IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 22 OF 2024

Zoru Darayus Bhathena .....*Petitioner*

: Versus :

1. Maharashtra State Road Development Corporation
2. Maharashtra Coastal Zone Management Authority
3. Government of Maharashtra, through its Chief Secretary
4. Union of India through MoEF&CC Through the Ministry of Law & Justice Branch Secretariat.
5. Municipal Corporation of Greater Mumbai, through Municipal Commissioner
6. Adani Properties Pvt. Ltd. ....*Respondents*

ALONGWITH
PUBLIC INTEREST LITIGATION (LODG.) NO. 8224 OF 2024

Bandra Reclamation Area Volunteers Organization (BRAVO) .....*Petitioner*

: Versus :

1. Union of India, through the

Secretary of Ministry of Environment
and Forest
2. State of Maharashtra, through the
Secretary of Ministry of Environment
and Forest.
3. Maharashtra State Road Development
Corporation
4. Maharashtra Coastal Zone Management
Authority, through its Principal Secretary,
Environment Department
5. Adani Properties Pvt. Ltd. ....*Respondents*

Mr. Tushad Kakalia *i/b. Ms. Pushpa Thapa for the Petitioner in Public Interest Litigation No. 22 of 2024.*

Ms. Ronita Bhattacharya Bector *i/by. Mr. Amar Garate for the Petitioner in Public Interest Litigation (L.) No.8224-2024.*

Mr. Milind Sathe, Senior Advocate *with Mr. Bhushan Deshmukh with Ms. Ravleen Sabharwal and Ms. Aarushi Yadav i/b. RS Justicia Law Chambers for Respondent No.1-MSRDC in Public Interest Litigation No.22/2024 and for Respondent No.3-MSRDC in Public Interest Litigation (Lodg.) No.8224/2024.*

Ms. Ravi Kadam, Senior Advocate **with Mr. Zal Andhyarujina,** Senior Advocate *with Mr. Karan Bhide, Ms. Rati Patni, Mr. Vikrant Dere, Ms. Anushka Maurya and Ms. Kathleen Lobo i/b. Wadia Ghandy & Co. for Respondent No.6 in Public Interest Litigation No. 22/2024 and for Respondent No.5 in Public Interest Litigation (Lodg.) No. 8224/2024.*

Mr. Anil Singh *Additional Solicitor General with Ms. Savita Ganoo, Ms. Carina Xavier, Mr. Raj Ambekar, Ms. Rama Gupta and Ms. Shrishti Shahi for Respondent No.4-UOI in Public Interest Litigation No. 22-2024.*

Mr. Anil C. Singh, *Additional Solicitor General with Ms. Shehnaz V. Bharucha i/b. Mr. A.A. Ansari, for Respondent No.1 in Public Interest Litigation (Lodg.)-8224/2024.*

Ms. Jaya Bagwe *for Respondent No.2-MCZMA in Public Interest Litigation No. 22/2024 and for Respondent No.4-MCZMA in Public Interest Litigation (Lodg.) No.8224/2024.*

Mr. Akshay Shinde *with Ms. Oorja Dhond i/b. Ms. Komal R. Punjabi for Respondent No.5-M.C.G.M. in Public Interest Litigation No. 22/2024.*

Mr. Milind V. More, *Addl. Government Pleader for Respondent Nos.2 and 3 in Public Interest Litigation No. 22 of 2024 and for Respondent No.2 in Public Interest Litigation (Lodg.) No. 8224/2024.*

CORAM : ALOK ARADHE, CJ. &

SANDEEP V. MARNE, J.

Reserved On : 21 August 2025.

Pronounced On : 26 August 2025.

JUDGMENT :- *(Per : Sandeep V. Marne, J.)*

A. THE CHALLENGE

1) These two petitions are filed *pro-bono-publico* for restraining the Maharashtra State Road Development Corporation **(MSRDC)** from commercially exploiting the land, which was reclaimed for construction of Bandra Worli Sea Link in Mumbai. Petitioners contend that permission to reclaim the land in question for construction of the Sea Link was granted subject to the restriction of not utilizing the reclaimed

land for residential or commercial purposes and that the said restriction would continue to apply notwithstanding the fact that the land now falls outside the Costal Regulation Zone (**CRZ**). They allege that in violation of the said condition imposed by the Ministry of Environment and Forests, the reclaimed land is being commercially exploited by MSRDC by appointing Respondent No.6 as a contractor.

2) The short issue that arises for considerations in these Public Interest Litigations is whether the restriction of non-exploitation of reclaimed land for commercial or residential purposes imposed in the Environmental Clearance issued as per Coastal Zone Regulation Notification, 1991 would continue to apply even after the reclaimed land subsequently falls outside CRZ area as per the Coastal Zone Regulation Notification, 2019. To paraphrase, whether a reclaimed land would remain undevelopable for perpetuity even after the same is no longer a part of defined CRZ area?

B. FACTS

3) A brief factual narration as a prologue to the judgment would be necessary. The first Development Plan for the City of Bombay (later renamed as Mumbai City) came into force on 17 February 1966. In and around 1974, Bombay Metropolitan Regional Development Authority **(BMRDA)** was constituted under the provisions of Bombay Metropolitan Region Development Act, 1977 for the overall development of Bombay Metropolitan Region. On 7 March 1977, the State Government appointed BMRDA as a Special Planning Authority for the notified area of Bandra Kurla Complex. In 1984, a draft revised

Development Plan of H-West Ward and G-North Ward of Municipal Corporation of Greater Mumbai **(MCGM)** was published inviting suggestions and objections by the Municipal Corporation. This revised plan included *'West Island Freeway'* going from the middle of the Bay between Bandra's ancient Fort and Mahim Fort, one going towards toward Worli Sea Face in South and the other going towards North at Bandra. On 7 May 1992, the State Government sanctioned the revised Development Plan of G-North and H-West Wards of M.C.G.M. which included the West Island Freeway.

4) On 19 February 1991, the Government of India, through Ministry of Environment and Forests **(MoEF)** published Coastal Regulation Zone Notification, 1991 **(1991 CRZ Notification)** declaring the defined areas as CRZ and imposed various restrictions on setting up or expanding of industries, operations or processes in the CRZ. The restrictions inter alia included prohibition on reclamation of land between High Tide Line **(HTL)** and Low Tide Line **(LTL)** and creation of any obstruction in the flow of tidal waves. On 10 June 1993, the Government of Maharashtra applied to MoEF for construction of Bandra-Worli Sea Link as the same required reclamation of land. During pendency of State Government's application dated 10 June 1993, 1991 CRZ Notification was amended on 9 July 1977 which permitted reclamation for construction of bridges and sea links. On 7 January 1999, MoEF granted clearance for construction of Bandra-Worli Sea Link subject to various terms and conditions. One of the conditions was that the reclaimed land should be kept to the bare minimum (*not exceeding 4.7 hectares*) and the same to be monitored closely so as not to violate the provisions of 1991 CRZ Notification. On 27 June 2000, MoEF issued amendment to the clearance modifying

Condition No.(viii) which increased the reclaimed area to 27 hectares. A specific condition was imposed that no portion of the reclaimed area should be used for residential/commercial purposes.

5) In pursuance of the clearance granted by MoEF, construction of Bandra-Worli Sea Link was undertaken by MSRDC and the same was completed in 2009. In ***Rambhau Patil Versus. Maharashtra State Road Development Authority***[1] challenge to the MoEF clearances as well as to the validity of project of Bandra-Worli Sea Link was rejected.

6) By order dated 4 November 2016 passed under the provisions of Section 40 of the Maharashtra Land Revenue Code, 1966 (**MLRC**), land admeasuring 2,32,465 sq.mtrs. was transferred by the State Government to MSRDC for the purpose of its development after securing requisite clearances from MCZMA and MoEF. In pursuance of order dated 4 November 2016, the Collector, Mumbai Suburban District passed order dated 30 January 2017 transferring the subject land admeasuring 2,32,465 sq.mtrs. in the name of MSRDC with a condition of securing prior permissions of MCZMA and MoEF in the event of construction being caused thereon. MSRDC took possession of the subject land on 17 February 2017.

7) The gross plot area of the subject plot is approximately 57.44 acres (2,32,465 sq. mtrs.), out of which MSRDC earmarked land admeasuring 29.44 Acres for road, special amenities and garden. Out of the balance 28 Acres of land, land admeasuring 24 Acres is kept available for development and approximately 4 acres of land came to be reserved for cemetery, cremation ground, burial ground, health posts etc

1 2002 (1) Bom.C.R. 76

under the Development Control Promotion Regulations, 2034 **(DCPR, 2034).**

8) In the meantime, the 1991 CRZ Notification was superseded by CRZ Notification issued on 6 January 2011 **(2011 CRZ Notification),** under which the distance from HTL for applicability of CRZ restrictions was changed in respect of tidal influenced water bodies such as bays and creeks. The 2011 CRZ Notification provided for CRZ area in resepct of land alongside bays and creeks upto the distance of 100 meters from HTL. In the year 2014, the water body at Mahim was classified as 'Bay' and applicability of CRZ restrictions became applicable only in resepct of lands situated upto the distance of 100 mtrs from HTL. The 2011 CRZ Notification was superseded by another Notification issued by MoEF on 18 January 2019 **(2019 CRZ Notification)**, which envisaged preparation of Coastal Zone Management Plan **(CZMP)**. Accordingly, CZMP for Mumbai City was prepared and the same was approved by MoEF on 29 September 2021.

9) It is the case of the MSRDC that under the 2019 CRZ Notification and as per the CZMP prepared in pursuance thereof, the subject plot (*including 24 acres available for development*) is outside CRZ area. Accordingly, MSRDC floated a tender for selection of developer for development of MSRDC land parcel in Bandra as Construction and Development Agency in January 2024. Upon learning about the proposed the development, Petitioner in Public Interest Litigation No.22 of 2024 filed a complaint with MCZMA on 21 February 2024. He also sought information under the Right to Information Act, 2005 and received reply dated 4 March 2024 from MSRDC. Petitioners believe that no development is permissible on the subject plot and have

accordingly filed the present petitions to restrain MSRDC from planning and executing any commercial development activities on the subject plot. The prayers made in Public Interest Litigation No. 22/2024 are as under :-

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 restraining the Respondent No.1 from planning or executing any commercial development activity at Plot bearing CTS No 792 of Village Bandra-A, Mumbai Suburban District,

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 Respondents that upon completion of their public utility (casting yard) usage to take steps to protect and preserve the Plot bearing CTS No 792 of Village Bandra-A, Mumbai Suburban District as a Green Lung:

c. That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondent No.1 to refrain from planning or carrying out any commercial development activity at Plot bearing CTS No 792 of Village Bandra-A, Mumbai Suburban District;

d. Ad-interim reliefs in terms of prayer clause (c) above;

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

f. For costs of this Petition.

10) The prayers in Public Interest Litigation (L) No. 8224/2024 are more or less similar and read thus:-

(a) that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions thereby declaring that permission and or steps which is been taken by the Respondent in reservation of the plot of land admeasuring 24 acres of Bandra Reclamation Land is illegal null and void ultra vires, bad in law as same is in complete violation of conditions stipulated in the letter of approval dated 7th January, 1999 and letter dated- 26" April 2000. EXH-“C”

(b) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing that Respondents shall not take any further steps in respect of the plot of land admeasuring 28 acres, out of which 24 pursuant to tender floated by Respondent No. 3 as same is incomplete violation of conditions stipulated in the letter of approval dated 7th January, 1999 and letter dated 26th April 2000 ie EXH. "C"

(c) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing that Respondent no. 1 to 3 shall not proceed further with respect to the sanctioning of permission and or approval of any nature whereby Development of the plot of land admeasuring 24 acres of Bandra Reclamation Land can proceed as same is in complete violation of conditions stipulated in the letter of approval dated 7th January, 1999 and letter dated 26th April 2000.

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing that Respondents to develop a Public Park as stipulated in the MSRDC plans submitted for Environment Clearances for the Bandra Worli Sea Link.

(e) that pending the hearing and final disposal of the petition, this Hon'ble Court be pleased to direct Respondents not to take any action in exercise of any purported power purportedly vested in Respondents pursuant to development of the plot of land admeasuring 24 acres of Bandra Reclamation Land,

(f) that pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to restrain Respondents from taking steps in respect of the development of the plot of land admeasuring 24acres of Bandra Reclamation Land in any manner whatsoever;

(g) Ad-interim and interim relief in terms of prayer clauses (e) and (f)

(h) for costs

(i) for such other and further relief's as the nature and circumstances of the case may require.

11) During pendency of the petitions, MoEF has granted environmental clearance under the Environment Impact Assessment Notification dated 14 September 2006 (**EIA Notification 2006**) for undertaking development on the subject plot on 8 April 2025.

C. SUBMISSIONS

C.1 SUBMISSIONS ON BEHALF OF PETITIONERS IN PIL NO. 22 OF 2024

12) Mr. Kakalia, the learned counsel appearing for the Petitioner submits that reclamation of land for execution of project on Bandra Worli Sea Link was undertaken and environmental clearance therefor was secured under a specific understanding that the reclaimed land shall not be used for any developmental activities. That specific condition No.(viii) was included in permissions dated 7 January 1999 as amended on 26 April 2000 prohibiting use of the reclaimed land for residential/commercial purposes. That Condition No. (viii) is independent of whether the subject land falls within the CRZ or not. That the said condition provided for non-violation of the 1991 CRZ Notification, which sufficiently addresses the restrictions on the subject reclaimed land made available as a result of the said Notification. The said condition was not included on account of subject land falling within CRZ area but the same was included to prevent what MSRDC is now seeking to do, that is to reclaim the land for said purpose of construction of sea link and then change the user thereof to allow private development thereon. The condition was added on the basis of representation made by MSRDC and State Government that the reclaimed land would be not only kept open but would be developed into a green area. That the land can be used only for the purpose of execution of Project of Bandra-Worli Sea Link which is clear form Condition No.(ix) of the Environmental Clearance which prohibits any activities on landward side except collection of toll for users of sea link. Thus, the conditions are imposed in the clearance for the purpose of

binding MSRDC by the representations it made while securing the clearance.

13) Mr. Kakalia would further submit that the restriction on development of land by MSRDC is further clear from order dated 4 November 2016 for transfer of land to MSRDC which also provides for securing approval of MCZMA/MoEF in respect of any activities over the subject plot. Similar condition was also imposed by the Collector in transfer order dated 30 January 2017.

14) Mr. Kakalia would further submit that the restrictive Condition No. (viii) in clearance dated 26 April 2000 continues to apply to the subject land notwithstanding the changes brought by the 2019 CRZ Notification. That originally Clause No.2 (viii) of the 1991 CRZ Notification prohibited land reclamation completely. By Notification dated 9 July 1997 amendment was made in the 1991 CRZ Notification, which allotted land reclamation for specified purposes including construction of projects and sea links. That therefore the environmental clearances dated 7 January 1999 and 26 April 2000 were granted under the 1991 CRZ Notification as amended by the 1997 amendment. That the 2011 CRZ Notification expressly saved all things done or omitted to be done while superseding the 1991 CRZ Notification. Similarly, the 2019 CRZ Notification saved all things to be done or omitted to be done while superseding the 2011 CRZ Notification. That the effect of the saving clauses under the 2011 and 2019 CRZ Notifications is that the reclaimed land, which has become available on account of environmental clearance granted under the 1991 CRZ Notification would continue to be governed by the conditions imposed while granting the said environmental clearance. He would rely upon

judgment of the Apex Court in ***Pune Municipal Corporation Versus. Sus Road Baner Vikas Manch and others***[2] in support of his contention that the expression 'all things done' is comprehensive enough to take in not only the things done but also legal consequences arising therefrom. Reliance is also placed on the judgment of the Apex Court in ***Maharashtra Chamber of Housing Industry, Mumbai and others Versus. State of Maharashtra and another***[3] in support of the contention that the conditions attached to the exemption granted vide environmental clearances dated 7 January 1999 and 26 April 2000 would continue to be saved by virtue of saving clauses in the 2011 and 2019 CRZ Notifications.

15) Mr. Kakalia would further submit that even *dehors* the environmental clearance issued under the 1991 CRZ Notification, commercial exploitation of the land would not be permitted if the project was to be undertaken today under the 2019 Notification. That under Clause-5.1.2 of the 2019 CRZ Notification, reclamation of land is allowed only for permitted activities which does not include construction of residential or commercial buildings. That the status of land as a reclaimed land, which is reclaimed for public purpose, cannot be altered and the same would always remain as a reclaimed land attracting prohibition under Clause-5.1.2 of the 2019 CRZ Notification. That interpretation advanced by MSRDC and the sixth Respondent, if accepted, would lead to an absurdity and would defeat the very purpose of the CRZ Notification. The a project proponent would reclaim land within the tidal influenced water body for permitted purpose and then contend that the land so reclaimed which is beyond the distance of 50 meters from HTL falls outside CRZ and can be commercially exploited.

2 (2024) 9 SCC 1
3 2014 SCC Online Bom 1083

The Court cannot countenance such a manifestly absurd interpretation of CRZ Notifications as held in ***Commissioner of Income Tax Versus. National Taj Traders***[4].

16) Mr. Kakalia would then invite our attention to the Affidavit-in-Reply filed by MCGM to demonstrate that MCGM also believed that the subject plot is affected by CRZ. That the Affidavit refers to Notification dated 22 May 2023, by which draft Development Plan of 2034 of Bandra A-block is transferred from MMRDA to MCGM which includes a table showing that even in the year 2023 (well after preparation of CZMP in pursuance of 2019 CRZ Notification), the zoning of the subject land was proposed within 'C' Zone ignoring environmental clearance dated 26 April 2000. That the State Government has refused to sanction the proposed Notification. That in any case, what is evident from MCGM's initial Affidavit in Reply that MCGM itself has understood applicability of Condition No. (viii) in environmental clearance dated 26 April 2000 as a restriction for commercial exploitation of the subject plot. That MCGM has latter attempted to change its stand, which cannot be countenanced in law. That even MCZMA has stated in its Reply that CRZ clearance would be necessary from MOEF in the light of condition No. (viii) of EC dated 26 April 2000.

17) Mr. Kakalia would then rely on the six-Monthly Monitoring Report submitted by MSRDC to MoEF on 8 July 2024 indicating thereby that the conditions mentioned in the environmental clearance dated 26 April 2000 still continue to apply requiring MSRDC to submit a six Monthly Monitoring Report.

4 (1980) 1 SCC 370

18) Lastly, Mr. Kakalia, would submit that the proposed commercial exploitation of the subject land violates the public trust doctrine. That a specific representation was made (after raising of concerns for excessive reclamation of land) that the entire reclaimed land would be kept open as open space/garden without any commercial exploitation (letter of Government of Maharashtra dated 10 February 2000). That the environmental clearance dated 26 April 2000 was issued in respect of reclaimed land of 27 hectares acting on the said representation. After having reclaimed land by making a representation that the same would be kept open as green belt/garden, it is impermissible for MSRDC to take a *volte-face* and utilize the land for commercial purposes. He would rely upon judgment of the Apex Court in ***Karnataka Industrial Areas Development Board Versus. C. Kenchappa and others***[5] in support of the contention that the public trust doctrine enshrines upon the Government and its Instrumentalities a duty to protect public resources such as the land and the sea for enjoyment of general public. That the present case does complete violence to the doctrine of public trust. That the present project has no public trust element at all as what has been planned to be developed by Adani Properties is high end luxury project which will be accessible only to affluent sections of the Society. That permitting commercial exploitation of the subject land would be gross breach of public trust doctrine. On above broad submissions, Mr. Kakalia would pray for making the Public Interest Litigation No.22/2024 absolute in terms of the prayers made therein.

5 (2006) 6 SCC 371

C.2 SUBMISSIONS ON BEHALF OF PETITIONERS IN PIL (L) NO. 8224 OF 2024

19) Ms. Bector, the learned counsel appearing for the Petitioners in Public Interest Litigation (L.) No.8224/2024 would adopt the submissions of Mr. Kakalia. Additionally, she would submit that the CRZ Notifications are not to be read in the manner as if they are Development Control Regulations. CRZ Notifications are not enabling framework for development but a mitigative framework for permitting only limited activities while seeking to protect coastal areas. That the reclaimed land can never lose its status as a reclaimed land. That reclaimed land is not specified as a separate category in 2019 CRZ Notification and that therefore all the restrictions occurring under 1991 and 2011 CRZ Notifications would continue to apply with full force to land which is reclaimed under permission secured in pursuance of the said Notifications.

20) Ms. Bector would press into service the doctrine of non-regression while submitting that environmental law cannot be interpreted or modified detrimental to environmental protection. That after enactment of CRZ Notifications, reclaimed land in Mahim, as a practice, is reserved for open spaces. She would draw parallels with CRZ clearance granted in 2017 to Mumbai Coastal Road Project providing that 70 acres out of 90 acres of reclaimed land would be used only for open spaces and that the reclaimed land would not be used for residential and commercial purposes. She would rely upon judgment of the Apex Court in ***Royal Orchid Hotels Limited and another Versus. G. Jayarama Reddy and others***[6] in support of the contention that land

6 (2011) 10 SCC 608

acquired by the Government in exercise of power of eminent domain cannot be used for another purpose and doing so would be abuse of power of eminent domain of the Government.

21) Ms. Bector would further submit that substantial portion of the land of subject plot was reserved for 'plantation' or 'green belt' as approved plan for Bandra-Worli Seal Link which is yet to be developed and maintained as green zone. That reliance by MSRDC on the report of Institute of Remote Sensing, Anna University, Chennai is misplaced as the same institute was never informed that the land was earlier reclaimed. That the EIA Notification requires continuous monitoring without specifying any time limit and any deviation amounts to false information/concealment. She would invite our attention to the environmental clearance granted by MoEF on 8 April 2025 which also specifies the condition for securing CRZ clearance from Competent Authority indicating that the land still falls under CRZ restrictions. That the very fact that monitoring reports are required to be submitted even today leave no manner of doubt that CRZ restriction continue to apply in respect of the subject plot.

22) Lastly, Ms. Bector would submit that MSRDC is not a statutory authority and has been created merely under a Government Resolution by the State Government with the object of development of roads in the State. It is not the objective of MSRDC to undertake commercial development of land. That this is yet another reason why the land reclaimed by a road building authority exclusively for the construction of sea link project cannot be permitted to be commercially exploited by such an agency which is not constituted with the object of commercial exploitation of land. On above broad submissions, Ms.

Bector would pray for making the Public Interest Litigation (L) No.8224/2024 absolute in terms of the prayers made therein.

C.3 SUBMISSIONS ON BEHALF OF RESPONDENT NO.1-MSRDC

23) Dr. Sathe, the learned Senior Advocate appearing for Respondent No.1-MSRDC would oppose both the petitions submitting that the subject plot does not fall within the CRZ area under the 2019 CRZ Notification and that therefore CRZ restrictions prescribed in the 2019 CRZ Notification are inapplicable to the activities to be undertaken on the subject plot. He would submit that CRZ Notifications do not have any universal application and they apply only to the defined areas. That 1991 CRZ Notification apply only to area falling within the distance of 500 meters from HTL and did not provide for any restrictions beyond the said area. That the 2011 Notification brought about a change which reduced the defined area in so far as Bays and creeks are concerned to 100 meters. That the subject plot is situated in proximity of Mahim Bay for which the defined area was only 100 meters from HTL. In support of his contention of Mahim Sea being declared as Bay, Dr. Sathe would rely upon order passed by this Court in ***Deepak Rao Versus. The State of Maharashtra and Ors.***[7] and ***Hoary Realty Ltd. & Anr. Versus. Municipal Corporation of Greater Mumbai & Ors.***[8]. That if declaration of Mahim water body being a 'bay' was available at the time of execution of Bandra-Worli Sea Link Project, the land would have fallen outside CRZ limit as the same is even outside 100 meters distance from HTL. That 2019 CRZ Notification has reduced the defined area affected by Bay to only 50 meters from HTL.

7 Writ Petition No. 327 of 2013 dated 25 November 2013.
8 Writ Petition (L.) No. 2383/2014 dated 7 October 2014

He would take us through various documents to demonstrate as to how the subject plot no longer falls in CRZ area under the 2019 CRZ Notification.

24) Dr. Sathe would submit that the permissions dated 7 January 1999 and 26 April 2000 were secured under 1991 CRZ Notification. That the said permissions are not issued under EIA Notification of 1994 which is apparent from the fact that the application for permission was made on 10 June 1993 well before issuance of the EIA Notification dated 27 January 1994. That since defined areas are governed by various CRZ Notifications issued from time to time, the moment there is change in the defined areas, restrictions imposed in the previous permission based on then existing CRZ regime would become inapplicable if subsequent CRZ Notification throws the subject plot outside the defined CRZ area.

25) Dr. Sathe would further submit that the interpretation of Petitioners about saving clauses in 2011 and 2019 CRZ Notifications is flawed. That the saving clauses only mean that '*things done and omitted to be done*' under the previous CRZ Notification are protected. That the expression '*things done*' means permissions already secured under previous CRZ Notifications are saved and need not be obtained afresh. That the expression '*omitted to be done*' refers to the things which were not required to be done in previous CRZ Notifications but are required to be done under the new CRZ Notification are saved and a person is not held responsible for non-doing of such omitted thing. That saving clauses do not mean that the condition imposed under environmental clearance would continue to operate in perpetuity. He would rely upon the provisions of Section 6 of the General Clauses Act, 1897 in support

of his contention that the effect of repeal merely protects the things done under the repealed enactment and does create an actionable claim in favour of a third party.

26) Dr. Sathe would further submit that part of the reclaimed land has been reserved for various purposes under DCPR 2034 including reservation of cemetery. That as a result of order passed by this Court in Public Interest Litigation No.101/2024 dated 27 March 2024, the land reserved for cemetery has been handed over to MCGM. That thus part of the reclaimed land is permitted to be used by this Court for setting up a cemetery belying the contentions of the Petitioners that the same cannot be used for any developmental activities on account of restrictions imposed under the environmental clearance issued on 26 April 2000. That Petitioners have selectively challenged execution of the subject project without raising any objection for use of part of the reclaimed land as cemetery. So far as the Six Monthly Compliance Reports submitted by MSRDC is concerned, he would submit that Reports are submitted in a prescribed format and cannot be read to mean as if the act of MSRDC in submitting six monthly reports amounts to admission of application of Condition No. (viii) of environmental clearance dated 26 April 2000. Dr. Sathe would pray for dismissal of the petitions.

C.4 SUBMISSIONS ON BEHALF OF RESPONDENT-MOEF

27) Mr. Singh, the learned Additional Solicitor General appearing for the Respondent-Union of India would also oppose the petitions submitting that once the subject plot is found to be falling outside the CRZ area, the same becomes developable and the previous

conditions issued by MoEF on 7 January 1999 and 26 April 2000 would no longer apply. That Condition No.(viii) in environmental clearance dated 26 April 2000 was imposed because the land was falling under CRZ area as per 1991 CRZ Notification as amended in 1997. That if the land was not falling in CRZ at the relevant time, the condition could not have been imposed. That therefore the moment the land goes outside the CRZ area, condition would also automatically become inapplicable. That MoEF has granted environmental clearance for the project after considering the fact that the Plot is not affected by CRZ Notification. He would pray for dismissal of the petitions.

C.5 SUBMISSIONS ON BEHALF OF RESPONDENT NO.6

28) Mr. Kadam, the learned Senior Advocate appearing for Respondent No.6 would oppose the petition submitting that the subject plot no longer forms part of CRZ area. He would take us through several documents to demonstrate that the subject plot is no longer a part of CRZ restrictive area. That Petitioners also admit that the subject plot is outside the distance of 50 meters from HTL of Mahim Bay. That the moment, the plot is found to be outside CRZ area, there is no question of applying any CRZ related restrictions. That the land can no longer be described as a reclaimed land and the same cannot be treated as reclaimed land in perpetuity. That a reclaimed land ultimately assumes the character of 'land' and development thereon can be carried out subject to CRZ restrictions. That 2019 CRZ Notification does not impose any restriction on use of the subject plot. That therefore no CRZ related restrictions can apply for carrying out development on the subject plot. That considering the size of the plot taken up for

development, permission from MoEF has been secured on 8 April 2025. Mr. Kadam would accordingly pray for dismissal of the petitions.

29) Ms. Bagwe, the learned counsel appearing for MCZMA would adopt the submissions of the Additional Solicitor General.

30) Mr. Shinde, the learned counsel appearing for MCGM would draw our attention to the Affidavits-in-Reply filed on behalf of the Municipal Corporation. He would submit that the subject plot now falls outside CRZ area and that therefore no CRZ related restrictions can be applied for carrying out any development on the subject plot.

D. REASONS AND ANALYSIS

31) The core issue that requires determination in present PIL petitions is whether the restrictive conditions imposed while granting CRZ clearance for undertaking reclamation of land would continue to apply even when the reclaimed land falls under CRZ area under the current coastal zone regulatory regime. In other words, whether a project proponent who has secured permission to reclaim land under 1991 CRZ Notification by undertaking not to use the reclaimed land for residential or commercial development, can be permitted to undertake such development merely because the 2019 CRZ Notification puts such reclaimed land outside the CRZ area ?

32) The issue arises in light of peculiar facts of the case where Bandra Worli Sea Link project has been executed during 1991 CRZ regime which included the location where reclamation is done in CRZ area (500 meters from HTL). Since land reclamation for construction of

a sea link was permissible activity under the amended 1991 CRZ Notification, Environment Clearance was granted by MoEF for undertaking land reclamation by putting a restriction that the reclaimed land shall not be used for residential or commercial development. However subsequently 2011 CRZ Notification reduced the CRZ defined area to 100 meters from tidal influenced water bodies like bay and creeks. The concerned water body at Mahim has been declared as a 'bay'. By further CRZ Notification of 2019, the CRZ area is now reduced to only 50 meters from HTL of Mahim Bay. On account of these changes, the reclaimed land now falls outside CRZ area and on that count, MSRDC has taken up development for commercial and residential use on the subject plot contending that CRZ restrictions no longer apply to such development. Petitioners, on the other hand, contend that MSRDC cannot secure permission to reclaim the land on a representation that reclaimed land would not be used for residential or commercial development and then turn around and undertake such development contrary to the conditions subject to which permission to reclaim the land was granted. Petitioners contend that the conditions imposed in clearances issued under previous CRZ Notification are saved and continue to operate even if any subsequent change is made in CRZ area by successive Notifications. This is the broad controversy involved in the present petitions.

D.1 CRZ NOTIFICATIONS

33) The Environment (Protection) Act, 1986 is enacted to provide for protection and improvement of environment and for matters connected therewith. Section 3 of the Act empowers the Central

Government to take measures to protect and improve the environment. Sub-section (2) of Section 3 contains inclusive list of matters in respect of which the Central Government can take measures. Section 3(2)(v) provides for restriction of areas in which any industries, operations or processes or classes of industries, operations and processes cannot be carried out or can be carried out subject to certain safeguards. Sections 6 and 25 of the Act empowers the Central Government to make Rules, and in exercise of that power, the Environment (Protection) Rules, 1986 have been notified. Rule-5 regulates the procedure for prohibiting and restricting location of industries and carrying on processes and operations in different areas. Sub-Rule (3) of Rule 5 empowers the Central Government to issue notifications imposing prohibition or restriction on location of industries and carrying on of processes or operations in an area.

D.1.1 1991 CRZ NOTIFICATION

34) In exercise of powers conferred by clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the MoEF issued Notification dated 19 February 1991 (1991 CRZ Notification) declaring coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action (in the landward side) upto 500 meters from HTL and the land between LTL and HTL as "Coastal Regulation Zone". The Notification imposed the enumerated restrictions on setting up and expansion of industries, operations or processes, etc. in the defined Coastal Regulation Zone. The 1991 CRZ Notification prohibited *inter alia* the activity of land reclamation. The relevant portion of 1991 CRZ Notification reads thus :-

> Now, therefore, in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone,; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ). For purposes of this Notification, the High [Tide Line (HTL) will be denned as the line upto which the highest high tide reaches at spring tides.
>
> Note.—The distance from the High Tide Line (HTL) to which the proposed regulations will apply in the case of rivers, creeks and backwater; may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans (referred to below) ; however, this distance shall not be less than 100 metre or the width of the creek, river or backwater whichever is less.
>
> The following activities are declared as prohibited within the Coastal Regulation Zone, namely :
> (i)
> (ii)
>
> (viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or cleasing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and sweet water recharge;

35) The 1991 CRZ Notification was amended by Notification dated 9 July 1997, under which sub-paragraph (viii) was substituted as under :-

> (viii) land reclamation, bunding or disturbing the natural course of sea water except those required for construction of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge"

36) Thus, as against complete prohibition on land reclamation under the 1991 CRZ Notification, the amended paragraph (viii) vide Notification dated 9 July 1997 permitted land reclamation for construction of ports, habours, jetties, wharves, ways, slip-ways, bridges and sea link and other facilities that are essential for activities that are permissible under the Notification.

D.1.2 2011 CRZ NOTIFICATION

37) In supersession of 1991 CRZ Notification, MoEF issued 2011 CRZ Notification. While various other changes were bought into effect by 2011 CRZ Notification, the major change included the declaration of areas as CRZs. While land area from HTL of 500 meters on landward side along sea front continued to be declared as CRZ, major change was bought about in respect of land area alongside tidal influenced water bodies. The land area between HTL upto distance of 100 meters on landward side along tidal influenced water bodies was declared as CRZ by 2011 CRZ Notification. The relevant part of 2011 CRZ Notification reads thus :-

> Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through 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, does hereby, declare the coastal stretches of the country and the water area upto its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands upto its territorial limit, as Coastal Regulation Zone (hereinafter

referred to as the CRZ) and restricts the setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances as specified in the Hazardous Substances (Handling, Management and Transboundary Movement) Rules, 2009 in the aforesaid CRZ.; and

In exercise of powers also conferred by clause (d) and sub rule (3) of rule 5 of Environment (Protection) Act, 1986 and in supersession of the notification of the Government of India in the Ministry of Environment and Forests, number S.O.114(E), dated the 19th February, 1991 except as respects things done or omitted to be done before such supercession, the Central Government hereby declares the following areas as CRZ and imposes with effect from the date of the notification the following restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ,-

(i) the land area from High Tide Line (hereinafter referred to as the HTL) to 500mts on the landward side along the sea front.

(ii) CRZ shall apply to the land area between HTL to 100 mts or width of the creek whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt) measured during the driest period of the year and distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans (hereinafter referred to as the CZMPs).

Explanation.- For the purposes of this sub-paragraph the expression tidal influenced water bodies means the water bodies influenced by tidal effects from sea, in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds connected to the sea or creeks and the like.

38) Under para-3(ix) of the 2011 CRZ Notification, reclamation for commercial purposes was prescribed as a prohibited activity within the CRZ. However, under para-3(iv)(a), land reclamation, bunding or disturbing the natural course of sea water was permitted for construction of bridges and sea link.

D.1.3 2019 CRZ NOTIFICATION

39) The 2011 CRZ Notification is superseded by 2019 CRZ Notification issued on 18 January 2019. The major change brought about by 2019 CRZ Notification for the purpose of deciding the issue at hand, is reduction of the distance from HTL for classification of area as CRZ from tidal influenced water bodies. Thus, under the CRZ Notification 2019, the land area between HTL upto the distance of 50 meters on landward side along tidal influenced water bodies falls in CRZ. The relevant portion of 2019 CRZ Notification is extracted below for facility of reference :-

> And Whereas, the Ministry of Environment, Forest and Climate Change has received representations from various coastal States and Union territories, besides other stakeholders, regarding certain provisions in the Coastal Regulation Zone Notification, 2011 related to management and conservation of marine and coastal ecosystems, development in coastal areas, eco-tourism, livelihood options and sustainable development of coastal communities etc.;
>
> And Whereas, various State Governments and Union territory administrations and stakeholders have requested the Ministry of Environment, Forest and Climate Change to address the concerns related to coastal environment and sustainable development with respect to the Coastal Regulation Zone Notification, 2011;
>
> Now, therefore in exercise of the powers conferred by sub-section (1) and clause (v) of subsection (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in supersession of the Coastal Regulation Zone Notification 2011, number S.O. 19(E), dated the 6th January, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, with a view to conserve and protect the unique environment of coastal stretches and marine areas, besides livelihood security to the fisher communities and other local communities in the coastal areas and to promote sustainable development based on scientific principles taking into account the dangers of natural hazards, sea level rise due to global warming, do hereby, declares the coastal stretches of the country and the water area up to its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands, as Coastal Regulation Zone as under:-

(i) The land area from High Tide Line (hereinafter referred to as the HTL) to 500 meters on the landward side along the sea front.

Explanation. - For the purposes of this notification, the HTL means the line on the land upto which the highest water line reaches during the spring tide, as demarcated by the National Centre for Sustainable Coastal Management (NCSCM) in accordance with the laid down procedures and made available to various coastal States and Union territories.

(ii) CRZ shall apply to the land area between HTL to 50 meters or width of the creek, whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of five parts per thousand (ppt) measured during the driest period of the year and distance up to which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plan (hereinafter referred to as the CZMP):

Provided that the CRZ limit of 50 meters or width of the creek whichever is less, shall be subject to revision and final approval of the respective CZMPs as per this notification, framed with due consultative process, public hearing etc. and environmental safeguards enlisted therein, and till such time the CZMP to this notification is approved, the limit of 100 meters or width of the creek whichever is less, shall continue to apply.

Explanation.- For the purposes of this sub-paragraph the expression "tidal influenced water bodies" means the water bodies influenced by tidal effects from sea in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds that are connected to the sea.
(iii) The "intertidal zone" means land area between the HTL and the Low Tide Line (hereinafter referred to as the LTL).
(iv) The water and the bed area between the LTL to the territorial water limit (12 Nm) in case of sea and the water and the bed area between LTL at the bank to the LTL on the opposite side of the bank, of tidal influenced water bodies.

(emphasis added)

40) The effect of 2019 CRZ Notification is such that the land between the distance of 51 meters to 100 meters from tidal water influenced bodies like creeks and bays are now outside the CRZ regulatory framework.

41) Perusal of the 1991, 2011 and 2019 CRZ Notifications would thus indicate that the Notifications provide for a regulatory framework by prohibiting most of the activities in defined CRZ areas and permitting very few activities, subject to various restrictions. The CRZ Notifications are not aimed at promoting development in coastal areas unlike Development Control Promotion Regulations of a Planning Authority, but provide for a mitigative framework based on the principle of sustainable development. The CRZ Notifications define the area within which the stipulated prohibitions, restrictions and permissions are applicable. This follows that the restrictions imposed by CRZ Notifications do not apply to the lands which are not included in defined CRZ areas.

D.2 ENVIRONMENTAL CLEARANCES DATED 7 JANUARY 1999 & 26 APRIL 2000 FOR BANDRA-WORLI SEA LINK PROJECT

42) Having considered the three CRZ Notifications issued in 1991 (as amended in 1997), 2011 and 2019, it would be necessary to consider the background in which the environmental clearance was sought and secured for execution of Bandra Worli Sea Link project. The Urban Development Department of Government of Maharashtra had submitted application dated 10 June 1993 to MoEF seeking environmental clearance for construction of Bandra Worli Sea Link project. It must be observed here that as on the date of application dated 10 June 1993, the only regulatory framework requiring environmental clearance was in the form of 1991 CRZ Notification. The Environment Impact Assessment Notification dated 27 January 1994 was issued subsequent to the application dated 10 June 1993. There is some degree

of debate between the parties as to whether environment clearance issued in respect of Bandra Worli Sea Link project is referable only to 1991 CRZ Notification or has any reference with regard to EIA Notification dated 27 January 1994. This aspect is being discussed in latter part of the judgment. The State Government's application dated 10 June 1993 was allowed by MoEF, which accorded environmental clearance to the proposed Bandra Worli Sea Link project on 7 January 1999. The approval was accorded subject to the condition that the land reclamation should be kept bare minimum (not exceeding 4.7 Hectares) and that the same should be monitored closely so as to not violate conditions of 1991 CRZ Notification. The approval was also subject to the condition of impermissibility to undertake commercial or residential activity/development on seaward side of the road and no commercial activity on the landward except relating to collection of the toll for users of the sea link. It would be apposite to reproduce the relevant portion of Environmental Clearance dated 7 January 1999 which reads thus:-

> No. Z-12011/92-JA-III
> Government of India
> Ministry of Environment & Forests
> Parayavarn Bhawan CGO Complex,
> Lodhi Road, New Delhi-440 003
>
> Dated the 7th January, 1999.
>
> Subject : Construction of Worli Bandra link Road,
> Project in Mumbai Environmental Clearance reg.
>
> The Undersigned is directed to refer to letter No. BMRDA-1092-25/CR-4/UD-10 dated 10th June, 1993 from the Urban Development Department, Government of Maharashtra and subsequent correspondence regarding the subject mentioned above, Further information submitted by Mumbai Metropolitan Regional Development Authority vide their letter No- T/WELR/EIA/Vol. VI dated 25.8.97 and clarification submitted vide their letters dated 28th

November, 1977, 10th December, 1977 have also been examined. In addition, the information furnished by Maharashtra State Road Development Corporation vide their letter No. MSRDC/WBLR/402 dated 23rd March, 1998 and clarifications offered during discussions have also been examined Ministry of Environment & Forests herby accords environmental clearance to the proposed Worli Bandra Link Road Project Subject to strict compliance of terms and conditions mentioned below.

i.

ii.

iii.

viii. The land reclamation should be kept to the bare minimum (not exceeding 4.7 hectares) and the same should be monitored closely so that it does not violate the provisions of the Coastal Regulation Zone (CRZ) Notification, 1991 as amended subsequently.

xi. No commercial or residential activity/ development would be allowed on the seaward side of this road. On the land ward side (within 100 meters) between existing habitations/ establishments and the road, no commercial activity except that relating to collection of toll for the users of the road would be permitted.

xxx

The above-mentioned stipulations shall be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Hazardous Chemical (Manufacture Storage and Import) Rules, 1989, the Environmental Impact Assessment (EIA) notification, 1994, the Coastal Regulation Zone (CRZ) Notification, 1991 as amended on 9th July, 1997, the public Liability Insurance Act, 1991 and the amendments and rules made there under from time to time.

(emphasis added)

43) It appears that MSRDC, which was the executing agency for Bandra Worli Sea Link project carried out reclamation of land exceeding 4.7 hectares, for which clearance was granted on 7 January 1999. By letter dated 20 December 1999, MoEF sought clarification from MSRDC. By letter 7/9 February 1999 MSDRC not only justified its action but sought further clearance for reclamation of 22.2 Hectares of additional land in addition to 4.7 Hectares for which permission was already granted. The request was followed by another letter dated 10

February 2000, this time by Chief Secretary, Government of Maharashtra to MoEF in which following assurance was given :-

> You may kindly appreciate that omission of not seeking specific clearance for reclamation of 22 ha. of land did take place because of certain presumptions made by MSRDC. **Moreover, this reclaimed land will be kept as open space/garden and no commercial exploitation will be done.**
>
> *(emphasis added)*

44) It appears that MoEF sought certain clarifications vide letter dated 27 March 2000 and MSRDC, while clarifying the queries, stated in its letter dated 28 March 2000 as under :-

> 2. Reclamation of road and for the filing of ditch between the existing shoreline and the proposed road were also included in the sanctioned development plan of State Government.
>
> 4. **Condition No. (xi).** The filled up area on the landward side of the road and for the promenade will be developed as "Green Area". MSRDC have got detailed plans prepared for this by a reputed Architect and based on them provision has already been made in the awarded contracts for Bandra Worli Sea Link Project.
>
> 9. Studies were carried out by the CWPRS in 1984 to ascertain the effect of construction of approach road and bridge on the waves and tidal conditions in Mahim bay. Hydraulic model studies were carried out for two sets of conditions ie. (i) For existing conditions and (ii) Superimposing the bridge having different openings and approach road. The CWPRS studies had clearly brought out the following:
>
> (a) The construction of bridge and approach road at Bandra-end is not likely to create any adverse conditions along the coast, and
>
> (b) The tidal wave direction in the Mahim bay is in the North-South direction and the bay gets filled up due to raising of level of the water and the area on the South-East of the bay is slack zone and is prone to sedimentation as flushing velocity is not available.

45) It appears that for considering MSRDC and State Government's requests for environmental clearance in respect of

additional reclaimed area, MoEF constituted a team consisting of representatives from MoEF and two representatives from State Government to examine the extent of reclamation required/done and the need and justification for the same. The team conducted site inspection and submitted report dated 16 March 2000 opining as under:-

> 9. Apart from reclamation issue MSRDC & BMC officials also explained to the team the following issues.
>
> A). After constructing the bridge, there will be no hindrance to the movement of fishing boats in Mahim bay.
>
> B). As per the studies carried out, this project has no adverse effect along the coast
>
> Conclusions
>
> After examining the various factors and the details of the project, the Team is of the view that suitable modifications may be considered by the Ministry of Environment & Forests in the environmental clearance, permitting reclamation not exceeding 27 ha so that MSRDC may complete the balance work of the project.

46) After considering the report and as per the requests made by the MSRDC and State Government, MoEF granted further Environmental Clearance on 26 April 2000 relevant portion of which reads thus :-

> 2 The Ministry of Environment and Forests constituted a team consisting of an officer from the Central Government and two officers form the Maharashtra State Government to look into the actual requirement of land for the approach road and promenade and also need and justification for the same. The team made a visit to the site during 14th-15th March, 2000 and submitted its report after examining the report of the team and the project authority the Ministry of Environment & Forests has decided to modify the conditions in the clearance letter dated 7th January, 1999, Following are the modified conditions.

> i. Condition No viii The existing provisions is replaced with the following:-
>
> **The land reclaimed should be kept to the bare minimum and should in no case exceed 27 hectare. The land reclaimed should be monitored closely in order to avoid violation of the provisions of the CR/ Notification 1991 and as subsequent amendments. No portion of the reclaimed land should be used for residential/commercial purposes.**
>
> ii. Condition No viii the existing provision is replaced with the following
>
> A six- Monthly monitoring report shall be submitted to the Regional office of this Ministry at Bhopal regarding implementation of the stipulated conditions An assessment of the impact of reclamation should also be included in the report.
>
> *(emphasis added)*

47) Thus, MoEF granted environmental clearance for reclamation of additional land subject to the condition of not exceeding reclamation beyond 27 Hectares and close monitoring of the reclaimed land so as to avoid violation of provisions of 1991 CRZ Notification and subsequent amendments. A specific condition was imposed by "*no portion of reclaimed land should be used for residential / commercial purposes*". It is this condition imposed in EC dated 26 April 2000 which is the hotbed of controversy between the parties. It is Petitioner's contention that condition imposed in EC dated 26 April 2000 continues to operate and prevents MSRDC from using the reclaimed land for residential/commercial purposes.

48) As observed above the validity of Environmental Clearance granted vide letter dated 7 January 1999 and 26 April 2000 as well as the validity of Bandra Worli Sea Link Project came to be upheld Division Bench of this Court in ***Rambhau Patil*** (supra).

D.3 HANDING OVER OF RECLAIMED LAND TO MSRDC

49) After completion of construction Bandra Worli Sea Link project, Government of Maharashtra decided to handover land admeasuring 2,32,465 sq.mtrs. (57 Hectares) to MSRDC under provisions of Section 40 of MLRC. Accordingly, State Government issued Memorandum dated 4 November 2016 which contained following conditions :-

> (iii) Usage of the said land will be permissible as per the provisions in Development Control Regulations of the concerned Planning Authority and it will be binding to take prior approval from Municipal Corporation of Gr. Mumbai before commencing such usage.
>
> (v) If there are any proposed scheme here, it will be necessary to obtain prior approvals from MCZMA/MOEF and all the concerned competent authorities.

50) In pursuance of Memorandum dated 4 November 2016, Collector, Mumbai Suburban District, passed order dated 30 January 2017 transferring the land admeasuring 2,32,465 sq.mtrs. in favour of MSRDC, in which again following conditions were stipulated :-

a) The above land can be used for the approved purposes with the aproval of the planning authority. As per Government decision, Public Works Dept. No. Khakshes-2002/Pra. Kra.182/Raste-8 dt. 5.7.2016, separate 'Land Disposal Rules' will be prepared in respect of the land held by Maharashtra State Road Development Corporation Ltd. and unless these rules are approved by the competent authorities, no disposal of this land can be made in any manner. Maharashtra State Road Development Corporation Ltd. will exercise caution in this regard.

b) It will be binding upon Maharashtra State Road Development Corporation Ltd. to use the land only for essential and approval purposes only.

c) The sanctioned land cannot be transferred/sold without prior permission from the Government / Dist. Collector, nor can it be given on lease or mortgaged.

d) The land or any of its part cannot be transferred or no third party rights can be created without government permission.

e) Prior permission will be required from the Government / Dist. Collector if the land is to be used for the purpose other than the sanctioned purposes.

D.4 CLASSIFICATION OF WATER BODY AT MAHIM AS "BAY"

51) An important event occurred sometime in the year 2014 when the water body of Mahim was classified as "Bay", which is one of the recognised tidal influenced water bodies under the CRZ Notifications. On account of classification of the water body at Mahim as 'Bay', the CRZ applicability got restricted to a distance of only 100 mtrs from HTL. There is no debate about this position as this Court in numerous cases has recognised that the applicability of CRZ has been reduced to only 100 mtrs from HTL of Mahim Bay. In this regard, Dr. Sathe has relied on orders passed in ***Deepak Rao*** (supra) and ***Hoary Realty Ltd.*** (supra). The Petitioners also do not seriously dispute the position of declaration of water body at Mahim as 'Bay' and applicability of CRZ restrictions only to the specified distance from HTL of Mahim Bay under the CRZ Notifications.

52) Here Dr. Sathe points out that the moment the water body of Mahim got declared as Bay, the subject plot actually fell outside CRZ area as the same was not within 100 mts distance of HTL. He has submitted that CRZ clearance under 1991 CRZ Notification was required to be secured only on account of the fact the Mahim water body, at that point of time, was treated as Arabian sea and the subject

plot fell within the distance of 500 meters from HTL of Arabian sea. It is thus sought to be contended on behalf of MSRDC that the subject plot was actually outside CRZ area even under 1991 or 2011 CRZ Notifications if declaration of body water at Mahima as Bay was available during 1999/2000. We need not delve further into this aspect.

53) The 2019 CRZ Notification has further reduced the distance from HTL of a Bay upto a distance of only 50 meters as noted above. Thus under 2019 CRZ Notification any land falling outside the distance of 50 meters from HTL of tidal influenced water body (Bay) falls outside CRZ area. This is how MSRDC now contends that the subject plot is now outside CRZ area and that therefore the restrictions imposed under the 2019 CRZ Notification are no longer applicable for developing the 24 acres of land for which tender was floated by MSRDC and contract has been awarded to Respondent No.6.

54) To buttress the position that the subject plot falls outside CRZ area, reliance is placed on CZMP prepared in pursuance of 2019 CRZ Notification, which certifies that the subject plot is outside the CRZ area.

55) Here it must be pointed out that Petitioners do not really dispute the position that the subject land falls outside 50 meters distance of HTL of Mahim Bay. They however contend that the subject plot would still be governed by CRZ restrictions on account of saving clauses in Notifications of 2011 and 2019. They also contend that since the subject plot forms part of reclaimed land, the CRZ restrictions under the

2019 CRZ Notification, as applicable to reclaimed lands, would continue to apply to the subject plot.

D.5 STAND TAKEN BY MCZMA, MOEF AND MCGM

56) Maharashtra Coastal Zone Management Authority (**MCZMA**) is the regulatory authority, which receives proposals and makes recommendations for CRZ clearance under the CRZ Notifications. MCZMA has clarified in its Affidavit that the subject plot is situated outside the purview of CRZ area. In its Affidavit dated 24 January 2025, MCZMA has pleaded as under :-

> 10. I say that the environmental clearance with respect to Worli Bandra Link Road Project had been granted by the Ministry of Environment and Forest on 07/01/1999 which was subsequently amended on 26/04/2000 vide Condition mentioned at Sr. Viii was replaced with the following:
>
> > "The land reclaimed should be kept to the bare minium and should in no case exceed 27 hectare. The land reclaimed should be monitored closely in order to avoid violation of the provisions of the CRZ Notification 1991 and as subsequent amendments. No portion of the reclaimed land should be used for residential / commercial purpose."
>
> **And now the subject plot is situated falls out of the preview of the CRZ area, as per prevailing CRZ Notification, 2019 and therefore clarification from Ministry of Environment, Forest and Climate Change, New Delhi is inevitable as to the applicability of the amended aforesaid condition at in the letter dated 26th April, 2000 issued by the Ministry of Environment, Forests & Climate Change, New Delhi.**
>
> *(emphasis and underlining added)*

57) Thus, while clarifying that the subject plot falls outside the purview of CRZ area, MCZMA has pleaded that clarification from MOEF is necessary in the light of conditions stipulated in

environmental clearance dated 26 April 2000. The MoEF has filed Additional Affidavit dated 14 February 2025 referring to the Affidavit of MCZMA and has pleaded therein as under :-

> 5. It is humbly submitted that the ECs to the extant project vide letter dated 07/01/1999 and 26/04/2000 were granted as per the provisions of Coastal Regulation Zone Notification, 1991 (hereinafter referred to as 'CRZ Notification, 1991') as amended on 9th July 1997 and the Environment Impact Assessment (EIA) Notification, 1994 applicable at that point of time. Copies of the CRZ notification 1991, CRZ notification dated 09.07.1997, EIA notification, 1994 has been annexed herewith as **Annexure-R4/3, Annexure-R4/4,** and **Annexure-R4/5**, respectively.
>
> 6. It is humbly submitted that CRZ Notification, 1991 since then had been superseded by CRZ Notification, 2011, which has now been superseded by CRZ Notification, 2019. A copy of the CRZ notification, 2019 has been annexed herewith as **Annexure-R4/6.** Further, Coastal Zone Management Plans (hereinafter referred to as 'CZMPs') as per CRZ Notification, 2019 have been approved for the State of Maharashtra and all the concerned activities in the CRZ areas of the State would attract the provisions of CRZ Notification, 2019. **As confirmed by Maharashtra Coastal Zone Management Authority (hereinafter referred to as 'MCZMA'), the subject plot falls out of the purview of the CRZ area, as per CRZ Notification, 2019.** The copy of the affidavit filed by MCZMA in this regard is annexed herewith as **Annexure-R4/7.**
>
> *(emphasis added)*

58) Thus while the MCZMA expected a clarification from MoEF with regard to condition No. (viii) in EC dated 26 April 2000, the MoEF has not really pleaded any such clarification in its additional affidavit-in-reply. The MoEF had however accepted MCZMA's plea of the subject plot falling outside the CRZ area. Be that as it may. During the course of his submissions, Mr. Singh, the learned ASG has clarified the stand on behalf of MoEF that the subject plot not only falls outside the CRZ area but the conditions of the EC dated 26 April 2000 would no longer apply for the development of the subject plot.

59) Some confusion is created on account of filing of initial Affidavit on behalf of MCGM. It its Affidavit filed on 6 March 2025, it was pleaded by MCGM as under :-

> 7) The said land is partly situated in 'Residential Zone' and partly in 'Commercial Zone'. Also the part of land bearing CTS No 792 i.e. bounded on South side by Rajiv Gandhi Sea Link, on West side K.C. road, on North side proposed 9.15m wide DP road on East side existing road falls within MMRDA's (Special Planning Authority) jurisdiction. The ownership of the said land is vest with MSRDC.
>
> 8) **As per approved Coastal Zone Management Plan 2021, the said land bearing CTS No. 792 of Village Bandra-A is affected by Coastal Regulation Zone (*CRZ*) -'IB', CRZ- 'II' and No Development Zone (*NDZ*) within CRZ II-Greater Mumbai.**
>
> *(emphasis added)*

60) However, by filing Additional Affidavit, MCGM has clarified as under:-

> 5) I say that alongwith the aforesaid proposal the Architect has submitted a demarcation plan and report dated 25/10/2024 which is prepared by Institute of Remote Sensing Anna University, Chennai. In the report the said Institute was given the task of preparing a local level Coastal Regulation Zone map in the vicinity of the project site by superimposing on approved CZMP as per CRZ Regulations, 2019. The main objective was to superimpose the project site on approved CZMP (Map No. MH 75) published by MCZMA for Mumbai Suburban District. The said report records the following conclusions:-
>
> The project site of M/s. MSRDC, RGSL Project Office, Near Leelavati Hospital, Bandra (W), Mumbai 400036 bearing CTS No. A-792 of Bandra-A village situated in H/W ward, Mumbai, Maharashtra falls fully outside the 50m. setback line from HTL of Mahim Bay as per approved CZMP published vide CRZ Notification 2019. Hence the project site falls fully outside CRZ as per approved CZMP."
>
> The copy of the said Demarcation plan and said Report is hereto annexed and marked as Exhibit-AR2 and Exhibit-AR3.

> 6) I say that the Assistant Engineer (DP), H/West Ward in his remarks dated 27/12/2024 pertaining to CRZ has stated that as per approved CZMP 2019 published on 29/09/2021, the land bearing CTS No. 792 (pt.) of Bandra-A Village in 'H-West' ward as shown bounded blue on the accompanying plan does not fall under CRZ. Hereto annexed and marked as Exhibit-AR4 is a copy of the said remarks.
>
> 7) Thus, from the aforesaid documents namely demarcation plan, report of Institute of Remote Sensing Anna University and CRZ remarks, it can be safely said that the project site namely Sub-Plot A and Sub-plot B whereupon residential development is proposed falls outside the CRZ line.
>
> 8) I therefore say that the earlier affidavit filed on behalf of Respondent No. 5 ought to be read alongwith this Additional Affidavit, for completion of record and for clarity.

61) Thus, all the authorities are *ad-idem* that the subject plot now falls outside CRZ area as per 2019 CRZ Notification.

D.6 EC FOR SEA LINK PROJECT ISSUED UNDER WHICH NOTIFICATION

62) Some degree of debate is sought to be created on behalf of the Petitioners about the exact Notification under which the environmental clearances dated 7 January 1999 and 26 April 2000 are issued. It is the contention of MSDRC that both the clearances of 7 January 1999 and 26 April 2000 are issued only in accordance with 1991 CRZ Notification. On the other hand, it is sought to be orally suggested on behalf of Petitioners that the said clearances were also issued independent of 1991 CRZ Notification and under 1994 EIA Notification. There are multiple reasons why we are not inclined to accept the contention of the Petitioners. Firstly, in the written note submitted on behalf of Petitioners in Public Interest Litigation No. 22 of 2024, following submission is made:-

10. The EC dated 7 January 1999, as amended, was thus granted under 1991 CRZ Notification, as amended by the 1997 amendment.

63) Thus, a specific admission is given in the written submissions on behalf of the Petitioners that the environmental clearance dated 7 January 1999 and 26 April 2000 are both issued under 1991 CRZ Notification. Furthermore, both the clearances specifically incorporate a condition of close monitoring of reclaimed land so as to avoid violation of provisions of 1991 CRZ Notification. When the application was made to MoEF on 10 June 1993, the EIA Notification of 1994 was not even issued. Mere reference to the 1994 EIA Notification in last paragraph of environmental clearance dated 7 January 1999 does not mean that the said environmental clearance is issued under EIA Notification of 1994. Petitioners have not even produced copy of EIA Notification of 1994 alongwith any of the pleadings nor there is a specific contention in the petition that environmental clearance dated 7 January 1999 and 26 April 2000 is issued under 1994 EIA Notification. On the contrary there is specific admission in the written note of submissions that the said environmental clearance is granted under 1991 CRZ Notification. Once it is held that environmental clearances dated 7 January 1999 and 26 April 2000 were issued under 1991 CRZ Notification alone, the moment the subject plot falls outside the CRZ area no CRZ related restrictions can be made applicable for developing the subject plot.

64) Even otherwise, the debate about the exact Notification under which the EC was granted to the Bandra Worli Sea Link Project is rendered academic in the light of the position that during pendency of the Petitions, the MoEF had granted Environment Clearance under the EIA Notification, 2006 to the current project undertaken by the

MSRDC. Therefore, even if Petitioners' contention is accepted that the EC 7 January 1999 and 26 April 2000 were issued under both CRZ as well as EIA Notifications, there is EIA clearance for the project in question.

D.7 EFFECT OF SAVING CLAUSES IN 2011 AND 2019 CRZ NOTIFICATIONS

65) It is contended on behalf of Petitioners that even if the reclaimed land may physically fall outside 50 meters distance from HTL of Mahim Bay, the same would not be a ground for presuming that the restrictions put in Environmental Clearance dated 7 January 1999 and 26 April 2000 for non-use of land for residential or commercial development would cease to apply. It is contended on behalf of the Petitioners that once land is reclaimed subject to a restriction, the reclaimed land can only be used subject to the condition on which the reclamation was permitted and mere change in CRZ Notification would not nullify the condition on which reclamation permission was granted.

66) Petitioners have relied upon the saving clauses under 2011 and 2019 CRZ Notification in support of their contention that the said clauses have the effect of continuation of the conditions imposed in environmental clearances dated 7 January 1999 and 26 April 2000. Both 2011 and 2019 CRZ Notifications use the expression "*except as respects things done or omitted to be done before such supersession*". It is Petitioners' contention that use of the above expression in both CRZ Notifications is aimed at protecting not only the things already done in pursuance of previous CRZ Notifications, but also the compliances and conditions subject to which such thing was permitted to be done.

67) As observed above, 2011 CRZ Notification was issued in supersession of 1991 CRZ Notification, on account of which, it became necessary to protect the things done in pursuance of 1991 CRZ Notification which was being superseded. Thus, what is protected and not superseded are i) things done and ii) things omitted to be done. This essentially means that if any activity is performed as a permissible activity under 1991 CRZ Notification, such activity would remain protected under 2011 CRZ Notification, notwithstanding the fact that the said activity may be prohibited under 2011 Notification. This also means that a clearance already secured for an activity under 1991 CRZ Notification need not be again secured under 2011 Notification. To illustrate, if a port was constructed after securing permission under 1991 CRZ Notification, construction of such port would not be rendered illegal after coming into effect of 2011 CRZ Notification nor fresh permission is necessary under the 2011 CRZ Notification. This is the true purport of the words 'things done' used in 2011 CRZ Notification.

68) Similarly, the words "things omitted to be done" used in 2011 CRZ notification means that if any act was not required to be performed under 1991 CRZ Notification, non-performance of such act does not *per se* become illegal after coming into effect of 2011 CRZ Notification.

69) This is all that the saving clause "*except as respects things done or omitted to be done before such supersession*" used in 2011 CRZ Notification would mean.

70) The 2019 CRZ Notification, issued in supersession of 2011 CRZ Notification uses the similar expression and protects '*things done or omitted to be done before such supersession'* .

71) The said saving clauses cannot be read to mean that if an activity was permissible subject to a condition under 1991 CRZ Notification and if the very same activity is not restricted in any manner in 2011 or 2019 CRZ Notifications, the conditions subject to which the earlier permission was granted would continue to operate. This is not the purport of the saving clause under 2011 and 2019 CRZ Notifications. If interpretation placed by Petitioners is accepted, the same would lead to absurdity. To illustrate, if a particular piece of land was included in CRZ area under 2011 CRZ Notification and a restrictive activity was performed by the landowner on the land with due clearance of MoEF/MCZMA and subsequently the 2019 CRZ Notification excludes the said land from CRZ area, the interpretation of Petitioners would mean that the restrictions which were imposed in the EC would continue to operate notwithstanding exclusion of such land from the purview of CRZ by the 2019 CRZ Notification. Such an interpretation would completely destroy the very objective of relaxation granted under the 2019 CRZ Notification. In our view, therefore the interpretation placed by the Petitioners on the saving clause is clearly misplaced and the saving clause under 2019 CRZ Notification cannot be read to mean that the conditions imposed in the environmental clearances dated 7 January 1999 and 26 April 2000 would continue to operate even though the subject plot falls outside the CRZ area.

72) Petitioners have relied on the judgment of the Apex Court in ***Pune Municipal Corporation*** (supra) in support of their contention that the saving clause protects not only the things done but also the effect of legal consequences flowing therefrom. The Apex Court after referring to

its judgment in ***State of Punjab Versus. Harnek Singh***[9] held in paragraphs-44 and 45 of the judgment as under:-

> **44.** It will be relevant to refer to the following observations of this Court in ***State of Punjab*** **v.** ***Harnek Singh*** [*State of Punjab* v. *Harnek Singh*, (2002) 3 SCC 481 : 2002 SCC (Cri) 659 : 2002 INSC 84] , wherein this Court after considering the earlier decisions has observed thus : (SCC p. 490, para 16)
>
> > "*16.* The words "anything duly done or suffered thereunder" used in clause (*b*) of Section 6 are often used by the legislature in saving clause which is intended to provide that unless a different intention appears, the repeal of an Act would not affect anything duly done or suffered thereunder. This Court in *Hasan Nurani Malak* v. *S.M. Ismail* [*Hasan Nurani Malak* v. *S.M. Ismail*, 1966 SCC OnLine SC 45 : AIR 1967 SC 1742] has held that the object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the things done before a particular date from which the repeal of such a pre-existing law takes effect. In *Universal Imports Agency* v. *Controller of Imports and Exports* [*Universal Imports Agency* v. *Controller of Imports and Exports*, 1960 SCC OnLine SC 42 : AIR 1961 SC 41 : (1961) 1 SCR 305] this Court while construing the words "things done" held that a proper interpretation of the expression "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom."
>
> **45.** It can thus be seen that this Court has in unequivocal terms held that the term "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequences flowing therefrom.

73) The issue before the Apex Court in ***Pune Municipal Corporation*** was about the applicability of Municipal Solid Waste Rules, 2000 or Municipal Solid Waste Rules, 2016 to the Garbage Processing Plant put up by the Pune Municipal Corporation. The Municipal Corporation had contended that the plant would be governed by 2000 Rules whereas the first Respondent contended that the same would be governed by the 2016 Rules. The 2016 Rules, though superseded 2000 Rules, the things done or omitted to be done before such supersession

9 (2002) 3 SCC 481

were protected. The Municipal Corporation had applied for and secured authorisation from Maharashtra Pollution Control Board for setting up the plant in accordance with 2000 Rules, which was renewed from time to time. The National Green Tribunal however held that the plant of the Municipal Corporation was in violation of Rule 20 of MSW Rules, 2016. It is in the context of this controversy that the Apex Court held that all the acts done as well as legal consequences flowing therefrom under the Rules of 2000 would stand protected even after supersession thereof by Rules of 2016. This ratio if applied in the context of supersession of 2011 Notification by 2019 Notification would only mean that all the legal consequences flowing out of an EC secured for an activity under the 2011 CRZ Notification would continue to apply even after coming into effect of 2019 CRZ Notification and an act done in pursuance of that EC would not rendered illegal nor fresh EC for the activity would be necessary under the 2019 CRZ Notification. In our view, therefore the neither the judgment in ***State of Punjab Versus. Harnek Singh*** (supra) nor the judgment in ***Pune Municipal Corporation*** assist the case of Petitioners for holding that the conditions imposed in the environmental clearance dated 26 April 2000 would be saved by saving clauses stipulated in 2011 or 2019 CRZ Notifications.

74) Petitioners have also relied on judgment of Full Bench of this Court in ***Maharashtra Chamber of Housing Industry, Mumbai*** (supra) in which the issue was about applicability of conditions prescribed in exemption orders issued under Urban Land (Ceiling and Regulation) Act, 1976 after its repeal. This Court held in paragraphs-54 and 56 as under :-

> **54.** The validity of exemption order is saved so as to ensure that the same serves the purpose for which it is granted. If that is what the

Legislature had in mind, then, it is futile to suggest that the Legislature has left unaffected by repeal only the validity of the exemption order, but not its conditions. The argument that the conditions on which the exemption order is based or passed are no longer valid, but it is only the exemption order whose validity is saved, is required to be stated only for being rejected. While canvassing such an argument the counsel lost sight of clause (c) of sub-section (1) of section 3 of the Repeal Act. If as a condition for grant of exemption any payment has to be made to the State Government, then, the repeal of the Principal Act was not to affect such payment or condition under which the same is made. The insertion of the words "as a condition for granting exemption" in clause (c) of sub-section (1) of section 3 would demonstrate the legislative intent. If the payment made to the State Government as a condition for granting exemption and which may be incorporated in the exemption order is saved, then, there is no warrant to exclude from the provision in question the validity of other conditions in the exemption order. The entire order of exemption together with the conditions subject to which it has been granted is thus saved. That is because the Legislature was aware that the Principal Act was a social legislation. That its misuse and abuse by some sectors resulting in laudable social objective being not achieved that its repeal was necessitated. However, despite the repeal the validity of the exemption order or any action taken thereunder and notwithstanding anything to the contrary in any order of the Court has been expressly saved. That could never have been inserted and merely to save the validity of the exemption order on paper. The validity of the order is saved so as not to affect the legal consequences of such valid order. To save them and the order as a whole together with the conditions incorporated therein that section 3(1)(b) and (c) has been inserted in the Repeal Act. By that the State's powers incidental and ancillary to the power to exempt can thus, be exercised and despite the repeal. The exemption order, validity of which has been saved, can, therefore, be enforced, so also, its terms and conditions. These terms and conditions may have been incorporated simply to reaffirm that the power to exempt which is conferred in the highest executive functionary in the State, namely, Government is presumed to be exercised for public good and in public interest. The exercise of such powers is, therefore, presumed to be bona fide and for achieving the object and purpose for which it is conferred. It is with these presumptions and which were always present to the Legislature that the validity of exemption order has been saved. Having said that and also saving the payment or monetary aspect related to the exemption, it was not necessary for the Parliament to then spell out separately all the legal consequences flowing from such valid order. Even otherwise, that there is no intention contrary to what is spelled out by section 6 of the General Clauses Act is, therefore, apparent. There is no substance in the argument of the Petitioners that only the exemption order is saved, but not its terms and conditions and further by not referring to sub-section (2) of section 20 the State's power to withdraw

the exemption is taken away by repeal of the Principal Act. The argument is that the power to withdraw the exemption in terms of section 20(2) of the Principal Act conferred in the State cannot be exercised because of repeal of the Principal Act. This argument is premised on the fact that once the State Government withdraws the exemption order the only consequence could be that the excess vacant land vests in the State under section 10(3) of the Principal Act and that vesting cannot take place after repeal of the Principal Act.

56. The fallacy in the above arguments can be demonstrated by perusing section 20 of the Principal Act. The difference in the language in section 19 and section 20 is that section 19 says that Chapter-III will not apply to certain vacant lands whereas what section 20 sets out is the power to exempt the vacant land in excess of ceiling limit and which power can be exercised by the State Government in cases covered by clauses (a) and (b). That the said exemption can be withdrawn provided the Government records a satisfaction that any condition subject to which the exemption order is granted is not complied with by any person. Therefore, a conditional order of exemption can be withdrawn on reaching this satisfaction and conclusion. However, section 20 does not mandate withdrawal, but confers a discretion in the Government to withdraw the exemption order after giving a reasonable opportunity to such person of making a representation against the proposed withdrawal. It is only when the power of withdrawal is exercised that the provisions of Chapter-III will apply. The language of section is, therefore, clear inasmuch as it is only when the exemption order is withdrawn that the Chapter-III of the Principal Act applies to the excess vacant land. So long as the exemption order is in force to protect its validity despite a contrary Court order a saving provision in the Repeal Act will have to be inserted. The Legislature was aware that not only the terms and conditions of the exemption order need to be enforced, but if that order is acted upon by parties the validity as a whole must be saved. That needs to be saved so as to enable the State Government to apply the provisions of Chapter-III to the excess vacant land covered by the exemption order and the terms and conditions after it is noticed that the exemption is either misused or misutilized or not acted upon so as to subserve the larger public interest. A breach or violation of some of its vital conditions may result in its withdrawal and cancellation. If one way of applying Chapter-III is by withdrawing the exemption order, then, the power to withdraw the same which is implicit and inherent in the power to grant exemption is also saved and not affected by repeal of the Principal Act. That is because the vacant land held by a person is undisputedly in excess of ceiling limit. The power to exempt is exercised when a person holds the vacant land in excess of ceiling limit. That such power can be exercised even after declaration under section 10(3) of the Principal Act is further undisputed.

75) In our view, the judgment in ***Maharashtra Chamber of Housing Industry, Mumbai*** needs to be appreciated in the light of provisions of Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 which contained a specific provision that validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder shall not be affected by the Repeal Act. The conditions in exemption orders required the landowner to perform particular acts such as handing over constructed flats to the Government, etc. it was sought to be contended that since the ULC Act was repealed, the conditions in exemption orders would stand negated. However Section 3(b) of the Repeal Act protected the exemption order granted under Section 20(1) even after repeal of the Act and the Full Bench of this Court held that since the exemption order remained intact, the conditions subject to which the exemption was granted would also continue to apply. Thus, findings in para-54 of the judgment are rendered in the light of peculiar provisions of Section 3(1)(b) of the Repeal Act. The judgment in our view has no application for resolving the controversy at hand.

76) Petitioners have placed reliance of provisions of Section 24 of General Clauses Act, which provides thus :-

> **24. Continuation of orders, etc., issued under enactments repealed and re-enacted.—**
>
> Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any appointment notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-

> enacted [and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874 or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

77) In our view, all that the provisions of Section 24 of the General Clauses Act contemplate is protection of any appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealed Act, which continues to operate notwithstanding repeal of the Act, under which they are made or issued. If provisions of Section 24 of the Act are applied in the context of CRZ Notifications, it would only mean that if CRZ clearance was necessary under 2011 CRZ Notification, the clearance already secured under 2011 CRZ Notification would continue to remain valid notwithstanding supersession thereof. This further clear from the provisions of Section 6 of the General Clauses Act which protects everything done under the repealed Act. Section 6 of the General Clauses Act provides thus:-

> 6. Effect of repeal.—
>
> Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

78) In our view neither the saving clauses under 2011 and 2019 CRZ Notifications nor any provisions of General Clauses can be read to mean that conditions imposed for grant of environmental clearance at the time when came land came in CRZ area would continue to operate and govern development of that land even after the land is kept outside CRZ area by subsequent CRZ Notification. As observed above such an interpretation would lead to an absurdity. To illustrate if any restrictive construction activity was undertaken in pursuance of 1991 CRZ Notification on a plot of land situated at a distance of 70 meters from HTL of Mahim water body (on account of it not being declared Bay at the relevant time), the restriction would continue to operate even after the land is taken outside the purview of CRZ area on account of its location beyond 50 meters from HTL of Mahim Bay under the 2019 CRZ Notification. Mr. Kalakia has appreciated this point and has fairly conceded that the Petitioners do not wish to overstretch the contention with regard to saving clauses to mean that every plot on landward side would continue to be governed by CRZ restrictions notwithstanding the relaxation granted under 2019 CRZ Notification. He has however contended that the relaxation under the 2019 CRZ Notification, though may be applicable to normal lands situated within the distance of 51 to 100 meters, the same cannot be made applicable to a reclaimed land. Petitioners contend that a special dispensation needs to be read into the 2019 CRZ Notification to protect something which was never a land and was reclaimed after seeking permission under 1991 CRZ Notification. We proceed to consider this contention.

D. 8 PERMISSIBILITY TO DEVELOP RECLAIMED LAND

79) It is Petitioners' contention that a project proponent cannot reclaim land within tidal influenced water body for a permitted purpose and then contend that the land so reclaimed falls outside CRZ on account of its location at a distance beyond 50 meters from HTL. The contention may appear to be impressive at the first blush, but is without any basis. There is nothing in the 2019 CRZ Notification which provides that the land reclaimed under previous CRZ Notifications shall remain as reclaimed land forever and can never be developed. If the intention of MoEF was to make a special provision in relation to land already reclaimed, a specific restriction to that effect ought to have been provided in 2019 CRZ Notification. The Notification on the other hand does not make any conscious distinction between a 'land' and a 'reclaimed land'. Every land, whether reclaimed or not, which is beyond the defined CRZ area stands excluded from applicability of CRZ restrictions.

80) It must be borne in mind that the CRZ Notifications apply only to the defined area and have absolutely no application to land falling outside the defined area. For applying the CRZ related restrictions, the land needs to be included in CRZ area. Therefore, the moment a land falls outside the defined CRZ area, no restrictions under CRZ Notifications can be made applicable to such a land, even if the land has been reclaimed by securing clearance under the previous CRZ Notifications.

81) The Notifications issued under the provisions of the Environment Protection Act, 1986 have been held to be subordinate

pieces of legislations by the Apex Court in ***Vanashakti Versus. Union of India***[10]. A plain and literal reading of the 2019 CRZ Notification would indicate that the same does not provide for any restriction in respect of the land which was once reclaimed but now falls outside the CRZ area. While interpreting the 2019 CRZ Notification, it would be impermissible to import therein something which is not provided for. In this regard, it would be apposite to make a useful reference to the observations of the Apex Court in recent judgment in ***Vanashakti*** in which it is held in para-26 as under :-

> 26. **It is a settled principle of law that while interpreting any legislation including a subordinate legislation, the first principle that has to be adopted is the literal rule of interpretation.** Applying literal interpretation to the 2006 notification, it would be clear that said notification does not provide for applicability of the General Conditions to projects in Entry 8(a) and 8(b) of the Schedule. As already observed hereinabove, wherever the delegated legislation wanted the General Conditions to be made applicable it has been specifically provided in column 5 of the projects/activities.
>
> *(emphasis and underlining added)*

82) In ***Vanashakti***, the challenge was to the Notification dated 29 January 2025 and Office Memorandum dated 30 January 2025 issued by MoEF amending the provisions of the EIA Notification dated 14 September 2006 on the ground that the same has the effect of diluting the restrictions provided in 2006 EIA Notification. It was contended that the general conditions were applicable to projects or activities covered by entry no.(viii) of Schedule-II 2006 of EIA Notification, which are illegally sought to be deleted vide Notification dated 29 January 2025.The Apex Court held in paras-18 and 19 of the judgment that wherever the delegated legislation (2006 EIA Notification) required application of general conditions, the Notifications specifically provided

10 Writ Petition (C) No. 166 of 2025 decided on 5 August 2025.

for the same. It has further held that Entry Nos.8a and 8b did not provide for applicability of general conditions but provide for application of some other conditions.

83) Since the Apex Court has held in ***Vanashakti*** that the EIA Notifications are delegated legislation, even the CRZ Notifications issued under the same enactment (Environment Protection Act, 1986) would also be delegated legislation. Therefore, the CRZ Notifications also need to be literally construed and interpreted without reading into it something which is not expressly provided for. If the lawmakers desired that the reclaimed land should always be treated as CRZ area, a specific provision to that effect would have to be made in the CRZ Notification. There is nothing in 2019 CRZ Notification which provides that if a land is reclaimed for construction of a bridge or sea link, such land would always remain affected by CRZ restrictions irrespective of its location from HTL. In the present case, the land which is reclaimed for construction of Bandra Worli Sea Link now falls outside the distance of 50 meters from HTL of Mahim Bay and therefore is no longer part of CRZ area. In absence of any specific provision in the 2019 CRZ Notification applying the restrictions to a reclaimed land located outside the defined CRZ area, we are unable to accept Petitioners' contention that the land reclaimed for construction of sea link would never fall outside the CRZ area.

84) Once it is held that the land is no longer a part of CRZ area, no restriction imposed at the time of its reclamation would continue to operate after the land is taken outside the purview of CRZ area. If contention of Petitioners is accepted, the conditions subject to which the permission was granted under 1991 CRZ Notification would continue

to operate in perpetuity, which is not the legislative intent. From the historical background of issuance of the three CRZ Notifications, it is seen that the restrictions have been relaxed from time to time. Earlier, under the 1991 CRZ Notification, everything falling in the distance upto 500 meters from HTL was CRZ with some relaxation in respect of rivers, creeks and back waters. The 2011 CRZ Notification reduced the applicability of CRZ areas along the tidal influenced water bodies such as bays, estuaries, rivers, creeks, back waters, lagoons, ponds connected to the sea or creeks, etc. and declared lands falling within only 100 meters of HTL to be CRZ areas. The 2019 CRZ Notification further relaxed application of CRZ restrictions to lands alongside tidal influenced water bodies by reducing the distance to only 50 meters from HTL. Thus, with issuance of successive CRZ Notifications, the land which was earlier part of CRZ area, got excluded from CRZ area and became available for development without any CRZ restrictions. As discussed above land situated at distance of 70 meters from HTL of Mahim Bay had CRZ related restrictions under the 2011 CRZ Notification, but now falls outside CRZ area under 2019 CRZ Notification. It cannot be contended that merely because the said plot was previously under CRZ area, it must always continue to be under CRZ area by ignoring the provisions of 2019 CRZ Notification. Following this principle, if permission was required to be sought from MoEF on account of location of the concerned land in the CRZ area as per the 1991 CRZ Notification, the conditions imposed in such permission would cease to apply the moment the land falls outside the CRZ area.

85) CRZ Notifications are exception to the Development Control Regulations formulated by the Planning Authority and

sanctioned by the State Government. Even though a DCR may permit use of a land for particular purpose and for carrying out of a development activity thereon, if such land is affected by CRZ, the same can be put to use strictly in accordance with the CRZ Notification. Since the CRZ Notification is exception to the DCR, no restriction which is not specifically provided for in CRZ Notification, can be applied for restricting the development activities which are permissible under the DCR. Therefore, what is not specifically provided for in the CRZ Notification can neither be read into it nor can be inferred for the purpose of restricting any particular activity. CRZ being a delegated piece of legislation, the same must be strictly and literally construed and interpreted and a restriction which is not specifically provided cannot be read into the same. The 2019 CRZ Notification does not include a reclaimed piece of land into CRZ area, which otherwise falls outside the defined CRZ area.

86) Under the 2019 CRZ Notification, only four types of lands enumerated in Para 1(i) to (iv) have been included in the ambit of the term 'Coastal Regulation Zone' and every piece of land which is not covered by the four items in para-1 of the 2019 CRZ Notification would necessarily fall out of Coastal Regulation Zone. If law makers wanted to include a land which has been reclaimed after seeking permission under the 1991 or 2011 CRZ Notification as a separate class of land for being included in Coastal Regulation Zone, the same would have been specifically included in the list of Items enumerated in para-1 of the Notification. Since this is not done, the land reclaimed after seeking clearance under the 1991 or 2011 CRZ Notifications, which does not form part of the four enumerated items in para-1 cannot be treated as the one forming part of defined CRZ area.

87) Once a land is not treated as Coastal Regulation Zone under the 2019 CRZ Notification, no restriction provided for in the said Notification can apply to such piece of land. This is because the CRZ Notification does not apply to land which is not Coastal Regulation Zone. Therefore, CRZ Notification cannot be pressed into service for the purpose of enforcing any restriction on any land which is not a part of Coastal Regulation Zone.

88) Reliance by the Petitioners on conditions imposed by the Secretary, Revenue and Forest Department in Memorandum dated 4 November 2016 or by Collector in allotment order dated 30 January 2017 is misplaced. The said conditions were imposed under an impression that the transferred piece of land was a part of CRZ area under the 2011 CRZ Notification which was then applicable. In any case, the allotment orders issued by the Secretary or Collector cannot decide the issue as to whether the concerned land is a part of CRZ area or not.

89) We are therefore unable to accept Petitioners' contention that the land reclaimed for Bandra Worli Sea Link Project can never be developed even though the same falls outside defined CRZ area.

D.9 PUBLIC TRUST DOCTRINE AND PRINCIPLE OF SUSTAINABLE DEVELOPMENT

90) It is Petitioners' contention that the proposed commercial exploitation of the subject land violates the public trust doctrine. It is contended that after having reclaimed land by making a representation

that the same would be kept open as green belt/garden, it is impermissible for MSRDC to take a *volte-face* and utilize the land for commercial purposes. Reliance is placed on judgment of the Apex Court in ***Karnataka Industrial Areas Development Board*** (supra) in support of the contention that the public trust doctrine enshrines upon the Government and its Instrumentalities a duty to protect public resources such as the land and the sea for enjoyment of general public.

91) Petitioners have referred to the "green belt plan" submitted by MSRDC while securing environmental clearance permission in support of their contention that the reclaimed land was agreed to be maintained as green belt. In our view, such a representation for maintaining the reclaimed land as green belt made at the time at securing 1999/2000 environmental clearance would not bind MSRDC to maintain the reclaimed land as green belt forever. The representation of green belt was required to be made on account of specific condition imposed in 1999/2000 environmental clearances for not carrying out of any residential or commercial development on the land. Now that the land is outside the purview of CRZ, the said condition is no longer applicable and therefore MSRDC cannot be held bound by the representation for keeping the land as green belt.

92) The 2019 CRZ Notification has reduced the ambit of defined CRZ area alongside the tidal influenced water bodies from 100 meters to 50 meters of HTL. Petitioners have not challenged the 2019 CRZ Notification in the present petitions. The said Notification relaxes the restrictions on development of lands falling along tidal influenced water bodies like Bays. The relaxation is granted following the principle of sustainable development, where the need of protecting environment is

balanced against the need of undertaking developmental activities. Petitioners otherwise do not question grant of such relaxation. This means that Petitioners do have objection to development activities on lands falling within the distance of 50 to 100 meters from HTL of tidal influenced water bodes. They however selectively seek to challenge the impugned development activity undertaken by MSRDC. The objection stems essentially on Petitioner's belief that the land once reclaimed must continue as open piece of land and cannot be used for development or for residential or commercial use. However, what is pertinent to note here is that the restriction on use of reclaimed land was imposed in the environmental clearance dated 26 April 2000 because the land fell in CRZ area at that point of time. As pointed out by Dr. Sathe, the concerned land was actually outside CRZ area even in 1999/2000 if the Mahim water body was to be identified as "bay" at that time. We however are not delving deeper into this aspect which is being argued by MSRDC to quell the notion that the land created by landfill activity into the sea is being developed commercially by MSRDC. If the land was outside the CRZ area, the project would not have required CRZ clearance. The key therefore is whether the land falls in CRZ area or not. If it does, CRZ clearance is necessary and all conditions granted while granting CRZ clearance would continue to apply. However, the moment the land falls outside CRZ area, there is no question of application of conditions imposed when the land was part of CRZ area. The object behind imposing various restrictions vide 1991, 2011 and 2019 Notifications is both to manage and conserve marine and coastal ecosystem, as well as to regulate development activities in coastal areas. In this regard, the two recitals of the 2019 CRZ Notification read thus :-

> And Whereas, the Ministry of Environment, Forest and Climate Change has received representations from various coastal States and Union territories, besides other stakeholders, regarding certain provisions in the Coastal Regulation Zone Notification, 2011 related to management and conservation of marine and coastal ecosystems, development in coastal areas, eco-tourism, livelihood options and sustainable development of coastal communities etc.;
>
> And Whereas, various State Governments and Union territory administrations and stakeholders have requested the Ministry of Environment, Forest and Climate Change to address the concerns related to coastal environment and sustainable development with respect to the Coastal Regulation Zone Notification, 2011;

93) Since sustainable development is one of the goals of regulating activities in coastal areas through CRZ Notifications, once a conscious relaxation is granted *qua* a particular activity by issuance of new Notification in supersession of earlier Notification, such relaxation must be allowed to fully operate without reading any restriction in the same.

94) In para-31 of the judgment in ***Vanashakti*** (supra), the Apex Court has emphasized the need for balancing developmental activities while protecting environment and natural resources. It has been held in paras-31to 34 as under :-

> **31.** No doubt that the courts have consistently insisted upon protecting environment and consistently held that the natural resources are held in trust by the present generation for the future generations. However, at the same time, the courts have also consistently taken into consideration the need for developmental activities.
>
> **32.** A country cannot progress unless the development takes place. As such, this Court in a catena of decisions has adopted the principle of sustainable development. Some of the notable decisions of this Court are *Vellore Citizens' Welfare Forum* v. *Union of India*2, *Jagannath* v. *Union of India*3, *Consumer Education & Research Society* v. *Union of India*4, *Intellectuals Forum, Tirupathi* v. *State of A.P.*5, *Tata Housing*

Development Company Limited v. *Aalok Jagga*6 and *State of Uttar Pradesh* v. *Uday Education and Welfare Trust*7.

33. A reference in this respect can also be made to the recent judgment of this Court rendered *In Re: Zudpi Jungle Lands*8, wherein all the earlier judgments of this Court have been considered by a coordinate bench, to which one of us (B.R. Gavai, CJI.) was a party. It would be apposite to refer to paragraphs 117, 118 and 119 of the said judgment:

> "117. Another aspect that needs to be considered is the balance between environmental protection and the need for sustainable development. It will be apt to refer to paras 87-88 of the judgment of this Court in the case of *State of Uttar Pradesh* v. *Uday Education and Welfare Trust*, (2022 SCC OnLine SC 1469), which read thus:
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> > "87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.
> >
> > 88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck."
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> 118. Much prior to that, this Court, in the case of *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647 : 1996 INSC 952, had an occasion to consider the conflict between the development and ecology. This Court observed thus:
>
> > "10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and

> development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."
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> 119. The principle of *Sustainable Development* as a balancing concept between ecology and development has been accepted as a part of the Customary International Law by this Court in various judgments including *S. Jagannath* v. *Union of India*, (1997) 2 SCC 87 : 1996 INSC 1466, *Consumer Education & Research Society* v. *Union of India*, (2000) 2 SCC 599 : 2000 INSC 81, *Intellectuals Forum, Tirupathi* v. *State of A.P.*, (2006) 3 SCC 549 : 2006 INSC 101 and *Tata Housing Development Company Limited* v. *Aalok Jagga*, (2020) 15 SCC 784 : 2019 INSC 1203."

> **34.** It is thus clear that the courts have taken a view that while development is permitted to be undertaken, it is also required that a precaution is needed to be taken so that the least damage is caused to the environment and ecology. The courts have also insisted upon the mitigation and compensatory measures so as to compensate the loss which is caused to the environment and ecology on account of the damage that would be caused by the developmental activities.

95) There is no challenge in the present Petitions to the 2019 CRZ Notification and in that sense, the public trust doctrine is not really relevant and cannot be pressed into service for the purpose of reading into the Notification, something which is not specifically provided for.

D.10 PRINCIPLE OF NON-REGRESSION

96) Ms. Bector has strenuously relied on the principle of non-regression in support of her contention that any new provision relating

to environmental law cannot be interpreted in such a manner that it amounts to environmental destruction. Reliance is placed on judgment of NGT in ***Society for Protection of Environment & Biodiversity Versus. Union of India and others***[11]. In our view, the principle of non-regression does not have any application to a case where a undevelopable plot becomes developable on account of its exclusion from CRZ area due to relaxation in CRZ norms. The principle that the land once affected by CRZ restrictions must always remain subject to CRZ restrictions would lead to absurdity. Also, the principle of non-regression would have been of some relevance if the Petitioners were to challenge the relaxation granted under 2019 CRZ Notification. The principle prohibits the State from reversing or weakening the existing standards of environmental protection once they have been adopted. Since relaxation granted by the 2019 CRZ Notification is not under challenge, the principle of non-regression cannot be cited for interpreting the 2019 CRZ Notification in a manner which results in reading into the same something which is not expressly provided therein.

D. 11 NON CHALLENGE TO OTHER DEVELOPMENT ACTIVITIES IN RECLAIMED LAND

97) There is yet another interesting aspect suggesting selective challenge by the Petitioners to the project undertaken by MSRDC for commercial exploitation of the plot. Petitioners have not objected to some portion of the land being used for development of cemetery. As discussed while narrating the facts, out of gross area of the land of 57.44 Acres (2,32,465 sq.mtrs.) land admeasuring 29.44 Acres is earmarked

11 2017 SCC OnLine NGT 981

for road, social amenities and gardens. Out of the balance land of 28 Acres, land admeasuring 24 Acres is earmarked for development and balance 4 Acres land is earmarked for reservations as cemetery, cremation ground, burial ground, health post, etc. under DCPR, 2034. MSRDC has given the land used under the DCPR 2034 as under :-

SrNo	Zone/Reservation	Purpose	Tentative Area on sqm
1	Residential/Commercial	Residential/Commercial	98,521.65
2	Road	Road	73,693.19
3	Social Amenities		
	RSA 4.8	Cemetery	8,037.74
		Cremation Ground	
		Burial Ground	
4	RH1.1	Health Post	1,482.21
5	Open Space		
	2 Nos. DOS1.2	Public Walk	50,729.18
	7 Nos. ROS1.5	Garden	
	4 Nos. DOS1.5	Garden	
	1 Nos.DOS2.7	Green Belt	
		Total	**2,32,463.97**

98) So far as the land reserved for use of cemetery is concerned, the same has already been handed over to MCGM by MSRDC in pursuance of various orders passed by this Court in PIL No. 101 of 2016. Petitioners are not objecting to part of the reclaimed land being developed as cemetery by contending that no part of the reclaimed land can ever be developed for any purposes.

D.12 SIX MONTHLY COMPLIANCE REPORTS

99) Petitioners' reliance on six monthly compliance report submitted by MSRDC to MoEF cannot lead to presumption that condition No. (viii) of environmental clearance dated 26 April 2000 continues to apply. Under Condition No. (xvii) of environmental clearance dated 7 January 1999 as amended on 26 April 2000, six monthly monitoring report are required to be submitted regarding implementation of the stipulated conditions. The six monthly monitoring reports are submitted in a prescribed format by MSRDC and there is nothing in the said reports for inferring that there is any admission on the part of MSRDC about applicability of Condition No. (viii) of environmental clearance dated 26 April 2000 even after the land is taken out of purview of CRZ area. In any case, such six monthly reports cannot decide the permissibility of development of the land in question.

D.13 ENVIRONMENTAL CLEARANCE DATED 8 APRIL 2025

100) During pendency of the present PIL, MoEF has granted environmental clearance to the project on 8 April 2025. The said environmental clearance is required to be obtained on account coverage of project under Item 8(a) of the EIA Notification, 2006. Mere condition in the EC that project proponent shall obtain necessary CRZ clearance from competent authority is not sufficient to infer that such permission is necessary in law. The EC dated 8 April 2025 is only on account of the size of the land exceeding the prescribed limit under Item 8(a) of EIA Notification, 2006. Since the subject plot falls outside the CRZ area, it is

not necessary for the MSRDC to secure separate clearance from MCZMA.

D. 14 WHETHER DEVELOPMENT OF LAND CAN BE UNDERTAKEN BY MSRDC

101) Petitioners in PIL (L) No. 8224 of 2024 have raised an objection that MSRDC cannot undertake the activity of commercial exploitation of the subject plot on account of its activity being mainly restricted to construction of roads. MSRDC is an Instrumentality of State and requires funds for undertaking various projects relating to construction of roads, bridges, etc. The State Government has transferred the land in question to MSRDC and transfer of the land by the State Government to the MSRDC has not been challenged. Once the MSRDC has become owner of the land in question, it is for MSDRC to decide its use and exploitation. The activity of development of the land in question undertaken at the instance of MSRDC cannot be set aside by holding that MSRDC cannot do anything beyond the activity of construction of roads. Since the main point raised in the Petition about permissibility to develop reclaimed land is answered in the affirmative, we are not inclined to enteratin the debate about who can carry out such development. The reclaimed land was in the ownership of the State Government. Once it became developable, it is for the State Government to decide about the exact State Agency which can carry out the development. In the present case, since the land has been made available on account of construction of Sea Link by MSRDC, the State Government has decided to transfer ownership of land in favour of MSRDC for the purpose of developing the same. We therefore cannot see any illegality in MSRDC undertaking development of the land in question.

E. ORDER

102) Considering the overall conspectus of the case, we are of the view that Petitioners have failed to make out a valid ground of challenge to development of the subject plot at the instance of MSRDC. Both the petitions are devoid of merits. They are accordingly **dismissed.** However, considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.] [CHIEF JUSTICE]