



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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No.3/RERA/New Proj (872)/2022 | 300

Date: 22/04/2022

In the matter of

MOHIDIN'S HAMLET BY THE BAY

ORDER

Dated: 22/04/2022

This order decides the application for registration of project, 'MOHIDIN'S HAMLET BY THE BAY' at Mormugao Taluka filed by the Developer Shri Avez Azim Shaikh on 28/01/2022. As per the said application, the project would be launched in Survey No. 194/1-A-3 in an area of 49992.0 m2.

2. On perusal of the application along with documents annexed thereto, it was noticed that in the Memorandum Of Understanding dated 27/07/2021 executed between the applicant and the land owner, Zuari Global Limited, it is inter-alia mentioned in para 2 (F) on page 3 as follows:-

"The LARGER PROPERTY has been provisionally marked under private forest by the Department of Forest, Goa. The DEVELOPER has agreed with the OWNER OF the SCHEDULED PROPERTY that he shall attempt to get the SCHEDULED PROPERTY excluded from the provisional inclusion in private forest and shall pursue the matter with the respective Department/s at his own cost --."

3. Since, no construction as proposed by the applicant can be done in the Private Forest, a notice dated 24/03/2022 was issued to the promoter to appear before this Authority on 28/03/2022 for clarification regarding the

said issue of Private Forest land and for submission of further documents specified therein. On 28/03/2022, the promoter appeared before this Authority and submitted the documents and was heard on the said issue of Private Forest area pertaining to the land in question.

4. During the hearing and as per his letter dated 28/03/2022 addressed to this Authority, the applicant submitted before this Authority that at the time of the execution of the Memo Of Understanding on 29/07/2021, the area of Survey No. 194/1-A was 2, 29, 875.00 square meters and that the said MOU was executed for a part of the said total area i.e. 91,906.29 square meters of undivided land but subsequently on 19/10/2021, the Survey No. 194/1-A was partitioned in the Revenue records into independent surveys and the proposed project will be constructed in Survey No. 194/1-A-3 admeasuring 49,992 square meters. The applicant also produced on record "Interim Report" of the Review Committee on Review of Private Forest Area identified by North Goa and South Goa District Committee (V.T.Thomas and F.X. Araujo) and pointed out that in the said Interim Report at serial no.58, Survey No. 194 has been described as "the area does not qualify the criteria of Private Forest" and hence submitted that Survey No. 194 is not a Forest Land.
5. After hearing the applicant, the Report was prepared by this Authority on 31/03/2022 wherein it was mentioned that the issue of declaration of Forest land which is a serious issue is pending before the Hon'ble Supreme Court and Hon'ble High Court and in this regard various committees have been set up by the Government; that it is not clear by which committee the land was brought under the category of Private Forest; that though the third Interim Report submitted by the applicant mentions that Survey No. 194 does not


qualify the criteria of Private Forest, it is not clear whether the said Interim Report has become final or not and as this Authority does not have the expertise to deal with the issue of Forest land, the applicant was directed to produce on record "No Objection Certificate" from the Forest Department.

6. However, instead of complying with the said direction of this Authority by producing on record "No Objection Certificate" from the Forest Department, the applicant merely produced on record information received by him under Right to Information Act, 2005 from the office of Dy. Conservator of Forests, Panaji-Goa to the effect that though Survey No. 194 of Sancoale Village, Mormugao Taluka was provisionally identified as Private Forest by F.X. Araujo committee however the Review Committee reviewed the said Survey number and found it to be not qualifying the criteria of Private Forest.
7. From the aforesaid, it is clear that the applicant has not complied with the direction of this Authority to submit "No Objection Certificate" from the Forest Department and the aforesaid information under RTI Act does not amount to NOC from the Forest Department.
8. It is significant to mention that the issue of identification of Private Forest is a sensitive in nature and the process of such identification of the Private Forest in the state of Goa started in the year 1997 with the constitution of S.M. Sawant Committee on 24/01/1997, pursuant to **the Hon'ble Supreme Court's order dated 12/12/1996 in writ petition (civil) No.202/1995, T.N. Godavarman Thirumalpad Vs. union of India and others**, wherein the Hon'ble Supreme Court directed each state Government to constitute an Expert Committee to (i) identify areas which are "forests", irrespective of whether they are so notified, recognized or classified under any law and

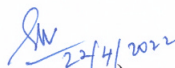
irrespective of the ownership of the land of such Forest; (ii) identify areas which were earlier forests but stand degraded, denuded or cleared and (iii) identify areas covered by Plantation trees belonging to the Government and those belonging to private persons. Thereafter, many other Committees were formed for the said purpose like Karapurkar Committee, Sharma Committee, D'Souza Committee, V.T. Thomas and F.X. Araujo Committee.

9. The applicant has relied upon "Interim Report" of the Review Committee with Chief Conservator of Forests as Chairman to show that survey No. 194 of Mormugao Taluka does not qualify the criteria of private forest. **Firstly**, nothing is produced on record by the applicant to show that the said "Interim Report" has attained finality and /or has been confirmed /approved by the competent Authority and **secondly**, no NOC has been produced by the applicant from the Forest Department to the effect that the Forest Department has no objection for the construction to be done in Survey No. 194/1-A-3 since the same does not come within Private Forest land.
10. The aforesaid NOC from the Forest Department is material taking into consideration the fact that similar issue of declaration of Private Forest land is pending before the Hon'ble High Court of Bombay at Goa in Public Interest Litigation **writ petitions No.2631 and 2718 of 2021 "Edwin Mascarenhas and 4 ors vs. State of Goa and 13 ors."** And **"Chicalim villagers Action Committee vs. The District Collector, South Goa and ors."** wherein one of the grounds for the petitioners to ask for the reliefs of setting aside the conversion sanads, development permissions, construction license, completion and occupancy certificates regarding the properties in question therein is that the said properties come within the Private Forest Land and in the said writ petition, order is passed by the Hon'ble Bombay

High Court on 27/01/2022 inter-alia to the effect that the respondents therein shall not carry out any construction or development on the plots in question without the leave of the Hon'ble High Court and that the occupancy of the structures constructed thereon will be subject to the final orders in the said petitions. The aforesaid order of the Hon'ble Bombay High Court in the aforesaid writ petitions is referred herein to show the seriousness of the issue of declaration/demarcation of Forest Land in the State of Goa, especially when in the instant case, the public interest is involved and has to be protected. It is the statutory duty of this Authority to protect the interests of the allottees/would be allottees of all the Real Estate Projects which come within the purview of the Real Estate (Regulation and Development) Act, 2016. Thus, keeping in view the public interest at large, the applicant was directed to produce on record the NOC from the Forest Department but in spite of opportunities given, the applicant failed to submit the same. Since, the applicant failed to comply with the aforesaid direction of this Authority, the instant application for registration of the said project is rejected.


(J.B. Singh)
Member


(Vijaya D. Pol)
Member


(S.Kumaraswamy)
Chairperson