
(2000) 08 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 469 of 1996

Kisan Mehta and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Development Control Regulations for Greater Bombay, 1991 — Regulation 59(2)
Environment (Protection) Act, 1986 — Section 3(1), 3(2)
Environment (Protection) Rules, 1986 — Rule 5(3)

Citation : (2000) 4 ALLMR 1 : (2001) 1 BomCR 451 : (2000) 4 MhLj 708

Hon'ble Judges : B.P. Singh, C.J.;N.J. Pandya, J

Bench : Division Bench

Advocate : G.G. Kalsekar and Asha Bhambwani, instructed by Mahimkar and Co., Gulam Vahanvati and N.V. Sanglikar, for Bombay Municipal Corporation, R.M. Sawant, G.P., for State and M.S. Karnik, for Union of India, for the Appellant; Siraj Rusotmjee, N.H. Seervai, S.A. Divan and M.S. Doctor, instructed by M.V. Jayakar and Co. for respondent No. 7 and I.M. Chagla, Janak Dwarkadas and D.J. Khambatta, instructed by Maneksha and Sethna for respondents 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, C.J.—This writ petition has been filed by the petitioners in public interest challenging the validity of the permission given to respondents No. 5 and 6 herein for the development and construction on a plot of land located in the Worli Division, Off Dr. Annie Besant Road, said to be abutting the sea. The challenge to the construction of a high rise building over the plot in question is in the light of the provisions of the Environment Protection Act, 1986 and the notification issued thereunder by the Government of India dated 19th February, 1991.

2. Petitioner No. 1 is the President of the Save Bombay Committee, vitally interested in espousing issues of public interest and environmental protection. Petitioners Nos. 2 and 3 are also members of the said Committee and are also

connected with various other public institutions. Respondent No. 1 is the State of Maharashtra, while respondent Nos. 2 and 3 are the Municipal Corporation of Greater Bombay and the Municipal Commissioner, respectively. Respondent No. 4 is the Union of India through its Ministry of Environment and Forests. Respondent No. 5 are the lessees of the plot in question, while respondent No. 6 are the builders who, under a development agreement with the lessees, are constructing the building on the said plot. Respondent No. 7, the Bombay Environment Action Group, is an environment action group and a society registered under the Societies Registration Act.

3. The instant writ petition was filed on 27th February, 1997. At that time only the aforesaid notification dated 19th February, 1991 held the field. Subsequently two Clarifications have been issued by the Government of India, Ministry of Environment and Forests, dated 27th March, 1998 and 8th September, 1998, which are also relevant and which have to be considered while dealing with the issues raised in the instant writ petition.

4. It is averred in the writ petition that the Ministry of Environment & Forests, Government of India, issued a notification on 19th February, 1991 u/s 3(1) and 3(2)(v) of the Environment Protection Act, 1986 and Rule 5(3)(d) of the Environment (Protection) Rules, 1986, whereunder the Central Government declared the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line and the land between the Low Tide Line and the High Tide Line as Coastal Regulation Zone; and imposed with effect from the date of the notification certain restrictions on the setting up and expansion of industries, operations or processes, etc., in the Coastal Regulation Zone. Under the notification, certain activities were prohibited while some other activities were declared to be permissible. The notification requires that even for the activities permitted under the notification, which involve investment exceeding Rs. 5 crores, prior environmental clearance from the Union Ministry of Environment and Forests should be obtained. An obligation was cast on all coastal States and Union Territory Administrations to prepare, within one year, Coastal Zone Management Plans in accordance with the guidelines given in Annexures I and II of the notification. Till such time as the Coastal Zone Management Plans were not prepared and approved, all developments and activities within the Coastal Regulation Zone were not to violate the provisions of the said notification. The State Governments and Union Territory Administrations were directed to ensure adherence to these regulations and violations, if any, were made subject to the provisions of the Environment (Protection) Act, 1986. The petitioners have referred to the various provisions of the notification and submitted that despite such a notification, several coastal States, including respondent No. 1, State of Maharashtra, failed to prepare the Coastal Zone Management Plan, and virtually ignored the said notification. Respondent Nos. 2, 3 and 4, completely ignoring the restrictions imposed by the said notification, continued to approve building proposals on the city's coastline in violation of the

provisions of the said notification. It was in these circumstances that the Supreme Court, in a writ petition filed before it by the Enviro-legal Council, issued an interim order directing all the coastal States and Union Territory Administrations not to permit any new industry/construction activities within 500 metres of the High Tide Line of the seas, bays, rivers, etc. The aforesaid order of the Supreme Court dated 12th December, 1994 was subsequently clarified/modified by its order dated 9th March, 1995 directing all the concerned States to scrupulously and meticulously follow the provisions of the said notification of 19th February, 1991. The petitioners, through their Advocates' letters, called upon respondents No. 1, 2, 3 and 5 to implement the above-mentioned Supreme Court orders and stop immediately the on-going constructions on Bombay's sea-front, such constructions as were approved by respondents No. 2 and 3 after 19th February, 1991. The petitioners have then narrated the events that took place, including the filing of a Contempt petition before the Supreme Court and the orders passed therein. They have made a grievance that during the pendency of the Contempt petition before the Supreme Court, illegal constructions were being carried out by the builders, aided and abetted by respondents No. 1 to 3. This compelled the petitioners to file another writ petition in the Supreme Court in respect of four plots of land, wherein they challenged as illegal the Planning Permissions granted by the Committee which resulted in the degradation of city coastline. On 20th October, 1995, the petitioners withdrew the said writ petition with a view to move this Court and, under these circumstances, the instant writ petition was filed before this Court in February, 1996.

5. The petitioners have advanced several legal submissions in the writ petition, but, unfortunately, the writ petition does not set out succinctly the factual background in which the issues were being urged by the petitioners. Though the writ petition was amended by the petitioners to include the challenge to the construction on the ground of its being in violation of Regulation 59(2) of Development Control Regulations for Greater Bombay, 1991 (hereinafter referred to as "the DC Regulations"), necessary factual averments, which were relevant and necessary to examine the correctness of the submissions urged by the petitioners, were not furnished. However, from the averments in the writ petition, considered in the light of the submissions urged before us by the learned Counsel appearing on behalf of the petitioners, it is clear that the petitioners have challenged the construction of the building undertaken by respondents No. 5 and 6 and sanctioned by respondents No. 1, 2 and 3. It is firstly urged on behalf of the petitioners that the building which is being constructed is in clear breach of the Notification dated 19th February, 1991, inasmuch as the building is being erected on a plot of land abutting the sea on the seaward side of the existing authorised structures. Secondly, though respondents No. 5 and 6 claim that they are reconstructing an authorised building, in fact, a new building is being constructed. The facts of the case would disclose that this is not a reconstruction of an authorised building. Thirdly, it is contended on behalf of the petitioners that the sanctioned plans clearly violate the restriction relating to height of a building

as prescribed under Regulation 59(2) of the Development Control Regulations, 1991. Lastly, it is submitted that the building plans have been sanctioned, and the building is being constructed, in gross violation of Floor Space Index.

6. In the absence of factual particulars in the writ petition, we have necessarily to rely upon the factual particulars mentioned in the affidavits-in-reply filed on behalf of the Municipal Corporation and its Commissioner, respondents Nos. 2 and 3, and the lessees and the builders, respondents No. 5 and 6, respectively. In their affidavits, respondents No. 5 and 6 have stated that the construction work carried out is legal and in accordance with sanctions and approvals obtained from the appropriate authorities. They have disputed the charge levelled by the petitioners that the building plans have been sanctioned in breach of the provisions of the CRZ Notification dated 19th February, 1991. The factual averments stated in the affidavit-in-reply disclose the following facts :---

That, initially, an Intimation of Disapproval (IOD) dated 13th November, 1980 was issued for a building consisting of stilt and 14 upper floors. The approved plans were sanctioned for a building of a height of 149'-9" (approximately 45.66 meters). Permissions were granted under the provisions of the Bombay Municipal Corporation Act, 1888 and the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act") to construct a building according to the approved plans on the plot in question. However, after the construction of such a building commenced, it was decided to obtain further building approval to construct a building on the plot with a "U"-shaped plinth of 5 storeys of a height of 60 feet. The approval was obtained on 2nd June, 1981, and thereafter construction of a part of this "U"-shaped plinth commenced pursuant to an amended plan approved on 2nd June, 1981. Commencement Certificate dated 14th August, 1981 for a building of stilt and 3 floors in Phase I was also issued.

Thereafter, the original building plans were reverted to, and Commencement Certificate dated 5th October, 1983 for stilt and 10 upper floors was granted. The construction of the aforesaid building came up to stilt and 10 upper floors. Thereafter, an application for extension of the Commencement Certificate for a further 4 floors was made in February, 1984. It was to be granted after realignment of hutments on the adjoining plot and the removal of encroachments on the access road to the plot. The plinth of the aforesaid "U"-shaped structure also remained on the plot. Pursuant to sanction granted by the Bombay Municipal Corporation, respondent No. 5 realigned structures existing on the adjoining plot.

7. The aforesaid respondents have further averred that in 1993, respondent No. 5 sought the sanction of the Bombay Municipal Corporation for demolition of the existing building on account of the original structure having weakened due to the delay, and re-construction of another building on the plot consisting of a basement, stilt and podium with eleven upper storeys having a total height of approximately 42.9 metres i.e. 140'-9". Such sanction was granted by the Bombay Municipal Corporation on 30th December, 1993, followed by a

Commencement Certificate dated 24th April, 1994 for the construction upto the plinth level, and the said Certificate was later extended on 2nd November, 1994 to cover the entire work. Pursuant to the aforesaid sanction and Commencement Certificates, the work of re-construction commenced in or about April, 1994 by demolition of the existing ground floor on stilt and ten-storied structure from the site. The re-construction began and by 23rd November, 1995, re-construction had reached the 7th floor. The aforesaid re-construction activity was carried on openly, but the said writ petition was filed only in February, 1996 in which an interim Order was passed on 2nd April, 1996. By then, the re-construction of all the floors (viz. 11 floors) having a total height of approximately 42.9 metres i.e. 140'-9" was done and the entire superstructure of the building was complete. By the interim Order, taking note of the fact that the construction was actually completed by respondents No. 5 and 6, the Court left it open to the aforesaid respondents to complete the construction of the building at their own risk and costs with a specific understanding that by completing the construction, they would not claim any equity in their favour at the time of the hearing of the petition. The aforesaid respondents continued with the construction and the said re-constructed building is complete and flats are ready for occupation.

8. One of the grounds urged by the aforesaid respondents for the dismissal of the writ petition was that the petitioners waited so long, even though the construction work was being carried on openly, and moved this Court only at the time when the construction had crossed the 7th floor. In the meantime, third-party interests have been created, as respondents No. 5 and 6 had entered into several agreements in respect of apartments/flats in the structure. Those purchasers had not been made parties to the writ petition. That itself provided a ground for dismissal of the writ petition.

9. The aforesaid respondents have pointed out various inaccuracies in the writ petition, but it is not necessary, at this stage, to go into that aspect of the matter.

10. On the merits, respondents No. 5 and 6 have submitted that the re-construction carried on by respondents No. 5 and 6 on the site is legal and not in violation of any provision of law, nor in contravention of the CRZ Notification dated 19th February, 1991 and/or the MRTP Act and/or the DC Regulations. It is stated that the plot in question falls in the Worli Division, Off Dr. Annie Besant Road, Mumbai, and is situated in an area falling under Category II of Annexure I of the CRZ Notification. The plot does not abut the High Tide Line, foreshore or creek. Relying upon Clause 6(2) of the CRZ Notification, it is submitted that the building or the construction activity is expressly permitted. The re-construction is also within the existing FSI (Floor Space Index) or the FAR (Floor Area Ratio) norms, as laid down in the DC Regulations. The combined gross floor area of all the floors of the re-constructed structure (excepting areas specifically exempted under the DC Regulations) does not exceed 1.33 times the area of the plot. Regulation No. 32 of the DC Regulations provides for FSI of 1.33 within the island city of Mumbai in the residential zone. The re-construction also satisfies other

requirements of the DC Regulations. According to respondents No. 5 and 6, in the case of re-construction of an authorised building in CRZ-II, no restrictions have been placed in respect of the plinth area of the re-constructed structure, as contrasted with the specific and additional restrictions set out for re-construction of buildings in CRZ-III area. This, according to them, is apparent from a mere reading of the aforesaid Notification of 19th February, 1991. It is further asserted that the said re-constructed structure is on the landward side of the road proposed in the finally sanctioned Development Plan for Greater Mumbai. Apart from this, well back in 1991, an authorised structure existed on the said plot, including retaining and boundary walls constructed on the South, East and West (i.e. seaward) sides of the said plot. These structures would be "existing authorised structures" within the meaning of that term under Clause 6(2) of the CRZ Notification.

11. It is further stated that the adjoining plot belongs to the Bombay Municipal Corporation. Several authorised, permanent structures existed on the said adjoining plot and, pursuant to sanction of the Bombay Municipal Corporation, the permanent structures were re-aligned by respondent No. 5 at their own cost. Some of the structures had unauthorisedly also encroached on to the access road in the said plot. Even prior to 19th February, 1991, respondent No. 5 had substantially carried out the scheme of re-alignment of approximately over a 100 structures, in all, on the adjoining plot. The scheme of re-alignment was commenced in 1985 in a phased manner starting, first, with the existing buildings closest to the sea on the adjoining plot. Respondent No. 5 also constructed a retaining wall on the North side of the adjoining plot well prior to 1991. The buildings on the adjoining plot closest to the sea and which were re-aligned and ready prior to 19th February, 1991 were as close, if not closer, to the sea, as the re-constructed building on the said plot. The said adjoining plot is fully developed with an authorised sewerage system and electricity and water connections. It is, therefore, urged that the buildings and structures thus re-aligned by respondent No. 5 and completed prior to 19th February, 1991 were permanent, fixed structures with roofs and forming enclosures providing protection from the elements. They are in accordance with the Building and Town Planning Regulations and Bye-laws then prevailing.

12. Apart from the permanent structures on the adjoining plot, according to respondents No. 5 and 6, even beyond the boundary wall of the said plot, there are also structures on the seaward side housing approximately 100 persons. Some of these structures consist of a ground plus one upper floor and almost all of them have got electricity and water connections. Such structures have been in existence for at least two decades and are tolerated structures, i.e., they cannot be demolished.

In this manner, it is submitted that for the last several decades, the aforesaid structures and buildings have existed on all the sides of the building along the line of the sea and several of these structures are as close or closer to the sea

than the said re-constructed building on the plot in question. Plots in the area around and nearby to the said plot on which the said re-constructed structure is built and in its vicinity are developed with multi-storied buildings and structures as close to or closer to the sea than the re-constructed building. It is, therefore, submitted that the said re-constructed building is on the landward side of existing authorised structures and buildings. In any event, since it is a re-constructed building, the construction thereof is in accordance with Clause 6(2) of the CRZ Notification.

13. It would, thus, appear from the averments made by respondents No. 5 and 6 that the re-constructed building, according to them, is on the landward side of the existing authorised structures and, in fact, much prior to the year 1991, on the adjacent plot belonging to the Bombay Municipal Corporation, existed as many as 100 authorised structures which are nearer the sea than the re-constructed building. The aforesaid respondents have also given particulars of the area of the plot, the built-up area, etc., and have demonstrated that the re-construction has been done in accordance with the applicable DC Regulations.

14. The Bombay Municipal Corporation has in its affidavit, substantially supported the case of respondents No. 5 and 6 and justified the permissions and sanctions granted by it for the construction of the building on the plot in question. It is asserted that the development on the plot in question has been permitted after considering the Notification issued by the Ministry of Environment and Forests, Government of India, on 19th February, 1991. On the plot in question, there was existing a building which was earlier constructed. The proposal submitted by the developers was in respect of the development of the plot in question after demolishing the existing building as the existing building had deteriorated to the extent of being unsafe and incapable of being repaired. Such development is specifically permitted under the CRZ Notification dated 19th February, 1991. The building permitted to be constructed is on the landward side of the existing authorised structures and, hence, the construction is a permissible construction. In fact, even the Government of Maharashtra, by communication dated 18th May, 1998, clarified that the permission granted for development is not in violation of the Notification dated 19th February, 1991 and that in view of the letter of the Ministry of Environment and Forests dated 27th March, 1998, construction along water-front can be permitted on the landward side of the imaginary line drawn along the existing authorised structures. It appears from the aforesaid letter of the Government of Maharashtra (Exhibit 1) that "the Government of Maharashtra had no objection to develop the property under reference subject to the condition that the construction shall be as per the Development Control Rules, 1991 for Brihan Mumbai Municipal Corporation".

15. The Municipal Corporation had further asserted that the development permission granted for construction of the building on the plot in question is in conformity with the DC Regulations. Necessary figures have been furnished to show that the FSI permitted is as per the DC Regulations.

So far as the height of the building is concerned, the same is sought to be justified in the background of the fact that in the year 1980-81, building plans were sanctioned for construction of stilt plus 14 upper floors, having a height of 149'-9", and construction upto 10th floor was carried out in pursuance to the Commencement Certificate. Since the original building proposal plans were sanctioned for construction of a building having a height of 149'-9", when the present proposal was submitted, height of the present building was allowed upto 140'-9". It is also stated that between the plot in question and the sea, there is a proposed Development Plan road. The plot in question, therefore, is on the landward side of the proposed Development Plan road in the sanctioned Development Plan.

16. The facts stated in the affidavits-in-reply filed on behalf of respondents No. 2 and 3 and respondents No. 5 and 6 have not really been controverted by the petitioners, though an affidavit-in-rejoinder has been filed by petitioner No. 3, Ashok Rawat. There is only a general denial of all the statements, representations and allegations made in the said replies as are inconsistent with the statements, representations and allegations made by the petitioners in the - writ petition as if the same are specifically traversed and separately denied. The deponent has adopted the affidavit of Kisan Mehta, petitioner No. 1, dated 20th of August, 1998 in reply to Notice of Motion No. 197 of 1998 taken out by respondents No. 5 and 6. The said affidavit of petitioner No. 1 in reply to the Notice of Motion also does not controvert any of the factual averments made in the affidavits-in-reply filed on behalf of respondents No. 2 and 3 and respondents No. 5 and 6, though various legal submissions have been urged relating to violation of the CRZ Notification and also FSI violation and violation of height restriction imposed by the DC Regulations. The following facts, therefore, emerge :---

(a) The plot in question has an area of 4929.63 sq.mtrs. and, according to the calculation shown in the affidavit-in-reply filed on behalf of the Bombay Municipal Corporation, the FSI consumed is 1.325 as against permissible FSI of 1.33.

(b) The building has been permitted to be constructed up to a height of 140'-9" (42.90 mtrs.).

(c) On the plot in question, there existed an earlier incomplete building even before the date of the CRZ Notification, viz., 19th February, 1991, which had been constructed upto 10th floor. The said construction had been made pursuant to building plans sanctioned in the year 1980-81 for the construction of stilt plus 14 upper floors.

(d) There is a retaining wall which was constructed well prior to 1991 on the South, East and West (i.e. seaward) sides of the plot in question.

(e) Even before 19th February, 1991, on the adjoining plot (adjoining the plot over which the impugned structure has been raised), there existed over a 100 structures belonging to the Bombay Municipal Corporation. These structures were

re-aligned by respondent No. 5 and completed prior to 1990-91. The aforesaid structures on the adjoining plot are permanent structures and the adjoining plot is fully developed with an authorised sewerage system and electricity and water connections.

(f) Between the plot in question and the sea, there is a proposed Development Plan road, and therefore, the plot in question is on the landward side of the proposed Development Plan road in the sanctioned Development Plan.

(g) Between the plot in question and the sea, there are large number of unauthorised structures which have been in existence for at least two decades and are tolerated structures which cannot be demolished.

17. It has not been disputed before us that the plot in question lies within a developed area, and it has also not been disputed before us that the plot is located in an area under the CRZ II Category.

18. In the light of these facts, we shall now proceed to examine the relevant provisions of the Notification and the several authorities cited at the bar touching upon the issues raised in this writ petition.

19. The CRZ Notification was issued on 19th February, 1991 in exercise of the powers conferred upon the Central Government by Clause (d) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986 declaring the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line and the land between the Low Tide Line and the High Tide Line as Coastal Regulation Zone. By the said Notification, the activities enumerated in paragraph 2 were declared the prohibited activities, while the activities enumerated in paragraph 3 thereof are the permissible activities. The Coastal Regulation Zone has been classified into four categories, viz., CRZ-I, CRZ-II, CRZ-III and CRZ-IV, CRZ-II has been described as follows :---

"Category-II (CRZ-II):

The areas that have already been developed upto or close to the shoreline. For this purpose, "developed area" is referred to as that area within the Municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains."

CRZ-III has been described as follows :---

"Category-III (CRZ-III) :

Areas that are relatively undisturbed and those which do not belong to either Category-I or II. These will include coastal zone in the rural areas (developed and underdeveloped) and also areas within Municipal, limits or in other legally designated urban areas which are not substantially built up."

20. Under CRZ-I, no new construction shall be permitted within 500 metres of the High Tide Line, and only the construction activity as listed under 2(xii) is permitted between the Low Tide Line and the High Tide Line. In the instant writ petition, we are solely concerned with CRZ-II and only incidentally with CRZ-III. Certain types of buildings are permitted under Category CRZ-II. The Notification provides as follows :---

"CRZ-II

(i) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI/FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject to the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surroundings landscape and local architectural style."

By Notification dated 9th July, 1997 Item No. (i) under the heading CRZ-II was substituted by the following :---

"CRZ-II

(i) Buildings shall be permitted only on the landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) or on the landward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of Floor Space Index/Floor Area Ratio : Provided that no permission for construction of building shall be given on landward side of any new roads (except roads proposed in the approved "Coastal Zone Management Plan) which are constructed on the seaward side of an existing road."

So far as CRZ-III is concerned, the Notification provides as follows :---

"CRZ-III

(i) The area upto 200 metres from the High Tide Line is to be earmarked as "No development Zone". No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density. However, the following uses may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.

(ii) Development of vacant plot between 200 and 500 metres of High Tide Line in

designated areas of CRZ-III with prior approval of MEF permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor).

(iv) Reconstruction/alterations of an existing authorised building permitted subject to (i) to (iii) above."

21. It would, thus, appear that so far as CRZ-II is concerned, no building is to be permitted on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. However, buildings are permitted on the landward side of the existing and proposed roads and existing authorised structures subject to the existing local Town and Country Planning Regulations, including the existing FSI or the FAR norms. So far as the reconstruction of authorised building is concerned, the same is permitted subject to the existing FSI or the FAR norms and without change in the existing user.

22. In paragraph 4 of the aforesaid Notification, the Ministry of Environment & Forests has been made responsible for monitoring and enforcement of the provisions of the Notification. Therefore, in response to certain queries of the State of Maharashtra, the Government of India, Ministry of Environment & Forests, by its letter of 27th March, 1998, made certain clarifications, one of them relating to new constructions along waterfront. In the said letter, it was stated as follows :---

"New Constructions along Waterfront:

"In the areas categorised as CRZ-II, construction of buildings can be permitted on the landward side of the imaginary line drawn along the existing authorised structures."

By letter dated 8th September, 1998, the Government of India in the Ministry of Environment & Forests issued some more clarifications. The relevant part of the clarifications as contained in the aforesaid letter is extracted below :---

"1. Construction of new building/reconstruction/expansion of existing authorised buildings shall not be permitted in the seaward side direction in the CRZ-II area of Mumbai Municipal Corporation, unless the following conditions are satisfied :

i. The CRZ-II area should be within the territorial jurisdiction of the Mumbai

Municipal Corporation as it existed on 19-2-1991, i.e., the date of coming into effect of the Coastal Regulation Zone Notification, 1991.

ii. This construction/protrusion towards the seaward side should not go beyond the imaginary line drawn from the seaward side of the existing authorised structure on the adjoining plot.

iii. The imaginary line will be parallel to the High Tide Line.

iv. The building(s) to be constructed will be restricted to the single plot (plot boundary as on 19-2-1991) immediately abutting/adjoining the existing authorised structures between which the imaginary line is drawn.

v. The imaginary line to be drawn should not cut across any river, creek, backwater, estuary, water body, sandy beach or mangroves.

vi. In case of re-construction, change in the existing use of the building shall not be permitted. Further any permissible extension of the plinth in seaward direction vis-a-vis the existing plinth limits will be governed by the stipulations mentioned in the above paras.

"2. Construction shall neither be permitted on the seaward side of existing roads nor on the seaward side of the existing authorised structures, in areas not covered by para 1(i) above, until these areas have been examined by the Committee headed by the Chief Secretary, Maharashtra to determine the CRZ-II categorization of these areas, and have been acknowledged as having been taken on record in the Ministry of Environment and Forests".

"3. It is clarified that the phrase "Existing Authorised Buildings" means those buildings of a permanent nature that were existing prior to 19-2-1991, and were constructed in accordance with the building regulations and bye-laws in vogue prior to 19-2-1991, and that had received necessary sanctions, including commencement and occupation certificates from the concerned local authority prior to 19-2-1991. Further, the construction of buildings, including expansion and reconstruction, should be in accordance with the FSI/FAR norms and all other Town & Country Planning Regulations, including maximum permissible density, height, zoning etc. that were prevalent and in force as on 19-2-1991. The phrase "building" means a permanent fixed structure with a roof for making an enclosure and providing protection from the elements."

23. At this stage, it may be noticed that the Government of India, by its letter dated 27th September, 1996, had approved the Coastal Zone Management for Maharashtra, subject to general and specific conditions mentioned in the said letter. In view of the conditions stipulated in the letter of the Government of India, the Government of Maharashtra took up the work of revising the Coastal Zone Management Plan for the State, and in that process, it was faced with certain difficulties in implementing certain provisions in the CRZ Notification dated 19th February, 1991, and its subsequent amendments. It was in this connection that in reply to the letters seeking clarifications of the State of

Maharashtra, the aforesaid two clarifications were issued by the Government of India in the Ministry of Environment and Forests.

24. Having regard to the provisions of the CRZ Notification dated 19th February, 1991 and the subsequent two clarifications dated 27th March, 1998 and 8th September, 1998, the question arises as to whether the building in question, which is sought to be constructed pursuant to the plan sanctioned by the Bombay Municipal Corporation, violates the provisions of the aforesaid CRZ Notification.

25. The first submission urged on behalf of the petitioners is that the building, which is sought to be constructed, is on the seaward side of the existing authorised structures. This is controverted by respondents No. 2 and 3 and 5 and 6, who have asserted that the building is on the landward side of the existing authorised structures and of the proposed road under the Coastal Zone Management Plan.

26. We have already noticed that the plot adjacent to the plot in question is owned by the Bombay Municipal Corporation. It is not in dispute before us that certain structures existed and still exist on the said plot which are authorised structures. Some other structures in the nature of encroachments existed on the access road to the plot in question. Those structures were of a permanent nature. Much prior to 19th February, 1991, respondent No. 5, pursuant to sanction of the Bombay Municipal Corporation, was required to realign the permanent structures existing on the adjoining plot. The re-alignment was to be done by respondent No. 5 at their own cost. This scheme was commenced in 1985 in a phased manner, starting, first, with the existing buildings closest to the sea on the adjoining plot. Respondent No. 5 also constructed a retaining wall on the Northern side of the adjoining plot well prior to 1991. The said adjoining plot is fully developed with an authorised sewerage system and electricity and water connections. It is averred by respondents No. 5 and 6, and not even disputed by the petitioners, that the buildings on the adjoining plot closest to the sea, and which were re-aligned and ready prior to 19th February, 1991 are as close, if not closer, to the sea as the re-constructed building on the said plot. But the petitioners contend that, since there is no permanent or authorised structure between the plot in question and the sea, it must be held that the plot is on the seaward side and not on the landward side, and consequently, no building could be erected on the said plot after the coming into force of the CRZ Notification dated 19th February, 1991.

27. On the other hand, respondents No. 5 and 6, supported by respondents No. 2 and 3, contend that the building is on the landward side, within the contemplation of the CRZ Notification read with the two clarifications issued thereunder. They rely on two decisions of this Court rendered by Division Benches and a Division Bench judgment of the Madras High Court. It is submitted that the CRZ Notification of 19th February, 1991, if read in the light of the clarifications issued by the Government of India, which is responsible for the

monitoring and enforcement of the provisions of the said Notification, buildings are permitted on the landward side of the existing and proposed roads and the existing authorised structures. By its letter dated 27th March, 1998, the Government of India clarified that in the area categorized as CRZ-II, construction of buildings can be permitted on the landward side of the imaginary line drawn along the existing authorised structures. This was further clarified in the letter dated 8th September, 1998, which provided that the construction or the protrusion towards the seaward side should not go beyond the imaginary line drawn from the seaward side of the existing authorised structure on the adjoining plot. The imaginary line will be parallel to the High Tide Line, and the buildings to be constructed will be restricted to the single plot (plot boundary as on 19th February, 1991) immediately abutting /adjoining the existing authorised structures between which the imaginary line is drawn.

28. Counsel for the petitioners as well as respondent No. 7 urged before us that the CRZ Notification should be interpreted in the background of the objective which is sought to be achieved. Commenting on the imaginary line being drawn, it was submitted that if an imaginary line is drawn parallel to the High Tide Line connecting two authorised structures, it may be that if a large tract of land lies between two authorised structures, building activity may be permitted on the entire tract of land, completely defeating the objective of the Notification. It was also submitted on behalf of the petitioners and respondent No. 7 that even if such an imaginary line could be drawn, the plot in question must lie within two authorised structures adjacent to it on either side, and consequently in a cause where an authorised structure existed only on one side, such an imaginary line could not be drawn and no development work or even re-construction could be permitted on such a plot. Counsel for the Bombay Municipal Corporation and the builders on the other hand submitted that such is not the position, if the letter of 8th September, 1998 is carefully read and given meaning. It was submitted that the clarification contained in the letter dated 27th March, 1998 did give an impression that construction of building can be permitted on the landward side of the imaginary line drawn along the existing authorised structures, meaning thereby that it presupposed existence of authorised structures on both sides of the plot in question. This, however, was further clarified in the letter dated 8th September, 1998, from which it is quite clear that it is not necessary that authorised structures must exist on either side of the plot. He further submitted that an imaginary line drawn in accordance with the Notification and the aforesaid clarifications cannot extend beyond the plot in question, which must be adjacent to an authorised structure at least on one side. In the instant case, therefore, an imaginary line should be drawn from the point closest to the sea of the authorised structure on the adjacent plot belonging to the Bombay Municipal Corporation and such a line should be drawn parallel to the High Tide Line. This imaginary line shall not be drawn beyond the plot in question. If such an imaginary line is drawn as contemplated by the clarifications, it will be found that the building in question is on the landward side of the said imaginary line.

29. The contention urged on behalf of respondent No. 2 and 3 and respondent No. 5 and 6 has force, and must be accepted. The notification of 19th February, 1991 permits building on the landward side of the existing and proposed roads and existing authorised structures. The notification does not define the term "landward side" or "seaward side". This has been clarified by the Government of India as a monitoring and enforcing agency. The letter of 8th September, 1998 clearly stipulates that the construction towards the seaward side should not go beyond the imaginary line drawn from the seaward side of the existing authorised structure on the adjoining plot and that the imaginary line will be parallel to the High Tide Line. Thereafter, Clause (iv) places a restriction as to the extent to which such a parallel imaginary line could be drawn by providing that the building(s) to be constructed will be restricted to the single plot immediately abutting/adjoining the existing authorised structure. Applying this rule to the facts of this case, it would appear that the farthest point on the seaward side of the existing structure on the adjoining plot belonging to the Bombay Municipal Corporation should be made the starting point for drawing a line parallel to the High Tide Line, and this line should extend towards the plot in question and end in line with the boundary of the plot in question. Thereafter, one has to see whether the building constructed is on the seaward side or the landward side of the said line. In the instant case, it is not disputed that if drawing of such an imaginary line is permissible, and is drawn, the building which has been constructed would fall on the landward side of such line. The objection of the petitioners and respondent No. 7 is that such a line cannot be drawn, because even if it is permissible to draw such a line it can be drawn only if authorised structures exist on either side of the plot in question. Apart from the clarification contained in the letter dated 8th September, 1998, the authorities cited at the bar to support the proposition that such an imaginary line can be drawn even if there is authorised structure on an adjacent plot on only one side of the plot in question.

30. In *K.V. Ramanathan & others v. The State of Tamil Nadu & others*, Writ Appeal No. 1287 of 1995 and Writ Petition No. 5971 of 1995 decided on 14th December, 1995, a Division Bench of the Madras High Court interpreted the provisions of the CRZ Notification dated 19th February, 1991. At the threshold, it may be noticed that when the judgment was rendered by the Madras High Court, the two subsequent clarifications issued by the Government of India had not been issued and, further, the Coastal Zone Management Plan had not been prepared and approved. The facts of that case disclose that 500 dwelling units were sought to be constructed on an area which was being used as a beach, and that was the subject-matter of challenge before the High Court on the ground that it was in violation of the CRZ Notification dated 19th February, 1991. The Court proceeded on the assumption that the area came under CRZ-II Category. It was also shown that Village Kuppam existed on the North-eastern side of the scheme area, which is very close to the shoreline within a distance of 200 metres therefrom. Large number of houses existed in the said village provided with

drainage, sewerage facilities and approach road. Similarly, on the South-eastern side, a number of private buildings existed, some of which were three or four storied buildings. All such buildings were within a distance of 200 metres of shoreline. That area was also a developed area with substantial buildings with all facilities. The scheme area lay beyond 200 metres on the landward side of the existing roads. It was urged before the Court that there was no building or road between the proposed construction and the sea, and, therefore, the averments in the counter-affidavits that the proposed construction was on the landward side of the existing road or proposed roads and existing structures were not true. From the plan produced before the Court, it appeared that in Village Kuppam, on the North-eastern side, there were a large number of structures therein. At a distance of only 130 to 140 metres, there were three and four storied buildings as well as private houses at a distance of 82 metres from the sea and there was also well formed road running from North to South at a distance of about 65 metres. Similarly, on the South-eastern side, there were buildings of four floors at a distance of 182 metres from the sea. There was a well-developed area with several buildings and a guest house, said to be in existence for quite a long time at a distance of 46 metres from the sea. The Court, therefore, found that there were well-formed roads near the sea line, both on the North-East and South-East and the disputed area was surrounded on all the three sides, North, West and South, by built-up areas. Among the impugned constructions, those which were very near the sea were at a distance of 210 metres and the farthest at a distance of 370 metres. It was contended on behalf of the respondents that there were roads and existing structures on the North-East and South-East nearer the sea and the impugned constructions were very much in the interior and, therefore, they were situated on the landward side of the roads and structures. In these circumstances, it was held that the law laid down in the CRZ Notification could not be tested with reference to each building situated on the seashore. Once it is seen that the area is a developed one and there are buildings and roads in the said area which are nearer to the sea than the impugned constructions, there can be no doubt whatever that the impugned constructions are situated on the landward side of the existing roads and structures and thus the norm prescribed in the notification was fully satisfied. Accordingly, the writ petition and the writ appeal were dismissed.

31. In paragraph 12 of its judgment, however, the Court pointed out that the State Government had prepared and forwarded the necessary Coastal Zone Management Plans identifying and classifying the CRZ area and the Central Government had not considered the same and expressed its opinion. In that situation, the disposal of the writ petition was without prejudice to the rights, if any, of the Central Government to take appropriate action within the power conferred by the Act, the Rules and the Notifications.

32. The decision of the Madras High Court, as pointed out by Counsel appearing on behalf of respondent No. 7, does not refer to any imaginary line, but proceeds on the basis that if to the South-East of the scheme area as well as to its South-

West, there were developed areas nearer to the sea than the scheme area, the latter must be considered to be on the landward side of the authorised construction.

33. In *Sneha Mandal Co-operative Housing Society Limited and others Vs. The Union of India and others*, a Division Bench of this Court considered the provisions of the CRZ Notification of 19th February, 1991 and the clarifications issued thereunder relating to the question whether drawing up an imaginary line parallel to the High Tide Line envisaged the existence of authorised structures on adjoining plots of both sides of the plot in question. In that case, on Plots No. 149 and 150, the B.E.S.T. Sub-Station was in existence. Plot No. 148 was adjacent to Plot No. 149 and abutted the sea on the Southern and Western sides. It was contended in that case that the existing authorised structures were only on the side of the plot in the adjoining plots, viz., the B.E.S.T. Sub-Station. In the absence of any other authorised structure on other side of the plot bearing No. 148, it was not possible to draw the imaginary line so as to demarcate Plot No. 148 as falling on the landward side. It was contended that drawing of the imaginary line would not be possible in every case and, indeed, even the length of the imaginary line could not be unlimited, as it would defeat the very purpose of CRZ Notification. On the other hand, it was contended that looking to the location of the plot, the imaginary line which could be drawn could only be across the shoreline and the imaginary line would be in the form of a wave. Plot No. 148 was on the landward side of the B.E.S.T. structure in the sense that if an imaginary line is drawn from the developed area of B.E.S.T. Sub-Station up to the sea, touching Plot No. 148, then the plot would come within the landward side of the developed area on Plots No. 149 and 150. Reliance was also placed on the judgment of the Division Bench of the Madras High Court in *Ramanathan (supra)*. The Court noticed that the guideline issued by the Central Government subsequently did not exist when the Madras High Court delivered its judgment. Further, the approved Coastal Zone Management Plan was not before the Madras High Court when it delivered the judgment. After referring to the provisions of the CRZ Notification of 19th February, 1991 and the two clarifications subsequently issued by the Government of India, the Court observed that the clarification dated 8th September, 1998 requires an imaginary line to be drawn parallel to the High Tide Line. It further observed as under :---

"A perusal of the guideline dated 8th September 1998 issued by the MOEF (Ministry of Environment and Forests) shows that a new construction/building shall not be permitted on the seaward side unless the following conditions are satisfied viz. that the construction towards the seawards side should not go beyond the imaginary line drawn from the seaward side of the existing authorised structure on the adjoining plot. Further, the imaginary line shall be parallel to the High Tide Line. Further, the imaginary line should not come across any creek, river, backwater etc. and lastly that the building to be constructed will be restricted to the Single Plot immediately adjoining the existing authorised structures between which the imaginary line is drawn. Now, in the present case,

Plot 148 is bounded on the East by General Jagannath Bhosale Marg and by the sea on the West. It is also bounded on the Southern side by sea and by B.E.S.T. Sub-Station (authorised structure) on the North. There is no space behind Plot(s) 149 and 150 as the entire plot is built upon by B.E.S.T. The point at issue is whether a structure could come up on the adjoining Plot 148. If we analyze the arguments advanced on behalf of the petitioners and on behalf of the Planning Authority, it is clear that the impugned structure can be put up on the adjoining plot i.e. plot adjoining the authorised structure. The only difference in the respective submissions is whether an imaginary line should be drawn only between two existing authorised structures. In this connection, the correspondence clearly indicates that initially MOEF had issued clarifications which clearly show that the imaginary line should be drawn between the two existing structures and that the impugned structures can come up only behind the existing authorised structure. This led to certain difficulties in implementation. If the two existing authorised structures stand apart by several blocks/lots, would it cover the entire area. Therefore, the above clarification came to be issued on 8th September 1998 which clearly stipulates that an imaginary line should be drawn from the seaward side of the existing authorised structure on the adjoining plot. In other words, the adjoining plot need not be only behind the authorised structure. The adjoining plot can also be on Southern side of the authorised structure. This clarification further indicates that the imaginary line drawn between the two structures will not protect all the structures, but it will protect the adjoining plot to the authorised structures. In the present matter, Plot 148 is adjoining to the authorised structure on Plot(s) 149 and 150. In the present case, on facts, we also find that beyond Plot 148 on the Southern side, there is the sea. The imaginary line from the authorised structure which is shown in red runs, parallel to the High Tide Line. The impugned structure cannot cross the building line shown in red in the plan. In the facts and circumstances of the present case, therefore, we are of the view that the impugned proposed structure does not violate the CRZ Notification. In fact, the plan (Append ix-A) supports our interpretation. The matter can be looked at also from one more angle. Under the CRZ Notification of 1991, area which stood developed up to the shoreline have come under Category-II (CRZ-II). The expression "developed area" in the said category in the said notification of 1991 is defined to mean area within the Municipal limits or an area falling under a designed urban area which is substantially built up and which has been provided with drainage and approach road and other infrastructural facilities, such as water supply and sewerage mains. Relying on the definition of the word "developed area", the Madras High Court in the case of Ramnathan & others v. State of Tamil Nadu (supra) came to the conclusion that since the impugned structure in that case came within a developed area the CRZ Notification stood complied with although there was no building in existence between the impugned structure and the sea. The Madras High Court laid down that the CRZ norm cannot be tested with reference to each of the building(s) situated on the seashore and, therefore, once it is found that the area is a developed area and

there are buildings and roads in the said area which are nearer to the sea, then the impugned construction would fall on the landward side and, therefore, the norms prescribed in the Notification stand fully satisfied. The judgment of the Madras High Court was delivered prior to approval of Coastal Zone Management Plan. The said judgment was delivered prior to issuance of subsequent guidelines. It is for this reason that in the judgment of the Madras High Court, it has been specifically stated by the Division Bench that the State Government had not prepared and forwarded the Coastal Zone Management Plan for the State of Tamil Nadu and, therefore, the Madras High Court proposed to dispose of the writ petition without prejudice to the rights of the Central Government, if any, to take appropriate action within the power conferred by the Act, Rules and Notification. However, in our opinion, the test laid down by the Madras High Court with regard to the structure falling in a developed area under the CRZ Notification could be usefully applied in a restricted sense."

34. The aforesaid decision of the Division Bench of this Court is binding upon us. We find ourselves in respectful agreement with the principles enunciated in the aforesaid judgment. The first point urged in support of the writ petition must, therefore, be rejected, and it must be held that it is not necessary that to fall on the landward side the building to be constructed must be behind an authorised structure between the building sought to be constructed and the sea before permission can be granted to permit construction of such a building. We must also hold that an imaginary line may be drawn even if there is an authorised structure on the adjacent plot only on one side, and if the building constructed falls on the landward side of the imaginary line drawn in accordance with the clarification contained in the letter of the Government of India dated 8th September, 1998, it must be held that the buildings falls on the landward side of the existing authorised structure.

35. Apart from the contention that the building falls on the landward side of the imaginary line, it was further contended that there are two other reasons why it should be held that the CRZ Notification is not violated. Firstly, it was submitted that in the approved Coastal Zone Management Plan, there was a proposed Development Plan Road between the building in question and the sea, and, therefore, there could be no dispute that the building constructed is on the landward side of the proposed road in the sanctioned Development Plan. Secondly, it was submitted that the existence of a retaining wall between the building and the sea also justifies the sanction of the building plan. Under the CRZ Notification, in the area which falls under CRZ-II, building can be permitted on the landward side of an existing authorised structure. According to respondents No. 5 and 6, much prior to 1991, an authorised structure existed on the said plot, including retaining and boundary walls constructed on the seaward side of the plot. This structure would be "existing authorised structure" within the meaning of that terms in Clause 6(2) of the CRZ Notification. In this context, respondents No. 5 and 6 placed reliance on two reported decisions in the case of Bharat Petroleum Corpn. Ltd. and Another Vs. Municipal Corporation of Greater

Bombay and Another, and Md. Umar and another v. Fayazuddin & others, AIR 1924 Lah 172. It was held in Bharat Petroleum Corporation Limited that the expression "structure" is a generic term, and includes the expression "building". Every structure is not necessarily a building as building connotes occupation either by human beings or animal. As the definition of the expression "structure" is anything built or constructed, any piece of work artificially built up, can be a structure but not necessarily a building. In Md. Umar and anr., it was held that every building is a structure though every structure is not a building and the term "structure" can be applied to a wall, shed or any other unsubstantial erection for which the word "building" cannot be used.

36. Learned Counsel also relied on certain observations in The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd., . We do not think it necessary to consider this questions, as we have already held that the building has been erected in conformity with the CRZ Notification and the clarifications issued thereunder, as it lies on the landward side of the imaginary line drawn in accordance with the guidelines contained in the letter of the Government of India dated 8th September, 1998.

37. It was then submitted that respondents No. 5 and 6 were erecting a structure not by way of a re-construction but really a new building. It was submitted that, in any, event if it was re-construction, such a building could be erected only on the plinth of the building earlier constructed and, consequently, the plinth area of the re-constructed building could not be more than that of the old building which was demolished. Counsel for respondents No. 5 and 6 drew our attention to the CRZ Notification dated 19th February, 1991 and submitted that while in an area under CRZ-III, no construction is permitted, except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, such provisions are not to be found in respect of area covered under CRZ-II. As long as the FSI norm is not violated, a building can be permitted to be re-constructed without change in the existing use. Such cases are clearly covered by Clause (ii) under CRZ-II, which treats a re-construction as a distinct category from new construction covered by Clause (i). Clause (iii) may apply to both the categories. In any event, even if Clause (ii) is subject to the same restrictions as in Clause (i), there is no violation of the restrictions contained therein, as the building in questions has been constructed on the landward side of authorised constructions, and proposed road in the developed plans.

38. It has not been denied that an authorised structure existed on the plot in question, which had been constructed up to the 10th floor. This was done pursuant to a sanctioned plan and Commencement Certificate. The said structure had to be demolished on account of the original structure having weakened due to the delay. It is, therefore, apparent that respondents No. 5 and 6 were really re-constructing an authorised building. It cannot be denied that the old structure which is in the shape of 10 storied building was an authorised building, since it

had been constructed pursuant to sanctioned plan and Commencement Certificate. There is nothing in the CRZ notification of 19th February, 1991 requiring that the plinth area should be the same as that of the earlier building sought to be re-constructed. All that is required is that the re-construction should be permitted subject to the existing FSI or the FAR norms and without change in the existing use. It is nobody's case that there has been any change in the existing use. There is also nothing in the aforesaid notification to support the plea of the petitioners that the plinth area of the re-constructed building must be the same as that of the earlier building.

39. It was contended that there has been violation of FSI norms. We do not find any reliable material in support of the aforesaid submission. By way of amendment, the petitioners had sought to give certain particulars as to the area of the plot and the area of the proposed construction and they have even given their own calculation of the built-up area and the FSI consumed. It is not known from where those figures have been taken and the affidavit in support of the amendment only declares that the amendment portion is based on legal advice which the deponent believes to be true. Obviously, we cannot rely on the calculation given by the petitioners when we do not even know from where the particulars have been taken. On the other hand, the Bombay Municipal Corporation has furnished the necessary particulars in its affidavit-in-reply, from which, it appears that the FSI consumed is 1.325, as against permissible FSI of 1.33. We, therefore, reject the submission that the FSI norms have been violated.

40. It was then submitted that under Regulation 59(2) of the DC Regulations, the maximum height that could be permitted was 22 metres, whereas the building constructed had a sanctioned height of 42.9 metres. In reply, Counsel for respondents No. 5 and 6 submitted that the DC Regulations came into force with effect from 21st February, 1991. The CRZ Notification had been issued earlier on the 19th February, 1991. Under CRZ-II Category, it was clearly provided that the building should be permitted subject to the existing local Town and Country Planning Regulations, including the existing norms of FSI/FAR. So far as re-construction of authorised buildings are concerned, that was also to be permitted subject to the existing FSI or FAR norms and without change in the existing use. What is, therefore, emphasised is the fact that the local Town and Country Planning Regulations as well as FSI and FAR norms applicable to such structures were those that existed on 19th February, 1991. On that date, the DC Regulations had not come into force. Before the DC Regulations came into force, no restriction as to height was prescribed, though FSI norm had been laid. The DC Regulations which came into effect later could not have the effect of in any way modifying or amending the CRZ Notification dated 19th February, 1991. In fact, the DC Regulations were to aid the implementation of the CRZ Notification rather than to override or modify the same. It was, therefore, submitted that Regulations 59(2) of the DC Regulations was not applicable to the building in question.

41. Reliance has been place upon two Division Bench decision of this Court in Overseas Chinese Cuisine (India) Pvt. Ltd. and another Vs. The Municipal Corporation of Greater Bombay and others, and M/s. Buildarch & another v. The Union of India & others, Writ Petition No. 1019 of 1999 decided on 8th December, 1999. In Overseas Chinese Cuisine, it was urged that there was some doubt as to whether the CRZ Notification contemplated that buildings permitted on the landward side of the existing, authorised structures were required to be subject to the local Town and Country Planning Regulations and the norms of FSI and FAR as existed on the date of the notification i.e. 19th February, 1991 of as on the date on which the building permission was applied for and sanctioned. After considering the clarification given by the Ministry of Environment and Forests dated 8th September, 1998, it was observed that the Central Government was the authority to monitor the implementation of the Act. The Act was intended to put severe restrictions on untrammelled depredation of environmental resources. The CRZ notification intended to maintain the status quo as on the date of the notification in the areas falling within the CRZ. Upholding the contention urged on behalf of the respondents that the existing local Town and Country Planning laws and existing Floor Space Index norms contemplated by the concerned CRZ Notification itself were the ones in operation and current on the date on which the CRZ Notification itself came into force and not the ones in existence on any given date in future when applications may be made for development permission, it was observed as follows :--- "69. There appears to be great merit in the contentions of the respondents based on the CRZ Notifications. We too are inclined to think that the purpose of imposing severe restrictions as done in the CRZ notification would be rendered nugatory if these restrictions are capable of being abrogated or watered down by subsequent amendments made by the local authorities or local town planning laws. We cannot lose sight of the fact that this is a salutary piece of Central legislation intended for the benefit of the entire country. That it might cause hardship to some one in some corner of the country, can hardly be a ground for tilting against it. True, that by the time the Central Government set up and took notice and Parliament enacted this piece of legislation, considerable amount of development activity had already taken place all along the coastal areas, which are now technically defined as the Coastal Regulation Zones. It would have been eminently unjust to undo all that had already been done. Parliament, therefore, adopted what we may call as Doctrine of Toleration that development activity already carried out and in existence in accordance with laws and norms then existed, had to be tolerated. Simultaneously, the legislative policy is also reflected in what we may style as the "doctrine of containment", which means that even though what existed on the date of the notification is to be tolerated, it should not be permitted to grow beyond the dimensions up to which it was tolerated. When looked at from this point of view, particularly keeping in mind the responsibilities of the country towards the world community as a whole and to its future generations, it appears to us that the construction sought to be out on the CRZ Notification by the respondents is perfectly justified and would have to be upheld irrespective of the

clarification given by the letter dated 8th September 1998 by the Ministry of Environment and Forests. "70. In our view, the word "existing" as used in the concerned part of the notification, cannot be read differently at different places within the same part. We have already quoted the material part on restriction of development activity in CRZ-II. The word "existing" used in the material part of the Notification refers in several places to structure which were already physically existing on the date of the Notification and to roads existing already on the date of the notification. If the intention of the notification was to refer to and deal with local Town & Country Planning Regulation and FSI norms as on the date of the grant of permission for building activity, then it would have sufficed to say that the building permitted on the landward side of the existing and proposed roads/ existing authorised structures "shall be subject to the local Town and Country Planning Regulations including the norms of Floor Space Index/Floor Area Ratio". The use of participate "existing" to qualify "local Town and Country Planning Regulations" and "norms of Floor Space Index/Floor Area Ratio" is, in our view, not merely accidental. It serves an important purpose, namely, to highlight that irrespective of what local Town and Country Planning Regulations may provide for in future in any nook or corner of the country, and irrespective of how the norms of Floor Space Index/Floor Space Ratio might be revised at some future point of time, the building activity permitted under the notification in CRZ-II shall be frozen to the laws and norms existing on the date of the notification. This interpretation, in our view, is perfectly in consonance with the legislative intentions behind the Environment (Protection) Act, 1986."

42. In M/s. Buildarch & another a Division Bench of this Court considered the same question and relying upon the decision in Overseas Chinese Cuisine, negated the contention advanced therein. This question is, therefore, squarely answered against the petitioners by these two Division Bench decisions of this Court, which are binding upon us. We, accordingly, reject the submission urged on behalf of the petitioners regarding violation of height restriction as contained in Regulation 59 of the DC Regulations.

43. Having considered the various grounds of challenge urged before us, we find no merit in any one of them. We find that the construction on the plot in question lies on the landward side of the imaginary line drawn in accordance with the clarifications issued by the Central Government. We also find that there is no FSI violation, nor is there any violation of height restriction. The construction of the building is really in the nature of a re-construction and the same has been carried out in accordance with existing FSI norm. We have found no violation of the CRZ Notification dated 19th February, 1991 as understood in the light of the two clarifications issued by the Government of India on 27th March, 1998 and 8th September, 1998.

44. In the circumstances, the writ petition is dismissed as devoid of merit. Rule is discharged. There shall be no order as to costs.

45. Issuance of certified copy of this judgment is expedited.

46. After the judgment was pronounced, Counsel for the petitioners prayed for stay of the operation of the said judgment and order. We find no good reasons to grant stay. Prayer is, therefore, rejected.

Writ petition dismissed.