

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
MEMORANDUM OF APPLICATION

(UNDER SECTION 14 AND SECTION 18(1) READ WITH
SECTION 20 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010)
ORIGINAL APPLICATION NO. 74 OF 2022

IN THE MATTER OF:

Navi Mumbai Environment Preservation SocietyApplicant

Versus

City and Industrial Development Corporation of Maharashtra
(CIDCO) & Ors.Respondents

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Advocate for the Applicant



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AFFIDAVIT-IN-REJOINDER ON BEHALF OF THE APPLICANTS

I, Anupam Verma, aged 47 years, Indian inhabitant, Authorised signatory of the Applicant & having my address at 205, CITI Tower, C Wing, Plot 55, Sector 15, CBD Belapur, Navi Mumbai - 400614, do hereby solemnly state that I am filing this short affidavit-in-rejoinder as a response to Affidavit in Reply dated 14.11.22 filed by Respondent No. 1. I reserve my right to file an additional detailed Affidavit in Rejoinder as and when required.

1. At the outset, I deny each and every statements, allegations and averments made in the Reply dated 14.11.2022 filed by R-1. I shall proceed to reply to all the assertions and contentions of R-1 subject-wise in the same order as followed by R-1 in its reply and that nothing



should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me herein.

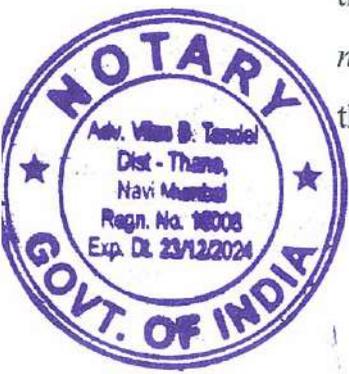
I. R-1'S CONTENTION THAT THIS HON'BLE TRIBUNAL LACKS JURISDICTION TO RESTRICT THE ALIENATION OF LAND AND THAT THE TENDER ENSURES PROTECTION OF THE ENVIRONMENT

2. I say that the contents of Paras 3(i) to 3(iii) of R-1's reply are denied as misplaced, incorrect, against interest of the citizens of Navi Mumbai and a gross attempt to circumvent the rule of law that deserves to be deprecated, especially when coming from a planning authority – CIDCO. I say that CRZ Notification, 2011 has been promulgated to protect the coastal stretches of the country by restricting and prohibiting setting up and expansion of certain industry, operations and processes in Coastal Regulation Zone (CRZ), which applies to the area from HTL to 500 mts on the landward side along the seafront and between HTL and 100 meters or width of the creek, whichever is less along tidal influenced waterbodies.

3. I say that pertinently, Regulation 3 of CRZ, 2011 specifically lists out **“prohibited activities within CRZ”** and Regulation 8 lists out **“Norms for regulation of activities permissible under this notification”** wherein only such development or construction activities are permitted in different CRZ categories as enlisted between Regulation 3(I). to 3(V). This includes CRZ – I under Regulation 3(I.) and CRZ-II under Regulation 3(II.). Regulation 3(xi) of CRZ, 2011 clearly prohibits all construction activities in CRZ-I except those specified in Regulation 8.



4. I say that Plot 2A in Nerul is admittedly in CRZ-I and CRZ-II areas and therefore, prohibitions and restrictions as provided under CRZ, 2011 are directly applicable on the plot. Clause 8(I)(i) specifically provides that no new construction is permitted in CRZ-I areas except as stated therein and does not include construction of commercial and residential buildings under the list of exceptions. As far as CRZ-II is concerned, Clause 8(II)(i) states that buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorised structures.
5. I say that the tender issued by CIDCO, a public authority, is for granting long-term lease to private parties for construction of “residential and commercial” buildings on the said plot, an activity which in itself is completely prohibited under the CRZ 2011. I say that CIDCO seeks to take steps to alienate its land for a purpose which could not have been initiated in the first place. I say that an action that is *void ab initio* and seeks to invite a private developer to invest for a single purpose that is prohibited in the first place is required to be stopped at its inception as the same is a substantial question of environment arising from a violation of environmental legislation, viz. CRZ Notification 2011. I say that the purpose for which alienation is sought is intrinsically linked to the regime under CRZ 2011, a special law, as it explicitly enlists prohibited, permitted and regulated activities.
6. I say that the tender for leasing the plots for residential and commercial buildings has been surely issued for the purpose of “construction” thereof and for no other reason. If the purpose itself is void, illegal and *non-est* in law, which arises from an environmental legislation on which this Hon’ble Tribunal has jurisdiction over, then this Hon’ble Tribunal



has powers to take preventive and remedial steps within its original jurisdiction under Section 14 r/w Section 20 of NGT Act, 2010 to restrain a planning authority to initiate sale or grant of lease for the purpose, which is prohibited. I say that this principle of law has now been affirmed by a 3 Judge-bench of the Hon'ble Apex Court in *Municipal Corporation of Greater Mumbai v/s Ankita Sinha & Ors.* (2021 SCC OnLine SC 897).

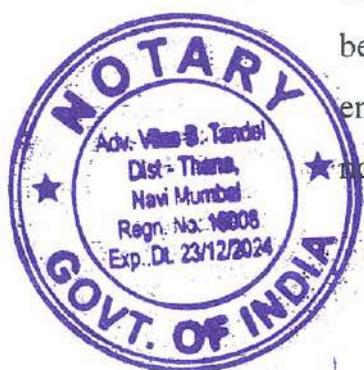
II. R-1'S CONTENTION THAT CONSTRUCTION ACTIVITIES ARE NOT PROHIBITED ON PLOT 2A UNDER CRZ, 2011

7. With respect to Paras 3(II.) (i) to (vi), I deny the contents thereof as misplaced, untenable in law, incorrect application of law and is nothing but an attempt to defeat the scope and purpose of CRZ, 2011. I say that CRZ Notification, 2011 is a law that seeks to govern and regulate development in CRZ areas in a sustainable manner. Therefore, town planning and country regulations are also required to be read and perused alongwith the CRZ 2011 since CRZ, through its CZMP, seeks to only earmark environment and ecologically relevant indicators such as CRZ stretches with CRZ designation over all survey plots, ecologically sensitive areas with colour coding, polluted areas in sea water, fisherfolk settlements, etc. as laid down under Clause 5 read with Guidelines for preparation of CZMP under Annexure – I of CRZ 2011.
8. I say that CZMP does not include/identify aspects such as existing roads, authorised structures, gardens, land use of each plot, etc. which aspects are required to be identified only under the local development plans read with town and planning regulations. I say that this can be



further understood from Clause 8(II)(ii) of CRZ, 2011 which allows buildings to be constructed on the landward side subject to existing local town and country planning regulations. Therefore, it is clear from the above that any interpretation of existing roads or existing authorised structures in the context of CRZ, 2011 can only be ascertained when a CZMP (that shows CRZ affected areas) and Development Plan (that shows the presence of existing roads and authorised structures through its land use) are read together and that if CZMP is read in isolation, the entire purpose of CRZ 2011 shall stand defeated. I say that it is to suppress this mischief has the CRZ 2011 has expressly subjected the determination of authorised structures on the basis of the local town planning regulations alone as CZMP has no mandate to determine, demonstrate or identify authorised structures or roads independently. In fact, the same can be even further demonstrated from the Clause 8(V) which are special provisions concerning Greater Mumbai wherein Clause A therein clearly stipulates that construction of roads only as approved in the Development Plan can be taken up and therefore, the Development Plans and CZMPs are required to be read together for giving true meaning to the provisions of CRZ 2011.

9. I say that it is legally absurd contention of R-1 that since Plot 2A includes portions of non-CRZ area alongwith CRZ-I and CRZ-II portions, the plot has to be treated as a "larger plot" and thus, there is no impediment in law for construction and/or development on such larger plot. I say that if the aforesaid logic is applied, then the entire CRZ 2011 notification can be rendered nugatory as all CRZ areas could be linked to adjoining non-CRZ areas and make CRZ notification entirely inapplicable on such "larger conjoint plots". I say that this is not the intention of the CRZ Notification since the intention has always



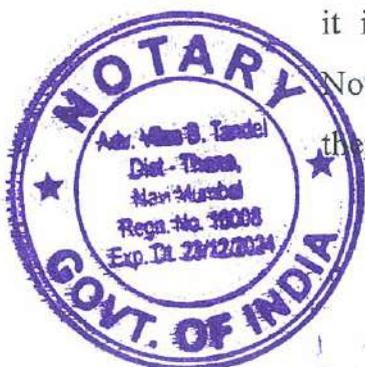
been to make CRZ Notification applicable on all CRZ areas, irrespective of whether the CRZ land is independent or forms a part of a "larger plot".

10.I further say that CZMP of Navi Mumbai does not identify any existing road, let alone marking the "existing road" for Plot 2A. I say that R-1's own Development Plan clearly demonstrates the presence of existing road by which the it is very clear that Plot 2A falls on the seaward side of the existing road. I say that in the absence of any existing road towards the seaward side, Plot 2A also clearly falls on the seaward side of the authorised structures.

11.I deny that draft CZMP shows that Plot 2A is entirely free from CRZ and in any case, a draft CZMP has no force or authority in law as the same is yet under consideration and amenable to further changes. I say that the present CZMP that is into effect admittedly demonstrates that Plot 2A is affected by CRZ-I and CRZ-II and therefore, such a recognition as it stands today in the existing CZMP is relevant for the purposes of adjudicating the instant OA.

III. R-1'S CONTENTION THAT PLOT NO. 2A IS DEVELOPABLE AS PER THE NAVI MUMBAI DEVELOPMENT PLAN

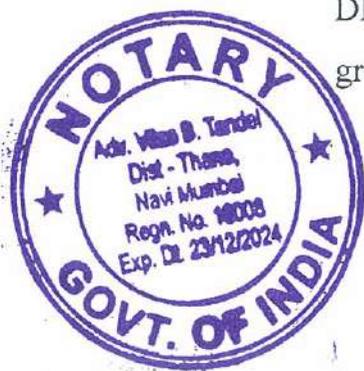
12.I say that though the existing Navi Mumbai Development Plan clearly shows that the said plot is a "No Development Zone", it is immaterial for the present proceedings as to what the status of the land use is, once it is affected by CRZ. I say that once an area is a CRZ, CRZ Notification, being a special law, overrides any other planning laws and thereby, land use of that CRZ plot will be dependent on the CRZ



designation and subject to all the prohibitions and restrictions thereof. I say that draft Navi Mumbai Development Plan has no applicability in the instant proceedings as the same is at a draft stage and the DP that is applicable today for the purposes of the issue at hand clearly shows that Plot 2A is situated on the seaward side of an existing road.

13.I say that as far as the contention of construction allowed in a buffer zone of mangroves in CRZ-I, I say that the Hon'ble High Court has made it absolutely clear that only construction of a fencing/wall is allowed in the buffer zone "*for the purpose of conservation of mangroves*". Such an interpretation cannot be allowed to mean that an entirely prohibited activity (construction of commercial and residential buildings on the seaward side) in the adjoining CRZ-II area can be allowed by merely construction a wall or a fence between the CRZ-I and CRZ-II. I say that even assuming the same to be true, there can still be no construction of buildings allowed on the CRZ-II portion in light of express prohibition under Clause 8 of CRZ 2011.

14.I say that as far as protection of DPS Lake granted by the Hon'ble High Court because of its ecological value of flora and as a habitat for varieties of migratory birds such as flamingoes is concerned, it is absolutely denied that DPS lake is not a wetland and in fact, such false submissions from a public authority deserves to be deprecated with costs. Wetlands Atlas 2021 clearly demonstrate that the DPS lake is identified as a coastal Wetland, as an inter-tidal mudflat, under the latest Wetlands Atlas of 2021 and therefore, to even remotely suggest that DPS lake is not declared as a Wetland is entirely false, inaccurate and grossly incorrect. Annexed and marked hereto as ANNEXURE R-1 is



a copy of the extract of Wetlands Atlas 2021 demonstrating that DPS lake is indeed an identified natural coastal wetland.

15. With respect to Paras 4 and 5 of the Reply, I say that the contents thereof are denied *in toto* and to avoid prolixity and repetition, the aforesaid submissions may be treated as a response to such paras.

16. In view of the above, I pray that the present application be allowed with costs.

Solemnly affirmed at Mumbai)

Dated this 16th of December, 2022)

Identified by Me


Zaman Ali,

Advocate for Original Applicants



DEPONENT



BEFORE ME

ADVOCATE & NOTARY
Vitas B. Tander BA., LL.B., D.A.M.
Balchandra Coop. Hsg. Soc., Flat No. 102,
Plot No. 53, Sector-41A, Seawoods,
Nerul (W), Navi Mumbai - 400 706.
Reg. No. 16808
NOTED & REGISTERED
84 NOV 2022

21/12/2022 19 DEC 2022

MAHARASHTRA

The Maharashtra State occupies a prominent place in the Indian union. It is the second largest state in the country occupying nearly 10 % of the total geographical area. The State has a total geographical area of 3,07,748 km² extending over 800 km from East to West and 700 km from North to South. The State can be divided into two major physiographic divisions viz., the Deccan Plateau and the coastal region known as Konkan. The state is located between 16° N and 22° N latitudes and 72° E and 80° E longitudes and falls in the western part of India, along the Arabian Sea. A 720 km long coastline stretches from Daman in the North to Goa in the South, which falls in the resource development zone called the Western Plateau and Hill Regions of India. Physical divisions of the State comprise of three parts based on its physical features, viz, Maharashtra Plateau, the Sahyadri Range and the Konkan Coastal Strip as explained below.

Maharashtra Plateau: The major physical characteristics of the state include many small plateaux and river valleys. In the north the plateau is flanked by Satpuda ranges, which run in the East-West direction in Maharashtra. The river Narmada flows along the north boundary of Maharashtra, and other major rivers like Krishna, Godavari, Bhima, Penganga-Wardha, and Tapi-Purna have carved the plateau in alternating broad river valleys and intervening highlands.

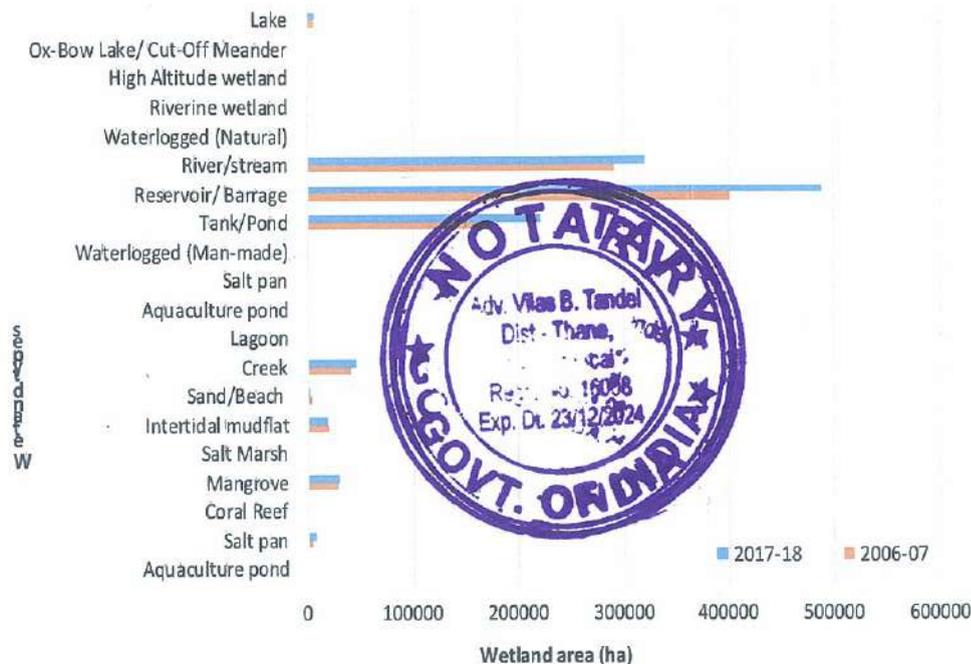
The Sahyadri Range: The Western Ghats of Maharashtra known as the 'Sahyadri' mountain ranges have an average elevation of 1000-1200 m above the MSL. The Sahyadri hills run parallel to the seacoast, with many offshoots branching eastwards from the main ranges (Satmala, Ajanta, Harishchandra, Balaghat and Mahadeo). The special features are the hills of Trimbakeshwar, Matheran and the Mahabaleshwar plateau. Its highest peak is Kalsubai at an altitude of 1650 m. Most of the rivers in Maharashtra originate in the Sahyadri and then divide to join the eastward and westward flowing rivers. These ranges are also characterised by a number of ghats, the important ones being Thal, Bor, Kumbharli, Amba, Phonda and Amboli.

The Konkan Coastal Strip: The narrow strip of coastal land between the Sahyadri and the Arabian Sea is called the Konkan coastal strip. It is barely 50 km in width; it is wider in the north and narrows down in the south. River creeks and branches of the Sahyadri, which reach right up to the coast, dissect this coastline. The important creeks in Konkan are Terekhol, Vijaydurg, Rajapuri, Raigad, Dabhol, Daramthar, Thane and Vasai. The rivers of Konkan rise from the cliffs of Sahyadri and have a short swift flow into the Arabian Sea. Some important rivers are Ulhas, Savitri, Vashishthi and Shastri.

Flora of Maharashtra is heterogeneous in composition. In addition to the different five major forest types, Maharashtra harbours significant mangrove, coastal and marine biodiversity. The state has several national parks and bird sanctuaries. The most common animal species present in the state are tiger, leopard, gaur, sloth bear, sambar, four-horned antelope, blue bull, chital, barking deer, mouse deer, small Indian civet, golden jackal, jungle cat, and hare

Category-wise wetland distribution in Maharashtra

Sr. No.	Wetland Type	Area in ha				
		2017-18		2006-07		Change Wetland Area
		Wetland Area	Percentage of wetland area	Wetland Area	Percentage of wetland area	
1	Inland-Natural	329529	28.6	300596	30.6	28933
2	Inland-Man-made	711045	61.7	577877	58.8	133168
3	Coastal-Natural	102633	8.9	97282	9.9	5351
4	Coastal-Man-made	9418	0.8	6865	0.7	2553
Total		1152625	100	982620	100	170005



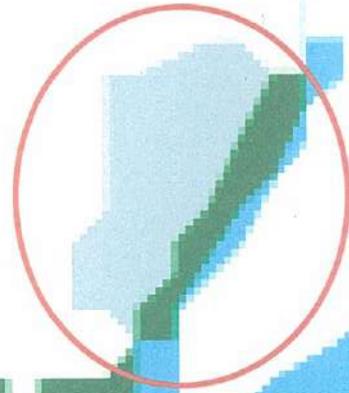
Wetland type-wise area distribution during 2017-18 and 2006-07

336

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DPS Lake marked as a coastal wetland (an inter-tidal mudflat) under Wetlands Atlas 2021



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WETLAND MAP OF MAHARASHTRA
Timeframe - 2017-18

337

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Legend			
Symbol	Description		
	Level-1	Level-2	Level-3
	Inland	Natural	Lake/Pond
			Ox-bow lake/ cut-off meander
			High altitude lake
			Riverine Wetlands
			Waterlogged
			River/Stream
			Reservoir/Barrage
		Man-made	Tank/Pond
			Waterlogged
			Salt pan
	Aquaculture Pond		
	Coastal	Natural	Lagoon
			Creek
			Sand/Beach
			Intertidal mud flat
			Salt Marsh
			Mangrove
			Coral Reef
		Man-made	Salt pan
			Aquaculture pond

Major Roads (NH) ————	Location Map
District Headquarters ●	
Major Railway + + + + +	
State Boundary ————	

Data Source: Resourcesat-2
LISS-III (post monsoon 2017
and pre-monsoon 2018)

Prepared by:
Maharashtra Remote Sensing Application Centre,
Nagpur &
Space Applications Centre, ISRO, Ahmedabad



True Copy
[Signature]

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AFFDAVIT IN REJOINDER

Dated this 17th day of December, 2022

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