

Writ Petition No. 414/1998

The Goa Foundation

V/s

United Breweries Ltd.; The Panchayat of Candolim;

The Goa State Committee on Coastal Environment;

State of Goa; The Chief town Planner

Issue: The Goa Foundation challenged the construction of a company guesthouse on Survey No. 112/19 at Candolim, a CRZ-III zone, by United Breweries Ltd. because it was not permissible under the Coastal Regulation Zone (CRZ) Notification. The Goa Foundation argued that in CRZ-III areas, a new structure is permitted within 200 to 500 meters of the HTL “so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and goathans.” Thus, a guesthouse could not be within the traditional or customary rights of the gaothan and therefore the permissions granted by the Goa State Committee on Coastal Environment, the Town Planner, and the Sarpanch were in violation of the CRZ Notification. Guesthouses, like hotels could be constructed in the CRZ-III only after obtaining permission from the Ministry of Environment, which UB had neither applied for, nor received.

The Goa Foundation also alleged that the quota of constructions permitted in Candolim village had already been exceeded, so no new constructions could not be permitted in the Candolim CRZ. Finally the Goa Foundation showed photographs of massive destruction of sandy stretches of beach and sand dunes by UB within 200 meters of the HTL, which was in violation of the CRZ law.

At interim stage, after viewing the photographs on record, the show cause notice issued by the village panchayat to UB for destruction of sand dunes and the documents which showed that the application for construction was made by the Company specifically for a guest house, the court stayed any further development and directed status quo.

During the pendency of the petition UB wrote to the CTP that it had erroneously termed the building as company guesthouse in its applications, and requested change of nomenclature to residential accommodation. It also filed an affidavit that the building would be not be used for commercial purpose or as a guesthouse or hotel, but would be used only as residential accommodation for the Chairman of the Company.

One year later UB filed an application to vacate the stay on the ground that it was ready to give an undertaking that the construction will be used only for the residence of the Chairman. However the court declined to vacate its order on the ground that a distinct purpose was sought to be achieved by the CRZ Notification in respect of dwelling units which fall within traditional rights and a prima facie view having been taken that the construction did not fall within that scope, the court saw no reason to take a different view now.

The village panchayat followed up its show cause notice with a site inspection and came to the conclusion that the plot did not have sand dunes and therefore withdrew its show cause notice.

During the final hearing the undertakings and affidavit were relied upon to show that in effect the construction was for residential use and not a guesthouse. As the issue of 'doubling' i.e., that the constructions in Candolim had exceeded the limit permitted formed the subject matter of another petition by Goa foundation, the court decided not to adjudicate that issue in this petition but left the fate of this construction subject to further orders of the court.

Interim Orders:

24/12/1998: Essentially, the constructions permitted are those that fall within the ambit of traditional rights and customary uses. Prima facie the suit construction of UB does not fall within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. The construction is therefore required to be stayed and status quo is directed.

21/10/99: A distinct purpose was sought to be achieved by the CRZ Notification in respect of dwelling units, which fall within traditional rights and a prima facie view having been taken that the construction did not fall within that scope, we have no reason to take a different view now.

Final Judgment: 11/7/2001

The petitioners have not brought before the Court any material to support the contention that by construction of the guest house any damage is caused to the environment. There is no injury to the public or injury to the environment by UB's construction of a guesthouse. Plans have been sanctioned. Permissions have been granted by the relevant authorities. No malafides have been alleged. The aspect regarding company guest house has been considered by the authorities concerned and the company has been directed to comply with the necessary conditions under which permission was granted. As the competent authorities have determined the issue and sanctioned the plans, the construction is not in violation of the CRZ Notification. The court permitted UB to carry out the construction, subject to further orders of the court. The court concluded that the writ petition was not maintainable and rejected it.