

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1534 OF 2019

1. Akshay Sthapatya Private Limited
a Company incorporated and
registered under the Companies Act,
1956, having its registered office at
401, Raheja Chambers, 213,
Nariman Point, Mumbai-400 021
2. Jayvardhan Vinod Goenka
Director, Akshay Sthapatya Private
Ltd. having his address at 401,
Raheja Chambers, 213, Nariman
Point, Mumbai -400021 .. Petitioners

Versus

1. Union of India
through the Secretary, Ministry of
Environment, Forest & Climate
Change, J-232, Indira Paryavaran
Bhawan, Jor Bagh Road,
New Delhi – 110053
2. State of Maharashtra
Through the Secretary, Department
of Environment, Government of
Maharashtra, Mantralaya Annex,
Madam Cama Road, Mumbai-
400032
3. Maharashtra Coastal Zone
Management Authority
5th Floor, Administrative Building,
Manatralaya, Madam Cama Raod,
Mumbai-400 032

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4. Municipal Corporation of
Greater Mumbai,
Head Quarters, Main Office,
Mumbai C.S.T.-400 001
5. Slum Redevelopment Authority,
Bandra East, Mumbai-400 051 .. Respondents

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Mr. Aspi Chinoy, Senior Counsel with Dr. Milind Sathe, Senior Counsel with Mr. Vineet Naik Senior Advocate, Mr. Bhushan Deshmukh, Ms. Rujuta Patil & Ms. Niyathi Karla i/b Negandhi Shah & Himayatullah for the Petitioners.

Mr. Anil Singh, Additional Solicitor General with Mr. Aditya Thakkar and Mr. Anil Yadav for Respondent No.1-Union of India.

Mr. Abhay Patki, Additional Govt. Pleader for Respondent No.2-State.

Ms. Sharmila Deshmukh with Ms. Jaya Bagwe for Respondent No.3.

Ms. K.H.Mastakar for Respondent No.4-MCGM

Mr. Vijay Patil for Respondent No. 5

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**CORAM : PRADEEP NANDRAJOG, C.J., &
SMT. BHARATI DANGRE, J.**

DATED : SEPTEMBER 20, 2019

JUDGMENT [PER PRADEEP NANDRAJOG, C.J.]:

1. On 6th January 2011 the Ministry of Environment and Forest, Government of India promulgated the Coastal Regulatory Zone Notification (hereinafter referred to as “**CRZ-2011**”). The Notification defined areas under CRZ as under:

- “1. *The land area from High Tide Line (hereinafter referred to as the HTL) to 500 mts on the landward side along the sea front.*
2. *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 measured during the direst 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.

3. *The land area falling between the hazard line and 500 mts from HTL on the landward side, in case of seafront and between the hazard line and 100 mts line in case of tidal influenced water body. The word 'hazard line' denotes the line demarcated by Ministry of Environment and Forests (MoEF) through the Survey of India (SoI) taking into account tides, waves, sea level rise and shoreline changes.*
 4. *Land area between HTL and Low Tide Line (LTL) which will be termed as the intertidal zone.*
 5. *The water and 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.”*
2. As per the said Notification, areas under CRZ were assigned four categories being CRZ-I, CRZ-II, CRZ-III and CRZ-IV.

3. CRZ-II was defined in the Notification as under:

“(ii) CRZ-II,-

The areas that have been developed upto or close to the shoreline.

Explanation.- For the purposes of the expression “developed area” is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains;”

4. Vide paragraph V of CRZ-2011 ‘*areas requiring special consideration*’ were dealt with for the purpose of regulating development or redevelopment. Relevant part of paragraph V of CRZ-2011 reads as under:

“1. *CRZ areas falling within municipal limits of the Greater Mumbai*

(i) *Developmental activities in the CRZ area of the Greater Mumbai because of the environmental issues, relating to degradation of mangroves, pollution of creeks and coastal waters, due to discharge of untreated effluents*

and disposal of solid waste the need to provide decent housing to the poor section of society and lack of suitable alternatives in the inter connected islands of Greater Mumbai shall be regulated as follows, namely:

- (ii) [....]*
- (iii) In CRZ II areas*
 - 1. The development or redevelopment shall continue to be undertaken in accordance with the norms laid down in the Town and Country Planning Regulations as the existed on the date of issue of the notification dated the 19th February 1991, unless specified otherwise in this notification.*
 - 2. Slum Rehabilitation Schemes*
 - (b) In the Greater Mumbai area there are large slum clusters with lakhs of families residing therein and the living conditions in these slums are deplorable and the civic agencies are not able to provide basic infrastructure such as drinking water, electricity, roads, drainage and the like because the slums come up in an unplanned and congested manner and the slums in the coastal area are at great risk in the event of cyclones, storm surges or tsunamis, in view of the difficulties in providing rescue, relief and evacuation.*
 - (c) To provide a safe a decent dwelling to the*

slum dwellers, the State Government may implement slum redevelopment schemes as identified as on the date of issue of this notification directly or through its parastatal agencies like MHADA, SSPL, MMRDA and the like, provided that

- 1. Such redevelopment schemes shall be undertaken directly or through joint ventures or through public private partnerships or other similar models ensuring that the stake of the State Government or its parastatal entities shall not be less than 51%.*
- 2. The FSI or FAR for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on the date on which the project is granted approval by the competent authority.*
- 3. It shall be the duty of the project proponent undertaking the redevelopment through conditions (1) and (2) above along with the State Government to ensure that all legally regularized tenants are provided houses in situ or as per norms laid down by the State Government in this regard.”*

5. Representations were made to Ministry of Environment and Forest (MoEF) concerning paragraph V of CRZ-2011 pertaining to Slum Rehabilitation Schemes in areas falling in CRZ-II. The stipulation in CRZ-2011 was to the

effect that development or redevelopment of slum clusters was to be undertaken directly by the State Government or through the Joint Ventures or through Public Private Partnerships or other similar models ensuring that the State of the State Government or its parastatal entities was not less than 51%. Further, if redevelopment was through a Joint Venture or Public Private participation or the other similar model, it was the duty of the project proponent to undertake redevelopment while complying with Condition Nos. 1 and 2 and also to ensure that all legally regularized tenants were provided houses *in situ* as per norms laid down by the State Government.

6. On 31st October 2013 the Chief Executive Officers Slum Rehabilitation Authority's communication to the Principal Secretary to the Government of Maharashtra informed as under:

*“To
The Principal Secretary to Govt.
Environment Department
Mantralaya, Mumbai 400 032.*

*Sub: Re development of slum rehabilitation
Scheme falling within CRZ-II.*

*Ref: Ministry of Environment & Forest Govt.
of India's notification dt. 6th January 2011.*

Respected Sir,

There are large number of slums in Mumbai falling within CRZ II are and about 17 lakhs people are residing in it. There are restrictions on re development of those slums regarding the FSI consumption. The Scheme referred to above was announced by the Ministry of Environment & Forest, Govt. of India so as to boost the re development in CRZ II area by increasing the FSI. Since the inception of Scheme, the response is almost zero.

An exercise was carried out so as to attract the slum dwellers and developers to participate in the Scheme. A detail report in this regard is submitted herewith which shows the nil response. It is requested that the fact may be brought to the notice of Ministry of Environment & Forest, Govt. of India so as to cancel the Scheme and allow normal FSI in CRZ II area for re development of slums.

Encl:-Pages 1 to 28

*(Nirmal Deshmukh)
Chief Executive Officer,
Slum Rehabilitation Authority”*

7. The letter brings out that on account of restrictions on redevelopment of slums regarding FSI consumption, there was no response and the slum dwellers evinced no interest. Request made was to amend CRZ-2011 and permit normal FSI to be utilized in areas comprised CRZ-II.

8. The said letter was communicated to MoEF.
9. Simultaneously there were demands from the Industry to ease restrictions of distance from high tide areas. The Industry wanted the distance to be reduced to 50 meters with reference to the high tide line and this in turn, impacted the distance between the hazard line and 100 meters line in case of tidal influenced water bodies.
10. On 18th January 2019, in supersession of CRZ-2011, CRZ-2019 Notification was issued. Areas comprised CRZ-II was defined as per paragraph 2.2 of the Notification as under:-

“2.2 CRZ-II:

CRZ-II shall constitute the developed land areas up to or close to the shoreline, within the existing municipal limits or in other existing legally designated urban areas, which are substantially built-up with a ratio of built-up plots to that of total plots being more than 50 per cent and have been provided with drainage and approach roads and other infrastructural facilities, such as water supply, sewerage mains, etc.”

11. The Notification of the year 2019 required fresh coastal zone management plans to be prepared by the State Coastal Zone Management Authorities and with respect to the

period interregnum the issuance of the Notification and preparation of fresh coastal zone management plans, vide sub-paragraph (i) of paragraph (6) of the Notification it was stipulated as under:-

“6. Coastal Zone Management Plan (CZMP)

- (i) *All coastal States and Union territory administrations shall revise or update their respective coastal zone management plan (CZMP) framed under CRZ Notification, 2011 number S.O. 19(E), dated 6th January, 2011, as per provisions of this notification and submit to the Ministry of Environment, Forest and Climate Change for approval at the earliest and all the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under this notification and until and unless the CZMPs is so revised or updated, provisions of this notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011, shall continue to be followed for appraisal and CRZ clearance to such projects.”*

12. Needless to state the rigors imposed by paragraph V of CRZ-2011 concerning FSI and redevelopment to be undertaken directly by the State or their Joint Venture was not incorporated in CRZ-2019. Meaning thereby, development or

redevelopment in areas comprised in areas falling in CRZ-II could be as per the building norms. The FSI would be as per the building norms.

13. The 1st petitioner of which the 2nd petitioner is a Director intended redevelopment of slum known as Mariamma Nagar situated near Nehru Centre, Worli, wherein CS No. 47(Part) and 16/47. The redevelopment scheme has been languishing for the past twenty years due to restriction on FSI. The undisputed position is that the plot in question was in an area comprising CRZ-II under CRZ-2011 Notification. The present petition was filed on the plea that CRZ-2019 eases the distance requirement to categorize lands as CRZ-I, CRZ-II, CRZ-III and CRZ-IV. Meaning thereby, such lands which would not be comprised in CRZ-II under CRZ-2011 could fall under CRZ-II under CRZ-2019 Notification but not *vice versa*. Meaning thereby, a land comprised in CRZ-II area under CRZ-2011 would not go outside the area comprised in CRZ-II under CRZ-2019 Notification. Thus a land which was in CRZ-II under CRZ-2011 Notification would continue to be under CRZ-II even under CRZ-2019. Thus, as per the petitioners it hardly mattered whether the coastal zone management plan was finalized qua the petitioners' land. Therefore the petitioners pray that it be relieved of the rigor under clause (i) of paragraph

6 of CRZ-2019 which required that unless coastal zone management plans were finalized under CRZ-2019 provisions under CRZ-2011 shall continue to apply.

14. The argument of the petitioners is simple. Paragraph 6 of CRZ-2019 was incorporated on the premise that the Notification relaxed the distance from high tide line to categorize lands falling in CRZ-I to CRZ-IV and this was possible only after the coastal zone development plan was finalized and was superimposed upon the Revenue map so as to identify the location of the land on the coastal zone management plan. But, since as per the two Notifications if a land was in CRZ-II in the first Notification it would continue to be in CRZ-II under the second Notification and since the object of the law was to identify the location of a plot as falling in a particular zone, this being known with certainty, it would be futile to postpone the development work and therefore the restriction contemplated by paragraph 6(i) would make no sense to it being applied to the petitioners.

15. Learned Additional Solicitor General urged that CRZ-2019 is a composite Notification and the petitioners cannot seek benefit under the same on the plea that paragraph V of CRZ-2011 not finding a mention in the Notification and

simultaneously pray that the restriction under the Notification concerning redevelopment till the coastal zone management plans were finalized be done away with.

16. The principle of empty formality guides the Court that if the doing of an act or the performance of an obligation is a mere formality the Court can waive the same.

17. Applying said principle to the facts of the instant case, suffice it to highlight that the respondents do not dispute that a parcel of land which fell in an area comprising CRZ-II under CRZ-2011 would continue to be comprised in area falling in CRZ-II under CRZ-2019. The respondents also do not dispute that as and when the coastal zone management plans in the State of Maharashtra would be finalized under CRZ-2019 the land of the petitioners would be in CRZ-II. The purpose of paragraph 6 of CRZ-2019 is to remove a void. Pending preparation of coastal zone management plans under CRZ-2019 rights could be exercised under CRZ-2011. The development restrictions in terms of FSI envisaged under CRZ-2011 being removed from CRZ-2019 if the undisputed position would be that a land comprised in CRZ-II under CRZ-2011 would continue to be in CRZ-II under CRZ-2019, the preparation of coastal zone management plan in relation to the

said plot would be a mere formality and thus for said plot of land development would be permissible under CRZ-2019 without formally awaiting the preparation of the coastal zone management plan.

18. The learned Additional Solicitor General urged that CRZ-2019 has been challenged by way of a PIL No. 18 of 2019 and PIL No. 19 of 2019 before the Goa Bench of this Court. Counsel urged that it may be possible that the challenge may succeed and CRZ-2019 may be declared *ultra vires* 'The Environment Protection Act, 1986'. The argument overlooks the fact that challenge in the Public Interest Litigations is to such parts of the Notification which reduce the distance from the high tide line and in particular relating to creeks. We have perused the said two petitions and a perusal thereof would show that the case pleaded is that on the basis of scientific studies parameters were finalized to determine areas comprising CRZ-I, CRZ-II, CRZ-III and CRZ-IV when CRZ-2011 was issued. History of Coastal Regulation Zone Notifications have been traced out to bring home point that scientific studies do not warrant any reduction in the distance from the high tide line, for the same would be a disaster to the ecology and the environment. The petitions also highlight the possibility of subjectiveness influencing demarcation of the high

tide line which hithertofore had to be notified by an Agency notified by National Centre for Sustainable Coastal Management, but under the impugned Notification the same body would mark the high tide line. It is pleaded in the petition that by opening more areas for development people would be encouraged to move closer to the sea and reduction of NDZ in coastal area from 200 meters from high tide line to 50 meters had been struck down by the Supreme Court in the year 1996. That activities permitted under CRZ-IB would be permitted in CRZ-II and CRZ-IIIB areas.

19. Meaning thereby, if petitioners succeed in the petitions, the same would result in striking down of such provisions of the Notification which have been challenged and not the Notification as a whole.

20. Thus, we dispose of the petition noting that qua the subject land undisputed position is that as and when the coastal zone management plans are prepared under CRZ-2019 the land would be in CRZ-II. We declare that qua the petitioners' land the development would be permitted as per CRZ-2019 i.e. sans the development restrictions vide paragraph 5 of CRZ-2011 because the same have been omitted in CRZ-2019. We direct the respondents to sanction the building plans by

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granting such FSI as would be available as per the Municipal Law. Needful shall be done within eight weeks.

21. No costs.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE

22. Learned Additional Solicitor General seeks stay of the judgment pronounced today. We are not staying the operation of the judgment for the reason the petitioner cannot commence construction work till plans are approved and this would take sufficient time within which if the respondents desire to challenge the judgment before the Supreme Court, they can do so.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE