

PETITIONER:
GOA FOUNDATION, GOA

..APPELLANT

Vs.

RESPONDENT:
DIKSHA HOLDINGS PVT.LTD & ORS.

DATE OF JUDGMENT: 10/11/2000

BENCH:
Umesh C. Banerjee, J.

JUDGMENT:

BANERJEE, J.

L...I...T.....T.....T.....T.....T.....T.....T...J

I have had the privilege of going through the lucid judgment of my learned Brother Pattanaik, J. and while recording my concurrence therewith, however, I wish to add a few pages as my own reasonings. Environmental degradation said to be by reason of disturbance of existing sand dunes on the sea front of Goa is the focal point for consideration in this Appeal - the High Court answered it in the negative. Goa, a popular tourist resort has recently been facing a tremendous influx of people as any other urban area. Tourism has turned out to be the basic economic benefactor to the State and correspondingly attracts the multifarious attributes of the same. Tourism is an industry and this growth of tourism has attracted all the other ancillary agencies including Hoteliers to start commercial operations and business activities. Panaji being the capital city has, as a matter of fact, hundreds of such hotels big and small and it is in pursuit of this trade and commercial venture that thenceforth uninhabited Beaches of the State being converted into commercial arena by way of hotels and beach-resorts of course to the benefit of the State exchequer but obviously commencement of a business activity on a Virgin Beach could lead to environmental degradation and resultantly various non- governmental organisations have come up to protest against such exploitation of the nature's bounty. The present Petition before this Court is one such instance. To put the record straight however, be it noted that though originally the writ petition was moved before the Goa Bench of the Bombay High Court but subsequently matter was transferred to Bombay and was heard by the Division Bench which negated the plea of environmental degradation as noticed above and hence the Appeal. In the present Public Interest Litigation, the main thrust of challenge pertains to maintenance of environmental equilibrium and bio-diversity in Nagorcem Beach, Palolem, Taluka Cancona, Goa being a coastal area in the State of Goa. The factual backdrop depicts that M/s. Diksha Holdings Pvt. Ltd., (the Respondent No.1 herein) applied to Town & Country Planning Department for permission to the construction of a Beach resort in January, 1996 along with a contour and site plan of the area. The records depict that Cancona Municipal Council upon due consideration of the clearance report from the Ministry of Environment and Forests granted sanction for construction of Hotel on 16th

January, 1998 which however, prompted the foundation (the Appellant herein) to approach the Court inter alia contending that the Ministry of Environment and Forests, did not, as a matter of fact, consider all relevant material particulars before issuance of the clearance and consequently the grant of sanction also stands vitiated. On the second count the Appellant contended that in any event the area being in the Coastal Regulation Zone (CRZ) and the construction of the Hotel does not come within the ambit of permissible activities in terms of the Notification under Section 3(1) and 3(2)(v) of the Environment Protection Act, 1986, there appears to be a serious irregularity resulting in the grant of an illegal sanction for setting up the project, more so by reason of the existence of sand dunes and categorisation of the area as CRZ-I, which prohibits any construction within 500 metres of the High Tide Line. While it is true that nature will not tolerate after a certain degree of its destruction and it will have its toll definitely though may not be felt in present and the present day society has a responsibility towards the posterity so as to allow normal breathing and living in cleaner environment but that does not by itself mean and imply stoppage of all projects. In my Judgment in regard to East Calcutta Wetlands (People United for Better Living in Calcutta - Public and another v. State of West Bengal : AIR 1993 Calcutta 215) I did speak of a balance between development and ecology and since my learned Brother Pattanaik, J. has already dealt with the issue, I refrain myself from dealing with the matter in extenso in that regard excepting however, recording my concurrence therewith and state that harmonization of the two namely, the issue of ecology and developmental project cannot but be termed to be the order of the day and the need of the hour. Before proceeding with the matter further, it be noted that the schedule attached to the local Town & Country Planning Act depict that the area in question was designated in the original plan as an orchard and as early as in 1989 the Settlement recorded a proposal to convert the plot from orchard to Settlement (Beach Resort). This proposal was finally accepted and approved in early April, 1990 and accordingly the record of Rights recorded the conversion from orchard to settlement as its land-use. India, admittedly, has around 6000 kms long coastal line against which Goa having 110 kms consisting largely of long sandy beaches. The beauty coupled with infrastructural facility has made Goa renowned the world over. Tourism as noted above is the main contributing factor for Goas economy. We have on record in the matter in issue the Notifications issued by the Central Government in regard to regulation of Coastal Zones in the country popularly known as CRZ Notifications which has, in fact, regulate the user of the beach area of the country. A brief reference to the norms for regulation of activities in different categories of CRZs would be convenient at this stage: CRZ-I : No new construction shall be permitted within 500 metres of the High Tide Line. No construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line;

[provided that construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, d rainage, sewerage which are required for traditional inhabitants of the Sunderbans Bio-sphere reserve area, West Bengal, may be permitted, on a case to case basis, by an authority designated by the State

Government].

CRZ-II :

- (i) .
- (ii) .
- (iii) .

CRZ-III :

(i) The area upto 200 metres from the HTL is to be earmarked as No Development Zone. [No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants]. However, the following uses may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water

(ii) Development of vacant plots between 200 and 50-0 metres of High Tide Line in designated areas of CRZ-III with prior approval of Environment and Forests (MEF) permitted for construction of hotels/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

- (iii)
- (iv)

In support of the appeal, Dr. Calude Alvares, a well-known Environmentalist of the country and appearing-in-person contended that by reason of the restrictions in terms of the CRZ Notification for setting up or expansion of industries and which lies about 500 meters from the High Tide Line, question of construction of any building (whether a hotel or beach resort or even any other building) cannot be considered and the act or acts of the concerned authority in the matter of approval to the proposed construction is the resultant effect of total non-application of mind. CRZ Category-I does not permit any new construction except, however, as mentioned in the Notification itself. It is in this perspective that Dr. Alvares however contended that the matter ought to be remitted back to the concerned authority for reconsideration of the same and upon examination of proper materials in the matter in issue. An in-depth analysis of the submission of Dr. Alvares would indicate that according to him demolition of sand dunes may create an environmental degradation and reliance was placed on the Report of the National Institute of Oceanography. Before, however, dealing with the Report, a cursory glance on to the nature of sand and sand dunes and impact thereof may be noticed. Sand in common English parlance cannot but mean and include minute fragments resulting from wearing down of siliceous rocks found covering parts of the sea-shore, river-beds, deserts (vide Concise Oxford Dictionary). Sand is a product of abrasion or break down of older parent or source rocks. McGraw- Hill

Encyclopedia of Science and Technology (6th Edn.) describes the characteristics of sand as below: Sand can be described in terms of both texture and composition. Textual attributes include size, size sorting, angularity, shape and surface texture of the grains. Grain size refers to the mean diameter of the grains and is usually determined by sieving. Grain size is directly related to the energy of velocity of the agent which transports the grains and is inversely related to the total distance of transport prior to deposition. Size sorting is a measure of the range in grain sizes within a given deposit of sand. Poorly sorted sands contain grains of many different sizes within the sand-size range; well-sorted sand have only a narrow range of particle diameters. The best-sorted sands are those transported by agents of low viscosity (for examine, wind) and deposited very slowly.

Sand is found virtually anywhere where fluids with high kinetic energy transport and deposit sediment. The largest modern-day accumulations of sand are in the vast inland deserts and on beaches. In both environments much of the sand has been reorganized by wind into dunes. Other significant concentrations of sand are found in alluvial fans which form at the base of mountains, on bars in rivers, and in a variety of shoreline settings including spits, barrier islands, and tidal flats, and in parts of deltas. Until about the 1950s sand was not thought to be present in the oceans very far beyond the inner parts of the continental shelves. However, it has been shown that sand can be transported even beyond the shelves into very deep-water settings by density currents which commonly move down submarine canyons.

Mcgraw-Hill Encyclopedia of Science and Technology further notes its use in the manner below: Sand is an important economic resource. Silica (SiO_2) from quartz sand is the chief ingredient for glass. Sand is also employed as a filler in concrete and plaster, as an abrasive (for example, on sandpaper), and as a fertilizer (glaucinite sand).

Needless to record that sand is normally transported away from its site of origin by wind and water before it being deposited at a particular place.

The New Encyclopaedia Britannica (Volume 10) has this to note for sand dune:@@
JJJJJJJJJJJJJJJJJJ

Sand dune, hill, mound, or ridge of loose material (not always sand) formed by wind action. The existence of dunes is a direct function of the ability of wind to transport unconsolidated material. They are commonly associated with desert regions where windblown sand occupies extensive areas. It has been estimated, for example, that sand deposits in the Sahara Desert cover about 2,700,000 sq mi (7,000,000 sq km). In the recent geological past desert areas may have been even larger during dry periods in the Pleistocene glaciation. At that time great areas of loess (wind-blown silt) were deposited across North America, Europe, and Asia. Dunes are also associated with coasts where beach sands may be reworked by the wind.

The geomorphic characteristics of sand dunes can be best

appreciated upon assessment of two basic elements, namely, sand and the wind and it is an interaction of these two elements which bring about the sand dunes. It is interesting to note that sand dunes are invariably built by particles of various forms and shapes of sand, sized up by waves and carried by the wind. Clay particles usually do not come along with sand particles. The growth of sand, however is totally dependent upon the direction and velocity of the wind. By reason wherefor sand dune which cannot be attributed to be ancient has been noticed to have another redeeming feature of being a movable along with time, tide and the wind. In the Coastal Zone Management Plan for Goa as issued by the Goa State Committee on Coastal Environment (Town & Country Planning Department: Government of Goa), Government of Goa June 1996, Dr. Wilfred Menezes Mesquita, the Environment Minister in no uncertain terms stated that Goa being on the verge of a quantum jump in all round development and thus having a tremendous pressure on its natural resources as also environment. The Minister however, went on to state that though Goa shall have to achieve economic prosperity but at the same time the Government cannot afford to damage the ecology and it will be the endeavour of the Government to achieve both by maintaining a proper balance. This is exactly how Brother Pattanaik, J. in his judgment dealt with the issue as regards the balance between development and ecology and as such further dilation is not required in the matter excepting however to note that the Government of Goa was not, in fact, completely oblivious of the environment of the area. The Minister of Environment himself makes a note that a proper balance shall have to be maintained between the ecology and development. Sand dunes, admittedly, if otherwise ancient in nature as noticed above, sometimes have cononut tree grown on the dunes by reason wherefor the dunes, as a matter of fact, act as a second line of defence against the fury of any cyclonic onslaught and before delving into the merits of the matter, another significant feature which ought to be noticed at this juncture is that the width of the beaches in Goa is not the same all along the coastal line and resuntaltly Coastal Management Plan cannot also be uniform neither can it be put on a formula each beach is singularly singular and has to be developed or protected in a specific manner applicable to the concerned beach only. ISSUES RAISED IN THE MATTER: The criticism levelled against the judgment under Appeal as noticed above, is the factum of non-consideration of relevant materials produced during the course of hearing as also the documents enclosed with pleadings of the parties. Strong reliance has been placed on the Report of the National Institute of Oceanography which admittedly focussed the irreparable loss of environmental climate in the event of sanction for the proposed construction. It is at this juncture however would be significant to note two several factors detailed herein concerning the above Report: firstly, the Report has been obtained during the pendency of the Appeal before this Court and secondly Report has been signed by four several experts of the Institute of which two were the members of the Coastal Zone Management Committee of the Government of Goa which has granted the sanction of the proposed construction upon due certification with respective signatures. On a further factual reference at this juncture it appears that the application for grant of sanction for the proposed construction was scrutinised by statutory agencies including the State Environment Department as also the Ministry of Environment and Natural Resources of the Government of

India. It is worth adverting that the Government of India, as a matter of fact, examined the issue upon obtaining a special Report of two very eminent scientists of the country. The Report, be it noted, as obtained by the Government of India has been on actual specific verification of the site in question and it is on the clearance from the Central Government that the State Government in its bid to have a balance for development and ecology also considered the issue and upon due deliberation thereof granted the sanction. The two scientists of the National Institute of Oceanography were members of the Committee which investigated the ecological aspect of the issue and on being satisfied and there being no affectation of the environment, the Committee recommended the same upon recording of signature as a mark of approval of all members including the two who later give a report otherwise. I do not wish to make any further comment thereon as regards the subsequent report excepting however, recording that it is rather unfortunate that such a state of affairs did take place and the happenings have involved two very noted scientists of Western India as also of the country. The other aspect which needs to be gone into is the factum of affectation of sand dunes and its environmental impact. Admittedly, the dunes provide a beauty to the area in question and nature's bounty stands very well exposed in the dunes but sand, it is to be noted is also used for commercial purposes, but the factum of the same being capable of a commercial item, has not been delved into either of the parties in the course of the submissions. Admittedly, dune sand is also used by the foundry industry though, of course, Ford Motor Co. have now started using non-dune sand for foundry operations for automobile engine castings: non availability of any evidence of alteration or physical, biological and geological characteristics of sand dunes ought also to be noticed and taken into consideration. The factum of affectation of micro climate downwind of the sand dune area and the resultant effect therefor has also not been highlighted so as to warrant any adverse finding pertaining to the project. There is not even existing an iota of evidence as regards the resultant damage on the vegetation top soil or topographic features neither any evidence pertaining to the elimination of existing flora and fauna of the area in question, no details are available as regards the plants species which would otherwise be threatened in the event of there being such a project. We unfortunately also do not also have any local environment audit report excepting however the Report of the National Institute of Oceanography and we reserve our doubts as to the credence to be attributed to the report and as detailed hereinbefore in this judgment. The affectation admittedly cannot possibly be a mere fanciful idea but there ought to be cogent materials in support therefor. Unfortunately, we do not have such cogent evidence or any evidence available in the matter so as to come to a conclusion about the disturbed environmental equilibrium by reason of the change of bio-diversity in the area in question rather the records suggest otherwise. Another factual element ought also to be noticed since the same is rather significant to wit: An assurance or undertaking not to disturb the existing sand dunes. Mr. Chhagla appearing for the Respondents upon instructions has candidly submitted that as a matter of fact, there has been a change in the plan and the new revised plan contain maintenance of the sand dunes since on an appraisal of the entire situation, the Respondent feel that the dunes would otherwise enhance the beauty of the

hotel or the beach resort. Protection of the environment is required undoubtedly provided however the same is required and it is in this perspective Mr. Chhagla contended that the entire edifice of the appellants contention is based on assumptions de hors the realities. As a matter of fact, a faint suggestion of motive has also been introduced, we do not however, subscribe to such a view since the intent of this particular public interest litigation is the preservation and maintenance of environment in a beach area within the Goa Coastal Zone. Coastal Zone shall have to be protected undoubtedly but development of the area cannot be decried also in any way provided however, there is no environmental degradation and it is on this score Mr. Chhagla contended that, in fact, on the locale there were temples: educational institutions and settlements as well - thus, it is not that the beach was totally uninhabited and there was available an unspoiled beach. The record of Rights as noticed above has recorded the area in question to be a beach resort and admittedly also settlement, in fact, is existing in the area in question, even today. It is not that a hitherto unspoiled coastal zone is being spoiled, it is even presently being occupied by human settlements. Another severe criticism which had come from Dr. Alvares pertains to the issue of CRZ-I area. In the earlier part of the judgment I had, in fact, dealt with the categorisation of the Coastal Zone and CRZ-I, which cannot but be ascribed to be a totally prohibited zone for any construction and there also cannot be any dispute in regard thereto. In the event the area is ascribed to be CRZ-I area, question of any grant of sanction would not arise and the earlier pronouncement of this Court of which reference has been made by my learned Brother Pattanaik, J. has settled the same finally and I record my respectful concurrence therewith. The High Court also while dealing with the issue has dealt with the same and came to a conclusion however, the area is in CRZ-III and not CRZ-I : Needless to record here that Governments sanction and Ministry of Environments clearance (both Central and State Governments) have proceeded on the basis thereof and we do not find any contra evidence so as to depict its coastal-zone characteristics other than CRZ-III. A recapitulation on the score of Coastal Management would prompt us to record that since each beach is different in its contour, there is no fixed formula for its management either. Coastal zone of Goa attracts tourists by reason of availability of natures bounty but infrastructural facility is also required to develop this recently growing tourism industry provided, of course, there is no permanent affectation of environment in the area in question. The records depict that the issue of affectation of environment, be it permanent or even temporary does not and cannot arise in the contextual facts. Environment is beauty, environment is our sustenance, as such in the event, the same perishes, humanity also would perish may not be today or tomorrow but certainly a day or two later. The issue, therefore, in the Appeal is whether there is a degradation of environment in the event of construction, the records speak volumes in the negative: Environmentalists opine in the negative would the court be justified in thwarting the project in the contextual facts - the answer cannot possibly be in the affirmative. On the wake of the aforesaid, I record my concurrence with the conclusion of my learned Brother Pattanaik, J. that the judgment under Appeal cannot be faulted in any way and as such I would also dismiss the Appeal without, however, any order as to costs.

JUDIS