

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

REVIEW APPLICATION NO.13 OF 2023

IN

ORIGINAL APPLICATION NO. 74 OF 2022 (W.Z.)

AND

ORIGINAL APPLICATION NO. 75 OF 2022 (W.Z.)

(DISPOSED OF ON 11.10.2023)



City and Industrial Development Corporation ...Review Applicant

**IN THE MATTER BETWEEN**

Navi Mumbai Environment Preservation

Society & Ors. ...Original Applicants

versus

City and Industrial Development

Corporation & Ors. ...Respondents

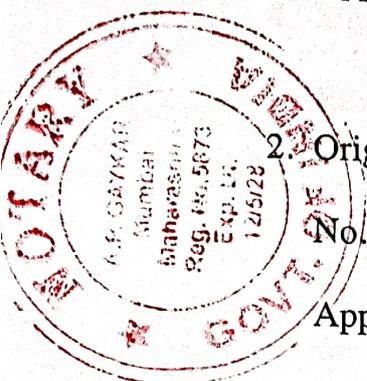
**AFFIDAVIT IN REPLY ON BEHALF OF THE RESPONDENT NOS. 5**

**TO 10:**

I, Rekha Sankhala, the Respondent No.5 herein (Original Applicant No.1 in O.A. 75 of 2022), residing at 12/801, NRI Complex, Nerul, Navi Mumbai 400 706, do solemnly affirm and state as follows:



1. I say that I have read a copy of the Review Application filed by the Applicant herein and am filing this Affidavit in Reply to the said Application on behalf of the Respondents No. 5 to 10.



2. Original Application No. 75 of 2022 came to be filed by the Respondents No. 5 to 10 herein assailing a tender that was issued by the Review Applicant by which it sought to grant a lease of Plot 2A, situated in Sector 54, 56 and 58 of Nerul Node in Navi Mumbai. The plot was proposed to be leased for "Residential and Residential-cum-Commercial Use". The Applicants sought a direction to exclude Plot No.2A from the E-Tender cum E-auction initiated under Scheme No. MM/SCH-28/2022-23 and that CIDCO (the Review Applicant herein) be prevented from disposing of Plot No. 2A through any other means and maintain it as an open space.

3. By the final judgment and order dated 11<sup>th</sup> October 2023 this Ld. Tribunal held that the plot falls within CRZ-I(A) and CRZ-II area. This Ld. Tribunal held that construction in CRZ-(A) areas was barred by the CRZ Notification and further observed that since the CRZ-II area of the plot lies on the seaward side of the existing road, construction in this area too was barred in accordance with Clause 8(i)(II) of the CRZ Notification, 2011. This Ld. Tribunal took note of the fact that the single strip of land falling

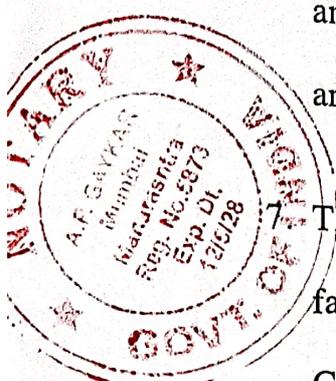
towards the south of the plot in question could not be recognized to be a road and therefore would not fall within the meaning of the term "existing road".

4. Significantly, this Ld. Tribunal considered the arguments raised by the Review Applicant that the area falling outside CRZ could be permitted to be used for construction and held that since no construction is permissible in CRZ-II and CRZ-1A areas, their FSI could not be allowed to be taken for construction in the adjoining areas. This Ld. Tribunal therefore directed the Review Applicant not to sell, transfer or grant any leasehold rights on Plot No.2A and recommended that parts of the plot falling outside CRZ areas be used for a garden or social facility as per the Navi Mumbai Municipal Corporation Draft Development Plan.

5. The Applicant has alleged that disposal of land does not fall within the purview of the NGT Act and is thus beyond the jurisdiction of the NGT Act, 2010. The Applicant has also urged that the documents placed on record demonstrated the presence of a road on the seaward side of the plot and thus construction would not be barred under the provisions of the CRZ Notification.



6. The Respondent submits that both of these arguments were canvassed at the time when the O.A. was heard and in fact were specifically raised in the Affidavit in Reply filed by the Review Applicant. The final judgment and order dated 15<sup>th</sup> November 2023 was passed taking into account these arguments that were urged by the Review Applicant.



The Review Applicant has alleged that there is an error apparent on the face of the record in as much as the Ld. Tribunal has failed to consider the Costal Zone Management Plan ("CZMP") prepared under the provisions of the CRZ Notification, 2019 which was finally approved by the MoEF-CC after the matter was heard and reserved for orders on 15<sup>th</sup> September 2023 but before the judgment was pronounced. The Applicant states that this development was brought to the attention of the Tribunal *vide* an affidavit filed on 14<sup>th</sup> November 2023.

8. The Respondents submit that this Ld. Tribunal is not bound to take into account any additional material or evidence once the matter is closed for orders. This Ld. Tribunal was therefore right in not considering the contents of the Affidavit that was filed on 14<sup>th</sup> November 2023.
9. It bears noting that the Review Applicant has been negligent in bringing to the attention of the Tribunal the fact that the CZMP under the CRZ Notification 2019 was published. Although, as the Applicant itself has

stated, the CZMPs under the CRZ Notification, 2019 were published on 26<sup>th</sup> September 2023, it was not until 14<sup>th</sup> November 2023, upon the listing of the matter for pronouncement of orders, that the Applicant filed an Additional Affidavit pointing out the fact that the CZMPs under the CRZ Notification, 2019 were published.

10. It is well settled that the scope of a review petition is extremely limited.

Under the guise of a review, the Petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided.

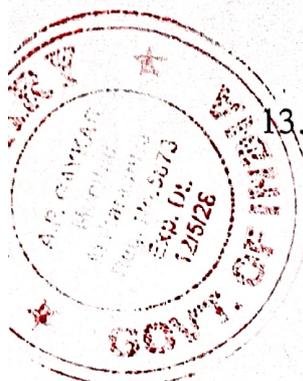
11. As stated by the Hon'ble Justice Krishna Iyer in *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi* (1980) 2 SCC 167, while reflecting on the scope of a review petition, -

*-"A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of results"*

12. As stated above, the Review Applicant has sought to reiterate that there is an "existing road" present towards the south of the plot in question, and would therefore not be hit by clause 8(i)(II) of the CRZ Notification, 2011 [corresponding clause 5.2(ii) of the CRZ Notification, 2019]. The Applicant has also sought to reagitate the arguments with respect to the



jurisdiction of the NGT to prohibit the transfer of any land, which were raised in its Affidavit in Reply dated 14<sup>th</sup> November 2022 [paras 3(i) – 3(iii) of the Affidavit in Reply]. The Respondents herein have dealt with these arguments in detail in the Affidavit in Rejoinder dated 14<sup>th</sup> December 2022.



13. The Applicant has sought to place additional material on record to “*substantiate and prove*” [para 32(b), pg. 28 of the Review Application] that the subject road was, in fact, in existence. Pertinently, it is not the Applicants case that this material was not available with the Applicant at the time when it filed its Affidavit in Reply. The Applicant states that these documents were not brought on record since they were “*not considered necessary at that point of time...*” (para 31, pg. 27). Having now suffered an adverse order, the Applicant seeks an opportunity to rectify the defects in substantiating the arguments that were made at the time when the Original Application was being considered by this Ld. Tribunal.

14. Interestingly, the Applicant in fact appears to be aware that none of this material can be considered by this Ld. Tribunal in a Review Application and in fact specifically says so at 31 of the Review Application.

15. It may be noted that a substantial part of the Applicant’s submissions are premised on the publication of the CZMPs under the CRZ Notification, 2019 and the consequent coming into force of the CRZ Notification, 2019

because of which a smaller proportion of the Plot No.2A falls within CRZ areas. However, as stated above, this Ld. Tribunal held that since no construction is permissible in CRZ-II and CRZ-1A areas, their FSI could not be allowed to be taken for construction in the adjoining, non-CRZ areas. Thus, the coming into force of the CRZ Notification, 2019 thereby reducing the proportion of the plot falling within CRZ areas has no bearing on the findings arrived at by this Ld. Tribunal.

16.Th Review Applicant effectively seeks a rehearing and fresh decision of the case. No circumstances of a compelling nature justifying a review of the final judgment and order dated 15<sup>th</sup> November 2023 passed by this Ld. Tribunal have been disclosed by the Applicant. The Review Application this ought to be rejected.

Solemnly affirmed at Mumbai )

*Rekha Sankhala*

Dated this 17th day of April 2024 )

Respondent No.5

(Rekha Sankhala)

**BEFORE ME**

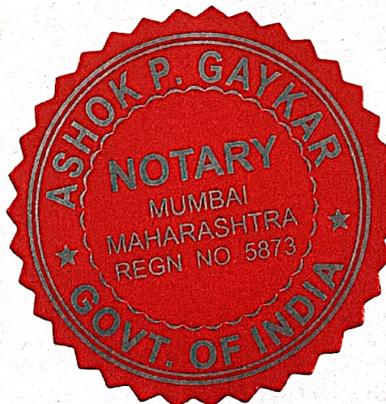
17 APR 2024

Adv. ASHOK P. GAYKAR  
B.Com., LL.B., G.D.C. & A.  
NOTARY GOVT. OF INDIA  
Reg. No. 5873



Identified by me

*M. Kakalia*  
Meenaz Kakalia



Advocate for the Respondent Nos. 5 to 10

Before me,



Reg. No... 51  
Sr. No... 4367  
Date... 17 APR 2024  
OF NOTARY REGISTER