

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 ADDITIONAL AFFIDAVIT FILED
BY RESPONDENT NO. 1, THE MAHARASHTRA
MARITIME BOARD:**

I, Banda Nagaraj Kumar, aged 68 years and residing at 501-Am,
Neelkanth Arcade, Plot 94, Sector-17, Kopar Khairane, Navi



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Mumbai - 400709, the Applicant No. 1 herein, do hereby state on solemn affirmation as follows:

1. I say that I am the Applicant No. 1 in the present Original Application No. 77 of 2023 filed before this Hon'ble Tribunal on 10.05.2023 ("**present Application**"). I say that I have read the present Application and am familiar with its contents. I say that I have also read the Additional Affidavit of Respondent No. 1 i.e., the Maharashtra Maritime Board ("**MMB**") and am familiar with its contents. Thus, I am competent to affirm and submit the present Affidavit-in-Rejoinder on behalf of the Applicants to the Additional Affidavit of Respondent No. 1 in the present Application.
2. At the outset, I say that I am filing the present Affidavit-in-Rejoinder to counter the Additional Affidavit filed by Respondent No. 1. I deny each and every averment, contention, allegation and/or submission made by Respondent No. 1 in its Additional Affidavit and contrary to what has been stated in the present Application and herein. 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 shall now proceed to deal with the para-wise contentions of Respondent No. 1 raised in its Additional Affidavit.

4. With reference to Para 4 of the Additional Affidavit of Respondent No. 1, 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*" commissioned by Respondent No. 1 ("**Project**"). The construction of the Project is in breach of the directions stipulated by Respondent No. 2 i.e., the Maharashtra Coastal Zone Management Authority ("**MCZMA**") while recommending the Project for CRZ Clearance to Respondent No. 4 i.e., the State Environmental Impact Assessment

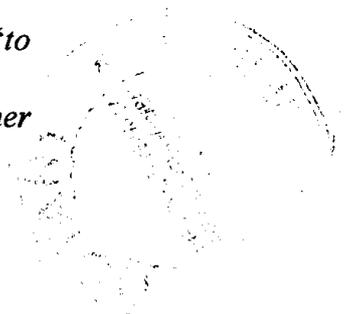


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Authority (“SEIAA”). Accordingly, the Applicants are seeking, *inter alia*:

- (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 which has been constructed in contravention of the Coastal Regulation Zone Notification, 2011 (“**CRZ Notification, 2011**”).

- 5. With reference to Para 5 of the Additional Affidavit of Respondent No. 1, I say that the same forms part of the record and does not warrant any specific comment.
- 6. With reference to Para 6 of the Additional Affidavit of Respondent No. 1, I say that Respondent No. 1 has falsely claimed that the purpose of construction of the Project was “*to prevent erosion of the beach and also to prevent further*



destruction and collapsing of existing electric poles due to the same". I say that the letter dated 28.06.2023 addressed by Respondent No. 1 MMB to Respondent No. 2 MCZMA seeking deletion of Specific Condition No. 1 and the titles of the agenda items of the MCZMA minutes when the Project was being considered make it evident that Respondent No. 1 is wrongfully trying to pass off the Project as an anti-erosion measure, whereas it is actually a project for the "*proposed beautification*" of Aksa beach. I say that the record in the present matter clearly demonstrates that the Project is completely illegal and in breach of the clearances granted to it thus far.

7. With further reference to Para 6 of the Additional Affidavit of Respondent No. 1, I repeat and reiterate that as regards the reports of the CWPRS and IIT Bombay, the statements made within the report prepared by IIT Bombay itself show that:
 - a. The beach is found to be "marginally eroding";
 - b. the beach is found to be very "plat" [sic: flat] unlike other locations where its protected by dunes.



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Therefore, the said portion of Aksa Beach would actually be suitable for beach nourishment as an erosion control technique instead of the construction of a concrete seawall. Moreover, Respondent No. 2 MCZMA and Respondent No. 4 SEIAA itself have categorically disallowed construction work on Aksa Beach and/or its inter-tidal areas. It is also noteworthy that the IIT Bombay report records that sea water reaches the Project site where lamp posts were previously present, thus indicating that the portion of the beach on which the Project is being constructed is a tidally influenced portion of the beach, and therefore, CRZ I-A area, and not CRZ-II as wrongfully claimed by Respondent No. 1.

8. With reference to Para 7 of the Additional Affidavit of Respondent No. 1, I say that the Applicants became aware of the letter dated 28.06.2023 addressed by Respondent No. 1 MMB to Respondent No. 2 MCZMA seeking the deletion of Specific Condition-I, which was imposed by Respondent No. 2 MCZMA while recommending the Project to Respondent No. 4 from the CRZ point of view, only through a response dated 21.09.2023 to their RTI query dated 17.02.2023. Accordingly, the Applicants



herein filed an Affidavit dated 08.11.2023 seeking to bring on record the said letter dated 28.06.2023 sent by Respondent No. 1 MMB subsequent to the filing of the present Application and the Affidavit-in-Reply filed by Respondent No. 1 MMB. Specific Condition-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-I came after the present Application was filed on 10.05.2023. Moreover, the letter dated 28.06.2023 states:

“As per CWPRS letter, following recommendations:

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



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The use of the phrase '*constructed seawall*' denotes that at the time of sending the letter dated 28.06.2023, Respondent No. 1 had already carried out construction in contravention of the CRZ clearance dated 05.03.2019, in violation of the conditions set by Respondent Nos. 2 and 4 for the Project, and was now seeking a drastic alteration to those conditions post-facto. The letter dated 28.06.2023 also makes it clear, as has already been stated in the present Application, the Affidavit-in-Rejoinder dated 31.08.2023, and the Additional Affidavit dated 08.11.2023, that the Project was actually for the "*proposed beautification*" of the beach with the construction of a concrete seawall, which is a prohibited activity under the CRZ Notification, 2011. It is submitted that Respondent No. 1 cannot obtain post-facto permission and a fresh CRZ clearance ought to be obtained.

9. With further reference to Para 7 of the Additional Affidavit of Respondent No. 1, I say that Respondent No. 1's claim that it made an application to Respondent No. 2 MCZMA to delete Specific Condition-I of the CRZ Clearance dated 05.03.2019 as it observed that "*the existing electric poles were collapsing due to erosion and existing private properties and proposed public*



facilities along the landward side of the High Tide Line due to which the anti-sea erosion bund cannot be on the landward side of the High Tide Line” is an afterthought rather than a substantiated scientific rationale for carrying out the construction. There is no evidence to demonstrate that the corrosion of the electric poles is a longstanding issue and not one document produced by Respondent No. 1 shows any recommendation for the construction of the road. In fact, even the Brihanmumbai Municipal Corporation (“**BMC**”) has yet to respond to the Applicant’s RTI request seeking information on the corrosion of electric poles and the frequency of pole replacements. Notably, Respondent No. 1 was aware of the topography of the site proposed by it for the Project, and therefore, 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.



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10. With reference to Paras 8 and 9 of the Additional Affidavit of Respondent No. 1, I say that the fact that the letter dated 28.06.2023 was addressed by Respondent No. 1 to Respondent No. 2 MCZMA when the present Application filed on 10.05.2023 was still pending before this Hon'ble Tribunal, Respondent No. 2, on this ground alone, should have rejected Respondent No. 1's request for post-facto permission. Instead, it considered Respondent No. 1's proposal seeking deletion of Specific Condition No. 1 of the CRZ Clearance dated 05.03.2019, which Respondent No. 1 had already breached at the time of sending the letter, and requested that a scientific study be submitted from erosion point of view from a competent organization. It is worth noting that Respondent No. 2 MCZMA had earlier, rejected Respondent No. 1 MMB's proposal titled "*Proposed beautification of Aksa Beach at Madh, Mumbai by MMB*", at its 115th meeting held on 17.01.2018 and 18.01.20218, and stated as follows:

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

Even at its 155th 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 categorically disallowed any construction on the beach, and only allowed some landscaping activities, etc. The extent of the construction being undertaken by the Respondent No. 1, particularly the construction of a road directly upon the natural sandy beach has categorically been disallowed by the Respondent MCZMA both at its 115th Meeting and its 155th Meeting.



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11. With reference to Para 10 of the Additional Affidavit of Respondent No. 1, I say that even assuming the existing structures at Aksa Beach are affected by erosion, it is worth considering why Respondent No. 1 did not consider replacing or fortifying the eroded poles or explore the feasibility of “soft” erosion control techniques such as beach/sand nourishment, which were directed for by the Hon’ble NGT, at Para 83 of its order dated 11.04.2022 in *C.H. Balamohan v. Union of India (OA No. 04/2013 with Appeal No. 18/2017)*, based on the report submitted by the National Institute of Ocean Technology (“NIOT”) in the said matter. *C.H. Balamohan v. Union of India* pertained to the issue of destruction of Puducherry and Tamil Nadu Coastal Environment due to the construction of hard structures causing continuous erosion of the coast. The said order dated 11.04.2022 affirmed that the principle of “working with nature” would be a better approach for cost-effective and sustainable coastal protection measures. Notably, the IIT report, at Page No. 651 of Respondent No. 1’s Additional Affidavit, recommends “erosion protection measures” but not erecting a permanent seawall. It is necessary to consider the feasibility of



soft measures such as beach nourishment to ensure the permanent strengthening of the beach instead of only hard measures such as construction of sea walls.

12. With reference to Para 11 of the Additional Affidavit of Respondent No. 1, I say that the MCZMA Meeting held on 02.02.2024, which was convened to consider Respondent No. 1's request to remove Specific Condition No. I, took place after Respondent No. 1 had nearly completed construction of the seawall, blatantly disregarding conditions set by Respondent No. 2 for the Project. Initially, Respondent No. 2 took no action against Respondent No. 1 for the unlawful construction, which violated the stipulated conditions. Subsequently, even after Respondent No. 1 acknowledged during the hearing before this Hon'ble Tribunal on 01.12.2023 that construction was almost finished, Respondent No. 2 considered Respondent No. 1's proposal to amend specific condition no. I which it had already breached.



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13. With reference to Para 12 of the Additional Affidavit of Respondent No. 1, I deny that the Project is a permissible activity under the CRZ Notification, 2011 and that there is no infirmity on the part of Respondent No. 1 for carrying out the construction of the Project. I say that significant damage has been caused to the seawall constructed by Respondent No. 1 MMB during the recent monsoons, which has started developing cracks and caving in. The fact that the wall directly faced the tidal wave makes it evident that the wall was in the middle of the path of the tidal water and cut into the high tide line thereby interfering with the free flow of tides. I say that it is most important to note 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. 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. A copy of a photograph indicating the damage caused to the seawall at Aksa Beach constructed by Respondent No. 1 MMB in violation of the CRZ Clearance is annexed hereto and marked as **Annexure A-1**.

Solemnly Affirmed at Mumbai
Dated this ^{19th} Day of August 2024



Bunni
DEPONENT



Identified by me

SH *Shreya Mohapatra*
Shreya Mohapatra

SHREYA MOHAPATRA / HAMZA LAKDALOOLA
Advocate for the Applicants, BEFORE ME



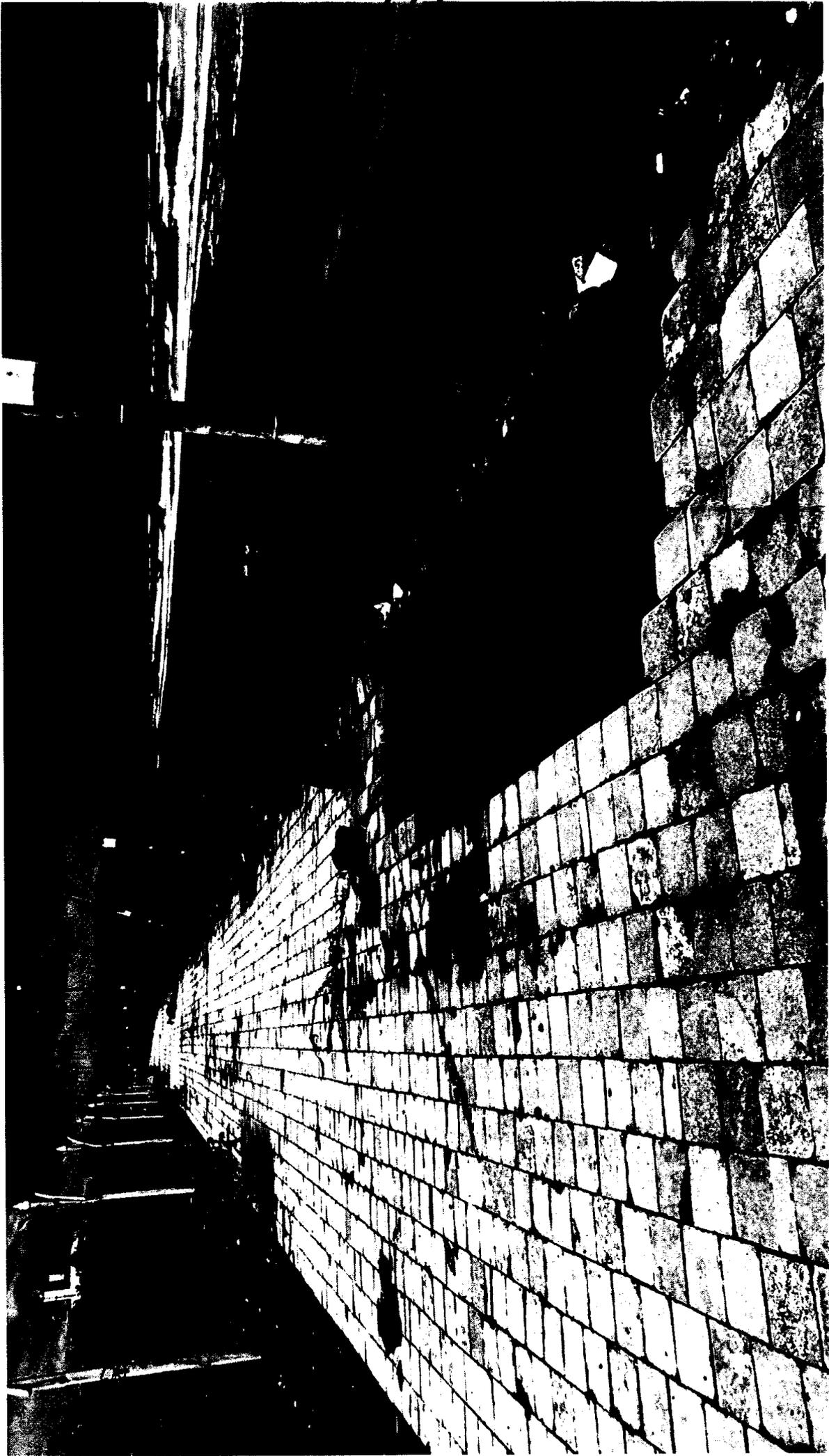
BEFORE ME
S. K. Tambawalla
S. K. TAMBAWALLA
ADVOCATE, HIGH COURT
B-23, Taheri Manzil
Nesbit Road, Mazgaon
Mumbai - 400 010 19/8/24

NOTARY & REGISTERED
20019 19/8/24
Sr. No..... dt.....



ANNEXURE A-1

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True copy
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**AFFIDAVIT-IN-REJOINER TO THE
ADDITIONAL AFFIDAVIT FILED BY
RESPONDENT NO. 1**

Dated – 16TH August 2024

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