

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**SITTING AT PUNE**

**ORIGINAL APPLICATION NO. 77 OF 2023**

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

Banda Nagaraj Kumar and Anr. )...Applicants

*Versus*

Maharashtra Maritime Board and Ors. )...Respondents

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**AFFIDAVIT-IN-REJOINDER ON BEHALF OF THE  
APPLICANTS TO THE AFFIDAVIT-IN-REPLY BY  
RESPONDENT NO. 2, THE MAHARASHTRA COASTAL  
ZONE MANAGEMENT AUTHORITY:**

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





lack of specific denial unless the same is specifically admitted by me hereinafter.

3. I shall now proceed to deal with the para-wise contentions of Respondent No. 2 raised in its Affidavit-in-Reply.
  
4. With reference to Para 1 of the Affidavit-in-Reply of Respondent No. 2, I say that the present Application has been filed in view of the illegal construction work that has been carried out in the ecologically fragile CRZ lands on Aksa Beach, Madh Island, under the project titled "*Sea front development and beautification at Aksa Beach, Madh, Mumbai Suburban*" ("**Project**") commissioned by Respondent No. 1 i.e., Maharashtra Maritime Board ("**MMB**"). I say that the construction of the Project is in breach of the directions stipulated by Respondent No. 2 while recommending the Project for CRZ Clearance to Respondent No. 4 i.e., the State Environmental Impact Assessment

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Authority (“SEIAA”). Accordingly, the Applicants are seeking, *inter alia*:

- (a) directions to Respondent Nos. 2 and 4 to revoke the original as well as the amended CRZ clearance granted on 05.03.2019 and 10.06.2021-11.06.2021 respectively; and
- (b) restoration of Aksa Beach given the permanent destruction of the beach and the tidal flow of water caused by the Project by the Respondent Authorities in contravention of the Coastal Regulation Zone Notification of 2011 (“**CRZ Notification, 2011**”).

5. With reference to Para 2 of the Affidavit-in-Reply of Respondent No. 2, I say that the present Application has been filed under Section 18 (1) read with Sections 14, 15 and 20 of the National Green Tribunal Act, 2010 (“**NGT Act**”). It should be noted that Section 16 was inadvertently mentioned and this clarification is duly recorded at Para 1 of the order dated 19.05.2023 passed by this Hon’ble Tribunal. The



relevant portion of the order dated 19.05.2023 is reproduced as follows:

*“1. This application has been filed under Section 18(1) read-with Sections 14, 15, 16 (learned Counsel for the Applicants submits that Section-16 has been mentioned wrongly) and 20 of the National Green Tribunal Act, 2010...” [Emphasis supplied]*

I, therefore, say that the present Application is maintainable.

6. With reference to Para 3 of the Affidavit-in-Reply of Respondent No. 2, I say that the Applicants have adequately clarified in Paras 26-36 and Para 38 of the present Application and Para 6 of the Affidavit-in-Rejoinder to the Affidavit-in-Reply filed by Respondent No. 1 that they were awaiting the report of Respondent No. 1 MMB explaining to Respondent No. 2 MCZMA how the Project was in compliance with the permissions granted to it, prior to filing the present Application. I hereby adopt and reiterate the said averments

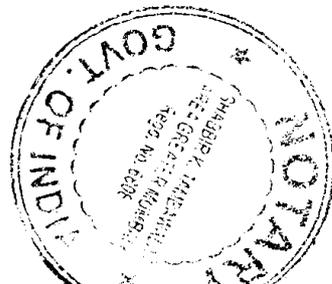


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and request that they be read as part of the present Affidavit-in-Rejoinder. At the cost of being repetitive, I say that after the Applicants noticed indiscriminate and illegal construction in the ecologically fragile CRZ-I lands on Aksa Beach, Madh Island in the latter half of 2022, they made repeated enquiries and addressed complaints to the Chief Secretary of the Environment Department, the Ministry of Environment, Forest and Climate Change (“MoEFCC”), Respondent No. 5 herein, the Collector, and the Chief Minister of Maharashtra from July 2022 till April 2023. The Office of the Tehsildar of Mumbai Suburban vide letter dated 22.12.2022, which is at **Annexure A-12 at Page No. 8 of the present Application** wrote to the Sub-Divisional Commissioner and Respondent No. 1 requesting that a thorough investigation be undertaken into the Project and an action taken report be prepared. However, no investigation was conducted, and no report was prepared. Subsequently, after follow-ups, on 05.03.2023, Scientist ‘E’ from Respondent No. 5 wrote to Respondent No. 2 MCZMA directing it to “*examine the nature and extent of alleged representations*” and further requesting that “*action applicable with law may be taken in the all aforesaid*



*grievance are affirmative*". Respondent No. 1 MMB then informed the Member Secretary of Respondent No. 2 MCZMA, through a letter dated 10.03.2023, which is at **Annexure-A15 at Page No. 212 of the present Application**, that it had formed an internal committee to review the status of statutory clearances obtained and would produce a report within 10 days. A copy of the letter dated 10.03.2023 was also provided to Applicant No. 1. However, as evidenced by **Annexure A-19 from Page No. 222 to Page No. 226 of the present Application**, Respondent No. 1 MMB did not provide a copy of this report by the stipulated date of 20.03.2023, despite multiple requests and reminders by Applicant No. 1. On 10.03.2023, Respondent No. 1 preemptively filed a caveat with this Hon'ble Tribunal anticipating a challenge to the Project. This sequence of events made it apparent that Respondent No. 1 MMB could not satisfactorily justify or explain the permissions authorising it to carry out construction of the Project directly on the beach, on the seaward side within an area clearly designated as Coastal Regulation Zone ("CRZ"). Moreover, despite clear violations of the conditions stipulated by



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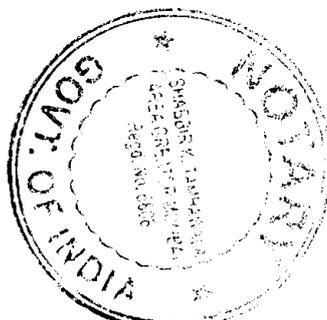
Respondent No. 2 MCZMA for the Project, while recommending the Project to Respondent No. 4 SEIAA for CRZ Clearance, Respondent No. 2 MCZMA failed to take action against Respondent No. 1 MMB. I, therefore, say that the cause of action for filing the present Application arose on 20.03.2023 when Respondent No. 1 MMB failed to share a report explaining the permissions authorising it to carry out construction of the Project and whether any violations had occurred, despite earlier assurances that it would do so by 20.03.2023. As such, it became evident to the Applicants on and after 20.03.2023 that they needed to seek the intervention of this Hon'ble Tribunal to address the ecological damage and degradation of Aksa beach caused by the Project. Accordingly, the present Application was filed on 10.05.2023.

7. With further reference to Para 3 of the Affidavit-in-Reply of Respondent No. 2, I say that the Applicants have clearly demonstrated in the present Application that Respondent No. 2 MCZMA, while considering the proposal for the Project,



has categorically disallowed any construction on the beach and has only allowed some landscaping activities and activities permissible under the CRZ Notification, 2011. The construction activities undertaken by Respondent No. 1 MMB, particularly the construction of a road directly on the natural sandy beach, have been expressly disallowed by the MCZMA. Therefore, the Applicants are not challenging the CRZ Clearance dated 05.03.2019, but in fact, are seeking the revocation of the CRZ Clearances dated 05.03.2019 and 10.06.2021-11.06.2021 granted to Respondent No. 1 MMB on the grounds that Respondent No. 1 MMB has significantly exceeded and flagrantly violated the terms and conditions of the CRZ clearance issued to it.

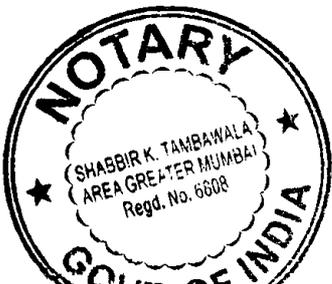
8. With reference to Para 4 of the Affidavit-in-Reply of Respondent No. 2, I repeat and reiterate that the Applicants are not challenging the CRZ Clearance dated 05.03.2019, but in fact, are seeking the revocation of the CRZ Clearances dated 05.03.2019 and 10.06.2021-11.06.2021 granted to Respondent No. 1 MMB on the grounds that Respondent No.



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1 has violated the conditions stipulated in the CRZ Clearance issued to it by undertaking the construction of a road directly in the middle of a natural sandy beach.

9. With reference to Paras 5 and 6 of the Affidavit-in-Reply of Respondent No. 2, I say that the order dated 23.05.2023 passed by this Hon'ble Tribunal rejecting Original Application No. 64 of 2021 which pertained to a wide 1.2 km long RCC wall at Versova Beach being constructed in violation of the CRZ Notification, 2011 and passed off as an anti-sea-erosion bund, was subsequently challenged before the Hon'ble Supreme Court. Vide order dated 29.08.2023, the Hon'ble Supreme Court imposed a stay on the construction of the RCC wall 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 order dated 29.08.2023 passed by the Hon'ble Supreme Court imposing a stay on the construction of the 1.2 km long RCC wall at Versova Beach is annexed hereto and marked as **Annexure-A1**. I further deny the averment of Respondent No. 2 at Para 6 of its



Affidavit-in-Reply that “*a similar anti-sea erosion bund is being constructed in public interest in the present case, by the MMB*”, as the record in the present matter clearly demonstrates that the Project is in breach of the clearances granted to it thus far.

10. With reference to Paras 7-10 of the Affidavit-in-Reply of Respondent No. 2, I say that the same forms part of the record and does not warrant any specific comment. I say that a perusal of the 115<sup>th</sup> Minutes of the Meeting of the MCZMA, which is at **Annexure A-3 from Page Nos. 79-82 of the present Application**, makes it clear that Respondent No. 2 itself stated that “*the beach may be eroded due to the solid construction*”, and that solid construction is not permissible as per the CRZ Notification, 2011. The relevant portion of the Minutes of the 115<sup>th</sup> Meeting of the MCZMA is reproduced as under:

***“Officials from Maharashtra Maritime Board presented the proposal of beautification of Aksa Beach at Madh, Mumbai Suburban. The proposal***



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*involves construction of Gabion wall at Aksa Beach. The Authority instructed MMB to explore other options such as ecosystem based solutions for beautification of Aksa Beach, instead of solid construction on beach. The Authority felt that beach may be eroded due to solid construction on beach. Further solid construction on beach is not permissible as per the CRZ Notification, 2011. The Authority after deliberation decided to reject the proposal from CRZ point of view.” [Emphasis supplied]*

I say that subsequently, at the 127<sup>th</sup> Meeting of the MCZMA on 02.11.2018, the minutes of which are at **Annexure A-4 from Page Nos. 83-88 of the present Application**, the Project was considered once again where Respondent No. 1 MMB changed its stance, asserting that the Project was intended as an “anti-sea erosion bund”, involving, *inter alia*, repair of an existing old bund. The MCZMA, during this meeting, made rather conflicting observations. While it noted that the EIA



report for the Project itself records that the “*clearing, stripping, and levelling of sites, construction of anti-sea erosion measures, earth filling and excavation for foundation, will lead to disturbances to the habitat*” and that “*MCZMA in its meeting on 17<sup>th</sup> & 18<sup>th</sup> January, 2017 observed that solid construction on beach may erode the beach and discouraged the proposal*”, it then proceeded to recommend the Project to SEIAA for CRZ clearance, despite recognizing that it could exacerbate the very issue of erosion it aimed to address. Nevertheless, Respondent No. 2 MCZMA imposed certain restrictions on the Project, including that no construction would be permitted in the intertidal or beach area i.e., the CRZ area and that solid construction should be restricted to landward side of the High Tide Line. After the recommendation was granted by Respondent No. 2, Respondent No. 4 granted a CRZ clearance on 05.03.2019. Thereafter, at its 155<sup>th</sup> meeting held on 10.06.2021-11.06.2021, while considering Respondent No. 1 MMB’s proposal titled “*Proposal for sea front development & beautification at Aksa Beach, Madh, Mumbai Suburban by MMB*”, Respondent No. 2 MCZMA disallowed any construction on the beach, and only allowed some landscaping activities, etc. Thus, the extent of the

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construction being undertaken by the Respondent No. 1 has been disallowed by Respondent No. 2 MCZMA.

11. With reference to Paras 11, 12 and 13 of the Affidavit-in-Reply of Respondent No. 2, I say that the same is part of the record and do not warrant any specific comment. However, it is important to note that after the grant of final CRZ Clearance by Respondent No. 4 on 05.03.2019, Respondent No. 1 proposed an amendment in the CRZ Clearance for anti-sea-erosion measures to expand its scope to “*sea front development & beautification at Aksa Beach, Madh, Mumbai Suburban*” (emphasis supplied), as is evident from the 148<sup>th</sup> Minutes of the Meeting of the MCZMA, which is at **Annexure A-5 from Page Nos. 89-94 of the present Application.**

12. With reference to Paras 14 and 15 of the Affidavit-in-Reply of Respondent No. 2, I say that a perusal of the 155<sup>th</sup> Minutes of the Meeting of the MCZMA, which is at **Annexure A-6**



from Page Nos. 95-98 of the present Application, denotes that Respondent No. 2 declined permission for plaza/restaurant/gym/wooden shacks since the same is not permissible as per the provisions of the CRZ Notification, 2011, and allowed landscaping, playgrounds/recreation grounds and gardens in CRZ-II areas, specifically directing that no construction be allowed on Aksa Beach. However, Aksa Beach entirely falls within CRZ-IA and CRZ-IB zones 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 and none of it is a CRZ-II area. CRZ-I areas are environmentally most critical as per the Coastal Regulation Zone Notification, 2019 (“**CRZ Notification, 2019**”). The CRZ-II area falls beyond the beach area.

13. With reference to Para 16 of the Affidavit-in-Reply of Respondent No. 2, I say that during the first hearing before this Hon’ble Tribunal on 19.05.2023, it was brought to the attention of this Hon’ble Tribunal that the Applicants had been attempting to obtain several documents pertaining to the



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Project and the CRZ clearance through RTI requests. It came to the Applicants' attention in October 2023, through a response dated 21.09.2023 to an RTI query dated 17.02.2023, that Respondent No. 1 had sent a letter dated 28.06.2023 to Respondent No. 2, requesting the deletion of specific Condition I imposed by Respondent No. 2 while recommending the Project to Respondent No. 4 from the CRZ point of view. This issue was discussed at the 127<sup>th</sup> meeting of the MCZMA held on 02.11.2018. Specific condition no. I mandated Respondent No. 1 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 HTL.*" It is noteworthy that Respondent No. 1's request for deletion of specific condition No. I came after the present Application was filed on 10.05.2023 seeking, *inter alia*, revocation of the CRZ clearance dated 05.03.2019 on account of Respondent No. 1 failing to comply with the conditions stipulated therein. This clearly demonstrates that Respondent No. 1 has illegally proceeded with construction of a road directly on the beach, contrary to the conditions stipulated by Respondent Nos. 2 and 4 for the Project, and is now seeking



a drastic alteration to those conditions post-facto. I say that Respondent No. 1 cannot obtain post-facto permission and a fresh CRZ clearance ought to be obtained. I further say that considering that the letter dated 28.06.2023 was addressed by Respondent No. 1 MMB to Respondent No. 2 MCZMA when the present Application was still pending before this Hon'ble Tribunal, on this ground alone, Respondent No. 2 should have rejected Respondent No. 1's request for post-facto permission. Moreover, as mentioned above, Respondent No. 2 MCZMA had itself categorically disallowed the extent of construction being undertaken by Respondent No. 1, particularly, the construction of a road directly upon the natural sandy beach, and cannot now grant post-facto permission.

14. With respect to Para 17 of the Affidavit-in-Reply of Respondent No. 2, I say that the same forms part of the record and does not warrant any specific comment.



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15. With reference to Para 18 of the Affidavit-in-Reply of Respondent No. 2, I say that Respondent No. 2 has itself admitted that the IIT, Mumbai report titled "*Shoreline Studies to ascertain the coastal erosion for Aksa Beach, Mumbai, Maharashtra*", indicating that Aksa Beach is an eroding site was prepared on 21.12.2023, subsequent to the filing of the present Application dated 10.05.2023 and the order dated 01.12.2023 passed by this Hon'ble Tribunal. It is therefore, evident that the IIT Bombay Report dated 21.12.2023 is an afterthought, sought only to provide Respondent No. 1 with a justification for carrying out unauthorized construction on Aksa Beach.

16. With reference to Para 19 of the Affidavit-in-Reply of Respondent No. 2, I repeat and reiterate that Respondent No. 2 MCZMA has itself rejected Respondent No. 1 MMB's proposal titled "*Proposed beautification of Aksa Beach at Madh, Mumbai by MMB*" on the ground that that beach may be eroded due to solid construction on beach as well as the proposal titled "*Proposal for sea front development &*



*beautification at Aksa Beach, Madh, Mumbai Suburban by MMB*”, and disallowed any construction on the beach. However, it has now stated, at its 172<sup>nd</sup> Meeting held on 05.02.2024, that “*due to site constraints and electric pole present near the site and need to protect the infrastructure adjoining the beach, the Authority is of the view that above said condition stipulated in earlier MCZMA recommendation requires modification*”. I say that it is universally accepted that the most effective technique to ensure long term protection of beaches and prevent erosion of beaches is to supplement and strengthen beaches, instead of constructing tidally obstructive “hard constructions” which block the natural tidal flow of water, increasing the flood prone nature of the area, and result in a lack of sand and sediment passing on to the landward side of the hard construction, which ultimately leads to the complete erosion of the said sediment deprived landward portion beyond the hard construction. It is therefore, worth considering why Respondent No. 2 MCZMA did not direct Respondent No. 1 MMB to replace or fortify the eroded poles or explore the feasibility of “soft” erosion control techniques such as beach/sand nourishment, which



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were directed for by the Hon'ble NGT, vide its order dated 11.04.2022 in *C.H. Balamohan v. Union of India (OA No. 04/2013 with Appeal No. 18/2017)*. I further say that Respondent No. 2 MCZMA, at its 172<sup>nd</sup> Meeting held on 05.02.2024, noted that "*now, it came to the notice of the Authority from the representation of MMB and various report of IIT & CWPRS called by the Authority; that there are constraints and seawall could not be restricted on landward side of HTL*", and accordingly, opined that the condition stipulated by it earlier requires to be amended. However, Respondent No. 2 MCZMA failed to consider that Respondent No. 1 was aware of the topography of the site proposed by it for the Project, and should have addressed the issue of allegedly existing private properties and proposed public facilities along the landward side of the High Tide Line, prior to the grant of the CRZ clearance dated 05.03.2019. The fact that this concern has been raised at such a belated stage makes it evident that Respondent No. 1 did not intend to comply with the CRZ clearance.



17. With further reference to Para 19 of the Affidavit-in-Reply of Respondent No. 2, I say that there is no provision of either CRZ Notification, 2011 or CRZ Notification, 2019, which permits a motorable road, complete with benches, to be constructed on beaches on sand dunes which are CRZ-1A areas. Neither is the construction of concrete seawalls mentioned as a permissible activity in the CRZ Notification. Instead the CRZ notification only permits “bundling” and erosion control techniques. I further say that at page 553 of the Affidavit-in-Reply of Respondent No. 1, it is recorded by IIT Bombay that sea water reaches the Project site where lamp posts were previously present, thus clearly indicating that the portion of the beach on which the Project is being constructed is a tidally influenced portion of the beach and hence, CRZ I-A area, and not CRZ-II. Therefore, the region is evidently an inter-tidal area wherein construction cannot be allowed as per the CRZ clearance dated 05.03.2019.
18. With reference to Para 20 of the Affidavit-in-Reply of Respondent No. 2, I say that Respondent No. 2 recommended



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a proposal to Respondent No. 4 SEIAA for modification of specific condition no. I stating that "*MMB to ensure that Anti Sea Erosion bund shall occupy minimum intertidal area which is necessary*". However, there is no clarity or specificity regarding the definition of "*minimal intertidal area*". I say that this lack of clarity will further expand the scope for Respondent No. 1 MMB to undertake construction of the Project in flagrant violation of environmental norms. It is noteworthy that Respondent No. 2 MCZMA has not even suggested a monitoring mechanism for the construction activities being carried out by Respondent No. 1 MMB, particularly, given the construction already carried out by Respondent No. 1 MMB. I reiterate that the Project will result in the portion of the beach falling towards the landward side of the road to 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. At any rate, Respondent No. 2 MCZMA cannot grant post-facto permission to Respondent No. 1 MMB, especially considering Respondent No. 2 had itself rejected Respondent No. 1's proposal in the past on the ground that that beach may



be eroded due to solid construction on the beach and expressly disallowed any construction on the beach.

Solemnly Affirmed at Mumbai )

19th

Dated this Day of August 2024 )

Bumr

DEPONENT



Identified by me

SH

Hamza Lakdawala



SHREYA MOHAPATRA / HAMZA LAKDAWALA

Advocate for the Applicant

BEFORE ME

BEFORE ME

S. K. TAMBAWALLA  
ADVOCATE, HIGH COURT  
B-23, Taheri Manzil  
Nesbit Road, Mazgaon  
Mumbai - 400 010



ITEM NO.13

COURT NO.7

SECTION XVII

760 ANNEXURE - A-1

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S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5364-5365/2023

ZORU DARAYUS BHATHENA

Appellant(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.168614/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.168613/2023-EX-PARTE STAY and IA No.168615/2023-EXEMPTION FROM FILING O.T.)

Date : 29-08-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s)

Mr. Gopal Sankaranarayanan, Sr. Adv.  
Ms. Pooja Dhar, AOR  
Mr. Vishal Sinha, Adv.  
Ms. Aakriti Vikas, Adv.

For Respondent(s)

Mr. Saket Mone, Adv.  
Mr. Kush Chaturvedi, AOR  
Mr. Syed Faraz Alam, Adv.  
Mr. Atharva Gaur, Adv.  
Mr. Aayushman Aggarwal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Applications for exemption from filing a certified copy of the impugned judgment and exemption from filing official translation are allowed.

Issue notice returnable on 7<sup>th</sup> November, 2023.

Mr. Kush Chaturvedi, learned counsel takes notice on behalf of the respondent Nos. 1 and 5.

Signature Not Verified  
Digitally signed by  
Anita Marathe  
Date: 2023.09.01  
10:04:45 IST  
Reason: [ ]

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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

True copy  
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**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL SITTING AT PUNE  
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(Under Section 18(1) read with Sections 14, 15 and  
20 of the National Green Tribunal Act, 2010)

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**AFFIDAVIT-IN-REJOINDER TO THE  
AFFIDAVIT-IN-REPLY FILED BY  
RESPONDENT NO. 2**

**Dated 19th August 2024**

Shreya Mohapatra / Hamza Lakdawala

Advocate for the Applicants

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