IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.165 OF 2015

The Municipal Commissioner of Municipal
Corporation of Greater Bombay and Anr. .. Appellants

vs.

M/s.Vardhman & Hiranandani Developers .. Respondents

WITH

FIRST APPEAL NO.849 OF 2019

M/s.Vardhman & Hiranandani Developers .. Appellants

vs.

The Municipal Commissioner of Municipal
Corporation of Greater Bombay and Anr. .. Respondents

Mr.B.M.Chatterji Sr.Advocate, Mr.Vishesh Srivastav, Ms.Kavita Singh i/b Ms.Shital Mane for the M.C.G.M. Appellant in First Appeal No.165 of 2015 and for Respondents in First Appeal No.849 of 2019

Mr.S.U.Kamdar, Senior Advocate with Mr.Vatsal Merchant with Mr.Abhishek Bhadang with Mr.Sharad Wakchoure i/b

M/s.Kishore Thakurdas and Co. for the appellant in First Appeal No.849 of 2019 and for Respondent in First Appeal No.165 of 2015

CORAM : K. K. TATED, J
RESERVED ON : 26.09.2019
PRONOUNCED ON : 15.11.2019

JUDGMENT.:

1 Heard the learned counsel for the parties.

2 First Appeal No.849 of 2019 filed by original plaintiffs challenging the judgment and decree dated 17.6.2014 passed by Bombay City Civil Court at Dindoshi, Borivali Division, Mumbai in L.C.Suit No.2450 of 2003 and First Appeal No.165 of 2015 filed by the Municipal Corporation of Greater Bombay original defendants challenging the same judgment and decree.

3 For the sake of convenience, the nomenclature of the parties will be referred to as stated in the Suit i.e. appellant in First Appeal No.849 of 2019 as plaintiffs and respondent as defendants and appellant in First Appeal No.165 of 2015 as defendants and respondent as plaintiffs.

4 Plaintiffs filed their written submission on 17.10.2019.

5 In the present proceeding, plaintiffs filed Suit No.2450 of 2003 before the Bombay City Civil Court at Dindoshi, Borivali

Division, Mumbai for a permanent order and injunction against the defendants Corporation, from taking any action under notice dated 7.2.1998 issued by them under section 354A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as 'said Act') for demolition of the Building No.4, situated on a plot bearing no.261 of Village Dahisar, Taluka Borivli, Mumbai. During the pendency of the said Suit, plaintiffs carried out amendment and also claimed declaration that the property on which the Suit building no.4 is constructed by them, is not affected by Coastal Zone Regulation. Prayer Clauses in the said Suit reads thus:

> *"(a) that the Defendants, their servants and agents be restrained by a permanent order and injunction of this Hon'ble Court from taking any steps under the said impugned notice dated 7th February, 1998 (Ex. "C" hereto) in respect of the said Building No.4 or otherwise taking any steps for demolition of the said Building No.4 situate, lying and being at Village Dahisar, Taluka Borivli bearing CTS No.261 of Village Dahisar or taking any action against teh Plaintiffs in that behalf;*
>
> *(a1) that the entire records and file containing papers/documents as maintained by the concerned Executive Engineer (Building Proposal) who is acting under the direct control of Defendant No.1 in respect of Suit Building, be called for and after verifying and examining and verifying the same, it may be declared that the property on which the Suit Building No.4 which is constructed by the Plaintiffs is not affected by the Coastal Zone Regulation.*
>
> *(b) that pending the hearing and final disposal of the suit, the Defendants, their servants and agents be*

restrained by an interim order and injunction of this Hon'ble court, from taking any steps under the said impugned notice dated 7th February 1998 (Ex."C" hereto) in respect of the said Building No.4 or otherwise taking any steps for demolition of the said Building No.4 situate, lying and being at Village Dahisar, Taluka Borivali bearing CTS No.261 of Village Dahisar or taking any action against the Plaintiffs in that behalf.;

(c) for ad-interim reliefs in terms of prayer (b) above;

(d) for such further and other reliefs as the nature and circumstances of the case may require;

(e) for costs of the suit.

6 In the said Suit, the defendants filed written statement and opposed the reliefs claimed by the plaintiffs. On the basis of pleading of both the sides, the Trial Court framed following issues:

1) Is it proved that it is necessary to restrain the Defendants from taking any action against the suit property in pursuance of the notice dated 7.2.1998 ?

2) Is it proved that the suit is within limitation ?

3) Is it proved that the suit is maintainable ?

4) Is it proved that the suit is properly valued ?

5) What is the final order ?

RECASTED-ISSUES

ISSUES	FINDINGS
1) Whether the suit property is situate within Coastal Regulation Zone and thereby in non-residential zone ?	In the Affirmative.
2) Whether the act of the Defendant sanctioning layout/plan of stilt plus 21 floor building in ignorance of provisions of Coastal Regulation Zone can be enforced ?	In the Negative.
3) Whether the Defendants have committed beach of right of the Plaintiff in respect of the above referred building ?	In the Negative.
4) Whether Plaintiff is entitle to a decree of perpetual and mandatory injunction ?	For perpetual injunction only to the extent of notice dated 7.2.1998
5) What Order and Decree ?	As per final order.

7 The Trial Court held that construction carried out by the plaintiffs of building no.4 i.e. stilt plus 21 floors was as per sanction lay out / building plan and declared that the same is not unauthorised construction. But at the same time the Trial Court held that the construction carried out by the plaintiffs of building no.4 is situated within Coastal Regulation Zone. Therefore, they are not entitled for completion and occupation certificate. Hence, the plaintiffs filed the present First Appeal No.849 of 2019 challenging the impugned judgment and decree to the extent of issue of Coastal Regulation Zone and refusing to direct the Corporation to issue completion certificate and occupation certificate for the suit building no.4, whereas the defendants

Corporation filed First Appeal No.165 of 2015 challenging part of the judgment and decree passed by the Trial Court restraining them from demolishing the suit building no.4 situated on CTS No.261 of Village Dahisar Taluka Borivali under the notice dated 7.2.1998 under section 354A of the said Act.

8 The learned Senior Counsel appearing on behalf of the plaintiffs submits that in the present matter on 27.9.1988 (Exhibit 62) State Government approved development for weaker section under Urban Land (Ceiling and Regulation) Act, 1976. Thereafter, the plaintiffs through their architect on 7.8.1989 submitted layout for issuance of sanction and I.O.D. for proposed project on the property bearing Survey No.343 CTS No.261 of Village Dahisar (West), Bombay under section 337 of the said M.M.C.Act along with necessary forms, plans, copy of U.L.C. N.O.C, copy of application and copy of receipt of central cell remarks, copy of D.P. remarks, scrutiny fees etc. Thereafter, the plaintiffs paid aggregate amount of Rs.3,27,200/- to the defendant on 8.8.1989 as scrutiny fees. He submits that plaintiffs further paid fees of Rs.1,28,325/- on 9.11.89 towards further fees for security of layout plans. He submits that defendants by the letter dated 19.8.89 called upon the plaintiffs to submit further details for processing layout application. He submits that to construct the bridge across Dahisar river along 44 ft. Wide D.P. Road as an access to property bearing CTS No.261 of village Dahisar (West) was one of the condition for carrying out development in the said plot of land. Pursuant to the said condition, the plaintiff's architect on 5.5.90 and

11.1.1991 submitted proposal and plan to the defendant for construction of bridge over the Dahisar river.

9 The learned Senior Counsel for the plaintiffs submits that as per the terms and conditions of IOD, plaintiffs agreed to complete the construction of bridge. He submits that after following due process of law, defendants on 14.3.1992 (Exhibit 10) approved the plans for building No.4 and issued I.O.D. with reference to the plaintiff's application dated 7.8.1989 (Exhibit 35). He submits that defendants approved amended plans for building No.4 stilt + 21 upper floors. He submits that defendants called upon the plaintiffs to deposit the security charges and other payments for I.O.D. At that time, the plaintiffs requested defendants sometime to make payment. In this way, plaintiffs carried out construction of the building no.4 as per the sanction plan. He submits that even the defendants by their letter dated 24.8.1998 (Exhibit 18) admitted the fact that, plans for stilt plus 21 upper floors i.e. building no.4 on plot bearing CTS No.261 Village Dahisar was approved by the Corporation. He relies on letter dated 24.8.1998 (Exhibit 18) which reads thus:

> *"You are aware that stop work notice under sec. 354/ A of B.M.C. Act is issued on the said work, since the work is carried out beyond plinth level. During the site inspection, it is observed that the R.C.C. work upto 5th slab level and columns over 5th slab has been constructed for which C.C. is not granted by this office. Similarly the amended plans submitted by you for stilt +21 upper floors are approved however, the same are*

not issued for non payment of requisite fees for which the demand letter is already issued to you.

You are, therefore, requested to instruct your client to stop the work carried out beyond C.C. & further you are requested to clarify that under what circumstances you had allowed your client to carry out the work beyond C.C. You are requested to clarify the above matter within 15 days hereof, failing which action under provision of MRTP Act as deem fit will be initiated against your client."

10 The learned Senior Counsel for the plaintiffs submits that after construction is over, plaintiffs applied for completion and occupation certificate on payment of usual charges. He submits that, there is a circular issued by the Corporation bearing no.CHE/4808/DPC dated 13.3.1996 (Exhibit 46) for compounding offence by levying regularisation charges, for carrying out the work beyond approval/without C.C. and by withdrawing for stop work notice under section 354 of the said Act. He submits that the said Circular reads thus:

"CIRCULAR

Sub :- Compounding offence by levying Regularisation charges, for carrying out the work beyond approval/without C.C. and by withdrawing for stop work notice under section 354 of the BMC Act.

Earlier guidelines were approved by then AMC(R) under no.AMC/R/3258 dated 30/7/85 (CE/9944/DPR of 4/8/05)

prescribing penalties while regularising the work done without proper approval by withdrawing notice under Section 354(A) of the BMC Act by the Building Proposal Department. The scale of penalties for regulations of the work carried out without proper approval/C.C. but which otherwise conforms with the provisions of D.C.Regulations was then prescribed.

Sr.No.	***Scale of Penalty charges. The offence committed***	***The charges of Regularisation at % of land cost.***
1	*C.C. is issued and further work is carried out after stop work notice but work is as per the approved plans.*	*5%*
2	*C.C. is issued but work is done after the stop work notice and also not as per the approved plans,but approvable.*	*10%*
3	*Work beyond the C.C. but as per the approved plans, but no work done after the stop work notice/inventory.*	*7%*
4	*Work done beyond C.C. and also not as per the approved plans and work done after the stop work notice/inventory but approvable.*	*12%*
5	*Work done without approval but work is approvable/case of Post Facto sanction.*	*15%*
6	*Work done without and work is not approvable case of regularisation beyond approvable.*	*Not to be regularised and demolition action be taken.*

The Municipal Commissioner has reviewed this policy in the light of provisions of MRTP Act 1966 for compounding the offence and has accorded sanction to levy the Regularisation charges at the following rates. The land cost to be considered for the above purpose will be land rate as assumed or prepared and adopted by Supdt. Of Stamps, Mumbai.

All the staff working in the Building proposal section are requested to take not the the above policy circular."

11 The learned Senior Counsel for the plaintiffs submits that on the basis of the said Circular they tendered requisite amount to the Corporation for issuing completion certificate and also occupation certificate. He submits that instead of issuing completion and occupation certificate, the defendants issued notice under section 53(1) of the MRTP Act, 1966 dated 16.10.2000 (Exhibit 20) on the ground that construction carried out by plaintiffs is not in accordance with the permission granted to them. The said notice was replied by the plaintiffs through their Advocate's letter dated 10.11.2000 (Exhibit 58) and place on record that, the defendants issued IOD and the construction was carried out by them on the basis of IOD without violating FSI limit. Therefore, there is no question of taking any action against them under section 53(1) of the MRTP Act, 1966. He submits that plaintiffs by their application dated 5.1.2000 (Exhibit 56) requested defendants to regularise the work carried out of building no.4 in terms of circular dated 13.3.1996 on payment of usual charges. In the meanwhile, on 19.1.2000 Coastal Zone Management plan for Maharashtra was sanction by Union of India. On the basis of the said plan of the Coastal Zone Management, the defendants refused to grant completion certificate, on the ground that construction of the building no.4 is affected by CRZ - II. Hence, plaintiffs filed Suit for declaration that the construction carried out by plaintiffs was according to law as per the sanction plan and IOD and same is not affected by CRZ Zone because the plans for construction were sanctioned in

the year 1992.

12 The learned Senior Counsel for the plaintiffs submits that as per the notification dated 19.2.1991 under section 3(1) and 3(2) (v) of the Environment Protection Act, 1986 and Rules 5(3) (d) of Environment (Protection) Rules, 1986 declaring coastal stretches as Coastal Regulation Zone (CRZ) and regulating activities in the CRZ, Ministry of Environment and Forests, Union of India, construction should not be within the area of less than 100 metres from the distance of High Tide Line (HTL), or the width of the creck, river or backwater whichever is less. He relies on the said notification dated 19.2.1991 which reads thus:

> *"S.O. 114(E).*
> *- Whereas a Notification under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986, inviting objections against the declaration of Coastal Stretches as Coastal Regulation Zone (CRZ) and imposing restrictions on industries, operations and processes in the CRZ was published vide S.O. No. 944(E) dated 15th December, 1990.*
>
> *And whereas all objections received have been duly considered by the Central Government:*
>
> *Now, therefore, in exercise of the power conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low*

Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes, etc., in the said Coastal Regulation Zone (CRZ). For the purposes of this Notification, the High Tide Line (HTL) will be defined as the line upto which the highest high tide reaches at spring tides.

Note. - The distance from the High Tide Line to which the proposed regulation will apply in the case of rivers, creeks and back waters and may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans (referred to below). However, this distance shall not be less than [100] metres or the width of the creek, river or backwater whichever is less.

2. Prohibited Activities:

The following activities are declared as prohibited within the Coastal Regulation Zone namely:

(i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests No. S.O. 594(E) dated 28th July 1989, S.O. 966(E) dated 27th November, 1989 and GSR 1037(E) dated 5th December, 1989;

(iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas);

(iv) setting up and expansion of units/mechanism for disposal of waste and effluents, except facilities required for discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974; and except for storm water drains;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements. Schemes shall be implemented by the concerned authorities for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;

(vi) dumping of city or town waste for the purposes of land filling or otherwise; the existing practice, if any, shall be phased out within a reasonable time not exceeding 3 years from the date of this Notification;

(vii) dumping of ash or any wastes from thermal power stations;

(viii) land reclamation, funding or disturbing the natural course of sea water with similar obstructions, except those 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, storm water drains and structures for prevention of salinity ingress and for sweet water recharge;

(ix) mining of sand, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas;

(x) harvesting or drawal of ground water and

construction of mechanisms therefore within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries;

(xi) construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification;

(xii) any construction activity between the LTL and HTL except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and

(xiii) dressing or altering of sand dunes, hills natural features including landscape charges for beautification, recreational and other such purpose, except as permissible under the Notification.

3. Regulation of Permissible Activities:

All other activities, except those prohibited in para 2 above, will be regulated as under:

(1) Clearance shall be given for any activity within the Coastal Regulation Zone only if it requires water front and foreshore facilities.

(2) The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:

(i) Construction activities related to Defence requirements for which foreshore facilities are essential (e.g. slip-ways, jetties, etc.); except for classified operational component of defence projects for which a

separate procedure shall be followed. (Residential buildings, office buildings, hospital complexes, workshops shall not come within the definition of operational requirements except in very special cases and hence shall not normally be permitted in the CRZ).

(ii) Operational constructions for ports and harbours and light houses requiring water frontage; jetties, wharves, quays, slip-ways, etc. (Residential buildings & office buildings shall not come within the definition of operational activities except in very special cases and hence shall not normally be permitted in the CRZ);

(iii) Thermal power plants (only foreshore facilities for transport of raw materials facilities for in-take of cooling water and outfall for discharge of treated waste water/cooling water); and

(iv) All other activities with investment exceeding rupees five crores.

(3) (i) The coastal States Union Territory Administrations shall prepare, within a period of one year from the date of this Notification. Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the Notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests;

(ii) Within the framework of such approved plans, all development and activities within the CRZ other than those covered in para 2 and para 3(2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guide lines given in Annexure-I

and II of the Notification; and

(iii) In the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986.

4. Procedure for monitoring and enforcement:

The Ministry of Environment & Forests and the Government of State or Union Territory and such other authorities at the State or Union Territory levels, as may be designated for this purpose, shall be responsible for monitoring and enforcement of the provisions of this notification within their respective jurisdictions."

13 The learned Senior Counsel for the plaintiffs submits that bare reading of the notification dated 19.2.1991 shows that the distance should not be less than 100 meters or width of the river, creek or backwater whichever is less. In the present case, admittedly, width of the river is only 46 metres, as per the defendants communication from time to time, at the time of directing plaintiffs to construct the bridge on the river (Exhibit '12' letter dated 21.09.1995). In this way, the notification dated 19.2.1991 does not affect construction on the suit plot of land, particularly building no.4. Therefore, finding given by the Trial Court that construction of building no.4 affects the CRZ II is not correct.

14 The learned Senior Counsel for the plaintiffs further submits that in any case, in the present proceeding, plaintiffs submitted layout for issue of sanction and IOD on 7.8.1989 i.e. before issuing the said notification. Not only that, the Corporation approves plans within one year from the date of issuing notification. In this way, the said notification does not affect the construction carried out by the plaintiffs in respect of building no.4. Therefore, the impugned order passed by the Trial Court holding that construction of building no.4 violates CRZ II area is against justice, equity and good conscience and same is liable to be set aside.

15 The learned Senior Counsel for the plaintiffs submits that as per the said MMC Act before carrying out any construction, developer/builder have to give notice under section 302 of the said Act to the Commissioner with intention to lay out lands for building and for private streets. He submits that as per section 302, plaintiffs submitted layout for issuance of sanction and IOD on 7.8.89. He submits that once the IOD is issued and construction is started, thereafter developer has to submit only subsequent plans of project for carrying out construction, within permissible FSI.

16 The learned Senior Counsel for the plaintiffs submits that, as per section 45 of the MRTP Act, 1966, planning authority to grant or refuse the permission for carrying out construction. He submits that in the present proceeding, admittedly, Corporation granted permission to carry out construction of building no.4.

He further submits that, as it remained on the part of plaintiffs to pay requisite charges within time, the copy of the said IOD was not handed over to the plaintiffs. He further submits that though the defendant raised objection in their submission that, the said IOD was in the form of draft, same cannot be acceptable, because defendants themselves called upon the plaintiffs to deposit requisite amount for issuing IOD. Apart from that there is no provision in Municipal Act for draft IOD. These facts were admitted by defendant's witness Pankaj Prabhudas Bansali, Sub Engineer MMC in his cross-examination dated 17.2.2014. Paragraph 3, 4 and 5 of the cross-examination reads thus:

> "3. I have also seen and studied the plans approved for construction of nine buildings having ground plus three floors to be constructed on suit plots. No IOD was given in respect or other buildings except building No.4 in the year 1992. Commencement Certificate in respect of building No. 4 was issued only after fulfillment of all the conditions of IOD Draft approval means summary of corrections to be carried on in final approval. I cannot say upto which level draft approval was carried out. Draft approval is always subjected to correction suggested by Executive Engineer. I do not know about the correction suggested in respect of draft approval upto the level of Executive Engineer. (At this stage, witness stated before Court that he has not brought office record in respect of draft approval.

Advocate for plaintiff' submitted that the said record is necessary for the purpose of cross examination hence, witness is directed to bring the concerned record on next date and till then, his further cross examination is deferred.)"

"4. Plaintiff had submitted additional plan for G plus twenty one floors and the same was approved under draft approval. It is true to say that at the time of draft approval the only condition for issuing the approved pan was to deposit amount as per demand note. Draft approval was submitted upto the level of Executive Engineer. Executive Engmeer had sanctioned the draft approval. If plaintiff had deposited amount of demand note then copy of approved plan would have been given to him by corporation."

"5. It is true to say that had the plaintiff deposited amount of demand note then there was no necessity to issue fresh commencement certificate and in that case the earlier commencement certificate would have re-endorsed for the further construction. When the demand note was sent there was no mention of CRZ in our office record in respect of proposal of plaintiff regarding stilt + 21 floors. It is not true to say that till filing complaint on 14/1/2003 as per Ex.76 there was no remark in our office record that suit plot was affected CRZ. It is true to say that as per letter dtd. 14.1.2003

> corporation was not having any objection for construction of stilt plus 7 floor building. As per our office record there is no entry as to whether any panchanama was carried out under the letter of police at Ex.77. Our office had deputed one sub-engineer Thatte to assist police to carry out panchanama as mentioned on Ex.77. On the perusal of office record I now say that panchnama was carried out by local police station on 26/3/2003. It is true to say that there is no mention of violation of CRZ regulations in the police complaint."

17 The learned Senior Counsel for the plaintiffs submits that the Division Bench of our High Court in the matter of ***Sneha Mandal Co-operative Housing Society Ltd. vs. Union of India and ors.***[1] held that if the process of the development starts prior to CRZ notification then there is no question of affecting the said project by the said notification. He relies on paragraph 10 of the said authority which reads thus:

> *"10. In the present matter, detail arguments were advanced regarding delay and laches on the part of the petitioners in moving the Court during the period 1991 to 1998 and during which period huge investment has been made by respondent No. 7. It is also submitted vehemently that citizens had welcomed construction of the Bulk Receiving Station in 1990 and coupled with the fact that no objection has been taken by the petitioners all over the years, the construction of the Bulk Receiving Station by Tata Electric Company should not*

1 AIR 2000 BOMBAY 121

be stopped. In the present matter, it is important to note that the process for construction of Bulk Receiving Station started prior to 1991. Initially, Plot 150-A was earmarked for the Bulk Receiving Station. However, the land was required to be reclaimed and during this period, the CRZ Notification came into force. In the circumstances, the Government decided to permit Tata Electric Company to construct the Bulk Receiving Station on Plot 148. Construction of a Bulk Receiving Station is a long-drawn process. It has various stages. It starts from laying of underground cables. These cables are long distance cables. They come from Dharavi. It is only after these cables are laid that actual construction of the structure commences. It is for this reason that Government permitted Tata Electric Company to cordon Plot 148 by a wall so that encroachment does not take place, particularly as the process was a long-drawn up process involving various different stages. The point which is required to be borne in mind is that the process started prior to CRZ Notification in 1991. Today, as the matter stands, the Project is at a stage where the building is required to be put up as under-ground cables at huge costs have already been laid down. Looking from this perspective, it is clear that before the CRZ Notification came into force, the process had already commenced. The Project involves various stages and to our mind, the initial allocation of the Plot 150-A which was subsequently shifted to Plot 148 itself is a part of the ongoing process. In the circumstances, the CRZ Notification of 1991 is required to be considered in the context of the facts of this case. Lastly, we find merit in the contention of Mr. Chagla that in any event, the larger public interests should be weighed and since there is utmost need in the locality for the Bulk Receiving Station, the larger public interest should prevail, particularly when two public interests compete with each other."

18 The learned Senior Counsel for the plaintiffs submits that in the case in hand, project was started in the year 1989 when the plaintiffs submitted their layout for issuance of sanction and IOD and also when the Corporation approves plans and issued IOD on 14.3.1992. Apart from that, the width of the river is only 46 mtrs. Therefore, construction of building no.4 does not affect by the CRZ Zone II.

19 The learned counsel for the plaintiffs submits that in the present proceeding, first time on 19.1.2000, Coastal Zone Management Plan for Maharashtra was sanctioned by Union of India. These facts were admitted by the respondent in the written statement. He submits that apex court in the matter of ***Goan Real Estate and Construction Limited and Another vs. Union of India Through Secretary, Ministry of Environment and Others,***[2] held that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 notification till the management plans are approved. He relies on paragraph 28, 31, 38 and 40 of this authority.

> *"28. The question which falls for consideration is whether the constructions made or on-going pursuant to the plans sanctioned on the basis of Notification dated August 16, 1994 would be affected or not. For this purpose, it will be necessary to construe the judgment rendered in Indian Council for Enviro-Legal Action (supra)."*

2 (2010) 5 SCC 388

"31. It is well settled that an order of Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should be read in isolation and out of context. On perusal of paragraph 10 of the judgment, it is abundantly clear that even under 1991 Notification which is the main Notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the Management Plans are approved. Thus, the intention of legislature while issuing Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of 1991 Notification."

"38. The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court in Indian Council for Enviro-Legal Action (supra) but incomplete construction cannot be permitted to be completed is devoid of merits. Two amendments made in the year 1994 were declared to be illegal vide judgment dated April 18, 1996. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallized by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amending notification was declared

illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever."

"40. On the facts and in the circumstances of the case, this Court is of the opinion that a good case has been made out by the petitioners for issuance of a declaration that the judgment dated April 18, 1996 rendered in the case of Indian Council for Enviro-Legal Action (supra) will not affect the on-going constructions or completed constructions pursuant to the plans sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by this Court."

20 The learned Senior Counsel for the plaintiffs further submits that even Apex Court in the matter of ***M.Nizamudeen vs. M/s.Chemplast Sanmar Limited and Others***[3] held that as per para 3 (3)(i) of the 1991 Coastal Zone Management Plan prepared by State Coastal Zone Management Authority and duly approved by MoEF is the relevant plan for identification and classification of CRZ area, within their respective territories in accordance with the guidelines given in Annexures I and II of the Notification. He submits that admittedly, in the case in hand, plans were prepared by Coastal Zone Management and sanctioned on 19.1.2000 i.e. after completion of building no.4. Therefore, same is not affected by CRZ Zone. He relies on paragraph 24, 25, 27, 28 and 30 of the authority which reads thus:

3 (2010) 4 SCC 240

"24. In view of the contentions advanced by the senior counsel and counsel for the parties, the first question which we have to look to is, whether Uppanar river and its banks at the point where pipelines pass, fall in the CRZ III area. If the answer to this is in the affirmative, obviously, the pipelines crossing underneath Uppanar river would require environmental clearance. The other main question we have to consider in connection with these matters is, whether paragraph 2(ii) of 1991 Notification restricts transfer of VCM (hazardous substance) beyond port area to the PVC plant through pipelines. Other considerations would depend on answer to these two core issues."

"25. In considering the first question, we need to look to 1991 Notification which came to be issued by the MOEF declaring the coastal stretches as Coastal Regulation Zone (CRZ) and regulating activities in such area. 1991 Notification has been amended from time to time. To the extent it is relevant, it reads:

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in

the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ).

1[(i) For the purposes of this notification, the High Tide Line means the line on the land up to which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorised by the Central Government, in accordance with the general guidelines issued in this regard]

2[(ii) The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case to case basis for reasons to be recorded in writing while preparing the Coastal Zone Management Plans provided that this distance shall not be less than 100 meters or the width of the creek, river or backwaters, which ever is less. The distance up to which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on

salinity concentration of 5 parts per thousand (ppt). For the purpose of this notification, the salinity measurements shall be made during the driest period of the year and the distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans.;]

2. Prohibited Activities:

The following activities are declared as prohibited within the Coastal Regulation Zone, namely:

(i) ....

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment & Forests No. S.O. 594(E) dated 28th July, 1989, S.O. 966(E) dated 27th November, 1989 and GSR 1037(E) dated 5th December, 1989; 3[except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa, in the port areas:]

.....

3. Regulation of Permissible Activities:

All other activities, except those prohibited in para 2 above, will be regulated as under:

1. ....

2. The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:

(i) ....

(ii) 4[Operational constructions for ports, harbours and light houses and construction activities of jetties, wharves, Slipways, pipelines and conveying systems including transmission lines provided that environmental clearance in case of constructions or modernization or expansion of jetties and wharves in the Union Territory of Lakshadweep for providing embarkation and disembarkation facilities shall be on the basis of a report of scientific study conducted by the Central Government or any agency authorized or 3 recognized by it suggesting environmental safeguard measures required to be taken for minimizing damage to corals and associated biodiversity.]

(3) (i) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of this Notification, Coastal Zone

Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures-I and II of the Notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests;

(ii) Within the framework of such approved plans, all development and activities within the CRZ other than those covered in para 2 and para 3 (2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexures-I and II of the Notification; and

(iii) In the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986."

"27. Paragraph 3(3)(i) of 1991 Notification requires the Coastal States and UT Administrations to prepare Coastal Zone Management Plans for identification and classification of the CRZ areas within their respective

territories in accordance with the guidelines given in Annexures I and II of the Notification. It further mandates Coastal States and UT Administrations to obtain approval of such plans from the Central Government. As a matter of fact, the said provision provided a period of one year for preparation of such plans from the date of the Notification, but the Coastal States and UT Administrations remained dormant for many years in this regard."

"28. However, consequent upon directions of this Court, the State of Tamil Nadu submitted its Coastal Zone Management Plan to the MOEF on August 23, 1996 which was approved on September 27, 1996 (1996 Plan) containing 31 sheets corresponding to maps for different stretches of the coastline of the State of Tamil Nadu with certain conditions/modifications/ classifications. Sheet No. 10 pertains to the coastal stretch of Cuddalore District. The MOEF, based on sheet No. 10 (1996 Plan) have stated in their affidavit that the land portion of the banks of Uppanar river adjacent to the plant in Thiyagavalli village where the pipeline crosses Uppanar river does not come under the CRZ area. This position is reiterated by the TNSCZMA in their affidavit filed before this Court:

....as per the approved Coastal Zone Management Plan, the banks of Uppanar River adjacent to the Plant in Thiyagavalli Village where the pipeline crosses River

Uppanar does not come under CRZ area...."

"30. By 1998 amendment, it has been provided in 1991 Notification that HTL shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorized by the central government in accordance with the general guidelines issued in this regard. By further amendment on May 21, 2002, sub-paragraph (ii) was inserted in the first para of 1991 Notification providing therein that the distance from the HTL shall apply to both sides in the case of rivers, creeks and backwaters. The said amendment provides that the distance up to which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 ppt. It further provides that salinity measurements shall be made during the driest period of the year and distance up to which tidal effects are experienced shall be clearly identified and demarcated in the Coastal Zone Management Plans."

21 On the basis of these submissions, the learned Senior Counsel for the plaintiffs submits that the construction carried out by plaintiffs in respect of building no.4 is according to law and hence, First Appeal No.165 of 2015 preferred by defendant Corporation is required to be dismissed with costs. He further

submits that the construction carried out by plaintiffs of building no.4 does not affect CRZ regulation and therefore, Corporation be directed to issue completion and occupation certificate. He submits that if First Appeal preferred by the plaintiffs is not allowed, irreparable loss and injury will be caused to them.

22 On the other hand the learned Senior Counsel for the Corporation submits that in the present proceeding, Trial Court erred in coming to the conclusion that the plaintiffs carried out construction of building no.4 is according to law. He submits that admittedly in the present proceeding, plaintiffs carried out construction of building no.4 without obtaining IOD from the Corporation. He submits that though the plaintiffs relied on letter dated 24.8.1998 Exhibit '18' from the Corporation that amended plans submitted by them for stilt + 21 upper floors were approved, but the same was not issued for non payment of requisite fees, for which demand letter was issued by them. Therefore, construction carried out by plaintiffs of building no.4 was unauthorized. In support of this contention, the learned Senior Counsel for the defendants relies on the letter dated 24.8.1998 Exhibit '18'.

23 The learned Senior Counsel for the Corporation further submits that though the defendants issued notice under section 354 A of the MMC Act, plaintiffs failed to comply the same and continued the construction activities. Therefore, defendants were constrained to issue notice under section 53(1) of the MRTP Act, 1966 dated 16.10.2000 (Exhibit 20). These facts

were not considered by the Trial Court at the time of passing impugned judgment and decree and held that the construction carried out by the plaintiffs was according to law. Therefore, impugned judgment and decree to that extent is required to be set aside.

24 The learned Senior Counsel for the defendants submits that in the present proceeding, admittedly, as per the notification dated 19.2.1991 issued by the Ministry of Environment and Forests, Union of India, construction of building no.4 comes within CRZ and therefore, there is no question of granting any completion certificate and or occupation certificate to the plaintiffs. He submits that it is specifically stated in the said notification dated 19.2.1991 that, no construction be carried out and or sanctioned by the authority, if the same is affected by CRZ. He submits that though survey was carried out in the year 2000 by the authority and declared the said area affected by CRZ Zone, the construction carried out by the plaintiffs before that, cannot be regularized and or allow them to use for residential purpose. In any case, same is required to be demolished.

25 The learned Senior Counsel for the Corporation / defendants submitted that though the IOD was prepared by the Corporation in respect of building no.4 for stilt + 21 floors, it was specifically stated that same be treated as draft IOD. Apart from that, plaintiffs failed and neglected to pay usual charges for issuing said IOD. Therefore, there is no question of regularization of work carried out by the plaintiffs without payment of those

charges. Not only that, the Corporation from time to time issued notices to the plaintiffs to remove the unauthorised construction as well as stop the further work. He submits that Corporation issued notice under section 354A of the said Act dated 7.2.1998 Exhibit 17 calling upon the plaintiffs to stop the further work of building no.4. He further submits that thereafter the Corporation issued notice under section 53(1) of the MRTP Act, 1966 in respect of building no.4 calling upon the plaintiffs to demolish the unauthorised construction immediately, failing which Corporation will take appropriate action against them. He submits that inspite of all these facts, the plaintiffs failed and neglected to demolish the unauthorised construction.

26 The learned Senior Counsel for the defendants submits that though the Corporation issued letter dated 24.8.1998 (Exhibit 18) stating that amended plan submitted by the plaintiffs in respect of proposed building no.4 on the plot bearing CTS No.261 village Dahisar were approved, however, same were not issued for non-payment of requisite fees for which the demand notice was issued to the plaintiffs. He submits that plaintiffs has taken this letter as approval of the construction of the building no.4 in other way. He submits that actually, the said IOD was draft for approval. Therefore, there is no question of plaintiffs to carry out the construction of building no.4 without obtaining IOD in respect of the said building. Hence, the said construction is unauthorised and same is required to be demolished.

27 The learned counsel for the Corporation submits that the

Apex Court in the matter of ***Piedade Filomena Gonsalves vs. State of Goa and Others*** [4] held that court should not interfere in environmental matters where unauthorised construction carried out. He relies on paragraph 4 and 6 of this authority which reads thus:

> *"4. We do not think that any fault can be found with the judgment of the High Court and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 metres of HTL, it is writ large that the appellant has indulged into misadventure of raising a construction without securing permission from the competent authorities. That apart, the learned counsel for the respondents has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18.8.1994 introduced in the notification dated 19.2.1991 entitled the Coastal Regulation Zone notification issued in exercise of the power conferred by Section 3(1) and Section 3(2)(v) of the Environment Protection Act, 1986, while the appellant's construction was completed before the date of the amendment and therefore, the appellant cannot take benefit of the order dated 25.9.96 passed in writ petition No. 102 of 1996."*
>
> *"6. The Coastal Regulation Zone notifications have been issued in the interest of protecting environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned.*

4 (2004) 3 SCC 445

We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment."

28 The learned counsel for the Corporation also relies on the judgment of the Apex Court in the matter of ***M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu and Others*** [5]. He submits that in this matter, the Apex Court held that court should order demolition of unauthorised construction even though the builder invested considerable amount.

29 The learned Senior Counsel for the Corporation relied on the judgment of the Apex Court in the matter of ***Esha Ekta Apartments Co-operative Housing Society Ltd. AndOrs. vs. Municipal Corporation of Mumbai and Ors.***[6] He submits that Apex Court in this authority held that unauthorised construction cannot be regularised and demolition order cannot be quashed. He relies on paragraph 37, 45, 46, 55 and 56 which reads thus:

"37. Learned Attorney General referred to Sections 44, 45, 47, 52 and 53 of the 1966 Act and argued that the extra floors constructed by the developers/builders cannot be regularized because that would tantamount to violation of the D.C. Rules. He further argued that the Deputy Chief Engineer and the Appellate Authority did not commit any error by refusing to entertain the prayer made by the architect of the lessee for regularization of the buildings because the same fall within the CRZ area. He relied upon the judgment in

5 1999 (6) SCC 464
6 2013 (5) SCC 357

Suresh Estates Private Limited v. Municipal Corporation of Greater Mumbai, (2007) 14 SCC 439 and argued that the Petitioners cannot rely upon the 1991 Regulations for seeking regularization of the illegally constructed floors."

"45. We shall now notice the provisions of the 1966 Act.

45.1 Section 44(1) of that Act postulates making of an application to the Planning Authority by any person intending to carry out any development on any land. Such an application is required to be made in the prescribed form incorporating therein the relevant particulars and must be accompanied by such documents, as may be prescribed. This requirement is not applicable if the Central or State Government or local authority intends to carry out any development on any land. Similarly, a person intending to execute a Special Township Project on any land is not required to make an application under Section 44(1). Instead, he has to make an application to the State Government.

45.2 Section 45 postulates grant or refusal of permission. In terms of Section 45(1), the Planning Authority is empowered to grant permission without any condition or with such general or special conditions which may be imposed with the previous approval of the State Government. It is also open to the Planning Authority to refuse the permission. As per Section 45(2) the permission granted under Sub-section (1), with or without conditions, shall be contained in a commencement certificate in the prescribed form. Section 45(3) mandates that the order passed by the Planning Authority granting or refusing permission shall state the grounds for its decision. Section 45(5) contains a deeming provision and lays down that if the

Planning Authority does not communicate its decision within 60 days from the date of receipt of application, or within 60 days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, then such permission shall be deemed to have been granted on the date immediately following the date of expiry of 60 days. However, the deemed permission is subject to the rider contained in the first proviso to Section 45(5) that the development proposal is in conformity with the relevant Development Control Regulations framed under the 1966 Act or bye-laws or Regulations framed in that behalf under any law for the time being in force and the same is not violative of the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under the Act. The second proviso to this Sub-section lays down that any development carried out pursuant to such deemed permission, which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorized development for the purposes of Sections 52 to 57.

45.3 Section 52 prescribes the penalty for unauthorized development or for use of land otherwise than in conformity with development plan. Any person who commences, undertakes or carries out development, or institutes or changes the use of any land without obtaining the required permission or acts in violation of the permission originally granted or duly modified is liable to be punished with imprisonment for a term of at least one month, which may extend to three years. He is also liable to pay fine of at least Rs. 2,000/-, which may extend to Rs. 5,000/-. In case of continuing offence, an additional daily fine of Rs. 200/- is payable. Any person who continues to use or allows the use of any land or building in contravention of the provisions

of a development plan without being allowed to do so under Section 45 or 47, or where the continuance of such use has been allowed under that section, continues such use after expiry of the period for which the use has been allowed, or in violation of the terms and conditions under which the continuance of such use is allowed is liable to pay fine which may extend to Rs. 5,000/-. In the case of a continuing offence, further fine of Rs. 100/- per day can be imposed.

45.4 Section 53 empowers the Planning Authority to require the wrongdoer to remove unauthorized development. of course, this power can be exercised only after following the rules of natural justice, as engrafted in Sub-sections (1) and (2) of Section 53. By virtue of Section 53(3), any person to whom notice under Sub-section (2) has been given can apply for permission under Section 44 for retention of any building or works or for the continuance of any use of the land pending final determination or withdrawal of the application. If the permission applied for is granted, the notice issued under Section 53(2) stands automatically withdrawn. If, however, the permission is not granted, the notice becomes effective. If the person to whom notice under Section 53(2) is given or the application, if any, made by him is not entertained, then the Planning Authority can prosecute the owner for not complying with the notice. Likewise, if the notice requires the demolition or alteration of any building or works or carrying out of any building or other operation, then the Planning Authority is free to take steps for demolition, etc., and recover the expenses incurred in this behalf from the owner as arrears of land revenue.

45.5 Section 54 empowers the Planning Authority to stop unauthorized development. Section 55 enables the

Planning Authority to remove or discontinue unauthorized temporary development summarily. Section 56 empowers the Planning Authority to take various steps in the interest of proper planning of particular areas including the amenities contemplated by the development plan. These steps include discontinuance of any use of land or alteration or removal of any building or work."

"46. An analysis of the above reproduced provisions makes it clear that any person who undertakes or carries out development or changes the use of land without permission of the Planning Authority is liable to be punished with imprisonment. At the same time, the Planning Authority is empowered to require the owner to restore the land to its original condition as it existed before the development work was undertaken. The scheme of these provisions do not mandate regularization of construction made without obtaining the required permission or in violation thereof."

"55. It is thus evident that the 1963 Act obligates the promoter to obtain sanctions and approvals from the concerned authority and disclose the same to the flat buyers. The Act also provides for imposition of penalty on the promoters. However, the provisions contained therein do not entitle the flat buyers to seek a mandamus for regularization of the unauthorized/illegal construction."

"56. In view of the above discussion, we hold that the Petitioners in the transferred case have failed to make out a case for directing the Respondents to regularize the construction made in violation of the sanctioned plan. Rather, the ratio of the above-noted judgments and, in particular, Royal Paradise Hotel (P) Ltd. v. State of Haryana and Ors. (supra) is clearly attracted in the

> present case. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

30 The learned Senior Counsel for the Corporation relies on the judgment of the Apex Court in the matter of ***Ekta Shakti Foundation vs. Govt. of NCT Delhi***[7]. He submits that in this authority the Apex Court held that in the matter of policy decisions or exercise of discretion by Government, so long as infringement of fundamental rights is not shown, the courts will have no occasion to interfere and court will not and should not substitute its own judgment for the that of executive in such matters. He further submits that Apex Court in the matter of ***Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain and Ors.***[8]held that illegal construction cannot be authorised through judicial process.

31 On the basis of these submissions and the authorities, the learned Senior Counsel for the Corporation submits that, the impugned Judgment passed by the Trial Court dated 17.6.2014 is required to be partly set aside holding that construction of building no.4 is unauthorised and Corporation can take appropriate steps for demolition of the same.

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7 2006 (10) SCC 337
8 1997 (1) SCC 35

32 The learned Senior Counsel for the Corporation further submits that construction carried out by the plaintiffs of building no.4 also affects the CRZ II. He submits that Coastal Zone Management plan for Maharashtra sanctioned by the Government of Union on 19.1.2000, in which it is specifically shown that plot of land on which building no.4 is constructed, same is affected by CRZ II. Therefore, though construction was carried out by the plaintiffs before sanction of the said plan, there is no question of issuing completion certificate in respect of the said construction. He submits that Supreme Court in the matter of ***The Kerala State Coastal Zone Management Authority vs. The State of Kerala Maradu Municipality and Ors.***[9] specifically held that if construction carried out contrary to the Coastal Zone Management plan, same cannot be authorised. Same is required to be demolished with immediate effect. He submits that these facts were correctly considered by the Trial Court at time of passing impugned judgment and decree. Therefore, there is no question of issuing completion certificate and or occupation certificate to the plaintiffs in respect of construction of building no.4. Therefore, First Appeal preferred by Corporation is required to be allowed and Appeal preferred by plaintiffs is required to be dismissed with costs.

33 I have heard both the sides at length. I have gone through the papers and proceedings called for from the Trial Court. After considering the submissions and pleadings of both the parties, following issues are involved in the present First Appeal:

9 2019 (7) SCC 248

1. Whether construction carried out by the plaintiffs of building no.4 situated on CTS No.261 of Village Dahisar, Taluka Borivali is unauthorised construction? ..... NO

2. Whether construction carried out by the plaintiffs of building no.4 situated on CTS No.261 of Village Dahisar, Taluka Borivali affects the Coastal Regulation Zone and thereby in non-residential zone. ..... NO

34 For deciding the present both the First Appeals, the following documents placed on record by both the parties before the Trial Court are important. Those are as under:

S. NO.	DATE	EXHIBIT NO.	PARTICULARS	PAGE NO. AS PER R & P
1.	07.08.89	35	Fresh proposal submitted by Architect of plaintiff to the Executive Engineer, Mumbai Municipal Corporation under section 337 of the Mumbai Municipal Corporation Act, 1888 for proposed building no.4 on property bearing Survey No.343; CTS No.261 of Village Dahisar (W), Bombay	147
2.	17.08.89	25	Survey report of Municipal Corporation bearing Case No.CE/7882/AR for the proposed building on CTS No.261 in which it is specifically stated that proposal is in residential zone	86
3.	19.08.89	36	Notice from Corporation to the plaintiff under section 340 and 343 of the Mumbai Municipal Corporation Act, 1888 calling upon the plaintiff to supply certain documents in respect of intended building no.4 on the suit land.	148
4.	07.08.91	37	Plaintiff's Architect's letter to the Executive Engineer, Mumbai Municipal Corporation in respect of proposed building no.2 on the suit land.	151
5.	10.01.92	27	Intimation of dis-approval (IOD) issued by the Corporation in respect of proposed construction of buildig no.1 on the suit property.	90
6.	10.02.92	39	Letter from Corporation bearing No.CE/7882/BP(WS)AR to the plaintiff calling upon them to pay additional security fees Rs.7,920/-, IOD deposit Rs.36,800/- and debris removal deposit Rs.10,000/- for the proposed building no.1 on the suit land	155
7.	14.03.92	10 & 28	Photocopy – Intimation of dis-approval under section 346 of the MMC Act in respect of building no.4 on the suit property	156 and 101

8.	09.11.92	40	Letter from Municipal Corporation to the plaintiff's Architect for proposed bridge Dahisar river for the cementary and access to the property bearing CTS No.261 of Village Dahisar, Dahisar (West).	173
9.	24.03.94	42	Letter from Municipal Corporation to the plaintiff's Architect for specification how to construct the bridge	177
10.	07.07.94	43	Letter from Municipal Corporation to the plaintiff stating that structural design for bridge across Dahisar river submitted by them by their structural engineer has been verified and found in order.	180
11.	17.08.94	44	Letter from Municipal Corporation to the plaintiff approving drawing for the bridge to be constructed across Dahisar river.	181
12.	21.09.95	12	Letter from Municipal Corporation to the plaintiff giving detailed description for proposed bridge across Dahisar river.	183
13.	30.01.96	14	Commencement certificate issued by the Corporation in Form No.A of Maharashtra Regional and Town Planning Act, 1966 bearing no.CHE/7882/UP(WS) – AP – AR in respect of proposed building no.4 on the plot bearing CTS No.261 Dahisar.	186
14.	13.03.96	46	Circular issued by Municipal Corporation for compounding offence by levying regularisation charges for carrying out the work beyond approval, without commencement certificate and by withdrawing stop work notice under section 354 of the Mumbai Municipal Corporation Act, 1888.	188
15.	26.12.96	48	Letter from Municipal Corporation to the plaintiff calling upon additional security fees Rs.83,300/-, balance Encl. Rs.1,82,000/-, ST Case PROM Rs.6,19,500/-, IOD Deposit Rs.22,850/- and demolition deposit Rs.55,400/- in respect of proposed building no.4 on the suit plot.	192
16.	17.01.97	49	Letter from Corporation to the plaintiff stating that they have no objection to carry out the work of proposed building no.4 on the suit land as per amended plans.	193
17.	19.02.97	51	Letter from Corporation to the plaintiff in respect of proposed 30' - 0 "bridge across Dahisar river along with 44", vide DP road as access to the property bearing CTS No.261 Village Dahisar.	197
18.	27.05.97	54	Letter from the office of the Chief Fire Officer, Mumbai Fire Brigage E-Ward Central Office in respect of fire protection and Fire fighting requirement for the construction of proposed hi rise residential building [building no.4, on Sector II Plot-A] on property bearing CTS No.261 Survey No.343 of Village Dahisar at Dahisar West.	200
19.	21.06.97	16	Letter from Municipal Corporation to the plaintiff in respect of building no.4 on suit lands calling upon the plaintiff to pay sum of Rs.1,67,100/- fee for amended plans, for balance enclosure premium Rs.3,60,000/- for staircase premium, Rs.12,38,700/- for development charges as per MRTP Act, 1966, Rs.12,66,550/- for demolition deposit, Rs.44,600/- and Rs.1,13,560/- for IOD deposit.	206
20.	24.08.98	18	Corporation letter to the plaintiff in respect of proposed building no.4 on suit land stating that amended plans submitted by the plaintiff for stilt + 21 upper floors are approved. However, the same are not issued for non payment of requisite fees for which demand letter is already issued.	209
21.	05.01.00	56	Application filed by the plaintiff through their Architect to the Corporation for regularisation of the work of building no.4 on the suit plot of land	210
22.	17.05.00	19	Letter from Corporation to the plaintiff stating that suit plot is entirely within the custodial regulation zone categorised as CRZ-I and CRZ-II. The development on the plot under	213

			reference is not permissible as per the provisions of MOEF Notification 1991. Hence, the plaintiff request for regularisation of work carried out beyond completion certificate / beyond approval, cannot be considered.	
23.	21.12.02	33	Report prepared by the Corporation in respect of CRZ stating that when the permission was granted to the plaintiff to carry out construction of building no.4, the said plot was not declared as affected by CRZ.	115

35 Issue no.1 – It is to be noted that in the present proceeding, the plaintiffs submitted layout for issuance of sanction plan and IOD with the Corporation on 7.8.1989. Thereafter the plaintiffs paid aggregate amount of Rs.3,27,200/- to the Corporation as security fees for the said project. Plaintiffs also paid fees of Rs.1,28,325/- for scrutiny of lay out plan.

36 After following due process of law, Corporation approved the plans and issued IOD on 14.3.1992 (Exhibit 10 and 28) with reference to the plaintiff's application dated 7.8.1989 (Exhibit 35) . One of the terms and conditions of the IOD dated 14.3.1992 Exhibit 10 and 28 is in respect of the breach reads thus:

> *"(15) The access road to the full width shall be constructed in water bound macadam before commencing the work and should be complete to the satisfaction of Municipal Commissioner including asphalting lighting and drainage before submission of the Building Completion Certificate."*

37 At the time of issuing IOD in respect of the said project, Corporation imposed condition on plaintiffs that they have to

construct the bridge across Dahisar river for the cemetery and access to the property bearing CTS No.261 of Village Dahisar, Dahisar (West) by the letter dated 9.11.1992 (Exhibit 40). Terms and Conditions of the said letter are as under:

> *"(1) The clear waterway of 42 Mtrs. width, and 3.5 Mtrs. depth shall be maintained for the proposed bridge.*
>
> *(2) The road level shall not be below the level of existing bridge at Kandarpada Road.*
>
> *(3) The structural design and details of the proposed. bridge shall be got approved from Executive Engineer (Bridges), before taking up work in hand.*
>
> *(4) That no obstruction shall be caused in the river bed any time during construction of bridge.*
>
> *(5) that the deposit of Rs.15,000/- shall be kept for faithful compliance of above conditions.*
>
> *(6) that the demarcation for the exact location of proposed bridge shall be obtained from the Competent Authority.*
>
> *(7) That any other permission required from other authority shall be obtained before actual commencement of the work.*
>
> *(8) Prior intimation should be given to this office and the office of Dy.C.B.(Bridge) regarding commencement of the bridge work.*

(9) That bridge will be allowed for use by general public and vehicular traffic."

38 Thereafter, the Corporation sanctioned the plans for carrying out construction of the said bridge at the cost of plaintiffs. Plaintiffs accepted the said terms and conditions and constructed the bridge at their cost.

39 On 18.08.93 (Exhibit '41' - Page 175 of R & P), the Executive Engineer (Building Proposal) by his letter to M/s.Kalpana Consultants Pvt. Ltd. Architects, confirmed that the suit property is under "Residential" Zone. In the said letter, there was no remark that said property is affected by Coastal Regulation Zone. Thereafter, from time to time, plaintiffs submitted amended plans and same were sanctioned by the Corporation. As per section 45 of the MRTP Act, 1966, once IOD is issued, then plan can be amended within the four corners of the law for available FSI. In the present proceeding, plaintiffs carried out construction as per sanction plan issued by the Corporation. Assistant Engineer, Building Proposal (West Sub) P & R Ward issued "Work Commencement Certificate" dated 30.01.1996 (Exhibit 14, Page No.186 of R & P) of proposed building NO.4 under Maharashtra Regional and Town Planning Act, 1966 (Form 'A'). By letter dated 07.08.96 (Exhibit 15), the Executive Engineer (Building Proposal) while processing the application for further sanction of plans, called upon the plaintiffs to pay the security deposit and development charges as also to file an undertaking to construct the bridge on Dahisar

river. Thereafter, on 17.01.97 (Exhibit 49), the Executive Engineer (Building Proposal) 'R' Ward granted approval to carry out the construction work as per amended plans. On 24.02.97, the plaintiffs submitted further amendment plans for building no.4 comprising of stilt and 21 upper floors and reducing the floors of the other building. The Plans for the suit building no.4 proposed to be comprising of Wing A and Wing B of 21 floors were sanctioned on 18.06.97 and by letter dated 21.06.97 (Exhibit 16) the Assistant Engineer (Building Proposal) demanded the payment of various amounts towards the development cess charges, amended plan fee and Bal. enclosure premium etc. in respect of amended plans for stilt and 21 upper floors.

40 Though the plaintiffs were constructing the Suit Building No.4 as per the amended plans submitted on 24.02.1997 and subsequently sanctioned on 18.06.97/21.06.97 by the defendant on 24.08.98, the defendant issued the stopped work notice under section 354A of the Mumbai Municipal Corporation Act, 1888 on the ground that the work was being carried out beyond commencement certificate. Hence, plaintiffs filed the application for regularization on 5.1.2000 (Exhibit 56) in terms of the policy of the defendants contained in the circular dated 13.3.1996 for compounding offence by levying regularization charges, for carrying out the work beyond approval/without Commencement Certificate. However, the defendants vide letter dated 17.5.2000 (Exhibit 19) rejected the regularization application on the ground that the suit property now falls within CRZ, though the Coastal Zone Management Plan for Maharashtra was finalized,

approved and published on 19.01.2000.

41. It is to be noted that Corporation by the letter dated 24.8.1998 (Exhibit 18) admitted that amended plans submitted by the plaintiffs for stilt plus 21 upper floors was approved. The approved plan and IOD was not issued to the plaintiffs for non-payment of requisite fees for which the payment letter was issued by the Corporation to the plaintiffs. Paragraph 1 of the said letter dated 24.08.98 (Exhibit 18) reads thus:

> *"You are aware that stop work notice under Sec. 354/ A of B.M.C. Act is issued on the said work, since the work is carried out beyond plinth level. During the site inspection, it is observed that the R.C.C. work upto 5th slab level & columns over 5th slab has been constructed for which C.C.. is not granted by this office. Similarly the amended plans submitted by you for stilt +21 upper floors are approved however, the same are not issued for non payment of requisite fees for which the demand letter is already issued to you."*

42 The construction carried out was within the FSI limit, with the planning authority in the first instance sanctioning the layout and plans of 9 buildings on 14.03.92, subsequently modified to 7 buildings of 7 floors each with IOD being issued on 17.01.97. A commencement certificate for building no.4 has been issued on 30.01.96. The plans in respect of building no.4 were approved on 18/21.06.97 with a demand being made for payment of development charges etc. The Municipal Corporation has admitted that plans were approved and not released for want of payment of development charges and fees. This is reflected in the

notice dated 24.08.98 (Exhibit 18), wherein it is clearly recorded that plans were approved stilt plus 21floors, but not issued since the fees not paid. The Municipal Corporation in its witness, cross-examination in paragraph 4 & 5 have admitted that, if the plaintiffs had deposited the amounts demanded, the approved plans would have been handed over. It is also admitted in cross examination that it was not necessary to apply fresh commencement certificate for 21 floors. Only endorsement would have been entered on the already issued commencement certificate.

43 This itself shows that construction carried out by the plaintiffs was authorised, but for want of payment of requisite fees, the Corporation withheld those approved plans. These facts were considered by the Trial Court and held that construction carried out by the plaintiffs was not unauthorised and therefore, Trial Court restrained the defendants from carrying out demolition of building no.4.

44 It is to be noted that authorities cited by the learned Senior Counsel for the Corporation in the matter of ***Piedade Filomena Gonsalves vs. State of Goa and Others*** (Supra), ***M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu and Others*** (Supra), ***Esha Ekta Apartments Co-operative Housing Society Ltd. AndOrs. vs. Municipal Corporation of Mumbai and Ors.*** (Supra), ***Ekta Shakti Foundation vs. Govt. of NCT Delhi*** (Supra) and ***Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain and Ors.*** (Supra) are not applicable in the facts and circumstances of the present case. In all these authorities, the construction carried

out by the concerned person was unauthorised, without any approval from the competent authority. In the case in hand, Corporation themselves sanctioned the plans submitted by the plaintiffs and specifically recorded in their letter dated 24.8.1998 Exhibit 18, but same were not issued to the plaintiffs for want of payment of requisite fees. It is to be noted that as per Circular No. CHE/4808/DPC dated 13.3.1996, same can rectify by paying the charges. Apart from that whenever Corporation issued notice under section 354A of the said MMC Act and under Section 53(1) of the MRTP Act, 1966, they failed to take any action in respect of building no.4, only because construction was according to the sanction plans. In view of these facts, issue no.1 is answered in the negative (No).

45 Issue No.2 - It is to be noted that in the present proceeding, the Corporation granted commencement certificate for project. Plans were approved from time to time. Plans approved in respect of building no.4 for 21st upper floors with letter dated 21.6.1997 Exhibit '16' calling upon the plaintiffs to make further payment towards amended plan and IOD deposit. This itself shows that Corporation after considering the documents submitted by the plaintiffs, issue IOD but same was not handed over to the plaintiffs on the ground that plaintiffs failed to pay the said charges. Thereafter, the Coastal Zone Management carried out survey, prepared the plan and sanctioned the same by Union on 19.1.2000. This itself shows that when plans were sanctioned and construction was carried out by the plaintiffs, said plot of land was not declared affected by CRZ II.

46 Apart from that, as per notification dated 19.2.1991 particularly clause 3, if project is started within one year from the date of notification, that can be continued. In the present proceeding, admittedly, the plaintiffs submitted their lay out on 7.8.89 and made the payment to that effect. The survey was conducted by Coastal Zone Management Authority, who prepared the plan and same was sanctioned on 19.1.2000 i.e. after completion of construction. This itself shows that construction was carried out when the property was not affected by CRZ.

47 It is to be noted that the Corporation witness DW1/1 Pankaj Prabhudas Bansod, Sub Engineer MMC in cross-examination specifically admitted that IOD was given in respect of building no.4 in the year 1992. Commencement certificate in respect of building no.4 was issued only after fulfillment of all the conditions of IOD. He further admitted in his cross-examination that when the demand notice for IOD charges was issued to the plaintiffs, there was no remark of CRZ in their office documents in respect of building no.4 i.e. stilt plus 21 floors. Paragraph 3, 4 and 5 of his cross-examination reads thus:

> "3. I have also seen and studied the plans approved for construction of nine buildings having ground plus three floors to be constructed on suit plots. No IOD was given in respect or other buildings except building No.4 in the year 1992. Commencement Certificate in respect of building No. 4 was issued only after fulfillment of all

the conditions of IOD Draft approval means summary of corrections to be carried on in final approval. I cannot say upto which level draft approval was carried out. Draft approval is always subjected to correction suggested by Executive Engineer. I do not know about the correction suggested in respect of draft approval upto the level of Executive Engineer. (At this stage, witness stated before Court that he has not brought office record in respect of draft approval. Advocate for plaintiff submitted that the said record is necessary for the purpose of cross examination hence, witness is directed to bring the concerned record on next date and till then, his further cross examination is deferred.)"

"4. Plaintiff had submitted additional plan for G plus twenty one floors and the same was approved under draft approval. It is true to say that at the time of draft approval the only condition for issuing the approved pan was to deposit amount as per demand note. Draft approval was submitted upto the level of Executive Engineer. Executive Engmeer had sanctioned the draft approval. If plaintiff had deposited amount of demand note then copy of approved plan would have been given to him by corporation."

"5. It is true to say that had the plaintiff deposited amount of demand note then there was no

necessity to issue fresh commencement certificate and in that case the earlier commencement certificate would have re-endorsed for the further construction. When the demand note was sent there was no mention of CRZ in our office record in respect of proposal of plaintiff regarding stilt + 21 floors. It is not true to say that till filing complaint on 14/1/2003 as per Ex.76 there was no remark in our office record that suit plot was affected CRZ. It is true to say that as per letter dtd. 14.1.2003 corporation was not having any objection for construction of stilt plus 7 floor building. As per our office record there is no entry as to whether any panchanama was carried out under the letter of police at Ex.77. Our office had deputed one sub-engineer Thatte to assist police to carry out panchanama as mentioned on Ex.77. On the perusal of office record I now say that panchnama was carried out by local police station on 26/3/2003. It is true to say that there is no mention of violation of CRZ regulations in the police complaint."

48 These facts clearly show that when the construction was completed by the plaintiffs, the said area was not affected by CRZ. The learned Senior Counsel appearing on behalf of Corporation relied on Judgment of the Apex Court in the matter of ***The Kerala State Coastal Zone Management Authority vs. The State of Kerala Maradu Municipality and Ors.*** (Supra) to show that once the construction is affected by CRZ then there is no question of authorizing the same.

49 It is to be noted that in the matter of ***The Kerala State Coastal Zone Management Authority vs. The State of Kerala Maradu Municipality and Ors.*** (Supra), construction activity was started in the areas, which were declared as Coastal Regulation Zone. Inspite of that, the concerned authority issued no objection certificate to the builder. Hence, the Apex Court held that the construction started by the builder, when the said area was declared as CRZ, therefore, the construction carried out was unauthorized and same was directed to remove/demolished.

50 It is to be noted that in the present proceeding, plaintiffs submitted layout for issuance of sanction and IOD on 7.8.89. That time, the said area was not affected by CRZ. Not only that, plaintiffs started construction of the said project, when same was not declared as CRZ. Even when the IOD was granted by the Corporation, plans were approved by the Corporation for building no.4 on 18.6.1997, at that time, also the said area was not shown in Coastal Zone Management Plan for Maharashtra and even the same was not declared as CRZ. Not only that, Corporation also prepared IOD in respect of building no.4 but the same was not issued for want of charges. This clearly shows that on the date of construction of the said building no.4, area was not affected by CRZ.

51 It is to be noted that Division Bench of this High court in the matter of ***Sneha Mandal Co-operative Housing Society Ltd. vs.***

Union of India and ors. (Supra) specifically held that on going project cannot be affected, if later on the said area is declared as CRZ. In similar way, on the same point, Apex Court has also taken view in the matter of ***Goan Real Estate and Construction Limited and Another vs. Union of India Through Secretary, Ministry of Environment and Others,*** (Supra) that on going project should not affect, if the area is declared CRZ later on. In similar way, the Apex Court in the matter of ***M.Nizamudeen vs. M/s.Chemplast Sanmar Limited and Others*** (Supra) held that if project is started before issuing notification dated 19.2.1991, then same is not going to affect subsequent declaration as CRZ. Paragraph 24, 25, 27, 29 and 30 of this authority reads thus:

> *"24. In view of the contentions advanced by the senior counsel and counsel for the parties, the first question which we have to look to is, whether Uppanar river and its banks at the point where pipelines pass, fall in the CRZ III area. If the answer to this is in the affirmative, obviously, the pipelines crossing underneath Uppanar river would require environmental clearance. The other main question we have to consider in connection with these matters is, whether paragraph 2(ii) of 1991 Notification restricts transfer of VCM (hazardous substance) beyond port area to the PVC plant through pipelines. Other considerations would depend on answer to these two core issues."*
>
> *"25. In considering the first question, we need to look to 1991 Notification which came to be issued by the MOEF declaring the coastal stretches as Coastal Regulation Zone (CRZ) and regulating activities in such area. 1991*

Notification has been amended from time to time. To the extent it is relevant, it reads:

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ).

1[(i) For the purposes of this notification, the High Tide Line means the line on the land up to which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorised by the Central Government, in accordance with the general guidelines issued in this regard]

2[(ii) The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case to case basis for reasons to be recorded in writing while preparing the Coastal Zone Management Plans provided that this distance shall not be less than 100 meters or the width of the creek, river or backwaters, which ever is less. The distance up to which development along rivers, creeks and backwaters is

to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt). For the purpose of this notification, the salinity measurements shall be made during the driest period of the year and the distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans.;]

2. Prohibited Activities:

The following activities are declared as prohibited within the Coastal Regulation Zone, namely:

(i) ....

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment & Forests No. S.O. 594(E) dated 28th July, 1989, S.O. 966(E) dated 27th November, 1989 and GSR 1037(E) dated 5th December, 1989; 3[except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa, in the port areas:]

.....

3. Regulation of Permissible Activities:

All other activities, except those prohibited in para 2 above, will be regulated as under:

1. ....

2. The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:

(i) ....

(ii) 4[Operational constructions for ports, harbours and light houses and construction activities of jetties, wharves, Slipways, pipelines and conveying systems including transmission lines provided that environmental clearance in case of constructions or modernization or expansion of jetties and wharves in the Union Territory of Lakshadweep for providing embarkation and disembarkation facilities shall be on the basis of a report of scientific study conducted by the Central Government or any agency authorized or 3 recognized by it suggesting environmental safeguard measures required to be taken for minimizing damage to corals and associated biodiversity.]

(3) (i) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of this Notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures-I and II of the Notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests;

(ii) Within the framework of such approved plans, all development and activities within the CRZ other than those covered in para 2 and para 3 (2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexures-I and II of the Notification; and

(iii) In the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986.

"27. Paragraph 3(3)(i) of 1991 Notification requires the Coastal States and UT Administrations to prepare Coastal Zone Management Plans for identification and classification of the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the Notification. It further mandates Coastal States and UT Administrations to obtain approval of such plans from the Central Government. As a matter of fact, the said provision provided a period of one year for preparation of such plans from the date of the Notification, but the Coastal States and UT Administrations remained dormant for many years in this regard.

"29. We were also shown a copy of sheet No. 10 from which it did not transpire that Uppanar river and its banks where the pipelines pass have tidal influence and come under the CRZ area. That 1996 Plan does not reflect the area on both sides of the Uppanar river through which the pipelines pass as CRZ area is not in dispute. The contention of the senior counsel for the petitioner/appellant is that 1996 Plan has become redundant and obsolete in view of change in the CRZ regimedue to amendments in 1991 Notification, first on December 29, 1998 and then on May 21, 2002."

"30. By 1998 amendment, it has been provided in 1991 Notification that HTL shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorized by the central government in accordance with the general guidelines issued in this regard. By further amendment on May 21, 2002, sub-paragraph (ii) was inserted in the first para of 1991 Notification providing therein that the distance from the HTL shall apply to both sides in the case of rivers, creeks and backwaters. The said amendment provides that the distance up to which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 ppt. It further provides that

salinity measurements shall be made during the driest period of the year and distance up to which tidal effects are experienced shall be clearly identified and demarcated in the Coastal Zone Management Plans."

52 It is to be noted that the plaintiff's project has commenced in the year 1988 with the State Government granting approval for development of lands for weaker section Housing, under Urban land Ceiling and Regulation Act, 1976. Thereafter, the plaintiffs had obtained all the necessary permission from the defendants for development of the suit land. The construction of the suit building no.4 was over in the year 1998-99 much prior to Coastal Zone Management Plan being published on 19.1.2000. Hence, the defendants Corporation committed grave error by rejecting the regularisation application filed by the plaintiffs on 17.05.2000 on the ground that the development of the Suit property is affected by CRZ. This itself shows that the Corporation defendants retrospective made the Coastal Zone Management Plan applicable to the development of the suit property and more particularly development of the suit building no.4. This itself shows that prior to publication of Coastal Zone Management Plan, the construction of the suit building no.4 was over and was awaiting occupation certificate from the Corporation. This shows that the ongoing projects were not affected by the publication of Coastal Zone Management Plan as alleged by the Senior Counsel for the defendant.

53 In view of above mentioned facts that, after issuing IOD by

the Corporation, said area was declared as CRZ in the year 2000 by which time the construction of building no.4 was completed, there is no question of denying by the Corporation to issue completion certificate and occupation certificate to the plaintiffs on the ground of CRZ. These facts were not considered by the Trial Court at the time of deciding the said issue.

54 The Trial Court held that earlier plaintiffs have not challenged the demarcation of High Tide Line carried out by Hydrographer in the year 2000. Therefore, declaration that, property on which suit building is constructed is not affected by Coastal Regulation Zone cannot be granted. The Trial Court failed to consider the fact that in the present proceeding, there is no question of challenge to the demarcation of High Tide Line carried out by Hydrographer in the year 2000. Main contention raised by the plaintiffs was that they started their project in 1989 and construction of building no.4 was completed in the year 1999 i.e. before sanction of Coastal Zone Management Plan for Maharashtra.

55 In view of the above mentioned facts, I am satisfied that plaintiffs has made out a case to show that the construction carried out by them of building no.4 does not affect the CRZ and hence, they are entitled for building completion certificate as well as grant of occupation certificate in respect of building no.4. Therefore, issue no.2 is answered in the negative. (No).

56 In view of above mentioned facts, plaintiffs are entitled for mandatory order directing Corporation to issue necessary building completion certificate as well as Occupation Certificate in respect of building no.4. It is to be noted that for obtaining completion certificate and occupation certificate, plaintiffs have to comply with all the formalities as required by law except CRZ issue. In view of these facts, following order is passed :

a. First Appeal No.165 of 2015 preferred by the Mumbai Municipal Corporation stands dismissed.

b. First Appeal No.849 of 2019 preferred by the plaintiffs is allowed in terms of prayer clause (a1) and (a2) of the plaint which reads thus:

"(a1) that the entire records and file containing papers/documents as maintained by the concerned Executive Engineer (Building Proposal) who is acting under the direct control of Defendant No.1 in respect of Suit Building, be called for and after verifying and examining and verifying the same, it may be declared that the property on which the Suit Building No. 4 which is constructed by the Plaintiffs is not affected by the Coastal Zone Regulation."

(a2) that the Defendants and/or any person/s acting under them be directed by a mandatory order and directions of this Hon'ble Court inter alia directing them to issue necessary Building

Completion Certificate as well as grant of Occupation Certificate in respect of said Building No.4 to the Plaintiffs after the Plaintiffs complying with the requisite formalities as provided therein as per the provisions of Mumbai Municipal Corporation Act."

c. Decree be drawn accordingly.

d. No order as to costs.

(K.K.TATED, J.)