, Advocate for Respondent No. 5 in WP No.293/2019 and WP No.308/2019 and for Respondent Nos.5(a) to 5(e) in WP No.294/2019.

**CORAM:**                   **BHARAT P. DESHPANDE &  
VALMIKI SA MENEZES,JJ.**

**RESERVED ON:** 9<sup>th</sup> February, 2024  
**PRONOUNCED** 16<sup>th</sup> February, 2024  
**ON:**

**JUDGMENT: (Per Bharat P. Deshpande,J)**

1. Heard Mr. J.E. Coelho Pereira, learned Senior Advocate for the petitioner in all the Petitions, Mr. D.J. Pangam, learned Advocate General with Ms. Sapna Mordekar, learned Additional Government Advocate for respondent Nos. 1 to 4 in WP 293 of 2019, Mr. D.J. Pangam, learned Advocate General with Ms. Amira Razaq, learned Government Advocate (through VC) for respondent Nos. 1 to 4 in WP No. 294 of 2019, Mr. D.J. Pangam, learned Advocate General with Mr. Shividatt P. Munj, learned Additional Government Advocate for respondent Nos. 1 to 4 in WP No. 308 of 2019 and Mr. Jitendra P. Supekar, learned Counsel for respondent No.5 in WP No.293/2019 and WP No.308/2019 and for Respondent Nos.5(a) to 5(e) in WP No.294/2019.

2. The petitions were admitted on 05/03/2020 since it was pointed out that the only issue involved in these petitions is the powers of review of GCZMA in connection with its own orders. The prayers in Writ Petition No.293 of 2019 reads thus:

*A1. For a Writ or Certiorari or any appropriate writ direction/order quashing the impugned Division namely the Impugned Order at Annexure G taken by the Respondent No.1 at its meeting held on 22/10/2019 at Case 1.3 of the Minutes hereto annexed at Annexure -F.*

*a) For a writ in the nature of mandamus or for any appropriate writ /order, commanding the Respondent No.2 and Respondent No.3 to forthwith in compliance with the directions thereof of Respondent No.4, contained in Annexure A to this Petition, cause the structures referred to at Annexure A constructed by the Respondent No.5 in properties bearing Survey No.136/14 referred to and more particularly described to be demolished forthwith and cost thereof be recovered from the Respondent No.5 as arrears of land revenues.”*

3. In short, it is the case of the petitioner in Writ Petition No.293 of 2019 that he is the owner in possession of the property bearing survey no. 143/ 14 of village Candolim which he claimed by sale dated 13/06/1995. The petitioner was compelled to file an application under Section 18 read with Sections 14 and 15 of National Green Tribunal Act, 2010 for seeking redressal of blatant violation of the provisions of the Environment Protection Act, 1986 along with CRZ Regulations. Such application came to be registered vide No.88 of 2016 (WZ). The GCZMA/respondent No.4 was a party respondent in the said application. Various complaints filed by the petitioners with the concerned authority in connection with illegal constructions carried out by respondent nos. 2 to 5 in the said application no. 88 of 2016(WZ) were virtually ignored by the concerned authority and failed to enforce the CRZ Regulations.

4. It is further contended by the petitioner that National Green Tribunal upon hearing the parties in application No.88 of 2016(WZ) passed an order dated 07/07/2018 thereby directing respondent No.4 to undertake survey and mapping work. Accordingly, respondent No.4

conducted site inspection and mapping of structure at sites through the Officer of DSLR and placed the same for consideration at its 183rd meeting during which opportunity of hearing was provided to the petitioner as well as respondent No.5. Only thereafter a decision was taken by respondent No.4 directing respondent No.5 to demolish the structure as found mentioned in the order dated 05/10/2018.

5. Similarly, respondent No.4/GCZMA issued certain directions on 05/10/2018 pursuant to a decision taken in its 183<sup>rd</sup> meeting dated 31/08/2008 thereby directing respondent No.5 to demolish the structures existing in survey No.136/14 and restore the land in its original condition within a period of 30 days. Respondent No.3/Deputy Collector SDO Bardez was directed to comply with the directions issued by the GCZMA and in the event respondent no.5 failed to carry out such demolition, respondent No.3 was directed to comply with it.

6. Respondent No.5 failed to comply with such directions of GCZMA within the said stipulated period which prompted the petitioner to address a letter to Respondent Nos.2 and 3 to comply with the directions of GCZMA (Respondent No.4) within the stipulated period. However, the respondent Nos. 2 and 3 failed to comply with such directions till date.

7. Though such directions were not complied with, the petitioner was compelled to approach this Court. Respondent No.5 instead of challenging the order passed by the GCZMA before the competent authority i.e. the NGT, resorted to file a review application before respondent No.1. thereafter respondent No.5 filed a Writ Petition before this Court and the same was considered along with the present petition. Subsequently, on 13/09/2019 this Court passed an order directing respondent No.1 to decide the review application as expeditiously as possible and on or before 23/09/2019.

8. The respondent No.1/4 Revenue Secretary/GCZMA, then considered review petitions though he had no powers under the statute to review the order of demolition passed. However, respondent No.4 in its 215<sup>th</sup> meeting held on 22/10/2019 sought to resume jurisdiction and virtually assumed powers to review its own orders arbitrarily and sought to amend its earlier order by excluding some of the structures which were ordered to be demolished under its 183<sup>rd</sup> meeting dated 31/08/2019. Since such orders were passed in its 215<sup>th</sup> meeting held on 22/10/2019 thereby reviewing its own earlier orders on merit and thereby excluding some structures from the earlier order of demolition, respondent No.5 sought liberty to withdraw his petition. By amendment to the present petition, the petitioner has challenged the orders passed by the GCZMA under its 215<sup>th</sup> meeting on the ground that it is a substantial review without any power or jurisdiction.

9. Since there are connected matters, we requested the petitioners to hand over a chart disclosing the details of the order passed on 05/10/2018 and the order of review passed subsequently on 22/10/2019. accordingly, Mr. Pereira hands in the chart which is incorporated as under:

RESPONDENT	OUR WRIT PETITION	THEIR PETITION	ORIGINAL GCZMA ORDER	GCZMA ORDER POST REVIEW
Hanumant Kandolkar	293/2019	520/2019	<b>Structure-C</b> Ordered Demolition of G+1 Structure along with staircase and compound wall (05-10-2018)	Instead of demolishing entire structure, apart from the residential house comprising of G+1 structure all other additional structure i.e. temporary shed adjoining main building, staircase be demolished.
Ramesh G. Kandolkar	294/2019	519/2019	<b>Structure-B</b> First Floor (05-10-2018)	Structure – B can be given leverage of being in existence prior to 1991 because structures are reflecting on Survey Plan albeit some minor alterations.
Deepak K. Kandolkar	308/2019	522/2019	<b>Structure -A</b> G+1 construction with ongoing construction for pillars for second floor to be demolished along temporary cloth fencing and staircase.	Structure A Assuming the same was existing prior to CRZ Notification; instead of demolishing entire structure only second floor construction to be demolished.

10. We therefore are not incorporating the facts of other petitions which are found in the above chart.

11. The short question in the present proceedings is whether the GCZMA is empowered to review its own orders and that too on substantial grounds or merits.

12. Mr. Pereira would submit that there is absolutely no power of review on merit available with GCZMA and therefore the impugned order passed on 22/10/2019 in its 215<sup>th</sup> meeting is without jurisdiction and void. He submits that neither the Act nor the Rules provide any power of review. However, respondent Nos.4 and 5, taking advantage of the order of this Court in a petition filed by respondent No.5, reviewed its own earlier orders on merit which cannot be permitted. He further submits that power of review must be conferred upon the authority by the Act itself. It cannot be implied or usurped by any order of the Court asking the authority to decide the review applications. What this Court has mentioned in a petition filed by respondent No.5 is only directing respondent No.4 to decide review applications which does not give power to GCZMA to review when such power is not conferred on it by the statute.

13. Learned Additional Government Advocates Ms. Morderkar and Ms. Amira Razaq candidly accepted that there is no power of review available with GCZMA on merit. It is no doubt true that the power to review to rectify the typographical mistake or mistakes apparent on the face of the record is available to the authority or the Court, however, the power of review its own order on substantial facts and on merit must be conferred under the Act itself.

14. Mr. Supekar appearing for respondent No.5 tried to justify that the review passed by the GCZMA is on the basis of material placed before it. He submits that GCZMA is an authority created under the Environment Protection Act by a delegated legislation. He submits that the provisions of the Environment Protection Act were not brought to the notice either before this Court or before the concerned authority. He submits that Section 3(1) of the Environment Protection Act in general empowers the authority to give directions and under it, the authority created could act and infer the powers of review on merit.

15. Rival contentions fall for determination.

16. In the case of **Kapra Mazdoor Ekta Union v/s. Birla Cotton Spinning and Weaving Mills Ltd and another** [(2005) 13 SCC 777] the Apex Court considered the powers of review on merit as compared to power of review on procedure. While placing reliance in the case of **Grindlays Bank Ltd. V/s. Central Government Industrial Tribunal and others** [1980 (supp) SCC 420], held in paragraph No.19 as under:

*“19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi*

*judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others [1980 Supp SCC 420], it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.”*

17. In the case of **Kashinath Jairam Sheye v/s. Goa Coastal Zone Management Authority and others** [Writ Petition No.702 of 2018] decided on 25/09/2018 by the co-ordinate Bench of this Court, reliance was placed in the case of **Kapra Mazdoor Ekta**

**Union**(supra). In that matter, the petitioner has sought direction to GCZMA to implement its decision dated 28/02/2017 pursuant to the order passed by the National Green Tribunal. When the matter came up, it was informed that the private respondent moved an application for review of the said order before the GCZMA. In such facts of the matter, this Court has observed that *prima facie* GCZMA would not have power of review. A Resolution dated 28/08/2018 was placed before the Division Bench by the learned Advocate General which states that GCZMA does not have power of review on merit and it has limited power of procedural review. In this context, the Division Bench observed that a Court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so ascertains whether it has committed a procedural illegality which goes to the root of the matter and invalidates the proceeding itself and consequently the order passed therein. The authority observed that its constitution order does not have an express provision or necessary implication conferring to it the power to review on merit. A question when the authority becomes *functus officio* was also discussed and it was deemed appropriate that the authority would become *functus officio* from the date of passing of the order as far as review on merit is concerned. Thus, it is apparent that GCZMA has inherent power for procedural review. Such procedural review could be considered where a decision rendered without notice to the opposite party or under a mistaken expression that the notice has

been served or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing. However, the matters once decided by the authority are clearly outside the purview of the powers of review on merit. The Division Bench therefore clearly observed at the end of paragraph 3 that GCZMA only has power of procedural review. This means that the co-ordinate Bench of this Court and that too on the basis of Resolution placed on record by the learned Advocate General dated 28/08/2018 stating that GCZMA does not have power of review on merit but it has only got power to procedural review, confirmed that the power to review the case on merit as neither implied under the Act or expressly provided.

18. The learned Counsel Mr. Supekar tried to submit that the order issued by the Central Government dated 26/10/2016 constitutes the GCZMA for the relevant period refers to review of cases as found mentioned in clause 1(ii)(b) and therefore the said authority is having power to review.

19. Contention of Mr. Supekar on this aspect has no substance at all. The Notification which he refers regarding constitution of the GCZMA of the year 2016 is formal Notification issued appointing the members of the GCZMA for a specified period and conferred the powers on it which are including examination of proposal for changes or modifications in classification of Coastal Regulation Zone, inquiry into cases of alleged

violation of the provisions of the said Act, review of cases involving violations of the provisions of the said Act etc. Clause (b) which Mr. Supekar relying upon, is admittedly not the power of review of the orders which the authority is entitled to pass after hearing the parties. This clause refers to review all cases involving violations provisions of the said Act and Rules made thereunder. The aspect of review of cases referred in clause 'b' cannot be stretched to mean that there is power to review the orders.

20. Apart from this, the Notification of constitution of GCZMA is issued in view of Section 3 of the Environment Protection Act. By Notification, the powers cannot be given unless such power exists under the Act.

21. Section 3 of the Environment Protection Act, 1986 reads thus:

*"3. Power of Central Government to take measures to protect and improve environment.—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.*

*(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—*

*(i) co-ordination of actions by the State Governments, officers and other authorities—*

*(a) under this Act, or the rules made thereunder; or*

*(b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

*Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances;*

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central

*Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”*

22. Perusal of the above provision would show that it deals with the power of the Central Government to take measures to protect and improve the environment.

23. Sub Section 3 empowers the Government by order published in the official gazette to constitute an authority by such name as may be satisfied for the purpose of exercising and performing such of the powers and functions of the Central Government under this Act as well as for taking measures with respect to such of the matters referred in sub-section 2 as may be mentioned in the order.

24. Mr. Supekar though tried to claim that Section 3 of the Environment Protection Act deals with the powers of the Central Government, failed to point out in specific provision under the said Act of 1986 which expressly or impliedly gives powers to the Central Government to review the orders passed by it. If such power of review on merit is not available to the Central Government, such powers cannot be conferred on any authority created or constituted by the Central Government as provided under Section 3(3) of the Act of 1986.

25. Keeping in mind the above settled proposition of law, the contention raised by Mr. Pereira with regard to the impugned order needs to be examined.

26. The Minutes of the 182<sup>nd</sup> meeting of GCZMA held on 28/08/2018 is placed on record which clearly goes to show that various decisions were taken including the powers of review of its decision which is refereed under case No.2.3. The authority observed that the members have no legal expertise to decide the question in connection with its own order. The authorities discussed various orders passed by the Hon'ble Supreme Court in matters related to review power of quasi judicial authority. It refers to the decision in the case of **Kapra Mazdoor Ekta Union** (supra), **Syed Muzaffar Ali and others vs. Municipal Corporation of Delhi** [1995 Suppl (4) SCC 426] and then observed that since the question of power of review pending before the High Court, authority shall obey the decision and directions passed by the High Court.

27. The extract of minutes of 183<sup>rd</sup> meeting of GCZMA held on 31/08/2018 is placed on record. The case No.1.1 in the said minutes refers to discussion and decision on the complaint with regard to alleged illegal construction in the property bearing Survey No.136/4, 136/10, 136/13, 136/16 at Wadi, Candolim, Bardez-Goa and to comply with the order dated 06/07/2017 passed by the NGT, Pune in application

No.88/2016. It was found that the challenge before the NGT was regarding illegal construction in property bearing Survey No.136/13 by Hanumant Kandolkar-Respondent No.5 in Writ Petition No.239/2019.

The decision reads thus :

*“Decision: The authority noted that pursuant to order dated 06/07/2018 a detailed mapping of structures is carried out by DSLR. The structures belonging to respondents are clearly identified with letters A, B, C, D respectively in the survey plan prepared by DSLR. The authority heard all the parties and perused all the documents on record filed by the complainant and individual respondent. The authority noted that the house tax receipts produced by the respondents cannot be construed as justification for extension, re-construction and construction of new floor on the existing structures done without necessary permission. The Authority resolved the following with regard to individual structures belonging to the respondents:*

*C) With regard to structure C belonging to Mr. Hanumant Kandolkar in sy. no.136/13 of village Candolim, the authority observed that it consists of main building which G+1 structure, temporary shed adjoining main building, stair case extending in Sy No. 136/14 belonging to the complainant, compound wall extending in Sy no. 136/14 of village Candolim. The authority decided that the structure C is new construction which has been constructed illegally to its present form after 1991 without permission of GCZMA. The authority decided to issue order of demolition for entire G+1 structure marked as C in the DSLR plan along with stair case and compound wall.”*

28. However, while considering review application filed by respondent No.5 in its 215<sup>th</sup> meeting held on 22/10/2019, under Case No.1.3, discussion and decision is taken upon review application filed by the

respondent No.5 and on internal page No.13 which is part of the decision itself, it is observed thus:

*“During the course of hearing the entire subject matter in question was relooked on merits de novo. The aspect which came for re-determination was as to whether there had been any remiss on the part of the Officials of the DSLR which carrying out the mapping of the structures. Apart from the fact of respondents submitting that they were not notified about the inspection, they haven't in any way spelt out as to how & in what manner the said mapping is wrong. Hence to point out & say that on account of they being not present at the time of inspection would entail the mapping carried out be the DSLR being not correct is not a sound proposition that augers well for the Authority to disbelieve the mapping done by DSLR of that being as incorrect”.*

29. The above paragraph in the decision itself shows that while considering review application, the subject matter was relooked on merits de novo. The decision after review reads thus:

*“Finally as regards the structure identified with alphabet ‘C’ belonging to Hanumant Kandolkar instead of demolishing the entire structure, apart from the residential house comprising of G+1 structure all other additional structures i.e. temporary shed adjoining main building, staircase extending in property bearing Sy.No.136/14 be demolished”.*

30. Thus, it is apparent from the fact of record that GCZMA in its 215<sup>th</sup> meeting not only reviewed earlier decision but modified it on merit thereby saving ground+1 structure which was earlier directed to

demolish along with the staircase and compound wall. The decision to that effect was taken by relooking the matter on merit de novo.

31. Similar exercise has been carried out with regard to respondent No.5-Ramesh Kandolkar in Writ Petition No.294 of 2019 and respondent No.5-Deepak Kandolkar in Writ Petition 308 of 2019. It is not necessary to quote the relevant decisions passed by GCZMA in its 183<sup>rd</sup> meeting and the review decisions taken in its 215<sup>th</sup> meeting as far as the case of Ramesh Kandolkar and Deepak Kandolkar are concerned since decisions are similar i.e. received on merit as disclosed in the chart in paragraph 9. There is no dispute raised on behalf of respondents that such decisions have been reviewed on merit.

32. Since it has been already observed that GCZMA is an authority constituted under Section 3 of the Environment Protection Act by the Government and such authority is neither having implied or expressed power of review of its decision on merit, the impugned decisions taken by said authority in its 215<sup>th</sup> meeting and that too on the directions of the Co-ordinate Bench of this Court in Writ Petition No.519/2019 wherein this Court directed the GCZMA to dispose of the review applications filed by the respective parties the impugned orders are without jurisdiction. In Writ Petition No.519/2019 only directions issued to decide review applications within a specified time as such applications were kept pending. In that order this Court did not discuss or deliberate the

specific powers of review of GCZMA. Thus the fact remains that the power of review available to GCZMA which is considered to be inherent is only with regard to procedural review and not to review on merit, which must be expressly provided by the statute.

33. The impugned orders therefore suffer from want of jurisdiction to review its own order on merit. The contention of Mr. Supekar that there is implied power of review has no substance at all, specifically when the learned Counsel appearing for the State and the GCZMA admit that there is no such power available with the said authority to review its own order on merit.

34. The petitions thus need to be allowed. The impugned orders of review dated 22/10/2019 in its 215<sup>th</sup> meeting, are hereby quashed and set aside.

35. Rule is made absolute in the above terms.

36. Petitions stand disposed of.

**VALMIKI SA MENEZES,J.**

**BHARAT P. DESHPANDE, J**

MEENA  
VISHAL BHOR  


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MEENA VISHAL BHOR  
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