

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT  
PUNE**

**MEMORANDUM OF APPLICATION**

(Under Section 18(1) read with Sections 14, 15 and 20 of the National  
Green Tribunal Act, 2010)

Application No. 77 of 2023

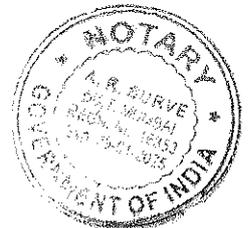
Banda Nagaraj Kumar and Anr. )...Applicants

VERSUS

Maharashtra Maritime Board and Ors. )...Respondents

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Through

*R.B.*

For **RONITA BHATTACHARYA**

Advocate for the Appellants

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**AFFIDAVIT ON BEHALF OF THE APPLICANTS:**

I, Banda Nagaraj Kumar, Age 68 years residing at 501-A, Neelkanth  
Arcade, Plot 94, Sector-17, Kopar Khairane, Navi Mumbai 400709, the  
Applicant No. 1 herein, do hereby state on solemn affirmation as follows:

1. I say that I am the Applicant No. 1 in the Original Application, being  
O.A. No. 77 of 2023. I am fully acquainted with the facts and  
circumstances of the case, and I have read the present O.A. No. 77 of  
2023 filed on 10.05.2023, the affidavit-in-reply of the Respondent No.



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1 dated 27.06.2023 (“Affidavit-in-Reply”) and the affidavit-in-rejoinder of the Applicants dated 31.08.2023 (“Affidavit-in-Rejoinder”), and thus, I am competent to swear to this Affidavit.

2. At the outset, I say that I am filing the present Affidavit in order to bring on record certain material facts and information that have become known to the Applicants subsequent to the filing of the O.A. No. 77 of 2023 and the Affidavit-in-Reply by the MMB. I say that the facts raised in the present Affidavit support the contentions of the Applicants raised in O.A. No. 77 of 2023, and the present Affidavit should be read along with O.A. No. 77 of 2023.
3. I say that during the first hearing on 19.05.2023 in O.A. No. 77 of 2023, it was brought to the attention of this Hon’ble Tribunal that the Applicants had been attempting to obtain several documents under RTI pertaining to the Project and the CRZ clearance. I say that through the response dated 21.09.2023 to the RTI Query dated 17.02.2023, it came to the knowledge of the Applicants in October, 2023 that the Maharashtra Maritime Board (“MMB”) had addressed a letter dated 28.06.2023 (“Letter”) to the Maharashtra Coastal Zone Management Authority (“MCZMA”) seeking to delete specific condition no. I put forth by the MCZMA for the proposed project pertaining to the



construction of the anti-sea erosion bund and sea front development and beautification at Aksa Beach, commissioned by the Respondent MMB (“Project”). The condition that the Respondent MMB had sought to delete, stipulated “*MMB to ensure that no construction is allowed in intertidal or beach area i.e. CRZ area. Solid construction should be restricted to landward side of the High Tide Line*”, and was mandated by the MCZMA while recommending the Project to the State Environmental Impact Assessment Authority (“SEIAA”) from the CRZ point of view, which issue was discussed at the 127<sup>th</sup> meeting of the MCZMA held in November, 2018. A copy of the Letter is annexed hereto and marked as Annexure “A-1”.

4. I say that the Respondent No. 1 MMB filed its Affidavit-in-Reply on 27.06.2023, however, no details were furnished as to whether any CRZ clearance was given to carry out construction on the beach / CRZ-I area. I say that on 03.07.2023, O.A. No. 77 of 2023 was admitted and notice was issued, returnable within four weeks; the Respondents MCZMA, SEIAA and the Environment Department of the State of Maharashtra were directed to file reply affidavits within 4 weeks, and the Applicants were directed to file an affidavit-in-rejoinder to the Affidavit-in-Reply filed by Respondent No. 1. I say that the Applicants filed their Affidavit-in-Rejoinder on 31.08.2023.



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5. I say that vide its last order dated 04.09.2023 in O.A. No. 77 of 2023, this Hon'ble Tribunal had granted four weeks' additional time to Respondent Nos. 2-5 to file an affidavit-in-reply, and listed the matter for further consideration on 01.12.2023. It is noteworthy that despite passage of over a month, the affidavit-in-reply on behalf of Respondent Nos. 2-5 has not been filed.
6. It is pertinent to note that the Respondent MMB's proposal to the MCZMA seeking deletion of the aforementioned condition no. I prohibiting construction in the CRZ area was addressed on 28.06.2023, i.e. after O.A. No. 77 of 2023 was filed on 10.05.2023 seeking, *inter alia*, the revocation of the CRZ clearance dated 05.03.2019 on account of the non-compliance with the conditions stipulated in the CRZ clearance by the Respondent MMB. It is thus evident that as an afterthought, a drastic alteration is being sought in the condition recommended by MCZMA. I say that this cannot be done without modifying the earlier CRZ clearance dated 05.03.2019, and further, that the Respondent MMB cannot obtain post-facto permission from the MCZMA. In fact, a fresh CRZ clearance has to be obtained. The Letter thus clearly indicates that though the Respondent MMB has repeatedly emphasized that it has complied



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with all the conditions stipulated in the CRZ clearance, it has, in fact, violated the conditions imposed by the Respondents MCZMA and SEIAA, and has been illegally constructing a road on top of the beach without any permission to do so.

7. I say that the Respondent MMB has, while seeking deletion of the MCZMA recommendation, stated that as there are existing private properties along the landward side of the High Tide Line, it is not possible to keep the anti-sea erosion bund on the landward side of the High Tide Line as directed in the CRZ clearance dated 05.03.2019; hence, it approached the CWPRS, Pune and IIT, Mumbai, which has submitted a report stating that the construction of the anti-sea erosion bund is needed as Aksa Beach is an eroding site, and that, the alignment chosen to construct the said anti-sea erosion bund seems appropriate as the existing electric poles were collapsing due to erosion. I say that if the Respondent MMB was aware of the topography of the site proposed by it for the Project, it should have raised the concern regarding the existence of private properties along the landward side of the High Tide Line prior to the CRZ clearance being granted. The fact that this concern has been raised at such a belated stage makes it evident that the Respondent MMB did not intend to comply with the CRZ clearance, and that it has been



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constructing the seawall in complete violation of the CRZ clearance dated 05.03.2019.

8. The Respondent MMB also did not provide any scientific studies indicating that Aksa Beach is an eroding site, making it necessary to construct the anti-sea erosion bund or that the construction is required at the site proposed by it. While the lack of studies necessitating the construction of anti-sea erosion bunds at the site proposed by the Respondent MMB has been recorded in the Minutes of the MCZMA's 168<sup>th</sup> meeting dated 10.08.2023, the agenda of which was, "*Proposal for amendment in CRZ Clearance for Anti Sea Erosion Measures at Aksa Beach, Madh, Mumbai Suburban by MMB*", and the matter was even deferred for want of the above information, the MCZMA did not call for conclusive evidence from the Respondent MMB regarding Aksa Beach being an eroding site. A copy of the Minutes of the 168<sup>th</sup> meeting of the MCZMA dated 10.08.2023 is annexed hereto and marked as Annexure "A-2".

9. I say that the Letter further states as follows:

*"As per CWPRS letter, following recommendations:*

- a. ***The constructed seawall is aligned with the existing electric pole. The***



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*alignment of the wall is in between High and Low water line, which is a permissible activity in CRZ-1B. The seawall/Toe-berm protection was necessary to protect boundary wall and the proposed beautification. During the visit there was a flood tide (about 3.0 m water level) and the measured distance between toe-berm of the seawall to water line was about 50 m.”*

It is thus evident that at the time the Letter was sent on 28.06.2023, construction work had already been carried out in clear contravention of the CRZ clearance dated 05.03.2019. On this ground alone, the Respondent MCZMA should have directed the demolition of the wall. It is further evident from the above-quoted portion of the Letter that as has already been stated in the O.A. No. 77 of 2023 and the Affidavit-in-Rejoinder, the Respondent No. 1 was wrongfully trying to pass off the Project as an anti-erosion measure, whereas the project was actually for the “proposed beautification” of the beach with the construction of a concrete seawall, which is a prohibited activity under the CRZ Notification.

10. I repeat and reiterate my submissions that the statements made in the report prepared by IIT Bombay that the beach is found to be “marginally eroding”, and that the beach is found to be very “plat”



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[sic: flat] unlike other locations where it is protected by dunes show that the said portion of Akxa Beach would actually be suitable for beach nourishment as an erosion control technique instead of the construction of a concrete seawall.

11. I repeat and reiterate that the entirety of the Akxa beach falls within CRZ I-A and CRZ I-B areas, either in the form of sand dunes or in the form of tidally influenced land falling between the low tide line and the high tide line. I say that it is pertinent to note that vide its order dated 16.08.2022 in *Rajabhau Pawar v. State of Goa & Ors.*<sup>1</sup>, which dealt with illegal constructions being carried out on Baina Beach, Goa under the guise of beautification of the beach, this Hon'ble Tribunal, despite the assertion of the Goa Coastal Zone Management Authority ("GCZMA") that the area fell in CRZ-II where constructions are permissible, concluded that as per the CRZ Notification of 2011, area containing sand-dunes falls in CRZ-I, and hence, the beach where constructions were being carried out fell in CRZ-I, and that therefore, restrictions in Para 8 of the CRZ Notification shall apply. Para 8 prohibits all new constructions in CRZ-I areas except for certain activities such as "*construction of trans harbour sea link and without*

<sup>1</sup> Original Application No. 97/2016 (WZ).



*affecting the tidal flow of water, between LTL and HTL*” in CRZ-I areas and “*construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water*” in areas between LTL and HTL which are not ecologically sensitive. This Hon’ble Tribunal in *Rajabhau Pawar* held that the area in question was a no-development zone, and the constructions in question were therefore, wrongly allowed by the GCZMA. Accordingly, this Hon’ble Tribunal directed that the area be restored to its original form under the supervision of the GCZMA, and that if the same is not done within 3 months, the GCZMA may undertake restoration and take coercive measures as per law, including assessment and recovery of compensation for the violations.

12. It is also relevant to state that in a similar matter pertaining to the construction of a wide 1.2 kilometre long RCC wall at Versova beach, which was being passed off as an anti-sea erosion bund, and was being constructed in violation of the CRZ Notification of 2011, this Hon’ble Tribunal had vide order dated 23.05.2023 rejected the O.A. No. 64 of 2021, however, the Hon’ble Supreme Court vide order dated 29.08.2023, imposed a stay on the construction of the wall by directing that “*status quo, as of today, shall be maintained in respect of the work under progress on the beach in question*”. A copy of the



said order dated 29.08.2023 is annexed herewith and marked as Annexure "A-3".

13. I say that in the O.A. No. 77 of 2023 filed by the Applicants seeking, *inter alia*, (a) revocation of the CRZ clearances granted to the Respondent No. 1 MMB for the Project by Respondent No. 2 MCZMA and Respondent No. 4 SEIAA, and (b) directions to stop all constructions / development works for the Project, the Applicants have clearly pointed out that the Project was not being carried out in accordance with the MCZMA recommendations or the provisions of the CRZ clearance dated 05.03.2019. It was further pointed out that the portion of the beach falling towards the landward side of the road will be completely eroded if the wall is permitted to exist, as the wall, and the road will disallow natural deposition of sediments / sand on the other side of the wall/road. I say that O.A. No. 77 of 2023 is currently pending adjudication before this Hon'ble Tribunal, and on this ground alone, the Respondent MCZMA should have rejected the Respondent MMB's request for post-facto permission.

14. In view of the above submissions, I say that the issue deserves to be examined by this Hon'ble Tribunal, especially in view of the fact that both the MCZMA and SEIAA have categorically stated that



construction cannot be permitted in the intertidal and beach area. I say that the letter dated 28.06.2023 written by MMB conclusively proves that no permission was granted to carry out any construction on the beach, and that contrary to this, construction had been carried out. Hence, no post-facto approval could be granted, and therefore, the reliefs sought in the Application be granted.

Solemnly Affirmed at Mumbai

Dated this Day of November 2023

3 NOV 2023

Identified by me

*[Signature]*  
for **RONITA BHATTACHARYA**

Advocate for the Applicants

) *[Signature]*  
) Deponents  
[Banda Nagaraj Kumar]

BEFORE ME

**BEFORE ME**

**A. R. SURVE**  
ADVOCATE & NOTARY  
GOVT. OF INDIA  
REG. No. 16353

Seen Original  
PAN / ~~Aadhar~~ / Election  
Card / Driving License / I-  
Card - Passport / POA *34>682851100*  
Bearing No. *W/4-26028*

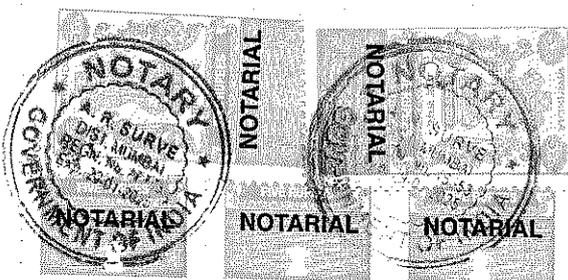
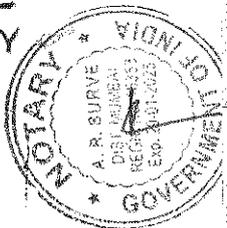
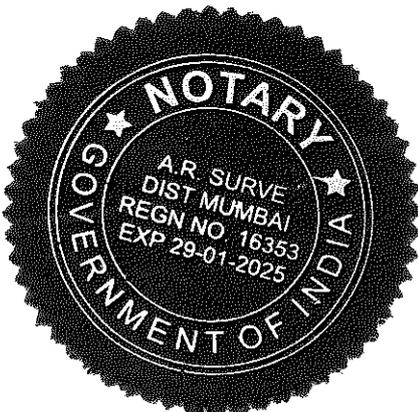
Dated: 8 NOV 2023

For Verification \_\_\_\_\_

NOTED & REGISTERED

Page No. 31/14577

Date: 8 NOV 2023





सत्यमेव जयते

GOVERNMENT OF MAHARASHTRA, HOME DEPARTMENT (PORTS & TRANSPORT)

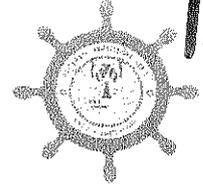
# MAHARASHTRA MARITIME BOARD

Indian Mercantile Chambers, 2nd Floor, Ramjibhai Kamani Marg, Ballard Estate, Mumbai - 400 001. Tel.: 022-69041777 Fax : 022-69041740

Website : <https://mahammb.maharashtra.gov.in>

Email: [ceo.mmb@maharashtra.gov.in](mailto:ceo.mmb@maharashtra.gov.in) / [ceommb@gmail.com](mailto:ceommb@gmail.com)

# ANSWER - A-1



12

No MMB/CEO/Engg/Aksa Beach/ 2913

Date :- 28 JUN 2023

To,  
Member Secretary,  
Maharashtra Coastal Zone Management Authority,  
Environment Department, 15<sup>th</sup> floor,  
New Administrative Building,  
Mantralaya, Mumbai - 400 032.

MCZMA  
लिपिक नो-२११, १२०/१७-७-२३  
पर्यावरण व आवासीय बदल विभाग  
मंत्रालय, मुंबई ४०० ०३२

**Sub: - CRZ Clearance for proposed construction of anti-sea erosion bund and Sea Front Development and Beautification at Aksa Beach by Maharashtra Maritime Board.**

Ref :- i) CRZ Clearance letter dated 05/03/2019.

ii) CRZ Clearance letter dated No. CRZ-2020/CR-95/TC4 Dated 30/06/2021

Sir,

Maharashtra Maritime Board has received CRZ Clearance for proposed construction of anti-sea erosion bund and Sea Front Development and Beautification at Aksa Beach. This was approved by MCZMA in its 127<sup>th</sup>, 148<sup>th</sup> MCZMA meeting and granted CRZ clearance on with certain conditions.

MMB has constructed the Anti sea erosion bund as per given permission but with reference to the CRZ clearance letter dated 05/03/2019 specific condition - I is: "MMB to ensure that no construction is allowed in intertidal or beach area i.e. CRZ area. Solid construction should be restricted to landward side of the High Tide Line."

As there are existing private properties along the landward side of the High Tide Line, it was not possible to keep the anti-sea erosion bund on landward side of the High Tide Line as directed in the approval letter. In this context we have approached to CWPRS, Pune and IIT, Mumbai they had submitted their report; as per this report, Aksa beach is an eroding site and the existing structures are affected by erosion. Hence, there is need to provide anti-sea erosion bund to protect the facilities being developed. The alignment chosen to construct the anti-sea erosion measure seem appropriate as the existing electric poles were collapsing due to erosion.

As per CWPRS letter, following recommendations:

- The constructed seawall is aligned with the existing electric pole. The alignment of the wall is in between High and Low water line, which is a permissible activity in CRZ-1B. The seawall/Toe-berm protection was necessary to protect boundary wall and the proposed beautification. During the visit there was a flood tide (about 3.0 m water level) and the measured distance between toe-berm of the seawall to water line was about 50 m.



Amendment

155m  
6

Asst  
2  
1412

- b. It is recommended to provide roundhead on both sides of the seawall to reduce flanking effect on either side of seawall. However, the roundhead at the entrance (southern side of Seawall) may cause hinderance to the public visiting Aksa beach. Hence, it is advised to monitor the effect of flanking on the southern side of seawall for 2-3 years and then the decision regarding the need of roundhead construction (southern side) may be taken-up. The roundhead of northern end of the seawall should be constructed immediately.
- c. The constructed seawall is a flexible structure made up of rubble mound and it is essential to monitor and maintain them regularly. It is advisable to compile the beach profile data in front of the constructed seawall upto the LWL or 80m (whichever is lower) at least for 3 years to compare the changes of the beach profiles.

In view of the above it is requested to kindly delete the specific condition I in the sanction letter.

Thanking you,

Encl : As above



Chief Engineer,  
Maharashtra Maritime Board, Mumbai.



# 599 ANNEXURE - A-2

14

Minutes of the 168<sup>th</sup> meeting of the Maharashtra Coastal Zone Management Authority (MCZMA) was held on 10<sup>th</sup> August, 2023

Item No.16: Proposal for amendment in CRZ Clearance for Anti Sea Erosion Measures at Aksa beach, Madh, Mumbai Suburban by MMB

## INTRODUCTION:

The Chief Engineer, MMB presented the matter before the Authority. The MMB presented that the MCZMA in its 127<sup>th</sup> meeting held on 2<sup>nd</sup> November, 2018 deliberated the proposal of Anti sea erosion bund and recommended the proposal from CRZ point of view to SEIAA subject to certain conditions. The SEIAA vide letter dated 5<sup>th</sup> March, 2019 granted the clearance for the project.

The MMB vide letter dated 28.06.2023 has requested to delete the following specific condition No.1 of the MCZMA recommendation and SEIAA clearance:

I) MMB to ensure that no construction is allowed in intertidal or beach area i.e. CRZ area. Solid construction should be restricted to landward side of the High Tide Line.

## DELIBERATION:

The MMB during the meeting presented that there are existing poles and proposed public facilities immediately along the beach and there are existing private properties nearby, hence, it is not possible to keep anti sea erosion bund on landward side of HTL.

Hence, the MMB requested to delete above said conditions no. I.

Expert Member asked MMB whether any scientific studies from erosion point of view from competent organisation has been carried out in the matter recommending the necessary of the bund at site proposed by MMB. MMB agreed to submit the same.

## DECISION:

In the light of above, the Authority after deliberation decided to defer the matter, for want of above information.

  
Member Secretary



  
Chairman



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We direct that *status quo*, as of today, shall be maintained in respect of the work under progress on the beach in question.

(ANITA MALHOTRA)  
AR-CUM-PS

(AVGV RAMU)  
COURT MASTER



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**AFFIDAVIT ON BEHALF OF THE  
APPLICANTS:**

**On this 8<sup>th</sup> November 2023**

**RONITA BHATTACHARYA**

Advocate for the Appellants

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Mumbai – 400 023.

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