

WRIT PETITION NO.176 OF 2015

Malvani Prabodhan Sahakari Grihanirman
Sanstha Maryadit

Petitioner

versus

The State of Maharashtra and others

Respondents

WITH

WRIT PETITION NO.180 OF 2015

Malvani Anand Deep Sahakari Grihanirman
Sanstha Maryadit

Petitioner

versus

The State of Maharashtra and others

Respondents

WITH

WRIT PETITION NO.187 OF 2015

Malvani Matoshri Sahakari Grihanirman
Sanstha Maryadit

Petitioner

versus

The State of Maharashtra & others

Respondents

WITH

WRIT PETITION NO.188 OF 2015

Malvani Sagar Sahakari Grihanirman
Sabha Maryadit

Petitioner

versus

The State of Maharashtra & others

Respondents

WITH

WRIT PETITION NO.190 OF 2015

Malvni Tiranga Sahakari Grihanirman
Sanstha (Niyojit)

Petitioner

versus

The State of Maharashtra & others

Respondents

WITH
WRIT PETITION NO.249 OF 2015

Malvani Sahara Sahakari Grihanirman
Sanstha (Niyojit)

Petitioner

versus

The State of Maharashtra and others

Respondents

WITH
WRIT PETITION NO.251 OF 2015

Malvani Laxminarayan Sahakari Grihanirman
Sanstha (Maryadit)

Petitioner

versus

The State of Maharashtra & others

Respondents

Mr.Jai Chhabria i/by M.V.Jayakar & Co. for PIL Petitioners in PIL
No.87 of 2006.

Mr.Atul Damle, Sr.Advocate with Mr.Abhijeet Kadam for
Petitioners in WP (L) No.1770/2015 and WP Nos.176, 180, 187,
188, 190, 249, 251, 273 of 2015 and for Applicant in CHSW
No.169 of 2015.

Mr.G.S.Godbole with Ms.Krishna Raje i/by LJ Law for Applicant
in CHSW No.172 of 2007.

Mr.VM.Parshurami for MHADA.

Mr.VP.Sawant for Applicant in NMW No.234 of 2015.

Mr.Rui Rodrigues with P.S.Jetly, N.R.Prajapati, Rajesh Singh,
Ms.S.V.Bharucha and Ms.Bharadwaj for Union Government.

Ms.Sharmila Deshmukh for MCZMA.

Mr.G.S.Hegde with Ms.PM.Bhanushali for CIDCO.

Ms.Yamuna Parekh for MCGM.

Mr.D.A.Nalavade, GP and J.S.Saluja, AGP in WP Nos.176 and 251 of 2015.

Mr.J.S.Saluja, AGP in WP Nos.180 and 190 of 2015.

Mr.Hitesh Venegavkar, Addl.G.P in WP Nos.187 & 249 of 2015.

Mr.Milind More, Addl.G.P in WP Nos.188 of 2015.

CORAM : MOHIT S. SHAH, C.J. AND
A.K.MENON, J.

DATE : 29 July 2015

ORAL JUDGMENT - (Per : Chief Justice) :-

The writ petitioners and the applicants in the chamber summons have prayed for modification/variation of the order dated 6 October 2005 of this Court in Public Interest Litigation No.86 of 2006 (original Writ Petition (L) No.3246 of 2004 and connected writ petitions) to the extent that the order contained in paragraph 8(iii) of the said order dated 6 October 2005 will not apply to the following plots in Malvani-Malad (West) and Versova-Andheri :

Sr. No.	Writ Petition No./ Chamber Summons No.	Plot No.	Village	Name of Petitioner/ Applicant society
1	WP No.176 of 2015	45, Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Prabodhan Sahakari Grihanirman Sanstha Maryadit
2	WP No.180 of 2015	57, Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Anand Deep Sahakari Grihanirman Sanstha Maryadit
3	WP No.187 of 2015	56 Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Matoshri Sahakari Grihanirman Sanstha Maryadit
4	WP No.188 of 2015	41 Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Sagar Sahakari Grihanirman Sabha Maryadit
5	WP No.190 of 2015	44 Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Tiranga Sahakari Grihanirman Sanstha (Niyojit)
6	WP No.249 of 2015	42 Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Sahara Sahakari Grihanirman Sanstha (Niyojit)
7	WP No.251 of 2015	38 Survey No.263 (P), CTS No.3525A	Malvani-Malad (West)	Malvani Laxminarayan Sahakari Grihanirman Sanstha (Maryadit)
8	CHSW No.169 of 2015	B/2, CTS No.1374-B	Versova-Andheri	Dinshow Trapinex Builders Pvt.Ltd.
9	CHSW No.172 of 2007	Plot on Survey No.120, CTS No.1374B-24, RSC-2 in MHADA Layout	Versova-Andheri (West)	Blue Star Realtors Pvt.Ltd.

2. For the purposes of deciding these writ petitions and chamber summonses, we would refer to the facts as set out in the affidavit-in-reply filed on behalf of Maharashtra Housing and Area Development Authority (*MHADA*) dated 13 July 2015.

3. The Government of Maharashtra initiated Bombay Urban Development Project (*BUDP*) on 4 January 1985 as a project aided by the World Bank at Gorai, Charkop, Versova, Malvani and Mulund in Mumbai. The said schemes were undertaken especially for Economically Weaker Section (EWS) and Lower Income Group (LIG) known as Site Service Project. The project was undertaken for allotment of plots for residential purposes which were already developed with all infrastructural services. The Government of Maharashtra, World Bank and *MHADA* being the implementing agencies, spent substantial amounts between the years 1985 and 1994. Accordingly, *MHADA* and Maharashtra Housing and Area Development Board (*MHADB*) prepared complete layout plans for Charkop-Kandivali, Gorai-Borivali, Malvani-Malad, Versova-Andheri and Mulund and submitted the same to the Municipal Corporation of Greater Mumbai (*MCGM*) for its approval. After the Municipal Corporation granted approval and other legal formalities were completed, *MHADA* invited applications from the public at large and co-operative housing societies for allotment of residential plots, society plots, commercial plots, amenity plots etc. on terms and conditions mentioned in the

respective brochures in the years 1987, 1988, 1989 and 1994 respectively for Charkop, Gorai, Versova, Mulund and Malvani areas. After receiving the applications, MHADA allotted plots under BUDP Project to various persons. The particulars about the date of approval of the lay out by the Municipal Corporation and the date of allotment of plots in the respective layout are given in a chart, as under :

Sr. No.	Location of BUDP Project	Date of approval granted by MCGM to lay out for BUDP Project	Date of allotment of plots by MHADA under BUDP Project layout wise
1	Gorai-Borivali	5 June 1987	11 January 1990
2	Charkop-Kandivali	4 May 1989	5 July 1989
3	Versova-Andheri	6 February 1990	14 June 1994
4	Malvani-Malad	21 December 1991	30 October 1994
5	Mulund	25 June 1992	7 September 1993

4. MHADA has further pointed out in its reply affidavit that when the above process was going on, the Government of India in the Ministry of Environment and Forest (*MoEF*) issued Notification dated 19 February 1991 putting restrictions on construction activities within the Coastal Regulatory Zone (*CRZ*) and, therefore, under the provisions of the said Notification, necessary environmental clearance was required to be obtained. Accordingly, MHADA sent proposal to MoEF on 24 September

2002 and on 10 February 2003 MoEF granted environmental clearance to the following projects in the following terms :

" This has reference to your letter No.Sr.Arch/NB/4319/02, dated 24.9.2002 regarding the subject mentioned above. **The Ministry after examination of the above proposal pertaining to development of housing schemes by MHADA hereby accords clearance under Coastal Regulation Zone Notification, 1991 as amended from time to time, to the plots falling within Coastal Regulation Zone area of the following sites :**

- (v) Gorai (Phase-III),
- (vi) Charkop - Kandiyali (Phase IV);
- (vii) Versova S.No.120 Andheri (West) (Phase-I),
- (viii) Mulund Sl.No.386 (Phase-I)

2. The following conditions may be complied with while undertaking development of the plots in the Coastal Regulation Zone area located in the above sites :-

(vii) The floor space index for the proposed developments shall be the floor space index as existed prior to 19th February, 1991;

(viii)

(ix) Sewage treatment facilities shall be provided for the housing scheme but shall be located outside Coastal Regulation Zone area. Discharge of untreated sewage into the creeks is prohibited;

(x) No mangroves shall be destroyed during construction or post construction;

(xi) Dumping of solid waste such as construction waste or municipal solid waste shall not be undertaken in Coastal Regulation Zone area."

(emphasis supplied)

5. MoEF, however, did not agree to the grant of environmental clearance to the residential zone in Malvani-Malad (West) on the ground that the area was acquired after 19 February 1991 and the basic sites and services were provided after 19 February 1991. However, subsequently, on representations by MHADA, MoEF granted environmental clearance for the Malvani-Malad (West) layout also, by their letter dated 10 November 2005 subject to the same terms and conditions on which environment clearance dated 10 February 2003 was granted for above four layouts.

6. Thereafter, a writ petition being Writ Petition (L) No.3246 of 2004 came to be filed in this Court where directions were sought regarding protection of mangroves. That writ petition came to be converted in Public Interest Litigation No.87 of 2006. When the said writ petition was heard on 6 October 2005, this Court gave several directions for protection of mangroves. The relevant directions for the purpose of this group of petitions read as under :

" 8. *The State Government is directed to designate a Senior Officer not below the rank of concerned District Magistrate and Collector and Deputy Commissioner of Police/Superintendent of Police to oversee the implementation of the following directions. They would entertain complaints from citizens in respect of mangrove destruction. The name, address and contact information of such officers shall be advertised prominently in one English newspaper and two Marathi newspapers, apart from the official websites of the Maharashtra Government and the Forest Department.*

(i) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. We take note of the fact that in T.N. Godavarman Thirumulkpad vs. Union of India and Ors. etc. [Writ Petition (C)No. 202 of 1995 and 171 of 1996], an affidavit was filed on behalf of the State of Maharashtra by the Chief Conservator of Forests (Administration), in which on the basis of a report of an Expert Committee, it was stated that in the Mumbai Urban Area alone, 1,534 hectares of land were, inter alia, classified as mangrove areas.

(ii) All construction and rubble/garbage dumping on the mangrove areas shall be stopped forthwith;

(iii) Regardless of ownership of the land, all construction taking place within 50 meters on all sides of all mangroves shall be forthwith stopped ;

(iv) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves.

(v) The Municipal Commissioner of Greater Mumbai shall forthwith issue the necessary directions to the Municipal Corporation of Greater Mumbai Building Proposals Department not to entertain any applications for development (as defined in the Maharashtra Regional and Town Planning Act, 1966) on or in respect of the mangrove lands, regardless of the nature of ownership;

(vi) The State Government and the Maharashtra Coastal Zone Management Authority (MCZMA) are directed to file monthly report on the above action plan to this Court. The first report will be submitted within four weeks from today. The report shall specifically state, in addition to the progress/action taken,

- (a) the number of complaints received, if any,
- (b) the action taken thereon, if any,
- (c) the number of offenders named, and
- (d) the details of prosecutions/action launched/taken against such offenders.

(vii) The State of Maharashtra is directed to file in Court and furnish to the petitioners copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr.Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today;

(viii) The areas shown as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today;

(ix) After the aforesaid process in clause (viii) is completed, the areas so identified which are government owned shall be declared and notified as "protected forests" in accordance with law after carrying out ground survey etc. The areas so identified that are privately owned shall be declared and notified as "forests" in accordance with law, after carrying out ground survey etc. The said declaration/notification will be completed within a period of 8 weeks of the completion of Phase-II mapping;

(x) The mangrove areas that are on government owned lands will be handed over to the Forest Department within a period of 12 weeks from the declaration of the same as "protected forests";

(xi) From the list of "mangrove areas" so identified, Government owned lands will automatically be declared/notified as "protected forests". Likewise, privately owned lands from the list of mangrove areas so identified, the same will be declared/notified as "forests";

(xii) The Secretary, Revenue Department, shall from the said date of taking over possession of the Government owned land by the Forest Department, update all the revenue

records to ensure that the said Government lands are shown as "protected forests" in the said revenue records within a period of 12 weeks from the same being declared as "protected forests". In the case of lands that are private owned, the secretary, Revenue Department, shall update all the revenue records to ensure that the said private lands are shown as "forests" in the said revenue records within a period of 12 weeks of completion of the steps in clause (x) above;

(xiii) In respect of Government lands, the Forest Department and other authorities of the State of Maharashtra shall take the following necessary steps of protection, conservation and regeneration of the areas that would be declared/notified as "protected forests: in terms of clause (x) above :

(a) Removal of all obstructions that are impeding the growth of mangroves as also the impediments which restrict the flow of sea water in the mangrove areas;

(b) Wherever mangrove growth is found to be sparse and denuded (i.e. with forest density less than 0.4 which means canopy less than 40%) within these identified areas, taking necessary steps for rejuvenation;

(c) On identification of the areas as forest, the Municipal Corporation of Greater Mumbai would remove garbage and debris within these areas within a period of three months as per the instructions of the Forest Department. These areas shall be rejuvenated with mangroves;

(d) The Forest Department is directed to take necessary action against the offenders in accordance with law for damaging or destroying mangroves.

9. The Officers so designated in paragraph 8 above shall submit a report on the above action plan every three months to this Court. The first of such reports shall be submitted within four weeks from the date of declaration/notification as "protected forest". In addition to the progress/action taken, the reports shall specifically state the action taken as regards (a) number of complaints received, if any, (b) the action taken thereon, if any, (c) the number of offenders named,

and (d) the details of the prosecutions/action launched/taken against such offenders.

10. The State Government shall provide the necessary staff and funds for implementing the aforesaid directions to all concerned departments of the State.

11. The Principal Secretaries of (i) Environment, (ii) Revenue and (iii) Forest Departments, Government of Maharashtra, shall be overall in-charge of ensuring total compliance of this order.

12. This order shall partly modify the order dated 9th June, 2004 of this Court passed in Writ Petition No. 2208 of 2004.

13. The Chief Secretary of the State of Maharashtra is directed to send a circular to all concerned Collectors/Deputy Commissioners of Police/Superintendents of Police and all other concerned officials to ensure meticulous compliance of this order.

14. A copy of this order shall be sent to the Chief Secretary of the State of Maharashtra with a special messenger."

(emphasis supplied)

7. In view of the above directions, particularly direction prohibiting any construction activity in the buffer zone of 50 meters, all the construction activities in such buffer zone came to a stand still. Hence, the MHADB sent a proposal to Maharashtra Coastal Zone Management Authority (MCZMA) and in response to the said proposal, MCZMA by its letter dated 29 July 2013 observed as under :

"3. The Authority noted that the MoEF, New Delhi has accorded clearance in 2003 and 2005 for the five

affected schemes, under the CRZ Notification, 1991. However, as per the then High Court order dated 6.10.2005 in WP No.3246/2004 and 27.1.2012 in PIL No.87/2006, prior High Court permission is mandatory for the development, if the plot falls in mangroves or its 50 mt. buffer Zone area.

4. The Authority deliberated the matter and observed that the MHADA can approach the Hon. Mumbai High Court for seeking the mandatory prior permission for development on the plots which are affected by mangroves or its 50 mt buffer Zone area."

8. MHADA has accordingly moved Notice of Motion No.234 of 2015 seeking following directions :

"a) That this Hon'ble Court be pleased to exempt and exclude the lands more particularly described in the schedule annexed to the Notice of Motion from the purview of the judgment and order dated 6th October 2005 qua the housing project undertaken by the Applicant at Gorai-Borivali, Charkop-Kandivali, Malwani-Malad, Versova and Mulund in Mumbai."

9. The plot owners of the respective plots have also prayed for exemption/variation of the order dated 6 October 2005 as indicated above.

10. The learned counsel for MHADA has submitted that MHADA had launched BUDP project as far back as in the year 1985 for providing affordable housing to the economically weaker section and to the lower income group with the help of World Bank. The BUDP project was undertaken to develop the plots along with providing complete infrastructural services and

for that purpose all the infrastructural services were provided from 1985 to 1994. It is further submitted that by now, more than ten thousand plots have been developed and the percentage of plots on which residential buildings have been constructed, is as per the particulars given in the following chart:-

Sr. No.	Location of BUDP Project	Date of approval granted by MCGM to lay out for BUDP Project	Date of allotment of plots by MHADA under BUDP Project layout wise	Percentage of Plots development till date
1	Gorai-I Gorai-II	05.06.1987 03.02.1988	11.01.1990	85 percent
2	Charkop-Kandivali	04.05.1989	05.07.1989	85 percent
3	Versova-Andheri	06.02.1990	14.06.1994	76 percent
4	Malvani-Malad	21.12.1991	30.10.2004	84 percent
5	Mulund	25.06.1992	07.09.1993	79 percent

11. The learned counsel for PIL petitioner, however, submits that the question is whether the development permitted on the plots within 50 meters buffer zone is governed by CRZ Notification dated 6 January 2011; and that as per said Notification, the land falling within 50 meter buffer zone shall fall in CRZ-I area and no construction activity is permitted in CRZ-I except specified category of construction.

12. In view of the above submission, it is necessary to reproduce the relevant provisions of CRZ Notification dated 6 January 2011, which read as follows :

“ 7. Classification of the CRZ :

For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely :

(i) CRZ-I :

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

(a) Mangroves, in case mangrove area is more than 1000 sq. mtrs., a buffer of 50 metres along with mangroves shall be provided;

(b) to (k)

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

(ii) CRZ-II :

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

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

(iii) CRZ-III :

Areas that are relatively undisturbed and those do not belong

to either CRZ-I or II, which include Coastal Zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas, which are not substantially built up.

(iv) CRZ-IV :

A. The water area from the Low Line to twelve nautical miles on the seaward side;

B.

(v) Areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by Local Communities,-

A. (i) CRZ area falling within municipal limits of Greater Mumbai;

B. Critically Vulnerable Coastal Areas (CVCA) such as Sunderbans region of West Bengal and other ecologically sensitive areas identified as under Environment (Protection) Act, 1986 and managed with the involvement of coastal Communities including fisherfolk."

(Emphasis supplied)

The explanation to Clause 7(ii) of CRZ Notification dated 6 January 2011 read with Guideline no.6 of Classification of CRZ areas in Annexure-I of CRZ Notification dated 6 January 2011 laying down guidelines for preparation of coastal zone management plans. The relevant portion of Guideline no.6 read as under :

II. Classification of CRZ areas :

1.
2.

3. *Buffer zone along mangrove areas of more than 1000 sq.mts shall be stipulated with a different colour distinguishing from the mangrove area.*

4. *The buffer zone shall also be classified as CRZ-I area.*

5.

6. *The CRZ-II areas shall be those areas which have been substantially built-up with a ratio of built-up plots to that of total plots is more than 50%."*

(Emphasis supplied)

13. In view of the above provisions, by an order of this Court dated 9 March 2015 passed in Notice of Motion (L) No.743 of 2014 and present group of writ petitions, MCZMA was directed to submit a report to indicate whether plots in question fall within buffer zone of 50 meters from the mangroves and whether mangrove area near the plots is 1000 sq.meters or larger. So also by order dated 26 June 2015 passed in Chamber Summons No.169 of 2015, MHADA was also asked to file an affidavit indicating the ratio of built-up plots to that of total plots in the layouts in question.

14. In compliance with the above directions, MCZMA has submitted a report on the basis of inspection made on 19 July 2015. As per the said report, while plots in question are within 50 meters from the mangroves towards landward side,

there are existing concrete/tar roads between the mangroves and the plots in question in case of nine sites visited by expert member of MCZMA, Under Secretary of Environment Department-Government of Maharashtra and other officers of MHADA and Municipal Corporation. In view of the said report, the learned counsel for PIL petitioner has submitted that the land falls within CRZ-I and, therefore, no construction activity is permitted.

15. On the other hand, Mr.Parshurami, learned counsel appearing for MHADA, Mr.Godbole learned, counsel appearing for the applicants in Chamber Summons No.172 of 2007 and and Mr.Damle, learned Senior Advocate appearing for Applicant in Chamber Summons No.169 of 2015, have submitted that the lands in question fall in CRZ-II area because the areas that have been developed may be close to the shoreline, but these plots are within municipal limits of Municipal Corporation for Greater Mumbai and are part of the layouts approved by MCGM between 1989 and 1994 with infrastructural facilities such as approach roads, drainage, water supply and sewage mains and are, therefore, developed areas falling in CRZ-II. It is submitted that in view of the particulars given by MHADA in their affidavit dated 13 July 2015, all the five layouts are areas which have been substantially built-up with infrastructural services, with construction on the percentage of plots ranging between 75% to 85% of the total plots in the respective layouts. The learned

counsel have, therefore, submitted that when the plots fall in areas which are admittedly within existing municipal limits and which are substantially built-up and have been provided with drainage and other infrastructural services including water supply and sewerage, the lands have to be considered as falling under CRZ-II notwithstanding the fact that they may also be falling within 50 meters buffer zone.

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 January 2011 read with Annexure-I thereto, indicates that :-

(i) area will fall in CRZ-I, if the area is covered by mangroves of more than 1000 sq.meters. Mangroves generally grow on the land between Low Tide Line and High Tide Line (also known as inter-tidal zone);

(ii) areas up to 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 up to 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 up to or close to the shoreline" could be within 50 meters of the mangroves area which (mangroves area) has more than 1,000 sq.meters 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 up to 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 up to 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).

17. Learned counsel for the PIL petitioner would, however, submit that any development which has taken place after 19 February 1991, cannot be taken into consideration for the purposes of considering whether the lands in question fall within CRZ-II area, because CRZ Notification dated 19 February 1991 also defined CRZ-II area in the following terms :

"ANNEXURE-I

Coastal Area Classification and Development Regulations

Classification of Coastal Regulation Zone :

6 (1) *For regulating development activities, the coastal stretches within 500 m. of High Tide Line of the landward side are classified into four categories, namely :*

Category I (CRZ-I) :

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

It is submitted that since the definition of CRZ-II area in the CRZ Notification dated 6 January 2011 is same as definition of CRZ-II area in CRZ Notification dated 19 February 1991, it would necessarily mean that only those areas will be treated as substantially built-up areas on 6 January 2011 which had already been substantially built-up as on 19 February 1991. It is submitted that MHADA affidavit indicates that the plots in the layouts in question were allotted in 1989 or after 19 February 1991 and, therefore, subsequent development of the areas after 19 February 1991 cannot be taken into account for the purpose of deciding the ratio of "built-up plots to the total plots". It is submitted that it would be less than 50% and, therefore, the plots in question cannot be treated as falling in CRZ-II as per CRZ Notification dated 6 January 2011.

18. The learned counsel for the PIL petitioner further submitted that in any view of the matter, the CRZ clearance granted by MoEF in the years 2003 and 2005 cannot enure for the benefit of the petitioners as those clearances were valid only for a period of five years.

19. We have carefully considered the rival submissions. It is necessary to note that accepting the contention urged on behalf of PIL petitioner that the development which has taken place after 19 February 1991 cannot be taken into consideration for the purposes of determining whether the lands are part of

layouts which are substantially built-up with more than 50% plots having construction, would mean that construction which has taken place on the buffer zone between 19 February 1991 and 6 October 2005 would have to be declared illegal. In the writ petition which was filed in the year 2004, which was subsequently converted into PIL, no such contention was taken. Therefore, it would be too late in the day to allow PIL petitioner to raise such contention. Even otherwise, we are of the view that while considering whether a plot of land falls in CRZ-II area as per CRZ Notification dated 6 January 2011, we would have to consider the position as on the date of the coming into force of CRZ Notification dated 6 January 2011. However, considering the fact that for the first time by an interim order dated 6 October 2005 this Court had prohibited any construction activity on 50 meter buffer zone i.e. 50 meters from mangroves towards landward side, at the most, relevant date would be 6 October 2005 and not any date prior thereto.

The CRZ Notification of 19 February 1991 did not contain any prohibition on construction on the 50 meters buffer zone. Such a prohibition was for the first time introduced by an interim judicial order dated 6 October 2005. The affidavit on behalf of MHADA clearly shows that more than 10,000 plots in all the five layouts were allotted to various persons by 1994. Since the infrastructural facilities were provided with the assistance of World Bank by 1994 and since the plots were allotted by MHADA as far back as from 1989 to 1994, the case of MHADA

that plots with construction are ranging in the ratio between 75% to 85% of the total plots upto 6 October 2005, is consistent with its case that the plots in question fall within the existing municipal limits and within the substantially built-up areas which were provided with drainage, concrete/tar roads and other infrastructural facilities as far back as between 1987 and 1994.

20. Mr.Damle, learned Senior Advocate appearing for one of the the applicants in Chamber Summons No.169 of 2015, has also invited our attention to the minutes of 99th meeting of MCZMA wherein it is clearly shown that the plot in question falls in CRZ-II even as per CZMP map of the year 1991.

21. As regards the contention urged on behalf of PIL petitioner that environmental clearance granted by MoEF on 10 July 2003 and 10 November 2005 would lapse after expiry of five years, it is necessary to note that those environmental clearances were not qua individual plots but for all the plots in four layouts under clearance dated 10 February 2003 and for the fifth layout under clearance dated 10 November 2005. Each layout has hundreds of plots and, therefore, once MoEF accorded "clearance to the plots" in a given layout and once the construction was put up on 50% or more plots, it would not be necessary for the other plot holders to obtain again environmental clearance after expiry of five years.

22. As far as Notice of Motion No.234 of 2015 is concerned, it seeks clearance for development of plots some of which are forming subject matter of the above writ petitions and chamber summons. The affidavit in support of the Notice of Motion of Mr.Yogesh Shivajirao Deshmukh, Estate Manager of MHADA discloses that lay out approvals for Charkop in Kandivali, Gorai in Borivali, Malvani in Virar, Versova in Andheri and Mulund had been submitted to MCGM for its approval and these approvals were received for Gorai on 5 June 1987, Gorai-II on 3 February 1998, Charkop-III on 4 May 1989, Versova on 6 February 1990, Malvani on 21 December 1991 and Mulund on 25 June 1992. It is only after scrutinising the layout that the permissions were granted. According to MHADA, in Gorai area, after the infrastructural development was complete, the plots were allotted to various persons on 11 January 1980. In Charkop, the plots were allotted to various persons on 5 July 1989. In Versova, plots were allotted to various persons on 14 June 1994. In Malwani, plots were allotted on 30 October 1994 and in Mulund on 7 September 1993. The photographs relied upon by the parties including the PIL petitioner discloses what is in our view substantial development. MHADA has on oath stated that the infrastructure in these areas was complete including road, water supply, sewerage main etc. by 1994. No further infrastructure is to be completed in these layouts. In most of

these cases before us, the petitioners are the societies comprising of members of low income and middle income group and considering the reported shortage of affordable housing for these groups in the City of Mumbai and its suburbs, subject to precautions set out in the judgment, it is necessary to take pragmatic view of the matter. The plots adjoining most of the plots under consideration are already having construction.

23. The MHADA has inadvertently not annexed the schedule to the Chamber Summons specifying the exact particulars of plots in these layouts. MHADA shall file an affidavit in this PIL setting out particulars of various plots in these layouts that have been allotted, within a period of three weeks with copies to the PIL petitioner and MCZMA. Within a period of six weeks thereafter MCZMA will carry out similar exercise as in case of the nine plots which were considered at the time of site visit on 19 July 2015 and file such site inspection reports along with an affidavit. It is only after ensuring that these sites also comply with the requirements of being located on the landward side of permanent road of tar or concrete road that such plots allotted can be permitted to be developed.

24. For avoidance of doubt, without MCZMA completing the aforesaid exercise in terms of aforesaid, the MHADA will not grant any permission to develop in respect of plots other

than the plots for which reliefs are being granted by the present order. So also the MCGM shall not process any application received without MHADA and MCZMA certifying that the plots in question are all on the landward side of existing tar/concrete roads and are part of the completed infrastructure as on 6 October 2005. All the authorities shall take notice of the same and in no case any construction of a new road or extension of existing road shall be undertaken in these areas along side the mangroves in order to facilitate any development of any vacant plot.

25. Furthermore, it is made clear that all authorities concerned including the Municipal Corporation of Greater Mumbai and MHADA may grant permissions for construction on the plots referred to in the aforesaid layouts subject to strict compliance with all requirements of law including the following :

(a) While carrying out excavation or development work as contemplated in section 7 of the MRTP Act no excavated earth or other debris or construction material or any kind will be stored or dumped on the road or towards the shore line. Any violation of such debris management will be considered as breach, with consequences to follow.

(b) So also while carrying such debris or excavated earth or any construction materials all concerned will ensure that there is absolutely no spillage and that the shoreline of mangrove or mangrove vegetation whether such mangroves are adjoining the plots in question or otherwise are not affected. All preventive measures shall be undertaken by the authorities concerned including MCZMA, the concerned plot owners, societies and developers so as to avoid any violation of these conditions.

(c) No mangroves shall be destroyed or polluted during construction, nor shall construction waste or municipal solid waste shall be dumped on mangroves or roads or in coastal regulation zone area. Under no circumstances will any garbage refuse or rubble shall be dumped in the mangrove area or in the buffer zone by any of the persons/developers/contractors or the societies concerned. This would have to be monitored on regular basis by the Municipal Corporation of Greater Mumbai by the officer not lower than the rank of Assistant Municipal Commissioner who will be held responsible for the breach of these stipulations.

26. Mangroves being the lifeline of the area, no breach of the above directions can be regularised throughout the layouts forming subject matter of the petitions and other proceedings taken out in the PIL. Any violation will result in

prompt cancellation of the commencement certificate, if any, issued and all development work as contemplated under MRTP Act shall be forthwith stopped and continuance will be illegal, with consequences to follow. Moreover, in case any plot owner or developer violates these conditions, the plot in question will have to be restored to its original state after demolition of existing structures at the risk and cost of the developer and the society. The authorities concerned will ensure strict compliance with the above by the persons concerned including developers, contractors, societies or other entities contemplated under Maharashtra Ownership of Flats Act, 2012 and Maharashtra Apartment Ownership Act, 1970.

27. In our view, therefore, Notice of Motion No.234 of 2015 taken out by MHADA deserves to be allowed. We accordingly allow the motion and exclude the plots in the layouts for which environmental clearance was granted by MoEF on 10 February 2003 and 10 November 2005, subject to the observations set out above, from operation of the 50 meters buffer zone requirement.

28. It was because there was no such restriction in the CRZ Notification dated 19 February 1991 that this Court had introduced additional safeguard for protection of mangroves, that construction activity was prohibited in the buffer zone area by interim order dated 6 October 2005. 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. In respect of the plots outside the aforesaid approved MoEF layouts, the concerned persons shall move the competent regulatory authority (MCZMA or MoEF), and not this Court.

29. It is clarified that when any CRZ clearance is sought, MCZMA will have to satisfy itself that the plot in question is beyond the existing concrete/tar road towards landward side and is a part of the developed area, as explained in this judgment.

30. The Writ Petitions and Chamber Summons are allowed accordingly in the above terms.

31. Learned counsel for the PIL petitioner prays for stay of this judgment for some time in order to have further recourse in accordance with law.

32. Since our order merely requires authorities to act as per environmental clearances granted by MoEF as far back as in 2003 and 2005, we do not grant the prayer for stay. The prayer is rejected.

(CHIEF JUSTICE)

(A.K.MENON, J.)

MST