IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1720 OF 2014

Municipal Corporation of Greater Mumbai,
Through the Municipal Commissioner,
having its office at Mahapalika Marg, CST,
Mumbai 400 001. .... Petitioner

V/s

1 The National Green Tribunal Western Zone Bench, Pune, through its Registrar Having its address at New Administrative Bldg. 1st Floor, D-Wing, Opp. Council Hall, Pune.

2 Vanashakti Public Trust
Having its office at 19/21,
Unique Industrial Estate,
Twin Towers lane,
Prabhadevi, Mumbai-400 025.

3 Dayanand Stalin
Aged 48 years, Director of
Vanashakti Public Trust,
having his office at 19/21,
Unique Industrial Estate,
Twin Towers lane,
Prabhadevi, Mumbai-400 025.

4 Maharashtra Pollution Control Board through its Chairman, having his office at Kalpataru Bldg., Sion (E), Mumbai – 400 022.

5 Maharashtra Coastal Zone Management Authority, Environment Department,

Room No.217 (Annex), Mantralaya,
Mumbai – 400 032.

6 State of Maharashtra
Mantralaya, Mumbai – 400 032.

6a. Principal Secretary
Department of Environment,
State of Maharashtra
Mantralaya, Mumbai – 400 032.

6b. Principal Secretary (Forest),
Department of Revenue and Forest,
State of Maharashtra,
Mantralaya, Mumbai-400 032.

6c. Principal Secretary,
Department of Urban Development,
State of Maharashtra,
Mantralaya, Mumbai – 400 032.

7 Union of India through the Ministry of
Environment and Forest Paryavaran
Bhawan, CGO Complex, Lodhi Road,
New Delhi – 110 003.

8 Antony Lara Enviro Solutions Pvt.
Ltd. 515, Maria Plaza, Pokharan Road,
Thane, Maharashtra – 400 601. …. Respondents

Mr. S. U. Kamdar, Senior Advocate with Ms. Komal Punjabi i/b Mr. U. H. Kedar for the petitioner.
Ms. Gayatri Singh, Senior Advocate with Mr. Zaman Ali for respondent nos. 2 and 3.
Mrs. S. U. Deshmukh with Ms. Rupali Dixit for respondent no.5-MCZMA.
Mr. B. H. Mehta with Mr. J. S. Saluja, AGP for the respondent-State.
Mr. M. M. Chuniwala with Mr. D. R. Shah for respondent no.7.
Mr. Saket Mone with Mr. Subit Chakrabarty and Mr. Vishesh Kalra I/b Vidhi Partners for respondent no.8.

CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.

Date of Reserving the Judgment : 27 April 2016.
Date of Pronouncing the Judgment : 10 June 2016.

JUDGMENT: (*Per M. S. SONAK, J.*)

The challenge in this petition is to the order dated 4 November 2013 made by the Ministry of Environment and Forest (MoEF) to the extent it directs the demolition of the compound wall within the Coastal Regulation Zone (CRZ) area and the area affected by the mangroves, whilst granting liberty to replace the same with live/barbed wire fencing with vegetative cover (the impugned directions).

2. The present petition concerns the solid waste management project (said project) established and operated at Kanjur Marg, Mumbai (said site). The MoEF has granted environmental clearance (EC) dated 17 March 2009 to enable the petitioner-Municipal Corporation of Greater Mumbai (MCGM) to establish and operate the said project at the said site subject to the terms and conditions set out in the EC dated 17 March 2009.

3. VANASHAKTI, a Non Governmental Organization (NGO) and one Mangesh Sangle instituted Public Interest Litigation (PIL No.131/2012 and PIL No.1/2013, respectively) to challenge the very EC dated 17 March 2009 or in the alternate, to enforce strictly, the terms and conditions of the EC dated 17 March 2009, if the said project is to proceed.

4. In pursuance of certain interim directions issued by this Court in the aforesaid PIL's, experts were deputed to inspect the said site and on the basis of reports made by them, the MoEF issued show cause notice dated 25 July 2013 to MCGM requiring it to show cause as to why appropriate directions be not issued in the matter of compliances with the terms and conditions of the EC dated 17 March 2009. The MCGM was also directed to maintain *'status quo ante'* at the said site since *prima facie* breaches were evident.

5. The MCGM filed detailed response to the show cause notice dated 25 July 2013 and was also offered personal hearing in the matter. By order dated 4 November 2013, the MoEF disposed off the show cause notice dated 25 July 2013 by issuing several directions under Section 5

of the Environmental (Protection) Act, 1986 (EPA). The MCGM claims that all the directions contained in the order dated 4 November 2013, (except the impugned directions concerning demolition of compound wall constructed in the CRZ area), have been complied with by the MCGM. In the present petition, we are really not concerned with the issue as to whether the directions contained in the order dated 4 November 2013 (except the impugned directions) have been complied with or not. That is a matter for the MoEF and the Maharashtra Coastal Zone Management Authority (MCZMA) to independently consider. In this petition however, we are concerned with the legality and the validity of the impugned directions contained in the order dated 4 November 2013 made by the MoEF.

6. At this stage, it would be appropriate to clarify that the present petition, as filed, had challenged interim orders dated 15 January 2014, 6 February 2014 and 12 February 2014 made by National Green Tribunal (NGT) in Appeal No.1/2014 instituted by VANASHAKTI, questioning the order dated 4 November 2013 to the extent that the said order had not directed the revocation of EC dated 17 March 2009. It was the case of VANASHAKTI that the breaches on the part of MCGM were of such magnitude that nothing short of revocation of the EC dated 17 March

2009 might suffice. Accordingly, the MCGM in the present petition had challenged not only the order dated 4 November 2013 made by MoEF, but also the aforesaid interim orders made by the NGT in Appeal No.1/2014 instituted by VANASHAKTI. The respondent no.8, who is the contractor engaged by MCGM for establishing and operating the said project at the said site had also instituted Writ Petition No.3836/2014, to challenge the said interim orders made by the NGT in Appeal No.1/2014.

7. The learned Counsel for MCGM and the respondent no.8 have however, made a statement that Appeal No.1/2014 instituted by VANASHAKTI before the NGT no longer survives and consequently, the interim orders dated 15 January 2014, 6 February 2014 and 12 February 2014 are no longer operational. In fact, the learned Counsel for respondent no.8, on basis of instructions from respondent no.8 applied for and was granted leave to withdraw the Writ Petition No.3836/2014. The learned Counsel for MCGM, therefore, made it clear that the challenge which survives in the present petition is only to the impugned directions for demolition of compound wall, which extends into the area classified as CRZ and the area affected by mangroves at the said site.

8. Mr. S.U. Kamdar, the learned Senior Advocate for MCGM has made the following submissions in support of the present petition:-

(A) That, upon true and correct interpretation of Environment Impact Assessment (EIA) notification dated 14 September 2006 issued by MoEF, the construction of compound wall undertaken by the MCGM in the year 2010 did not even require any approval from the MoEF or any State Agency under the provisions of the EPA. Mr. Kamdar submitted that the impugned directions, which order the demolition of the compound wall on the ground that such construction was undertaken by the MCGM without prior approval of the MoEF, is a direction in excess of jurisdiction vested in the MoEF;

(B) In the alternate, Mr. Kamdar submitted that the construction of such compound wall was in fact approved by the MoEF under the EC dated 17 March 2009, either expressly or in any case impliedly. In this regard, Mr. Kamdar made reference to the following:

(i) Clause 5(ii) of EC dated 17 March 2009, which expressly permits providing of allied facilities such as roads, conveying systems in the CRZ area. Mr. Kamdar contended that the construction of a compound wall is nothing but an *"allied facility"*;

(ii) Clause 3.7.1 of the project report submitted by the consultant of the MCGM at the stage of consideration of application for EC, very clearly refers to the construction of compound wall to protect the entire

site;

(iii) The minutes of the public hearing held on 8 June 2007, in which, it was clarified that a compound wall will be constructed to provide security and prevent encroachment at the said site;

(iv) Clause 3.19(x) of the minutes of the 60th meeting of the Expert Appraisal Committee of the infrastructure development records that all issues raised at public hearing will be addressed to by the MCGM and necessary provisions for the said purpose shall be made in the Environment Management Plan (EMP).

(C) The impugned directions are vitiated by non application of mind, inasmuch as it refers to annexure III to CRZ notification 2011, which was not even in existence when EC dated 17 March 2009 was granted for the said project at the said site. In any case, Mr. Kamdar submitted that annexure III provides for guidelines for development of beach resorts and hotel in designated areas of CRZ III. In the present case, Mr. Kamdar points out, that said project was neither a hotel nor a beach resort and therefore there was no question of applicability of annexure III. Mr. Kamdar also pointed out that in the present case, the area in question has been classified as CRZ II and not CRZ III and that this is an additional reason as to why annexure III was not at all attracted

to the facts and circumstances of the present case.

(D) Mr. Kamdar submitted that the CRZ notification of 1991 has since been replaced by the CRZ notification of 2011. The latter notification expressly permits setting up of solid waste management project in CRZ area, except those areas classified as CRZ I. Mr. Kamdar submitted that the State Government has already issued *"in principle approval"* for setting up solid waste management project even upon areas affected by CRZ notification. This according to him, is evident from the minutes of the 110th meeting of the MCZMA held on 5 January 2015. Mr. Kamdar submitted that the impugned directions are liable to be set aside, in view of the altered position, particularly, since Rule 12 of the Municipal Solid Waste 2000 (MSW) Rules imposes a condition that the landfill site must be protected to prevent entry of unauthorised persons and stray animals. Mr. Kamdar submitted that the construction of the compound wall, in the facts and circumstances of the present case, must be construed as compliance with the provisions contained in Rule 12 of the MSW Rules.

(E) Finally, Mr. Kamdar submitted that the MCGM is a public authority which has set up the said project for the benefit of the public. In such circumstances, Mr. Kamdar contended that the impugned directions may be quashed and appropriate directions be issued to the

MoEF and the MCZMA to consider MCGM's pending representations for retention/regularization of the compound wall. In fact, Mr. Kamdar contended that there is material on record which suggests that the authorities are already considering such representation for regularization upon terms favourable to the MCGM. In this regard, reference was made to the minutes of the 110th meeting of the MCZMA held on 15th and 16th October 2015.

9. Mr. M.M. Chuniwala, the learned Counsel for respondent no.7 (MoEF) countered the submissions made by Mr. Kamdar and submitted that there is no ground whatsoever made out by the MCGM justifying interference with the impugned directions for demolition of the compound wall unauthorisedly erected by the MCGM in areas classified as CRZ and areas affected by mangroves. Mr. Chuniwala submitted that from out of the total site area of 141.77 ha, EC dated 17 March 2009 had cleared area of only 65.96 ha, which was neither classified as CRZ nor affected by mangroves. Mr. Chuniwala submitted that the MCGM by constructing the compound wall in areas classified as CRZ or areas affected by mangroves, has not only breached the terms and conditions of the EC dated 17 March 2009 but further, such unauthorised construction, which has destroyed and has the potential to destroy

ecologically sensitive areas, constitutes breach of the CRZ notification and the EPA. Mr. Chuniwala submitted that such unauthorised constructions are impermissible in areas classified as CRZ and areas affected by mangroves and therefore, there is no question of any retention or regularization as proposed by the MCGM. Mr. Chuniwala submitted that the impugned directions are based upon the reports submitted by experts and after consideration of the explanation submitted by the MCGM, which was not found to be satisfactory. Mr. Chuniwala submitted that the impugned directions were preceded by compliance with principles of natural justice and fair play and further all relevant considerations have been taken into account before the issuance of the same.

10. Mrs. S.U. Deshmukh, the learned Counsel for respondent no.5 (MCZMA) submitted that the construction of the compound wall by the MCGM within the areas affected by CRZ notification or the areas affected by the mangroves was without any approval from the MoEF and even otherwise illegal and unauthorised. Mrs. Deshmukh submitted that such construction is not even permissible in CRZ areas or areas affected by mangroves and reference to annexure III to CRZ notification 2011, was only to illustrate that even where construction of hotels or beach

resorts is permitted in certain designated CRZ areas, construction of compound wall is not permissible. All that is permissible is live/barbed wire fencing with vegetative cover. Mrs. Deshmukh, therefore, submitted that there is no proposal for taking into consideration the MCGM's representation for regularization/retention of the compound wall at the said site, particularly, since the same is not even permissible under the CRZ notifications.

11. Mr. B.M. Mehta, the learned Counsel for the State Government submitted that the compound wall constructed by the MCGM within CRZ area and the area affected by mangroves is illegal and unauthorised and, therefore, the impugned directions may not be interfered with.

12. The rival contentions now fall for our determination.

13. The record indicates that the MCGM, prior to taking up the said site at Kanjur Marg, was dumping solid waste in Chincholi Bundar Area. In a PIL instituted by the Residents' Association of Chincholi Bunder Area, this Court issued certain directions in the matter of such dumping, after noticing that such dumping by the MCGM was in breach of

relevant rules and environmental norms. The matter was ultimately taken up by the Hon'ble Supreme Court in SLP (Civil) No.18717/2011.

14. On 21/11/2003, the Hon'ble Supreme Court in the aforesaid case of **Residents' Association of Chincholi Bunder Area V/s MCGM** made the following order :

> *"The matter relates to shifting of a dumping ground. The residents of the locality of the present dumping ground filed a petition alleging that the dumping of waste materials bio-medical waste caused serious hazard to the residents of the locality. The Pollution Control Board, Maharashtra also filed a petition alleging that the continuance of the dumping ground in that area would cause serious problem to the local citizens. In this SLP the order passed by the High Court of Bombay dated 31.7.2003 is challenged and when the matter came up for consideration, parties on all sides explored the possibility of alternative dumping ground for the respondent Municipal Corporation. The Municipal Commissioner of Municipal Corporation of Greater Mumbai and the Chief Secretary of the State of Maharashtra jointly filed an affidavit dated 26th August 2002. In the affidavit it is stated :-*
>
> *"In the said meeting the Collector, M. S.D. of the Govt. of Maharashtra pointed out that the Salt Plan Land bearing survey No. 275(pt) situated at Village*

Kanjur, eastern suburbs admeasuring about 283 hectares is vacant and free from encumbrances and therefore the said land can be used for landfill purpose. Out of the said 283 hectares of the said land, 141.77 hectares is free from CRZ-1, as shown in the plan by red color dotted line. The said land admeasuring 141.77 hectares in equal proportion is required to be shared by the Govt. of Maharashtra and Govt. of India. Hereto annexed a copy of the said plan showing the details of the land bearing survey no. 275 (pt) village Kanjur as well as the copy of the plan showing the location of the existing and the proposed landfill site as Annexure- D Collectively.

In view of the same, it was then decided that 50% of the said land admeasuring 141.77 hectares bearing survey No. 275 (pt) shall be handed over to M.C.G.M. free of cost by Govt. of Maharashtra for using the said land as a landfill site.

The remaining 50% of the plot of land admeasuring 141.77 hectares bearing survey No. 275(pt) which is required to be shared by the Govt. of India, cannot be used by the Govt. of India for development purpose as the same would be in the vicinity of the proposed landfill site, thus, the MCGM will have 141.77 hectares of land as a landfill sites."

The Govt. of Maharashtra to hand over the 50% of the land admeasuring 141.77 hectares bearing survey No. 275 (pt) within a period of 3 months from today to the Municipal Corporation of Greater Mumbai and on completion of all the formalities regarding transfer are over the said land be used as dumping

subject to strict observance of law relating pollution and present dumping ground which is continuing at Chincholi Bunder Area shall be discontinued. The SLPs are disposed off."

(emphasis supplied)

15. The State Government, in pursuance of the aforesaid order, handed over to MCGM the Kanjur Marg site admeasuring in all 141.77 ha for establishing and operating the said project. The MCGM was therefore permitted to establish and operate the project at the said site subject however to *"strict observance of law relating to pollution"* as was made quite clear by the Hon'ble Supreme Court in its aforesaid order dated 21 November 2003.

16. The MCGM applied for and was granted EC dated 17 March 2009 by the MoEF. The EC specifically notes that whilst the total area of the site was 141.77 ha, 52.5 ha, falls under CRZ III and 20.76 ha is affected by mangroves. Accordingly, the EC dated 17 March 2009, makes it quite clear that the said project can be set up and operated only upon the balance area of 65.96 ha. Clause 5 of the EC dated 17 March 2009, in terms provides that the composting plant/landfill facilities must be located outside the CRZ areas whilst other allied facilities such as roads and conveying systems can be located in the CRZ area. Special directions were also issued for protection of mangroves at the site.

17. The MCGM has awarded the contract for setting up and operating the said project at the said site to M/s. Anthony Lara Enviro Solutions Pvt. Ltd., the respondent no.8 herein. The contractor, in pursuance of such contract has actually established and operates the said project at the said site. The learned Counsel for respondent no.8 conceded the respondent no.8 makes commercial profits, from out of treatment of solid waste whilst at the same time discharging functions, which are in public interest. The record also indicates that the respondent no.8, who has actually established and operates the said project at the said site undertakes such activities upon commercial basis.

18. There were several complaints in the matter of the very issuance of EC dated 17 March 2009 by the MoEF for the said project at the said site. VANASHAKTI and Mangesh Sangle, as noted earlier, instituted PIL Nos.131/2012 and 1/2013, alleging inter alia that the EC dated 17 March 2009 was wrongly issued by the MoEF and in any case, the MCGM and its contractor had set up and were operating the said project in total breach of the terms and conditions subject to which the EC dated 17 March 2009 came to be issued.

19. This Court, in the aforesaid PILs issued certain directions, in pursuance of which the MCZMA deputed a team of experts to visit the

site and prepare a report. Based upon such site visit, the MCZMA filed its report in the said public interest litigations. The Maharashtra Pollution Control Board (MPCB) also filed its affidavit in the public interest litigations. This Court, on 10 May 2013, made an order in the said public interest litigations, which has some bearing upon the issues raised in the present petition. Therefore, reference to certain observations and directions in the order dated 10 May 2013 would be appropriate. The same read thus:

> *"7. The issue before the Court is primarily in regard to whether there is a breach on the part of the Municipal Corporation in complying with the terms of the environmental clearance that was granted by the **MOEF** on 17 March 2009.*
>
> *8. The Maharashtra Coastal Zone Management Authority (**MCZMA**) deputed a team of experts to visit the site on 27 April 2013. This exercise was initiated on a complaint that (i) there was a violation of the conditions contained in **MOEF**'s permission dated 17 March 2009; (ii) there was a destruction of wetlands on a massive scale by **MCGM** outside the permitted 65 hectares area; (iii) there was a destruction of mangroves. When the petitions initially came up before the Court the Learned Counsel for the Municipal Corporation was allowed an adjournment as sought to enable the Municipal Corporation to consider and respond to the report of the **MCZMA**. This exercise has been carried out and the Court has heard the submissions urged by the Municipal Corporation on the Report extensively. An affidavit has also been filed by the Maharashtra Pollution Control Board on 2 April 2013 in these proceedings.*
>
> *9. Now, it will be necessary to consider the contents*

*of the affidavit filed by the **MPCB** and the report of the Experts' Committee of **MCZMA**, both these authorities being expert statutory bodies set up by the State Government. The affidavit filed by the MPCB inter alia highlights the following aspects :-*

(i) Though it is obligatory on the Municipal Corporation to collect the segregated MSW at source to avoid a burden on the waste processing site, un-segregated waste is being received at the MSW processing site.

(ii) In the absence of proper segregation and scientific disposal of inert material which has been mixed with the solid waste taken to the bioreactor and composting facility, an obnoxious smell / odour has been reported near the Bio-Reactor Landfill (BLF). A number of complaints have been received not only in respect of smell nuisance problems but also in respect of unscientific collection and disposal of leachate into the nearby area, unscientific collection, treatment and disposal of municipal solid waste, giving rise to serious pollution of the environment; (iii) Non-biodegradable inert waste, residues of waste processing unit and pre-processing rejects are being disposed off at the BLF Cell, in violation of the conditions stipulated in the authorisation;

(iv) Though the operator of the facility – M/s Antony Lara Enviro Solutions Pvt. Ltd. was directed to make available the details of the buffer zone around the landfill site, this was not made available;

(v) The operator of the facility has not taken any effective steps to cover the site with soil;

(vi) At the time of the visit on 12 November 2012 untreated leachate was being discharged through a bypass arrangement in the nearby area;

*(vii) Though the permission granted by the **MOEF** was for construction of the MSW Processing Facility involving Windrows Composting for processing 4000 TPD, **MCGM** is providing a composting facility for 3000 MT per day by bio-reactor landfill without environmental clearance. Out of 7 cells, only one cell is in progress and a trial cell was in operation;*

(viii) The data collected between June, July and

August 2012 reveals that parameters inter alia of mercury, iron, total hardness, chlorides and TDS etc. are exceeding the parameters prescribed as per monitoring done in respect of nearby borewells. The statutory authority incharge of the prevention of pollution has found serious violations. ***MPCB*** *has also noted serious environmental hazards.*

The report which has been submitted by the ***MCZMA*** *highlights following aspects :-*

(i) Though the permission granted by the ***MOEF*** *was for processing 4000 TPD waste by windrow composting,* ***MCGM*** *has adopted alternate technology of 3000 TPD waste processing by bio-reactor and 1000 TPD waste processing by windrow composting based on the consent of the Central Pollution Control Board (****CPCB****). A proposal has been submitted to the* ***MOEF;*** *however the permission of* ***MOEF*** *is still to be received;*

(ii) A compound wall about 12 feet in height has been constructed all around the project site, almost along the high tide line. The compound wall has been constructed around the area of 86 hectares;

(iii) Within the compound wall, there are two mangrove patches. One of those mangrove patches is highly degraded and the mangroves are either dying or cut. The flushing of tidal waters to this patch is blocked by the wall and insufficient culverts. There are only three culverts with just 1.2 mtr. diameter for tidal flushing. This is a major cause for degradation of mangroves.

(iv) The second site of mangroves is however found to be flourishing due to proper influx of tidal waters through 15 properly placed culverts;

(v) Along the compound wall, there is a good tarred road of about 10 m. width. However, the entire road length is now being widened by reclaiming the rest of the CRZ and mangrove buffer zone area. The dumpers were carrying soil at site and in this process, the sides of the wetlands and mangroves are also getting filled up. The Committee did not find any necessity for further widening of the road for functioning of the project.

*The conclusions of the report of **MCZMA** are inter alia as under :-*

"(a) Dumping / filling activity by soil was going on beyond the 65 ha of land allotted for the project. The reclamation is rampant (and the only operation at present) and the main function of MSW processing and landfill has taken a back seat. Due to dumping / filling, the wetland is being reclaimed and mangroves patches at some location are seen being affected.

(b) Due to less no. of culverts at one of the mangrove patches the influx of tidal water was found insufficient for the survival of mangroves. Moreover, the diameter of the pipe at the culverts of both the mangroves patches seems to be carrying less volume of tidal water, therein degrading the mangroves. To allow sufficient tidal water to enter the mangrove site 1 in the place of the present three introduce at least another ten culverts. They should be at least half a meter below the present level of the inlet pipes. In contrast to this in the site 2 since 12 culverts are provided the mangroves are flourishing."

At this stage, it would be necessary to note that in PIL 131 of 2012, an ad-interim order was passed on 6 November 2012. This was vacated by a Division Bench of this Court on 22 November 2012. In a Special Leave Petition filed against the order of the Division Bench dated 22 November 2012, the Supreme Court by an order dated 22 February 2013 directed that while the SLP is dismissed, this would not preclude the petitioners from making a fresh application for interim relief before this Court in the changed circumstances.

10. In a separate batch of writ petitions filed in public interest relating to the disposal of the Municipal Solid Waste, a Division Bench of this Court issued directions on 2 April 2013 in pursuance of minutes of the order which were tendered before the Court on a joint meting that was convened inter alia of all the agencies of the State and Municipal Corporations

*including **MCGM**. The minutes of order inter alia contain a stipulation in clause 10 that all dumping sites which do not comply with the MSW Rules and other governing applicable laws and the directions and sites which are not designated as per Rules shall be discontinued and closed within a period of three months or on acquisition of a new site whichever is earlier.*

*11. During the course of hearing, learned Senior Counsel appearing on behalf of the Municipal Corporation has submitted that (i). The Municipal Corporation is in terms of the permission which has been granted by the **MOEF** not restricted to an area of 65.96 hectares since what was envisaged to be handed over to the Municipal Corporation was an area of 141.77 hectares for the purpose of the project; (ii) The site of the project falls in CRZ III of the CRZ Notification of 1991. CRZ III does not form part of the Coastal Regulation Zone; (iii) The Municipal Corporation was granted permission by the Central Pollution Control Board and by the Maharashtra Pollution Control Board for adoption of bioreactor waste technology but in view of the affidavit filed by **MPCB**, an application has now been made to the **MOEF** for clearance which is still to be disposed of; (iv) The Municipal Corporation is ready and willing to ensure that in the course of carrying out the project, no dumping shall take place on wetlands / mangroves and that the culverts are widened and regularly maintained so as to obviate a danger to the environment; (v) The Municipal Corporation has moved the State Government for leasing out an additional area belonging to the Corporation on a concessional rent under section 92 of the **MCGM** Act 1886 and (vi) The Forest Department may be directed to cooperate with **MCGM** for ensuring that the mangroves are not destroyed.*

*12. **The order of the Supreme Court dated 21 November 2003 mandates strict observance of the law relating to pollution. Two statutory authorities –***

MPCB and MCZMA have found the Municipal Corporation to be in violation of environmental norms including the environmental clearance of MOEF of which several requirements are found to be breached*. Hence for the purpose of these proceedings, it is not necessary for the Court to embark on an enquiry of its own nor is it necessary for the Court to deal with any disputed question of fact. The available material on record is essentially based on inspection that was carried out by the* ***MPCB*** *and by the* ***MCZMA****. The permission which was granted by* ***MOEF*** *on 17 March 2009 is specifically for the setting up of the project only on 65.96 hectares.* ***MOEF****'s permission was for the construction of inter alia an MSW facility involving windrow composting of 4000 TPD. The permission stipulates that the composting plant and landfill facility shall be located outside the CRZ area while other allied facilities including roads and conveying systems could be located in the CRZ area.* ***The environmental clearance granted by the MOEF completely answers beyond doubt the issue as to whether the land in question is within the CRZ area.*** *According to the petitioners, the issue has also been decided by the Supreme Court in Krishnadevi M. Kamathia and others v/s Bombay Environmental Action Ground (2011) 3 SCR 292, where the Supreme Court laid down that mangroves fall for classification in CRZ I.* ***The environmental clearance of MOEF of 17 March 2009 proceeds on the basis that out of the total land area of 141.77 hectares which was proposed for the project, 52.5 hectares falls in CRZ III and 20.76 hectares was affected by mangroves. The area available for the project development was hence computed at 65.96 hectares.*** *The terms and conditions on which the* ***MOEF*** *has granted its permission would have to be scrupulously observed.*

13. Both the ***MPCB*** *and* ***MCZMA*** *have found serious violations on the part of the Municipal Corporation. These include :-*

(i) The decision of the Municipal Corporation to adopt an alternate technology without seeking permission of

*the **MOEF**;*
(ii) The degradation of one of the two patches of mangroves within the compound wall as a result of the exclusion of tidal waters to the mangroves;
(iii) Carrying out of dumping / filling activities beyond 65.96 hectares of land allotted to the project as a result of which the main function of the MSW processing and landfill has been relegated to the background. MCZMA has in its report made specific recommendations for ensuring that the environmental hazards that have resulted during the course of the development of the site should be obviated.
*14. We direct that the Municipal Corporation shall forthwith take steps to ensure compliance with the recommendations which have been made by the **MCZMA**. We also direct that the **MOEF**, which is impleaded as the fifth respondent to these proceedings, shall cause a site inspection to be carried out and on the basis thereof, a further affidavit shall be filed clarifying the impact, if any, inter alia of the Wetlands (Conservation and Management) Rules 2010 and what remedial steps, if any, are required to be taken in order to ensure conformity with the rules. The affidavit of **MOEF** shall indicate such remedial measures as are required to ensure conformity with all environmental norms. The affidavit shall be filed on or before 1 July 2013. We adjourn the further hearing on 9 July 2013. In the meantime, the **MOEF** shall consider the application which has been submitted by the Municipal Corporation for adoption of the bio-reactor technology in accordance with law.*

(emphasis supplied)

20. In pursuance of the direction contained in paragraph 14 of the aforesaid order dated 10 May 2013, experts deputed by MoEF made site visits and submitted reports. Based upon the same, MoEF issued show

cause notice dated 25 July 2013 to MCGM to show cause as to why directions be not issued under Section 5 of the EPA for prima facie violation of the terms and conditions of EC dated 17 March 2009. Pending final decision upon the show cause notice, the MCGM was also directed to maintain '*status quo ante'* at the said site.

21. The MoEF, upon taking into consideration MCGM's response and also upon affording opportunity of hearing to the MCGM has made the order dated 4 November 2013, which inter alia contains the impugned directions. As regards the decision making process, it must be noted that the impugned directions came to be made upon due compliance with the principles of natural justice and fair play. Upon perusal of the material on record, it is quite apparent that the relevant material has been taken into consideration by the MoEF. The MoEF relying upon the EC dated 17 March 2009, has reiterated that the said project was to be restricted to the area admeasuring 65.96 ha and that there was no clearance or approval in respect of the balance area which was classified as CRZ and affected by mangroves. The MOEF has rejected the contentions of MCGM that the construction of the compound wall of such magnitude, was some allied activity which was either expressly or impliedly permitted by the MoEF in its EC dated 17 March 2009. The MoEF has

assigned reasons for issuance of the impugned directions, which reasons can neither be styled as irrelevant nor extraneous in the fact situation of the present case.

22. This Court in PIL Nos.131/201 and 1/2013, made order dated 8 January 2014, taking cognizance of the MoEF's order dated 4 November 2013. In this order, it was clarified that the MCGM was at liberty to carry on its activities at the said site in accordance with the MoEF's impugned order dated 4 November 2013. To that extent, the previous order dated 7 August 2013, by which he MCGM has been directed to maintain status quo at the said site was modified.

23. The order dated 8 January 2014 made in the aforesaid public interest litigations reads thus:

> *"By order dated 7 August 2013 this Court had directed as under:-*
>
> > *"We accordingly direct that pending further orders of this Court, the Municipal Corporation shall take all necessary steps to maintain the status quo as directed by the MOEF on 25 July 2013.Since the show cause notice has been received by the Municipal Corporation yesterday in court, the Municipal Corporation shall submit a copy of its reply to the notice to show cause as directed on or before 21 August 2013. The MOEF shall take a final*

decision thereon and submit a copy of its decision separately to this court by 25 September 2013. Before the MOEF takes a final decision, it shall furnish to the Municipal Corporation a reasonable opportunity of being heard. Liberty to the Petitioners to intervene in the proceedings before the MOEF. The MOEF shall be at liberty to consider all the submissions in pursuance of the notice to show cause independently and on merits.

In the meantime, the MCZMA shall periodically visit the site for the purposes of monitoring that the vegetation of the mangroves on the land continues to regenerate and is not destroyed."

2) It appears that pursuant to the aforesaid directions MOEF has passed a final order dated 4 November 2013. The MOEF has also given certain directions under Section 5 of the Environment (Protection) Act 1986 being directions (a) to (f) at Paragraph 5 in its order dated 4 November 2013. It appears that after passing the final order dated 4 November 2013 there has been no inspection by MCZMA. In view of the above, it is just and proper to direct the MCZMA to submit the report about compliance of the MOEF order dated 4 November 2013 by Municipal Corporation of Greater Mumbai. The report shall be submitted within two weeks from today.

3) It is clarified that the Municipal Corporation is at liberty to carry on activities in accordance with the MOEF order dated 4 November 2013. Accordingly, the previous order dated 7 August 2013 passed by this Court shall stands modified in terms of the MOEF directions dated 4 November 2013.

4) Stand over for 3weeks."

(emphasis supplied)

24. As noted earlier, VANASHAKTI, the petitioner in PIL No.131/2012 instituted appeal No.1/2014 before the NGT questioning MoEF's order dated 4 November 2013, inter alia, on the ground that the breaches and the violations on the part of the MCGM and its contractor were of such magnitude, that nothing short of complete revocation of EC dated 17 March 2009 would suffice. It is in this appeal No.1/2014 that NGT made interim orders dated 15 January 2014, 6 February 2014 and 12 February 2014, virtually staying the operations upon the said project at the said site.

25. In the present petition, as well as Writ Petition No.3836/2014 instituted by the respondent no.8-contractor, this Court, on 17 April 2014 made the following order:

> *"We are satisfied that the order passed by the National Green Tribunal, Western Zone, Bench Pune - (NGT) directly overrides the order passed by the Division Bench of this Court on 8.1.2014 though this order was shown to the NGT and also the other orders passed by the Apex Court and the High Court were brought to the notice of the NGT. Inspite of that, the impugned order has been passed, granting stay to all the activities including the dumping which was going on pursuant to the direction given by the Apex Court. The learned counsel for the Municipal Corporation as well as for the Contractor makes a statement that they would comply with all the conditions imposed by the MOEF. Hence, the impugned order, passed by the NGT, is stayed. It is clarified that the direction given for*

demolition of the compounding wall, however, is stayed. Stand over to 17th June, 2014."

26. VANASHAKTI, instituted SLP (Civil) Nos.15752-15753/2014 before the Hon'ble Supreme Court, which upon grant of leave was numbered as Civil Appeal Nos.6882-6883/2014. The said appeals were disposed off by order dated 25 July 2014 which reads thus:

"Leave granted.

2. Our attention has been invited to the order dated 08.01.2014 passed by the Division Bench of the Bombay High Court in Public Interest Litigation No. 131 of 2012, Vanashakti and Anr. Vs. Municipal Corporation of Gr. Mumbai and ors. In para 3 of that order, the High Court clarified the position as follows:-

> *"It is clarified that the Municipal corporation is at liberty to carry on activities in accordance with the MOEF order dated 4 November, 2013. Accordingly, the previous order dated 7 August 2013 passed by this Court shall stand modified in terms of the MOEF directions dated 4 November 2013."*

3. Mr. Shekhar Naphade, learned Senior Counsel for the appellants, submits that the order of the National Green Tribunal (for short, 'Tribunal') is in compliance and for enforcement of the above order.

4. On the other hand, Mr. Pallav Shishodia, learned Senior Counsel for respondent no.1, and Dr. Abhishek Manu Singhvi, learned Senior Counsel for the respondent no.6, submit that the Tribunal went beyond the order of the High Court passed on 08.1.2014.

5. However, all the learned Senior Counsel agree that they have no objection if the order dated 08.01.2014 passed by the High Court is reiterated by this Court and in modification of the impugned

order, all the parties are directed to act in compliance and in accord with the order dated 08.01.2014.

6. In view of the agreement amongst all the learned Senior Counsel for the parties, we direct that the order 08.01.2014 passed by the High Court shall remain operative and all parties shall act in compliance and in accord with the above order.

7. The impugned order passed by the High Court as well as the orders dated 15.01.2014, 06.02.2014 and 12.02.2014 passed by the Tribunal stand modified as above.

8. Civil Appeals are disposed of with no order as to costs."

(emphasis supplied)

27. From the aforesaid, it is quite clear that the MCGM and its contractor i.e. respondent no.8 were granted liberty to carry on the activities upon the said project at the said site in accordance with MoEF's order dated 4 November 2013. As is recorded in paragraphs 5 & 6 of the order dated 25 July 2014 made by the Hon'ble Supreme Court in Civil Appeal No.6882-6883/2014, this course of action was in fact agreed to by the MCGM and its contractor. Thus at least from 25 July 2014, it was incumbent upon the MCGM to comply with the directions contained in MoEF's order dated 4 November 2013 which included inter alia the demolition of the compound wall, to the extent it transgressed into the CRZ area and the area affected by mangroves. However, it appears that the MCGM and its contractor, in pursuance of the liberty granted, continued with its activities upon the said project at the said site, without

complying with the impugned directions, which was very much a part of MoEF's order dated 4 November 2013.

28. The MCGM, after having agreed to abide by the order dated 8 January 2014 made by this Court, with regard to undertaking of activities upon the said project at the said site in accordance with MoEF's order dated 4 November 2013, cannot in the same breath, be heard to challenge the impugned directions in MoEF's order dated 4 November 2013. The interim order dated 17 April 2014, by which the direction for demolition of the compound wall was stayed, also could not be taken advantage of by the MCGM or its contractor, in the light of the order dated 25 July 2014 made by the Hon'ble Apex Court in the aforesaid Civil Appeal Nos.6882-6883/2014. The conduct on the part of MCGM and its contractor in continuing with the activities upon the said project at the said site on the basis of this Court's order dated 8 January 2014 and the Hon'ble Supreme Court's order dated 25 July 2014, but at the same time not complying with the condition imposed therein with regard to undertaking such activity in accordance with the MoEF's order dated 4 November 2013, cannot be appreciated. Such approbation and reprobation on the part of the MCGM, particularly in the matter of compliance with the orders made by this Court and the Hon'ble Supreme

Court, disentitles the MCGM to any equitable reliefs, considering that the jurisdiction under Articles 226 and 227 of the Constitution of India is equitable and extraordinary. Accordingly, we might have been justified in dismissing the present petition upon this ground only. However, we hasten to make it clear that we are not dismissing the present petition only upon such ground, particularly, as we are satisfied that the various challenges raised by MCGM to the impugned directions, lack merit.

29. With the assistance of the learned Counsel for the parties, we have perused the EIA notification dated 14 September 2006 as well as the CRZ notification of 1991. Mr. Kamdar, the learned Senior Counsel for MCGM, was however, unable to satisfy us that construction of a compound wall in the area affected by CRZ notification and mangroves is a permissible activity, which could have been undertaken by the MCGM, even without any prior approval from the MoEF or for that matter any other authority. In fact, the EIA notification dated 14 September 2006, is quite clear with regard to the requirement of a prior environmental clearance from the concerned regulatory authority i.e. the MoEF, in the matter of setting up of a solid waste disposal project. Whatever the contention of Mr. Kamdar, at least the MCGM did not appear to have any doubt on this score, inasmuch as the MCGM applied

for and even obtained the environment clearance in terms of the EIA notification dated 14 September 2006. The clearance was however restricted to 65.96 ha, the area neither classified as CRZ nor affected by the mangroves. The MCGM, having breached this condition by constructing a compound wall in the area classified as CRZ III and affected by the mangroves, cannot be heard to contend that there was no requirement of obtaining any clearance. In these circumstances, we are unable to accept Mr. Kamdar's contention that there was no requirement of either applying for or obtaining any approval from the MoEF or any State Agency in the matter of construction of a compound wall in areas classified as CRZ and areas affected by mangroves. The impugned directions, therefore, cannot be said to have been made in excess of the jurisdiction vested in the MoEF.

30. At the stage when the EC dated 17 March 2009 was granted by the MoEF, the CRZ notification 1991 was in force. There is not and there cannot be any serious dispute that almost 52.5 ha, from out of the total site area of 141.77 ha is affected by the CRZ notification. The record indicates that this area has been classified as CRZ III. This is stated so in clear terms in the EC dated 17 March 2009. At no stage has MCGM seriously challenged this. At this stage, therefore, it is too late for

MCGM to contend that such area is CRZ II and not CRZ III. There is no material produced on record by MCGM to substantiate this contention. Further, there is not and there can be no serious dispute that an area of 20.76 ha, from out of the total site area of 141.77 ha is affected by mangroves. It is upon taking into consideration these relevant factors that the MoEF, in its EC dated 17 March 2009 had made it clear that the said project can be set up and operated only upon the balance area of 65.96 ha not classified as CRZ or affected by the mangroves. In the present petition, we are not concerned with the portion of the compound wall, in so far it encloses this area of 65.96 ha. The impugned directions questioned in this petition concern the compound wall constructed beyond and outside the area of 65.96 ha, which areas are clearly classified as CRZ and affected by mangroves. We are satisfied that such extended construction was beyond the scope of the clearance granted by EC dated 17 March 2009 and consequently unauthorised.

31. The paragraph 2 of the CRZ notification 1991, in its sub-clause (vi) clearly prohibits dumping of city or town waste for the purposes of land filling or otherwise in CRZ areas. This clause provides that any existing practice to this effect shall be phased out within a reasonable time not exceeding three years from the date of the notification. The

paragraph 3, upon which, reliance has been placed by Mr. Kamdar, however, provides that all other activities, except those prescribed in paragraph 2, will be regulated in the manner prescribed. The paragraph 3, in the first place, provides that clearance shall be given for any activity within the CRZ, only if it requires water front and foreshore facilities. Secondly, sub-clause (2) of paragraph (3) lists the activities which will require environmental clearance from the MoEF and the same includes, inter alia, construction activities related to Defence for which foreshore facilities are essential; operational construction for ports and harbours and light houses requiring water frontage; jetties, wharves, quays, slip-ways, etc., thermal power plants; and all other activities with investment exceeding rupees five crores.

32. The MCGM, on one hand, has contended that the said project is restricted to the non-CRZ area of 65.96 ha. On the other hand, the MCGM contends that in terms of paragraph 3(2)(iv) of the CRZ notification of 1991, the construction of compound wall within the CRZ area is a permissible activity, since, the investment therefor exceeds rupees five crores. Such contention is a contradiction in terms. Such contention cannot be accepted even upon the plain reading of paragraphs 2 & 3 of the CRZ notification of 1991. The MCGM is disentitled to

approbate and reprobate in such matters. Even if Mr. Kamdar's contention is to be accepted, the same does not obviate the necessity of environment clearance from the MoEF. In the present case, as we shall consider later, it is quite clear that there was no environment clearance for construction of compound wall of the magnitude undertaken by the MCGM in the areas classified as CRZ and the areas affected by the mangroves. Accordingly, we are unable to accept Mr. Kamdar's first contention in support of the present petition.

33. Mr. Kamdar, in the alternate, has contended that the EC dated 17 March 2009, either expressly or in any case impliedly approves the construction of compound wall in the CRZ area and the area affected by mangroves. We are unable to read any express approval in EC dated 17 March 2009. In fact, it is quite clear that the MoEF had restricted its approval to the area of 65.96 ha only, being the only area not classified as CRZ or affected by the mangroves. This position is quite clear from reference to clauses 2,3 & 4 of the EC dated 17 March 2009. The EC, in fact, makes reference to the recommendation of the MCZMA for clearance in respect of the entire area of 141.77 ha, but proceeds to state that the Expert Appraisal Committee, upon due consideration of such recommendation, has deemed it fit to recommend clearance only in

respect of area of 65.96 ha, not classified as CRZ or affected by the mangroves. The EC is quite unambiguous on this score and there is really no scope to read any express approval or clearance for construction of the compound wall of such magnitude beyond the area of 65.96 ha, classified as CRZ and affected by the mangroves.

34. We are also unable to accept the contention that the construction of the compound wall in areas affected by CRZ notification or the mangroves had been impliedly approved by the MoEF in its EC dated 17 March 2009. In the first place, in matters of this nature, there arises no question of any implied approval. Issues relating to environment and protection of ecologically sensitive areas cannot rest on basis of any implied approvals, particularly, when the legal provisions prohibit construction activities in such areas or in any case, permit such activities, only upon strict compliance with the terms of the law or the permissions granted. The instances referred to by Mr. Kamdar for reading some sort of implied clearance in favour of MCGM, assist the case of the authorities, rather than MCGM. The instances only suggest that despite proposals and recommendations, the MoEF, based upon the recommendations of the Expert Appraisal Authorities, restricted the clearance only to the area of 65.96 ha, thereby, declining clearance in

respect of the areas beyond, since such areas were classified as CRZ and affected by the mangroves. Reference to the project report submitted by the consultant of MCGM or the minutes of the public hearing, only suggest that the MoEF did take into consideration the proposal of the MCGM for construction of compound wall so as to cover the areas beyond 65.96 ha, but ultimately, such proposal did not find favour with the MoEF at the stage of final issuance of the EC dated 17 March 2009.

35. We are also satisfied that reference to clause 5(ii) of the EC dated 17 March 2009, in no manner suggests, that construction of compound wall of such magnitude was either expressly or impliedly approved by the MoEF in area beyond 65.96 ha. The learned Counsel for MoEF and MCZMA had in fact contended that the CRZ notification of 1991 does not even permit the construction of such compound wall in area classified as CRZ and affected by the mangroves. The allied facilities refereed to in clause 5(ii) of the EC dated 17 March 2009, are basically in the context of providing appropriate access to the project area of 65.96 ha and nothing further. On the basis of this clause, it is not open to the MCGM, to urge that any clearance or approval was granted for construction of compound wall of such magnitude in area affected by CRZ notification 1991 and mangroves. The said clause in the EC dated

17 March 2009 cannot be construed as some sort of licence to destroy ecologically sensitive areas affected by CRZ notification and mangroves. The express exclusion of areas beyond 65.96 ha in the EC dated 17 March 2009 cannot be defeated by MCGM by styling the construction carried out by it within the CRZ area and the area affected by mangroves as *"allied activities"*. The MCGM cannot, defeat the specific terms and conditions of EC dated 17 March 2009 under the garb of undertaking *"allied activities"*.

36. The reports of experts have pointed out the destruction brought about in the ecologically sensitive CRZ area and the area affected by mangroves on account of the unauthorised construction of compound wall in these areas. This Court, in its order dated 10 May 2013, in PIL Nos.131/2012 and 1/2013 (referred to earlier) has taken cognizance of the environmental degradation caused due to the construction of the compound wall within the CRZ areas and the areas affected by mangroves. The order dated 10 May 2013 notes that compound wall of 12 feet in height has been constructed all around the project site, along the high tide line. The compound wall encloses area of 86 ha, when in fact, the clearance was in respect of area of only 65.96 ha, not affected by CRZ or mangroves. The order notes that within the compound wall

there are two mangrove patches, out of which one of the mangrove patch is highly degraded and the mangroves are either dying out or cut. The flushing of tidal waters to this patch is blocked by the compound wall and the insufficient culverts. The order notes that there are only three culverts with just 1.2 mtr. diameter for tidal flushing and this is a major cause for degradation of mangroves. The order also notes that dumping and filling activity by soil was being undertaken beyond the area of 65.96 ha allotted for the project. The reclamation was rampant and that reclamation was the only operation taking place at the site, when the MCZMA made its report to this Court. The order notes that the main function of MSW processing and landfill had in fact taken a back seat. Due to dumping/filling, the wetland was being reclaimed and mangroves patches at some locations were seen being affected.

37. The experts appointed by the MoEF, to a great extent corroborate the aforesaid position. The MCGM, despite opportunity has failed to place any material on record, either justifying the construction of the compound wall within the areas classified as CRZ and affected by the mangroves or to counter the observations with regard to environmental degradation on account of the unauthorised construction of the compound wall within CRZ area and the areas affected by mangroves.

In such circumstances, there is really no case made out to interfere with the impugned directions issued by the MoEF, in the matter of demolition of the unauthorised compound wall within the CRZ area and the areas affected by the mangroves.

38. We are unable to accept Mr. Kamdar's submission that there has been non application of mind on the part of the MoEF in issuing the impugned directions, merely because the order dated 4 November 2013 makes reference to annexure III to CRZ notification of 2011, which deals with guidelines for development of beach resorts or hotels in designated areas of CRZ III.

39. In the first place, the perusal of the impugned order dated 4 November 2013 makes it quite clear that the reference to the said guidelines was only by way of an illustration in order to emphasize that even where construction of beach resorts or hotels is permitted in the designated areas of the CRZ-III, there is no approval granted for construction of compound walls. The permission is only granted for erection of barb wire or fencing with light vegetative cover, so that there is minimum environmental degradation in ecological sensitive areas. Secondly, there is no real difference between the contents of annexure III

to CRZ notification of 2011 and the annexure III to CRZ notification of 1991. It is not even the case of MoEF that annexure III *per se* applies to the said project, which is obviously neither a hotel nor a beach resort. The reference to this annexure in the impugned order dated 4 November 2013, therefore, is not indicative of any non-application of mind as urged by Mr. Kamdar. The impugned order dated 4 November 2013 does not find fault with the construction of the compound wall by reference to annexure III to the CRZ notification. The impugned order, very clearly states that there was no approval granted for the construction of any compound wall within the area classified as CRZ or affected by the mangroves. The impugned order, only proceeds to add that even with regard to hotels and beach resorts, which are permitted activities in certain designated areas of CRZ no approval is granted for construction of compound wall and, therefore, it is inconceivable that any such permission or approval may have been granted either expressly or impliedly by the MoEF to the said project which is not even a hotel or a resort in a designated CRZ area.

40. The next contention as to whether the setting up of a solid waste management facility is permissible under CRZ notification of 2011 or not, really does not arise for consideration at the present stage. Further, even Mr. Kamdar accepted that no such project can be set up in areas

classified as CRZ-I. Admittedly, in the present case, area of over 20.76 ha is affected by mangroves. In terms of the CRZ notification of 2011, such areas at least prima facie are classifiable as CRZ-I. In any case, at least at present, there is no material on record, to establish that the construction of the compound wall beyond the area of 65.96 ha was ever approved or permitted by the MoEF whilst granting the EC dated 17 March 2009. Accordingly, reliance upon the so called "*in principle approval*" by the State Government, which is even otherwise, not the final authority in such matters is hardly a ground to assail the MoEF's directions.

41. The reference to Rule 12 of the MSW Rules, is also quite misconceived in the facts and circumstances of the present case. The compliance with the said rule might require the MCGM to construct the compound wall in order to enclose the actual landfill site or the project area, which in the facts and circumstances of the present case, admeasures 65.96 ha. This is clear from the circumstance that the EC dated 17 March 2009 very specifically grants environmental clearance to set up and operate the said project over an area of 65.96 ha, even though, the total area of the said site is 141.77 ha. Construction of a compound wall within the areas classified as CRZ or affected by the mangroves

cannot be justified by reference to Rule 12 of the MSW Rules. Reports referred to by this Court in its order dated 10 May 2013 in PIL Nos.131/2012 and 1/2013 indicate that the compound wall has been constructed along the high tide line. Within the compound wall there are two mangrove patches and one of the patches is highly degraded and the mangroves are either dying or cut. The flushing of tidal waters is blocked by the compound wall and insufficient culverts. There are only three culverts with just 1.2 mtr. diameter for tidal flushing and this is major cause for degradation of mangroves. The order also makes a reference to the environmental degradation within the CRZ area, on account of the compound wall and attempts at widening the tar road which runs parallel to the compound wall.

42. The EC dated 17 March 2009 with which we are concerned has not only acknowledged the existence of mangroves at the said site, but specific conditions have been imposed upon MCGM to ensure that there is no destruction of such mangrove areas. In ***Krishnadevi Malchand Kamathia & Ors. V/s Bombay Environmental Action Group & Ors. (2011) 3 SCC 363***, the Hon'ble Supreme Court, upon consideration of the provisions of the CRZ notification 1991 has held that mangroves fall squarely within the ambit of CRZ I. The regulations allow for certain

activities in such area, only when it is established that such areas are not ecologically sensitive and important.

The Hon'ble Supreme Court, upon taking cognizance of the destruction of mangroves in the name of salt harvesting, has made the following observations in the context of CRZ notification of 1991:

> *"30. The CRZ Regulations define for regulating developmental activities, coastal stretches within 500 m of the landward side of the high tide line into four categories. Category I (CRZ-I) is defined as under:*
>
> *"(i) Areas that are ecologically sensitive and important, such as, national parks/marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals/coral reefs, areas closed to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and other such areas as may be declared by the Central Government or the authorities concerned at the State/Union Territory level from time to time."*
>
> *(emphasis added)*
>
> *31. The regulation of development or construction activities in CRZ-I areas is to be in accordance with the following norms:*
>
> *"CRZ-I*
>
> *Between LTL and HTL in areas which are not ecologically sensitive and important, the following may be permitted: (a) exploration and extraction of natural gas; (b) activities as specified under proviso of sub- paragraph (i) and (ii) of Para 2; (c) construction of dispensaries, schools, public rain shelters, community toilets bridges, roads, jetties, water supply, drainage, sewerage which are required*

for traditional inhabitants of the Sunderbans Biosphere Reserve area, West Bengal, on a case-to-case basis, by the West Bengal State Coastal Zone Management Authority; (d) salt harvesting by solar evaporation of sea water; (e) desalination plants; (f) storage of non-hazardous cargo such as edible oil, fertilisers and food grain within notified ports; (g) construction of trans-harbour sea links."

(emphasis added)

32. From the above, it is evident that mangroves fall squarely within the ambit of CRZ-I. The Regulations allow for salt harvesting by solar evaporation of sea water in CRZ-I areas only where such area is not ecologically sensitive and important. In the instant case it has been established that mangrove forests are of great ecological importance and are also ecologically sensitive. Thus, salt harvesting by solar evaporation of sea water cannot be permitted in an area that is home to mangrove forests."

43. In ***Piedade Filomena Gonsalves V/s State of Goa & Ors. (2004) 3 SCC 445***, the Hon'ble Supreme Court, again in the context of CRZ notification 1991, approved the decision of this Court in not interfering with the directions for demolition of constructions put up within areas affected by the CRZ notification of 1991. At paragraph 6 of the said decision, the Hon'ble Supreme Court has observed that the Coastal Regulation Zone Notifications have been issued in the interest of protecting environment and ecology in the coastal area. The construction raised in violation of such regulation cannot be lightly condoned.

44. Accordingly, we are unable to accept Mr. Kamdar's contentions that the construction of compound wall within areas classified as CRZ and affected by the mangroves could have been undertaken by the MCGM without any approval from any authorities enjoined with the implementation of the CRZ notification of 1991 or the EIA notification of 2006. We are also unable to accept Mr. Kamdar's contention that in the facts and circumstances of the present case, the MCGM had in fact obtained express or in any case implied clearance for construction of compound wall within areas affected by CRZ and mangroves. We are satisfied that the impugned directions issued by the MoEF are based upon relevant considerations and the same are neither affected by any perversity nor any non-application of mind. The impugned directions have been issued after due consideration of the response put forth by MCGM. There is neither any illegality, irrationality nor any procedural impropriety in the issuance of the impugned directions. Therefore, taking into consideration the limited parameters of judicial review under Articles 226 and 227 of the Constitution of India, we are unable to find any ground to interfere with the impugned directions.

45. There is no ground made out by MCGM, sufficient to interfere with the impugned directions, particularly, considering the limited

parameters of judicial review in such matters. As noticed earlier, the impugned directions are neither irrational nor disproportionate. The impugned directions, neither prevent the establishment nor the operation of the said project. At the same time, the impugned directions, seek to prevent the environmental degradation by the construction of a compound wall in the area classified as CRZ and affected by mangroves. To this extent, the impugned directions are consistent with the principle of sustainable development. The practical problems highlighted by Mr. Kamdar, in the matter of security and prevention of encroachment, are really not legal excuses for putting up unauthorised constructions in ecologically fragile areas. In any case, the impugned directions permit the replacement of the compound wall with live/barbed wire fencing with vegetative cover. This will, at least to some extent, redress the concerns raised by MCGM and at the same time constitute substantial compliance with the terms and conditions set out in the EC dated 17 March 2009. Further, if the unauthorised compound wall is removed, the same will, according to even the experts deputed by the MoEF, contribute to the restoration of the degraded CRZ areas and the areas affected by mangroves. In this sense, there is no unreasonableness, in the matter of issuance of the impugned directions. The impugned directions are consistent with the principle of sustainable development. The MoEF

has attempted to balance the need of having a municipal solid waste management project at the said site along with the need to protect ecologically fragile areas classified as CRZ and affected by mangroves. This is not a case where any extraneous, irrelevant or non germane matters have been taken into consideration by the MoEF. Thus, there is no case made out by the MCGM to interfere with the impugned directions upon application of the well settled principles of judicial review in the matters of administrative actions.

46. The principles of judicial review in such matters have been analysed, inter alia, in the decision of the Hon'ble Supreme Court in ***Maharashtra Land Development Corporation & Ors. V/s. State of Maharashtra & Anr. (2011) 15 SCC 616*** at paragraphs 58 to 61, which read thus:

> *"58. Being called upon to review this administrative action, we have examined as to whether the same amounts to irrational or disproportionate. The common yardstick to determine whether the act on the part of the Government violates established principles of administrative law has been the Wednesbury principle of unreasonableness, employed both by English and Indian Courts.*
>
> *59. The Wednesbury principle was enunciated by Lord Greene MR in Associated Provincial Picture*

Houses Limited v. Wednesbury Corporation reported at (1947) 2 All ER 680. To quote the learned Judge on the principle enunciated:

"... What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question; the authority must disregard those irrelevant collateral matters."

60. However, the Wednesbury principle of reasonableness has given way to the doctrine of proportionality. Through his decision in the celebrated case of Council of Civil Services Unions v. Minister for the Civil Services reported at [1985] AC 374, Lord Diplock widened the grounds of judicial review. He mainly referred to three grounds upon which administrative action is subject to control by judicial review. The first ground being "illegality", the second "irrationality" and the third `procedural impropriety'. He also mentioned that by further development on a case-to-case basis, in due course, there may be other grounds for challenge. He particularly emphasized the principles of proportionality. Thus, in a way, Lord Diplock replaced the language of "reasonableness" with that of "proportionality" when he said:

"By `irrationality' I mean what can by now be succinctly referred to as `Wednesbury unreasonableness'... It applies to a decision which is so outrageous in its defiance of logic or of accepted

moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

61. The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the Court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred."

47. In ***Intellectuals Forum, Tirupathi V/s. State of A.P. & Ors. (2006) 3 SCC 549***, the Hon'ble Supreme Court has held that, the responsibility of the State to protect environment is now a well accepted notion in all countries. It is this notion that, in international law, gave rise to the principle "State responsibility" for pollution emanating within one's own territories. The responsibility is clearly enunciated in the

United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. Article 48-A of the Constitution mandates that the State shall endeavour to protect and improve environment to safeguard the forests and the wildlife of the country. Article 51-A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but also it would be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14,19 & 21 and also the various laws enacted by Parliament and the State Legislatures. The debate between developmental and economic needs and that of the environment is an enduring one, since if the environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of "sustainable development". Hence merely ascertaining an intention for development will not be enough to sanction

destruction of local ecological resources. The Court has to follow the principle of sustainable development and find a balance between the developmental needs which the State asserts, and the environmental degradation, which the citizens allege. The Hon'ble Supreme Court added that the decision in such matters cannot be based solely upon the investments made by any party. Since, otherwise, it would seem that once any party makes certain investment in a project, it would be a *fait accompli* and this Court will not have any option but to deem it legal.

48. In ***Jal Mahal Resorts (P) Ltd. V/s. K.P. Sharma*** ***(2014) 8 SCC 804***, the Hon'ble Supreme Court has held that although the Courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, credence, at least to some extent, has to be accorded to the decision of the State Authorities, specially if it based on the opinion of the experts reflected from the project report prepared by the technocrats and accepted by the entire hierarchy of the State administration. In the present case, the impugned directions issued by the MoEF, have taken into consideration all relevant and technical aspects, including reports made by experts particularly in the mater of environmental degradation caused by the MCGM and its contractor by

the construction of compound wall within area classified as CRZ and affected by mangroves. There is accordingly no case made out to interfere with the impugned directions.

49. This leaves us with the last contention raised by Mr. Kamdar that since the MCGM is not some private builder and since the project of handling municipal solid waste, is a project conceived in public interest, the authorities should be directed to consider favourably the MCGM's representations for retention or regularisation of the unauthorised compound wall within areas affected by CRZ and the mangroves. Mr. Kamdar, in fact, contended that the concerned authorities are inclined to favourably consider such representation and that this is evident from the minutes of the 110th meeting of the MCZMA held on 15th and 16th October, 2015.

50. Since considerable emphasis was laid upon the aforesaid minutes it will be useful to transcribe the relevant contents :

> ***"Item No. 31:- Proposal for retention of compound wall at Kanjur processing site at Kanjur, Mumbai.***
>
> *Mr. Minesh Pimple, Dy. Chief Engineer, MCGM presented that the MoEF, New Delhi granted the Environment Clearance for MSW processing facility on area admeasuring 65.96 HA area. The EIA report submitted to MoEF emphasized upon the need to*

strengthening of the peripheral bunds wherever there were breaches as well as their widening so as to construct roads on their top. Accordingly, the compound wall was constructed after strengthening the existing bunds along with laying of peripheral for roads. The storm water drainage system was also constructed and the culverts which were provided were upgraded/repaired for protection of mangroves etc. However, subsequently, since the boundary wall was constructed by the MCGM around the entire land comprising the CRZ as well as the non CRZ areas, the Director (IA-III Division), Ministry of Environment and Forest issued certain directives to the MCGM as per which the part of the boundary wall which was constructed in the CRZ was required to be removed. The MCGM requested the MoEF to reconsider their directives.

Meanwhile, Vanashakti, NGO challenged the directives issued by the MoEF in the NGT, Pune through Appeal No.1 of 2014. The NGT vide its order dated 13th March, 2014 directed the demolition of the boundary wall in the said Appeal. The MCGM therefore challenged the said order of the NGT by way of filling WP(L) No.689/2014 in the Mumbai High Court. The Mumbai High Court after hearing all the parties stayed the order of NGT on 17.4.2014. The Vanashakti, NGO thereafter challenged the order of the Mumbai High Court in the Supreme Court. The Supreme Court directed all the parties to act in accordance with the order passed by the Mumbai High Court on 8.1.2014 vide its order dated 25th July, 2014 in Civil Appeals No. 6882-6883 of 2014 in SLP 15752-15753 of 2014.

It was further presented that the compound wall is required for prevention of erosion of soil and is helping in protecting the mangroves in and around the allotted project area. The compound wall is preventing the public land which has been allotted by the government for a specific purpose from getting encroached. It is a requirement of MSW Rules, 2000

and will provide a buffer between the processing site and surrounding environment.

The Authority observed that there is no provision for giving post facto CRZ clearance in the CRZ Notification, 2011. Further, the matter is subjudice before the Hon. Supreme Court of India.

The Authority After deliberation decided to take the opinion of the Advocate General, GoM regarding issuance of post facto CRZ clearance for the existing compound wall, demolition of which, is stayed by the Hon. High Court of Mumbai."

(emphasis supplied)

51. From the aforesaid, it cannot be said that the proposal for regularisation/retention of the compound wall is being *favourably considered* by the MCZMA. In fact, the minutes record that there is no provision for giving post facto CRZ clearance in terms of the CRZ notification of 2011. That apart, Mrs. Deshmukh, learned Counsel for MCZMA made it clear that the MCZMA has not considered any proposal for regularisation or retention of the compound wall with regard to which the MoEF has already issued demolition orders. Mrs. Deshmukh, in fact, contended that the MCZMA is not even the appropriate authority to consider such proposal, particularly, when the MoEF has already directed the demolition of such compound wall on the grounds that the same is in breach of the environmental clearance as also

the CRZ notifications. This position was also reiterated by the learned Counsel appearing for MoEF.

52. Mr. Kamdar was also unable to point out any provision under which an illegal construction within the CRZ area or area affected by mangroves can be regularised or permitted to be retained on the basis of some ex post facto approval or clearance. In any case, the MCGM or even the public authority endowed with the duty to prevent illegal and unauthorized construction, cannot itself put up wholly illegal and unauthorized construction in ecologically sensitive area and thereafter, insist upon, regularization or retention. This is clearly not a case where the MCGM or its contractor have marginally or unintentionally exceeded the apparent scope of the environment clearance. The environment clearance was quite clear inasmuch as it related to the area of 65.96 ha only. The MCGM and its contractor, however, enclosed the area admeasuring 86 ha with a compound wall despite clear knowledge that the area beyond 65.96 ha is affected by the CRZ notification as well as mangroves. As noted earlier, the compound wall which the MoEF has now directed the MCGM to demolish extends not only to the areas affected by the CRZ notification, but also to areas affected by mangroves. There can be no doubt that areas covered by mangroves are ecologically highly sensitive areas and, therefore, special provisions

have been made for protection of such areas. In such a situation, to permit MCGM to seek regularisation or retention, would virtually amount to rewarding the MCGM for its illegal and high handed acts. At least in the exercise of extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India, we cannot extend such indulgence to the MCGM, which as noted earlier, is itself one of the main statutory authorities enjoined with the duty to prevent illegal and unauthorised constructions.

53. Although Mr. Kamdar is right in his submission that the MCGM is not some private builder, we are unable to accept his contention that different standards should apply when it comes to consideration of the case of MCGM for regularisation of unauthorised construction in CRZ areas and areas affected by mangroves. The treatment of municipal solid waste is no doubt conceived in public interest. However, we cannot overlook the circumstance that the MCGM has engaged a contractor to treat such municipal waste and it is such contractor who is in fact operating the contract upon the project site handed over free of charge by the state Government to the MCGM. The contractor is operating the said project upon commercial basis and the contention on behalf of some of the respondents that the contractor is making substantial profits, was not even seriously disputed. In any case, we see no reason to apply any

different yardstick, in the matter of regularisation of unauthorised construction undertaken by the MCGM or its contractor. In fact, the MCGM, which is otherwise enjoined to ensure orderly development, has to take active steps to prevent illegal and unauthorised construction. Instead, in the present case, the MCGM has itself indulged in illegal and unauthorised construction, thereby, degrading and destroying ecologically sensitive areas affected by CRZ notification and mangroves. Merely because the MCGM is a public body and through its contractor is undertaking the laudable enterprise of municipal solid waste management, the MCGM cannot ignore the laws of the land which are equally binding upon the MCGM. In fact, in such matters, it is expected that the MCGM sets a good example, particularly, when it comes to protection of ecologically sensitive areas within CRZ areas or areas affected by mangroves.

54. In ***Urban Improvement Trust, Bikaner V/s. Mohan Lal (2010) 1 SCC 512***, the Hon'ble Supreme Court by reference to its previous decision, has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. It is a matter of concern that such frivolous

and unjust litigations by Governments and statutory authorities are on increase. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants. Statutory authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of Governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision-making, or worse, of improper motives for any decision-making. Unless their insecurity and fear is

addressed, officers will continue to pass on the responsibility of decision-making to courts and tribunals.

55. In the present case, it is hardly open to the MCGM to seek some relief on equitable grounds, considering its conduct in putting up an unauthorised construction in area affected by CRZ and mangroves. In terms of the orders made by this Court as well as the Hon'ble Supreme Court, the MCGM was permitted to continue with its activity at the said site subject to compliance with the directions in the order dated 4 November 2013 made by MoEF. As noted earlier, the MCGM continued with its operations, but failed to comply with all the conditions in the order dated 4 November 2013 made by MoEF. That apart, only on basis of equitable considerations, there is no question of interfering with the impugned directions issued by the MoEF for purposes of protection of ecologically sensitive areas affected by CRZ notification and mangroves.

56. In ***Union Territory of Lakshadweep & Ors. V/s. Seashells Beach Resort & Ors. 2012 (6) SCC 136***, the Hon'ble Supreme Court did not approve grant of relief in matters of violation of CRZ notification, only upon humanitarian and equitable considerations.

In paragraphs 30 & 31, the Hon'ble Supreme Court has observed thus:

> *"30. The High Court's order proceeds entirely on humanitarian and equitable considerations, in the process neglecting equally, if not more, important questions that have an impact on the future development and management of the Lakshadweep Islands. We are not, therefore, satisfied with the manner in which the High Court has proceeded in the matter.*
>
> *31. The High Court obviously failed to appreciate that equitable considerations were wholly misplaced in a situation where the very erection of the building to be used as a resort violated the CRZ requirements or the conditions of land use diversion. No one could in the teeth of those requirements claim equity or present the administration with a fait accompli. The resort could not be commissioned under a judicial order in disregard of serious objections that were raised by the Administration, which objections had to be answered before any direction could issue from a writ Court."*

57. In ***M/s. Royal Parasdise Hotel (P) Ltd. V/s State Of Haryana & Ors. 2006 (7) SCC 597***, the Hon'ble Supreme Court has held that unauthorised constructions should not be encouraged and compounding is not to be done when the violations are deliberate, designed, reckless or motivated.

At paragraphs 7 & 8, the Hon'ble Apex Court has observed thus:

> *"7. It is clear from the statement of the synopsis and list of dates furnished by the appellant itself, that on 4.2.1998, Mr. Chawla, who put up the construction before it was sold to the appellant received a notice under Section 12 of the Act informing him of contravention of Section 3 or Section 6 and of violation of Section 7(1) and Section 10 of the Act and directing him to stop further construction. When it was*

found that the appellant was defying the direction to stop, an order was passed on 26.2.1998 under sub-Section (2) of Section 12 of the Act directing him to remove the unauthorized construction and to bring the site in conformity with the relevant provisions of the Act on finding that there was clear violation of Section 7 and Section 10 of the Act. On 16.3.1999, another notice was issued to Mr. Chawla mentioning therein that there is a contravention of Section 7(1) or Section 10 of the Act and directing removal of the unauthorized construction. The copies of the original notices are produced by the respondents along with the counter affidavit filed on behalf of the respondent Nos.1 to 3. Though the copies of such notices have been produced by the appellant also, we find that there are some omissions in the copies produced on behalf of the appellant. Whatever it be, the fact remains that the construction was made in the teeth of the notices and the directions to stop the unauthorized construction. Thus, the predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorized and put up in defiance of law. The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the interest of general public and moving traffic on such highways. ***Therefore, this is a fit case for refusal of interference by this Court against the decision declining the regularization sought for by the appellant. Such violations cannot be compounded and the prayer of the appellant was rightly rejected by the authorities and the High Court was correct in dismissing the Writ Petition filed by the appellant. It is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of High Courts to ensure that such defiers of law are not rewarded. The High Court was therefore fully***

justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

8. We also find no merit in the argument that regularization of the acts of violation of the provisions of the Act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception. The authorities and the High Court were hence right in refusing the request of the appellant."

(emphasis supplied)

58. In ***Friends Colony Development Committee V/s. State Of Orissa & Ors. (2004) 8 SCC 733,*** the Hon'ble Supreme Court at paragraph 25 has made the following observations in the context of regularisation of unauthorised constructions:

"25. Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less

> ***than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum.*** *The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."*
>
> (emphasis supplied)

59. In ***Shanti Sports Club V/s. Union of India (2009) 15 SCC 705***, the Hon'ble Supreme Court approved the order of the Delhi High Court which had declared the construction or sports complex by the appellant on the land acquired for planned development of Delhi to be illegal by observing thus at paras 74 & 75:

> *"74. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support*

of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. ***This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town***

planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc....

75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

(emphasis supplied)

60. In ***Dipak Kumar Mukherjee V/s. Kolkata Municipal Corporation & Ors. (2013) 5 SCC 336***, the Hon'ble Supreme Court at paragraph 8, in the context of unauthorised constructions has observed thus:

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the

concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

61. Similarly, in ***Esha Ekta Apartments Cooperative Housing Society Limited And Ors. V/s. Municipal Corporation of Mumbai & Ors. (2013) 5 SCC 357***, the Hon'ble Supreme Court in the context of regularisation of unauthorised constructions, at paragraph 56, has observed thus:

"56. In view of the above discussion, we hold that the petitioners in the transferred case have failed to make out a case for directing the respondents to regularise the construction made in violation of the sanctioned plan. Rather, the ratio of the above noted judgments and, in particular, Royal Paradise Hotel (P) Ltd. V/s. State of Haryana is clearly attracted in the present case. ***We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The***

courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

(emphasis supplied)

62. We are satisfied that this is not a case where the MCGM or its contractor had put up the compound wall either on account of any genuine misconstruction of the terms of EC dated 17 March 2009 or that deviation of such magnitude was unintentional, accidental or trivial. The impact of such unauthorised construction of the compound wall within areas affected by CRZ notification and mangroves, has already been noted by this Court, inter alia, in its order dated 10 May 2013 in PIL Nos.131/2012 and 1/2013. On account of the construction of the compound wall within such ecologically sensitive areas, such areas as well as the mangroves therein have been degraded and destroyed. As observed by the Hon'ble Supreme Court in the decisions referred to herein above, it will not be appropriate to encourage such unauthorised constructions or permit their retention particularly, when the same have been undertaken by the MCGM and its contractor by disregarding the terms of EC dated 17 March 2009 as also the provisions of CRZ notifications and the EPA. Accordingly, there is no case made out to

interfere with the impugned directions made by the MoEF in its order dated 4 November 2013 or to issue any direction for regularisation or retention of the illegal and unauthorised construction.

63. For all the aforesaid reasons, we dismiss the present petition. Rule is discharged. Interim orders, if any, are hereby vacated.

64. Taking into consideration the report of the MCZMA with regard to environmental degradation within the area classified as CRZ and the area affected by mangroves on account of the construction of the compound wall in such areas, it is only appropriate that the MCGM complies with the impugned directions issued by MoEF and demolishes the compound wall to the extent directed within a period of two months from today. Accordingly, we issue directions to the MCGM to this effect and thereafter file a report / affidavit of compliance within a period of two weeks from the date of demolition. Copy of such report / affidavit to be served upon the MoEF, before the same is filed in the registry.

65. Although this would otherwise be a fit case for imposition of costs, considering that the brunt of such costs may have to be borne by

the municipal tax payers, we refrain from the imposition of any costs upon the MCGM.

M. S. SONAK, J. **D.H. WAGHELA, C.J.**