

**BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE, PUNE.
ORIGINAL APPLICATION NO. 64 OF 2021**

PARTIES

1. Mr. Zoru Darayus Bhatena	... Applicant
<i>Versus</i>	
1. State of Maharashtra	
2. Collector, M.S.D.	
3. Maharashtra Coastal Zone Management Authority	
4. State Level Environment Impact Assessment Authority (“SEIAA”)	
5. State of Maharashtra (Environment Department)	
6. Assistant Commissioner, MCGM	
7. Maharashtra Maritime Board	... Respondents

NOTE ON SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

1. The present Original Application has been filed u/s 18 (1) r/w Sections 14, 15 and 20 of the National Green Tribunal Act, 2010 (“NGT Act”) *inter alia* seeking a direction to the Respondent No. 1 to desist from construction of the anti-sea erosion bund from Sagar Kutir to Hindu Smashan Bhoomi at Versova, Mumbai and demolish the newly made constructions in relation thereto.

2. The Respondent No.1 is implementing a public project i.e., constructing/reconstructing/developing an anti-sea erosion bund from Sagar Kutir to Hindu Mashanbhumi at Versova (“**said project**”). The said project is being developed by the Respondent No.1 pursuant to taking cognisance of the fact that the people residing in the vicinity of the Versova Shore line (*Minutes of Meeting of District Planning Committee at Exhibit-F/ Page No.215 of R1’s Reply*) are facing immense difficulty due to the flooding and damage caused to life and property by the tidal actions (*Photographs at Exhibit-A/Page No.180 & Exhibit-E/Page 207 of R1’s Reply*). Therefore, to protect the property and wellbeing of the people and to prevent frequent flooding, there was a dire need to construct an anti-erosion wall.

LIST OF IMPORTANT DATES & EVENTS

Sr. No.	Date	Particulars	Exhibit/Pg. No.
1.	2015-2016	The existing walls of the private properties of citizens were damaged due to the tidal actions and there was frequent flooding into private properties. In fact, the Respondent No.1 received various representation from the people to take urgent action to develop necessary protection structures.	A/180 - 192 (Photographs of damaged walls) E/207 - 214
2.	02.01.2015 02.11.2015	The District Planning Committee took cognizance of the hardships faced by the people residing in the vicinity of the shore line where the project is being implemented.	F/215 – 221
3.	08.03.2016	Due to the constant flooding in the Sagar Kutir area, the Respondent No. 1 issued a letter to the Central Water and Power Research Station, Khadakwasla (“ CWPRS ”) which is an expert in the field, requesting a suitable design for coastal protection at Sagar Kutir to Hindu Smashan Bhoomi, Versova	G/ Pg. 222
4.	11.04.2016	The CWPRS provided a suitable design report for constructing coastal protection/ anti-erosion bund at Sagar Kutir. <i>Note: The design categorically provided for a walkway/pathway/promenade, which is seen at item no.4 in the legend provided in the design at page 98.</i>	H/ Pg. 96 - 102
5.	2016	The Respondent No.1, as per extant law, conducted Environmental Impact Assessment with respect to the project. <i>Note: A perusal of the project details (page 116), project description (page 118), Executive Summary (page 166) would show that the proposal was always for construction of an Anti-Sea Erosion Bund. 2.Furthermore, Paragraph 4, 5 and 7of the Affidavit in Reply filed by the MCZMA also confirm the position that the CRZ clearance is for construction of the Anti-Sea Erosion Bund.</i>	I/230 - 319
PROCEDURE SCRUPULOUSLY FOLLOWED BY MZCMA PRIOR TO GRANT OF CRZ CLEARANCE			
6.	27.12.2016	Respondent No. 1 applied for CRZ clearance from the MCZMA along with Form I. <i>Note: the basic information provided at page 196, information checklist 1.1 at page 196, information checklist 1.11 at page 197, information checklist 4.7 at page 200, information checklist 5.4 at page 201, information checklist 6.1 at page 201, brief description of the project item no. 4(ii) at page 206, planning brief 7 (i) at page 208, executive summary more particularly project description at page 218 would show that at all times the project was for construction of Anti Sea Erosion Bund.</i>	J/ Pg. 320 K/ 321

7.	17.01.2017	The MCZMA, at its 115 th meeting, considered the proposal and observed that there should be a combination of hard and soft solutions for arresting the sea erosion and deferred the proposal.	L/ Pg. 372 - 373
8.	17.01.2017	Respondent No.1 immediately forwarded the recommendation of the MCZMA to CWPRS being the expert and requested for appropriate modifications in the design.	M/Pg. 374
9.	24.01.2017	The CWPRS after considering the recommendations of the MCZMA, has given detailed reasons and scientific explanation as to why a soft solution will not be a suitable solution for the said project.	N/ Pg. 375 - 376
10.	24.01.2017	The Respondent No.1 on the same day of receiving the reply from the CWPRS, forwarded the same to the MCZMA.	
11.	22.03.2017	At its 116 th meeting, the MCZMA took note of the recommendations of the CWPRS that in view of the higher waves, high tidal range and limited sediment, a soft solution would not be suitable. Accordingly, the MCZMA directed the Respondent No. 1 to submit a detailed design of the Anti-Sea Erosion bund considering the mix of soft solutions and hard structures and time series data.	O/ Pg. 377 - 378
12.	08.05.2017	The Respondent No.1 forwarded the 116 th minutes of MCZMA to the CWPRS for further consideration.	P/ Pg.379
13.	27.06.2017	CWPRS issued a communication to the Respondent No. 1 <i>inter alia</i> stating that the design of the protection scheme/anti-erosion bund and the details of the site of the conditions for design consideration have already been submitted vide letter dated 25 th January, 2017, after considering hard as well as soft solution.	R/ Pg. 381
14.	28.07.2017	MCZMA, at its 119 th meeting, considered the Respondent No. 1's proposal and decided to recommend the proposal of construction/reconstruction/development of anti-sea subject to various conditions including deleting of the walkway. <i>Note: the permission to reconstruct, necessarily means and is inclusive of the word construction.</i>	S/ Pg. 382 - 383
15.	04.09.2017	The Respondent No.1 issued a letter to the MCZMA thereby confirming compliance of all the conditions imposed by MCZMA in its 119 th meeting.	T/ Pg. 384
16.	14.09.2017	The Respondent No.1 has forwarded the minutes of the 119 th meeting to CWPRS for necessary action. <i>Note: In the said letter the Respondent No.1 has communicated all the conditions imposed by the MCZMA at the time of recommending the said proposal for grant of CRZ clearance and has categorically placed on record that the authorities have recommended that the promenade/walkway should be deleted. In these premises, the Respondent No.1 requested for a fresh design.</i>	
17.	25.10.2017	After forwarding the minutes of MCZMA's 119 th meeting to the CWPRS, CWPRS, by its letter, provided a fresh design for carrying out the construction of the said Project.	V/ Pg. 387 - 393

		<i>Note: Map at Pg. 262 shows that the CWPRS/Respondent No.1 has duly deleted the walkway/promenade.</i>	
18.	27.08.2018	SEIAA considered the Respondent No. 1's proposal for grant of CRZ Clearance in its 138 th meeting wherein after duly taking cognizance of the fact that the Respondent No.1 had complied with all the conditions raised in MCZMA's 119 th meeting, the authority decided to grant CRZ clearance to the Respondent No.1.	
19.	18.09.2018	SEIAA granted CRZ clearance to the Respondent No. 1 for carrying on the said Project	W/ Pg. 394 - 403
20.	12.10.2018	The Respondent No. 1 issued the work order to the Project Proponent to commence construction of the said Project.	D/ Pg. 203 - 206
21.	26.12.2018	The Respondent No.1 commenced construction of the project post obtaining the clearance and issuance of the work order. <i>Note: i. for the purpose of the NGT Act, the cause of action first arose, latest, on 12.10.2018, post which date the construction commenced. ii. The captioned Application is filed on 3rd September 2021 i.e., post the period of limitation of 6 months as stipulated under section 14 of the NGT Act. Therefore, the Petition as filed is not maintainable.</i>	
22.	06.12.2021	By an order passed in the captioned Application, this Hon'ble Tribunal <i>inter alia</i> raised a query regarding the construction of a walkway/road which is against the condition imposed by the MCZMA and provided the Respondent No.1 an opportunity to bring in clarity with respect to the same.	A (Additional Affidavit) / Pg. 446 - 448
23.	23.12.2021 24.12.2021	Respondent No. 1 addressed a letter to the CWPRS <i>inter alia</i> informing them of the suggestion of this Hon'ble Tribunal to incorporate a mix of soft as well as eco-friendly solutions with respect to the coastal protection work. The Respondent No. 1 further informed the CWPRS that by the said Application, it has been alleged that the design/work of the coastal project is not as per the conditions laid down by MCZMA in its 119 th meeting. <i>(Photographs of the Existing Wall at Ex. B of R1's Additional Affidavit/ Pg. 448 - 451)</i>	B (Additional Affidavit)/ Pg. 452 C (Additional Affidavit) /453
24.	30.12.2021	CWPRS addressed a letter to the Respondent No. 1 providing the clarifications as sought for. <i>Note: (i) By the said letter, the CWPRS has stated that the work has been designed to suit the peculiar conditions on the site and has given scientific explanation with respect to the design of the anti-erosion bund. Furthermore, as the existing compound wall is constructed with rubble masonry, it is in a damaged condition and consequently, repair of the existing wall would not be possible. In view thereof, the CWPRS has stated that it was absolutely mandatory to have constructed the wall as disturbance of the existing wall would have led to collapse of private compounds. (ii) it is further recorded that the minimum distance required between the existing wall and the new retaining wall is maintained. (ii) Therefore, in view of the aforesaid, the construction of the new retaining wall was entirely necessary as the repair/reconstruction of</i>	D (Additional Affidavit) / Pg. 454 - 455

	<i>the existing wall would not be possible in view of its dilapidated/damaged condition.</i>	
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A. PRELIMINARY OBJECTION:

a) Limitation:

1. National Green Tribunal being a creation of the National Green Act, 2010, (“**NGT Act**”), is bound by the provisions of the Parent Act. The captioned Original Application is filed under Section 14 of the NGT Act. Section 14 of the NGT Act, contemplates jurisdiction of the National Green Tribunal over all civil cases where substantial question relating to environment is involved, subject to the Application being filed “within a period of 6 months from the date on which the cause of action for such dispute arose”.
2. The captioned Original Application has been filed raising various issues and allegations with respect to the anti-sea erosion from Sagar Kutir to Hindu Smashanbhumi at Versova, Mumbai. The State Level Impact Authority (“**SEIAA**”) granted CRZ clearance to the said project on 18th September 2018 (*Exhibit W of R1’s Reply/ Page 394 to 403*). In furtherance thereof, the Respondent No.1 commenced construction which is also recorded in the Respondent’s letter dated 26th December 2018 (*Exhibit-D of R1’s Reply/ Page 203 to 206*).
3. The captioned Petition was filed on 3rd September 2021 i.e. after almost three years from the date on which the cause of action first arose. On this count alone, the captioned Original Application deserves to be dismissed.

b) Appeal against the grant of CRZ clearance:

4. On a complete reading of the Original Application, it appears that the Original Applicant is aggrieved by the grant of CRZ clearance dated 18th September 2018. It is well established that a party ought not to be permitted to challenge the CRZ clearance except by way of filing an Appeal, more particularly in cases such as the present one wherein all the conditions imposed in the CRZ clearance has been duly complied with by the Project Proponent. The only way to challenge a CRZ clearance is as and by way of an Appeal provided under the NGT Act. Thus, on the sole ground that the Original Applicant are attempting to invoke the jurisdiction of this Hon’ble Court under Section

14 to challenge a grant of CRZ clearance instead of filing an Appeal, the captioned Application deserves to be dismissed at the threshold.

B. THE CONSTRUCTION OF THE PROJECT HAS BEEN CARRIED OUT IN ACCORDANCE WITH LAW AND THE PERMISSIONS GRANTED TO THE RESPONDENT NO. 1

5. The Respondent No.1 states that it has obtained all permissions as required under the extant law, *inter alia*, CRZ clearance under the applicable CRZ notification. In fact, the expert bodies and authorities, Maharashtra Coastal Zone Management Authority (“MCZMA”) and SEIAA, after scrupulously following the procedure as mandated under law, applying their mind and by a reasoned speaking permission have granted CRZ clearance to the Respondent No.1 to carry out the construction of the said project. Therefore, the Respondent No.1 states that there is absolutely no occasion for this Hon’ble Tribunal to interfere with the permissions granted to the said project, more particularly in light of the fact that all the conditions imposed by the CRZ clearance have been complied with by Respondent No.1;

6. The Respondent No. 1 had initiated this Project pursuant to the concerns raised by the people residing near Versova beach regarding losses caused to their property by the tidal wave action which causes damages to the existing walls and houses along the coast (*Ex. E (Colly) of R1’s Reply at Pg. 207 to 214*). Accordingly, on 8th March, 2016, the Respondent No. 1 issued a letter to the CWPRS requesting a suitable design for providing coastal protection in that area (*Ex. G of R1’s Reply at Pg. 222*). Thereafter, the Respondent No. 1 applied for CRZ clearance from the MCZMA on 27th December, 2016 (*Ex. J of R1’s Reply at Pg. 320*). As set out hereinabove, the MCZMA considered the proposal at its 115th and 116th meeting held on 17th January, 2017 and 22nd March, 2017 respectively. The proposal was deferred as the MCZMA had recommended a mix of hard and soft solutions for arresting sea erosion, however, the CWPRS being the expert body recommended that in view of the specific conditions at site, higher waves, high tidal range and limited sediment movement, a soft solution may not be a long term solution.

7. The Respondent No. 1’s proposal was therefore considered finally by the MCZMA on 28th June, 2017 at its 119th meeting. The recommendations made by the CWPRS were accepted and the MCZMA decided to recommend the proposal of the

construction/reconstruction/development of the anti-sea erosion wall to SEIAA subject to compliance of certain conditions. The Respondent No. 1 has complied with the conditions set out therein as detailed hereunder:

A. Proposed reconstruction of anti-sea erosion wall should be in accordance with provisions of the CRZ Notification dated 6th January, 2011 (“Notification”) (amended from time to time);

- a. The construction of the Project is in compliance with the Notification. Clause 3 of the Notification sets out activities that are prohibited within the CRZ. However, sub-clause 4 of Clause 3 states that land reclamation, bunding or disturbing the natural course of seawater shall be permissible where it is a measure for control of erosion based on scientific Environmental Impact Assessment (“EIA”) studies. The Respondent has conducted the EIA studies with respect to the Project in 2016 itself (*Ex. I of R1’s Reply/ Pg. 230 - 319*). Chapter 07 of the EIA at Pg. 286 study sets out the Project Benefits which *inter alia* records that the Project will prevent coastal erosion at Versova beach. Therefore, the construction of the Project undertaken by the Respondent No. 1 falls within the permissible activities under the Notification.

B. Walkway is not permitted on the anti-sea erosion bund as it is not permissible activity in CRZ-I inter tidal area;

- b. The initial design report prepared by the CWPRS dated 11th April, 2016 proposed the construction of a promenade with concrete protection wall along with coastal protection in the form of rubble mound seawall of about 1200m length from Sagar Kutir to Machhalimar. The proposed promenade in the original plan is at *Ex. H of R1’s Reply/ Pg. 225* and has been shaded in red in the plan (*Item No. 4 of the legend*). However, in compliance with the imposed MCZMA condition, the Respondent No. 1 has submitted modified designs dated 25th October, 2017. A perusal of the layout at *Ex. V of R1’s Reply/ Pg. 389* shows that the promenade that was proposed to be constructed initially has been removed pursuant to the MCZMA’s recommendation. The Respondent No.1 has further confirmed in its Additional Affidavit that the said space of about 5.5 mtrs between the existing wall and the constructed wall, which is the minimum distance which mandatorily had to be maintained considering the technical

requirements, will not be open to the public post the completion of the said project (*paragraph 4 at Pg. 444 of the Additional Affidavit of R1*).

8. The Respondent No. 1, by its letter dated 4th September, 2017 (*Ex. T of R1's Reply/ Pg. 384*), informed the MCZMA that all the conditions imposed by the MCZMA at its 119th meeting had been complied with. Subsequently, on 27th August, 2018, SEIAA considered the Respondent No. 1's proposal for grant of CRZ clearance. After noting that all the conditions imposed by the MCZMA had been complied with, SEIAA decided to grant CRZ clearance for the project and the same was granted on 18th September, 2018 (*Ex. W of R1's Reply/ Pg. 394 - 403*).

C. THE PROJECT ENVISAGED RECONSTRUCTION OF THE ANTI-SEA EROSION WALL WHICH CONTEMPLATES CONSTRUCTION OF THE ANTI-SEA EROSION BUND

9. The Applicant has alleged that construction of a new wall was not contemplated under the Project and the same was for reconstruction of the wall. However, the proposals made by the Respondent No. 1 for the project have always envisaged construction of a new anti-sea erosion bund. This is evinced from Chapter 2 (*Cl. 2.3/ Pg. 116 & Cl. 2.3.2.1/ Pg. 118*) and Chapter 9 (*Cl. 9.3/ Pg. 166 & Cl. 9.3.2/ Pg. 168*) of the EIA study which sets out the description of the project. The CRZ clearance granted by the SEIAA also records that the project is for *construction* of an Anti-Sea Erosion Bund (*Ex. W of R1's Reply/ Pg. 394 (Table – Item 1)*).
10. It is apposite to mention at this juncture that the CWPRS, by its letter dated 30th December, 2021 (*Ex. D of R1's Additional Affidavit/ Pg. 454 - 455*) has stated that the term “seawall” means the retaining wall along with the bund in the anterior part. Therefore, seawall is a cumulative word which includes the tetrapods/stones, retaining walls, bunds, etc. As the Project contemplated reconstruction and redevelopment of the seawall along with the fresh construction of the Anti-sea erosion bund, it cannot be said that there has been non-compliance of the conditions of the MCZMA and the reconstruction of the seawall contemplates construction of the new retaining wall.
11. Therefore, the Project always contemplated the construction of an Anti-sea erosion bund. The Minutes of MCZMA's 119th meeting contemplates *reconstruction of anti-*

sea erosion wall (*Ex. S of R1's Reply/ Pg. 383*). the construction of the Anti-sea erosion bund and therefore, there has been no non-compliance of the MCZMA conditions.

Existing wall could not have been repaired and minimum distance has been maintained between the existing wall and the retaining wall;

12. Furthermore, the CWPRS by the aforesaid letter dated 30th December, 2021 (*Ex. D of R1's Additional Affidavit/ Pg. 454 - 455*) has also stated that the existing wall has been constructed with rubble masonry, is in a damaged condition at multiple locations and are constructed in a zig zag manner. Therefore, the existing wall could not have been repaired and it was not possible to place any stones or any other material to imbibe the force of the sea waves on the existing compound wall. In order to protect the existing walls, and to redevelop the seawall, it was absolutely mandatory to have constructed the wall, as disturbance of the existing walls would have led to collapse of private compounds. The current wall constructed on site is at a minimum distance of 5.5 metres as opposed to the initial 10 metres as proposed in the original design. The Respondent No. 1 has therefore, kept the space between the two walls at a minimum and is in the process of considering planting trees/shrubs suitable to grow in the coastal weather. In these premises, the construction of the retaining wall was absolutely mandatory considering the conditions on site and to meet the objective of constructing the said coastal barrier. Furthermore, the Respondent No.1 has stated that post the completion of the said project, public access will be restricted in this area.

13. In view of the foregoing, it is *ex-facie* apparent that the Application ought to be dismissed as the same is barred by *limitation* in view of the provisions of Section 14 of the NGT Act which clearly states that an Application ought to be filed within a period of six months from the date on which the cause of action has arisen. The captioned Application has been filed on 3rd September 2021 i.e., post the period of limitation of 6 months as stipulated under section 14 of the NGT Act. Therefore, the Application as filed is not maintainable. Furthermore, the Applicant has wrongly invoked the provisions of Section 14 of the NGT Act with a view to challenge the said CRZ Clearance. It is well settled that the grant of CRZ Clearance can only be challenged by way of an Appeal. In these premises, the Application ought to be dismissed at the threshold itself.

14. Without *prejudice* to what is stated hereinabove, the contention of the Applicant that the said construction has not been carried out in accordance with law is entirely false, frivolous, baseless and misconceived. The Respondent has carried out the construction in accordance with the provisions of law and has followed all the procedures as required by the MCZMA and the SEIAA. The activities carried out by the Respondent are entirely permissible as contemplated under sub-clause 4 of Clause 3 of CRZ Notification, 2011. Furthermore, the conditions imposed by SEIAA have all been complied with by the Respondent No. 1 as set out hereinabove, for instance, the walkway initially proposed to be constructed by the Respondent No. 1 was thereafter deleted in accordance with the conditions imposed by SEIAA. Moreover, the Applicant's allegation that the Project never contemplated construction of a new retaining wall is entirely unfounded. The Project envisaged reconstruction of the anti-sea erosion wall which always contemplated construction and development of the anti-sea erosion bund as set out hereinabove. Furthermore, the reconstruction of the existing wall would not have been possible as the existing wall is in an extremely damaged condition and any reconstruction/repair would result in a collapse in the private compounds. Accordingly, the construction of the retaining wall was absolutely mandatory considering the conditions on site and to meet the objective of constructing the said coastal barrier.
15. Thus, as the said project has been developed strictly as per the designs provided by the CWPRS which is an expert agency and after the design being duly confirmed by MCZMA and SEIAA, this Hon'ble Court ought to permit the Respondent No.1 to complete the said project.