

28.04.2023

WRITTEN ARGUMENTS BY APPLICANT IN OA-64-2021
REG VERSOVA BEACH

1. R1 PWD has filed its Affidavit in Reply (AIR) dated 23.10.2021. The said AIR infact re-confirms the Applicant's case.

2. R1 claims that the OA is defective as the Applicant has not challenged the CRZ Clearance (Paras 4.4 & 4.5 of AIR)
 - ii. The entire case of the Applicant is that work is being carried out by R1 PWD contrary to, and in breach of, the MCZMA recommendations and CRZ Clearance.

 - iii. It is the specific case of the Applicant that CRZ Clearance is based on MCZMA's recommendations, which recommend only reconstruction of existing wall (and there is no CRZ Clearance for constructing a new wall as underway at site)

3. The MCZMA's recommendations are very clear.
 - ii. 115th MoM at Ex-L at Pg 373 of AIR, MCZMA asked R1 PWD to revise the proposal and incorporate soft solutions

 - iii. 116th MoM at Ex-O at Pgs 377-378of AIR, MCZMA deferred the proposal for seeking soft solutions and permitted only the 'repair of **existing** retaining walls'.

iv. 119th MoM at Ex-S at Pgs 382-383 of AIR, MCZMA ‘recommended the proposal of **reconstruction of existing anti-sea erosion walls** subject to compliance of conditions’.

v. CRZ Clearance was granted by SEIAA (Ex-W at Pgs 394-403 of AIR). The SEIAA MoM clearly states that SEIAA decision is based on compliance with the points raised in the 119th meeting of MCZMA (Pg 64 at Ex-I of OA)

vi. The CRZ Clearance is therefore **only for reconstruction of existing anti-sea erosion wall** and there is no question of construction of any new anti-erosion wall as being undertaken by R1 PWD (*Photos of newly constructed wall can be seen in OA at Ex-L at Pg 92, Ex-M at top of Pg 93, Ex-T at bottom of Pg 117, Ex-V at bottom of Pg 130, at Pg 131, at top of Pg 132 & Ex-BB at Pg 146*)

vii. PWD’s letter to CWPRS at Ex-U at Pgs 385-386 of AIR also clearly reflect the conditions of MCZMA, i.e. proposed **reconstruction** of anti sea erosion wall (conditions 1 & 3 on Pg 385 of AIR)

viii. More important is Ex-V at Pgs 387-393 of AIR which is CWPRS’s letter dated 25.10.2018 which states that revised design is prepared based on comments received from 119th MoM of MCZMA (1st para on Pg 387 of AIR), to reduce the splashing of waves **over the existing compound wall** (last line on Page 387 of AIR).

ix. However, the drawings attached to said Ex-V of AIR clearly show an existing compound wall and a new RCC wall (drawings at Pgs 391 & 392 of AIR), which clearly show that the design is contrary to & in breach of the MCZMA recommendations & CRZ Clearance.

4. PWD's own letter to CWPRS at Ex-U at Pgs 385-386 of AIR also clearly records that a **walkway is not permitted** (Condition 2 at Pg 385 of AIR).

ii. And the walkway (driveway actually) that PWD has constructed in breach, is visible at Ex-BB at Pg 146 of OA.

iii. It is thus abundantly clear that R1 PWD has carried out work contrary to the MCZMA recommendations, CRZ Clearance, and even contrary to their own understanding.

5. R1 PWD's own letter dated 04.09.2019 at Ex-T at Pg 384 of AIR records the conditions laid down by MCZMA & confirms PWD's compliance, viz

(1) **re-construction of anti-sea erosion wall**

(2) walkway not permitted on the bund

(3) **reconstruction/re-development of wall**

(4) **there is no requirement of reclamation for proposed project**

(5) no construction debris on beach

(6) suggestions of residents shall be taken into consideration

This is not a case where R1 PWD has made some mistake in understanding.

This is a case where PWD has deliberately breached the MCZMA Recommendations & CRZ Clearance and constructed what was expressly prohibited.

6. MCZMA has filed its AIR dt 02.12.2021 also confirming its recommendations (in paras 7 & 8 at Pgs 432-434)

i) permission was to (only) reconstruct the existing wall

ii) (only) minimal reclamation was permitted

iii) walkway was not permitted.

7. Regarding the contention that work is being done as demanded by residents.
- ii. The work was originally proposed to protect the residents of Sagar Kutir (only) from flooding (letter by MP dated 14.06.2016 at Ex-E at Pg 213 of AIR).
 - iii. Sagar Kutir (slums) is located at the South end of Versova Beach & the Shamshan (crematorium) is located at the north end of the beach as can be seen in Ex-H at Pgs 225-226 of AIR.
 - iv. The work of constructing a protective wall involved the rehabilitation of 60 affected families at Sagar Kutir (Ex-E at Pg 214 of AIR).
 - v. However, PWD has abandoned the plan to construct such a protective wall where it was actually needed (Ex-V at Pg 393 of AIR shows no wall proposed at Sagar Kutir) – i.e. further confirmation that work is not being done as per plan.
 - vi. Note- Sagar Kutir does not have an existing wall. Whilst the rest of the beach does have an existing wall. New wall is proposed in red on Pg 225-226 (but not outside Sagar Kutir)
8. The real reason why all this extra wall work was proposed in the first place is revealed in Ex-G at Pg 222 of AIR where it is clearly revealed that work is proposed by MLA for **costal protection of Sagar Kutir and demand for promenade along the sea shore.**
- It is submitted that there was no need for any promenade along Versova Beach. **The only reason was the demand from the MLA for a Promenade.**
- Despite MCZMA rejecting the proposal for a promenade (walkway) R1 PWD is constructing it, probably due to pressure from the Politicians.

9. The Rapid EIA submitted by R1 PWD at Ex-I at Pgs 230-319 of AIR clearly show that issues like change in high tide line, sandy beach, marine fauna, olive ridley turtles etc have not been considered at all (there is simply no mention about these critical aspects in the EIA, which affirms that it is simply a sham document).

Note- The Olive Ridley Turtle nesting grounds have been completely destroyed

10.i. R1 claims that the OA is filed beyond limitation by claiming that work started on 26.12.2018, by way of self-certification (Paras 4.1, 4.2 at Pgs 164-165 and Ex-B at Pg 193 & Ex-D at Pg 203 of AIR).

ii. However, the truth is revealed in Ex-Y1 at Page 415 of AIR, where PWD states (on 08.11.2019) that *“We will start working as soon as we get permission and alignment from the concern department. We are also waiting for the same”*

iii. i.e. PWD’s own document confirms that work had not started in Nov’2019.

iv. The Applicant has filed complaint in Jan’2020 (Ex-T at Pgs 115-126 of OA), and the present AO is within Limitation as stated in Para 50 at Pg 28 of the OA.

11. To destroy a public sandy beach in the garb of protecting the compounds & walls of private properties cannot & ought not to be ever allowed.

If the private buildings are inconvenienced with the tidal waves their existing walls can be strengthened and made taller, to keep the waves out.

But, to destroy an entire public beach to keep the sea waves out of a private property is an alien concept and ought to be struck down.

Note- P1 PWD claims the private compound walls along the beach are zig-zag (Para 3 on Pg 443 of Addl Affidavit, with photo at Pg 449). However, the authorized shoreline is absolutely straight as seen in map at Page 351 of AIR. Any zig-zag wall is merely an unauthorized extension into the sea/beach, and such unauthorized & illegal extension deserves to be demolished and removed, not protected)

12.It is therefore prayed that R1 PWD be directed to remove their illegally constructed wall; and to restore Versova Beach to its natural condition. If R1 PWD wishes to repair the existing compound walls, in compliance of the MCZMA Recommendations & CRZ Clearance they may be permitted to do so only after removing their illegal construction.

Mumbai, 28th April 2023

submitted for Applicant