

GOVERNMENT OF MAHARASHTRA

Tel. No.: 22793132

No. ENV-2017/Legal/CR-18
Environment Department,
Mantralaya, Mumai-400 032.

Dated : 05th March, 2018.

C I R C U L A R

Sub : Clarification in respect of mangrove buffer found in developed / Municipal limits - Order passed by Hon'ble High Court of Judicature at Bombay dtd. 29.7.2015.

The Hon'ble High Court of Judicature at Bombay has passed an order dtd. 29.7.2015 in Chamber Summons No. 172 of 2007 in PIL No. 87 of 2006 filed by the BEAG V/s S.o.M. & Ors. with W.P. No. 176 of 2015, 180 of 2015, 187 of 2015, 188 of 2015, 190 of 2015, 249 of 2015, 251 of 2015 & 273 of 2015 with Notice of Motion No. 234 of 2015 in PIL No. 87 of 2006 with Chamber Summons No. 169 of 2015 in PIL No. 87 of 2006 by rejecting the prayer for stay. The relevant portion of the order is reproduced hereunder :-

1) para 16 :

" We find considerable substance in the submissions made by the learned counsel for MHADA and the learned counsel appearing for the writ petitioners and for the applicants in Chamber Summons that CRZ Notification has to be read as a whole. An analysis of the classification of coastal regulation zone into CRZ-I and CRZ-II in sub-clauses (i), (ii) and (v) of Clause – 7 of the CRZ Notification dated 6.01.2011 r.w. Annexure-I thereto indicates that :-

- (i) area will fall in CRZ-I, if the area is covered by mangroves of more than 1000 sq.mtrs. Mangroves generally grow on the land between Low Tide Line and High Tide Line (also known as inter-tidal zone);*
- (ii) Areas upto or close to the shoreline will fall in CRZ-II, if the areas which are within municipal limits (or in other existing legally designated urban areas) and are developed i.e. are substantially built-up and have been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains, with a ratio of built-up plots to that of total plots being more than 50%.*
- (iii) The dispute is about the classification of the buffer area of 50 meters from the mangroves.*

It is necessary to note that definition of CRZ-II as the areas that have been developed upto or close to the shoreline, does not provide that such developed areas must be at a distance of 50 meters from the shoreline. If the contention of PIL petitioner were correct, the Government of India would have indicated that CRZ-II areas are those which are at a distance of 50 meters from the shoreline and developed etc. Obviously, "the areas that have been

developed upto or close to the shoreline” could be within 50 meters of the mangroves area which (mangroves area) has more than 1,000 sq.mtrs. of mangroves. The Notification specifically mentions in Clause – 7 (v) that the CRZ areas falling within the municipal limits of Greater Mumbai require special consideration. Hence, the definition of CRZ-II in Clause-7 (ii) of Notification specifically uses the words “the areas that have been developed upto or close to the shoreline” could be within 50 meters of the mangroves area which (mangroves area) has more than 1,000 sq.mtr. of mangroves. The Notification specifically mentions in Clause-7(v) that the CRZ areas falling within the municipal limits of Greater Mumbai require special consideration. Hence, the definition of CRZ-II in clause -7(ii) of Notification specifically uses the words “the areas that have been developed upto or close to the shoreline.” The Government of India, therefore, knew that there were developed areas within the municipal limits in Greater Mumbai which were upto or close to the shoreline. Hence, we are unable to accept the submission of learned counsel for the PIL petitioner that the area of 50 meters from the mangrove area, can never fall in CRZ-II, even if such areas are developed areas within the existing municipal limits of Greater Mumbai. Accepting the PIL petitioner’s contention would render the words “up to or close to the shoreline” in clause 7 (ii) redundant. Of course, where the buffer zone area of 50 meters from the mangrove area does not have any developed area as defined in Clause-7(ii), it would fall in CRZ-I as per Clause-7 (i).

II) Specific attention is drawn to Para 28 of the order that :

“ Since the restriction is now incorporated in the Notification dated 6 January 2011, as per interpretation placed by us on CRZ Notification dated 6 January, 2011, where plot of land falls in 50 meters buffer zone but it was already part of an approved layout with infrastructure facilities within a municipal area or in an existing legally designated urban area as on 6 January 2011, then it would have to be treated as falling in CRZ-II, provided the area was substantially developed as per explanation given in CRZ Notification and as explained in this order. ”

Consequently, the Environment Department, G.o.M. has obtained confirmation of the Law and Judiciary Department on the above referred interpretation of the CRZ Notification dtd. 06.01.2011 by the Hon’ble High Court. The Law and Judiciary Department has commented on the interpretation of a judgement that :

Para 8 : As the issue before the Hon’ble High Court was restricted only to the plots involved in the Writ Petitions, Chamber Summons rather, a general issue, the orders of Hon’ble High Court dtd. 29.7.2015 is applicable to the plots involved in the said matters only.

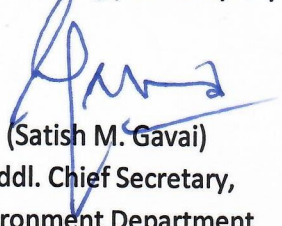
Para 9 : As the Hon’ble High Court has interpreted the CRZ Notification dtd. 6th January, 2011, in its present order dtd. 29th July, 2015, unless the said order of Hon’ble High Court is varied or set aside by the appropriate forum, the interpretation of the CRZ Notification dtd. 6th January, 2011 put by the Hon’ble High Court, be taken help of by the authorities, of course, subject to the observations of the Hon’ble High Court in the said order. The Department may examine the individual matters before it, in the

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light of the interpretation put by the Hon'ble High Court to the CRZ Notification dtd. 6th January, 2011, then by applying \the said interpretation to the individual matter, the authority may take appropriate decision."

Considering above, it is directed that all Concerned Authorities shall take cognizance of the aforementioned decision of the Hon'ble High Court and the interpretation confirmed by the Law & Judiciary Department while making recommendations of such cases to the MCZMA. The MCZMA shall act on the basis of the opinion given by the Law & Judiciary Department while taking decision in such cases.

Above action will be subject to any other subsequent order/s passed or being passed by any superior Court/s.


(Satish M. Gavai)
Addl. Chief Secretary,
Environment Department

Copy forwarded to :

- 1) Addl. Chief Secretary to Chief Minister, Maharashtra State – for information.
- 2) P.S. to Hon'ble Minister (Environment) – for information.
- 3) P.S. to Hon'ble State Minister (Environment) – for information.

Copy to :

- 1) Addl. Chief Secretary, Revenue Department – for information – It is requested to forward the above Circular to the Concerned Authorities under your jurisdiction.
- 2) Principal Secretary – I / II, Urban Development Department – for information – It is requested to forward the above Circular to the Planning Authorities under your jurisdiction.
- 3) Divisional Commissioner – Konkan – for information and necessary action
- 4) Municipal Commissioner – Municipal Corporation of Greater Mumbai / Navi Mumbai Municipal Corporation / Thane Municipal Corporation / Ulhasnagar Municipal Corporation / Kalyan Dombivali Municipal Corporation / Bhivandi-Nijampur Municipal Corporation / Mira-Bhyandar Municipal Corporation / Panvel Municipal Corporation – for information and necessary action.
- 5) Managing Director, CIDCO – for information and necessary action
- 6) Metropolitan Commissioner, Mumbai Metropolitan Region Development Authority – for information and necessary action
- 7) Collector – Mumbai / Thane / Palghar / Raigad / Sindhudurg / Ratnagiri - for information and necessary action.
- 8) Member Secretary, Maharashtra Coastal Zone Management Authority, 15th Floor, New Administrative Building, Mantralaya – for information and necessary action.