

BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT PUNE

MEMORANDUM OF APPEAL

(Under Section 18(1) read with Sections 16,15 and 20 of the National
Green Tribunal Act, 2010)

APPEAL NO 13 OF 2024

Banda Nagaraj Kumar)...Appellants

VERSUS

The City and Industrial Development Corporation)

of Maharashtra and Ors)...Respondents

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AFFIDAVIT IN REJOINDER ON BEHALF OF THE APPLICANT

I, Banda Nagaraj Kumar, Age 68 years residing at 501-Am, Neelkanth
Arcade, Plot 94, Sector-17, Kopar Khairane, Navi Mumbai 400709, the
Appellant herein do hereby solemnly affirm and declare as under:-

1. I say that I have read the present Appeal and am conversant with its
contents. I have also read a copy of the Affidavit in Reply of the Respondent
No. 1 dated 16.08.2024 as well as the Affidavit in Reply of the Respondent



No. 3 dated 23.04.2024 as well as the the Affidavit in Reply of the Respondent No. 8 dated 30.01.2025 thus I am competent to depose on behalf of the Appellant in the present Affidavit in Rejoinder.

2. At the outset I say that I deny each and every averment, contention, allegation and/or submission made by the Respondent 1, 3 and 8 in its Respective Affidavits in Reply (hereinafter referred to as the "Affidavits"). Nothing should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me hereinafter.
3. I say that I am filing the present Affidavit in Rejoinder as a combined response to the Affidavits in Reply to the Respondents 1, 3 and 8. I say that for the sake of brevity and cohesiveness I am dealing with the averments raised in the Affidavits in terms of the common averments raised in each of the affidavits and not paragraph-wise in the Affidavits in Reply. The Appellant crave leave to file further affidavits in Rejoinder if deemed to be necessary by this Hon'ble Tribunal. Nothing in the Affidavits in Reply of the Respondents should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me hereinafter.



4. I say that the primary ground for the Appellant to challenge impugned CRZ Clearance dated 20.11.2023 issued for the construction of the Lord Venkateswara Swami for by the Respondent No. 8, Tirumala Tirupati Devasthanams on the land bearing plot no 3, Sector 12, located at Ulwe Node, Panvel Taluka in Raigad District is that the project admittedly which involved mangrove buffer zones constituting CRZ IA area should have been issued by Ministry of Environment, Forest and Climate Change based on the recommendation of the concerned Coastal Zone Management Authorities. Instead, in the present case the impugned clearance has been issued by the MCZMA and not the Respondent Ministry of Environment, Forest and Climate Change.
5. I say that the Respondent No. 1 CIDCO has not addressed the said averment in its affidavit beyond a simplicity denial.
6. The Respondent No. 3, MCZMA at para 25, 26 and 29 of its affidavit by making an ill-conceived and untable submission that if the MCZMA is permitted to grant direct CRZ clearances for projects such as stand alone jetties, salt works, slipways, temporary constructions and erosion control



measures in CRZ areas, it should theoretically be allowed to approve construction of compound walls and “landscaping” of mangrove buffer zones.

7. I say that such a submission is bad in law, as the provisions of Regulation 7(iii) read with Regulation 8(ii)(b) of the CRZ Notification of 2019, along with office memorandum dated 29.11.2022, clearly stipulates an exhaustive list of projects in CRZ IA and CRZ IV areas either directly by the MCZMA or by the MoEFCC. I say that the Respondent MCZMA cannot read into the law provisions for its own convenience or to sanction in its own illegal actions.

8. I say that the Respondent No 8 however, has in its affidavit in Reply now indicated that it has further altered its design plans to ensure that no work of any kind is undertaken in the mangrove buffer zone. I say that at para 3(vii) the Respondent No. 8 has stated that “In the event that the Respondent No. 8 wishes to proceed with the garden space located in the CRZ-II zone, the Respondent shall seek prior approval from the MCZMA” and has also stated that “*Moreover, apart from the earmarked boundary of*



the land, there is no construction or landscaping that will take place in the designated Mangrove buffer Zone. In fact even in respect to the boundary, the Respondent No. 8, shall after prior permission from the concerned authority would build a wired chain-link fence for security and to prevent strangers trespassing in to said land, that will in no way obstruct the flow of water whatsoever. The Respondent No. 8 has no intention of constructing a concrete wall in the said mangrove buffer zone...

9. I say that the aforementioned statements of the Respondent No. 8 paint a materially different picture of the project than what is allowed under the impugned CRZ clearance which was described in the 170th meeting of the MCZMA as follows,

“During the meeting, the consultant presented that construction of temple is proposed beyond CRZ area as per approved CZMP, 2019. However, only garden/landscaping and compound wall is proposed within 50 mangrove buffer zone area. No mangrove cutting is involved in the project. Consultant presented that compound wall will help in fencing/protection of mangroves. The Authority instructed the PP to obtain the Mangrove Cell NoC for the said activity within 50m mangrove buffer zone



DECISION

In the light of above, the Authority after deliberations decided to recommend the proposal from CRZ point of view on Non CRZ portion subject to compliance of the following conditions:

- 1. CIDCO to ensure that construction is proposed in Non CRZ area strictly as per approved CZMP under CRZ Notification, 2019.*
- 2. CIDCO to ensure that mangrove cutting is not allowed.*
- 3. PP to obtain the Mangrove Cell NoC for the said activity within 50 mangrove buffer zone.*
- 4. No construction is allowed in Mangroves or its 50 m buffer zone area, without Hon'ble High Court permission.*



5. Debris generated during the construction activity should not be dumped in CRZ area. It should be ensured that debris is processed in a scientific manner at a designated site.

6. There shall not be impact on CRZ area, from any activities proposed to be carried out in Non CRZ area.

7. All other required permission from different statutory authorities should be obtained before starting construction at the site shall be ensured by Urban Local Body.”

[Emphasis supplied]

10. It is evident therefore that the MCZMA had at one point been made to believe, based on the submission of the Respondent No. 8, a compound wall and landscaping in the mangrove buffer zone was a part of the project, and as per the position of the Applicant, had wrongfully issued a CRZ clearance for the project to proceed. However, it now appears that the



Respondent No. 8 seems to have redesigned or re “prioritised” its constructions to the development of the temple building “and other constructions” in the Non CRZ area.

11. In these circumstances, I say that the Respondent No. 8 and the Respondent No. 1 must be strictly held to the statement of the Respondent No. 8, and the constructions of the Respondent No. 8 under the impugned CRZ clearance should be restricted to or limited to the those described above as per the Affidavit of the Respondent No. 8. The impugned CRZ clearance should not be later cited by the Respondent No. 1 and 8 as an enabling mechanism for the Respondent No. 8 to start constructing compound walls or any other constructions in mangrove buffer zones - as the law makes it clear that projects involving constructions in Mangrove buffer zones would require to be issued by the Respondent MoEFCC and not the MCZMA. It is pertinent to note that project site is further shown to be mudflats in the MRSAC map, which is also categorised to be CRZ IA areas.

**AVERMENTS REGARDING IMPROPRIETY OF THE CONDUCT OF
THE MCZMA BETWEEN THE 167TH AND 170TH MEETING**



12. I say that irrespective of the reduction or alteration of the construction plan of the Respondent No. 8, I repeat and reiterate that the conduct of the Respondent MCZMA in disallowing construction of the project until the CZMP map under 2019 CRZ notification was improper and was done with a view to give the Respondent No. 8 the benefit of the admittedly more liberal provisions CRZ Notification of 2019. It is submitted that the MCZMA while specifically stating that its recommendation for approval of the project being granted by it during its 167th meeting was only under the CRZ Notification of 2011 as the CZMP maps prepared under the 2011 Notification were approved as on date, and the CZMP maps under the 2019 notification were still pending, the Respondent MCZMA specified as part of its decision that:

“No construction in CRZ II area is allowed till finalisation of CZMP under CRZ Notification of 2019”

13. That the Respondent MCZMA seems to have placed a conditional recommendation regarding the development and construction in CRZ II area until the finalisation of the the CZMP maps under the CRZ Notification of 2019, which is entirely illegal, malafide and untenable in law as such a condition directly contradicts the very first condition of the



recommendation of the Respondent MCZMA that “CIDCO to ensure that construction is proposed in Non CRZ area strictly as per approved CZMP under the CRZ Notification of 2011”

14. I say that the said condition of the MCZMA evidently provided a buffer to the Respondent Project Proponent to permit it to make use of the more development-friendly provisions of the CRZ Notification of 2019, under which additional development work would be permissible in CRZ II areas, and protected CRZ areas would be reduced in area.

15. I say that it is not the job or responsibility of the MCZMA to advise project proponents on how to avoid restrictions placed on potential projects under the CRZ Notification. The job of the MCZMA is to implement and execute the provisions of the CRZ Notification and to ensure that only permissible constructions are allowed in CRZ areas, in conformity with any and all restrictions and safeguard provided in the CRZ Notification which serve to protect the environment. The Respondent MCZMA could not lawfully factor in the 2019 CRZ Notification while considering the proposal for the temple project and recommending its construction under the CRZ



Notification of 2011 since the CZMP maps for Raigad district under the 2019 Notification were not approved at the time when the MCZMA was considering the proposal of the Respondent Project Proponent during its 167th meeting on 23.05.2023.

16.I say that in dereliction of its responsibilities, during the course of its 167th meeting wherein the Respondent MCZMA considered the application for CRZ clearance presented by CIDCO and the Respondent Project Proponent, the Respondent MCZMA did not consider the fact that the plot leased out for the temple project is part of the temporarily landfilled casting yard area.

17.I say that during the course of the 170th meeting of the MCZMA, the Respondent MCZMA was pleased to recommend the proposed project under the CRZ Notification of 2011. I repeat and reiterate the provisions and terms of the MCZMA recommendation are deeply concerning due to the contradictory terms regarding not permitting construction in “non-CRZ” land, and also directing that “construction in Non-CRZ land should not affect the CRZ land”, while simultaneously allowing a compound wall



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and other constructions to be undertaken in the 50m mangrove buffer zone, which, at the time, was admittedly required by the Project Proponent.

18. I say that if it is correct that the proposed project does not involve any construction at all on any CRZ land, then the explanation provided by the Respondent No. 3 of the MCZMA at para 11 and para 31 of its affidavit as to why it issued a CRZ clearance for the project makes little sense.

SUBMISSIONS REGARDING THE ECO SENSITIVE NATURE OF THE PROJECT SITE

19. I say that I repeat and reiterate the submissions made in the appeal that the site for the proposed project, namely the land bearing plot no 3, Sector 12, located at Ulwe Node, Panvel Taluka in Raigad District is a large expanse of thick mangrove forests, tidally influenced wetlands and mudflats. As such the land consists of ecologically fragile lands and falls under the category of CRZ I land adjacent to the Thane creek. I say that the satellite imagery and photographs of the project site as well as the admission of the Respondent No. 3 at para 11 of its Affidavit where it has said "*the project*



site is one continuous land parcel which is partly in CRZ and partly outside CRZ area.” indicate the eco-sensitive nature of this plot of land.

20. I further repeat and reiterate the submissions raised at para 56-57 of the Appeal that that the project site is actually land traditionally used by the local fisher folk of Ulwe/Gavan was being used by the local fishing community for entering the creek as well as for fishing in the intertidal waters before 2019, prior to the use of the land for the purpose of the casting yard of the MTHL project. The fishing community in Ulwe/Gavan comprises over 1000 families who engage in traditional fishing for generations within their families. I say that the said fact was confirmed in the site inspection report dated 09.08.2023 prepared by the Forester Ghansoli, Additional Charge, Forest Officer Vashi. also noted the presence of an existing natural fishing pond right next to the project site.

21. I deny categorically the submission of the at para 14 and 17 of its Affidavit that the land was historically developable and used for agriculture. I say that the Respondent No. 1 has not attached the 7/12 documents referred to



in para 14 of its Affidavit. At any rate, I say that rice cultivation, as stated by the Respondent No. 1 as the land use of the lands constituting the project site, occurs in low lying areas and paddy fields, thereby confirming that the land in question was mudflats and marshy, tidally influenced lands. It is common knowledge that rice is typically cultivated on flat, low-lying, flooded land with clayey loam soil, particularly in river valleys, deltas, and floodplains, as this type of soil retains water well and is ideal for the flooded conditions needed for rice cultivation; essentially, "paddy fields" are the primary land type for rice farming.

22. With regards to the submission of the Respondent No 8 at para 4(t) of its affidavit about the translation of the the site inspection report dated 09.08.2023 prepared by the Forester Ghansoli, Additional Charge, Forest Officer Vashi, I say that the statements made therein are patently false. I say that a perusal of the translation of the document at Page 426-427 of the Affidavit does mention a kacha road on the southern side, and there is no question of anything being withheld or misrepresented in the said translation.



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23.I say that the impugned CRZ clearance therefore deserved to be quashed and set aside by this Hon'ble Tribunal and the prayers sought by the Appellant deserve to be made absolute.



Solemnly affirmed at Mumbai)

Dated ^{10th} day of March 2025)

Banda

Appellant



(Banda Nagaraj Kumar)

Identified by me

RB

RONITA BHATTACHARYA

Advocates for the Petitioners

Before me



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

10/3/25

NOTARY & REGISTERED
21906 10/3/25
Sr. No..... dt.....



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THE APPLICANT

ON THIS DTED 9TH MARCH 2025

RONITA BHATTACHARYA

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