

# The Goa Foundation

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## **PRESS RELEASE**

On 24<sup>th</sup> October 2016, the Hon'ble High Court of Bombay at Goa Ordered that the 'in-principle' approval granted by the Goa-Investment Promotion Board (IPB) will not be a basis to grant statutory permissions from the authorities like the CRZ authority or Panchayats. The High Court also issued notices to 7 private respondents, who have got in-principle approval from the IPB to develop projects in CRZ Areas. These are:

1. M/s Chaksu Properties Pvt. Ltd.
2. M/s Yacht Heaven Pvt Ltd
3. M/s Kargwal Construction Pvt. Ltd.
4. M/s Ace Hotels and Resorts Pvt.
5. M/s Niraamaya Retreats Venaulim Goa Pvt. Ltd
6. M/s Total Composites Pvt. Ltd.
7. M/s Aswem Beach Resort and Villas Pvt. Ltd.

The Petition was filed by the Goa Foundation due to multiple 'in principle' approvals granted by the IPB in CRZ areas despite a specific bar within the Investment Promotion Act, 2014 prohibiting the Investment Board from approving projects in such areas.

Upon hearing the learned Counsel appearing for the Petitioner and the learned Advocate General appearing for the Respondents, the Court found, prima facie, that Section 8 of the said Act clearly imposes restriction to make any recommendation with regard to the projects which come within the Coastal Regulation Zone Notification, except those which require foreshore facilities. In the present case, there is no material on record, prima facie to show that the projects which have been approved are providing only foreshore facilities. No

doubt, the in principle approval would facilitate the project proponent to obtain the permissions from the statutory authorities, but however, the question of making any recommendation by the Board in connection with the areas identified as Coastal Regulation Zone, are specifically restricted in terms of Section 8 of the Act. In such circumstances, the Hon'ble Court found that, until the returnable date, the in-principle approval granted to the concerned Respondents would not be the basis for the concerned Authority examining any application for approval in the Coastal Regulation Zone, in accordance with the law.

The Petitioners had approached the Court on the following Grounds:

- a) The Powers of the Board are nonexistent in so far as projects that fall within Coastal Regulatory Zones, khazan lands and forests are concerned. Section 8 of the Investment Promotion Act deals with Restrictions and lists out a class of lands that the Board shall not recommend for the purpose of setting up projects or for investment promotion. Accordingly, Section 8 (iv) refers to CRZ areas, except where foreshore facilities are required. Thus, the Board does not have any power to grant any recommendation, let alone an “in principle” approval within CRZ areas.
- b) All the 7 impugned projects cleared by the Board are in CRZ areas.
- c) The IP Act, 2014 cannot operate contrary to the CRZ Notification and Hotel Policy. It however allows project proponents to bypass all state, district and village-level laws under the garb of facilitating investment. As per the provisions within the IP Act, under Section 23, the Secretary to the Government could issue a permission if a statutory body like a local panchayat does not grant a construction license once the project has been cleared by the Board.
- d) When the Chief Minister of the State who is heading the Government is also head of the Board, none of the bodies of the state government will take decisions that are contrary to those of the Board. The decision of the Board is therefore, for all practical purposes, final.
- e) According to Rule 13 of the Investment Promotion Rules, the Board shall be the single clearance window to provide/and or facilitate permissions from State as well as Central Govt, and/or its agencies. In case a project proposal is rejected by the competent authority, the Secretary to the Government must be informed. Section 23 of the Investment promotion

Act, 2014 grants the Secretary power to give directions. Section 23(4) of the Act states that upon receiving information regarding the rejection of a proposal, the Secretary to the Government shall ensure that the necessary compliance is carried out and the clearance is issued by the relevant competent authority. Furthermore, in case of failure and/ or refusal by the Competent authority, the Secretary shall exercise all the powers of the original/appellate/revisonal authorities under the Goa Municipalities Act, 1968, the City of Panaji Corporation Act, 2002, the Goa Panchayat Raj Act, 1994, the Goa Land Revenue Code, 1968, the Goa (Regulation of Land Development and Building Construction) Act, 2008, the Goa Town and Country Planning Act, 1974, or any other local or special or State Act and the rules and regulations framed thereunder and issue such directions as he deems fit. It is also not clear whether the Secretary of a concerned department will discharge all the functions given in a particular enactment, if the enactment provides that an approval has to be granted in a particular manner. The petitioner argued that these are draconian measures and clearly unconstitutional.

f) The CRZ Notification, dated 6/01/2011 designates 4 beaches in Goa as turtle nesting sites with CRZ I, including Mandrem and Morjim beaches in Pednem. Under this Notification, no development of any sort is permitted in turtle nesting sites and the authorities are duty bound to do surveys and prepare management plans for the area. The approved CZMP issued under the CRZ Notification has classified turtle nesting sites at Mandrem and Morjim, as CRZ I, where no development is permitted. Some of these projects fall within the regions demarcated as Turtle Nesting sites under CRZ Notification dated 06/01/2011, yet these projects have been approved by Respondent no. 2.

g) It is expected of the Government to act for the betterment of the public and strictly in accordance with the Plans and the statutory provisions. It cannot take recourse to arbitrary powers and use its discretion contrary to such provisions and that too, to frustrate the very object of the CRZ Notification and Hotel Policy. The Petitioner submits that exercise of power ought not to be destructive of any provisions of the CRZ Notification and the Hotel Policy, having the force of law.

h) The CRZ Notification lays down a specific procedure to be followed in order to obtain clearance for construction within CRZ areas.

Accordingly, the project proponents must apply with the requisite documents seeking prior clearance under the CRZ notification to the Coastal Zone Management Authority. The CZMA shall examine the documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations to the MoEF or State Environmental Impact Assessment Authority as the case may be. The MoEF or SEIAA would then consider such projects for clearance based on the recommendations of the CZMA. Any approval or recommendation from any body, other than the concerned CZMA would violate the specific procedure to be followed as per the CRZ Notification.

i) The Hotel Policy also details a specific procedure to be followed for hotel / beach resort projects in Goa. Accordingly, project proposals must first be sent to the GCZMA, then forwarded to the Goa SEAC. The Goa SEAC would then examine the proposal and determine the Terms of Reference for the proposal in accordance with the Hotel Policy. Following this, the GCZMA would consider the proposal and the recommendations of the GCZMA along with the appraisal from the Goa SEAC would be forwarded to the Goa-SEIAA for further recommendations. Only on receiving a favourable recommendation from the Goa-SEIAA and with the approval from the State Government, would the proposal finally be sent to the MOEF for consideration. Thus, even before prior approval from the MOEF as the CRZ Notification requires, the requisite procedure as laid down by the Hotel Policy must be followed. This Policy does not permit any other body to recommend or grant any approvals for projects in the CRZ. The Projects of Respondent nos 15, 19 and 21, lie outside the open plots marked by the Hotel Policy, yet they have been approved by the Board.

j) The beaches and coastal ecosystems are natural assets that belong not only to this generation, but to future generations as well. Intergenerational equity demands that the beaches and the coastal zone are handed over to future generations to enjoy.

Note prepared by Ms Anamika Gode

Issued by Claude Alvares for the Goa Foundation

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