

IN THE HIGH COURT OF JUDICATURE AT MUMBAI,  
GOA BENCH, AT PANAJI.

Misc. Civil Appln. No. 510/2002

In

Writ Petition No. 150/98

The Goa Foundation

In

...Applicant

1. Leonard J.S. Fernandes  
Palolem, Cancona, Goa.
2. Ana Mari Afonso,  
Palolem, Cancona, Goa.
3. Opociano Diniz,  
Palolem, Cancona, Goa.
4. Vincent Cardoso,  
Palolem, Cancona, Goa.
5. Januario Fernandes,  
Palolem, Cancona, Goa.
6. The Goa Foundation,  
Mapusa, Goa.

...Petitioners

V/s.

1. The Cancona Municipal Council  
Through its C.E.O., Cancona, Goa.
2. State of Goa through its Chief  
Secretary, Secretariat, Panaji, Goa.
3. Goa State Committee on Coastal Environment  
Town and Country Planning Dept, Panaji, Goa.
4. The Secretary, Ministry of Environment  
And Forests, Paryavaran Bhavan, New Delhi.
5. Ganesh Guno Pagui,  
Palolem, Cancona, Goa.
6. Tony Rodrigues,

- Palolem, Cancona, Goa.
7. Ramesh Nagarsenkar,  
Opposite Railway Station, Khamamol,  
Curchorem, Goa.
  8. Rajendra Datta Dessai,  
Char Rasta, Cancona, Goa.
  9. Gurudas Gaitonde,  
Palolem, Cancona, Goa.
  10. Mohan Nagarsenkar,  
Palolem, Cancona, Goa.
  11. Kiril Vaz,  
Coloma Beach, Cancona, Goa.
  12. Ghanasham D. Varik,  
Patnam, Cancona, Goa.
  13. The Electricity Department  
Through C.E, Vidyut Bhavan, Panaji.
  14. The PWD through its C.E,  
PWD, Altinho, Panaji, Goa.
- ...Respondents

IN THE HIGH COURT OF BOMBAY AT GOA  
PANAJI – GOA  
APPELLATE SIDE

MISC. CIVIL APPLICATION NO. 510 OF 2002 IN W.P. NO. 150/1998.

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Office Notes, Office Memoranda  
of Quorum appearances. Court's  
orders or directions and  
Registrar's orders.

Court's or Judge's Orders

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Mr. S.G. Dessai, Sr. Advocate with Mr.  
Amit Palekar applicants.

Ms. Norma Alvares, Advocate for the  
Applicant.

Mr. Sudesh M.S. Usgaonkar, Advocate for  
the Respondent No. 1.

Mr. A.N.S. Nadkarni, Advocate General  
with Mr. P.A. Kamat, Addl. Govt. Advocate  
for Respondent No. 2, 3, 13 & 14.

Mr. A.D. Bhoje, Advocate for the  
Respondent No. 5.

Mr. M.S. Sonak, Advocate for the  
Respondent No. 7.

CORAM: F.I. REBELLO &  
P.V. HARDAS, JJ.

DATE: JULY 16, 2003.

P.C.:

This is an application by the applicants who had been granted license by respondent No. 1 for carrying on business on the Municipal land in the tourist season. It was a condition of the license that the applicants will remove their structures on or before 15<sup>th</sup> May, 2003. Some of these applicants have not yet removed their structures. They have addressed letters to respondent No.1 that they should be allowed to continue and keep their structures. They have moved this Court and the relief sought is that they be allowed to intervene in the writ petition.

2. In the State of Goa, there is in force the Goa Land (Prohibition on Construction) Act, 1995. Section 4 of the said Act provides that no person shall on and from the date of commencement of this Act, undertake any work of construction of any structure, building, hut or any part thereof on any land belonging to the Government, a local authority or a Comunidade except under the authority of written permission granted by the concerned authority. There is also a provision for prosecution. It is true that all these construction have been put up on the land pursuant to the permissions granted by

respondent No. 1. Continuation of these constructions would, prima facie, be illegal in terms of Section 4 of the Goa Land (Prohibition on Construction) Act, 1995. Even, otherwise, according to general law, on the expiry of the license, the constructions would be unlawful. On failure to remove the illegal structures, Section 5 of the Act contemplates criminal prosecution and conviction with punishment by way of imprisonment.

3. These temporary constructions are in the area which falls within the CRZ. Normally no structure can be put up on the land which falls within 200 meters of the high tide line. However, the Government of Goa and the local authorities during the tourist season do permit temporary structure to come up with conditions. These temporary structures are to be removed before the end of the season or the period prescribed in the license, so that the land is restored to its original form. Any person who has put up any structure within the CRZ pursuant to the permission granted by the Government of Goa and/or local authorities must, therefore, strictly comply with this condition of removal of the structures falling within 200 sq. meters of high tide line. There can be no exception. All such structures have to be removed in terms of condition.

The matter pertains to protection of the ecology and environment in the CRZ area. The fundamental rights to life do not brook any act on the part of licensees or any citizens which would affect the ecological balance in the CRZ area. Various Notifications have been issued for ensuring that purpose.

Though the application is an application to intervene on behalf of the applicants who have put up their said structures on the land belonging to respondent No.1, in the

larger public interest, and so that the Authorities do not have to spend sparse public money in removal of the structures which they have licensed and with the object of giving effect to the provisions of the Environment Act, the Rules of Notifications, the following directions are issued which are to be complied with by the State of Goa and all local bodies in the State of Goa.

- (i) The State of Goa/Local Authorities will not permit putting up any structure within 200 meters from the high tide line, except to existing structures of traditional fishermen and that only for carrying out repairs to existing structures connected with their traditional fishing activities.
- (ii) Any license for temporary structures to be granted would be only from 1<sup>st</sup> October up to 15<sup>th</sup> June. The structures so constructed will be removed on the expiry of the license period and the place is to be restored back to its natural or original form.
- (iii) The license must include a condition that if any person allowed to put up any structure pursuant to the license granted by the State of Goa/Local Authorities, does not remove the structure, within three days of the license period expiring, then he/she would be barred from applying for a license either in his own name or in the name of his close family, which includes dependent parents, wife, sons, or un-married daughters or un-

married or widowed sister staying with him/her, for a period of five years from the date of committing breach of the said condition of license.

(iv) In the even, the local authorities have to remove the Structures/constructions, they will be entitled to remove it on the expiry of three days from the end of the license period and recover the costs towards the removal from the person who was granted the license. All applicants who are granted license, will have to deposit with the Local Authorities a sum of Rs. 2500/-, which would be refunded at the end of season, after the construction is removed and on being so certified by the Authority granting the license. If not removed or if any further work is required to be done, to return the land to its original form the amount would be spent from the amount deposited and the balance would be refunded. If there is excess expenditures, it will be recovered from the licensee. The amount will carry no interest. This deposit would be over and above the license fees or other fees or taxes that the State Government or local authorities, can charge under any Act, Rules or Bye-laws.

(v) Since the permissions are granted pursuant to directions issued by this Court and considering the sensitive nature of the CRZ area, no Court will exercise jurisdiction in respect of structures, put up pursuant to guidelines, except this Court.

4. We have noted with concern, the growing incidence of illegal constructions being put up within the CRZ i.e. 200 meters of the High Tide Line. Before this Court, in other Writ Petition, the Village Panchayat of Calangute, as well as the Municipal Council of Canacona have prepared survey plans showing the existing structures within 200 meters of High Tide Line and indicating therein structures constructed prior to 1991 and the structures after 1991. The Chief Secretary, State of Goa is, therefore, directed within four weeks to issue notices/directions to all the Coastal Villages and Towns to prepare survey plans showing all structure within 200 meters of the High Tide Line, existing before 1991 and the constructions after 1991, if not already prepared. The Survey Plans will be prepared in terms of the directions issued by this Court in Writ Petition No. 126/96, pursuant to the directions issued on 29.2.2002. These plans to be prepared and submitted to the Goa Coastal Zone Management Authority within six months from today.

All the coastal Villages and Towns to file their compliance report within six months from today.

With these directions, applications stands disposed of.

IN THE HIGH COURT OF BOMBAY  
AT GOA.

WRIT PETITION NO. 150/1998

1. Leonard J.S. Fernandes  
resident of Palolem, Cancona, Goa.
2. Ana Mari Afonso,  
resident of Palolem, Cancona, Goa.
3. Opociano Diniz,  
resident of Palolem, Cancona, Goa.
4. Vincent Cardoso,  
resident of Palolem, Cancona, Goa.
5. Januario Fernandes,  
resident of Palolem, Cancona, Goa.
6. The Goa Foundation,  
represented by its Secretary,  
Dr. Claude Alvares, with registered  
office at Mapusa, Goa.

...Petitioners.

Versus

1. The Cancona Municipal Council,  
through its C.E.O., Cancona, Goa.
2. State of Goa,  
through its Chief Secretary,  
Secretariat, Panaji, Goa.
3. Goa State Committee on Coastal Environment  
through Member-Secretary, Town and Country  
Planning Dept, Panaji, Goa.
4. The Secretary, Ministry of Environment  
and Forests, New Delhi.
5. Ganesh Guno Pagui,  
resident of Palolem, Cancona, Goa.
6. Tony Rodrigues,  
resident of Palolem, Cancona, Goa.

7. Ramesh Nagarsenkar,  
resident of Palolem, Canacona, Goa.
8. Rajendra Datta Dessai,  
Char Rasta, Cancona, Goa.
9. Gurudas Gaitonde,  
resident of Palolem, Cancona, Goa.
10. Mohan Nagarsenkar,  
resident of Palolem, Cancona, Goa.
11. Kiril Vaz,  
resident of, Cancona, Goa.
12. Ghanasham D. Varik,  
resident of Patnam, Cancona, Goa.
13. The Electricity Department  
through Chief Engineer, Government  
of Goa, Panaji, Goa.
14. PWD through its C.E, PWD,  
Altinho, Panaji, Goa. ... Respondents.

Mrs. Norma Alvares, Advocate for the Petitioners.

Mr. S. Usgaonkar, Advocate for Respondent No. 1.

Mr. C.A. Ferreira, Addl. Government Advocate for Respondents No. 2, 13 and 14.

Mr. A.N.S. Nadkarni, Advocate for Respondent No. 3.

Mr. G.V. Tamba, Standing Counsel for Respondent No. 4.

Mrs. A.A. Agni, Advocate for Respondent No. 6.

Mr. S.G. Dessai, Senior Advocate with Mr. S.D. Padiyar, Advocate for Respondents No. 8 and 9.

Mr. S.D. Lotlikar, Advocate for Respondent No. 12.

CORAM: A.A. Dessai &  
R.K. Batta, JJ.

DATE: 18.7.1998

JUDGMENT (PER BATTA, J.)

In this Public Interest Litigation, directions of the Court are sought in relation to constructions put up by respondents No. 5 to 12 near Palolem Beach, Canacona, Goa in violation of Building Laws and Coastal Regulation Zone Notification. The petitioners No. 1 to 5 are living in the area where the violations are alleged to have taken place and petitioner No. 6 Goa Foundation which is a Society registered under the Societies Registration Act has brought the matter before this Court. The petitioners seek directions to respondent No.1 to demolish the impugned constructions made by respondents No. 5 to 12 and to fix the responsibility for such violations as well as award exemplary punishment for dereliction of duty on the part of those who are responsible to contain such violations. The matter was heard at length at the admission stage for final disposal.

2. The violations alleged are that no construction licenses had been obtained and where construction licenses were obtained, there were merely for repairs and not for construction; that the constructions are made in CRZ-III of the Coastal Zone Notification; that no approval has been taken from the Goa State Committee of Coastal Environment (GSCCE for short); that the constructions made have been occupied without occupation certificate and that in some cases demolition orders have been issued. The violations are reported to have been committed by the respondents No. 5 to 12 on whose behalf the matter was argued by their

counsel separately. Therefore, we shall take up the case in respect of the alleged violations against each respondents No. 5 to 12 separately.

3. Before taking up the case of each respondent separately, it is necessary to note the restrictions in respect of the developments which can be carried out in CRZ-III. In CRZ-III fall areas that are relative undisturbed and those which do not fall either in CRZ-I or CRZ-II and they include coastal zone in the rural areas (developed and undeveloped) as also areas within Municipal limits or in other legally designated urban areas which are not substantially built up. in CRZ-III the area upto 200 meters from the HTL is to be earmarked as 'No Development Zone' and no construction shall be permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density (emphasis supplied). In this zone upto 200 and 500 meters of High Tide line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF for short) is permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II. Construction/ reconstruction of dwelling units between 20 and 500 meters of HTL is permitted so long as it is within the ambit of traditional rights and customary used such as existing fishing villages and goathans. There are further restrictions namely that building permission for such construction/ reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size and overall height of construction shall not exceed 9 meters and construction shall not be more than 2 floors (ground floor plus one

floor). The reconstruction/ alterations of an existing authorized building is permitted subject to the above restrictions (emphasis supplied). Thus, we have to examine the case of the respondents keeping in view the above restrictions for development which exist in CRZ-III areas. It has also to be born in mind that the area unto 200 meters from High Tide Line is earmarked as 'No Development Zone' and no construction is permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density. The violations alleged in this petition are stated to be in respect of the constructions made in 'No Development Zone' i.e. the area up to 200 meters from the HTL. We shall now take up the case of each respondent separately.

4. Case of Ganesh Guno Pagui – Respondent No. 5:-

According to the petitioners, respondent No.5 has constructed an illegal building in Survey NO. 120/10 which is being used as tourist cottages and this construction falls within the 'No Development Zone'. The respondent No. 5 obtained license for repairs of hut/mangor bearing No. 7 in Survey 120/7. In fact, respondent No. 3 had shown the said structures as store-room in letter dated 5.9.95 (Exhibit 6) and had sought permission to repair/ reconstruct the same showing it as house bearing No. 7. The license was granted for repairs of hut/mangor bearing No. 7 within the existing plinth area, but the license does not even show the existing plinth area. Cost of repairs was stated to be Rs. 20,000/-. Son of respondent No. 5 Ganesh Guno Pagui is Dayanand Pagui, Municipal Councilor, who is also the Vice President of the Canacona Municipal Council which had granted the said license dated 6.11.95 for repairs. On a specific query made by the Canacona Municipal Council, respondent No. 5 in letter dated 6.10.95 (Exhibit 10) had stated that

he wanted to repair the roof of the house by replacing the palm leaves by Mangalore tiles and he only intended to carry out minor repairs and not reconstruct the house. On 16.10.95 the Chief Officer J.P. Gadekar of Canacona Municipal Council had prepared a memorandum after visiting the site with the Municipal Engineer and at the time of inspection the structure in question was shown by respondent No. 5 which was only a shed erected on sandy land without any foundation with support of wooden poles thatched with palm leaves roofing. There was no masonry construction at all. It was also noticed and recorded in the said memorandum that the said structure which was shown by respondent No. 5 was very close to the high sea and within 200 meters. The Municipal Engineer was advised by the Chief Officer J.P. Gadekar that he should be meticulous and careful while processing the application of respondent No. 5 in view of the representation of one Isabella Coutinho. Technical section of Canacona Municipal Council in Note dated 1.11.95 (Exhibit 13) found that in Survey No. 120/10 there is a mango (hut for keeping canoe) which bears registration No. 7 as per house tax records and it is registered in the name of Ganesh Guno Pagui. The plinth area of the existing mango is 6 x 11 meters which is supported by wooden poles and thatched palm leaves. N.O.C. was given to repair this mangor within the existing plinth of 6 x 11 meters. The construction which has come up in pursuance of license for repairs of the said hut/mangor is 18 x 8 meters. The photographs (Exhibit 33) on record show not only this construction is at Palolem beach, but it is totally a new construction and can by no stretch of imagination be said to be a repair work. The Municipal Council also found that this construction which was made by respondent No. 5 was on a different location without permission. As such, show cause notice dated 21.1.96 was issued as townty the unauthorized construction which had

been made without obtaining permission under Section 184 of the Municipalities Act and which falls within 200 meters of the HTL should not be demolished. Respondent No. 5 was directed to stop the construction forthwith. However, it appears that the construction work continued and on 20.12.96 demolition order was passed by the Chief Officer, Canacona Municipal Council. No approval in respect of this construction was taken from GSCCE and the same was occupied without obtaining any occupancy certificate and the same is now stated to be used for tourists. Some of the residents of Palolem had filed Writ Petition No. 432/96 against this illegal construction to which the present respondent No. 5 was a party as respondent No. 4. By Order dated 22<sup>nd</sup> November, 1996 this Court had directed the present respondent No. 5 to stop the construction and the bailiff was directed to take photographs as well as measurements of the existing construction. Reliance has been placed on the said order regarding construction by the petitioners in this petition. The demolition order dated 20.12.96 of the Chief Officer; Canacona Municipal Council was kept in cold storage for reasons best known to the Canacona Municipal Council which gave enough time to respondent No. 5 to file appeal against the demolition order after about nine months of the said demolition order. The Appellate Court had ordered status quo, but it appears that respondent No. 5 continues with the construction and contempt proceedings were filed. The Canacona Municipal Council, except for taking paper action, did not effectively deal with the matter and the construction was allowed to be completed. Not only it was allowed to be completed but it was also allowed to be occupied without any occupancy certificate and the Canacona Municipal Council stood as a mere spectator all along. Learned Advocate Shri Sudesh Usgaonkar struggled hard to convince us that the Canacona Municipal Council was

taking action but could not satisfy us that the Canacona Municipal Council was really interested in containing the illegal construction which was made by the respondent No. 5. Learned Advocate, Shri Lotlikar also tried in vain to justify the construction. The construction in question is in total violation of Building Laws and falling within CRZ-III. In these circumstances, we are of the opinion that respondent No. 5 is not entitled to maintain appeal against order of demolition dated 20.12.96 of the Chief Officer of the Canacona Municipal Council. In view of the above, we direct respondent No. 1 to demolish the entire construction made by respondent No. 5 within a period of one month from today and report compliance to this Court within a week thereof.

5. Case of Tony Rodrigues – Respondent No. 6:-

According to the petitioners, respondent No. 6 has raised three illegal buildings within 200 meters no-development zone – two of them have been raised in the past six months, out of which one is a restaurant with pucca kitchen and the second is being used for tourists and no construction license had been obtained for the same. The third construction for tourists was made about tow years earlier and the same has been illegally regularized by Canacona Municipal Council. Respondent No. 1 in the return has stated that show cause notice dated 13.9.93 had been given to respondent No. 6 since he had made the construction without permission and the construction was ordered to be stopped. On 23.1.95 respondent No. 1 had passed demolition order and at that time respondent No. 6 applied for regularization of construction done by him in Survey No. 118/4 and 118/5. Respondent No. 6 claimed that the construction had been made six years ago in 1990 and he was already in occupation of the same. How the construction was allowed to be completed when the construction was ordered to be stopped by the

Canacona Municipal Council vide notice dated 13.9.93 and how it was occupied without occupancy certificate shows total ineffectiveness of the Canacona Municipal Council to deal with the matter. By Resolution dated 24.8.95 by Canacona Municipal Council all unauthorized illegal construction in private properties were assessed for the purpose of house tax. The Resolution was passed in pursuance of directions given by the Minister for Urban Development. We are at a loss to understand as to how blanket order of regularization could be passed by the Canacona Municipal Council. The ground put forward by the Canacona Municipal Council is that in order to levy house tax, the construction had to be authorized and respondent No. 1 had passed resolution on 4.2.96 that all illegal constructions which were surveyed by respondent No. 1 to whom demolition notice had been served by regularized by imposing fines. Can illegal construction be regularized ignoring norms laid down by Building Laws and against Coastal Zone Regulations? The Canacona Municipal Council without examining these aspects blindly regularized all illegal constructions which is a matter of serious concern as it ignores the purpose for which Building Bye-Laws are framed by the Legislature and Coastal Zone Regulations which have been made with a view to preserve the environment along the coast, beaches, etc. Encouraged by the attitude of the Canacona Municipal Council respondent No. 6 Tony Rodrigues made yet another construction without permission and show cause notice dated 12.9.97 was issued. Respondent No. 6 replied that part of the existing construction had collapsed due to rainfall and the same was repaired and he once again sought regularization of the suit construction. No approval at the time of regularization was taken from the GSCCE.

6. Learned Advocate Mrs. Agni, appearing on behalf of respondent No. 6 argued before us that the constructions had been made in the year 1990 when the Coastal Zone Regulations in question had not come into force. We had asked learned Advocate for the respondent No. 6 to produce documents to show that the constructions in questing were existing prior to the coming into force of the Coastal Zone Regulations under which CRZ were demarcated. The documents produced are: Regularization dated 10.4.96 on the existing plinth, but what is existing plinth is nowhere specified. House tax receipts have been produced prior to that or till 1989 when respondent No. 6 is alleged to have purchased this property from someone. All other documents including license, telephone bill, NOC for electric connection, water connection, registration of paying guest, registration under the Tourist Trade Act, etc. do not establish the existence of the construction prior to the coming into force of the Coastal Zone Regulation in question and all these documents are relating to the year 1996/97. The plan which is produced shows that independent rooms, sitting and veranda have been made for the purpose of accommodating tourists. One electricity bill of February, 1996 has been produced in respect of a meter sought to have been installed on 19.9.90, but it cannot be connected with any of the constructions. The constructions in question as can be seen from the photography (Exh. 34 on record) are totally new constructions made in the recent past. Learned Advocate Mrs. Agni pointed out that in the survey plan a garage is shown under survey No. 188/4. But except for this faint attempt nothing has been placed on record to suggest that any of the constructions have been made at the existing place where the garage existed. The constructions were done in a clandestine manner without obtaining any license and without obtaining any occupancy certificate or approval from GSCCE.

In these circumstances, the construction in question cannot be permitted to stand.

Accordingly, we direct that all the three constructions in question shall be demolished by the Canacona Municipal Council within a period of one month from today and compliance report shall be filed in this Court within a week thereof.

7. Case of Ramesh Nagarsenkar – Respondent No. 7:-

The case of the petitioners is that respondent No. 7 has raised illegal constructions within 200 meters of the High Tide line during 1996/97. One of the constructions is a liquor vending shop about 10 meters from the HTL and the other construction is an illegal compound wall on the sea-shore of Palolem beach. Both are in survey No. 118/1.

Respondent No. 1 Municipal Council has filed return wherein it is stated that on noticing that respondent No. 7 had started construction of rooms of laterite masonry walls without permission, show cause notice dated 29.9.97 was issued to show cause why this structure should not be demolished since it is within 200 meters of the HTL and no construction license had been obtained. He was also directed to stop the construction immediately.

Respondent No. 7 in his reply dated 29.9.97 stated that no construction had been started by him and the existing structure is shown in the survey plan. On 3.10.97 Canacona Municipal Council carried out inspection and found that the construction was totally new without and license and the structure in questing was not shown in the survey plan.

Accordingly, demolition order was issued but the respondent No. 7 filed appeal and demolition was stayed on 17.10.97. Insofar as the compound wall is concerned, the learned Advocate Shri S. Usgaonkar, appearing on behalf of respondent No. 1 has stated that the compound wall has already been demolished. Report dated 26.6.96 (Exh. 38 on record) shows that the premises in which bar in run by Ganesh Pagui belongs to him and

he is father of Councilor Dayanand Ganesh Pagui and this bar is located about 15 meters from the compound wall in survey No. 118/4, whereas the petitioners complain of the bar in Survey No. 118/1 as belonging to Ramesh Nagarsenkar. The said Ramesh Nagarsenkar had not put in appearance. According to the petitioners this construction is not occupied by respondent No. 7 and according to respondent No. 1 neither license nor occupancy certificate has been obtained by respondent No. 7. The appellate Court is seized of the matter and, as such, we are not inclined to pass any order at this stage. however, we wish to make it clear that respondent No. 7 shall not occupy the construction without obtaining permission of GSCCE.

8. Case of Rajendra Datta Dessai – Respondent No. 8:-

According to the petitioners, father of respondent No. 8 by letter dated 30.11.92 (Ehb. 41) had sought license for reconstruction of house being No. 7/1 in Survey No. 120/7 Palolem, Canacona. The Municipal Engineer visited the site and wrote on the reverse of the said application that the area of the existing house is 36 sq. m. i.e. 6 m. x 6 m. and that the respondent No. 8 wanted to reconstruct the house within the plinth area of 36 sq. m. and recommended the issue of license. Respondent No. 8 is the son of Datta Dessai who had sought reconstruction and respondent No. 8 was the President of Canacona Municipal Council at the relevant time. On 18.1.93 reconstruction license was granted in favor of father of respondent No. 8 in respect of house No. 6/1 and 7/1 in survey No. 120/7. These licenses were renewed on the application filed by respondent No. 8 on 20<sup>th</sup> January, 1995. Respondent No. 8 is now running a hotel by name 'Cosy Nook' in the newly constructed building in pursuance of the said license which has been joined together. He is also alleged to have constructed a compound wall.

9. Respondent No. 1 submitted that though registration of house No. 6/1 existed in the erstwhile Panchayat when the structure was assessed for house tax since 1980 yet the structure is not shown in the survey plan. The structure in question is at a distance of 10 meters from the HTL. Only repairs can be permitted in the 'No Development Zone' up to 200 meters of the HTL and construction is not permitted. In respect of the compound wall it is stated by the Panchayat that steps would be taken to demolish the same if it is constructed without permission. During the course of arguments, learned Advocate Shri Usgaoncar stated that the construction of the compound wall is without license and show cause notice for its demolition has already been issued on 30.6.98. In respect of the building no approval was taken from GSCCE.

10. Respondent No. 8 has in his return stated that the petitioners have picked only a few construction out of more than 300 constructions existing all along Palolem beach, when these constructions can also be challenged on the ground of having violated laws on the subject; that the petitioners have themselves carried out illegal constructions to their houses within 200 meters and the petitioners are running bar and restaurant in illegal constructions constructed by them. Respondent No. 6 Tony Rodrigues had also made similar allegations against petitioners No. 1 and 5. Learned Senior Advocate Shri S. Desai had urged that he will furnish the details of illegal constructions carried out by petitioners No. 1 to 5 and action should also be taken against them and we shall deal with this aspect at a later stage. According to respondent No. 8 there were in all three old houses in survey No. 120/7 of which one is occupied by mundcars and is still existing and the two other houses bearing No. 6/1 and 7/1 were in possession of his father. He further states that construction license for structures admeasuring 36 sq. m. and 42 sq. m.

had been obtained and at the time of reconstruction the two houses were made into one unit and occupation certificate was applied for showing the whole reconstructed house as one under No. 6/1; that water and electricity connections were obtained in 1996; that respondent No. 8 bonafidely believed that permission of GSCCE was not necessary as it was a mere case of reconstruction of existing house.

11. The case of respondent No. 8 is that the two houses were in existence much prior to the coming into force of the Coastal Zone Regulation Notification and the same were merely reconstructed. However, all the documents which have been produced by him relate to the year 1993 to 1996. No document in relation to the existence of old houses has been produced except for placing reliance on the survey plan of survey No. 10/7 which is at page 149 of the petition. In survey No. 120/7 two structures are shown and according to learned Senior Advocate Shri S. Dessai while reconstructing on the existing plinth of the said structures, the same have been joined together and converted into one house.

12. Learned Advocate Ms. Norma Alvares urged before us that there were only three houses in survey No. 120/7, out of which house No. 7 had collapsed, house No. 6 is occupied by petitioner No. 2 and house No. 8 is occupied by petitioner No. 2's sister. The survey record of survey No. 120/7 shows that the said three houses belonged to Augustinho B. Pereira, Z. Vaz Afonso and Augustinho Pereira. Thus, according to the survey record Form I and XIV none of the houses belong to Rajendra Datta Desai and no material has been produced by him that the said existing house belonged to him. The location of the said existing houses vis-à-vis plan at page 149 of the petition has not been satisfactorily established. According to the return filed by Canacona Municipal Council

house NO. 7/1 is not shown in the survey plan though it is stated that the existing structure was assessed for house tax since 1980 and the said existing structure was 10 meters from the HTL since its inception. Admittedly no permission from GSCCE has been obtained by the petitioner. It is also alleged by the petitioners that Rajendra Desai, son of Datta Desai was the President of the Canacona Municipal Council, as a result of which Canacona Municipal Council constructed public toilets in survey No. 120/7 which have been converted by respondent No. 8 into private toilets and the public has no access to the said toilets. Respondent No. 8 obtained occupancy certificate for the said construction as residential-cum-commercial house No. 6/1. The construction in question as can be seen from photograph (Exh. 46) is practically on the beach and same is the position in relation to the compound wall as can be seen from Exh. 47. The reconstruction was not only done in the 'No development zone' where no construction is permitted except for repairs of existing authorized structures not exceeding the plinth. No material has been placed by respondent No. 8 in relation to the existence of any existing authorized structures and the construction has been made in total violation of CRZ Regulation and without obtaining necessary approval from GSCCE. Accordingly, we are constrained to order the demolition of the suit construction made by respondent No. 1 to demolish the suit construction within a period of one month from today and report compliance within seven days thereof. In respect of the compound wall, show cause notice for demolition dated 13.6.98 has already been issued and the respondent No. 1 is directed to pass order in accordance with law within a period of three months from today and action taken be reported to this Court within seven days thereof.

13. Case of Gurudas Gaitonde – Respondent No. 9:-

The petitioners complain of three illegal constructions carried out by respondent No. 9. The said constructions being: (a) construction at 200 meters from HTL in survey No. 118/9; (b) cottage on HTL in survey No. 120/21 and (c) three huts on Canacona island. According to the return filed by Canacona Municipal Council – Respondent No. 1, the construction (a) falls outside 200 meters from HTL. Respondent No. 9 has also stated that the petitioners themselves have carried out illegal constructions to their houses and have chosen only a few constructions out of more than 300 constructions, whereas those constructions can also be challenged on the ground of having been constructed in violation of Building Laws. According to respondent NO. 9 he had taken approval of GSCCE for construction at (a) in survey No. 118/9. The approval taken from GSCCE is for residential building which is dated 28.7.97. Thereafter respondent No. 9 obtained sanad showing survey No. 118/9 as residential-cum-commercial building wherein two blocks namely Block A and Block B having area of 164 sq. m. and 168 sq. m. respectively was shown for the purpose of conversion. The construction licenses were obtained on 20.10.97 wherein the construction licenses were obtained on 20.10.97 wherein the constructions are shown commercial-cum-residential building. The occupancy certificate from Cancona Municipal Council was obtained on 14<sup>th</sup> April, 1998 for front four shops Block A for commercial-cum-residential building. The learned Advocate Shri Nadkarni, appearing on behalf of GSCCE has urged before us that GSCCE had not permitted any construction for commercial/shops but the approval was given only for residential building. In view of the same the occupancy certificate dated 14<sup>th</sup> April, 1998 showing front four shops blocking for commercial-cum-residential building is hereby quashed. The said buildings – Bock A and Block B, shall not be used for any

commercial purpose, including shops by respondent No. 9 and in case of any violation thereof, respondent No. 1 Cancona Municipal Council shall take immediate and appropriate measures.

14. In respect of construction (b), learned Advocate for respondent No. 1 submitted that show cause notice for its demolition has already been issued. Learned Senior Advocate Shri. S. Dessai submitted that this construction was made in the year 1982 and it was assessed for house tax from 1987 onwards, but according to Ms. N. Alvares this construction was made in the year 1996. House tax receipts in respect of house No. 22 from 1987 have been produced. We shall therefore leave the matter to be dealt with and decided by the Cancona Municipal Council since show cause notice dated 13.6.98 has already been issued and no order is proposed to be passed in respect of this construction in the circumstances of the case.

15. In respect of three huts at (c), learned Senior Advocate Shri S. Dessai has stated that the same do not belong to him. The stand of the Cancona Municipal Council – respondent No. 1 is that three huts have been assessed for the purpose of house tax in the year 1995/96. The Cancona Municipal Council has already issued show cause notice dated 13.6.98. The said huts, as already pointed out, are not claimed by respondent No. 9. The Cancona Municipal Council shall therefore take action in the matter in accordance with law. Action in respect of constructions at (b) and (c) about shall be taken by the Cancona Municipal Council – respondent No. 1 within a period of three months and compliance of action taken shall be furnished within one week thereof.

16. Case of Mohan Nagarsenkar – Respondent No. 10:-

The said respondent did not appear. The construction in this case was said to be at the plinth level within 200 m. of the HTL. According to the return filed by respondent No. 1, respondent No. 9 had not taken any permission for the said construction which is like a platform. Learned Advocate Shri S. Usgaonkar, appearing on behalf of respondent No.1 has submitted before us that the said platform including plinth has already been removed. Hence no further action is called for in the matter.

17. Case of Kiril Vaz – Respondent No. 11:-

The case of the petitioners is that the construction in question carried out by respondent No. 11 adjoining Coloma beach is at a distance of 30 meters from the HTL and on the side of the upcoming construction was an old hut for the storage of firewood. It is alleged that huge new construction has been raised for existing the plinth area of the original wood storage hut which did not have a plinth. The return filed by Cancona Municipal Council respondent No. 1 shows that respondent No. 1 had applied for repairs of his existing residential house No. 214 in Ward NO. 7 on 9.9.97 and on verifying the position of the said house permission was granted on 16.9.97 to repair the existing house i.e. plastering of walls and repairs of roof. On 23.4.98 the Municipal Inspector reported that respondent NO. 11 had demolished existing structure and constructed new structure o laterite walls and cement concrete roof. Accordingly, show cause notice dated 23.4.98 was issued on the ground that permission was not granted for fresh construction of the building and the construction being without permission of respondent No. 11 there are three existing authorized and old structures further towards the sea side as compared to his house; that existing structure was occupying 280 sq. m. plinth area, but the present house occupies much lesser area. It is also stated in his affidavit in reply that there is an

existing public road in between his structure and the sea as shown in location plan (Exh. R. 11/E). The contention of learned Advocate Shri Lotlikar, appearing on behalf of respondent No. 11 is that the house in question is situated on landward side of the said road and it is not towards seaward side. In Form I and XIV of survey No. 79/1 houses of many persons are shown besides store-room of the owners. The construction has already been ordered to be stopped by the Cancona Municipal Council and demolition notice dated 23.4.98 has already been issued. The Cancona Municipal Council is seized of the entire controversy and, as such, no action is called for at this stage. The Cancona Municipal Council shall take final decision in respect of the demolition order dated 23.4.98 within three months from today and report compliance within one week thereof. In the meantime, respondent No. 11, his agents, etc. shall not proceed with the construction as the same has already been ordered to be stopped by the Municipal Council.

18. Case of Ghanasham D. Varik – Respondent No. 12:-

The case of the petitioners is that respondent No. 12 has constructed a shed at Patnem with laterite stones and cement admeasuring 6.4 x 4.6 m. and this construction is within 200 meters of the HTL. In respect of this construction demolition order dated 16.12.96 was issued by Cancona Municipal Council against which appeal was filed by respondent No. 12 and the matter was remanded by the appellate court to give fresh opportunity and accordingly Municipality. The stand taken by respondent before Cancona Municipal Council – respondent No. 1 is that the house was existing for 22 years. However, on examination of the house tax receipts produced by respondent No. 12 it was found that the said receipts were in relation to a different structure than the one for which demolition

notice was given by respondent No. 1. No construction license, occupancy certificate or approval of GSCCE is alleged to have been obtained by respondent No. 12. Cancona Municipal Council is already seized of the matter and this stage, we do not wish to pass any order in the matter and would leave the Municipality to deal with the matter in accordance with law, within a period of three months from today and report compliance within one week thereof.

19. The petitioners have also complained of the ramp constructed by respondent No. 1 to enable trucks to go to the beach. According to Cancona Municipal Council – respondent No. 1 the same ramp was constructed in 1995/96 under NRY scheme as there was no proper access from the road which is at a higher level to the sandy portion at lower level. There were grievances from the fishermen also that they were not able to take their vehicles down for loading fish, and the misuse of the ramp for taking the vehicles with construction material was not contemplated by respondent No. 1. We are informed that there is a board which prohibits the vehicles from going to the beach, but it appears that the said prohibition is not being adhered to and the vehicles are being taken on the beach. Permitting the vehicles to drive on the beach would not only disturb the ecology but it would also spoil the beach and, as such, it is necessary that no vehicles should be permitted to go to the beach. Therefore, we direct respondent No. 1 to place hurdles/ erect poles at short distance on the ramp so that no vehicles go to the beach from the said ramp. Allowing the fisherman to take vehicles to the beach for the purpose of loading fish can not be permitted and the fish can be brought in baskets and loaded in the vehicles beyond the ramp.

20. We shall now come to the allegations made by some of the respondents that the petitioners have themselves committed violation of Building Laws and they are not entitled to come in public interest litigation. This stand of the respondents can not be accepted and cannot protect the illegal constructions made by them, but in case the petitioners have made any illegal extensions to their houses, the construction of the petitioners would also be subject to the Building Laws. As against petitioner No. 1 Leonard Fernandes, it is alleged by respondent No. 9 that he has reconstructed/ renovated kitchen by laterite masonry walls, replacing mud walls and changed the roof. There is no allegation that the construction has been made beyond the old plinth. The Cancona Municipal Council has already issued show cause notice dated 12.5.88 to him and the learned Advocate Shri S. Usgaoncar, appearing on behalf of the Municipal Council – respondent No. 1 submitted that action will be taken. Respondent No. 9 has also alleged that toilet blocks have been constructed in close vicinity/ attached to houses. In this respect show cause notices are issued by the Cancona Municipal Council to the landlord Manju Naik Gaonkar and demolition order has already been passed on 20<sup>th</sup> May, 1998.

21. In respect of petitioner No. 2 Ana Maria Afonso, allegations are that she has extended one bedroom and according to learned Advocate Shri S. Usgaoncar, respondent No. 1 will take action in accordance with law. In respect of petitioner No. 3 Opociano Diniz he has extended roof by palm leaves supported by wooden poles and had constructed water tank of laterite stones covered by palm leaves. In respect of this the Canacona Municipal Council is stated to have issued show cause notice dated 31.10.95 and demolition order has been issued on 19.6.98. In respect of Vincent Cardozo petitioner No. 4 illegal construction has been made in survey No. 102, but no details have

been furnished by respondent No. 9. According to the Canacona Municipal Council three old existing structures and one hut of palm leaves and poles exists and in case of any violation, action will be taken. In respect of petitioner No. 5 Januario Fernandes, it is said that he has made illegal closure of veranda of house NO. 180/27 and one temporary hut has been made. It is submitted on behalf of Canacona Municipal Council that in case of violation of Building Laws, action will be taken in the matter.

22. In view of the above, we do not propose to pass any order in the matter in so far as Petitioners are concerned and the Canacona Municipal Council shall proceed to take action in case there is violation of Building Laws or Coastal Zone Regulation. The action shall be taken within three months from today and compliance thereof shall be reported within one week thereof.

23. In view of the discussion relating to the impugned constructions we issue the following directions:-

- (i) Respondent No. 1 is directed to demolish the entire construction in question made by respondent No. 5 Ganesh Guno Pagui within a period of one month from today and report compliance to this Court within a week thereof.
- (ii) Respondent No. 1 is directed to demolish all the three construction in fashion carried out by respondent No. 6 Tony Rodrigues within a period of one month from today and compliance report shall be filed in this Court within a week thereof.

- (iii) Respondent No. 7 Ramesh Nagarsenkar shall not occupy the construction in question without obtaining permission of the GSCCE.
- (iv) Respondent No. 1 is directed to demolish the construction in question carried out by respondent NO. 8 Rajendra Datta Dessai within a period of one month from today and report compliance within seven days thereof. In respect of the compound wall, show cause notice for demolition dated 13.6.98 has already been issued and respondent No. 1 is directed to pass order in accordance with law within a period of three months from today and action taken to be reported to this Court within seven days thereof.
- (v) Occupancy certificate dated 14<sup>th</sup> April, 1998 issued in favor of respondent No. 9 Gurudas Gaitonde showing front four shops – Block for commercial-cum-residential building is hereby quashed. The said buildings – Block A and Block B shall not be used for any commercial purpose including shops by respondent No. 9 and in case of any violation thereof, respondent No. 1 shall take immediate and appropriate measures.

In respect of construction 'b' raised by respondent No. 9 Gurudas Gaitonde respondent No. 1 has already issued show cause notice dated 13.6.98 and we leave the matter to be dealt with and decided by respondent NO. 1 and no order is proposed to be passed in respect of this construction in the circumstances of the case.

In respect of three huts at 'c' respondent No. 1 has already issued show cause notice dated 13.6.98 and respondent No. 1 shall take action in the matter in accordance with law.

Action in respect of constructions at 'b' and 'c' shall be taken by respondent No. 1 within a period of three months and compliance of action taken shall be furnished within a week thereof;

- (vi) In case of respondent No. 10 Mohan Nagarsenkar the platform including plinth has already been removed and no further action is called for.
- (vii) In respect of the construction made by respondent No. 11 Kiril Vaz respondent No. 1 had ordered the same to be stopped and demolition notice dated 23.4.98 has already been issued. The respondent No. 1 is seized of the entire controversy and, as such, no action is called for at this stage. Respondent No. 1 shall take final decision in respect of demolition order dated 23.4.98 within three months from today and report compliance within one week thereof. In the meantime respondent No. 11, his agents, etc. shall not proceed with the construction as the same has been ordered to be stopped by respondent No. 1.
- (viii) In the case of Ghanasham Varik, respondent No. 12, respondent No. 1 is already seized of the matter and at this stage we do not wish to pass any order in the matter and would leave the Municipality to deal with the same in accordance with law within a

period of three months from today and report compliance within one week thereof.

- (ix) In respect of the ramp constructed by respondent No. 1, we direct respondent No. 1 to place hurdles/ erect poles at short distance on the ramp so that no vehicles can go to the beach from the said ramp.
- (x) In respect of the construction carried out by petitioner No. 1 Leonard Fernandes, Canacona Municipal Council has already issued show cause notice dated 12.5.98 to him and we direct the Municipality to deal with the said notice and dispose of the same within a period of three months from today and report action within one week thereof. In respect of toilet Blocks, show cause notices are already issued by respondent No. 1 to landlord Manju Naik Govekar and demolition order has already been passed on 20th May, 1998. Respondent No. 1 shall therefore take further necessary action if any and report compliance within three months from today.
- (xi) In respect of construction carried out by petitioner No. 2 Ana Maria Afonso, respondent No. 1 shall take action in accordance with law and report action taken within three months from today.
- (xii) In respect of petitioner No. 3 Opociano Diniz respondent No. 1 had already issued show cause notice dated 31.10.95 and demolition order has been issued on 19.6.98. Respondent No. 1 shall

therefore take further necessary action, if any and report compliance within three months.

(xiii) In respect of construction alleged to have been made by petitioner No. 4 Vicente Cardoso no details have been furnished and respondent No. 1 shall take action in case of any violation and submit report in this behalf within three months.

(xiv) In respect of alleged construction by petitioner No. 5 Januario Fernandes, respondent No. 1 has stated that in case of violation of Building Laws action will be taken in the matter. A report of action taken in this behalf be submitted within three months from today.

24. For the reasons stated above, the Writ Petition is disposed of in the aforesaid terms and the Canacona Municipal Council – respondent No. 1 shall report compliance to this Court in terms of the order passed in this Writ Petition. In the facts and circumstances we would leave the parties to bear their costs.