

SUPREME COURT OF INDIA

Goa Foundation, Goa

Vs.

Diksha Holdings Pvt. Ltd.

C.A.No.401 of 2000

(G. B. Pattanaik and U. C. Banerjee, JJ.)

10.11.2000

JUDGEMENT

PATTANAIAK, J.:-

1. 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 Initially, the appeal had been filed through counsel, but later on, the appearing counsel having withdrawn, the appeal was argued by the Secretary of the Goa Foundation, Dr.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 Committee's 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 land cape 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 and 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, 1977. On getting such clearance from the Ministry of Environment and Forest, the Cancona Municipal Council granted licence 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 metres strip from shore line where no construction is permitted and beyond the said 200 meters strip within 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.

2. 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 up to 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 reconsideration to the Department of Ministry of Environment and Forest for consideration of some fresh data shall the Goa Foundation has found subsequent to the filing of the writ petition before the High Court.

3. Mr. I. M. Chhagla, the learned 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 Court's approach should be 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 as 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 is due weight.

4. 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 Government 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 and 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.

5. 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.

6. 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 v. State of West Bengal, AIR 1993 Cal 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 up to 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 de hors the same. In the case of *Indian Council for Enviro-Legal Action v. Union of India*, (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 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.

7. 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 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.

8. 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 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 and 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 up to 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 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, development 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.

9. 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, Government 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. Government of India, were to be regulated by the State Government. The Goa State Coastal Zone Management Plan stood approved by the Government 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 Nagozem 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 Government 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.

10. Coming to the materials on record, we find in the High Court itself, the Ministry of Environment and Forest, Government of India had filed the affidavit, indicating therein that as per the information submitted by the Government 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 and 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/Palolerm 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 Government 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 Nos. 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 Goa's 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, Government 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 (is) 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 Government of India.

11. 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 the 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 reconsideration 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.

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

13. **BANERJEE, 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 reasoning.

14. 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.

15. 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.

16. 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 and 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 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.

17. 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 praesenti 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 v. State of West Bengal, AIR 1993 Cal 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.

18. Before proceeding with the matter further, it be noted that the schedule attached to the local Town and Country Planning Act depict that the area in question was designated in the original plan as an orchard and as early as and 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.

19. India, admittedly, has around 6000 kms. long coastal line against which Goa having 100 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 Goa's economy.

20. 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 Notification 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 meters of the High Court 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, drainage, 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) to (iii)

CRZ-III :

(i) The area up to 200 meters 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 meters 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) to (iv)

21. In support of the appeal, Dr. Claude 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.

22. 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.

23. 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 example, wind) and deposited very slowly.

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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 part 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."

24. Megraw-Hill Encyclopedia of Science and Technology further notes its use in the manner below :

"Sand is an important economic resource. Silica (SiO₂) 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 (glaucanite sand)."

25. 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.

26. The New encyclopadia Britannica (Volume 10) has this to note for sand dune :

"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 rigions 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."

27. 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.

28. In the Coastal Zone Management Plan for Goa as issued by the Goa State Committee on Coastal Environment (Town and Country Planning Department. Government of Goa), Government of Goa-June, 1996, Dr. Wilfred Menezes Mesquita, the Environment Minister in no uncertain terms end 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.

29. 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.

30. Sand dunes, admittedly, if otherwise ancient in nature as noticed above, sometimes have coconut tree grown on the dunes by reason wherefor the dunes, as a matter of fact, 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 resultantly 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 :

31. 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.

32. 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 due deliberation thereof granted the sanction.

33. The two scientists of the National Institute of Oceanography were members of Committee which is 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 affection 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 affection 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.

34. 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 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 charge of bio-diversity in the area in question rather the records suggest otherwise.

35. 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 respondent 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 this perspective Mr. Chhagla contended that the entire edifice of the appellant's 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 a hitherto unspoiled coastal zone is being spoiled, it is even presently being occupied by human settlements.

36. 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 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 any 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 Government's sanction and Ministry of Environment's clearance (both Central and State Governments) have preceded 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 nature's 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.

37. 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.

Appeal dismissed.