



**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL,
WESTERN ZONE BENCH, PUNE
OA NO. 49 / 2024**

Pratap Lal Tcli

... Appellant

v/s.

Secretary, Environment
Department & Ors.

... Respondents

REPLY AFFIDAVIT BY RESPONDENT NO. 4, SEIAA

I, Dattatray Suryakant Bhalerao, Scientist I and Deputy Secretary,
Environment and Climate Change Department, Government of
Maharashtra do hereby state on solemn affirmation as under –



I am well conversant with the facts of the present case and I am competent to swear this Affidavit based upon the records available with this office.

1. It is submitted that at the very outset this respondent denies each averment made in the present appeal which is contrary to and inconsistent with the averments made and facts states in the present reply. It is submitted that nothing stated in the appeal may deemed to have been admitted by this respondent unless and until the same has been admitted by the respondent.
2. This original application has been filed against the construction which is being done by the respondent no. 5 on the land bearing survey no. 341(part), CTS No. 629(part) of Bandra & survey no. 4(part), CTS No. 8(part) of Parighkhar, Mumbai, Bandra Kurla Complex, Mumbai. It is alleged that



[Handwritten Signature]

the said construction is being undertaken in mangrove buffer zone without prior environment clearance.

3. In the present case, the CRZ Clearance has been granted to the PP by the Urban Development Department, Govt of Maharashtra on 6th August, 1999 as per the then prevalent norms and rules. The present PP had obtained Consent to Establish from MPCB on 24-09-2009. The PP made an application to the MPCB for revalidation of the said consent to establish. The MPCB wanted guidance from the Environment Department whether the PP needs to obtain prior Environment Clearance and CRZ Clearance. Accordingly the MPCB wrote a letter on 23-02-2016 to the Environment Department seeking their guidance. Copy of the MPCB letter dated 23-02-2016 is attached as **Annexure 1**.
4. On 05-03-2018, the Environment Department replied to the MPCB wherein it observed the following –

...

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" 2. The Environment Department, has scrutinized the documents submitted by the PP to the MCZMA in the light of its decisions taken by the MCZMA in its 119th, 121st and 122nd meetings. During scrutiny, it has been observed that the Urban Development Department, has issued clearance to M/s The Indian Film Combine Pvt. Ltd. vide letter dtd.06.09.1999 wherein, it is stated at para 4 that : " It is observed that the plot under reference is partly affected by Coastal Regulation Zone. In the circumstances, there is no objection to develop the unaffected portion of the plot as per prevailing regulations. However in respect of portion of plot coming within CRZ the same may be allowed to be developed subject to conditions that proposed construction shall be on the landward side of existing authorized structure and imaginary line drawn from the creek ward side of existing authorized structures and as per relevant rules and regulations.



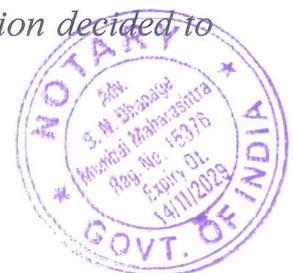
3. *It is noted that the project is a composite one and has received sanction from the MMRDA as a composite project on 05.12.2001 after issuance of CRZ Clearance by the U.D.D. vide letter dtd. 6.8-1999. Hence CRZ and non CRZ portion cannot be practically separated. In conclusion, it is found that the Notification 1994 amended on 07.07.2004 is not applicable to the project due to the exclusions at para 3 (a) thereof.*

5. *Further also it is seen that the project dimensions have changed negatively i.e. area under construction is less than the initial proposed area and it is an ongoing project.*

Therefore, EIA Notification dtd. 14-09-2006 is also not applicable to this project.

...

6. (d) *Considering the above, including opinion of Law & Judiciary Department and information furnished by the MMRDA and PP, the Authority after deliberation decided to*



withdraw the stop work order dtd. 11-08-2017 subject to compliance of the following –

- i) MMRDA to ensure that it was ongoing project as mentioned in its reply and approved on 05-12-2001 to which commencement certificate was issued in the year 2003.*
- ii) MMRDA to ensure that there are no significant subsequent changes in the original approved plans for the project undertaken in CRZ area.*
- iii) MMRDA to ensure that ongoing work is as per the provisions of the CRZ Notification and beyond mangroves buffer zone as applicable, as per approved CZMP of 2000.*
- iv) As per the opinion of the Law & Judiciary department, the MMRDA and PP to ensure that no condition of the clearances including CRZ NoC is violated. And, no construction should be undertaken in mangroves or its*



A handwritten signature in purple ink, appearing to be 'S. N. Dhanage', located below the notary seal.

mangroves 50 buffer zone as per approved CZMP of 2000.

- v) *In the event conditions no. 1 to 4 as above, are not complied with, the MMRDA shall stop the work and report the violation of the CRZ Notification to the Authority at the earliest.*

7. *MMRDA has submitted their reply showing compliance to the conditions imposed by the MCZMA, which notes, that it is an ongoing project with CC for layout on 05-12-2001. Although minor changes are approved by MMRDA no significant changes in the original approved plans for the project are approved by MMRDA for redevelopment on plot under reference (in CRZ area). As per the approved CZMP of 2000, there is no 50 m mangrove buffer zone. In view of the aforementioned compliance, there is no need to take any action on the redevelopment of drive – in theatre on site under reference.*

[Signature]



8. *In view of the foregoing, the order of the then Chief Minister would have no bearing on the clearance status of this project from the Environment (P) Act, 1986 point of view.*

Considering the above observations, as the project is ongoing and exempt from the purview of Notifications mentioned at para 3, you are directed to take appropriate decision, in the above case.”

9. Environment Department has thoroughly studied the CRZ Notification 1991, the EIA Notification 1994, EIA Notification 2004 and EIA Notification 2006. Further it has obtained opinion from the Law and Judiciary Department accordingly it communicated it's decision to the MPCB vide the letter dated 05-03-2018. Copy of the Environment Department letter dated 05-03-2018 is attached as **Annexure**

2.

10. In light of the above averments, this respondent craves leave to file any additional reply as and when required. It is



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respectfully prayed that Environment Department shall abide
by any orders and directions issued by the Hon'ble Tribunal.

Whatever is stated above is true and correct to the best of my
knowledge, ability and belief and I affirm it to be true.

Mumbai
Date 05 JUN 2025



Dattatray Suryakant Bhalerao
Scientist-I & Deputy Secretary,
Environment & CC Department,
Government of Maharashtra



VERIFICATION

I, Dattatray Suryakant Bhalerao, Scientist-I & Deputy Secretary, Environment and Climate Change Department, Government of Maharashtra, having my office address at 15th Floor, New Administrative Building, Hutatma Rajguru Chowk, Madam Cama Road, Mantralaya, Mumbai-400032 do hereby verify and declare that the statements made in the aforesaid paras are true and correct to the best of my knowledge and information and I believe the same to be true and that no material is has been concealed therefrom.

Solemnly affirmed on this _____ day of June, 2025 at Mumbai.

05 JUN 2025

Dattatray Suryakant Bhalerao
Scientist-I & Deputy Secretary,
Environment & CC Department,
Government of Maharashtra



BEFORE ME

Adv. S. N. Dhanage
Notary Govt. of India
Regd. No. 15376, MUMBAI (MS)
404-405, 4th Floor, Davar House,
197/199, Near Central Camera Bldg.,
D. N. Road, Fort, Mumbai - 400001.
Mob.: 8788385738

NOTED & REGISTERED
Page No. 64 Sr. No. 610
Date 05 JUN 2025



200/6270
9/03/2016

MAHARASHTRA POLLUTION CONTROL BOARD

Phone : 4010437 / 4014701 / 4020781
 Fax : 4024068 / 4023516
 Website : <http://mpcb.gov.in>
 E-Mail : ta@mpcb.gov.in



KALPATARU POINT, 3rd Floor,
 Sion-Matunga Scheme Road No.8,
 Opp. Sion Circle, Sion (East)
 Mumbai-400 022.

No.BO/CAC-Cell/TB/B-778

Date : 23/02/2016

To,
 The Director,
 Environment Department, Government of Maharashtra,
 15th Floor, New Administrative Building, Mantralaya, Mumbai-400032.

Sub: Application of M/s. The Indian Film Combine Pvt. Ltd., Maker Maxit S.No. 341(Pt.) of village Bandra, S.No. 4(Pt.) of Village Parighkhar, Tal. Andheri, Mumbai

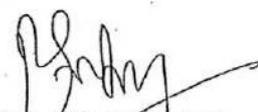
Ref : (1) Consent to Establish granted vide no BO/RO(P&P)/EIC No. MU-1130-09/E/CC-345 dt 24.09.2009
 (2) Letter of Urban Development Department dtd. 17.01.2007 enclosing order passed by Govt. of Maharashtra u/s 47 of Town Planning Act 1966 (quasi-judicial order passed by Hon'ble the then Chief Minister of Maharashtra dated 15th January 2007) in the matter of Appeal No. TPE 4305/207/CR-78/05/UD-11 (The Indian Film Combine Pvt. Ltd. V/s. MMRDA)

This office is in receipt of the application from M/s. The Indian Film Combine Pvt. Ltd., Maker Maxit S.No. 341(Pt.) of village Bandra, S.No. 4(Pt.) of Village Parighkhar, Tal. Andheri, Mumbai for grant of Revalidation of consent to establish. Board had granted consent to establish to the PP vide dated 24.09.2009 for construction of Cinema Theatre & commercial complex on Total plot area 80,800 sq.mtrs and having Total construction BUA (FSI+Non FSI) 1,41,100.84 sq. mtrs. Since it is infrastructure /Building project, it falls under schedule 8(a) category B2 and attracts Environmental clearance (EC) as per provisions of EIA notification 2006; hence Board has stipulated the condition at Sr. No. 12 in the Consent to Establish dtd. 24.09.2009 regarding "Applicant should not take any effective steps for implementation of the project before obtaining EC as per EIA Notification 2006 and amendments thereto and CRZ Clearance from MCZMA/MoEF".

However in this context it is noted that PP has submitted reply by attaching the previous correspondence dtd. 25.11.2009 made with this Board along with a copy of letter dtd. 17.01.2007 from Urban Development Department and an order passed by Govt. of Maharashtra dtd. 15.01.2007, u/s 47 of Town Planning Act 1966 and claims that they have complied with as evident from the quasi-judicial order passed by Hon'ble the then Chief Minister of Maharashtra.

Board has obtained the legal opinion from Legal Section of the Board, which is as: "Since the EIA Notification, 2006 and the CRZ Notification 2011 are self-explanatory, according to which Statutory compliances in respect of obtaining clearances are required to be obtained, the Quasi-Judicial Order passed by the then Hon'ble Chief Minister cannot be having overriding effect on the mandatory compliance of those provisions. The matter may be put up before CAC for taking final decision as per the delegation of the powers for Consent Management"

It is therefore, requested to provide us guidance on whether PP needs to obtain prior EC and CRZ clearance or not.


 (Dr. P. Anbalagan, IAS)
 Member Secretary

DA:- as above
 Copy to:- CAC Cell, MPCB, Mumbai.- For information and follow-up action.

12/11/2016
 CR-22

11/2/16
 SCI (P) &
 SCI (CS)
 Pl. put up
 opinion.

Dr. S. Sawane
 President

20/2/16

GOVERNMENT OF MAHARASHTRA

Tel. No. : 2279 3132

No. MISC-2018/CR-10/T(-)
 Environment Department,
 217(Annex), Mantralaya, Mumbai - 400 032.
 Date : 05/03/2018

By Fax/ Hand Delivery

To,

The Member Secretary,
 Maharashtra Pollution Control Board,
 Kalpataru Point, 3rd Floor,
 Sion-Matunga Scheme Road No.8,
 Opp. Sion Circle, Sion (East),
 Mumbai - 400 022.

Sub.:- Regarding applicability of EC and CRZ clearance to the project of M/s The Indian Film Combine Pvt. Ltd., Maker Maxit on plot bearing S. No. 341 (Pt) of Bandra, S. No. 4 (Pt) of Parighkar, Bandra Kurla Complex, Mumbai.

Ref. :- Letter dtd. 23.2.2016 received from the MPCB .

Sir,

1. We refer to your letter dtd. 23.02.2016 wherein requested to provide guidance as to whether the project of M/s Indian Film Combine Pvt. Ltd. on plot bearing S. No. 341 (Pt) of Bandra, S. No. 4 (Pt) of Parighkar, Bandra Kurla Complex, Mumbai required to obtain prior EC and CRZ Clearance from the Competent Authority.
2. Accordingly, the Environment Department, G.o.M. has scrutinized the documents submitted by the PP to the MCZMA in the light of its decisions taken by the MCZMA in its 119th, 121st & 122nd meetings. During scrutiny, it has been observed that the Urban Development Department, G.o.M. has issued Clearance to M/s The Indian Film Combine Pvt. Ltd. vide letter dtd. 06.08.1999 wherein it is stated at para 4 that : *" It is observed that the plot under reference is partly affected by Coastal Regulation Zone. In the circumstances, there is no objection to develop the unaffected portion of the plot as per prevailing regulations. However in respect of portion of plot coming within CRZ the same may be allowed to be developed subject to conditions that proposed construction shall be on the land ward side of existing authorized structure and imaginary line drawn from the creek ward side of existing authorized structures and as per relevant rules and regulations."*
3. It is noted that the project is a composite one and has received sanction from the MMRDA as a composite project on 05.12.2001 after issuance of CRZ Clearance by the U.D.D. vide letter dtd. 6.8.1999. Hence CRZ and non-CRZ portion cannot be practically separated. In conclusion, it is found that the Notification 1994 amended on 07.07.2004 is not applicable to the project due to the exclusions at para 3 (a) thereof.

: 2 :

4. Further also it is seen that the project dimensions have changed negatively i.e. area under construction is less than the initial proposed area and it is an ongoing project. Therefore, EIA Notification dtd. 14.9.2006 is also not applicable to this project.
5. In the same case, after taking cognizance of complaint received by the MCZMA against the PP, opinion received from the Law & Judiciary Department and information furnished by the MMRDA and the PP, the MCZMA has discussed the above project in its 119th, 121st & 122nd meetings held on 28th – 30th June, 2017, 15th - 16th September, 2017 & 30th October, 2017 respectively. Extract of the minutes of the abovementioned meetings is as under :-
- a) The Urban Development Department, G.o.M. vide letter dtd. 06.08.1999 granted the CRZ clearance.
 - b) As per the submission of the MMRDA and project proponent, the plans were approved in accordance with CRZ NoC granted by the UDD, G.o.M. MMRDA further submits that there are no significant changes in the proposed plans in CRZ area after 05.12.2001 i.e. the year of approval of plans. Further, there is reduction in FSI due to minor changes. Further, the MMRDA states that it is ongoing project since 05.12.2001.
 - c) The PP to strictly follow the conditions mentioned in the CRZ NOC granted by the UDD, G.o.M. and no construction is allowed in Mangrove area.
 - d) Considering the above, including opinion of Law & Judiciary Department and information furnished by the MMRDA and PP, the Authority after deliberation decided to withdraw the stop work order dtd. 11.08.2017 subject to compliance of following :-
 - i) MMRDA to ensure that it was ongoing project as mentioned in its reply and approved on 5.12.2001 to which commencement certificate was issued in the year 2003.
 - ii) MMRDA to ensure that there are no significant subsequent changes in the original approved plans for the project undertaken in CRZ area.
 - iii) MMRDA to ensure that ongoing work is as per the provisions of the CRZ Notification and beyond mangroves buffer zone as applicable, as per approved CZMP of 2000.
 - iv) As per the opinion of the Law & Judiciary department, the MMRDA and PP to ensure that no condition of the clearances including CRZ NoC is violated. And, no construction should be undertaken in mangroves or its mangroves 50 buffer zone, as per approved CZMP of 2000.
 - v) In the event, conditions no. 1 to 4 as above, are not complied with, the MMRDA shall stop the work and report the violation of the CRZ Notification to the Authority at the earliest.

Also the decisions are communicated to the Project Proponent and MMRDA vide letter dtd. 11.01.2018.

Further the MMRDA has clarified vide letter dtd. 16.02.2018 w.r. to the compliance of the directives given by the MCZMA in its 121st & 122nd meetings that :

No.	MMRDA's reply.
<i>Condition 1. Of 121st Authority meeting of MCZMA</i>	MMRDA vide its letter dtd. 07/09/2017 has already informed that it is a ongoing project with CC for layout on 05/12/2001.

: 3 :

<i>Modified Condition 2. Of 122nd Authority meeting of MCZMA</i>	Although minor changes are approved by MMRDA, no significant changes in the original approved plans for the project are approved by MMRDA for redevelopment on plot under reference (in CRZ area).
<i>Modified Condition 3. Of 122nd Authority meeting of MCZMA</i>	As per the approved CZMP of 2000, there is no 50 m. mangrove buffer zone.
<i>Modified Condition 4. Of 122nd Authority meeting of MCZMA</i>	As per the approved CZMP of 2000, there is no 50 m. mangrove buffer zone.
<i>Condition 5. Of 121st Authority meeting of MCZMA</i>	In view of the compliance to conditions 1 to 4 above, there is no need to take any action on the redevelopment of Drive-In Theatre on site under reference.

In view of the forgoing, the order of the then Chief Minister would have no bearing on the clearance status of this project from the Environment (P) Act, 1986 point of view. Considering paras 3 & 4 above, as the project is ongoing and exempt from the purview of Notifications mentioned at para 3, you are directed to take appropriate decision in the above case.



(Satish M. Gavai)
Addl. Chief Secretary,
Environment Department

Copy to :

1. Director (TC-1) / Member Secretary – MCZMA – for information and necessary record.
- ✓ 2. M/s The Indian Film Combine Pvt. Ltd., Maker Tower 'F', 1st Floor, 85, Cuffe Parade, Mumbai – 400 005.