

VERSUS

1. Administrator of Daman & Diu,
Secretariat Building,
Daman.
2. COLLECTOR, Daman,
Union Territory of Daman and Diu.
3. Coastal Zone Management Authority,
Daman And Diu.
4. Union of India
Through Ministry of Environment and Forest.

TO,

**THE HON'BLE THE CHIEF JUSTICE AND OTHER HON'BLE
PUISNE JUDGES OF THIS HON'BLE HIGH COURT OF
JUDICATURE AT BOMBAY.**

**THE HUMBLE PETITION
OF PETITIONER
ABOVENAMED**

MOST RESPECTFULLY SUBMIT:-

1. The Petitioner has filed present Public Interest Litigation seeking essentially relief that the construction work which has been carried out without the permission of the Union Territory Coastal Zone Management Authority and without following procedure as given under the Environment Impact Assessment Notification dated 14.09.2016 is illegal, bad in

law and is done as colorable exercise of power by high ranking officials with pre-determined mind in complete disregard to the law.

2. Declaration and undertaking by the Petitioner:-

- a. The present Petition is being filed by way of Public Interest Litigation and the Petitioner does not have any personal interest nor will Petitioner be benefited if the Petition is allowed. The Petition is being filed in the interest environment more specifically the Coastal protection as well as the one of the cleanest beaches that Daman has.
- b. That the entire litigation cost, including the Advocate fees and other charges are being born by the Petitioner.
- c. That a thorough research has been conducted in the matter in the Petition prior to filing this Petition.
- d. That to the best of the Petitioners' knowledge and research, the issue raised has not been dealt with or decided, nor any similar or identical Petition filed earlier by any of them.
- e. That the Petitioner has understood that in the course of hearing of this Petition the Court may require any

security to be furnished towards cost or any other charges and the Petitioner shall have to comply with such requirement.

f. The Petitioner is a citizen of India and permanently residing on the above referred address.

3. The relevant and material facts for/to the present Petition are as set out hereinafter :-

i. Petitioner submits that he is Right to Information as well as anti-corruption activist and continuously exposing various illegalities, wrong activity and malafide committed by the government officers and Government Departments in the Union Territory of Dadra and Nagar Haveli and U.T. of Daman & Diu as well as in other states since 2007-08.

ii. Petitioner submits that Daman has coastal city and has coastline of almost 12.5 km. Daman also has 2 natural beaches namely Devka Beach and Jampore Beach which also have sand dunes. Daman at few places has rocky parts of the beach which thrive with the various marine species. Apart from this at various places beaches are adjoining to the reserve forests and passes through it.

In this manner Daman has rich coastal environment which has become scarce now days.

iii. Petitioner is also regular visitor to the Daman so as to enjoy the pleasant beaches of the Daman. However meanwhile due to heart ailment Petitioner could not visit the Daman. After much gap approximately in month of _____ 2019, Petitioner visited the Daman beach, he could not go upto the Devka beach due to the digging work right on the beach sand. He was utterly shocked and heartbroken to see the destruction of the beach with the use of heavy machinery. Petitioner also observed that the high tide water was coming right at the places where the heavy machinery was doing digging activities. At some of places to prevent the high tide water from coming to the construction place permanent retention wall were required to be constructed and remaining places the construction of retention wall was under way. Petitioner has learnt that said retention wall now will be constructed through out length so as to restrict the high tide water from sweeping away the entire road. It was clearly seen and observed that the high tide waves were hitting the retention wall wherever constructed indicating the high tide line to be much ahead of the retention walls.

- iv. Petitioner was shocked, saddened and heartbroken by the said widespread destruction of the beaches, sand dunes. On further enquiry he came to know that Daman administration was constructing the sea facing road on Devka Beach as well as doing beautification. By no stretch of imagination the small city of Daman requires the Sea Front road that too at the cost of destruction of environment. The authorities have proposed and routed the said proposal as **"Sea front road and beautification of Devka Beach at Nani Daman km 0/0 to 6/380"**. Annexed hereto and marked as **Exhibit "A"** is copy of the relevant documents showing various stages at which the proposal was routed. It is pertinent to note that though the proposal was put forward for consideration in May 2018, however until May 2019 no efforts were made to comply with the stringent requirements of the law. Petitioner further submits that it is not only simple road but full fledged construction which involves construction of Gabion Wall, 10.5 meter wide road, side walk way, side drain.
- v. Petitioner therefore filed Right to Information Application dated 03.04.2019. However, the information was not supplied and hence Petitioner was required to file appeal

against the non-supply of the information on 04.06.2019. However, after appeal was file Petitioner was informed that vide letter dated 12.04.2019 itself Petitioner was intimated to collect the information. Petitioner however in the best interest collected the information. Since the work on the beach was in progress, Petitioner decided to file the Petition with all available information. Petitioner humbly submits that the Respondents be directed to place before this Hon. Court entire file with true disclosure for perusal.

- vi. Petitioner submits that it can be seen from the minutes of the meeting dated 02.03.2019 of the Daman & Diu Coastal Zone Management that only in principle approval has been granted to the said construction. Said Construction is considered as **"CRZ Clearance for the work of Sea Front Road & Beautification of Devka Beach at Nani Daman KM 0/0 to 6/380"** Annexed hereto and marked as **Exhibit "B"** is copy of the minutes of meeting dated 02.03.2019 of the CZMA.
- vii. It is pertinent to note that very adjoining there exists _____ meter road which is absolutely sufficient for the purpose of connectivity with only difference that same is not adjoining to the sea. The residents of Daman never ever sought the construction of the such

kind of sea facing road at the cost of destruction of the beach itself. Annexed hereto and marked as **Exhibit "C"** is copy of the Tentative map showing proposed road as well as existing road immediately adjoining to the beach but not sea-facing.

viii. The Daman & Diu Coastal Zone Management authority has for the purpose of Granting the in principal approval has relied upon the clause 8(III)A(iii)(j). For the sake of convenience said clause is reproduced as under

“(j) construction of dispensaries , schools, public rain shelter, community toilets, bridges, roads, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station which are required for the local inhabitants may be permitted on case to case basis by CZMA;”

ix. Petitioner submits that thought the caption clause permits construction of road however same has to be permitted is same is required for the local inhabitants. Admittedly none of the local inhabitants has demanded said road and they already have the existing road for their daily use. Contrary to this at all

the administrative levels this road has been pushed through by stating that said road is required for the purpose of increasing the tourism. The clause mentions it clearly that such kind of project has to be considered on case to case basis by CZMA. In present case rather no such application of mind by the authority considering various aspects. The Authority simply proceeded to grant "in principal approval" and on the basis of said in principal approval, work has been commenced. It is pertinent to note that CZMA required to grant either approval or reject the same. The law no-where provides for in-principal approval. This itself shows that complete non-application of the mind by the authority. Annexed hereto and marked as **Exhibit "D"** is copy of the CRZ Notification of year 2011.

- x. Petitioner also seeks to draw attention of this Hon. Court towards the letter dated 31.05.2019 wherein the CZMA has sought compliance of the certain documents. This indicates that the CZMA authority presided over by the officers from the very administration has pre-determined mind to grant approval to the project under any circumstances and

only formality of submission of documents is being done.

xi. From the document dated 31.05.2019 it can be seen that CZMA has not even verified that demarcation of the HTL or LTL coupled with project lay out. Annexed hereto and marked as **Exhibit "E"** is copy of letter dated 31.05.2019. Petitioner categorically asserts that the said road is actually being constructed between high tide line and low tide line. Petitioner on various occasion has been to the said site and has visually verified this fact. Therefore, if at all this project is to be permitted it has to be one of the kind exceptional case so as to permit construction between HTL and LTL. This being the case the construction is definitely either CRZ IA or CRZ IB. In either case this kind of destructive development is not permissible. Though the zone actually CRZ IA or CRZ IB, the authorities with clear malafides and for obvious extraneous reasons have exercised their powers contrary to the legislative intent of the Environment Protection Act, 1986 and the CRZ notifications. The respondents created farce of CRZ Clearance by making wrong noting that the area falls under CRZ II and CRZ III. On this ground alone the "In principle approval" as granted required to be quashed and set aside. Annexed

hereto and marked as **Exhibit "F"** is copy of the photographs as captured by the Petitioner showing the construction of work. Annexed hereto and marked as **Exhibit "G"** is copy of the Coastal Map as prepared by the Respondents. Apart from this at various places beaches are adjoining to the reserve forests and passes through it. Annexed hereto and marked as **Exhibit "H"** is copy of the minutes of meeting dated 30.03.2005.

xii. Petitioner also submits that there exist no Coastal Zone management plan and time and again only Draft notifications have been issued. Annexed hereto and marked as **Exhibit "I"** is copy of the draft notification as issued in year 2014. Petitioner submits that in year 2017 the timeline to submit the Coastal Zone Management plan was extended upto 2018. Annexed hereto and marked as **Exhibit "J"** is copy of the extension as granted.

xiii. Petitioner submits that even authority is not sure as to under which CRZ category the project falls. Despite this the project has been granted "In principal approval." by the CZMA. It is apparent from the Coastal Regulation Zone Notification dated 06.01.2011 that at-least rapid EIA report is required for clearing

the permissible activities. Admittedly even said Rapid EIA has not been conducted. On this ground alone the so called in principle approval given by the authority should be quashed and set aside. Though it is the case of the Petitioner that the comprehensive EIA would be required nevertheless taken the case as it is even rapid EIA has not been conducted. This shows clear non-application of the mind on the part of the Authorities.

xiv. In the year 2019, Central Government has issued one more notification i.e. Coastal Regulation Zone notification, 2018. However even under the said provisions this kind of constructions are not permissible. Petitioner however submits that the notification of year 2011 permitted reclamation only in exceptional cases. However in notification of year 2019, said clause of "Exceptional cases" has been completely done away with. In view thereof, Petitioner is constrained to challenge the CRZ Notification of year 2015 as ultra vires of Environment Protection Act. Annexed hereto and marked as **Exhibit "K"** is the copy of the CRZ Notification of year 2019.

xv. Petitioner submits that in this peculiar facts and circumstances he is approaching this Hon. Court so as to seek appropriate directions for protection of the environment.

4. Essential disclosure :-Petitioner says and submits that he has no personal interest and no other interest of whatsoever nature if the Petition is allowed and Petitioner will not be benefited in any manner if the writ in the nature of "Mandamus" is issued by this Hon. Court.

5. Nature and extent of injury caused/ apprehended:-

The coastline of the Daman will undergo extensive and irreparable damage because of non-compliance with the statutory requirements.

6. The representation etc. made:-

The Petitioner is filling the Petition in hurry since the authority themselves are doing the illegality and making any representation would be empty formality. Even otherwise lot of time was wasted in even considering the RTI application of the Petitioner. Considering the day to day damage caused to coastline, Petitioner is directly

approaching this Hon. Court under Art. 226 of the Constitution of India.

7. Delay, if any, in filing the petition and explanation thereof:-

1. There is no delay no delay in filing the present Petition, since authorities are doing illegal construction upon the coastline. Petitioner says that delay if any therefore is not deliberate.

8. Documents relied upon:-

As exhibited.

9. Relief(s) prayed for:-

this Hon'ble Court may be pleased

(a) To issue Rule;

(b) This Hon. Court be pleased to quash and set aside the in principal Approval dated 02.03.2019 under the guise of provisions of Coastal Regulation Zone, 2011;

(c) This Hon. Court further be pleased to declare that the commencement of the work without obtaining the final CRZ clearance and Environment Impact Assessment is illegal and further be pleased to direct the Respondents to restore the Devka beach as it was

prior to commencement of work pursuant to the project namely "Sea front road and beautification of Devka Beach at Nani Daman km 0/0 to 6/380";

(d) This Hon. Court further be pleased to direct the Respondents to fix the personal responsibility of all the concern officials for the gross violation of the Coastal Regulation Zone and further direct to take appropriate action in accordance with law for destruction of the Devka Beach without following the due process of law as established;

(e) This Hon. Court further be pleased to declare the Coastal Regulation Zone Notification, dated 18 January 2019 (Annexed as Exhibit "G" to Petition) more specifically para 5.1.2.(c) as ultra vires to the provisions of the Environment Protection Act, 1986;

(f) Ad-interim relief in terms of prayer clause (d);

(g) All other reliefs and orders as this Hon'ble court may deem just, legal and proper;

10. **Interim order, if prayed:-**

(a) Pending hearing and disposal of the Public Interest Litigation, this Hon. Court further be pleased to stay

the Construction activities carried on the Devka beach
in furtherance of **"Sea front road and
beautification of Devka Beach at Nani Daman
km 0/0 to 6/380"** project

(b) All other reliefs and orders as this Hon'ble court
may deem just, legal and proper;;

**AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE
PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

PLACE: MUMBAI.

DATE: (_____)

Advocate for the Petitioner.

VERIFICATION

I, _____ the Petitioner abovenamed do hereby state on solemn affirmation state and declare that what is stated in the paragraphs Nos. 1 to _____ are true to my own knowledge and belief and what is stated in paragraph No., _____ to _____ is based on the information and legal advice which I believe to be true and correct.

Solemnly affirmed at Mumbai _____)

This ___ day of _____, _____ \ .. Deponent.

Before me.

Explained & Interpreted by me.

Advocate for the Petitioner.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.

OF 2019.

DISTRICT: UNION
TERRITORY OF
DAMAN AND DIU

Shri. Jitendra P. Maru,

...Petitioner.

VERSUS

Administrator of Daman, Diu,

& Ors

...Respondents.

Affidavit

I,

the

Petitioner abovenamed, do hereby state and declare on solemn affirmation as under :-

1. I say that I am the Petitioner in the above Public Interest Litigation and I am aware of all the facts and circumstances pertaining to the subject matter of the Present Public Interest Litigation.
2. I say that I repeat, reiterate and confirm all avernments, statements and contentions stated and raised by me in the said Public Interest Litigation Petition and all the statements and avernments made therein are adopted as part and parcel of this Affidavit for avoiding repetition. This Affidavit has been affirmed and executed in support of the said Public Interest Litigation Petition.

3. I say that I have no personal /vested interest in the subject matter of the present Public Interest Litigation and I am filling the present Public Interest Litigation for the interests of the Public at large.
4. I say that, to the best of my knowledge, the issues in the present Public Interest Litigation has not been decided in any other Writ Petition.
5. I say that whatever is stated herein above is true and correct to the best of my knowledge and belief and I believe the same to be true and correct.

Solemnly Affirmed at Mumbai, _____)

On this ____ day of July 2019. _____)

(Deponent)

Identified by me,

Advocate for Petitioner.

(_____)