

**BEFORE THE NATIONAL GREEN TRIBUNAL (EZ), KOLKATA**  
(Under Section 18(1) read with Sections 14 & 15 of National Green Tribunal Act, 2010)

**O.A. No. 93 & 95 of 2024 & M.A. No. 23 of 2024 (EZ)**

Ashish Kothari

....Applicant

Vs.

The Ministry of Environment, Forest  
and Climate Change and Anr.

...Respondents

**WRITTEN SUBMISSIONS FILED BY THE PETITIONER**

It is respectfully submitted on behalf of the Applicant as follows:

1. The submissions are organised in the following manner for sake of convenience.

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## I. SYNOPSIS QUA THE HPC CONCLUSIONS

### i. HPC conclusion: "No part of the project falls under CRZ IA"

- a. The Mega transshipment port is proposed on the eastern flank of Galathea bay. The layout from the ADS(reply) submitted to the EAC after the 297<sup>th</sup> meeting is pasted below for context. (see page 1270 of file)



- b. The bay is proposed to be dredged, breakwaters constructed, and the berths are to be constructed by reclamation. Once port is constructed in the bay, it is not possible for turtles to access even the western flank. The entire bay was notified as a sanctuary for leatherback turtles and protected. The eastern flank is also turtle nesting grounds and has been marked even in the approved CZMP land use plan.
- c. Scrutiny of the evidence on record – ICRZ maps, NCSCM's own reports, Government records, RTI information on turtle nesting, maps of the Forest Department, project proponent's own reports and application form, peer reviewed publications etc. provide irrefutable evidence of Turtle nesting (Leatherback and other species), Megapode bird nesting and Coral reefs in Galathea bay (both flanks), which are protected

ecologically sensitive areas, classified as ICRZ IA under the ICRZ Notification, 2019 where construction of a Port is prohibited.

- d. Revised recommendation of ANZMA dated 08.07.2022 clearly states that 0.57 Sq km (57 hectares) of port area and 0.06 Sq Km (6 hectares) of Port reclamation area falls under CRZ IA.
- e. Hon'ble Tribunal in judgment dated 03.04.2023 held that part of the port was in prohibited CRZ IA area and directed "revisit" of the clearance by a High Powered Committee ("HPC").
- f. MoEF&CC agrees that Port is not permissible in CRZ IA areas. (para 7 (c) of affidavit at page 969)
- g. The MoEF&CC now claims that the HPC accepted NCSCM's report after visit on 17-18 June, 2023, which concluded "no part of the project area is falling under CRZ IA" and therefore there is no illegality in the siting of the port. This single report by a consultant (which is also not part of the records before this Hon'ble Tribunal) of the project proponent has been accepted as against the overwhelming evidence and admissions submitted to the contrary.
- h. This conclusion is illegal and contrary to facts and the record. MoEF&CC cannot deny the existence of CRZ IA areas to facilitate the siting of the port. The Port has to be relocated at a legally permissible location.
- i. The admitted extent of CRZ IA areas within the project layout are available in the revised recommendations of the ANZMA dated 08.07.2022, totalling 7.07 Sq Km. These areas have to be excluded, and the project has to be redesigned / relocated where legally permissible in accordance with the law. (Prayer in OA No 93 of 2024).
- j. Allowing the applications will only mean that the law is complied with and necessary studies are done, project is sited where it is legally permissible and that the rule of law is upheld.
- k. These proceedings ought not to be viewed as adversarial.

**ii. HPC conclusion: Rapid EIA – one season baseline data is sufficient, Comprehensive EIA not necessary**

- a. OM dated 03.11.2009 mandates ***comprehensive EIA including physical and mathematical modelling and ground verification*** for ports and harbours greater than 5 MTPA proposed in the Andaman and Nicobar Islands. (See page 1034 of file).
- b. Clause 8(i)(c) of the ICRZ Notification, 2019 mandates comprehensive EIA with cumulative studies for projects located in low and medium eroding stretches (see pg. 88 @ 89 of the file).
- c. The eastern flank of Galathea Bay where the port is proposed has been marked as an eroding stretch in the ISRO Shoreline Change Atlas of the Indian Coast Volume VI (pg. 1005 of the file).
- d. Therefore, even considering this coast as a low or medium eroding coast, a comprehensive EIA with cumulative studies is mandatory.
- e. EIA Guidance manual relied on by MoEF&CC itself requires more than one season data collection for port - The EIA guidance manual at 4.4 states: "*While bathymetry is a one-time parameter, oceanographic data such as currents, waves, tides, etc need to be measured at least for two seasons.*" (pg. 1030 of the file)
- f. Annexure 6 of Manual states that "*physical, chemical and biological data has to be collected in two to three seasons so as to understand their impact in different seasons like pre and post monsoon.*" (pg. 1033 of the file) One season requirement in the manual extracted by MoEF&CC in its affidavit is only for ambient air quality.
- g. Comprehensive EIA will ensure seasonal variations and biodiversity is properly assessed. Existing studies are not even a rapid EIA.
- h. The Revisiting exercise as directed by this Hon'ble Tribunal ought to have resulted in comprehensive EIA studies as a bare minimum before considering the project. (Proper "Revisit" sought in OA No.95 of 2024).

**iii. HPC conclusion: HPC agreed with Coral Translocation proposal of ZSI for locating the port at Galathea bay**

- a. 16150 coral colonies spread across 10 hectares are to be translocated. (para 37 of EC at page 217 and para 7 (a) at page 967) and 4158 colonies are to be studied and observed before taking the decision to translocate them.
- b. The HPC's entire discussion and conclusion was limited to the coral translocation proposal and not on the legality, permissibility of it under ICRZ Notification, 2019, as required by the ToR.
- c. It is evident from para 7(a) that the HPC never considered clause 3(i), clause 4(I)(II), clause 2(i)(ii)(a)(ii) and annexure I of the Island Coastal Regulation Zone (ICRZ) Notification, 2019.
- d. Corals and coral reefs are protected as CRZ IA and their destruction is specifically prohibited under clause 3(i) of the Notification.
- e. Clause 4(I)(II) lists the limited activities that are permissible in CRZ IA areas. Construction of a port is not a permitted activity.
- f. ICRZ Notification, 2019 **prohibits** the destruction of corals. Translocation of corals is not a permissible activity.
- g. **Annexure I** to the Notification under "B" specifically prohibits destruction of corals and coral reefs and surrounding areas and coral transplantation activities are permitted only when necessary for regeneration after obtaining permission under the Wildlife (Protection) Act, 1972. Activities like dredging, discharge of ballast water etc. are prohibited in and around coral reefs (See page 91 of the file).
- h. Corals reefs and associated biodiversity **cannot be translocated** i.e removed from an area to enable the location of a port. The law does not permit it. "Translocation" of an existing corals and coral reefs is NOT even an activity permitted under the Notification. (Prayer in both OA 93 of 2024 and OA 95 of 2024)

**II. PROCEEDINGS BEFORE THIS HON'BLE TRIBUNAL - OA No.93, 95 OF 2024 AND MA No. 23 OF 2024**

**i. Judgment dated 03.04.2023**

- a. On 11.11.2022, the MoEF&CC issued Environmental Clearance for the township, power plant and mega port proposed on the Great Nicobar Island. This EC along with the forest clearance was challenged in Appeal Nos. 29 to 32 of 2022 before this Hon'ble Tribunal and judgment dated 03.04.2022 was delivered.
- b. This Hon'ble Tribunal found that the EC suffered from illegalities which the Tribunal described as "some unanswered deficiencies", stated its findings on three such "deficiencies" by way of instance, and directed "revisit" of the EC by a committee. While this Hon'ble Tribunal did not set aside the EC, it remanded it to a High-Powered Committee (HPC) for reconsideration. (See page 78 of file)

**ii. OA No.93, 95 of 2024 and IA No. 23 of 2024**

- a. **OA No. 93 of 2024** - Seeking exclusion of admitted ICRZ IA areas like turtle nesting grounds, megapode (bird) nesting grounds, corals and coral reefs, mangroves etc from the project area since the ICRZ Notification, 2019 prohibits such activity. The fact that ICRZ IA areas are included within the project area is admitted and recorded in the recommendation of the Andaman & Nicobar Coastal Zone Management Authority dated 08.07.2022 for clearance under the ICRZ Notification,2019 and also recorded in numerous reports of the NCSCM, Government and publications.

b. **OA No. 95 of 2024 and MA No. 23 of 2024** - Seeking a direction to the respondent to "revisit" the clearance dated 11.11.2022 as directed by the Tribunal in its judgment dated 03.04.2023 and to punish them for non-compliance. The petition also seeks production of the record of proceedings and report of the HPC.

**III. THE FACT THAT THERE ARE "DEFICIENCIES" IN EC DATED 11.11.2022 – ALREADY CONCLUDED IN JUDGMENT DATED 03.04.2023**

2. It is submitted that the subject cases are not a challenge to the EC dated 11.11.2022. This Hon'ble Tribunal in its judgment dated 03.04.2023 has already concluded that there were "*some unanswered deficiencies pointed out by the appellants which need to be addressed.*" and remanded the matter to a High-Powered Committee for "*revisiting*" the EC. The MoEF&CC and the Project proponent ANIIDCO accepted the judgment. They did not challenge it.
3. The Tribunal on examination found that the destruction of corals was prohibited by the ICRZ Notification, that data collection for the impact assessment study was limited to one season as opposed to 3 seasons (comprehensive EIA) and that a part of the port is located in ICRZ IA, where port is prohibited and listed these as examples of the deficiencies in the EC.
4. Therefore, the HPC's mandate was to revisit and address inter alia these illegalities. In order to make the project legally compliant, the HPC ought to have ensured that the project was redesigned / relocated to avoid CRZ IA areas and sited in areas where it was *legally permissible* , ensured preparation of a comprehensive EIA report and addressed the illegalities or "deficiencies" in the EC. It is not open to the HPC to conclude that the EC was valid as it stood.

#### **IV. PLEADINGS IN THE APPLICATIONS PENDING BEFORE THIS HON'BLE COURT**

5. Before embarking on an examination as to whether the MoEF&CC has acted in compliance with the judgment and the HPC has discharged its functions, it is necessary to take note of the pleadings filed in the present matter.
  - a. OA No. 93, 95 and MA 23 filed by the Applicant in April 2024.
  - b. On 23.07.2024, ANIIDCO, the 2<sup>nd</sup> respondent in OA No. 93 of 2024 filed their counter affidavit. No documents filed along with the counter affidavit.
  - c. On 19.09.2024, MoEF&CC, the 1<sup>st</sup> respondent filed a Counter affidavit, marking 5 annexures, namely, the EC dated 11.11.2022, the counter affidavit filed by MoEF&CC in Appeal 29 to 32 of 2022, judgment dated 03.04.2023, copy of OM dated 13.04.2023 constituting the HPC and an extract from the EIA Guidance manual issued by the MoEF&CC.
  - d. On 11.11.2024, the applicant filed a rejoinder to both the counter affidavits filed along with 24 annexures containing evidence of turtle nesting, megapode nesting, corals etc.
  - e. On 05.07.2025, MoEF&CC filed an additional affidavit along with the OM dated 13.04.2023, OM dated 17.08.2023 forwarding the HPC report to the project proponent and order dated 02.01.2024 constituting the "overarching" committee.
  - f. On 21.07.2025, a rejoinder was filed to the above affidavit along with 7 annexures.
  - g. On 24.07.2025, Notes on submissions were filed by the Applicant and matter was argued. MoEF&CC claimed that the project area was revised and CRZ IA areas were excluded. They were asked to produce evidence of the claim by this Hon'ble Tribunal.

- h. Since no revised layout was produced, on 16.09.2025, an additional reply was filed by the applicant along with 6 annexures to show that ICRZ IA areas were not excluded.
  - i. On 30.10.2025, while concluding submissions, a bound volume of the HPC report was handed over to this Hon'ble Tribunal in a sealed cover and copies of the report were also handed over separately. Copies were not furnished to the Applicant. MoEF&CC claimed the report was confidential.
  - j. On 19.11.2025, 4 IAs – IA Nos. 108& 109 of 2025 in OA No. 95 of 2024 and IA Nos. 110&111 in OA No. 93 of 2024 were filed seeking directions to produce the HPC report and praying that this Hon'ble Tribunal refrain from relying on the report of the HPC handed over in a sealed cover. MoEF&CC did not file any counter to these IAs.
  - k. On 21.11.2025, the case was argued and orders were reserved.
6. It is submitted that though MoEF&CC filed two affidavits, they have not responded to the averments in the pleadings filed by the applicant. Only in para 20 (a-c) of the affidavit dated 19.09.2024 and para 7 (a-c) of the affidavit dated 05.07.2025, the MoEF &CC has made submissions on how the HPC discharged its functions and the conclusions reached by the HPC.
7. It is trite that parties are bound by their pleadings and cannot travel beyond the contours of their pleadings. The Hon'ble Supreme Court in ***Union of India Vs Ibrahim Uddin & Anr*** (2012 8 SCC 148) has held, "78. ... A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further

*held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.”(See page 1679 of file).*

8. Further, it is trite that a vague denial is insufficient, and denial must be specific (Please see ***Thangam & Anr Vs Navamani ammal*** (2024) 4 SCC 247). MoEF&CC has not denied the assertions in the pleadings of the applicant, nor have they responded to the evidence adduced in the annexures.
9. It is submitted that in the present case, the adjudication can only proceed on the basis of pleadings filed by the parties. The contentions of the MoEF&CC have to necessarily be tested based on their statements in both the affidavits filed by them and not on any other material not forming part of the record.

**V. EC DATED 11.11.2022 NOT “REVISITED” BY THE HPC AS DIRECTED BY THIS HON’BLE TRIBUNAL**

10. It is submitted MoEF&CC has failed to comply with the judgment of this Hon’ble Court and has reduced the entire exercise of “revisiting” the EC to a formality. The direction of this Hon’ble Tribunal was to revisit the entire clearance in light of the “deficiencies’ found. The Hon’ble Tribunal stated 3 such “deficiencies” by way of instance i.e as illustrations. However, the MoEF&CC frustrated the exercise by
  - i. framing only three ToR (based on the 3 illustrative deficiencies mentioned by the Tribunal) for the HPC and even these were incorrectly framed.
  - ii. Even these ToRs were not complied / satisfied by the HPC

**i. Incorrect, inadequate ToR – Only 3 ToRs issued**

11. The MoEF&CC admittedly issued O.M. dated 13.04.2023 issuing terms of reference to the HPC (Please see page 974 of the file). According to the MoEF&CC, the HPC revisited the EC "based on the mandate defined in the O.M. dated 13.04.2023." (para 7 of additional affidavit dated 05.07.2025 @ page 967 of file).

12. The O.M. dated 13.04.2023 lists only 3 terms of reference

5. The Terms of Reference of the Committee shall be as follows :
- i. To review the proposal related to coral translocation submitted by the project proponent and regulatory provisions under ICRZ Notification, 2019 with respect to corals.
  - ii. To review the data collection requirement for the project as per the EIA Notifictaion, 2006.
  - iii. To review CRZ boundries of the port project with respect to ICRZ Notification, 2019.

13. This is the first illegality. By limiting the terms of reference only to the three broad issues stated by this Hon'ble Tribunal as examples, the MoEF&CC prevented the HPC from revisiting the EC effectively.

**a. "By way of instance" means "For example"**

14. "By way of instance" – "by way of" is an idiom, defined in the Cambridge Advanced Learner's Dictionary and Thesaurus to mean "as a type of." "For instance" is also an idiom, defined in the same dictionary to mean "for example." This Hon'ble Tribunal, by way of instance i.e. as examples, listed three of the contentions of the appellant. However, the MoEF&CC limited the entire exercise to the three examples stated by this Hon'ble Tribunal and as elaborated below, even these three ToR were not addressed / satisfied.

15. The second illegality is that the three ToR framed also suffers from factual errors. For example, ToR 2 mentions data collection requirement "as per EIA Notification, 2006". However, this Hon'ble Tribunal did not make any such observation, and the MoEF&CC is aware that the requirement of a comprehensive EIA with 3 season data is mandated under the ICRZ Notification, 2019 and the OM dated 03.11.2009.

16. By framing the incorrect / wrong ToR, the MoEF & CC ensured that the wrong questions were asked and conclusions to suit their convenience were reached.

**b. Violation of principles of Natural justice – HPC proceedings included the project proponent but not the applicant**

17. It is submitted that in *Maneka Gandhi Vs Union of India (1978) 1 SCC 248*, the Hon'ble Supreme Court constitutionalised the principles of natural justice. It is trite that even when the statute is silent, adherence to principles of natural justice in any administrative action is mandatory.

18. The applicant was not put on notice by the respondents of the HPC proceedings. The project proponent was very much a part of the HPC proceedings. Thus, the inclusion of the project proponent and the exclusion of the applicant from the process renders the entire process vitiated as fundamental principles of natural justice were violated.

19. The applicant sent representations dated 09.07.2023 (@ page 107 of the file) and 05.09.2023 (@ page 112 of the file) seeking proper, exhaustive reconsideration as directed by this Hon'ble Tribunal, and information on this process, but no reply was received. The memorandum of appeal in

Appeal No. 32 of 2022 (filed as Annexure A1 in O.A. No. 95 of 2024 at pg. 13) was also sent to the authorities and the HPC members.

20. The Hon'ble Tribunal in its order dated 03.04.2023 has directed the HPC to examine the "unanswered deficiencies" pointed out by the Applicant (Appellant therein) and the HPC ought to have given the Applicant an opportunity as required by fundamental principles of natural justice and examined the issues raised in the appeal, as directed by the Hon'ble Tribunal, with due application of mind. The failure to do so vitiates the entire process.

**ii. Three ToR issued vide OM dated 13.04.2024 not complied**

21. The MoEF&CC claims to have complied with the judgment of this Hon'ble Tribunal and completed the exercise of "revisiting" the EC dated 11.11.2022. In para 6 and 7 of the affidavit dated 05.07.2025 filed by the MoEF&CC (page 967 of file), it has been stated that

- a. HPC was constituted and 3 Terms of Reference (ToR) issued vide OM dated 13.04.2024.
- b. The HPC held 3 meetings on 18.04.2023, 02.05.2023 and 04.07.2023 and
- c. the conclusions of the HPC are stated at para 7 (a-c) of affidavit dated 05.07.2025 (page 967, also at para 20 (a-c) of the affidavit dated 21.10.2024 (page 205)).
- d. On 17.08.2023 an OM was issued forwarded the report of the HPC to the project proponent and Chief Secretary of A&N islands. (para 11 of affidavit at page 971).
- e. An overarching committee was constituted vide order No. 683 dated 02.01.2024.

22. The table below provides a comparison of the ToR issued, the claimed compliance of the MoEF&CC based on HPC conclusions and evidence on record. A reading of the table would show that the conclusions stated are contrary to law and the Government's own records.

<b>ToR issued by MoEF&amp;CC in OM dated 13.04.2023</b>	<b>MoEF&amp;CC's claimed compliance of TOR based on stated conclusions of the HPC</b>	<b>Facts, Evidence on record and the law</b>
<p><b>(i)</b> To review the proposal related to coral translocation submitted by the project proponent and regulatory provisions under ICRZ Notification, 2019 with respect to corals</p>	<p><b>In the Affidavit dated 05.07.2025</b> (See para 7 (a) of affidavit at page 967)</p> <p>In respect of the first issue regarding the translocation of the 16150 out of 20668 coral colonies and threat to the remaining 4518 coral colonies during the deliberations of HPC, it was pointed out that, "...Based on the ZSI study, no corals have been found in the proposed site for the construction of port and other amenities at Galathea Bay. However, corals which are likely to be impacted because of Project are found in proximity of the proposed construction site at depths ranging from 5 to 30 metres.</p>	<p>The MoEF &amp; CC states that there are no corals in Galathea Bay where the port is being constructed and that the 16150 coral colonies are located in proximity which will be impacted and hence are being translocated. This contention is entirely false as explained below.</p> <p>But even considering the admitted case of the respondent, the proposal is illegal and prohibited under the ICRZ Notification, 2019 as Coral/coral reefs cannot be translocated.</p> <p><b><i>The HPC's entire discussion and conclusion was limited to the coral translocation proposal and not on the legality of it, as required by the ToR.</i></b></p> <p><b>Admitted case: 16150 coral colonies spread across 10 hectares are to be translocated. (para 37 of EC at page 217 and para 7 (a) at page 967) and 4158 colonies are to be studied and observed before taking the decision to translocate them.</b></p> <p><b>a.</b> The ToR is for review of the coral translocation proposal in light of the "regulatory provisions under ICRZ Notification, 2019".</p>

	<p>The total number of coral colonies encountered in the adjoining area is about 20,668. Among them about 16,150 coral colonies were found 15 meters depth of water column while 4518 colonies were observed at 15-30 metres of depth may be duly studies and observed to analyse the sedimentation load and rate of sedimentation before any decision on translocation or otherwise is taken...".</p> <p>Accordingly, the HPC agreed with the recommendations of ZSI, which states that the remaining 4518 colonies would need to be continuously observed from 15-30 meters of depth to analyse the sedimentation load and rate of sedimentation before any decision on translocation is taken regarding them"</p>	<ul style="list-style-type: none"> <li><b>b.</b> The HPC conclusion does not even mention the provisions of the ICRZ 2019.</li> <li><b>c.</b> It is evident from para 7(a) that the HPC never considered clause 3(i), clause 4(I)(II), clause 2(i)(ii)(a)(ii) and annexure I of the Island Coastal Regulation Zone (ICRZ) Notification, 2019.</li> <li><b>d.</b> Corals and coral reefs are protected as CRZ IA and their destruction is specifically prohibited under clause 3(i) of the Notification.</li> <li><b>e.</b> Clause 4(I)(II) lists the limited activities that are permissible in CRZ IA areas. Construction of a port is not a permitted activity.</li> <li><b>f.</b> ICRZ Notification,2019 <b>prohibits</b> the destruction of corals. Translocation of corals is not a permissible activity.</li> <li><b>g. Annexure I</b> to the Notification under "B" specifically prohibits destruction of corals and coral reefs and surrounding areas and coral transplantation activities are permitted only when necessary for regeneration after obtaining permission under the Wildlife (Protection) Act, 1972. Activities like dredging, discharge of ballast water etc. are prohibited in and around coral reefs (See page 91 of the file).</li> </ul>
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	<p>The affidavit contains <b>NO</b> reference to the legal provisions in the ICRZ Notification,2019 concerning corals or even a mention of the same.</p> <p><b>In the Affidavit dated 19.09.2024</b>, para 20 (a) (page 205 of the file), the same contents are found.</p> <p><b><u>Oral Submissions:</u></b></p> <p><b>a.</b> It was reiterated that the ZSI study on Corals comprehensively dealt with the issue of coral translocation and budget has been allotted.</p> <p><b>b.</b> The issue of legal prohibitions in the ICRZ Notification,2019 was not addressed.</p>	<p><b>h.</b> Corals reefs and associated biodiversity <b>cannot be translocated</b> i.e., removed from an area to enable the location of a port. The law does not permit it.</p> <p><b>i.</b> "Translocation" of existing corals and coral reefs is NOT even an activity permitted under the Notification.</p> <p><b>j.</b> The HPC does not consider the coral translocation proposal in light of the applicable legal prohibitions / protections under the ICRZ Notification,2019 and that the coral translocation proposal itself is illegal and is impermissible under law.</p> <p>The report fails to disclose or take into account the fringing reefs that are present in Galathea bay. If the fringing reefs present are taken into account, the extent of coral and coral reefs in Galathea where the port is proposed will be exponentially higher than the admitted <b>16150 coral colonies</b>.</p> <p>Presence of Corals entitles the area to protection as CRZ IA. This Hon'ble Tribunal has already noticed the prohibition in the ICRZ Notification and ruled that Ports cannot be located in CRZ IA area.</p>
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<p><b>(ii)</b> To review the data collection requirement for the project as per the EIA Notification, 2006.</p>	<p><b>In the Affidavit dated 05.07.2025</b> (See para 7 (b) of affidavit at page 969)</p> <p>"Regarding the 2<sup>nd</sup> issue of collection of baseline data, the HPC, with the assistance of the EAC (Infra-1 sector) concluded that the EIA Notification, 2006 do not prescribe either Rapid or Comprehensive EIA studies. The Environment Impact Assistance Guidance Manual for Ports and Harbours prepared by Administrative College of India (ASCI) mentions that "One season data should be monitored other than monsoon as per CPCB norms"."</p> <p><b>In the Affidavit dated 19.09.2024</b>, para 20 (b) (page 206 of the file), the same contents are found.</p>	<p>The MoEF&amp;CC and the HPC have failed to see that the requirement of comprehensive EIA, i.e. an EIA based on three season data collection, is mandated under the ICRZ Notification, 2019 and the EIA guidance manual itself requires data collection of more than one season. The HPC was perhaps misled because the ToR in the O.M. dated 13.04.2023 mentions data collection as per the EIA Notification, 2006.</p> <p>EIA based on one season (3 months) data collection is called a "Rapid EIA".</p> <p>EIA based on three seasons / one year data collection is called a "Comprehensive EIA".</p> <p><b>Baseline data collected for EIA report for obtaining EC – Not even Rapid EIA</b></p> <ol style="list-style-type: none"> <li>a. EIA report states (page Chapter 1 - 26) that baseline data collection was between December 2020 to March 2021, but,</li> <li>b. The survey of ecology and biology was conducted between 14-22 December 2020.</li> <li>c. The survey of leatherbacks was conducted between 12-18 February 2021.</li> </ol>
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	<p><b><u>Oral submissions:</u></b></p> <p><b>a.</b> Reliance was placed on clause 8 (i) (b) of the ICRZ Notification, 2019 and submitted that only a Rapid EIA was required under the Notification.</p> <p><b>b.</b> It was contended that the Galathea Bay was an accreting coast / shoreline.</p> <p><b>c.</b> The mandate of the OM dated 03.11.2009 was <b>not</b> addressed.</p> <p><b>d.</b> The mandate for data collection in the EIA Guidance manual was <b>not</b> addressed.</p>	<p><b>d.</b> Thus, EIA report is not even a Rapid EIA (i.e a study based on 3 months baseline data collection)</p> <p><b>e.</b> The ZSI study's baseline data was collected in March 2021.</p> <p><b>f.</b> The Wildlife Institute of India (WII) report's baseline data was collected between 14-19 April 2021.</p> <p><b>g.</b> Thus, none of the study reports based on which EC was granted even qualify as a rapid EIA.</p> <p><b>Mandate of law – comprehensive EIA</b></p> <p><b>a.</b> The O.M. dated 03.11.2009, contained in Annexure 12 of the EIA guidance manual, mandates <b><i>comprehensive EIA including physical and mathematical modelling and ground verification</i></b> for ports and harbours greater than 5 MTPA proposed in the Andaman and Nicobar Islands. (See page 1034 of file)</p> <p><b>b.</b> The subject mega port is proposed to handle 14.2 million TEU per annum, far greater than 5 MTPA. Thus the project required a comprehensive EIA.</p>
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		<p><b>c.</b> Clause 8(i)(c) of the ICRZ Notification, 2019 mandates comprehensive EIA with cumulative studies for projects located in low and medium eroding stretches (see pg. 88 @ 89 of the file).</p> <p><b>d. ISRO has mapped Galathea bay as Eroding coast -</b> The eastern flank of Galathea Bay where the port is proposed has been marked as an eroding stretch in the Indian Space Research Organisation (ISRO) Space Application Centre's (SAC) Shoreline Change Atlas of the Indian Coast Volume VI (pg. 1005 of the file).</p> <p><b>e.</b> The map clearly shows RED colour marked portions in the Eastern Flank of the Galathea bay where the port is proposed.</p> <p><b>f.</b> Therefore clause 8 (i) (b) relied on by MoEF&amp;CC during oral submissions is irrelevant and inapplicable and clause 8 (i) (c) is applicable.</p> <p><b>g.</b> Therefore, even considering this coast as a low or medium eroding coast, a comprehensive EIA with cumulative studies is mandatory.</p>
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		<p><b>Need for Comprehensive EIA – Explained in Lok Sabha:</b></p> <p><b>a.</b> The reply given by the Minister for Environment in the Lok Sabha in response to a request from the government of Gujarat to consider projects for clearance in low and medium eroding stretches based on rapid EIA instead of comprehensive EIA is instructive on the need for such comprehensive EIA studies. In response to the request, the Minister stated:</p> <p><i>"The request could not be considered since a rapid EIA, which is based on one season data may not address all the environmental concerns. As per the procedure prescribed for seeking prior clearance under the CRZ Notification, 2011, all project proposals in stretches classified as low and medium eroding as well as stable coasts shall be accompanied by comprehensive EIA studies based on three season data. This requirement is uniformly applicable throughout the country. To conserve and protect such coastal stretches, promote development through sustainable manner, it is important that comprehensive EIA studies are carried out based on scientific principles and Environment Management Plans</i></p>
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		<p><i>worked out accordingly before considering proposals in such stretches.” (please see pg. 579 of the file).</i></p> <p><b>b.</b> However, the present mega project has been cleared without even a rapid EIA. The HPC has failed to see this.</p> <p><b>Contention of MoEF in para 7(b) is false – even EIA Guidance manual requires more than one season data collection</b></p> <p><b>a.</b> The EIA guidance manual at 4.4 states: <i>“While bathymetry is a one-time parameter, oceanographic data such as currents, waves, tides, etc. need to be measured at least for two seasons.”</i> (pg. 1030 of the file)</p> <p><b>b.</b> Annexure 6 states that <i>“physical, chemical and biological data has to be collected in two to three seasons so as to understand their impact in different seasons like pre and post monsoon.”</i> (pg. 1033 of the file)</p> <p><b>c.</b> The MoEF&amp;CC filed an extract from the EIA guidance manual as Annexure 5 along with its counter affidavit filed on 21.10.2024. The statement that one season data should</p>
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		<p>be monitored other than monsoon as per CPCB norms is found under the head "ambient air quality" at pg. 557 of the file. <b>MoEF&amp;CC did not file the above references from the EIA guidance manual and suppressed these requirements under the manual relied on by them.</b></p> <p><b>d.</b> Therefore, it is evident that even according to the EIA guidance manual for ports, important parameters like physical, chemical and biological data, which are extremely relevant in the context of a port, need to be based on baseline data for more than one season.</p> <p><b>e.</b> Given the fact that the EIA study along with the ZSI and WII study based on which the clearance was granted is not even a rapid EIA, i.e. not even based on one season data, the conclusion of the HPC cannot be countenanced.</p>
<p><b>(iii)</b> Review the boundaries of the port project with respect to ICRZ Notification, 2019.</p>	<p><b>In the Affidavit dated 05.07.2025, para 7 (c)</b> (Page 970 of the file)          "In view of the 3<sup>rd</sup> issue, i.e., part of the project in CRZ IA area where Port is prohibited, the HPC came to the conclusion that in the</p>	<p><b>Port located in CRZ IA where port is prohibited– finding in judgment dated 03.04.2023</b></p> <p><b>a.</b> The Hon'ble Tribunal in the judgment dated 03.04.2023, after the examination of contentions at para 33, has observed that "it is also shown that part of the project is in CRZ IA area where Port is prohibited." (Please see page 193)</p>

	<p>Report submitted by the NCSCM, it has been determined that construction of port is permissible in ICRZ-IB area but not permissible in ICRZ-IA. The NCSCM, concluded that no part of the project area is falling under CRZ-IA area”</p> <p><b>In the Affidavit dated 19.09.2024, para 20 (c) (page 207 of the file)</b></p> <p>“In order to address the 3rd issue, i.e. whether part of the Project is in CRZ- IA area where Port is prohibited, the HPC directed ANIIDCO to submit the layout plans and the National Centre for Sustainable Coastal Management (hereinafter referred to as "NCSCM") was required to authenticate the maps to ensure that no part of the Port falls in ICRZ-IA. Therefore, in order to evaluate whether a part of</p>	<p><b>b.</b> Clause 2(i)(ii) of the ICRZ Notification, 2019 lists mangroves, corals and coral reefs, biologically active mud flats, turtle nesting grounds, nesting grounds of birds as CRZ IA, i.e. as ecologically sensitive areas.</p> <p><b>Ports not permitted in CRZ IA – admitted by MoEF&amp;CC</b></p> <p><b>a.</b> The fact that ports are not permitted in CRZ IA areas is not in dispute, and even the project proponent’s counter affidavit at para 16 and the 1<sup>st</sup> Respondent’s additional affidavit dated 05.07.2025 at para 7(c) admit to the same (please see pg. 120 and 969 of the file respectively).</p> <p><b>b.</b> Clause 4(I)(II) states that CRZ IA areas are ecologically more sensitive, and generally no activity shall be permitted. Exceptions mentioned in (a), (b) and (c) to this clause are limited to very few activities like eco-tourism activities in identified stretches, construction of roads on stilts in exceptional cases, laying of pipelines only in the mangrove buffer etc. Only the activities permitted by the Notification in CRZ IA areas can be legally permitted.</p> <p><b>c.</b> In fact, the other components are also not permissible in CRZ IA areas.</p>
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the project is falling inside the CRZ IA area, the NCSCM visited the project site and its nearby areas on 17<sup>th</sup> – 18<sup>th</sup> June, 2023 and also interacted with the ANIIDCO Project team as well as with the Forest Officials of UT of Andaman & Nicobar for conducting the ground truthing exercise to determine status of High Tide Line, Low Tide Line and Ecologically Sensitive Areas. Thereafter, taking into consideration the factual position, layout of the project received from ANIIDCO, observations made during the ground truthing exercise and in terms of the clarification received from the Forest Department of UT Administration and Project Proponent, the NCSCM concluded that no part of the project area fell under CRZ-

**Admitted extent of ICRZ IA areas within the project area  
– Recommendation of the ANCZMA dated 08.07.2022**

- a. Originally, in its meeting held on 17.03.2022, the ANCZMA decided to recommend the project for clearance under ICRZ Notification, 2019 and vide order dated 22.03.2022, it was communicated to MoEF&CC and the project proponent ANIIDCO (please see page 103 of file)
- b. On 24.05.2022, in the 297<sup>th</sup> meeting of the EAC, ANIIDCO was directed to submit revised layout excluding CRZ IA, IB areas from masterplan for port. ( see page 375 of file)
- c. Thereafter ANIIDCO submitted proposal with revised layout and sought recommendations from the ANCZMA for the revised layout.
- d. On 08.07.2022, the ANCZMA issued revised recommendations for the project for ICRZ clearance. (please see page 103 of file)
- e. The original extent of ICRZ IA within the project and the revised extent are as follows (see page 104 & 105 of file)

Project	Original ICRZ IA extent (Sq Km)	<b>Revised ICRZ IA extent (Sq Km )</b>
Port	0.67	<b>0.57</b>
Airport	0.58	<b>0.60</b>
Township (defence)	0.81	<b>0.81</b>

IA area. Moreover, it was also clarified by ANIIDCO that in conformity with Specific and General conditions of the EC dated 11.11.2022, no activity is proposed within ICRZ-IA area.  
Based on the Report of the NCSCM, the HPC concluded that no part of the project area is falling under CRZ IA area.”

**Oral submissions:**

A color print out along with a map showing three squares marked in red was circulated as proof of turtle nesting grounds/ CRZ IA areas on the western flank of Galathea bay that were excluded from the project – as proof of revision after the

Township	4.93	<b>5.03</b>
Port reclamation	0.06	<b>0.06</b>
Airport reclamation	0.02	<b>0.00</b>

- f. The revised recommendations of the ANZMA were also extracted in the judgment of this Hon'ble Tribunal dated 03.04.2023 (please see para 24 at page 64 of the file)
- g. Therefore, the admitted extent of ICRZ IA areas within the different project components is as stated in the revised recommendations of the ANZMA dated 08.07.2022.
- h. Subsequently, the project area has not been revised to exclude ICRZ IA areas.
- i. The MoEF & CC and the ANIIDCO cannot argue against the permission obtained by them.
- j. The only course of action open to the MoEF&CC and ANIIDCO post the judgement of the Hon'ble Tribunal dated 03.04.2023 wherein it was recognised that a part of the port falls in CRZ IA and that ports are prohibited in ICRZ IA, is for the layout to be revised to exclude ICRZ IA areas

	<p>judgment of this Hon'ble Tribunal.</p> <p><b>NOTE :</b> <i>It needs to be noted that the color print out circulated was of ADS and map submitted to the EAC after the 297<sup>th</sup> meeting of the EAC – before the EC was issued and <b>DID NOT RELATE TO EXCLUSION OF CRZ IA AREAS AFTER THE JUDGMENT DATED 03.04.2023.</b></i></p>	<p>from the project. 0.60 Sq Km – which is 60 hectares of ICRZ IA areas from the port ought to have been excluded.</p> <p><b>k.</b> Similarly, other activities are also not permitted in ICRZ IA areas.</p> <p><b>l.</b> HOWEVER, THE PROJECT AREA WAS NOT REVISED TO EXCLUDE ICRZ IA</p> <p><b>m.</b> However, the MoEF&amp;CC and the HPC have now claimed that no part of the port falls within ICRZ IA area based on a report of the NCSCM.</p> <p><b>HPC Conclusion is based on</b></p> <p><b>a.</b> A report of the NCSCM submitted based on visit to “project site and nearby areas” on 17-18 June, 2023.</p> <p><b>b.</b> During which they interacted with ANIIDCO and Forest officials of A&amp;N UT.</p> <p><b>c.</b> The NCSCM concluded that “no part of the project area fell under CRZ-IA area.”</p>
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		<p><b>d.</b> It is preposterous to claim that no part of the project falls within ICRZ IA when the port is located at Galathea bay, inter alia the most important nesting ground for the leatherback turtle.</p> <p><b>NO REVISION OF LAYOUT MADE AFTER JUDGEMENT DATED 03.04.2023.</b></p> <p><b>a.</b> In the 297th meeting of the EAC, held on 24-25 May, 2022, the EAC observed that the port included CRZ IA and IB areas and the revised layout after excluding such areas has not been submitted (page 375 of the file).</p> <p><b>b.</b> The project proponent submitted reply (ADS) to the queries of the EAC raised in the 297th meeting and submitted that revised ICRZ recommendations had been received vide letter dated 08.07.2022 and "the master plan has been revised based on these recommendations". The ADS enclosed documents including A&amp;N CZMA revised recommendation as enclosure 13, the revised master plan as enclosure 2, the project proponent's map regarding exclusion of CRZ-IA areas as enclosure 5 and a map of active Megapode mounds as enclosure 17.</p> <p><b>c.</b> This enclosure 5 is the map that was given during the course of oral submissions. This map contains three red</p>
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		<p>square boxes which according to the Respondents is the CRZ-IA excluded from the port area.</p> <p><b>d.</b> Copy of ADS reply and enclosure 2, 5, 13, 17 submitted along with the ADS reply are collectively available at page1339 onwards.</p> <p><b>e.</b> Thus, it is evident that the revision of layout was based on the revised recommendation of the A&amp;N CZMA dated 08.07.2022, which reduced the ICRZ-IA1220 area in the port area from 0.67 sq.km to 0.57 sq.km. Thus, it is borne out from the record that the entire ICRZ-IA area was not excluded and the area of the port for which clearance has been obtained includes 0.57 sq.km of CRZ-IA.</p> <p><b>f.</b> In the 306th meeting of the EAC held on 22-23 August, 2022, the EAC takes into the account the above revised recommendation and recorded the submissions of the project proponent regarding the revised extent of ICRZ-IA in different components of the project at para 3.10 (xviii).. Based on the above, the EAC recommended the project for grant of clearance.</p> <p><b>g.</b> The EC was granted on 11.11.2022 for the subject project which included CRZ-IA areas, despite the express prohibition in law. This Hon'ble Tribunal in its judgement dated 03.04.2023 took note of the fact that ports were prohibited in CRZ-IA areas and directed the committee</p>
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		<p>constituted by the Tribunal to examine all these issues and revisit the clearance.</p> <p><b>h.</b> Therefore, NO REVISION TOOK PLACE AFTER THE JUDGEMENT DATED 03.04.2023 and the colour maps handed during the course of oral submissions relate to the ADS submitted during the appraisal process. The judgement dated 03.04.2023 TOOK NOTE of this layout and noticed the existence of CRZ-IA areas and directed the revisit of the clearance.</p> <p><b>Galathea bay where the port is located is the most important leatherback nesting ground, megapode bird nesting ground, coral reefs and mangroves</b></p> <p><b>Evidence of Turtle nesting at Galathea bay – Government records and reports of the 2<sup>nd</sup> respondent</b></p> <p><b>a.</b> Maps furnished by the Principal Chief Conservator of Forests (PCCF) obtained under the Right to Information (RTI) Act, 2005 <i>have clearly marked megapode nesting sites and turtle nesting sites at Galathea Bay and all along the proposed project area (including the eastern flank).</i> (Please see pg. 1017-1018 of the file)</p>
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		<p><b>b.</b> Form – 1 application filed by the 2<sup>nd</sup> respondent for obtaining the subject clearance states "<b><i>Galathea Bay and some of the other beaches are turtle nesting ground</i></b>" and "turtle nesting sites and megapode nesting sites may be impacted." (entry 2 and 3, pg. 580 @ 590 of the file) – <b>ADMISSION BY 2<sup>nd</sup> RESPONDENT.</b></p> <p><b>c. WII report on Turtles</b> submitted by the 2<sup>nd</sup> respondent as part of the clearance process confirms the fact that Galathea Bay is an important turtle nesting ground. (see table 1 at pg. 607, table 2 at pg. 609, pg. 611 and 616 of the file).</p> <p><b>d.</b> Beaches of Galathea bay is one of the three important nesting sites of leatherback turtles in Great Nicobar island, others being at Casuarina bay and Alexandria bay. About 150-480 leatherback turtles nest at Galathea Bay every year (ANFD) (para 5 at page 605 of the file)</p> <p><b>e.</b> A total of 484 leatherback nests were recorded in 2020-2021, old signs of 5 nests of leatherback observed western side of Galathea and <b><i>one nest on the eastern side of Galathea River back on 15-16 April, 2021.</i></b> Nesting of one turtle observed on 15<sup>th</sup> April, 2021. (see page 611 of file)</p>
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		<p><b>f.</b> The WII report (please see page 611 of the file) records a leatherback nesting on the <b><i>eastern side of the Galathea river mouth on 15-16 April, 2021 when they visited.</i></b></p> <p><b>g.</b> It is bereft of logic to claim that Turtles do not nest on the eastern shores of the Galathea bay when the hatchery of the forest department itself was located on the eastern shores. <b>Please see photo of hatchery on the eastern flank in NCSCM's report</b> (Please see page 1355 @ 1408 of the file)</p> <p><b>h.</b> <b><i>Photographs of the hatchery at Galathea bay, eastern flank are also available at NCSCM's report on HTL / LTL and ICRZ submitted for the project</i></b> (Please see 1223 @ 1249 of the file) and also at page 1474 to 1477 of the file.</p> <p><b>i.</b> <b><i>The Galathea Bay was notified as a Sanctuary for the "Giant Leatherback Sea Turtle".</i></b> Copy of Notification of the Galathea Bay sanctuary dated 15.09.1997 (pg. 655 of the file).</p> <p><b>j.</b> This sanctuary was de-notified to facilitate the subject port and the Minutes of the National Board for Wildlife (NBWL)</p>
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		<p>meeting held on 05.01.2021 also clearly state that <b>"Provisions of CRZ should be enforced in the area"</b>, (pg. 660 of the file).</p> <p><b>k. The National Marine Turtle Action Plan of the MoEF&amp;CC for 2021- 2026 lists Galathea Bay as the largest leatherback turtle nesting ground in India.</b> (Pg. 672 @ 684 of the file)</p> <p><b>l. NCSCM report on HTL / LTL and ICRZ for the project</b> (at page 1223 of the file) [report commissioned by ANIIDCO and based on which EC was issued]</p> <p><b>m.</b> Report was based on field investigations carried out during February 2022. (page 1231 of file)</p> <p><b>n.</b> Figure 2 : Sheet No:5 – "Part of the proposed development activity viz Road (26m) and <b>Port falls within the ICRZ category of ICRZ IA (nesting ground of birds and protected forest)</b> (page 1233 of file)</p> <p><b>o.</b> Figure 2 : Sheet No.6 (Galathea Bay, Great Nicobar) – <b>"Part of the proposed activity such as port and port reclamation area falls within the ICRZ category of ICRZ IA)</b> (page 1233 of file)</p>
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		<p>p. Figure 2 : Sheet No.10 (Galathea Bay, Great Nicobar) – <b><i>“Part of the proposed activity such as port area falls within the ICRZ category of ICRZ IA (turtle nesting grounds, nesting ground of birds, protected forest and biosphere reserve area).”</i></b></p> <p>q. <b>“Proposed port reclamation area falls within the ICRZ category of ICRZ IA (turtle nesting grounds, protected forest).</b> (page 1234 of file)</p> <p>r. <b>“... ICRZ classification of the proposed project site area ICRZ IA (ESAs)...”</b> (Page 1242 of file)</p> <p>s. <b>RTI reply from Divisional Forest officer, ANFD (page 1352 of file)</b></p> <ul style="list-style-type: none"><li>• <b><i>Leatherback nesting in Galathea in May,2022 – 649 nests (page 1352 of file)</i></b></li><li>• <b><i>Leatherback nesting in Galathea in May,2023 – 505 nests (page 1353 of file)</i></b></li><li>• <b><i>Leatherback nesting in Galathea in March,2024 – 614 nests (page 1354 of file)</i></b></li></ul> <p>t. Total number of nesting leatherback female turtles in the Indian Ocean region is estimated to be about 1000. More</p>
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		<p>than 50% of this population nests at Galathea bay. This is the significance and importance of this nesting grounds.</p> <p><b>u. The approved CZMP land use plan under the ICRZ 2019 – marks turtle nesting grounds (red crisscross lines) on the eastern flank as well.</b> (see page 1012,1013). Zoomed images are annexed with these submissions for convenience. <b>The CZMP land use plans Map No. GN 1 and 2 are already part of the record (see page 1012-1013) and the markings can be observed when the maps are zoomed in on the pdf. However, since the Hon’ble Tribunal is using printed copies, zoomed screenshot of the same are enclosed. These are not new documents.</b></p> <p><b>v.</b> In an August 2020 webinar, Dr. Sivakumar, the lead of the WII report has stated, “The moment the shipment (project) comes, we must forget about Great Nicobar.. This port is going to be built in the beaches of leatherback sea turtle nesting sites.. I begged this planning commission once when they involved me in the consultation, I begged the Chairman.. this is an animal travelling 8000 kilometre, coming to lay eggs because their natal place is there.. next time when they come they will not see their home, where</p>
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		<p>will they go?.. Then the chairman said, we will take care of the beaches, nothing will happen to the nesting beach.. we will have the port away, we will not touch .. The chairman may not have ecological knowledge of the species, they build a port, there are 50 /60 ships anchored in the nearby area, how can turtles negotiate the ships and reach the shore.. He couldn't understand.. I couldn't convince them, I am sorry for that.. but the Government went ahead and invited a tender" (see news report at page 1479 with link to the video)</p> <p><b>w.</b> It is shocking that the same person has authored reports for the project but has not expressly stated his concerns. The port will destroy this extremely significant turtle nesting ground.</p> <p><b>Evidence of Megapode nesting at Galathea bay – Government records and reports of the 2<sup>nd</sup> respondent</b></p> <p><b>a.</b> EC dated 11.11.2022 at para "B" titled "Nicobar Megapode" states that "<b><i>From enclosure no 17 provided by the PP it is clear that about 51 active nests of Nicobar Megapode are present within the proposed project areas of which approximately 30 will be permanently destroyed.</i></b>"</p>
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		<p><b>b. The approved CZMP land use plan under the ICRZ 2019 – marks “Megapode Nesting ground” (Purple colour crisscross lines) on the eastern flank as well.</b> (see page 1012,1013). Zoomed images are annexed with these submissions for convenience.</p> <p><b>c.</b> WII report submitted by the 2<sup>nd</sup> respondent as part of the clearance process records megapode nest mounds on the beaches of Galathea (see pg. 605, 608 of the file).</p> <p><b>d.</b> Megapode nest mounds were found along the beaches of .. Galathea (N=1) (page 606).</p> <p><b>e.</b> Table at page 607 shows <b><i>presence of megapode in Galathea bay.</i></b></p> <p><b>f.</b> The map at page 608 (in the WII report), <b><i>clearly marks Megapode nesting mounds on the eastern flank of Galathea bay</i></b> as well as the western flank.</p> <p><b>g.</b> Project layout is marked on the WII map clearly shows that Megapode nesting mounds fall within the project area. (page 960 of the file)</p>
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		<p><b>h.</b> Map provided by the PCCF under RTI, clearly shows megapode nesting marked on both flanks of the Galathea bay (page 1017 of the file)</p> <p><b>i.</b> WII report on Megapode submitted as part of the project's clearance studies states, "It is noteworthy that over 95% of incubation mounds of this endemic bird were located within 100 m from the coastal line." (Page 705)</p> <p><b>j.</b> NCSCM report on ICRZ plans of Great Nicobar states at 5.4 under the head "Nesting Ground of Birds" that, Megapode nesting sites are found.. <b><i>in the south it is found in the Galathea bay wildlife sanctuary.</i></b>"(page 1381 of the file)</p> <p><b>k.</b> Salim Ali Centre for Ornithology and Natural History (SACON) Megapode Plan submitted by the 2<sup>nd</sup> respondent states that "Although, the Nicobar megapodes are recorded in the interior forests of the island, but most of the population of the species are confined to coastal habitat which indicates the coastal habitat upto 200 meters (Sankaran, 1995b) is very important from the point of conservation and management for the species." (pg. 732 of the file)</p>
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		<p><b>l.</b> Sankaran R. (1995a). The Nicobar megapode and other endemic avifauna of the Nicobar Islands-Status and Conservation. SACON Technical Report 2, 43 pp – The paper states that of the 188 active mounds for which measures were taken during the study, 97% were found within 100 m (80% within 60 m) from the beach.(Pg. 765 of the file)</p> <p><b>m.</b> Sankaran, R. (1995b). The distribution, status and conservation of the Nicobar Megapode <i>Megapodius nicobariensis</i>. <i>Biological Conservation</i>, 72(1), 17-25 – (please see pg. 824 of the file.</p> <p><b>n.</b> Sankaran, R., &amp; Sivakumar, K. (1999). Preliminary results of an ongoing study of the Nicobar megapode <i>Megapodius nicobariensis</i> Blyth. <i>Zoologische Verhandelingen</i>, 327, 75-90 - the study records megapode nesting mounds on the coast (pg. 834 of the file).</p> <p><b>o.</b> Sivakumar, K. (2007). The Nicobar megapode: Status, ecology, and conservation: Aftermath tsunami. Technical Report. Wildlife Institute of India, Dehradun</p> <p><b>p.</b> Balasubramanian, P., Vijayan, L., &amp; Sankaran, R. (2012). Monitoring post-tsunami coastal ecosystem recovery in the</p>
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		<p>Nicobar Islands and developing site-specific restoration measures. SACON, Dept. of Environment &amp; Forests, ANI. Final Report. 84 pp</p> <p><b>q.</b> Sivakumar, K., &amp; Sankaran, R. (2012). Habitat preference of the Nicobar megapode <i>Megapodius nicobariensis</i> in the Great Nicobar Island, India. In <i>Ecology of Faunal Communities on the Andaman and Nicobar Islands</i> (pp. 251-262). Springer, Berlin, Heidelberg – the paper reiterates that most of the mounds were found within 200 m of the high tide line (pg. 869 of the file)</p> <p><b>Corals and Coral reefs in Galathea bay</b></p> <p><b>a. 16150 coral colonies spread across 10 hectares are to be translocated. (para 37 of EC at page 217 and para 7 (a) at page 967) and 4158 colonies are to be studied and observed before taking the decision to translocate them.</b></p> <p><b>b. This acknowledgment / admission itself is evidence that the area is protected as CRZ IA.</b></p>
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		<p><b>c. However, the presence of <i>Fringing coral reef</i> in Galathea Bay suppressed:</b></p> <ul style="list-style-type: none"><li><b>i.</b> The fringing reefs present all along the island's coast are also present along Galathea bay. The presence of the reef has been suppressed.</li><li><b>ii.</b> The draft coastal land use plan CZMP sheet for Galathea bay (Map No. GN 1,2) <b>clearly mark the presence of coral reefs along the entire coast of Galathea Bay (fringing reef). Including on the eastern flank where the port is to be located.</b> (Please see page 1006 and 1007 of the file for the maps – combined map at page 1008).</li><li><b>iii.</b> These maps demarcate the fringing reefs exactly how it was marked in the approved CZMP and land use plan prepared under the 2011 Notification.</li><li><b>iv.</b> The ZSI report relied on by the MoEF&amp;CC (submitted for obtaining clearance) itself clearly states that "<b><i>The narrow and shallow coastal waster of Great Nicobar Island harbors fringing -type coral reefs.</i></b>" (page 911 @ 917 of the file)</li></ul>
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		<p>v. <b>NCSCM report</b> on Island Coastal Regulation Zone Plan of Great Nicobar Island dated April 2023, published as per ICRZ,2019</p> <ul style="list-style-type: none"><li>• at page 1380 of the file states, <b><i>"In Great Nicobar Island, coral reef is linear and extensively well-developed fringing reef."</i></b></li><li>• at page 1380 of the file also states, <b><i>"All corals are protected in India as they are listed as Schedule I species under the Wildlife Protection Act, 1972. This implies that touching, removing, dislocating corals in any fashion is a prohibited activity in the Indian territorial waters."</i></b></li></ul> <p>vi. Study by Sivaperuman (ZSI) et al at page 1453 @ 1455 of the file states, <b><i>"In India, the fringing reefs are dominating in the ANI, covering an expanse of 1021.46 km<sup>2</sup>. Such reefs adhere directly to a shore or border in shallow waterways or lagoons."</i></b></p> <p>vii. <b>The Allen coral atlas</b>, which is the most comprehensive data base of corals in the world and relied on in the above ZSI study also marks the fringing coral reefs in Galathea bay. (Please see page 1438 and 1439 of the file).</p>
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		<p><b>viii.</b> Photographs with GPS location of the dead corals on Galathea bay's eastern flank are at page 1478 of the file.</p> <p><b>ix.</b> However, in the approved CZMP land use plan, the fringing reefs along the coast have disappeared and islands of corals – away from the coast have been marked. (Please see page 1012, 1013 and combined map at 1014). It is impossible for corals to exist at the depths of 30 meters and more where they have been marked. This map is evidently and obviously flawed, incorrect and designed to suppress the fringing reefs in Galathea bay and the map is contrary to NCSCM's own report quoted at (e) above.</p>
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23. Therefore, it is evident that the TOR issued have not been complied and the HPC has failed to note that the project is illegally sited on ecologically sensitive CRZ IA areas like turtle nesting grounds, megapode nesting grounds, coral reefs etc. If the MoEF &CC had strictly complied with the judgment of this Hon'ble Tribunal, the illegalities pointed out could have been examined and the project's complete compliance with the law would have been ensured. However, the MoEF&CC has acted without objectivity and in a manner unbecoming of a statutory regulatory authority. The MOEF&CC's attempt to contend that the HPC report is confidential and cannot be made public is without merit.

#### **VI. HPC report ought to be made public**

24. It is submitted that the sealed cover process followed ought to be deprecated. The 1<sup>st</sup> respondent's contention that the HPC report cannot be disclosed because it is of '*strategic and national importance and has confidential and privileged information*' is without merit and contrary to the facts.

25. When the entire clearance process and documents including EIAs, project layout and masterplan etc. are in public domain, how can the exercise to "revisit" the clearance become confidential? This specious claim has been raised only to avoid scrutiny of their actions and judicial review.

26. It is submitted that there are more than 300 documents, reports, maps and studies pertaining to the subject project available in public domain. These contain all information about the project, its clearance process and permissions obtained etc. Only after the present OA was filed, the MoEF&CC took the strange, illegal stand in its counter affidavit that the

report of the HPC itself is "*strategic and national importance and has confidential and privileged information*".

27. When all information leading to the grant of the clearance is in public domain, challenged in Courts, inadequacy and illegality demonstrated leading to direction of this Hon'ble Tribunal to re-examine the clearance, it is preposterous and utterly without merit to claim that the report of the re-examination exercise has suddenly and magically assumed "*strategic and national importance and has confidential and privileged information*".

28. The following table will demonstrate the absurdity and futility of this claim.

<b>S No</b>	<b>DATE</b>	<b>EVENT</b>	<b>Availability of information</b>
1.	2015	Port Management Board, A&N, publishes an expression of interest document for the establishment of transshipment port & free trade warehousing zone in Andaman & Nicobar Islands. This document quotes a techno-economic feasibility study conducted by WAPCOS in 2009-10	Publicly available
2.	July 2016	AECOM submits a technical report to Ministry of Shipping on the Development Options (FTWZ, Transshipment Hub, Bunkering, Shipbreaking/Building yard,	Publicly available

		Cruise Facilities) at Great Nicobar and suggests to develop cruise facility and states Transshipment hub is not feasible.	
3.	November, 2016	Ministry of Shipping, Indian Ports Association publishes Final report for Sagarmala (Vol. VI) which contains the technical note prepared by AECOM in July 2016	Publicly available
4.	10.08.2018	A presentation by the CEO, NITI Aayog in 2018 mentions the transshipment port at South Bay and an Eco-tourism site at Great Nicobar (pg 30) and states that a committee has been constituted for Little Andaman and Great Nicobar to address 'land issues' for holistic development (pg 17)	Publicly available
5.	May,2019	NIYI Aayog publishes a document titled 'Transforming the islands'	Publicly available
6.	26.12.2019	Tender document by WAPCOS Limited for a 'Traffic Study for Creating Transshipment port at South Bay (Galathea Bay), Great Nicobar Island	Publicly available
7.	2019	NITI Aayog commissions a report to understand the stakeholder's views on the development in Great Nicobar	Publicly available

		(video report posted on AN Collective's YouTube channel)	
8.	11.08.2020	PM announces a transshipment project in Great Nicobar involving an investment of Rs. 10,000 crore	Publicly available
9.	Sep 2020	NITI Aayog issues a 201 page request for proposal (RfP) for 'Preparation of Master Plan for Holistic Development of Great Nicobar Island'	Publicly available
10.	07.10.2020	A&N FD sends the proposal for the diversion of 121.87 sq.km of forest land and 8.88 sq.km of deemed forest for sustainable development in Great Nicobar (Phase-I) to MoEF&CC	Publicly available
11.	05.01.2021	60 <sup>th</sup> meeting NBWL: Denotification of the Galathea Bay WLS, Megapode WLS approved	Publicly available
12.	March, 2021	Publication by AECOM India Pvt. Ltd of a 126 page pre-feasibility report titled: 'Holistic Development of Great Nicobar Island at Andaman and Nicobar Islands. The client for the same is NITI Aayog	Publicly available
13.	02.03.2021	ANIIDCO application to the 1 <sup>st</sup> respondent for ToR for the project under EIA and ICRZ Notification	Publicly available

14.	17-18 Mar 2021	258 <sup>th</sup> meeting of the EAC Infra-I	Publicly available
15.	03.04.2021	Project is listed under 'Investment opportunities under maritime sector' at the presentation at India Maritime Summit	Publicly available
16.	05/06.04.2021	260 <sup>th</sup> meeting of the EAC Infra-I: The EAC 'recommended' the Great Nicobar proposal for "grant of terms of reference (ToR)" for EIA studies.	Publicly available
17.	25.05.2021	MoEF&CC issues ToR to ANIIDCO	Publicly available
18.	20.06.2021	Proposal for transshipment port is seen on the Investment India Grid website -	Publicly available
19.	August 2021	AECOM submits a Preliminary Engineering design Report for the ICTT at Galathea Bay to NITI Aayog	Publicly available
20.	August 2021	AECOM submitted draft masterplan for the project	Publicly available
21.	26.12.2021	Public hearing announced in local newspaper	Publicly available
22.	28.12.2021	Draft EIA report is uploaded on the ANPCC website along with Report of WII, Report of ZSI and other documents	Publicly available
23.	27.01.2022	Public hearing held in Campbell bay	Publicly available

24.	07.03.2022	ANIIDCO submits the final EIA study and application for environmental and CRZ clearance	Publicly available
25.	17.03.2022	The Airport Authority of India releases a tender for appointing a technical consultant for preparing a DPR for the development of Green field International Airport at Chingenh in GNI	Publicly available
26.	24/25.03.2022	293 <sup>rd</sup> meeting of the EAC Infra-I	Publicly available
27.	09.05.2022	Project proponent submits Additional Details Sought in the 293 <sup>rd</sup> EAC meeting held on 24th March,2022	Publicly available
28.	25.05.2022	<u>297<sup>th</sup> meeting of the EAC Infra-I: It is declared for the first time that the airport will be a joint military-civil facility controlled by the Indian Navy; "Ministry of Home Affairs vide letter no. 15020/10/2022 dated 30th March, 2022 mentioned that the Greenfield International Airport proposed at Gandhi Nagar-Shastri Nagararea of Great Nicobar Island as part of the Integrated development of the Island, will be developed as a joint military-civil, dual-use airport, under the operational control of Indian Navy. This project is</u>	Publicly available

		<i>for Defense, Strategic, National Security, and Public Purpose. In view of this, the portion of deliberation made for Airport component may not be made public due its strategic nature."</i>	
29.	08.06.2022	Syama Prasad Mookerjee Port is made the nodal agency undertaking development of proposed port project	Publicly available
30.	19.08.2022	Project proponent responds to the Additional Details Sought in the 297th EAC meeting held on 24th May	Publicly available
31.	22.08.2022- 23.08.2022	306 <sup>th</sup> meeting of EAC Infra-I: EAC recommended the project for approval	Publicly available
32.	27.10.2022	MoEF&CC grants Forest Clearance to the Great Nicobar Holistic Development project	Publicly available
33.	04.11.2022	<u>MoEF&amp;CC grants Environmental Clearance and CRZ clearance to the Airport – File No.:10/17/2021-IA.III addressed to ANIIDCO. Clearance states – "This project is for Defence, Strategic, National Security, and Public Purpose to be implemented by M/s Andaman and Nicobar Islands Integrated Development Corporation Ltd".</u>	Publicly available

34.	11.11.2022	MoEF&CC grants Environmental and CRZ clearance for the Township, Port and Power plant.	Publicly available  Note: Clearance only for Township, Port and power plant.
35.	December 2022	Appeal No. 32 of 2022 filed within limitation challenging the EC dated 11.11.2022.	Publicly available
36.	22.02.2023	MoEF&CC filed counter affidavit in Appeal No. 32 of 2022. At para 9, even they contended that only the airport was " <i>Defence, Strategic, National Security, and Public Purpose</i> ".  9. It is pertinent to note that the Ministry of Home Affairs vide letter dated 30.03.2022, communicated to the answering Respondent that the Greenfield International Airport proposed at Gandhi Nagar-Shastri Nagar area of Great Nicobar Island as part of the Integrated development of the Island, will be developed as a joint military-civil, dual-use airport, under the operational control of Indian Navy. This project will be for Defence, Strategic,	Publicly available  NO CLAIM that the port, tourism township and power plant are " <i>Defence, Strategic, National Security, and Public Purpose</i> ".

		National Security, and Public Purpose and therefore, the portion of deliberation made for Airport component may be dealt with accordingly as a project of strategic nature”	
37.	03.04.2023	Judgment of this Hon’ble Tribunal in Appeal No. 29 to 32 of 2022, directing “Revisit” of the clearance as “some unanswered deficiencies” were there. The Tribunal constituted the HPC and also stated three issues by way of instance.	The judgement is publicly available.
38.	13.04.2023	OM issued by MoEF & CC issuing ToR for HPC and nominating members.	Publicly available
39.	09.07.2023	The Applicant herein addressed a representation to the 1 <sup>st</sup> Respondent and members of the HPC pointing out that the Office Memorandum setting out the terms of reference of the HPC was contrary to the findings of the Hon’ble Tribunal vide judgement dated 03.04.2023.	No reply received from the MoEF&CC
40.	05.09.2023	Applicant herein once again sent a representation requesting that the respondent hear the Applicant herein and take necessary measures to comply with the judgement of the Hon’ble Tribunal.	No reply received from the MoEF&CC

41.	24.04.2024	OA No. 95 of 2024 filed seeking directions to the 1 <sup>st</sup> respondent to re-visit the environmental clearance dated 11.11.2022 as directed in its judgement dated 03.04.2023 along with interim relief seeking production of minutes of the HPC, the terms of reference of the HPC, report submitted by the HPC and orders passed on the representations of the Applicant and final orders passed by the Respondent ministry if any.	
42.	24.04.2024	OA No. 93 of 2024 filed seeking a direction to the 1 <sup>st</sup> Respondent to exclude and delete the following admitted extents of ICRZ-IA areas from the project of the 2 <sup>nd</sup> respondent ANIIDCO	
43.	19.09.2024	MoEF&CC filed counter affidavit before this Hon'ble Tribunal (notarised on 18.10.2024 and filed on 21.10.2024), for the first time stating at para 24 that " <i>the report of the HPC is of strategic and national importance and has confidential and privileged information and has therefore been categorized accordingly by competent authority.</i> "	MoEF in this counter affidavit claims that the HPC report " <i>is of strategic and national importance and has confidential and privileged information</i> " and

			<p><i>"has therefore been categorized accordingly by competent authority."</i></p> <p><b>HPC REPORT NOT PLACED IN PUBLIC DOMAIN.</b></p>
44.	05.07.2025	<p>MoEF&amp;CC filed additional affidavit stating at para 9 that (it) <i>"has forwarded the HPC report to the project proponent and to the chief secretary, Andaman and Nicobar Administration for taking appropriate action in the matter. The OM concluded that, the conclusions and recommendations of this report need to be taken note of by the project proponent for implementation together with the conditions mentioned in the Environmental clearance dated 11.11.2022"</i></p>	<p><b>HPC report not filed.</b></p> <p><b>HPC report however sent to project proponent etc.</b></p> <p>States at para 12 "the report of the HPC along with relevant documents has been brought In a sealed envelope for the kind perusal of this</p>

			Hon'ble tribunal"
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## VII. DENIAL OF NATURAL JUSTICE AND THE RIGHT TO A FAIR TRIAL

29. It is submitted that the Hon'ble Supreme Court in a series of judgements deprecated the practice of sealed cover jurisprudence and has held that the same is contrary to the established principles of natural justice and fair hearing.

30. In the case of **Manohar Lal Sharma vs Union of India & Ors.** ((2023) 11 SCC 401), it was held that:

*"53. It is on the strength of the above exception carved out that the Respondent Union of India has justified its non-submission of a detailed counter affidavit, viz., by citing security concerns. It is a settled position of law that in matters pertaining to national security, the scope of judicial review is limited. However, this does not mean that the State gets a free pass every time the spectre of "national security" is raised. National security cannot be the bugbear that the judiciary shies away from, by virtue of its mere mentioning. Although this Court should be circumspect in encroaching upon the domain of national security, no omnibus prohibition can be called for against judicial review.*

*54. Of course, the Respondent Union of India may decline to provide information when constitutional considerations exist, such as those pertaining to the security of the State, or when there is a specific immunity under a specific statute. However, it is incumbent on the State to not only specifically plead such constitutional concern or statutory immunity but they must also prove and justify the same in*

*Court on affidavit. The Respondent Union of India must necessarily plead and prove the facts which indicate that the information sought must be kept secret as their divulgence would affect national security concerns. They must justify the stand that they take before a Court. The mere invocation of national security by the State does not render the Court a mute spectator.*

*55. In the present matter, as we have indicated above, the Petitioners have placed on record certain material that prima facie merits consideration by this Court. There has been no specific denial of any of the facts averred by the Petitioners by the Respondent Union of India. There has only been an omnibus and vague denial in the "limited affidavit" filed by the Respondent Union of India, which cannot be sufficient. In such circumstances, we have no option but to accept the prima facie case made out by the Petitioners to examine the allegations made." (See page 1575 of file)*

31. In the case of **Amit Kumar Sharma vs Union of India**, ((2023) 20 SCC 486), the Hon'ble Supreme Court held that:

*"25. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with 'reasonable probability' influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.*

*26. The non-disclosure of relevant material to the affected party and its disclosure in a sealed-cover to the adjudicating authority (in this case the AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond the reach of challenge. Secondly, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such as the identity of a sexual harassment victim cannot be disclosed. The measure of nondisclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm.” ( See page 1600 of file)*

32. In **S.P. Gupta vs UOI**, (AIR 1982 SC 149), a seven-judge bench of the Hon'ble Supreme court held that:

*"78. Now as we have already pointed out above, it is for the court to decide the claim for immunity against disclosure made under Section 123 by weighing the competing aspects of public interest and deciding which, in the particular case before the court, predominates, The court is not bound by the affidavit made by the minister or the secretary because the minister or the secretary would be concerned primarily and almost exclusively with the assertion of the public interest which would be injured by the disclosure of the document and he would have very little concern, if at all, with the public interest in the fair administration of justice and in fact he would not be in a position to appreciate and assess the relative importance of the two competing public interest so as to be able to judge as to which in the particular case before the Court should be allowed to prevent.....*

...

*80. Bearing these observations in mind, we must now proceed to examine the claim for immunity against disclosure in respect of the correspondence between the Law Minister, the Chief Justice of Delhi High Court and the Chief Justice of India in regard to non-appointment of S.N. Kumar. It was a class immunity which was claimed in respect of this correspondence and the protected class was said to consist of correspondence between the Law Minister or other high level functionary of the Central Government the Chief Justice of the High Court, the Chief Minister or the Law Minister of the State Government and the Chief Justice of India in regard to appointment or non-appointment of a High Court Judge or a Supreme Court Judge or transfer of a High Court Judge and the notings made by these constitutional functionaries in that behalf. The argument was that the*

*documents belonging to this class are immune from disclosure, irrespective of their contents, because it is in national interest and also necessary for maintaining the dignity of the judiciary and preserving the confidence of the people in the integrity of the judicial process that documents belonging to this class should be withheld from disclosure. Now there are a few prefatory remarks we would like to make before embarking upon an examination of this argument. In the first place, it is necessary to bear in mind that the burden of establishing a claim for class immunity is very heavy on the person making the claim. Lori Reid pointed out in *Eeg. v. Lewes Justices, Ex Parte Home Secy. 1973 AC 388 (supra)* that the speeches in *Conway v. Rimmer 1968 AC 910 (supra)* made it clear that there is a heavy burden of proof on any authority which makes a claim for class immunity. The claim for class immunity is an extraordinary claim because it is based not upon the contents of the document in question but upon its membership of a class whatever be its contents and therefore the court should be very slow in upholding such a broad claim which is contradictory, if not destructive, of the concept of open government. Secondly, it is true, as pointed out earlier, that classes of documents to which the immunity may be accorded are not closed and in the life of a fast changing society rapidly growing and developing under the impact of vast scientific and technological advances new class or classes of documents may come into existence to which the immunity may have to be granted in public interest, but that should only be as a highly exceptional measure. It is only under the severest compulsion of the requirement of public interest that the court may extend the immunity to any other class or classes of documents and in the context of our commitment to an open government with the concomitant right of the citizen to know what is happening in the government, the court should*

*be reluctant to expand the classes of documents to which immunity may be granted. The court must on the contrary move in the direction of attenuating the protected class or classes of documents, because by and large secrecy is the badge of an authoritarian government. We may point out once again, though it be at the cost of repetition, that even in regard to documents belonging to the class which has been judicially recognised as entitled to immunity, the law must now be taken to be well-settled that the immunity is not absolute. The public interest in nondisclosure of a document belonging to this class may in an appropriate case yield to the public interest that in the administration of justice, the court should have the fullest possible access to every relevant document and in that event, the document would be liable to be disclosed even though it belongs to the protected class. The executive cannot by merely invoking the scriptural formula of class immunity defeat the cause of justice by withholding a document which is essential to do justice between the parties, for otherwise the doctrine of class immunity would become a frightful weapon in the hands of the executive for burying its mistakes, covering up inefficiencies and sometimes even hiding its corruption. Every claim for immunity In respect of a document, whatever be the ground on which the immunity is claimed and whatever be the nature of the document, must stand scrutiny of the court with reference to one and only one test, namely, what does public interest require -- disclosure or non-disclosure. The doctrine of class immunity is therefore no longer impregnable; it does not any more deny judicial scrutiny, it is no more a mantra to which the court pays obeisance, Whenever class immunity is claimed in respect of a document, the Court has to weigh in the scales the one aspect of public interest which requires that the document should not be disclosed against the other that the court in*

*performing its functions should not be denied access to relevant document and decide which way the balance lies. And this exercise has to be performed in the context of the democratic ideal of an open government.”* ( See page 1635 onwards of file)

33. In **Madhyamam Broadcasting Ltd v Union of India**, (2023 13 SCC 401), it was held that:

*"195. In view of the discussion above, the appeals are allowed and the order of the MIB dated 31 January 2022 and the judgment of the High Court dated 2 March 2022 are set aside. We summarise our findings below:*

*195.2.1. The principles of natural justice were constitutionalised by the judgement of this Court in Maneka Gandhi (supra). The effect is that the courts have recognised that there is an inherent value in securing compliance with the principles of natural justice independent of the outcome of the case. Actions which violate procedural guarantees can be struck down even if non-compliance does not prejudice the outcome of the case. The core of the principles of natural justice breathes reasonableness into procedure. The burden is on the claimant to prove that the procedure followed infringes upon the core of procedural guarantees;*

*195.2.2. The appellants have proved that MBL's right to a fair hearing has been infringed by the unreasoned order of the MIB dated 31 January 2022, and the non-disclosure of relevant material to the appellants, and its disclosure solely to the court. The burden then shifts on the respondents to prove that the procedure that was followed was reasonable and in compliance with the requirements of Articles 14 and 21 of the Constitution. The standard of proportionality has been used to test the reasonableness of the procedure.*

*195.2.3. The judgments of this court in Ex-Armymen's Protection Services (supra) and Digi Cable Network (supra) held that the principles of natural justice may be excluded when on the facts of the case, national security concerns overweigh the duty of fairness;*

*195.2.4. Though confidentiality and national security are legitimate aims for the purpose of limiting procedural guarantees, the state has been unable to prove that these considerations arise in the present factual scenario. A blanket immunity from disclosure of all investigative reports cannot be granted;*

*195.2.5. The validity of the claim of involvement of national security considerations must be assessed on the test of (i) whether there is material to conclude that the non-disclosure of information is in the interest of national security; and (ii) whether a reasonable prudent person would draw the same inference from the material on record;"*  
(See page 1106 onwards of file)

34. In the instant case, there is no ground or reason furnished by the MoEF&CC to support their contention that the HPC report is of "*strategic and national importance and has confidential and privileged information*" save the bald statement in the affidavit as stated above. As held by the Hon'ble Supreme Court, the MoEF&CC can claim no such immunity at its whims and fancies. In the instant case, as demonstrated by the materials available in public domain and the peculiar, convenient moment when the claim of confidentiality is made to escape judicial scrutiny and a fair trial, makes it clear that the claim of the respondent is without merit and they are not entitled to arbitrarily deny production / publication of the HPC report and justify proving this Hon'ble Tribunal a copy in a sealed cover.

35. The MoEF&CC has failed the test laid down by the Hon'ble Supreme Court to establish that non-disclosure is in the interest of "national security" **(MoEF DOES NOT EVEN MAKE THIS CLAIM IN THE AFFIDAVITS FILED)** and a reasonable prudent person will draw the same inference from the material on record. This Hon'ble Tribunal cannot take the HPC report furnished in a sealed cover on record and render any findings in the present proceedings on the basis of the report unless a copy is furnished to the applicant and an opportunity is provided to respond to the same. If this is not done, it would result in serious prejudice, make the process of adjudication vague and opaque. It would result in a denial of a legal right to effectively challenge any order since the adjudication has proceeded on the basis of unshared material provided in a sealed cover, tilts the balance of power in the litigation in favour of the respondent and renders the applicant's right to a fair, impartial adjudication otiose.
36. It is submitted that it is trite that even the mere invocation of the term national security does not render Courts mute spectators, as held by the Hon'ble Supreme Court. The MoEF & CC ought to "necessarily plead and prove the facts which indicate that the information sought must be kept secret as their divulgence would affect national security concerns. They must justify the stand they take before a Court." (Manohar Lal Sharma vs Union of India). In the instant case, no such attempt has even been made and the MoEF&CC cannot now make such an attempt to improve their case.
37. However, though the onus is not on the person seeking disclosure to demonstrate that the disclosure is in public interest and will not affect national security, in the present case, the table presented above shows

that information about the project, the clearance process, studies submitted, appraisal by authorities has always been in public domain and transparent and only when illegality was made evident, the MoEF & CC resorted to arbitrarily claiming that the HPC report revisiting the clearance process cannot be disclosed. There is no public interest or national interest in keeping the HPC report a secret.

38. The subject case concerns the protection of one of the most biodiverse, sensitive, untouched ecosystems in the world. The case concerns ensuring legal compliance of applicable laws with an aim to safeguard this fragile ecosystem and protecting the people's right to clean environment and participating in environmental decision making. It is an enquiry into whether the MoEF&CC, which is entrusted with the task of protection of the environment and enforcement of the law has discharged its duties. It is an enquiry into whether prohibitions in law have been respected and turtle nesting grounds, corals, megapode nesting grounds and other ecologically sensitive areas are protected and extended the protection they are afforded by the law. The island is home to the Shompen, an uncontacted tribe and is a biodiversity hotspot. An enquiry into these issues is in great public interest. Ensuring the environmental rule of law is of greatest public interest and the inalienable right of people to participate in environmental decision making.

39. The HPC report therefore ought to be made public, so that the manner in which the exercise directed by this Hon'ble Tribunal was conducted can be ascertained.

**VIII. HON'BLE TRIBUNAL DID NOT ENTRUST THE HPC WITH ANY "CONFIDENTIAL" TASK**

40. It is submitted that even embarking on an exercise to determine the considerations the HPC ought to have reasonably undertaken in light of the ToR it was tasked with and the conclusions it has arrived at as stated in the Counter affidavits, shows that absolutely no enquiry or determination of issues of national security could be involved.

**41. To comply with the 1<sup>st</sup> ToR, HPC would be required**

- a. to take note of the admitted coral translocation plan of the project proponent. (This report is already in public domain and permissions are also available in public domain)
- b. to take note of the provisions of the ICRZ 2019 with respect to corals.
- c. Review the proposal to see if it is legally permissible i.e whether the ICRZ Notification 2019 permits the destruction of corals or the translocation of corals to facilitate establishment of a port and other activities.
- d. Conclusion of HPC: para 7 (a) of MoEF&CC affidavit dated 05.07.2025, HPC reviewed the coral translocation plan and directed its implementation. No discussion of legality / permissibility.
- e. There is not a single aspect of this exercise that would require consideration of confidential information or decisions as the information is available in public domain.

**42. To comply with the 2<sup>nd</sup> ToR, HPC would be required to**

- a. To look at the EIA reports and other studies to ascertain the period of data collection. (All reports are already in public domain).
- b. Ascertain the requirement for period and manner of data collection under the EIA Notification, 2006 and the ICRZ Notification, 2019,

Sector specific EIA manual for ports and the OM dated 3.11.2009 specifically dealing with siting of ports and harbors inter alia in Andaman and Nicobar Islands.

- c. Conclusion of HPC: At para 7(b) of the MoEF&CC's additional affidavit dated 05.07.2025, the MoEF&CC states that the HPC with the assistance of EAC Infra 1 concluded that the EIA Notification, 2006 does not prescribe either rapid or comprehensive EIA studies, and that the EIA guidance manual for ports and harbors mentions "One season data should be monitored as per CPCB norms."
- d. The HPC consulted EAC infra – I and has based its conclusion on the EIA Notification, 2006 and the EIA guidance manual published by the MoEF&CC. Both these documents are in public domain.
- e. There is not a single aspect of this exercise that would require consideration of confidential information or decisions as the information is available in public domain.

**43. To comply with the 3<sup>rd</sup> ToR, HPC would be required to**

- a. To obtain the boundaries of the proposed port at Galathea bay.
- b. Compare the area with reports available on the CZMP, report on delineation of HTL / LTL, the CZMP and the overwhelming publication and evidence of turtle nesting, megapode bird nesting, corals, mangroves etc.
- c. **HPC conclusion :** It is seen from para 7(c) of the affidavit dated 05.07.2025 that the 1<sup>st</sup> Respondent has claimed that the HPC has concluded that no part of the project area falls under CRZ IA since the National Centre for Sustainable Coastal Management (NCSCM) visited the project site and nearby areas on 17-18 June, 2023 and concluded that "no part of the project fell in CRZ IA."

- d. The layout of the port and its location, the port boundaries etc. are already in public domain and available in the EIA report and several subsequent publications.
- e. The documents and evidence to ascertain presence of ecologically sensitive areas under ICRZ 2019 like Mangroves, Turtle nesting grounds, nesting grounds of birds, corals etc in Galathea bay are also available in public domain.
- f. What NCSCM saw in its alleged two day visit on 17-18 June, 2023 is and cannot be top secret – as no secret project has been constructed at the Galathea bay yet and they could have only reported their observations and the basis for their conclusions.
- g. There is not a single aspect of this exercise that would require consideration of confidential information or decisions as the information is available in public domain.

44. Therefore, the HPC was not tasked with carrying out any top-secret exercise by this Hon'ble Court, nor by the ToR specified by the MoEF & CC. The claims of the MoEF&CC are without merit and are only a convenient attempt to escape scrutiny of their actions, which are illegal.

**Decision ought not to be based on sealed cover documents – IA No. 108 in OA No.95 of 2024 and IA No. 110 in OA No. 93 of 2024.**

45. As submitted above, the interest of justice requires that this Hon'ble Tribunal eschew all consideration of the sealed cover documents from the adjudication of these proceedings and restricts its consideration only to the pleadings on record as served and filed by the respective parties or direct service of the complete HPC report on the applicant. The submissions made in IA Nos 108 and 110 are not repeated for the sake of brevity and it is prayed that they be read as part of these submissions.

**IX. NO ORDER PASSED BY THE MoEF&CC – O.M. DATED 17.08.2023 OR NOTE SHEET ARE NOT ORDERS UNDER EIA OR CRZ NOTIFICATIONS**

46. By the judgment dated 03.04.2023, this Hon'ble Tribunal directed the competent authority i.e. the MoEF&CC to re-look the EC or its conditions based on the report of the committee and till then directed that work in pursuance of the EC may not proceed.
47. The report of the HPC ought to have been considered by the MoEF&CC and an order ought to have been passed regarding the EC dated 11.11.2022. But in the instant case, no such order has been passed, which ought to be the culmination of the process directed by this Hon'ble Tribunal. In the additional affidavit at para 9 (page 970 of the file), it has been mentioned that vide O.M. dated 17.08.2023 the Ministry "*...has forwarded the HPC report to the project proponent and to the Chief Secretary, Andaman and Nicobar Administration for taking appropriate action in the matter.*"
48. It is not for the project proponent ANIIDCO or the Chief Secretary to take appropriate action on the report of the HPC. It is for the MoEF&CC to pass appropriate orders based on the HPC report. It is of no avail that the O.M. states that the recommendations of the report need to be taken note of by the project proponent. Any person aggrieved has a right to challenge an order passed by the MoEF&CC in terms of the EIA and ICRZ Notifications. The MoEF&CC has till date not passed any orders on the HPC report and has merely forwarded the report to the project proponent and the Chief Secretary (who is the officer heading the project proponent ANIIDCO as well). The MoEF&CC's actions are arbitrary, illegal and a clear abdication of responsibilities under the Notifications.

49. This Hon'ble Tribunal sought the MoEF & CC to produce any order passed in this regard vide the order dated 24.03.2025, such an order was never filed. However, on 30.10.2025, while concluding arguments, document was submitted by the learned counsel for the MoEF&CC as the approval / order. A copy of this was shown to the counsel for the Applicants briefly but taken back. A quick look at the document showed that it was a printed copy of the online note sheet of a file maintained by the MoEF&CC. However, this is not an order passed by the MoEF&CC on the conclusion of the "revisiting" exercise.
50. The file noting is not an order passed under the EIA or CRZ Notifications. It is not available in public domain. There is no appeal against a note sheet under the NGT Act, 2010. It is an internal noting of the MoEF&CC and nothing more. This is not an order passed by the MoEF&CC and till date no such order has been passed as a culmination of the "Revisiting" exercise directed by this Hon'ble Tribunal.
51. It is submitted that the direction of this Hon'ble Tribunal in para 33 of the judgment to revisit the clearance in light of the deficiencies pointed out by the Applicant (Appellant therein) has not been complied with.
52. The objective of these Applications is only to seek the enforcement and implementation of the law. To ignore the law and deny the existence of ecologically sensitive areas is neither sustainable development nor legally permissible.
53. Unless this Hon'ble Tribunal directs the exclusion of admitted CRZ IA areas such as coral reefs along the coast, turtle nesting grounds, megapode nesting grounds, biologically active mudflats etc. from the project area, they will be converted and destroyed. The exercise of

revisiting the clearance ought to be conducted in letter and spirit as directed by this Hon'ble Tribunal in its judgment dated 03.04.2023, so that proper studies etc. can be conducted and an informed decision can be taken.

54. The state wears both hats – as regulator and project proponent – in the subject project and the trust reposed by the law should not be abused. In the present case, the 1<sup>st</sup> respondent has abdicated its responsibility as the authority entrusted with the protection of the environment and ecology and has instead chosen to ignore the law. The project can be implemented in accordance with the law – by avoiding ecologically sensitive areas and in a sustainable manner. This cannot be achieved by siting the project in a legally prohibited, impermissible area, suppressing evidence of ESAs like turtle nesting grounds, megapode nesting grounds, coral reefs etc. and by denying even the need to conduct comprehensive EIA studies, a basic mandate of the law.

55. This Hon'ble Court succinctly held in *Indian Council for Enviro-legal Action v Union of India*, (1996) 5 SCC 281:

*"26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law over a period of time is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society."*

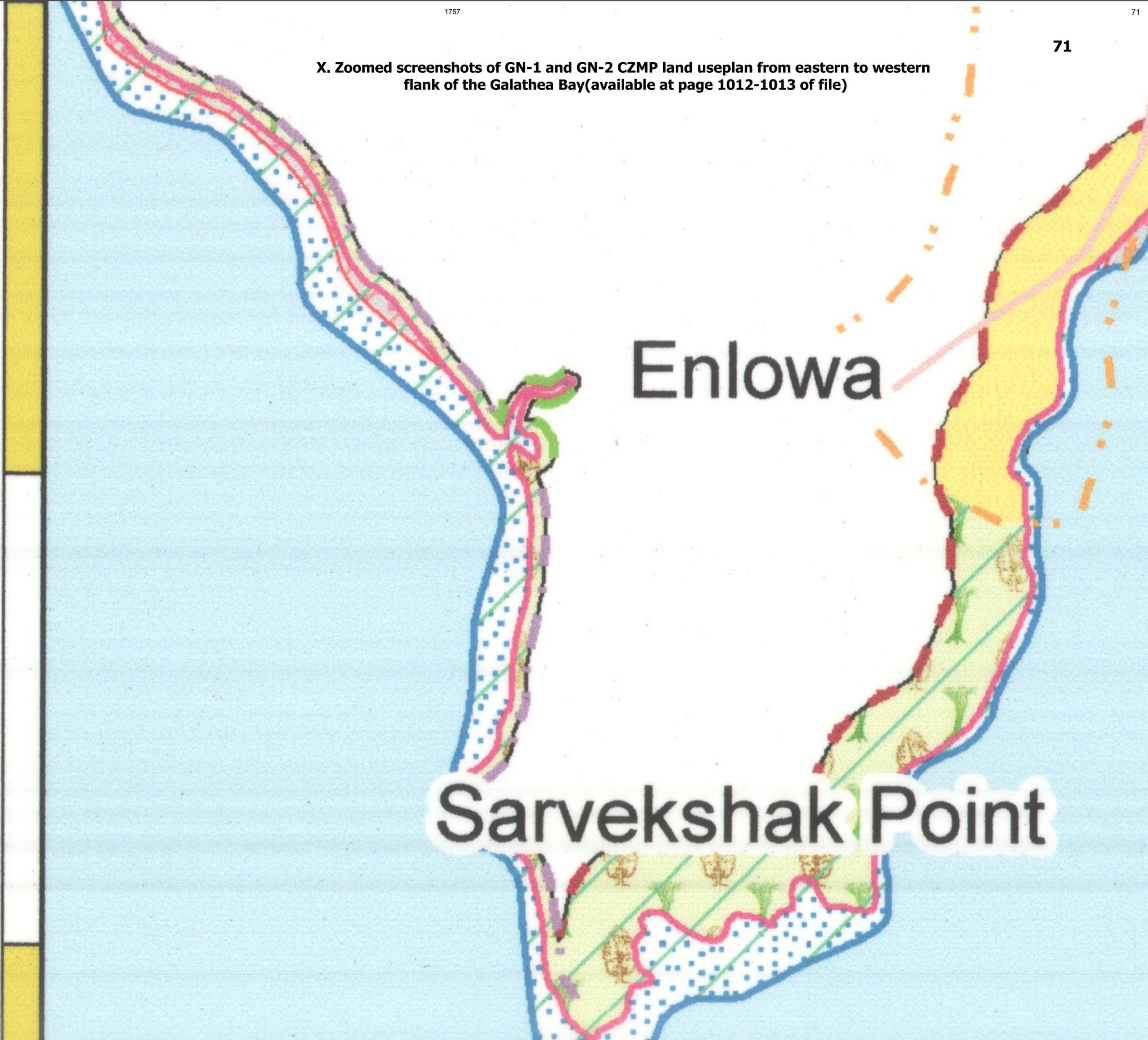
56. The greatest public interest is in ensuring the rule of law. It is therefore prayed that this Hon'ble Tribunal may be pleased to allow the applications as prayed for in the interest of justice.

Dated at Chennai on this the 24<sup>th</sup> day of November, 2025

 (MS 1421/2011)

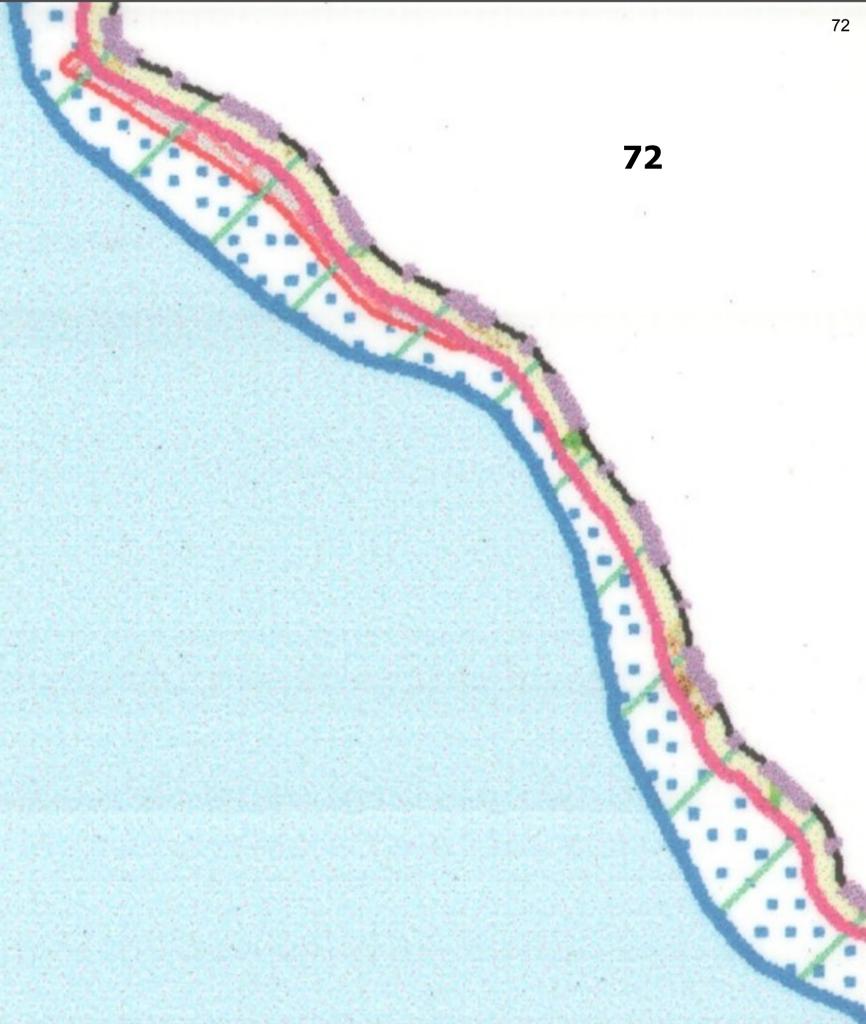
Counsel for Applicant

X. Zoomed screenshots of GN-1 and GN-2 CZMP land useplan from eastern to western flank of the Galathea Bay (available at page 1012-1013 of file)

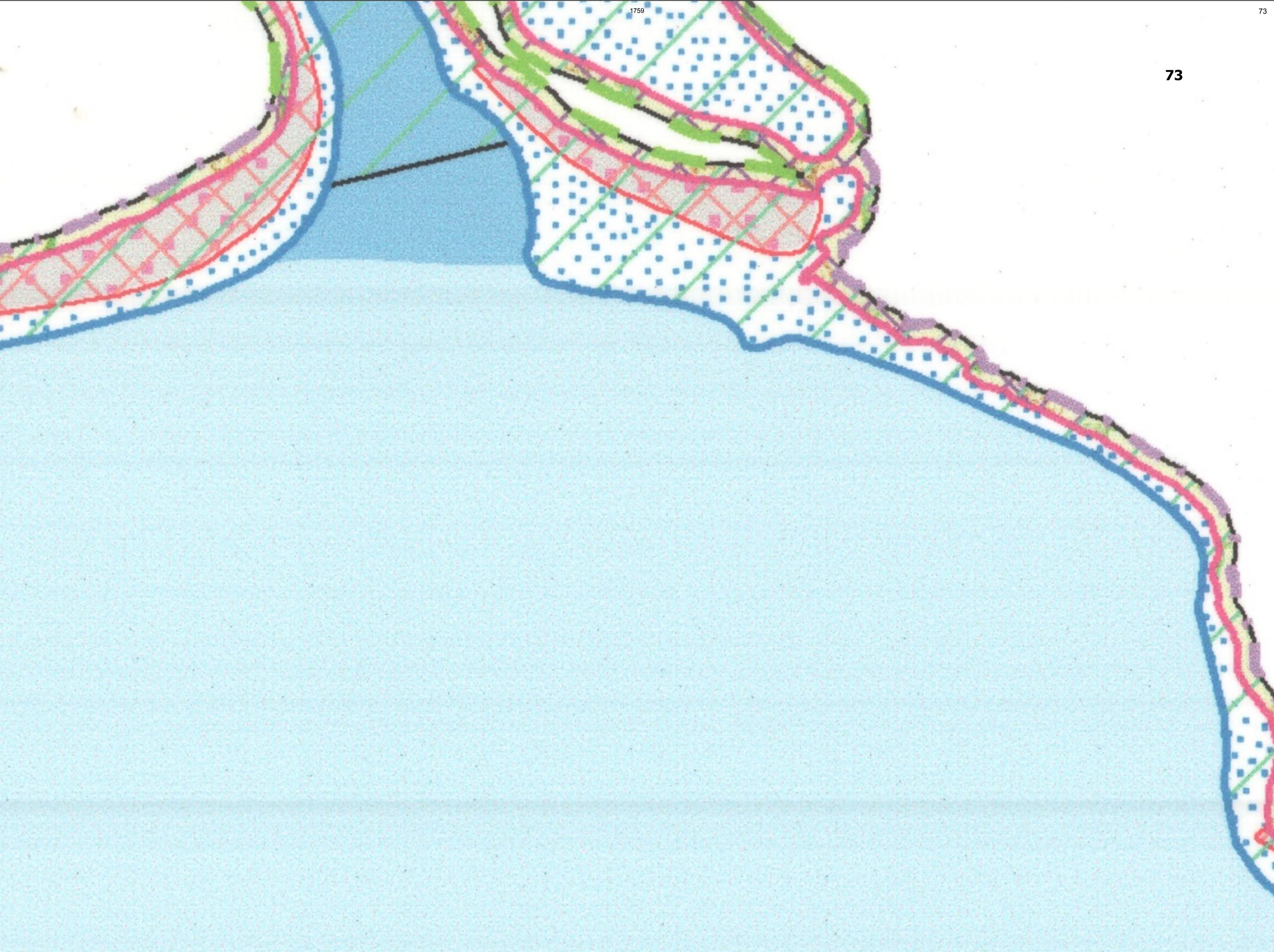


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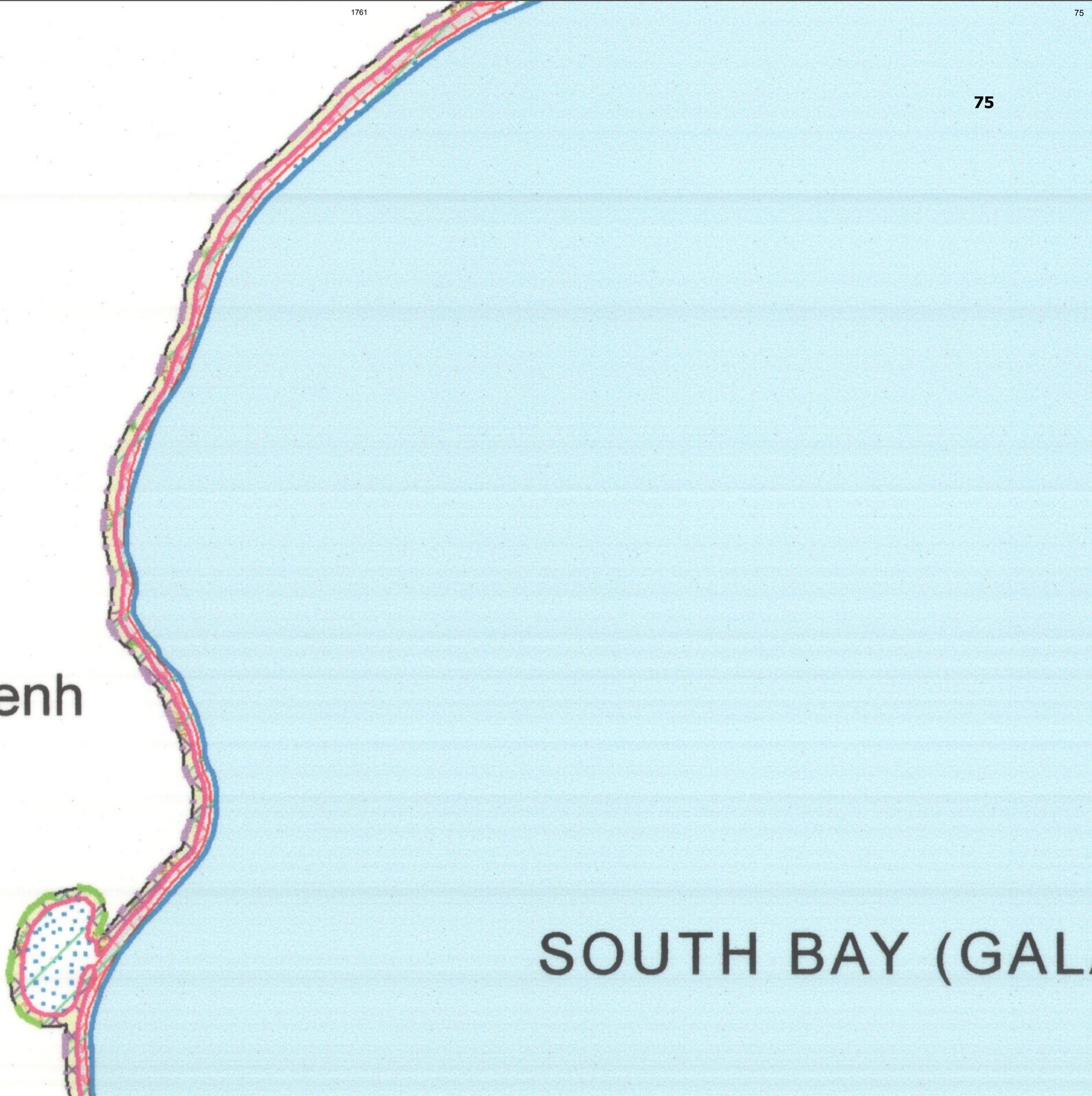




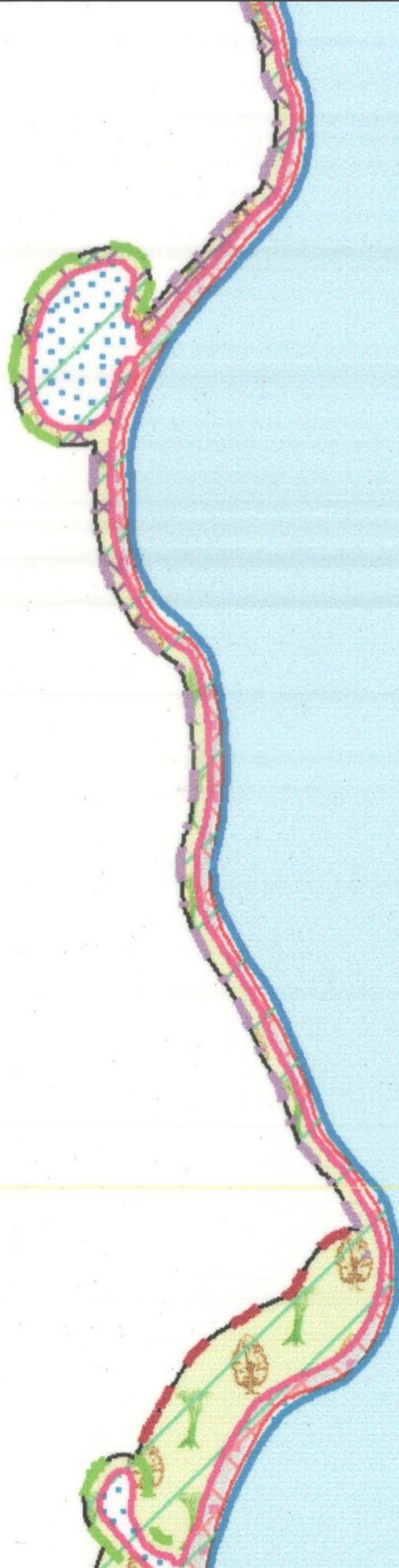
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SOUTH BAY (GAL)



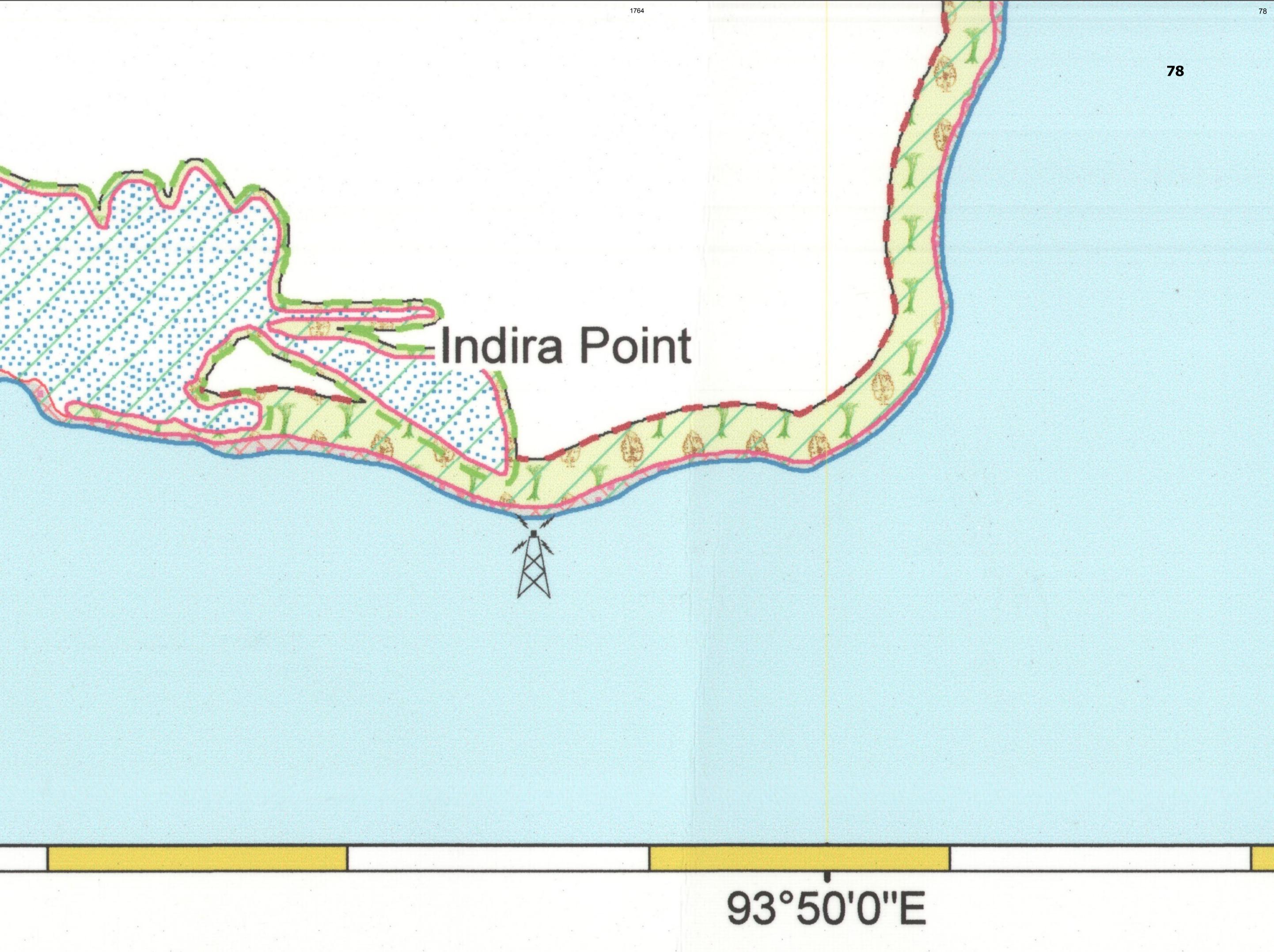
# SOUTH BAY (GAL)



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**Written Submissions filed by the Applicant dated 24.11.2025 in OA No 93 of 2024, OA No 95 of 2024 and MA No 23 of 2024**

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Iraiyambu Prasad <iraiyanbup14@gmail.com>

Mon, Nov 24, 2025 at 2:03 PM

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Respected sir/ma'am,

Please find attached the written submissions filed by the applicant dated 24.11.2025, in the subject mentioned cases. Kindly treat this email as service of the written submissions.

Regards,  
Iraiyambu. P  
On behalf of Yogeshwaran A  
Counsel for Applicant

--  
*Regards,  
Iraiyambu. P  
Advocate,  
Madras High Court*



**Written submissions dated 24.11.2025 in OA 93 & 95 of 2024 and MA 23 of 2024 - .pdf**  
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