BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

I.A. NO. 197 OF 2022
IN
APPEAL NO. 12 OF 2017

MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD. **APPLICANT**

IN THE MATTER BETWEEN:

DILEEP B. NEVATIA **APPELLANT**

VERSUS

UNION OF INDIA & OTHERS **RESPONDENTS**

INDEX

Sr. No.	Particulars	Pages
9.	**Annexure A-8** **AIR 2019 (SC) 365** *"Mantri Techzone Pvt. Ltd. v. Forward Foundation and others"*	**886 – 908**
10.	**Annexure A-9** **AIR 2008 Bombay 155** *"Smt. Shamlata wd/o Manohar Raut and Ors v. Vishweshwara Tukaram Giripunje and Anr"*	**909 – 911**
11.	**Annexure A-10** **AIR 1994 Supreme Court 853** *"S. P. Chengalvaraya Naidu (dead) by L.Rs v. Jagannath (dead) by L.Rs. and others"*	**912 – 914**

APPELLANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI

DATED: 1.1.2023

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE

I.A. NO. 197 OF 2022
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DEVELOPMENT CORPORATION LTD. **APPLICANT**

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REPLY OF THE APPELLANT

The Appellant above named, begs to state as follows:

1. That the Appellant has read the copy of Interim Application No. 197 of 2022 filed by the Applicant/Respondent No.5 - MSRDC and in reply thereto states as follows:

2. At the outset, the Appellant denies each and every statement, allegation, averment and contention made by the Applicant in its Application parawise ad-seriatim which is contrary to or inconsistent with what is stated by the Appellant in Appeal No. 76 of 2017 and put the true and correct facts before this Hon'ble Tribunal. The Appellant prays that nothing should be deemed to be admitted by him by virtue of not having been specifically denied herein. The Appellant craves leave to file further Affidavit, if required.

3. At the further outset, the Appellant states that the Applicant, while relying upon various Orders passed by the Hon'ble High Court and also this Hon'ble Tribunal in proceedings that are not inter parté, the Applicant has deliberately suppressed the records of the said proceedings so as to deliberately mislead

this Hon'ble Tribunal and thereby snatch an Order against the Appellant, which the Applicant is not entitled to in the first place.

4. That it was only by Order dated 22.11.2022 passed in I.A. No. 180 of 2022 preferred by the Appellant, this Hon'ble Tribunal was pleased to direct the Applicant herein to supply to the Appellant the entire record and proceedings of *High Court in Writ Petition (L) No. 17 of 2019 / Writ Petition No. 535 of 2019, including the Chamber Summons (L) No. 70 of 2019, Notice of Motion No. 190 of 2019* etc. In pursuance to the said Order, the Applicant has supplied to the Appellant the copies of the following records, which are also annexed herewith, namely:-

(a) High Court Writ Petition (L) No. 17 of 2019 / Writ Petition No. 535 of 2019 "Maharashtra State Road Development Corporation Ltd. versus Union of India and others", the copy thereof (without its exhibits) is annexed and marked as **Annexure A-1**.

(b) High Court Chamber Summons (L) No. 24 of 2019 in Writ Petition (L) No. 17 of 2019 / Writ Petition No. 535 of 2019 "Zoru Darayus Bathena versus Maharashtra State Road Development Corporation Ltd. and others", the copy thereof (without its exhibits) is annexed and marked as **Annexure A-2**.

(c) High Court Chamber Summons (L) No. 63 of 2019 in Writ Petition (L) No. 17 of 2019 / Writ Petition No. 535 of 2019 "Geeta Sheshu versus Maharashtra State Road Development Corporation Ltd. and others", the copy

thereof (without its exhibits) is annexed and marked as **Annexure A-3**.

(d) High Court Notice of Motion No. 190 of 2019 in Writ Petition (L) No. 17 of 2019 / Writ Petition No. 535 of 2019 "Zoru Darayus Bathena versus Maharashtra State Road Development Corporation Ltd. and others", the copy thereof (without its exhibits) is annexed and marked as **Annexure A-4**.

(e) NGT Appeal No. 14 of 2017 "Juhu Moragaon Machhimar Vividh Karyakari Sahkari Sanstha Ltd. and 7 others versus The State of Maharashtra and others", the copy thereof (without its exhibits) is annexed and marked as **Annexure A-5**.

(f) NGT O.A. No. 39 of 2021 "Juhu Tara Koli Samaj Sahakari Sangh Maryadit and 4 others versus Maharashtra State Road Development Corporation Ltd. and others", the copy thereof (without its exhibits) is annexed and marked as **Annexure A-6**.

5. That, without annexing the copies of the above records and proceedings and by merely producing the copies of the Orders passed in these proceedings, by the present Application the Applicant is praying to this Hon'ble Tribunal to dismiss the Appellant's present Appeal No. 12 of 2017.

6. That it is the case of the Applicant that in view of the Orders dated 8.2.2019 and 16.12.2019 passed by the Hon'ble Bombay High Court (annexed as **Exhibit C** and **Exhibit D** to I.A.) in Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion, this Hon'ble Tribunal by its

Order dated 22.8.2022 had disposed off/dismissed Appeal No. 14 of 2017 and O.A. No. 39 of 2021. However, the Applicant herein is completely silent to the fact that the grounds raised in High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion were not the same as raised in Appeal No. 14 of 2017 and O.A. No. 39 of 2021. The Applicant is also silent to the fact that the parties in the High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion were not the very same parties as in Appeal No. 14 of 2017 and O.A. No. 39 of 2021, yet the Applicant managed to deliberately mislead this Hon'ble Tribunal and through fraudulent misrepresentation got the Appeal No. 14 of 2017 and O.A. No. 39 of 2021 disposed off/dismissed.

7. Now the Applicant is further carrying forward its fraudulent acts in an attempt to dismiss the present Appeal, by falsely alleging that the grounds raised in Appeal No. 14 of 2017 and O.A. No. 39 of 2021 and the present Appeal are allegedly similar. It is further allegation of the Applicant that the issue raised in the present Appeal is allegedly dealt with and therefore the legality of the Environment Clearance is allegedly no longer *res integra* and the challenge to the environment clearance allegedly does not arise.

8. That the present application is not at all maintainable, both in facts of the case and on law, inasmuch as:-

(a) The parties in High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion, Appeal No. 14 of 2017 and O.A. No. 39 of 2021 and the present Appeal are not the same and identical.

(b) The issues involved in High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion, Appeal No. 14 of 2017 and O.A. No. 39 of 2021 and the present Appeal are not the same or identical.

9. That a perusal of records submitted by the Applicant show that the following are the parties in High Court Writ Petition No. 535 of 2019, Appeal No. 14 of 2017 and the present Appeal:-

WP No. 535 of 2019	Appeal No. 14 of 2017	Appeal No. 12 of 2017
Petitioner: MSRDC	Appellants 1. Juhu Moragaon Machhimar Vividh Karyakari Sahkari Sanstha Ltd. 2. Dinesh Suresh Mangela 3. Vanashakti Public Trust 4. Dayanand Stalin 5. Bandra (West) Residents' Associat. 6. Darryl D'Monte 7. Juhu Tara Koli Jamat 8. Arvind Sane	Appellant Dileep B. Nevatia
Respondents 1. MoEFCC 2. State of Maharashtra 3. MCZMA 4. Chief Conservator of Forests	Respondents 1. State of Maharashtra 2. MoEFCC 3. MCZMA 4. MPCB	Respondents 1. MoEFCC 2. State of Maharashtra 3. MPCB 4. MCZMA

	5. MSRDC 6. Fine Envirotech Engineers 7. Department of Fisheries 8. Forest Department	5. MSRDC 6. Director General of Police 7. Fine Envirotech Engineers 8. State level environment impact Assessment authority

10. That the records of the above proceedings clearly show that they are not having common parties. The Petitioners/ Appellants are totally different from each other. In High Court Writ Petition No. 535 of 2019, there are four Respondents, whereas in Appeal No. 14 of 2017 there are eight Respondents and so also in Appeal No. 12 of 2017 there are eight Respondents.

11. That MoEFCC, State of Maharashtra and MCZMA are the only three common Respondents in all the three proceedings, the rest of the parties are made Respondents in only one or two proceedings.

12. That similarly, a perusal of records submitted by the Applicant show that parties are not common in High Court Chamber Summons (L) No. 24 of 2019 and Chamber Summons (L) No. 63 of 2019 in Writ Petition (L) No. 17 of 2019 / Writ Petition No. 535 of 2019 and O.A. No. 39 of 2021:-

Chamber Summons (L) No. 24 of 2019	Chamber Summons (L) No. 63 of 2019	O.A. No. 39 of 2021
Applicant: Zoru Darayus Bathena	Applicant: Geeta Sheshu	Applicants 1. Juhu Tara Koli Samaj Sahakari

		Sangh Maryadit 2. Juhu Tara Koli Zamat Seemakan Samiti 3. Khardanda Koliwada Gaothan Sangh 4. Danda Koli Masemari Vyavasayik Sahakari Sanstha Maryadit 5. Danda Koli Samaj
Respondents 1. MoEFCC 2. State of Maharashtra 3. MCZMA 4. Chief Conservator of Forests 5. MSRDC	Respondents 1. MoEFCC 2. State of Maharashtra 3. MCZMA 4. Chief Conservator of Forests 5. MSRDC	Respondents 1. MSRDC 2. Environment Dept., Maharashtra 3. MoEFCC 4. MCZMA 5. District Collector 6. Fisheries Dept. 7. Reliance Astaldi JV

13. That the records of the above proceedings clearly show that they are also not having common parties. The Applicants are completely different from each other. In High Court Chamber Summons there are five Respondents, whereas in O.A. No. 39 of 2021 there are seven Respondents.

14. Thus, the proceedings relied upon by the Applicant are clearly not inter partes and a decision not inter partes cannot, even on general principles of res judicata, operate as res judicata in a subsequent proceedings.

15. That a perusal of records submitted by the Applicant further show that even the issues raised in High Court Writ Petition No. 535 of 2019 and its connected Chamber Summons and Notice of Motion are not the same in Appeal No. 14 of 2017, O.A. No. 39 of 2021 and the present Appeal.

16. That in paras (6) and (7) of Writ Petition No. 535 of 2019, the Petitioner MSRDC has stated that:-

> "6. Further, the present petition is filed in the teeth of the condition imposed by the Respondent No.3 in the CRZ Clearance dated 9th January, 2013 being condition No. (iii) and the Clause 4 and General Condition No. (iv) of the Environment Clearance imposed by the Respondent No.2, both upon the Petitioner to obtain prior leave of this Hon'ble Court before executing the proposed project."
>
> "7. The intervention of this Hon'ble Court is necessary and expedient as the Petitioner has been granted the CRZ Clearance dated 9th January, 2013 with specific conditions being condition No. (iii) of the CRZ Clearance and Clause 4 & General Conditions for preconstruction phase no. (4) of the Environment Clearance **that the Petitioner must apply to the Hon'ble High Court prior to cutting of any mangroves.**"

17. That in para (10) of Writ Petition No. 535 of 2019, MSRDC has further stated that:-

> "10. Further, the Petitioner is approaching this Hon'ble Court, invoking its extra ordinal jurisdiction under

Article 226 of the Constitution of India, seeking a direction to the Respondent Authorities to permit the Petitioner to execute the said project by granting leave as contemplated in condition No. (iii) of the CRZ Clearance dated 9th January, 2013 as extended on 6th December, 2018 and the Clause 4 and General Condition No. (iv) of the Environment Clearance dated 2nd February, 2017, and in light of the finding given by this Hon'ble Court at paragraph 83(viii) of the Judgment and Order dated 17th September, 2018 in PIL No. 87 of 2006 and the leave granted by this Hon'ble Court in the Order dated 2nd November, 2018 in Notice of Motion No. 278 of 2018. **In view of the limited relief sought by the Petitioner in the form of direction to the Respondent statutory authorities, the Original Petitioner in PIL No. 87 of 2006, which is a private Non-Governmental Organization (NGO) is not pleaded as a party to the present proceedings.**"

18. **That in Paras (44) to (53) Writ Petition No. 535 of 2019, the MSRDC has set out the requirements of approaching the Hon'ble High Court for obtaining permission as required under condition No. (iii) of the CRZ Clearance dated 9th January, 2013 and Clause 4 and General Condition No. (iv) of the Environment Clearance dated 2nd February, 2017, and nothing more.**

19. **That the main prayer (a) of Writ Petition No. 535 of 2019, is limited to granting leave as contemplated in specific**

condition No. (iii) of the CRZ Clearance and Clause 4 and General Condition No. (iv) of the Environment Clearance.

20. That Specific Condition No. (iii) of the CRZ Clearance dated 9th January, 2013 states that:-

> "(iii) **The project proponent should take appropriate clearance from the authorities such as Forest Department and/or Hon'ble High Court as the case may be for cutting of mangroves.**"

21. That general condition No.(iv) and (4) of the EC dated 13.2.2017 is also in respect of the Judgments/orders issued by Hon'ble High Court, which would evidently be the permission required to cut the mangrove, namely:-

> "(iv) This environmental clearance is issued subject to use verification. Local authority/planning authority should ensure this with respect to Rules, Regulations, Notifications, Government Resolutions, Circulars, etc. issued if any. **Judgments/orders issued by Hon'ble High Court, Hon'ble NGT, Hon'ble Supreme Court regarding DCR provisions, environmental issues applicable in this matter should be verified.** PP should submit exactly the same plans appraised by concern SEAC and SEIAA. If any discrepancy found in the plan submitted or details provided in the above para may be reported to environment department. This environmental clearance issued with respect to the environmental consideration and it does not mean that State Level Impact Assessment Authority (SEIAA) approved the proposed land use."

22. That para (1) of the Order dated 8.2.2019 passed by Hon'ble High Court in Writ Petition No. 535 of 2019 and its connected applications reveals that the said Writ Petition was not filed challenging any Order or direction, but MSRDC had

approached the Hon'ble High Court seeking permission to cut mangroves in the path of the proposed VBSL project in furtherance of the statutory permissions granted to them and to grant leave as contemplated in the specific condition No.(iii) of the CRZ Clearance and under general condition No.(iv) and (4) of the EC. It is further recorded that the permission was sought by the Petitioner, since 1585 number of mangrove trees would be required to be removed for the execution of the VBSL project in view of the directions judgment and order passed by the High Court in PIL No.87 of 2006 decided on 29th June 2018, namely:-

> "(iii) **The project proponent should take appropriate clearance from the authorities such as Forest Department and/or Hon'ble High Court as the case may be for cutting of mangroves.**"

23. That it is indisputably clear that MSRDC had approached the Hon'ble High Court only for a limited relief and for grant of permission contemplated in specific condition No. (iii) of the CRZ Clearance and Clause 4 and General Condition No. (iv) of the Environment Clearance i.e. to cut and remove 1585 number of mangrove trees in the path of VBSL project and nothing more. **At no point of time, did MSRDC ever plead or prayed before the Hon'ble High Court to adjudicate the legality of the Versova Bandra Sea Link, being constructed pursuant to the CRZ Clearance dated 9th January, 2013 or the Environment Clearance dated 2nd February, 2017.**

24. That other observations made in the passing were neither in issue before the Hon'ble High Court nor were they decided on merit or part of *ratio decidendi.*

A.C.J.

25. That **Annexure A-2** shows that the Chamber Summons (L) No. 24 of 2019 in Writ Petition No. 535 of 2019 was filed by Zoru Darayus Bathena only to implead him as a party Respondent in the main Petition and for limited relief in respect of Juhu Koliwada Beach.

26. That **Annexure A-3** shows that the Chamber Summons (L) No. 63 of 2019 in Writ Petition No. 535 of 2019 was filed by Geeta Sheshu only to implead her as a party Respondent in the main Petition.

27. That **Annexure A-4** shows that the Notice of Motion No. 190 of 2019 in Writ Petition No. 535 of 2019 was filed by Zoru Darayus Bathena only for limited purpose of directing the Petitioner to stop destruction of mangroves.

28. That **Annexure A-5** shows that Appeal No. 14 of 2017 was filed challenging the EC granted for the VBSL project on various grounds, none of which were before the Hon'ble High Court. Though there are some grounds taken in Appeal No. 14 of 2017 which are similar to the grounds taken in the present Appeal, a decision in Appeal No. 14 of 2017, which is not inter partes certainly cannot operate as res judicata in the present Appeal.

29. That **Annexure A-6** shows that O.A. No. 39 of 2021 was filed by local fishermen expressing their concern on the impact of their fishing activities by the access roads of the VBSL project, none of which were before the Hon'ble High Court. Besides, there are also no common grounds taken in O.A. No. 39 of 2021 which are similar to Appeal No. 14 of 2017 or the present Appeal.

30. That it is therefore indisputably clear that:-

(a) The parties in High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion, NGT Appeal No. 14 of 2017 and O.A. No. 39 of 2021 and the present Appeal are not the same and identical.

(b) The issues involved in High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion, NGT Appeal No. 14 of 2017 and O.A. No. 39 of 2021 and the present Appeal are not the same or identical.

31. That in para (5) of the present I.A. the Applicant MSRDC has falsely alleged that the grounds raised in the present Appeal are allegedly similar / identical to the grounds raised in Appeal No. 14 of 2017 and O.A. No. 39 of 2021. It is the further false case of the Applicant that the issue in the present Appeal is allegedly dealt with and that the legality of the Environment Clearance is allegedly no longer *res integra*.

32. That in para (6) of the present I.A. the Applicant MSRDC has further alleged that in light of the common Order dated 22.8.2022 passed in Appeal No. 14 of 2017 and O.A. No. 39 of 2021, the present Appeal is allegedly barred by the principle of Constructive Res Judicata, since the entire issue raising similar grounds have allegedly been decided by the said Order.

33. That Appeal No. 14 of 2017 and O.A. No. 39 of 2021 were dismissed by this Hon'ble Tribunal, without hearing them on merit as this Hon'ble Tribunal was made to believe the deliberate and false misrepresentation made by the Applicant MSRDC, whereby claiming that order of the Hon'ble High Court

records that no case is made out to interfere with the impugned Environment Clearance, when in fact the Hon'ble High Court had only granted the limited permission contemplated in specific condition No. (iii) of the CRZ Clearance and Clause 4 and General Condition No. (iv) of the Environment Clearance i.e. to cut and remove 1585 number of mangrove trees in the path of VBSL project and nothing more.

34. That the Hon'ble Supreme Court in its judgment, as reported in **AIR 2011 Supreme Court 9** "*Alka Gupta v. Narender Kumar Gupta*", the copy thereof is annexed and marked as **Annexure A-7**, has held in para (14) of the judgment that Section 11 of the CPC requires the following essential requirements to be fulfilled, to apply the bar of res judicata to any suit or issue:-

"(i) **The matter must be directly and substantially in issue in the former suit and in the latter suit.**

(ii) **The prior suit should be between the same parties or persons claiming under them.**

(iii) **Parties should have litigated under the same title in the earlier suit.**

(iv) **The matter in issue in the subsequent suit must have been heard and finally decided in the first suit.**"

That none of the above requirements have been fulfilled in the four proceedings where under the Applicant is attempting to apply the bar of res judicata, namely High Court Writ Petition No. 535 of 2019, NGT Appeal No. 14 of 2017 and O.A. No. 39 of 2021 and the present Appeal.

35. That in the above authority, the Hon'ble Supreme Court has further held in para (15) that:-

> "Explanation IV provides that where any matter which might and ought to have been made a ground of defence or attack in the former suit, even if it was not actually set up as a ground of attack or defence, shall be deemed and regarded as having been constructively in issue directly and substantially in the earlier suit. Therefore, even though a particular ground of defence or attack was not actually taken in the earlier suit, if it was capable of being taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata."

36. That moreover, the Applicant has not even stated what was the ground of attack that the Appellant herein ought to have raised in the Writ Petition but had failed to raise, which the Appellant has raised in the present Appeal No. 12 of 2017, to attract the principle of constructive res judicata, due to simple reason that the Appellant herein was not even a party in the Writ Petition or in Appeal No. 12 of 2017 or O.A. No. 39 of 2021. Under the circumstances, it is clear that the present Appeal is also not barred by constructive res judicata, as alleged by the Applicant.

37. That in **O.A. No. 222 of 2014** "*The Forward Foundation and others v. The State of Karnataka*" the Full Bench of this Hon'ble Tribunal was seized with the issue of bar of res judicata on grounds that in Writ Petition filed in the Karnataka High Court the issues raised and the reliefs sought are the same as in O.A. No. 222 of 2014. **By Judgment dated 4.5.2016, this Hon'ble Tribunal dismissed the said objections by holding that the**

parties are not common and also the issues in application and the writ petitions are not directly and substantially the same. After examination of the pleadings, this Hon'ble Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments and that the prayers and the geneses of the respective proceedings are entirely distinct and different in their scope and relief.

38. That the said Order was challenged before the Hon'ble Supreme Court and by its judgment, as reported in **AIR 2019 (SC) 365** "*Mantri Techzone Pvt. Ltd. v. Forward Foundation and others*", the copy thereof is annexed and marked as **Annexure A-8**. The Hon'ble Supreme Court, after recording in Para (58) of the judgment the conclusion of this Hon'ble Tribunal, upheld the same at para (59) of the judgment, namely:-

> "59. **We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by the respondent Nos. 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.**"

39. Moreover, any Judgment or Order that is not between the same parties cannot be looked into for any purpose, for it is irrelevant in the present proceedings. That the Hon'ble Bombay High Court in its judgment, as reported in **AIR 2008 Bombay 155** "*Smt. Shamlata wd/o Manohar Raut and Ors v. Vishweshwara Tukaram Giripunje and Anr*", the copy thereof is

J.

annexed and marked as **Annexure A-9**, while dealing with the judgment which was not inter partes has held in para (5) that:-

> "5. The question is whether this judgment is at all relevant. The learned counsel for the appellant submitted that this judgment does not fall within the scope of Sections 40 to 44 (of the Evidence Act). **The judgment does not fall within the scope of Section 11 of Code of Civil Procedure since the present defendant was not party to that suit. Obviously, therefore, that judgment does not fall within the scope of Section 40 of the Evidence Act. It is not relevant under Section 41 because it is not a judgment delivered in exercise of probate, matrimonial, admiralty, or insolvency jurisdiction. It is no relevant because it does not relate to matter of public nature. It also does not fall within the scope of Section 43 since existence of such judgment is not fact in issue. The learned Judge of the first appellate Court as well as the trial Court could not have, therefore, looked into this judgment for any purpose, for they are irrelevant.**"

40. That it is evidently clear that the Applicant has approached this Hon'ble Tribunal by deliberately suppressing the records and proceedings of High Court Writ Petition No. 535 of 2019 and the connected Chamber Summons and Notice of Motion, NGT Appeal No. 14 of 2017 and O.A. No. 39 of 2021, and thereby it is seeking to dismiss the present Appeal, which was the same

ploy adopted by the Applicant MSRDC to dismiss Appeal No. 14 of 2017 and O.A. No. 39 of 2021.

41. That the Hon'ble Supreme Court in its judgment, as reported in **AIR 1994 Supreme Court 853** "*S. P. Chengalvaraya Naidu (dead) by L.Rs v. Jagannath (dead) by L.Rs. and others*" the copy thereof is annexed and marked as **Annexure A-10**, has held in paras (7) and (8) that:-

> "7. ..... **The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.**
>
> 8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. **A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage**

of another. It is a deception in order to gain by another's loss. It is a cheating intended to got an advantage.

Nonproduction and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

42. That the Applicant herein, who was also the Petitioner in High Court Writ Petition No. 535 of 2019, was fully aware that the only relief that was sought in the said Writ Petition was for permission to cut mangroves and this was the only relief granted by the Hon'ble High Court.

43. That in the said Writ Petition No. 535 of 2019, at no point of time, did MSRDC ever plead or prayed before the Hon'ble High Court to adjudicate the legality of the Versova Bandra Sea Link, being constructed pursuant to the CRZ Clearance dated 9th January, 2013 or the Environment Clearance dated 2nd February, 2017 or the said issue was adjudicated on merit.

44. However, MSRDC deliberately suppressed from this Hon'ble Tribunal the records and proceedings of Writ Petition No. 535 of 2019 and its connected applications and proceeded to falsely claim before this Hon'ble Tribunal that the Hon'ble High Court has already adjudicated the legality of the Versova Bandra Sea Link and thereby managed to get the Appeal No. 14 of 2017 and O.A. No. 39 of 2021 dismissed on 22.8.2022 by playing a fraud on this Hon'ble Tribunal.

45. In the circumstances, the Appellant respectfully submits that the present I.A. No. 197 of 2022 filed to dismiss the present Appeal by relying upon the Order dated 22.8.2022 in Appeal No. 14 of 2017 and O.A. No. 39 of 2021, which in the first place was obtained by the Applicant MSRDC by playing a fraud on this Hon'ble Tribunal, be dismissed with exemplary costs.

APPELLANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI:
DATED: 1.1.2023

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE

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MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD. **APPLICANT**

IN THE MATTER BETWEEN:

DILEEP B. NEVATIA **APPELLANT**

VERSUS

UNION OF INDIA & OTHERS **RESPONDENTS**

AFFIDAVIT

I, Dileep Nevatia, S/o Shri Balkrishna Nevatia, R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-400030 aged about 73 years, do hereby solemnly affirm and declare as under:

1) That I am the Appellant in the abovementioned Application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.

2) That I have read over the contents of the accompanying Reply and same are true and correct.

DEPONENT

VERIFICATION:-

Verified on this the 1st day of January, 2023 that the contents above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

Seen the Driving Licence
No. MH01 – 20090127799
DOI – 6.9.1967

NOTED & REGISTERED
Sr. No. 2191 Page No. 100
01/01/2023

01/01/2023
R. R. MISHRA
B.Com LLB,
ADVOCATE & NOTARY GOVT. OF INDIA
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NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

ANNEXURE A-1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.(L) 17 OF 2019

In the matter of Article 226 of the Constitution of India;

And

In the matter of Judgment and Order dated 17th September 2018 in *PIL No. 87 of 2006;*

And

In the matter of Interim Orders dated 6th October 2005 and 27th January 2010 in *PIL No. 87 of 2006;*

And

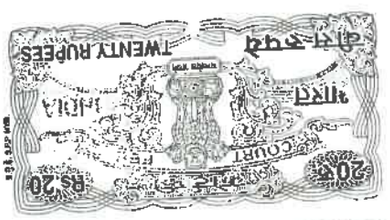
In the matter of Order dated 2nd November 2018 in Notice of Motion No. 278 of 2018 in *PIL No. 87 of 2006;*

And

In the matter of development of a project of public interest in an area covering 50 meters mangroves buffer zone;

And

In the matter of Environmental Clearance dated 2nd February 2017 and CRZ Clearance dated 9th January 2013 imposing the condition



of obtaining leave of this Hon'ble Court prior to execution of the project.

Maharashtra State Road Development Corporation Ltd.,
Bandra Worli Sea LinkProject Office,
K. C. Marg, Opp. Bandra Reclamation
Bus Depot, Bandra (West),
Mumbai – 400 050

..Petitioner

VERSUS

1. **Union of India**
   Through the Ministry of Environment Forest and Climate Change, Paryavaran Bhavan,
   New Delhi 110002
   And also at
   Aayakar Bhavan, 2nd floor,
   Maharshi Karve Road, New Marine Lines,
   Mumbai – 400 020

2. **State of Maharashtra**
   Environment Department
   through the Office of Government Pleader,
   High Court, Bombay, PWD Building,
   Fort, Mumbai 400 001

3. **Maharashtra Coastal Zone Management Authority**
   Through the Additional Chief Secretary,
   Environment Department, 2nd Floor, Room No. 217,
   Annexe Building, Mantralaya, Mumbai- 32.

4. **Chief Conservator of Forest (Mangrove Cell),**
   through the Office of Government Pleader,
   High Court, Bombay, PWD Building,
   Fort, Mumbai 400 001

.. Respondents

NOTARY
N. RAJA
GR. BOMBAY
Regn. No. 246
GOVERNMENT OF INDIA

TO,
THE HON'BLE THE CHIEF JUSTICE AND OTHER
PUISNE JUDGES OF THE HON'BLE HIGH COURT
OF JUDICATURE AT BOMBAY

THE HUMBLE PETITION OF
THE PETITIONERABOVENAMED

MOST RESPECTFULLY SHEWETH

PARTIES:

1. The Petitioner is a company registered under the Companies Act, 1956 and is wholly owned and controlled by the Government of Maharashtra, established with the sole objective of execution of infrastructure projects of public utility, more particularly public transportation systems such as road, bridges etc., and has been appointed as a nodal agency by Respondent No.2 (State of Maharashtra) for the implementation of the Versova-Bandra Sea Link ("**VBSL**") Project on Engineering Procurement and Construction basis.

2. The Respondent No.1 is the Union of India through its Ministry of Environment and Forest, being the nodal agency in the administrative structure of the Government for the planning, promotion, coordination and overseeing the implementation of India's environmental and forestry policies, including but not limited to grant of environment clearance. Respondent No. 2 is the State of Maharashtra. Respondent No.3 is Maharashtra Coastal Zone Management Authority constituted under the CRZ Notification 1991 under the provisions of the Environment (Protection) Act, 1986 ("**EPA**"), responsible for regulation of activities in Coastal Regulation

Zones ("**CRZ**") and grant of CRZ clearances. The Respondent no.4 is the Chief Conservator of Forest (Mangroves Cell).

3. All the Respondents are State within the meaning of Article 12 of the Constitution of India and as such, amenable to the writ jurisdiction of this Hon'ble Court.

PURPOSE OF THIS PETITION:

4. The Petitioner, by way of the present Petition under Article 226 of the Constitution of India, is seeking directions to the Respondent Authorities to permit the Petitioner to carry out the work of its project being the Versova - Bandra Sea Link, in accordance with the permissions granted to it and with the leave of this Hon'ble Court and to commence and execute the construction of the proposed sea link which is an important transport infrastructure project.

5. Such directions to the Authorities with the leave of this Hon'ble Court are being sought for by the Petitioner in the teeth of the Judgment and Order dated 17th September 2018 passed by this Hon'ble Court in *PIL No. 87 of 2006* read with the Order dated 2nd November 2018 in *Notice of Motion No. 278 of 2018* in *PIL No. 87 of 2006*. This Hon'ble Court, by way of the Judgment and Order dated 17th September 2018 has given a finding that in view of the applicability of public trust doctrine, the Respondent No.3 is duty bound to protect and preserve mangroves and destruction of the same cannot be permitted for private, commercial or any other use unless this Hon'ble Court finds it necessary for public interest. Further, by way of the Order dated 2nd November 2018, this Hon'ble Court has granted liberty to the present Petitioner who had also filed

a *Notice of Motion No. 278 of 2018* in the same proposed project as the present Petition seeking leave to exclude the land of the proposed project from the embargo created by this Hon'ble Court by way of Order dated 6th October 2005.

6. Further, the present Petition is being filed in the teeth of the condition imposed by the Respondent No. 3 in the CRZ clearance dated 9th January 2013 being Condition No. (iii) and the Clause 4 and General Condition no. (iv) of the Environment Clearance imposed by the Respondent no. 2, both upon the Petitioner to obtain prior leave of this Hon'ble Court before executing the proposed project.

7. The intervention of this Hon'ble Court is necessary and expedient as the Petitioner has been granted the CRZ clearance dated 9th January 2013 and Environment Clearance with specific conditions being Condition No. (iii) of the CRZ Clearance and Clause 4 & General Conditions for pre-construction phase no. (iv) of the Environment Clearance that the Petitioner must apply to the Hon'ble High Court prior to cutting of any mangroves.

8. It is pertinent to mention that the proposed sea-link project is ofgreat public importance which would reduce the congestion on the Western Express Highway and the Western Line of the Mumbai Suburban Railway, thereby greatly reducing the acute problem of traffic congestion faced in the city of Mumbai, developing an alternative environment friendly public transportation system which would consequently ease the traffic conditions and improve the environmental situation. Needless to mention that the proposed sea-link project will also reduce the travel distance to various public

amenities providing not only an environment friendly but also a cost-effective alternative.

9. The proposed project of the Petitioner is founded on the principles of public utility, sustainable development and eco-friendly transportation systems, aimed at benefiting the citizens and not premised on private or commercial gain. It is a public utility project being executed by the Petitioner and as such, the same should be allowed to be implemented, more so since the concerned statutory authorities have granted requisite permissions in accordance with law.

10. Further, the Petitioner is approaching this Hon'ble Court, invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India, seeking a direction to the Respondent Authorities to permit the Petitioner to execute the said project by granting leave as contemplated in Condition No. (iii) of the CRZ Clearance dated 9th January 2013 as extended on 6th December 2018 and the Clause 4 and General Condition no. (iv) of the Environment Clearance dated 2nd February 2017, and in light of the finding given by this Hon'ble Court at paragraph 83(viii) of the Judgment and Order dated 17th September 2018 in *PIL No. 87 of 2006*and the leave granted by this Hon'ble Court in the Order dated 2nd November 2018 in *Notice of Motion no. 278 of 2018*. In view of the limited relief sought by the Petitioner in the form of the direction to the Respondent statutory authorities, the Original Petitioner in *PIL No. 87 of 2006,* which is a private Non-Governmental Organization (NGO) is not impleaded as party to the present proceedings.

11. It is in these premises that the Petitioner is approaching this Hon'ble Court only upon the receipt of all requisite statutory permissions/ clearances from the relevant statutory authorities under its extraordinary jurisdiction under Article 226 of the Constitution of India, seeking a direction to the relevant statutory authorities to allow the Petitioner to implement the proposed project of Versova-Bandra Sealink Project in view of its public importance.

DESCRIPTION OF THE PROJECT

12. The Petitioner states that the proposed VBSL project is a part of the Western Freeway, a critical transportation infrastructure project in the city of Mumbai that envisions the construction of multiple bridges over the Arabian sea to reduce traffic congestion between the Western suburbs and the island city of Mumbai in its entirety, the freeway is envisaged to stretch from Marine Drive in South Mumbai to Kandivli in North Mumbai, of an aggregate distance of about 30 kilometers. The first phase of the project christened Bandra-Worli Sea Link was successfully completed in June 2009 and links Worli in South Mumbai to Bandra in the North using a cable stayed bridge spanning the Mahim causeway. This development has significantly reduced the traffic load on the Mahim Causeway which until then had been the only road connecting the Western Suburbs and South Mumbai on the western seafront.

13. As part of the Western Freeway, the Bandra Worli Sea Link, is to be extended up to Versova in the Western Suburbs via a sea link connection. The Petitioner states that VBSL is the proposed 9.89 km long main sea link that would connect Bandra with Versova, thereby

establishing a contiguous sea link connection from Versova in the Western Suburbs up to Worli in South Mumbai. This northward extension of the Bandra-Worli Sea Link will be built on pillars 900 meters into the Arabian Sea. There are two dispersal points at Otter's Club and Juhu Koliwada. The total length including connectors is approximately 17.17 Kms. The Juhu beach will have a 150 meter long cable-stayed portion.

14. The Petitioner states that VBSL has been envisaged to reduce congestion on the Western Express Highway and the Western Line of the Mumbai Suburban Railway. The 8-lane sea link will pass through Bandra, Juhu Koliwada, Versova and Carter Road. The project will be developed on EPC (Engineering Procurement and Construction) basis. The cost of the project was originally estimated as Rs. 4,045 crores in 2012. This escalated to Rs. 7502 crores in the year 2015-2016, it is currently estimated to about Rs.11332.82 crores. The project is expected to be completed in 5 years from its commencement.

Cost of the project

15. As per the provisions of the CRZ notification dated 6th January 2011, construction of sea link, bridges and road on stilts are permissible activities as per clause 3(iv)(a) of the notification which is reproduced hereinbelow for ease of reference:

> *"3. Prohibited activities within CRZ- The following are declared as prohibited activities within the CRZ -*
>
> .....
>
> *(iv) Land reclamation, bunding or disturbing the natural course of seawater except those-*
>
> *(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, **bridges**, **sealink**, **road on stilts**, and*

*such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;" **(emphasis added)***

16. Further, as per clause 8(i)I(i) (e) of the CRZ notification 2011, construction of trans-harbour sea link is a permissible activity in CRZ-1(a). The same is reproduced hereinbelow for ease of reference:

"8. Norms for regulation of activities permissible under this notification,-

(i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-

.....

I. CRZ-I,-

(i) no new construction shall be permitted in CRZ-I except,-

(a) projects relating to Department of Atomic Energy;

(b) pipelines, conveying systems including transmission lines;

(c) facilities that are essential for activities permissible under CRZ-I;

(d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

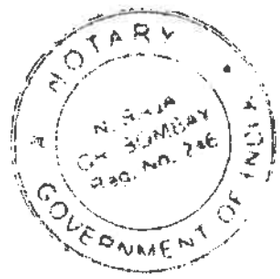
(e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL."
(emphasis applied)

17. Further, as per paragraph 8(i)I(ii)(g) of the CRZ notification 2011, construction of trans-harbour sea links, roads on stilts or pillars without effecting the tidal flow of water is a permissible activity in CRZ-I (B). The same is reproduced hereinbelow for ease of reference:

".....

(ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-

(a) exploration and extraction of natural gas;



(b) construction of dispensaries, schools, public rainshelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere reserves after obtaining approval from concerned CZMA.

(c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;

(d) salt harvesting by solar evaporation of seawater;

(e) desalination plants;

(f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;

(g) construction of transharbour sea links, roads on stilts or pillars without affecting the tidal flow of water."

A copy of the CRZ notification dated 6th January 2011 is annexed hereto and marked as **Exhibit "A".**

NEED / IMPORTANCE OF VBSL

18. The VBSL project is one of the crucial importance for the city of Mumbai and its Western Suburbs in view of the acute problems of traffic congestion faced herein. The population of Mumbai is increasing at a fast pace and is estimated to reach around 24 million by 2021. The Western Suburbs of Mumbai aredeveloping at a rapid pace in terms of commercial establishments as also housing schemes to accommodate this vastly expanding population. The commuters travelling to South Mumbai from the Western Suburbs presently use the available Swami Vivekananda Road and the Western Express Highway, both of which have already reached saturation level. There is no open space available for expansion of these existing roads and the heavy congestion on these roads leads to indefinite delay and more travel time and increasing air pollution. In the premises, it has

NOTARY N. RAJA GR. BOMBAY Reg. No. 246 GOVERNMENT OF INDIA

become imperative to develop an alternate route to ease such traffic conditions and consequently improve the environmental situation.

19. The Petitioner states that a need to develop a ring road to cater to the traffic throughout Mumbai both from the North to South and from East to West has become imperative owing to major growth in the Western Suburbs, especially around Andheri, Goregaon and Borivli. This proposed ring road would be formed by Eastern Freeway (which extends between the Eastern Express Highway at Ghatkopar to P. D'Mello Road, South Mumbai) and the Western Freeway connecting at Nariman Point.

20. Various studies have revealed that about 50% of the traffic towards South Mumbai originates from the Suburbs beyond Bandra such as Andheri and Goregaon. The Petitioner states that with the construction of VBSL, the traffic of the Northern Suburbs would get diverted from the existing city roads such as Swamy Vivekanand Road and Western Express Highway which are suffering acute congestion on date.

21. A pre-feasibility study was carried out by M/s CES (India) Pvt. Ltd., an expert agency with specific emphasis on:

a. Broad traffic estimate;

b. Conceptual alignment and plan with possible links;

c. Broad cost estimates;

d. Broad environment and social issues;

e. Organization and legal aspects;

f. Financial aspects.

It is only after detailed study and deliberation of the feasibility of the proposed VBSL that it has been seen that the same is indubitably imperative. Some of the benefits which are expected to be achieved by the construction of the Bandra-Versova Sea Link project includes:

a. significant savings in the travel time due to increased speed and reduced delay at intersections;

b. reduced number of accidents;

c. improvement of the environment vis-à-vis reduced air and noise pollution along with the densely populated existing corridors, the concentration of carbon dioxide and nitrous oxide are expected to significantly reduce, and

d. consequent easing of traffic congestion on the Western Express Highway and S.V. Road,

e. consequent easing of traffic on local road in the densely populated area owing to a diversion of traffic to sea link.

METHODOLOGY / TECHNOLOGY OF THE PROJECT

22. VBSL is proposed along with the West Coast of Mumbai from Bandra West to Versova, built on pillars 900 meters into the Arabian Sea with a 150 meter cable-stayed portion at Juhu Beach. It will have dispersal points at Juhu Koliwada and Otter's club, making it viable for commuters from the Western Suburbs. The length of the sea link is 9.890 kilometers having four plus four lanes on both sides. The total length including connectors is approximately 17.17 Kms. The

Petitioner states that the total area required for the project is 47.3884 hectares, with certain portions falling in protected/ mangrove forest areas and therefore, the VBSL is being aligned in such a manner to utilize minimum mangrove area as also a minimum impact on surrounding mangrove areas if any.

23. The Petitioner states that the methodology to be employed involves construction of the sea link on piers / stilts entirely through the sea and does not involve any underground tunneling, mining, reclamation works. The construction of VBSL will be carried out using modern technology with least environmental effect and in compliance with all the conditions mentioned in the CRZ clearance dated 9th January 2013 granted in favor of the Petitioner.

24. During the construction phase, temporary structures will be erected for production and manufacturing of parts of the sea link structure i.e. segments, girders, etc. at the existing casting yard with jetty already constructed for the Bandra Worli Sea Link or at a new casting yard proposed at Juhu Koliwada. Barges / trailers will be used to carry such material from the casting yard to the launching site.

25. The Petitioner states that the VBSL is being envisaged in a manner which ensures that there is no need to close or divert the existing transport routes nor will there be any change in water bodies or land surface.

ENVIRONMENTAL IMPACT

26. As per the Environment Impact Assessment Report carried out and prepared by the Petitioner, the dominant species of mangroves in the

area to be affected by the VBSL are *avicennia marina* and *aveicennia alba*. There is a dense presence of mangroves at Versova, however, only a few patches exist at the proposed end of the VBSL. It is estimated that there would be a loss of approximately 2.9907 Ha of mangroves for the connectors of the proposed VBSL. After piling work, since it is in the intertidal area, the mangroves will grow again, the connectors being built on stilts. I crave leave to refer to and rely upon the copy of the Environmental Impact Assessment Report of August 2011 as and when produced.

27. There were 5 different proposals, which were considered for the construction of the VBSL. They were:

a. Alignment No.1(A): Coastal road on reclamation with cut and cover tunnel at Juhu Beach;

b. Alignment No.1(B): Coastal road on stilt with cut and cover tunnel at Juhu beach;

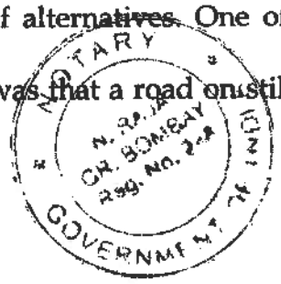
c. Alignment No2: Sea link partly away from the coast at a distance of 200 m. And partly along with the cut and cover tunnel at Juhu beach;

d. Alignment No.3: Sea link entirely through the sea at approximately 900 m. away from the coast; and

Approved

e. Alignment No.4: Coastal road on reclamation of approximately 1 km till Galaxy Apartment, Bandra and thereafter a sea link till Versova at approximately 900 m. away from the coast.

28. The Petitioner states that the Cabinet Committee on Infrastructure approved the Alignment No.3 for the construction of the VBSL, considering all the merits and demerits of alternatives. One of the reasons for the choice of Alignment No.3 was that a road on stilts in



the sea would have a negligible environmental impact, particularly, on the mangrove forest because the ambient air quality and noise level affected will be minimum.

PERMISSIONS / CLEARANCES OBTAINED

29. The Petitioner has obtained all necessary clearances and permissions as required under law for commencing and carrying out the VBSL project. The same have been granted by the respective statutory authorities, keeping in mind the peculiar geographical and topographical aspects of the land required for the VBSL project as also keeping in mind environmental factors.

30. The Petitioner states that the proposed project was considered by the MCZMA in its 71st meeting held on 26th August 2011 when, after duly appraising the project from the CRZ point of view, the MCZMA was pleased to approve the proposal for VBSL. Annexed hereto and marked as **Exhibit "B"** is a copy of the relevant excerpt of the Minutes of the Meeting dated 26th August 2011. The recommendation culminated in the issuance of an order granting CRZ recommendation dated 5th November 2011, a copy of which is annexed hereto and marked as **Exhibit "C".**

Ex B

Ex C

31. On 3rd April 2012, the Maharashtra Maritime Board was pleased to grant a No Objection Certificate to the Petitioner for construction of the proposed sea link pursuant to clearing their vertical and horizontal clearances. Annexed hereto and marked as **Exhibit "D"** is a copy of the NoC granted.

Ex D

NOTARY
N. RAJA
GR. BOMBAY
Regd. No. 248
GOVERNMENT OF INDIA

32. On 9th January 2013, the MOEF (Respondent No.2) was pleased to issue Coastal Regulation Zone (CRZ) clearance for the VBSL on the terms and conditions contained therein. Copy of the CRZ Clearance is annexed hereto and marked as **Exhibit "E".** The CRZ Clearance was recommended for extension for a further period of 5 years in the meeting dated 13th April 2018 by Expert Appraisal Committee held in the Office of the MoEF, New Delhi. The Respondent no. 3 recommended extension of the CRZ Clearance as is recorded in the Minutes of the Meeting dated 6th December 2018. Petitioner craves leave to produce a copy of the minutes dated 6th December 2018 as and when produced.

Ex E

33. On 5th, 6th and 7th October 2016, the State Level Expert Appraisal Committee (SEAC)-1 of Maharashtra in its 136th meeting considered and appraised the project as per the EIA Notification 2006 and after due deliberation and perusal of the documents placed on record, was pleased to recommend VBSL project for prior environmental clearance to the State Level Environment Impact Assessment Authority (SEIAA). Annexed hereto and marked as **Exhibit "F"** is a copy of the relevant excerpt of Minutes of the 136th Meeting of the SEAC-1. The VBSL project was also considered by SEAC-2 under the Screening Category 8(b)B-1 as per the EIA Notification of 2006.

Ex F

34. Thereafter, the VBSL project came to be appraised by the SEIAA in its 107th meeting dated 19th, 20th and 21st October 2016 when after considering the proposal of the Petitioner in threadbare detail, the SEIAA was pleased to recommend the project for prior environmental clearance on various terms and conditions. Annexed

NOTARY N. RAJA GR. BOMBAY Regd. No. 2445 GOVERNMENT OF INDIA

E-G hereto and marked as **Exhibit "G"** is a copy of the relevant excerpt of the Minutes of the 107th Meeting of SEIAA.

35. On 2nd February 2017, the environmental clearance for the proposed VBSL came to be issued in favor of the Petitioner on the terms and conditions contained therein pursuant to the 136th meeting of the State Level Expert Appraisal Committee – I and further approved by the State Level Environment Impact Assessment Authority in its 107th meeting. Annexed hereto and marked as **Exhibit "H"** is a copy of the environmental clearance dated 2nd February 2017.

E-H

36. On 22nd March 2017 the Petitioner has addressed a letter to the Divisional Forest Officer (Mangrove) requesting for processing the proposal for diversion of forest land for construction of the VBSL, a copy of which is annexed hereto and marked as **Exhibit "I"**. The same is in compliance with specific condition no.(iii) of the CRZ clearance dated 9th January 2013.

E-I

37. The Petitioner states that the VBSL project came to be approved by Respondent No.2 vide Government Resolution dated 4th December 2017, a copy of which is annexed hereto and marked as **Exhibit "J"**.

E-J

approval the govt

38. In respect of the same, the Collector, Mumbai Suburbs requested the Commissioner of the K West Ward and H West Ward to forward report *qua* the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 on forest area vide letter dated 10th July 2017. Accordingly, the Hon'ble *Prabhag Samiti* K/ West Ward have recommended the proposal vide their letter dated 7th December 2017 and 20th February 2018, copies of which are annexed hereto and marked as **Exhibit "K" and "L"**. The EIA

E-K

E-L

NOTARY N. RAJA BOMBAY REG. NO. 246 GOVERNMENT OF INDIA

Certificate was accordingly granted by the Office of the Collector, Mumbai Suburban District on 9th April 2018. Copy of the same is annexed hereto and marked as **Exhibit "M"**

Ex M

39. The Petitioner states that as per Specific Condition No.(iii) imposed in the CRZ clearance dated 9th January 2013 regarding mangroves plantation, the Petitioner has addressed a letter dated 11th December 2017 to the Divisional Forest Officer of the Mumbai Mangroves Conservation Unit requesting for issuance of mangroves plantation scheme. Annexed hereto and marked as **Exhibit "N"** is a copy of the letter dated 11th December 2017.

Ex N

40. On 15th September 2018, the Office of the Collector, Mumbai, granted permission to the Petitioner to permanently utilize a few parts of the plots of land in Juhu Versova and Bandra, for the purpose of constructing connectors of the proposed Sea Link project; whereas the Petitioner was granted permission to temporarily occupy a portion of the plot of land at Juhu Koliwada admeasuring 78,392.12 sq.mtrs. as the area reserved for casting yard, till the entire project was completed. Copy of the permission granted to the Collector dated 15th September 2018 is annexed hereto and marked as **Exhibit "O".**

Ex O

41. On 3rd October 2018, the Respondent no. 2 by way of a Government Resolution, revised the sanctioned amount for the proposed sea link now amounting to Rs. 11,332.82 crores. Copy of the Government Resolution dated 3rd October 2018 is annexed hereto and marked as **Exhibit "P".**

Ex P

42. On 29th November 2018, the Maharashtra Pollution Control Board issued a Consent to Establish for construction of the proposed sea

NOTARY GR. BOMBAY No. 243 GOVERNMENT OF INDIA

link in the Orange/ LSI Category as per the Environment Clearances of 2nd February 2017 and CRZ Clearance dated 9th January 2013. Copy of the Consent to Establish is annexed hereto and marked as **Exhibit "Q"**.

43. On 20th December 2018, the Petitioner was granted forest clearance by the Ministry of Environment, Forests and Climate Change and forest land admeasuring 2.9907 ha was granted to the Petitioner for the purpose of the proposed sea link project subject to fulfillment of certain conditions that are enlisted herein below. Copy of the Forest Clearance is annexed hereto and marked as **Exhibit "R"**. The said clearance permitted cutting of about 1585 number of mangrove trees subject to approval from the Hon'ble High Court. The Petitioner further states that it has also started complying with the said conditions in the manner enlisted herein below.

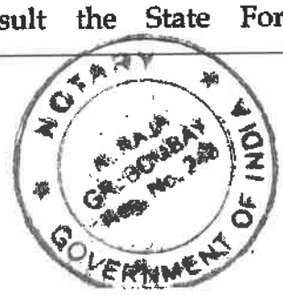
Sr. no.	Conditions	Compliance / Comment
1.	Legal status of the diverted forest land shall remain unchanged	The Petitioner has noted this condition.
2.	Compensatory afforestation, over non-forest land of 2.9907 ha, shall be raised by the State Forest Department at the cost of User Agency	The Petitioner has accepted this condition and has proceeded to take steps towards compensatory afforestation. The Petitioner has also acquired the land upon which afforestation would be carried out and the same would be handed over to the Forest Department.
3.	The non-forest land identified for raising compensatory afforestation shall be transferred and mutated in favour of the State Forest Department before issue of the Stage-II clearance	

NOTARY N. RAJA GR. BOMBAY REG. NO. 248 GOVERNMENT OF INDIA

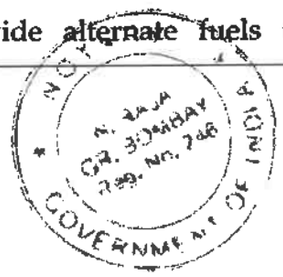
	The non - forest land transferred and mutated in favour of the State Forest Department shall be notified by the State Government as RF under Section-4 or PF under Section-29 of the Indian Forest Act, 1927 or under the relevant Section(s) of the local Forest Act, latest within a period of six months from the date of issue of Stage-II approval. The Nodal Officer shall report compliance in this regard along with a copy of the original notification declaring the non-forest land under Section 4 or Section 29 of the Indian Forest Act, 1927 or under the relevant sections of the local Forest Act, as the case may be, within the stipulated period to the Central Government for information and record	The Petitioner has noted this condition.
	The User Agency shall transfer the cost of raising and maintaining the CA plantation as per conditions (ii) stipulated above and for raising equal number of mangrove plants as mentioned in condition (xxvi), at the current wage rate, to the State Forest Department. The scheme may include appropriate provision for anticipated cost increase for works scheduled for subsequent years.	The Petitioner has accepted this condition and is willing to make the necessary payments as and when the State Forest Department raises the demand for the same.
	The State Government shall charge the Net Present Value (NPV) of the forest land being diverted under this proposal from the User Agency as per the orders of the Hon'ble Supreme Court of India dated 28.03.2008, 24.04.2008 and 09.05.2008 in Writ Petition (Civil) No. 202/1995 and the guidelines issued by this Ministry vide its	The Petitioner has noted this condition.

NOTARY P. RAJA KUMARAN GR. NO. 2/6 GOVERNMENT OF INDIA

	letter No. 5-3/2007-FC dated 05.02.2009 in this regard	
	At the time of payment of the Net Present Value (NPV) at the then prevailing rate, the User Agency shall furnish an undertaking to pay the additional amount of NPV, if so determined, as per the final decision of the Hon'ble Supreme Court of India	The Petitioner has noted this condition and will comply with the same.
	All the funds received from the User Agency under the project, except the funds realized for regeneration/ demarcation of safety zone, shall be transferred to CAMPA in the Saving Bank Account pertaining to the State concerned	This condition is to be complied with by the State Forest Department.
	The User Agency shall obtain the Environment Clearance as per the provisions of the Environmental (Protection) Act, 1986, if required	The Petitioner states that they have already obtained the necessary EC *vide* letter dated 2nd February 2017 (Exhibit I).
	The User Agency will obtain CRZ clearance from competent authority, if required	The Petitioner states that they have already obtained the necessary CRZ Clearance from the Respondent no. 2 *vide* letter dated 9th January 2013 (Exhibit E).
	The boundary of the diverted forest land shall be demarcated on ground at the project cost by suitable structures	The Petitioner has noted this condition and will comply with the same.
	Wherever possible and technically feasible, the User Agency shall undertake afforestation measures along the roads	The Petitioner has accepted this condition and will consult the State Forest



	within the area diverted under this approval, in consultation with the State Forest Department at the project cost	Department for further guidance on compliance with the same.
	The reclamation of quarry should be done under the supervision of the State Forest Department. The quarry shall be reclaimed and afforested completely before the project is closed.	The said condition is not applicable to the present proposed Project, hence need not be complied with by the Petitioner.
	The User Agency will provide retaining walls, breast walls and drainage as per requirement to make the slope stable.	The Petitioner has accepted this condition and will be complied with during the execution of the proposed project.
	The User agency, if required will undertake comprehensive soil conservation measures at the project cost in consultation with the State Forest Department.	The Petitioner has accepted this condition and conservation measures will be undertaken as per advice of the State Forest Department.
	The designing of culverts/bridges, if any, over the natural streams/rivers/canals should be done in such a manner that it does not hamper the natural course of water, does not give rise to water-logging, and also does not hamper movement of wild animals	The Petitioner has noted this condition and will comply with the same.
	No labour camp shall be established on the forest land	The Petitioner has accepted this condition and there will not be any labor camp in forest land.
	The User Agency shall provide fuels preferably alternate fuels to the labourers and the staff working at the site so as to	The Petitioner has accepted this condition and will provide alternate fuels to



	avoid any damage and pressure on the nearby forest areas	the laborers and staff working at the site.
	The forest land shall not be used for any purpose other than that specified in the proposal	The Petitioner has accepted this condition and the forest landwill not be used for any other purpose.
	The layout plan of the proposal shall not be changed without the prior approval of the Central Government	The Petitioner has accepted this condition Change in layout plan if any will not be without approval of the Central Government.
	The forest land proposed to be diverted shall under no circumstances be transferred to any other agency, department or person without prior approval of the Central Government	The Petitioner has accepted this condition and the forest landwill not be transferred to any other Agency.
	No damage to the flora and fauna of the adjoining area shall be caused	The Petitioner has noted this condition and will comply with the same.
	Revised Part- II including details on Topography of the area, Geology and Slope to erosion shall be submitted by DCF/ DFO concerned along with the compliance report	The Petitioner has noted this condition.
	Detailed CA scheme including adequate funds for fencing of CA area shall be prepared and submitted along with the compliance report	The Petitioner has noted this condition and will comply with the same.
	In covering letter, it is mentioned that 2.9907 ha falls in Protected/ Mangrove	The Petitioner has noted this condition.

NOTARY GOVERNMENT OF INDIA

	Forest area, where as the statement of area shows it also contains Reserved Forest area. State Government may clarify the legal status of the land sought for diversion and submit compliance before Stage- II approval	
	State Government shall raise equal number of Mangrove trees at any suitable place at the cost of User Agency in addition to the CA plantation	The Petitioner has noted this condition.
	Felling of trees shall be restricted to 1585 trees. Any tree felling shall be done only when it is unavoidable and that too under strict supervision of the State Forest Department	The Petitioner has noted this condition and will comply with the same.
	No taxes/ toll will be levied on the vehicles of Forest Department plying on the proposed sea link	The Petitioner states that as per Government toll policy, the toll exemption will be as per Toll Notification of BWSL and will be allowed on all Government vehicles
	The User Agency in consultation with the State Government shall create and maintain alternate habitat/home for the avifauna, whose nesting trees are to be cleared in this project. Bird's nests artificially made out of eco-friendly material shall be used in the area, including forest area and human settlements, adjoining the forest area being diverted for the project and submit a scheme along with Stage-I compliance	The Petitioner states that this condition will not be applicable to the proposed project considering its nature.
	The State Government shall ensure that settlement of rights, in terms of the	FRA certificates are already handed over by the

	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, if any, have been completed in accordance with the relevant guidelines issued by the MoEF&CC in this regard. Original copy of the certificate dated 6.07.2013, issued by the concerned District Collector shall be submitted along with the compliance report	Petitioner to the Nodal Office MOEF&CC for grant of Stage I forest clearance.
	The User Agency shall submit six monthly self-compliance reports as on 1st January and 1st July of every year to this office as well as to the Nodal Officer of the State	Noted and six monthly reports will be submitted accordingly.
	The State Government shall monitor compliance of conditions of Forest Clearance and shall submit in this regard yearly report as on 31st December of every year	The Petitioner has noted this condition.
	Any other condition that the concerned Regional Office of this Ministry may stipulate, from time to time, in the interest of conservation, protection and development of forests & wildlife and	The Petitioner has noted this condition.
	The User Agency and the State Government shall ensure compliance to provisions of the all Acts, Rules, Regulations, Guidelines and Court/ Tribunal directions for the time being in force, as applicable to the project	The Petitioner has noted this condition.
	Grant of working permission to the extant proposal may be considered by the State Government in accordance with the	The Petitioner has noted this condition.

	provisions as contained in the MoEF&CC's Guidelines dated 28.08.2015	

REQUIREMENT OF APPROACHING THIS HON'BLE COURT: -

44. As per Specific Condition No. (iii) in the CRZ Clearance dated 9th January 2013, the Petitioner is required to obtain permission from this Hon'ble Court before giving effect to such clearance.

45. Further, as per Clause 4 and General condition no. (iv) in the EC dated 2nd February 2017, the Petitioner is required to ensure compliance with the conditions imposed by the Respondent No. 2, meaning thereby compliance with Clause 4 and General condition no. (iv) in the EC dated 2nd February 2017.

46. By an Order dated 6th October 2005 in *PIL No. 87 of 2006*, a complete freeze was imposed on development activities in areas affected by mangroves. The said Order came to be modified by a further Order dated 27th January 2010 in *PIL No. 87 of 2006*, wherein this Hon'ble Court was pleased to direct that nothing would prevent statutory bodies to approach competent authorities to seek permission for their respective projects as required in accordance with law for the projects in mangrove areas and that such application would be considered strictly in accordance with law keeping in mind the principle of sustainable development and that grant of such permission would be subject to the approval of this Hon'ble Court. Copy of the order dated 6th October 2005 is annexed hereto and marked as **Exhibit "S"**.

NOTARY N. RAJA GR. BOMBAY No. 248 GOVERNMENT OF INDIA

47. In furtherance of the Order dated 27th January 2010, this Hon'ble Court had been pleased to grant similar permissions in fit cases wherein the Applicants/project proponents have sought to execute projects of bona fide public utility. Annexed hereto and marked as **Exhibit "T"** is a copy of the Order dated 27th January 2010 and furthermore, copies of the following orders are annexed hereto and marked as **Exhibit "U-1"** to **Exhibit "U-8"**:-

GT
GU
Exu 1-18

(i) Order dated 2nd March 2015 in NM (L) No. 75 of 2015;

(ii) Order dated 10th July 2015 in NM No. 213 of 2013;

(iii) Order dated 12th January 2016 in NM (L) No. 869 of 2015;

(iv) Order dated 22nd November 2016 in NM (L) No. 784 of 2015;

(v) Order dated 22nd November 2016 in NM No. 406 of 2016;

(vi) Order dated 22nd November 2016 in NM No. 404 of 2016;

(vii) Order dated 28th November 2016 in NM No. 307 of 2016.

(viii) Order dated 23rd March 2018 in NM No. 153 of 2018.

48. The present Petitioner filed a *Notice of Motion No. 278 of 2018*in the year 2014taken out in *PIL No.87 of 2006* in furtherance of the Order dated 27th January 2010. On 29th June 2018, this Hon'ble court recorded a statement of the Petitioner that they will move this Notice of Motion only after all clearances that are required under the law have been granted. When the said statement was made for by the Petitioner, the only permissions that were pending was the extension of the CRZ Clearance and the Forest Clearance both of which have been granted in December 2018 and are already annexed herein above at Exhibit E and Exhibit R. It was also agreed by the Petitioner, that it would not proceed with any work towards the project unless

NOTARY * N. RAJA GR. BOMBAY Reg. No. 246 * GOVERNMENT OF INDIA *

all necessary permissions are received by this Hon'ble Court. Copy of the Order dated 29th June 2018 is annexed hereto and marked as **Exhibit "V".**

Ex V

49. By Judgment and Order dated 17th September 2018 in *PIL No. 87 of 2006*, this Hon'ble Court was pleased to dispose of the said PIL, with various findings and directions. Paragraph 83(viii) of the said Judgment provided that no destruction of mangroves could take place unless this Hon'ble Court deemed it necessary for the public good or public interest. Paragraph 83(viii) is reproduced hereinbelow for ease of reference: -

> *"In view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destructed by the State for private, commercial or any other use unless the Court finds it necessary for the public good or public interest;"*

Ex W

Annexed hereto and marked as **Exhibit "W"** is a copy of the Judgment and Order dated 17th September 2018 in *PIL No. 87 of 2006*. The Petitioner states that only pursuant

50. The *Notice of Motion No. 278 of 2018* came to be finally heard on 2nd November 2018 when, this Hon'ble Court observed that the present Petitioner can file a fresh petition independently raising issues for the consideration of this Hon'ble Court, which would be considered on its own merits in light of the finding at paragraph 83(viii) of the Judgment and Order dated 17th September 2018. Annexed hereto and marked as **Exhibit "X"** is a copy of the Order dated 2nd November 2018 in *Notice of Motion No. 278 of 2018*.

Ex X

51. It is pertinent to point out that in December 2018, a contempt petition being *Contempt Petition (L) No. 8 of 2018* came to be filed against the present Petitioner and other statutory authorities alleging that the Petitioner is guilty of contempt for having violated the directions laid down by this Hon'ble Court in the Order dated 6th October 2005 and Judgment and Order dated 17th September 2018 of the PIL No. 87 of 2006. The Petitioner therein prayed for directions from this Hon'ble Court to the present Petitioner to hold the Petitioner guilty of contempt and direct the present Petitioner to purge the contempt and to strictly comply with the Order and the Judgment.

52. The contempt was listed for hearing on the 19th of December 2018, when the Hon'ble Court upon hearing the Petitioner therein and the present Petitioner, was pleased not to issue a notice of contempt against the present Petitioner and adjourn the matter. Copy of the Order dated 19th December 2018 is annexed hereto and marked as **Exhibit "Y".**

Exhibit "Y"

53. In view of the afore stated facts, the Petitioner states that it has received all the requisite and necessary permissions and clearances from the statutory authorities. However, in compliance with Para 83(viii) of the Judgment and Order dated 17th September 2018 the present Petitioner is required to take leave of this Hon'ble court to commence the construction work of the proposed Project.

54. In the premises aforesaid, the Petitioner is approaching this Hon'ble Court, seeking necessary directions to give effect to the lawful, valid and subsisting permissions/clearances granted by the concerned statutory authorities and to execute the said Project, on the following

NOTARY N. KAJA GR. BOMBAY Reg. No. 248 GOVT. OF INDIA

amongst other grounds which are taken without prejudice to one another.

GROUNDS:

A. That this Hon'ble Court, by way of the Judgment and Order dated 17th September 2018 has given a finding that in view of the applicability of public trust doctrine, the Respondent No.3 is duty bound to protect and preserve mangroves and destruction of the same cannot be permitted for private, commercial or any other use unless this Hon'ble Court finds it necessary for public interest. In the present case, the project is being executed by the Petitioner which is a Government undertaking, for the benefit of the citizens and which would reduce problems of traffic congestion and vehicular pollution and have a positive socio-economic impact. Thus, the said project squarely falls within the category of public utility project as contemplated in paragraph 83 (viii) of the Judgment and Order dated 17th September 2018;

B. That the *Notice of Motion No. 278 of 2018* which had been taken out by the Petitioner in *PIL No.87 of 2006* in furtherance of the Order dated 27th January 2010 and similar conditions in the CRZ clearance and EC of prior permission of this Hon'ble Court, came to be heard on 2nd November 2018 when, this Hon'ble Court was pleased to observe that Petitioner, in view of the disposal of the *PIL No. 87 of 2006,* should file a fresh petition independently raising issues for the consideration of this Hon'ble Court, which would be considered on its own merits in light of the finding at paragraph 83(viii) of the Judgment and Order dated 17th

September 2018. The present Petitioner ought to be permitted to execute the said project in view of its indubitable public benefit.

C. That this Hon'ble Court, by way of the Judgment and Order dated 17th September 2018 has given a finding that in view of the applicability of public trust doctrine, the Respondent No.3 is duty bound to protect and preserve mangroves and destruction of the same cannot be permitted for private, commercial or any other use unless this Hon'ble Court finds it necessary for public interest. In view of the specific Condition No. (iii) in the CRZ Clearance and the finding of this Hon'ble Court recorded at paragraph 83(viii) of the Judgment and Order dated 17th September 2018, the Petitioner, despite having obtained all necessary clearances and permissions in accordance with law, cannot execute the proposed project without this Hon'ble Court finding it necessary and expedient for public interest.

D. That as per general condition no. (iii) and (4) in the EC letter dated 2nd February 2017, the Petitioner is required to ensure compliance with the conditions imposed by the Respondent No.2.

E. That all the necessary permissions and clearances from all the statutory authorities have been procured by the Petitioner and furthermore, despite having been alleged as having been in contempt of the Order and Judgement dated 17th September 2018, this Hon'ble Court has not issued a notice of contempt against the present Petitioner. This only points out that the present Petitioner has always been following and complying with all its statutory compliances ensuring protection of environment along the way

and therefore ought to receive leave from this Hon'ble Court to execute the proposed Project.

F. That the VBSL project is of crucial importance for the city of Mumbai and its Western Suburbs in view of the acute problems of traffic congestion faced there. The population of Mumbai is increasing at a fast pace and is estimated to reach around 24 million by the year 2021. The Western Suburbs of Mumbai is developing at a rapid pace in terms of commercial establishments as also housing schemes to accommodate this vastly expanding population. The commuters travelling to South Mumbai from the Western Suburbs presently use the available Swami Vivekananda Road and the Western Express Highway, both of which have already reached saturation level. There is no open space available for expansion of these existing roads and the heavy congestion on these roads leads to indefinite delay and more travel time and increasing air pollution. In the premises, it has become imperative to develop an alternate route to ease such traffic conditions and consequently improve the environmental situation.

G. That the said Project being a sea link project is permissible under the provisions of the CRZ Notification dated 6th January 2011. A conjoint reading of Clauses 3(iv)(a) and 8(i)I(i)(e) of the CRZ Notification 2011, makes it indisputably clear that the said project is permissible in accordance with law. As such, the only impediment in executing the said project is the rigors imposed by this Hon'ble Court in the Judgment and Order dated 17th September 2018. In light of the finding recorded at paragraph 83

(viii) of the said Judgment, this Hon'ble Court ought to release the said project from such rigors, keeping in mind its undoubted public utility and the fact that it is otherwise permissible in law.

H. That all the necessary and requisite permissions including *inter alia* the CRZ Clearance, the Environment Clearance and the Forest Clearance have been granted to the said project, in accordance with law. The Petitioner has altered its position, financially and otherwise, on the *bona fide* legitimate expectation that the Petitioner will be allowed to act in furtherance of such permissions. Significant monies have been defrayed by the Petitioner till date. Thus, the case of the Petitioner is squarely hit by the doctrine of legitimate expectations.

I. That the said project is otherwise legal, premised on the principles of sustainable development and is for the benefit of the public at large.

55. The orders based on which the present Petition is preferred, have been passed on 17th September 2018 and 2nd November 2018, thus, the present Petition does not suffer from any delay or latches.

56. The Respondents are situated in Mumbai. The Petitioner and the said project is situated in Mumbai. All correspondences, applications, clearances, approvals and agreements arise out of / are granted / have been executed in Mumbai. Hence the entire cause of action has arisen in Mumbai and this Hon'ble Court has territorial jurisdiction to entertain the Writ Petition.

57. The Petitioner craves leave to add to alter or amend any of the aforesaid grounds.

58. That having regard to the nature of reliefs claimed the Petitioner do not have any other equally efficacious or adequate alternate remedy.

59. No caveat has been filed by the Respondents or any of them and the Petitioner have not been served with any caveat with respect to the above matter. The Petitioner undertake to serve a copy of the Petition, if so directed by this Hon'ble Court.

60. That the Petitioner has not filed any other Writ petition on the same cause of action either in this Hon'ble Court or in other High Court or in the Hon'ble Supreme Court of India.

61. The Petitioner will rely upon the documents a list whereof is enclosed.

62. The Petitioner has paid the requisite Court fees of Rs 250 /-.

63. **The Petitioner, therefore, prays that:**

a) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent Authorities to permit the Petitioner to execute the construction of the proposed Versova – Bandra Sea Link in furtherance of the statutory permissions granted under law and grant leave as contemplated in the specific condition no. (iii) of the CRZ Clearance (Exhibit E) and

NOTARY
N. RAJA
GR. BOMBAY
Reg. No. 246
GOVERNMENT OF INDIA

general condition no. (iv) and (4) of the EC (Exhibit I), in view of the public importance of the project;

b) costs;

c) For such further and other reliefs as this Hon'ble Court may consider fit and proper under the facts and circumstances of the present case.

Mumbai, dated this 3rd day of January 2019

For Vidhii Partners, Advocates

Subit Chakrabarti
Advocates for the Petitioner

V. Surkya
Petitioner
(Suresh Vallabhaneni)

VERIFICATION

V. Surkya Raja

I, SURESH KATU VALLABHANENI, of Mumbai, Indian Inhabitant, having my office at MSRDC Ltd. Bandra Worli Sea Link Project office, K.C. Marg Opp. Bandra Reclamation Bus Depot, Bandra (W), Mumbai 400 050 do hereby solemnly declare that what is stated in Paragraphs 1 to 9 is true to my own knowledge, and that what is stated in the remaining paragraphs 10 to 55 are stated on information and belief, and I believe the same to be true.

V. Surkya

Solemnly declared at Mumbai)

this 3rd day of January 2019

V. Surkya

Before Me

V. Raja 3/1/19

S. No. 894
DATE : 3/1/2019

Subit Chakrabarti
Advocates for the Petitioner

Authorisation dt 2/1/2019

V. Raja 3/1/2019
Notary

TRUE COPY

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ANNEXURE A-2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 24 OF 2019
IN
WRIT PETITION (L) NO. 17 OF 2019

Mr. Zoru Darayus Bhathena)
Age 43 years, Occupation Business)
Having his address at)
501, Vijay Deep, Plot No. 102, 10th Road)
Khar W, Mumbai 400052)…. Applicant

IN THE MATTER OF:-

Maharashtra State Road Development Corporation)
Bandra Worli Sea Link Project Office,)
K C Marg, Opp Bandra Reclamation Bus Depot)
Bandra (West) Mumbai 400050) ….Petitioner

Versus

1. Union of India)
Through the Ministry of Environment, Forests)
and Climate Change,)
Paryavaran Bhavan, Jorbagh Road,)
New Delhi, 110003)
And also at,)
Aaykar Bhavan, 2nd floor,)
Maharshi Karve Road, New Marine Lines)
Mumbai 400020)

2. State of Maharashtra, Environment Department)
Through the office of the Government Pleader)
High Court Bombay, PWD Building, Mumbai-32)

3. Maharashtra Coastal Zone Management Authority)
through the Additional Chief Secretary)
Environment Dept, 2nd floor, Room No. 217,)
Annexe Building, Mantralaya, Mumbai-32)

4. Chief Conservator of Forest (MangroveCell))
Through the Office of Government Pleader)
High Court, Bombay, PWD Building,)
Fort, Mumbai 400 001)….Respondents

LET ALL PARTIES CONCERNED ATTEND IN CHAMBERS

Before their Lordships the Hon'ble Mr. Justice B. R. Gavai and Mr. Justice N. J. Jamadar on theof January 2019 at 11 o'clock in the forenoon or soon thereafter when the counsel for the Applicant may be heard for the following reliefs:

a) That this Hon'ble Court be pleased to direct the Petitioner to implead the Applicant as party Respondent;

b) That this Hon'ble Court, be pleased not to grant any relief in favour of the Petitioner, with reference to areas of Juhu Koliwada Beach, including, but not limited to CTS Nos. 962, 1053, 1211, 1213 and one unnumbered plot, till the Applicant is heard;

c) That this Hon'ble Court be pleased to condone the delay in filing this Application;

d) That this Hon'ble Court may pass such other orders as justice and convenience may demand from time to time in favor of the Applicant herein.

Dated this 28th day ofJanuary 2019.

This Chamber Summons is taken out)
By **Mini Mattew / Kruthi Venkatesh, Advocate**)
for the Applicant, having their office)
at 63, Jalaram Jyot, 1st Floor,)
Janmabhoomi Marg, Fort,)
Mumbai – 400 001)
Advocate Code No. : 16058)
Email Id: mathewmini@rediffmail.com)

Advocate for the Applicant

To,

1. Maharashtra State Road Development Corporation

PETITIONER ABOVENAMED

1. Union of India
2. State of Maharashtra, Environment Department
3. Maharashtra Coastal Zone Management Authority
4. Chief Conservator of Forest (Mangrove Cell)

RESPONDENT ABOVENAMED

NB: Please note that the Affidavit of *Mr. Zoru Darayus Bhathena*,Applicant above named duly affirmed on this 28th day of January 2019 will be used in support of this Chamber Summons.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO OF 2019
IN
WRIT PETITION (L) NO. 17 OF 2019

Mr. Zoru Darayus Bhathena)..... Applicant

IN THE MATTER OF:-

Maharashtra State Road Development Corporation)...Petitioner

Versus

Union of India & ors)... Respondents

AFFIDAVIT IN SUPPORT OF CHAMBER SUMMONS

I, *Zoru Darayus Bhathena*, aged 43 years, residing at 501, Vijay Deep, Plot No. 102, 10th Road, Khar W, Mumbai 400052 the above-named Applicant do hereby solemnly affirm and state as under:

1. The Applicant has filed a Public Interest Litigation dated 22.12.2018, bearing PIL (L) No. 120 of 2018, against all the parties to the present Writ Petition. The present Writ Petition is filed on 03.01.2019, subsequent to filing of the said PIL(L) No. 120 of 2018, and is pending before the Bench headed by the Hon'ble Chief Justice.

2. The said PIL (L) No. 120 of 2018 concerns the unauthorized construction of a casting yard, by the Petitioner herein, on Juhu Koliwada Beach. The prayers sought in the said PIL (L) No. 120 of 2018 are :

a. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 1 (MSRDC)*to stop forthwith the carrying out of any works in the nature of dumping of mud or debris, levelling of sandy beach and reclamation/stoppage of tidal water/destruction of mangroves in the area of Juhu Koliwada Beach, including, but not limited to CTS Nos. 962, 1053, 1211, 1213 and one unnumbered plot;*

b. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent Nos. 2 to 11 (which include the Respondents to the present Writ)*to stop all work on and to disallow the setting up of any casting yard on Juhu Koliwada Beach by the Respondents No.1*(MSRDC) *or any other government or non-governmental instrumentality;*

c. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus to revoke any clearance granted by any authority for setting up of a casting yard on Juhu Koliwada Beach;

d. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent Authorities to protect and conserve the mangroves on Juhu CTS 1053 and 1213 and to replant and restore the mangrove cover previously destroyed;

e. That this Hon'ble Court be pleased to direct the Respondent No. 7 (District Collector, Mumbai Suburban District) *to take back possession of the said plots of Juhu CTS 962, 1053, 1211, 1213 and one unnumbered plot from Respondent No. 1*(MSRDC) *and to hand over the same to Respondent No.3* (State of Maharashtra, Forest Department) *in compliance with the High Court's Order dated 17.09.2018;*

f. That this Hon'ble Court be pleased to direct Respondent No.3 (State of Maharashtra, Forest Department) *to notify the said plots of*

Juhu CTS 1053 and 1213 as protected forest in compliance with the High Court's Order dated 17.09.2018;

g. That this Hon'ble Court direct the Respondent Nos 2 to 11 to take action under S.15 of the EP Act, 1986 against the Respondent No.1(MSRDC), *its officers, agents and contractors, for their acts of environmental destruction of Juhu Koliwada Beach;*

h. Pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondent No. 1 (MSRDC) *to stop forthwith the carrying out of any works in the nature of dumping of debris, levelling of beach and reclamation/ stoppage of tidal water /destruction of mangroves in the area of Juhu Koliwada Beach, including, but not limited to CTS Nos. 962, 1053, 1211, 1213 and one unnumbered plot;*

i. Pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents Nos. 2 to 11 to disallow the setting up of any casting yard on Juhu Koliwada Beach by Respondent No. 1 (MSRDC) *or any other government or non-governmental instrumentality;*

j. Pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents to restore the flow of tidal waters to the mangroves area, plant, restore and conserve the mangroves destroyed in Juhu CTS 1053 and 1213;

k. Pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents to restore the natural sandy beach and slope on Juhu Koliwada Beach;

l. Ad - interim relief in terms of prayer clauses (h), (i), (j) and (k);

m. For such other and further orders as this Hon'ble Court deems fit in the facts and circumstances of this case.

n. For costs of this Petition.

Hereto annexed and marked as **EXHIBIT-A** is a copy of the said PIL(L) No. 120 of 2018 filed by this Applicant, without exhibits. The

Applicant craves leave to refer to the said exhibits, when produced.

3. The said PIL (L) No. 120 of 2018 was heard before their Lordships the Hon'ble Chief Justice and Mr. Justice N. M. Jamdar on 25.01.2019 when this Hon'ble Court was pleased to restrain MSRDC (Petitioner herein) from carrying out any work on Juhu Koliwada Beach till the next date of hearing, save and except any survey work by the Forest Department (Respondent No. 4 herein). The said Order dated 25.01.2019 has not yet been uploaded. The Applicant craves leave to refer to and rely upon the same once uploaded.

4. By way of the present Writ Petition, MSRDC (Petitioner herein) has sought leave of this Hon'ble Court from complying with the specific condition no (iii) of the CRZ Clearance and General Condition no. (iv) and 4 of the EC, for the purpose of constructing the Versova Bandra Sea Link.

5. The said CRZ Clearance is dated 09.01.2013. As no construction has commenced within a period of five years (i.e. by 08.01.2018), the said CRZ Clearance lapsed. However, the Petitioner commenced construction in October 2018. Once the CRZ clearance lapsed, the Petitioner could not have commenced construction until a fresh CRZ clearance was obtained.

6. Specific Condition No. (iii) of the lapsed CRZ Clearance reads "*The project proponent should take appropriate clearance from the authorities such as Forest Department and/or Hon'ble High Court as the case may be for cutting of mangroves*". Nowhere in the present Petition are any details

mentioned of where these mangroves are proposed to be cut. No plot number/ CTS Number is stated anywhere. Petitioners request letter dated 22.03.2017 seeks diversion of 2.9907 Ha of mangrove forest land at Villages Versova and Bandra (only). However, by MoEF's letter dated 20.12.2018 approval is given for diversion of 2.9907 Ha of mangrove forest land at Villages Versova, Juhu and Bandra. The Applicant reiterates that the Mangroves of Village Juhu are the subject matter of the said PIL (L) No. 120 of 2018, and no permission regarding the mangroves of Village Juhu ought to be granted without hearing the Applicant.

7. With reference to the prayer for leave to comply with General Condition no. (iv) of the EC, the said EC is dated 02.02.2017 and contains three separate General Condition No (iv) for three different phases of the project. General Condition No. (iv) for the pre-construction phase refers to the land use/zoning of the land. By way of the present Petition the Petitioner seeks leave to use land for purposes not in consonance with law. Nowhere in the petition is the location of such land mentioned. The pre-construction casting yard activity at Juhu Koliwada has already been challenged by the Applicant in the said PIL (L) No. 120 of 2018, and no permissions affecting the land at Juhu Koliwada ought to be granted without hearing the Applicant.

8. With reference to the prayer for leave to comply with Clause No. 4 of the EC. The said Clause No. 4 reads "*The Environmental clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project*

proponent has not violated any environment laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence, this clearance does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act". The Applicant has already filed said PIL (L) No. 120 of 2018 seeking action against the Petitioner (MSRDC) under the EP Act for their acts of environmental destruction of Juhu Koliwada Beach, and no leave ought to be granted to the Petitioners in the present Petition without hearing the Applicant.

9. The Applicant verily believes that the present Petition has been filed only to counter the Applicant's PIL (L) No. 120 of 2018. The Petitioner has illegally destroyed the natural environment of Juhu Koliwada beach in the garb of conducting survey work for the VBSL. It is only because of the Applicant's complaint that the conduct of the Petitioner has been brought to the attention of this Hon'ble Court who has restrained them from carrying out any further work on Juhu Koliwada Beach. No reliefs ought to be granted to a party who is guilty of such wrong-doings.

10. By Order dated 15.01.2019 this Hon'ble Court was pleased to direct the Applicant to file application for intervention within a period of one week from 15.01.2019. The said Order was uploaded on 21.01.2019 and the Applicant has been unable to file this application within the period stated. In the interest of justice the Applicant prays that the delay in filing this application be condoned.

11. As the present Petition involves issues pertaining to Juhu Koliwada Beach, which are the subject matter of Applicant's PIL (L) No. 120 of 2018, the Applicant prays that, in the interest of Justice and with a view to protect the environment, this Chamber Summons be allowed. The Applicant further states that grave harm, loss and injury will be caused to the natural environment if the present Chamber Summons is not allowed. The Applicant respectfully submits and prays that the above Chamber Summons be made absolute with costs.

Solemnly affirmed at Mumbai)
this 28th day of January 2019) Applicant
(Mr. Zoru Darayus Bhathena)

Identified by me

Mini Mattew/Kruthi Venkatesh
Advocate for the Applicant

BEFORE ME
S. K. TAMKAWALLA
ADVOCATE, HIGH COURT
B-23, Tamari Manzil
Nesbit Road, Mazgaon
Mumbai - 400 010

Before me 28.1.19

NOTARY & REGISTERED
Sr. No. 37212 dt. 28.1.19

GOVT. OF INDIA
AREA GREATER MUMBAI
Regd. No. 6808

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ANNEXURE A-3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO (L) 63 OF 2019

IN

WRIT PETITION (L) NO. 17 OF 2019

Geeta Seshu

No. 42/52 Varun, Carter Road,

Bandra West, Mumbai 50.

...Applicant

IN THE MATTER OF

Maharashtra State Road Development

Corporation Ltd.,

Bandra Worli Sea Link Project Office,

K.C. Marg, Opp. Bandra Reclamation

Bus Depot, Bandra (West),

Mumbai- 400050 ...Petitioner

VERSUS

1) Union of India,

Through the Ministry of Environment Forest

And Climate Change, Paryavaran Bhavan,

New Delhi 110002

And also at

Aayakar Bhavan, 2nd Floor,

Maharshi Karve Road, New Marine Lines,

Mumbai-400020

2) State of Maharashtra

Environment Department

Through the Office of Government Peader,

High Court, Bombay, PWD Building,

Fort, Mumbai 400001.

3) Maharashtra Coastal Zone Management Authority

Through the Additional Chief Secretary,

Environment Department, 2nd Floor, Room No, 217,

Annexe Building, Mantralaya, Mumbi-32.

Having his office at- C/o DNA,

4) Chief Conservator of Forest (Mangrove Cell),

Through the Office of Government Pleader,

High Court, Bombay, PWD Building,

Fort, Mumbai 400001.

... Defendants

LET ALL PARTIES CONCERNED ATTEND THE CHAMBER OF HIS LORDSHIP THE HON'BLE JUSTICE B.R. GAVAI AND N.J. JAMADAR on the 1ST day of FEBRUARY 2019 in the forenoon or soon thereafter when the counsel for the Applicant can be heard for the following relief's;

a) That this Hon'ble court may be pleased to kindly allow the present Chamber Summons and allow the Applicant herein to intervene in

the present writ petition.

b) To direct the Petitioner to implead the Applicant herein as party respondent in the present Writ Petition No. 17 of 2019.

c) For such other and further reliefs as the circumstances of the case may require.

THIS CHAMBER SUMMONS has been taken out by-

Devyani Kulkarni,

Advocate for the Applicant/Intervenor,

Dated this 1st day of February, 2019.

Advocate for the Applicant/Intervenor

To,

1) Maharashtra State Road Development Corporation Ltd.
The Petitioner above named.

1) The Ministry of Environment Forest
and Climate Change, Union of India,

2) The Office of Government Pleader,
Environment Department, State of
Maharashtra,

3) The Additional Chief Secretary,
Maharashtra Coastal Zone

Management Authority,

4) The Office of Government Pleader,

Chief Conservator of Forest (Mangrove Cell)

The Respondents above named.

NB: Please note that the affidavit of Geeta Seshu, the Applicant/Intervenor abovenamed duly affirmed on this 31st day of January 2019 will be used in support of this Chamber Summons.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO (4) 63 OF 2019

FOR INTERVENTION

IN

W.P. (L) NO. 17 OF 2019

Geeta Seshu

...Applicant

IN THE MATTER BETWEEN

Maharashtra State Road Development Corporation Ltd. ... Petitioner

VERSUS

Union of India & Ors. ... Respondents

AFFIDAVIT IN SUPPORT OF CHAMBER SUMMONS

I, Geeta Seshu, aged about __ years, residing at No. 42/52 Varun, Carter Road, Bandra West, Mumbai 50, the above named Applicant do hereby solemnly affirm and state as under-

1. I say that I have filed the present chamber summons to intervene in the abovementioned Writ Petition.

2. I say that in the proposed project of Versova Bandra Sealink there are two dispersal points at Otter's Club and Juhu Koliwada. I am presently residing at Carter Road, Bandra the same being near the dispersal point near

Bandra.

3. I say that if the Petitioner is allowed to construct the clear the Mangrove forest, all the residents along Versova, Bandra and Juhu will be adversely affected. Moreover I say that, the Petitioner had stated earlier that the mangroves will not be cut, however now the Petitioner is intending to cut down the mangroves without having the prior requisite permissions and without mentioning any particulars or specifications regarding the same.

4. I say that the Mangroves are pertinent to the ecosystem. The dense root systems of mangrove forests trap sediments flowing down rivers and off the land. This helps stabilizes the coastline and prevents erosion from waves and storms. In areas where mangroves have been cleared, coastal damage from hurricanes and typhoons is much more severe. By filtering out sediments, the forests also protect coral reefs and seagrass meadows from being smothered in sediment. Thus the Petitioners should not be allowed to clear the Mangrove forest along the proposed project area.

5. I say that, the only reason that there is a condition no. (iii) of the CRZ Clearance and the general condition no. (iv)

and (4) of the Environmental Clearance is for this Hon'ble High Court to verify and ensure whether it is sustainable to allow the clearing of the Mangrove forests for any proposed project. The said conditions have been laid down to ensure that no Mangroves are destroyed without considering the impact of its destruction. Even if the Petitioner undertakes to replant the Mangroves the same will not be beneficial and will still adversely affect the residents in the vicinity.

6. I say that, referring to the CRZ notification issued by the Ministry of Environment and Forest on 6th January 2011, as clearly stipulated in Rule 4.2 (vi) of the same, the clearance accorded to the projects under the notification shall be valid for the period of 5 years from the date of issue of the clearance for commencement of construction and operation.

7. I say that, the Petitioner authority's project was accorded with clearance by MOEF on 09.01.2013. The period of 5 years as mentioned in CRZ notification has expired on 09.01.2018.

8. I say that, as per the Petitioner the CRZ clearance was recommended for extension for further period of 5 years

in the meeting dated 13.04.2018 by expert appraisal committee held in the MOEF, New Delhi. The minutes of the same have not been annexed to the petition by the Petitioner.

9. I say that, as per the Petitioner, Respondent no. 3 recommended extension of CRZ clearance which is recorded in the Minutes of the Meeting dated 06.12.2018. The petitioner has not annexed the copy of the same to the Petition.

10. I say that, as per the facts stated by the Petitioner in the Petition new clearance has not been granted by MOEF after the expiration of the period of five years as per the previous clearance which was granted.

11. I say that, the Petitioner is suppressing and concealing important facts by saying that all the necessary licenses and clearances by competent authorities have been granted with respect to the project. I further say that, the Petitioner has nowhere in the Petition mentioned any details or plan to indicate where the Petitioner intends to cut the mangroves. It has merely been mentioned in the Petition that a total of 1585 mangrove trees will be cut, without mentioning any particulars to that effect. Thus the Petitioner is purposely trying to suppress facts from this Hon'ble Court.

12. I say that, by the order dated 29.06.2018 in PIL No.87 of 2006 by the Bombay High Court, the Petitioner had submitted that the present Petitioner will not move the notice of motion till all the clearances required by law are granted. The Petitioner having no regard to this order has moved the present Writ Petition without receiving all the clearances.

13. I say that, the Petitioner authority has already started cutting Mangroves on the construction area without the prior permission of this Hon'ble Court. I say that on03.01.219 the Petitioner authority has without any permission cut down a considerable portion of the mangroves along Carter Road at Bandra. The copies of Photos corroborating the same have been marked and annexed as **Exhibit "A"**.

14. I say that, thus without obtaining any of the requisite permissions the Petitioner in blatant violation of the law have destroyed the Mangroves along Carter Road in Bandra.

15. I say that, in light of the above submissions, grave loss and harm will be caused to the environment if the present Chamber Summons is not allowed.

16. Thus the Applicant/Intervenor most humbly submits and prays that the present Chamber Summons may kindly be allowed.

Therefore, I say that the abovementioned Chamber Summons be allowed and the Writ Petition be heard expeditiously.

Solemnly affirmed at Mumbai)
Dated this 31st day of ~~February~~ June, 2019)

Applicant

Identified by me.

Devyani H.Kulkarni

Advocate for the Applicant/Intervener

31 JAN 2019

BEFORE ME

SHAILA V. PATHAK
Advocate & Notary
8/9, Gundecha Chambers,
N. M. Rd., Fort, Mumbai - 400 023.
Notary Reg. No. 253/88

Notary Reg. Sr. No.	438
VOL No.	26
Page No.	131

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ANNEXURE A-4

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. **190** OF 2019

IN

WRIT PETITION NO.**535**OF 2019

Mr. Zoru Darayus Bhathena)
Age 44 years, Occupation Business)
Having his address at)
501, Vijay Deep, Plot No. 102, 10th Road)
Khar W, Mumbai 400052)…. Applicant

IN THE MATTER OF:-

Maharashtra State Road Development)
Corporation Bandra Worli Sea Link Project)
Office,K C Marg, Opp Bandra Reclamation)
Bus Depot Bandra (West) Mumbai 400050) ….Petitioner

Versus

1. Union of India)
Through the Ministry of Environment, Forests)
and Climate Change,)
ParyavaranBhavan, Jorbagh Road,)
New Delhi, 110003)
And also at,)
AaykarBhavan, 2nd floor,)
Maharshi Karve Road, New Marine Lines)
Mumbai 400020)

2. State of Maharashtra, Environment)
DepartmentThrough the office of the)
Government Pleader High Court Bombay,)
PWD Building, Mumbai-32)

3. Maharashtra Coastal Zone Management)
Authority through the Additional Chief)
Secretary Environment Dept, 2nd floor,)
Room No. 217, Annexe Building,)
Mantralaya, Mumbai-32)

4. Chief Conservator of Forest (Mangrove Cell))
Through the Office of Government Pleader)
High Court, Bombay, PWD Building,)
Fort, Mumbai 400 001) ....Respondents

LET ALL PARTIES TAKE NOTICE THAT THIS HON'BLE COURT shall be moved before Their Lordships The Hon'ble Justice _____ and the Hon'ble Justice _____ on the _____ in the morning/afternoon at ____ AM/PM or soon thereafter so that the Counsel on behalf of the Applicants above-named can be heard for the following reliefs:-

a) That this Hon'ble Court be pleased todirect the Petitioner to forthwith cease the carrying out of any works in the nature of destruction of mangroves for the Versova Bandra Sea Link project in excess of the 150Sq Metres (permanent) and 50 Sq Metres (temporary) permitted to be cut by CRZ (MoEF) clearance dated 09.01.2013, revalidated on 07.02.2019;

b) That this Hon'ble Court be pleased to direct the Petitioner to replant 10 times the destroyed mangroves at the adjacent site at Bandra in compliance with CRZ (MoEF)'s clearance dated 09.01.2013 revalidated on 07.02.2019;

c) That this Hon'ble Court be pleased to direct the Petitioner to comply with all the terms and conditions of the CRZ clearance dated 09.01.2013 and the environmental clearance dated 02.02.2017.

d) That this Hon'ble Court be pleased to pass any other order or further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Dated this day of April 2019.

This Notice of Motion is taken out)
By **Kruthi Venkatesh/Mini Mathew, Advocate**)
for the Applicant, having their office)
at 63, Jalaram Jyot, 1st Floor,)
Janmabhoomi Marg, Fort,)
Mumbai – 400 001)
Advocate Code No. : I24384)
Email Id: kru93venkatesh@gmail.com)

Advocate for the Applicant

To,

1. Maharashtra State Road Development Corporation

PETITIONER ABOVENAMED

1. Union of India
2. State of Maharashtra, Environment Department
3. Maharashtra Coastal Zone Management Authority
4. Chief Conservator of Forest (Mangrove Cell)

RESPONDENT ABOVENAMED

NB: Please note that the Affidavit of *Mr. Zoru Darayus Bhathena*, Applicant above named duly affirmed on this day of April 2019 will be used in support of this Notice of Motion.

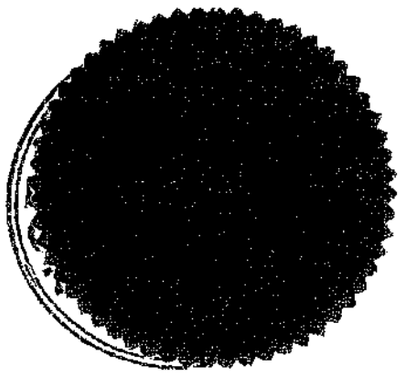
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. OF 2019

IN

WRIT PETITION NO. OF 2019



Zoru Darayus Bhathena ...APPLICANT

IN THE MATTER BETWEEN

Maharashtra State Road Development Corporation ...PETITIONER

Versus

Union of India & Ors. ...RESPONDENTS

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, Zoru Darayus Bhathena,aged 44 years, residing at 501, Vijay Deep, Plot No. 102, 10th Road, Khar W, Mumbai 400052 the above-named Applicant do hereby solemnly affirm and state as under:

1. I say that on coming to learn about the present Writ Petitionbeingfiled by the Petitioner herein, I immediately approached this Hon'ble Court seeking permission to intervene in the matter. By Order dated 15.01.2019 I was permitted to file an application to intervene. I crave leave to refer to and rely upon the said Order dated 15.01.2019 when produced.

2. On 28.01.2019 this Applicant filed his Chamber Summons No. 24 of 2019 interalia seeking a direction to be impleaded in this Petition. I crave leave to refer to and rely upon the said Chamber Summons No. 24 of 2019 when produced.

3. On 08.02.2019 this Hon'ble Court was pleased to dispose of this Petition by allowing the Petition in terms of prayer clause (a) after hearing oral submissions by Counsel for this Applicant/intervenor, but without formally allowing the intervention/impleadment application. Hereto annexed and marked as **EXHIBIT- A** is a copy of the order dated 08.02.2019.

4. Being aggrieved with the said Order dated 08.02.2019, this Applicant filed Special Leave Petition (Civil) Diary No. 8449 of 2019 interalia highlighting that 2.9907 hectares of mangrove forests are proposed to be cut by the Petitioner (herein) in the garb of grant of prayer clause (a) to this Writ Petition No. (L) 17 of 2019. Hereto annexed and marked as **EXHIBIT-B** is a copy of the said SLP(c) Diary No. 8449 of 2019, with synopsis and without exhibits.

5. By Order dated 01.04.2019 the Hon'ble Supreme Court recorded the issues before them and permitted this Applicant to approach this Hon'ble Court and make submissions regarding the same.Hereto annexed and marked as **EXHIBIT-C** is a copy of said Order dated 01.04.2019 passed by the Hon'ble Supreme Court.

6. In view of the Order of the Hon'ble Supreme Court this Applicant has filed the present Motion to bring the relevant facts before this Hon'ble Court for adjudication.

7. A synopsis of the issues raised by this Applicant are as under:

I) The present Writ was filed seeking the following reliefs

Prayer (a):*This Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent Authorities to permit the Petitioners to execute the construction of the proposed Versova-Bandra Sea Link in furtherance of the statutory permissions granted under law and grant leave as contemplated in the specific conditions no.(iii) of the CRZ Clearance (Exhibit-E) and general condition no. (iv) and (4) of the EC* (Environmental Clearance) *(Exhibit-H)* (mistyped as Exhibit-I)*, in view of the public importance of the project.*

II) Specific Condition No. (iii) of the CRZ Clearance (Exhibit-E) states:

(iii) The project proponent should take appropriate clearance from the authorities such as Forest Department and/or Hon'ble High Court, as the case may be for cutting of mangroves.

III) General Condition no. (iv) of the Environmental Clearance (Exhibit-H) states:

(iv) This environmental clearance is issued subject to land use verification. Local authority/planning authority should ensure this with respect to Rules, Regulations, Notifications, Government Resolutions,

NOTARY SHABBIR K. TAMBAWALA AREA GREATER MUMBAI Regd. No. 8908 GOVT. OF INDIA

Circulars, etc. issued if any Judgment/Orders issued by Hon'ble High Court, Hon'ble NGT, Hon'ble Supreme Court regarding DCR provisions, environmental issues applicable in this matter should be verified. PP (Project Proponent) *should submit exactly the same plans appraised by concern SEAC and SEIAA. If any discrepancy found in the plans submitted or details provided in the above para may be reported to environment department. This environmental clearance issued with respect to the environmental consideration and it does not mean State Level Impact Assessment Authority (SEIAA) approved the proposed land use.*

IV) General Condition no. (4) of the Environmental Clearance (Exhibit-H) states:

(4) The environmental clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble Court will be binding on the project proponent. Hence, this clearance does not give immunity to the proposed proponent in the case filed against him, if any or action initiated under EP Act.

V) None of the above conditions specify the area of mangroves to be cut. Grant of prayer clause (a) leaves the area of mangrove destruction open to wide interpretation.

8. At the time of hearing of this Petition, the Petitioner tendered a copy of MoEF's CRZ Clearance extension dated 07.02.2019, extending the

original CRZ Clearance dated 09.01.2013 **on the same terms and conditions**. Hereto annexed and marked as **EXHIBIT-D** is a copy of the said MoEF CRZ extension dated 07.02.2019.

9. MoEF's CRZ Clearance dated 09.01.2013 revalidated on 07.02.2019,Specific Condition No. (i) states:

(i) In mangrove area only road on stilt shall be constructed. There would be permanent loss of about 150 sqm mangroves and 50 sqm temporary loss during construction in Versova and Carter connector. As per the CRZ notification, 2011, at least five times the number of mangroves destroyed/cut during the construction process shall be replanted. The proponent has proposed 10 times mangrove plantation at Bandra adjacent to the project. The identified land is government land & presently it has sparse mangroves."

10. It is relevant to note that, prior to MoEF CRZ clearance, the Petitioner was directed not to disturb any mangroves. The Applicant craves leave to refer to and rely upon MCZMA MoM of its 71st meeting on 26.08.2011 and it'srecommendation letter dated 05.11.2011 when produced. MCZMA's specification condition 1, states:"*The tidal ingress to mangroves shall be maintained during and post construction of the project.*"MCZMA's General Condition 4, states:"*The mangroves, if any, on the site should not be disturbed in any way.*"Thus, pursuant to the information provided by the Petitioner it was recommended that no mangroves will be disturbed. Despite this, MoEF's CRZ clearance permitted permanent loss of about 150 sqm mangroves and temporary loss of 50sqm during construction in Versova and Carter Connectors. It is also relevant to note that even the

Environmental Clearance granted by SEIAA states that "*no mangroves shall be disturbed.*"

11. In this background it is most surprising that the Forest Department has permitted the destruction of 2.9907 ha of mangroves, in complete disregard for and in blatant violation of the conditions imposed by MoEF and SEIAA. The Applicant states that it is inconceivable that an area of 2.9907 Hectares would fall under stilts/pillars. The Applicant further states that there is always some flexibility of distance between two stilts/pillars and the Petitioner can always design their stilts/pillars to minimize loss to the natural environment by overstepping the mangroves.Hereto annexed and marked as **EXHIBIT-E** are Google Earth photos of the 2.9907 Hectares of mangroves proposed to be removed based on the in-principal approval dated 20.12.2018 granted by the Forest Department, which clearly show that no bridge on stilts would ever require cutting of such large tracks of mangroves.

12. The three statutory approvals stating three different areas viz mangrove removal, are:

Sl. No.	***Permission granted by Authority***	***Extent of Mangrove Deforestation Permitted***
1.	*MoEF CRZ Clearance granted on 09.01.2013 (for five years) and extended on*	*Specific Condition No. 8(i)—"In mangrove area only road on stilt shall be constructed. There would be*

	the same terms and conditions on 07.02.2019.	*permanent loss of about 150 sqm mangroves and 50 sqm temporary loss during construction in Versova and Carter connector."* *Specific Condition No. 8(vii)- "All the recommendation of the MCZMA shall be strictly abided."*
2.	*State Environment Impact Assessment Authority (SEIAA) accorded Environmental Clearance on 02.02.2017*	*General Condition No. (i)— "No mangrove shall be disturbed."*
3.	*MoEF Forest Department granted 'in-principle approval' on 20.12.2018*	*Diversion of 2.9907 ha of forest land at Village Versova, Juhu and Bandra*

13. In view of the inconstancy between the three statutory permissions, which would leave the area of mangrove destruction open to wide interpretation; this Applicant has therefore approached this Hon'ble Court in order that the mangroves be protected from needless destruction.The Applicant reiterates that the MoEF CRZ clearance takes into consideration that only the mangroves under the stilts need to be cut, a fact which the Forest Department's in-principle approval hascompletely lost sight of.

14. The Applicant therefore prays that this Application/Notice of Motion be allowed.

Solemnly affirmed at Mumbai)
This 30th day of April, 2019)

Applicant

BEFORE ME

S. K. TAMBAWALLA
ADVOCATE, HIGH COURT
B-23, Taheri Manzil
Nesbit Road, Mazgaon
Mumbai - 400 010
30.4.19

Identified by me

Kruthi Venkatesh/Mini Mathew

Advocate for the Applicants

Before Me

NOTARY & REGISTERED
Sr. No. 36565 dt. 30.4.19

TRUE COPY

ANNEXURE A-5

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

MEMORANDUM OF APPEAL

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

APPEAL NO. _____ OF 2017

1. Juhu Moragaon Machhimar Vividh Karyakari Sahkari Sanstha Ltd., being a co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 and having Its Registration No. as BOM/RSR-109-1995 and its office at Moragao, Magelawadi, Janardan Ramji Mhatre Marg, Juhu, Mumbai - 400 049

2. Dinesh Suresh Mangela, Secretary, Juhu Moragaon Machhimar Vividh Karyakari Sahkari Sanstha Ltd, having its office at Moragao, Magelawadi, Janardan Ramji Mhatre Marg, Juhu, Mumbai - 400 049

3. Vanashakti Public Trust, Having its office at Nandakumar Pawar House, Opp. Shri Jagannath Darshan Building, M.D. Kini Marg, Bhandup Village (East), Mumbai - 400 042

4. Dayanand Stalin, Aged 51 years, Director (Projects), at Vanashakti Public Trust and having its office at Nandakumar Pawar House, Opp. Shri Jagannath Darshan

Building, M.D. Kini Marg, Bhandup)
Village (East), Mumbai - 400 042)

5. Bandra (West) Residents' Association,)
Having its office at Kinara 29B Carter Road,)
Bandra (West), Mumbai-400050)

6. Darryl D'Monte,)
President, Bandra (West) Residents')
Association and having its office at)
Kinara, 29B Carter Road,)
Bandra (West), Mumbai-400050)

7. Juhu Tara Koli Jamat,)
a Registered Trust under the)
Bombay Public Trust Act, 1950 and having its)
Office at Shree Vithal Mandir, Koliwada,)
Hiraboove Gawde Marg, Juhutara,)
Mumbai - 400 049)

8. Arvind Sane,)
Secretary of Juhu Tara Koli Jamat and)
Having its office at Shree Vithal Mandir,)
Koliwada, Hiraboove Gawde Marg,)
Juhutara, Mumbai - 400 049) ...Appellants

Versus

1. The State of Maharashtra,)
Through the Environment Department,)
Room No. 217, New Admin Building,)
Mantralaya, Mumbai - 400 032)

2. Union of India,)
Through the Secretary, Ministry of)
Environment, Forest and Climate Change,)
Indira Paryavaran Bhawan,)
Aliganj, Jor Bagh Road, New Delhi- 110003)

3. Maharashtra Coastal Zone Management Authority)
Environment Department, Room No. 217,)
New Admin Building, Mantralaya,)
Mumbai - 400 032)

4. Maharashtra Pollution Control Board)
Kalpataru Point, 3rd and 4th floor,)
Sion Circle, Mumbai - 400 022)

5. Maharashtra State Road Development)
Corporation, through its Managing Director and)
having its office at Nepean Sea Road,)
Priyadarshini Park, Mumbai - 400 036)

6. M/S Fine Envirotech Engineers,)
Through its head of Technical Team,)
Dr. U.S. Kulkarni, having its office at)
102, Hiren Industrial Estate, Mogul)
Lane, Mahim, Mumbai - 400 016)

7. Department of Fisheries,)
The State of Maharashtra)
Through the Commissioner of Fisheries,)
having its Office at Taraporwala Aquarium,)
Netaji Subhash Chandra Road, Charni Road,)
Mumbai - 400 002)

8. Forest Department,)
The State of Maharashtra,)
Through its Secretary, having its)
Office at Mantralaya, Mumbai - 400 032) ...Respondents

MEMORANDUM OF APPEAL UNDER SECTION 16 AND 20 READ WITH SECTION 18 (1) OF THE NATIONAL GREEN TRIBUNAL ACT, 2010

MOST RESPECTFULLY SHEWETH:

1. The addresses of the Appellants are as given above for the service of notices of this Appeal on them and on their representatives as stated in the Memo of Parties.

2. That the Addresses of the Respondents are as given above for the service of notices of this Appeal.

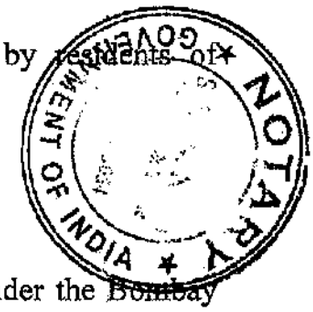
3. The Appellant No.1 herein is a Co-operative Society registered under the Maharashtra Cooperative Society Act, 1960 *vide* Registration No. BOM/RSR-109 and has been issued the Certificate of Incorporation on 20/03/1995. The Society has been actively engaging in implementing various schemes for providing government subsidies for fishing nets, diesel prices for mechanized and high-speed vessels and social activities like raising welfare concerns on behalf of fisherfolk from Juhu Moragaon Koliwada. Since 1995, the Society is also engaged in the business of selling

and reselling fish at fish markets. Appellant No. 2 is an Indian National and the Secretary of Appellant No. 1.

4. The Appellant No. 3 is a Public Trust registered under the Bombay Public Trusts Act, 1950 vide Registration No. E25340 and has been issued Registration Certificate dated 19/12/2008 by the Charity Commissioner, Maharashtra. The Trust has filed several public interest litigations relating to the protection and preservation of the environment and other social causes in public interest in Maharashtra and around Mumbai. The Appellant No. 3 has its office at the address set out above. The Appellant No. 4 is an Indian National and the Projects Director of Appellant No. 3, who has been campaigning for the protection and preservation of Western Ghats, coastal zones and rivers in Maharashtra, besides campaigning on other environment issues.

5. Appellant No. 5 is the Bandra West Residents' Association which was founded in 1999. It comprises of residents primarily living in and around Carter Road, Bandra and its major responsibility has been the maintenance of the public promenade along the seafront. Over the years, this space has proved a vital public amenity which is maintained by citizens' organisation, entrance to which is free of charge. It is due to such a space that cultural events are held on weekends almost every fortnight and this proved to be one of the main venues for the Celebrate Bandra festival, the first of which was held in 2003. It has also intervened earlier to stop rampant squatting on the mangroves which lie off the promenade. The environment section of the

BMC's Detailed Project Report on the Coastal Road has cited that these mangroves have been protected due to citizens' initiatives. BWRA has also received international recognitions for restoring the Bandra waterfront on various occasions. Appellant No. 6 is the current president of Appellant No. 5, who has organised many public protests supported by residents of Mumbai to protect the Bandra waterfront since 1972.



6. The Appellant No. 7 herein is a Public Trust registered under the Bombay Public Trusts Act, 1950 vide Registration No. A2659. The Society has been actively engaging in implementing various schemes for providing government subsidies on the fishing nets, diesel prices for mechanized and high-speed vessels and social activities like raising welfare concerns on behalf of fisherfolk from Juhu Tara Koliwada. Appellant No. 8 is an Indian National and the Secretary of Appellant No. 7.

7. The Respondent No.1 is the Government of Maharashtra, through the State Environment Department, and is responsible for the protection of environment in the state and is the Respondent that has granted Environment Clearance for the *VBSL*. The Respondent No. 2 herein is the Union of India through the Ministry of Environment, Forests & Climate Change and is charged with the responsibility of protecting the environment and biodiversity in the country. The Respondent has granted CRZ clearance for the *VBSL*. The Respondent No.3 is the Maharashtra Coastal Zone Management Authority, charged with the responsibility of protecting the coast of the State and regulating related activities thereof. The Respondent

No. 4 is the Maharashtra Pollution Control Board, the state level authority for prescribing permitted emission and effluent levels. The Respondent No. 5 herein is the Maharashtra State Road Development Corporation Ltd. and is responsible for developing, building and maintaining roads in the State of Maharashtra. The said Respondent has been granted Environment Clearance dated 02.02.2017 and CRZ clearance 09.01.2013 for the *VBSL* which is being challenged in the instant appeal. Respondent No. 6 is the Environmental Consultant of Respondent No. 5, who has outlined and framed the entire EIA Report for the VBSL project. Respondent No. 6 is the Fisheries Department of State of Maharashtra, who is entrusted with the complete fishery data of the entire state of Maharashtra. Respondent No. 7 is the Forest Department of State of Maharashtra whose mandate to protect the entire mangrove forests of the entire State of Maharashtra.

8. The present Appeal is being filed under Section 18 read with Sections 16 and 20 of the National Green Tribunal Act, 2010 against the Environment Clearance dated 2nd February, 2017 granted by the Respondent No.1 as well as the CRZ Clearance dated 9th January, 2013 granted by the Respondent No. 2 to Respondent No. 5 for the Versova Bandra Sea Link (**hereinafter referred to as '*VBSL*')**.

BRIEF FACTS OF THE CASE:

9. The city of Mumbai has been a cluster of seven islands until the British colonized the city and these seven islands were inhabited by different fishing tribes called Kolis. The Kolis were the traditional inhabitants of these islands

since decades and these communities are spread over different Koliwadas such as Juhu Koliwada, Versova Koliwada Sion Koliwada, Thane Koliwada, Khar Danda, Mahim Koliwada, Worli Koliwada being the prominent and popular amongst them. Mumbai has a fisherfolk population of 50,075 (about 0.33 per cent of Mumbai's population), according to the Marine Fisheries Census 2005 conducted by the Central Marine Fisheries Research Institute (CMFRI).

10. The traditional fisher folk, being the original inhabitants of the city have depended on coastal ecosystems for their livelihood but are slowly becoming marginalized and neglected communities, due to increasing development pressures on the city and the consequent pollution and degradation of the environment, and the encroachments on their physical space. Unfortunately, these settlements today face the threat of extinction due to several reasons such as environmental destruction, loss of public access to common lands and resources, disruption of coastal livelihoods, encroachments, displacement and gentrification.

11. Moragaon is a designated fishing village (CTS No. 7 & 11) situated at northern end of the Juhu and has a population of 400 fisherfolk families who fish in the Juhu Moragaon area from where the VBSL is proposed to be built, using around 40 odd mechanised and non-mechanised boats. Such fisherfolk community comprise of the Koli community, which is a tribal community listed as Scheduled Tribes under PART IX of The Constitution (Scheduled Tribes) Order, 1950 at Sr. Nos. 28 to 30 and solely rely on

fishing activities for their livelihood. The livelihood of the fisherfolk of Moragaon will be adversely affected by the proposed VBSL as the Respondent State has ignored the fact that the fishing activity is carried up to 1 km from the coast. The improper Environmental Impact Assessment and public consultation process for VBSL on the livelihood of Moragaon village will permanently destroy the livelihood of the Koliwada community members. The Appellants seek to challenge the CRZ Clearance granted to VBSL on 9th January, 2013 and the final Environment Clearance granted to VBSL on 2nd February, 2017. The said CRZ Clearance and the Environmental Clearance are annexed hereto and marked as **ANNEXURE A-1** and **ANNEXURE A-2** respectively.

12. The said project is a 9.89 km long bridge proposed to be constructed off the Arabian Sea in CRZ-I (i), CRZ-I (ii) and CRZ-IV areas at a distance of 900 metres away from the coast with dispersal points at Otter's Club in Bandra and Juhu Koliwada in Juhu and connectors to the Bandra-Worli Sea Link and Nana-Nani Park at Versova. 300 fisher families from the Northern end of Juhu Versova Koliwada and 400 fisher families from the Southern end of Juhu Versova Koliwada, who are directly dependent on the fisheries for livelihood purposes around the project area will be adversely affected due to this project. The shallow waters around the fishing villages provide a conducive environment for phytoplanktons and zooplanktons, which are the primary sources of fishery production in the area.

13. The Respondent No. 5 submitted a proposal to develop a sea link from Versova to Bandra in the Suburbs of Mumbai. The proposal was first floated in the year 2009. As the project area falls within CRZ areas, a formal application was made to the Respondent No. 3 herein in August 2011 for CRZ clearance. As per the proposal, the sea link it to be 9.80 kms, at 900 metres away from the coast in with dispersal points at Jogger's Park in Bandra and Juhu Koliwada in Juhu with both dispersal points being ecologically sensitive areas having abundant mangroves and connectors to the Bandra-Worli Sea Link and Nana-Nani Park at Versova. The said proposal was considered by the MCZMA (Respondent No. 3 herein) in its 71st meeting on 26th August, 2011 and subsequently, the said Respondent recommended the Project to the Ministry of Environment, Forests & Climate Change (Respondent No. 1 herein) for grant of CRZ clearance vide letter dated 5th October, 2011.

14. The Expert Appraisal Committee of the Respondent No. 1 considered the project in its meetings held on the 9th and 10th February, 2012 and subsequently on 18th and 19th October, 2012 and thought fit to recommend the said project to the Respondent No.1 for CRZ clearance Based on the said recommendation, the Respondent No.1 granted CRZ clearance for the project to the Respondent No.5 *vide* communication dated 9th January, 2013 (*ANNEXURE A-1 hereto).*

15. Subsequently, Appeal No.11 of 2013 came to be filed before the Principal Bench of the National Green Tribunal, wherein the said project was

challenged on the ground that not only were there deficiencies in the CRZ Clearance granted but also on the ground that the project would also require Environmental Clearance under the EIA Notification, 2006 in light of the judgement passed by the Principal Bench in Original Application No. 137 of 2014 (*Vikrant Kumar Tongad vs. Delhi Tourism and Transportation Corporation & Ors*). In the said matter, it was held that construction of a bridge across the Yamuna is a project activity requiring prior EC under category 8 (b) - B1 of the schedule to the EIA Notification, 2006 which pertains to "Townships and Area Development Projects". Therefore in terms of the said judgement, the Hon'ble NGT disposed off the Appeal No. 11 of 2013 *vide* order dated 19th February, 2015, not only directing the Respondent No.5 to apply for Environment Clearance under the EIA Notification, 2006 but also granted liberty to the Appellant therein to challenge the said order on all grounds taken up in the Appeal No. 11 of 2013. The said order is annexed hereto and marked as **ANNEXURE A-3.** It is submitted that consequently the project was covered by both the EIA Notification, 2006 as well as the CRZ Notification, 2011.

16. Under the CRZ Notification, 2011, Clause 7 provides for classification of the CRZ areas for the purpose of conserving and protecting the coastal areas and marine waters wherein CRZ-I (A) includes mangroves and mudflats as two of the areas being most ecologically sensitive that help in maintaining the integrity of the coast. CRZ-I (B) includes areas that fall between the High Tide Line and the Low Tide Line. CRZ-II includes areas that have been

developed upto or close to the shoreline. CRZ-IV (A) include water areas from the Low Tide Line to 12 nautical miles on the seaward side.

17. Further, Clause 8 of the CRZ Notification, 2011 provides for regulation of permissible activities in as much as Clause 8(I)(i)(e) of the CRZ Notification permits construction of trans harbour sea link between LTL and HTL which is reiterated under Clause 8(I)(ii)(g) of the CRZ Notification. Clause 8(IV) provides for all activities to be regulated except for traditional fishing and related activities undertaken by local communities.

18. It is stated that from the aforesaid, it is clear that the construction of Trans Harbour Sea Links is permissible only in CRZ-I(B) areas under Clause 8(I)(i)(e) of the CRZ Notification by strictly ensuring that the said construction does not affect the tidal flow of water. The present project also falls under CRZ-IV as the sea link is proposed 900 metres into the sea, much beyond the Low Tide Line (Low Tide Line is approximately 100 meters from the shoreline) that has not even been demarcated clearly. On perusal of the CRZ Clearance, it is shocking to note that that the information regarding the CRZ Areas that will be impacted by VBSL has not been provided by Respondent No. 3 and is deliberately not listed to conceal its CRZ-IV status. It is pertinent to note that the said inconsistency in identifying the CRZ areas for VBSL can be ascertained from the EIA Report at Page 2-27 under Category No. B(i) titled 'CRZ Impacts' as prepared by Respondent No. 6 stating that the project area falls under CRZ-IV.

19. At Para 4 of the CRZ Clearance, it is stated that a discussion was held with the fishermen and a demand was made by the fishermen for navigation span of 90 metres at Juhu Koliwada. It is submitted that on 10th April, 2014, two official representatives of Respondent No. 5 visited Juhu Koliwada without any notice, to discuss about the fishing route of the fishermen. For better understanding, they were advised by the fishermen from the community to visit the Koliwada on a High Tide day pursuant to which on 12th April, 2012, the two representatives of Respondent No. 5 met the fisherfolk members in Juhu Koliwada and were accompanied on the boat to conduct a visit to the fishing route of the Juhu Koliwada. After the visit, it was informed to the fisherfolk that another round of discussion was required to understand navigational span and on that note, the personal discussion ended. It is further submitted that no such demands for the navigational span of 90 meters or 150 meters at Juhu were made by any of the said fisherfolk associations from Juhu. It is also submitted that no request was made nor did any discussion take place to develop a small jetty and a common area of repairing net or about compensation to the affected fishermen. It is therefore submitted that on account of such misinformation being recorded in the official communication, the CRZ Clearance granted to VBSL is therefore deceptive, fabricated and deserves to be quashed and set aside.

20. At Para 5 of the CRZ Clearance, Respondent No. 2 notes that the 2 important issues which are raised are the effects on existing traffic at dispersal points and disturbance of fishing activities for local fishermen. Although the issues with regard to traffic are subsequently addressed, the

issue of impact on livelihoods of fishermen has not been dealt with.It is submitted that after having noted the livelihood of local fisherman as a very important issue, the Respondent Nos. 2 and 5 chose to ignore the said issue and have failed to respond to the issues pertaining to the livelihood of fisherfolk community.

21. It is further submitted that the CRZ Notification, 2011 provides that traditional fishermen community be given special consideration as numerous difficulties are faced by such fishermen. Clause 7(V) of the Notification stipulates specifically that CRZ areas falling within municipal limits of Greater Mumbai be given special consideration for the purpose of protecting the critical coastal environment and difficulties faced by local communities. The plight of the traditional fishermen of Mumbai has to be judged on the basis of such protection already provided under the CRZ Notification, 2011 and therefore, it is of utmost importance that their views are considered as a part of public consultation while granting permissions for projects that are highly adverse to the fisher folk community.

22. It is submitted that very first Condition under Para 8 'SPECIFIC CONDITIONS' of the CRZ Clearance dated 9th January, 2013 states:

"(i) *In mangrove area only road on stilt shall be constructed. There would be permanent loss of about 150 sqm mangroves and 50 sqm temporary loss during construction in Versova and Carter connector. As per the CRZ notification, 2011, at least five times the number of mangroves destroyed/cut*

during the construction process shall be replanted. The proponent has proposed 10 times mangrove plantation at Bandra adjacent to the project. The identified land is government land & presently it has sparse mangroves."

(emphasis supplied)

In PIL No. 87 of 2006 (*Bombay Environmental Action Group v/s State of Maharashtra & Ors.*), while stressing on the importance of mangroves, the Hon'ble High Court of Bombay passed an order dated 06.10.2005 directing a complete freeze on destruction and cutting of mangroves, banning complete construction/dumping of garbage on mangroves and declared all mangrove regions as "Protected Forests". It is stated that despite having complete knowledge about the mangrove areas being destroyed, all Respondent authorities have completely ignored the said protection granted to mangroves and have cursorily stated that 5 times the size of mangroves destructed shall be replanted. In fact, by virtue of being a designated "Protected Forests" it is incumbent on Respondent No. 2 to de-reserve the said protected forest under the Forest (Conservation) Act, 1980 and provide a specific condition that the said CRZ Clearance is subject to the final approval of Forest Department of Respondent No. 1. Annexed hereto as **ANNEXURE A-4** is the said High Court order dated 06.10.2005. In lieu of having not complied with the Hon'ble High Court's order, the CRZ Clearance granted is improper, incomplete, arbitrary, without any application of mind and thereby, deserves to be quashed and set aside.

23. Furthermore, Condition (v) under 8. SPECIFIC CONDITIONS states that the muck materials shall be analysed prior to dumping/disposal in the identified locations with the approval of the competent authority. It is submitted that no such locations have been identified nor any plans for such disposal annexed under the CRZ Clearance. In lieu of having failed to provide complete information regarding the muck disposal in the final Clearance, the CRZ Clearance dated 9th January, 2013 is improper, incomplete, arbitrary and thereby, deserves to be quashed and set aside.

24. Under the EIA Notification, 2006 all projects included as category 'B' in the Schedule, require prior environmental clearance from the State/ Union Territory Environment Impact Assessment Authority (SEIAA). The SEIAA is to base its opinion on the recommendation of the State Expert Appraisal Committee (SEAC). At the stage of "Scoping", the Expert Appraisal Committee is required to address all relevant environmental concerns for the preparation of an EIA Report in respect of the project or activity for which clearance is sought and formulate comprehensive Terms of Reference. Once Terms of Reference are formulated and finalized by the EAC, the environment impact assessment studies are conducted in consonance with them. It is well-settled that, far from being a routine undertaking, the Terms of Reference provide the analytical framework on the basis of which EIA studies are to be conducted. Pursuant to the EIA studies conducted, a draft EIA report is prepared and placed before the local affected persons and others who have plausible stake in the environmental impacts of the project at the stage of "Public Consultation". After giving widespread notice of

hearing in vernacular language and circulating the draft EIA Report, the public consultation is undertaken and is conducted by the SPCB. Pursuant to the consultation, all material concerns expressed are addressed in the final EIA Report after recording appropriate changes. The final stage of EIA is "Appraisal" wherein the EAC scrutinises all documents such as the Final EIA Report and public consultation proceedings in detail and make recommendations to the regulatory authority (MoEF herein) for grant of prior environment clearance. The EIA Notification, 2006 is annexed hereto and marked as **ANNEXURE A-5.**

25. Accordingly, in the present case, the Respondent No.5 made an application for Prior Environment Clearance to the SEIAA. The SEAC in its meeting held on 24th, 25th and 26th February, 2016 considered the said application and decided to approve the Terms of Reference for preparation of the EIA Report subject to certain conditions. The relevant extract of the minutes of the meeting of the SEAC dated 24th, 25th and 26th February, 2016 is annexed hereto and marked as **ANNEXURE A-6.**

26. As stated in paragraph 7, the next step in the process for obtaining environment clearance, is "Public Consultation". Certain categories of projects are exempted from this stage, including category 8 (b) projects (building/ construction projects/ area development projects). However projects that attract both the EIA Notification, 2006 and the CRZ Notification, 2011 are governed by the Office Memorandum dated 24th

February, 2011 issued by the Respondent No. 1 herein, which is annexed hereto and marked as **ANNEXURE-A-7.**

27. The said Office Memorandum was issued in exercise of powers granted to the Respondent No. 1 under paragraph 4(i)(e) of the CRZ Notification, 2011. The contents of the Office Memorandum dated 24th February, 2011 are produced herein below for ready reference:

> *"This has reference to the issue of the Coastal Regulation Zone Notification, 2011 vide S.O.No.19(E), Dated 6th January, 2011. As per para 4(i)(e), "MoEF may under a specific or general order specify projects which require prior public hearing of project affected people", it is hereby clarified that the following projects would attract prior public hearing:-*
>
> *(a) All 'A' and 'B1' category projects listed under the Environmental Impact Assessment Notification, 2006 and which also attract the Coastal Regulation Zone Notification, 2011;*
>
> *(b) The housing project which involves group housing, slum rehabilitation project, cessed/unsafe/dilapidated building redevelopment projects.*
>
> *The public hearing shall be held as per the procedures laid down in the Environmental Impact Assessment Notification, 2006 which will involve project affected persons.*
>
> *This issues with the approval of the competent authority.*

23. Admittedly, the proposed project attracts both the EIA Notification, 2006 as well as the CRZ Notification, 2011. Therefore, although ordinarily category 8(b) projects would be exempted from the stage of "Public Consultation" under the EIA Notification, 2006 but by virtue of the Office Memorandum dated 24th February, 2011, the Respondent No.5 would have to conduct a Public Consultation with regard to the proposed project as per the procedure laid down in the EIA Notification, 2006.

24. The public hearing process under the EIA Notification, 2006 is defined in the following terms:

> *"...the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of a project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate."*

25. Appendix IV to the EIA Notification, 2006 sets out the procedure to be followed for the conduct of public hearings. The Applicant is to make a request to the local State Pollution Control Board to arrange the public hearing. The applicant is to enclose 10 hard copies and an equivalent number of soft copies of the draft EIA Report including the summary Environment Impact Assessment Report in English and in the local language, prepared strictly in accordance with the Terms of Reference. Copies are also to be sent to the District Magistrate, Zilla Parishad/ Municipal Corporation, District Industries Office and the concerned Regional office of the MoEF. On

receiving the draft EIA report, the said authorities are to give wide publicity and request interested persons to send their comments. They are also to make the draft EIA report available for inspection. Similarly the SPCB is also to make arrangements to make similar arrangements for giving publicity to the project and making the draft EIA report available for inspection. The Member-Secretary of the SPCB is to finalise the date and time of the public hearing and advertise the same in one major National Daily and one Regional vernacular daily. A minimum of thirty days notice is to be provided for furnishing of responses, if any, from the public.

26. The importance of public hearing under the EIA Notification has been emphatically stated by the Hon'ble Supreme Court in *Alaknanda Hydro Power Company Limited v/s Anuj Joshi & Ors.* [*2014 (1) SCC 769*] wherein the Hon'ble Division Bench observed:

> "*The purpose of public hearing, it may be noted, is to know the concerns of the affected people and to incorporate their concerns appropriately into the EMP and it is after incorporation of the concerns and revision/modifying plan, the final EMP would be submitted to the MoEF for granting environmental clearance.*"

Further, while setting out that strict guidelines are required to be followed for environmental matters, the Hon'ble Supreme Court, in the landmark judgment of *Lafarge Umiam Mining Private Ltd. v/s Union of India & Ors (AIR 2011 SC 2781)*, stated that *"The public consultation or public hearing as it is commonly known, is a mandatory requirement of the environment*

clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redressal of his/her grievances".

27. However in the present case, this vital stage in the process of environment clearance has not been followed. The Respondent No.5 has has allegedly held a series of 'discussions'. These discussions were held in 2012, i.e. before even the Terms of Reference were approved and the EIA Report was prepared. In the present case, none of the information in the EIA report was available to the persons who were involved in the 'discussions' and therefore, they could not have made an informed decision. Moreover, this Hon'ble Court as well as several High Courts have held time and again that the process is of great importance and is a form of participatory justice given to the people who are most likely to be impacted by the project. This process is of even more significance in the present case by virtue of its scale and the number of people likely to be affected by it, particularly the fishing communities residing in the proposed project area.

28. The EIA Report was prepared by the Respondent No. 6 and submitted in September 2016. The said report is annexed hereto and marked as **ANNEXURE A-8.** It is submitted that perhaps if the EIA Report was made available to the people most likely to be affected by the proposed project, a number of flaws could have been pointed out-

a. Ecology and Marine Environment (Pg. 3-30 of EIA Report)

NOTARY ★ GOVERNMENT OF INDIA ★ S. M. N. Nayri Mumbai & Thane Dist. Reg. No. 3054

The chapter on ecology and marine environment concedes that the water quality along the proposed study area is extremely poor, and then comes to the conclusion that therefore there is no fishery potential in the area. The relevant paragraphs of the EIA Report are as under-

Pg. 3-32- *"The studies show that there is a considerable amount of degradation of marine environment from the coast up to 2 km due to discharge of untreated sewage, industrial waste etc."*

Pg 3-34- *"Maximum load of faecal coliforms was observed at Khar which is dominantly a residential area. The sanitation facilities provided in this region are not sufficient to suffice for the population dwelling in the small houses along the coast. The studies carried out by NIO also indicate a high Total Coliforms (TC) at Versova and Mahim.*

The TC observed by them at Mahim are 11000 /ml while at Versova it is 9000/ml. The studies by them also show presence of pathogens like E.coli like organisms and Vibrio like organisms."

Pg. 3-36- *"The studies carried out at Versova and Mahim reveals the impact of wastewater on phytoplankton. Observations reveal that the polluted locations like Versova and Mahim are characterized by enhanced phytoplankton population and poor algal species. It was observed that the depleted oxygen content and changes in the nutrient content of the waters are the important factors leading to the decrease in*

the phytoplankton diversity."

The EIA Report, in complete ignorance and disregard of the fact that these areas have been traditionally used for fishing for centuries, then comes to the conclusion that since the water quality is already deteriorated, "*the polluted systems have poor fishery potential*".

Further, the EIA Report at pg. 3-40 cursorily states that the fishery data of the region has been collected through secondary sources only. It is preposterous and absolutely unreasonable to not collect the official fishery data from Respondent No. 7.

The proposed alignment crosses the navigational channel of fisherfolk at four locations- Bandra, Chimbai Road, Khar Danda and Juhu Koliwada. The shore areas are used for community events, storing nets, parking boats, fish drying etc. The proposed project will lead to the destruction of fishing activity, lifestyle, culture of the original settlers and already marginalised communities of the city.

It is submitted that the logic in EIA report for coming to the conclusion that proposed project will not affect fisheries is flawed and illogical to say the least. It ignores the fact that presently nearly 600 people in and around the proposed project

area are dependent on fishing and related activities for their livelihood and any disruption of the fragile ecosystem will affect their ability to live and flourish as they have for centuries.

b. Socio-Economic Factors (Pg. 3-28 of EIA Report)

The planned project will have irreversible impacts on the lives and livelihoods of the fishing communities that depend on the delicate and already threatened ecology for their livelihood. Not only does the proposed project threaten their access to the sea but also coastal commons that is used for fish drying, docking and parking boats mending nets, etc.

Apart from traditional fishing communities, the EIA Report does not consider the impact the project is likely to have on the residents that live along the project area. It is submitted that the proposed project will cripple existing public spaces, cutting off their access to the sea. One of the dispersal points is proposed at Otter's Club which is on Carter road in Bandra. It is a vibrant public space for recreation and is regularly used for cultural events. It contains gardens, amphitheatres, walking tracks and is used by the local residents as well as people from across the city to exercise, socialise and as such is a shared community space. Similarly Nana Nani Park in Versova, which is where one of the connectors of the proposed project will be, is a popular public space especially for morning and evening

walkers. The influx of vehicles and resultant increase in noise and air pollution that proposed project will bring to the proposed connectors at Carter Road and Nana Nani Park, will adversely impact the health of the local residents.

c. Proposed Mitigation Measures-

The mitigation measures it has proposed for fishing activities is confined to navigational spans. It fails to correlate the adverse impact on the ecology and marine environment with the fishing activities- increase in turbidity that would affect the marine flora, disturbance to the sea bed during the construction of offshore piers, coastline erosion. The consultation that is referred to in the EIA Report was conducted with fishermen who were not privy to information about the likely impact of the project on marine flora and fauna as they were not provided with a copy of the draft EIA report and were thus not in a position to make an informed decision. It does not address the impact of loss of mangroves on ecological habitats which serve as breeding grounds of aquatic fauna and the resultant impact on fisheries. Some of the suggested mitigation measures are absurd and have no scientific basis-"*Moreover proper mitigation measures shall be taken such as soft-scraping of the upper layer of sea-bottom and relocation to another site, which is conducive for reproduction of benthic fauna.*" (Pg. 3-39).

29. Moreover, the EIA Report itself records the possible impacts that have not been adequately addressed-

a. Baseline studies on Air Quality-

While ambient air quality standards for Particulate Matter 2.5 (PM2.5) as per the MoEF notification dated 16th November, 2009 is 40 to 60 µg/m3 for residential areas, the average PM2.5 recorded along the proposed project alignment was 74.02µg/m3. The average highest values are as high as 82.76 µg/m3.

The growing number of privately owned vehicles has lead to the air pollution in the city consistently increasing over the last two decades. There is no mention of the impact of the already deteriorating air quality on public health. Prolonged exposure to pollutants can lead to increased morbidity and mortality. Mumbai experiences sea-land and land-sea breeze that helps to mitigate the effects of air pollution to some extent. The proposed project will act as an obstruction and is therefore likely to lead to further deterioration of the air quality. It is pertinent to note that a recently published report by the Maharashtra Pollution Control Board and TERI states that people living in Mumbai and Navi Mumbai have been breathing polluted air, which falls under "poor to severe" category. The Appellants crave leave to refer and rely on the studies referred to herein.

b. Baseline studies on Noise Quality

The data on baseline noise levels presented in table 3.11 (Pg. 3-29) of the EIA Report shows that noise levels were consistently above those prescribed by the Central Pollution Control Board during the study period. Yet curiously it is stated that *"the night time and day time are below the permissible levels but are on the higher side."* Vague statements have been made with regard to the proposed mitigation measures- *"...by adopting proper measures and care it can be mitigated to acceptable levels."* There is no mention of what these proposed measures are.

c. Impact on fisheries and marine life

The EIA Report concedes that *"As construction of BVSL involves offshore structures such as piers disturbance to the sea bottom is unavoidable. Construction of offshore structure modifies the relationships of benthic communities, changing the existing biodiversity in the area and creating a new local ecosystem. ... The construction work phase would increase temporarily the water turbidity. This could affect marine flora (Phytoplankton specially) because of a decrease in the possible received light. There may be temporary decrease or change in the faunal population due to disturbance caused by construction activities. Dredging of sea bottom may disturb infaunal communities inhabiting therein. However, this impact would be transient so the habitat loss caused is expected to be*

negligible, owing to the fact that marine invertebrates have greater capability to regenerate and colonize."

Although temporary impacts of the project activity are emphasised, it is likely that the dredging activity will cause permanent and irreversible damage and affect livelihood related activity after construction, apart from making these activities impossible during construction.

30.It is submitted that apart from glaring inconsistencies pointed out in the preceding paragraph within the EIA Report, the said report also fails to deal with the following issues-

a. <u>Increased risk of climate impact</u>

Long term impacts such as climate change will be compounded by the drastic transformation of the coastline by projects such as the one proposed. Some of the perceived threats due to climate change in the region of Mumbai include sea level rise, erosion of coastal land, and an exacerbation of natural hazards such as flooding in low lying coastal areas, increase in sea temperatures and changes in productivity of aquatic ecosystems. Impacts due to climate change would involve the loss of beach-space and coastal commons, loss of resources and livelihoods, flooding of settlements, further deterioration in living and health condition, and eventually displacement.

b. Erosion of coastline

Reclamation during the construction of the Bandra Worli Sea Link, resulted in severe erosion of the Dadar Chowpatty beach. It is expected that the proposed project may have similar impacts. Tidal variation is likely to have severe impacts at several places. The volume of water displaced is likely to lead to the erosion of Juhu and Versova beach which would mean the loss of foreshore areas used by the fishing communities.

c. Impact of destruction of mangroves

As stated before, mangroves and mudflats are ecologically sensitive that help in maintaining the integrity of the coast. Apart from this mangroves also act as breeding and spawning grounds for fish. The microorganisms that flourish in the estuary where mangroves grow decompose sewage and other effluent. The EIA report is completely silent on the likely impacts of the destruction of 250 sq. mts. of mangroves in the proposed project area. Afforestation as a mitigation measure will not be effective considering the years before which plantations will be able to balance the toxicity likely to spread till that happens. Moreover mangroves are complex ecosystems and it is close to impossible to replant them as there is likely to be irreversible and substantial loss of their biodiversity.

d. Additional influx of traffic

Increased road space generates traffic and promotes private automobile use apart from leading to increase in fuel

consumption. The proposed project will substantially increase levels of air and noise pollution in the relatively peaceful residential neighbourhoods that it will pass through.

31. Pertinently, the Respondent No. 2 herein issued an Office Memorandum dated 2nd December, 2009 whereby all consultants/ public sector undertakings working in the area of Environmental Impact Assessment would require to get themselves registered under the scheme of accreditation and registration of the National Accreditation Board of Education and Training (NABET). The said Office Memorandum is annexed hereto and marked as **ANNEXURE A-9.** It is submitted that the EIA Consultant for the proposed project, being Respondent No. 6 herein, is not an accredited consultant, although on the EIA Report mentions that the QCI number of the Respondent No.6 is 154. In fact included in the list of unaccredited applications by the NABET. The said list is annexed hereto and marked as **ANNEXURE A-10**

NOTARY * S. M. N. Naqvi Mumbai & Thane Dist. Reg. No. 3054 * GOVERNMENT OF INDIA

32. It is stated that the State Expert Appraisal Committee - I (SEAC-I), while appraising the said project in its 136th meeting held on 5th, 6th and 7th October, 2016, has not only disregarded all such infirmities under the EIA Report as stated in the aforesaid paragraphs while scrutinising the VBSL project but also overlooked the conditions imposed as per the CRZ Clearance which stated that there will be a permanent loss of 150 sqm mangroves and a further temporary loss of

50 sqm mangroves. In fact, the SEAC-I proceeded to place a condition that no mangroves will be disturbed, which is completely contrary to the EIA Report and the CRZ Clearance. This shows complete non-application of mind on behalf of SEAC-I and thereby, the EC granted based on the recommendations of SEAC-I is manifestly perverse. Annexed and marked hereto as **ANNEXURE A-11** are the minutes of the 136th meeting held on 5th, 6th and 7th October, 2016.

GROUNDS:

Being aggrieved by the action of the Respondents, the Appellants approach this Hon'ble Tribunal on the following amongst other grounds each of which are without prejudice to each other:

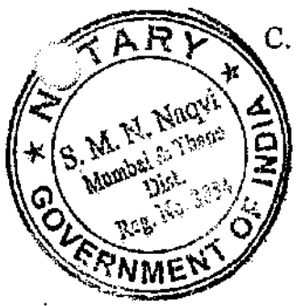
No public consultation.

A. That the Environment Clearance dated 2nd February, 2017 was granted in violation of the EIA Notification, 2006 inasmuch as Public Consultation as contemplated under the said Notification was not conducted and as such the concerns of the affected people having plausible stake in the environmental impact of the proposed project were not effectively considered are ascertained with a view to take into account all material concerns for the said project and such crucial stage in the procedure has been excluded by the Expert Appraisal Committee which is completely arbitrary, illegal, unreasonable and *ultra vires*. The exclusion of the participative consultation of traditional fishermen in a manner where there exists long-term impact on their livelihood such as this violates their rights directly under

NOTARY * S. M. N. Naqvi Mumbai & Thane Dist. Reg. No. 3054 * GOVERNMENT OF INDIA

Article 14 and Article 21 of the Constitution.

B. That the principle of '*audi alteram partum*', i.e both sides must be heard before passing an order by the authority is a crucial principle of natural justice, and this principle has not been followed in the present case. This principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not. Despite the governance of the Office Memorandum dated 24th February, 2011 issued by Respondent No.2 that provides for the public consultation to take place in accordance with the EIA Notification, 2006 for all Category 'A' and 'B1' Projects if the project attracts both the EIA Notification, 2006 and CRZ Notification, 2011, the Respondent Authorities have waived the public hearing for the reasons known best to them.



C. That the grant of final CRZ and Environment Clearance is wholly arbitrary, unreasonable and fails the test of arbitrariness under Article 14 and 21 of the Constitution of India. In *Maneka Gandhi v/s Union of India (1978 AIR 597)*, the Hon'ble Supreme Court opined that Article 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Article 14. An order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice. Further, while dealing with the right to be heard under the Land Acquisition Act, the Hon'ble

Supreme Court in *State of Punjab v. Gurdial Singh [(1980) 2 SCC 471]*, observed: *"16. ...it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter.* ***Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act.*** *Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."*

D. That the EIA Report fails to address the social consequences on vulnerable groups, particularly the traditional fishing communities, and the likely disruption to environment and social ecology.

E. That the VBSL Project falls under CRZ-IV under the CRZ Notification, 2011 which has been completely disregarded by all respondent authorities despite the categorical mention in the EIA Report that the project impacts CRZ-IV.

F. That the CRZ Clearance is overtly violative of the CRZ Notification, 2011 in letter and spirit in as much as the said clearance is granted to a

project which is prohibited in eco-sensitive areas of CRZ-I(A) and CRZ-IV areas.

G. That the said project is only permissible under CRZ-I(B), the area between High Tide Line and Low Tide Line, under the CRZ Notification, 2011.

H. That no Consent to Establish and Consent to Operate has been granted to Respondent No. 5 by Respondent Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

I. That the very foundation of granting the EC for the said project is unfounded and is granted on extraneous considerations the as the EIA Report prepared for the said project is misleading and filled with infirmities and inaccuracies.

That the EIA Report has been prepared by a consultant that is unaccredited and as such is unreliable and the entire procedure is void *ab initio* as per the Office Memorandum issued by the Respondent No. 2.

K. That the CRZ Notification, 2011 and the orders passed by the Hon'ble Bombay High Court do not permit any destruction and reclamation of

mangroves, which play an integral role in maintaining the integrity of the coast.

L. That the primary intention of the legislature while drafting the CRZ Notification, 2011 is to protect the livelihood security of the fishing community as it can be ascertained from the preamble of the Notification. The Preamble is a key to understand the scope and ambit of the Act and therefore, the interpretation of CRZ Notification, 2011, in its entirety, must be read with the very object that the legislature had in mind. In *Sec Tribhubar, Perkash Nayyar v/s The Union of India (AIR 1970 SC 540)*, the Hon'ble Supreme Court has observed that **though the preamble may not control or qualify precise or unambiguous language of the enactment, it is always permissible to look into it, since it is a key to open the mind** of the Legislature. The aforesaid Environment Clearance granted for the said project has completely disregarded the objective of CRZ Notification, 2011 by granting permission which overlooked the due process of law while granting the EC, filled with various inconsistencies potential disaster on the livelihood of traditional fishermen, to construct the said project in the Arabian Sea and is therefore, unconstitutional.

M. That the Hon'ble Supreme Court in the *Research Foundation for Science Technology and Ecology Vs. Union of India and ors* (W.P. No. 657 of 1995) held that the right to information and community participation for protection of the environment and human health is a

right that flows from Article 21. Further, the Hon'ble Court relying on the decision in *A.P Pollution Control Board vs. Prof M. V Nayudu (Retd) and Ors. (1996 5 SCC 718)* held that principles of good governance are an accepted principle of international and domestic law. It comprises of the rule of law, effective state institution, transparency and accountability, respect for human rights and the meaningful participation of citizens in the political process of their countries and the decisions affecting their lives.

N. That the proposed project will lead to the disruption of neighbourhoods and impact the health of the residents at the end of the connectors and most importantly, lead to the loss of livelihoods of coastal communities.

O. That the EAC recommended the VBSL for CRZ and Environment clearances by ignoring the permissions as required from the Hon'ble High Court of Bombay, the de-reservation and forest clearance under the Forest (Conservation) Act, 1980, the public consultation process under the EIA Notification, 2006 and impacts on livelihood of the fisherfolk and health of the residents.

NOTARY * INDIA * GOVERNMENT OF
S. M. N. Naqvi
Mumbai & Thane Dist.
Reg. No. 3014

PRAYERS:

It is humbly prayed that the Hon'ble Tribunal may be pleased to:

a) Quash and set aside the Environment Clearance dated 2nd February, 2017 (granted pursuant to the CRZ Recommendation dated 9th January, 2013) granted by the Respondent No. 1 for the said project to Respondent No. 5.

Amended as per order dated 6/7/2017.

~~b) Quash and set aside the CRZ clearance 9th January, 2013 granted by Respondent No. 2 to Respondent No. 5.~~

26/7/2017

c) Direct the Respondent No. 5 to immediately cease and desist from carrying on operations at the project site in pursuance of the impugned clearances.

d) Direct the Respondents to conduct the Public Hearing under the EIA Notification, 2006 as mandated under the law.

e) Restrain Respondent No. 5 from dredging in the project area in any manner and from reclaiming any land and/or carry out construction activity.

f) Pending hearing and final disposal of the case, this Hon'ble Tribunal be pleased to stay the impugned EC dated 2nd February,

g) Pending hearing and final disposal of the case, this Hon'ble Tribunal be pleased to stay the the Consent to Establish dated 10th July, 2013 granted by Respondent No. 3 to Respondent No. 5.

h) Pending hearing and final disposal of the case, this Hon'ble Tribunal be pleased to stay the NOC dated 13th April, 2014 issued by Respondent No. 4 to Respondent No. 5.

i) Pending hearing and final disposal of the case, this Hon'ble Tribunal be pleased to restrain Respondent No. 5 from dredging in the project area in any manner and from reclaiming any land and/or carry out any construction activity in the project area.

j) Pending hearing and final disposal of the case, this Hon'ble Tribunal be pleased to direct Respondents to not interfere with the fishing activities of the local fisherfolk community in the project area.

k) Pending hearing and final disposal of the case, this Hon'ble Tribunal be pleased to direct the Respondents to maintain *status quo* for any project related activity in the project area.

(L) For any such reliefs that this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of this case.

Appellant No. 1

Appellant No. 2

Appellant No. 3

Appellant No. 4

Appellant No. 5

Appellant No. 6

Appellant No. 7

Appellant No. 8

Meenaz Kakalia & Zaman Ali,

Advocate for the Appellants

NOTARY
S. M. N. Naqvi
Mumbai & Thane
Dist.
Reg. No. 5054
GOVERNMENT OF INDIA

VERIFICATION

I, Dinesh Suresh Mangela, aged years, Indian Inhabitant, Authorised Signatory of Appellant No.1 and having his office at Moragao, Magelawadi, Janardan Ramji Mhatre Marg, Juhu, Mumbai - 400 049 do hereby verify the contents of paras ___ to _____ are true to my personal knowledge and paras

____ to _____ believe to be true on legal advice and that I have not suppressed any material facts.

Appellant No. 1

Appellant No. 2

Appellant No. 3

Appellant No. 4

Appellant No. 5

Appellant No. 6

Appellant No. 7

Appellant No. 8

BEFORE ME

S. M. N. Naqvi
NOTARY
Government of India
Mumbai & Thane

Meenaz Kakalia & Zaman Ali,

Advocate for the Appellants

NOTARY S. M. N. Naqvi Mumbai & Thane GOVERNMENT OF INDIA

S.R. No. 17 P. No. 02
NOTARY Register 215 Date 17/3/

Mumbai

Date

Filed by

Meenaz Kakalia & Zaman Ali

1st Floor, Jalaram Krupa, Janma Bhoomi Marg, Fort, Mumbai - 400 001.

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TRUE COPY

ANNEXURE A-6

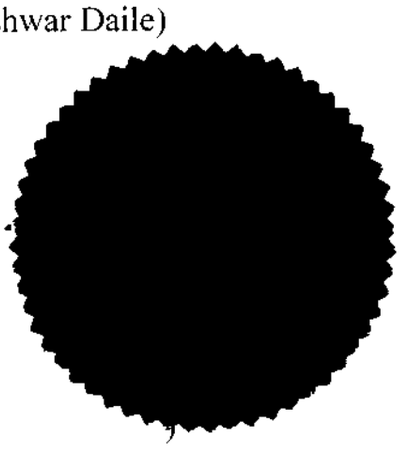
BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT PUNE

MEMORANDUM OF APPLICATION

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

Application No. 39 of 2021

1. Juhu Tara Koli Samaj Sahakari Sangh Maryadit)
   Through its General Secretary,Vidnay Dyaneshwar Daile)
   Juhu Koliwada
   K Hirabuva Gawde Marg,
   Santacruz (West) Mumbai - 400049
   Email address:gawanish@gmail.com
   Phone Number: 9768482575)



2. Juhu Tara Koli Zamat Seemakan Samiti)
   Through its President, Mr. Anish Gawde)
   Juhu Koliwada, Hiru Buwa Gawde Marg,)
   Santacruz (W), Mumbai - 400049)
   Email address:gawanish@gmail.com)
   Phone number:9768482575)

3. Khardanda Koliwada Gaothan Sangh)
   Through its Chairman, Mr Bhimsen Kopte)
   Sankalp Sidhi - K, Gopalbuva Dandekar Chowk)
   Dada Koli Samaj Karyalay,)
   Khar Danda Koliwada,)

Khar West, Mumbai - 400052)

Email address:khopte.bhimsen@gmail.com)

Mobile Number: 9372223654)

4. Danda Koli Masemari Vyavsayik Sahakari Sanstha Maryadit)

Through its authorised representative Sandeek Kashinath Aglave)

Sankalp Sidhi-K, Gopalbuva Dandekar Chowk)

Dada Koli Samaj Karyalay,)

Khar Danda Koliwada,)

Khar West, Mumbai - 400052)

Email:khopte.bhimsen@gmail.com)

Mobile No: 9372223654)

5. Danda Koli Samaj)

Through its Treasurer, Datta Vishnu Thalkar)

Sankalp Sidhi-K, Gopalbuva Dandekar Chowk)

Dada Koli Samaj Karyalay,)

Khar Danda Koliwada,)

Khar West, Mumbai - 400052)

Contact Number: 9372223654)

Email address:khopte.bhimsen@gmail.com)....Applicants

VERSUS

1. Maharashtra State Road Development Corporation)

through its General Manager)

Nepean Sea Road, Priyadarshini Park,)

NOTARY SHABBIR K. TAMBAWALA GREATER MUMBAI INDIA

Mumbai 400 036,)

Contect Number: 91 22 23685909)

Email: info@msrdc.org)

2. The Environment Department,)

Government of Maharashtra)

Through its Secretary,)

Mantralaya, Mumbai - 400032.)

Contact Number: 022-22029388)

psec.env@maharashtra.gov.in)

3. Union of India, Ministry of Environment, Forests)

and Climate Change,)

Through its Secretary)

Aaykar Bhavan, Marine Lines, Mumbai)

Contact Number: +91-11-24695262,)

Email address: secy-moef@nic.in)

4. The Maharashtra Coastal Zone Management Authority)

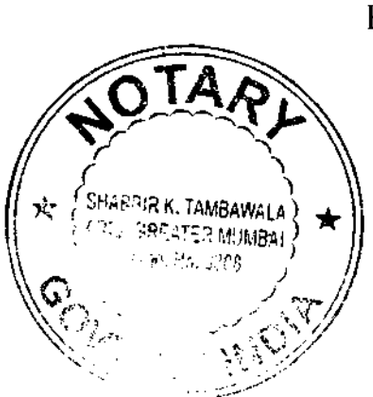
Through its Chairman)

15th floor, New Administrative Building,)

Mantralaya, Mumbai - 400032.)

Contact Number: + 022-22873845)

Email address: psec.env@maharashtra.gov.in)



5. District Collector, Mumbai Suburban District,)
10th Floor, Administrative Building,)
Govt Colony, Bandra (E), Mumbai – 400 051)
Contact: 022-26514742)
Email:collector.mumbaisuburb@maharashtra.gov.in)

6. The Fisheries Department)
Government of Maharashtra)
Through the Commissioner of Fisheries,)
Taraporwala Aquarium,)
Netaji Subhash Road,)
Charni Road, Mumbai-400002)
Contact Number.- 022-22821239)
E-mail : commfishmaha@gmail.com)

7. Reliance Astaldi JV)
3rd Floor, North Wing)
Reliance Centre)
Santa Cruz (East))
Mumbai 400 055)
Email:8080140045)
Braj.Kishore@relianceada.com)...Respondents

MEMORANDUM OF APPLICATION UNDER SECTION 14, 15 READ WITH SECTION 18(1) OF THE NATIONAL GREEN TRIBUNAL ACT, 2010

MOST RESPECTFULLY SHEWETH:

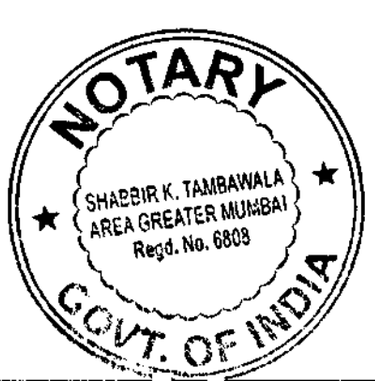
1. The addresses of the Applicants are given above for the service of notices of this application.

2. The address of the Respondents are as given above for service of notices of the application.

3. The Applicants above named begs to present the Memorandum of Application on the grounds set out hereunder:

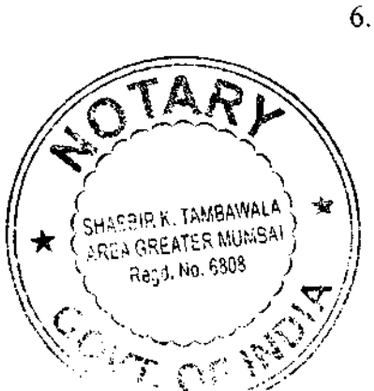
FACTS IN BRIEF

4. The Applicants are all collectives of local fisherfolk located in Juhu and Khar Danda areas of Mumbai, Maharashtra. The Applicants are all registered organisations, and work to mobilise local fisherfolk when faced with legal and other challenges that infringe upon their fishing rights, or pose threats to the delicate ecological balance in their fishing areas in Juhu and Khar, Mumbai so as to ensure that the natural resources in the area remains intact, thereby protecting and maintaining the sea, its natural resources, and its surrounding CRZ areas for the legal and sustainable use by the local fisherfolk.



5. The Respondent No. 1 herein is responsible for developing, building and maintaining roads in the State of Maharashtra. The said Respondent is the project proponent and implementing authority for the Versova Bandra Sea Link (***"VBSL"***). The Respondent No.2 is the Environment Department, Government of Maharashtra, and is responsible for the protection of the environment in the state. The Respondent No.3 is the Union Ministry of Environment, Forests and Climate Change and is charged with the responsibility of protecting the environment and biodiversity in the country. The Respondent No. 4 is the Maharashtra Coastal Zone Management Authority, charged with the responsibility of protecting the coast of the State and regulating related activities thereof. The Respondent No.5 is the Collector, Mumbai Suburban District, and is responsible for protecting lands under him from environmental destruction. The Respondent No. 6 is the Fisheries Department of the State Government of Maharashtra and is responsible for undertaking necessary actions to safeguard the interests of the fisherfolk in the State. The Respondent No. 7 is the private contractor engaged to execute all development and construction works arising from the VBSL project.

6. Aggrieved by the "access roads" for the Versova Bandra Sea Link ("VBSL") being built through illegal reclamation of the sandy beaches by the Respondent No. 1 in Juhu, Bandra Reclamation and Carter Road, Mumbai without any specific clearance under either



the CRZ Notification of 2011 or the EIA notification of 2006 permitting the construction of such access roads, the Applicants have approached this Hon'ble Tribunal seeking directions that the construction work for the said "access roads" be stopped forthwith and that the reclamation and destruction of the sandy beaches in Juhu be stopped forthwith.

RECLAMATION FOR CEMENT ACCESS ROAD

7. The Applicants submit that after approximately a year-long halt in the construction work for the Versova Bandra Sea Link Road due to the Covid-19 pandemic, since late October 2020, the Respondent No.1 has resumed its construction work for the VBSL, which is a 17.17-kilometre bridge built on stilts over the Arabian sea and is supposed to connect Versova, a neighbourhood in the suburb of Andheri, Mumbai to the Bandra-Worli Sea Link in Bandra, as part of the Coastal Road. The road is a mammoth structure comprising of 8 lanes.The Applicants submit that the CRZ clearance granted to the construction of the Versova Bandra Sea Link dated 09.01.2013, which has been extended on 07.02.2019 and further amended on 28.01.2020, along with the Environmental Clearance granted to the project on 02.02.2017 has been challenged by other parties before this Hon'ble Tribunal in Appeal No 14/2017, and is still pending adjudication before this Hon'ble Tribunal. It is pertinent to note that sites of construction of the "access roads" in Bandra reclamation, Carter Road and Juhu, which are challenged in the present Application clearly fall in

CRZ IA areas as classified in Clause 7(i) A of the Notification and constituted inter alia, mangroves, corals, coral reefs *and associated biodiversity,* sand dunes, mudflats, horseshoe crab habitats.The Applicants submit that the said "access roads" themselves span several kilometers, and also cut through tidally influenced portions of the beach classified under Clause 7(i)B of the Notification to be CRZ-IB areas, which are lands between the Low Tide Line and High Tide Line. The "access roads" extend into the sea, which is categorised to be CRZ IV under Clause 7(iv) of the Notification, so as to provide the Respondent No. 7 contractor a means to transport construction material and machineries into the midst of the sea ,where connectors of the VBSL project are proposed to be constructed.Despite the fact that reclamation and disturbing the natural course of seawater is prohibited in CRZ Areas under clause 3(iv) of the CRZ Notification of 2011 unless essential for activities permitted under the CRZ Notification of 2011, neither the CRZ clearance dated 09.01.2013, which has been extended on 07.02.2019 and further amended on 28.01.2020, along with the Environmental Clearance granted to the project on 02.02.2017 grant permission for the building of cemented, permanent "access" roads upon the sandy beaches of Juhu, Bandra Reclamation or Carter Road, Mumbai being constructed through reclamation of the beach. Copies of the CRZ clearance dated 09.01.2013, along with its extension letter on 07.02.2019 and amendment on 28.01.2020 have been annexed hereto and marked as **Annexure A - 1, Annexure A-2** and **Annexure A - 3** respectively. The Environmental Clearance granted to the project on 02.02.2017 has

been annexed hereto and marked as **Annexure A-4.** However, since late October 2020 it appears that the Respondent No. 1 has been intermittently clearing up the sandy beaches in all three locations across the city in order to construct "access roads" for the Versova Bandra Sea Link Road through reclamation. The Applicants submit that it is noteworthy that the CRZ Notification of 2011 specifically prohibits the construction of roads in CRZ areas unless they are roads on stilts, or are roads on reclaimed surfaces *without affecting the tidal flow of water.*

8. The Applicants submit that despite the construction of roads being prohibited in CRZ areas unless specifically built to avoid disturbance of the natural tidal flow of seawater, the Respondent No. 1 has started excavating sand and dumping rocks as well as laying down blocks upon which cement is to be poured onto the beach and in the intertidal CRZ-I areas to build an access road by way of reclamation. It is submitted that due to the construction of the said access roads, the navigational routes used by local fishermen for their boats in the sea shore between Khar Danda and Juhu Koliwada has been blocked, and no information or discussion has been held with the local fisherfolk about the solutions, if any, on how they could continue their fishing activities. Similarly, the fishermen are precluded from parking their boats on the beaches during high tide and their traditional means of catching fish that breed in shallow waters, such as crabs, with nets called *paags* and *peras* has also become impossible.

LAW REGULATING ECO-SESITIVE COASTAL AREAS

9. The CRZ Notification of 2011 was issued under Section 3(2)(1)(v) of the Environmental Protection Act, 1986, which empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment, including restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.

10. The notification, which was issued with a view to *"conserve and protect coastal stretches, its unique environment and its marine area and to promote development through a sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming"* demarcates the most ecologically sensitive coastal areas and regulates the extent of development permitted, if at all, in such lands.

11. The Applicants further submit that Clause 7(i) A of the Notification classifies inter alia, mangroves, corals, coral reefs *and associated biodiversity,* sand dunes, mudflats, horseshoe crab habitats to be CRZ-1 A areas, which are ecologically sensitive and have geomorphic features which play a role in maintaining the integrity of the coast. It is pertinent to note that sites of construction of the "access roads" in Bandra reclamation, Carter

Road and Juhu admittedly constitute CRZ IA areas.The Applicants submit that the said "Access roads" themselves span several kilometers, and also cut through tidally influenced portions of the beach classified to be CRZ-IB areas under Clause 7(i)B, which are lands between the Low Tide Line and High Tide Line.

12. The Applicant submits that the site of these "access roads" pass through sandy beaches around the Western Suburbs of Mumbai and traverse into the sea, which is categorised to be CRZ IV under Clause 7(iv) of the Notification of 2011, so as to provide the Respondent No. 7 contractor a means to transport construction material and machineries into the midst of the sea,where connectors of the VBSL project are proposed to be constructed. The Applicants submit that the said construction sites constitute solely of the ecologically sensitive geomorphic features that epitomise the coastal areas of Mumbai that are protected under the CRZ Notification. The Applicants submit that allowing indiscriminate development of such lands under the garb that they are necessary to complete the VBSL project is not only a mockery of the CRZ Notification of 2011 and its legally binding provisions, but will damage these ecologically fragile areas in a permanent and irreversible manner. The Applicants further submit that the Environmental Clearance of the VBSL project dated 02.02.2017 also records that the project site of the VBSL is CRZ (I), CRZ(I)(i) and CRZ(I)(ii) areas.

DISTURBANCE OF TIDALLY INFLUENCED AREAS

13. Clause 8 of the CRZ Notification prohibits all new construction in CRZ I areas, with the exception of certain activities, *inter alia,* as provided under Clause 8(i)I(i)(e) which permits "*construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.*" in CRZ I areas and Clause 8(i)I(ii)(g)- "*construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water.*"in areas between LTL and HTL which are not ecologically sensitive .

14. Similarly, Clause 8(V)(1), which lays out special provisions for CRZ areas falling within municipal limits of Greater Mumbai. Clause 8(V)1(i)A(a) permits the, *"Construction of roads, approach roads and missing link roads approved in the Developmental Plan of Greater Mumbai on stilts ensuring that the free flow of tidal water is not affected,"*

15. Clause 4 lists the full range of activities in CRZ areas that are regulated under the Notification. Clause 4(i)(g) provides that the "*construction of road by way of reclamation in CRZ area shall only be in exceptional cases, to be recommended by the concerned CZMA and approved by MoEF....*". Similarly Clause 3(iv) prohibits reclamation in CRZ areas, except for, inter alia, *"bridges, sealink, road onstilt, road on reclaimed surface without affecting tidal flow of water"* .

16. The Applicants therefore submit that a combined reading of Clause

8, Clause 4(i) (g) and Clause 3(iv) indicates that:

a. Roads in CRZ areas are only to be permitted under exceptional circumstances,

b. Such roads must be built with prior permission of the MoEFCC.

c. Such roads are to be built on stilts so as to not disturb the tidal flow of water

d. Even when constructed through reclamation with prior permission, such roads cannot affect the tidal flow of water

e. Such constructions of roads require to be specifically permitted under the CRZ notification of 2011 *prior* to being constructed.

17. The Applicants submit that the said "access roads" do not muster the five requirements as stipulated as above, since:

a. The official position of the Respondent No. 1 is that the said roads are temporary in nature, and are allegedly only for the purpose of permitting construction material to be transported in and out of construction sites, and therefore cannot be considered to be roads required in "*exceptional standards*" as their utility, as per the Respondent No. 1 itself, is short lived and temporary. The Applicants had first learnt that these "access roads" in all three constructions sites were proposed to be "temporary" in nature upon making verbal enquiries from the Respondent No. 1 and its officers when the construction work for the project commenced in October 2020. The Applicants submit that the fact that the roads

appear to be permanent in nature is evident from the nature and extent of the dredging of sand, laying down of permanent cement blocks through reclamation to create the access roads. The Applicants submit that the access roads built so far are over 8 feet high and have been reinforced with cement after dredging and reclamation of tidally influenced areas, mangroves, corals, coral reefs *and associated biodiversity,* sand dunes, mudflats, horseshoe crab habitats in order to provide a smooth and solid surface upon which JCM machines, cranes and bulldozers can drive upon without difficulty. Images of the illegal dredging and reclamation of the CRZ IA and CRZ IB areas in Juhu, Carter Road and Bandra Reclamation has been annexed hereto and marked as **Annexure A - 5.**

b. There has been no approval granted for the construction of access roads in CRZ areas granted by the MoEFCC or SEIAA as per the CRZ Clearance to the project on 09.01.2013, which was extended on 07.02.2019 and further amended on 28.01.2020 or the Environmental Clearance dated 02.02.2017. In fact, both clearances expressly prohibit reclamation and dredging for the project.

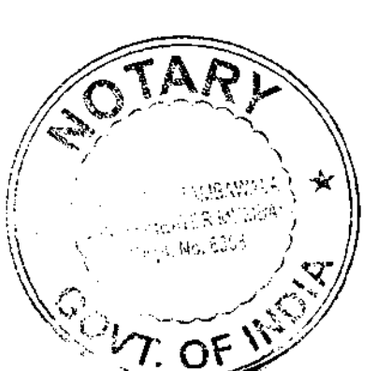
c. The said road is not being built on stilts in order to ensure the continuous, unimpeded tidal flow of sea water

d. The said roads being built through reclamation are already obstructing the tidal flow of water in Juhu, Bandra Reclamation and Carter Road

NOTARY ★ GOVT. OF INDIA

18. It is therefore evident that under the CRZ Notification of 2011, a road by way of reclamation cannot be built without explicit permission from the MoEF in areas such as mangrove forests, corals, coral reefs *and associated biodiversity,* sand dunes, mudflats and marshy lands. Furthermore any other type of road, approach road, or bridge, must be built only on stilts, i.e. in such a way that the free flow of tidal waters is not affected in such lands.

19. Additionally, the Applicants have received a plan of the access roads for the VBSL project titled "VBSL Project Land Plan" which shows the layout for the connectors of the Versova Bandra Sea Link Road in Bandra (Carter Road), Juhu and Versova The plans show clearly that besides the foundation of the pillars being constructed to support the elevated road, there will be a road forming a "right of way" which will span over 2.9907 Ha of land. The Applicants that such a large expanse of road, that is aimed to create a "right of way" around the pillars clearly indicates that this access road will be permanent. A copy of the plan has been annexed hereto and marked as **Annexure A - 6.** The Applicants submit that their understanding of the roads formulating right of way around the pillars are similar to the cement roads forming underpasses, exists, and parking spaces under the large cement pillars of a bridge or freeway. These roads, upon which the pillars of an elevated road are constructed, provide a right of way to vehicles alighting and exiting the elevated roads, and also for underpasses for traffic at the ground level to pass through unabated, in addition to the roads that are elevated and have been



constructed a top the pillars in question.The Applicants further submit that since the plans of the VBSL project itself clearly disclose that vehicles utilising the VBSL will disperse in areas that are presently sandy/beach areas along the coast, it is a certainty that cement roads will be required to be constructed in these areas to provide vehicles an opportunity to exit the VBSL and offer connectivity to the existing roads in Mumbai. The Applicants understanding of the construction that has not been specified in any environmental or CRZ clearance , but included in the plans and maps of the VBSL project is based on a careful and deliberate perusal of the plans of the project.

20. The reason behind preserving the tidal flow of water without any impediments in coastal areas has been recognised by the Hon'ble Supreme Court of India in its judgment in the matter of *Kerala State Coastal Zone Management Authority v. State of Kerala*, (2019) 7 SCC 248 , wherein it held that, *"The area in which the Respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The*

Coastal Zone Management Plan (in short "CZMP") has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.

CONSTRUCTION OF ACCESS ROADS IS CONTRARY TO THE CRZ CLEARANCE GRANTED TO THE VBSL PROJECT

21. The Applicants submit that since the CRZ Notification prohibits the construction of roads in CRZ I *areas other than those built on stilts,* the Respondent No. 3 MoEF while granting CRZ Clearance dated 09.01.2013 to Respondent No. 1 for the VBSL project, stipulated that, in Para No. 8(iv) MoEF that *"there shall be no dredging and reclamation for this project"*. Therefore, the present work of construction of access roads by way of reclamation is in direct violation of MoEF's CRZ Clearance.

22. The Applicants submit that the process of applying and granting a CRZ clearance is provided for in Clause 4 of the CRZ Notification on 2011. Clause 4 (i)(a) provides that "*clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities"* . The Applicants submit that the said condition clearly demonstrates the axiomatic rule of assessing whether any project, no matter its scale, can be permitted in CRZ areas - which is that the project in question must be of such a nature that it requires waterfront and foreshore facilities. The Applicants submit that since an "access road" being built only to supply construction material cannot pass the muster of being an

activity which requires waterfront and foreshore facilities, such roads cannot be granted CRZ clearances in the first place. The Applicants further submit that the building of roads in CRZ IV areas (areas from the Low Tide Line to twelve nautical miles on the seaward side) is not even a permissible activity permitted in CRZ IV areas under Clause 4 or Clause 8(IV) of the CRZ Notification.

23. Notwithstanding the Applicant's submissions that construction of access roads for transportation of construction material is not only impermissible and bad in law, the Applicants submit that if the Respondent MSRDC is to build such access roads, whether temporary or not, it would have had to obtain a CRZ clearance for the construction of such roads in terms of clause 4 of the CRZ Notification of 2011. It is submitted that Clause 4(i)(g) of the CRZ Notification specifies that," *construction of road by way of reclamation in Coastal Regulation Zone area shall be only in exceptional cases, to be recommended by the concerned Coastal Zone Management Authority and approved by the Ministry of Environment, Forest and Climate Change; and in case the construction of such road is passing through mangroves or likely to damage the mangroves, three times the number of mangroves destroyed or cut during the construction process shall be replanted*" . Therefore, the access roads presently being built by the Respondent MSRDC and Respondent Contractor would require study and assessment of the Respondent MCZMA, and subject to the recommendation of the Respondent MCZMA, the Respondent MoEFCC would also then assess the project prior to granting any

potential clearance for the construction of the access roads. The Applicants submit that the fact that the CRZ Notification mandates that a clearance for roads such as the access roads being built by the Respondent MSRDC requires to be assessed by the MoEFCC of the Central Government, and not the State Environment Impact Assessment Authority shows the gravity behind, and "exceptional" nature of, the grant of permissions to build roads in CRZ areas.

24. The Applicants submit that the extent to which a project must be thoroughly assessed prior to the grant of a CRZ clearance is evident from the provisions of Clause 4.2 of the CRZ Notification of 2011. Sub- Clause (i) of Clause 4.2 of the CRZ Notification of 2011 reads as follows

"4.2 Procedure for clearance of permissible activities.- All projects attracting this notification shall be considered for CRZ clearance as per the following procedure, namely:-

(i) The project proponents shall apply with the following documents seeking prior clearance under CRZ notification to the concerned State or the Union territory Coastal Zone Management Authority,-

(a) *Form-1 (Annexure-IV of the notification);*

(b) *Rapid EIA Report including marine and terrestrial component except for construction projects listed under 4(c) and (d)*

(c) *Comprehensive EIA with cumulative studies for projects in the stretches classified as low and medium eroding by MoEF*

based on scientific studies and in consultation with the State Governments and Union territory Administration;

(d) *Disaster Management Report, Risk Assessment Report and Management Plan;*

(e) *CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) i n 1:4000 scale;*

(f) *Project layout superimposed on the above map indicated at (e) above;*

(g) *The CRZ map normally covering 7 km radius around the project site.*

(h) *The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas;*

(i) *No Objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the projects involving discharge of effluents, solid wastes, sewage and the like.;*

25. The Applicants submit Sub- Clause (i) of Clause 4.2 of the CRZ Notification requires an extensive amount of details and information pertaining to the nature of the project, its environmental consequences and possible mitigation techniques to reduce and prevent environmental damage, along with details of the site of the project and its ecological features have to be studied at great length and detail by environmental experts prior to any clearance being granted under the CRZ Notification of 2011. The recommendation of the MCZMA made after applying its mind to information about the project as submitted by the Project

Proponent would then require to be "considered for clearance" by the MoEFCC or SEIAA as maybe necessary in terms of the provisions of Clause 4.2(ii) and Clause 4.2(iii). The Applicants accordingly submit that the construction of these access roads in the absence of a detailed, elaborate study into the details of project, to which there must be application of mind by experts of the MCZMA and MoEFCC who, upon opting to permit a project, provide legally binding conditions subject to which the project can be constructed, is an egregious breach of the CRZ Notification of 2011 which is *non-est* in law.

26. The Applicants submit that it is also noteworthy that the CRZ Clearance, dated 09.01.2013, in its "Specific Conditions", in point 8(ii) clearly states that the *"proponent shall comply with all the assurances made to the fishermen and local public, including provision of navigation channels, providing noise barriers at sensitive locations."* Additionally, the letter of the MoEF dated 07.02.2019, which extends the validity of the aforementioned CRZ clearance, amends the clearance to include the following conditions:

> *"(xiii) Temporary structures set up for construction of the bridge and materials for construction shall be removed and area around the site restored to its near original state.*
>
> *(xv) Construction period shall be limited such that prolonged affect to marine community can be minimized... "*

The Applicants accordingly submit that if the said access road is indeed meant to be temporary in nature, not only is it not permitted

under the provisions of the CRZ Notification of 2011, the CRZ clearance for the VBSL project expressly prohibits any permanent construction, and indicates that temporary structures must be of such a nature that can be removed such that area around the site can be restored to its near original state. The Applicants submit that the cement access roads not only are permanent, to create "a right of way" around the pillars of the VBSL connectors, and further, even if somehow removed someday, which would be next to impossible on account of the said roads being built through reclamation, once the access roads are completed the site of these access roads cannot be returned any where close to its near original state, thereby permanently impeding and altering the tidal flow of sea water.

27. The Applicants submit that on 26.10.2020, through their advocates, the Applicants submitted a legal notice to the Respondent No. 1 and the contractor engaged by it for the development and construction for the VBSL project calling upon them to cease any construction work for the access roads on account of the fact that, *"Any work being undertaken between Juhu Koliwada beach and Khar Danda Koliwada beach that is not for the construction of stilts and that will lead to permanent irreversible damage requires a separate specific clearance and the main project CRZ Clearance does not suffice for the same.*

Kindly note that any permanent damage in the intertidal area will adversely affect flow of the water, the fish breeding areas and the

fishing activity undertaken by the local fisherfolk and will therefore adversely and irreversibly affect their livelihood. This is in violation of point 8(ii) of the Specific Conditions of the CRZ Clearance mentioned above. "

A copy of the said legal notice dated 26.10.2020 has been annexed hereto and marked as **Annexure A - 7.**

28. The legal notice sent by the Applicants was responded to on 05.11.2020 by the Respondent No. 1 by denying in toto the submissions of the Applicants that the access roads would be permanent and stating that "there is no permanent reclamation work" be undertaken for the construction of these temporary access roads. The Respondent No. 1 did admit that "construction of the Versova Bandra sea link may hamper the fishing activity" of local fishermen, but deferred the issue to the constitution of a committee by the Government of Maharashtra to examine the issues faced by, and loss of livelihood caused to the fisherfolk. The response of the Respondent No.1 vide letter dated 05.11.2020 has been annexed hereto and marked as **Annexure A - 8.** The Applicants then submitted a further response to the Respondent No. 1 on 26.12.2020 clarifying that any degree of reclamation of the beaches at the construction site would be permanent and irreversible, and once again called upon the Applicants to forthwith cease any construction work for the said access roads.The Applicants have not received any further response to

their last letter from the MSRDC dated 26.12.2020 which has been annexed hereto and marked as **Annexure A-9**.

IMPACT OF THE CONSTRUCTION WORK ON THE FISHING ACTIVITIES OF THE LOCAL FISHERFOLK

29. The Applicants submit that the VBSL project and more particularly, the construction of the access roads will completely eradicate the ability of local fishermen to continue with their traditional, customary fishing practices that they have been adopting for generations. The Applicants submit that there are three categories of fishermen represented through their associations.

30. The first category, and the majority, of fishermen are those who utilise traditional nets like *paag* and *peras* in low lying areas abutting the beaches to catch small Crabs and Oysters catching, Shell fish, and small fish known colloquially as *dhomi, sulpi, kargota,murdi* and *boi* These fishermen don't own boats, and wade through the water to retrieve their catch in the nets that they layout in shallow waters near the beach. The Applicants submit that since the soil testing work has commenced for the VBSL project, their fishing nets have on several occasions been torn and sometimes completely swept away in the soil testing rigs laid out by the Respondent Contractor. The Applicants submit that subsequent to these disruptive techniques being adopted by the Respondent No. 7, many of these fishermen, who earn a maximum of Rs. 500-600

on a good day after selling their catch, have had to invest months of savings on buying new fishing nets, only to have them torn or damaged again. Images of a collapsed soil testing rig with the nets around its torn and damaged have been annexed hereto and marked as **Annexure A - 10**.

31. The second category of fishermen are those having smalls boats with less than 4 cylinders.These boats are too small to traverse beyond 5 nautical miles into the sea and such fishermen generally fish for fish such as Dhomi, Pomfret, Lekru, Lepti, Stingray, Vakti, Bombil and shell fish such lobsters, white prawns, large crabs, large oysters and squids which breed in the rocky areas below the surface of the sea within 5 nautical miles of the coast. However, these fishermen have observed that due to the construction work being undertaken due to the VBSL project, the specific type of soil, traditionally called "Chikkal" in which shellfish breeding occurs has been displaced with piling and vibration . The shell fish themselves are not breeding in their regular breeding sites due to the high reverberations and resonance within the sea arising from soiling testing and piling activities which disturbs the said shellfish. Images of boats of various cylinder sizes, and the catch of the smaller shellfish by fishermen operating smaller boats have been annexed hereto and marked as **Annexure A-11.**

32. The third category of fishermen who have big boats of 4 or more cylinders can traverse deeper into the sea, within the territorial

limits of Mumbai upto 12 nautical miles - however, they too are unable to find their usual catch of *Rawas, Lobsters, Tiger prawns, Pomfret (small & big), Bhilja, Khajura, Ghol fish, Stingray, Squid, Vaav, Baga, Philsa, Taam, Tuna fish, Black pomfret, Bombil,* and *Pala* now that construction, soil testing etc works have started. The Applicants submit that the boats used by these fishermen cost upwards of Rs. 30 lakhs, and on account of being unable to catch their fish and generate their usual amounts of revenue, these fishermen are unable to make payments against the outstanding amount of the loans they have taken to purchase their boats.

33. The Applicants submit that for all three categories of fisherfolk, their levels of catch have been steadily declining since the construction work for the VBSL project commenced. It is noteworthy that the season for most of the breeding of fish falls between June to August, which in the past two years had resulted in negligible availability of fish. The Applicants submit that since there is little of no fish available presently, prior to the fish breeding seasons. They are once again anticipating complete loss of high revenue shell fish subsequent to August 2021, which will cause financial loss for the year.

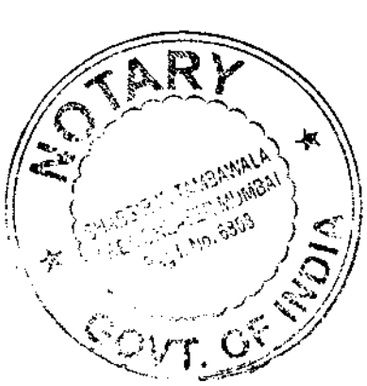
34. The Applicants submit that all categories of fishermen are having their navigational channels blocked. The Pillars of the VBSL and construction work undertaken thus far will obstruct the tidal flow of sea water and navigational channels of the local fishermen

NOTARY SHABBIR K. TAMBAWALA AREA GREATER MUMBAI Regd. No. 6803 GOVT. OF INDIA

thereby causing whirlpools and making it difficult to navigate and park small boats. In fact, the access roads being built in Carter Road/Band Stand area only allow for small gaps and slots through these roads through which the fishermen are expected to navigate and catch fish. Images of the blockages to the navigational channel of fishermen due to the VBSL project have been annexed hereto and marked as **Annexure A-12.**

35. The Applicants submit that the impediments/interference to the navigation routes of the Kolis have not been discussed with members of any of the four fishing villages. The local fisher communities have no idea what to anticipate, and how to prepare for construction works that have already commenced for the sealink, as they are unsure how their fishing routes will be affected. The fisherfolk are unable to park their boats upon the beaches due to the construction work being undertaken on the beach front. Further, the tidal flow disruptions will also affect ebb and flow of garbage out of intertidal areas also and reclamation in intertidal areas for the construction of access roads will expose Koliwadas to flooding.

36. The Applicants had also sent a detailed notice dated 26.12.2020 to the Respondent No.1 proposing Terms of Reference and the number and nature of expert members to be constituted to the Committee proposed by the State Government to examine the issues of the fisherfolk caused due to the construction of the VBSL. A copy of the letter dated 26.12.2020 of the Applicants has



been annexed hereto and marked as **Annexure A -13** .However, the Respondents have not altered the constitution of its Committee to meet the the number of members requested by the Applicants and has not adopted the Terms of Reference proposed by the Applicants. The Applicants received a letter dated 23.12.2020 from the Respondent 1 in January 2021 which showed that the Committee would have fewer members than proposed by the Applicants and would not represent all of the Applicant associations. A copy of the letter of the Respondent No. 1 dated 23.12.2020 has been annexed hereto and marked as **Annexure A-14.** The Applicants submit that following the said correspondence, no further developments have transpired with regards to the constitution or meeting of the said Committee.

DESTRUCTION TO THE ENVIRONMENT

37. The Applicants submit that on 02.01.2021, over 1000 sq m of mangroves were felled in the Carter road site for the VBSL connector, despite the fact that the plans for the project itself records that only 36 mangroves across 56 sq m of land required to be cut for the said connector. The Applicants therefore submits that the consistent manner in which the MSRDC exceeds its own commitments regarding how many mangrove trees it needs to cut cannot go unchecked by the Respondent Authorities and must be urgently addressed by the Respondent MCZMA, which must appropriately penalise the MSRDC for its fragrant violations of the CRZ Notification 2011. The Applicants submit that it is

noteworthy that General Condition No (iv) of the CRZ clearance dated 09.1.2013 allows the Respondent No. 3 to *"Revoke the clearance if conditions stipulated are not implemented to the satisfaction of the department"*

38. The Applicants submit that the illegal construction of these roads, particularly the reclamation undertaken for the building of the roads will permanently destroy the mangroves and sandy beaches that are the very geomorphic features of these coastal areas that are sought to be protected under the CRZ notification of 2011. It is noteworthy that mangroves are a unique ecosystem of their own, that grow in very particular circumstances which do not otherwise support most forms of flora. Several environmental factors must be aligned in order to support mangrove growth, such as marshy lands and uninterrupted access to saline water. scientific studies show that unless these factors are made available.Mangroves are protected as CRZ IA areas under clause 7(i)A(a) of the CRZ Notification of 2011

39. Para 4 of the judgment of this Hon'ble Court in PIL 86 of 2006 dated 17.09.2018 notes the importance of mangroves as follows,

"The mangroves play important role in protecting sea shores from erosion, high winds and cyclone;

Mangroves are strategically located between the land and sea and therefore, their importance is not merely in their forest value.

The mangroves act as a buffer between the land and sea and play a very important role in fighting tidal erosion. The presence of mangroves does away with the need for expensive sea walls.

The presence of mangroves on the fringes of the city like Mumbai which has one of the lowest open space ratios in the world ensures that some open spaces are kept open;

The mangroves are breeding grounds for a number of marine organism, such as shrimps, crabs and fish. The presence of mangroves keeps the fish relatively free from industrial and other pollution; and

The mangroves are also centres of biodiversity and are the most productive ecosystems. In Maharashtra, they house panthers, otters, jackals, wild cats, reptiles and birds of numerous varieties. It is pointed out that Thane creek is a home to about 1.5 million birds of 206 different species.

40. The Applicants submit that sand dunes and mudflats on beaches also play a similar role in acting as a barrier to the ingress and inundation of sea waters, and also are crucial in protecting the coastal integrity of the land. It is noteworthy that the dressing or altering of sand dunes is prohibited under Clause 3(xiii) of the CRZ notification and Clause 7 (i)A(c) protects sand dunes as CRZ IA areas, which constitute ecologically sensitive areas which play a role in maintaining the integrity of the coast.

41. The Applicants submit that the tidal flow of water will be permanently obstructed due to the construction of these cement access roads, thereby leaving the beach fronts at Bandra Reclamation, Carter Road and Juhu susceptible to dangerous flooding and also putting the local fisherfolk at risk while navigating their boats in the region due changes in tidal patterns that could cause whirlpools and rough waters.

42. As the Respondents have failed to take any action to stop such illegal work, the Applicants have been compelled to approach this Hon'ble Tribunal on the following amongst other grounds which are independent of each other and are without prejudice to one another.

GROUNDS

A. That the Respondent No. 1 is constructing access roads by way of reclamation in breach of the CRZ Clearance and in violation of the CRZ Regulations;

B. That the sites of construction of the "access roads" in Bandra reclamation, Carter Road and Juhu, which are challenged in the present Application clearly fall in CRZ IA areas as classified in Clause 7(i) A of the Notification and constituted inter alia, mangroves, corals, coral reefs *and associated biodiversity,* sand dunes, mudflats, horseshoe crab habitats.The said "access roads" themselves span several kilometers, and also cut through tidally influenced

portions of the beach classified under Clause 7(i)B of the Notification to be CRZ-IB areas, which are lands between the Low Tide Line and High Tide Line. The "access roads" extend into the sea, which is categorised to be CRZ IV under Clause 7(iv) of the Notification, so as to provide the Respondent No. 7 contractor a means to transport construction material and machineries into the midst of the sea ,where connectors of the VBSL project are proposed to be constructed.Neither the EC or CRZ clearance granted to the project allows the construction of permanent access roads

C. That Clause 8 of the CRZ Notification 2011 prohibits all new construction in CRZ I areas,with the exception of certain activities, inter alia, as provided under Clause 8(i)I(i)(e) which permits "*construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.*" in CRZ I areas and Clause 8(i)I(ii)(g)- "*construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water.*"in areas between LTL and HTL which are not ecologically sensitive .

D. Similarly, Clause 8(V)(1), which lays out special provisions for CRZ areas falling within municipal limits of Greater Mumbai. Clause 8(V) 1 (i) A (a) permits the, "*Construction of roads, approach roads and missing link roads approved in the Developmental Plan of Greater Mumbai on stilts*

ensuring that the free flow of tidal water is not affected,.....

E. That Clause 4 lists the full range of activities in CRZ areas that are regulated under the Notification. Clause 4(i)(g) provides that the "*construction of road by way of reclamation in CRZ area shall only be in exceptional cases, to be recommended by the concerned CZMA and approved by MoEF....*". Similarly Clause 3(iv) prohibits reclamation in CRZ areas, except for, inter alia, "*bridges, sealink, road onstilt, road on reclaimed surface without affecting tidal flow of water*".

F. That the Respondent No. 3 MoEF while granting CRZ Clearance dated 09.01.2013 to Respondent No. 1 for the VBSL project, stipulated that, in Para No. 8(iv) MoEF that "*there shall be no dredging and reclamation for this project*"

G. That the official position of the Respondent No. 1 is that the said roads are temporary in nature, and are allegedly only for the purpose of permitting construction material to be transported in and out of construction sites, and therefore cannot be considered to be roads required in "exceptional standards" as their utility, as per the Respondent No. 1 itself is short lived and temporary

H. That the fact that the roads appear to be permanent in nature is evident from the nature and extent of the dredging of sand, laying down of permanent cement blocks through reclamation to create the access road

I. That there has been no permission granted by the MoEFCC as per the CRZ Clearance to the project on 09.01.2013, which was extended on 07.02.2019 and further amended on 28.01.2020 or the Environmental Clearance dated 02.02.2017 for the construction of cement access roads for the VBSL project

J. That the Respondent Authorities have failed to stop the illegal activities of Respondent No.1 despite complaint filed by the Applicants

K. That the illegal construction of these roads, particularly the reclamation undertaken for the building of the roads will permanently destroy the mangroves and sandy beaches that are the very geomorphic features of these coastal areas that are sought to be protected under the CRZ notification of 2011

L. that since the CRZ Notification prohibits the construction of roads in CRZ I *areas other than those built on stilts,* the Respondent No. 3 MoEF while granting CRZ Clearance dated 09.01.2013 to Respondent No. 1 for the VBSL project, stipulated that, in Para No. 8(iv) MoEF that *"there shall be no dredging and reclamation for this project"*. Therefore, the present work of construction of access roads by way of reclamation is in direct violation of MoEF's CRZ Clearance.

M. that the dressing or altering of sand dunes is prohibited under Clause 3(xiii) of the CRZ notification and Clause 7 (i)A(c) protects sand dunes as CRZ IA areas, which

NOTARY SHABBIR K. TAMBAWALA AREA GREATER MUMBAI Regd. No. 6808 GOVT. OF INDIA

constitute ecologically sensitive areas which play a role in maintaining the integrity of the coast.

N. That notwithstanding the various protections granted to the ecologically sensitive CRZ areas that constitute the construction sites for the "access roads" both in the CRZ Notification of 2011 and the CRZ clearance as amended/renewed from time to time, the Respondent No.1 has commenced the dredging and reclamation of the natural sandy beaches and mangrove areas in Bandra Reclamation, Carter Road and Juhu to build cemented access roads for the VBSL connectors

O. That Clause 4(i)(g) of the CRZ Notification of 2011 the access roads presently being built by the Respondent MSRDC and Respondent Contractor would require study and assessment of the Respondent MCZMA, and subject to the recommendation of the Respondent MCZMA, the Respondent MoEFCC would also then assess the project prior to granting any potential clearance for the construction of the access roads

P. Sub- Clause (i) of Clause 4.2 of the CRZ Notification requires an extensive amount of details and information pertaining to the nature of the project, its environmental consequences and possible mitigation techniques to reduce and prevent environmental damage, along with details of the site of the project and its ecological features have to be studied at great length and detail by environmental experts

prior to any clearance being granted under the CRZ Notification of 2011. The recommendation of the MCZMA made after applying its mind to information about the project as submitted by the Project Proponent would then require to be "considered for clearance" by the MoEFCC or SEIAA as maybe necessary in terms of the provisions of Clause 4.2(ii) and Clause 4.2(iii)

Q. General Condition No (iv) of the CRZ clearance dated 09.1.2013 allows the Respondent No. 3 to *"Revoke the clearance if conditions stipulated are not implemented to the satisfaction of the department"* and therefore the said clearance should be revoked

R. that there has been no progress in the constitution of the Committee by the State Government to study and redress fisherfolks rights and issues in terms of the CRZ Clearance, dated 09.01.2013, which, in its "Specific Conditions", in point 8(ii) clearly states that the *"proponent shall comply with all the assurances made to the fishermen and local public, including provision of navigation channels, providing noise barriers at sensitive locations."*

S. that the soil testing work for the pillars of the VBSL has affected nearshore fishing activity. Siltation due to construction activity has affected the fragile ecology of the sea-bed and the productivity of the fishing grounds of the locals and thereby impacted their artisanal fishing practices.

Catch that was available in shallow waters, such as crabs, can no longer be caught with nets called *paags* and *peras,* the traditional nets has also become impossible.nets that have been cast by fisherfolk in the intertidal and subtidal areas have been damaged/destroyed. Further, the impediments/interference to the navigation routes of the Kolis have not been discussed with members of any of the four fishing villages. The local fisher communities have no idea what to anticipate, and how to prepare for construction works that have already commenced for the sealink, as they are unsure how their fishing routes will be affected. Lastly, the fisherfolk are unable to park their boats upon the beaches due to the construction work being undertaken on the beach front.

T. That the Respondents have failed to uphold the mandate of Article 48A of the Constitution which directs the State to protect and improve the environment.

U. The Hon'ble Supreme Court has held in the matter of *Ratheesh K.R v State of Kerala 2013 SccOnLine Ker 14359*

"We have found that the [sic: CRZ] Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification....

107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safe-guards essential for the preservation of environment.

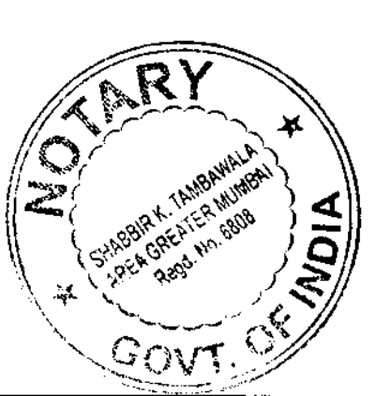
108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument"

V. That the Respondents have failed to uphold the mandate of Article 51A(g) of the Constitution which casts upon every

citizen a constitutional duty to protect and improve the environment;

W. That the precautionary principle requires that, if there is a strong suspicion that a certain activity may have environmentally harmful consequences, it is better to control that activity now rather than to wait for incontrovertible scientific evidence;

X. In the matter of *A.P. Pollution Control Board v. Prof. M.V. Nayudu & Ors. (AIR 1999 SC 812)* the Hon'ble Apex Court elucidated the the Precautionary Principle. The Hon'ble Supreme Court of India held that it is the inadequacies of science that has led to the Precautionary Principle of 1982. This principle is based on the theory that it is better to err on the side of caution and prevent environmental harm, which has the propensity to become irreversible. The principle of precaution involves the anticipation of environmental harm, and taking measures to avoid it or to choose the least environmentally harmful alternative. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential.



Y. That as per the Hon'ble Supreme Court of India in the judgment of *Lal Bahadur v. State of U.P., (2018) 15 SCC 407,* unplanned, chaotic Development will impair natural resources of the State in contravention of with the principle of intergenerational equity as guaranteed under Article 21 and the Public Trust Doctrine elucidated by the Hon'ble Supreme Court of India in *Enviro-Legal Action v Union of India* 1996 3 SCC 212.

Z. That as per the public trust doctrine upheld by the Honourable Supreme Court of India in the matter of *M.C Mehta v Kamal Nath and Ors.* (1997) 1 SCC 388, the public has the right to expect certain land and natural resources should retain their natural characteristics.

LIMITATION

43. It is respectfully submitted:

a. That the cause of action as specified in the present Application only became known to the Applicant on 25.10.2020 when work for the construction of the access roads commenced. Accordingly, the Applicants submit that the present Application is well within the 6 month Limitation period specified in Section 14 of the NGT Act, 2010.

b. The Applicants state that with regards to the other reliefs within the Application seeking restoration of the sites of construction of access roads in Juhu, Carter Road and Bandra Reclamation, along with compensation for consequent loss of livelihood, the actions of Respondent Authorities as stated hereinabove have harmed and continue to cause harm, destruction and degradation of the environment and ecology of the sites of construction of the "access roads" and therefore form a continuous cause of action against the said Respondents. It is therefore submitted that the Applicant is approaching this Learned Tribunal well within the limitation period prescribed under Section 15(3) of the National Green Tribunal Act, 2010 of 5 years and that even on this count, there is no delay.

PRAYERS

That this Honourable Tribunal be pleased to:

a. Prohibit the Respondent No. 1 from carrying out of any work in the nature of dumping or reclamation on the coast, in any CRZ IA, CRZIB or CRZIV areas for the Versova Bandra Sea Link project;

b. Direct the Respondents to remove the construction works undertaken thus far for the

NOTARY GOVT. OF INDIA SHABBIR K. TAMBAWALA A.R.C.A. GREATER MUMBAI Regd. No. 6668

illegal construction of these access roads restore the natural sandy beaches constituting CRZ IA and intertidal areas constituting CRZ IB areas of Juhu Koliwada, Carter Road and Bandra Reclamation to their natural conditions prior to the commencement of the construction of access roads at these sites;

c. Direct the Respondent No. 2,3 and 4 to inspect the extent and manner in which the Respondent No.1 is felling mangroves, dredging and reclaiming sandy beaches in contravention to the terms of the CRZ clearance dated 09.01.2013 as amended/renewed from time to time for the construction of the connectors of the VBSL project in Carter Road, Juhu and Versova and accordingly take appropriate steps to revoke the said CRZ clearance on account of non-compliance by the Respondent No.1 in terms of General Condition No. (iv) of the clearance;

d. Direct the Respondent 1, 2,5 and 6 to forthwith constitute and ensure the timely and consistent functioning of the proposed Committee to study and redress the issues faced by the local fisherfolk affected by the VBSL project, with

members representing the local fisherfolk as per the proposed membership and Terms of Reference as submitted by the Applicants in their representation dated 23.12.2020 at Annexure A - 13

e. Direct the Respondents 1, 2,5 and 6 to ensure that its Committee constituted in terms of prayer clause 'd' above, ensures that there is no hindrance in the fishing activities and navigational channels of the local fishermen in terms of Specific Condition No. 8(ii) the CRZ Clearance, dated 09.01.2013 and further assesses and determines the quantum of compensation due to the fisherfolk affected by the VBSL project for loss of livelihood suffered by them;

f. That pending hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to stop forthwith the carrying out of any works in the nature of dumping or reclamation on the coast, in intertidal areas, or in the sea for the Versova Bandra Sea Link project;

g. That pending hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the Respondents to remove the construction works undertaken thus far for the illegal construction of these access roads restore the natural sandy beaches constituting CRZ IA and intertidal areas constituting CRZ IB areas of Juhu Koliwada, Carter Road and Bandra Reclamation to their natural conditions prior to the commencement of the construction of access roads at these sites;

h. That pending hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to Direct the Respondent No. 2,3 and 4 to inspect the extent and manner in which the Respondent No.1 is felling mangroves, dredging and reclaiming sandy beaches in contravention to the terms of the CRZ clearance dated 09.01.2013 as amended/renewed from time to time for the construction of the connectors of the VBSL project in Carter Road, Juhu and Versova and accordingly take appropriate steps to revoke the said CRZ clearance on account of non-compliance by the Respondent No.1 in terms of General Condition No. (iv) of the clearance;

i. That pending hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the Respondent 1, 2,5 and 6 to forthwith constitute and ensure the timely and consistent functioning of the proposed Committee to study and redress the issues faced by the local fisherfolk affected by the VBSL project, with members representing the local fisherfolk as per the proposed membership and Terms of Reference as submitted by the Applicants in their representation dated 23.12.2020 at Annexure A - 13

j. That pending hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the Respondents 1, 2,5 and 6 to ensure that its Committee constituted in terms of prayer clause 'i' above, ensures that there is no hindrance in the fishing activities and navigational channels of the local fishermen in terms of Specific Condition No. 8(ii) the CRZ Clearance, dated 09.01.2013 and further assesses and determines the quantum of compensation due to the fisherfolk affected by the VBSL project for loss of livelihood suffered by them;

k. Ad - interim relief in terms of prayer clauses (f)(g)(h)(i) and (j);

g. For any other orders as this Hon'ble Tribunal deems fit

ADVOCATE

APPLICANT NO.1

(Vidnay Dyaneshwar Daile)

APPLICANT NO.2

(Anish Gawde)

APPLICANT NO.3

(Bhimsen Kopte)

NOTARY GOVT. OF INDIA
SHABBIR K. TAMBAWALA
AREA GREATER MUMBAI
Regd. No. 6808

APPLICANT NO.4

(Sandeek Kashinath Aglave)

APPLICANT NO.5

(Datta Vishnu Thalkar)

VERIFICATION

We, Vidnay Dyaneshwar Daile, the General Secretary of the Applicant No. 1, Mr Anish Gawde, President of the Applicant No. 2,Mr. Bhimsen Kopte, Chairman of the Applicant No. 3, Sandeek Kashinath Aglave, the authorised representative of the Applicant No. 4, Datta Vishnu Thalkar, the Applicant No. 5, do hereby state and solemnly declare that what is stated in paras No. **1** to_____ is true to our knowledge and whatever is stated in remaining paras is as stated on information and belief which we believe the same to be true.

APPLICANT NO.1

(Vidnay Dyaneshwar Daile)

APPLICANT NO.2

(Anish Gawde)

APPLICANT NO.3

(Bhimsen Kopte)

APPLICANT NO.4

(Sandeek Kashinath Aglave)

APPLICANT NO.5

(Datta Vishnu Thalkar)

TRUE COPY

BEFORE ME

S. K. TAMBAWALLA
ADVOCATE, HIGH COURT
B-23, Taheri Manzil
Nesbit Road, Mazgaon
Mumbai - 400 010
22/4/22

NOTARY & REGISTERED
Sr. No. 961 dt. 22/4/22

PLACE: Mumbai

DATE: 22/4/22

NOTARY SHABBIR K. TAMBAWALLA AREA GREATER MUMBAI Regd. No. 6808 GOVT. OF INDIA

ANNEXURE A-7

AIR 2011 SUPREME COURT 9

(From : Delhi)*

R. V. RAVEENDRAN AND H. L. GOKHALE , JJ.

Civil Appeal No.8321 of 2010 (arising out of S.L.P. (C) No. 11328 of 2010), D/-27 -9 -2010.

Alka Gupta v. Narender Kumar Gupta .

(A) Civil P.C. (5 of 1908) , O.2 , R.2 -Bar to suit under - In absence of plea by defendant as to bar under O.2, R.2 and in absence of issue thereon - Suit cannot bedismissed as barred under O.2, R.2.

2009 (162) DLT 593, Reversed.

Unless the defendant pleads the bar under O. 2, R. 2 and an issue is framed focusing the parties on that bar to suit, obviously the Court cannot examine or reject a suit on that ground. The pleadings in the earlier suit should be exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action. In the instant case, the defendant did not contend that suit was barred by O. 2, R. 2. No issue was framed as to whether the suit was barred by O. 2, R. 2. Therefore dismissal of suit being barred under O. 2, R. 2 would be illegal.

2009 (162) DLT 593, Reversed. (Paras 7 , 9)

(B) Civil P.C. (5 of 1908) , S.11 , O.2 , R.2 - Res judicata and bar to suit under O.2, R.2 - Pleas as to - Are different and one will not include other.

Res judicata relates to the plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas O. 2, R. 2 of CPC requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. (Para 9)

(C) Civil P.C. (5 of 1908) , O.2 , R.2 -Bar to second suit - Cause of action

@page-SC10

in second suit - Completely distinct and different than cause of action in first suit - Bar under O.2, R.2, not attracted.

2009 (162) DLT 593, Reversed.

In the instant case the cause of action for the first suit was non payment of price under the agreement of sale dated 29-6-2004, whereas the cause of action for the second suit was non-settling of accounts of a dissolved partnership constituted under deed dated 5-4-2000. The two causes of action are distinct and different. O. 2, R. 2 would come into play only when both suits are based on the same cause of action and the plaintiff had failed to seek all the reliefs based on or arising from the cause of action in the first suit without leave of the Court. Merely because the agreement of sale related to an immovable property and the business run therein under the name of 'Takshila Institute' and the second suit referred to a partnership in regard to business run at other place also under the same name of Takshila Institute, it cannot be assumed that the two suits relate to the same cause of action. Further, while considering whether a second suit by a party is barred by O. 2, R. 2 all that is required to be seen is whether the relief's claimed in both suits arose from the same cause of action. The Court is not expected to go into the merits of the claim and decide the validity of the second claim. The strength of the second case and the conduct of plaintiff are not relevant for deciding whether the second suit is barred by O. 2, R. 2.

2009 (162) DLT 593, Reversed. (Paras 7 , 11 , 12)

(D) Civil P.C. (5 of 1908) , S.11 -Constructive res judicata - Plea must be clearly established - Plaintiff who is sought to be prevented by bar of constructive res judicata should have notice about plea and have an opportunity to put forth his contentions against same - It was not shown as to what was ground of attack that plaintiff ought to have raised in first suit but had failed to raise, which she raised in second suit - Second suit thus would not be barred by constructive res judicata . (Para 15)

(E) Civil P.C. (5 of 1908) , Pre. , O.15 , R.1 -Civil suit - To be decided in accordance with law and provisions of Civil P.C. - Not on whims

of Court. **(Para 16)**

(F) Civil P.C. (5 of 1908) , Pre. , O.14 , R.1 -Civil suit - Cannot be dismissed with out trial - Merely because Court feels dissatisfied by conduct of plaintiff.

2009 (162) DLT 593, Reversed.

Where the summons have been issued for settlement of issues, and a suit is listed for consideration of a preliminary issue, the Court cannot make a roving enquiry into the alleged conduct of the plaintiff, tenability of the claim, the strength and validity and contents of documents, without a trial and on that basis dismiss a suit. A suit cannot be shortcircuited by deciding issues of fact merely on pleading and documents produced without a trial. A suit cannot be dismissed without trial merely because the Court feels dissatisfied with the conduct of the plaintiff.

2009 (162) DLT 593, Reversed. (Para 19)

(G) Civil P.C. (5 of 1908) , O.15 , R.3 -Applicability - Summons issued for settlement of issues - Issues settled - Therefore, unless parties agree, Court cannot deny right of parties to lead evidence - To render final decision by denying such opportunity would be highhanded arbitrary and illegal. (Para 19)

(H) Civil P.C. (5 of 1908) , Pre. , O.15 , R.1 -Natural justice - Branding plaintiff as unscrupulous person who abuses process of Court and manipulates documents - Without there being trial and without giving plaintiff to explain her conduct - Opposed to principles of natural justice embodied in Code of Civil Procedure.

Constitution of India , Art.14 .

Court recorded factual findings on inferences from the plaintiffs (appellant) conduct and branded her as an unscrupulous person who abuses the process of Court and

@page-SC11

as a person who utters falsehoods and manipulates documents without there being a trial and without there being an opportunity to the plaintiff to explain her conduct. Such a procedure is opposed to all principles of natural justice embodied in the Code of Civil Procedure. At all events, the alleged weakness of the case of the plaintiff or unscrupulousness of plaintiff are not grounds for dismissal without trial. (Para 21)

Cases Referred :	**Chronological Paras**
AIR 1990 SC 1607 : 1991 AIR SCW 2226 :1990 Lab IC 1304 (Ref.)	15
AIR 1986 SC 391 (Ref.)	15
AIR 1964 SC 1810 (Ref.)	9
1947 (2) All ER 257	15

Aman Lekhi, Sr. Advocate, Mrs. Meenakshi Lekhi, Sachin Jain, Madhur Jain, Sanjai Kumar Pathak for Appellants; P. C. Agarwal, Sr. Advocate, Aditya K. Dubey, Varun Thakur, Ramesh Babu, M. R. Ambuj Agarwal, for Respondent.

**R.F.A. (OS) 60 of 2009 D/- 7-9-2009 (Reported in 2009 (162) DLT 593)*

Judgement

R. V. RAVEENDRAN, J. :-Leave granted. Heard. For convenience the appellant and respondent will also be referred to by their ranks in the suit, as 'plaintiff and 'defendant' respectively.

2. The appellant and respondent entered into a partnership as per deed dated 5.4.2000 to run an Institute for preparing students for competitive examinations, under the name and style of 'Takshila Institute', at No. F-19, LSC, Bhera Enclave, Paschim Vihar, New Delhi.

3. On 29.6.2004, the appellant entered into an "agreement to sell" (Bayana Agreement) under which she agreed to sell the property described as follows :

"An undivided half share, second floor (without roof rights) of built up property bearing No. 8, Pocket and Block C9, Sector-8, Rohini, Delhi-110 085, built on a plot of land area measuring 158.98 Sq.m. and 50% share of M/s. Takshila Institute established in the above said property which is hereby agreed to be sold includes all rights, titles, interests, goodwill, electricity equipment, furniture, fixtures including passages, easements facilities privileges etc., which attached thereto or connected therewith."

Clause 13 of the said agreement clarified that the property agreed to be sold included the goodwill of the firm M/s. Takshila Institute, having its office at C-9/8, Sector 8, Rohini, Delhi-85 in which the first party is also the partner of 50% and included all rights, interest, claims, title, fittings, furniture, fixtures and all equipment.

4. Under the said agreement, the total consideration agreed was Rs. 21,50,000/- and the appellant received Rs. 750,000/- as advance. The appellant claimed that in pursuance of the said agreement, she executed a sale deed in regard to the immovable property for Rs. 200,000/- and that the respondent promised to pay the balance of Rs. 12 lakhs in regard to the other rights and interest agreed to be sold under agreement of sale dated 29.6.2004. She filed Suit No. 16/2006 in the District Court, Delhi for recovery of Rs.12 lakhs under the said agreement dated 29.6.2004, alleging that respondent had paid in all Rs. 9.5 lakhs towards the agreed price. The said Suit No. 16/2006 was decreed in favour of the appellant on 25.11.2006, directing respondent to pay Rs. 12 lakhs with interest at 7% per annum with effect from 30.8.2004.

5. Thereafter the appellant filed another suit - C.S. (O.S.) No. 302/2007 in the Delhi High Court against the respondent, for rendition of accounts for the period 5.4.2000 to 31.7.2004, in regard to the partnership firm of Takshila Institute constituted under deed of partnership dated 5.4.2000. In that suit, the appellant alleged that the said partnership was at will and it was dissolved by implication on 31.7.2004, when respondent filed Suit No. 438/2004 against the appellant (and others) for an injunction. She also sought a decree against the respondent for her share of profits in the said partnership and for a decree for Rs. 25.28 lakhs or higher amount in regard to the share of plaintiff with interest thereon. The said suit was resisted by the respondent. Three preliminary grounds of objections

@page-SC12

were raised in regard to the maintainability of the suit; (a) that the suit was barred by res judicata; (b) that the suit was barred under Section 69 of the Partnership Act, 1932, as it related to an unregistered partnership; and (c) that the suit was liable to be dismissed for material suppression of facts and approaching the court with unclean hands. It was alleged that parties were close relatives and appellant being a government servant, was only a sleeping partner. It was contended that by the agreement of sale dated 29.6.2004, the partnership under deed dated 5.4.2000 was dissolved and all claims of appellant were settled.

6. The issues in the said suit were framed on 17.1.2008 with a direction that the first issue, extracted below, be treated as a preliminary issue :

"Whether the suit is barred by the principle of res judicata as issue raised in the suit has been directly and substantially been adjudicated between the plaintiff and the defendant in suit No. 16/2006 titled as Alka Gupta v. Narender Kumar Gupta vide an order dated 25.11.2006 by a. competent court?

By order dated 13.3.2009, the trial bench (learned Single Judge of the High Court) held that the suit was liable to be dismissed summarily on the following grounds : (i) The appellant had abused the process of court; (ii) the appellant was an unscrupulous person and the suit was based on falsehoods; (iii) the partnership dated 5.4.2000 was illegal and unenforceable as appellant was a government servant; (iv) the suit was barred by Order 2, Rule 2 of the Code of Civil Procedure ('Code' for short); and (v) the suit was barred by principle of constructive res judicata. The suit was accordingly dismissed with costs of Rupees Fifty Thousand. In the preamble to the said order, the trial court observed that on 12.1.2009, when arguments were on the preliminary issue, it was clarified that arguments were being heard not only on the said preliminary issue, but also the question as to why independent of section 11 and Order 2, Rule 2 of the Code, the suit should not be dismissed summarily on the ground of re-litigation and abuse of process of court. It is further stated that on 16.1.2009, the statement of plaintiff (appellant herein) was recorded and arguments on various aspects were heard on 16.1.2009 and 21.1.2009.

7. Feeling aggrieved, the appellant filed an appeal. An appellate bench of the High Court, by the

impugned judgment dated 7.9.2009, dismissed the appeal. The appellate bench affirmed the decision of the trial bench. It however held that as it was agreeing with the learned Single Judge that the suit was barred by Order 2, Rule 2 of the Code and that the appellant had settled all her claims with the respondent under the Bayana Agreement dated 29.6.2004, it was not necessary to decide upon the question as to whether the partnership deed dated 5.4.2000 could be enforced in a court or not. The said order is challenged in this appeal by special leave.For the reasons following, we are of the view that the orders of the learned Single Judge and the Division Bench which ignore several basic principles of Code of Civil Procedure cannot be sustained.

I.A suit cannot be dismissed as barred by Order 2, Rule 2 of the Code in the absence of a plea by the defendant to that effect and in the absence of an issue thereon.

8. We may extract Order 2, Rules 1 and 2 of the Code for ready reference :

"1. Frame of suit: Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Suit to include the whole claim : (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim : Where a plaintiff omits to sue in respect

@page-SC13

of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs : A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

The object of Order 2; Rule 2 of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2, Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.

9. This Court in Gurbux Singh v. Bhoora Lal [AIR 1964 SC 1810] held :

"In order that a plea of a bar under O. 2, R. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar."

Unless the defendant pleads the bar under Order 2, Rule 2 of the Code and an issue is framed focusing the parties on that bar to the suit, obviously the court cannot examine or reject a suit on that ground. The pleadings in the earlier suit should be exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action. In this case, the respondent did not contend that the suit was barred by Order 2, Rule 2 of the Code. No issue was framed as to whether the suit was barred by Order 2, Rule 2 of the Code. But the High Court (both the trial bench and appellate bench) have erroneously assumed that a plea of res judicata would include a plea of bar under Order 2, Rule 2 of the Code. Res judicata relates to the

plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas Order 2, Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. The dismissal of the suit by the High Court under Order 2, Rule 2 of the Code, in the absence of any plea by the defendant and in the absence of an issue in that behalf, is unsustainable.

II. The cause of action for the second suit being completely different from the cause of action for the first suit, the bar under Order 2, Rule 2 of the Code was not attracted.

10. The first suit was for recovery of balance price under an agreement of sale. The agreement dated 29.6.2004 was not an agreement relating to dissolution of the firm constituted under deed of partnership dated 5.4.2000, or settlement of the accounts of the said partnership. The agreement of sale made it clear that it related to sale of the undivided half share in the second floor at Rohini, 50% (property bearing No. 8, Pocket and Block C-9, Sector-8, Rohini, Delhi-110085) and 50% share of the business

@page-SC14

that was being run in that premises, that is premises at Rohini. The second suit was for rendition of accounts in pursuance of the dissolution of the firm of Takshila Institute constituted under deed of partnership dated 5.4.2000, carrying on business at Bhera Enclave, Paschim Vihar, Delhi-110087 and for payment of the amounts due on dissolution of the said firm.

11. The pleadings in the two suits make it clear that both parties proceeded on the basis that the partnership between appellant and respondent under deed dated 5.4.2000 was only in regard to the business run under the name and style of 'Takshila Institute' at Bhera Enclave, Paschim Vihar, Delhi-110087. The appellant proceeded on the basis that the property at Rohini and the business carried therein under the name of Takshila Institute, was not a part of the partnership business under deed dated 5.4.2000. Even the respondent in his written statement in the first suit asserted that the partnership dated 5.4.2000 between appellant and respondent did not extend to Takshila Institute at Rohini or other places. In fact appellant clearly contended that respondent was carrying on business under the same name of Takshila Institute at Janakpuri, Ashok Vihar and Kalu Sarai in Delhi and also at Dehradun and Palampur, but they were not partnership businesses. The respondent in his written statement asserted that he alone was carrying on business at those places under the name of Takshila Institute. Therefore, the court could not, before trial, assume that the sale of appellant's share in the immovable property at Rohini and the goodwill and assets of the business carried on at Rohini under the name of Takshila Institute should be taken as relinquishment or retirement or settlement of share in regard to the partnership business of Paschim Vihar Takshila Institute.

12. The cause of action for the first suit was non-payment of price under the agreement of sale dated 29.6.2004, whereas the cause of action for the second suit was non-settling of accounts of a dissolved partnership constituted under deed dated 5.4.2000. The two causes of action are distinct and different. Order 2, Rule 2 of the Code would come into play only when both suits are based on the same cause of action and the plaintiff had failed to seek all the reliefs based on or arising from the cause of action in the first suit without leave of the court. Merely because the agreement of sale related to an immovable property at Rohini and the business run therein under the name of 'Takshila Institute' and the second suit referred to a partnership in regard to business run at Pachhim Vihar, New Delhi, also under the same name of Takshila Institute, it cannot be assumed that the two suits relate to the same cause of action. Further, while considering whether a second suit by a party is barred by Order 2, Rule 2 of the Code, all that is required to be seen is whether the reliefs claimed in both suits arose from the same cause of action. The court is not expected to go into the merits of the claim and decide the validity of the second claim. The strength of the second case and the conduct of plaintiff are not relevant for deciding whether the second suit is barred by Order 2, Rule 2 of the Code.

III. The second suit was not barred by constructive res judicata.

13. The learned trial bench passed the order on

13.3.2009 on the preliminary issue (Issue No. 1) relating to res judicata. But there is absolutely no discussion in the order of the learned Single Judge in regard to the bar of res judicata except the following observation at the end of the order : "Of course it cannot be said that the present suit is barred by res judicata inasmuch as the said claims were not decided in that case. But the principle of constructive res judicata is applicable." This was not interfered by the appellate bench. Both proceeded on the basis that the suit was not barred by res judicata, but barred by principle of constructive res judicata without assigning any reasons. Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication

@page-SC15

of his claim. The plea must be clearly established, more particularly where the bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put forth his contentions against the same. In this case, there was no plea of constructive res judicata, nor had the appellant plaintiff an opportunity to meet the case based on such plea.

14. Res judicata means 'a thing adjudicated' that is an issue that is finally settled by judicial decision. The Code deals with res judicata in section 11, relevant portion of which is extracted below (excluding Explanations I to VIII) :

"11. Res judicata . - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court".

Section 11 of the Code, on an analysis requires the following essential requirements to be fulfilled, to apply the bar of res judicata to any suit or issue :

(i) The matter must be directly and substantially in issue in the former suit and in the latter suit.

(ii) The prior suit should be between the same parties or persons claiming under them.

(iii) Parties should have litigated under the same title in the earlier suit.

(iv) The matter in issue in the subsequent suit must have been heard and finally decided in the first suit.

(v) The court trying the former suit must have been competent to try particular issue in question.

To define and clarify the principle contained in Section 11 of the Code, eight Explanations have been provided. Explanation I states that the expression 'former suit' refers to a suit which had been decided prior to the suit in question whether or not it was instituted prior thereto. Explanation II states that the competence of a court shall be determined irrespective of whether any provisions as to a right of appeal from the decision of such court. Explanation III states that the matter directly and substantially in issue in the former suit, must have been alleged by one party or either denied or admitted expressly or impliedly by the other party. Explanation IV provides that any matter which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. The principle of constructive res judicata emerges from Explanation IV when read with Explanation III both of which explain the concept of "matter directly and substantially in issue".

15. Explanation III clarifies that a matter is directly and substantially in issue, when it is alleged by one party and denied or admitted (expressly or impliedly) by the other. Explanation IV provides that where any matter which might and ought to have been made a ground of defence or attack in the former suit, even if it was not actually set up as a ground of attack or defence, shall be deemed and regarded as having been constructively in issue directly and substantially in the earlier suit. Therefore, even though a particular ground of defence or attack was not actually taken in the earlier suit, if it was capable of being taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata. Constructive res judicata deals with grounds of attack and defence which ought to have been raised, but not raised, whereas Order 2, Rule 2 of

the Code relates to reliefs which ought to have been

@page-SC16

claimed on the same cause of action but not claimed. The principle underlying Explanation IV to Section 11 becomes clear from Greenhalgh v. Mallard [1947 (2) All ER 257] thus :

"....it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised thatit would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

(Emphasis supplied)

In Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra [1990 (2) SCC 715] : (AIR 1990 SC 1607 : 1991 AIR SCW 2226), a Constitution Bench of this Court reiterated the principle of constructive res judicata after referring to Forward Construction Co. v. Prabhat Mandal [1986 (1) SCC 100] : (AIR 1986 SC 391) thus :

"an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence."

In this case the High Court has not stated what was the ground of attack that plaintiff-appellant ought to have raised in the first suit but had failed to raise, which she raised in the second suit, to attract the principle of constructive res judicata. The second suit is not barred by constructive res judicata.

IV.A suit cannot be dismissed without trial merely because the court feels dissatisfied with the conduct of the plaintiff.

16.Code of Civil Procedure is nothing but an exhaustive compilation-cum-enumeration of the principles of natural justice with reference to a proceeding in a court of law. The entire object of the Code is to ensure that an adjudication is conducted by a court of law with appropriate opportunities at appropriate stages. A civil proceeding governed by the Code will have to be proceeded with and decided in accordance with law and the provisions of the Code, and not on the whims of the court. There are no short-cuts in the trial of suits, unless they are provided by law. A civil suit has to be decided after framing issues and trial permitting the parties to lead evidence on the issues, except in cases where the Code or any other law makes an exception or provides any exemption.

17. The Code enumerates the circumstances in which a civil suit can be dismissed without trial. We may refer to them (not exhaustive) :

(a) Dismissal as a consequence of rejection of plaint under Order 7, Rule 11 of the Code in the following grounds : (i) where it does not disclose a cause of action; (ii) where the relief in the plaint is undervalued and plaintiff fails to correct the valuation within the time fixed; (iii) where the court fee paid is insufficient and plaintiff fails to make good the deficit within the time fixed by court : (iv) where the suit appears from the statement in the plaint to be barred by law; (v) where it is not filed in duplicate and where the plaintiff fails to comply with the provisions of Order 7, Rule 9 of the Code.

(b) Dismissal under Order 9, Rule 2 or Rule 3 or Rule 5 or Rule 8 for non-service of summary or non-appearance or failure to apply for fresh summons.

(c) Dismissal under Order 11, Rule 21 for non-compliance with an order to answer interrogatories, or for discovery or inspection of documents.

(d) Dismissal under Order 14, Rule 2(2) where issues both of law and fact arise in the same suit and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only and it

@page-SC17

tries such issue relating to jurisdiction of the court or a bar to a suit created by any law for the time being in force first and dismisses the suit if the

decision on such preliminary issue warrants the same.

(e) Dismissal under Order 15, Rule 1 of the Code when at the first hearing of the suit it appears that the parties are not at issue on any question of law or fact.

(f) Dismissal under Order 15, Rule 4 of the Code for failure to produce evidence.

(g) Dismissal under Order 23, Rules 1 and 3 of the Code when a suit is withdrawn or settled out of court.

18. The following provisions provide for expeditious disposal in a summary manner :

(i) Order V, Rule 5 of the Code requires the court to determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit (and the summons shall have to contain a direction accordingly). In suits to be heard by a court of small causes, the summons shall be for the final disposal of the suit.

(ii) Order 15, Rule 3 of the Code provides where the parties are at issue on some question of law or of fact, and issues have been framed by the court as hereinbefore provided, if the court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit. (But where the summons has been issued for the settlement of issues only, such a summary course could be adopted only where the parties or their pleaders are present and none of them objects to such a course).

(iii) Order 37, Rule 1 read with Rules 2 and 3 of the Code relating to summary suits.

19.But where the summons have been issued for settlement of issues, and a suit is listed for consideration of a preliminary issue, the court cannot make a roving enquiry into the alleged conduct of the plaintiff, tenability of the claim, the strength and validity and contents of documents, without a trial and on that basis dismiss a suit. A suit cannot be shortcircuited by deciding issues of fact merely on pleadings and documents produced without a trial.In this case; the learned Single Judge has adjudicated and decided questions of fact and rendered a judgment, without evidence tested by cross-examination. We extract below some of the reasonings, findings, assumptions and conclusions of the learned Single Judge leading to the dismissal of the suit when hearing a preliminary issue relating to res judicata, thereby demonstrating assumption of a jurisdiction not vested in it and also acting in the exercise of its jurisdiction illegally and with material irregularity :

"What emerges from the aforesaid is that the plaintiff at the time of inception of the partnership and till date is a government teacher and under the terms of her employment was not entitled to enter into the partnership and was not entitled to earn any profits therefrom. Not only under the terms of her employment,the plaintiff before the Service Tax Authorities also represented that she had only academic interest. It can only mean that she had no profit interest in the partnership.Though the plaintiff has denied that she has filed the clearance certificate aforesaid with the government school in which she is employed but the purpose of plaintiff obtaining the said clearance certificate from the defendant can only be to use the same in the event of any complaint of breach of terms of employment being made against her.

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Thequestion which arises for adjudication

@page-SC18

is whether a litigant can be permitted to take a stand in the court, diametrically opposite to the stand of that litigant elsewhere. Can there be different stands before the government as employer and before the Taxation Authorities and before the court. Should the courts permit such stand to be taken in the course of judicial proceedings and should the courts come to the rescue of such a litigant in recovering dues which that litigant elsewhere has represented are not due to her.

The aforesaid circumstances leave no manner of doubt that the plaintiff in contravention of the terms of her employment was carrying on business as a partner with the defendant. The question is of enforcement of such a partnership and or the terms thereof by the court.

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In the present case the condition in the term of the employment of the plaintiff as a government teacher, admittedly prohibit her from carrying on any business activity or other vocation for profits. Such condition has been imposed to ensure that the teachers of the government school devote their full energy and time to developing the young minds, rather than treating the government service as a mere source of income and utilizing their time and skill in earning/making money elsewhere. The plaintiff by entering into the agreement of partnership with the defendant had clearly violated her terms of employment and this Court cannot come to her assistance to enable her to earn profits which she otherwise is not entitled. The plaintiff has admitted to having not shown any profits whatsoever in her Income Tax return. It is inconceivable that the plaintiff who has claimed to be in partnership since the year 1999 or 2000 would not have earned any profits from the partnership and/or if would not have earned would have sat quietly for four years. The plaintiff cannot be permitted to take different stands before different fora. The condition/term of employment prohibiting the plaintiff from entering into partnership is found to be in public interest and the action of the plaintiff of breaching/violating the same is found to be immoral and opposed to public policy. The breach is not found to be trivial or venial. Further, the conduct of the plaintiff thereafter also, as noted above is found to be of subterfuge and plaintiff has been found to be misstating facts.The plaintiff is found to be an unscrupulous person and her case is found to be based on falsehood. This Court refuses to come to the aid of plaintiff and her case is liable to be dismissed summarily.

That even on the facts of this case, I have no doubt that the plaintiff has abused the process of the court. The plaintiff in the Bayana Agreement aforesaid had clearly agreed to the sum of Rs. 21.50 lacs towards her share in the partnership firm inclusive of the value of the Rohini property where the partnership business was being carried on. As far as the Paschim Vihar property is concerned, the issue with respect whereto was raised, the same also finds mention in the said Bayana Agreement and the receipt.The conduct of the plaintiff also shows that all accounts had been settled and no accounts remained to be taken and for which purpose the suit had been filed. Had the accounts not been settled, the question of the plaintiff instructing the bank to delete her name from the account in the name ofthe firm and of receiving the original Bayana Agreement and of obtaining the clearance certificate aforesaid would not have arisen. The case set up by, the plaintiff is contrary to all the admitted documents.

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I find the present case to be clear beyond all reasonable doubts. The Bayana Agreement and Receipt admittedly executed by plaintiff and the averments of plaintiff in plaint in earlier suit instituted by plaintiff, permit of no controversy. The consideration mentioned therein was in settlement of all claims of plaintiff with respect to her share in partnership. The

@page-SC19

contemporaneous conduct of plaintiff, of statement on 13th August, 2004 in suit No. 438/2004 instituted by defendant; of taking clearance certificate dated 13th August, 2004 from defendant, of having her name as signatory deleted from the bank account of firm are also in consonance with said documents.The facts of this case do not require any opportunity for leading evidence to be given to the plaintiff. This Court cannot put a case contrary to such documents and conduct to be put to trial.The explanations now given during arguments do not form the basis of suit and pleadings."

(Emphasis supplied)

The observation of the learned Single Judge that "the facts of this case do not require any opportunity for leading evidence to be given to the plaintiff' violates Order 15, Rule 3 of the Code. Where summons have been issued for settlement of issues and where issues have been settled, unless

the parties agree, the court cannot deny the rights of parties to lead evidence. To render a final decision by denying such opportunity would be highhanded, arbitrary and illegal.

20. Even the Division Bench committed the same error. We extract below para 14 of the impugned order which shows that the decision was based on assumption without basis and in the absence of evidence freely referring to and relying upon unexhibited documents :

"This is not the case of the plaintiff/appellant that the firm was maintaining separate accounts, one for the business being run by it in Rohini and the other for the business being run in Paschim Vihar. Ordinarily, when there is a Settlement between the partners of the firm whereby they agree to part ways, the Settlement effected between them would cover accounts of the entire business being run by them in partnership and it would not be confined only to one part of the business. This is moreso when the document executed between the parties at the time of parting ways and setting the disputes does not reserve any right in favour of the outgoing partner, to receive any further payment from the partner who retains the business of the erstwhile firm.In none of the documents executed between the parties, there is an averment that the accounts of business being run in Paschim Viharhad not been settled or that the plaintiff/appellant would not, in addition to the sum referred in the document, also be entitled to share of the profit earned by the firm from its business in Paschim Vihar. Vide endorsement made on the receipt dated 29.6.2004, the husband of the appellant recorded that Paschim Vihar Institute Deed would be settled in the name of Dr. Rashmi Gupta for the consideration of Rs. 15 lakhs.This is yet another proof of the fact that the matter relating to Paschim Vihar Institute had also been finally settled between the parties.During the course of arguments before us, it was contended by learned counsel for the appellant that the endorsement was made by the husband of the appellant without authority from her. Since we noticed a gentleman giving instructions to the learned counsel for the appellant, during the course of the hearing before us, we asked her as to who the gentleman was and we were told that he was none other than the husband of the appellant.This leaves no doubt in our mind that the husband of the appellant was acting on authority from her when he made endorsements on the Bayana Agreement and Receipt dated 29.6.2004.The shifting stands taken before him have been noted in detail, by the learned Single Judge.

(Emphasis supplied)

21.The High Court recorded factual findings on inferences from the plaintiff's (appellant) conduct and branded her as an unscrupulous person who abuses the process of court and as a person who utters falsehoods and manipulates documents without there being a trial and without there being an opportunity to the plaintiff to explain her conduct. To say the least, such a procedure is opposed to all principles of natural justice embodied in the Code of

@page-SC20

Civil Procedure. At all events, the alleged weakness of the case of the plaintiff or unscrupulousness of plaintiff are not grounds for dismissal without trial.

22. We also fail to understand how costs of Rs. 50,000/- could be levied. This Court has repeatedly stated that in dealing with civil suits, courts will have to follow the provisions of Code of Civil Procedure in levying costs.

23. This order should not be construed as a finding on the conduct of the appellant one way or the other. We have examined the matter only for the limited purpose of finding out whether the High Court had proceeded in accordance with law and the provisions of Code of Civil Procedure. If on evidence, the conduct of the plaintiff or the defendant is found to be unscrupulous or unbecoming, it is open to the court at that stage to decide upon the consequences that should be visited upon her or him.

24. We therefore allow this appeal, set aside the order of the Division Bench of the High Court dated 7.9.2009 affirming the order dated 13.3.2009 of the learned Single Judge and restore the suit to the file of the High Court with a direction to decide the same in accordance with law, after giving due opportunity to the parties to lead evidence.

ANNEXURE A-8

AIR 2019 SC (Supp) 365
SUPREME COURT
: AIROnline 2019 SC 495
A. K. SIKRI , J. and S. ABDUL NAZEER , J. and M. R. SHAH , J.

Civil Appeal No. 5016 of 2016 With C. A. Nos. 8002-8003, 12326, 9227, 10995, 10993, 10994, 10992, 12157, 12152, 12156, 12158, 12160, 12159 of 2016, C. A. Nos. 4923-4924, 1343, 14966 of 2017, C. A. No. 2246 of 2018, D/- 5 - 3 - 2019

Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors.

(A)National Green Tribunal Act (19 of 2010), S.15 - Compensation and restriction - Allotment of land for Software Technology Park, Commercial and Residential complex, hotel and multilevel car parks - National Green Tribunal's order enlarging buffer zone limits around lakes and water bodies in Bengaluru - Definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects - Conclusion arrived by Tribunal supported by documents, Committee's report and inspection note of the Expert Members - Imposition of penalty on builder are valid and sustainable and does not suffer from any perversity.

In the present case Tribunal has pointed out on the basis of the Committee report appellant had encroached 3 acres 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. There is a definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects. Findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the Expert Members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

(Paras52 54)

(B)National Green Tribunal Act (19 of 2010), S.14, S.15 - Limitation - National Green Tribunal's for enlarging buffer zone limits around lakes and water bodies in Bengaluru - Environmental degradation would give rise to independent cause of action and thus petition under S. 15 and not under S. 14 to be filed within 5 years from date on which cause for such compensation or relief first arose.

It was an application where a specific prayer has been made with reference to Lake Development Authority's ('LDA') Report and the Ministry of Environment, Forest and Climate Change ('MoEF') Monitoring Committee Report for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious

@page-SC366

adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act

and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

(Para49)

(C)Civil P.C. (5 of 1908), S.11 - Res judicata - Writ petition filed by respondent subsequently impleaded - Plea of Res judicata - Neither parties are common nor issues are same in application and in writ petitions - No commonality of cause of action or likelihood of conflict between judgments - Prayers and geneses of respective proceedings are entirely distinct and different in their scope and relief -Issues before Tribunal relate to environment, ecology and its restoration while proceedings before High Court relate acquisition of land, its allotment and transfer to third party - Application not barred by Res judicata.

(Paras57 59)

Cases Referred	**Chronological Paras**
AIR 2007 SC 1819 : 2007 AIR SCW 3032	44
AIR 1962 SC 1314	37

Udaya Holla, Adv. General, Shashi Kiran Shetty, Maninder Singh, Dharuv Mchta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms. Kiran Suri, Basavaprabhu S. Patil, Sr. Advs.. Mahesh Thakur, Ms. Anuparna Bordoloi, Savyasachi Sahai, Ms. Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s. Devasa and Co., Devashish Bharuka. Justine George, Prabhas Bajaj, Ms. Kanika S., Ravi Bharuka, Ms. Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P, Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, M/s. Devasa and Co., Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna Madhavam Sharma, Ms. Sriparna Dutta Choudhrury, Udayaditya Banerjee, Mahesh Agrwal, Ankur Saigal, Sarans Jain, Ms. Tanvi Manchanda, Nithin P., Ms. Priyanka M.P., E. C. Agrawala, Devashish Bharuka, S.J. Amith, Ms. Rithika Gambir, A. Shwarya Kumar, Dr. (Mrs.) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O. P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms. Pankhuri Bhardwaj, Pai Amit, Advs. with them for Appearing Parties.

Judgement

1. S. ABDUL NAZEER, J. :-These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity 'NGT Act') challenging the judgment and order dated 07.05.2015 and 04.05.2016 respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short 'the Tribunal').

2. The appellants in Civil Appeal Nos. 5016 of 2016 and 8002-8003 of 2016 are respondent Nos. 9 and 10 in the Original Application No. 222 of 2014 (hereinafter referred to as 'the respondent Nos. 9 and 10'). The said Application was filed by respondent Nos.1 to 3 herein (hereinafter referred to as 'the applicants'). Respondent Nos. 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as respondent Nos. 1 to 4 in the application. Respondent Nos. 12 and 13 herein were subsequently impleaded in the application (for short 'the impleaded respondents').

3. The State of Karnataka has filed Civil Appeal Nos. 4923-4924 of 2017, challenging the general condition and direction No.(1) contained in the order of the Tribunal dated 04.05.2016.

@page-SC367

The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 04.05.2016 insofar as it directs a buffer/green zone of 75 metres in respect of lakes, 50 metres in respect of primary Rajakaluves, 35 metres in case of secondary Rajakaluves and 25 metres in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed O.A. No.222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short 'the KIADB') to respondent Nos. 9 and 10 vide Notifications dated 23.04.2004 and 07.05.2004 respectively for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), identifies the allotted land as 'Residential Sensitive', though the same land was identified in the Draft Master Plan as 'Protected Zone'. It was further contended that the Revenue Map in respect of properties as referred in the Land Lease Agreements has multiple Rajakaluves (Storm Water Drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rain water into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 acres and 1.23 acres each.

5. The Satellite Digital Images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short 'SEAC'), which was to assist the State Level Environment Impact Assessment Authority (for short 'SEIAA'), held its meetings on various dates to examine the project. It had required the appellant No.9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short 'BWSSB') for the project in question. It was also observed that the project lies between the Bellandur Lake and the Agara Lake. Respondent No.9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11.11.2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq. mtrs. whereas the built up area, as noted by SEAC, is 13,50,454.98 sq. mtrs. Respondent No.9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent No.9 had approached the Karnataka State Pollution Control Board (for short 'the KSPCB') for obtaining clearance, which was granted on 04.09.2012 subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by the KSPCB to respondent No.9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

7. Applicants further contended that respondent No.9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over the ecologically sensitive area of the lake

@page-SC368

catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from 'Protected Zone' to 'Residential Sensitive Area' is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondent Nos. 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of Wetlands (Conservation of Management) Rules, 2010 (for short 'Rules of 2010').

8. It was submitted that SEIAA in its meeting dated 29.09.2012, decided to close the file pertaining to respondent No. 10 due to non-submission of requisite information and the application thereof was rejected in November, 2012. Despite the rejection, respondent No.10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 water bodies in the Bangalore city in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 kms. of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the Report of the Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore city. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore Metropolitan Area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The applicants claim to have obtained monitoring report of the project by respondent No.5, Ministry of Environment and Forests, through RTI on 21.08.2013. The report dated 14.08.2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short 'the LDA'), after inspection in the catchment area of the Bellandur Lake submitted its report dated 12.06.2013 which confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of KIADB. The LDA has also opined that the land should be classified and maintained as sensitive area. The KIADB called upon respondent No. 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA.

@page-SC369

Despite all this, respondent Nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the Rajakaluves. It was also pleaded that respondent No. 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by respondent No.9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of respondent No. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what the BWSSB supplies to the entire Agaram Ward. The construction of respective projects by respondent Nos.9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

11. Respondent No.9 in its objections contended that it was incorporated with the objective of establishing an Information Technology Park and R and D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High Level Committee meeting held on 21.06.2000 and after examining the proposal, it was approved by the Government on 06.07.2000. Before the State High Level Committee, it had informed that its requirement was 110 acres of land, 25 MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10.02.2004. Subsequently, the lands were allotted vide letter dated 28.06.2007 for which Lease-cum-Sale Agreement was signed on 30.06.2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtrs. The Project was conceived as a zero waste discharge project. The project is located one and a half kms. away from the southern-side of the Bellandur Lake. Towards the North, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the East, lies the Project of respondent No. 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 04.07.2007 which was renewed from time-to-time.

12. Respondent No. 9 claims that it has obtained NOC from Airport Authority of India on 09.04.2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16.04.2010, granted clearance for the project construction. BWSSB, vide its communication dated 26.04.2011 issued NOC for portion of the proposed construction to be built.

@page-SC370

The Bangalore Electricity Supply Company Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental Clearance was granted by SEIAA vide communication dated 17.04.2012. The Director General of Police has issued NOC and KSPCB vide order dated 04.09.2012 accorded its consent for construction of the said project subject to the conditions stated therein. It was further stated that after grant of the Environmental Clearance on 17.09.2012, the same was published in the leading newspapers "Kannada Prabha" and "The Indian Express" on 12.03.2012 and 14.03.2014 respectively.

13. It submitted a modified the building plan which was approved by KIADB vide its letter dated 30.08.2012, which was valid up to 10.08.2014. It started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent No.10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fide. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31.08.2007 with an investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to it on 25.01.2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to respondent Nos. 9 and 10, one year time was granted for the implementation of the project which was extended from time-to-time. The building drawings were approved on 04.07.2007, and the modified building drawings were approved on 26.04.2011 and 30.08.2012 with specific conditions. In its meeting held on 16.07.2013, it was resolved to inform respondent No. 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from the LDA and KSPCB. LDA vide its letter dated 24.09.2013, had informed KIADB that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake with deleterious effects and asked it to stop construction activity of respondent Nos. 9 and 10. However, the validity of the building drawings was again extended up to 10.08.2014. The Lokayukta on 17.12.2013 had written a letter in respect of complaint filed by the South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21.12.2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to respondent No.9. The Board took a decision

which was communicated to respondent No.9 on 02.01.2014,

@page-SC371

wherein it asked the respondent No.9 to stop all construction activities on the allotted lands. The said communication was challenged by respondent No. 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23.12.2013 issued by Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') was also stayed vide order dated 21.01.2014. The proposal submitted by respondent Nos. 9 and 10 had been approved by the State Government. The land allotted to respondent Nos. 9 and 10 does not consist of any Rajakaluves.

16. The LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time it was in the dark. After the complaints, it inspected the Bellandur Lake and the Agara Lake on 12.06.2013 and prepared an inspection report. In the report, it was noticed that large scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 06.07.2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31.08.2013, that respondent No. 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23.09.2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time-to-time. It has taken a categorical stand that the projects as approved by the KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

1. Whether the application filed by the applicants and supported by respondent Nos. 11 and 12, is barred by time and thus, not maintainable?

2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petitions 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest

of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 07.05.2015 at Annexure A-2, disposed of the applications with the following directions:

@page-SC372

1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:

a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.

b) CEO of the Lake Development Authority, Karnataka State.

c) Chief Town Planner of BBMP, Bangalore.

d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.

e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

f) Dr. Siddharth Kaul, former Advisor to MoEF.

g) A Senior Officer from the National Institute of Hydrology, Roorkee.

2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies with particular reference to lakes. 4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake, particularly Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify, if any Rajakaluves have been covered by the construction activities of respondent Nos. 9 and 10 or by any of the projects in the area in question.

5) Committee should submit in its report, if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report, whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly in the city of Bangalore.

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent Nos. 9 and 10 have installed ETP/ STP and have taken full measures for recycling of used water for washing and flushing, etc. in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent Nos. 9 and 10 respectively.

@page-SC373

10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent Nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.

13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.

14) For the reasons stated in the judgment, respondent No. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent No. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent. of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, on to the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

19. Feeling aggrieved by the said order, respondent Nos. 9 and 10 filed Civil Appeal Nos. 4829 and 4823 of 2015 before this Court. This Court by its Order dated 20th May, 2015 passed the following order:

"One of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs.117.35 crores against the original Respondent No.9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter

afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

@page-SC374

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue No.5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 06.04.2016 on these applications as under:

"M.A. No. 603 of 2015 and M.A. No. 596 of 2015

These Applications have been filed on behalf of the Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned. The Tribunal after hearing the parties passed an order dated 04.05.2016 as under:

"General Conditions or directions:

1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/ wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondent Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:-

(i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.

(ii) 50m from the edge of the primary Rajkulewas.

(iii) 35m from the edges in the case of secondary Rajkulewas

(iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondent Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

@page-SC375

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/ lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

i. At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.

ii. All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgrada-tion in STP should be undertaken immediately.

Specific Conditions/ Directions for Respondent 9;

In addition to the above directions which should be equally part of EC condition in respect of respondent Nos. 9 and 10, following specific conditions shall apply to respondent No. 9:

i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.

iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm run off from the entire area falling between the Agara lake and the Belandur Lake, respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of run off to the Rajkalewas.

@page-SC376

For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake.

v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.

vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density,foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No.10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).General Directions:

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the

Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengluru.

4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time-to-time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

@page-SC377

5. Both the Respondent Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.

With the above directions, the Original Application No. 222 of 2014 and Misc. Application Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs."

22. Appearing for the appellants in C.A. No.5016 of 2016, Shri Mukul Rohatgi, learned senior counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short 'KIAD Act') declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State

Government in the year 2004. Following the acquisition, on 28.06.2007, the land was allotted to the appellant by the KIADB. The SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14.03.2012. Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Section 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further the application is barred by limitation. Though environmental clearance was granted on 17.02.2012 and it was published in two leading newspapers on 12.03.2012 and 14.03.2012, modified plan was approved by the KIADB on 30.08.2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March, 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

@page-SC378

24. It was also argued that buffer zone laid down by the NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22.06.2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short 'the Planning Act').

25. Shri Neeraj Kishan Kaul and Shri R.Venkataramani, learned senior counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur lake water body or to Bellandur lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned senior counsel appearing for the appellants, in C.A. Nos.5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30.09.2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. Learned Advocate General, Shri Udaya Holla, appearing for the appellant-State of Karnataka in C.A.Nos.4923-4924 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of the NGT to the extent of setting aside the buffer zone in respect of water bodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of the NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and

NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of the NGT to that extent is liable to be set aside.

28. Learned senior counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 meters buffer zone around the lakes and a buffer zone of 50 meters, 25 meters and 15 meters from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, the NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 meters around the lake and 50, 35 and 25 meters respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by the NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned senior counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in C.A Nos. 5016 of 2016 and 8002-8003 of 2016 (respondent Nos. 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of the NGT in paragraph (1) of the order dated 04.05.2016 except the directions issued against respondent Nos. 9 and 10.

@page-SC379

In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeal Nos. 4923-4924 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by respondent Nos. 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned senior counsel appearing for the appellants in C.A. No. 5016 of 2016 and C.A. Nos. 8002-8003 of 2016. It is submitted that the Tribunal is a specialized body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(a) of the NGT Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(b) and 15(1) (c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(b) and 15(1)(c) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(c) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short 'KMC Act'). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and water bodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by respondents 1 to 3 was not an application simplicitor under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12.06.2013 and the Ministry of Environment Forest and Climate Change Monitoring Committee report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of Appellate Jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC'). Under Section 100 of the CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. In the instant case,

@page-SC380

the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

"22.Appeal to Supreme Court.-Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficience cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate Appellate Court can exercise jurisdiction, the Court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in

Section 100 of the CPC. Under Section 100, CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing, 1962 Supp. (3) SCR 549 : (AIR 1962 SC 1314). This Court has laid down the test as under:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek re-appreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale re-appreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22.

@page-SC381

There cannot be fresh appreciation or re-appreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII, List I, Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) and (c) have not

been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See : Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17) : (AIR 2007 SC 1819). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently.

@page-SC382

The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I, Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and water bodies

in contradiction with zoning regulations under these statutes or the RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to appellants, environmental clearance was granted to the respondent No. 9 on 17.02.2012 for which notice was published in the leading newspaper on 12.03.2012 and 14.03.2012. Modified building plan was approved on 30.08.2012, which was followed up to 10.08.2014. Similar events had taken place in regard to the project of respondent No. 10 who had been granted environmental clearance on 30.09.2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March, 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. The OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.06.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the

@page-SC383

cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned senior counsel, appearing for the appellant in CA No.5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11.01.2012 of the Chairman of the KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 acres 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the

mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects. That is why, the Tribunal has observed as under:

"72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

1) The construction of both the projects had started prior to the grant to Environmental Clearance.

2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.

3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.

4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.

5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.

6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area

@page-SC384

to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved:

The inspection report by the MoEF clearly notes that condition Nos. (xxxix) and (xl) in the Environmental Clearance of respondent No. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

53. In paragraph 81, the Tribunal has observed as under:

"81. .....Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent Nos. 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition Nos. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August,

2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the Expert Members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of re-appreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Shri R.Venkataramani, learned senior counsel has also raised a subsidiary issue relating to res judicata. According to him, respondent Nos. 12 and 13 filed Writ Petition Nos.3656-57/2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

57. The Tribunal has answered this issue in paragraphs 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the geneses of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

58. After elaborately considering this question, the Tribunal has concluded as under:

"51. ....For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of res judicata

@page-SC385

is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of res judicata nor constructive res judicata. We also

hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by the respondent Nos. 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 04.05.2016:

"1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/ wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondent Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:-

(i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wet lands.

(ii) 50m from the edge of the primary Rajkulewas.

(iii) 35m from the edges in the case of secondary Rajkulewas

(iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondent Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out

@page-SC386

this operation in respect of all the water bodies/ lakes of Bangalore."

61. We have already noticed that Shri. Poovayya has no objection to set aside the aforesaid impugned portion of the order in so far as the appellants in all the appeals except the appeals filed by respondent Nos.9 and 10. The aforesaid portion of the order contains not only general directions but also certain directions against respondent Nos. 9 and 10. Therefore, only that portion of the order which does not pertain to respondent Nos. 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

i) Civil Appeal No. 5016 of 2016 and Civil Appeal Nos. 8002-8003 of 2016 filed by the 56

appellants/respondent Nos. 9 and 10 are hereby dismissed. The impugned judgment and order insofar as appellants/respondent Nos. 9 and 10 are concerned is sustained.

ii) All the other appeals are hereby allowed and the direction/condition No. (1) in the order dated 4.5.2016 is hereby set aside except the direction issued against respondent Nos. 9 and 10.

63. There will be no order as to costs.

Order Accordingly .

AIR 2008 BOMBAY 155

(NAGPUR BENCH)

C. L. PANGARKAR , J.

Smt. Shamlata wd/o Manohar Raut and Ors. v. Vishweshwara Tukaram Giripunje and Anr.

Second Appeal No. 67 of 1996, D/-29 -1 -2008.

(A) Evidence Act (1 of 1872) , S.74 , S.76 -Public document - Certified copy of plaint - Is not a public document - It requires proof.

The certified copy of the plaint is not a public document. Hence, it requires proof. For proving such document, the original plaint should have been called in the Court. That is not done, hence the certified copy of the plaint could not be said to be proved at all. (Para 5)

(B) Evidence Act (1 of 1872) , S.40 -Judgment of Court - Relevancy - Present defendant was not party to that suit - That judgment would neither fall within scope of S.40 nor provisions of S.11 of Civil P.C. would be applicable.

Civil P.C. (5 of 1908) , S.11 . (Para 5)

(C) Civil P.C. (5 of 1908) , O.26 , R.9 -Appointment of Commissioner - To measure site of plaintiff - Allegations of plaintiff that defendant encroached upon land of plaintiff - Measurement map prepared by retired Talathi was not reliable as site was not measured scientifically and after notice to opposite party - Appointment of Commissioner to measure plots of plaintiff and defendant, necessary. (Para 6)

J. J. Chandurkar, for Appellant.

Judgement

JUDGMENT :-This is a defendant's second appeal. The facts giving rise to this appeal are as follows -

The suit was initially instituted by one Surendrasing Ramarao Naik through his constituted attorney Shri Vishveshwar Tukaramji Giripunje. Subsequently, the original plaintiff Surendrasing sold the suit property to his constituted attorney Vishvesh-war. Both now are plaintiffs in this suit. The defendant Manohar is the neighbour of plaintiff. The plaintiff is the owner of open land in ward No. 26, Circle No. 6 Zilla Road, Mahal Nagpur.

The defendant has his house towards

@page-Bom156

North of the said land bearing Municipal Corporation No. 342/1. The plaintiff submits that the defendant has committed encroachment shown by letters HBCDNPT as shown in the plaint map, and the encroachment is to the extent of 159 sq. ft. It is alleged that the defendant committed the encroachment by constructing a Well in the year 1980. The plaintiff further contends that there was a dispute regarding the land ABCDEFGH covered by the lines in the plaint map with the Nazul department, who claimed that the land belonged to the nazul department. The plaintiff had, therefore, instituted Civil Suit No. 312/95 against the Collector of Nagpur. The suit came to be decreed in favour of the plaintiff and plaintiff was declared to be the owner. The appeals preferred by the State before the District Judge and the High Court were rejected. The plaintiff submits that since the plaintiff was out of Nagpur for quite some time on account of the fact that he had shifted his residence to village Kawatha, the defendant took disadvantage of the fact and committed encroachment. The plaintiff seeks to remove this encroachment and prays for a decree for possession of the site.

2. The defendant has filed the written statement. The defendant does not dispute that the plaintiff is the owner of area known as Naikwadi and he owns landed property in Nagpur. The defendant denies that the plaintiff is the owner of the plot shown by letters ABCDEFGH. He also denies that he has committed encroachment on the site as contended by the plaintiff. The defendant also denies that there was any dispute between plaintiff and the Government over the suit land and that the proceedings ended in favour of the plaintiff. The defendant submits that his house was purchased in the year 1935 from one Sitabai Giripunje. The defendant has been in possession of the property since more than 40 years adversely, and, to the knowledge of the plaintiff uninterruptedly. It is contended that, therefore, the suit is barred by limitation. It is further contention of the defendant that in the year 1982 there was a measurement by the City Survey Department in which it was found that the defendant has not committed any encroachment and

plaintiff did not prefer any appeal against the said measurement. The defendant, therefore, prayed that the suit be dismissed.

3. The learned Judge of the trial Court framed issues and found that the plaintiff is the owner of the site ABCD EFGH and defendant had committed encroachment. He has also found that the defendant was not in adverse possession. Holding so, he decreed the suit in favour of the plaintiff. The appellate Court concurred with the findings recorded by the trial Court. The second appeal was admitted by Patel, J. on ground No. 2, which reads as follows -

"That as a matter of fact the entire burden to establish that the title to the property in suit vested originally in plaintiff No. 1 and on his alleged transfer in favour of the plaintiff No. 2 in the plaintiff No. 2 and there being no evidence whatsoever to establish the transaction as result of which title was said to have been created in favour of the said plaintiff, merely putting on record certain irrelevant judgments which were clearly inadmissible in view of the mandatory provisions of Section 43 of the Indian Evidence Act, the Courts below have passed a decree in favour of the plaintiffs for which there is no foundation on the record."

4. I have heard the learned counsel for the appellant. None appears for the respondents.

5.The learned counsel for the appellant contended that the Courts below have relied upon the documents on which it could not have. The plaintiff has pleaded that he had instituted a suit for declaration of his ownership against the State of Maharastra and the suit was decreed in his favour. The plaintiff has placed on record the judgment delivered in that suit and the appeals thereon. The certified copies of the judgments of the Courts have been filed on record. They are Exhs. 51, 53 and 54. Exh. 51 is the copy of the trial Court judgment. Exh. 53 is the copy of the judgment of the first appellate Court while Exh. 54 is the judgment of the High Court. As said, the suit was between the original plaintiff and the State. It appears that the Nazul Tahsildar had given notice to the plaintiff-tenant to remove the encroachment on the said site and therefore, the suit was filed. The suit was decreed. The question is whether this judgment is at all relevant. The learned counsel for the appellant submitted that this judgment does not fall within the scope of Sections 40 to 44. The judgment does not fall within the scope of Section 11 of Code of Civil Procedure since the present defendant was not party to that suit.Obviously,

@page-Bom157

therefore, that judgment does not fall within the scope of Section 40 of the Evidence Act. It is not relevant under Section 41 because it is not a judgment delivered in exercise of probate, matrimonial, admiralty, or insolvency jurisdiction. It is no relevant because it does not relate to matter of public nature. It also does not fall within the scope of Section 43 since existence of such judgment is not fact in issue. The learned Judge of the first appellate Court as well as the trial Court could not have, therefore, looked into this judgment for any purpose, for they are irrelevant. It appears that the learned Judge of the trial Court as well as the appellate Court have relied upon the certified copy of the plaint in Civil Suit No. 312 of 1965 (Exh. 52).Both the Judges have held that the document i.e. plaint can be read as it is a public document. Both seem to be under misconception. The certified copy of the plaint is not a public document. Hence, it requires proof. For proving such document, the original plaint should have been called in the Court. That is not done, hence the certified copy of the plaint could not be said to be proved at all. The Courts below, therefore, were not justified in putting reliance on this copy of the plaint.The conclusions of the Courts below, however, are not based on the judgment alone between plaintiff and Government, but independently the Courts below have concurrently found that there is an encroachment on plaintiffs land. In this regard, it is seen that this land house of original plaintiff No. 1 is ancestral and hence there is no document of title with the plaintiffs. Plaintiff No. 2 has purchased the property during the pendency of the suit hence that sale deed carries no importance. But the defendant's title to his house is derivative, in as much as his mother has purchased the house and land in 1935. This sale-deed has been placed on record at Exh. 65. Although the plaintiffs do not have sale-deed and land is claimed to be an ancestral, plaintiffs have placed on record two important documents. They are Exh.60 - the record of rights. The area of the plaintiffs' land is shown to be 124.2 sq. meter in the said record of right. Second document is Exh. 61 - the map of City Survey Department. The map shows that the land was measured by department in presence of plaintiffs as well as defendant and other adjoining owners. The area of the plaintiffs plot No. 504 is shown to be 124.2 sq.mtr. in this map also. This measurement was done

on 15-5-1982.

6.Although these two documents are on record, the material thing that needs consideration is whether the plaint map prepared by PW 3 Balwant - retired Talathi -could be relied upon to hold that there is an encroachment on plaintiffs land and if there is one, what is the extent. This is the only map (Exh. 76) on record, as far as measurement of the site is concerned. It appears to me that it would not be proper to rely on this measurement map, for the site does not seem to have been measured scientifically and after notice to the defendant. PW 3 Balwant in examination-in-chief says that he measured the site on the basis of 1920 map and it was shown to him by Surendrasing - the plaintiff. It is not clear if it was a Survey map drawn by Government agency or department or a private map. Whatever that was, that too should have been placed on record. He admits in cross-examination that he had not seen the title-deed of either party. He also states that the map is drawn as told by Surendrasing. He says that he does not know the number of the map and he did not bring those notes of measurement before the Court. It is obvious that the map was drawn as suggested by Suredrasing - the plaintiff.It is not a measurement done independently and on basis of authenticated documents. He does not say if he had seen any document before he measured. One, therefore, wonders as to how then he could determine the boundaries of the plots of the plaintiff as well that of the defendant. He does not say if he found any fixed mark of survey department at any spot and that he measured it taking that point as base point. It is, therefore, clear that the measurement map (Exh. 26) cannot be taken as a correct map. The Courts below, therefore, should have appointed a Commissioner to measure not only the plot of the plaintiff but that of defendant also with reference to defendant's sale deed (Exh. 65) and also with reference to survey map (Exh. 61). It also appears that plaintiff had filed on record a certified copy of the sanction plan of house of plaintiff and it is at Article 'B'. This sanction plan of plaintiffs house is of the year 1923. Obviously, it is a very old document and material document to determine the exact extent of the land of plaintiffs site. Since sale deed of the plaintiffs site is not available, this document would be of immense

@page-Bom158

help at the time of the measurement. In fact, therefore, the above documents would certainly have helped the measurer to measure the land and for the Court to determine the question of encroachment correctly.To my mind, therefore, the Courts below erred in not appointing a Commissioner to measure the site of the plaintiff and defendant both with reference to these documents. In order that the suit is finally and effectually decided, it is, therefore, desirable to have measurement of both the sites which measurement can be undertaken by Surveyor from the City Survey Department. It is, therefore, now necessary to remand the matter back to the trial Court.

1) The appeal is, therefore, allowed.

2) The judgments and decrees passed by the Courts below are set aside.

3) The matter stands remanded to the trial for fresh decision. The trial Court shall appoint Surveyor/Commissioner from the City Survey Department to measure the sites of plaintiff and defendant both.

4) While making an appointment of the Commissioner, the trial Court shall issue instructions to the measurer to measure the land according to the observations in the preceding paragraph of this judgment and obtain the correct measurement map showing encroachment, if any, from the said Commissioner.

5) The parties are given liberty to tender evidence as they may choose in the matter. The trial Court shall then decide the suit afresh within period of six months positively.

6) The parties shall bear their own costs.

Order accordingly.

ANNEXURE A-10

AIR 1994 SUPREME COURT 853

KULDIP SINGH AND P. B. SAWANT, JJ.

Civil Appeal No. 994 of 1972, D/- 27 -10 -1993.

S. P. Chengalvaraya Naidu (dead) by L.Rs., Appellants v. Jagannath (dead) by L.Rs. and others, Respondents.

Civil P.C. (5 of 1908), S.2(2) - Evidence Act (1 of 1872), S.44 - Proceeding in court - Fraud by litigant - Withholding of vital document relevant to litigation - It is fraud on Court - Guilty party is liable to be thrown out at any stage - Litigant obtaining preliminary decree for partition of property - Not mentioning at trial as to his having executed before filing of suit release deed in respect of property in favour of his employer - Decree is vitiated by fraud.

Decision of High Court, Reversed.

The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

Decision of High Court, Reversed. (Paras 7, 8)

Where a person obtaining preliminary decree for partition in respect of certain property had, before filing suit, after purchasing the property benami for his employer in Court auction, had relinquished his rights in it by executing release deed in favour of employer, the non-production and non-mentioning of the release deed at the trial tantamounted to playing fraud on the court vitiating the decree. (Para 8)

Judgement

KULDIP SINGH, J.:- "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment / decree -- by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

2. Predecessor-in-interest of the respondents-plaintiffs filed application for final decree for partition and separate possession of the plaint properties and for mesne profits. The appellants defendants contested the application on the ground that the preliminary decree, which was sought to be made final, was obtained by fraud and, as such, the application was liable to be dismissed. The trial Judge accepted the contention and dismissed the application for grant of final decree. The respondents-plaintiffs went in appeal before the High Court. A Division Bench of the High Court went through plethora of case law and finally allowed the appeal and set aside the order of the trial Court. This appeal is by way of certificate granted by the High Court.

3. One Jagannath was the predecessor-in interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannat relinquished all his rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the

@page-SC854

property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of' the suit, the appellants did not know that Jagannath had no locus standi to file the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the appellants came to know about the release deed and, as such, they challenged the application on the ground that non-disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex. B- 15) before the trial Court. The relevant part of the release deed is as under:-

"Out of your accretions and out of trust vested on me,

purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed, The said properties are in your possession and enjoyment the said properties should henceforth be held and enjoyed with all rights by you as had been done;

"So far. If any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceedings without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you."

4. The High Court reversed the findings of the trial Court on the following reasonings :-

"Let us assume for the purpose of argument that this document, Exhibit B-15, was of the latter category and the plaintiff, the benamidar, had completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Exhibit B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Exhibit B- 15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence."

5. The High Court further held as under :-

@page-SC855

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest republicaent sit finis litium ' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation. "

6. Finally, the High Court held a under:-

"The principle of his decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when he filed the suit for partition, he had subsisting interest in the property though he had already executed Exhibit B-15. Even so that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necesarily involves an adjudication though impliedly that the plaintiff has a subsisting Interest in the property."

7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to got an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defend ants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party.

9. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial Court. The appellants shall be entitled to their costs which we quantify as Rs. 11,000 / -.

Appeal allowed.

@page-SC856