

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4625-4626 OF 2012

UNION TERRITORY OF LAKSHADWEEP & ORS.

Appellant (s)

VERSUS

SEASHELLS BEACH RESORT & ORS.

Respondent(s)

(with appln. for permission to file lengthy list of dates and impleadment and modification of court's order and office report)

Date: 17/01/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE M.Y.EQBAL

For Appellant(s) Mr. H.P.Raval, ASG,

Mr. Anando Mukherjee, Adv.

Mr. D.S. Mahra, Adv.

For Respondent(s)

Mr. P.Sanjay, Adv.

Mr. Gautam Narayan, Adv.

Mr. Dayan Krishnan, Adv.

UPON hearing counsel the Court made the following

O R D E R

An interim report dated 23.11.2012 has been received from Justice R.V.Raveendran, Chairman Expert Committee appointed by this court. From a reading of the report, it appears that the Committee is closely monitoring the finalisation of IIMPs for Lakshadweep Islands and that significant headway has been made by all concerned in that direction. The report suggests that the Committee was scheduled to visit the island from 12th January, 2013 onwards

to hold public hearings. Learned counsel for the parties submit that for some reason the said visit has not fructified and that the Committee may have to reschedule its visit. We appreciate the effort being made by the Committee and hope that the on going process of finalisation of the IIMPs shall get further expedited with its visit to the island for discussion and on spot evaluation.

The interim report makes a mention about an application filed before the Committee by M/s. Seashells Beach Resort seeking permission to operate its resort. The Committee has upon consideration of the said request recommended that the resort be allowed to operate temporarily if its construction is beyond 35 meters from the High Tide Line. The permission so granted would remain subject to the decision of the Lakshadweep administration after IIMPs are finalised and approved by the Ministry of Environment and Forest.

Mr. H.P.Raval, learned Additional Solicitor General submitted that according to the material on record M/s. Seashell Lakshadweep Resort was permitted to construct some dwelling units as against which the resort had constructed an establishment for commercial activity which was unauthorised. He further urged that the construction of the resort was within the 'no development zone' and

that while 9 huts were outside the 'no development zone', 5 of the huts were within the said zone on the eastern side. He urged that while the Committee has made a recommendation that the resort may be allowed to function temporarily if it

is beyond 35 meters of the high tide line, the Committee has not examined whether the resort was indeed authorised by the competent authority. The Committee could, argued Mr. Raval, be requested to record a prime facie view on the said aspect also before the resort is allowed to commence its activity.

Learned counsel appearing for the resort on the other hand submitted that the recommendation made by the Committee implies that the resort was authorised. At any rate if the Committee were to examine whether it was authorised by the competent authority it may waste the current tourist season. He contended that subject to the resort being found beyond 35 meters in the high tide line, on verification by the committee or any agency nominated by it the recommendation of the Committee could be accepted and the resort allowed to become functional subject to such other conditions as may be stipulated by this Court.

The Committee has recommended that a relaxed standard of 35 meters from high tide line could be applied for permitting the resort to commence its activity temporarily. That recommendation we assume is based on the Committee's observations upon spot inspection of the area and the fact that the resort is built on a narrow strip which has sea on both sides. We have no difficulty in accepting that recommendation as an interim measure as suggested by the Committee. Even so the larger issue whether the resort was authorised will have to be addressed

at least on a prima facie basis. The Committee could do that after hearing the version of both the sides. Since the current tourist season is ending by March this year, it would be appreciated if the Committee could address this aspect also as early as possible. Subject to the Committee finding the resort to be authorised, the resort shall be free to commence its activity on the following conditions:

1) The Committee either itself or through an agency nominated by it verifies the actual location of the resort and finds the same to be beyond 35 metres of the high tide line.

2) The resort owner demolishes/removes all such structures as are upon verification found by the Committee to be within 35 meters of the high tide line.

3) The resort complies with all other environmental clearance stipulated for such commercial activity to the satisfaction of the Committee or an authority nominated by it.

4) The Commencement of the operation by the resort shall not create any equity in its favour and shall remain subject to the final outcome of the IIMPs for the island concerned as approved by the Ministry of Environment and Forest as also any further direction that this Court may issue on this subject.

We request the Committee to keep the above in mind and expedite orders on the subject.

Post again after a further report is received from the Committee.

| (Shashi Sareen)
| Court Master

| | (Veena Khara)
| | Court Master

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