

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**WESTERN ZONE BENCH, PUNE**

**MEMORANDUM OF APPLICATION**

**(UNDER SECTION 14 OF THE NATIONAL GREEN TRIBUNAL ACT  
2010)**

**ORIGINAL APPLICATION NO. 75 OF 2022**

Rekha Sankhala & Ors.

...Applicants

*Versus*

City and Industrial Development

Corporation of Maharashtra Ltd. & Ors.

...Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANTS**

1. By the present O.A. the Applicants seek to challenge the auction of Plot No.2A located in Nerul Node of Navi Mumbai by the Respondent No.1 and to prevent the Respondent No.1 from disposing of the plot through any other means.
2. Vide affidavit dated 28th December 2022, the Respondent No.1 has stated that it has decided to cancel the current tender for Plot No.2A as the bid received for the said plot is allegedly below the prevailing market rate. It is further stated that it intends to re-tender the said plot for construction incorporating a specific condition clarifying that the mangrove buffer zone or CRZ-IA area shall not be disturbed by the successful bidder/ allottee apart from certain other conditions that it proposes to impose and has thus sought the dismissal of the present O.A.

3. Therefore, the Respondents have clearly indicated that they shall re-tender the said plot for construction. In light of the same, the present O.A. seeks to prevent the Respondent No.1 from disposing of plot no.2A through any means and to preserve it as an open space.
4. While reflecting on the powers of the NGT, the Supreme Court has observed that the role of the NGT is to perform roles that are *preventative*, ameliorative or remedial in nature [*Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors.* – 2021 SCC OnLine SC 897]. This Tribunal therefore has wide powers to restrain the proposed illegal act of the Respondents in selling the said property for commercial development.
5. In this context, the Applicant has three primary challenges to the proposed auction of the plot –
  - i. Since part of the plot in question indisputably falls within CRZ-IA areas where construction activities are prohibited, the plot cannot be auctioned by the Respondent No.1.
  - ii. Since part of the plot falls in CRZ-II where no development is permissible in view of Clause 8 (i)(II) of the CRZ Notification, 2011, the plot cannot be auctioned by the Respondent No.1.

iii. The area is marked as a “no-development zone” and an “open space”, a portion is also mangrove buffer area. The land is held in public trust and cannot be auctioned for commercial development.

**i. Since part of the plot in question indisputably falls within CRZ-IA areas where construction activities are prohibited, the plot cannot be auctioned by the Respondent No.1.**

1. The categorization of a part of the plot as CRZ IA has not been disputed. Further, it is not disputed between parties that no construction of any kind can be permitted on the part of the plot that falls within CRZ-IA. Consequently, it is submitted that the said plot cannot be auctioned. The state cannot auction eco-sensitive land falling under CRZ-IA under any circumstances, even with a caveat that “*it cannot be developed*”.
2. This is because the public trust doctrine places an embargo on the right of the State to transfer public properties to private parties if such transfer affects public interest and in fact mandates affirmative state action for the effective management of natural resources.
3. Natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action [*Fomento Resorts and Hotels Ltd. vs. Manguel Martins - (2009) 3 SCC 571*]).

4. The duties of a New Town Development Authority are to ensure the planned development of the areas within its jurisdiction. The Respondent No.1 appears to have abdicated its duty in favour of making huge profits at the cost of the environment and the health and safety of the residents of the area. The said property therefore cannot be sold.
  
  5. Without prejudice to the above contention that in no circumstances can be plot be developed, the so called Cavet proposed to be inserted that the plot will “not be developed” is also a complete eyewash. The intention in auctioning the whole plot is that FSI on the CRZ-I area will be used on the balance area. As held by the Bombay High Court in *Chedda Housing Development v. Bibijan Shaikh Farid & Ors.* [2007 (3) MhLj 402], FSI is an interest in the land, and utilization of FSI is development of the land. Permitting the entire plot to be auctioned would permit the use of FSI of the portion of the plot in CRZ-IA area and amount to development of the land. There is also no means for Respondent No.1 to monitor the same.
  
  6. Therefore, both in law and in reality, the caveat proposed to be added in the fresh tender is nothing but an eyewash and cannot save the illegal act of auctioning the property.
- ii. **Since part of the plot falls in CRZ-II where no development is permissible in view of Clause 8 (i)(II) of the CRZ Notification, 2011, the plot cannot be auctioned by the Respondent No.1.**

7. It is also undisputed that the balance portion of the plot falls in CRZ-II. No development is therefore permissible in view of Clause 8 (i)(II) of the CRZ Notification, 2011 and 5.2 (ii) of the CRZ Notification 2019.
8. The defense of the Respondents appears to be that the plot No.2A is on the landward side of an existing road and an existing authorized structure.
9. Both the Development Plan as well as the CZMP do not show any existing road or existing structure on the seaward side of the Plot. The CZMP of Navi Mumbai does not show the existence of an “existing road” on the southern/ seaward side of Plot No.2A (pg. 310 and 311 of Rejoinder).
10. The Development Plan (prepared by the Respondent No.1 itself) demonstrates that Plot No.2A is not on the landward side of any road or structure. In fact, it is on the seaward side of the existing road being Palm Beach Road (pgs. 64, 65 and 66 of O.A.). Thus, development on the portion plot 2A that falls within CRZ-II is barred under clause 8(i)(II) of the CRZ Notification, 2011. The Development Plan is very clear.
11. Section 22 (d) of Maharashtra Regional and Town Planning Act, 1966 (“MRTP Act”) stipulates that the Development Plan shall indicate all transport and communications such as roads, highways, parkways, railways etc., including their extension and development.

12. Therefore, if a road is not shown on the Development Plan, it is not an authorized road, and cannot be considered an “existing road” for the purposes of Clause 8 (i)(II) of the CRZ Notification, 2011. The same applies to an “existing structure”. Both roads and structures can only be constructed after requisite permissions have been obtained from the planning authorities. A private pathway/road is not a road and therefore cannot be considered for the purposes of Clause 8 (i)(II) of the CRZ Notification, 2011. It is perhaps for this reason that both the CZMP and the Development Plan does not show any road.
13. The Respondent No.1 has further contended that the DP shows only major city roads. This is absurd, the Development Plan always shows all sanctioned roads. This includes internal roads in layouts. Therefore, it is absurd to suggest that there are authorized roads that are not part of the Development Plan.

**The NCSCM Report**

14. The Report prepared by NCSCM notes that an existing road was observed on the creek-ward side of the project boundary. However, this is based on a physical inspection. The report does not say if the report is in use, or actually leads anywhere. It does not analyze the CZMP or the Development Plan to ascertain if the same is an authorized road – or just a private pathway/road. This is perhaps because CZMP and the Development Plan speak for themselves, and show that there is no authorized road. The said report is inconclusive on this point.

15. Therefore, the Report prepared by the National Centre for Sustainable Coastal Management ('NCSCM') on the instructions of the MCZMA may have no bearing on deciding the dispute between parties in the present matter, except for establishing that part of the Plot is CRZ-I and the balance is CRZ-IIB.

16. Furthermore, the Development Control Regulations for Navi Mumbai Municipal Corporation define a "road" as follows-

*"any highway, street, lane, pathway, alley, stairway, passage way, garage way, footway, square, place or bridge, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a specified period, **whether existing or proposed in any scheme**, and includes all bunds, channels, ditches, storm water drains, culverts, side walks, traffic islands, road-side trees and, hedges, retaining walls, fences, barriers and railings within the street lines."*

As stated above, the DP for Navi Mumbai does not reflect this so-called road, and as far as the Applicants are aware there is no existing or proposed scheme which reflects the existence of this road.

iii. **The area is marked as a "no-development zone" and an "open space", a portion is also mangrove buffer area. The land is held in public trust and cannot be auctioned for commercial development.**

17. The DP maps show the plot in question as "no-development" zone (pg. 65 of O.A.). The Nodal plan indicates that the plot is reserved as an "open space" (pg. 67 of O.A.).

18. By seeking to auction the plot that is otherwise used as a common playground for recreational purposes and as a community space, the Respondent No.1 has failed to fulfil its statutory mandate. As stated earlier, public trust doctrine places an embargo on the right of the State to transfer public properties to private parties if such transfer affects public interest and in fact mandates affirmative state action for the effective management of natural resources. The importance of open spaces has been noted time and time again by the Supreme Court in a number of judgments. The right of the public to open spaces has been read to be a part of the right to life under Article 21 of the Constitution of India.

19. The Tribunal is required to play a proactive role in ensuring that damage to the environment is not caused and not merely to step in once environmental laws are violated.

20. As such, and for the reasons more particularly set out above, this Ld. Tribunal ought to grant the prayers made in the present O.A.

Filed by Meenaz Kakalia,

Advocate for the Applicants

Dated 14.09.2023