

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH, PUNE
OA No.89 of 2020(WZ)

IN THE MATTER OF:
Sama Siddiq Osman

....Applicant

VERSUS

Ministry of Environment, Forest and Climate Change and Ors.
...Respondents

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New Delhi, the 6th January 2011 (As amended upto 22.03.2016)

S.O.19(E).- WHEREAS a draft notification under sub-section (1) of section and clause (V) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 was issued inviting objections and suggestions for the declaration of coastal stretches as Coastal Regulation Zone and imposing restrictions on industries, operations and processes in the CRZ was published vide S.O.No.2291 (E), dated 15th September, 2010.;

AND WHEREAS, copies of the said Gazette were made available to the public on 15th September, 2010.;

AND WHEREAS, the suggestions and objections received from the public have been considered by the Central Government.;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, does hereby, declare the coastal stretches of the country and the water area upto its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands upto its territorial limit, as Coastal Regulation Zone (hereinafter referred to as the CRZ) and restricts the setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances as specified in the Hazardous Substances (Handling, Management and Transboundary Movement) Rules, 2009 in the aforesaid CRZ.; and

In exercise of powers also conferred by clause (d) and sub rule (3) of rule 5 of Environment (Protection) Act, 1986 and in supersession of the notification of the Government of India in the Ministry of Environment and Forests, number S.O.114(E), dated the 19th February, 1991 except as respects things done or omitted to be done before such supersession, the Central Government hereby declares the following areas as CRZ and imposes with effect from the date of the notification the following restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ,-

- (i) the land area from High Tide Line (hereinafter referred to as the HTL) to 500mts on the landward side along the sea front.
- (ii) CRZ shall apply to the land area between HTL to 100 mts or width of the creek whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt) measured during the driest period of the year and distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans (hereinafter referred to as the CZMPs).

Explanation.- For the purposes of this sub-paragraph the expression tidal influenced water bodies means the water bodies influenced by tidal effects from sea, in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds connected to the sea or creeks and the like.

- (iii) the land area falling between the hazard line and 500mts from HTL on the landward side, in case of seafront and between the hazard line and 100mts line in case of tidal influenced water body the word 'hazard line' denotes the line demarcated by Ministry of Environment and Forests (hereinafter referred to as the MoEF) through the Survey of India (hereinafter referred to as the SoI) taking into account tides, waves, sea level rise and shoreline changes.
- (iv) land area between HTL and Low Tide Line (hereinafter referred to as the LTL) which will be termed as the intertidal zone.
- (v) the water and the bed area between the LTL to the territorial water limit (12 Nm) in case of sea and the water and the bed area between LTL at the bank to the LTL on the opposite side of the bank, of tidal influenced water bodies.

2. For the purposes of this notification, the HTL means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority(s) so authorized by the MoEF in accordance with the general guidelines issued at Annexure-I. HTL shall be demarcated within one year from the date of issue of this notification.

3. Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ,-

- (i) Setting up of new industries and expansion of existing industries except,-
 - (a) those directly related to waterfront or directly needing foreshore facilities;

Explanation: The expression "foreshore facilities" means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations and the like.;

- (b) projects of Department of Atomic Energy;
- (c) facilities for generating power by non-conventional energy sources and setting up of desalination plants in the areas not classified as CRZ-I(i) based on an impact assessment study including social impacts.;
- (d) development of green field Airport already permitted only at Navi Mumbai;
- (e) reconstruction, repair works of dwelling units of local communities [**especially**]*¹ [**fisher folk**]*² in accordance with local town and country planning regulations.
- (ii) manufacture or handling oil storage or disposal of hazardous substance as specified in the notification of Ministry of Environment and Forests, No. S.O.594 (E), dated the 28th July 1989, S.O.No.966(E), dated the 27th November, 1989 and GSR 1037 (E), dated the 5

*1 and *2 - Substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

December, 1989 except,-

- (a) transfer of hazardous substances from ships to ports, terminals and refineries and vice versa;
- (b) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas (hereinafter referred to as the LNG) in the areas not classified as [CRZ- I (A)]*³ subject to implementation of safety regulations including guidelines issued by the Oil Industry Safety Directorate in the Ministry of Petroleum and Natural Gas and guidelines issued by MoEF and subject to further terms and conditions for implementation of ameliorative and restorative measures in relation to environment as may be stipulated by in MoEF.

Provided that facilities for receipt and storage of fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid and the like, shall be permitted within the said zone in the areas not classified as [CRZ-I (A)]*⁴.

- (iii) Setting up and expansion of fish processing units including warehousing except hatchery and natural fish drying in permitted areas:
- (iv) Land reclamation, bunding or disturbing the natural course of seawater except those,-
 - (a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;
 - (b) measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies
 - (c) maintenance or clearing of waterways, channels and ports, based on EIA studies;
 - (d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF.
- (v) Setting up and expansion of units or mechanism for disposal of wastes and effluents except facilities required for,-
 - (a) discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
 - (b) storm water drains and ancillary structures for pumping;
 - (c) treatment of waste and effluents arising from hotels, beach resorts and human settlements located in CRZ areas other than CRZ-I and disposal of treated wastes and effluents;
- (vi) Discharge of untreated waste and effluents from industries, cities or towns and other human settlements. The concerned authorities shall implement schemes for phasing out existing discharge of this nature, if any, within a time period not exceeding two years from the date of issue of this notification.
- (vii) Dumping of city or town wastes including construction debris, industrial solid wastes, fly

*3 and *4 - Substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

ash for the purpose of land filling and the like and the concerned authority shall implement schemes for phasing out any existing practice, [**within a period of one year**]*⁵ from date of commencement of this notification.

Note:-The MoEF will issue a separate instruction to the State Governments and Union territory Administration in respect of preparation of Action Plans and their implementation as also monitoring including the time schedule thereof, in respect of paras (v), (vi) and (vii).

- (viii) Port and harbour projects in high eroding stretches of the coast, except those projects classified as strategic and defence related in terms of EIA notification, 2006 identified by MoEF based on scientific studies and in consultation with the State Government or the Union territory Administration.
- (ix) Reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities [**except for construction of memorials/ monuments and allied facilities, only in CRZ-IV (A) areas in exceptional cases, by the concerned State Government, on case to case basis;**]*⁴¹
- (x) Mining of sand, rocks and other sub-strata materials except,-
 - (a) those (**rare**)*⁶ ^{deleted} minerals not available outside the CRZ area [**and collection of dead shells by the traditional communities for poultry and animal feed supplements**]*⁷.
 - (b) exploration and exploitation of Oil and Natural Gas.
- (xi) Drawl of groundwater and construction related thereto, within 200mts of HTL; except the following:-
 - (a) in the areas which are inhabited by the local communities and only for their use.
 - (b) In the area between 200mts-500mts zone the drawl of groundwater shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries and where no other source of water is available.

Note:-Restrictions for such drawl may be imposed by the Authority designated by the State Government and Union territory Administration in the areas affected by sea water intrusion.
- (xii) Construction activities in CRZ-I except those specified in para 8 of this notification.
- (xiii) Dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purpose [**except utilizing the rocks / hills/ natural features, only in CRZ-IV (A) areas, for development of memorials / monuments and allied facilities, by the concerned State Government**]*⁴²
- (xiv) [**Except**]*⁸ Facilities required for patrolling and vigilance activities of marine/coastal police stations. ;

4. Regulation of permissible activities in CRZ area.- The following activities shall be regulated except those prohibited in para 3 above,-

- (i)(a) clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities;
- (b) for those projects which are listed under this notification and also attract EIA notification, 2006 (S.O.1533 (E), dated the 14th September, 2006), for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority (hereinafter referred to as the CZMA).
- (c) Housing schemes in CRZ as specified in paragraph 8 of this notification;

*5 and *7 - Substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

*6 – deleted vide Corrigendum S.O.651(E) dated 29.03.2011.

*8 – inserted vide Corrigendum S.O.651(E) dated 29.03.2011.

*41, *42 – inserted vide notification S.O. 556 (E) dated 17.02.2015.

- (d) Construction involving more than 20,000sq mts built-up area in CRZ-II shall be considered **[for approval]*³⁵** in accordance with EIA notification, 2006 **[however, for]*⁹** projects less than 20,000sq mts built-up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendations from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.
- (e) MoEF may under a specific or general order specify projects which require prior public hearing of project affected people.
- (f) construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures **[and salt works]*³⁶**;
- (ii) the following activities shall require clearance from MoEF, **[after being recommended by the concerned CZMA]*³⁷** namely:-
- (a) **[those activities listed under category ‘A’ in the EIA notification, 2006 and permissible under the notification:]*³⁸**
- (b) construction activities relating to projects of Department of Atomic Energy or Defence requirements for which foreshore facilities are essential such as, slipways, jetties, wharves, quays; except for classified operational component of defence projects. Residential buildings, office buildings, hospital complexes, workshops of strategic and defence projects in terms of EIA notification, 2006.;
- (c) construction, operation of lighthouses;
- (d) laying of pipelines, conveying systems, transmission line;
- (e) exploration and extraction of oil and natural gas and all associated activities and facilities thereto;
- (f) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater or cooling water from thermal power plants. MoEF may specify for category of projects such as at (f), (g) and (h) of para 4;
- (g) Mining of rare minerals as listed by the Department of Atomic Energy;
- (h) Facilities for generating power by non-conventional energy resources, desalination plants and weather radars;
- (i) Demolition and reconstruction of (a) buildings of archaeological and historical importance, **[(b)]*¹⁰** heritage buildings; and buildings under public use which means buildings such as for the purposes of worship, education, medical care and cultural activities;

*9 and *10 - Substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

*35, *36 and *37 – inserted vide notification S.O. 3085 (E) dated 28th November, 2014.

*38 – substituted vide notification S.O. 3085 (E) dated 28th November, 2014.

(j) [construction of memorials/ monuments and allied facilities by the concerned State Government in CRZ-IV (A) areas in exceptional cases, with adequate environmental safeguards, subject to the following, namely:-

(A) The concerned State Government shall submit justification for locating the project in CRZ area along with details of alternate sites considered and weightage matrix on various parameters including environmental parameters to State CZMA who will examine the project and make recommendation to the Central Government (MoEF) for grant of Terms of Reference (ToRs) for preparation of an environmental impact assessment report by the State Government;

(B) on grant of ToRs by the Central Government, the concerned State Government shall submit the draft Environmental Impact Assessment report (EIA) with Environmental Management Plan (EMP), draft Risk Assessment Report with Disaster Management Plan (DMP) including on-site and off-site emergency plan and evacuation plan during emergency, to the State Pollution Board for conduct of public hearing for the proposed project in accordance with the procedure laid down under the Environment Impact Assessment notification;

(C) (C) The concerned State Government shall submit final EIA, EMP, Risk Assessment and DMP after addressing the relevant issues raised by the public during the public hearing, to State CZMA for their examination and recommendation to MoEF.

Note: Construction of memorials / monuments would generally discouraged in CRZ-IV areas and the same would be allowed only in exceptional cases with adequate environmental safeguards.]^{*43}

]

4.2 Procedure for clearance of permissible activities.- All projects attracting this notification shall be considered for CRZ clearance as per the following procedure, namely:-

(i) The project proponents shall apply with the following documents seeking prior clearance under CRZ notification to the concerned State or the Union territory Coastal Zone Management Authority,-

(a) Form-1 (Annexure-IV of the notification);

(b) Rapid EIA Report including marine and terrestrial component except for construction projects listed under 4(c) and (d)

(c) Comprehensive EIA with cumulative studies for projects in the stretches classified as low and medium eroding by MoEF based on scientific studies and in consultation with the State Governments and Union territory Administration;

(d) Disaster Management Report, Risk Assessment Report and Management Plan;

(e) CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) in 1:4000 scale;

(f) Project layout superimposed on the above map indicated at (e) above;

*43 – inserted vide notification S.O. 556 (E) dated 17.02.2015.

- (g) The CRZ map normally covering 7km radius around the project site.
- (h) The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas;
- (i) No Objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the projects involving discharge of effluents, solid wastes, sewage and the like.;
- (ii) The concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations within a period of sixty days from date of receipt of complete application,-
 - (a) MoEF or State Environmental Impact Assessment Authority (hereinafter referred to as the SEIAA) as the case may be for the project attracting EIA notification, 2006;
 - (b) MoEF for the projects not covered in the EIA notification, 2006 but attracting para 4(ii) of the CRZ notification;
- [(c) SEIAA, for the projects specified under paragraph 4 (i) (except with respect to item (d) thereof relating to building projects with less than 20,000 sq.mts of built up area) and for the projects not attracting EIA Notification 2006]*³⁹**

(iii) MoEF or SEIAA shall consider such projects for clearance based on the recommendations of the concerned CZMA within a period of sixty days.

[(iv)]*¹¹ The clearance accorded to the projects under the CRZ notification shall be valid for the period of five years from the date of issue of the clearance for commencement of construction and operation.

(v) For Post clearance monitoring – (a) it shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated terms and conditions of the environmental clearance in hard and soft copies to the regulatory authority(s) concerned, on 1st June and 31st December of each calendar year and all such compliance reports submitted by the project proponent shall be published in public domain and its copies shall be given to any person on application to the concerned CZMA.

(b) the compliance report shall also be displayed on the website of the concerned regulatory authority.

(vi) To maintain transparency in the working of the CZMAs it shall be the responsibility of the CZMA to create a dedicated website and post the agenda, minutes, decisions taken, clearance letters, violations, action taken on the violations and court matters including the Orders of the Hon'ble Court as also the approved CZMPs of the respective State Government or Union territory.

5. Preparation of Coastal Zone Management Plans.

- (i) The MoEF may obtain the CZMPs prepared through the respective State Government or Union territory;
- (ii) The CZMPs may be prepared by the coastal State Government or Union territory by engaging reputed and experienced scientific institution(s) or the agencies including the National Centre for Sustainable Coastal Management (hereinafter referred to as the NCSCM) of MoEF and in consultation with the concerned stakeholders;
- (iii) The hazard line shall be mapped by MoEF through SoI all along the coastline of the country and the hazard line shall be demarcated taking into account, tide, waves, sea level

*11 - Substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

*39 - substituted vide notification S.O. 3085 (E) dated 28th November, 2014.

rise and shoreline changes;

- (iv) For the purpose of depicting the flooding due to tides, waves and sea level rise in the next fifty and hundred years, the contour mapping of the coastline shall be carried out at 0.5m interval normally upto 7km from HTL on the landward side, and the shoreline changes shall be demarcated based on historical data by comparing the previous satellite imageries with the recent satellite imageries;
- (v) Mapping of the hazard line shall be carried out in 1:25,000 scale for macro level planning and 1:10,000 scale or cadastral scale for micro level mapping and the hazard line shall be taken into consideration while preparing the land use plan of the coastal areas;
- (vi) The coastal States and Union Territory will prepare within a period of twenty four months from the date of issue this notification, draft CZMPs in 1:25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-I of the notification, which involve public consultation;
- (vii) The draft CZMPs shall be submitted by the State Government or Union territory to the concerned CZMA for appraisal, including appropriate consultations, and recommendations in accordance with the procedure(s) laid down in the Environment (Protection) Act, 1986;
- (viii) **[The Coastal Zone Management Authority of a State or of a Union Territory shall submit the draft Coastal Zone Management Plan along with its recommendations to the Ministry of Environment, Forest and Climate Change, after incorporating the suggestions and objections received from the stakeholders] *44**
- (ix) MoEF shall thereafter consider and approve the CZMPs within a period of four months from the date of receipt of the CZMPs complete in all respects;
- (x) All developmental activities listed in this notification shall be regulated by the State Government, Union Territory Administration, the local authority or the concerned CZMA within the framework of such approved CZMPs as the case may be in accordance with provisions of this notification;
- (xi) The CZMPs shall not normally be revised before a period of five years after which, the concerned State Government or the Union territory may consider undertaking revision of the maps following the above procedures;
- (xii) **[The Coastal Zone Management Plans as already approved by the Ministry of Environment and Forests shall be valid up to the 31st day of January, 2017 or till such time as the approval is given by that Ministry to the fresh Coastal Zone Management Plans made under the said notification, whichever is earlier.]*45**

6. Enforcement of the CRZ, notification, 2011-

- (a) For the purpose of implementation and enforcement of the provisions **[of]*12** this notification and compliance with conditions stipulated thereunder, the powers either original or delegated are available under Environment (Protection) Act, 1986 with the MoEF, State Government[s]*13 or the Union territory Administration[s]*14 NCZMA and SCZMA s;
- (b) The composition, tenure and mandate of NCZMA and State Government or the Union territory CZMA s have already been notified by MoEF in terms of Orders of Hon'ble

*12, *13 and *14 - Inserted vide Corrigendum S.O.651(E) dated 29.03.2011.

*44 and *45*46 - Substituted vide Corrigendum S.O. 938(E) dated 31.03.2015 & 1212 (E) dated 22.03.2016.

Supreme Court in Writ Petition 664 of 1993;

- (c) the State Government or the Union territory CZMAs shall primarily be responsible for enforcing and monitoring of this notification and to assist in this task, the State Government and the Union territory shall constitute district level Committees under the Chairmanship of the District Magistrate concerned containing atleast three representatives of local traditional coastal communities [**especially**]*¹⁵ from fisherfolk;
- (d) The dwelling units of the traditional coastal communities [**especially**]*¹⁶ fisherfolk, tribals as were permissible under the provisions of the CRZ notification, 1991, but which have not obtained formal approval from concerned authorities under the aforesaid notification shall be considered by the respective Union territory CZMAs and the dwelling units shall be regularized subject to the following condition, namely-
- (i) these are not used for any commercial activity
 - (ii) these are not sold or transferred to non-traditional coastal community.

7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

(i) CRZ-I,-

A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-

- (a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50meters along the mangroves shall be provided;
- (b) Corals and coral reefs and associated biodiversity;
- (c) Sand Dunes;
- (d) Mudflats which are biologically active;
- (e) National parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life (Protection) Act, 1972 (53 of 1972), the Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986); including Biosphere Reserve [**as enumerated in para V(4)(b)]***¹⁷
- (f) Salt Marshes;
- (g) Turtle nesting grounds;
- (h) Horse shoe crabs habitats;
- (i) Sea grass beds;
- (j) Nesting grounds of birds;
- (k) Areas or structures of archaeological importance and heritage sites.

B. The area between Low Tide Line and High Tide Line;

(ii) CRZ-II,-

The areas that have been developed upto or close to the shoreline.

Explanation.- [**For the purposes of the**]*¹⁸ ~~deleted~~ expression “developed area” is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains;

*15 and *16 - substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

*17 - Inserted vide Corrigendum S.O.651(E) dated 29.03.2011.

*18 – deleted vide Corrigendum S.O.651(E) dated 29.03.2011.

(iii) CRZ-III,-

Areas that are relatively undisturbed and those do not belong to either CRZ-I or II which include coastal zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas, which are not substantially built up.

(iv.) CRZ-IV,-

A. the water area from the Low Tide Line to twelve nautical miles on the seaward side;

B. shall include the water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand during the driest season of the year.

(v) Areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by local communities,-

- A. (i) CRZ area falling within municipal limits of Greater Mumbai;
 (ii) the CRZ areas of Kerala including the backwaters and backwater islands;
 (iii) CRZ areas of Goa.

B. Critically Vulnerable Coastal Areas (CVCA) such as Sunderbans region of West Bengal and other ecologically sensitive areas identified as under Environment (Protection) Act, 1986 and managed with the involvement of coastal communities including fisherfolk.

8. Norms for regulation of activities permissible under this notification,-

- (i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-

Note:- **{The word [existing, used]*¹⁹ hereinafter in relation to existence of various features or existence of regularisation or norms shall mean existence of these features or regularisation or norms as on 19.2.1991 [when the CRZ notification, 1991]*²⁰ was notified.}** ^{*46} ~~{deleted}~~

I. CRZ-I,-

- (i) no new construction shall be permitted in CRZ-I except,-

- (a) projects relating to Department of Atomic Energy;
 (b) pipelines, conveying systems including transmission lines;
 (c) facilities that are essential for activities permissible under CRZ-I;
 (d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;
 (e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.
 (f) development of green field airport already approved at only Navi Mumbai;

- (ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-

*19 and *20 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

*46 – deleted vide notification S.O. 1599 (E) dated 16th June 2015.

- (a) exploration and extraction of natural gas;
- (b) construction of dispensaries, schools, public rainshelter, community toilets, bridges, roads, jetties, [erosion control measures]*⁴⁰ water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere reserves after obtaining approval from concerned CZMA.
- (c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;
- (d) salt harvesting by solar evaporation of seawater; (e) desalination plants;
- (f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;
- (g) construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water.

II. CRZ-II,-

- (i) buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;
- (ii) **[buildings permitted on the landward side of the existing and proposed roads or existing authorised structures shall be subject to the existing local town and country planning regulations as modified from time to time, except the Floor Space Index or Floor Area Ratio, which shall be as per 1991 level :
Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road :
Provided further that the construction in CRZ-II area of Goa, Kerala and Mumbai shall be governed by the provisions of Clause V of paragraph 8.]***⁴⁷
- (iii) reconstruction of authorized building to be permitted subject with the existing FloorSpace Index or Floor Area Ratio Norms and without change in present use;
- (iv) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas subject to the conditions as mentioned in sub-paragraph (ii) of paragraph 3;
- (v) desalination plants and associated facilities;
- (vi) storage of non-hazardous cargo, such as edible oil, fertilizers and food grain in notified ports;
- (vii) facilities for generating power by non-conventional power sources and associated facilities;

III. CRZ-III,-

A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as “No Development Zone (NDZ)”,-

- (i) the NDZ shall not be applicable in such area falling within any notified port limits;
- (ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification **[especially]***²¹ facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities **[especially]***²² fisherfolk and

*21 and *22 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

*40 – inserted vide notification S.O. 3085 (E) dated 28th November, 2014.

*47 – substituted vide notification S.O. 1599 (E) dated 16th June 2015.

incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF;

(iii) however, the following activities may be permitted in NDZ –

- (a) agriculture, horticulture, gardens, pasture, parks, play field, and forestry;
- (b) projects relating to Department of Atomic Energy;
- (c) mining of rare minerals;
- (d) salt manufacture from seawater;
- (e) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II;
- (f) facilities for regasification of liquefied natural gas subject to conditions as mentioned in subparagraph (ii) of paragraph 3;
- (g) facilities for generating power by non conventional energy sources;
- (h) Foreshore facilities for desalination plants and associated facilities;
- (i) weather radars;
- (j) construction of dispensaries, schools, public rain shelter, community toilets, bridges, roads, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station which are required for the local inhabitants may be permitted on a case to case basis by CZMA;
- (k) construction of units or auxiliary thereto for domestic sewage, treatment and disposal with the prior approval of the concerned Pollution Control Board or Committee;
- (l) facilities required for local fishing communities such as fish drying yards, auction halls, net mending yards, traditional boat building yards, ice plant, ice crushing units, fish curing facilities and the like;
- (m) development of green field airport already permitted only at Navi Mumbai.

B. Area between 200mts to 500mts,-

The following activities shall be permissible in the above areas;

- (i) development of vacant plot in designated areas for construction of hotels or beach resorts for tourists or visitors subject to the conditions as specified in the guidelines at Annexure-III ;
- (ii) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II;
- (iii) facilities for regasification of liquefied natural gas subject to conditions as mentioned in sub-paragraph (ii) of paragraph 3;
- (iv) storage of non-hazardous cargo such as, edible oil, fertilizers, food grain in notified ports;
- (v) foreshore facilities for desalination plants and associated facilities;
- (vi) facilities for generating power by non-conventional energy sources;
- (vii) construction or reconstruction of dwelling units so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and goathans. Building permission for such construction or reconstruction will be subject to local town and country planning rules with overall height of construction not exceeding 9mts with two floors (ground + one floor);
- (viii) Construction of public rain shelters, community toilets, water supply drainage, sewerage, roads and bridges by CZMA who may also permit construction of

schools and dispensaries for local inhabitants of the area for those panchayats, the major part of which falls within CRZ if no other area is available for construction of such facilities;

- (ix) reconstruction or alteration of existing authorised building subject to sub-paragraph (vii), (viii);
- (x) development of green field airport already permitted only at Navi Mumbai.

(IV) In CRZ-IV areas,-

The activities [**impinging**]*²³ on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities as follows:-

- (a) No untreated sewage, effluents, ballast water, ship washes, fly ash or solid waste from all activities including from aquaculture operations shall be let off or dumped. A comprehensive plan for treatment of sewage generating from the coastal towns and cities shall be formulated within a period of one year in consultation with stakeholders including traditional coastal communities, traditional fisherfolk and implemented;
- (b) Pollution from oil and gas exploration and drilling, mining, boat house and shipping;
- (c) There shall be no restriction on the traditional fishing and allied activities undertaken by local communities.

V. Areas requiring special consideration,-

1. CRZ areas falling within municipal limits of the Greater Mumbai.

- (i) Developmental activities in the CRZ area of the Greater Mumbai because of the environmental issues, relating to degradation of mangroves, pollution of creeks and coastal waters, due to discharge of untreated effluents and disposal of solid waste, the need to provide decent housing to the poor section of society and lack of suitable alternatives in the inter connected islands of Greater Mumbai shall be regulated as follows, namely:-

A. Construction of roads - In CRZ-I areas indicated at sub-paragraph (i) of paragraph 7 of the notification the following activities only can be taken up:-

- (a) Construction of roads, approach roads and missing link roads approved in the Developmental Plan of Greater Mumbai on stilts ensuring that the free flow of tidal water is not affected, without any benefit of CRZ-II accruing on the landward side of such constructed roads or approach roads subject to the following conditions:-
 - (i) All mangrove areas shall be mapped and notified as protected forest and necessary protection and conservation measures for the identified mangrove areas shall be initiated.
 - (ii) Five times the number of mangroves destroyed/cut during the construction process shall be replanted.

B. Solid waste disposal sites shall be identified outside the CRZ area and thereafter within two years the existing conventional solid waste sites shall be relocated outside the CRZ area.

[(ii)]*²⁴ In CRZ-II areas-

- (a) The development or redevelopment shall continue to be undertaken in accordance with the norms laid down in the Town and Country Planning Regulations as they existed on the date of issue of the notification dated the 19th February, 1991, unless specified

*23 and *24 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

otherwise in this notification.

(b) SLUM REHABILITATION SCHEMES,-

1. In the Greater Mumbai area there are large slum clusters with lakhs of families residing therein and the living conditions in these slums are deplorable and the civic agencies are not able to provide basic infrastructure such as drinking water, electricity, roads, drainage and the like because the slums come up in an unplanned and congested manner and the slums in the coastal area are at great risk in the event of cyclones, storm surges or tsunamis, in view of the difficulties in providing rescue, relief and evacuation.
2. To provide a safe and decent dwelling to the slum dwellers, the State Government may implement slum redevelopment schemes as identified as on the date of issue of this notification directly or through its parastatal agencies like Maharashtra Housing and Area Development Authority (MHADA), Shivshahi Punarvasan Prakalp Limited (SPPL), Mumbai Metropolitan Region Development Authority (MMRDA) and the like.:

Provided that,-

- (i) such redevelopment schemes shall be undertaken directly or through joint ventures or through public private partnerships or other similar models ensuring that the stake of the State Government or its parastatal entities shall be not less than 51%;
- (ii) the Floor Space Index or Floor Area Ratio for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on [6th January, 2011]*²⁵
- (iii) it shall be the duty of the project proponent undertaking the redevelopment through conditions (i) (2) above along with the State Government to ensure that all legally regularized tenants are provided houses in situ or as per norms laid down by the State Government in this regard.

(c) REDEVELOPMENT OF DILAPIDATED, CESSSED AND UNSAFE BUILDINGS:

1. In the Greater Mumbai, there are, also a large number of old and dilapidated, cessed and unsafe buildings in the CRZ areas and due to their age these structures are extremely vulnerable and disaster prone and therefore there is an urgent need for the redevelopment or reconstruction of these identified buildings.
2. These projects shall be taken up subject to the following conditions and safeguards:
 - (i) such redevelopment or reconstruction projects as identified on the date of issue of this notification shall be allowed to be taken up involving the owners of these buildings either above or with private developers in accordance with the prevailing Regulation, directly or through joint ventures or through other similar models.
 - (ii) the Floor Space Index or Floor Area Ratio for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on [6th January, 2011]*²⁶
 - (iii) suitable accommodation to the original tenants of the specified buildings shall be

*25 and *26 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

ensured during the course of redevelopment or reconstruction of the buildings by the project proponents, undertaking the redevelopment through condition 2(i) above.

- (d) Notwithstanding anything contained in this notification, the developmental activities for slums and for dilapidated, cessed and unsafe buildings as specified at paras (b) and (c) above shall be carried out in an accountable and transparent manner by the project proponents mentioned therein which shall include the following pre-condition measures, wherever applicable;-
1. (i) applicability of the Right to Information Act, 2005 to all redevelopment or reconstruction projects granted clearance by the Competent Authorities;
 - (ii) MoEF shall issue an order constituting the CPIO and the first Appellate Authority of appropriate ranks in consultation with Government of Maharashtra;
 - (iii) details of the Slum Rehabilitation Scheme, including the complete proposal and the names of the eligible slum dwellers will be declared suo-moto as a requirement of Section 4 of compliance of the Right to Information Act, 2005 by the appropriate authority in the Government of Maharashtra in one month before approving it;
 - (iv) the implementing or executing agency at the State Government with regard to projects indicated at sub-item (b) and (c) of item (iii) of sub-paragraph V shall display on a large notice boards at the site and at the office of the implementing or executing agency the names of the eligible builders, total number of tenements being made, names of eligible slum dwellers who are to be provided the dwelling units and the extra area available for free sale.
 - (v) Projects being developed under sub-items (b) and (c) of item (iii) of sub-paragraph V shall be given permission only if the project proponent agree to be covered under the Right to Information Act, 2005.
2. MoEF may appoint statutory auditors, who are empanelled by the Comptroller and auditor General (hereinafter referred to as the C&AG) to undertake performance and fiscal audit in respect of the projects relating to redevelopment of dilapidated, cessed and unsafe buildings and the projects relating to Slum Rehabilitation Scheme shall be audited by C&AG.
 3. A High Level Oversight Committee may be set up by the Government of Maharashtra for periodic review of implementation of V(iii)(b) and (c) which shall include eminent representatives of various Stakeholders, like Architects, Urban Planner, Engineers, and Civil Society, besides the local urban bodies, the State Government and the Central Government.
 4. The individual projects under V(iii)(b) and (c) shall be undertaken only after public consultation in which views of only the legally entitled slum dweller or the legally entitled tenant of the dilapidated or cessed buildings shall be obtained in accordance with the procedures laid down in EIA notification, 2006.
- (e) In order to protect and preserve the 'green lung' of the Greater Mumbai area, all open spaces, parks, gardens, playgrounds indicated in development plans within CRZ-II shall be categorized as CRZ-III, that is, 'no development zone'.
- (f) the Floor Space Index upto 15% shall be allowed only for construction of civic amenities, stadium and gymnasium meant for recreational or sports related activities and the residential or commercial use of such open spaces shall not be permissible.

- (g) Koliwada namely, fishing settlement areas as identified in the Development Plan of 1981 or relevant records of the Government of Maharashtra, shall be mapped and declared as CRZ-III so that any development, including construction and reconstruction of dwelling units within these settlements shall be undertaken in accordance with applicable as per local Town and Country Planning Regulations.
- (h) Reconstruction and repair works of the dwelling units, belonging to fisher communities and other local communities identified by the State Government, shall be considered and granted permission by the Competent Authorities on a priority basis, in accordance with the applicable Town and Country Planning Regulations.

2. CRZ for Kerala

In view of the unique coastal systems of backwater and backwater islands alongwith space limitation present in the coastal stretches of the State of Kerala, the following activities in CRZ shall be regulated as follows, namely:-

- (i) all the islands in the backwaters of Kerala shall be covered under the CRZ notification;
- (ii) the islands within the backwaters shall have 50mts width from the High Tide Line on the landward side as the CRZ area;
- (iii) within 50mts from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed [**however,**]*²⁷ no new construction shall be permitted;
- (iv) beyond 50mts from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Gram panchayat;
- (v) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like, may be taken up within 50mts width from HTL of these backwater islands.

3. CRZ of Goa.-

In view of the peculiar circumstances of the State Goa including past history and other developments, the specific activities shall be regulated and various measures shall be undertaken as follows:-

- (i) the Government of Goa shall notify the fishing villages wherein all foreshore facilities required for fishing and fishery allied activities such as traditional fish processing yards, boat building or repair yards, net mending yards, ice plants, ice storage, auction hall, jetties may be permitted by [**Gram Panchayat**]*²⁸ in the CRZ area;
- (ii) reconstruction, repair works of the structures of local communities including fishermen community shall be permissible in CRZ;
- (iii) purely temporary and seasonal structures customarily put up between the months of September to May;
- (iv) the eco sensitive low lying areas which are influenced by tidal action known as khazan lands shall be mapped;
- (v) the mangroves along such as khazan land shall be protected and a management plan for the khazan land prepared and no developmental activities shall be permitted in the khazan land;
- (vi) sand dunes, beach stretches along the bays and creeks shall be surveyed and mapped. No activity shall be permitted on such sand dune areas;
- (vii) the beaches such as Mandrem, Morjim, Galgiba and Agonda [**have**]*²⁹ been

*27, *28 and *29 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

designated as turtle nesting sites and protected under the Wildlife Protection Act, 1972 and these areas shall be surveyed and management plan prepared for protection of these turtle nesting sites;

(viii) no developmental activities shall be permitted in the turtle breeding areas referred to in sub-paragraph (vii).

4. (a) Critical Vulnerable Coastal Areas (CVCA) which includes Sunderbans and other identified ecological sensitive areas [**which**]*³⁰ shall be managed with the involvement of the local coastal communities including the fisher folk;-
 - (b) the entire Sunderbans mangrove area and other identified ecologically important areas such as Gulf of Khambhat and Gulf of Kutch in Gujarat, Malvan, [**Achra in Ratnagiri**]*³¹ in Maharashtra, Karwar and Coondapur in Karnataka, Vembanad in Kerala, Gulf of Mannar in Tamil Nadu, Bhitarkanika in Orissa, Coringa, East Godavari and Krishna in Andhra Pradesh shall be declared as Critical Vulnerable Coastal Areas (CVCA) through a process of consultation with local [**fisher folk**]*³² and other communities inhabiting the area and depend on its resources for their livelihood with the objective of promoting conservation and sustainable use of coastal resources and habitats;
 - (c) the process of identifying planning, notifying and implementing CVCA shall be detailed in the guideline which will be developed and notified by MoEF in consultations with the stakeholders like the State Government, local coastal communities and fisherfolk and the like inhabiting the area;
 - (d) the Integrated Management Plans (IMPs) prepared for such CVCA shall inter alia keep in view the conservation and management of mangroves, needs of local communities such as, dispensaries, schools, public rain shelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage and the impact of sea level rise and other natural disasters and the IMPs will be prepared in line with the para 5 above for preparation of Coastal Zone Management Plans;
 - (e) till such time the IMPs are approved and notified, construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants shall be permitted on a case to case basis, by the CZMA with due regards to the views of coastal communities including fisherfolk.

[F.No.11-83/2005-IA-III]
J. M. MAUSKAR, Addl. Secy.

*30, *31 and *32 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

ANNEXURE I**GUIDELINES FOR PREPARATION OF COASTAL ZONE MANAGEMENT PLANS****I. A. Demarcation of High Tide Line**

1. Demarcation of High Tide Line (HTL) and Low Tide Line (LTL) shall be carried out by one of the agencies authorised by MoEF based on the recommendations of the National Centre for Sustainable Coastal Management (NCSCM).
2. Demarcation of the High Tide Line or LTL shall be made on the Coastal Zone Management (CZM) Maps of scale 1:25,000 prepared by the agencies identified by the MoEF.
3. Local level CZM Maps shall be prepared for use of officials of local bodies for determination of the CRZ.
4. The local level CZM Maps shall be prepared on a Cadastral scale in accordance with the CZM Maps approved by the Central Government.

B. Preparation of CZM Maps

5. Base Maps of 1:25,000 scale shall be acquired from the Survey of India (SOI) and wherever 1:25,000 maps are not available, 1:50,000 maps shall be enlarged to 1:25,000 for the purpose of base map preparation and these maps will be of the standard specification given below:

Unit	:	7.5 minutes X 7.5minutes
Numbering	:	Survey of India Sheet Numbering System
Horizontal Datum	:	Everest or WGS 84
Vertical Datum	:	Mean Sea Level (MSL)
Topography	:	Topography in the SOI maps will be updated using latest satellite imageries or aerial photographs
6. The High Water Level (HWL) and Low Water Level (LWL) marked on the Base maps will be transferred to the CZM maps.
7. Coastal geomorphological signatures in the field or satellite imageries or aerial photographs will be used for appropriate adjustment, in the HWL or LWL for demarcating HTL or LTL in accordance with the CRZ notification.
8. The following geomorphological features shall be considered while demarcating in HTL or LTL:
 - Landward (monsoonal) berm crest in the case of sandy beaches
 - Rocks, Headlands, Cliffs
 - Seawalls or revetments or embankments
9. 500 meter and 200 metre lines will be demarcated with respect of HTL.
10. HTL (as defined in the CRZ notification) and LTL shall also be demarcated in the CZM maps along the banks of tidal influenced inland water bodies with the help of the geomorphological signatures or features.
11. Classification of different coastal zones shall be done as per the CRZ notification
12. Standard national or international colour codes shall be used to highlight sub-classification of data.

C. Local level CZM Maps

Local level CZM Maps are for the use of local bodies and other agencies to facilitate implementation of the Coastal Zone Management Plans

13. Cadastral (village) maps in 1:3960 or the nearest scale, shall be used as the base maps.

14. These maps are available with revenue Authorities and are prepared as per standard norms.
15. HTL (as defined in the CRZ notification) and LTL will be demarcated in the cadastral map based on detailed physical verification using coastal geomorphological signatures or features in accordance with the CZM Maps approved by the Central Government.
16. 500metre and 200metre lines shall be demarcated with respect to the HTL thus marked.
17. HTL (as defined in the CRZ notification, 1991) and LTL will also be demarcated along the banks of tidal influenced inland water bodies with the help of geomorphological signatures or features.
18. Classifications shall be transferred into local level CZM maps from the CZM Plans.
19. Symbols will be adopted from CZM Maps.
20. Colour codes as given in CZM Maps shall be used.
21. Demarcation of cadastral maps will be done by local agencies approved by the Central Government. The local agencies shall work under the guidance of the concerned State Government or Union Territory Coastal Zone Management Authorities.

D. Hazard mapping:-

II. Classification of CRZ areas

1. The CZM Maps shall be prepared in accordance with para 5 of the CRZ notification demarcating CRZ I, II, III, IV and V.
2. The CZM Maps shall clearly demarcate the land use plan of the area and lists out the CRZ-I areas. All the CRZ-I areas listed under para 7(I)A and B shall be clearly demarcated and colour codes given so that each of the CRZ-I areas can be clearly identified.
3. Buffer zone along mangrove areas of more than 1000sq mts shall be stipulated with a different colour distinguishing from the mangrove area.
4. The buffer zone shall also be classified as CRZ-I area.
5. The hazard line to be drawn up by MoEF shall be superimposed on the CZM maps in 1:25,000 scale and also on the cadastral scale maps.
6. The CRZ-II areas shall be those areas which have been substantially built-up with a ratio of built-up plots to that of total plots is more than 50%.
7. In the CRZ areas, the fishing villages, common properties of the fishermen communities, fishing jetties, ice plants, fish drying platforms or areas infrastructure facilities of fishing and local communities such as dispensaries, roads, schools, and the like, shall be indicated on the cadastral scale maps. States shall prepare detailed plans for long term housing needs of coastal fisher communities in view of expansion and other needs, provisions of basic services including sanitation, safety, and disaster preparedness.
8. No developmental activities other than those listed above shall be permitted in the areas between the hazard line and 500mts or 100mts or width of the creek on the landward side. The dwelling unit of the local communities including that of the fishers will not be relocated if the dwelling units are located on the seaward side of the hazard line. The State Government will provide necessary safeguards from natural disaster to such dwelling units of local communities.
9. The water areas of CRZ IV shall be demarcated and clearly demarcated if the water body is sea, lagoon, backwater, creek, bay, estuary and for such classification of the water bodies the terminology used by Naval Hydrographic Office shall be relied upon.
10. The fishing Zones in the water bodies and the fish breeding areas shall be clearly marked.
11. The water area shall be demarcated indicating the pollution levels as per Central Pollution Control Board standards on water quality.
12. In the CRZ V areas the land use maps shall be superimposed on the Coastal Zone Management Plan and clearly demarcating the CRZ I, II, III, IV.
13. The existing authorized developments on the sea ward side shall be clearly demarcated.

14. The features like cyclone shelters, rain shelters, helipads and other infrastructure including road network may be clearly indicated on the CZM Maps for the purpose of rescue and relief operations during cyclones, storms, tsunami and the like.

III. CZMPs approved by MoEF in accordance with CRZ notification, 1991

1. While preparing the CZMPs under CRZ notification, 2011, the CZMPs that have been approved under the CRZ Notification, 1991 shall be compared. A justification shall be provided by the concerned CZMA in case the CZMPs prepared under CRZ notification, 2011 varies with respect to the approved CZMP prepared under CRZ notification, 1991.

IV. Public Views on the CZMP.

- a) The draft CZMPs prepared shall be given wide publicity and suggestions and objections received in accordance with the Environment (Protection) Act, 1986. Public hearing on the draft CZMPs shall be held at district level by the concerned CZMAs.
- b) Based on the suggestions and objections received the CZMPs shall be revised and approval of MoEF shall be obtained.
- c) The approved CZMP shall be put up on the website of MoEF, concerned website of the State, Union Territory CZMA and hard copy made available in the panchayat office, District collector office and the like.

V. Revision of Coastal Zone Management Plans

1. Whenever there is a doubt the concerned State or Union territory Coastal Zone Management Authority shall refer the matter to the National Centre for Sustainable Coastal Management who shall verify the CZMP based on latest satellite imagery and ground truthing.
2. The rectified map would be submitted to MoEF for its record.

Annexure-II

List of petroleum and chemical products permitted for storage in [CRZ except CRZ-I(A)]

- (i) Crude oil;
- (ii) Liquefied Petroleum Gas;
- (iii) Motor spirit;
- (iv) Kerosene;
- (v) Aviation fuel;
- (vi) High speed diesel;
- (vii) Lubricating oil;
- (viii) Butane;
- (ix) Propane;
- (x) Compressed Natural Gas;
- (xi) Naphtha;
- (xii) Furnace oil;
- (xiii) Low Sulphur Heavy Stock;
- (xiv) Liquefied Natural Gas;
- (xv) Fertilizers and raw materials for manufacture of fertilizers.

Annexure-III**Guidelines for development of beach resorts or hotels in the designated areas of CRZ-III and CRZ-II for occupation of tourist or visitors with prior approval of the Ministry of Environment and Forests**

- I. Construction of beach resorts or hotels with prior approval of MoEF in designated areas of CRZ-II and III for occupation of tourist or visitors shall be subject to the following conditions, namely:-
- (a) The project proponent shall not undertake any construction within 200 metres in the landward side of High Tide Line and within the area between Low Tide Line and High Tide Line [**in CRZ – III**]*³³;
 - (b) The proposed constructions shall be beyond the hazard line or 200mts from the High Tide Line whichever is more;
 - (c) live fencing and barbed wire fencing with vegetative cover may be allowed around private properties subject to the condition that such fencing shall in no way hamper public access to the beach;
 - (d) no flattening of sand dunes shall be carried out;
 - (e) no permanent structures for sports facilities shall be permitted except construction of goal posts, net posts and lamp posts;
 - (f) Construction of basement may be allowed subject to the condition that no objection certification is obtained from the State Ground Water Authority to the effect that such construction will not adversely affect fee flow of groundwater in that area;
 - (g) the State Ground Water Authority shall take into consideration the guidelines issued by Central Government before granting such no objection certificate;
 - (h) though no construction is allowed in the no development zone for the purposes of calculation of Floor Space Index, the area of entire plot including the portion which falls within the no development zone shall be taken into account;
 - (i) the total plot size shall not be less than 0.4 hectares and the total covered area on all floors shall not exceed 33 percent of the plot size i.e., the Floor Space Index shall not exceed 0.33 and the open area shall be suitably landscaped with appropriate vegetal cover;
 - (j) the construction shall be consistent with the surrounding landscape and local architectural style;
 - (k) the overall height of construction upto the highest ridge of the roof, shall not exceed 9metres and the construction shall not be more than two floors (ground floor plus one upper floor);
 - (l) groundwater shall not be tapped within 200metre of the High Tide Line; within the 200metre 500metre zone it can be tapped only with the concurrence of the Central or State Ground Water Board;

*33 – substituted vide Corrigendum S.O.651(E) dated 29.03.2011.

- (m) extraction of sand, leveling or digging of sandy stretches except for structural foundation of building, swimming pool shall not be permitted within 500metres of the High Tide Line;
 - (n) the quality of treated effluents, solid wastes, emissions and noise levels and the like, from the project area must conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and under the Environment (Protection) Act, 1986;
 - (o) necessary arrangements for the treatment of the effluents and solid wastes must be made and it must be ensured that the untreated effluents and solid wastes are not discharged into the water or on the beach; and no effluent or solid waste shall be discharged on the beach;
 - (p) to allow public access to the beach, atleast a gap of 20metres width shall be provided between any two hotels or beach resorts; and in no case shall gaps be less than 500metres apart; and
 - (q) if the project involves diversion of forestland for non-forest purposes, clearance as required under the Forest (Conservation) Act, 1980 shall be obtained and the requirements of other Central and State laws as applicable to the project shall be met with; and
 - (r) approval of the State or Union territory Tourism Department shall be obtained.
- II. In ecologically sensitive areas (such as marine parks, mangroves, coral reefs, breeding and spawning grounds of fish, wildlife habitats and such other area as may be notified by the Central or State Government Union territories) construction of beach resorts or hotels shall not be permitted.

["Note: For the development of beach resorts or hotels in the CRZ-II area, the guidelines at sub-items (c), (d), (e), (f), (g), (n), (o), (q), ® of Item I and at item II shall be applicable."]*³⁴

*34 – inserted vide notification S.O. 383 (E) dated 04th February, 2015.

Annexure-IV**Form-I for seeking clearance for project attracting CRZ notification**

Basic information:

Name of the Project:-

Location or site alternatives under consideration:-

Size of the project (in terms of total area) :-

CRZ classification of the area :-

Expected cost of the project:-

Contact Information:-

(II) Activity

1. Construction, operation or decommissioning of the Project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, and the like)

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)		
1.2	Details of CRZ classification as per the approved Coastal Zone Management Plan?		
1.3	Whether located in CRZ-I area?		
1.4	The distance from the CRZ-I areas.		
1.5	Whether located within the hazard zone as mapped by Ministry of Environment and Forests/National Disaster Management Authority?		
1.6	Whether the area is prone to cyclone, tsunami, tidal surge, subduction, earthquake etc.?		
1.7	Whether the area is prone for saltwater ingress?		
1.8	Clearance of existing land, vegetation and buildings?		
1.9	Creation of new land uses?		
1.10	Pre-construction investigations e.g. bore hole, soil testing?		
1.11	Construction works?		

1.12	Demolition works?		
1.13	Temporary sites used for construction works or housing of construction workers?		
1.14	Above ground buildings, structures or earthworks including linear structures, cut and fill or excavations		
1.15	Underground works including mining or tunneling?		
1.16	Reclamation works?		
1.17	Dredging/reclamation/land filling/disposal of dredged material etc.?		
1.18	Offshore structures?		
1.19	Production and manufacturing processes?		
1.20	Facilities for storage of goods or materials?		
1.21	Facilities for treatment or disposal of solid waste or liquid effluents?		
1.22	Facilities for long term housing of operational workers?		
1.23	New road, rail or sea traffic during construction or operation?		
1.24	New road, rail, air waterborne or other transport infrastructure including new or altered routes and stations, ports, airports etc?		
1.25	Closure or diversion of existing transport routes or infrastructure leading to changes in traffic movements?		
1.26	New or diverted transmission lines or pipelines?		
1.27	Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?		
1.28	Stream and river crossings?		
1.29	Abstraction or transfers of water form ground or surface waters?		
1.30	Changes in water bodies or the land surface affecting drainage or run-off?		
1.31	Transport of personnel or materials for construction, operation or decommissioning?		
1.32	Long-term dismantling or decommissioning or restoration works?		
1.33	Ongoing activity during decommissioning which could have an impact on the environment?		
1.34	Influx of people to an area in either temporarily or permanently?		
1.35	Introduction of alien species?		
1.36	Loss of native species or genetic diversity?		
1.37	Any other actions?		

2. Use of Natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply):

S. No.	Information/checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
2.1	Land especially undeveloped or agricultural land (ha)		
2.2	Water (expected source & competing users) unit: KLD		
2.3	Minerals (MT)		
2.4	Construction material – stone, aggregates, sand/soil (expected source – MT)		
2.5	Forests and timber (source – MT)		
2.6	Energy including electricity and fuels (source, competing users) Unit: fuel (MT), energy (MW)		
2.7	Any other natural resources (use appropriate standard units)		

3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about actual or perceived risks to human health.

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
3.1	Use of substances or materials, which are hazardous (as per MSIHC rules) to human health or the environment (flora, fauna, and water supplies)		
3.2	Changes in occurrence of disease or affect disease vectors (e.g. insect or water borne diseases)		
3.3	Affect the welfare of people e.g. by changing living conditions?		
3.4	Vulnerable groups of people who could be affected by the project e.g. hospital patients, children, the elderly etc.,		
3.5	Any other causes, that would affect local communities, fisherfolk, their livelihood, dwelling units of traditional local communities etc		

4. Production of solid wastes during construction or operation or decommissioning (MT/month)

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data

4.1	Spoil, overburden or mine wastes		
4.2	Municipal waste (domestic and or commercial wastes)		
4.3	Hazardous wastes (as per Hazardous Waste Management Rules)		
4.4	Other industrial process wastes		
4.5	Surplus product		
4.6	Sewage sludge or other sludge from effluent treatment		
4.7	Construction or demolition wastes		
4.8	Redundant machinery or equipment		
4.9	Contaminated soils or other materials		
4.10	Agricultural wastes		
4.11	Other solid wastes		

5. Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources		
5.2	Emissions from production processes		
5.3	Emissions from materials handling including storage or transport		
5.4	Emissions from construction activities including plant and equipment		
5.5	Dust or odours from handling of materials including construction materials, sewage and waste		
5.6	Emissions from incineration of waste		
5.7	Emissions from burning of waste in open air (e.g. slash materials, construction debris)		
5.8	Emissions from any other sources		

6. Generation of Noise and Vibration, and Emissions of Light and Heat:

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
6.1	From operation of equipment e.g. engines, ventilation plant, crushers		
6.2	From industrial or similar processes		
6.3	From construction or demolition		
6.4	From blasting or piling		
6.5	From construction or operational traffic		
6.6	From lighting or cooling systems		

6.7	From any other sources		
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7. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea:

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
7.1	From handling, storage, use or spillage of hazardous materials		
7.2	From discharge of sewage or other effluents to water or the land (expected mode and place of discharge)		
7.3	By deposition of pollutants emitted to air into the land or into water		
7.4	From any other sources		
7.5	Is there a risk of long term build up of pollutants in the environment from these sources?		

8. Risk of accidents during construction or operation of the Project, which could affect human health or the environment

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
8.1	From explosions, spillages, fires etc from storage, handling, use or production of hazardous substances		
8.2	From any other causes		
8.3	Could the project be affected by natural disasters causing environmental damage (e.g., floods, earthquakes, landslides, cloudburst etc)?		

9. Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
9.1	Lead to development of supporting facilities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: Supporting infrastructure (roads, power supply, waste or waste water treatment, etc.)		

	housing development extractive industries supply industries other		
9.2	Lead to after-use of the site, which could have an impact on the environment		
9.3	Set a precedent for later developments		
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects		

III. Environmental Sensitivity

S. No.	Areas	Name/ Identity	Aerial distance (within 15 km.) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value		
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests		
3	Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration		
4	Inland, coastal, marine or underground waters		
5	State, National boundaries		
6	Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas		
7	Defence installations		
8	Densely populated or built-up area		
9	Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)		
10	Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)		
11	Areas already subjected to pollution or environmental damage. (those where existing legal environmental standards are exceeded)		
12	Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)		

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SUPREME LAWS TODAY

(May) 2019

IV (2019) SLT 516

SUPREME COURT OF INDIA

A.K. Sikri, J., S. Abdul Nazeer, J. & M.R. Shah, J.

MANTRI TECHZONE PVT. LTD.

—Appellant

versus

FORWARD FOUNDATION & ORS.

—Respondents

Civil Appeal No. 5016 of 2016 with Civil Appeal Nos. 8002-8003 of 2016, Civil Appeal No. 12326 of 2016, Civil Appeal No. 9227 of 2016, Civil Appeal No. 1343 of 2017, Civil Appeal No. 10995 of 2016, Civil Appeal No. 10993 of 2016, Civil Appeal No. 10994 of 2016, Civil Appeal No. 2246 of 2018, Civil Appeal No. 10992 of 2016, Civil Appeal No. 12157 of 2016, Civil Appeal No. 12152 of 2016, Civil Appeal No. 12156 of 2016, Civil Appeal No. 12158 of 2016, Civil Appeal No. 12160 of 2016, Civil Appeal No. 12159 of 2016, Civil Appeal Nos. 4923-4924 of 2017 and Civil Appeal No. 14966 of 2017—Decided on 5.3.2019

(i) National Green Tribunal Act, 2010 — Section 22 — Civil Procedure Code, 1908 — Section 100 — Appeal to Supreme Court — Enquiry — Scope of — There is no vested right of appeal unless statute so provides — If statute provides for condition subject to which appropriate Appellate Court can exercise jurisdiction, Court is under obligation to satisfy itself whether condition prescribed is fulfilled — Exercise of appellate jurisdiction without fulfillment of statutory mandate would be without jurisdiction — Section 22 provides for appeal to Supreme Court on grounds specified in Section 100 of CPC — Scope of appeal under Section 22, is restricted to substantial question of law arising from judgment of Tribunal — Merely because remedy of appeal is provided against decision of Tribunal on substantial question of law alone that does not *ipso facto* permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Appellants cannot seek to re-argue their entire case to seek wholesale re-

appreciation of evidence and factual matrix that has been considered by Tribunal is *ex facie* impermissible under Section 22.

[Paras 36, 37, 38]

(ii) National Green Tribunal Act, 2010 — Sections 14, 15, 16, 20, 33 — Constitution of India, 1950 — Article 21, Entry 13 of List I Schedule VII — Karnataka Municipal Corporations Act, 1976 — Revised Master Plan of Bengaluru, 2015 — Overriding effect — NGT Act *vis-a-vis* State legislations — Jurisdiction of Tribunal — Right to healthy environment has been construed as part of right to life under Article 21 — Tribunal has special jurisdiction for enforcement of environmental rights — Jurisdiction of Tribunal is provided under Sections 14, 15 and 16 of Act — NGT Act being beneficial legislation, power bestowed upon Tribunal would not be read narrowly — An interpretation which furthers interests of environment must be given broader reading — Existence of Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of Act, would render it ineffective and toothless, and shall betray legislative intent in setting up specialized Tribunal specifically to address environmental concerns — Tribunal, specially constituted with Judicial Members as well as with Experts in field of environment, has legal obligation to provide for preventive and restorative measures in interest of environment — Section 33 of NGT Act provides overriding effect to provisions of Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act — This gives Tribunal overriding powers over anything inconsistent contained in KIAD Act, Planning Act, KMC Act and Master Plan — Central legislation enacted under Entry 13 of List I Schedule VII of Constitution will have overriding effect over State legislations — Tribunal while providing for restoration of environment in area, can

specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or Master Plan.
[Paras 40, 41, 44, 47]

(iii) National Green Tribunal Act, 2010 — Section 15 — Limitation — Petition barred by time — Environmental degradation as established from documents would give rise to independent cause of action — This was petition under Section 15 of Act — Same could be filed within 5 years from date on which cause for such compensation or relief first arose — In original application before Tribunal there was no mention of provision under which it was being filed — Non-mention of or erroneous mention of provision of law would not be of any relevance, if Court had requisite jurisdiction to pass order — It would be mere irregularity and would not vitiate application or judicial order of Tribunal — Findings arrived at by Tribunal are not only based on documents that were available on record but also on pleadings that were made by parties buttressed by Committee's report and inspection note of Expert Members — Directions passed penalty imposed by Tribunal on both project proponents are valid and sustainable.
[Paras 49, 50, 54, 55]

Result: Appeal disposed of.

Cases referred:

1. *Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing*, 1962 (SLT SOFT) 127. (Relied) [Para 37]
2. *Kishore Lal v. Chairman, Employees' State Insurance Corpn.*, 1 (2008) CPJ 13 (SC). (Relied) [Para 44]

JUDGMENT

S. Abdul Nazeer, J.—These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity 'NGT Act') challenging the judgment and order dated 7.5.2015 and 4.5.2016 respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short 'the Tribunal').

2. The appellants in Civil Appeal Nos. 5016

of 2016 and 8002-8003 of 2016 are respondent Nos. 9 and 10 in the Original Application No. 222 of 2014 (hereinafter referred to as 'the respondent Nos. 9 and 10'). The said Application was filed by respondent Nos. 1 to 3 herein (hereinafter referred to as 'the applicants'). Respondent Nos. 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as respondent Nos. 1 to 4 in the application. Respondent Nos. 12 and 13 herein were subsequently impleaded in the application (for short 'the impleaded respondents').

3. The State of Karnataka has filed Civil Appeal Nos. 4923-4924 of 2017, challenging the general condition and direction No. (1) contained in the order of the Tribunal dated 4.5.2016. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4.5.2016 insofar as it directs a buffer/green zone of 75 meters in respect of lakes, 50 meters in respect of primary Rajakaluves, 35 meters in case of secondary Rajakaluves and 25 meters in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed O.A. No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short 'the KIADB') to respondent Nos. 9 and 10 *vide* Notifications dated 23.4.2004 and 7.5.2004 respectively for setting up of Software Technology Park, Commercial and Residential Complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), identifies the allotted land as 'Residential Sensitive', though the same land was identified in the Draft Master Plan as 'Protected Zone'. It was further contended that the Revenue Map in respect of properties as referred in the Land Lease Agreements has multiple Rajakaluves (Storm Water Drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rain water into Bellandur Lake. The project

will thus encroach two Rajakaluves of 1.38 acres and 1.23 acres each.

5. The Satellite Digital Images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short 'SEAC'), which was to assist the State Level Environment Impact Assessment Authority (for short 'SEIAA'), held its meetings on various dates to examine the project. It had required the appellant No. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short 'BWSSB') for the project in question. It was also observed that the project lies between the Bellandur Lake and the Agara Lake. Respondent No. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11.11.2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq. mtrs. whereas the built up area, as noted by SEAC, is 13,50,454.98 sq. mtrs. Respondent No. 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent No. 9 had approached the Karnataka State Pollution Control Board (for short 'the KSPCB') for obtaining clearance, which was granted on 4.9.2012 subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by the KSPCB to respondent No. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

7. Applicants further contended that respondent No. 9 violated the conditions and commenced construction of the project. There

was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from 'Protected Zone' to 'Residential Sensitive Area' is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondent Nos. 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of Wetlands (Conservation of Management) Rules, 2010 (for short 'Rules of 2010').

8. It was submitted that SEIAA in its meeting dated 29.9.2012, decided to close the file pertaining to respondent No. 10 due to non-submission of requisite information and the application thereof was rejected in November, 2012. Despite the rejection, respondent No. 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 water bodies in the Bangalore city in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 kms. of Rajakaluves have been encroached upon in several places and have become sewage channels.

The applicants also relied on the Report of the Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore city. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore Metropolitan Area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The applicants claim to have obtained monitoring report of the project by respondent No. 5, Ministry of Environment and Forests, through RTI on 21.8.2013. The report dated 14.8.2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short 'the LDA'), after inspection in the catchment area of the Bellandur Lake submitted its report dated 12.6.2013 which confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of KIADB. The LDA has also opined that the land should be classified and maintained as sensitive area. The KIADB called upon respondent No. 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, respondent Nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides

that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the Rajakaluves. It was also pleaded that respondent No. 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by respondent No. 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of respondent No. 9 alone is approximately 4.5 million liters per day, *i.e.* 135 million liters per month, which is more than what the BWSSB supplies to the entire Agaram Ward. The construction of respective projects by respondent Nos. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

11. Respondent No. 9 in its objections contended that it was incorporated with the objective of establishing an Information Technology Park and R & D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High Level Committee meeting held on 21.6.2000 and after examining the proposal, it was approved by the Government on 6.7.2000. Before the State High Level Committee, it had informed that its requirement was 110 acres of land, 25 MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and

four lakh litres of water per day from BWSSB. The lands for the project were initially notified *vide* Notification dated 10.2.2004. Subsequently, the lands were allotted *vide* letter dated 28.6.2007 for which Lease-cum-Sale Agreement was signed on 30.6.2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtrs. The Project was conceived as a zero waste discharge project. The project is located one and a half kms. away from the southern-side of the Bellandur Lake. Towards the North, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the East, lies the Project of respondent No. 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4.7.2007 which was renewed from time to time.

12. Respondent No. 9 claims that it has obtained NOC from Airport Authority of India on 9.4.2010. Bharat Sanchar Nigam Ltd, *vide* its communication dated 16.4.2010, granted clearance for the project construction. BWSSB, *vide* its communication dated 26.4.2011 issued NOC for portion of the proposed construction to be built. The Bangalore Electricity Supply Company Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental Clearance was granted by SEIAA *vide* communication dated 17.4.2012. The Director General of Police has issued NOC and KSPCB *vide* order dated 4.9.2012 accorded its consent for construction of the said project subject to the conditions stated therein. It was further stated that after grant of the Environmental Clearance on 17.9.2012, the same was published in the leading newspapers "Kannada Prabha" and "The Indian Express" on 12.3.2012 and 14.3.2014 respectively.

13. It submitted a modified the building plan which was approved by KIADB *vide* its letter dated 30.8.2012, which was valid up to 10.8.2014. It started the construction of the project

in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent No. 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and *mala fide*. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31.8.2007 with an investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to it on 25.1.2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to respondent Nos. 9 and 10, one year time was granted for the implementation of the project which was extended from time to time. The building drawings were approved on 4.7.2007, and the modified building drawings were approved on 26.4.2011 and 30.8.2012 with specific conditions. In its meeting held on 16.7.2013, it was resolved to inform respondent No. 9 to fully comply with the Ecology and Environment Rules and to obtain approvals

from the LDA and KSPCB. LDA *vide* its letter dated 24.9.2013, had informed KIADB that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake with deleterious effects and asked it to stop construction activity of respondent Nos. 9 and 10. However, the validity of the building drawings was again extended up to 10.8.2014. The Lokayukta on 17.12.2013 had written a letter in respect of complaint filed by the South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21.12.2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to respondent No. 9. The Board took a decision which was communicated to respondent No. 9 on 2.1.2014, wherein it asked the respondent No. 9 to stop all construction activities on the allotted lands. The said communication was challenged by respondent No. 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23.12.2013 issued by Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') was also stayed *vide* order dated 21.1.2014. The proposal submitted by respondent Nos. 9 and 10 had been approved by the State Government. The land allotted to respondent Nos. 9 and 10 does not consist of any Rajakaluves.

16. The LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected the Bellandur Lake and the Agara Lake on 12.6.2013 and prepared an inspection report. In the report, it was noticed that large scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB *vide* letter dated 6.7.2013 and even requested it to stop the construction

activity and to re-classify the land as non-SEZ area. It was thereafter on 31.8.2013, that respondent No. 9 wrote a letter for according approval for the proposed development projects. However, *vide* its letter dated 23.9.2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by the KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

1. Whether the application filed by the applicants and supported by respondent Nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata*?
4. Whether the application filed by

the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petitions 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7.5.2015 at Annexure A-2, disposed of the applications with the following directions:

- (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated hereinafter:
 - (a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
 - (b) CEO of the Lake Development Authority, Karnataka State.
 - (c) Chief Town Planner of BBMP, Bangalore.
 - (d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
 - (e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
- (2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.
- (3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies with particular reference to lakes.
- (4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake, particularly Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify, if any Rajakaluves have been covered by the construction activities of respondent Nos. 9 and 10 or by any of the projects in the area in question.
- (5) Committee should submit in its report, if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be
 - (f) Dr. Siddharth Kaul, former Advisor to MoEF.
 - (g) A Senior Officer from the National Institute of Hydrology, Roorkee.

- demolished. If so, details thereof along with reasons.
- (6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.
- (7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report, whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.
- (8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly in the city of Bangalore.
- (9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent Nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc. in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent Nos. 9 and 10 respectively.
- (10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.
- (11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent Nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.
- (12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.
- (13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.
- (14) For the reasons stated in the judgment, respondent No. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent No. 10 shall pay a sum of Rs. 22.5

crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

- (15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, on to the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

19. Feeling aggrieved by the said order, respondent Nos. 9 and 10 filed Civil Appeal Nos. 4829 and 4823 of 2015 before this Court. This Court by its Order dated 20th May, 2015 passed the following order:

“One of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against the original Respondent No. 9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the

appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the Counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The Counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties.”

20. In relation to Issue No. 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6.4.2016 on these applications as under:

“M.A. No. 603 of 2015 and M.A. No. 596 of 2015

These Applications have been filed on behalf of the Respondent 9 & 10 respectively. It is not necessary for us to refer to any details in view of the

directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned. The Tribunal after hearing the parties passed an order dated 4.5.2016 as under:

"General Conditions or directions:

1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP-2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and

buffer zone for all the existing water bodies *i.e.* lakes/wetlands.

- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents-Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the water bodies/ lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is

for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

- (i) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.
- (ii) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.
- (iii) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific Conditions/Directions for Respondent 9:

In addition to the above directions which should be equally part of EC condition in respect of respondents Nos. 9 & 10, following specific conditions shall apply to respondent No. 9:

- (i) Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored

to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

- (ii) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.
- (iii) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.
- (iv) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing

the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas.

For the disposal of excavated material, a proper muck disposal plan duly approved by SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake.

- (v) The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.
- (vi) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.
- (vii) In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard

the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General Directions:

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.
2. SEIAA Karnataka and MoEF shall ensure regular supervision and

monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.

6. There is a serious discrepancy even

in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 sq. meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.

With the above directions, the Original Application No. 222 of 2014 and Misc. Applications Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs."

22. Appearing for the appellants in C.A. No. 5016 of 2016, Mr. Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short 'KIAD Act') declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28.6.2007, the land was allotted to the appellant by the KIADB. The SEIAA granted environmental clearance which

was followed by public notice concerning clearance on 14.3.2012. Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Section 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further the application is barred by limitation. Though environmental clearance was granted on 17.2.2012 and it was published in two leading newspapers on 12.3.2012 and 14.3.2012, modified plan was approved by the KIADB on 30.8.2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by the NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22.6.2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short 'the Planning Act').

25. Mr. Neeraj Kishan Kaul and Mr. R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the

applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur lake water body or to Bellandur lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Mr. Maninder Singh, learned Senior Counsel appearing for the appellants, in C.A. Nos. 5016 and 10995 of 2016, while supporting the submissions made by Mr. Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible *i.e.* 30.9.2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. Learned Advocate General, Mr. Udaya Holla, appearing for the appellant-State of Karnataka in C.A. Nos. 4923-4924 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of the NGT to the extent of setting aside the buffer zone in respect of water bodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of the NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of the NGT to that extent is liable to be set aside.

28. Learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 meters buffer zone around the lakes and a buffer zone of 50 meters, 25 meters and 15 meters from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. *vide* the impugned

judgment, the NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 meters around the lake and 50, 35 and 25 meters respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by the NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Mr. Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in C.A Nos. 5016 of 2016 and 8002-8003 of 2016 (respondent Nos. 9 & 10). He has no objection to set aside the order in so far as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of the NGT in paragraph (1) of the order dated 4.5.2016 except the directions issued against respondent Nos. 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeal Nos. 4923-4924 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by respondents Nos. 9 and 10.

30. Mr. Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in C.A. No. 5016 of 2016 and C.A. Nos. 8002-8003 of 2016. It is submitted that the Tribunal is a specialized body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section

15(1)(a) of the NGT Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(b) and 15(1)(c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(b) and 15(1)(c) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(c) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short 'KMC Act'). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and water bodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by respondents 1 to 3 was not an application simplicitor under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12.6.2013 and the Ministry of Environment Forest and Climate Change Monitoring Committee report dated 14.8.2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from

the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of Appellate Jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC'). Under Section 100 of the CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned Counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned Counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

“22. Appeal to Supreme Court—Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.”

36. It is settled that there is no vested right

of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate Appellate Court can exercise jurisdiction, the Court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 of the CPC. Under Section 100, CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing, 1962 (SLT SOFT) 127=1962 Supp. (3) SCR 549*. This Court has laid down the test as under:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not *ipso facto* permit the appellants to agitate their appeal to seek re-appreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale re-appreciation of evidence and the factual matrix that has been considered by the Tribunal is *ex facie* impermissible under Section 22. There cannot be fresh appreciation or re-appreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned Counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the

enactments specified in Schedule I. Further, under Sections 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.*, I (2008) CPJ 13 (SC)=(2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply

demonstrating that jurisdiction of the Tribunal flows from these Sections (*i.e.* Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra, the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to appellants, environmental clearance was granted to the respondent No. 9 on 17.2.2012

for which notice was published in the leading newspaper on 12.3.2012 and 14.3.2012. Modified building plan was approved on 30.8.2012, which was followed up to 10.8.2014. Similar events had taken place in regard to the project of respondent No. 10 who had been granted environmental clearance on 30.9.2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. The OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.6.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.8.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite

jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Mr. R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11.1.2012 of the Chairman of the KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 acres 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects. That is why, the Tribunal has observed as under:

"72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities

undertaken by the respondents before us can be summed up as under:

- (1) The construction of both the projects had started prior to the grant to Environmental Clearance.
- (2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
- (3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
- (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
- (5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
- (6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
- (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered

and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition Nos. (xxxix) and (xl) in the Environmental Clearance of respondent No. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.”

53. In paragraph 81, the Tribunal has observed as under:

“81.Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent Nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition No. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage

and the restoration and restitution thereof.”

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the Expert Members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of re-appreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Mr. R.Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to *res judicata*. According to him, respondent Nos. 12 and 13 filed Writ Petition Nos. 3656-57/2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of *res judicata*.

57. The Tribunal has answered this issue in paragraphs 47 to 51 of the order. There was no dispute in so far as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the geneses of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the

proceedings are neither substantial nor materially identical.

58. After elaborately considering this question, the Tribunal has concluded as under:

“51.For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned.

There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor constructive *res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ

Petitions pending before the Hon'ble High Court of Karnataka.”

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by the respondent Nos. 9 and 10 do not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4.5.2016:

“1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP-2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies *i.e.* lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be

treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents-Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.”

61. We have already noticed that Mr. Poovayya has no objection to set aside the aforesaid impugned portion of the order in so far as the appellants in all the appeals except the appeals filed by respondent Nos. 9 and 10. The aforesaid portion of the order contains not only general directions but also certain directions against respondent Nos. 9 and 10. Therefore, only that portion of the order which does not pertain to respondent Nos. 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

- (i) Civil Appeal No. 5016 of 2016 and Civil Appeal Nos. 8002-8003 of 2016 filed by the appellants/ respondent Nos. 9 and 10 are hereby dismissed. The impugned judgment and order in are concerned is sustained.
- (ii) All the other appeals are hereby

allowed and the direction/ condition No. (1) in the order dated 4.5.2016 is hereby set aside except the direction issued against respondent Nos. 9 and 10.

63. There will be no order as to costs.

Appeal disposed of.

IV (2019) SLT 537

SUPREME COURT OF INDIA

Ashok Bhushan, J. & K.M. Joseph, J.

DIPAKBHAI JAGDISHCHANDRA PATEL —Appellant

versus

STATE OF GUJARAT AND ANOTHER —Respondents

Crl. Appeal No. 714 of 2019—Decided on 24.4.2019

(i) Criminal Procedure Code, 1973 — Section 227 — Framing of charge — At the stage of framing charge Court does not act as a mere post office — Court must indeed sift material before it — Material to be sifted would be material which is produced and relied upon by prosecution — Sifting is not to be meticulous in the sense that Court dons mantle of Trial Judge hearing arguments after entire evidence has been adduced after a full-fledged trial and question is not whether prosecution has made out case for conviction of accused — All that is required is, Court must be satisfied that with materials available, case is made out for accused to stand trial — Strong suspicion suffices — However, strong suspicion must be founded on some material — Material must be such as can be translated into evidence at stage of trial — Strong suspicion cannot be pure subjective satisfaction based on moral notions of Judge that here is a case where it is possible that accused has committed offence — Strong suspicion must be suspicion which is premised on some material which

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**Original Application No.111/2018
(I.A. No. 20/2019)**

IN THE MATTER OF:

1. **Kachchh Camel Breeders Association
Through Shri Bhikhabhai Rabari
Jangi, Bhachau Taluka
Kachachh District
Gujarat – 370150** Applicant

Versus

1. **Union of India
Through Secretary, Government of India
Ministry of Environment & Forest & Climate Change
Indira Prayavaran Bhawan
JorBagh Road, New Delhi - 11003**
2. **State of Gujarat
Through Additional Chief Secretary
Forests and Environment Department
Block No. 14, 8th Floor, Sachivalaya,
Gandhinagar, Gujarat**
3. **Gujarat State Coastal Zone
Management Authority (GCZMA)
Through the Member Secretary
Block No. 14/8th floor, New Sachivalaya,
Sector-10 A, Gandhinagar, National Coastal Zone
Management Authority**
4. **Gujarat Forest Department
Through the Principal Chief Conservator of Forest
And Head of Forest Forces
Block 14, 8th Floor, Sachivalaya
Gandhinagar – 382010**

5. **District Collector, Kachchh
Jila Seva Sadan
Collectorate Office, Bhuj, Gujarat**
6. **Deen Dayal Port Trust
Through Chairman
P.O Box 50, Administrative Building
Gandhidham, Kachchh,
Gujarat, India - 370201**
7. **Gujarat Pollution Control Board
Paryavaran Bhavan, Sector 10-A
Gandhinagar - 382010
Gujarat**
8. **M/s Shree Jyoti Salt Industries
Maitri Bhavan, Plot No. 18
Sector No. 8, Post Box No. 106
Gandhidham, Kachchh- 370201**
9. **Shree Ram Salt Supply
Shree Ram House
T.C.X South - 20
Behind Oriental Bank of Commerce
Gandhidham, Kachchh- 370201** **...Respondents**

COUNSEL FOR APPLICANT (S):

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COUNSEL FOR RESPONDENTS:

Mr. Gigi C. George, Advocate

Mr. Maulik Advocate

Mr. Pinaki Misra, Sr. Advocate with Mr. Sumit Goel, Mr. Sarthak Gaur, Mr. Tanuj Goel and Ms. Pratyusha Priyadarshini, Advocates

Ms. Ruchi Kohli and Ms. Nidhi Jaswal, Advocates

Mr. Raj Kumar, Advocate

JUDGEMENT**PRESENT:****Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)****Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)**

Reserved on: 30th August, 2019**Pronounced on: 11th September, 2019**

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

1. This Original Application has been filed by the Applicant- Kachchh Camel Breeders Association through Shri Bhikhabhai Rabari, Jangi, Bhachau Taluka, Kachachh District, Gujarat alleging that there has been a blatant violation of the provisions of Coastal Regulation Zone Notification, 2011 (hereinafter known as CRZ Notification) as well as Forest Conservation Act, 1980 by rampant clearing of the mangroves in Nani Chirai and Moti Chirai areas of Bhachau Taluka in the district of Kachchh, Gujarat by the Respondent no. 6-Deen Dayal Port Trust, (DPT). These areas are said to be locally known as Nani Beti, Hadkiya Khadi, Bhojwari Khadi, Hematwaro and others. These areas are stated to be the habitat of indigenous Kharai Camel species which live among the mangroves and are the source of livelihood for several hundred camel breeders of the region. It is alleged that the Respondent No. 6-DPT has cleared the

mangroves without obtaining any CRZ clearance as well as forest clearance and that the Coastal Zone Management Authority and the Forest Department, Gujarat have not taken any concrete action to prevent the indiscriminate destruction of mangroves, despite having information and that the destruction of pristine mangroves habitat is continuing even today unabated.

2. It has also been alleged that the Respondent no. 6- DPT have allotted the areas falling under the CRZ – I which are under their control for extraction of salt etc., which have resulted in destruction of mangroves due to obstructions raised in the creeks without any permission of the Competent Authorities under CRZ Notification, 2011.
3. The applicant has stated that in a similar case of *Kheti Vikas Seva Trust and Ors. Vs. State of Gujarat (W.P. PIL No. 12 of 2011)* before the High Court of Gujarat concerning destruction of mangroves by the activities of Mundra Port led to the formation of High Court Committee headed by the District Collector, Kachchh in the year 2011 and High Court of Gujarat on 7th July, 2011 had ordered that no mangroves must be cut without the due permission and mandate of Forest and Environment Department of the State. The Applicant has stated that they had sent multiple communications to the DPT as well as the District Collector,

District Level Coastal Zone Management Committee and Gujarat Forest Department about the blatant destruction of Mangroves which are habitat of 400 Kharai Camels. The Authorities were urged to take immediate action against the illegal destruction of mangroves. It has further been submitted that there has been no response on behalf of the Port Trust as well as the concerned Authorities in this regard.

4. The Applicant has also submitted that Dr. Ashok Kumar Saxena, IFS, Principal Chief Conservator of Forest, Member Secretary, Gujarat Ecology Commission and Project Director, Integrated Coastal Zone Management Project (Gujarat) (World Bank Project) on 21st February, 2018 had written a letter to the District Collector, Bhuj, Principal Chief Conservator of Forest (HoFF) State of Gujarat and Director Environment and Member Secretary, Gujarat Coastal Zone Management Authority, Forest and Environment Department, Government of Gujarat, Gandhi Nagar informing them that there is large scale destruction of mangroves at Nani Chirai and Moti Chirai areas of Bhachau Taluka.

5. The Applicant has, therefore, prayed as under :

- “i. Direct the official respondents to immediately stop the ongoing destruction of mangroves.*
- ii. Direct the Respondent No. 6 to ensure that no mangroves are cut within their premises in perpetuity as it is a CRZ-I area where it is prohibited to cut such mangroves.*

- iii. *Direct the respondents for rehabilitation and restitution of the mangrove environment already destroyed.*
- iv. *Direct the respondents to pay a huge environmental compensation charge for the mangroves destroyed in accordance with past precedents of this Hon'ble Tribunal.*
- v. *Pass any other such order(s)/ direction(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the present matter. ”*

6. In view of the facts and categorical statement made by the Applicant, this Tribunal had on 19th March, 2018 directed that *status quo* be maintained till further orders in order to stop the destruction of mangroves. The Tribunal had also ordered Joint Inspection to be conducted and a report in this regard to be filed by the Gujarat State Pollution Control Board (GPCB) and the Central Pollution Control Board (CPCB). As requested by the Respondent no. 6, the GPCB, the Shree Jyoti Salt Industries and the Shree Ram Salt Supply were impleaded as Respondent no. 7, 8 and 9.

7. The Respondent no.1-MoEF & CC in their affidavit have stated that the CRZ Notification, 2011 declares the following areas fall within the ambit of CRZ and imposes following restrictions on setting up and expansion of industries, operations or processes and the like in the CRZ :

- “ (i) *The land area from High Tide Line (hereinafter referred to as the HTL) to 500 mts on the landward side along the sea front.*

- (ii) CRZ shall also apply to the land area between HTL to 100 mts or width of the creek whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea. Explanation:- For the Purposes of this sub-paragraph the expression tidal influenced water bodies means the water bodies influenced by tidal effects from sea, in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds connected to the sea or creeks and the like.
- (iii) The land area falling between the hazard line and 500 mts from HTL on the landward side, in case of seafront and between the hazard line and 100 mts line in case of tidal influenced water body.
- (iv) Land area between HTL and Low Tide Line (hereinafter referred to as the LTL) which will be termed as the intertidal zone.
- (v) The water and the bed area between the LTL to the territorial water limit (12 Nm) in case of sea and the water and the bed area between LTL at the bank to the LTL on the opposite side of the bank, of tidal influenced water bodies.

.....5. That the CRZ Notification, 2011 provides details for classification of CRZ areas. As per the Notification, CRZ – I are the areas that are ecologically sensitive and the geomorphological features which play a role in maintaining the integrity of the coast, which, inter-alia, includes mangroves, mud flats, national parks, sand dunes, etc. The Notification also provides that in case mangrove area is more than 1000 sq m, a buffer of 50 m along the mangroves shall be provided. In addition, CRZ-I also includes the area between LTL and HTL.

.....7. That paragraph 4 of CRZ Notification, 2011 provides for the regulation of permissible activities in CRZ area and the relevant extracts read as follows:

“ The Following activities shall be regulated except those prohibited in para 3 of the CRZ Notification, 2011:-

- (i) (a) Clearance Shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities;
- (ii) For those projects which are listed under this notification and also attract EIA notification, 2006, for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State and Union territory Coastal Zone Management Authority. ”

.....8. That for the purpose of implementation and enforcement of the provisions the CRZ Notification, 2011 and compliance with the conditions stipulated there under, the powers either original or delegated are available under the Environment (Protection) Act, 1986 with the State Government and the State Coastal Zone Management Authority (SCZMAs), including the Gujarat Coastal Zone Management Authority (GCZMA) for the State of Gujarat. The composition, tenure and mandate of State/UT CZMAs, have been notified from time to time by the Ministry.

.....9. The main function of these Authorities is to enquire into the cases of alleged violation of the provisions of the CRZ Notification, 2011 and take appropriate decision under Section 5, 10 and 19 of the Environment (Protection) Act, 1986.

8. The Respondent no. 6 in their counter affidavit filed on 06.08.2018 submitted that they had asked the allottees to carry out the activities only for the purpose of demarcation of the boundaries so that actual corners of the plots can be demarcated and official possession on the respective plots of the land can be handed over to the Respondent nos. 8 and 9.
9. The Respondent no. 6-DPT has further countered that it has come on record in various inspection reports that huge earthen bunds along with internal bunds were created stage wise for creating salt pans for salt farming and the land was also levelled at several places by Respondent no. 9 and not by DPT. The DPT had only wanted activities which are necessary for demarcation of boundaries and that the DPT is not engaged in any process of salt production and salt supply

and they have no reasons for levelling the grounds on its own.

10. The Respondent no. 6 (DPT) has submitted that the alleged destruction of mangroves by creation of mud walls has not been done by the DPT. It has been stated that Kandla Port Water Front land from Village Jungi to Village Veera extends in a length to about 110 kms and due to the acute shortage of staff and more particularly due to inaccessibility by vehicles to the some of these areas, it is practically not possible for the DPT staff to monitor these lands on regular basis. It has further been submitted that peripheral boundary length of about 100 kms in this region is disputed as to whether this land belongs to the DPT or the Government of Gujarat (Revenue Land). And as such, there has no clearly demarcated boundaries of lands belonging to the DPT and those belonging to the State Government. As a result, there exist many cases wherein the State Government has slotted lands to the salt manufacturers, which even extends to the lands belonging to the DPT. Further, due to lack of demarcation there have been many cases of illegal encroachments over DPT lands by miscreants. At the time of survey or inspection carried out by the Land Department Officials of DPT, these miscreants claim to be allottees from the State Government. The DPT had been taking up the survey and demarcation of the boundaries of DPT land and

land belonging to the State Government since the Year 2009 and the DPT had requested the Office of D.I.L.R innumerable times and even the Chief Secretary, Government of Gujarat, had been requested many times to intervene in the matter. The DPT has submitted that if at all any destruction of mangroves has taken place as complained in the application, the same has been done by the encroachers who have illegally entered upon the lands belonging to DPT.

11. The Respondent no.7-GPCB in their affidavit filed on 03rd July, 2018 has submitted that they had with the assistance of the Collector and District Magistrate, Kachchh completed the work of demolition of bunds and removal of all obstructions to the satisfaction of the complainant and in compliance of our order dated 24th May, 2018.
12. The Respondent no. 8- Shree Jyoti Salt Industries has submitted that the Respondent no. 6-DPT had decided to allot certain plots of land for production of salt by using tender auction and the Respondent no. 8 had submitted a bid for allotment of six (6) plots on lease for production of salt for thirty (30) years through e-auction on 29th July, 2016. The said six (6) plots are said to be situated between Village Bachau and Village Jungi and in the e-auction the Respondent no. 8 was the highest bidder. The Respondent

no. 8 has disputed the position stated by the Respondent no. 6-DPT. They have stated that pursuant to the allotment order no lease deed has been executed till date nor the possession of the said parcels of land in question has ever been handed over to the Respondent no. 8. Therefore, the Respondent No. 8 states that they have never been in possession of the plots of said parcels of land in question and even the legal possession of plots in question is not with the Respondent no. 8 for want of execution of lease deed. They have further stated that when the lease deed itself is not executed and when no demarcations of plots have been made and even the formal possession of land has not been handed over, therefore, they are not responsible for any contravention as complained by the applicant in the original application.

13. The Respondent no. 9- Shree Ram Salt Supply has also stated on the similar lines as stated by the Respondent no. 8 that they had submitted a bid for allotment of a plot, out of six (6) plots on lease for production of salt for thirty (30) years through e-auction on 29th July, 2016 floated by the Respondent no.6-DPT. The Respondent no. 9 had received pre-acceptance letter dated 13th January, 2017 from DPT. The DPT was unable to provide the details of the boundaries/demarcation of plots. The DPT is also stated to have informed the Respondent no. 9 that the demarcation is not possible as the land in question is water logged. The DPT

officials also said to have informed them that they were of view that attempt should be made to construct bunds on the line of boundaries if possible, it may help demarcation of boundary points of the allotted plot. The Respondent no. 9 has categorically stated that they have never entered into any agreement for any construction nor they have made any construction on the alleged parcels of land in question.

14. In view of submissions made above by Respondent nos. 8 & 9, the submissions made by the Respondent DPT that allotment of land for manufacture of salt was made by the State of Government cannot be accepted as Respondent nos. 8 & 9 had given their bid in response to the tender floated by DPT on 29th July, 2016 for allotment of plots for the production of salt. It appears that both DPT as well as State of Government had allotted lands to the salt manufacturers as there was no clear demarcation of boundaries between the land owned by the DPT and the state government which has resulted in destruction of mangroves in the area.

15. In pursuance of order of this Tribunal dated 19th March, 2018, Joint Inspection of the site was conducted on 13th April, 2018 by the following officials of the GPCB and CPCB and the report was filed on 27th April, 2018:

- “ i. Shri Pratik Bharne, Scientist D, CPCB, Regional Directorate (West), Vadodara.
- ii. Shri Kedarnath Dash, Scientist C, CPCB, Head Office, Delhi.
- iii. Shri K.B. Chaudhary, Regional Officer, GPCB, Kutch-East, Gandhidham.
- iv. Shri Manish G. Barad, Deputy Env. Engineer, GPCB, Gandhinagar.
- v. Shri Rikesh Virda, Asst. Env. Engineer, RO, GPCB, Kutch-East, Gandhidham. ”

16. During the Inspection, It was observed as follows :

“02. Observations:

- It was observed that earthen bunds have been created stage wise for creating pans for salt farming and land levelled at several places which resulted in blocking of minor creeks i.e., obstruction of flow of sea water and destruction of the mangroves (photographs at Annexure – III).

It was also observed that mangroves are dried due to blocking of free flow of water in minor creeks and creek lets system due to creation of bunds and at some locations getting dried. Due to land levelling and creation of bunds with the help of heavy machinery, mangroves were uprooted which are buried as well as lying on land (photographs at Annexure – III)

- These activities might have affected the survival of the Mangroves in a vast area and its associated biodiversity. It was also noticed construction of earthen bunds in large area beyond the above said plots in areas towards creek (little Gulf of Kutchh).
- During the inspection, no any activities like bund making, levelling of land, manual up-rooting of mangroves were observed at visited site. Machineries were not observed, at this site.
- It was informed by Deendayal Port Trust (DPT) officials that the land admeasuring to 3500 acres viz. (Plot No. 2-1000 Acres to Shree Ram Salt Supply, Plot No. 3 to 6 (3 X 500 acres; 1 X 1000) acres to Shri Jyoti Salt industries) allotted on lease for 30 years for salt production purpose on as is where is basis. The allotment letters were

issued on 21.02.2017. Further, it was informed that for the demarcation of the land/plot for giving possession, DPT issued letter (dated 19.06.2017) to both allottee (Shree Ram Salt Supply and Shri Jyoti Salt Industries) to construct a bund along the line of boundary, so that actual boundary points can be demarcated and possession of the land can be handed over. It was informed by DPT officials that the possession letters to the above allottee have not been issued till date.

- DPT informed that as per one of the tender condition (clause 4.26 (A)), all the requisite clearances should be obtained by the allottee and the construction of plots will only be allowed after all such certifications/clearances from various departments are obtained.

However, it was surprising to know that DPT has not properly noticed/monitored any developments in this area and only asked for requisite approvals from allottee (which were to be obtained from statutory authorities) after visit of Officials of Regional Office, GPCB, Kutch-East. The GPCB visit was carried out on 22.02.2018 based on the similar complaint from the Applicant (Shri Bhikabhai Vaghabhai Rabari, President, Kachchh Camel Breeders Association). Thus, DPT has not properly monitored the tender condition regarding obtaining statutory permissions.

- Based on representation of Kachchh Camel Breeders Association, sub-committee was constituted by District Collector & Chairman, District Level CRZ Committee (DLC), Kutch, for site inspection. The Sub-committee headed by Deputy Conservator of Forest (DCF), Kutch (East) Division visited the site on 14.03.2018 and submitted the report to District Collector & Chairman, District Level CRZ Committee.
- As per the said sub-committee report, since the area covers of mangroves, i.e., CRZ I-A, any activity without prior permission on habitat alterations or removal of mangroves is a case of clear violation of CRZ Notification 2011 and amendment thereof.
- As per the said sub-committee report all the above activities resulted in destruction of mangroves habitats and removal of mangroves in an area of about 750 acres. Out of which, 250 acres area can be categorized as moderately dense mangroves and balance 500 acres can be classified as moderately dense mangroves and balance 500 acres can be classified as open mangrove (sparse mangrove). It was also observed by the sub-committee that total impact could be several folds of the lease areas.

- *The recommendations of the said sub-committee are as follows:*
 - *To stop all the activities immediately in the said area.*
 - *To restore the free flow water in the creeks/creek lets by removing all earthen bunds/roads.*
 - *Since area falls under CRZ category I-A, all the leases should be cancelled with immediate effect and legality should be followed.*
 - *The restoration plan needs to be prepared for the impacted and surrounding areas and effective implementation should be followed.*
- *Further, based on report of the said sub-committee, District Collector & Chairman, District Level XRZ Committee, issued Advisory Note (28.03.2018) to DPT which is provided as Annexure-IV. The Report has also been submitted to Gujarat Coastal Zone Management Authority (CGZMA), Gandhinagar for further action in this regard.*

The DPT is advised for:

- *To stop all prohibited activities immediately in CRZ area and restore the pre-conditions by removing bunds and obstruction made to stop the free flow of water.*
 - *To stop carrying out any activity in and around the inter tidal areas which are affecting the mangroves, blocking of the creeks, disturbing the natural flow of tidal waters and commenced without obtaining prior clearance from the competent authority are in violation of the provision of the CRZ notification.*
 - *To cancel all such leases with immediate effect which falls under CRZ category 1-A area.*
 - *To stop any activity in CRZ -1 (A) area, which is classified as ecologically sensitive area as per CRZ Notification.*
 - *To prepare restoration plan for the impacted and surrounding areas including its effective implementation plan and submit within fortnight.*
- *As per the order (19.03.2018) of Hon'ble NGT, PB, New Delhi there should be status quo maintained till further order. By not clearing the blocking of minor creek for free flow of the water, mangroves are drying in some area,*

therefore, restoration activity to ensure free flow of water in creeks needs to be allowed on priority basis.”

17. Further, it has been concluded in the inspection report as follows:

“ 3.0 Conclusion

- *The Substantial work of bunding, blocking of minors creeks, destruction of mangroves, in area took place without obtaining prior CRZ clearance which is a violation of CRZ Notification 2011 & amendment there off. During the inspection, no any activities like bund making, levelling of land, manual up-rooting of mangroves were observed at visited site.*
- *GCZMA should examine the matter of execution of lease deed of the said plots and liability which may arise due to violations of provisions of CRZ Notification 2011. As the possession letters are not yet given by the DPT to allottees (salt industries), it is opined that the responsibilities lie with DPT for such activities and violations. Gujarat Coastal Zone Management Authority (GCZMA) should take appropriate action.*
- *There is urgent need of investigation by GCZMA for the destruction of mangroves for salt pan preparations and the duration of such activities carried out in surrounding area (Bhachau Taluka), violating provisions of CRZ Notification.*
- *The constructed earthen bunds as well as blocking of minor creeks are restricting/blocking of the flow of tidal water to the mangrove areas which resulted into drying off/loss of mangroves, therefore, blockings/bunds to be removed on priority, so that mangrove area gets water and survive.*
- *Restoration plan needs to be prepared for the impacted and surrounding areas and effective implementation should be envisaged with appropriate monitoring mechanism by GCZMA. ”*

18. On 28th April, 2018, it was noted that obstructions caused in the creeks have resulted in depletion of the water in the areas where mangroves were growing and if this position continues, destruction will be complete. Besides, if the water is not allowed to pass through the creeks, it will destroy all the

mangroves and the area will be exposed to reclamation which may be the intention of the vested interests. The Gujarat State Pollution Control Board (GPCB) assisted by the District Magistrate was directed forthwith to visit the spot and remove all obstructions from the creeks to ensure flow of water to the area where mangroves exist. The GPCB was asked to report compliance within ten (10) days from 24th May, 2018.

19. Learned Counsel appearing for the State of Gujarat has stated that they have lodged several FIRs for encroachment in the area.
20. In view of the submissions made above, it is amply clear that there is no demarcation which are existing on the ground between the land belonging to the DPT and the revenue land with the result there has been several instances of encroachments in the revenue land as well as land belonging to the DPT and the people have taken advantage of the situation that was prevailing on the ground and the salt pans have been created by constructing bunds across creeks which has caused death of mangroves.
21. Mangroves are special class of trees which grow in estuaries and intertidal regions along the creeks and coasts. Mangrove forests are among the most productive ecosystem on earth and serve many important functions including water filtration,

prevention of coastal erosion, carbon storage, and timber and biodiversity protection. They play extremely important role as windbreaks in coasts which protect coasts during cyclones and tsunamis. Because of dense root systems the mangroves trap sediments which help in stabilizing coastlines and prevent erosion from waves and storms. Mangroves are also the nursery grounds for several fish species and other marine fauna. Therefore, mangroves work as system that keeps coastal zones healthy and vibrant. It is because of these extremely important roles that mangroves play it is incumbent upon everyone concerned to conserve and protect the mangroves. Other than Sunderbans and Andaman & Nicobar Islands there are few locations in our country where mangroves thrive and Kachchh Coastline is one such location and, therefore, Gujarat Forest Department and Gujarat Coastal Zone Authorities have special responsibility to conserve and protect the mangroves in Gujarat coastline wherever they occur.

22. We, therefore direct as follows:

- (i) There shall be no obstruction of any kind in the creeks and free and continuous flow of estuarine water in the creeks will be ensured.

- (ii) The Forest Department, Government of Gujarat, GCZMA and Revenue Officials will jointly inspect the area to find out the persons who were responsible for obstruction of the creeks and take action in accordance with law including recovery of environmental damage and cost of restoration of mangroves damaged. This may be done within a period of one (1) month from today.
- (iii) If there has been any activity which is in violation of CRZ Notification, 2011, the GCZMA will immediately take action in accordance with law.
- (iv) If there has been any activity in the mangroves area which are in contravention of the Forest (Conservation) Act, 1980 or any other law, the Forest Department will immediately take action in accordance with law.
- (v) There shall be no salt manufacturing activity in CRZ – 1 area without following the due procedures provided under law/notification. If such activity are found the GCZMA will take action immediately to stop forthwith and initiate appropriate proceedings.
- (vi) The quantum of damage caused to the mangroves shall be assessed by the GCZMA in accordance with laid down procedures and the same shall be recovered from

the persons responsible for the same within a period of one month from today.

- (vii) The Forest Department, Government of Gujarat will take immediate action to restore the mangroves which are damaged within a period of six (6) months from hence.

23. With the abovementioned directions, this Original Application No. 111/2018 is disposed of. The Miscellaneous Application No. 20/2019 does not survive for consideration as the main application itself is disposed of.

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Raghuvendra S. Rathore, JM

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Dr. Satyawan Singh Garbyal, EM

Dated: 11/09/2019
Place : New Delhi