



Amrut

## IN THE HIGH COURT OF BOMBAY AT GOA

## PUBLIC INTEREST LITIGATION WP NO.26 OF 2023

The Goa Foundation,  
Through its Secretary,  
Dr. Claude Alvares, age 75 years,  
Having Regd. Office at Room No.7,  
Above Mapusa Clinic,  
Mapusa Goa – 403507,  
PAN No.AAAAG0249C,  
Income Rs.10-15,00,000/- per annum (aprox.)  
Registration No.-23/Goa/86,  
Email id: goafoundation@gmail.com

...Petitioner

***Versus***

1. The Goa Coastal Zone Management  
Authority,  
Through its Member Secretary,  
4<sup>th</sup> Floor, Dempo Towers Bldg.,  
Patto Plaza, Panaji Goa – 403001.
2. The State of Goa,  
Through its Chief Secretary,  
Secretariat, Porvorim Goa 403521
3. The Water Resources Department,  
Through its Chief Engineer,  
Sinchai Bhavan, near Police Station,  
Porvorim Goa 403521
4. V. M. Salgaocar Corporation  
Private Limited, having its registered office  
at Salgaocar Centre, E4, Murgaon Estate,  
Off Airport Road, Chicalim, Goa 403711

5. Central Water and Power Research Station  
Khadakwasla, Pune, Maharashtra –  
411024.

...Respondents

Ms Norma Alvares, Senior Advocate with Mr Om D’Costa and Ms Malisa Simoes, Advocates for the Petitioner.

Mr S. S. Kantak, Senior Advocate with Ms Neha Kholkar, Ms Saicha Dessai and Mr P. Arolkar, Additional Government Advocate for respondent No.1.

Mr Deep Shirodkar, Additional Government Advocate for respondent Nos.2 and 3.

Mr Rafique Dada, Senior Advocate with Mr Nitin Sardesai, Senior Advocate, Mr Rishit Badiani and Mr Jitendra Supekar, Advocates for respondent No.4.

Mr Raviraj Chodankar, Central Government Standing Counsel for respondent No.5.

**CORAM:                   BHARATI DANGRE &  
                                  NIVEDITA P. MEHTA, JJ**

**Reserved on :       27<sup>th</sup> JUNE 2025  
Pronounced on:   4<sup>th</sup> SEPTEMBER 2025**

**JUDGMENT ( Per Bharati Dangre, J.)**

1.     The PIL writ petition is instituted by the Goa Foundation seeking implementation of the directions issued by the High Court in the earlier round of litigation and according to the petitioner, the orders passed have been actively circumvented and it is alleged that the Goa Coastal Zone Management Authority (GCZMA) and

the Water Resources Department have failed to implement the directions issued by the Court.

2. We have heard Ms Norma Alvares, the learned Senior Advocate with Mr Om D'Costa and Ms Malisa Simoes for the petitioner whereas the learned Senior Advocate Mr Kantak has represented the State. Mr Rafique Dada, the learned Senior Advocate along with the learned Senior Advocate Mr Nitin Sardesai, represented respondent No.4 and Mr R. Chodankar, represented the respondent No.5.

By consent of the respective counsel, we deem it appropriate to issue Rule, by making it returnable forthwith.

3. The pleadings in the petition would outline the events preceding the institution of the present petition, and from its perusal, it is revealed that on 07.03.1977, the Government of Goa issued an advertisement inviting offers for the construction of a luxury hotel in Panaji at Gaspar Dias Beach and the project proponent Palm Hotels (India) Limited submitted its proposal to the Government, which resulted into the execution of the lease deed in its favour for 99 years on 30.04.1979. At this stage, we must note that the Palm Hotel amalgamated with V. M. Salgaocar and Brothers Pvt. Limited in 2004 and the hotel stood transferred

and vested with V. M. Salgaocar Corporation Pvt. Ltd. in the year 2017.

Pursuant to the execution of the lease deed, various approvals/clearances were received from Ecological Control Committee, the Ecological Development Council, Goa State Committee on Environment, and necessary approvals/licences were procured from the regulatory authorities.

4. It is also pertinent to note that this lease deed dated 30.04.1979 was the subject matter of a writ petition filed before this Court, which prayed for rescinding of the lease and prosecution of all concerned officers involved in the grant of lease.

This writ petition (Writ Petition No.391 of 1993) was decided by the Division Bench on 29.06.2015, on consideration of the rival contentions advanced, by recording that the petition has been filed belatedly and it was dismissed.

5. In the year 1991 and to be precise on 19.02.1991, the CRZ Notification was issued under the Environment Protection Act, 1986 and in terms of the said Notification prohibited activities included the following:-

*“(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control*

*of coastal erosion and maintenance or cleansing of waterways, channel and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge.”*

6. The Goa Foundation once again approached the Court, praying for an issuance of an appropriate writ/order raising a challenge to the sanction granted in favour of respondent No.7, Palm Hotel (India) Limited as well as the subsequent revision/extension to the construction of the hotel, alleging that the permissions granted are in breach of the CRZ Notification 1991. The petition specifically pleaded that respondent No.7 has not conformed to the rules and guidelines issued by the State Government from time to time, particularly in relation to the preservation of ecology and the environment and fulfil the statutory requirements existing in law. The decision of the Goa State Committee on Environment (GSCE) was also questioned by specifically alleging that the Chief Town Planner has deliberately shown the Palm Hotel to be outside the CRZ, although the joint site inspection report shows the distance as 23 metres from the high tide line.

7. The writ petition was extensively heard and objections raised by the petitioner were exhaustively considered in the wake of the CRZ Notification and it was recorded that there is

development/construction activity carried out by respondent No.7, which include swimming pool and compound wall towards the seaward side of the imaginary line to be drawn from the light house to be referred in the said plan. It was noted that the permission was granted in the year 1997 after the coastal management plan was approved by the Central Government and the compound wall was allowed to be constructed in the CRZ-II area and allowing such a construction without examining whether it comes on the seaward side of the existing authorized structure as existing in 1991 would violate the restrictions and norms of CRZ Notification of 1991. However, the pertinent observations of the Court are to be found in Para 35, and the operative part of the order, being in Para 37.

*“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.

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

**O R D E R**

(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.”

8. The aforesaid decision was the subject matter of review petition in the form of Misc. Civil Application No.898 of 2015 which was rejected by the Division Bench on 30.06.2016, by recording that there was no error apparent on the face of the record which would justify review of the judgment.

9. The Misc. Civil Application was taken out in the disposed of writ petition seeking clarification and the Division Bench particularly noted that in its decision, it had indicated the manner in which the exercise of identifying the exterior and drawing of the imaginary line parallel to exterior from authorised structure, stated to be light house was clearly indicated and the direction was issued to GCZMA, which was the authority constituted under the Environment Protection Act to examine the environmental issues.

It was further directed that HTL would have to be identified in accordance with Environment Protection Act, 1986 and CRZ Notification of 1991 within three months and it was also clarified that the Court had not conclusively examined the correctness of the record though on bare perusal of the report the exercise was carried out on the basis of the high water line, which was not the direction issued by the Court.

Another order was passed in the very same petition on 21.08.2017, which endorsed the observations of the Division Bench in its order dated 29.06.2015, when the Court observed that once the imaginary line was established the rest would follow as a matter of course, because it was then only a question of physical measurement and there can be no challenge to the correctness of GCZMA's 2017 report.

**10.** PILWP No.26 of 2017 was thereafter filed by Goa Foundation, once again alleging that the authorities are circumventing the directions issued by the Court in Writ Petition No.333 of 1993 and the petitioner specifically contended that the GCZMA constituted a committee and carried out the site inspection and even prepared a report which was accepted in its 154<sup>th</sup> meeting and arrived at a decision that there is no authentic record of high tide line of the year 1991 and it marked high tide line assuming there has been continuous erosion from 1973-2017. According to the petitioner, the conclusion reached by the GCZMA that no construction of the hotel is towards the riverside of the imaginary line is complete eyewash and it therefore prayed for quashing and setting aside the decision of the GCZMA dated 01.08.2017 approving the report and necessary directions were sought for restoration of the beach to the public and for removing

the construction in contravention to the direction of the Division Bench.

11. Upon due deliberation including the analysis of the two reports of GCZMA, the second report being submitted by three expert members, the Deputy Town Planner, Member Secretary of NGPDA, OSD of Goa Coastal Zone Management Authority and the Member Secretary of GCZMA, the Division Bench recorded thus:-

*“53. Thus the gist of the conclusion is this: Since there is no authentic record of the year 1991, the High Tide Line for the year 1991 has been marked assuming that there has been continuous erosion on a yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 at different points is depicted. The average shift in the High Tide Line in the last 43 years i.e. from 1973 to 2017 has been calculated. The cumulative shift in the High Tide Line 1973 to 1991 i.e. for a period of 18 years is calculated by multiplying average shift per year into 18 at the relevant points. Thus HTL of 1991 is deduced. An imaginary line parallel to the High Tide Line of 1991 is marked from the Light House maintaining equidistance of 24.5 meters. The imaginary line parallel to the boundary is also drawn. It is seen that there are no construction activities carried out by the Hotel in the area beyond the imaginary line towards the riverside.*

*54. The Authorities and the Hotel contend that there is no authentic data from the year 1991 available and the Division Bench has acknowledged this position. They have argued that the Second Report is a product of expert input and the Court should give deference to it. The decisions in the case of Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and ors,<sup>1</sup> and in the case of Neetu Singh Markam vs. State of Madhya Pradesh and ors.<sup>2</sup> were cited*

---

<sup>1</sup> (2010) 3 SCC 732

<sup>2</sup> (2014) 4 MPLJ 203

*by the Respondents to stress upon the fact that the Goa Coastal Zone Management Authority is an expert body and it must be given due deference. It was contended that the allegations of mala fides, without joining those as party respondents, cannot be made. The decision in the case of E.P. Royappa vs. State of Tamil Nadu and anr<sup>3</sup> was cited by the Hotel to contend that the burden of establishing the mala fides has been not been discharged in respect of the Goa Coastal Zone Management Authority, the expert body in the field which has arrived at a certain decision. None of the officers have been joined as parties, nor any mala fides have been attributed.”*

By recording in the second report, the authorities are not going by the definition of the term ‘high tide line’ but are going by an interpolated line with water line and soil erosion being added, it was specifically observed thus:-

*“70. The interpolated line mixing the High Water Line data of 1973 with the High Tide Line data of 2017 and working out soil erosion, is a concept alien to the definition of the High Tide Line. One of the foundations for the second report is a High Water Line data of the year 1973. The Division Bench did not accept the concept of High Water Line in the order dated 24 October 2016 when it rejected the first report. Again the High Water Line is brought in.”*

**12.** After due deliberation, the Court observed that the authority had made reference to the National Centre for Sustainable Coastal Management (NCSCM) Chennai and had requested it to carry out this exercise. The NCSCM had sought time of 120 days and also submitted a report indicating time frame and cost but it was noted

---

<sup>3</sup> (1974) 4 SCC 3

that GCZMA did not take this proposal further on the ground that time was short and in fact this proposal ought to have taken ahead.

It is in these circumstances, the Court expressed that NCSCM is an authorized agency by the MOEF to demarcate the high tide line and low tide line for the purpose of Coastal Regulation Zone (CRZ) and it is therefore not only the expert body but also functions as an agency of the MOEF. It was also noted that the GCZMA had already proposed NCSCM to carry out the work of identifying the high tide line and this work should be undertaken through the said agency and the authorities were therefore directed to approach the National Centre for Sustainable Coastal Management Chennai for implementing the directions contained in Para 37(i) of the judgment and order dated 29.06.2015 in Writ Petition No.333 of 1993. Upon the submission of the estimate of cost to the authorities by the NCSCM, it was directed to carry out the exercise to ensure compliance of the directions in Para 37(i) of the order within a period of four months and prepare a report.

The petition was thereafter disposed of with a direction to ensure its compliance.

This decision was once again challenged before the Apex Court by V. M. Salgaocar Corporation Private Limited and on 11.01.2019, the SLP was disposed of with an observation that the

High Court had merely sought a report from the National Centre for Sustainable Coastal Management with regard to the high tide line and this direction no way prejudice the petitioner as it will always be open to the petitioner to urge its defence and take all points before the said authority at the time of consideration of the matter.

**13.** It is in the background of the direction issued by this Court in PILWP No.26 of 2017, the NCSCM submitted its report in August 2019, identifying the HTL, an imaginary line, and as compliance of the directions “to examine whether any of the construction activities carried out by the Hotel Goa Marriot Resort comes towards the river side of the imaginary line drawn from the lighthouse shown in the plan of the Court Commissioner parallel to the high tide line.”

The detailed report considered the scope of the work made over to it and formulated the issues as below: -

- *“Identification of the HTL of 1991 along the Mandovi river based on morphological signatures in the Satellite Images of 1991, by following the guidelines provided by the Ministry of Environment, Forests and Climate Change, Government of India.*
- *Mapping of landuse, Lighthouse, adjoining structures and other hotel structures including swimming pool, compound wall etc using DGPS/Total Station/ other appropriate methods.*

- *Draw the imaginary line from the Lighthouse, parallel to the HTL of 1991.*
- *Preparation of large scale map (1:1000/1:2000/1:4000 scale) of the project site depicting the HTL of 1991, landuse, Lighthouse, adjoining structures and Goa Marriot resort hotel structures including swimming pool, retaining wall etc and the imaginary line from the Lighthouse, parallel to the HTL of 1991.*
- *Submission of Report along with necessary maps".*

**14.** The NCSCM granted personal hearing to V. M. Salgaocar & Brothers Pvt. Ltd. as well as to the petitioner, Goa Foundation and thereafter carried out exercise of identification of HTL from satellite imagery and the report make reference to preparation of map, reflecting the collapsed retaining wall, existing retaining wall, lighthouse, youth hostel, playground, swimming pool and Marriott resort hotel buildings. In Para 7.0 of the Report, one finds the observations to the following effect: -

*"7.0 Observations of NCSCM*

*1. As per the results of the survey and mapping exercise carried out by NCSCM, it is seen that the HTL of 1991 demarcated by NCSCM coincides with the remnants of the collapsed retaining/parapet wall. The HTL of 1991 and the remnants seen on the ground of the collapsed retaining wall are depicted in the said map (Fig-1), along with the existing retaining wall, among other details.*

*2. As per the enclosed detailed signed map on 1:1000 scale, depicting the imaginary line drawn from the lighthouse shown in the plan of the court commissioner, parallel to the High Tide Line of 1991, the structures (in the hotel Goa Marriot resort project in question) which fall on the river side of the imaginary line are:*

*Parts of swimming pool, Hut and the existing retaining wall.*

3. The distance between the Light house (depicted in the court commissioner's report) and the High Tide Line of 1991 is 19 m.

4. The imaginary line was drawn at a distance of 19 m from the High Tide Line of 1991, towards the landward side.

5. The distance between the western facade of the Youth hostel and the High Tide Line of 1991 is 38m.

6. The distance of The Hotel Goa Marriott resort's extreme most projecting sections/ towards the river from the High Tide Line are 24m in the north, 34 m in the middle and 23m in the south.

7. The structures (in the Hotel Goa Marriot resort project in question) which fall on the river side of the said imaginary line are parts of the swimming pool, Hut and the existing retaining wall.

8. The project area/the project in question falls under the CRZ II category.

9. The distances of the structures (in the Goa Marriot hotel resort project in question) which fall on the said imaginary line (within the 19 m buffer) on the river side, from the HTL of 1991, are given below.

Sl. No.	Points on the structures	Distance from the HTL of 1991
1	Existing Retaining Wall (P1)	7.5 m
2	Hut (P2)	15 m
3	North west corner of swimming pool (P3)	14.0 m
4	Swimming pool middle point facing river side (P4)	16.5 m
5	Swimming pool South west point (P5)	15 m

15. Upon the report being placed by the NCSCM before the GCZMA in its meeting held on 24.08.2019, it was held that in the wake of the said report notice was issued to both the parties so as to receive their comments on the said report and hear them out before the appropriate decision be taken in that regard.

16. The show cause notice cum personal hearing notice was issued by GCZMA and the matter was finally heard in its 249<sup>th</sup> meeting held on 18.02.2021. The GCZMA in its proceedings recorded the sequence of events as below: -

*“AND WHEREAS, the deliberation of the authority in the said meeting 249<sup>th</sup> GCZMA meeting held on 18/02/2021 can be seen as follows: "At the 218<sup>th</sup> Meeting of the Goa Coastal Zone Management Authority (GCZMA) held on 18/12/2019 at 3.30pm, this Authority has decided to call for a Report from the WRD about the demolition of the retaining wall which acts as a barrier for soil erosion and if in the event it is demolished then what steps would be taken by them to prevent soil erosion including the time required for this purpose.*

*1. Accordingly, this Authority by its letter dated 31/12/2019 bearing Ref. No. GCZMA/W.P. No. 333/1993/17/2019 addressed a letter in this regard to the Chief Engineer, Water Resource Department, Porvorim.*

*2. This Authority by its letter dated 16/01/2020 bearing Ref. No. GCZMA/W.P. No. 333/1993/17/2203 sent a Reminder to the Chief Engineer, Water Resource Department, Porvorim.*

*3. At the 219<sup>th</sup> Meeting of the Goa Coastal Zone Management Authority (GCZMA) held on 28/01/2020 and 29/01/2020, this Authority had decided to direct the Respondent to initially demolish part of the swimming pool and part of the hut next to the swimming pool on or before 12/02/2020, failing which the Collector of North Goa shall initiate steps to undertake the demolition on or before 28/02/2020 and recover costs incurred. In so far as the retaining wall*

*is concerned, this Authority decided that the same shall be deliberated only after obtaining the report from the WRD.*

*4. Accordingly, the GCZMA issued a Demolition Order dated 30/01/2020 directing the Hotel to demolish part of the swimming pool and part of the hut as identified in the Panchanama and to restore the land to its original condition on or before 13/02/2020. Further, the Deputy Collector and S.D.O, Tiswadi was directed to verify if the structures were demolished, and in the event, the same were not demolished, the Dy. Collector and S.D.O, Tiswadi was directed to demolish the same on or before 28/02/2020.*

*5. In so far as the retaining wall is concerned, it was decided by the GCZMA that the same shall be deliberated only after obtaining report from the WRD.*

*6. At the 220th Meeting of the Goa Coastal Zone Management Authority (GCZMA) held on 05/02/2020 at 3.30pm, this Authority has asked the WRD to give their input to suggest means and measures to have the accessible access to the beach on account of the level difference of the land and the beach by addressing another letter to the WRD.*

*7. The Hon'ble High Court vide its Order dated 13/02/2020 in Contempt Petition No. 2 of 2020 in PIL WP No. 26 of 2017, granted a period of six weeks' time from the date the Order to the Hotel to carry out the demolition work of part of the swimming pool and the part of the hut, under supervision of NGPDA, Panaji.*

*8. The WRD has by its letter dated 12/02/2020 addressed to the GCZMA has enclosed a Preliminary Report dated 12/02/2020 by Scientist Shri. V. B. Sharma, Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune observing that the existing retaining wall is able to protect the river bank from the two forces exerted by the high river currents and wave impact. It further observed that the two forces may cause erosion in the vicinity of the hotel area if the wall is demolished. The report states that final findings on the effect of demolition can be provided after carrying out detailed studies based on field observation like local bathymetry in the river, sediment size of bed material, suspension sediments concentration, etc.*

9. On 06/03/2020, site inspection was carried out by the Field Surveyors deputed by this Authority and Panchanama was drawn recording demolition of the offending part of the hut and swimming pool were in progress as per the NCSCM Plan and measurements were taken and found to be correct.

10. This Authority by a letter dated 13/03/2020 Ref. No. GCZMA/W.P. No. 333/1993/17/2669 informed the Hotel to bear the costs of Rs.10,00,000/- with additional tax of 18% towards GST payable to the Central Water and Power Research Station (CWPRS), Pune for a scientific report on the aspect of the retaining wall if the same is demolished. The Hotel by its letter dated 19/03/2020 tendered the said amount with the WRD to be transferred to CWPRS, Pune.

11. On 12/05/2020, site inspection was carried out by the Field Surveyors deputed by this Authority and Panchanama was drawn recording that demolition of offending parts of the hut and swimming pool have been satisfactorily completed in terms of Demolition Order dated 30/01/2020 and Panchanama annexed thereto based on the NCSCM Report and Plan and also that the Order of High Court dated 13/02/2020 stood complied.

12. This Authority has received letter dated 16/09/2020 from the WRD enclosing Technical Report No. 5850 dated 10/09/2020 from the Central Water and Power Research Station (CWPRS), Pune which agency has undertaken 'Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa'.

13. The scientific report has recorded that,  
"the site is influenced by waves, tide and large river discharge conditions. River discharges and waves play an important role in erosion of bank in the vicinity of Marriott hotel. This stretch is prone to erosion. Other major cause of erosion at the left bank is bending of river which is result of a large land outcrop towards Reis Magos Fort site (right bank site) and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the state since 1978 all along the left bank. The river has the tendency to move towards left bank due to sharp bend in the upstream. This oblique flow along with high river discharge combined with severe wave condition is the worst scenario for the bank near Marriot hotel, The demolition of wall would result

*in shifting of channel towards left bank and this would further worsen the situation as angle of oblique current would further increase. The peak currents near the Marriott hotel wall are of the order of 0.9 m/s. In addition to this, breaking and non-breaking waves exert huge thrust on the wall. After shifting the wall, the whole force would be borne by the bank resulting into further erosion. The distance of pillar of Marriott hall hardly remains at about 5m. The distance between imaginary line and wall footing would further be less. Shifting of left bank would not help in improving the hydraulic conditions in the river instead it may further worsen the situation as it will increase the curvature of bend in this region."*

**17.** The report, which was obtained clearly concluded thus:-

- *"The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*
- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone."*

**18.** In the wake of the aforesaid, the GCZMA in exercise of powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with sub-rule (3)(a) of Rule 4 of the Environment (Protection) Rules 1986 and read with power vested with the GCZMA vide order S.O.3975 (E) dated 31.10.2019 issued by the Ministry of Environment & Forests, Government of India, discharged the proceedings in respect of retaining wall in property of Hotel Goa Marriott Resort C/o V. M. Salgaocar Corporation

Pvt. Ltd. in terms of the decision taken in 249<sup>th</sup> GCZMA meeting held on 18.02.2021. It issued further directions as below: -

*“a) Further, Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.*

*b) As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA in terms of decision taken 249<sup>th</sup> GCZMA meeting held on 18/02/2021.”*

GCZMA with the aforesaid directions concluded the proceedings on 11.03.2021.

**19.** It is in these background facts, we have heard the arguments advanced on behalf of the petitioner, which are strongly contested by the learned Senior Advocate representing respondent No.1 as well as the project proponent. It is worth to note that the Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti had also carried out mathematical model studies on hydrodynamics and sedimentation for demolition of retaining wall at Marriott Hotel Goa and the report inter alia refers to the 10 structures, which were erected by the Government of Goa by way of anti sea erosion measures and these structures are on the left bank of the river being constructed

by the Government itself, as early as in 1978 and they were enlisted as below:-

- “1. Construction of protection wall at sea shore at Miramar up to changing room. (Work order no. HI/Accts/F.43/1945/78-79 dt.16/09/78.)*
- 2. Construction of protection wall at sea shore at Miramar near Youth Hostel, Panaji. (Work order no. HI/Accts/F.43/3585/78-79 dt.20/11/1978.)*
- 3. Anti Sea erosion work behind swimming pool campal, Panaji. (Work order No.7-5/WD-I/Irrg/A/397 dt. 26.7.1991)*
- 4. Temporary measures to safeguard the lighthouse behind Kala Academy at Campal, Panaji. (Work order No.7-5/WD-I/Irrg/Accts/499/91-92 dt. 10.3.1992).*
- 5. Temporary anti-sea erosion protection measures behind Forest nursery to Punjab Upovan at Campal. (Work order No.7-5/WD-I/Irrg/Accts/267 dt. 14.7.1992).*
- 6. Immediate temporary Anti sea erosion wall behind Indoor Stadium to Youth hostel at Campal, Panaji. (Work order No.7-5/WD-I/Irrg/Accts/302/92-93 dt. 5.9.1992).*
- 7. Urgent temporary Anti sea erosion wall behind Indoor stadium to Football stadium, Campal. (Work order No.7-5/WD-1/Irrg/A/504/92-93 dt. 22.10.1992).*
- 8. Temporary Anti sea erosion behind Kala Academy, Campal (Stretch I to V). (Work order No.7-5/WD-I/Irrg/Accts/95-9/22-23 dt. 24.7.1995).*
- 9. Anti sea Erosion measures behind Children's park Campal, Panaji. (Work order No.7-5/WD-I/Irrg/Accts/96-97/760 dt. 1.1.1997).*
- 10. Anti sea Erosion measures at Bhagwan Mahavir Balvihar park, Campal Panaji Tiswadi Goa. (Work order No. 7-5/WDI/Accts/07-08//09. Dt. 19/06/2007).”*

20. The detailed report based on purely scientific methodological study of wave transformation by using hydrodynamic and sedimentation studies, involved the wave height at Hotel Marriott and the study of the waves, including breaking and non -breaking and the thrust that it created. In Paragraph 6 of the said report in the form of result and discussion, along with conclusion record thus:-

*“6.0 RESULTS AND DISCUSSION*

*The site is influenced by waves, tide and large river discharge conditions. River discharges and waves play an important role in erosion of bank in the vicinity of Marriott hotel. This stretch is prone to erosion. Other major cause of erosion at the left bank is bending of river which is result of a large land outcrop towards Reis Magos fort site (right bank site) and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the state since 1978 all along the left bank. The river has the tendency to move towards left bank due to sharp bend in the upstream. This oblique flow along with high river discharge combined with severe wave condition is the worst scenario for the bank near Marriot hotel. The demolition of wall would result in shifting of channel towards left bank and this would further worsen the situation as angle of oblique current would further increase. The peak currents near the Marriott hotel wall are of the order of 0.9 m/s. In addition to this, breaking and non breaking waves exert huge thrust on the wall. After shifting the wall, the whole force would be borne by the bank resulting into further erosion. The distance of pillar of Marriott hall hardly remains at about 5m. The distance between imaginary line and wall footing would further be less. Shifting of left bank would not help in improving the hydraulic conditions in the river instead it may further worsen the situation as it will increase the curvature of bend in this region.*

*7.0 CONCLUSIONS*

- . The high river discharges and waves and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank site) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- . Shifting of left bank would increase the curvature of river resulting in more erosion at left bank.*
- . The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.”*

**21.** The learned Senior Advocate Mr Dada would also invite our attention to the judgment dated 30.09.2022, delivered by the Division Bench when the Contempt Petition was filed by Goa Foundation alleging disobedience of the order dated 24.08.2018. The relevant observations in the decision would reveal that the Contempt Petition was filed as it was alleged that the swimming pool, hut and existing retaining wall were categorised as structures which fell on the riverside of the imaginary line, and there were directions of the Division Bench in Para 93 of the order, and the structures ought to have been demolished.

On consideration of the directions that were issued and the allegations that there was wilful disobedience of the order, and the submission advanced on behalf of the respondents authorities that the GCZMA, after following proper procedure and taken a lawful decision on 11.03.2021 and decided not to disturb the retaining wall and more particularly in compliance of the directions of the

Division Bench in Writ Petition No.333 of 1993, where the Court had expressed a concern in regard to the measures to be taken by the State Government to protect the erosion of the bank and siltation of river Mandovi along the land of the hotel. The decision being a reasoned one, which had taken into consideration every possible aspect including environmental concern as well as expert report came to the conclusion that there was no violation of CRZ Notification of 1991, the Court appreciated the said stand and it observed that the GCZMA shall call for an opinion of the Water Resources Department (WRD) and also a technical report from the Central Water and Power Research Station (CWPRS ), which concluded that shifting of left bank would increase the curvature of river resulting in more erosion at the left bank and the demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone. The GCZMA thereafter passed a detailed order on 11.03.2021.

Recording that the said decision dated 11.03.2021 was not challenged, the Contempt Petition was found to be without any substance as the GCZMA had arrived at the conclusion that the demolition would worsen the situation and therefore deemed it not appropriate to demolish it as it would cause serious erosion.

Therefore, the contempt petition was dismissed by imposing a heavy cost of Rs.50,000/-.

The Apex Court while considering the said order was of the view that the petitioner may have different perception from what the concerned Court had taken, but the petitioner will exercise its right to assail that order in accordance with law whether that retaining wall can or cannot be retained and as far as costs is concerned, liberty was conferred on the petitioner to move the High Court seeking waiver of the costs.

**22.** The respondent No.4 has filed a specific reply and raised a preliminary objection by stating that the petition is barred by principles of res judicata/constructive res judicata as the issues raised therein have attained finality and therefore the petitioner is estopped from challenging the order dated 11.03.2021 passed by the GCZMA. It is also urged that the contention of the petitioner that the Supreme Court had given liberty to the petitioner to file the present petition is a misconceived notion and the petition is also objected on the ground of the challenge to the report of the WRD dated 04.02.2020 and further report of the Central Water and Power Research Station (CWPRS) are hopelessly barred by limitation and this Court may not entertain the same.

Mr Dada would also press into service, a specific objection that the petitioner has an alternative and efficacious remedy of approaching the Green Tribunal and we have noted that the order dated 11.03.2021 passed by the GCZMA pertaining to the retaining wall in the property of the Hotel Goa Marriott resort with reference to the judgment passed in Writ Petition No.333/1993 as well as the judgment in PILWP No.26/2017, make a reference to the various meetings of the GCZMA, pursuant to the show cause notice issued on 19.09.2019 and this order make a reference to Section 5 of the Environment (Protection) Act, 1986 and it was open for the petitioner to raise a challenge to the said order under the provisions of the National Green Tribunal Act, 2010 but the petitioner has failed to adopt the said remedy.

Apart from this, we also find that the petition is also barred by principles of res judicata as we find that the judgment and order dated 24.08.2018 passed in PILWP No.26/2017 as well as the order dated 30.09.2022 in Contempt Petition No.2/2020 passed by this Court have tested the issue raised in the present petition and the said order having attained finality, operates as res judicata. Pertinent to note that the grievance raised in the present petition, was already adjudicated, and on 30.09.2022, the High Court had specifically noted that the GCZMA has determined the issue by

adopting a fair procedure when it came to the conclusion that it is necessary to retain the wall to prevent the soil erosion and siltation.

This Court on 30.09.2022 specifically observed that the decision to prevent damage to the environment as taken by the GCZMA cannot be a matter of any agitation by the petitioner who is stated to be canvassing an interest to protect the environment.

This finding was not interfered by the Apex Court when it heard the Special Leave Petition and a belated challenge to the order of the GCZMA, according to us, cannot be entertained.

**23.** The very genesis of the argument of the petitioner is the judgment dated 29.06.2015, as we find that the GCZMA was directed to re-examine the issue with regard to the construction activity carried out by the respondent and to deal with the same, in accordance with law. The said judgment directed the State of Goa to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the hotel. Accordingly, the GCZMA, in compliance with the directions granted hearing to the petitioner as well as respondent and after considering the material, including the expert report and necessary provisions of law has passed a detailed order dated 11.03.2021, which we find in compliance of the judgment dated

29.06.2015. Though the petitioner is of the view that there is no compliance of the directions contained in the judgment dated 29.06.2015 but in the Contempt Petition No.2/2020, this Court specifically rendered a finding that the order dated 11.03.2021 is in consonance with the directions issued by the Division Bench in Writ Petition No.333/1993 and it is this order which is now attempted to be challenged in the present petition and we find this challenge a belated one, apart from the fact that the petitioner was heard when the impugned order was passed by the GCZMA. Further, it is also pertinent to note that before the order was passed, the GCZMA had before it the report of the WRD as well as CPWRS, Pune, recognised as an expert body and in fact we find that even the Apex Court had relied upon its report in the case of *Delhi Development Authority Vs Rajendra Singh and others*<sup>4</sup>, when the issue of reclaimed land from Yamuna riverfront and its conversion from agricultural and water body to “ public and semi-public facilities” by modifying master plan, was in question. A PIL filed in the High Court was refused to be entertained and it directed setting up of a committee to enquire if the village site was on the riverbed or on flood plain. It is in regard to this issue, the CWPRS was asked to submit its report along with the report of NEERI.

---

<sup>4</sup> (2009) 8 SCC 582

We find the said body to be an expert body and the GCZMA in its order has heavily relied upon its report along with the report of WRD.

The WRD by its letter dated 12.02.2020 addressed to the GCZMA had enclosed a preliminary report dated 12.02.2020 prepared by Scientist V. B. Sharma, CWPRS, Ministry of Jal Shakti, Government of India, Pune observing that the existing retaining wall is able to protect the river bank from the two forces exerted by the high river currents and wave impact. It was also reported that the two forces may cause erosion in the vicinity of the hotel if the wall is demolished and it was stated that the final findings on the effect of demolition can be provided by carrying out detailed studies based on field observation, like bathymetry in the river, sediment size of bed material, suspension sediments concentration etc. This was followed by a site inspection carried out by the Field Surveyors deputed by the GCZMA and panchanama was drawn, recording the demolition of the offending part of the hut and swimming pool as per the NCSCM plan and measurements were taken. The CWPRS carried out “Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa” and furnished its report, which included the scientific conclusions drawn by applying the scientific method, as it was

categorically noted that the site in question was influenced by waves, tide and large river discharge conditions and the stretch is prone to erosion. It was further observed that the major cause of erosion at the left bank is bending of river, which is result of a large land outcrop towards Reis Magos Fort site and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the State since 1978 all along the left bank. Recording that the river has the tendency to move towards left bank due to sharp bend in the upstream and the oblique flow along with high river discharge combined with severe wave condition was the worst scenario for the bank near Marriott hotel.

**24.** It is in this factual background, it was noted that the demolition of the wall would result in shifting of the channel towards the left bank, and this would further worsen the situation, as the angle of the oblique current would further increase and after shifting the wall, the whole force would be borne by the bank, resulting into further erosion. It was further therefore conclusively held that shifting of the left bank would not help in improving the hydraulic conditions in the river, instead it may further worsen the situation, as it will increase the curvature of the bend in this region. The report therefore did not favour, removal of the retaining wall.

**25.** The GCZMA relied upon this report heavily and rightly so, the report being from an expert agency which was consulted by the WRD, which possessed technical expertise in the field of coastal protection and specialises in conducting physical and mathematical model studies. This persuaded the GCZMA to conclude that to prevent further erosion of the shoreline and to protect the erosion prevention works put up by the Water Resources Department, Government of Goa, in the immediate vicinity of the structures, the retaining wall should be left in the present condition and should be properly maintained, though the GCZMA directed that the hotel shall not put the area, between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM report, for any kind of commercial use and the hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA.

**26.** We find that GCZMA has given due weightage to the report of the expert committee, and in doing so it find support from the observations of this Court in *Bses Limited Vs Union of India*<sup>5</sup>, when the Court observed thus:-

*“....17. Environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced*

---

<sup>5</sup> AIR 2001 Bom 128

*with the needs of the community at large and the needs of a developing country. If one finds, as in this case, that all possible environmental safeguards have been taken, the check and control by way of judicial review should then come to an end. Once an elaborate and extensive exercise by all concerned including the environmentalists, the State and the Central authorities and expert-bodies is undertaken and effected and its end result judicially considered and reviewed, the matter thereafter should in all fairness stand concluded. Endless arguments, endless reviews and endless litigation in a matter such as this, can carry one to no end and may as well turn counterproductive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further."*

*The same view was reiterated by the Supreme Court when the matter was taken in appeal. In the judgment in the case of Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd., reported in (1991) 2 SCC 539, the Court observed;*

*"2. The limitations, or more appropriately, the self-imposed restrictions of a Court in considering such an issue as this (construction of a Thermal Power Plant) have been set out by the Court in Rural Litigation & Entitlement Kendra v. State of U. P. (1987) 1 SCR 637. See in this regard the connected detailed judgment of Ranganath Misra, J, (as he then was) in the same matter at (1987) 1 SCR 641 : (AIR 1987 SC 359) and Sachidanand Pandey v. State of W. B. (1987) 2 SCC 295 : (AIR 1987 SC 1109). The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision."*

23. The same principles must apply to the case in hand. MPCB, which consists of experts, has considered all aspects of the matter in the light of the special status of Dahanu, being an ecologically fragile area. Various experts have expressed divergent views, and discussions were held before arriving at the conclusion. These views have been taken into account by DTEPA. The petitioners themselves had set up the Thermal Power Plant with a clear understanding that they would have to set up FGD Plant. The mere fact that another view is possible, inasmuch as presently there is no imminent threat to the environment, is no ground for interfering with the order of DTEPA.”

27. It is a settled position that the Court may not sit in an appeal over the decision of an expert and shall not substitute its opinion for the opinion of the expert and this being a settled position of law, we may not refer to the various decisions, reiterating these principles relied upon by Mr Dada including the decision in the case of *Medical Council of India Vs Kalinga Institute of Medical Sciences (KIMS) and others*<sup>6</sup> and in specific the observations in Paragraph 24, which held that in the absence of any malafides being attributed to the inspection team or ex facie perversity in the inspection report or jurisdictional error on the part of MCL etc., the High Court shall not examine the report as an appellate body, as it is simply not the function of the High Court and it should lend credence to the report of the expert body.

---

<sup>6</sup> (2016) 11 SCC 530

**28.** In the light of the aforesaid, since we find that the report of the WRD and CWPRS are expert reports, which are duly considered by the GCZMA while passing the order dated 11.03.2021 and even the petitioner was afforded an opportunity of hearing and has failed to point out any legal or factual lacuna in the said report, the inference drawn by the GCZMA based upon the said report must finally weigh with us as we are not experts in the field and cannot substitute our opinion over the opinion of the expert.

**29.** The long drawn litigation, brought by the present petitioner must come to an end, as we find that right from the filing of the petition in the year 1993 raising a challenge to the lease deed granted by the Government of Goa in favour of Palm Hotel (India) Limited, the petitioner - Goa Foundation had raised objections from time to time, by filing proceedings before the said Court when it filed Writ Petition in 1993 challenging the construction permissions granted in favour of Palm Hotel (India) Limited on the ground that it was in violation of the CRZ Notification of 1991. This petition which was disposed of on 29.06.2015, by directing GCZMA to re-examine the constructions put up by 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 was located. The Court clearly expressed that there was no sufficient material on record to clearly identify the high tide line at loco to ascertain whether any building/structure put up by the private respondent is located towards the river side. However, very specifically this exercise was left to the respondent/GCZMA to examine the said issue as to whether the construction activities come towards the riverside of the imaginary line, to be drawn from the light house as shown in the plan by the Court Commissioner and take necessary steps for restoring such area in accordance with law. Another direction from the Court was to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of respondent Nos.7 and 9 and this exercise undertaken by the GCZMA ultimately resulted into an order being passed on 18.02.2021, on taking into consideration the report prepared by the CWPRS as well as the previous minutes of meeting of GCZMA, which was committed towards the compliance of the CRZ regulations and a final order is therefore passed which is challenged before us on the ground that there is wilful disobedience of the earlier directions issued by the Court on 29.06.2015.

The submission advanced by Ms Alvares fail to appeal us, as we find that it is in the wake of the opinion of the expert body, the decision is taken by the GCZMA to continue with the retaining

wall, as its removal would cause more damage. The impugned decision being reasoned one, and since we do not find that there is any wilful disobedience of the order issued by us and particularly if we consider the timeline from which the proceedings were instituted till today, we find a beseeching solution being offered by the GCZMA in the interest of environment and hence we refuse to entertain the petition on the grounds raised by the petitioner alleging that the decision of the GCZMA is arbitrary and malafide.

Finding no merit and substance in the petition, the Rule is discharged.

**NIVEDITA P. MEHTA, J**

**BHARATI DANGRE, J**