

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 23 OF 2022**

Chetan Kodarlal Vyas ...Petitioner
Versus

The Union of India and Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.1833 OF 2022**

Make Waves Sea Resort Private Ltd. ... Applicants/
Intervenor

Mr. Saket Mone i/by Ms. Anchita Nair for the petitioner.
Mr. Rui Rodrigues a/w. Mr. N. R. Prajapati for the respondent no.1-Union of India.
Mr. Abhay L. Patki, Addl. GP for the respondent nos.2 and 3-State.
Dr. Milind Sathe, senior advocate a/w. Ms.Jaya Bagwe for the respondent no.4-MCZMA.
Mr. A. Y. Sakhare, senior advocate a/w. Ms. K.H. Mastakar for the respondent no.5-MCGM.
Mr. Pramod Kathane a/w. Mr. Anjaykumar Kori, Mr. Vikram Kapur, Mr. Anil Jaiswar, Mr. Pramod Yadav and Mr. Vikas Wagh for the respondent nos. 6 and 7.
Mr. Karl Tamboly with Ms. Hansa Advani for the applicants.
Mr. Sunil Mali, Sub-Divisional Officer, Western Suburban, Bandra, Mumbai Suburban District is present in Court.
Dr. Kalpesh Bhalerao, Medical Officer of Health, P/North Ward, Officer of MCGM present in Court.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

**RESERVED ON : 21st SEPTEMBER, 2022
PRONOUNCED ON : 29th SEPTEMBER, 2022**

JUDGMENT (Per Madhav J. Jamdar, J.) :

1. This writ petition, purportedly filed to serve public interest, is one more example of abuse of the PIL jurisdiction of this Court. Under the pretext that the same has been filed for protecting ecology and environment, it is in fact filed for

serving vested interests of others, as would appear from the discussion to follow. It is significant to note that by the time the writ petition came up for hearing before us, the petitioner has succeeded in achieving his extraneous and motivated purpose. The Collector, Mumbai Suburban District under the pretext that she is complying with the directions of this Court, demolished the crematorium of Koli Community on Erangal Beach, Malad.

2. The Supreme Court after noticing that a large number of people who are poor, ignorant or in a socially or economically disadvantaged position were not in a position to approach the Courts to redress their grievances regarding violation of fundamental or legal rights evolved what is popularly known as Public Interest Litigation. In Public Interest Litigation, the Courts mainly deal with the cases seeking direction to protect fundamental rights and other legal rights of the marginalized groups and weaker sections of the society who for various reasons including poverty, illiteracy and ignorance cannot approach this Court or the Supreme Court. The Public Interest Litigation is also entertained in the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, etc. PILs relating to maintaining the probity, transparency and integrity in governance are also entertained by the Courts.

3. This PIL petition under the garb of protecting ecology and environment seems to have been filed at the instance of Applicant-Make Waves Sea Resort Private Ltd. (hereinafter referred to as "said resort") to protect their commercial interest and for that purpose intended to destroy legal rights of fisherman community to use the said plot as

crematorium. This PIL is filed to destroy legal rights of weaker section i.e. fishermen community for the purpose of securing commercial interest of said resort. The PIL petitioner and, possibly the said resort, succeeded in demolishing said crematorium through government machinery under the pretext that High Court has directed demolition of the same.

4. It is to be noted that without pointing out the detailed site inspection report dated 18th November 2021 of Deputy Collector, General Administration, the petitioner represented to a coordinate Bench of this Court that some unauthorised construction was progressing on the Erangal Beach situated at CTS No.1413 of Erangal Village, Taluka Borivali and obtained the following order on 7th January, 2022:-

- "4. The ad-interim order granting stay to the further construction shall operate until further orders.
5. It is expected of the Respondent-Collector to take steps in accordance with law to comply with the directions of Respondent-MCZMA."

5. The respondent – Collector acted with alarming speed and issued letters dated 18th January 2022 and 25th January 2022 and also held special meeting on 21st January 2022 and ensured that the said crematorium was demolished on 9th February 2022 without giving any show cause notice to the affected parties viz. fishermen, without affording them any opportunity of hearing and without passing any order considering their case. Thus, under the pretext that the Collector is complying with High Court's direction, the said crematorium was demolished in total violation of the principles of natural justice and the provisions of law.

6. It is settled legal position that no one shall suffer by an act of the Court. If any illegal action is taken under the pretext of complying with the Court's order and after noticing the true position that the structure is authorised and the same is demolished illegally this Court is duty bound to see that corrective actions are taken and status-quo ante is restored.

7. It is settled legal position that while deciding a Public Interest Litigation, great care has to be taken by the Courts to ensure that PILs are not misused to sub-serve extraneous and motivated purposes.

8. The facts of this case are very shocking. Respondent Nos.6 and 7 i.e. Bhati Machhimar Gram Vikas Mandal and Bhati Machhimar Sarvoday Sahakari Society Limited, both Societies registered under the Maharashtra Co-operative Societies Act, 1960, are the Societies of the fishermen. The PIL petitioner who is an individual and carrying on the profession of Law Consultancy filed the present PIL seeking to stop the ongoing construction of erection of concrete shed on the Erangal Beach situated at CTS No.1413, Erangal Village, Malad (W). It is alleged that construction of a cement concrete shed is being carried out right on the beach by levelling the sandy beach with cement and hard material. It is the petitioner's contention that the activity in the nature of construction of cemetery is totally prohibited under the provisions of CRZ Notification, 2011. It is the petitioner's contention that one North Mumbai Madh Erangal Beach Management Co-operative Society Limited vide complaint dated 29th September 2021 brought the fact of the said illegal construction to the notice of the respondent no.3 i.e. the Collector and the respondent no.4 i.e. the Maharashtra

Coastal Zone Management Authority (hereinafter referred to as "MCZMA") and still no action has been taken by the said Authorities and therefore, PIL is filed.

9. The said crematorium was repaired in 2008-2009 by State of Maharashtra through MHADA by utilising local MLA's fund and accordingly plaque was put on the said old construction. It is significant to note that petitioner has annexed photographs of said old construction to the memo of PIL by taking the same from such an angle that said plaque is not visible in the photographs. It is further significant to note that said North Mumbai Madh Erangal Beach Management Co-operative Society Ltd. in complaint dated 29th September 2021 stated as follows :-

"A glaring example of violation of law/ regulations is the construction of the crematorium, which is nothing but an enclosed shed which has been illegally constructed / put up 3-4 years back and which is now under process of further encroachment and presently construction is ongoing on the beach area at Madh, which is sensitive area from coastal point of view and no construction is allowed on the beach. The said crematorium is touching the high tide line and is completely illegal and constructed without any sanctions/ permissions and is bereft of any facilities."

The said complaint is annexed as Exh.B to the PIL. Thus, it is clear that deliberate attempt is made to mislead this Hon'ble Court and it is purposely not disclosed to this Court that the construction in question is in existence at least since 2008-2009 and the same was done by Government of Maharashtra through MHADA by using local MLA's fund. By misleading this Court, order dated 22nd October 2021 has been obtained. As PIL petitioner represented to the coordinate

Bench that illegal construction on the beach was going on, by order dated 22nd October 2021 the coordinate Bench of this Court directed respondent nos.3, 4 and 5 to nominate an officer from their departments to carry out survey of the offending structure and file a report in this Court by the next date. This Court also directed that further construction be stayed till the next date.

10. Pursuant to the said order dated 22nd October 2021, said site was inspected in the presence of the following officers:

1. Sub Divisional Officer, Mumbai Western Suburbs
2. Deputy Secretary and Scientist (Grade 1), Environment and Climatic Changes Department, Mantralaya, Mumbai
3. Project Officer, MCZMA
4. Tahsildar Borivali
5. Assistant Engineer (Building and Industries), P North, MCGM
6. Junior Engineer (Building and Industries), P North, MCGM
7. City Survey Officer, Goregaon
8. Forester Malwani
9. Senior Police Inspector, Malwani Police Station
10. Assistant Police Inspector, Malvani Police Station and others.

11. On the basis of said inspection, Deputy Collector, General Administration submitted detailed site inspection report dated 18th November 2021 to this Court. The relevant portion of the said report is reproduced hereunder :-

- (i) The subject plot of the cemetery is situated on Erangal beach near Bhati Koliwada. On the **landward side of this beach there are places and constructed plinths for drying of fishes and the activities of drying of fishes was in motion during the site inspection.**
- (ii) There is a **big resort namely "Hotel Retreat" situated at the landward side of the beach. Towards the northern side of this hotel,** near

- the Bhati Koliwada, construction work of Hindu cemetery was going on.** This construction is approximately on a **40x32 feet concrete plinth**. On all the four sides of this plinth, **a wall of 3 feet height with gaps at regular intervals** and decorated with glazed tiles has been constructed.
- (iii) Mr. Ganesh Namdev Koli, Chairman and Mr Dhanaji Pandurang Koli, Vice-chairman of 'Bhati Machhimar Gram Vikas Mandal' as well as Mr. Lakshman Havlya Koli, Chairman and Mr. Narayan Sakharam Koli, Vice-chairman of 'Bhati Machhimar Sarvodaya Cooperative Society' explained that the construction work of above cemetery is being done by their cooperative bodies. Likewise they stated that **this cemetery has existed since long back. They have documentary evidence of it i.e. 7/12 extract of Survey no.134/1 of village Erangal.**
- (iv) The office bearers of the above two cooperative societies explained that **the above cemetery is quite old. Due to the storm namely 'Taukte', the roof of the cemetery was damaged. The repairing work of the roof of the cemetery is being done through the funds of the above Cooperative Societies.** The office bearers of the above cooperative societies contended that they have not been given notice regarding the site inspection on 27th October, 2021. Similarly they have not been given an opportunity to put forth their side before the Hon'ble High Court. They requested before the present officers that they should be given proper opportunity to submit their claim and say before the Hon'ble High Court.
- (v) **One lithograph has been seen on the wall of the cemetery with the contents that 'the work of this symmetry has been carried out in the year 2008-09 through the funds of MLA Mr. Piyush Mehta by Mumbai Slum Development Authority (MHADA).**
- (vi) The land bearing Survey no.134/1 area 9.12.56 Hq.R.Sq.M. of village Erangal is a grassland means 'Gurcharan land'. In the other rights column of the 7/12 extract of this Survey no.134/1, by **Mutation Entry number 589** following remarks have been mentioned.

As per Taluka Kukum number LND 2023, dated 17/12/1955 and order of Sub Divisional Officer Thane number LND/7829, dated 3/12/1955 remark has been mentioned that out of sea 10R land allotted for cemetery of Koli community.

- (vii) According to the information from City Survey Officer, Goregaon, **CTS no.1413 has been given to the Survey no.134/1** and on 11/03/1997 mutation entry has been effected in the property card as follows:

As per the instructions given by Collector, Mumbai Suburban District in the monthly meeting held on 26th February, 1997 and letter from City Survey Officer, Goregaon no.Nabhu/Government land/Nodi 97/Goregaon, dated 27 February 1997, remarks have been taken in the property card as per the **remarks in 7/12 extract that in connection to C/DESK/LNK/3WS/1007, dated 30/08/1983 land has been reserved for drying of fishes and nets. As well as according to orders from Additional Collector, Mumbai number 73K/006, dated 21st April, 1989 securing the rights of fishermen community to dry the fishes and nets on the land and excluding the land of their need remaining land has been permitted to M/s Makeup Sea Resort Private Limited to decorate the seashore since date 3rd January 1990 for 5 years. Area 15 Acres means 8703 Sq.M.**

- (viii) **As per the remarks mentioned in the other right column of the 7/12 extract of Survey no.134/1 as well as the contents of Mutation Entry no.589 it seems that, "out of sea 10 R land adjacent to Survey no.134 has been allotted for the cemetery of the Koli community".** In the third column of the above Mutation Entry means in the column of affected Survey numbers and Pot-hissa number, "out of sea" has been written. **Also the Lithograph show that the work of cemetery has been carried out in the year 2008-2009 through the MLA funds and The Managers or caretakers of above cemetery i.e. 'Bhati Machhimar Gram Vikas Mandal' and**

'Bhati Machhimar Sarvodaya Cooperative Society' have not been made party respondents in this PIL (L) no.23498 of 2021. Hence it is necessary to give proper opportunity to put forth the side of above Gram Vikas Mandal and Cooperative Society before the Hon'ble High Court."

(Emphasis added)

The Deputy Collector annexed various record and photographs to the said report. The revenue record showed that by order dated 17th December 1955, said land was allotted to the Koli community for crematorium. The photographs annexed to the said report show that said structure was constructed/ repaired by Government of Maharashtra through MHADA by using local MLA's fund in 2008-2009.

12. It appears that when the coordinate Bench heard this PIL on 7th January 2022, none of the parties pointed out the detailed site inspection report prepared by the Deputy Collector, General Administration. This Court, *inter-alia*, issued the directions on 7th January 2022 which are already set out hereinabove.

13. On 31st January 2022 the Sub-Divisional Officer, Mumbai Western Suburban, pursuant to letters dated 18th January 2022 and 25th January 2022 of the Collector and pursuant to the decision taken by the Collector in meeting dated 21st January 2022 issued the following direction :

"उपरोक्त आदेशानुसार आपण स्वतः आपल्या स्तरावरून उक्त वर्णन केलेले स्मशानभूमीचे व बांधकामाचे निष्कासन त्वरित करुन घ्यावे. अन्यथा स्मशानभूमीच्या बांधकामाच्या निष्कासनाची कारवाई शासकीय यंत्रणेमार्फत दिनांक 09.02.2022 रोजी सकाळी 11.00 वाजता करण्यात येणार आहे. त्यावेळी आपण निष्कासन कामात कोणताही हरकत, अडथळा आणून मा. उच्च न्यायालयाच्या आदेशाचा अवमान करण्याचा प्रयत्न केल्यास होणाऱ्या परिणामांची संपूर्ण जबाबदारी आपली राहिल, याची

कृपया नोंद घ्यावी.”

(Emphasis added)

Learned advocate appearing for the respondent nos.6 and 7 submitted translation of said letter dated 31st January 2022. The translation of the above-referred paragraph is as follows:

“As per the above order **you on your own remove the above mentioned Cemetery Structure or the said Cemetery Structure shall be removed by the government machinery on 09.02.2022** at 11 am. At that time if you **obstruct the process of Cemetery structure** removal process in any way you shall be solely responsible for the **contempt of Court of the order passed by the Hon’ble High Court.** Please note the same.”

(Emphasis added)

Accordingly, on 9th February 2022 the said alleged illegal construction was demolished.

14. The said letter dated 31st January 2022 makes specific reference to the aforesaid order dated 7th January 2022 passed by this Court, particularly clause nos.(iv) and (v) of the order and also makes reference to letter dated 1st November 2021 addressed to the District Collector, Mumbai Suburban District by the Maharashtra Coastal Zone Management Authority. By the said letter dated 1st November 2021, the MCZMA has issued the following directions to the District Collector who is also the Chairman of the District Coastal Zone Monitoring Committee (hereinafter referred as “DCZMC”):-

“5. In the light of above, you are hereby instructed **to ensure that ongoing construction work of the cemetery is stopped at CTS No.1413 at village Erangal, Malad (W), Mumbai and remove the illegal construction following due procedure**

of law. Responsibility of taking action lies with District Coastal Zone Monitoring Committee (DCZMC) headed by District Collector. It is understood that said matter is listed on 17.11.2021, hence it is once again instructed to submit the compliance report on or before 10.11.2021."

(Emphasis added)

15. Thus, it is clear that this Court passed said direction on 7th January 2022 without taking into consideration the detailed site inspection report submitted by the Deputy Collector, General Administration. At least, there is no reference of the said report in the order of the Coordinate Bench. The said report makes a detailed reference to the revenue record showing that by order dated 3rd December 1955 the land in question has been allotted for the purpose of crematorium of Koli community. It records that the work of this crematorium was carried on in the year 2008-2009 by State of Maharashtra through MHADA by utilising local MLA's funds. It further records that what is being done is just to restore the roof of the crematorium which was damaged due to the storm namely 'Tauktae'. It is further significant to note that by the said order dated 7th January 2022 passed by the coordinate Bench it was only recorded that the Collector being the Authority is expected to take steps in accordance with law to comply with the directions of respondent MCZMA. The direction dated 1st November 2021 of MCZMA also contemplates removal of illegal construction following due procedure of law. Therefore, it is clear that neither the order passed by the coordinate Bench of this Court nor the direction of MCZMA dated 1st November 2021 contemplated demolition of said crematorium without following the due process of law. It is clear that "due process of law" means the action taken by

complying with the principles of natural justice. Thus, what is contemplated is issuing show cause notice to the respondent nos.6 and 7, giving them opportunity to file their say alongwith supporting documents and consideration of the same before passing the order directing demolition. The Collector has failed to comply with the principles of natural justice under the pretext that the High Court has passed the order. The letter dated 31st January 2022 of the Sub-Divisional Officer, Mumbai, Western Suburban issued to the respondent nos.6 and 7 directing them either to voluntarily demolish the crematorium or the same would be removed through Government machinery on 9th February 2022 cannot be by any stretch of imagination be considered as "show cause notice" as attempted to be contended by learned Additional Government Pleader.

16. Thus, it is clear that in this particular case, the coordinate Bench of this Court passed the order without considering the detailed site inspection report as well as the documents annexed to the same reflecting the order dated 3rd December 1955 of Sub-Divisional Officer, Thane, by which the said land has been allotted for crematorium of Koli community and photographs as annexed to the said detailed report. It is to be noted that although the coordinate Bench has specifically directed to take steps in accordance with law to comply with the directions of MCZMA, the crematorium has been demolished by assuming that the High Court has directed demolition.

17. It is well established that no one shall suffer by an act of the Court. The Supreme Court discussed the said aspect in the judgment in the case of **South Eastern Coalfields**

Ltd. vs. State of Madhya Pradesh and Ors. reported in 2003(8) SCC 648. The relevant paragraphs read as under :-

"27. Section 144 CPC is not the fountain source of restitution, it is rather a statutory recognition of a pre-existing **rule of justice, equity and fair play**. That is why it is often held that even away from Section 144 the **court has inherent jurisdiction to order restitution so as to do complete justice between the parties**. In *Jai Berham v. Kedar Nath Marwari* Their Lordships of the Privy Council said : (AIR P.271).

It is the duty of the court under section 144 of the Civil Procedure Code **to 'place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed'**. Nor indeed does this duty or jurisdiction arise merely under the said section. **It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved.**

Cairns, L.C., said in *Rodger v. Comptoir d'Escompte de Paris*, (ER P.125)

"One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression, 'the act of the Court' is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case".

This is also on the principle that **a wrong order should not be perpetuated by keeping it alive** and respecting it (*A. Arunagiri Nadar v. S.P. Rathinasami*). In the exercise of such inherent power the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. **That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the**

court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. **The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so.** Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant

would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced, we are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.”

(Emphasis added)

18. As we noticed that the detailed site inspection report dated 18th November 2021 alongwith the documents annexed to the same clearly show existence of said Cemetery since the year 1955, we passed the following directions on 19th September 2022:-

5. **Prima facie, we are satisfied that the machinery of the Court has been abused for the purpose of ensuring removal of the crematorium at the instance of a litigant who does not seem to have moved this petition in public interest; on the contrary, the litigant appears to have been set up for achieving the vested interests of someone else.** This we say having regard to the documents that have been placed before us by Mr. Kathane, learned advocate for the fishermen community as well as the inspection report which was prepared by the Deputy Collector, General Administration, Mumbai Suburban District in terms of a previous order passed on this petition.
6. Having regard to the documents that have been placed before us by Mr. Kathane, we find that even in the year 1995 the crematorium was in operation and there has been an instance of cremation pursuant to instructions issued on 2nd November, 1995, by the Public Health Department of the Municipal Corporation of Greater Mumbai (MCGM).
7. In such circumstances, **we require Mr. Sakhare,**

learned senior advocate appearing for MCGM to let us know on perusal of the official records as to whether the crematorium was in operation any time prior to the CRZ notification dated 19th February, 1991 came into force. The relevant death/cemetery register(s) may be produced by Mr. Sakhare pertaining to periods prior to 19th February, 1991 on the next date.

8. Place this writ petition on Wednesday next (21st September, 2022) at 2.30 p.m., when we propose to pass further orders on this petition after looking into the register(s) to be produced by Mr. Sakhare."

(Emphasis added)

19. On 21st September 2022 the learned Senior Counsel for the Municipal Corporation of Greater Mumbai produced a 'Death Register'. After perusal of the said death register we found that the said crematorium was in operation at least before issuance of CRZ Notification dated 19th February 1991 and we noted the same in our order dated 21st September 2022. The relevant part of said order is reproduced herein below :-

- "1. Pursuant to the order passed on 19th September 2022, Mr. Sakhare, learned senior counsel for the Municipal Corporation of Greater Mumbai, has produced a "Death Register". We have found from the **entries at Serial Nos. 3055 dated 25th December 1990 and 450 dated 16th February 1991 that there have been cremation of the respective deceased at the subject crematorium on Erangal beach, Malad (West), Mumbai.**
2. **Since the relevant CRZ notification was issued on 19th February 1991, it is, therefore, clear that the crematorium was in operation even prior to introduction of restrictions on constructions by the subject notification."**

(Emphasis added)

20. Mr. Pramod Kathane, learned advocate appearing for the respondent nos.6 and 7 has tendered compilation of documents on 21st September 2022. At Sr. No.5 of the said compilation, letter dated 4th May 2022 of Executive Engineer (W), Mumbai Slum Improvement Board, Mumbai addressed to the Member Secretary, Maharashtra Coastal Zone Management Authority has been produced. The said letter refers to order of Sub-Divisional Officer, Thane dated 17th December 1955. Also reference is made to the record of Department of Health of Municipal Corporation of Greater Mumbai regarding Bhatigaon crematorium i.e. the crematorium in question. It records that the said crematorium is in existence for about 100 years. It is therefore clear that the said crematorium came into existence before the Environment (Protection) Act, 1986 and before the CRZ Notification of 1991 came into force. It further records that in the year 2008-2009 the then MLA demanded funds for repairing the crematorium and accordingly, vide letter no.1419 dated 18th October 2008 of administrative section of the Collector Office, Bandra, sanction was given and thereafter, crematorium was renovated on 2nd January 2009 by MHADA. The said letter further records that the crematorium and sheds were severely damaged due to devastating cyclone Tauktae in May 2021. It is further mentioned that due to lack of sheds in the crematorium, it is very difficult to set fire to the dead bodies in the rainy season and people are suffering in the scorching heat and therefore, villagers of Bhatigaon have requested to repair the crematorium by using MLA fund. In view of this, request was made to give NOC to execute the repair work of crematorium at CTS No.1413, Bhatigaon, Malad (W), Mumbai.

21. The MCZMA considered the said subject in its meeting held on 12th September 2022 and rejected the said application. The relevant discussion in this behalf is reproduced as under :-

“Item No.14: Proposed repair of existing crematorium on plot bearing CTS no.1413 of Erangal Village, Bhaigaon, Malad (W), Mumbai by MHADA.

The MHADA officials presented that an application is submitted for repair of existing crematorium on plot bearing CTS no.1413 of Erangal Village, Bhaigaon, Malad (W), Mumbai. He presented that crematorium and sheds were severely damaged and requires repairs. **The Authority noted that complaints were received alleging that crematorium is constructed in violation of the CRZ norms** at village Erangal Village, Bhaigaon, Malad (W), Mumbai. **The Environment Department had issued directions under section 5 E(P) Act, 1986** dated 14th November, 2017 issued to District Collector and MCGM directing to take action in the matter.

Further, there is **Public Interest Litigation (L) No.23498/2021** is filed before Hon'ble High Court by **Chetan Kodarlal Vyas versus Union of India & Ors** alleging the illegality of the said crematorium. **Hon'ble High Court on 22.10.2021** passed an order for action in the matter. **Accordingly, instructions were issued vide letter dated 1.11.2021 to DCZMC, Mumbai Suburban and MCGM for removal of the crematorium. Accordingly, the crematorium is dismantled by the local Authorities in the February, 2022.**

The Authority discussed that there is **High Court matter regarding the said illegal crematorium and the said crematorium is dismantled which was constructed in violation of the CRZ norms. Then, in such case, seeking repair permission of the said dismantled crematorium is irrational.** When asked, MHADA

official could not provide any plausible explanation in the matter.

In the light of above, **the Authority after deliberation decided to reject the said application from the CRZ point of view."**

(Emphasis added)

Thus, it is clear that the MCZMA completely ignored the material showing that the said crematorium was in existence at least since 1955 and in any case at least before the said CRZ Notification dated 19th February 1991 came into existence. A bare perusal of the aforesaid order passed by the MCZMA shows that the said authority has completely been influenced by the fact that PIL is filed, High Court has directed demolition, complaints are received regarding said crematorium alleging that the same was constructed in violation of the CRZ norms and the same has been dismantled. The most crucial aspect that the same is in existence for at least about 67 Years and in any case before 1991 CRZ notification came into force is completely ignored. It is completely overlooked that there is no impediment in re-constructing/repairing the same by providing overhead shed.

22. Dr. Sathe, learned senior advocate appearing for the MCZMA has fairly submitted that if there is material to show that the said crematorium was in existence before the issuance of CRZ notification dated 19th February 1991, then there is no impediment in re-constructing the same.

23. As discussed hereinabove, the coordinate Bench has passed the order directing Collector to take action in accordance with law (**emphasis ours**) to comply with MCZMA directions. It is significant to note that all the Authorities have assumed that High Court has directed demolition and,

therefore, action of demolition of said crematorium was taken in totally illegal and unauthorized manner without affording proper opportunity to the respondent nos.6 and 7 and without considering the documents on record showing the existence of said crematorium before CRZ Notification dated 19th February 1991 came into force. It is significant to note that the photographs annexed to the site inspection report clearly show that renovation of said crematorium was completed through MLA fund in the year 2008-2009. The petitioner has annexed certain photographs taken on 11th October 2021 to the petition memo; however, deliberately photographs are taken from such an angle that the said plaque showing that the renovation work was done through MLA fund in 2008-2009 is not reflected in the said photographs. Petitioner has annexed at page 40 to the memo of the writ petition property card however, deliberately, 7/12 extract of survey no. 134/1, which is a public document is not annexed. The said 7/12 extract clearly mentions in other rights column about the order dated 17th December 1955 by which the said land was allotted to Koli Community for crematorium. In the writ petition, the impression sought to be given is that the construction of cement concrete shed is being carried out right on the beach by levelling sandy beach with cement and hard material. In fact, the site inspection report clearly shows that what was going on was repairing work of the roof of the crematorium as due to the storm "Tauktae", the roof of the crematorium was damaged.

24. We suspect that the writ petition has been filed as the crematorium was affecting the commercial interest of said Resort. The said Make Waves Sea Resort Private Limited was carrying on resort by name "The Retreat", Hotel and

Convention Centre at Madh Island, Marve Road, Malad (W), Mumbai – 400 006. Make Waves Sea Resort Private Limited filed the Interim Application No.1833 of 2022 in this writ petition. It is significant to note that the demolition of the crematorium took place on 9th February 2022 pursuant to order dated 7th January 2022 passed by the coordinate Bench and thereafter the said Resort filed said interim application on 15th April, 2022. In the said application, it is specifically mentioned that the plot on which the resort “The Retreat” is located is situated to the south of the area where crematorium was sought to be constructed. It is further mentioned that applicant has been granted license for plantation of trees and beautification of the beach portion of an area of about 12 acres of Survey No.134, village Erangal, Malad (W) and that the name of the applicant is mentioned in the 7/12 extract which is annexed to the site inspection report dated 18th November 2021.

25. It is significant to note that the 7/12 extract which has been annexed to the inspection report also mentions in other rights column that by order dated 17th December 1955 of the Sub-Divisional Officer, Thane, 10 guntha land adjoining survey no.134 has been allotted to the fishermen community for the crematorium. Thus, it is clear that the said applicant has suppressed very important entry of 7/12 extract. The said 7/12 extract also records in other rights column that part of the said land was also allotted to fisherman community to carry out work regarding fishing and net drying. It is further significant to note that property card which has been annexed by the PIL petitioner as well as the 7/12 extract which has been annexed to the inspection report clearly show that about 15 acres land was allotted to the applicant only for a period of

five years from 31st January 1990 for beautification purpose. There is nothing to show that the said period was extended after expiry of said five years' period. The applicant is completely silent in interim application about very crucial aspects viz. the period for which the license was granted, when the said period expired and extension, if any, granted to the applicant. Thus, it is clear that the applicant has also made an attempt to mislead this Court. In the interim application, the prayer is made to remove the concrete/stone beds which have been constructed by the fishermen community to dry fish. The said plot is specifically allotted to the fishermen community for the said purpose. It is not the case of the MCZMA and the Collector that the said activity has violated the CRZ Notification. As the applicant has suppressed the true position and there is nothing to show that the license which has been granted for five years to the applicant from 31st January 1990 has been extended thereafter and as we suspect that the PIL petition might have been filed at the instance of the applicant, the interim application deserves to be dismissed.

26. As we have already noted several aspects pointing out that the present PIL has been filed for extraneous and motivated purpose, the PIL petition is also required to be dismissed with compensatory costs.

27. This is not a case where merely dismissal of the PIL petition and interim application will do justice.

28. We have set out hereinabove extensively that demolition of crematorium for Koli community took place under the pretext that the High Court has passed the order of demolition. Although the coordinate Bench has not directed

that the said crematorium be demolished, however the coordinate Bench recorded that it is expected of the Collector to take steps in accordance with law to comply with the directions of MCZMA. We have already observed that none of the parties pointed out to the coordinate Bench the detailed site inspection report and various other factual aspects.

29. The factual position on record establishes following :-

- (i) The land in question was allotted to the fisherman community by order dated 17th December 1955 of Sub-Divisional Officer, Thane. The same is specifically mentioned in 7/12 extract of Survey No.134/1 and in Mutation Entry No.589 dated 15th April 1958;
- (ii) It is the claim of the fishermen community that they are using the said crematorium for more than 100 years, however, at least since the year 1955 allotment of land is evident;
- (iii) The record maintained by MCGM particularly the death register shows that on 25th December 1990 and 16th February 1991 there have been cremation of the respective deceased viz. Vasant Janya Koli and Tarabai Laxman Mhatre at the said crematorium. The CRZ Notification came into effect on 19th February 1991. Thus, it is clear that the said crematorium was in existence at least when CRZ Notification dated 19th February, 1991 came in force;
- (iv) In the year 2008-2009 the then MLA demanded funds for repairing the crematorium and accordingly, vide letter no.1419 dated 18th October 2008 of administrative section of the Collector Office, Bandra

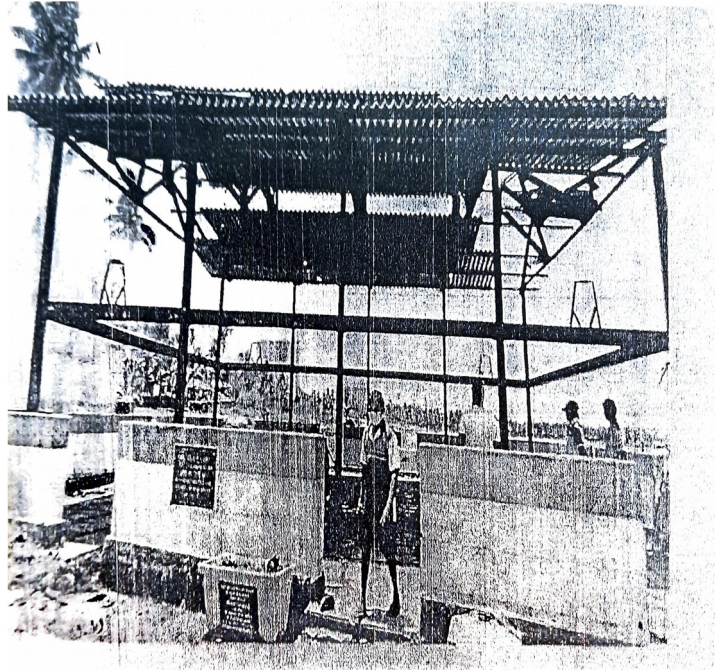
- sanction was given and thereafter, crematorium was renovated on 2nd January 2009 by MHADA;
- (v) The said crematorium and sheds were severely damaged due to cyclone 'Tauktae' in May 2021;
 - (vi) The photograph showing the position of crematorium before May 2021 has been taken on record and marked 'X' for identification by our order dated 21st September 2022. The said photograph shows that there are no full height walls to the said crematorium. The walls measuring 3 ft. height with gaps at regular intervals were constructed for supporting iron rods so that roof can be constructed;
 - (vii) Thus, it is clear that the said crematorium is in existence at least before CRZ Notification dated 19th February 1991 came into force and therefore, there is no impediment directing repairing/ reconstruction of the said crematorium;
 - (viii) As the said crematorium has been demolished under the pretext that High Court has directed demolition, it is necessary that the respondent no.2- State of Maharashtra and respondent no.3- Collector are required to be directed to take immediate steps for construction/repair of the said crematorium as is existing before 'Tauktae' storm and as reflected in photograph marked as Exh.'X' on 21st September 2022. The said direction is necessary since it is well established that no one shall suffer due to an act of the Court. It is the duty of the Court to act rightly and fairly according to the circumstances towards all the parties.

- (ix) As the said action of demolition was taken at the instance of PIL petitioner respondent no.3 – Collector, Mumbai Suburban District to take steps for recovery of the cost incurred for the said repair/reconstruction from the PIL petitioner.

30. In view of the above discussion, we pass the following order :

ORDER

- (I) As the PIL is filed for extraneous and motivated purposes, the same is dismissed with cost of Rs.1,00,000/- to be paid by the PIL Petitioner in equal share to respondent no.6-Bhati Machhimar Gram Vikas Mandal and respondent no.7- Bhati Machhimar Sarvoday Sahakari Society Limited within a period of two weeks from today;
- (II) The Interim Application No. 1833 of 2022 filed by Make Waves Sea Resort Pvt. Ltd. is also dismissed.
- (III) Order/minutes of meeting dated 12th September 2022 of the MCZMA are set aside;
- (IV) The respondent no.2-State of Maharashtra and the respondent no.3-Collector, Mumbai Suburban District to take immediate steps for re-construction of the crematorium at the place reflected in the site inspection report dated 18th November 2021 prepared by Mr. Vikas Gajre, Deputy Collector, General Administration and in conformity with the photograph taken on record and marked 'X' for identification on 21st September 2022, as shown below;



- (V) We direct that the said work of re-construction be carried out under the supervision of Mr. Vikas Gajre, Deputy Collector, General Administration. The said work of re-construction be completed as early as possible and in any case, within a period of one month from today;
- (VI) The respondent no.2 to take steps to recover cost of reconstruction/repair from the PIL petitioner.

31. Although the PIL petition is dismissed, the same be listed for compliance of this order on 10th November 2022 and to ensure reversal of the situation of demolition brought about by the order of this Court.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)