

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

WRIT PETITION (L) NO. 560 OF 2019

1. Worli Koliwada Nakhwa  
Matsya Vyavasay Sahkari Society Ltd.  
Through its member,  
Vijay Kishore Patil  
Having its office at 503,  
Nakhwa Mandir, Worli Koliwada,  
Mumbai 400 030.
  
2. Worli Machimmar Sarvodaya  
Sahakari Society, Through its  
Secretary, Royal Dominic Patil  
House No. 30, At Post Worli  
Koliwada, Mumbai 400 025. .. Petitioners

Vs.

1. Municipal Corporation of Greater  
Mumbai, Head Office, Mahapalika  
Marg, Opp. C. S.T. Station,  
Mumbai 400 001.
  
2. Commissioner of Fisheries  
Taraporewala Aquarium,  
Netaji Subhash Road,  
Mumbai 400 001.
  
3. Assistant Commissioner of Fisheries  
Office of the Asst. Commissioner

of Fisheries, 7<sup>th</sup> Floor, Admn.  
Building, Govt. Colony, Bandra (E),  
Mumbai – 400 051.

4. State of Maharashtra through the  
Department of Fisheries,  
Ground Floor, Sir S. R. Marg,  
JN Heredia Road, Ballard Estate,  
Fort, Mumbai 400 001.
5. Union of India  
Through the Secretary, Ministry of  
Environment, Forest and Climate  
Change, Indira Paryavaran Bhawan,  
Aliganj, Jor Bagh Road,  
New Delhi 110 003
6. Maharashtra Coastal Zone Management  
Authority, Through its Member Secretary,  
Environment Department, Room No.217,  
New Admn. Building, Mantralaya,  
Mumbai 400 032.
7. Worli Police Station,  
Through Station House Officer,  
Ganapatrao Kadam Marg,  
BDD Chawls, Worli Naka, Worli,  
Mumbai – 400 018.
8. Mumbai Coastal Police,  
Building No. 9,  
Kisharmand Colony,  
Sagri, Back Side of Reheja Hospital,  
Mahim, Mumbai 400 016.
9. Central Marine Fisheries Research  
Institute, Through its Mumbai

Research Centre, 2<sup>nd</sup> floor, Old  
C.I.F.E. Campus, Fisheries University  
Road, Seven Bungalows,  
Versova, Mumbai 400 061.

.. Respondents

**WITH  
PUBLIC INTEREST LITIGATION (L) NO. 39 OF 2019**

1. Vanashakti, a Public Trust registered under the Bombay Public Trusts Act, 1950 having its office at Nandakumar Pawar House, Opp. Shri Jagannath Darshan Building, M. D. Kini Marg, Bhandup Village (East), Mumbai 400 042.

2. Stalin Dayanand, aged 54 years, Indian Inhabitant, Director of Vanashakti, having its office at Nandakumar Pawar House, Opp. Shri Jagannath Darshan Building, M. D. Kini Marg, Bhandup Village (E), Mumbai 400 042.

.. Petitioners

Vs.

1. National Board for Wildlife  
Through the Chairperson, Having  
its office at Indira Paryavaran Bhavan,  
Jorbhagh Road, New Delhi 110 003.

2. Maharashtra State Wildlife Board  
Office of the Principal Chief Conservator  
of Forests (Wildlife),  
M. S. Nagpur, 3<sup>rd</sup> Floor, Van Bhavan  
Ram Giri Road, Civil Lines,  
Nagpur 440 001.

3. Maharashtra State Biodiversity Board  
Telangkhedi Road, Kadimbaug,  
Seminary Hills, Nagpur,  
Maharashtra 440 001
  4. National Biodiversity Authority  
5<sup>th</sup> Floor, TICEL Bio Park,  
CSIR Road, Taramani, Chennai  
Tamil Nadu – 600 113.
  5. State of Maharashtra, Environment  
Department, Room No. 217, New  
Administrative Building,  
Mantralaya, Mumbai 400 032.
  6. Union of India, Ministry of Environment  
Forests and Climate Change,  
Paryavaran Bhavan, Jorbagh Road,  
New Delhi 110 003.
  7. Municipal Corporation of Greater Mumbai  
through the Municipal Commissioner,  
having its office at Mahapalika Marg,  
Opp. CST, Mumbai 400 001.
  8. Maharashtra Coastal Zone Management  
Authority, through Member Secretary  
Environment Dept., Room No.217,  
New Admn. Building, Mantralaya,  
Mumbai 400 032.
  9. Wildlife Institute of India  
Through its Chairman, And having  
its office at Wildlife Institute Road,  
Chandrabani, Dehradun,  
Uttarakhand 248 002.
- ..Respondents

WITH  
PUBLIC INTEREST LITIGATION (L) NO. 44 OF 2019

1. Shweta Wagh  
Age 41 years, Occ: Architect  
361 A, Laxmi Sadan, V. P. Road,  
Mumbai 400 004.
2. Collective for Spatial Alternatives  
Having its office at 201, C-Wing,  
Baba Sadan Co-op. Society,  
Ratan Nagar, Four Bungalows,  
Andheri (W), Mumbai 400 066
3. Girija Gupte  
A/4 Navasamaj, Nehru Road,  
Vile Parle (E), Mumbai – 400 057.
4. Pushpa Suresh Mangela  
320, Juhu Mora Gaon, Mangela  
Wadi, JR Mahatre Road, Ruia Park,  
Juhu, Mumbai 400 049.
5. Rajashree Prakash Bhanji  
Pitruchaya Building, Dongri Galli  
Near Vetel Mandir, Versova  
Koliwada, Andheri West,  
Mumbai 400 061.
6. Jalbiradari  
Through Janak Daftary  
Having its office at 402 Arundoaya  
Azad Nagar II off Veera Desai Road,  
Andheri West Lane opp. Krishna Mandir

7. Surekha Harichandra Jawli  
Jawli House, Patil Gally – 2  
Versova, Andheri West,  
Mumbai 400 061.
8. Dr. Aruna Pendse  
Occupation: Professor  
196, Brahman Sabha Building No.2  
Raja Rammohan Roy Road, Girgaon  
Mumbai 400 004.
9. Kirtida Unwala  
Address 14/14, Panthaki Baug,  
Off Andheri Kurla Road,  
Andheri East, Mumbai 400 069. ..Petitioners

Vs.

1. Municipal Corporation of Greater Mumbai  
Through Commissioner,  
Having its office at  
Head Office, Mahapalika Marg,  
Opp. C.S.T. Station, Mumbai 400 001.
2. Maharashtra Coastal Zone Management  
Authority, through Chairman  
Environment Dept., 2<sup>nd</sup> Floor,  
Room No.217, Annexe Building,  
Mantralaya, Mumbai 400 032.
3. State of Maharashtra  
Through Secretary  
Environment Department  
New Administrative Bhavan  
15<sup>th</sup> Floor, Madam Cama Road,  
Mantralaya, Mumbai 400 032.

4. State of Maharashtra  
Through Secretary  
Urban Development Department  
4<sup>th</sup> Floor, Main Building,  
Mantralaya, Mumbai 400 032.
5. State of Maharashtra  
Through Secretary,  
The Department of Fisheries,  
Ground Floor, Sir S. R. Marg,  
J. N. Heredia Road, Ballard Estate,  
Fort, Mumbai 400 001.
6. State of Maharashtra  
Through Secretary  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032.
7. Collector of Mumbai  
Mumbai House Collectorate  
Old Custom House, Fort,  
Mumbai 400 001.
8. Union of India  
Through the Secretary  
Ministry of Environment, Forest and  
Climate Change, Indira Paryavaran  
Bhawan, Aliganj, Jor Bagh Road,  
New Delhi 110 003. ..Respondents

**WITH  
PUBLIC INTEREST LITIGATION (L) NO. 40 OF 2019**

1. The Conservation Action Trust  
5, Sahakar Bhavan, LBS Road,  
Narayan Nagar, Ghatkopar (W),  
Mumbai 400 086.

2. Mr. Debi Goenka  
B 502, Glengate, Hiranandani Gardens,  
Mumbai 400 076.
3. Bombay Environmental Action Group  
80, 2<sup>nd</sup> Floor, Empire Building,  
D. N. Road, Mumbai 400 001. ..Petitioners

Vs.

1. Union of India,  
Through the Secretary, Ministry of  
Environment, Forests & Climate  
Change, Indira Paryavaran Bhavan,  
Aliganj, Jor Bagh Road,  
New Delhi 110 003.
2. State of Maharashtra  
Through the Secretary,  
Environment and Forests  
Department.
3. Maharashtra Coastal Zone Management  
Authority, Environment Dept.  
Room No. 217 (Annex), Mantralaya,  
Mumbai 400 032.
4. Municipal Corporation of Greater  
Mumbai, Head Quarter,  
Mumbai C.S.T.-400 001. ..Respondents

WITH  
PUBLIC INTEREST LITIGATION (L) NO. 36 OF 2019

1. Society for Improvement, Greenery,  
And Nature, an NGO registered under  
the Bombay Public Trust Act, 1950  
Through its Secretary Mr. Nilesh Baxi  
Having its official address at  
801/2A, Yash Apartments, 3/343 Wadia  
Street, Tardeo, Mumbai 400 034. .. Petitioner

Vs.

1. Municipal Corporation of Greater  
Mumbai, Through its Commissioner  
Head Office, Mahapalika Marg,  
Opp. C.S.T. Station, Mumbai 400 001
2. Chief Engineer (Coastal Road)  
Municipal Corporation of Greater  
Mumbai, Engineering Hub Building,  
Dr. E. Moses Road, Worli,  
Mumbai 400 018.
3. The State of Maharashtra  
Through the Environment Department,  
Room No. 217, New Administrative  
Building, Mantralaya,  
Mumbai 400 032.
4. Union of India  
Through the Secretary, Ministry of  
Environment, Forest and Climate  
Change, Indira Paryavaran Bhawan,  
Aliganj, Jor Bagh Road,  
New Delhi 110 003.

5. Maharashtra Coastal Zone Management Authority, Environment Department, Room No. 217, New Admn. Building, Mantralaya, Mumbai 400 032.
6. The Urban Development Department State of Maharashtra, Through its Principal Secretary, 4<sup>th</sup> Floor, New Administrative Building, Mantralaya, Mumbai 400 032. ..Respondents

**WITH  
PUBLIC INTEREST LITIGATION NO. 25 OF 2019**

Prakash Laxman Chanderkar  
Age 73 yrs. Resident of India living  
at Block # 4, Ashirwad, Dr. Annie  
Besant, Worli, Mumbai 400 030. .. Petitioner

Vs.

1. Municipal Corporation of Greater Bombay Head Office:  
Mahapalika Marg, Opp. CST  
Station Mumbai 400001.
2. Commissioner of Fisheries  
Taraporewala Aquarium  
Netaji Subhash Bose  
Mumbai 400 001
3. Assistant Commissioner of Fisheries, Office of the Assistant Commissioner of Fisheries,  
7<sup>th</sup> Floor, Adm. Building,  
Government Colony, Bandra East  
Mumbai 400 051.

4. State of Maharashtra through  
Department of Fisheries  
Ground Floor, Sir S. R. Marg,  
J. N. Herdilia Road,  
Ballard Estate, Fort,  
Mumbai 400 001.
5. Union of India  
Through the Secretary  
Ministry of Environment, Forest and  
Climate Change  
Indira Paryavaran Bhavan, Aliganj  
Jor Bagh Road, New Delhi 110 003.
6. Maharashtra Coastal Zone Management  
Authority, Through its Member  
Secretary, Environment Department  
Room No. 217, New Administrative  
Building, Mantralaya,  
Mumbai 400 032. .. Respondents

Ms. Gayatri Singh, Senior Advocate i/b Meenaz Kakalia for Petitioner  
in WPL No.560/2019

Mr. Janak Dwarkadas, Senior Advocate & Ms. Gayatri Singh, Senior  
Advocate a/w Ms. Rishika Harish i/by Ankit Kulkarni & Meenaz  
Kakalia for Petitioner in PIL(L) No. 36/2019.

Mr. Zaman Ali I/b Kruthi Venkatesh for Petitioner in PIL(L)  
No.39/2019

Mr. Janak Dwarkadas, Senior Advocate with Mr. Navroz Seervai,  
Senior Advocate a/w Mr. Pheroze Mehta, Ms. Rishika Harish, Mr.  
Rhishikesh Bidkar & Ms. Suchita Uppal i/b Hariani & Co. for  
Petitioner in PIL(L) No. 40/2019

Mr. Janak Dwarkadas, Senior Advocate & Ms. Gayatri Singh, Senior Advocate A/w Mr. Shubham Kaushal & Ms. Aditi Saxena i/b Kranti L.C. for the Petitioner in PIL(L) No.44/2019

Mr. Prakash Laxman Chanderkar, Petitioner-in-person in PIL NO.25/2019

Mr. Anil Singh. Additional Solicitor General a/w Mr.Aditya Thakker, Mr. Y.R. Mishra, Ms. Apurva Gupte & Ms. Carina Xavier i/b Pravartak S.Pathak, for Respondent -Union of India, Resp. No.5 in WP(L) No.560/2019, Resp.No.4 in PIL(L) No.36/2019, Resp. No.6 in PIL(L) No.39/2019, Resp. No.1 in PIL(L) No.40/2019 & Resp. No.8 in PIL(L) No.44/2019

Mr. Milind Sathe, Special Counsel a/w Ms. Geeta Shastri-Additional Government Pleader, for State, Resp. No.2,3,4,7 & 8 in WP(L) No.560/2019, Resp. No.3 & 6 in PIL(L) No.36/2019 & Resp. No.3 to 7 in PIL(L) No.44/2019 & Resp. No.2 to 5 in PIL No.25/2019

Ms. Geeta Shastri, Additional Government Pleader for State in PIL(L) No.39/2019 & PIL(L) No.40/2019

Mr. D.J. Khambata, Senior Advocate, Mr. S.G. Aney, Senior Advocate And Mr. A.Y. Sakhare, Senior Advocate a/w Ms. Aruna K. Savla, Mr. H.C. Pimple, Ms. K.H. Mastakar, Mr. Advait M. Sethna, Mr. Rohan Mirpurey, Mr. Bhushan Deshmukh, Ms. Shweta Sangtani, Ms. Ruju R. Thakker, Mr. Aaditya Mehta & Mr. Tushar Hathiramani for MCGM

Ms. Sharmila Deshmukh a/w Ms. Jaya Bagwe for Resp. No.6 in WP(L) No.560/2019, Resp. No.5 in PIL(L) No.36/2019, Resp. No.8 in PIL(L) No.39/2019, Resp. No.3 in PIL(L) No.40/2019 & Resp. No. 2 in PIL(L) No.44/2019

Mr. Pravin Samdani, Senior Advocate A/w Dr. Birendra Saraf, Ms. Jyoti Sinha & Mr. Haabil Vahanvaty i/b Khaitan & Co. for Larsen & Toubro Limited in PIL(L) No.44/2019

Dr. Birendra Saraf a/w Ms. Jyoti Sinha & Mr. Haabil Vahanvaty I/b Khaitan & Co. for Larsen & Toubro Limited in WP(L) No.560/2019, PIL(L) No.36/2019, PIL(L) No.39/2019, PIL(L) No.40/2019.

Mr. Kaustav Talukdar a/w. Mr. Vikias Kumar and Mr. Raturaj Bankar i/b Lex Legal & Partners for HCC-HDL

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**CORAM: PRADEEP NANDRAJOG, CJ. &  
N. M. JAMDAR, J.**

**RESERVED ON : JULY 01, 2019.**

**PRONOUNCED ON : JULY 16, 2019.**

**JUDGMENT [ PER PRADEEP NANDRAJOG, CJ. ] :**

1. The Metropolitan City of Mumbai lies on the Western Coast of India by the bank of the Arabian Sea. Mumbai is made from the group of seven islands and is thus referred to as the Island city. These islands are Isle of Bombay, Mazgaon, Colaba, Old Woman's Island, Parel, Worli, and Salsette Island. The Eastern Coast of Salsette Island has rows of mangroves, whereas the Western Coast happens to be sandy and stony. Due to proximity to the sea, the soil cover of this region is sandy to a large extent. The underlying rocks of this area are made up of Black Deccan Basalt pours. The island city of Mumbai is

divided into two distinct regions; the city and the suburbs. The suburbs have alluvial soil type. The major creeks found in Mumbai coast are Manori, Malad and Mahim which protrudes in the mainland and give rise to mudflats and swamps. The area is drained by Mahim, Mithi, Dahisar and Polsar rivers. These small rivers near the coast, form small rivulets which intermingle with each other resulting in swamps and mudflats in the low lying areas. It took over 150 years to join the original seven islands of Mumbai. These seven islands were lush green thickly wooded, and dotted with 22 hills, with the Arabian Sea washing through them at high tide. The first island of Mumbai was only 24 km long and 4 km wide from Dongri to Malabar Hill (at its broadest point), and the other six were Colaba, Old Woman's Island, Mahim, Parel, Worli, Mazgaon. After the British arrived, the demand for land steadily increased, and by 1730; it was becoming impossible to accommodate the entire population of Mumbai inside the Fort. The sea was making inroads at Worli, Mahim and Mahalaxmi, which turned the ground between the islands into a swamp, making travel between Mumbai islands hazardous. The first major reclamation took place in 1708, to construct the causeway between Mahim and Sion. The

second major reclamation took place in 1772, to stop the ingress of water and the consequent flooding of central Mumbai, and to connect Mahalaxmi and Worli. This causeway was named Hornby Vellard, sealing the Great Breach (Breach Candy) between Dongri, Malabar hill and Worli. At the fortified Dongri hill, an esplanade and parade ground was cleared, from the walls of the Fort to the present-day Crawford market. The flatlands from Mahalaxmi to Kamathipura were reclaimed only after the completion of construction of Breach Candy by Hornby in 1784. In 1803, Mumbai was connected to Salsette by a causeway from Sion. The Thane and Colaba causeway was built during the tenure of Sir Robert Grant, the Governor of Mumbai. He was also responsible for the construction of several roads between Mumbai and the hinterland. The Colaba Causeway was completed in 1838 joining Colaba, Old Woman's island and the H-shaped island of Mumbai together. Land prices shot up, and Colaba became the centre of commerce. The Causeway was widened and strengthened from 1861 to 1863 (Cusrow Baug is built on the causeway). The horse-drawn tramcars revolutionised transport in Colaba. The Prongs Lighthouse was constructed off the island in 1875, and in the same year, the

Sassoon Docks were built by David Sassoon on reclaimed land. The BB & CI (Bombay and Central India) Railways established a terminus at Colaba. Around 90,000 sq. yard of land was reclaimed on the Western shore of Colaba by the City Improvement Trust; the work was completed in 1905. A seaside promenade (Cuffe Parade) was completed the next year. The next reclamation took place in the year 1836 when the development of the Mumbai port had already begun. Major quarrying had already begun in 1870. The hills of Chinchpokli and Byculla were quarried and dumped into the sea, to fill the land near the railway line, the swamps and also the port to prevent the accumulation of stagnant water. The first railway line was laid in 1855 from Bori Bunder to Thane. By 1862 the town became widespread, and the constructions that took place began to give rise to the modern city of Mumbai. This became a regular feature in the succeeding years. The Fort walls were demolished, and the tanks up to Parel were filled. From 1870 to 1970, industrial and commercial development prospered, which increased the spate of reclamation that ended with the famous Backbay reclamation. The first Backbay Reclamation Company (BRC) was formed in the 1960s with the express purpose to reclaim the

whole of Backbay. With the end of the American Civil War in 1865, land prices fell. The government took over the narrow strip of land created by the BRC and gave it to the BB & CI Railways (Bombay Baroda and Central India) to construct a new line between Churchgate and Colaba. A proposal was made in 1917 to reclaim 607 hectares of land between Colaba and Backbay. The project was taken over by the Development Directorate who planned to reclaim 463 hectares and relocated the Colaba terminus, which was moved to Bombay Central. The work continued till 1945. Eventually, 177 hectares was developed by 1929 of which 94 hectares was sold to the military, and 6 hectares was incorporated into the Marine Drive and its sea wall. The Independence did not end the reclamation work, but a third Backbay Reclamation was put into effect and yielded the acreage on which stand the high rise buildings of Nariman Point and Cuffe Parade. East of the Naval Dockyards some land was reclaimed, and work was done to the North too. Coastal Regulation Zone (CRZ) was promulgated in 1990, banning reclamation for commercial activities.

2. As the city grew, the population increased. Apart from housing, vehicular traffic increased. By the Resolution No ENV-2011/

CR-55/TC3 dated 30 June 2011 of the State Government, a Joint Technical Committee (JTC) was set up to consider whether coastal roads in Mumbai were a possible solution to solve traffic congestion. An eleven Member Committee comprising (i) Mr. Subodh Kumar, Municipal Commissioner, MCGM (Chairman), (ii) Mr. B. Shrimali, Managing Director, MSRDC (Member), (iii) Dr. Nalini Bhat, Advisor, Ministry of Env. & Forest, Government of India (Member), (iv) Dr. S. R. Shetye, Director, National Institute of Oceanography (Member), (v) Dr. Tarun Kant, Professor of Civil Engineering, IIT, Powai (Member), (vi) Mr. Chandrashekhar Prabhu, Architect/Urban Planner (Member), (vii) Mr. Rajiv Mishra, Architect, Principal, Sir J.J. College of Architecture (Member), (viii) Mr. Hafeez Contractor, Architect (Member), (ix) Mr. P. K. Das, Architect, (Member), (x) Mr. P. R. K. Murthy, Chief, Transport Division, MMRDA (Member) and (xi) Mr. Sharad M. Sabnis, Chief Engineer, MMRDA (Member-Secretary) was set up.

3. The JTC submitted its report on 29 December 2011. Divided into seven chapters, the JTC set out the background to consider the need for a ring road/coastal freeway for Mumbai. The

background captured by the JTC highlights that the current population of the city was 12.4 million. The city is narrow and had a long North-South axis. The city comprised area of 68.71 Sq. Km. The area comprising Greater Mumbai was 437.71 Sq. Km. and the area comprising Mumbai Metropolitan Region was 4135 Sq. Km. That historically, the characteristic of traffic patterns was Southbound flow in the morning and Northbound flow in the evening. The background captures traffic-related solution issues. It is noted that Motor Vehicles contribution 75% Nitrogen Oxide, 83% Benzene, 77 % particulate matter, 53% volatile organic compounds, 29% Carbon dioxide and 97% Carbon monoxide. It notes that the total number of vehicles registered in Mumbai in the year 2004 was 12,33,675 which rose in the year 2011 to 19,17,798; evidencing an average addition of vehicles per year to be 96000. A further fact noted is that vehicular speed on almost on the roads in the city has reached to as low as a level at 8 km per hour (against the efficient speed of 90 km per hour). Long term ill effect on the health of the residents of Mumbai, noted in a tabular form by the JTC, records that over seven years, the figures would be as under:

	Percentage of People suffering	
	Year 2004	Year 2011
Cough	13.3	41.3
Bronchitis	21.4	31.1
Eye Irritation	14.1	38.4
Observed SPM Levels	381 p gm/cum	642 p gm/cum

4. With reference to the aforementioned factual data the background note highlights that a coastal freeway would not only facilitate high travel speeds on the road but also take away traffic from the internal roads thereby enhancing vehicular movement at high speed which in turn would reduce pollution. The background note thereafter proceeds to highlight whether a coastal road could be constructed within the existing framework of laws. It noted that the current Legislation prohibited reclamation of land for constructing a coastal road and that at a meeting held on 15 April 2001 with the Hon'ble Minister, Ministry of Environment and Forest, Government of India the issue of permitting reclamation of land to construct a coastal road was discussed. The JTC noted that the current Legislation permitted

construction of a coastal road on stilts. The JTC recorded that it would, therefore, consider the cost aspect of a coastal road built on stilt vis-a-vis a coastal road after reclaiming the land. The JTC thereafter highlighted the terms of reference to the JTC, being: (i) to examine the various options in the construction of a coastal road including road on stilt or sea link in Mumbai, (ii) to evaluate options on the basis of technical feasibility and environmental impact and impact on the neighbourhoods, (iii) to recommend the best option which provides improved mobility, enhances environment and leads to sustainable development of open spaces/greenery.

5. Pertaining to the need of a coastal freeway for the city of Mumbai, the Committee reviewed the past studies being: (A) Traffic and Transportation Study by M/s Wilbur Smith Association (1962), (B) Planning for Road Systems for MMR by the Central Road Research Institute (CRR) (1983), (C) Comprehensive Transport Strategy Study by M/s. W.S. Atkins (1992), (D) Comprehensive Transport Strategy Study (CTS) by M/s Lea Associates (2009) and (E) Concept Plan for Mumbai for the horizon year 2052 (Study in Progress).

6. With reference to the past studies, the JTC highlighted that the data spanning 15 years between the year 1991 till the year 2005 revealed that the population grew by 43%. Suburban Train Daily trips grew by 35%. Daily Bus Trips grew by 9%. Registered cars grew by 137%. Registered two-wheelers grew by 306%, and registered auto-rickshaws grew by 420%. Registered taxis grew by 125%, and registered commercial vehicles grew by 200%. The JTC further highlighted that the share of people using public transport, which was 84% in 1991 declined to 78% by 2005. Highlighting therefrom the fact that notwithstanding the share of public transport in Mumbai is already very high, city roads were badly congested, it noted that the Mumbai suburban rail network had crossed its peak intake and could no longer bear the burden to transport by rail more people. The JTC concluded that in said background and context, new roads were the urgent need of the city to meet public transportation. The JTC thereafter focused on the reclamation options and brought out that in the Netherlands, South Korea, Hong Kong, Japan and Singapore reclamation had yielded 7000 Sq. Km., 1500 Sq. Km., 86 Sq. Km., 249 Sq. Km. and 135 Sq. Km. land respectively. The JTC recorded its

opinion that coastal freeway, based on reclamation, would provide speedy connectivity between various parts of the city but also facilitate creating of green spaces and waterfronts. Residential or commercial usage could be barred.

7. Focusing next on the costing aspects of the coastal freeway, the JTC noted that if the coastal road was constructed on the stilts, the same would need to incorporate elaborate disaster mitigation measures and the cost would be ₹ 378 Crore per km which would increase to ₹ 600 Crore per km considering the interchanges, which on account of long distance from the city roads till the coastal road, would need more money. If built on reclaimed land, the cost per km would be between ₹ 60-70 Crore, and with interchanges, it would be ₹ 100 Crore per km.

8. Having analysed the need for a coastal road and the project cost if built on stilts or on reclaimed land, the JTC focused on the environmental aspect. The discussion in the report on environment commenced by recording that key inputs on the environmental aspects were provided by the Director, the National Institute of Oceanography

(CSIR/NIO) who was a Member of the Committee. Director, in turn, sought advice from a team formed at CSIR/NIO comprising experts in Marine Biology, Geophysics, Coastal Regulations, Ocean Engineering and Physical Oceanography. The JTC highlighted that this was to examine the oceanographic aspects of the impact of the proposed coastal road. On the environmental aspect the JTC recorded that all the key issues were discussed by it concerning reclamation for a coastal road; the most important pertaining to the possible impact of reclamation on the *tidal circulation* around the city: whether the land reclaimed for the coastal road would change tides in the coastal area of the city leading to adverse impact such as a coastal erosion. The JTC recorded that the key issue referred to the CSIR-NIO team was whether the proposed reclamation for the coastal road would cause any adverse effects on the tides or erosion of the coastline. With reference to the study by CSIR-NIO team, it is highlighted by the JTC that the team noted that the average width of reclamation proposed was about 100 meter. This will mean moving the coastline further offshore by a distance of 100 meters at many locations. Even at the few isolated locations, where gentle curves would be proposed to the coastal road to

avoid sharp kinks in the coastline, this would only smoothen the coastline and that no change in the characteristic of the boundary between the coastline and the sea was expected. The shore protection measures (viz. tetrapods, retaining walls, etc.) that were proposed to be used were the same as those that are used at present. These seem to be working well. The isolated locations where the road would be provided with a gentle curve at some sharp kinks in the coastline would only help improve the erosion protection. The JTC further noted that the team also noted that the spatial scales of variability associated with tidal circulation on the west coast of India are large in comparison to the expected perturbation length scale of 100 meters. The width of the shelf off Mumbai is about 200 km. The JTC noted that the CSIR-NIO team recorded an opinion that it did not expect any change in the present behaviour of tides due to moving of the coastline perpendicular to the present coastline by a distance of 100 meter. Such a move, in essence, would shift the present boundary offshore by 100 meters, parallel to the present boundary, leaving everything else, including the structure of the present coastline interface unchanged. The opinion of the team was that such a move would not have any impact on the tides

and tidal circulation around Mumbai. In view of said findings by the CSIR/NIO team, the JTC recorded its opinion that the environmental impact on the tides or erosion of the coastline was minimal. However, the JTC highlighted the requirement of further studies, and to quote:

*“The matter of further environmental and other studies and the investigations that were needed towards obtainment for the CRZ clearance were also discussed. It was observed that the CRZ clearance would normally require a pre-feasibility report/traffic studies related technical studies including EIA indicating the likely impacts and mitigation measures. The Committee is of the view that such studies should be entrusted only to the consultants accredited by the Quality Council of India (QCI). As regards impact on mangroves, since mangrove areas are now declared as reserved forests in Maharashtra, any construction work impacting mangroves would necessitate compensatory, mangrove plantation. The detailed project preparation studies should be accordingly taken up to incorporate these aspects”.*

9. Under caption **Policy Intervention And Implementation Strategy**, the JTC highlighted eight steps to be undertaken towards the implementation of the project, being:

1. *Amendment in the CRZ Notification,*
2. *Detailed Project Report involving surveys, Investigations and preparation of detailed drawings,*
3. *Environmental Impact Studies,*
4. *CRZ Clearance,*

- 5. Preparation of detailed plans and estimates,*
- 6. Bid Processes,*
- 7. Actual Implementation,*
- 8. Maintenance and Upkeep.*

10. The records relied upon during arguments in the writ petitions did not contain the finding of the team at CSIR-NIO and apparently some interim reports by CSIR-NIO were considered by the JTC. A report submitted by CSIR-NIO dated January 2016 was handed over to us during arguments by Shri Darius J. Khambata, learned Senior Counsel for MCGM and obviously, this report could not be considered by the JTC when it gave its report on 29 December 2011. We shall note the relevant facts, opinion and recommendations in the report of January – 2016 when we reach said date in our narratives because we think it advisable to record the events as they unfolded at seriatim.

11. The coastal road proposed to be constructed by MCGM starts from Prince Street Flyover which is about 1 km from Tambe Chowk on Marine Drive and moves Northward through a tunnel beneath Malabar Hill and Nepeansea Road. The tunnel opens at the seashore near Priyadarshani Park from where reclamation commences till the Worli-Bandra sea link is reached at Worli. From the Bandra side of the

sea-link (which already exists) the road proceeds further North towards Versova. This layout of the road appears to have been taken note of by the JTC.

12. Since the proposed project impacted the coastline, the Maharashtra Coastal Zone Management Authority (MCZMA) also considered the proposal. At the 82<sup>nd</sup> Meeting of MCZMA under the chairmanship of the Secretary (Environment) held on 12 June 2013, the Minutes of the Meeting drawn up, highlight that the function of the Authority included protection and conservation of coastal stretch as also identifying the ecologically sensitive area and formulate the necessary management plan for the coast. Pertaining to coastal roads, MCZMA noted that the CRZ -2001 published by MoEF permitted road on stilts in CRZ-1 areas with there being a total prohibition to reclaim land for coastal roads. MCZMA noted that a coastal road based on reclamation having an average width of about 100 metres is a cost-effective option as compared to other options and also helps generate significant open spaces which could be used as gardens, promenade, cycle tracks etc. MCZMA further noted that the proposed coastal road required reclamation of 160 hectares on which a coastal road having a

length of 36 Km. would be constructed. MCZMA decided to recommend the proposal to MoEF to amend the CRZ -2011. Relevant would it be to highlight that the minutes simply refer to the necessity of a coastal road and cost-effectiveness of a coastal road built on reclaimed land and opines that this was in the larger public interest. There is no reference in the minutes to adverse impact on the environment and especially the geomorphological features of the coastline.

13. MCZMA met again on 23 January 2015. This was the 97<sup>th</sup> Meeting of MCZMA. On the proposed coastal road project, MCZMA recommended an amendment to clause (a) of subparagraph (iv) of paragraph 3 and insertion of paragraph (g) in sub-clause (1) of paragraph 4 of CRZ-2011 as under:

*(a) required for setting up, construction or modernisation or expansion of foreshore facilities like port, harbours, jetties wharves, quays, slipways, bridges, sealink, road on stilts, coastal roads by way of reclamation in sea and in mangroves without the benefit of future commercial or real estate development on the landward side, keeping the existing HTL demarcated in approved CZMP same in its effect and taking it as a reference for appraisal of all other projects from CRZ point of view, as if there was no coastal road and such as meant for defence and security purpose and*

*for other facilities that are essential for activities permissible under the notification.*

XXX

*(g) construction of coastal road by way of reclamation in sea and mangroves area in exceptional cases to be decided by concerned CZMA.*

14. On 4 February 2015, MCZMA wrote a letter to MoEF enclosing therewith minutes of its 97<sup>th</sup> meeting.

15. On 25 June 2015, MoEF issued a draft Notification in light of the amendment to CRZ-2011 proposed by MCZMA. The draft Notification reads as under:

*In the notification of the Government of India in the erstwhile Ministry of Environment and Forests, dated the 6<sup>th</sup> January, 2011 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. 19(E) dated the 6<sup>th</sup> January, 2011-*

*(A) In paragraph 3, in sub-paragraph (iv), for item (a), the following item shall be substituted, namely:-*

*“(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilt, road on reclaimed surface without affecting tidal flow or water, 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 road for permitting development on landward side of such roads till existing High Tide Line.”*

*(B) In paragraph 4, in sub-paragraph (i), after item (f), the following item shall be inserted, namely:-*

*(g) construction of road by way of reclamation in Coastal Regulation Zone area shall be only in exceptional cases, to be recommended by the concerned Coastal Zone Management Authority and approved by the Ministry of Environment, Forest and Climate Change; and in case the construction of such road is passing through mangroves or likely to damage the mangroves, three times the number of mangroves destroyed or cut during the construction process shall be replanted.*

16. On the same day, i.e. 25 June 2015, MCGM issued a public advertisement inviting objections from the public at large to the proposed coastal road project and uploaded the detailed project report on its website. It received 3375 representations from citizens and NGOs. 1663 supported the coastal road and 1712 raised objections to the project. On a date not emerging from the pleadings or the record of the writ petitions, even MoEF uploaded the draft notification on its website inviting representations. MCGM also put up on its website a

draft project report and received representations for and against the proposed coastal road and concerning the representations against appointed Frischmann Prabhu to conduct a peer review of the draft project report keeping in view the objections filed against the proposed coastal road.

17. Now, any reclamation of land along a seashore is bound to affect tidal flow. The proposed draft notification issued by MoEF on 25 June 2015, while permitting road on the reclaimed surface, hedged the reclamation to be without affecting the tidal flow of water. This being on impossibility and the proposed amendment would have been useless if ultimately reflected in the amendment carried out, on 26 August 2015 MCGM wrote a letter to MoEF to remove without affecting tidal flow. While promulgating the final notification, on 30<sup>th</sup> December 2015, MoEF amended paragraph 3(iv) and paragraph 4(i) of CRZ-2011 as under:

*(a) In paragraph 3, in sub-paragraph (iv) for item (a), the following item shall be substituted, namely :-*

*“(a) required for setting up, construction or modernisation nor expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, road 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 multi-modal 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) In paragraph 4, in sub-paragraph (i), after item (f), the following item shall be inserted, namely:-*

*(g) construction of road by way of reclamation in CRZ area shall be only in exceptional cases, to be recommended by the concerned Coastal Zone Management Authority and approved by the Ministry of Environment, Forest and Climate Change: and in case the construction of such road is passing through mangroves or likely to damage the mangroves, three times the number of mangroves destroyed or cut during the construction process shall be replanted.*

*(c) in the said notification, after Annexure-IV, Form-I, the following shall be inserted, namely:--*

***Explanation :-*** For the purpose of the notification, the word “existing” used in the said notification shall mean

*existence of the features or regularization or norms as on 19<sup>th</sup> February, 1991 wherein CRZ notification, was notified.*

18. The month of January 2016 arrived. In said month CSIR-NIO submitted a report: January 2016, recording therein that measurements of waves, tides and currents at Mahim were carried out by it during 21 November 2014 to 12 December 2014 and at Colaba between 25 November 2014 to 17 December 2015; which was a small-time segment and thus, local hydrodynamic changes need to be observed for a longer period. However, relevant would it be to note that CSIR-NIO report records a very important fact. The coastline being zig-zag, the team recorded in its report that the model simulations for the case of reclamation for the proposed coastal road facility showed increased water levels, increased flow speeds, and consequent increased bed level changes in the project region. However, the water flow was smooth along the coastline stretches, where the proposed reclamation had a smooth transition with the existing coastline. It was therefore recommended that reclamations should be done only with a smooth transition and not in a zig-zag alignment. It is also recommended that the overall project of the

coastal road should be planned and executed with minimum interference to the existing environment.

19. It not being clear, as to on what date in January 2016 CSIR-NIO report was submitted, the next event which needs to be noted is that on 11 January 2016 MCGM made an application to MCZMA seeking approval to construct a coastal road.

20. On 16 January 2016, at its 111<sup>th</sup> meeting, MCZMA noted that the proposal was to construct a road having 36 km length along the Western Coastal stretch of Mumbai. Recording that MCGM had submitted the EIA/EMP report prepared by M/s. STUP and Consultants Pvt. Ltd., recorded under noted sixteen observations:

1. *MCGM may consider option of Tram service instead of BRTS. Tram service is more eco-friendly and will provide boost to ecotourism in the area. Further, tram service should be on seaward side of the part of the proposed road.*
2. *It is observed that cycle track is not provided for entire stretch of the road. MCGM to provide dedicated cycle track with entry and exit provision at all the interchanges. MCGM to also provide cycle parking areas at appropriate locations. Further, MCGM to provide sitting/resting benches of appropriate intervals.*

3. *It is observed that there are few interchanges proposed on mangroves. MCGM to ensure that there is no reclamation on mangroves area at any of the interchange as well as other mangroves areas. MCGM to provide elevated/stilt road of appropriate height at the interchange. Further, Malvani patch 4 should also be on the stilt instead of mangroves.*
4. *Mangroves play important role in flood mitigation as well as protection from the coastal Hazards. Therefore, mangroves along the coastal road should be converted into mangroves parks. Efforts should also be done to increase the water flow in the mangroves areas to have more density by way of fish bone like channels, Adequate nos. of watch towers/sitting arrangement may be provided fronting the mangrove areas.*
5. *It is observed that detailed flood management analysis should be undertaken.*
6. *MCGM to explore providing solar streetlights or hybrid system along the coastal road.*
7. *MCGM to provide the real time monitoring for air quality and water quality at appropriate locations in consultation with expert institute.*
8. *MCGM to submit the socio-economic studies indicating benefits due to the proposed project.*
9. *It is observed that Coastal road will have impact on nearby habitats of traditional coastal communities and their livelihood. Therefore, MCGM to ensure that habitats and livelihood of these communities are not affected during construction and operation of the project. MCGM to ensure that navigational channels are not blocked at koliwada areas. Further, suggestions at NIO should be taken for construction near the IRLA Nalla.*
10. *It is observed that protection wall is proposed for*

*the protection of the landward structure. MCGM to explore the possibility of combination of engineered structures and green structures for protection of the coast, facing the coastal road.*

11. *System for monitoring environmental issues as should be set comprising national and international experts for day to day monitoring. Monitoring protocol and SOPs for environmental issues should be developed.*
  12. *Expert monitoring committee comprising reputed scientific institutes, MoEF, State Environment Dept, MPCB coordinated by the Chief Engineer, MCGM for construction & operation phase. MCGM may explore possibility of setting up dedicated monitoring cell.*
  13. *MCGM to submit the traffic analysis report indicating level of service as on today of existing road in periphery of 2 Km around the project site. Traffic study should also indicate air and noise pollution impacts due to proposed activities and measures to reduce the impacts as per the recommendations of the studies.*
  14. *MCGM to submit the Environmental Cost Benefit analysis of the proposed project.*
  15. *MCGM to formulate project specific disaster management plan and standard operating procedures for the plan during construction and operation phase of the project.*
  16. *MCGM to submit studies relating to impact of proposed road on existing storm water drainage pattern and measures to mitigate the impacts.*
21. On 13 April 2016 MCGM obtained a drainage report and traffic

report from STUP and Consultants Pvt. Ltd. and Ernst& Young Pvt. Ltd. On 29 April 2016, it obtained a peer review report from Frischmann Prabhu.

22. Treating as if MCZMA had cleared the coastal road project, the matter reached MoEF. On 22<sup>nd</sup> July 2016, MoEF returned the same. The deficiencies in the proposal received by MoEF were listed as under:

- (i) *MCZMA has not appraised the proposal comprehensively namely, the MCGM has been advised to consider option of Tram services instead BRTS, to consult NIO for construction near IRNLA Nalla as the coastal road is likely to have impact on nearby habitats of traditional coast communities, to explore possibility of combination of engineered structures and green structures for protection of the coast facing coastal road, to formulate project specific disaster management plan and SOP for the plan during construction and operation phase etc. Pending the said examination, MCZMA should have not forwarded the project to the Ministry.*
- (ii) *As per the CRZ Notification, 2011 the MCZMA is required to forward the following documents along with their recommendations:*
  - (a) *Form-1 (Annexure-IV of the notification) ;*
  - (b) *EIA Report including marine and terrestrial component with cumulative studies for projects.*
  - (c) *Disaster Management Report/Risk Assessment*

*Report and Management Plan;*

- (d) *CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) in 1:4000 scale;*
- (e) *Project layout superimposed on the above map;*
- (f) *No Objection Certificate from the concerned State Pollution Control Boards or Union Territory Pollution Control Committees for discharge of effluents, solid wastes, sewage and the like; and*
- (g) *The CRZ map normally covering 7 km radius around the project site;*
- (h) *The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas.*

*These documents have not been received from MCZMA till date.*

- (iii) *It is evident from the specific conditions prescribed by MCZMA for the project that proponent has not yet prepared the Disaster Management Plan, SOPs for construction and operation phase, and likely impacts on habitats if traditional coast communities near to the projects have not been analysed thoroughly. The MCZMA has also suggested exploring the alternative options.*
- (iv) *Further, the development of coastal road by the way of reclamation is permitted only in exceptional cases. There is no mention of the circumstances under which the Government has proposed to undertake this project.*

*In view of the above stated facts, the Ministry hereby return the proposal to MCZMA with a request to appraise it comprehensively as per the*

*provision of the CRZ Notification, 2011 and taking into considerations the conditions stipulated by MCZMA including mangrove conservatism plan, step to be taken for protection of local communities like to be affected. Shoreline changes due to construction of protection wall, etc.*

23. As noted above, considering the report dated 29 December 2011 submitted by the JTC which, as noted above, recorded that further issues on possible adverse impact of environment needed to be analyzed and as further noted above, the MCGM had entrusted the task to STUP and Consultants Pvt. Ltd. and Ernst & Young Pvt. Ltd. (Consultants) on 23 February 2014, the Consultants submitted the environmental impact assessment report in the month of August 2016.

24. The report of the Consultants reinforces the opinion formed by the CSIR-NIO team which submitted its report in January 2016 that a coastal road on reclaimed land, if constructed hugging the existing shoreline, would have many curves and such road would have more adverse impact on a tidal currents vis-a-vis a road away from the shoreline but sans the curves. On the issues of impact on marine ecology, it opined that during the construction phase and especially

when a cut and covered tunnel, proposed at two places, the impact would be:

*(i) Secondary effects will be formation of sediment plumes, which may affect fish or benthos because of the smothering and clogging effect of highly turbid waters on the gills of bivalves or fish, inability to detect predators and the limiting of the photosynthetic process in plants.*

*(ii) The suspension of fine sediments in the water column will create turbidity, which may scatter and attenuate light levels and potentially affect the growth of plants indirectly by reducing the availability of light and consequently the photosynthetic process in plants.*

*(iii) Accidental fuel spillages and overfilling of excavated material can also affect the Marine ecosystems.*

*(iv) The PH of water may increase causing imbalance in the ecosystem and also the activities will cause nutrient imbalance and algal bloom in the nearby shore areas.*

*(v) The water quality will decrease and may also cause increase in temperature thereby reducing the oxygen dissolving capacity.*

*(vi) Sedimentation will be very high due to continuous drilling of the ocean bedrocks.*

*(vii) The living habitats and micro habitats of the marine flora and fauna will be destroyed.*

*(viii) The above impacts will directly impact on fisheries due to the mortality and migration of fishes from the area under construction.*

*(ix) The food webs of the area under construction will be greatly affected thereby causing imbalance in the tropic layer.*

*(x) Immediate and long-term degradation of sensitive and essential breeding and nursery habitats for coastal and marine organisms (e.g. dunes, beaches, estuaries,) which could lead to long-term reductions of commercially important species (fish, shellfish etc.)*

25. Since the bridges were proposed at nine places in the project having a length of 8.2 km, the Consultants opined that the impact during the construction phases would be as under:

*(i) The immediate and long-term effect will be the degradation of sensitive and essential breeding and nursery habitats for coastal and marine organisms which could lead to long-term reductions of commercially important species (fish, shellfish etc.)*

*(ii) Destruction and damage to sensitive coastal vegetation*

*(iii) Interruption of dynamic coastal ecosystem processes (dune migration)*

*(iv) Visual impacts*

*(v) Degradation from increased human traffic and resultant pollution in coastal areas*

*(vi) Increased pollution can also lead to eutrophication (dead zones in water due to lack of oxygen) and harmful algal bloom events in coastal waters*

*(vii) Increased traffic congestion and resultant air/noise and water pollution and Pollution from vessels (oil, litter, chemicals, cargo if vessels are grounded)*

**Reclamation:** *A total length of 12.06 km will be reclaimed in the project. Reclamation may have indirect effects to the Environment and Ecology. Some of them is illustrated below:*

*(i) It may cause increase in the concentration of suspended solids and reduce light penetration thereby affecting photosynthesis of marine vegetation.*

*(ii) It may cause decrease in dissolve oxygen levels and may result in mortality of organisms.*

*(iii) It may cause nutrient imbalance and result in algal blooms.*

*(iv) During construction there will be increase in trampling on Rocky shores which will directly affect the inter tidal organisms.*

*(v) Excavation and Extraction of Inter tidal organisms may take place during constructional activities.*

26. On 17 September 2016 MCGM issued a work order to CSIR-NIO, calling upon it to- (i) undertake extreme air analysis studies to establish the extreme wave rides at select points along proposed coastal road; (ii) provide storm and associated extreme water levels, information on probable Tsunami heights considering earlier events at

along the proposed coastal road; (iii) modal hydrodynamic and morphology changes along the proposed coastal road.

27. On 11 October 2016 MCGM obtained further reports from the Consultants being: (i) Bus Rapid Transport System and Construction Methodology Report; (ii) Material Investigation Report; (iii) Topographic Study; (iv) Geotechnical Investigation Report; (v) Economic and Financial Analysis Report; (vi) Tunnel Safety Report; (vii) Resettlement Action Plan; (viii) Reclamation and Urban Design Report; (ix) Alignment Design and Special Design Report; (x) Bridge Design and Tunnel Report.

28. On 18 October 2016 MCGM submitted a fresh application to MCZMA for clearance of the coastal road limited to a part of the coastal road project by stating that the erstwhile proposed coastal road project was separated by the existing Bandra-Worli sea-link, thus, it would be a case of two projects; informing that the earlier application dated 11 January 2016 was withdrawn, the proposal was limited to the stretch of the coastal road from marine drive moving northwards till the Worli-Bandra sea-link at Worli. Along with the application following

12 were enclosed:

- 1 *Checklist for Submission of Application for prior CRZ Clearance Under CRZ Notification 2011, Part A & Part B*
- 2 *Form I (Annexure-IV of the notification)*
- 3 *Comprehensive EIA report (Volume-VIII)*
- 4 *CRZ maps in 1:4000 scale with Project layout superimposed*
- 5 *Risk Assessment & Disaster Management Plan with SOP's*
- 6 *Main Report (Volume-I)*
- 7 *Drainage Report (Volume-VI)*
- 8 *Traffic Report (Volume-IV)*
- 9 *Social Impact Assessment Report (Volume-IX)*
- 10 *Work order of NIO with Proposal*
- 11 *Compliance to observations and Conditions mentioned in Minutes of 111<sup>th</sup> Meeting of Maharashtra Coastal Zone Management Authority held on 16<sup>th</sup> January 2016.*
- 12 *Compliance to MoEF letter No: F.No.19-74/2016-IA,III dated 22<sup>nd</sup> July 2016*

29. Form No.1 for clearance of a project attracting CRZ prescribed by CRZ -2011 was filled up and enclosed and relevant would it be to note that the exceptional case projected was to overcome air pollution and traffic congestion considering the economic feasibility of reclamation. It was indicated that the project activity applied for was a

highway (7f).

30. At its 114<sup>th</sup> meeting held on 2<sup>nd</sup> and 3<sup>rd</sup>, November 2016 MCZMA considered the revised proposal and noted that the coastal road was now divided into two parts; Part A (South side) and Part B (North side). It was noted that the southern side was from Princess flyover to Worli sea-link end and Part B was from Bandra end of sea-link to Kandivali Junction link road. Sections of Part A noted were: (i) Princess flyover to Priyadarshani Park; (ii) Priyadarshani Park to Mahalaxmi; (iii) Mahalaxmi to Baroda Palace. The approximate length noted of Part-A was 9.98 km proposed to be constructed as a combination of land reclamation, landfilled Roads, Bridges into Sea, Tunnel and Elevated Roads. Four interchanges, one of which, was at Amarson Garden, was noted. It was further noted that the project would be CRZ-IB, II, III and IV-A. Total land reclaimed would be 90 hectares, out of which about 20 hectares would be actually utilized for the road and the rest would be for parks, cycle lanes, jogger tracks, bus parking etc.

31. In December 2016, MCGM obtained a Section 4-D

Environmental Impact Assessment and Reclamation Report from Frischmann Prabhu.

32. Taking forward its decision at the 114<sup>th</sup> meeting held on 2<sup>nd</sup> and 3<sup>rd</sup> November 2016, on 4<sup>th</sup> January 2017 MCZMA wrote to MoEF that it was recommended for environment clearance of the Southern part of the coastal road. MoEF queried from MCGM as to how it had recommended the project as a highway under Item 7f. On 22 February 2017 MCGM corrected its application by submitting a fresh application (the same is not on record in any petition).

33. The Expert Appraisal Committee (EAC) of MoEF at its 168<sup>th</sup> meeting held on 17 March 2017 recorded its satisfaction that the project could be cleared from the environment point of view pertaining to the viewpoint projected by NGOs, EAC noted the response of the project proponent, i.e. MCGM in a tabular form as under:

<i>Sr. No.</i>	<i>Comments/Objections</i>	<i>Remarks</i>
<i>1</i>	<i>In the EIA Report (uploaded on the</i>	<i>In the Joint Technical Committee Report the starting</i>

	<p><i>MoEF &amp; CC web site) dated August 2016 the proposed coastal road length is shown as 29.20 km, whereas in the Joint Technical Committee Report dated December 2011, the length is shown as 35.60 km. This change should be clarified by the project proponent.</i></p>	<p><i>point of the Coastal Road is taken from Jagannath Bhosale Marg, Nariman Point-, whereas in the final alignment the starting point is taken from Princess Street Flyover-,Also in the stretch between Khardanda to Varsova -, In the JTC Report the Tunnel is proposed below the Juhu Airport whereas in the preferred alignment a straight Tunnel is proposed. Due to the above, the final length is reduced from 35.60 km to 29.20 km.</i></p>
2	<p><i>The construction of the road is divided in to 2 parts (South Section) from Princess Flyover to Worli Sea Link and (North Section) from Bandra Sea Link to Kandivli Junction, The current proposal is for the South Section. The proposed project should be considered in entirety rather than on a piecemeal basis.</i></p>	<p><i>This is a policy matter not in purview of MCGM</i></p>
3	<p><i>The proposed coastal road will involve a large scale of reclamation in the sea along the coastline,</i></p>	<p><i>The reclamation is necessary for the Bus stop for BRTS Buses proposed as a public transport and for construction of FOB and under passes for passengers.</i></p>

	<p><i>land filled roads, tunnels, the road on stilts, Bridges in Sea and Interchanges.</i></p>	<p><i>It is also required as a parking of BRTS Buses. Also part portion is required for construction of ramp at entry point of tunnel at priyadarshani park as well as for 4 lane traffic Interchange landings. Also it is required for the ancillary services such as 24 x 7 surveillance, Air pollution control unit, Traffic chowky and electric substation, etc.</i></p>
<p>4</p>	<p><i>Whilst the proposed road is apparently aimed to reduce the traffic congestion of the Mumbai City-, we would like to point out that a whopping sum of ₹ 12,000 crore is proposed to be spent on a project that will be utilized by a tiny percentage, perhaps 1% - 2% of Mumbai's car owning population (since two-wheelers will not be allowed to use this road). Even this minuscule percentage of Mumbai's population will be hesitant to use this bridge if a toll is levied on this bridge.</i></p>	<p><i>BRTS is proposed in dedicated lane. All the details of are provided in DPR. The current cost of the project is about ₹ 5303 Cr. for southern part only.</i></p>

5	<p><i>Apart from this the proposed coastal road will destroy the natural features of our coast line, especially the mangroves, the mud flats, the rocky and sandy beaches, etc. It will also alter the course of existing rivers and creek.</i></p>	<p><i>This Tunnel will safeguard one of the beaches and there are no mangroves in Southern part.</i></p>
6	<p><i>The proposed project will also lead to alteration of Low Tide Line and High Tide Line. The project is illegal as per the CRZ Notification, 2011. However, the MoEF &amp; CC issued an amendment vide Notification No. S.O. 1741 (E) dated 25<sup>th</sup> June, 2015 to accommodate the coastal road project in Mumbai. This amendment in the notification for coastal road will not only destroy the overall coastal ecosystem but will also fail the complete objective behind the CRZ Notification, 2011.</i></p>	<p><i>NIO has carried out study through MTSU and MCGM will abide by their findings and recommendations.</i></p>

7	<i>The tunnels to be constructed for the road will alter the existing geomorphology and cause disturbance to and destruction to the existing open spaces.</i>	<i>The issues are dealt in DPR.</i>
8	<i>The fill material required for reclamation will lead to destruction of our hills and forests. Transportation of the fill material will lead to traffic jams and road deaths.</i>	<i>Fill materials required for the reclamation will be used from the muck of proposed work of tunnel. The additional quantities if required can be borrowed from quarries approved by competent Authority.</i>
9	<i>The proposed project will lead to increase flooding of the city and suburbs during the monsoons. It will alter the existing geomorphology and the hydrological pattern which would cause grave repercussions in the form of erosion, inundations of water logging. The Bandra Worli Sea Link is a glaring example of erosion caused to the Mahim and Shivaji Park beaches.</i>	<i>MTSU has carried out study through NIO and the same is submitted to MoEF &amp; CC.</i>

10	<p><i>The Joint Technical Committee was constituted vide Government Resolution dated 30<sup>th</sup> June 2011 to examine various options towards the construction of coastal road. In their report dated December 2011 at page no.29 in context to Coastal Projection / Beaches it states, “The coastal erosion protection measure at the end of the sea side promenade could be in the form of hard protection measures (e.g. tetrapods/sea walls etc.). The possibility of providing beaches through soil protection measures (e.g. geotubes etc.) at appropriate locations can also be considered.’ Further EAI report at page no.169 provides the details of the sea walls structures which can applicable for the proposed project. The</i></p>	<p><i>There are no mangroves in southern portion. Construction of sea wall will protect the erosion.</i></p>
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	<p><i>committee and the consultant overlook the fact that sea wall if constructed will accelerate the erosion of the adjoining areas. The sea wall may also block the tidal flow to the mangroves present along the coastal stretch.</i></p>	
11	<p><i>The destruction along the west coast of Mumbai will rob the city of its natural protection against cyclones and tsunamis and will make the city flood prone.</i></p>	<p><i>Construction of sea wall will protect from storm surge.</i></p>
12	<p><i>CRZ notification for aforesaid requires 5 times the number of mangroves that are being destroyed to be planted by the project proponent. In the case of this proposed road, only three times the number of mangroves being destroyed will be planted (as stated in the amendment dated 25<sup>th</sup> June 2015 of CRZ Notification, 2011). In any case</i></p>	<p><i>There are no mangroves in south portion.</i></p>

	<p><i>transplantation of mangroves will not help replace the invaluable ecosystem that exists along our coast. There is no space available within Mumbai to transplant five times the number of mangroves to compensate for the mangroves that will be destroyed.</i></p>	
13	<p><i>The EIA report on page no.180 state as Mitigation measure for Mangroves, To compensate for loss of Mangroves, mangrove species such as Avicennia marina, Savdora persica, Acanthus illicifolius etc. shall be established on either side of the road to be constructed.’ This clearly shows that the consultant does not know that Salvadora persica and Acanthus illicifolius are not mangroves but are mangrove associates.</i></p>	<p><i>Not applicable as there are no mangroves in south portion.</i></p>
14	<p><i>The EIA report on page no. 174, The</i></p>	<p><i>Not applicable as there are no mangroves in south portion.</i></p>

	<p><i>road constructed will equate to direct loss and removal of 321 number of mangroves vegetation association within 33.37 ha of affected mangrove area.’ The indirect loss of mangroves have not been considered at all.</i></p>	
15	<p><i>Livelihood of fishermen and fishing communities will be threatened due to this project. It will impact the koli wadas, the fish drying areas, the boat parking areas impacting the fishermen economically and socially. Rehabilitation and Resettlement of the fishermen communities has been ignored in the project plan.</i></p>	<p><i>MCGM has already obtained Fisheries NOC for the proposed coastal road. In south portion at Lotus Jetty Navigational bridge is proposed for smooth movement of boats of fisherman. There is no issue of Rehabilitation and Resettlement of the fishermen communities in south portion.</i></p>
16	<p><i>The coastal road will be passing from the front of Bandra fort. Bandra fort is one of the important historical and archaeological place in Mumbai. Once the</i></p>	<p><i>The proposed road is only for south portion and not passing in front of Bandra Fort. The proposed road will provide access to the religious places like Mahalaxmi Temple and Haji Ali Darga and will not cut off the historic site from the sea.</i></p>

	<p><i>coastal road is constructed the unhindered view of sea will be replaced by a view of the freeway. It will also be passing from the front of religious places like Mahalaxmi temple, Haji Ali bay. Reclamation around Mahalaxmi temple will cut off the historic site from the sea. Though it is stated that the project will not destroy the Girgaon Chowpati, it will disturb--, destroy and deteriorate the other historical and archaeological sites of Mumbai .</i></p>	<p><i>As the proposed Tunnel at Girgaon Chowpaty is below the sea bed-, hence – project will not destroy the Girgaon Chowpati-, or will not disturb, destroy and deteriorate the other historical and archaeological sites of Mumbai.</i></p>
<p>17</p>	<p><i>The EIA report at page no. 253 mentions that – The construction of coastal road based on reclamation would help generate large green spaces’. The reclamation is illegal as per the CRZ Notification dated 6<sup>th</sup> January 2011. The proposed creation of 91 hectares of green</i></p>	<p><i>The spaces generated due to road on reclamation will be used for ancillary facilities for the road and accessibility to public transport.</i></p>

	<i>spaces, would be done by destroying the already existing green and open spaces.</i>	
18	<i>The financial cost of environmental destruction has not been included in the project plan prepared for the proposed coastal road.</i>	<i>The cost benefit ratio is 1:15. MCGM will set aside 2% of the project cost towards mitigation measures.</i>
19	<i>This road will not be viable for public transport as past experience with sea links and expressways has shown. The project encourages motorized transport which will create more air and noise pollution instead of focusing on improving public transport facilities in the city.</i>	<i>The coastal road proposal has incorporated BRTS system along with allied facilities. The speed, transport system will reduce carbon footprint to t1826CO<sub>2</sub>e per annum.</i>
20	<i>The peak handling capacity of the Bandra-Worli Sea-link per day is around 85,000 cars. Currently it is handling only around 37,500 cars which is a gross miscalculation and same may happen in case of the coastal</i>	<i>MCGM has proposed toll free road.</i>

	<i>road if toll is levied for travel on this road.</i>	
21	<i>The project envisages to free up city's highly congested road, but owing to the high toll rates, the coastal road might only be used by the economically strong upper strata of the city.</i>	<i>MCGM proposed toll free road.</i>
22	<i>Alternatively if toll rates are controlled and are affordable then it would lead to congestion of the coastal road as well and then the issue of decongesting traffic would arise again. This can be substantiated by the fact that the flyovers all over the city were built to ease the traffic congestion, however the state of affairs is quite contrary and evident to everyone. The coastal road will bring an additional influx of cars into South Mumbai, which already struggles for parking space, inducing more traffic</i>	<i>MCGM has proposed toll free road.</i>

	<i>congestion.</i>	
23	<i>There are also further plans to extend the Mumbai coastal road till Ahmedabad through Vasai and Virar. Such haphazard plans will further aggravate the coastline-, the coastal ecosystem, thereby affecting the fisher folk communities and the livelihood of the people. Also, this will increase the chances of we being climate change refugees.</i>	<i>Not in MCGM's preview.</i>
24	<i>We request you to not grant CRZ Clearance to the proposed coastal road project as it will cut it will cut off the city from the sea and will destroy public access to the natural waterfront areas. In addition it will also mar the aesthetics of the west coast of Mumbai and ruin the sea view.</i>	<i>Not applicable.</i>

34. Recording the reason why EAC was recommending approval, it was noted in paragraph 13 of the Minutes drawn up that

environmental consequences were kept in mind as also the need for the project in view of the increasing traffic in Mumbai and the associated health implications. It was opined that in the view of the Committee, not to grant CRZ clearance will not serve any public interest and the long-run benefits would outweigh the marginal impact likely to be incurred on the environmental aspect. On 11<sup>th</sup> May 2017, MoEF granted CRZ approval for the coastal road (south). The approval was subject to 28 specific and general conditions.

35. It appears that construction work commenced on Marine Drive near Princes Street Flyover and Worli around October 2018 leading to the five above captioned Public Interest Litigations and one writ petition being filed.

36. Writ Petition (L) No. 560 of 2019 has been filed by Worli Koliwada Nakhwa Matysa Vyavasay Sahkari Society Ltd. and others seeking directions to Respondent No.1-MCGM to suitably modify the design of the proposed Coastal Road after considering the representations dated 27 October 2016 and 26 December 2018 made by the Petitioner No.1 society. The petition also seeks directions to

Respondents to apply for the necessary clearance under the Environment Impact Assessment Notification dated 14 September 2006 (EIA-2006) and conduct the public hearing as per the office Memorandum dated 24 February 2011. The other prayer in the said petition is to restrain construction activities in the fishing zone from Worli to Banganga. The petition also seeks directions against respondent No.1 restraining it from obstructing fishing activities in the fishing zone between Worli and Banganga which includes casting nets and plying boats in the fishing, using Jetties by fisherfolk.

37. Public Interest Petition (L) Society has filed no. 36 of 2019 for Improvement, Greenery And Nature (NGO) seeking directions to restrain respondent No.1 from carrying out work of reclamation at Section 2 of the project from Priyadarshani Park to Mahalaxmi Temple in CRZ-IV areas for which Environmental Clearance has not been obtained by MCGM and also restraining respondent No.1 from constructing the interchange and/or carrying out any construction and from felling trees inside Tata Garden. The petition also seeks directions to MCGM to re-examine the location and alignment of the subject interchange namely 'Amarsons Interchange' proposed to come

up at Bhulabhai Desai Road with a view to protect the Tata Garden and also to find out alternatives such as building road on stilts in order to reduce reclamation of excess land between Priyadarshani Park to Amarsons Garden. The petition further seeks directions restraining MCGM from utilizing the reclaimed land for any commercial, residential or industrial purpose and also appoint an independent body of experts to ascertain the impact of reclamation on the tidal waves and its impact on the low-lying areas within the vicinity of the reclaimed land.

38. Public Interest Petition (L) No. 39 of 2019 has been filed by Vanashakti (a Public Trust) and another seeking directions restraining MCGM from carrying out any coastal reclamation activity for the coastal road project until scientific expert study is undertaken, and the survey is completed for rich biodiversity on intertidal shores of Mumbai and the impact of work of reclamation on the ecology and biodiversity of species. The petition further seeks directions to the Respondents to constitute a committee of independent expert agencies such as CMFRI, NERRI, Wildlife Institution of India and/or BNHS.

39. The Public Interest Petition (L) No. 40 of 2019 has been filed by The Conservation Action Trust and others seeking quashing and setting aside the amendment S.O. 3552(E) dated 30 December 2015 amending notification S.O. 19(E) dated 6 January 2011 permitted reclamation within the CRZ area for roads and set aside the CRZ clearance dated 11 May 2017 to the Coastal road (South) from the Princess Street Flyover to the Worli end of the Sea-Link in Mumbai and also to set aside Executive decision of the Respondents to construct the Mumbai coastal road on the reclaimed land in the Arabian Sea of the western coast of Mumbai.

40. The Public Interest Petition (L) No. 44 of 2019 has been filed by Shweta Wagh and others to challenge the CRZ (Amendment) Notification dated 30 December 2015 (wrongly mentioned as dated 25 June 2015) to the extent that it allows for land reclamation for roads on reclaimed surfaces. The petition also challenges the decision of the MCGM to implement the coastal road project and to quash and set aside the CRZ Clearance dated 11 May 2017.

41. Public Interest Petition No. 25 of 2019 has been filed by Prakash

Laxman Chanderkar seeking directions to respondents to abandon the proposed coastal road and consider the alternative double-decker road.

42. Before the hearing commenced on 17 June 2019, notwithstanding Shri. Janak Dwarkadas learned Senior Counsel not being engaged in all the petitions, it was agreed that learned Senior Counsel would address arguments on the challenge to the Notification dated 3<sup>rd</sup> December 2015 issued by MoEF amending paragraphs 3(iv) and paragraph 4(i) of CRZ-2011; challenge to the approval dated 11 May 2017 granted by MoEF to Part A (south side) of the coastal road; construction activities being commenced without approval granted by MoEF under the Environment Impact Assessment Notification dated 14<sup>th</sup> September 2006 as amended from time to time; the proposed construction of the interchange at Amarson Garden and the allied issues concerning said four issues. Ms. Gayatri Singh Senior Counsel agreed to supplement if needed, arguments by Shri. Janak Dwarkadas Senior Counsel and independently argue Writ Petition (L) No.560 of 2019. Other learned counsel for the petitioners agreed to make brief supplementary submissions in the Public Interest Petitions filed by them.

43. Concerning the challenge to the Notification dated 30<sup>th</sup> December 2015 amending the CRZ-2011, Shri. Janak Dwarkadas tracked the events commencing from 30<sup>th</sup> June 2011 when the Government of Maharashtra decided to constitute JTC till the amendment was made. Since we have already captured the dates on which various events including recommendations and decisions took place, we briefly note that learned Senior Counsel highlighted that the emphasis in the decision of the Government of Maharashtra to constitute the JTC on 30<sup>th</sup> June 2011 was to study and make recommendations on the subject of coastal roads in Mumbai and with reference to the report dated 29<sup>th</sup> December 2011 by the JTC, learned Counsel highlighted the three terms of reference to it, which we have extracted in paragraph 4 above, to highlight that the terms of reference reproduced by the JTC made it clear that the only point being studied and considered by the JTC was the various options for the construction of a coastal road in Mumbai. Learned Senior Counsel argued that the limited scope of the terms of reference proceeded on the assumption that a coastal road was required. With reference to the sketchy reference in the report on the environmental impact, learned Senior

Counsel drew our attention to the part of the report wherein it was observed: *'that the CRZ clearance would normally require a pre-feasibility report/traffic studies/related technical studies including EIA indicating the likely impacts and mitigation measures. The Committee is of the view that such studies should be entrusted only to the consultants accredited by the Quality Council of India (QCI). As regards impact on mangroves, since mangrove areas are now declared as reserved forests in Maharashtra, any construction work impacting mangroves would necessitate compensatory mangrove plantation. The detailed project preparation studies should be accordingly taken up to incorporate these aspects.'* Referring to the report further, learned Senior Counsel referred to the parts of the report wherein the Committee recorded its opinion that: *'reclamation for the purposes of a coastal freeway in some length as a highly cost-effective option and one that also entails other benefits through the creation of the large open green spaces to citizens.'* Learned senior counsel submitted that aforesaid shows that the JTC report was limited to the purpose of reclamation in Mumbai. Referring to the 82<sup>nd</sup> meeting of MCZMA held on 10<sup>th</sup> June 2013, learned Senior Counsel urged that even

MCZMA deliberated upon amending CRZ-2011 to accommodate construction of a coastal road in the city of Mumbai. With reference to the 97<sup>th</sup> meeting of MCZMA on 23<sup>rd</sup> January 2015, learned Senior Counsel urged that even said minutes show that emphasis was to amend CRZ-2011 only for the coastline in Mumbai. Learned Senior Counsel urged that the draft amendment published by MoEF on 25<sup>th</sup> June 2015 proposed the amendment have a road on reclaimed land without affecting the flow of tidal water but the final amendment excluded the words '*without affecting the flow of tidal water*'. Thus, on this aspect, the submission terminated by submitting that the final Notification embraced the entire coastline of India. Learned Senior Counsel drew our attention to the Notification dated 15<sup>th</sup> May 2009 issued by MoEF amending CRZ-1991 by inserting a further proviso after the existing proviso to paragraph 2(i) of the existing Notification; the additional proviso being: '*Provided further that the development of greenfield airport at Navi Mumbai shall be undertaken subject to detailed scientific study for incorporating adequate environmental safeguard measures required for neutralising damage to the coastal environment as may be appropriate to the Navi Mumbai region*'. And

in the annexure to the existing notification under CRZ-1, after item (iv), item (g): '*development of greenfield airport and related activities at Navi Mumbai*, and under CRZ-II after item (i.e.) item (if) was inserted namely: '*development of greenfield airport and related activities at Navi Mumbai*'. The argument was that after conducting scientific studies and opining that another airport was needed in the city of Mumbai, a specific amendment was made limited to the city of Mumbai since an exceptional case was made.

44. Referring to the various reports and communications between MCGM, its consultants, MCZMA and MoEF learned Senior Counsel urged that the coastal road project was always referred to as a composite project which comprised of and involves land reclamation, landfilled roads, bridges, elevated roads, tunnels, creation of open spaces to be used as green spaces with public amenities such as promenades, jogging tracks, cycling tracks, amusement parks, butterfly gardens etc. Therefrom, learned Senior Counsel urged that the stated objective of the project was two-fold. First, to reduce vehicular congestion; Second, to create open spaces and construct a road reclamation of 95.25-hectare land. Learned Senior Counsel highlighted that only 20 hectare was to

be used for the road carriageway and remainders 75.25 hectares as open spaces and public amenities.

45. Learned Counsel urged that the amendment was contrary to the object of the Environmental Protection Act which in the statement of objects declared that one of the many objects of the Act was *the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.* Section 3 of the Act was referred to which empowered the Central Government to take such measures as were necessary for *protecting and improving the quality of the environment.* This as per learned Senior Counsel also casts an obligation on the Central Government to protect the environment and as a necessary corollary prohibits the Central Government from framing regulations which permit destruction of the environment. Learned Senior Counsel urged that the CRZ Notification in question suffered from the vice of arbitrariness and is ultra vires the Parent Act for a reason in the decision reported as (2001) 4 SCC 202 Assam Co. Ltd. Vs. State of Assam, the Supreme Court held: '*it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the*

*Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any Rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the Rule goes beyond what the Act contemplates, the Rule becomes in excess of the power delegated under the Act, and if it does any of the above, the Rule becomes ultra vires of the Act.”* Highlighting that the phrase '*exceptional case*' was not defined either under Clause 4(i)(g) or anywhere else in the notification learned Counsel urged that there was no guideline or criteria provided to identify what constitutes an exceptional case. The power conferred was thus totally unguided, uncanalised and unfettered. Paragraphs 8 and 9 of the decision reported as (1974) 1 SCC 549 *State of Punjab and Ors. Vs. Khanchand & Ors.* was highlighted which read as under:

*“8. We may state that the vesting of discretion in authorities in the exercise of power under an enactment does not by itself entail contravention of Article 14. What is objectionable is the conferment of arbitrary and uncontrolled discretion without any guidelines whatsoever with regard to the exercise of that discretion. Considering the complex nature of problems which*

*have to be faced by a modern State, it is but inevitable that the matter of details should be left to the authorities acting under an enactment. Discretion has, therefore, to be given to the authorities concerned for the exercise of the powers vested in them under an enactment. The enactment must, however, prescribe the guidelines for the furtherance of the objects of the enactment and it is within the framework of those guidelines that the authorities can use their discretion in the exercise of the powers conferred upon them. Discretion which is absolute uncontrolled and without any guidelines in the exercise of the powers can easily degenerate into arbitrariness. When individuals act according to their sweet will, there is bound to be an element of 'pick and choose' according to the notion of the individuals. If a Legislature bestows such untrammelled discretion on the authorities acting under an enactment, it abdicates its essential function for such discretion is bound to result in discrimination which is the negation and antithesis of the ideal of equality before law as enshrined in Article 14 of the Constitution. It is the absence of any principle or policy for the guidance of the authority concerned in the exercise of discretion which vitiates an enactment and makes it vulnerable to the attack on the ground of violation of Article 14. It is no answer to the above that the executive officers are presumed to be reasonable men who do not stand to gain in the abuse of their power and can be trusted to use "discretion" with discretion.....*

9. It has been observed by this Court in the case of *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and Ors.* that a statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the

*question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action under such law.*

(Emphasis supplied)

46. Learned Senior Counsel Shri.Janak Dwarkadas further submitted that from a perusal of the various reports and decisions it clearly emerges that the focus of the various Committees, MCZMA and MoEF was to consider exceptional circumstances justifying an amendment to CRZ 2011 and not an exceptional case.

47. In harmony with the settled legal position that were the vires of a statute or a statutory policy is questioned, an attempt should be made

to interpret the same to save it from vice of unconstitutionality and as per learned Senior Counsel the vires could be saved only if sub-para (g) of Clause 4(i) of the CRZ-2011 post amendment was read: (a) *The words 'shall be only in exceptional cases' qualifies inter alia the construction of road by way of reclamation in CRZ area;* (b) *In other words, no reclamation in CRZ areas for construction of road is the rule and only in exceptional cases is it to be permitted;* (c) *This is because paragraph 3(iv)(a) in the CRZ -2011 prior to its amendment totally prohibited the activity of reclaiming land for construction of roads in CRZ areas;* (d) *It cannot, as a matter of interpretation, be suggested that what was previously totally banned has been made a rule and reclamation in CRZ areas for construction of roads is to be permitted by construing the qualification, 'shall be only in exceptional cases,' widely;* (e) *In the MCGM's Reply dated June 1, 2019 in PIL No. 40 of 2019, the MCGM claimed that the State Government has taken into account factors such as increase in population, increase in the number of vehicles, ever-increasing traffic congestion city of Mumbai, burden on the existing road network and lack of green space in Mumbai and decided that the Coastal Road is the only solution to deal with these*

*aforesaid 'exceptional circumstances' existing in the city of Mumbai; (f) The phrase 'in exceptional cases' cannot be equated with the phrase 'exceptional circumstances in the city of Mumbai'. In fact, the word 'cases' itself suggests that the exception is meant to apply on a case-to-case basis; (g) The manner in which the MCGM and the State authorities have interpreted the amended provision would permit the wholesale destruction of CRZ areas by placing development over the environment, thus destroying the rule of sustainable development. Such an interpretation could destroy the entire coastline of India, which runs into 7,500 kms, as all planning authorities can adopt this interpretation, including gram panchayats, along the coast, which could lead to the destruction of beaches, mudflats and other highly ecologically sensitive areas, including those falling within CRZ -I; (h) The very fact that the latter part of paragraph 4(i)(g) provides that in case the construction of such a road is passing through mangroves or likely to damage mangroves, three times the number of mangroves destroyed or cut would be required to be replanted, is one more aid to the interpretation of this provision inasmuch as it clearly suggests that the damage caused by reclaiming a CRZ area for construction of a road*

*must be capable of being redeemed; (i) Where large tracts of rocky coastline, rocky beaches and wildlife, such as coral, are being destroyed, there is no question of redeeming the damage and hence the exception cannot be applied; and (j) In other words, the exception is meant to apply only where the damage to the CRZ area can be minimized and mitigated.* Learned Senior Counsel urged that if the interpretation placed by MCGM was to be accepted the amendment would liable to be set aside because the stated object and purpose of CRZ-2011 was 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.'* Referring to the decisions reported as 1997 (II) SCC 87 S. Jagannath Vs. U.O.I., (2017) 1 KHC 423 DLF Universal Ltd. Vs. Anthony A.V. & Ors., AIR 2018 SC 5194 M.C.Mehta Vs. U.O.I. & Ors., (1996) 5 SCC 647 Vellore Citizens Welfare Forum Vs. U.O.I. & Ors., and (1996) 5 SCC 281 Indian Council for Enviro Legal Action Vs. U.O.I. learned Senior

Counsel urged that the purpose of CRZ Notification highlighted in said judgments was to protect the ecologically fragile coastal areas warranting amendments to be carried out after scientific studies of the impact of projects such as roads on reclaimed land on the tidal currents, coastal geomorphology and ecology. No such scientific studies were conducted. Striking down certain amendments to the CRZ-1991 Notification by the amendment Notification of the year 1994, in Indian Council for Enviro Legal Action (case) supra, learned Senior Counsel highlighted that the Supreme Court in paragraphs 31, 32, 38 and 39 thereof held as under:

*“31. While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such notifications are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development*

*at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that development activity is sought to be regulated.*

*32. The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. That such a study had taken place is evident from the bare perusal of notification itself which shows how coastal areas have been classified into different zones and the activities which are prohibited or permitted to be carried out in certain areas with a view to preserve and maintain the ecological balance.*

**XXXX**

*38. We, accordingly, hold that the newly added proviso in Annexure II in paragraph 7 in sub-paragraph (1) (Item i) which gives the Central Government arbitrary, uncanalized and unguided power, the exercise of which may result in serious ecological degradation and may make the NDZ ineffective is ultra vires and is hereby quashed. No suitable reason has been given which can persuade us to hold that the enactment of such a proviso was necessary, in the larger public interest, and the exercise of power under the said proviso will not result in large-scale ecological degradation and violation of Article 21 of the citizens living in those areas.*

*39. ...Even the Vohra Committee which had been set up to look into the demands of Hotel and Tourism*

*Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason.... This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, held to be illegal.”*

48. On the assumption that the CRZ Notification dated 30<sup>th</sup> December 2015 was valid, referring to the various deliberations between the authorities and reports received, learned Senior Counsel urged that it was apparent that emphasis was on how to construct a coastal road incurring least expenses and that so obsessed were the authorities with the idea of a coastal road that not a thought was given that the proposal for the coastal road was mooted in the year 2011 and by the time approval was granted Metro network in Mumbai covering 246 km was not only conceived of but even construction work commenced. Learned Counsel argued that except a reference here or to that even Metro Project was planned in the city of Mumbai, there is

hardly any application of mind of what would be the impact of the Metro line by providing an alternative mode of transport to the public. Learned Counsel referred to the map prepared by the Mumbai Metro for the Mumbai Metropolitan Region to graphically show that the various Metro lines running south to the north covered the same areas, from south to north which was covered by the proposed coastal road. Learned Senior Counsel argued that lip service to environmental aspects is to be found in the various reports and recommendations as also decisions taken from time to time. No serious attempt has been made to ascertain the ecological damage to the coastline and impact on the geomorphic and ecologically sensitive shorelines through which after reclamation development would take place. Lastly, learned Senior Counsel argued that conceptually the coastal road was a singular concept because the very object of the road was to move the traffic from the south to the north of the City and vice versa. By dividing the project into Part A and Part B, a conceptually one project which had to be physically, one project was broken into two physically separate projects. Learned Senior Counsel posited the question: What if, Part B of the coastal road project was not built? The answer obvious to any

person would be that traffic chaos from one part of the city would be shifted to the other with no tangible benefits.

49. This took the learned Senior Counsel to the next limb of his submissions concerning CRZ Clearance dated 11<sup>th</sup> May 2017 granted by MoEF.

50. Tracing the background of the coastal road project when JTC was set up by the State Government Resolution dated 30<sup>th</sup> June 2011, learned Counsel highlighted that the report submitted by JTC relied upon an earlier Comprehensive Transport Strategic Study -2008 and opined that the coastal road was the only solution to decongest the city and additionally reclamation would create open green spaces. Pursuant to the JTC report, MCGM appointed STUP Consultants Pvt. Ltd. and Ernest& Young Pvt. Ltd. to prepare a feasibility report and a detailed project report (DPR). Accordingly, draft DPR was prepared to propose the coastal road. When the DPR was prepared reclamation in CRZ-1 area to construct a road was prohibited, and thus at its meeting held on 10<sup>th</sup> June 2013, MCZMA decided to recommend to MoEF to amend CRZ-2011 for a specific purpose of permitting construction of a road

on reclaimed land. On 22<sup>nd</sup> January 2015 MCGM requested MCZMA to propose the necessary changes to MoEF, and the very next day MCZMA again decided to recommend the amendment, and on 4<sup>th</sup> February 2015, MCZMA wrote a letter to MoEF. Thereafter MCGM entrusted the task to submit, amongst others environment Impact Assessment Report and Social Impact Assessment Report which are the requirements under paragraph 4.2 of the CRZ - 2011. In June 2015 MCGM invited objections to the draft project report probably for the reason paragraph 5 of CRZ-2011 requires public consultations while preparing the Coastal Zone Management Plan Maps, and one principal objection was that the existing CRZ - 2011 prohibited reclamation of land to construct a road. MCGM appointed Frischmann Prabhu to analyse the representations received and submit appropriate remedial measures. Said peer review report pointed out various issues and deficiencies regarding the coastal road project and the DPR studies conducted for the project. Learned Senior Counsel drew the attention of the Court to the under noted crucial finding of Frischmann Prabhu report (with the grievance that the neither MCZMA nor MoEF addressed themselves to the same). The crucial

findings referred to in the report read:

- i. That the EIA does not include an environmental and social data sheet or screening checklist;*
- ii. No studies have been undertaken regarding the impact of the project on surface, sub-surface and aquatic flora and fauna that will be permanently displaced by the project corridor or any mitigation measures in respect thereof.*
- iii. That the Environment Management Plan (EMP) for the Coastal Road Project does not include various material elements such as a management plan for reclamation area, coastal protection and soil erosion management;*
- iv. No formal risk assessment study to mitigate the risk of flooding has been undertaken. The report pointed out that information regarding high flood levels for a period of at least the last 50 years is required to be examined and included in the EIA report and that detailed hydraulic modeling would be required; and*
- v. That the Social Impact Assessment Report was insufficient and inconclusive inter-alia because it did not incorporate public consultation at different locations with different groups, social survey information and mapping of common property resources.*

51. After the amendment was made on 30<sup>th</sup> December 2015 MCGM applied to MCZMA for CRZ Clearance for the entire coastal road and at the 111<sup>th</sup> meeting of MCZMA held on January 16, 2016, several deficiencies were noted which we have noted in para 20 above.

52. Learned Senior Counsel highlighted that notwithstanding the several deficiencies, inadequacies and lack of material particulars, MCZMA recommended the coastal road project for approval to MoEF on 10<sup>th</sup> March 2016. On 22<sup>nd</sup> July 2016, MoEF returned the same listing the deficiencies, which we have noted in paragraph 22 above. MCGM withdrew its application dated 11<sup>th</sup> January 2016 and made a fresh application on October 18, 2016, but restricted the same to the southern portion of the road giving justification that both projects are separated by the existing Bandra-Worli sea link and are not dependent on each other. Criticizing the justification learned Senior Counsel urged that the dividing the project into two parts was clearly arbitrary because if the purpose was to have a smooth flow of traffic in the city, the entire road factually and conceptually as a single entity had to be constructed. MCGM provided further documents to MoEF on a date unknown but apparent from the affidavit in reply filed by MCGM to PIL(L) No. 40 of 2019. The documents being;

- 1) *Rapid EIA Report*
- 2) *CRZ maps with project layout superimposed*
- 3) *Risk assessment and disaster management plan with standard operating procedures (SOPs)*

- 4) *Detailed Project Report*
- 5) *Drainage Report*
- 6) *Traffic Report*
- 7) *Social Impact Assessment Report*
- 8) *Work Order of NIO with proposal*
- 9) *Compliance to observations and conditions mentioned by the MCZMA as well as MoEF & CC*

53. With reference to the aforementioned documents learned Senior Counsel highlighted that the ones at Item Nos. 1 to 7 were the same which were prepared for the entire stretch of the coastal road project and argued that if stand of MCGM was that the two stretches were independent logically the environmental impact of the two was independent and thus fresh studies, reports and assessments with data only for the southern section were to be submitted. Learned Senior Counsel urged that paragraph 4.2 of the CRZ -2011 notification had to be procedurally followed and handed over a tabulation showing documents required to be submitted under para 4.2 of CRZ-2011 and the ones submitted by MCGM. The tabular data reads as under :

<i>Sr. No.</i>	<i>Documents required to be submitted under Para 4.2, CRZ Notification</i>	<i>Status of compliance/non-compliance by MCGM</i>

a)	<i>Form-1 (Annexure-IV of the notification)</i>	<i>Submitted by MCGM.</i>
b)	<i>Rapid EIA Report including marine and terrestrial component except for construction projects listed under 4(c) and (d)</i>	<i>A Rapid Environment Impact Assessment Report dated August 2016 prepared by the Consultants has been submitted to the MCZMA by MCGM. However, this is based on the original stretch of the coastal road i.e. from Kandivali to Princess Street and not Coastal Road (South) alone.</i>
c)	<i>Comprehensive EIA with cumulative studies for projects in the stretches classified as low and medium eroding by MoEF based on scientific studies and in consultation with the State Governments and Union territory Administration</i>	<i>A Comprehensive Environment Impact Assessment Report has not been submitted. Therefore, the requirements of this condition have not been satisfied.</i>
d)	<i>Disaster Management Report, Risk Assessment Report and Management Plan;</i>	<i>A Risk Assessment and Disaster Management Plan prepared by M/s STUP Consultants has been submitted by MCGM. However, this is based on the original coastal road i.e. from Kandivali to Princess Street</i>

		<i>and not Coastal Road (South) alone.</i>
e)	<i>CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) in 1:4000 scale;</i>	<i>This document has not been separately submitted. In fact, the final approved CZMP (i.e. CRZ Map) under the 2011 Notification was only approved and notified on August 6, 2018 i.e. more than a year after the impugned CRZ Clearance was granted. As such, this condition could never have been satisfied. See clause (f) below.</i>
f)	<i>Project layout superimposed on the above map indicated at (e) above</i>	<i>The alignment of the project has been superimposed only on the draft CZMP under the 2011 Notification, and not the then prevailing CZMP (Under the 1991 Notification) or the final approved CZMP under the 2011 Notification as the same was not notified till August 16, 2018.</i>
g)	<i>The CRZ map normally covering 7 km radius around the project site.</i>	<i>There is no mention of this document in MCGM's Application dated 18 October 2016. However, the website of the MCGM reflects that such a map was submitted to the MCZMA. However, the map is prepared according to the draft CZMP under the 2011 Notification, and not the final approved</i>

		<i>CZMP under the 2011 Notification as the same was not notified till August 16, 2018 or the then prevailing CZMP (under the 1991 Notification).</i>
<i>h)</i>	<i>The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas.</i>	<i>There is no mention of this document in MCGM's Application dated 18 October 2016. In any event, the alignment of the project has been superimposed only on the draft, CZMP under the 2011 Notification, and not on the final approved CZMP under the 2011 Notification as the same was not notified till August 16, 2018 or the then prevailing CZMP (under the 1991 Notification).</i>
<i>i)</i>	<i>No Objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the projects involving discharge of effluents, solid wastes, sewage and the like.</i>	<i>Not submitted. There is no mention of a No Objection Certificate from the concerned State/Central Pollution Control Board in MCGM's Application dated 18 October 2016.</i>

54. Counsel highlighted that 114<sup>th</sup> meeting of MCZMA held on 2<sup>nd</sup>

and 3<sup>rd</sup> November 2016 MCZMA, decided to recommend the project for clearance subject to the twelve conditions listed therein as under:

- 1) *Proposed construction should be as per the provisions of the CRZ Notification 2011;*
- 2) *Machinery to be properly maintained and air and noise emissions should be minimized;*
- 3) *“MCGM as proposed, to set aside an amount of about 2% of the project cost towards mitigation measures; restoration & Conservation of mangroves/birds/flora/fauna and mudflats restoration;”*
- 4) *Ensure that no fishing activity is hampered during construction and operation of the project;*
- 5) *“MCGM to submit the impact of clearing of mangroves if any on surrounding low lying areas from flood point of view. However, post construction such areas should be restored with mangroves plantation if affected.”*
- 6) *“MCGM to obtain prior High Court permission for clearing of mangrove, if any.”*
- 7) *Undertake green belt development as suggested in the Environment Management Plan (EMP);*
- 8) *Road safety guidelines to be strictly adhered to;*
- 9) *Implement dust suppression measures during construction and operation;*
- 10) *MCGM to implement Green Belt development plans;*
- 11) *Implement all suggestions and recommendations given in the EIA, EMP, Disaster Management Plan (DMP) studies for the project; and*
- 12) *“All other required permissions should be*

*obtained before the commencement of the project.”*

55. Learned Senior Counsel urged that non-application of mind by MCZMA was apparent from conditions 5 and 6 because admittedly there are no mangroves in the southern section of the coastal road. As per learned Senior Counsel, remaining conditions appeared to be standard conditions imposed by MCZMA in such projects and were even found in earlier recommendations. As per learned Senior Counsel, it was apparent that MCZMA was not even aware of the fact that it was given reports and data for the entire coastal road project but was considering approval to be granted only to the southern section. With respect to the minutes of 168<sup>th</sup> meeting of EAC held on March 17, 2017, the tabular information noted in the minutes and extracted by us in paragraph 33 above of our opinion, learned Counsel urged that it shows that MCGM was unable to make out a case that the coastal road south is an independent project or that there was any rational justification for splitting the coastal road into two parts and that EAC failed to note this fact. That EAC or MoEF did not apply its mind to the objections mentioned above and MCGM's response, is

borne out by the absence of any discussion, consideration or finding either in the recommendation of EAC or MoEF. Referring to the decision of the Delhi High Court reported as 2009 SCC Online Delhi 3836 Utkarsh Mandal Vs. U.O.I., wherein MoEF granting environmental clearance on 26<sup>th</sup> July 2007 for renewal of mining lease, observed in paragraphs 36, 37 and 40 as under:

- “36. *The next issue concerns the failure on the part of the EAC (Mines) to deal with the objections raised at the public hearing and the effect of such failure on the grant of environmental clearance.... In terms of the procedure evolved by the MoEF to deal with applications for EIA clearance, the objections at the public hearing and the response thereto of the project proponent are placed before the EAC (Mines) for evaluation and for taking a decision which will constitute the advice to the MoEF on such project proposal. The EAC is therefore performing a public law function and is expected to adhere to those very standards which law requires the MoEF to adhere to.*
37. *The requirement of an administrative decision making body to give reasons has been viewed as an essential concomitant of acting fairly. Given that such a decision is in any event amenable to judicial review, the failure to make known the reasons for the decision makes it difficult for the judicial body entrusted with the power of reviewing such decision as to its reasonableness and fairness. The decision must reflect the consideration of the materials available before*

*the decision maker and the opinion formed on such material.*

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*Consequently, the exercise expected to be performed by the EAC (Mines) is a serious one and has to include a consideration on merits of the objections raised at the public hearing. Its decision must reflect this. We do not accept the contention of the learned ASG that as long as the MoEF while taking the ultimate decision has applied its mind to the objections raised at the public hearing, the requirement in law would be satisfied. The whole purpose of “outsourcing” the task to an EAC comprised of experts was to have a proper evaluation of such objectives on the basis of some objective criteria. It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage. We, therefore, hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.*

56. Learned Counsel hastened to add that though the judgment was

rendered in the context of environmental clearance under EIA Notification, the role of EAC under CRZ is in *pari materia*. Pursuant thereto, learned Senior Counsel urged that MoEF granted the clearance on May 11, 2017. As per learned Senior Counsel, MoEF failed to appreciate that the alignment of the project had not been superimposed on the final coastal zone management plan, in fact, this could not be done because the said plan for Mumbai city was approved only on 16<sup>th</sup> August 2018. Apparently, superimposition was on the draft coastal zone management plan. The second application relied on the JTC report submitted in the year 2011, which in turn relied on a 2008 traffic study. The report was outdated because by the year 2017 246 km of Metro Network along the north-south axis parallel to the proposed coastal road was underway. The DPR in respect whereof public participation was sought for the purpose of CRZ clearance was prepared for the entire length of the coastal road. Counsel once again highlighted that if only one segment of the coastal road was under scrutiny then the persons scrutinizing the proposal had to proceed on the basis that traffic would flow from the southern part of the city till the part of the coastal road ended and thus the purpose of reducing air

pollution would not be served because traffic congestion would shift from point A to point B. Learned Senior Counsel also urged that MoEF failed to appreciate that MCGM had not addressed the five crucial findings of the Frischmann Prabhu report to which we have made a reference herein-above.

57. In respect of Environment Impact Assessment Notification dated 14<sup>th</sup> September 2006 issued by the MoEF in exercise of powers conferred by Clause (v) of Sub-section (1) and Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (d) of Sub-Rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, Shri. Janak Dwarkadas learned Senior Counsel referred to Regulation 3 which stipulates that the projects and activities falling under category A of the Schedule would require prior environmental clearance from the Central Government and at the State level by the State Environment Impact Assessment Authority for Category B projects. Referring to the Schedule learned Counsel highlighted that under Column Nos. 1 and 2 of the Schedule under caption **Project or Activity** vide entry 8(b) townships and area development projects were listed and under Clause 4 it was provided 'covering an area  $\geq$  50

hectare and or built-up area equal to 1,50,000 sq meter and under Clause 5 pertaining to conditions if any, it was stipulated that *all projects under Item 8(b) shall be appraised as category B1 projects*. As per learned Senior Counsel the communications by the MCGM and MCZMA described the coastal road project as a composite opposite project which comprises of land reclamation, landfilled roads, bridges, elevated roads, tunnels, creation of open green spaces with public amenities including promenades, jogging parks, cycling parks, amusement parks, butterfly gardens etc. and the area proposed to be reclaimed was 95.250 hectare out of which 20 hectares was required for road carriageway. Thus, qualitatively the project was an area development project covering an area of more than 50 hectares with road built-up area equal to 20 hectares. Learned Senior Counsel referred to a Office Memorandum dated 24<sup>th</sup> February 2011 issued by the MoEF stating that all category A and B1 projects listed in the EIA-2006 would also attract the Coastal Regulation Zone Notification - 2011 and thus public hearing was required as a part of consultative process while considering the application for grant of environmental clearance under Notification dated 14<sup>th</sup> September 2006. It not being

disputed by the Respondents that if the project was to be treated as an area development project, it would be a project in category B1 and thus learned Counsel urged that the project would require a separate clearance under Notification dated 14<sup>th</sup> September 2006.

58. Referring to the decisions of the Principal Bench of the National Green Tribunal reported as 2015 SCC Online NTC 3 Vikrant Kumar Tongad Vs. Delhi Tourism and Transport Corporation which considered an unsymmetrical cable-stayed project covering an area of 1,55,260 sq meter over the river Yamuna, the Tribunal held the same to be an area development project under entry 8(b) of the EIA and repelled the contention that it would fall under Item 7(f) of the Schedule to the Notification. Learned Senior Counsel argued that as per the decision, the issue of a project falling in a particular category had to be seen by first applying the qualitative test and thereafter, the quantitative test. Learned Senior Counsel further argued on this aspect by placing reliance upon another decision of the Principal Bench of the NGT reported as 2015 SCC Online NGT 169 S.P. Muthuraman Vs. U.O.I., wherein a project for the development of commercial complex, was held to be covered by entry 8(b) of the EIA - 2006. Learned

Counsel also relied upon the decision of the Supreme Court pertaining to the construction of the new airport at Goa reported as 2019 SCC Online SC 441 *Hanuman Laxman Aroskar Vs. U.O.I* pertaining to a Category A project. Learned Counsel also referred to the decision of the Supreme Court concerning the construction of a part near Okhla Bird Sanctuary in Noida (U.P.) reported as (2011) 1 SCC 744 in *Re. Construction of Park at Noida near Okhla Bird Sanctuary* to bring home the point as to how different entries in the Schedule to the Notification needs to be construed. As per the learned Senior Counsel keeping in view the aforesaid judgments the project would be an area development project thereby meeting the qualitative requirement and the area being more than 50 hectares with covered area, i.e. the area under road being more than 20 hectares, the quantitative test was also met.

59. Conscious of the fact that in the counter-affidavits filed, stand of MCGM was that while granting environmental clearance under the Coastal Zone Regulation public hearing and assessment from the point of view of impact on the environment was considered and therefore, there is substantial compliance with the requirement of the procedures

to be followed and decisions to be taken under EIA – 2006, learned Senior Counsel urged that the provisions of EIA -2006 were more comprehensive. In this regard learned Senior Counsel referred to Regulation 4(i)(b) of the CRZ - 2011 which reads: '*for those projects which are listed under this Notification and also attract EIA Notification 2006 for such projects clearance under EIA Notification only shall be required subject to being recommended by the concerned State or Union Territory Coastal Zone Management Authority (CZMA).*' Learned Senior Counsel proceeded to refer to Regulation 7 of the EIA - 2006 which required an application seeking environmental clearance to be screened and appraised at four stages: (i) screening; (ii) scoping; (iii) public consultation; and (iv) appraisal. At the first stage of screening, the application had to be considered to determine whether or not the project or activity required further environmental studies to prepare an environmental impact assessment. If it was found that the project required preparation of an environmental impact assessment report, stage 2 of scoping required the expert appraisal committee to determine detailed, comprehensive Terms Of Reference. The terms of reference have to be conveyed to

the applicant. The terms of reference have to be displayed on the website of MoEF. At Stage (iii) public consultation was warranted and since paragraph (d) in stage (iii) of Regulation 7 excluded area development projects, learned Senior Counsel urged that the Office Memorandum dated 24<sup>th</sup> February 2011 mandated public consultation.

60. On facts learned Counsel urged that the stand of MCGM was that since a comprehensive EIA report prepared by the consultants had been submitted for the purpose of CRZ clearance, the requirements had been substantially complied with, but this stand of MCGM, learned Senior Counsel urged, overlooked the fact that under EIA - 2006, before a draft EIA report is prepared, the application has to be scrutinized and the result of the scrutiny could stipulate additional terms of reference and the said has been completely eliminated. On the issue that there was substantial public participation in the form of public consultation process followed by inviting suggestions from the public to the draft project report (not the draft EIA report), learned Counsel urged that the Respondents had mixed two different concepts and have unnecessarily created a confusion. Referring to Regulation 5

of the CRZ – 2011, learned Counsel urged that the same deals with the preparation of coastal zone management plans and vide paragraph (vi) the coastal States and Union Territories have to prepare coastal zone management plans in accordance with the guidelines contained in Annexure-I of the Notification. Annexure-I requires: *draft CZMP* prepared shall be uploaded on the website and suggestions and objections received in accordance with the Environment (Protection) Act 1986. A public hearing on the draft CZMP shall be held at the District Level by the concerned CZMAs. On the factual aspect, learned Senior Counsel urged that the public consultative process emerging from the pleadings of the Respondents is that MCGM issued a public advertisement on 25<sup>th</sup> June 2015 inviting objections from the public to the proposed coastal road and on its website uploading the draft project report. To summarize on the importance of a comprehensive terms of reference, learned Senior Counsel urged that the Notification laid emphasis on the matter to be considered from the point of view of comprehensive terms of reference because all relevant environmental concerns were required to be focused upon by the environmental impact assessment committees either at the Central

level or at the State level. The draft EIA report had to be prepared based on said terms of reference. A public notice had to be issued inviting objections and suggestions with reference to the terms of reference and objections and suggestions had to be noted and dealt with and finally incorporated in the final EIA report which then had to be considered by the Committee to grant or refuse the environmental clearance.

61. With reference to permission to be obtained under the Wildlife (Protection) Act 1972 before the project could be commenced, learned Counsel urged that environmental clearance itself stipulated that if any further clearances were required the same have to be obtained and thus MCGM could not have commenced construction without obtaining permission under Wildlife (Protection) Act, 1972. Learned Senior Counsel urged that admittedly corals were found at three places and thus urged that clearance under Wildlife (Protection) Act was warranted.

62. Ms Gayatri Singh, learned Senior Counsel for the Petitioner of WP (L) No. 560/2019 submitted that although a Social Impact

Assessment Study was conducted, it did not address any concern of the local fishermen community even though they were the most affected by the project. Since no public hearing for social impact study was conducted, no consultation was effected with the fishermen community or the petitioner society. The extent of damage caused to the ecology of the area and the livelihood of the fishermen cannot be effectively ascertained in the absence of a proper study in said regard, and the mitigation measures contemplated by the Respondents can never be effective. As per learned Senior Counsel, the issue was not restricted to fish drying beds or navigation of boats but extended to the very act of fishing, which is a traditional and artisan activity. The channels promised for ingress to the deeper waters will be surrounded by land and the construction would alter the tidal pattern making it unsafe for the fishermen to navigate. It will be hazardous for the boats to cross through such narrow channels causing great inconvenience to the livelihood of the fishermen. The navigational channel will not be sufficient since the project would destroy the ecology and biodiversity of the shallow water crucial for carrying out traditional artisan fishing. The Coastal Regulation Zone Notification has also emphasized

protecting the livelihood of the fishermen. The details of Form 1 to be submitted for clearance and Coastal Zone maps are to explain fishing activities and fish breeding areas. However, the details were not provided by the MCGM. The livelihood of the fishermen is being extinguished only to pander to the needs of 1% of the city population, i.e. the private car owners. The fishing activities from Worli have been carried out from the area over generations . The area produces quality fish and fishing is a lucrative business in the city of Mumbai, which has sustained the fishermen for generations. The rocky areas are a vital fishing zone where various quality fish are found in large quantity. The artisan fishing involved trapping fish that moves towards the breeding areas. If the breeding areas are lost due to reclamation, the fish population will not move to the part of the shore. In rocky areas fishing activity is seasonal and used to harvest commercially important fish which migrate to rocky areas for breeding. The artisan fishing involves different nets, and the fish are caught in cast-nets and gill-nets. A particular skill is developed to fish in muddy areas and that too in different period of the year. Once the breeding areas are lost whereby the migration of fish to breeding areas ceases, the fishing activity itself

would end, and therefore, there is no gainsaying that fishing can take place in deeper waters. It is impossible for the artisan fishermen skilled in the particular fishing activity to learn new skills of deep-sea fishing as suggested by MCGM. The fishing in deeper seas between 4 to 12 nautical miles will require substantial investment, maintenance, operating cost and different skill sets. Further fishing in the deep sea is more dangerous than shallow water fishing. A study conducted by Spatial Alternative titled Social Ecology of Shallow Seas sets out the ecology and productivity of the Coast, the practice of artisan fishing and the impact of the project on the livelihood and ecology of the area.

63. Mr. Jaman Ali learned Counsel for the petitioners in PIL (L) No. 39 of 2013 referred to a report prepared for a marine Biodiversity Conservation Plan which was annexed with the said petition and drew our attention to page 162 of the petition wherein observations of the intra-tidal marine Biodiversity in Worli Rocky shores revealed different species corals at a distance of 889.24 meter from Rocky seashore of Worli sea face. Counsel highlighted that under Schedule I of the Wildlife (Protection) Act 1972 colonies of corals are enlisted as

protected species.

64. Pertaining to the interchange to connect the existing Bhulabhai Desai road to the proposed coast road called Amarson Interchange, because, the interchange is near Amarson Garden, Shri. Janak Dwarkadas referred to the layout of the interchange and urged that the same would result in Tata garden being bifurcated into three parts and in between two parts a portion of the park being used to construct a part of the interchange. Learned Senior Counsel urged that this was illogical. There was no reason why the location of the interchange was not either on the corner of the park or a little further away so that the park could be saved.

65. Mr. Prakash Laxman Chanderkar who filed PIL No. 25 of 2019 argued that from a common-sense point of view, the matter could simply be resolved by constructing an elevated road over the existing road connecting the southern end of the city to its northern end and by introducing double-decker buses, further, the Government offices could be relocated outside the city of Mumbai.

66. In a spirited response, Shri D. J. Khambata, learned Senior

Counsel for MCGM argued with respect to the CRZ amendment made on 30<sup>th</sup> December 2015 by tracing the history to the Coastal Zone Regulations from the first issued on 19<sup>th</sup> February 1991. Counsel urged that the 1991 CRZ Notification declared what were CRZ areas and imposed restrictions on setting up and expansion of industries, operations and process in such areas. It also declared the prohibited activities in the CRZ areas. These activities included '*land reclamation*'; vide clause 2(viii). However, this was not an absolute prohibition. By way of an exception, land reclamation was permitted where it was '*required for control of coastal erosion and maintenance or clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, stormwater drains and structures for prevention of salinity ingress and for sweet water recharge*' vide para 2(viii). Counsel urged that land reclamation was not totally prohibited and was in fact permitted for development of certain infrastructure, e.g. stormwater drains.

67. The 1991 CRZ Notification was amended on 9th July 1997. Para 2(viii) was substituted with the following:

“(viii) *land reclamation, bunding or disturbing the*

*natural course of sea water except those required for construction of ports, harbours, jetties, wharves; quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge.”*

68. As per Shri Khambata, the amendment, therefore, expanded the scope of exceptions in relation to land reclamation and permitted land reclamation, inter alia, in respect of the construction of bridges and sea-links.

69. The 1991 CRZ Notification was amended once again on 12th April 2001 by which para 2(viii) was substituted with the following:

*“(viii) Land reclamation, bunding or disturbing the natural course of sea water except those required for construction or modernisation or expansion of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge:*

*provided that reclamation for commercial purposes such as shopping and housing complexes, hotels and*

*entertainment activities shall not be permissible.”*

70. Learned counsel urged that the amendment once again expanded the scope of exceptions in relation to land reclamation. Further, the proviso made it clear that the legislative intent was not to totally prohibit reclamation. The only activity for which reclamation was to be totally prohibited was for commercial purposes such as shopping and housing complexes, hotels and entertainment activities.

71. Learned senior counsel argued that on 6th January 2011 the MoEF issued a new CRZ Notification in substitution of the 1991 CRZ Notification. The preliminary background to the notification stated that it was introduced 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*'. Thus, counsel urged that the objective of the CRZ - 2011 was not to completely prohibit development in CRZ areas but instead the

objective was to `promote' development in a sustainable manner.

72. Learned Senior Counsel submitted that legislation, which denies or restricts a person's right to property must be strictly interpreted, as held in the decision reported as (2015) 3 BomCR 640 D. B. Realty Limited v. the State of Maharashtra. Given that the CRZ - 2011 imposes certain restrictions on a person's ability to develop his property located in a CRZ area and thereby has the effect of imposing restrictions on the right to property, the provisions of the CRZ Notification that impose prohibitions and restrictions must be construed strictly rather than liberally. Para 3 of the CRZ - 2011 lists out various general classes of activities that are prohibited. All the prohibitions listed out in para 3 are not absolute prohibitions. Many of the prohibitions are subject to several exceptions which limit the scope and extent of the prohibition. It is only certain specified activities that are totally prohibited. Learned Senior Counsel drew our attention to para 3(iv) of the CRZ - 2011, which prohibits land reclamation activities in CRZ being subject to the following exceptions:

*“(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, slipways,*

*bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;*

*(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”*

Thus, Counsel argued that land reclamation was permitted, inter alia, for construction of bridges, sea links and road on stilts. It was also permitted for even larger projects such as ports and harbours. Construction of roads on reclaimed land is therefore not anathema to the CRZ - 2011 as suggested by the Petitioners. It was envisaged and permitted for several projects/activities.

73. Concerning the amendment made on 30th December 2015 learned Counsel argued that by way of the amendment a further exception was introduced in para 3(iv) of the CRZ – 2011 which contains the prohibition against land reclamation. The amendment specifically excludes the construction of a ‘road on reclaimed surface’

from the prohibition against land reclamation. The amendment also introduced a new para 4(g) in the CRZ - 2011 to regulate the permissible activity of construction of a road on reclaimed land. The new para 4(g) provides that construction of a road on reclaimed land should only be done in `exceptional cases' and with the approval of the MoEF upon the recommendation of the concerned Coastal Zone Management Authority.

74. Concerning the petitioners contention that: (i) the object of the CRZ - 2011 is to protect ecologically fragile coastal areas; (ii) the amendment made in 2015 is contrary to the object of the CRZ – 2011, because it permits land reclamation and construction of a road in CRZ areas; and (iii) the 2015 amendment is contrary to the object and purpose of the Environment (Protection ) Act, 1986, learned counsel argued that the stated purpose and object of CRZ – 2011 included `to promote development through sustainable manner'. Under para 3 of the CRZ - 2011, there is no absolute prohibition against land reclamation. In fact, para 3(iv)(a) permitted land reclamation for several purposes, including for the construction of bridges, sea links and road on stilts. Notably, this was the position even under the

erstwhile 1991 CRZ Notification. Under the CRZ - 2011, there is no prohibition against the construction of roads in CRZ-I areas. In fact, para 8(i)(I)(ii)(b) of the CRZ – 2011 merely regulates the manner in which 'Roads' are to be constructed in CRZ-I areas by requiring '*necessary safety measures to be incorporated*' while permitting their construction.

75. Learned Counsel, therefore, submitted that the amendment made to the CRZ Notification in 2015, which permitted land reclamation to be carried out for the construction of a road on reclaimed land is not contrary to the stated object and purpose of the CRZ - 2011. Had the Coastal Road been on stilts, land reclamation would have been permissible for it even under the unamended 2011 CRZ Notification. It was submitted that the 2015 amendment is not contrary to the object and purpose of the Environment (Protection) Act since Section 3 of the Environment (Protection) Act reads:

*3. Power of Central Government to take measures to protect and improve environment :*

*(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating*

*environmental pollution.*

*(2) In particular, and without prejudice to the generality of the provisions of subsection (1), such measures may include measures with respect to all or any of the following matters, namely:-*

XXXX

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(Emphasis Supplied)*

76. As per Shri Khambata, it was evident that the Environment (Protection) Act does not contemplate a wholesale prohibition of development activities but instead only contemplates restrictions being placed on it and imposition of safeguards to protect the environment.

77. Referring to the decision of the Supreme Court reported as (1996) 5 SCC 647 Vellore Citizens' Welfare Forum v. U.O.I., learned Counsel urged that the Supreme Court noted that the `traditional concept that development and ecology are opposed to each other is no longer acceptable` and that `Sustainable Development` is the answer.

78. Thus as per the learned Counsel, the 2015 amendment by which land reclamation has been permitted in CRZ areas for the construction

of roads only in exceptional cases can therefore not be stated to be contrary to the object and purpose of the Environment (Protection) Act.

79. On the issue of scientific study preceding the Notification, learned Counsel drew our attention that the JTC in its Report first recommended the amendment of the CRZ - 2011 to allow for land reclamation for construction of the Coastal Road in Mumbai. It was evident from the JTC Report that it was only after it received the advice/inputs from the Council of Scientific & Industrial Research - National Institute of Oceanography (CSIR-NIO) that it recommended the amendment of the CRZ - 2011. The advice received from the team formed at CSIR-NIO comprised experts in Marine Biology, Geophysics, Coastal Regulations, Ocean Engineering and Physical Oceanography, which specifically examined '*oceanographic aspects of the impact*' of the proposed coastal road. This expert committee advised the JTC that the proposed reclamation for the coastal road would not cause any adverse effect on the tides or erosion of the coastline around Mumbai. Learned Counsel highlighted that the JTC itself comprised of an expert in the field of Oceanography (Dr. S. R.

Shetye, Director, National Institute of Oceanography).

80. As per learned Senior Counsel, the JTC Report was thereafter placed before the MCZMA which also considered the same and the scientific advice that the proposed coastal road would not have an adverse impact on tidal movements or erosion of the coastline around Mumbai. Based on this material, the MCZMA recommended the amendment of the CRZ - 2011 to allow the reclamation of land to construct the coastal road. Further, the JTC which received this expert scientific advice from the CSIR-NIO also comprised of a representative of the MoEF (Dr. Nalini Bhat, Advisor, MoEF). It was therefore submitted that the scientific study in respect of the impact of the proposed coastal road on tidal behaviour and the coastline was available to the MoEF before it amended the CRZ - 2011 in 2015.

81. On the issue whether by permitted reclamation for a coastal road in exceptional cases, learned Counsel urged that the striking down of legislation if it confers unguided, uncanalised and unfettered power is part of the doctrine of excessive delegation of legislative power. This is a doctrine that applies to a delegation of legislative power to another

authority. It is because of such delegation that the delegator legislator has to give guidance or impose some conditions to fetter or canalize that power so that there is no abdication of the legislative function to the delegatee. As per Shri Khambata, the 2015 Amendment is not as a case of delegation of legislative power at all. The delegation of legislative powers is found in Section 3 of the Environment (Protection) Act 1986. The delegate under Section 3 of the Central Government, i.e. the MoEF. Counsel referred to sub-section (1) of Section 3, which reads,

*“Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.”*

82. As per Shri Khambata the Central Government, i.e. the MoEF in the exercise of the delegated legislative power under Section 3 of the Environment (Protection) Act made the CRZ - 2011. The 2015 Amendment does not `delegate' any part of the MoEF's power under the 2011 CRZ - 2011 or under Section 3 of the Environment (Protection) Act 1986 to any other authority. Indeed the `exceptional

*case'* has to be approved by the MoEF itself. No question can therefore arise of the MoEF giving itself guidelines or fettering its own power. The entire argument of uncanalised or unguided power was therefore misconceived.

83. Shri Khambata argued that on the assumption that the doctrine of excessive delegation can be applied to the 2015 Amendment, that there was sufficient guidance or canalization of power.

84. Learned Senior Counsel submitted that in certain cases where it is difficult to identify situations in advance and to lay down a rigid rule is likely to cause hardship it was necessary to give such a power to the executive authority which is to be exercised sparingly and within the framework of the declared policy of the law. Referring to the decision reported as (2000) 7 SCC 425 Consumer Action Group vs. State of Tamil Nadu, counsel stated that the Supreme Court was concerned with a case where the town planning statute gave the Government the power to exempt any land or building from all or any of the provisions of the statute. Faced with the question of whether such a provision constituted excessive delegation, the Supreme Court held as follows :

*“18. The catena of decisions referred to above concludes unwaveringly in spite of very wide power being conferred on delegatee that such a section would still not be ultra vires, if guideline could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. In testing validity of such provision, the courts have to discover, whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. In the fast changing scenario of economic, social order with scientific development spawns innumerable situations which Legislature possibly could not foresee, so delegatee is entrusted with power to meet such exigencies within the in built check or guidance and in the present case to be within the declared policy. So delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially effecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situation cannot be culled out which has to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Such power is meant rarely to be used. So far decisions relied by the petitioner, where the provisions were held to be ultra vires, they are not cases in which court found that there was any policy laid down under the Act.”*

85. Similarly, in the decision reported as AIR 1951 SC 318 State of Bombay v. F. N. Balsara, the Supreme Court held:

*“44. This Court had to consider quite recently the question as to how far delegated legislation is permissible, and a reference to its final conclusion will show that delegation of the character which these sections involve cannot on any view be held to be invalid. (See Special Reference No.1 of 1951: In re The Delhi Laws Act, 1912, etc.). A legislature while legislating cannot foresee and provide for all future contingencies, and section 52 does no more than enable the duly authorized officer to meet contingencies and deal with various situations as they arise. The same considerations will apply to section 53 and 139(c). The matter however need not be pursued further, as it has already been dealt with elaborately in the case referred to.”*

86. Learned Senior Counsel submitted that in the context of the CRZ - 2011 `exceptional cases' has to be construed as compelling and rare cases, where the circumstances, the public interest and the need to construct a road on reclaimed land outweighs the interest in prohibiting land reclamation. It is only in such cases that the MoEF is to grant CRZ permission. By introducing the `exceptional case' test, the amended notification guides the MoEF that it is only in compelling and rare cases that the permission is to be granted. Hence, merely

because the amended notification leaves the discretion to the MoEF, on the recommendation of the MCZMA, to permit the reclamation of land for construction of a road does not make the provision unconstitutional on account of excessive delegation. There is retention of full power in the MoEF who is the delegate of Parliament under Section 3 (1) of the Environment (Protection) Act 1986. The 2015 amendment of the CRZ - 2011 concerns a case where the MoEF cannot foresee in advance all the future contingencies and in what cases and circumstances it may be necessary to permit the reclamation of land for the construction of a road. It is for this reason that the para 4(i)(g) inserted in the CRZ - 2011 only permits such projects in exceptional cases recommended by the Coastal Zone Management Authority and approved by the MoEF itself. Counsel highlighted that the petitioners have in fact relied on an amendment dated 15th May 2009 to the CRZ Notification, by the MoEF permitting '*development of greenfield airport and related activities at Navi Mumbai*', contending that a narrow and focused amendment such as this was permissible and valid. Based on exceptional circumstances relating to Mumbai, the MoEF could, therefore, have always specifically amended the CRZ -

2011 to permit the construction of the Coastal Road in Mumbai, as was done in the case of the Navi Mumbai Airport. Thereafter, if and when another exceptional case were to arise in the future in some other part of India, the MoEF could always make a similar amendment for that exceptional case. The 2015 amendment has the same effect. By allowing land reclamation for construction of roads only in exceptional cases approved by the MoEF the ultimate authority and power to permit such projects remains vested with the MoEF which will consider a case based on the recommendation of the concerned Coastal Zone Management Authority. The 2015 amendment does not suffer from the vice of excessive delegation. The petitioners argument that the 2015 amendment would allow wholesale destruction of CRZ areas all across India's coastline of 7,500 km is nothing short of an alarmist argument. As is clear from the amendment, reclamation of land for construction of roads is to be permitted only in `exceptional cases' to be recommended by the Coastal Zone Management Authority and approved by the MoEF. Unless these high-level authorities grant their approval, it could not be open to any planning authority or gram panchayat in India to go about reclaiming land to construct a road.

87. The dichotomy in the argument of the petitioners was sought to be highlighted by arguing that the petitioners in PIL No. 40 of 2019 challenge the 2015 Amendment on the ground that it is '*tailor-made and procured solely to permit and facilitate the Coastal Road*'. The Petitioner in PIL No. 44 of 2019 has also contended that '*the amendment of 2015 was introduced solely to enable effecting the coastal road in the City of Mumbai*'. The argument advanced by the petitioners was now to the contrary, i.e. that the 2015 Amendment is over wide and applies to the whole coastline and should have been limited only to the Coastal Road.

88. Learned Senior Counsel distinguished the decision in *Indian Council for Enviro-Legal Action (case)* supra by urging that in said case the amendments made by the Central Government were contrary to the recommendation of an Expert Committee under the Chairmanship of Mr. B. B. Vohra (the Vohra Committee) set up by the Central Government to examine issues relating to the development of the tourism and hotel industry in coastal areas. The Government claimed to have accepted the recommendations of the Vohra Committee with

*'slight modifications'* but was found in fact to have acted contrary to the recommendations. For example, where the Vohra Committee had recommended relaxations within the 200 meter in rocky and hilly areas on a case by case basis, the Government had not fettered the blanket power given to it under the amendment with these restrictions.

89. Referring to the argument of the petitioners that the approvals of the Coastal Road project refer to the *'exceptional circumstances'* existing in Mumbai and that *'exceptional cases'* cannot be equated with *'exceptional circumstances'*, counsel submitted that this is an argument of semantics since it is exceptional circumstances that make a case an exceptional one. Given that the authorities have accepted that exceptional circumstances exist in Mumbai that would necessarily mean that Mumbai is an *'exceptional case'*.

90. Concerning the argument of the petitioners that the 2015 Amendment suffers from the vice of arbitrariness, learned counsel submitted that there is not even an argument that the 2015 Amendment is *'manifestly arbitrary'* which is the minimum threshold required to be crossed whilst challenging delegated legislation as held

in the decision reported as (2006) 3 SCC 434 Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group. Learned counsel submitted that the 2015 Amendment is not even arbitrary for the reasons as far as the Coastal Road is concerned, experts of the CSIR-NIO concluded that the Coastal Road would not cause any adverse effect on the tides or change in the characteristics of the boundary between the coastline and the sea is expected. There was no need for a scientific study to have been carried out throughout India to determine the impact on India's 7,500 Km coastline. That as when an 'exceptional case' presents itself the MoEF would obviously consider the scientific material relating to that case before granting approval under the CRZ Notification. That there was no merit in the contention that there 2015 Amendment is arbitrary on the ground that there is no nexus between the amendment and the object of the Environment (Protection) Act and the 2011 CRZ Notification because the sole objective of the Environment (Protection) Act is not to stop all forms of environmental damage. If that were the sole objective of the Environment (Protection) Act, it would have prohibited all industrial activity and development. Instead, the Environment (Protection) Act

seeks to regulate industrial activity and development to balance environmental protection and development. This is evident from the measures that the Government may take as enumerated in Section 3(2) of the Environment (Protection) Act which emphasize the laying of standards and norms and the imposition of restrictions and safeguards to protect the environment. The emphasis is not on prohibiting the development and industrial activity. The object under the CRZ - 2011 is *'to promote development through sustainable manner'* and not to prohibit development. The CRZ - 2011 itself expressly permit the construction of bridges, sea links and roads on stilts through land reclamation. The 2015 Amendment merely extends the scope of this exception to even included roads constructed on reclaimed surfaces.

91. On the issue whether the Coastal Road (South) project falls under Entry 8(b) of the Schedule to EIA – 2006, learned counsel argued that EIA - 1994 simply contained a list of projects requiring environmental clearance and the entries were not divided into class or category either qualitative or quantitative. There was a provision to exclude certain items if in a particular area or below a specified value. However, EIA – 2006 introduced class and categories of projects and

activities. Depending upon their nature or character, for the first time projects or activities were grouped into eight distinct classes: (i) Mining, extraction of natural resources and power generation, (ii) Primary Processing, (iii) Materials Production, (iv) Materials Processing, (v) Manufacturing/Fabrication, (vi) Service Sectors, (vii) Physical Infrastructure including Environmental Services, (viii) Building/Construction projects/Area Development projects and Townships.

92. As per learned Senior Counsel, the project or activity under EIA – 2006 had to satisfy both a qualitative requirement and a quantitative threshold. To satisfy the qualitative requirement, the project/activity must be referable to a classified and listed in the entry in the Schedule to the notification.

93. Under the EIA – 2006, all projects and activities listed in the Schedule are sub-divided into two categories, viz. Category A and Category B based on quantitative factors, i.e. the spatial extent of the potential impact on human health and natural and human-made resources. Projects listed in Category A require environmental

clearance from the MoEF while projects listed in Category B require environmental clearance from the State Environment Impact Assessment Authority (SEIAA). Projects listed in Category B are further divided into Category B1, and B2 require an Environment Impact Assessment report those in Category B2 do not require such a report.

94. Learned Senior Counsel argued that in In Re Noida Memorial Complex (Case) supra, the Supreme Court held that to determine which class or item a project or activity is referable to the test of dominant purpose or dominant nature of the project has to be applied. Hence, if a project does not come within a specified entry, it would not be covered by the notification.

95. As per the learned Senior Counsel, a project does not become an area development project just because there is the development of an area, because then any building, engineering, mining or other operations in or over or under land would become area development projects. The dominant purpose test would determine what the project is. Entry 8(b) would be attracted if by the dominant purpose test a project or activity does not have the nature and character of any of the

seven other classes in the Schedule and is predominantly for the purpose of area development. Conceding that a reclamation is a form of development, but that begs the question. Applying the dominant purpose test the question to pose and answer is : Whether a common person would view the activity as far the purpose of reclamation as an end in itself or whether the end for which the reclamation is undertaken is the purpose of the activity. Viewed so, the reclamation was for the purpose of laying a road.

96. There may be an ancillary object to an activity but said facts would be irrelevant as was held in the decision reported as (1980) 2 SCC 231 CIT vs. Surat Art Silk Cloth Manufacturing Association, thus Entry 8(b) is not and cannot be treated as a residuary entry to which recourse can be taken whenever there is a project which satisfies the qualitative test of an entry in a class to which the project's dominant purpose is referable but which does not satisfy the quantitative threshold prescribed for that class much less if the project does not have the nature and character of an 'Area Development Project'.

97. Additionally, learned Senior Counsel urged that it is a settled rule

of construction that general provisions yield to special provisions be they in the same statute.

98. As per Shri D. J. Khambata, road construction falls within the class of Physical Infrastructure at Entry 7 of the Schedule of EIA – 2006. Thus road construction project whether on reclaimed land or otherwise partakes the class of projects specified under Entry 7 of EIA – 2006.

99. Learned Senior Counsel argued that a reading of the decision of the National Green Tribunal in Vikrant Kumar Tongad (Case) supra, shows that the tribunal erroneously proceeded on the footing that Entry 8 was a residual entry of the Schedule evidenced by the two sentences in para 17 of the opinion: *'The legislature has worded heading of Entry 8 in very wide and expressive terms use of expressions with such wide magnitude clearly indicate the legislative intent that they should be construed liberally'*. Learned Senior Counsel urged that National Green Tribunal correctly understood and applied the law in its subsequent decision dated 7 April 2016 in Application No. 85/2015 Goa Foundation vs. Goa State Infrastructure

Development Corporation, where a bridge forming part of a National Highway across river Mandovi not falling in Entry 7(f) was held to be not covered by Entry 8(a) i.e. said entry could not be treated as a residual entry.

100. Learned Senior Counsel urged that the JTC report, the decision of MCZMA dated 10 June 2013, and 16 January 2016, the Social Impact Assessment Report, the EAC report dated 17 March 2017 and CRZ clearances dated 11 May 2017, all highlight that the proposal was to construct an intracity road.

101. That of the 90 hectares reclaimed land only 20 hectares would be used for road and remaining 90 hectares for parts etc., would not result in the dominant purpose being changed because open green spaces were the result and consequences of the coastal road. That the coastal road had to have a gentle curve and not sharp kinks was to cause the least impact on tidal movement. As per learned counsel, the alignment drawings prepared by M/s STUP Consultants (the DPR Consultant) graphically shows the green areas only arise incidentally to the sharper curvature of the coastline as opposed to the gentle curves of the Coastal

Road. It is only this additional reclaimed land which is not required for the coastal road that is proposed to be used as open green spaces and recreational facilities.

102. Learned Senior Counsel posited a question by prefacing it with a statement of fact that if the open spaces generated by the road alignment were left as mud and rubble : Would they too qualify as an Area Development?

103. Turning next to the issues of environmental scrutiny and public participation learned Senior Counsel argued that at best it could be argued that as per EIA – 2006 Item 8(b) projects in Category B1 would need Environmental Impact Assessment which was also the requirement under CRZ – 2011. Clause 7(III)(i) of EIA – 2006 requiring public consultation for all Category A and B1 projects had an exception to the projects listed in paras (a) to (h) of the Clause and para (d) exempted projects at Entry 8(a) and 8(b) in the Schedule. Thus, there was no necessity to have Public Consultation. Clause 7(III)(ii) of EIA – 2006 stipulate: (a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons, (b)

obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

104. Thus, as per learned Senior Counsel, from the use of the word 'ordinarily' in the notification, the intent was that Public Consultation was not an invariable requirement.

105. As per learned counsel, MCGM had substantially complied with the requirement of Public Consultation because on 25 June 2015 MCGM had published advertisements and uploaded draft D.P.R on its website inviting objections and suggestions from the public at large and had received 3375 representations in support and against the proposed coastal road. Further, EAC published on its website the agenda of its proposed 168<sup>th</sup> meeting with documents it proposed to consider and thereafter held the meeting on 17 March 2017. The EAC considered objections raised by the petitioner of PIL (L) No. 40 of 2019. Lastly, before amending CRZ – 2011 on 20 December 2015 MoEF had invited objections to the draft amendment.

106. The O.M. Dated 25 February 2011 reads as under :-

*“ This has reference to the issue of the Coastal*

*Regulation Zone Notification, 2011 vide S.No.19(E), dated 6<sup>th</sup> January 2011. As per para 4(i)(d), “MoEF may under a specific or general order specify projects which require prior public hearing of project affected people”, it is hereby clarified that the following projects would attract prior public hearing:-*

*(a) All 'A' and 'B1' category projects listed under Environmental Impact Assessment Notification, 2006 and which also attract Coastal Regulation Zone Notification, 2011;*

*(b) The housing project which involves group housing, slum redevelopment project unsafe/dilapidated building redevelopment projects.*

*2. The public hearing shall be held as per the procedures laid down in the Environmental Impact Assessment Notification, 2006 which will involve the project affected people.”*

107. Conscious of the fact that MCGM had to overcome the same, learned Senior Counsel submitted that since as per Clause 7(III)(i)(d) of EIA – 2006 exempted Item 8(b) of the Schedule from the procedure of Public Consultation, reading the OM in a manner consistent with EIA – 2006, public consultation was not required.

108. Concerning appraisal of the applications, learned counsel urged that under clause 7(IV)(i) Appraisal means detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal

Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

109. Appendix V to EIA – 2006 reads :

1. *The applicant shall apply to the concerned regulatory authority through a simple communication enclosing the following documents where public consultations are mandatory:*

. *Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy]*

- . *A copy of the video tape or CD of the public hearing proceedings*
- . *A copy of final layout plan (20 copies)*
- . *A copy of the project feasibility report (1 copy)*

*3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance.”*

110. Thus as per learned Senior Counsel, the appraisal required was to be based on Form 1. Drawing attention to the 114<sup>th</sup> Meeting of MCZMA and the minutes drawn, learned Senior Counsel highlighted that it is recorded that MCZMA considered the following documents:-

- a) *Checklist for submission of Application for prior CRZ Clearance under CRZ Notification 2011, Part -A & Par – B.*
- b) *Duly filled Form-I.*

- c) *Comprehensive EIA Report (In Volume III).*
- d) *CRZ maps in 1:4000 scale with project layout superimposed*
- e) *Risk Assessment & Disaster Management Plan*
- f) *Main Report (Volume-I)*
- g) *Drainage Report (Volume-IV)*
- h) *Traffic Report (Volume – IV)*
- i) *Social Impact Assessment Report (Volume – IX)*
- j) *Work Order of NIO with proposal for studies on Waves, extreme water levels etc.*
- k) *Environmental Cost Benefit Analysis*
- l) *Compliance to observations and conditions mentioned in the 111<sup>th</sup> meeting of MCZMA.*
- m) *Compliance to MoEF letter dated 22.8.2016.*

The minutes of the 168<sup>th</sup> Meeting of EAC held on 17 March 2017 record that all the documents considered by MCZMA were endorsed with the recommendation made by MCZMA and were also considered by EAC. Thus, appraisal warranted by law was dutifully done.

111. Learned Senior Counsel drew comparison between Form 1 under CRZ – 2011 and Form 1 under EIA – 2006 to urge that all facets of scrutiny covered by the latter were covered by the former, in fact the

former had more stringent scrutiny parameters and the argument was that for purposes of the law, Expert Appraisal Committee being same for both notifications, scrutiny was done even under EIA – 2006. The tabular comparison being as under :

**ANNEXURE – II**

**Comparison chart between Form 1 under the Coastal Regulation Zone Notification, 2011 and Form 1 under the Environment Impact Assessment Notification, 2006**

<b><i>Form 1 – Annexure IV of the CRZ Regulations, 2011 -</i></b>	<b><i>Form 1 – Appendix I of the EIA Notification –</i></b>
<b><i>I. Basic information:</i></b>	
<b><i>Name of the Project</i></b>	1. Name of the project/s:
<b><i>Location or site alternatives under consideration:</i></b>	2. S. No. in the schedule
<b><i>Size of the project (in terms of total area) :-</i></b>	3. Proposed capacity/area/length/tonnage to be handled/command area/lease area/number of Wells to be drilled.
<b><i>CRZ classification of the area :-</i></b>	4. New/Expansion/Modernization
<b><i>Expected cost of the project-</i></b>	5. Existing Capacity Area etc.
<b><i>Contact Information:</i></b>	6. Category of Project i.e. 'A' or 'B'
	7. Does it attract the general condition? If yes,

	<p><i>Please specify.</i></p> <p>8. <i>Does it attract the specific condition? If 'yes,</i> <i>Please specify.</i></p> <p>9. <i>Location</i> <i>Plot/Survey/Khasra No.</i> <i>Village</i> <i>Tehsil</i> <i>District</i> <i>State</i></p> <p>10. <i>Nearest railway station/airport along with Distance in kms.</i></p> <p>11. <i>Nearest Town, city, District Headquarters</i> <i>Along with distance in kms.</i></p> <p>12. <i>Village Panchayats, Zilla Parishad, Municipal Corporation, Local body (complete postal</i> <i>Address with telephone nos. to be given)</i></p> <p>13. <i>Name of the applicant</i></p> <p>14. <i>Registered Address</i></p> <p>15. <i>Address for correspondence:</i> <i>Name</i> <i>Designation(Owner/ Partner/CEO)</i> <i>Address</i> <i>Pin Code</i></p>
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	<p><i>E-mail</i></p> <p><i>Telephone No.</i></p> <p><i>Fax No.</i></p> <p>16. <i>Details of Alternative Sites examined, if any. Location of these sites should be shown on a topo sheet.</i></p> <p>17. <i>Interlinked Projects</i></p> <p>18. <i>Whether separate application of interlinked Project has been submitted?</i></p> <p>19. <i>If yes, date of submission</i></p> <p>20. <i>If no, reason</i></p> <p>21. <i>Whether the proposal involves approval / clearance under: if yes, Details of the same and their status to be given.</i></p> <p><i>The Forest (Conservation) Act, 1980?The Wildlife (Protection) Act, 1972</i></p> <p><i>The C.R.Z. Notification, 1991?</i></p> <p>22. <i>Whether there is any Government Order/ Policy relevant/ relating to the site?</i></p> <p>23. <i>Forest land involved (hectares)</i></p> <p>24. <i>Whether there is any litigation pending against the project and /or land in which the project is propose to be set up?</i></p>
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		<p style="text-align: center;"><i>Name of the Court</i></p> <p style="text-align: center;"><i>Case</i></p> <p style="text-align: center;"><i>No.Orders/directions of the Court, if any and its relevance with the proposed project.</i></p>	
<p><b>II) Activity</b></p> <p><b>1. Construction, operation or decommissioning of the Project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.)</b></p>			
<i>Sr. No.</i>	<i>Information/Checklist confirmation</i>	<i>Sr. No.</i>	<i>Information/Checklist confirmation</i>
1.1	<i>Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)</i>	1.1	<i>Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)</i>
1.2	<i>Details of CRZ classification as per the approved Coastal Zone Management Plan?</i>		-
1.3	<i>Whether located in CRZ-I area?</i>		-
1.4	<i>The distance from the CRZ-I areas.</i>		-
1.5	<i>Whether located within the hazard zone as mapped by Ministry of Environment and Forests/ National Disaster Management Authority?</i>		-

1.6	<i>Whether the area is prone to cyclone, tsunami, tidal surge, subduction, earthquake etc.?</i>		-
1.7	<i>Whether the area is prone for saltwater ingress ?</i>		-
1.8	<i>Clearance of existing land, vegetation and buildings?</i>	1.2	<i>Clearance of existing land, vegetation and buildings?</i>
1.9	<i>Creation of new land uses?</i>	1.3	<i>Creation of new land uses?</i>
1.10	<i>Pre-construction investigations e.g. bore hole, soil testing?</i>	1.4	<i>Pre-construction investigations e.g. bore, houses, soil testing?</i>
1.11	<i>Construction works ?</i>	1.5	<i>Construction works?</i>
1.12	<i>Demolition works?</i>	1.6	<i>Demolition works?</i>
1.13	<i>Temporary sites used for construction works or housing of construction workers?</i>	1.7	<i>Temporary sites used for construction works or housing of construction</i>
1.14	<i>Above ground buildings, structures or earthworks including linear structures, cut and fill or excavations</i>	1.8	<i>Above round buildings,structures or earthworks including linear structures, cut and fill or excavations</i>
1.15	<i>Underground works including mining or</i>	1.9	<i>Underground works including mining or</i>

	<i>tunneling?</i>		<i>tunneling?</i>
1.16	<i>Reclamation works?</i>	1.10	<i>Reclamation works?</i>
1.17	<i>Dredging/reclamation/land filling/disposal of dredged material etc.?</i>	1.11	<i>Dredging?</i>
1.18	<i>Offshore structures?</i>	1.12	<i>Offshore structures?</i>
1.19	<i>Production and manufacturing processes?</i>	1.13	<i>Production and manufacturing processes?</i>
1.20	<i>Facilities for storage of goods or materials?</i>	1.14	<i>Facilities for storage of goods or materials?</i>
1.21	<i>Facilities for treatment or disposal of solid waste or liquid effluents?</i>	1.15	<i>Facilities for treatment or disposal of solid waste or liquid effluents?</i>
1.22	<i>Facilities for long term housing of operational workers?</i>	1.16	<i>Facilities for long term housing of operational workers?</i>
1.23	<i>New road, rail or sea traffic during construction or operation?</i>	1.17	<i>New road, rail or sea traffic during construction or operation?</i>
1.24	<i>New road, rail, air waterborne or other transport infrastructure including new or altered routes and stations, ports, airports etc.?</i>	1.18	<i>New road, rail, air waterborne or other transport infrastructure including new or altered routes and stations, ports, airports etc.?</i>
1.25	<i>Closure or diversion of</i>	1.19	<i>Closure or diversion of existing</i>

	<i>existing transport routes or infrastructure leading to changes in traffic movements?</i>		<i>transport routes or infrastructure leading to changes in traffic movements?</i>
1.26	<i>New or diverted transmission lines or pipelines?</i>	1.20	<i>New or diverted transmission lines or pipelines?</i>
1.27	<i>Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?</i>	1.21	<i>Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?</i>
1.28	<i>Stream and river crossings?</i>	1.22	<i>Stream crossings?</i>
1.29	<i>Abstraction or transfers of water form ground or surface waters?</i>	1.23	<i>Abstraction or transfers of water form ground or surface waters?</i>
1.30	<i>Changes in water bodies or the land surface affecting drainage or run-off?</i>	1.24	<i>Changes in water bodies or the land surface affecting drainage or run-off?</i>
1.31	<i>Transport of personnel or materials for construction, operation or decommissioning?</i>	1.25	<i>Transport of personnel or materials for construction, operation or decommissioning?</i>
1.32	<i>Long-term dismantling or decommissioning or restoration works?</i>	1.26	<i>Long-term dismantling or decommissioning or restoration works?</i>
1.33	<i>Ongoing activity during</i>	1.27	<i>Ongoing activity during</i>

	<i>decommissioning which could have an impact on the environment?</i>		<i>decommissioning which could have an impact on the environment?</i>
1.34	<i>Influx of people to an area in either temporarily or permanently?</i>	1.28	<i>Influx of people to an area in either temporarily or permanently?</i>
1.35	<i>Introduction of alien species?</i>	1.29	<i>Introduction of alien species?</i>
1.36	<i>Loss of native species or genetic diversity?</i>	1.30	<i>Loss of native species or genetic diversity?</i>
1.37	<i>Any other actions?</i>	1.31	<i>Any other actions?</i>
<b><u>2. Use of Natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply):</u></b>			
<i>Sr. No.</i>	<i>Information/checklist confirmation</i>	<i>Sr. No.</i>	<i>Information/checklist confirmation</i>
2.1	<i>Land especially undeveloped or agricultural land (ha)</i>	2.1	<i>Land especially undeveloped or agricultural land (ha)</i>
2.2	<i>Water (expected source &amp; competing users) unit: KLD</i>	2.2	<i>Water (expected source &amp; competing users) unit: KLD</i>
2.3	<i>Minerals (MT)</i>	2.3	<i>Minerals (MT)</i>

2.4	<i>Construction material - stone, aggregates, sand/soil (expected source - MT)</i>	2.4	<i>Construction material - stone, aggregates, sand/soil (expected source - MT)</i>
2.5	<i>Forests and timber (source - MT)</i>	2.5	<i>Forests and timber (source - MT)</i>
2.6	<i>Energy including electricity and fuels (source, competing users) Unit: fuel (MT), energy (MW)</i>	2.6	<i>Energy including electricity and fuels (source, competing users) Unit: fuel (MT), energy (MW)</i>
2.7	<i>Any other natural resources (use appropriate standard units)</i>	2.7	<i>Any other natural resources (use appropriate standard units)</i>
<b><i>3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about actual or perceived risks to human health.</i></b>			
<i>Sr. No.</i>	<i>Information/checklist confirmation</i>	<i>Sr. No.</i>	<i>Information/checklist confirmation</i>
3.1	<i>Use of substances or materials, which are hazardous (as per MSIHC rules) to human health or the environment (flora, fauna, and water supplies)</i>	3.1	<i>Use of substances or materials, which are hazardous (as per MSIHC rules) to human health or the environment (flora, fauna, and water supplies)</i>
3.2	<i>Changes in occurrence of disease or affect disease vectors (e.g. insect or water borne diseases)</i>	3.2	<i>Changes in occurrence of disease or affect disease vectors (e.g. insect or water borne diseases)</i>

3.3	<i>Affect the welfare of people e.g. by changing living conditions?</i>	3.3	<i>Affect the welfare of people e.g. by changing living conditions?</i>
3.4	<i>Vulnerable groups of people who could be affected by the project e.g. hospital patients, children, the elderly etc.</i>	3.4	<i>Vulnerable groups of people who could be affected by the project e.g. hospital patients, children, the elderly etc.,</i>
3.5	<i>Any other causes, that would affect local communities, fisherfolk, their livelihood, dwelling units of traditional local communities etc</i>	3.5	<i>Any other causes</i>

**4. Production of solid wastes during construction or operation or decommissioning (MT/month)**

<i>Sr. No.</i>	<i>Information/checklist confirmation</i>	<i>Sr. No.</i>	<i>Information/checklist confirmation</i>
4.1	<i>Spoil, overburden or mine wastes</i>	4.1	<i>Spoil, overburden or mine wastes</i>
4.2	<i>Municipal waste (domestic and or commercial wastes)</i>	4.2	<i>Municipal waste (domestic and or commercial wastes)</i>
4.3	<i>Hazardous wastes (as per Hazardous Waste Management Rules)</i>	4.3	<i>Hazardous wastes (as per Hazardous Waste Management Rules)</i>
4.4	<i>Other industrial process wastes</i>	4.4	<i>Other industrial process wastes</i>

4.5	<i>Surplus product</i>	4.5	<i>Surplus product</i>
4.6	<i>Sewage sludge or other sludge from effluent treatment</i>	4.6	<i>Sewage sludge or other sludge from effluent treatment</i>
4.7	<i>Construction or demolition wastes</i>	4.7	<i>Construction or demolition wastes</i>
4.8	<i>Redundant machinery or equipment</i>	4.8	<i>Redundant machinery or equipment</i>
4.9	<i>Contaminated soils or other materials</i>	4.9	<i>Contaminated soils or other materials</i>
4.10	<i>Agricultural wastes</i>	4.10	<i>Agricultural wastes</i>
4.11	<i>Other solid wastes</i>	4.11	<i>Other solid wastes</i>
<b>5. Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)</b>			
<i>Sr. No.</i>	<i>Information/checklist confirmation</i>	<i>Sr. No.</i>	<i>Information/checklist confirmation</i>
5.1	<i>Emissions from combustion of fossil fuels from stationary or mobile sources</i>	5.1	<i>Emissions from combustion of fossil fuels from stationary or mobile sources</i>
5.2	<i>Emissions from production processes</i>	5.2	<i>Emissions from production processes</i>
5.3	<i>Emissions from materials handling including storage or transport</i>	5.3	<i>Emissions from materials handling including storage or transport</i>
5.4	<i>Emissions from construction activities</i>	5.4	<i>Emissions from construction activities including plant and</i>

	<i>including plant and equipment</i>		<i>equipment</i>
5.5	<i>Dust or odours from handling of materials including construction materials, sewage and waste</i>	5.5	<i>Dust or odours from handling of materials including construction materials, sewage and waste</i>
5.6	<i>Emissions from incineration of waste</i>	5.6	<i>Emissions from incineration of waste</i>
5.7	<i>Emissions from burning of waste in open air (e.g. slash materials, construction debris)</i>	5.7	<i>Emissions from burning of waste in open air (e.g. slash materials, construction debris)</i>
5.8	<i>Emissions from any other sources</i>	5.8	<i>Emissions from any other sources</i>

**6. Generation of Noise and Vibration, and Emissions of Light and Heat:**

<i>Sr. No.</i>	<i>Information/checklist confirmation</i>	<i>Sr. No.</i>	<i>Information/checklist confirmation</i>
6.1	<i>From operation of equipment e.g. engines, ventilation plant, crushers</i>	6.1	<i>From operation of equipment e.g. engines, ventilation plant, crushers</i>
6.2	<i>From industrial or similar processes</i>	6.2	<i>From industrial or similar processes</i>
6.3	<i>From construction or demolition</i>	6.3	<i>From construction or demolition</i>
6.4	<i>From blasting or piling</i>	6.4	<i>From blasting or piling</i>
6.5	<i>From construction or operational traffic</i>	6.5	<i>From construction or operational traffic</i>

6.6	<i>From lighting or cooling systems</i>	6.6	<i>From lighting or cooling systems</i>
6.7	<i>From any other sources</i>	6.7	<i>From any other sources</i>
<b>7. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea:</b>			
Sr. No.	Information/checklist confirmation	Sr. No.	Information/checklist confirmation
7.1	<i>From handling, storage, use or spillage of hazardous materials</i>	7.1	<i>From handling, storage, use or spillage of hazardous materials</i>
7.2	<i>From discharge of sewage or other effluents to water or the land (expected mode and place of discharge)</i>	7.2	<i>From discharge of sewage or other effluents to water or the land (expected mode and place of discharge)</i>
7.3	<i>By deposition of pollutants emitted to air into the land or into water</i>	7.3	<i>By deposition of pollutants emitted to air into the land or into water</i>
7.4	<i>From any other sources</i>	7.4	<i>From any other sources</i>
7.5	<i>Is there a risk of long term build up of pollutants in the environment from these sources?</i>	7.5	<i>Is there a risk of long term build up of pollutants in the environment from these sources?</i>
<b>8. Risk of accidents during construction or operation of the Project, which could affect human health or the environment</b>			
Sr.	Information/checklist confirmation	Sr.	Information/checklist confirmation

No.		No.	
8.1	<i>From explosions, spillages, fires etc from storage, handling, use or production of hazardous substances</i>	8.1	<i>From explosions, spillages, fires etc from storage, handling, use or production of hazardous substances</i>
8.2	<i>From any other causes</i>	8.2	<i>From any other causes</i>
8.3	<i>Could the project be affected by natural disasters causing environmental damage (e.g., floods, earthquakes, landslides, cloudburst etc)?</i>	8.3	<i>Could the project be affected by natural disasters causing environmental damage (e.g., floods, earthquakes, landslides, cloudburst etc)?</i>
<b><i>9. Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality</i></b>			
Sr. No.	Information/checklist confirmation	Sr. No.	Information/checklist confirmation
9.1	<i>Lead to development of supporting. lities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: Supporting infrastructure (roads, power supply, waste or waste water</i>	9.1	<i>Lead to development of supporting. lities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: Supporting infrastructure (roads, power supply, waste or waste water treatment, etc.)</i>

	<i>treatment, etc.) housing development extractive industries supply industries other</i>		<i>housing development extractive industries supply industries other</i>
9.2	<i>Lead to after-use of the site, which could have an impact on the environment</i>	9.2	<i>Lead to after-use of the site, which could have an impact on the environment</i>
9.3	<i>Set a precedent for later developments</i>	9.3	<i>Set a precedent for later developments</i>
9.4	<i>Have cumulative effects due to proximity to other existing or planned projects with similar</i>	9.4	<i>Have cumulative effects due to proximity to other existing or planned with similar effects</i>

***III Environmental Sensitivity***

<i>Sr. No.</i>	<i>Areas</i>	<i>Sr. No.</i>	<i>Areas</i>
1	<i>Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value</i>	1	<i>Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value</i>
2	<i>Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres,</i>	2	<i>Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests</i>

	<i>mountains, forests</i>		
3	<i>Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, overwintering, migration</i>	3	<i>Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, overwintering, migration</i>
4	<i>Inland, coastal, marine or underground waters</i>	4	<i>Inland, coastal, marine or underground waters</i>
5	<i>State, National boundaries</i>	5	<i>State, National boundaries</i>
6	<i>Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas</i>	6	<i>Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas</i>
7	<i>Defence installations</i>	7	<i>Defence installations</i>
8	<i>Densely populated or built-up area</i>	8	<i>Densely populated or built-up area</i>
9	<i>Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)</i>	9	<i>Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)</i>
10	<i>Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)</i>	10	<i>Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)</i>

11	<i>Areas already subjected to pollution or environmental damage, (those where existing legal environmental standards are exceeded)</i>	11	<i>Areas already subjected to pollution or environmental damage, (those where existing legal environmental standards are exceeded)</i>
12	<i>Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)</i>	12	<i>Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)</i>

112. On the issue of corals at 3 places, learned counsel highlighted at only two places were along the alignment of the road at Haji Ali and Worli. They were 0.251 sq.mtr. and 0.11 sq.mtr. *de minimis* warrants the same to be overlooked. Miniscale presence of corals would not by itself make the coastal area ecologically sensitive nor play a role in maintaining the integrity of the coast.

113. Shri. S.G. Aney learned Senior Counsel supplemented the submissions addressed by Shri. D.J. Khambata on behalf of MCGM, by urging that the Environmental (Protection) Act, 1986 was enacted to not only protect and improve the environment but also to ensure a

sustainable development evidenced by the fact that industrial projects and activities were permitted; but subject to environmental concerns being addressed. As per the learned Senior Counsel, the restrictions and procedures contemplated under Regulations have to be interpreted applying the first rule of interpretation viz. the Rule of Literal construction. Thus, the approach has to be to first identify projects or activities which are covered by a specific mention thereof in the Notifications. If none is to be found, the project or activity has to be treated as unregulated. Counsel urged that Quantitative Norms could not govern the Qualitative Norms, nor the Qualitative Norms could govern the Quantitative Norms. Thus, merely because a project is qualitative identifying as a Building or Construction Project or Township Area Development Project unless it was specified in Column 2 of the Schedule, it does not become a Building or a Construction Project either under Entry 8(a) or Entry 8(b). Referring to Entry 7 in the Schedule to EIA - 2006 with reference to the draft Notification issued on 15<sup>th</sup> September 2005, learned Senior Counsel urged that 'Road' was deleted under Entry 7 and thus under Entry 7(f) only such Roads which were new National Highways or expansion of National

Highways having length more than 30 km requiring land acquisition were regulated meaning thereby Intra-State Roads were not regulated. As per learned Counsel, the subject of Roads being covered by Entry 7(f) was exhaustive and by an interpretative process, could not be brought under Entry 8(b) on the arguments that a Road was an Area Development Project. Learned Senior Counsel took the arguments forward by urging that Courts cannot read anything into a statutory provision which is plain and unambiguous and all entries were watertight. Learned Senior Counsel referred to and read out various paragraphs in the judgments reported as (2003) 2 SCC 455 M/s. Unique Butyle Tube Industries Pvt. Ltd. Vs. U.P. Financial Corporation & Ors., (2007) 2 SCC 230 Raghunath Rai Bareja and Anr. Vs. Punjab National Bank & Ors., AIR 2006 SC 1489 Bombay Dyeing and Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors., (2018) 2 SCC 674 Macquarie Bank Ltd. Vs. Shilp Cable Technologies Ltd., in which using different phrases and expressions the crystal which emerges is that Courts cannot read anything into a statutory provision which is plain and unambiguous. Under the garb of interpretation, Courts cannot amend the law.

Judicial Legislation is an oxymoron. The *casus omissus* cannot be supplied by the Court, except in cases of clear necessity and where the reason for it is found in the four corners of the statute itself. However, at the same time, the *casus omissus* should not be readily inferred. Statutes of prohibition and regulation having penal consequences should be strictly construed.

114. Supporting the arguments of Shri. D.J.Khambata learned Senior Counsel, Shri. S.G. Aney argued that in Vikram Kumar Tongad (case) supra the Principal Bench of N.G.T., though noted the approach of first, Qualitative test to be satisfied and thereafter the Quantitative test to be met, urged that while applying the same the Tribunal muddled its opinion by relying upon the Quantitative test to infer a Qualitative test.

115. The next submission advanced was that while appraisal decisions of expert bodies, with reference to the material appraised by the expert body to form an opinion, exercising the power of judicial review, the jurisdiction of the Court was limited and the test of proportionality had not to be applied. Unless the decision was unreasonable as per the

*Wednesbury* principle, the Court could not strike down the decision. For this proposition learned Counsel referred to the decisions of the Supreme Court reported as 1991 (2) BCR 541 Bombay Environmental Act Group & Ors. Vs. State of Maharashtra & Ors., (2000) 10 SCC 664 Narmada Bachao Andolon Vs. U.O.I., (1992) (Suppl) (1) SCC 44 Tehri Bandh Virodhi Sangharshan Samiti Vs. Stae of U.P., (2017 7 SCC 729 Shivshankar Sugar Ltd. Vs. Shree Renuka Sugar Ltd., (2013) 4 SCC 575 Sterlite Industries (I) Ltd. & Ors. Vs. Union of India. (2011) 7 SCC 338 Lafarge Umaim Mining Pvt. Ltd. V/s. Union of India & Ors., AIR 1988 SC 1703 State of Punjab V/s. Ram Lubhaya Bagga. 1994 (6) SCCC 651 Tata Celluar Ltd. Vs. U.O.I., 1997 7 SCC 463 Union of India and Anr. V/s. G. Gunayathun. 2001, 2 SCC 386 Omkumar & Ors. Vs. Union of India. 1978 2 SCC 1 Puthumma & Ors. Vs. State of Kerala & Ors., 2005 8 SCC 534 State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and urged that the said decisions guide the Court that while exercising the power of judicial review and on the subject of two competing claims of the society: (i) protection of environment, (ii) sustainable development, once the expert had weighed the two competing claims based on cogent material, the

Courts would not substitute their opinion on a reappraisal of the material. Limited jurisdiction was to see whether the opinion was grossly unreasonable, applying *Wednesbury's* principles.

116. On merits learned Senior Counsel reinforced the arguments advanced by learned Senior Counsel Shri.D.J. Khamabata by highlighting that the JTC report, after considering the topology of the coastline, opined that zig-zag coastal road along the sharp kinks of the coastline would cause more environmental damage vis-a-vis a road with a gentle curve. This necessitated the coastal road to be constructed at a distance of 100 meters from the farthest point on the seashore. Incidentally, this would result in large patches of the sea coming between the coastal road and the existing shoreline. The dominant purpose was not to regulate the sea for generating public space. Rather than keep bare the area between the coastal road and the seashore and suffer the danger of public throwing garbage in the said area, it makes sense to use said space for public amenities while; prohibiting commercial use thereof. Learned counsel highlighted that the proposed coastal road served the purpose of environment and ill effects of the existing position on the health of the residents of Mumbai, by

reducing the air pollution. Learned Counsel concluded the submissions in said regard while supplementing and reinforcing the submissions of learned Senior Counsel Shri. D.J.Khambata by stating that his esteemed colleague had painstakingly taken the Court through the various materials relied upon by the experts and he need not trouble us by repeating.

117. With reference to the coastal road being an exceptional case, learned Counsel, while reinforcing the submission made by Shri.D.J.Khambata, stated that the various transport reports brought out that the only way to decongest the existing roads for traffic to move smoothly, was to construct the Coastal Road. If not constructed, so polluted would be the City of Mumbai that its residents would continue to suffer from respiratory diseases.

118. Shri. A.Y. Sakhare Senior Counsel on behalf of MCGM made submissions on the issue of alignment of the Coastal Road (South) and the Tata Garden inter-change. Issues pertaining to the impact of the project on the livelihood of the fisherfolk community and issues regarding corals. On the alignment of the road, learned Senior Counsel

highlighted that the proposed road is on the western coast of Mumbai from Princess Street Flyover (about 1 km before Tambe Chowk) to the Worli end of the Borivali– Worli Sea-link. Four interchanges are connecting the existing road to the proposed Coastal Road. One of which is the interchange at Tata Garden. Learned Counsel argued that his esteemed colleague had taken the Court through the various reports, and with reference thereto the procedure adopted by MCGM was discernible. In the year 2008 comprehensive transport studies were undertaken. The studies showed the urgent need to construct a new arterial road along the Western Coast. JTC, comprised 11 members, after seeking advice from CSIR-NIO opined that a Coastal Road was necessary. Project Consultants appointed in the year 2014 were required to explore various alignment options. The peer review consultant, Frischmann Prabhu, also considered the alignment and the places where interchanges were required. Noting the zig-zag pattern of the coast, and the opinion of the experts on the subject of Oceanography, that the least impact on tidal currents would be if a road, with a slight curve, minus sharp bends was constructed, the proposed location of the road at the maximum distance of 100 meter

from the farthest point of the coastline was identified on scientific principles and even from a common sensible point of view any ordinary person would also so recommend. Tata Garden was selected as the interchange arm because Bhulabai Desai Road had to be connected to the coastal road. The inter-change required four arms for entry and exit of traffic on both sides of the carriageway. Keeping in view the Indian Road Congress norms pertaining to incline Tata Garden was the most suitable location because if, as projected by the petitioners, the inter-change was shifted towards the northern side the interchange would connect Bhulabai Desai road requiring 914 sq meters of land to be acquired from Vaibhav Apartment and Lincon House. The entry and exit of Vaibhav Apartment and Lincon House would require to be shifted. Access to a hospital and a school opposite Vaibhav Apartment would also to be affected. Learned Counsel showed a map to us graphically showing the site of the interchange as proposed in the approved plan and as after shifting. (Indeed the plan shows that if the space of the interchange is shifted in the Northern direction, as proposed by the petitioners, it would not lead to acquiring private land but would also obstruct the entry and exit to Vaibhav

Apartment and Lincon House as also a hospital and a school opposite to Vaibhav Apartment). On the issue of the impact of the project on the livelihood of fisherfolk communities learned Counsel highlighted that this concern had been addressed to, by providing navigational channels for boats. The fishing activity would be adversely affected in the Worli area affecting 685 families comprising 2934 residents. Albeit after the necessary approvals were granted, Counsel referred to expert opinion report from the Central Marine Fisheries Research Institute (CMFRI), revealing that effect on fishing activities within 200 meter of the shoreline affects only 115 fishers. Learned Counsel highlighted that issues of marine habitats, marine flora and fauna found along the project alignment were considered in detail and the environmental clearance was based taking into account the impact on the fishermen resulting in the conditions imposed that MCGM shall make alternate arrangement for fishing drying beds. Additionally, MCGM shall ensure rehabilitation and resettlement of the fishermen communities. On the issue pertaining to corals, learned Counsel referred to the marine Biodiversity Conservation Plan prepared by National Institute of Oceanography which shows the location of corals which are patchy,

covering *minuscule* areas at three different places of 50 sq cm and 600 sq cm. Therefore Counsel urged that on the principle of *de minimis*, there would be no adverse impact on corals and assured the Court that if during the construction any coral was encountered the same would be transplanted as recommended by NIO. Learned Senior Counsel highlighted that the presentation made to AEC by MCGM focused on: (i) Background of Project, (ii) Components of Project, (iii) Purpose of Reclamation, (iv) Features of Project, (v) Project Benefits, (vi) Location & Connectivity, (vii) Alternative Options Studied, (viii) Final Alignment, (ix) Comparative Analysis of Alternatives, (x) Section 1- Princess Street to Priyadarshini Park, (xi) Section 2 – Priyadarshini Park to Mahalakshmi, (xii) Section 3 – Mahalakshmi to Baroda Palace, (xiii) Section 4 – Baroda Palace to Worli end of Bandra Worli Sea-Lind, (xiv) Section wise length of coastal road, (xv) Interchange locations, (xvi) CRZ status, (xvii) Trees Affected, (xviii) Traffic Analysis, (xix) Proposed Interchange Locations, (xx) Interchange at Amarsons Garden, (xxi) Interchange at Haji Ali, (xxii) Interchange at Worli, (xxiii) Traffic Analysis and Forecasting, (xxiv) Construction Methodology, (xxv) Baseline Environment Monitoring and (xxvi)

Ambient Air Quality. Pertaining to the submissions made by Ms. Gayatri Singh, Senior Counsel on behalf of the fishing community Shri Sakhare, learned Senior Counsel argued that MCGM had prepared a Fishermen Rehabilitation Policy which will be in tune with the order passed by the National Green Tribunal in Application No. 19 of 2013 and in the nature of policy adopted by MMRD in Trans Harbor Project. A Fishermen Rehabilitation Assessment Committee will be formed to evaluate the effect of the project on the livelihood of the fishermen. Guidelines for compensation to be paid to the fishermen will be prepared by appointing a consultant. The Rehabilitation Committee will include representatives from Fisheries Department, Maritime Board and a Scientist from CMFIR besides to representatives of the fishermen society. Further, in accordance with the conditions imposed by MoEF periodic studies will be conducted to ascertain the actual impact on the sea. A sea wall will be constructed using rock boulders to provide an alternative site for fish breeding.

119. Shri. Milind Sathe learned Senior Counsel for the State of Maharashtra took forward submissions advanced by Shri. D.J. Khambata learned Senior Counsel for MCGM which were reinforced

and supplemented by learned Senior Counsel Shri. S.G.Aney on behalf of the MCGM, and argued that the interpretative process adopted by the petitioners would effectively bring an Inter-City road, after reclaiming the land, within the purview of environmental clearance and once the Legislation included only a particular category of Roads, adopting a process of interpretation to bring another category of Roads was impermissible. Learned Senior Counsel urged that the Coastal Road in issue was not notified as a National or a State Highway. Entry 7(f) in the Schedule I of EIA -2006 was restricted to National Highways or State Highways. Learned Senior Counsel urged that Township and Area Development Projects were not disjunctive, meaning thereby, only such Area Development Projects which were part of Township Projects would be covered by Entry 8(b), meaning thereby, development of a township was the *sine qua non* for Entry 8(b) to be attracted. On the issue of excessive delegation learned Counsel referred to the decision of the Supreme Court reported as (2001) 5 SCC 212, Kishan Prakash Sharma & Ors. Vs. U.O.I. & Ors., in which the Supreme Court observed that on ascertaining whether the Legislation suffered from the vice of excessive delegation, the scheme,

the provisions of the Statute including its preamble and the facts and circumstances in the background of which the Statute was enacted, the complicity of the problems which a State has to face, have to be noted. A skeleton statute would have upheld if Legislative policy and guidelines for its execution was ascertainable. The same was the ratio of the decision reported as 2000 (7) SCC 425 Consumer Action Group Vs. State of Tamil Nadu.

120. Shri. Anil Singh learned Additional Solicitor General of India on behalf of the Union of India defended the amendment dated 30<sup>th</sup> December 2015 amending CRZ Notification 2011 and the CRZ clearance granted by MoEF on 11<sup>th</sup> May 2017 by prefacing his arguments that he adopts the arguments advanced by Shri. D.J. Khambata Senior Counsel and Shri.S.G.Aney Senior Counsel on behalf of MCGM and Dr. Milind Sathe, Senior Counsel on behalf of the State of Maharashtra. Learned Counsel submitted that long term environmental benefits and paramount collective interest were taken into account by MoEF. The material appraised by MoEF while amending CRZ Notification 2011 on 30<sup>th</sup> December 2015 and CRZ clearance granted on 11<sup>th</sup> May 2017, which were referred to by said

learned Senior Counsel, showed a proper application of mind. He highlighted that EAC, which was an independent expert body constituted under EIA-2006, had categorically observed that *'the project can provide advisable solution to ameliorate traffic congestion and consequent health hazards. This can also generate a large recreational space. The main purpose of this project is to reduce the burden of traffic and transport system of Mumbai.* Counsel urged that this showed that the experts *Kishan Prakash Sharma & Ors. Vs. U.O.I. & Ors* had weighed the competing claims and had highlighted that the main purpose of the project was to reduce the burden of traffic and transport system in Mumbai. Referring to the decision of the Supreme Court in the decision reported as 1996 (5) SCC 281 *Indian Council for Enviro Legal Action Vs. Union of India*, learned ASG argued that both development and environment must go hand in hand; in other words, there should not be developed at the cost of environment and vice versa. Development was permissible if due care of the environment was taken.

121. Learned ASG stated that it is bound to happen, wherein public interest, restrictions are imposed or permissions granted that a few

residents get adversely impacted. The approach to be adopted by Courts when competing claims of individuals versus public benefits should be as per the law laid down in the judgment delivered on 23<sup>rd</sup> July 2018 in Writ Petition No. 1153 of 2017 and C.A. No. 863 of 2018 *Mazdoor Kisan Shakti Sanghtan Vs. Union of India*. Dealing with issues on rights of citizens to protest at Jantar Mantar and orders promulgated under Section 144 of the Criminal Procedure Code 1973, an argument being raised about the right of the residents of the areas around Jantar Mantar. The Supreme Court held that there might be situations where conflicts would arise between two fundamental rights. The situation can be of conflict of fundamental rights; intra fundamental rights and fundamental right of a person in conflict with other fundamental rights guaranteed to the same persons. In all situations, the Court has to examine as to where lies the larger public interest. It is the paramount collective interest which will ultimately prevail. Learned Senior Counsel urged that the history of the various events which took place and the various reports which were submitted from time to time brought out the requirement of eruption '*exceptional case*' for reclaiming land to construct a road. Thus, the

amendment Notification amending CRZ-2011 was valid. As regards, the environmental clearance granted by the environmental impact assessment committee at its 168<sup>th</sup> meeting held on 17<sup>th</sup> March 2017, learned Senior Counsel urged that the minutes thereof show that the committee, *inter alia*, considering the following:

- i. Joint Technical Report dated 30<sup>th</sup> June 2011;*
- ii. Letter dated 4<sup>th</sup> January 2016 (the letter contains an obvious error in the date and should be read as 2017), whereby MCZMA recommended the project for clearance;*
- iii. Virtual Videography of the project pathway, and a detailed presentation on the ecological issues likely to be incurred, including the mitigation steps proposed was presented by the Project Proponent;*
- iv. Comprehensive Transportation Study (CTS) carried out by Mumbai Metropolitan Region;*
- v. EIP Report;*
- vi. Social Impact Assessment Report;*
- vii. Risk Assessment and Disaster Management Plan;*
- viii. Study done by the NIO*
- ix. NOC obtained from the Department of Fisheries, Government of Maharashtra.*

122. Therefrom, learned ASG urged that there was a proper application of mind and there was sufficient to grant an environmental

clearance.

123. Ms.Sharmila U. Deshmukh learned Counsel for MCZMA argued that she adopts the arguments of learned Senior Counsel for MCGM, State of Maharashtra and Union of India to defend recommendations made by MCZMA to firstly amend CRZ - 2011 and thereafter to recommend the grant of permission to MCGM for laying down the Coastal Road. Learned Counsel highlighted that members of JTC comprised, amongst others, Adviser MoEF and Director of National Institute of Oceanography; the latter being an expert on Oceanography. The JTC not only had two environmental experts as its members but as referred to in paragraph 5.1 of the JTC report, had received key inputs from CSIR-NIO; the team which submitted the CSIR-NIO report comprised experts in marine biology, geophysics, coastal regulation, ocean engineering and physical oceanography. The fact that the deliberations were deep and pervasive was proved by the fact that, as recorded in paragraph 1.6 of the JTC report, it had held ten meetings in which the issue was deliberated. Learned Counsel urged that there was no need for a proper scientific study while amending the

CRZ-2011 because environmental issues had to be considered while granting the necessary permissions. Learned Counsel briefly touched upon the same points which were argued by her learned Senior Colleagues and thus we are not burdening our opinion, which as such, is already overburdened by noting the arguments.

**ARE THE AMENDMENTS TO THE CRZ-2011 MADE BY THE NOTIFICATION DATED 30TH DECEMBER 2015 ULTRA VIRES OF THE ENVIRONMENTAL (PROTECTION) ACT, 1986 AND/OR REPUGNANT TO CRZ-2011?**

124. The argument of learned Counsel for the Petitioners was that stated object of the Environment (Protection) Act, 1986 as per its Statement of Objects was the protection, improvement and prevention of hazards to human beings, other living creatures, plants and properties. As per Section 3, the Central Government had the power to take all such measures as were necessary for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution. As per learned Senior Counsel, the amendments made in Clause (a) of Sub-paragraph (iv) of Regulation 3 of CRZ-2011 and insertion of Clause (g) in Sub-paragraph (i) of Regulation 4 permitted land reclamation along

the sea-shores, albeit as an exceptional case. This was destructive of the object of the Environment (Protection) Act, 1986 and fouled the power of the Central Government under Section 3 of the Act, which was to take measures for protecting and improving the environment.

125. Per Contra: Argument of the learned Counsel of the respondents was that the Environment (Protection) Act, 1986 was to control activities which were likely to cause environmental pollution and that various Notifications issued from time to time pertaining to coastal zones recognized the need for reclamation in the coastal areas. The first Regulations issued in the year 1991 permitted land reclamation for limited activities. This was expanded by the Notification issued in the year 1997 and the year 2001 which further expanded the permissible activities under CRZ-1991. In the year 2011, CRZ-2011, CRZ-2011 was promulgated in supercession of CRZ-1991, with further expansion of the permissible activities. Thus, the contention of the Respondents was that the Notification dated 30<sup>th</sup> December 2015 is neither *ultra vires* the Environment (Protection) Act, 1986 nor it is *ultra vires* CRZ 2011.

126. The sky has been dropping water for years in a cyclic pattern for centuries but what looked driven by the clock of nature has changed. Referring to said global phenomenon, one section of the society is always alarmed whenever a legislation or a legislative policy permits or expands existing activities likely to impact the environment. They emit dire messages and perhaps gloomy assumption about the fate of mother earth. Some sections of the society feel villainized. This results in the listener forming a view that preserving the planet and economic growth are mutually exclusive.

127. Perhaps this dichotomous view of human needs and conservation is itself a problem.

128. The Courts have to strike a balance and, thus have to approach the issue of conservation and human development as not an either/or proposition. How to resolve the two? In a manner when both can be bettered has to be the key to settle the debate. In Vellore Citizens Welfare Forum (case) supra the Supreme Court held that '*traditional concept that development and ecology are opposed to each other is no longer acceptable*' and that *sustainable development is the answer.*

129. Ports have to be constructed on the sea-shores. Large ships transport goods. Large oil tankers transport oil. Society would be driven to the stone-age if there is no trade or business. The growing population needs sources of energy. Petroleum is a valuable source of energy. Notwithstanding the destruction to sea-shores and perhaps the destruction being irreversible in the area where a port is established, the first CRZ Notification issued in the year 1991 on 19<sup>th</sup> February permitted the land reclamation required for channels and ports; to prevent coastal erosion and for prevention of sandbars. The CRZ Notification dated 9<sup>th</sup> July 1997 amending CRZ-1991 expanded the activities, permitting land reclamation, to construct harbours, jetties, slipways, bridges and sea-link. The reason is obvious. As trade and commerce grew and the population increased and as the world became global, ports had to be expanded to transport goods to and fro from the land to the ships. Sea bridges and sea-links also became the necessity. No issues were raised. Next amendment was made on 12<sup>th</sup> April 2001 which further expanded activities for which land along a sea-shore could be reclaimed. No issues were raised. On 6<sup>th</sup> January 2011, in substitution of CRZ-1991, CRZ-2011 was promulgated. Retaining the

earlier provisions regulating reclamation of land for the activities and purpose therein enlisted, for the first time road on stilts in coastal regulated areas was permitted. The previous amendments show that keeping into account public need and public interest, notwithstanding any kind of activity in coastal area resulting in environmental damage, the activities were permitted. This included land reclamation; but not for roads. For the first time, the Notification under challenge permitted reclamation of land in coastal regulated areas for constructing a road. The Central Government took the care to hedge the permissible activities upon the conditions of it being an exceptional case.

130. Thus, we find that the amendment is neither *ultra vires* the Environment (Protection) Act, 1986 nor fouls the underlying policy or any part of CRZ-2011.

**IS THE NOTIFICATION DATED 30TH DECEMBER 2015 LIABLE TO BE QUASHED ON THE GROUND OF IT BEING ARBITRARY AND/OR VITIATED DUE TO EXCESSIVE UNREGULATED AND UNGUIDED DELEGATION?**

131. The submission of the learned Counsel for the petitioners was

that phrase '*shall be only in exceptional cases*' was unqualified and there is no guidance for determining an exceptional case. The argument in this regard and the case laws cited have been noted in paragraph 45 above, and put it simply, the argument was that there being no guidance to determine what an exceptional case would be, the amendment has to be struck down.

132. The response of the learned counsel for respondents was, as noted in paragraphs 81 to 85 above. To put it simply, the argument was that power was vested in the Central Government by the Parliament under Section 3 of the Environment (Protection) Act, 1986 to take such measures as it deems necessary to protect environment. The CRZ Notification under challenge did not delegate any power to any authority. The Central Government framed the policy to guide itself. That there were enough guidelines in CRZ-2011 as to when would a case warrant reclamation of coastal land for a road to be treated as an exceptional case. An exceptional case would be the need to construct a road on reclaimed land outweighing the interest in prohibiting reclamation. It had to be a compelling and a rare case.

133. Those matters on which law is unable, owing to the difficulty of framing general rules for all contingencies to make an exact pronouncement, that a general rule of exception in cases of extreme hardship or to further public interest or to prevent a greater hardship, is provided for.

134. In situations where Rules governing the sustainable development and preservation of the ecology are framed, the exceptional case to such development at cost of ecology has to be looked from the point of view of the necessity of development reaching the level of such great utilitarian value that what is lost or sacrificed must be accepted.

135. On aforesaid jurisprudential principles, it cannot be said that the amendment is either arbitrary or unguided. The amendment is not manifestly arbitrary, the minimum threshold requirement for arbitrariness to be crossed as was held in Bombay Dyeing (case) supra. Indeed, as rightly argued by the learned Senior Counsel for the Respondents it is difficult to identify situations in advance to lay down rigid rules as to when it is likely to cause hardship. Thus necessary powers given, to be exercised sparingly and within the framework of

the declared policy of law, are not an anathema to law. The law declared by the Supreme Court in Consumers Action Group (Case) supra, and F.M.Balsara (case) supra, noted in paragraphs 84 and 85 above, are a sufficient answer.

136. In fact, learned Senior Counsel Shri. Janak Dwarkadas himself gave an answer why the amendment cannot be said to be suffering from the vice of excessive unregulated delegation. With reference to the arguments advanced, which have been noted by us in paragraph 47 above, the words '*exceptional case*' themselves guide that permission to reclaim land for constructing a road, being an exception to the rule, must be sparingly used i.e. the power must be exercised rarely. But the argument that the guiding factor should be on the basis of reasoning stated by learned Senior Counsel is perhaps stated too widely. We shall be dealing with this aspect of the matter while discussing the legal position in the context of factors to be taken into account to determine whether an exceptional case is made out when we deal with facts leading to the grant of environmental clearance under CRZ-2011 as amended from time to time.

**IS THE AMENDING NOTIFICATION DATED 30TH DECEMBER 2015 LIABLE TO BE STRUCK DOWN ON ACCOUNT OF THERE BEING NO SCIENTIFIC STUDY CONDUCTED?**

137. The contention of learned Senior Counsel for the petitioners was that when on 15<sup>th</sup> May 2009, MoEF amended CRZ-1991 by permitting development of land to construct a Green Field airport at Navi Mumbai it was preceded by a scientific study conducted and that the decision in Indian Council for Enviro Legal Action (case) supra of the Supreme Court also requires a scientific study to precede any amendment likely to adversely affect environment. Referring to the decisions in S. Jagannath (case) supra, DLF Universal (case) supra, M.C. Mehta (case) supra and Vellore Citizens Welfare Forum (case) supra, learned Senior Counsel Shri. Janak Dwarkadas urged that the purpose of CRZ Notifications highlighted in said judgments was to protect the ecology warranting amendments to be carried out after scientific studies of the impact of projects such as roads on reclaimed land on the tidal currents, coastal geo-morphology and ecology.

138. The response of Shri. D.J. Khambata learned Senior Counsel was that there was a proper scientific study conducted before amending CRZ-2011 in the year 2015. Learned Counsel drew our attention to

the JTC report and highlighted that it was recorded in the report that on the environmental aspect it had received advice/inputs from CSIR/ NIO which comprised experts in marine bio-diversity, geophysics, coastal regulations, ocean engineering and physical oceanography. Learned Counsel further highlighted that the JTC report was placed before MCZMA based whereon MCZMA recommended amendment to CRZ-2011.

139. We have traced the events till the promulgation of the amended Notification on 30<sup>th</sup> December 2015 in paragraphs 2 to 17 of our opinion. The same evince that by Government Resolution dated 30<sup>th</sup> June 2011, JTC was set up comprising eleven members which included experts on environment and forest (Dr. Nalini Bhat) and Dr. S.R. Shetye, Director, National Institute of Oceanography. The Committee reviewed past studies on the need of a coastal freeway, which we have recorded in paragraph 5 above. The Committee noted the data pertaining to pollution caused by vehicles in Mumbai and high level of noxious gases released being the result of congestion on the roads leading to motor vehicles moving at an extremely low speed of 8 km per hour against efficient speed of 90 km per hour. The Committee

noted that alarming increase in percentage of population suffering from cough, bronchitis and irritation. The Committee also noted that suburb trains had reached the saturation levels of operations. The Committee noted that it had received inputs from scientists of CSIR-NIO; but relevant would it be to highlight that when JTC submitted its report on 29<sup>th</sup> December 2011, the CSIR-NIO report submitted in January 2016 was obviously not before the Committee. What environmental impacts studies were actually considered by JTC have not been enlisted in the report? We highlight that there is a reference that on an environmental concern, the Committee had received inputs from the Director National Institute of Oceanography who was a member of the Committee. In turn, he had sought advice from a team formed at CSIR-NIO comprising experts in marine biology, geophysics, coastal regulations, ocean engineering and physical oceanography. No such material was placed before us during the hearing. That apart, a perusal of the JTC report shows that it highlighted the terms of reference: (i) to examine various options in the construction of a coastal road; (ii) to evaluate options on the basis of technical feasibility and environmental impact and impact on the

neighbourhoods and to recommend the best options, however, we note that the discussions on the environmental impact is a minimal. The probable reason is that there was no scientific data before the JTC that is why, as noted in paragraph 8 above, JTC itself highlighted the requirement of further studies.

140. Since the proposed project impacted the coastline, on 12<sup>th</sup> June 2013 MCZMA also considered the proposal and the minutes show that MCZMA focused on traffic congestion and the solution thereto. There was thus no scientific study properly conducted when the amendment was enacted. We would be failing not to highlight that CSIR-NIO report on environmental aspect was submitted thereafter on January 2016 and that too recording measurement of waves, tides and currents at Mahim during 21<sup>st</sup> November 2014 to 12<sup>th</sup> December 2014 and at Colaba between 25<sup>th</sup> November 2014 to 17<sup>th</sup> December 2015. The report itself records that the time period was short and thus, more detail studies were required. Consultants M/s. STUP and Consultants Pvt. Ltd. and Ernst & Young Pvt. Ltd. had been appointed by MCGM which submitted an environmental impact assessment report in August 2016, which was after the amendment in question was made. On 30<sup>th</sup>

April 2016 MCGM obtained a drainage report and traffic report from the Consultants and on 29<sup>th</sup> April 2016 obtained a peer review report from Frischmann Prabhu. On 17<sup>th</sup> September 2016 MCGM had issued work-order to CSIR-NIO to conduct environmental related studies and submit a report. Thus, on facts we agree with the submissions made on behalf of the petitioners that when the amendment was made to CRZ-2011 it was not preceded by a comprehensive scientific evaluation of the impact of the project on environment.

141. But for said reason the amendment cannot be struck down because the amendment only permitted reclamation of land to construct a road by amending Clause (a) of sub-paragraph (iv) of Regulation 3 of CRZ-2011 and simultaneously amending Regulation 4 which regulates permissible activities in CRZ-1 by providing the regulatory mechanism of reclamation for a road being permitted only in exceptional cases; to be recommended by the concerned CZMA and approved by the Ministry of Environment and Forest Climate Change.

142. The Central Government could have taken two distinct routes

and both would have been as per law. As in the case of the airport at Navi Mumbai, after conducting the necessary studies and determining the impact on the environment, considering that the airport at Mumbai had reached the saturation level and another airport was needed; in light of the detailed environmental studies conducted, a decision was taken that construction of the airport was of such public utility that it outweighed the interest of the public in ecology; a specific amendment to CRZ-2011 could be made on said lines for the coastal road only at Mumbai. The other route was to simply amend CRZ-2011 by providing for an exceptional case warranting consideration for grant of approval, stipulating in the rule itself that whether or not a particular proposal would fall as an exceptional case to be decided with reference to impact of the project on environment at the stage of granting approval. In the instant case, the second route has been followed. Pertaining to the argument of learned Senior Counsel for the petitioners that the amendment to CRZ-2011 by permitting reclamation of land to construct a coastal road, albeit as an exceptional case, is a potential threat to the entire 7000 km coast line for the reason tomorrow Village Panchayats, Nagar Parishads, Municipalities and

State Governments could also assert a claim to reclaim coastal land and lay a road, we agree with the submission of Shri. D.J. Khambata Senior Counsel that the argument is nothing short of an alarmist argument because, reclamation of land to construct a road is permitted only in exceptional cases, to be recommended by the Coastal Zone Management Authority and approved by MoEF unless these high level authorities grant approval no planning authority can reclaim land to construct a road.

**WHETHER CZMA AND MoEF PROPERLY APPLIED THEIR MIND TO THE QUESTION WHETHER MCGM HAD MADE OUT COASTAL ROAD TO BE AN 'EXCEPTIONAL CASE' AND WHETHER THERE WAS A PROPER APPLICATION OF MIND TO APPRECIATE THE MATERIAL TO GAUGE THE ENVIRONMENTAL IMPACT OF THE COASTAL ROAD?**

143. The Coastal Zone Regulations issued for the first time on 19<sup>th</sup> February 1991 permitted reclamation of coastal land only for control of coastal erosion and maintenance or clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge. The CRZ Notification dated 9<sup>th</sup> July 1997 expanded reclamation of coastal land for bunding or

disturbing the natural course of sea water except those required for construction of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulation, storm water drains or for structures for prevention of salinity ingress and sweet water recharge. The CRZ Notification dated 12<sup>th</sup> April 2001 further expanded reclamation of coastal land for bunding or disturbing the natural course of sea water except those required for construction or modernisation or expansion of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge.

144. The original Notification and as amended from time to time shows that the Central Government was conscious of the fact that

inherently, reclamation of land in coastal areas was detrimental to the ecology of the sea, thus only projects or activities which could be carried out only on coastal waters and nowhere else should be permitted. To wit: harbours, jetties, warfs, etc. are necessary for loading and unloading Cargo from ships and this activity can only be at the sea shores. Hence, in larger public interest, had to be permitted. CRZ-2011 further expanded the activities required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sea-link, road on stilts, and such as ment for defence and security purpose and for other facilities that are essential for activities permissible under the notification.

145. Harbours, jetties, wharves, quays, slipways, bridges, sea-link and road on stilts can only be constructed at sea-shores and not in the hinterland. One cannot think of a harbour without them. Goods are transported through sea by ships, and loading as also unloading can only take place at harbours. Thus, building harbours, jetties, wharves, quays, slipways are the dying need (if we may use the colloquial expression). Without them inter country trade would be severely

hampered and thus, the larger public interest is served by exempting harbours, ports, jetties, wharves, quays, slipways, bridges, sea-link and road on stilts from the rule prohibiting reclamation of coastal land. Sea-links share the same traits as jetties, with the different that sea-links would be concreted structures in ports, akin jetties, or connect one part of the coast land to another for traffic movement, be it road traffic or rail traffic. Reclaimed land on the shore-shore for sea-links is minimal land. The span of the cantilever slab to construct a sea-link would be between 40 feet to 60 feet in width and the said strip of coastal land would be reclaimed. The requirement of sea-links could also be said to be the dying need and thus, the larger public interest served, justifying sacrificing the public interest in preservation of nature. Two reasons would justify the same. Firstly that the need is a dying need of the society and secondly that the environmental damage is minimal. But where a large length of the coastline is reclaimed, as in the instant case, to construct a coastal road, the situation cannot be compared with ports, harbours jetties, wharves, quays, slipways, bridges and sea-link. It is a case of no comparison, firstly for the reasons, ports and harbours have to be constructed or expanded only on the sea-

shore and not in the hinterland. Jetties, wharves, quays, slipways and bridges are necessary parts of harbours. Secondly because damage to the environment caused by the sea-links is minimal. That is the reason that the CRZ amendment Notification issued on 30<sup>th</sup> December 2015 permitted reclamation of coastal land to construct a road by way of an exception. The exceptional case to be determined would be on the same principle which justifies ports, harbours, jetties, wharves, quays, slipways and bridges i.e. the dying need of the society. The need has to be more than a crying need. It has not to be a need of convenience. It has to be a need based on exhausting all possible solutions. Upon material showing that the need is bordered between a crying need and dying need, a deep and pervasive environmental impact assessment has to be done. The assessment has not to be perfunctory and the authority charged with the obligation to decide where an exceptional case was made out requires piercing evaluation of the data on which the project proponent justified that it is an exceptional case. The task of the Court is to ensure that said decision making process has been followed. We propose to do that.

146. It is settled law that judicial review over administrative and

statutory decisions prohibits the Court from re-appreciating the material and delving into adequacy or inadequacy of the material. Since this is the conceded legal position, we need not discuss the plethora of decisions noted in para 15 above referred to by Shri. S.G. Aney learned Senior Counsel on behalf of MCGM. We need not trouble the reader of our opinion on the subject when unreasonableness warranting judicial intervention reaches unreasonableness on *Wednesbury's* principle.

147. That takes us back to the facts. Traffic studies in Mumbai relate back to the year 1962, when traffic and transport study by M/s. Wilbur Smith Association was conducted and reports submitted in 1962. It was conducted again in the year 1983 when Central Road Research Institute submitted a report on Planning Report for Road System. In 1992 M/s. W.S. Atkins submitted a Comprehensive Transport Strategy Study (CTSS). In the 2009 M/s. Lea and Associates submitted a Comprehensive Transport Strategy Study. With reference to said studies, the JTC which was set up by the State Government on 30<sup>th</sup> June 2011, collated further data and submit its report on 29<sup>th</sup> December 2011. The data brings out the unique feature of the city having a

narrow and long North-South axis. The characteristic of the traffic pattern showed South bound flow in the morning and North bound flow in the evening. The data further brings out that the suburban trains reached a saturation level and could not transport passengers by running more daily trains and public transport had reached a saturation level. As against 84% passengers traveling by public transport in the year 1991, their share had declined to 78% by the year 2005. The Committee also noted noxious gases emitted by automobiles traveling at an average speed of about 8 km per hour as against efficient speed of 90 km per hour. Health related issues induced by air pollution were noted, evidencing that persons in Mumbai suffering from cough, bronchitis and eye irritation increased from 13.3%, 21.4% and 14.1% respectively in the year 2004 to 41.3%, 31.1% and 38.4% in the year 2001. Undoubtedly, the data is alarming and justifies a solution to be found on urgent basis by not only mitigated air pollution but also the induced the health problems. Conscious of the fact that a coastal road could be built on stilts and this would cause less environmental damage as compared to a coastal road after reclaiming land, the JTC looked into the cost effectiveness, resulting in the Committee noting that a coastal

road on reclaimed land would cost about ₹ 100 crore per km, with interchanges, and if built on stilts with interchanges would cost about ₹ 600 crore per km. Having accorded consideration to the urgent need for reducing air pollution and the resultant medical problems of the residents of Mumbai and cost effectiveness of coastal road on stilts vis-a-vis reclaiming land, the JTC focused attention to the location of the coastal road if built after reclaiming land. Noting the zig-zag pattern of the sea-shore and being of the opinion that a coastal road having sharp curves and bends, if constructed along the sea-shore, would be dangerous and additionally would lead to traffic moving slowly, thus for the same journey would use more fuel thereby causing more air pollution, opined that a coastal road with a slight curve, constructed at at the farthest distance of 100 meter from the innermost point on the coastline was justified.

148. This would obviously result in large spaces between the proposed coastal road and the sea-shore becoming available, and the opinion of the Committee was that as a happy coincidence, one could use this space for utilities.

149. The Committee thereafter focused on the adverse impact on the coastline. The Committee had the benefit of two experts: (i) Dr. Nalini Bhat (Adviser Ministry of Environment and Forest, Government of India); and (ii) Dr. S.R. Shetye, Director of National Institute of Oceanography in CSIR-NIO who were its members. Recording said fact, and that reports of CSIR-NIO were considered, in its report the Committee opined that impact of reclamation on tidal circulation would not cause much impact on the coast-line. But these reports have not been referred to by reference to the dates or titles in the JTC report, and the CSIR-NIO report submitted in January 2016 could obviously be not the one considered by the JTC.

150. Relevant would it be to highlight that the JTC was conscious of the fact that it had not conducted a detailed Environmental Impact Assessment nor was it considering a detailed report on the Environmental Impact, it highlighted in its report that the matter of further environmental and other studies and the investigations which were needed towards obtaining CRZ clearance was needed. It was observed that the CRZ clearance would normally require a pre-feasibility report/traffic studies related technical studies including EIA

indicating the likely impacts and mitigation measures. The Committee was of the view that such studies should be entrusted only to the consultants accredited by the Quality Council of India (QCI). The JTC cautioned that detailed project preparation studies should be accordingly be taken up to incorporate these aspects. Under the caption 'Policy Intervention and Implementation Strategy', JTC therefore highlighted eight steps to be undertaken towards implementation of the project. Vide step No.3 informed MCGM that a proper Environmental Impact study be conducted.

151. CSIR-NIO, which appears also to have been instructed to carry out a study on the adverse impact on the sea-shore, if the coastal road was constructed, submitted a report in January 2016 in which it recorded that measurement of waves, tides and currents at Mahim were carried out by it during 21<sup>st</sup> November 2014 to 12<sup>th</sup> December 2015 and at Colaba between 25<sup>th</sup> November 2014 to 17<sup>th</sup> December 2015. Conscious of the fact that this was a small time segment, the report itself highlights that local hydrodynamic changes need to be observed over a longer period.

152. CSIR-NIO report also records that adverse impact on marine ecology would, amongst others, be a long term degradation of sensitive and an essential breeding and nursery habitats for coastal and marine organisms which would lead to a long term reduction in commercial important species of fish. The living habitats and micro habitats of the marine flora and fauna will be destroyed.

153. Interestingly, CSIR-NIO also concurred that the coastal road should be at such distance from the sea-shore keeping in view the zig-zag alignment of the sea-shore so that the road would facilitate faster flow of traffic i.e. the road should be without sharp curves and as straight as possible.

154. The MCGM had also appointed STUP and Consultants Pvt. Ltd. and Ernst& Young Pvt. Ltd. as consultants to submit, amongst other, environmental impact assessment studies. The report made sixteen pertinent observations which we have noted in paragraph 20 above and relevant would it be to highlight recommendation No.14 required MCGM to submit the environmental cost benefit analysis of the proposed project. On the issue of reclamation, the consultants

recorded in report that reclamation *may have indirect effects* to the environment and ecology. *Some of them* were illustrated as under:

- (i) *It may cause increase in the concentration of suspended solids and reduce light penetration thereby affecting photosynthesis of marine vegetation.*
- (ii) *It may cause decrease in dissolve oxygen levels and may result in mortality of organisms.*
- (iii) *It may cause nutrient imbalance and result in algal blooms.*
- (iv) *During construction there will be increase in trampling on Rocky shores which will directly affect the inter tidal organisms.*
- (v) *Excavation and Extraction of Inter tidal organisms may take place during constructional activities.*

155. Since MCZMA had cleared the proposal opining that it was an exceptional case, MoEF considered the proposal and on 22<sup>nd</sup> July 2016 and returned the same listing out deficiencies and on the subject of a proper environmental impact analysis recorded that MCZMA was to forward an EIA report including 'Marine and Terrestrial Component with Cumulative Studies' for the project. It was also indicated that construction of a coastal road, by way of reclamation, was permitted only in exceptional cases and there was no mention of the

circumstances under which the MCGM had proposed to undertake the project as an exceptional case.

156. At this stage, MCGM changed the track and on 18<sup>th</sup> October 2016, submitted a fresh application to MCZMA seeking to reclaim coastal land to construct a coastal road but limited to the part of the coastal road till the Bandra end of the Worli-Bandra sea-link from the Southern end of the city. The stretch of the proposed coastal road commences from Marine Drive at Princess Flyover and ends at the Worli end of the sea-link. Along with the application, the documents furnished to MCZMA by MCGM were twelve in number. They read:-

- 1 *Checklist for Submission of Application for prior CRZ Clearance Under CRZ Notification 2011, Part A & Part B*
- 2 *Form I (Annexure-IV of the notification)*
- 3 *Comprehensive EIA report (Volume-VIII)*
- 4 *CRZ maps in 1:4000 scale with Project layout superimposed*
- 5 *Risk Assessment & Disaster Management Plan with SOP's*
- 6 *Main Report (Volume-I)*
- 7 *Drainage Report (Volume-VI)*
- 8 *Traffic Report (Volume-IV)*
- 9 *Social Impact Assessment Report (Volume-IX)*

- 10 *Work order of NIO with Proposal*
- 11 *Compliance to observations and Conditions mentioned in Minutes of 111<sup>th</sup> Meeting of Maharashtra Coastal Zone Management Authority held on 16<sup>th</sup> January 2016.*
- 12 *Compliance to MoEF letter No: F.No.19-74/2016-IA,III dated 22<sup>nd</sup> July 2016*

157. Form-1 for clearance of projects attracting CRZ-2011 was filed and the *exceptional case* projected was to overcome air pollution and traffic congestion with a consideration of the economic feasibility of a road on reclaimed land vis-a-vis on stilts. It was indicated that the project activity applied for, was a highway, attracting Entry 7(f) of the Schedule to the Notification. At its 114<sup>th</sup> meeting held on 2<sup>nd</sup> and 3<sup>rd</sup> November 2016, MCZMA noted that the revised proposal was for the Southern part of the coastal road. This segment would require 90 hectare land to be reclaimed, out of which only 20 hectare would be utilized for the road and the rest for parks, cycle lanes, jogger tracks, bus parking etc. On 14<sup>th</sup> January 2017, MCZMA gave a positive recommendation in favour of MCGM. The Expert Appraisal Committee of MoEF met on 17<sup>th</sup> March 2017 and recommended

approval. While granting the approval, it noted the objections by NGOs and the response of the project proponents thereto in a tabular form, which we have noted in paragraph 33 above. MoEF granted the final approval on 11<sup>th</sup> May 2017.

158. The afore-noted facts bring out that the JTC was conscious of the fact that it had not conducted a detailed Environment Impact Assessment nor was it considering a detailed report on the environmental impact. Thus, in its report JTC itself highlighted that the matter of further environmental and other studies and the investigations which were needed towards obtaining CRZ clearance should be entrusted only to consultants accredited by the Quality Council of India. Further, while cautioning that the detailed project preparation studies should be undertaken, it further informed MCGM to conduct a proper environmental impact study. Thus, merely because there were two experts on the JTC who, in turn took advice from Scientists of CSIR-NIO becomes irrelevant; because notwithstanding the inputs which JTC received by way of advise/inputs, it clearly indicated in its report that proper environmental impact studies needed to be conducted. Further, CSIR-NIO which gave its report in January

2016 recorded that measurement of waves, tides and currents were carried out only at Mahim and at Colaba during the period 21<sup>st</sup> November 2014 to 12<sup>th</sup> December 2015 and 25<sup>th</sup> November 2014 to 17<sup>th</sup> December 2015 respectively; and conscious of the fact that this was a small time segment, highlighted that local hydrodynamic changes need to be observed for a longer period. Further, the report records that adverse impact on marine ecology would be a long term degradation of sensitive and essential breeding/nursery habitats for coastal and marine organisms; that the living habitats and micro habitats of marine flora and fauna will be destroyed. The consultants STUP and Consultants Pvt. Ltd. and Ernst& Young Pvt. Ltd. in the Environment Impact Assessment report submitted by them also highlighted the destruction of the ecology. (Noted in paragraph 14 above) Even Frischmann Prabhu which conducted the peer review of the draft project report after it was displayed on the website of MCGM in June 2015 and had considered the representations made against the proposed coastal road in the report highlighted that the EIA does not include an environmental and social data sheet or screening checklist; no studies have been undertaken regarding the impact of the

project on surface, sub-surface and aquatic flora and fauna that will be permanently displaced by the project corridor or any mitigation measures in respect thereof; that the Environment Management Plan (EMP) for the Coastal Road Project does not include various material elements such as a management plan for reclamation area, coastal protection and soil erosion management; no formal risk assessment study to mitigate the risk of flooding has been undertaken. The report pointed out that information regarding high flood levels for a period of at least the last 50 years is required to be examined and included in the EIA report and that detailed hydraulic modeling would be required.

159. Thus, CSIR-NIO report was a caution to the authorities to conduct proper environmental impact assessment studies because, CSIR-NIO had given its report on the basis of studies conducted during short duration at Mahim and Colaba. The peer review conducted by Frischmann Prabhu was also a word of caution. The only report, which to some extent exhaustively deals with the environmental impact is the report submitted by the consultants appointed by MCGM, and thus MCZMA and MoEF were obliged to independently apply their mind to the question: Whether there was a proper scientific

study independently conducted. Assuming the two authorities were entitled to treat the report of the consultants as an exhaustive study after analysis of the data, the objections raised to the environmental clearance had to be properly addressed to. The report of the Consultant had categorically opined that: *(i) Secondary effects will be formation of sediment plumes, which may affect fish or benthos because of the smothering and clogging effect of highly turbid waters on the gills of bivalves or fish, inability to detect predators and the limiting of the photosynthetic process in plants, (ii) The suspension of fine sediments in the water column will create turbidity, which may scatter and attenuate light levels and potentially affect the growth of plants indirectly by reducing the availability of light and consequently the photosynthetic process in plants, (iii) Accidental fuel spillages and overfilling of excavated material can also affect the Marine ecosystems, (iv) The PH of water may increase causing imbalance in the ecosystem and also the activities will cause nutrient imbalance and algal bloom in the nearby shore areas, (v) The water quality will decrease and may also cause increase in temperature thereby reducing the oxygen dissolving capacity, (vi) Sedimentation will be very high due to continuous*

*drilling of the ocean bedrocks, (vii) The living habitats and micro habitats of the marine flora and fauna will be destroyed, (viii) The above impacts will directly impact on fisheries due to the mortality and migration of fishes from the area under construction, (ix) The food webs of the area under construction will be greatly affected thereby causing imbalance in the tropic layer, & (x) Immediate and long-term degradation of sensitive and essential breeding and nursery habitats for coastal and marine organisms (e.g. dunes, beaches, estuaries,) which could lead to long-term reductions of commercially important species (fish, shellfish etc.).* As regards MCZMA, we find that the only material before it was the twelve documents noted herein-above, one of which at Serial No.10, was the work order issued to NIO to carry out scientific studies. Highlighting that this work order was issued on 17<sup>th</sup> September 2016 requiring the CSIR-NIO to undertake extreme air analysis studies; to establish extreme waves rides at select points along the proposed coastal road; and to model hydrodynamic and morphology changes along the proposed coastal road, both being necessary and relevant, to assess the impact on the environment, it was expected that MCZMA should as a prudent body have awaited the

report of NIO. Instead thereof, it recommended the proposal to MoEF along with documents submitted by MCGM and the Expert Appraisal Committee of MoEF simply noted the objections by the NGOs and the comments of MCGM without returning findings thereon. In paragraph 33 above of our opinion we have reproduced the 24 objections by the Opponents of the proposed project and the response of the project proponent i.e. MCGM. The minutes drawn up by Expert Appraisal Committee do not record the opinion of the Committee. There is lip service to the requirement of the law in as much as the minutes record that *'the Committee deliberated in detail the environmental issues likely to be associated with the proposed project. Perusal of the documents/project reports, including EIA report, Social Impact Assessment Report, Risk Assessment and Disaster Management Plan, etc. submitted, indicates that a detail study has been carried out as required for a project of such a large dimension'*. In paragraph 13 of the minutes it is recorded *'The Committee having noted the environmental consequences and the need of the project keeping in view the increasing traffic in Mumbai and the associated health implications arising due to vehicular traffic, in particular,*

*agglomerated air pollution due to idling vehicles concluded that the Coastal Road is the need of the hour . The Committee observed that denial of the project from recommending for CRZ Clearance, will not serve any public interest, as, in the long run, the social benefits outweigh the marginal impact likely to be incurred on the environmental aspects'. One is left to wonder wherefrom the opinion was recorded that the likely impact on the environment would be marginal. Not a fact arising out of the material before it has been discussed by the Committee and thus, it is a case of a conclusion sans any reasons.*

160. When the draft project report was put up on the website by MCGM in June 2015, objections against the proposed coastal road were filed and Frischmann Prabhu was appointed to conduct a peer review. The report submitted by Frischmann Prabhu recorded:

- i. That the EIA does not include an environmental and social data sheet or screening checklist;*
- ii. No studies have been undertaken regarding the impact of the project on surface, sub-surface and aquatic flora and fauna that will be permanently displaced by the project corridor or any mitigation measures in*

*respect thereof;*

- iii. That the Environment Management Plan (EMP) for the Coastal Road Project does not include various material elements such as a management plan for reclamation area, coastal protection and soil erosion management;*
- iv. No formal risk assessment study to mitigate the risk of flooding has been undertaken. The report pointed out that information regarding high flood levels for a period of at least the last 50 years is required to be examined and included in the EIA report and that detailed hydraulic modeling would be required; and*
- v. That the Social Impact Assessment Report was insufficient and inconclusive inter-alia because it did not incorporate public consultation at different locations with different groups, social survey information and mapping of common property resources.*

161. The minutes drawn up by the EAC do not show that said report was considered by it and probably MCGM did not produce said report for perusal of the Committee.

162. It is obvious that a serious lacuna in the decision making process has occurred. The lacuna is that neither MCZMA nor EIA nor MoEF took note of the fact that the except for the environmental impact

assessment study conducted by the consultants, all other reports themselves informed the recipient of the reports that they were not based on a complete and exhaustive analysis of the data and the material required to opine on the adverse environmental impact. Further, MCZMA did not even bother to record having considered the objections by the NGOs to the proposed project. EIA recorded the objections and against the objections noted the stand of MCGM, but gave no reasons much less returned findings on the objections and the response of MCGM.

163. We accordingly hold that there is lack of proper scientific study and this has been overlooked by MCZMA, EIA and MoEF warranting the approval granted by MCZMA on 4<sup>th</sup> January 2017, the approval granted by EAC on 17<sup>th</sup> March 2017 and the final approval granted by MoEF on 11<sup>th</sup> May, 2017 are liable to be quashed and set aside.

164. We quash the decision taken by MCZMA on 4<sup>th</sup> January 2017 and the approval granted by MoEF on 11<sup>th</sup> May 2017 on said ground alone.

165. There is additional reason to hold in favour of quashing the two decisions on account of not taking into account two more relevant facts. It is settled law that an administrative or a statutory decision has to be taken by the Executive after properly applying its mind to all relevant material which ought to be in the mind of the authority while taking the decision. Both MCZMA and MoEF have not taken into account, in spite of being informed, that the Metro Rail Project in Mumbai was under construction and the Metro Network to be constructed would run parallel to the proposed coastal road. It was covering the entire South-North of the city. The impact of the Metro of being able to transport commuters was extremely necessary and important keeping in mind that the reclamation of land to construct a coastal road is permitted only in an exceptional case, and as opined by us, to determine whether a case was an exceptional case warranted the same to be considered from the point of view of a crying need of the city bordering the dying need of the city. Secondly, the coastal road was proposed to not only decongest the interior roads of the city but even provide a freeway between the Northern and the Southern part of the city. Conceptually and factually it was a singular project and thus,

adverse environmental impact had to be determined for the project as a whole and not to artificially break the project into two components merely because there was a Sea-link in between. This would result in a truncated environment impact assessment to be made. The precautionary principle applicable to environmental jurisprudence does not recognize such approach to be adopted.

**WHETHER THE COASTAL ROAD PROJECT REQUIRED ENVIRONMENTAL CLEARANCE UNDER EIA NOTIFICATION DATED 14<sup>th</sup> SEPTEMBER 2006. IF YES, WHETHER THERE IS SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF THE SAID NOTIFICATION WHEN MoEF ACCORDED APPROVAL UNDER CRZ-2011 ON 11<sup>th</sup> MAY 2015?**

166. It is the common case of the parties that Regulation 2 of EIA Notification dated 14<sup>th</sup> September 2006 requires clearance from MoEF if project or an activity falls under Category (A) in the Schedule and the State Environment Impact Assessment Authority for matters falling under category B. It is also the common case of the parties that projects and activities falling in Category B are divided into B1 and B2 and for projects falling under B1, Regulation 7 requires scoping if they are area development projects. The debate between the parties was whether the project in question is an area development project

falling under Item 8(b) of the Schedule to the Notification. Learned Counsel for the parties argued on the ratio of the law laid down by the Principal Bench of the National Green Tribunal in Vikrant Kumar Tongad (case) supra; Re: construction of park near Okhla Bird Sanctuary (case) supra and Goa Foundation (case) supra. Even in respect to said debate there was no dispute between learned Counsel for the parties that the various entries in the Schedule to the Notification have to be read firstly, applying qualitative test and thereafter the quantitative test. Meaning thereby, if the issue was whether a project or an activity was an area development project, firstly the qualitative test had to be applied i.e. it had to be determined whether it was an area development project and if held to be so, the quantitative test whether the area covered was equal to or more than 50 hectare land or built up area was equal to or more than 1,50,000 sq meter. Thus, contention of Counsel for respondents was that the quantitative test could not be applied to determine the qualitative test and the legal flaw in the decision of the Principal Bench of the National Green Tribunal in Vikrant Kumar Tongad (case) supra was to determine the qualitative test with reference to the quantitative test.

167. In view of the fact that learned Counsel for the parties were in unison, as afore-noted, we need not trouble ourselves with the facts in which the law was interpreted in Vikrant Kumar Tongad (case) supra, Okhla Bird Sanctuary (case) supra and Goa Foundation (case) supra.

168. At first blush the decision of the Principal Bench of the National Green Tribunal in Vikrant Kumar Tongad (case) supra appears to be in conflict with the legal principles stated by the Tribunal in its decision, and on facts the decision cannot be justified, but a deeper look keeping in view of decision of the Supreme Court in Okhla Bird Sanctuary (case) supra would reveal that to some extent the quantitative test influences qualitative test evidenced by the fact that in said decision, in paragraph 66 the illustration given by learned Counsel for the petitioners in paragraph 63 was discussed. The Supreme Court held that the illustration given may be correct to an extent and by way of example held that constructions where built up area was in excess of 1,50,000 sq meter would be huge by any standard and in that case the project development on sheer magnitude would qualify as township development project.

169. The illustration given by the learned Counsel by way of an example in paragraph 63 noted, reads as under:

*“In support of the contention, Mr. Bhushan gave the example of a “building and construction project”, consisting of a number of multi-storied buildings, the aggregate of the built-up area of which exceeds 1,50,000 sq m. Mr. Bhushan submitted that since the total built-up area of the project crosses the upper limit of Item 8(a) the project would not fall within that item. But at the same time since the project is a “building and construction project” and not a “township and area development project”, it would not come under Item 8(b) and this would be indeed a highly anomalous position where a project with a small built-up area would fall within the ambit of the notification, whereas a project with a larger built-up area would escape the rigours of the notification”.*

The answer to the illustration reads as under:

*“The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. ”.*

170. Thus, notwithstanding the argument of learned Senior Counsel for MCGM that the projects or activities listed under categories in the Schedule to the Notification are independent and exhaustive and as a

result thereof Entries at Serial No. 8 cannot be read as residual entries, and as regards Entry 7(f), it is exhaustive, and merely because a road does not fall therein the same cannot be read as falling under Entry 8(b) is also correct, but in the instant case the land reclaimed is 90 hectare and only 20 hectare thereof is actually being utilized for purpose of constructing the coastal road. 70 hectare is being developed as green spaces to be used as parks, cycle tracks, promenade, butterfly park, bus depots etc. The sheer volume of the area, which is 90 hectare, would require the project activity to be treated as an area development project. It is trite that norms, such as predominant purpose, make sense in the abstract world of theory, but they have to be applied practically 'as a matter of fact'.

171. The dominant purpose test to be applied, as was argued by learned Senior Counsel for the respondents leading to the conclusion that since the dominant purpose of the project was to construct a coastal road, the project has to be read as one to construct a road, and not falling under Entry 7(f), would not require environment clearance under EIA-2006, misses the point that notwithstanding the dominant purpose being to lay down a coastal road, but in the implementation

thereof about 78% of the reclaimed land is being actually used for a purpose other than the dominant purpose for which the area was being developed. The dichotomy between the dominant purpose and predominantly the reclaimed land being used for a purpose other than constructing the coastal road has to be resolved. Indeed, it would be inherent in the application of the dominant purpose test that where the field of activity, as in the instant case, the area used or utilized or applied is not for the dominant purpose, it has to be held that it is area development. Thus, we conclude on the issue by upholding the contention of the opponents of the project by holding that the coastal road project with development of green areas to be used as parks, promenade,, cycle tracks, bus parking facilities etc. falls under Category B1 of the Schedule to the Notification.

172. This takes us to the second limb of the submission advanced by the respondents. The argument was that since clearance under CRZ-2011 required environmental appraisal, which was the object of the EIA Notification, since for purpose of CRZ clearances the environmental impact assessment was done, there is substantial compliance with the EIA Notification as well.

173. We have already held herein above that the clearance under CRZ-2011 is liable to be struck down and thus, we answer the theoretical question posed by learned Counsel for the respondents.

174. The tabular statement filed by learned Senior Counsel for the respondents which we have verbatim copied in paragraph 111 at pages 136 to 152 above no doubt shows that the extent of appraisal for environmental clearance under CRZ-2011 is more exhaustive than the appraisal for environmental clearance under EIA Notification, but the same misses a very relevant point.

175. Under EIA Notification, Regulation 7 prescribes procedure to be followed to obtain environmental clearance and under heading **SCOPING REQUIRES MoEF OR ITS ENVIRONMENTAL IMPACT ASSESSMENT COMMITTEE** to appraise the proposal and determine detailed and comprehensive terms of reference to be framed addressing all relevant concerns for the preparation of the EIA report. The terms of reference would enable the applicant to commence the process of preparation of the EIA report. Additional terms of reference can be provided for. In the instant case, the form which was filled up was as

per the requirements of the CRZ-2011 and submitted only to MCZMA and not the State Environment Impact Assessment Committee. Thus, the opportunity of stipulating additional terms of reference was lost. Meaning thereby, if the procedure under EIA Notification was followed, the opportunity of appraisal to SEAC would have been available and perhaps additional terms of reference were settled.

176. We are dealing an environmental issue and precautionary principle guides that all precautions envisaged by the Regulations to appraise proposals for projects or activities likely to impact environment have to be strictly followed.

177. On the issue of public consultation, suffice it to state that public consultation was at the stage when CRZ-2011 was proposed to be amended and not at the stage of the appraisal of the material from the point of view of public participation. Thus, we hold that there is lack of substantial compliance with the EIA Notification of the year 2006.

**WHETHER PRIOR PERMISSION UNDER THE WILDLIFE (PROTECTION) ACT WAS NEEDED?**

178. Schedule I to the Wildlife (Protection) Act, 1972 lists the species

of the wildlife to which protection is accorded. Section 39(3) of the Act prohibits a person, without prior permission in writing of the Chief, Wildlife Warden or the authorized Officer, to destroy or damage Government property. Section 2(36) defines 'wildlife animals' as the ones specified in Schedules I to IV. Section 39 stipulates that all wild animals shall be the property of the State or the Central Government. Concededly species of corals listed in the Schedule 1 to the Act were observed in the intra-tidal zone where the coastal road project has been proposed. Notwithstanding the fact that corals presence is minuscule the same shows that ecosystem in the area in question is conducive to the Corals. It establishes that the area is ecologically sensitive having geo-morphological features which play a role in maintaining integrity of the species and thus, we hold that MCGM could not have commenced the works in question without obtaining permission under Wildlife (Protection) Act, 1972.

**WHETHER THE INTERCHANGE AT AMARSON GARDEN WITHOUT A PRIOR APPLICATION OF MIND REQUIRING THE SITE OF THE INTERCHANGE TO BE SHIFTED, AS PROPOSED BY THE PETITIONERS, TOWARDS THE NORTHERN DIRECTION?**

179. Indeed the site plan of the interchange shows that it cuts through Tata Garden thereby compartmentalizing Tata Garden into three segments, but the respondents have good reason to do so, which reasons we have reproduced while noting the arguments by learned Senior Counsel for MCGM in paragraph 118 above, and since we accept the justification as sufficient we speak no more, save and except, the facts noted in paragraph 118 above justify the location of the interchange as proposed by MCGM.

180. Dealing with submissions made by Mr. Prakash Laxman Chanderkar that double decker buses should be plied on the existing roads for purposes of augmenting transport and elevated road be constructed above the existing road and further that Offices be shifted outside the city of Mumbai, is a matter of policy and thus we cannot issue any such directions exercising writ jurisdiction.

181. On the issue of fishermen community not being consulted and their grievances not being adequately redressed, we do not deal with the said submissions on account of the fact we have already held that without an environmental clearance under EIA Notification the project

could not commence and MCGM would therefore be required to apply for clearance under EIA Notification, which would require public consultant as per EIA Notification and at that stage the fishermen community would get an opportunity to present their case.

182. Before bringing the curtains down we would be failing not to note that an argument advanced that coastal area which is sought to be reclaimed belongs to either the State Government or the Central Government and therefore, MCGM cannot after reclaiming the sea-shore construct a road thereon.

183. In the public interest litigations and the writ petition filed, Union of India and the State Governments are parties and they have no problem with their lands being utilized for the project in question. Thus the question need not be answered.

184. The Public Interest Litigations and the Writ Petition are accordingly disposed of restraining MCGM from executing the works required to lay down the coastal road. While upholding the Notification dated 30<sup>th</sup> December 2015 amending CRZ-2011, but holding that the clearance granted under CRZ-2011 by MCZMA, EAC

and MoEF are illegal for the reasons given herein above, we quash the approval granted by MCZMA on 4<sup>th</sup> January, 2017, the approval granted by EAC on 17<sup>th</sup> March 2017 and the final approval granted by MoEF on 11<sup>th</sup> May, 2017. We further declare that MCGM cannot proceed with the works without obtaining an environmental clearance under EIA Notification. Further, permission under Wildlife (Protection) Act, 1972 would also be obtained by MCZMA.

185. Petitions are allowed in above terms with costs made easy.

**N.M.JAMDAR, J.**

**CHIEF JUSTICE**