

(2019) 04 BOM CK 0124

In the Bombay High Court

Case No : Public Interest Litigation (L) No. 120 Of 2018

Zoru Darayus Bhathena

APPELLANT

Vs

Maharashtra State Road Development Corpn And Ors

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Environment (Protection) Act, 1986 — Section 3(1)(v)(2)
Environment (Protection) Rules, 1986 — Rule 5(3)

Citation : (2019) 04 BOM CK 0124

Hon'ble Judges : Pradeep Nandrajog, CJ;N.M. Jamdar, J

Bench : Division Bench

Advocate : Gayatri Singh, Kruti Venkatesh, Ronita Bhattacharya, Milind Sathe, Saket Mone, Subit Chakrabarti, Neha Joshi, Vishesh Kalra, Rui Rodrigues, N.R. Prajapati, Sharmila U. Deshmukh

Judgement

Pradeep Nandrajog, CJ

1. A sea-link which would serve as an extension of the existing Bandra Worli sea-link, extending the same from Bandra to Versova, having length of 9.6 km. has been approved to be constructed.

2. On 26 February 2019 the Maharashtra Coastal Zone Management Authority (MCZMA) accorded approval to establish a casting yard at Juhu Koliwada after the same had been accorded CRZ approval by the Ministry of Environment. Spread-over 5 Hectares on the beach, possession of 78,392.12 Sq. Mtr. was handed over by the District Collector to Maharashtra State Road Development Corporation. The Minutes of the meeting dated 26 February 2019 of MCZMA lists the activities permitted at the casting yard. The same are:

(i) Site office; (ii) Labour rest room; (iii) RMC Plant and QC lab; (iv) Reinforcement fabrication yard; (v) Epoxy coating area; (vi) Segment stacking yard; (vii) Temporary Jetty for feeding the material and segments; and (viii) Diesel dispensing tank.

3. The minutes record that the land is located in CRZ-I(i) and CRZ-(II), but subsequently, the same minutes record that activities permitted are restricted to CRZ-II area.

4. The writ petition, filed in public interest, questions the yard being established notwithstanding it being recorded in the permission as also the letter allotting the land to the respondent no.1 that the yard is a temporary yard.

5. Notwithstanding the prolix pleadings in the writ petition, at the hearing held on 22 and 23 April 2019, the scope was restricted to the CRZ-II areas as the permission is granted by the MCZMA on that basis.

6. The crux of the arguments of the learned Senior Counsel for the petitioner was that CRZ Notification dated 6 January 2011, as amended from time to time, lays emphasis on conservation and supervision of coastal stretches and restrictions, constructions, operations and processes in CRZ-II. Regulation 3 of the CRZ Regulation lists prohibited activities enumerated in clause (i) to clause (xiv) thereof. Clause (iv) prohibits land reclamation except when required for purposes set out in paragraphs (a) to (d) to clause (iv). Clause (xi) of Regulation 3 prohibits construction activities in CRZ-I except those specified in Regulation 8. The said Regulation stipulates norms for regulating permissible activities under Notification and qua CRZ-II permits building to be permitted only on the landward side of the existing roads or landward side of the existing structures. It was urged that the word 'building' must take colour from the word 'to construct'.

7. The response was that paragraph (iv) of Regulation 3 permits land reclamation except for purposes as per the paragraphs (a) to (d) thereof and paragraph (a) permits reclamation required for setting up sea-links and for other facilities that are essential for activities permissible under the Notification. It was urged by the respondents that the word 'building' in the Notification, not being defined, must be given its natural meaning i.e. cement brick structures permanently erected to be used for storage purposes or dwelling units.

8. In light of the rival contentions we proceed our journey by extracting the relevant portions of the CRZ Notification -2011 as amended from time to time.

9. The preamble to the Notification, inter alia, reads as under:

"Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, does hereby, declare the coastal stretches of the country and the water area upto its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the

marine areas surrounding these islands upto its territorial limit, as Coastal Regulation Zone (hereinafter referred to as the CRZ) and restricts the setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances as specified in the Hazardous Substances (Handling, Management and Transboundary Movement) Rules, 2009 in the aforesaid CRZ.; and

In exercise of powers also conferred by clause (d) and sub rule (3) of rule 5 of Environment (Protection) Act, 1986 and in supersession of the notification of the Government of India in the Ministry of Environment and Forests, number S.O. 114(E), dated the 19th February, 1991 except as respects things done or omitted to be done before such supersession, the Central Government hereby declares the following areas as CRZ and imposes with effect from the date of the notification the following restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ,-

10. Regulation 3 prohibits activities within CRZ, relevant portion whereof reads as under:

"3. Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ,-

(i) Setting up of new industries and expansion of existing industries except,-

(a) those directly related to waterfront or directly needing foreshore facilities;

Explanation: The expression "foreshore facilities" means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations and the like;

(b) projects of Department of Atomic Energy;

(c) facilities for generating power by non-conventional energy sources and setting up of desalination plants in the areas not classified as CRZ-I(i) based on an impact assessment study including social impacts;

(d) development of green field Airport already permitted only at Navi Mumbai;

(e) reconstruction, repair works of dwelling units of local communities including fishers in accordance with local town and country planning regulations.

(ii)

(iii)

(iv) Land reclamation, bunding or disturbing the natural course of seawater except those, -

(a) required for setting up, construction or modernisation or expansion of

foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, [roads on reclaimed surface] and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;

[provided that such roads shall not be taken as authorised for permitting development on landward side of such roads till existing High Tide Line.

Provided further that the use of reclaimed land may be permitted for roads, mass rapid or multimodal transit system, construction and installation, on landward side of such roads, of all necessary associated public utilities and infrastructure to operate such transit or transport system including those for electrical or electronic signal system, transit stopover of permitted designs; except for any industrial operation, repair and maintenance.]

(b) measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies

(c) maintenance or clearing of waterways, channels and ports, based on EIA studies;

(d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF.

(v)

(vi)

(vii)

(viii)

(ix)

(x)

(xi)

(xii) Construction activities in CRZ-I except those specified in para 8 of this notification.

11. Regulation 7 classifies CRZ into 4 categories being CRZ-I to IV and relevant portion of Regulation 7 reads as under:

"7. Classification of the CRZ-- for the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

(i) CRZ-I,-

A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-

- (a) Mangroves, in case mangrove area is more than 1000 sq. mts. a buffer of 50 meters along the mangroves shall be provided;
- (b) Corals and coral reefs and associated biodiversity;
- (c) Sand Dunes;
- (d) Mudflats which are biologically active;
- (e) National parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life (Protection) Act, 1972 (53 of 1972), the Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986); including Biosphere Reserves;
- (f) Salt Marshes;
- (g) Turtle nesting grounds;
- (h) Horse shoe crabs habitats;
- (i) Sea grass beds;
- (j) Nesting grounds of birds;
- (k) Areas or structures of archaeological importance and heritage sites.

B. The area between Low Tide Line and High Tide Line;

(ii) CRZ-II,

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

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

12. Regulation 8 pertaining to norms for regulation activities permissible under the Notification, relevant for our journey, reads as under:

8. Norms for regulation of activities permissible under this notification,-

II. CRZ-II,-

(i) buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;

(ii) buildings permitted on the landward side of the existing and proposed roads or existing authorized structures shall be subject to the existing local town and country planning regulations including the 'existing' norms of Floor Space Index or Floor Area,Ratio: Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road;

[buildings permitted on the landward side of the existing and proposed roads or existing authorized structures shall be subject to the existing local town and country planning regulations as modified from time to time, except the Floor Space Index or Floor Area Ratio, which shall be as per 1991 level:

Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road:

Provided further that the construction in CRZ-II area of Goa, Kerala and Mumbai shall be governed by the provisions of Clause V of paragraph 8.]

(iii) reconstruction of authorized building to be permitted subject with the existing Floor Space Index or Floor Area Ratio Norms and without change in present use;

(iv) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas subject to the conditions as mentioned in sub-paragraph (ii) of paragraph 3;

(v) desalination plants and associated facilities;

(vi) storage of non-hazardous cargo, such as edible oil, fertilizers and food grains in notified ports;

(vii) facilities for generating power by non-conventional power sources and associated facilities;

13. The phrases to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, in the preamble in the CRZ Notification 2011 guides us that while interpreting the various clauses of the Regulation a balance has to be struck between conservation and protection of coastal stretches and constructions. The phrase restricts the setting up and expansion of any industry, operations or processes also guides that the Notification restricts not only construction of building but even operations or process in the lands comprised in the 4 zones of the Notification.

14. As argued by both sides, Regulation 3 stipulates prohibited activities in all the 4 zones of CRZ and vide clause (i) of Regulation 3 prohibits setting up of new industries and expansion of existing industries except those specified in paragraphs (a) to (d). Clause (iv) of Regulation 3 prohibits land reclamation, bunding or disturbing the natural course of sea water except for the situation contemplated by paragraphs (a) to (d) thereof. Vide Regulation 8, land reclamation and bunding would be permitted for constructing sea-links and for other facilities that are essential for activities relatable thereto. Clause (xii) of Regulation 3 prohibits construction activities in CRZ-I except those specified in

Clause 8 of the Notification. Regulation 7 of the Notification lists area that have been developed upto or close to the shoreline as falling within CRZ- II. Regulation 8 lists the norms for regulation of permissible activities under the Notification concerning CRZ-II and permits buildings only on the landward side of the existing road, or on the landward side of existing authorized structures.

15. Meaning thereby, permissible activities relatable to buildings in CRZ-II has to be only towards the landward side of the existing road and landward side of the existing authorized structures. Thus at the heart of the debate lies: What meaning has to be ascribed to the word 'to build' or the word 'buildings'.

16. In civil engineering, construction grading means ensuring a level base. It requires land leveling. Land leveling is the process of modifying the surface relief by smoothening it. It is the process of flattening or modifying existing / natural slopes or undulations thus creating a level surface. This process requires movement of earth from higher elevations to lower elevations.

17. The construction of a casting yard consists of various major activities and the same would be:

- 1) Area clearing and grubbing
- 2) Soil stabilization and ground improvement
- 3) Fencing and Barricading with entry and exit gates
- 4) Construction of Approach road to Casting yard
- 5) Sheet pile installation
- 6) Excavation, Backfilling and Compaction
- 7) Plain Cement Concrete (PCC) works
- 8) Internal road works and Drains
- 9) Fixing of pavement blocks
- 10) Shuttering and concreting works for Gantry track foundations
- 11) Shuttering and concreting works for Casting moulds foundations
- 12) Shuttering and concreting works for Survey towers
- 13) Shuttering and concreting works for segment stacking foundations
- 14) Fabrication, Assembly, Erection and commissioning of Overhead Gantries, Segment casting moulds
- 15) Fabrication and Installation of Rebar jigs
- 16) Supply, Installation and commissioning of RMC Batching plant
- 17) Supply, Installation and commissioning of weigh bridge

18) Construction of various Casting yard facilities i.e. Offices and other Pre-Engineered Buildings

19) Execution of Mobile STP, RO Plant, Chiller Plant, Elevated PVC water tanks, Curing tanks etc.

20) Supply, Installation and commissioning of Tower crane.

18. The facilities of a casting yard would be 26 in number and the same are :

1) EHS Office

2) QA/QC Lab

3) RMC Batching plant

4) Survey Towers and Watch Towers

5) Overhead Gantry Crane

6) Tower Crane

7) Steel Yard

8) Cement Godown

9) Weigh Bridges

10) Stores

11) RO Plant

12) Elevated and Underground Water Tanks

13) Chiller Plant

14) P & M Workshop

15) Electrical Sub-Station

16) Rebar cage fixing Area

17) Segment Casting area

18) Segment Stacking area

19) Fabrication Shop

20) Material storage Area

21) Sewage Treatment Plant

22) Diesel Dispensing Unit

23) RMS Plant

24) Internal Road and Drains

25) Toilet blocks

26) Security Cabin

19. The major materials to be used for a construction for a casting yard are 9 in numbers and same are:

1) Cement

2) Aggregates

3) Sand

4) Admixtures

5) Reinforcement Steel

6) Structural Steel

7) Diesel

8) High Tensile Bars

9) Other construction materials

20. The production of deck segments is the main function of Casting Yard and stages involved in segment casting are:

1) Preparation of Rebar cage in Rebar jig area

2) Setting of Soffit form and side forms

3) Setting of fixed bulkhead panel

4) Setting of Match-cast segment

5) Shifting and lowering of rebar cage in casting mould

6) Closing of Outer form panels

7) Positioning of inner form and closing of Inner form panels

8) Concreting and curing

21. The petitioner has filed photographs of the preliminary activities commenced at the site of the casting yard and the same are at pages 95 to 98 of the paper-book. The photographs show earth movers operating to complete the preliminary activity of earth-work and ground preparation. The photographs evince soil filling and at the hearing, it was informed that the soil filling would be upto 1 meter depth; soil layers would be compacted. On top of it, properly compacted layer of boulders will be provided and then PCC would be done to have a level surface. The activities permitted by MCZMA, as noted above, authorize establishment of reinforcement and thus obviously permit earthwork and ground preparation by carrying out the operations as noted above.

22. The end result of the operations would be to construct a structure akin to a platform.

23. Of the 20 activities, which we have noted above, comprising the activities to develop a casting yard, area closing and grubbing followed by soil stabilization and ground improvement are embraced. The casting of slabs would obviously require a hard ground surface and we see no escape from the common sense conclusion that the nature of the activities are akin to a building activity and the word 'building' must be given a wider meaning to give effect to the purpose of the Regulations.

24. Notwithstanding it being stated that the yard would be a temporary yard, but the foot prints left by the yard after the machinery brought to site is removed and temporary structures are removed on completion of the work, would be of a permanent and lasting nature adversely impacting the coastal stretch in question.

25. It is well settled that words and phrases in a Legislation, which would include a legislative policy, must be given a meaning to further the object of the Legislation.

26. The site plan of the area shows that the land allotted for the temporary yard is on the seaward side of the sandy beach. If we draw a line perpendicular to the yard, we fail to see a road or a building towards the seaward side of the imaginary line. Meaning thereby the Regulation of building activity in CRZ-II, which permits building activities only on the landward side of the existing road or landward side of the existing authorised structures, is blatantly violated.

27. Whilst it may be true that Regulation 8 permits building in CRZ-II but the same is only on the landward side of the existing road or landward side of the existing structure. It may also be true that clause (iv) of the Regulation 3 permits land reclamation and bunding for constructing sea-links and for facilities that are essential to the permissible activities, but that would not mean that pertaining to a sea-link, under the garb of ancillary activities land reclamation is permitted and that too on an area admeasuring 78,392.12 sq. mtrs.

28. The Public Interest Petition succeeds. The permission accorded to establish the casting yard is declared to be illegal. The permission granted by MCZMA on 26 February 2019 is quashed.

29. No costs.