

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

APPEAL NO. 81 OF 2025

IN THE MATTER OF:

GOA RIVER SAND PROTECTORS NETWORK

...APPELLANT

VERSUS

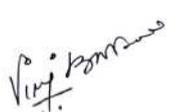
GSEIAA & ORS.

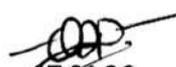
...RESPONDENTS

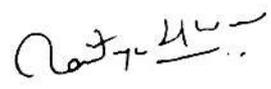
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THROUGH


VIRAJ BAKRE


27.01.26
OM D'COSTA


MAITREYA PRITHWIRAJ GHORPADE
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Place: Goa

Date: 27.01.2026

805
BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

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GOA RIVER SAND PROTECTORS NETWORK

...APPLICANTS

VERSUS

GSEIAA & ORS.

...RESPONDENTS

REJOINDER ON BEHALF OF THE APPLICANT IN RESPONSE TO
RESPONDENT NO. 1 AFFIDAVIT-IN-REPLY DATED 12.08.2025

- 1.** It is submitted that the present Appeal is challenging the Environmental Clearance (EC) dt. 03.02.2025 granted by the Goa State Environment Impact Assessment Authority (GSEIAA) viz., Respondent No.1 to the Directorate of Mines and Geology (DMG) viz., Respondent No.3, for sand mining in Zone-4 of the Mandovi River.
- 2.** The said Zone-4 of Mandovi River falls within the Coastal Regulation Zone (CRZ), viz., CRZ IV-B area (Critically Vulnerable Coastal Area) and is governed by the provisions of the Coastal Regulation Zone Notification, 2011. It is submitted that as per Section 3(x) of the CRZ Notification, 2011, sand mining in CRZ areas is expressly prohibited.
- 3.** It is submitted that GSEIAA vide Affidavit-in-Reply dated 12.08.2025 has sought to contest the issues raised by the Appellant in the present Appeal. Accordingly,

the Appellant is filing the present Rejoinder assailing the submissions made by GSEIAA vide Affidavit-in-Reply dated 12.08.2025.

4. At the outset, the Appellant denies each and every averment and conclusion made in the Affidavit-in-Reply dated 12.08.2025 submitted by GSEIAA which is contrary to and/or inconsistent with what has been submitted on record in the present Appeal. Furthermore, nothing stated in the present Rejoinder on behalf of the Appellant shall be construed as an admission for the want of any specific and para-wise denial or non-traverse unless and until the same is specifically admitted hereinafter.

I. Failure of GSEIAA to Respond to the Express Statutory Prohibition on Sand Mining in CRZ Areas

5. At the outset, it is submitted that the Affidavit in Reply filed by GSEIAA conspicuously fails to deal with the Appellant's primary and foundational contention, namely, the express and unequivocal statutory prohibition on sand mining in CRZ areas under the Coastal Regulation Zone Notification, 2011.
6. Paragraph 3(x) of the CRZ Notification, 2011 categorically prohibits "*mining of sand, rocks and other substrata materials*" within CRZ areas, save and except for narrowly carved out exceptions which are not applicable to the present case. The said prohibition is absolute in nature and admits of no administrative discretion, and is of special importance with regards to protection of Critically Vulnerable Coastal Areas, classified as CRZ IV B Areas.



7. The Impugned Environmental Clearance pertains to sand mining in Zone 4 of River Mandovi, which is admittedly a tidal river and falls within CRZ-IV, thereby squarely attracting the embargo under Para 3(x).
8. Despite the same, the Reply Affidavit is completely silent on the applicability of Para 3(x), the legal permissibility of sand mining in CRZ-IV rivers, and the manner in which the Impugned EC can survive a direct statutory bar.
9. It is settled law that silence in the face of a statutory prohibition amounts to admission, particularly where the burden lies on the authority granting the clearance to demonstrate compliance with environmental law. As the GSEIAA has failed to substantiate how the E.C. granted by it is permissible in view of the express prohibition of Paragraph 3(x) of the CRZ Notification, the impugned E.C. is bound to be set aside as being legally unsustainable.

II. GSEIAA'S CONTENTION THAT EC IS "CONTINGENT" UPON CRZ CLEARANCE IS LEGALLY UNSUSTAINABLE

10. GSEIAA's submission that the Impugned EC is merely "*contingent upon the grant of CRZ clearance*", as stated at **Page 355, Paragraph 5** of the Reply Affidavit, is wholly untenable in law and contrary to the statutory scheme governing CRZ and environmental clearances.
11. It is submitted that CRZ Clearance is a Statutory Pre-Condition to Grant of EC, as has been made explicitly clear in the provisions of the CRZ Notification, 2011.



12. That Paragraph 4.2 of the CRZ Notification, 2011 mandates that projects falling within CRZ areas shall obtain CRZ clearance prior to the grant of Environmental Clearance under the EIA Notification, 2006, as has been previously stated by the Appellant as on **Pg. 14, Para 26** onwards.
13. It is submitted that the statutory framework clearly envisages a sequential clearance mechanism, wherein CRZ clearance is a jurisdictional precondition, and Environmental Clearance can only be considered after such CRZ clearance is granted.
14. Consequently, reliance by GSEIAA on Specific Condition No. 33 and General Condition No. 14 of the Impugned EC is wholly misplaced. It is submitted that executive conditions imposed in an EC cannot override or dilute a statutory mandate, nor can they cure an inherent lack of jurisdiction at the time of grant.
15. It is well established that when the statute prescribes a particular procedure or manner of exercise of powers, it is only that specific procedure which is to be followed and nothing otherwise – which the S.E.I.A.A was bound to follow. Furthermore, the legal maxim of "*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*", which means 'What cannot be done directly cannot be done indirectly' has been repeatedly upheld by the Hon'ble Supreme Court of India in a catena of cases.
16. In this context, it is submitted that granting an EC first and making it "contingent" on a future CRZ clearance is a classic case of indirect circumvention of a statutory prohibition, which is impermissible in law and strikes at the very root of environmental governance.



II.1. Legislative Intent Clarified by CRZ Amendment dated 28.11.2014 and Judgment of Hon'ble Bombay High Court

- 17.** The Appellant submits that amendment to the CRZ Notification dated 28.11.2014 further reinforces the legislative intent that CRZ clearance must precede Environmental Clearance, particularly in projects involving coastal and tidal ecosystems.
- 18.** The amendment was introduced precisely to prevent the mischief of authorities granting ECs first and relegating CRZ compliance to a post-facto formality. GSEIAA's approach is therefore directly contrary to the object and purpose of the amendment. A copy of Gazette Notification S.O. 3085(E) dated 28.11.2014 issued by MoEFCC amending the CRZ Notification 2011 is annexed and marked herewith as **ANNEXURE A-10.**
- 19.** Furthermore, the Hon'ble Bombay High Court, in W.P. No. 814 of 2017 *Pervin Jehangir v. Union of India & Ors.*, vide Judgment dated 05.05.2017, has categorically upheld the grant of CRZ Clearance precedes the grant of Environmental Clearance. A copy of judgment dated 5.05.2017 in W.P. No. 814 of 2017, is annexed and marked herewith as **ANNEXURE A-11.**

III. GSEIAA'S CLAIM OF CONSIDERING PAST IMPACTS OF SAND MINING ON RIVER MANDOVI IS LEGALLY UNSUSTAINABLE

- 20.** The Appellant submits that GSEIAA's assertion, as on **Pg. 356, Paragraph 7** of the Reply, that the impacts of past sand mining on the River Mandovi have been considered is demonstrably false and unsupported by record.



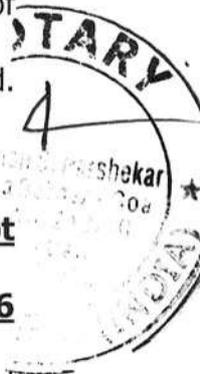
- 21.** The Appellant had placed on record inspection reports of the GCZMA (Pages 162–167, Annexure A-8 of the Appeal), which specifically document the degradation of riverine ecology, destruction of mangroves, and geomorphological alterations caused by prior sand mining activities.
- 22.** That GSEIAA has failed to either deny, explain, or rebut the findings of the GCZMA amounting to an admission of non-application of mind in the decision making process and the grant of the impugned E.C. dt. 03.02.2025.

III.1. Misplaced Reliance on the EIA/EMP and Modelling Study Report

- 23.** The Appellant submits that GSEIAA's reliance on the "*Report on EIA/EMP and Modelling Studies for the Sand Mining Clusters in the Rivers of Goa*", as on Pg. 356, Para 7, is entirely misplaced.
- 24.** A bare perusal of the said report reveals that it does not analyse past ecological damage, does not assess mangrove loss or recovery, does not evaluate cumulative impacts of earlier mining leases, and proceeds on an assumption of baseline conditions that are already environmentally compromised.

IV. GSEIA's claim regarding site inspections being carried out is not compliant with the procedure established by the EIA Notification, 2006

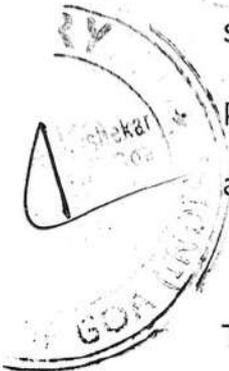
- 25.** The Appellant has raised a specific ground challenging the EC dated 03.02.2025, that no site inspections by a Sub-Divisional Committee were carried out as required by Appendix X of the EIA Notification, in respect of each site for which Environmental Clearance is sought. In response to this, the



Respondent number 1 contends that site inspections were carried out as a part of the preparation of the District Survey Report.

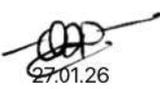
26. The Appellant submits that once again, the specific issue raised in the Appeal has not been dealt with. Even assuming without admitting that site inspections were carried out as a part of the preparation of the DSR, the same would not in any manner amount to compliance with Appendix X of the EIA Notification which mandates individual and site-specific inspections by a Sub-Divisional committee – which has not at all been complied with and followed in the process of the grant of the impugned EC dated 03.02.2025, thus amounting to yet another violation of the mandatory statutory procedure prescribed for the grant of an EC.

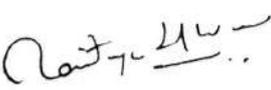
27. In light of the above-stated facts and submissions, it is humbly submitted that this Hon'ble Tribunal may be pleased to issue orders directing the quashing and setting aside of the impugned Environmental Clearance dated 03.02.2025; and pass any other order as deemed fit in light of the facts stated, issues raised, authorities cited, and arguments advanced.



THROUGH


VIRAJ BAKRE


OM D'COSTA


MAITREYA PRITHWIRAJ GHORPADE

ADVOCATE

COUNSEL FOR THE APPELLANT

Mobile: 7024102546

Email: maitreya.ghorpade@gmail.com

VERIFICATION

I, Dr. Claude Alvares, Indian National, do hereby verify that the contents of the present Rejoinder abovementioned are true to my personal knowledge and nothing material has been concealed therefrom.

Date: 27.1.2026

Place: Mapusa, Goa



APPELLANT



Solemnly affirmed before me by
Dr. Claude Alvares
Who has been identified by

who is known to me personally
Mapusa - Goa.

Reg. No. 338/26 Date 27/1/2026



JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA.
STATE OF GOA (INDIA)

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VERSUS

GSEIAA & ORS.

...RESPONDENTS

AFFIDAVIT

I, Dr. Claude Alvares, Indian National, do hereby solemnly affirm and state as under:

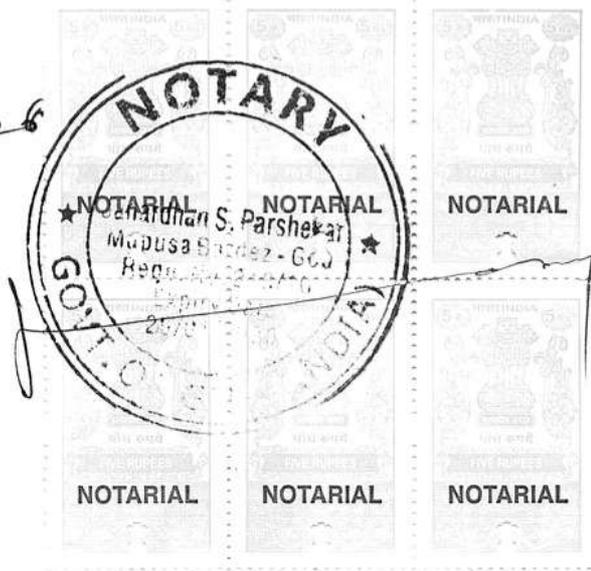
1. That I am the authorized Representative of the Appellant in the above titled Appeal and am conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.



Solemnly affirmed before me by Dr. Claude Alvares
 Who has been identified by _____
 who is known to me personally
 Mapusa - Goa.
 Reg. No. 330/20 Date 27/1/2026

DEPONENT

JANARDHAN S. PARSHKAR
 NOTARY AT MAPUSA, BARDEZ - GOA.
 STATE OF GOA (INDIA)



814
VERIFICATION

Verified on this 27th of January 2026 that the contents of the above-mentioned affidavit are true and correct and nothing material has been concealed therefrom.


DEPONENT

Solemnly affirmed before me by Dr. Claude Alvares
Who has been identified by _____

who is known to me personally
Mapusa - Goa.

Reg. No. 330/26 Date 27/1/26


JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA.
STATE OF GOA (INDIA)


भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 2488]

नई दिल्ली, सोमवार, दिसम्बर 8, 2014/अग्रहायण 17, 1936

No. 2488]

NEW DELHI, MONDAY, DECEMBER 8, 2014/AGRAHAYANA 17, 1936

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 28 नवंबर, 2014

का.आ.3085(अ).—भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना सं. का.आ. 19(अ) तारीख 6 जनवरी, 2011 (जिसे इसमें इसके पश्चात् त.वि.क्षेत्र अधिसूचना कहा गया है) द्वारा, तटीय विनियमन क्षेत्र के रूप में घोषित हैं और त.वि.क्षेत्र में उद्योगों, प्रचालनों और प्रक्रियाओं पर प्रतिबंध अधिरोपित किए गए थे ;

और, त.वि.क्षेत्र अधिसूचना के पैरा 4(ii)(क) के अधीन अधिसूचना सं. का.आ. 1533(अ) तारीख 14 सितंबर, 2006 (जिसे इसमें इसके पश्चात् ईआईए अधिसूचना, 2006 कहा गया है) में असूचीबद्ध क्रियाकलापों की पर्यावरण और वन मंत्रालय से मंजूरी अपेक्षित होगी ;

और, यह आवश्यक हो गया है कि ऐसे गतिविधियों की मंजूरी की शक्तियां या तो राज्य सरकार या प्रादेशिक प्राधिकारियों को प्रत्यायोजित कर दी जाएं ;

और, केंद्रीय सरकार की यह राय है कि लोक हित में यह आवश्यक है कि पर्यावरण (संरक्षण) नियम के नियम 5 के उपनियम (3) के खंड (क) के अधीन सूचना की अपेक्षा का परित्याग कर दिया जाए ;

अतः अब केंद्रीय सरकार पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) और उपनियम (4) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, त.वि.क्षेत्र अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात् :-

त.वि.क्षेत्र अधिसूचना में,—

(1) पैरा 4 के उपपैरा (i) में,—

(क) खंड (द) में “ईआईए अधिसूचना, 2006 के अनुसार” शब्दों और अंकों के पश्चात् “अनुमोदन के लिए” शब्द अंतःस्थापित किए जाएंगे ;

(ख) खंड (र) में “क्षरण नियंत्रण उपाय” शब्दों के पश्चात् “और नमक संकर्म” शब्द अंतःस्थापित किए जाएंगे ;

(2) पैरा 4 के उपपैरा (ii) में,—

- (क) “पर्यावरण एवं वन मंत्रालय, से निम्नलिखित गतिविधियों के लिए मंजूरी अपेक्षित होगी” शब्दों के स्थान पर “संबद्ध सीजेडएमए द्वारा की गई सिफारिशों के पश्चात् निम्नलिखित गतिविधियों के लिए मंजूरी अपेक्षित होगी” शब्द रखे जाएंगे ;
- (ख) खंड (अ) के स्थान पर, निम्नलिखित खंड रखा जाएगा, अर्थात् :-
- “(अ) वे गतिविधियां जो ईआईए अधिसूचना 2006 के प्रवर्ग ‘क’ के अधीन सूचीबद्ध हैं और उक्त अधिसूचना के अधीन अनुज्ञेय हैं”;
- (3) पैरा 4.2 के उपपैरा (ii) के खंड (ख) के पश्चात् निम्नलिखित खंड अंतःस्थापित किया जाएगा, अर्थात् :-
- “(स) एसईआईएए, पैरा 4(i) के अधीन विनिर्दिष्ट परियोजनाओं के लिए (सिवाय मद (घ) के साथ जहां भवन परियोजना से संबंधित है, जिसका विनिर्माण क्षेत्र 2000 वर्ग मीटर से कम है) और परियोजना ईआईए अधिसूचना 2006 के अंतर्गत नहीं आती है”
- (4) पैरा 8(i)I(ii)(ब) में, “जेटी” शब्द के पश्चात् “क्षरण नियंत्रण उपाय” शब्द अंतःस्थापित किए जाएंगे ।

[फा.सं. 12-3/2008-आईए. III]

विश्वनाथ सिन्हा, संयुक्त सचिव

टिप्पण- (1) मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii) में सं. का.आ. 19(अ) तारीख 6 जनवरी, 2011 द्वारा प्रकाशित की गई थी ।

MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 28th November, 2014

S.O. 3085 (E).-Whereas by a notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O.19 (E), dated the 6th January, 2011 (hereinafter referred to as the CRZ notification), coastal stretches are declared as Coastal Regulation Zone (CRZ) and restrictions have been imposed on industries, operations and processes in the CRZ area;

And whereas under para 4 (ii) (a) of the CRZ notification, the activities not listed in the notification number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA notification, 2006) require clearance from the Ministry of Environment and Forests.

And whereas it has become necessary to delegate the powers of clearing such activities either to the State Government or to the regional authorities;

And whereas, the Central Government is of the opinion that it is in public interest to dispense with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rules (3) and (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the CRZ notification, namely:-

In the CRZ notification,-

- (1) in paragraph 4, in sub-paragraph (i)
 - (a) in clause (d), after the words “shall be considered”, the words “for approval” shall be inserted;
 - (b) in clause (f), after the words ‘erosion control measures’, the words “and salt works” shall be inserted;
- (2) In sub-paragraph (ii) of paragraph 4,-
 - (a) after the words, “the following activities shall require clearance from MoEF, the words “after being recommended by the concerned CZMA” shall be inserted;

(b) for clause (a), the following clause shall be substituted, namely:-

(a) "those activities listed under category 'A' in the EIA notification 2006 and permissible under the said notification";

(3) In paragraph 4.2, in sub-paragraph (ii), after clause (b), the following clause shall be inserted, namely:-

"(c) SEIAA, for the projects specified under paragraph 4(i) (except with respect to item (d) thereof relating to building projects with less than 20,000 sq. mts of built-up area) and for the projects not attracting EIA notification, 2006"

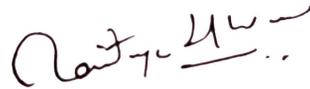
(4) In paragraph 8 (i)I (ii)(b), after the word 'jetties', the words "erosion control measures" shall be inserted.

[No. 12-3/2008-IA.III]

BISHWANATH SINHA, Jt. Secy.

Note: (1) The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* numbers S.O.19 (E), dated the 6th January, 2011.

TRUE COPY





IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 814 OF 2017

Mrs. Pervin Jehangir & Ors.] ... Petitioners
Versus
Union of India and Ors.] ... Respondents

ALONG WITH

WRIT PETITION (L) NO.365 OF 2017

Mrs. Nina Deepak Verma.] ... Petitioner
Versus
Tree Officer, Municipal Corporation of]
Greater Mumbai and Ors.] ... Respondents

Mr. Robin Jaisinghani a/w Jacinta D'Silva for Petitioner in WP 814 of 2017.

Mr. Janak Dwarkadas, Senior Advocate, a/w Mr. Zal Andhyarujina & Mr Saeed Mulani i/b Mulani & Co. for Petitioner in WPL 365 of 2017.

Mr Aspi Chinoy, Senior Advocate a/w Ms. Kiran Bagalia i/b Mrs. Chitra Phadke for Respondent No.2 in WPL 365 of 2017.

Ms. Kiran Bagalia i/b Mrs. Chitra Phadke for Respondent No.4 in WP 814 of 2017.

Mr. A. Y. Sakhare, Senior Advocate, a/w Mr. R. S. Mirupury & Mr. Sagar Patil for Corporation in both Writ Petitions.

Ms. S. S. Deshmukh for Respondent No.4 - Maharashtra Coastal Zone Management (MCZM) in WPL 365 of 2017 and for Respondent No.5 in WP 814 of 2017.

Mr. A. C. Singh, ASG, a/w Mr. Y. S. Bhate, Mr Anand Singh & Ms. Indrayani Deshmukh for Union of India in WP 814 of 2017 & WPL 365 of 2017.

Ms. Poornima Kantharia, GP, for State in WP 814 of 2017 & WPL 365 of 2017.

Dr. Milind Sathe, Senior Advocate a/w Mr. Parimal Shroff, Mr. D. V. Deokar, Mr. Sachin Pande, Mr. Pinakin Modi i/b M/s. Parimal K. Shroff & Co. for Respondent No.6 in WPL 365 of 2017.

CORAM :- DR. MANJULA CHELLUR, C.J.,
AND G. S. KULKARNI, J.

DATE :- 5 MAY 2017

P. C. :-

1. By our order dated 09/02/2017 awaiting returns to be filed, we had directed that none of the parties would proceed to cut any tree till further orders. The respondents have appeared and have filed counter-affidavits, as also additional affidavits. We have accordingly heard learned Counsel for the parties on the interim prayers as made in the Writ Petitions.

2. These two petitions raise a challenge to the Metro Rail Project namely Mumbai Metro Line 3 to operate between Colaba-Bandra-Seepz (for short 'the Metro 3 project'). The challenge is principally on two grounds, firstly, that the respondent – Mumbai Metro Rail Corporation Ltd. (for short 'the MMRCL) is undertaking illegal felling of trees and secondly on the ground that appropriate clearances are not obtained by MMRCL from the authorities under the

Coastal Zone Regulations as contained in the notification dated 06/01/2011 issued by the Government of India, Ministry of Environment and Forest (for short, 'the CRZ notification') and / or the clearances which are granted by the authorities are contrary to the provisions of the CRZ notification.

3. Mr. Janak Dwarkadas, learned Senior Counsel for the petitioner in Writ Petition (L) No.365 of 2017, in support of the interim prayers, would submit that the Metro 3 project is an activity *inter alia*, hit by the CRZ notification dated 06/01/2011, the object of which is to protect and conserve coastal stretches and for which it restricts setting up of industries, operations etc. Mr. Dwarkadas would submit that the proposed Metro stations fall in the defined CRZ areas and therefore, the stipulations as contained in the CRZ notification have become squarely applicable prohibiting certain activities which would include undertaking a Metro Rail project. Mr. Dwarkadas has drawn our attention to para 3 of the CRZ notification which speaks about prohibited activities within the CRZ and more particularly sub-para (x) which prohibits mining of sand and rocks and sub-strata material except those rare minerals not available outside the CRZ area, and exploration and exploitation of oil and natural gas. He also relies on sub-clause (xi) which prohibits construction activities except those specified in para 8 of the notification which, according to him, would become applicable for one of the Metro Station namely the Bandra Kurla Complex station (BKC).

4. Mr.Dwarkadas has laid much emphasis on paragraph 4(i) (b) of the said CRZ notification which provides, for applicability of Environmental Impact Assessment (EIA) Notification 2006 (dated 14/09/2006) for certain projects and for which clearance under the EIA notification would be necessary, subject to the recommendation by the concerned State or Union Territory Coastal Zone Management Authority ('CZMA'). He refers to sub-clause (d) of para 4(i) of the said notification which reads thus:

“(d) Construction involving more than 20,000 sq. mtrs. built up area in CRZ II shall be considered for approval in accordance with the EIA Notification 2006, and in case of projects less than 20,000 sq.mtrs built up area shall be approved by the concerned State or Union Territory Planning Authorities in accordance with this Notification after obtaining the recommendations from the concerned CZMA and prior recommendation of the concerned CZMA shall be essential for considering the grant of environmental clearance under EIA Notification 2006 or grant of approval by the relevant planning authority.”

5. The contention relying on clause 4 (*supra*) is that for construction of certain Metro stations falling in CRZ II, there is an apprehension that the construction would exceed 20,000 sq.mtrs. built up area, for which approval of the Central Government would be mandatory as per the Environmental Impact Assessment Notification dated 14 September 2006 and any approval granted by the local planning authority or the State authority would not suffice the requirement of sub-clause (i)(d) of paragraph 4 of the CRZ notification (*supra*). It is submitted that the CRZ notification cannot be applied in a disjointed manner presuming that each station is an

independent project. He submits that the total area of construction to be undertaken for the whole project is required to be considered for the purpose of the clearances under the CRZ notification and more particularly, para 4 (i)(d) (*supra*).

6. Mr. Dwarkadas would next submit that trees form a significant part of the environment and therefore, felling of trees for the proposed project would have a serious impact on the environment. He submits that in undertaking the project MMRCL would be indiscriminately felling trees. According to him, the felling of trees would also be hit by the protection granted to the environment under the CRZ notification dated 06/01/2011. It is, therefore, submitted that the petitioners have made out a *prima-facie* case for grant of the interim prayer as made in the petitions.

7. Mr. Jaisinghani, learned Counsel appearing in Writ Petition No.814 of 2017, supports the submissions of Mr. Dwarkadas. He would contend that Metro Rail project is a prohibited activity under clause 3(i) of the CRZ notification, which prohibits activities of setting of new industries and expansion of existing industries in the CRZ. According to him, the Metro Rail project is setting up of an industry. He submits that apart from this, for construction of the underground tunnels, excavation would be undertaken which is also a prohibited activity under sub-clause (x) of clause 3 of the CRZ notification which prohibits mining of sands, rocks and other substrata material. He submits that the only alternative available to the

respondents is to undertake construction of Metro Rail project beyond the CRZ areas. Mr. Jaisinghani would contend that even the open spaces are protected under the CRZ notification. In this context, he has referred to clause 8(e) (page 14 of the notification) which provides that in order to protect and preserve the green lung of Greater Mumbai area, all open spaces, parks, gardens, playgrounds, indicated in development plans within CRZ II shall be categorized as CRZ III, that is a no development zone. Mr. Jaisinghani would thus submit that the Metro Rail Project is rendered illegal in view of these provisions of the CRZ notification. Mr. Jaisinghani next submits that the Metro-3 project is also contrary to the provisions of the Metro Railways (Construction of Works) Act 1978 as, according to him, the respondents have acted in breach of the provisions of this Act and more particularly the provisions of Chapter III which pertains to acquisition of land. In this context, he submits that it is a settled principle of law that when the respondents are under an obligation to act in accordance with the rules and regulations, then the respondents are expected to act only in such manner and in no other manner. In this context he has placed reliance on the decision of the Supreme Court in *J. Jayalithaa & Ors. Vs. State of Karnataka & Ors.*¹ However, Mr. Jaisinghani has not pointed out specific instances of land acquisition undertaken by the MMRCL for the project nor the petitioner for whom he appears is affected by any land acquisition.

¹ (2014) 2 SCC 401

8. On the other hand, Mr. Chinoy, learned Senior Counsel for the MMRCL, has opposed the petition and the interim prayers and also seeks vacating of the ad-interim orders passed by us on 09/02/2017. Mr. Chinoy submits submit that the contentions as urged on behalf of the petitioners are completely misplaced. He has drawn our attention to the affidavit of Mr. Ashok Bhasme, Deputy General Manager of the MMRCL, wherein it has been pointed out that, in regard to the Churchgate, Girgaon and Shitaladevi Metro Stations which fall in CRZ II areas, the MMRCL had submitted a proposal for a CRZ clearance, to the Maharashtra Coastal Zone Management Authority (for short, 'the MCZMA') on 28/07/2016. It is submitted that the location of the station area as indicated in the said proposal establishes that the same falls on the landward side of the existing DP (Development Plan) road and hence is permissible under Clause (8) of the CRZ notification of 2011. It is submitted that MCZMA considered this proposal in its 113th meeting held on 8th to 11th August 2016 and recommended the said 3 proposals to the planning authority, this was also communicated to the MMRCL by the MCZMA by its letter dated 21/03/2017. Paragraph 6(b) of the affidavit, refers to the recommendation for the Worli station, which also falls in the CRZ II area, as considered by the MCZMA in its 114th meeting, held on 2nd and 3rd November 2016. As also the Siddhivinayak Temple Station was recommended, which fell under CRZ III. In paragraph 6(c), the deponent has referred to the Cuffe Parade Station admeasuring 10800 sq. mtrs., which is adjacent to Plot Nos.87A, 87, 88, 89, 90 and 103 comprising of DP road and an

additional area of 3375 sq.mtrs. covered by park area required for ancillary use. It is stated that the MCZMA had pointed out that area covered by the park reservation would fall under CRZ III and could not be permitted by MCZMA to be utilized as such, and thus the proposal would be recommended to the SEIAA for its clearance. It is stated that subsequently, MMRCL modified its plan and had deleted the area falling in the park reservation (CRZ-III) from its proposal. It is stated that on 18/05/2016, MMRCL had submitted a revised proposal to the MCZMA for the Cuffe Parade Station which was considered in the 113th meeting held on 8th to 11th August 2016 and was recommended to the planning authority as per the requirements of the CRZ notification.

9. As regards the BKC and the Dharavi Railway Stations which fall in CRZ I and partly in CRZ II, the affidavit of the MMRCL in para 8(a), (e) and (f), and (g), would point out that the proposal for construction of Metro Stations at Dharavi and BKC as submitted by MMRCL to the MCZMA were considered in its 113th held between 8 to 11 August 2016 and it was decided by the MCZMA to recommend the proposal to the MOEF. Thereafter, a representation was made by the MMRCL to MCZMA dated 2.9.2016 pointing out that as per the amended CRZ notification dated 28.11.2014, the proposal was required to be considered at the State level instead of the MOEF. It is stated that accordingly the MCZMA reviewed the proposal of said station in its 114th meeting held on 2nd and 3rd November 2016 and recommended the proposals to the SEIAA which granted an approval

to the BKC and Dharavi stations, in its meeting held on 7th April 2017. In para 8 (g) it is submitted that all precautions would be taken to comply with the various conditions of the approval. Para 9 of the reply affidavit refers to the recommendations of the MCZMA in relation to the Metro Rail tunnel. In regard to the contention as urged on behalf of the petitioners that Metro rail is an industry and thus a prohibited activity under CRZ notification, Mr. Chinoy submits that this contention cannot be accepted as the same is no more *res-integra* in view of the decision of the Division Bench of this Court in the case of *The Goa Foundation and Anr. Vs. The Konkan Railway Corporation & Ors*². It is submitted that the MOEF has held the Metro project to be a permissible activity in the CRZ, as a civic amenity and hence the contentions that prohibitions as contained in the CRZ notification would bar such a project on any count, cannot be accepted. It is submitted that the MMRCL has obtained clearances from the concerned authorities under the CRZ regulations. It is thus submitted that the contentions of the petitioners that these recommendations are made contrary to the provisions of the CRZ notification, are wholly unfounded.

10. In regard to the contention of the petitioners on felling of trees, Mr. Chinoy, learned Senior Counsel for MMRCL, submits that the required procedure under the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 is followed by the MMRCL and the Tree Committee of the Municipal Corporation has

² AIR 1992 Bom. 491

granted appropriate permission for felling of trees, transplanting of trees. It is submitted that the MMRCL would undertake re-plantation/ substituting the trees, which would be required to be felled as also maintain the re-planted trees. In this regard, he has drawn our attention to the affidavit of Mr. Ashok Bhasme, Deputy General Manager of the MMRCL dated 09/03/2017. In para 3, it is stated that the MMRCL will ensure as under :-

“The Stations of the Metro Line – 3 are also going to be underground, with only certain structures for access, ventilation and other miscellaneous allied services being above ground. Although constructions of such stations does entail cutting / removal of trees, on completion of the station construction, almost 90 – 95% of the area affected will be restored as a level vacant area and only 5 – 10% of the area will be utilized for access, ventilation and other services. Etc. Accordingly MMRC will ensure that trees equivalent to the number of trees affected (i.e. both trees cut and trees removed for transplantation) will be planted in the said area on completion of the station construction work. MMRC will take steps to ensure that trees of adequate girth of about 18” – 24” are made available & are planted in the said affected area. MMRC will also ensure for a period of three years thereafter such planted trees are looked, safeguarded & maintained. Accordingly MMRC will ensure that there is no loss of tree cover in all the areas affected by station construction.”

(Emphasis supplied)

11. In addition to the above submissions, Mr.Chinoy on behalf of MMRCL, submits that the MMRCL would place on the record of this Court an undertaking in terms of the submissions in the above paragraph. Mr. Chinoy submits that the MMRCL is also ready to

accept any suggestions / directions as may be given by the Court on this issue. Making there submissions, Mr. Chinoy would submit that the ad-interim order dated 09/02/2017 is required to be immediately vacated, as it is causing a serious prejudice to the MMRCL, resulting in delaying the project thereby increasing the financial burden on the public exchequer. Mr. Chinoy submits that during the execution of the work, there are trenches which are dug and which, if not attended in time, would become an issue of serious concern during the monsoon which would commence in the month of June.

12. Mr. Anil Singh, learned ASG, has appeared on behalf of Government of India, the Ministry of Environment and Forest & Climate Change (for short, 'MOEF & CC) – respondent no.5 in WPL 365 of 2017. The learned ASG has placed on record affidavit of Mr. W. Bharat Singh, Joint Director / Scientist 'D' of the Ministry. The deponent, in setting out the powers which are conferred on the MOEF under the CRZ notification 1991 read with notification dated 06/01/2011 and the stipulations and requirements of the said notification, in para 7, has stated as under :

“That it is submitted that this Metro project proposal was examined by the Ministry and being a civic amenity, was considered as permissible activity under CRZ Notification, 2011. The proposal was, accordingly, forwarded to the Maharashtra Coastal Zone Management Authority (Respondent No.4), vide Letter No.19-130/2015-IA-III dated 18.08.2016, for necessary action.”

Mr. Singh submits that the MOEF has discharged its statutory duty and considering Metro project as a permissible activity, being a civic amenity under the CRZ notification, appropriate action has been taken by permitting the State authorities to deal with the proposal of the MMRCL.

13. Mr. Sakhare, learned Senior Counsel appearing for the Municipal Corporation for Greater Mumbai – respondent no.1, would submit that various applications of the MMRCL were submitted to the Tree Authority, which came to be considered and appropriate decision was taken either to permit transplanting of the trees or to cut the trees and / or to retain the trees. In making this submission, he has relied on the reply affidavit filed on behalf of the Municipal Corporation. Mr.Sakhare has placed on record a statement indicating that in regard to the construction of the Metro Rail project, 1727 trees would be required to be transplanted, 1074 trees are permitted to be cut and 1090 trees would be retained in the 26 areas as set out in the said statement.

14. Having noted the rival contentions, we now examine whether the ad-interim order dated 09/02/2017 deserves to be continued or whether interim relief as prayed in the petition can be granted *inter alia* to stay the Metro project.

15. The petitioners do not dispute that the project in question is a project of considerable public importance for a metropolitan city

like Mumbai. The Metro 3 project is stated to be a fully underground, rail based mass public rapid transport system, of the total length of about 33.5 kilometers. There can be no dispute that the present public transport facilities in Mumbai city are grossly over-crowded, over-strained and inadequate. It is a matter of common knowledge that citizens are required to travel with immense pain and hardship and in conditions endangering their lives in the overcrowded existing suburban trains and buses. Desire for a smooth and comfortable travel in Mumbai had remained a distant dream. To decongest this pressure on the existing transport system and to increase mobility across the region, the State authorities had decided to undertake diverse Metro rail projects. The Metro Rail Line 3 project is stated to provide a high quality public transport system to the vast population, particularly beneficial to Wards A, C, D, E, G/S G/N, A/E, and K/E. It is projected that about 13.87 lakhs passengers per day can be benefited by Metro Rail Line 3. It is stated to connect 30 educational institution, 6 central business district, 30 recreational centers and the domestic and international air terminals. It is expected to save about 60 minutes of the passengers average travelling time per day, resulting in reduction of road traffic, fuel consumption and air pollution. There is a projection of estimated reduction of 6800 tons of Carbon Dioxide (CO₂) in 2021 and 9907 tons by 2041. Further it is estimated that there would be reduction of Carbon Monoxide (CO) to the tune of 4327 tons in 2021 and increasing to 6304 tons to 2041. If these are the benefits of the Metro Rail 3, there can be no doubt that it would be of enormous benefit to the public on all counts.

16. Now as regards the challenge as raised by the petitioners on the issue of the project offending the CRZ regulations, in our *prima facie* opinion, on the material as placed on record and as examined by us, the petitioners' contentions cannot be accepted. It is quite clear that the MMRCL had approached the competent authorities under the CRZ notification to obtain appropriate clearances. The Government of India in the MOEF has taken a clear stand that the project in question was examined by the MOEF and being a civic amenity was held to be permissible activity under the CRZ notification dated 06/01/2011. Further, as per the amendment dated 28/11/2014 to the CRZ notification, the projects involving construction of less than 20,000 sq.mtrs built up area are required to be approved by concerned State or Union Territory Planning Authorities and were required to be accordingly dealt as in the present case by the State Environmental Impact Assessment Authority (SEIAA), for clearance after obtaining recommendations of the Maharashtra Coastal Zone Management Authority (MCZMA). From what has been placed on record in the pleadings as filed on behalf of the respondents, *prima facie* we are satisfied that MMRCL has taken the essential steps of their proposal being approved by the MCZMA which ultimately was considered by the SIEAA and clearances for construction of different Metro stations have been granted by the SIEAA, subject to various conditions. These clearances are placed on record by the petitioner Mrs. Pervin Jehangir in the additional affidavit dated 2/5/2017, as also in the compilation of documents as submitted on behalf of MMRCL.

17. The contention of the petitioners is that in granting such clearances, each Metro station cannot be considered to be a single unit but the entire project is required to be considered as one unit in the context of the jurisdiction of the authorities under clause 4(i)(d) of the CRZ notification dated 06/01/2011. *Prima facie* we do not agree with this contention of the petitioners for two fold reasons. Firstly, because the Metro stations are being constructed at about 26 places, out of which, as noted above, about 10 stations would fall under CRZ areas. As these stations are being constructed at different locations, within the city and its suburbs, and in different CRZ areas, therefore, *ex facie*, they cannot be categorized as a single project for the application of clause 4(i)(d) of the CRZ notification of 2011, so as to hold that the State authorities (MCZMA and SIEAA), under the said clause, would not have jurisdiction to issue clearances. Such an interpretation as contended by the petitioners cannot be attributed to the plain language of clause 4(i)(d) (*supra*). Secondly, this contention cannot be accepted also for the reason that the MOEF being the parent authority, has examined the issue and holding Metro Rail as a civic amenity, has decided that the Metro project would be a permissible activity in the CRZ, and by its letter dated 10/08/2015, forwarded the proposal of the MMRCL to the MCZMA for necessary action. On this clear background, we do not feel that we ought to dwell any further on this issue. The petitioners' contention that there would be mining activity in digging tunnels which is a prohibited activity under the CRZ notification, also cannot be accepted. In our opinion, in the context of the CRZ notification, the prohibition would

be to a specific commercial activity of mining and not to the incidental activity of excavation of soil in digging tunnels. If such contention of the petitioners is accepted, then any activity involving digging of soil for the construction of foundation for any building would be required to be held as mining. Surely, this is not what is intended by the CRZ notification. In the present case, the excavation is surely not an activity of specific mining of sand or rocks and any sub-strata material. The authorities also do not agree with such attribute of the petitioners on the mining issue.

18. As regards the contention of the petitioners that the Metro Rail project is a prohibited activity under the CRZ notification being an industry, also cannot be accepted. Mr. Chinoy would be right in contending that this issue fell for consideration of the Division Bench of this Court in the *Goa Foundation Case (supra)*. The Division Bench, in no uncertain terms, rejected a similar contention holding that the expression ‘industries, operation or processes etc.’ as used in the CRZ notification cannot bring within in its sweep the activities of providing a rail line. The stand of the MOEF in the affidavit filed in these proceedings would also support this position.

19. In regard to the contention of the petitioners that there would indiscriminate felling of trees and thus there would be large scale damage to the environment, also cannot be accepted in the above circumstances. The MMRCL has adopted the appropriate procedure as known to law by approaching the Tree Authority. The

Tree Authority, as seen by us from the affidavit as placed on record by the Municipal Corporation, has considered these applications *qua* the trees which are to be affected, and has granted permission to either cut the trees or replant the trees as also to retain some of the trees. It also cannot be overlooked that a project as important as this cannot be undertaken without some damage to the environment in terms of felling of trees, but at the same time it is not the case that these trees would not be replaced in the same area by the MMRCL as undertaken by them and as extracted by us above. Not only that, but the MMRCL has also undertaken to maintain these trees even after the project is completed. This would mean that many of the trees would not only be transplanted in the same area but also those trees which are cut would be replanted and catered for times to come. This definitely cannot mean that there would be an irreversible damage to the environment by cutting of these trees. We cannot disregard the solemn undertaking being given on behalf of MMRCL to discharge their obligation to maintain the environment in these terms in furthering an important public cause of providing Metro Line 3 to the residents of Mumbai. Further it is not the case that other open areas are not available to undertake planting of new trees of different varieties and enrich the environment. An optimistic and pragmatic approach is necessary to mitigate this temporary phase which would ultimately result in larger public benefit. Thus, *prima facie*, the apprehensions of the petitioners on this count are not well founded.

20. We may observe that the approach which is required to be adopted would be to bring about a balance on both the issues namely environment on one hand and the development of Metro Rail on the other. It cannot be overlooked that once functional, Metro Rail 3 would also help for a better environment as noted above. Apart from this, it would also facilitate to improve the socio-economic condition of the citizens. Thus, the approach we intend to adopt in passing this order is to bring about a balance in the protection of environment and the development in question so that a situation of prosperity on both these counts can be achieved. The principles of law in this regard are well settled. If a hard stand, as canvassed by the petitioners is accepted, then it would be impossible to have any development for the betterment of the citizens residing in this metropolitan city. We also cannot overlook the far reaching benefits Metro Rail has provided in other cities like Kolkata, New Delhi and Bangalore. We, therefore, feel it appropriate that the respondents would achieve these objects and goals to provide for a Metro Rail for the benefits of lakhs of citizens, as also undertake every measure to protect the environment by adhering to all the norms as set down by the authorities. We are satisfied with the approach of MMRCL in this regard and the undertaking which they have given, in declining to grant the interim prayer of the petitioners.

23. Resultantly, we are inclined to vacate the ad-interim order dated 9/2/2017 by which we had restrained the MMRCL from further felling of trees in execution of the Metro 3 project. We, accordingly, pass the following order :

ORDER

- (i) Rule.
- (ii) The MMRCL is directed to file an undertaking in terms of paragraphs 3 and 5 of the affidavit of Mr. Ashok Bhasme, Deputy General Manager, MMRCL dated 9/3/2017 within a period of one week from today.
- (iii) We appoint the Member Secretary of the Maharashtra Legal Services Authority and the Deputy Registrar to oversee the compliance in regard to the re-plantation, transplantation of the trees in terms of the undertaking as contained in paragraphs 3 and 5 of the affidavit of Mr. Ashok Bhasme, Deputy General Manager, MMRCL dated 9/3/2017 and the undertaking to be filed.
- (iv) Such compliance be reported by these officers from time to time and preferably every month to a Committee of two Hon'ble Judges of this Court as would be nominated by the Chief Justice.
- (v) The interim prayers as made in the petitions stand rejected.
- (vi) The petitions be listed for final disposal in the 2nd week of July, 2017.

24. At this stage, learned Counsel for the petitioners, seek continuation of the ad-interim order dated 09/02/2017 for a period of two weeks. The request is opposed on behalf of the MMRCL. In the facts of the case, we continue the ad-interim order for a period of ten days from today.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

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