

PETITIONER:
GOA FOUNDATION, GOA.

Vs.

RESPONDENT:
DIKSHA HOLDINGS PVT. LTD. & ORS.

DATE OF JUDGMENT: 10/11/2000

BENCH:
U.C.Banerjee, G.B.Pattanaik

JUDGMENT:

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PATTANAIAK, J.

This appeal by the Goa Foundation, is directed against the judgment of the Bombay High Court dated 8th of October, 1999, dismissing the writ petition filed by the appellant. Initially, the appeal had been filed through counsel, but later on, the appearing counsel having withdrawn, the appeal was argued by the Secretary of the Goa Foundation, Dr. Claude Alvares. The appellant filed the writ petition before the High Court as a Public Interest Litigation, objecting to the construction of a hotel on a plot of land situated in the area of Nagorcem, Palolem, Taluka- Cancona, Goa, inter alia, on the ground that the land in question comes within CRZ-I, and as such it is not permissible to have any construction on the same plot of land. It was also contended that the plan and sanction obtained for such construction from the competent authority, are in contravention of the provisions of the Environment (Protection) Act and such permission has been granted by the concerned authority without application of mind and without considering the relevant materials, and, therefore, the Court should issue mandamus, injuncting the hotelier- Diksha Holdings Pvt. Ltd., from constructing the proposed hotel on the disputed plot of land. It was also contended before the High Court that there exist large number of sand dunes and by permitting the respondent to have the hotel complex on the plot of land will ultimately lead to irreversible ecological damage of the coastal area, and, therefore, the Court should prevent such construction. The High Court in the impugned judgment, took into consideration the balancing task of maintaining and preserving the environment and ecology of the pristine beach with sand dunes and the development of hotels and holiday resorts for economical development of the State. It also took into account several Acts and Regulations like Town and Country Planning Act, the CRZ Notification, the Coastal Zone Management Plan. It also took into account the approval of the Ministry of Environment and Forest, under which the disputed hotel complex comes as CRZ-III, the Court also took into account the Expert Committees recommendations, recommending the hotel project for environmental clearance, indicating therein that the existing sand dunes will not be disturbed in any manner and also the fact that the Goa Foundation had

submitted its representation to the Ministry of Environment and forest, objecting to the construction of the hotel at the disputed location. The High Court also took into account several inspections carried on by the different authorities and the fact that the Chief Town Planner submitted its report to the Ministry of Environment and forest, stating therein that the construction of the hotel will not affect the sand dunes. The High Court also had privilege of going through the report submitted by Dr. N.P.S. Varde, the Director of Science, Technology and Environment, Goa, who had categorically indicated that the hotel project is located on undistributed beach eco-system which has mostly gradually undulating landscape covered with stable dune vegetation which in a strict technical sense can be classified as sand dunes, and he was also of the opinion that if such technical view is taken, no development can ever be taken place along with the sea coast of Goa. The Ministry of Environment and Forest also had taken the opinion of the Secretary, Department of Science, Technology & Environment on the question whether sand dunes exist at the site of proposed hotel. The Ministry of Environment and Forest also sent one of its Scientists Dr. R. Warriar to the place where the hotel complex was to come up and said Dr. Warriar submitted his inspection report on 16th of September, 1997 and it is only after that, the Ministry granted clearance on 9th of October, 1997. On getting such clearance from the Ministry of Environment and Forest, the Cancona Municipal Council granted license for construction of hotel on 16th January, 1998. On these set of materials and applying the law relating to the approach of a Court in a Public Interest Litigation, the High Court came to the conclusion that the appropriate authority have accorded permission for construction of the hotel on the disputed site, after consideration of relevant and germane materials and the writ petitioner has failed to establish any illegality in the matter of grant of such permission. The High Court recorded a finding that the State Authorities as well the Central Government were aware of the existence of sand dunes formation up-to 200 meters strip from shore line where no construction is permitted and beyond the said 200 meters strip within which the hotel complex is proposed to be build up is under category CRZ III and as such there is no prohibition for construction of the hotel within that area. The High Court accordingly, dismissed the writ petition filed by the Goa Foundation.

Assailing the impugned judgment of the High Court Dr. Claude Alvares, Secretary of the Goa Foundation, contended with vehemence that the foundation is committed to preserve the environment and ecology of the coastal zone and it is with that objective the writ petition had been filed in the High Court, as Foundation was of the opinion that relevant materials had not been placed before the appropriate authority before the environmental clearance was obtained from the Ministry of Forest and Environment and before the Municipal Council sanctioned the plan for construction of the hotel. According to the appellant, coastal stretches having been declared as Coastal Regulation Zone (for short CRZ) in exercise of powers conferred under Section 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 and rule 5(3)(d) of the Environment (Protection) Rules, 1986 and restrictions on the setting up and expansion of industries having been put within the said CRZ, which lies upto 500 meters of the High Tide Line, the concerned authorities committed gross error in granting environmental clearance as

well as in granting permission to the respondent for setting up the hotel complex. The appellant also submitted that the existence of sand dunes having been admitted in several reports, the disputed area in question should have been categorised as Category I (CRZ I) which does not permit any new construction except those listed under 2(xii) between Low Tide Line and the High Tide Line and the so-called reports classifying the land over which the hotel complex is coming up as CRZ-III are motivated and designedly made to assist the respondent in having the hotel complex and, therefore, this is a fit case where this Court should prohibit the construction of hotel, annulling the permission granted by the Municipal Council and annulling the environmental clearance of the Ministry of Environment and Forest, Govt. of India or at least, this Court should remit the matter for re-consideration to the Department of Ministry of Environment and Forest for consideration of some fresh data which the Goa Foundation has found subsequent to the filing of the writ petition before the High Court.

Mr. I.M. Chhagla, the learned senior counsel appearing for the respondent, on the other hand contended that it has been held by this Court in several cases that in the matter of developmental activities and protection of environment and ecology, the Courts approach should be to achieve an appropriate balance between the development and the environment, so that both can co-exist without affecting the other. The High Court in the impugned judgment, has approached the problem from the aforesaid stand point. It took into account all the relevant materials which had been considered by the Ministry of Environment and Forest before granting environmental clearance and on the basis of such clearance, ultimately the Municipal Council sanctioned the plan for putting up the hotel and no contrary materials could be produced before the High Court to take any adverse view or to enable the High Court to come to the conclusion that either the concerned authorities did not apply their mind to the relevant and germane materials or that the clearance and sanction of the plan was obtained by any unfair means. According to Mr. Chhagla, it took long 22 months for the respondent to obtain the necessary sanction of the plan and such delay in obtaining the sanction of the plan has already caused enormous escalation of cost in bringing the hotel project. Mr. Chhagla, also further submitted on instructions that the structural construction of hotel has almost been completed and at this length of time it would be wholly inequitable and inappropriate to accept the contention of the appellant to remit the matter to the Ministry of Environment and Forest for re-consideration. Mr. Chhagla also placed before us the different reports of different authorities at different point of time and, so far as the subsequent report of the National Institute of Oceanography, obtained by the Goa Foundation during the pendency of this appeal in this Court, Mr. Chhagla submits that two of the members were also Members of the Committee which cleared the environmental clearance and as such no credence can be given to such self-serving report. Dr. Claude Alvares, in his reply however submitted that the Foundation has no self-serving interest in the matter except its effort to protect the environment and ecology. He also submitted that two Members who were party to the environmental clearance had themselves indicated that they were mere signatories to the decision taken without any application of mind, and, therefore the report of the National Institute of Oceanography which was

submitted in this Court should be given its due weight.

Mr. Mukul Rohtagi, the learned Additional Solicitor General, appearing for the State of Goa, submitted with vehemence that the State Government and the concerned authorities, for granting license, have acted only after the Govt. of India in the Ministry of Environment and Forest gave environmental clearance to the proposal of setting up of a hotel. Mr. Rohtagi also contended that in a State like Goa, where economy of the state, depends fully on tourism, if hotels are not allowed to come up on the sea shore, then the development of the State will come to a grinding halt. At the same time, the learned counsel submitted that the ecology and environment, must be protected and in the case in hand, the Government has proceeded from the aforesaid stand point. According to Mr. Rohtagi, several inspections having made to examine whether permission can be granted at the proposed place for construction of hotel and on being fully satisfied that such permission, does not contravene any of the prohibitions and restrictions, contained in the CRZ notification as well as provisions contained in the Environment (Protection) Act, the State authorities have accorded permission to the respondent for building up the hotel, and, therefore, the High Court was fully justified in dismissing the writ petition filed by the appellant and this Court should not interfere with the said order. The learned counsel, appearing for the Union of India, more or less, reiterated the stand taken by the learned Additional Solicitor General, appearing for the State of Goa.

Before we examine the materials on record to test the correctness of the rival submissions, we think it appropriate to notice one or two decisions, indicating the approach of a Court in such matters concerning environment and development. The Calcutta High Court in the case of People United for Better Living in Calcutta Public and another vs. State of West Bengal and ors. AIR 1993 CALCUTTA 215, had the occasion to deal with a similar problem in relation to the wetland and the learned Single Judge (U.C.Banerjee, J, as he then was) came to the conclusion:

There is no manner of doubt that the issue of environmental degradation cannot but be termed to be a social problem and considering the growing awareness and considering the impact of this problem on the society in regard thereto Law Courts should also rise upto the occasion to deal with the situation as it demands in the present day context: Law Courts have a social duty since it is a part of the society and as such, must always function having due regard to the present day problems which the society faces. It is now a well-settled principle of law that socio-economic condition of the country cannot be ignored by a Court of law. It is now a well-settled principle of law that while dealing with the matter, the social problems shall have to be dealt with in the way and in the manner it calls for, since benefit to the society ought to be the prime consideration of the Law Courts and ecological imbalance being a social problem ought to be decided by a court of law so that the society may thrive and prosper without any affection.

The learned Judge had indicated in the said judgment that there should be a proper balance between the protection of environment and the development process : The society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of the development of the society there shall have to be both development and proper environment and as such, a balance has to be found out and administrative actions ought to proceed in accordance therewith and not dhors the same. In the case of Indian Council for Enviro- Legal Action vs. Union of India and Ors. 1996(5) SCC, 281, this Court had the occasion to deal with the question of protection of 6000 kms long coast line of India and the Court emphasised that it would be the duty and responsibility of the coastal states and Union Territories in which the stretches exist, to see that the notifications issued under the provisions of Environment(Protection) Rules as well as the notifications issued, declaring the coastal stretches should be properly and duly implemented and the various restrictions on the setting up and expansion of industries, operation or process etc. in the Regulation Zone should be strictly enforced. The Court had indicated that with a view to protect the ecological balance in the coastal areas, notifications having been issued by the Central Government, there ought not to be any violation and the prohibited activities should not be allowed to come up within the area declared as CRZ notification. The Court also emphasised that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed and the Courts must scrupulously try to protect the ecology and environment and should shoulder greater responsibility of which the Court can have closer awareness and easy monitoring.

Bearing in mind the observations made in the aforesaid cases, let us now examine the case in hand to find out as to whether there exists any infraction of any rule, regulation or law by granting environmental clearance in favour of the respondent to have the hotel complex and whether there exists any authentic data or material before us for coming to a conclusion that by allowing such hotel complex at the disputed plot would upset the environment and ecological balance of the area and would really have the effect of damaging the pristine beach with sand dunes, if any.

Coming to the CRZ notification, it transpires that the Ministry of Environment and Forest, issued the Notification on 19th of February, 1991 in exercise of powers under Section 3(1) and section 3(2)(v) of the Environment (Protection) Act, 1986 and rule 5(3)(d) of the Environment (Protection) Rules, 1986, declaring Coastal Stretches as Coastal Regulation Zone (CRZ) and Regulating Activities in the CRZ. Be it be stated, the aforesaid notification was issued after considering duly, all the objections received by the Central Government. Paragraph 2 of the aforesaid notification declares certain activities as prohibited activities within the CRZ. Clause (xiii) prohibits dressing or altering of sand dunes, hills, natural features including landscape changes for beautification, recreational and other such purpose, except as permissible under the Notification. Paragraph 3 of the Regulation, provides that all other activities, except those prohibited in para 2 will be regulated, as indicated under the said paragraph. Annexure

1 to the Notification classifies the Coastal Regulation Zone into four categories, but Category IV relates to Coastal stretches in the Andaman & Nicobar, Lakshadweep and small islands and as such all other coastal stretches in the country are classified into three categories namely CRZ- I, CRZ-II, and CRZ-III. Paragraph 6 of the Notification provides the norms for regulation of the activities and so far as CRZ I is concerned, it categorically provides that no new construction shall be permitted within 500 meters of the High Tide Line and no construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line. By the proviso, certain constructions have been permitted, like construction of dispensaries, schools, public rain shelters, community toilets, bridges, jetties, water supply, drainage and sewerage etc., but the proviso applies to the State of West Bengal in Sunderban area. Under CRZ- III, an area upto 200 meters from High Tide Line is to be earmarked as No Development Zone. But development of vacant plots between 200 meters and 500 meters of High Tide Line in designated areas of CRZ III with the prior approval of Ministry of Environment and Forest is permitted for construction of hotels/beach resorts, subject to the conditions stipulated in the guidelines at Annexure-II. Annexure-II to the notification provides detailed guidelines for development of beach resorts and hotels in the areas of CRZ-III. According to the appellant, the plot of land on which the respondent has been granted permission to construct the hotel is CRZ-I and by allowing such construction of hotel, necessarily, there will be dressing or altering of sand dunes, which is a prohibited activity under paragraph 2 (xiii) of the Notification, whereas according to the Union Government, the State Government and the hotelier, the plot of land falls under Category CRZ-III and the same being beyond 200 meters from the High Tide Line, developmental activities for construction of hotel is permissible with the prior approval of the Ministry of Environment and Forest and as such there has been no infraction of the CRZ notification. In fact the High Court in the impugned judgment has come to the finding that the land in question falls within the Category CRZ-III of the Coastal Regulation Zone Notification, issued by the Government of India and, therefore, one question has to be answered whether the land has been appropriately categorised as CRZ III, as contended by the respondent or it ought to have been classified as CRZ I, as contended by the appellant.

Under the main notification issued by the Government of India, referred to earlier, the Coastal States and Union Territory Administrations were required to prepare within one year from the date of the notification, Coastal Zone Management Plan (hereinafter referred to as the Management Plan), identifying and clarifying the Regulation Zone Areas within the respective territories, in accordance with the guidelines contained in the main Notification and those plans were required to be approved with or without modifications by the Ministry of Environment and Forest, Govt. of India. The Notification of the Union of India further stipulates that within the framework of the approved Management Plan, all developments and activities within the Regulation Zone, except the prohibited activities and those which require environmental clearance from the Ministry of Environment and Forest, Govt. of India, were to be regulated by the State Government. The Goa State Coastal Zone Management Plan stood approved by the Govt. of India

Ministry of Environment and Forest on 27th of September, 1996 with certain conditions mentioned in the letter and this approval purports to have been accorded in exercise of powers vested in the Central Government under Section 3(3)(i) of the CRZ Notification of 1991. In the State of Goa, so far as Cancona Taluka is concerned, in which Taluka, the proposed hotel of the respondent situates, the whole of Cancona Taluka is classified as CRZ I, except settlement area, which is classified as CRZ III and in Nagorcem area, the entire area is classified as CRZ I, except settlement area which is classified as CRZ III. According to the various reports submitted by the State Government to the Govt. of India as well as reports obtained by the Union of India through its own scientists, in the area, where the permission has been accorded for construction of hotel, lot of settlement and built up structures are available like temples, schools etc. and that the plot of land is located beyond 200 meters of the High Tide Line. On going through the aforesaid CRZ Notification issued by the Government of India as well as the approved Coastal Zone Management Plan of State of Goa, we are not in a position to persuade ourselves to agree with the submission of Dr. Claude Alvares, appearing in person for the appellant that there has been an infraction of any provisions, and by allowing construction of hotel on the land, the authorities have allowed certain prohibited activities.

Coming to the materials on record, we find in the High Court itself, the Ministry of Environment and Forest, Govt. of India had filed the affidavit, indicating therein that as per the information submitted by the Govt. of Goa, the area of the proposed construction is designated as settlement area and the same has been categorised as CRZ-III in the approved Coastal Zone Management Plan of Goa. It was also averred in the said affidavit that the proposal for construction of hotel was thoroughly examined by the Ministry, including a visit to the site where the construction of hotel is proposed and the sand dunes and only after satisfying that the construction of the project was not on the sand dunes, the approval for the project was given by the Union Ministry of Environment and Forest. The respondent No. 1, the hotelier in his counter affidavit before the High Court had categorically stated:

The changes inter alia pertain to the said property bearing Survey Nos. 28/1, 29/1, 33/1 to 33/2 of the Village Nagorcem/Palolem notified in the Official Gazette annexed as Exhibit R-1. Hereto annexed and marked as Exhibit R-2 is a copy of the said Notification dated 5.4.1990. As the said property was earmarked as a settlement/beach resort area, the Respondent No. 1 negotiated its acquisition and purchased it from the concerned owners thereof in the year 1994. In portions of the said property there are various houses of occupants, namely in survey No.28/1 numbering 19 occupied by various families. There is a school within a part of property bearing survey No. 28/1. There is also a house of the owners and a temple which was constructed by the owners of the said property, namely the kunde family for the local residents within the property bearing Survey No. 28/1 and right at the back of the said property within survey no. 30/41 there existed a canning factory belonging to the owners, which now belong to the 1st Respondent and is the project office of the 1st Respondent.

This assertion of fact was not controverted by the

appellant before us, who was the petitioner in the High Court, though a rejoinder was filed in the High Court. The Govt. of Goa, Department of Urban Development, Town and Country Planning Department, had issued a notification under Section 17 of the Goa, Daman and Diu Town and Country Planning Act, 1974, way back in the year 1986 and in the said Notification, so far as Nagorcem/Palolem and in relation to Survey No. 28, 29, 33/1, the proposed user has been indicated to be settlement (beach/resort). The disputed plot of land in the case in hand falls within the aforesaid area and, therefore, it is crystal clear that the area in question was proposed to be used for settlement (beach/resort). Dr. N.P.S. Varde, on receipt of the letter from the Ministry of Environment and Forest vis-a-vis the representation made by the Goa Foundation on the subject of environmental clearance to the Goa Resort Hotel at Nagorcem, examined the matter in consultation with the Town and Country Planning Department and had categorically indicated that the area falls within CRZ III Category as per the CZMP approval dated 27th September, 1996 issued by the Ministry of Environment and Forest, New Delhi. In the said report, he had indicated the existence of sand dunes and the number thereof and had also further stated that the construction of resort complex will not disturb the dunes in any manner and the dunes will remain undisturbed. He had also stated that unless a realistic criteria is adopted for mapping out prominent and ecologically sensitive dunes as CRZ I areas, then a vast percentage of Goas coastline within 200 to 500 meters of High Tide Line will be out of bound for any development. The Chief Town Planner also after inspection of the site had submitted a report on 21st of February, 1997, indicating therein that the contour plan given by the hotelier does not tally with the existing sand dunes. Mr. R.N. Ray of the Town Planning Department, Goa, also had intimated to the Secretary, Department of Environment and Forest, Govt. of India that the proposed building of the hotelier do not affect the sand dunes and even the sand accumulations were protected by modifying the layout of the cottages in the section. It may be borne in mind that the appellant- Goa Foundation, had filed its objections before the environmental authorities, requesting, not to grant environmental clearance and it is because of such objections, the department of Environment and Forest had taken adequate care in obtaining reports from different sources including their own source and then, ultimately came to the conclusion that there possibly cannot be any objection to allow the hotel project to come up at the place particularly, when there exist several earlier settlements and structures over the area. On these mass of materials and those materials having been obtained after the appellant objected to grant of environmental clearance to the hotel project, when the Central Government granted the environmental clearance, we see no infirmity with the said grant of clearance nor are we in a position to hold that the conclusion of the competent authority are based on non-consideration of any relevant and germane materials. On the other hand, the Central Government has taken due care in obtaining reports from the authorities of the Goa Government as well as deputed its own scientists to have a spot inspection and report about the feasibility of the hotel project being cleared up. Under the aforesaid circumstances, we are of the considered opinion that the disputed plot situate in Category CRZ III and was available for development by way of construction of hotel/beach resort in the development plan of Goa, which was duly approved by

the Central Government and the activities in question cannot be held to be prohibited activity under the initial notification of the Govt. of India.

The appellant Dr. Claude Alvares, however placed before us the report of the National Institute of Oceanography, which was obtained during the pendency of this appeal in this Court and contended that in view of the aforesaid authentic document, it would be meet and proper for this Court to remit the matter to the Union Government for re-consideration. While the matter was pending in this Court, the Goa Foundation wrote a letter to the Director of National Institute of Oceanography, asking some clarification and comments in relation to the pending appeal of the Goa Foundation in this Court and it is in that context the National Institute of Oceanography has given the report on which so much of emphasis has been given by the appellant. Two of the scientists, belonging to the National Institute of Oceanography who were the authors of the report namely Dr. Antonio Mascarenhas and Dr. Kalidas Sawkar were Members of the Goa State Committee for Coastal Environment and they were signatories to the approved plan in the meeting held on 15th of March, 1996 and they never objected to the aforesaid approved plan, though now, they indicate that permission granted for the hotel would have the effect of demolishing the sand dunes. That apart, though the writ petition is in the nature of Public Interest Litigation at the instance of the Goa Foundation, but the said Goa Foundation had vehemently objected before the Department of Environment and Forest, which cleared the hotel project in question and, therefore, it must be assumed that all necessary materials in their possession had been produced before the Government of India. The present report of National Institute of Oceanography, if read with the letter of the Goa Foundation dated 20th of April, 1999, unequivocally indicates that the Goa Foundation had obtained this report just to nullify the environmental clearance, granted by the Department of Environment and Forest. On the basis of such reports, we are unable to accept the alternative prayer of Dr. Claude Alvares, that the matter should be remitted back to the Department of Environment and Forest for re-consideration of their approval granted earlier. In our considered opinion, this subsequent report obtained by the appellant cannot be considered for coming to a conclusion that the conclusion of the environmental authorities and the consequential clearance of the project is either based on non-consideration of the relevant materials or ignoring any vital material, requiring re-consideration, more so, when the structural construction of the hotel project is nearing completion. In our considered opinion, the appellant has utterly failed to establish by referring to any authentic material that there has been an infraction of any provisions of the CRZ Notification or the approved Management Plan of Goa nor is there any illegality in the order of the Government of India, granting environmental clearance as well as the order of the State Authorities in sanctioning the project on the basis of such environmental clearance.

This appeal, accordingly fails and is dismissed, but in the circumstances there will be no order as to costs.

JUDIS