Mrs. Ameeta Shah, Colaba (P.O.) Advance Locality Management, an association of residents of Colaba and Bakhtavar (Colaba) Association of Apartment Owners, an Association of Apartment Owners Vs State of Maharashtra, The Mumbai Municipal Corporation, The Collector, The Mumbai Port Trust, Director General of Fisheries, (Fisheries Department), Government of India and Union of India (UOI)

Court: Bombay High Court

Date of Decision: April 10, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226
Environment (Protection) Act, 1986 â€" Section 5(3)
Maharashtra Regional and Town Planning Act, 1966 â€" Section 31(1)

Citation: (2003) 5 BomCR 95

Hon'ble Judges: C.K. Thakker, C.J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: D.J. Khambata, Gautam Patel and A.S. Doctor, instructed by Gagrat and Co, for the Appellant; R.M. Sawant, Govt. Pleader for Respondent Nos. 1 and 3, P.A. Purandare, for Respondent No. 2, E.P. Bharucha and M.N. Mula, instructed by Mulla and Mulla for Respondent No. 4, A.J. Rana, Satish Shah and K.J. Presswala, instructed by T.C. Kaushik and H.V. Mehta, for the Respondent

Judgement

D.Y. Chandrachud, J.
Rule, returnable forthwith. Learned Counsel for the Respondents waive service. By consent taken up for hearing

and final disposal.

The challenge:

2. The Fishery Survey of India is in the process of constructing a building consisting of a ground floor and four storeys on reclaimed land near

Sassoon Dock, Mumbai. The building is situated at a distance of 150 meters from the High Tide Line. The project is sought to be implemented for

a Facilities Centre of the Fishery Survey of India (""FSI""). The construction is sought to be impugned, inter alia, by two Associations representing

residents interested in preserving ecology and the environment. The contention of the Petitioners before the Court is that the construction is within

the prohibition of the Coastal Regulation Zone notification dated 19th February, 1991 issued by the Ministry of Environment and Forests of the

Government of India (""MOEF"") and on the ground that it violates the conditions stipulated by the Ministry in a permission granted on 23rd

October, 1991.

The Sassoon Dock Fishery Harbour:

3. The construction which is being carried on by FSI is on Plot No. 2A of Unit No. 12, which is a part of a larger piece of land that was reclaimed

from the sea for a project of a fishing harbour. The project was undertaken by the Bombay Port Trust (""BPT"") and the entire reclaimed area is

stated to admeasure 15.27 Hectares. On 15th March, 1977, the Government of India in the Ministry of Agriculture, conveyed to the Chairman of

the BPT an administrative approval of the Government of India for the construction of a Fishing Harbour at Sassoon Dock at an estimated cost not

exceeding Rs. 405.72 lakhs under a Central Scheme for the provision of landing and berthing facilities for fishing craft at Major Ports. The sanction

was subject to the condition that one hectare of land in the newly reclaimed area at Sassoon Dock will be allotted to the Exploratory Fisheries

Project, Bombay (the precursor of FSI).

The Botanical Garden:

4. BPT commenced the project in 1979-80, but it came to be challenged in proceedings before this Court by the Bombay Environmental Action

Group. The petition was dismissed by this Court. An appeal as well as a SLP thereafter, were also rejected. BPT has stated in these proceedings

that the Bombay Environmental Action Group sought the intervention of the then Prime Minister, who ordered that a study be conducted. On the

report of the study being submitted, it was directed that while the project may be proceeded with, this would be subject to the condition that 50%

of the area required for the project would be converted into a botanical garden. This directive of the then Prime Minister, it has been stated, was

conveyed in a letter dated 12th September, 1980 to Admiral Cursetjee.

The Draft Development Plan:

5. On 19th October, 1988, the Urban Development Department of the State Government addressed a communication to FSI in response to its

request for permission to construct a building in a half hectare plot allotted to it by BPT in the Sassoon Dock area for construction of a building.

The letter stated that the Bombay Metropolitan Region Development Authority had cleared the proposal for the construction of a building that

would house among other things a Facility Centre, Reference Collection, Computer Centre, Laboratory and Museum; and the Municipal

Corporation had been advised to approve the building plan for the said construction pending sanction of the Revised Development Plan. The letter

recorded that the question as regards restrictions on constructions within 500 meters from the sea had also been examined and the Municipal

Corporation had been informed of the Government''s clearance of the construction in accordance with the Rules.

The Rejection of the Proposal by MOEF:

6. On 7th June, 1989, the Secretary in the Ministry of Food Processing Industries, that being the parent Ministry of FSI at the material time,

addressed a letter to the Secretary in the Ministry of Environment and Forests seeking clearance ""with regard to construction of office

building/Facility Centre for the Fishery Survey of India Headquarters, Bombay"". On 30th June, 1989, the Secretary in the MOEF responded

stating that it was not possible for the Union of India ""to make an exception from the general policy governing such constructions"". The proposal

was turned down on the ground that ""no construction of buildings within 500 meters of the High Tide Line, can be allowed."" The letter, however,

stated that construction ""required for operation of harbours essentially required to be located on sea front could be considered for exemption.

Consequently, it was stated that ""if this is an office building, there is no justification for exemption"".

Modification of the Development Plan:

7. On 20th July, 1990, two notifications were issued by the Urban Development Department of the Government of Maharashtra, the first u/s 31(1)

of the Maharashtra Regional and Town Planning Act, 1966 sanctioning part of the revised draft Development Plan for A to G Wards excluding

9.60 Hectares out of foreshore land located at Sassoon Dock. (According to the Petitioners, this exclusion was because less than the stipulated

area of 50% had been shown as reserved for a recreation ground or botanical garden). By the second notification, the State Government invited

suggestions and objections in respect of a proposed modification that would show 50% of the aforesaid excluded land of 9.60 Hectares as

reserved for a botanical garden. The plot of land to be leased to FSI was shown on the South-Western part of the land abutting the sea.

CRZ Notification:

8. On 19th February, 1991, the Union Government issued a notification in exercise of powers conferred by Section 5(3)(d) of the Environment

(Protection) Act, 1986 declaring coastal stretches upto 500 meters from the High Tide Line and the land between the Low Tide Line and the High

Tide Line as the Coastal Regulation Zone. (This notification is in accordance with the common usage for convenience referred to as the CRZ

Notification). The notification prohibits several activities in the CRZ area and lays down parameters for the regulation of permissible activities.

Fresh Proposal for Development:

9. After the CRZ notification was issued. FSI once again approached MOEF for its permission for the construction of an office building. This time,

FSI stated that when the Sassoon Fishery Harbour was sanctioned, it was a condition of the sanction that one hectare of land should be provided

to FSI for its office building. FSI claimed that this was obviously because its activities of the Fishery Harbour. FSI claimed that it had a large

number of vessels that are used for catching fish and, in fact, its original requirement was reduced to half a Hectare in order to meet the

requirement of land for a botanical garden. Once again a plan of the area showing the plot in question, was sought to be annexed which reflected

the position of the plot which had been leased out to FSI. The plan was in accordance with the draft development plan notification dated 20th July,

1990 which has already been referred to earlier.

10. On 7th June, 1991, the Secretary MOEF requested the parent Ministry of FSI to forward information on (i) the original layout plan together

with a report on the present implementation of the directives which were issued in regard to the Sassoon Fishery Harbour Project and (ii) the

implications of the proposal on the directives earlier imposed.

11. On 29th June, 1991, the parent Ministry of FSI responded by stating that BPT had taken over the project for the construction of an

Environment Park comprising 50% of the area of the Fishing Harbour Project and that the new plan of FSI did not provide for fish drying or for a

fish meal plant. Approval was specifically sought for the construction of an office building for FSI stating that the complex would include a museum,

computer centre, laboratory, reference collection facility etc. FSI stated that besides having no impact of environmental aspects, the clearance

would enable FSI to carry out its function of surveying marine resources more efficiently. Moreover, it was stated that since the original sanction of

the Sassoon Dock Project envisaged the allotment of land to FSI, the linkage between the project and FSI was recognised even then. Appended

to the letter were copies of old and new layout plans in which the area leased out to FSI was shown in the South Western portion of the land in

question.

The Revised Proposal:

12. Subsequently, on 19th August, 1991, the Government of India in the Ministry of Food Processing Industries (Fisheries Division), submitted a

revised preliminary plan for the construction of a Facility Centre for the headquarters of FSI. This, it was noted, was in continuation of the earlier

letter dated 29th June, 1991 and subsequent discussions held with the MOEF. This time, it was recorded that the proposal for a Museum,

computer room etc. had been eliminated and activities had been restricted only to foreshore operations. The revised preliminary plan contained a

pictorial representation as well as a drawing on the basis of which the approval of the MOEF was sought. The plan showed that the proposed

building would consist of a Ground Floor and one upper storey. The site plan similarly showed the exact location of the plot on which construction

was to be carried out as abutting the sea. The plan set out the specific facilities which would be provided by FSI on the Ground Floor and on the

First Floor of the proposed building. On the Ground Floor, it stipulated that the premises would be utilised for (i) a maintenance workshop; (ii) a

gear repair room; (iii) two sorting rooms; (iv) a chill room; (v) stores; (vi) rest room and toilet; and (vii) a fish freezing, processing and preserving

room. (Learned Counsel appearing on behalf of FSI has stated before the Court that FSI voluntarily gives up the proposed room for fish freezing,

processing and preserving as it is not in accord with the CRZ notification dated 19th February, 1991). In so far as the first floor was concerned, it

envisaged the demarcation of areas for: (i) a demonstration hall; (ii) a laboratory; (iii) a store for laboratories; (iv) a library for laboratories; (v) a

laboratory dark room; (vi) rooms for scientists and (vii) publication and extension services to the fishing industry.

The Approval of MOEF:

13. The Ministry of Environment and Forests communicated its approval on 23rd October, 1991 to the revised proposal submitted by FSI on

19th August, 1991. The subject of the approval was the ""construction of facilities by Fishery Survey of India requiring water frontage"". The

approval stipulated that it was subject to the implementation of various safeguards. These safeguards, inter alia, envisaged that the publication and

extension services should be located beyond 500 meters from the High Trade Line. Other safeguards were stipulated in regard to liquid effluents,

organic wastes and solid wastes and in regard to noise levels from the workshop. In paragraph 3 of its approval, MOEF made the following

stipulation:

In case of any deviation/alterations in the project proposal from those submitted to this Ministry, the above stipulations may be modified and/or

new ones imposed for ensuring environment protection.

Modification of the location:

14. The genesis of the dispute relates to the relocation of the proposed construction from a location immediately abutting the sea to an adjacent

location. On 1st October, 1993, a letter was addressed on .behalf of FSI to the Secretary in the Ministry of Food Processing Industries recording

that BPT had insisted upon a modification of the layout. The Ministry was informed that the new plot would be taken possession of by FSI and the

construction of the compound wall thereon would be commenced as soon as the modified layout was approved by the Urban Development

Department of the State Government. On 1st October, 1993, the State Government in a communication to the Chairman of BPT accepted the

proposal for the relocation of the site inter alia for FSI as proposed by the Port Trust. On 20th September, 1994, representatives of BPT and of

FSI recorded in a possession certificate that the earlier plot admeasuring 4972 sq. mtrs which was handed over to FSI on 9th May, 1985 had

been taken over by BPT and in lieu thereof, another plot bearing Plot No. 2A had been handed over to FSI.

Approvals and Commencement of Construction:

15. FSI in its affidavit filed before this Court has stated that construction of a compound wall together with fencing was completed in April, 1995.

According to FSI, the casting of piles was completed on 12th April, 2001 and the construction of the plinth level took place by 21st January,

2002. In the meantime, according to FSI, it was in receipt of an approvals from the BMRDA (26th June, 1992), BPT (19th March, 1991).

Heritage Conservation Committee of the Municipal Corporation (12th April, 1999), the Fire Department of the Corporation (28th April, 1999)

and of the Executive Engineer, Building Proposals of the Municipal Corporation (23rd December, 1999). On 2nd May, 2001, the Port Trust

communicated its approval to the construction of a Facility Centre on plot No. 2A subject to the conditions stipulated therein.

The Petition:

16. The writ petition before this Court challenging the construction was instituted on 9th August, 2002 by which stage, according to FSI, the

construction work had commenced. FSI has stated in these proceedings that the construction had already progressed by the time this Court

passed an order on 22nd August, 2002, after hearing the parties, requiring FSI to stop all further construction activities on the plot and on the

construction in dispute. By its interim order, this Court directed MOEF to file an affidavit clarifying whether the construction undertaken was in

accordance with the CRZ notification and the Coastal Zone Management Plan (""CZMP"") and to produce before the Court original papers relating

to the permission dated 23rd October, 1991, including the application submitted by FSI.

The scope of the challenge:

17. In these proceedings, the challenge urged before the Court on behalf of the Petitioners is that (i) The construction in question is prohibited by

the CRZ notification dated 19th February, 1991 and in violation of the Coastal Zone Management Plan approved on 27th September, 1996 by

MOEF and (ii) The construction is in breach of the clearance granted by MOEF on 23rd October, 1991; the violation of the clearance being in

respect of (i) the location of the plot, (ii) the height of the structure and (iii) the number of storeys. Consequently, it was urged that all the other

permissions which have been granted by the local authorities, including the Municipal Corporation must necessarily stand invalidated since they are

based on the clearance which has been granted by MOEF on 23rd October, 1991

The Defence:

18. Though the nuances of the submissions would be considered while dealing with each head separately, it would at this stage be appropriate to

note that the Respondents in their defence urge that (i) the petition is devoid of any element of public interest; (ii) the petition suffers from delay and

laches; (iii) there is no breach of the CRZ notification dated 19th February, 1991 and (iv) there is no breach on the part of FSI of the approval

granted by MOEF on 23rd October, 1991.

The Provisions of the CRZ Notification:

19. Before considering the merits of the issues which arise for adjudication in these proceedings, it would be necessary to advert to the provisions

of the CRZ notification dated 19th February, 1991 issued by MOEF in exercise of powers conferred upon it by the Environment (Protection) Act,

1986 and the Rules framed thereunder. The notification declares that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters

which are influenced by tidal action in the landward side upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line

and the HTL as the Coastal Regulation Zone. The notification then prescribes restrictions on the setting up and expansion of industries, operations

or processes in the CRZ area. In the present case, there is no dispute about the fact that the plot of land in question is in close proximity to the sea

since in its affidavit dated 19th August, 2002, FSI has adverted to the fact that ""this facility is being constructed about 150 meters from the High

Tide Level"". Paragraph 2 of the notification contains a list of prohibited activities. Amongst the activities which are prohibited is the setting up of

new industries and the expansion of existing industries, except those directly related to the water front or directly needing foreshore facilities

(Clause (i) of paragraph 2) and the setting up and expansion of Fish Processing Units (Clause (iii) of paragraph 2). Paragraph 3 of the Regulation is

entitled, ""Regulation of Permissible Activities"" and it provides that all other activities, except those prohibited in paragraph 2 will be regulated as

provided therein. Clause (1) of paragraph 3 enunciates that clearance shall be given for any activity within the Coastal Regulation Zone only if it

requires water front and foreshore facilities. Clause (2) of paragraph 3 lays down certain activities which will require environmental clearance from

MOEF. These include in Sub-clause (iv) all other activities with an investment exceeding rupees five crores except those activities which are to be

regulated by the concerned authorities at the State/Union Territory level in accordance with the provisions of paragraph 6, sub-paragraph (2) of

Annexure I of the notification. Under paragraph 3(3)(i), the Coastal States and Union Territory Administrations had to prepare Coastal Zone

Management Plans (CZMP) within a period of one year from the date of the notification identifying and classifying the CRZ areas within their

respective territories in accordance with the guidelines specified in Annexure I and II of the Notification and obtain approval of the MOEF. All

development and activities within the CRZ other than the prohibited activities specified in paragraph 2 and the activities specified in paragraph 3(2)

for which environmental clearance from the MOEF is required are to be regulated by the State Governments or the Union Territories or the local

authorities, as the case may be, in accordance with the guidelines contained in Annexure I and Ii of the notification. In the meantime, until a CZMP

has been prepared and approved, all development and activities were to be such as would not violate the provisions of the notification. Annexure I

to the notification provides for a classification of the CRZ into four categories for regulating development activities. CRZ-I consists of ecologically

sensitive and important areas; CRZ-II of areas within Municipal limits or in other legally designated urban areas which have been developed upto

or close to the shore-line; CRZ-III of areas which are relatively undisturbed other than those in CRZ-I and II while CRZ-IV consists of coastal

stretches in the Andaman & Nicobar, Lakshadweep and small islands. In so far as CRZ-II areas are concerned, it has been laid down that

buildings shall be permitted only on the landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of

the area) or on the landward side of existing authorised structures.

The Approval of the Coastal Zone Management Plan and subsequent clarifications by MOEF:

20. By a communication dated 27th September, 1996, MOEF approved the Coastal Zone Management Plan submitted by the State of

Maharashtra on 22nd November, 1995, subject to certain conditions and modifications. Amongst the significant conditions are stipulations that (i)

all the relevant provisions of the CRZ notification of 1991 as amended in 1994 shall be strictly incorporated in the CZMP; (ii) no activity which has

been declared as prohibited in paragraph 2 of the notification shall be carried out within the Coastal Regulation Zone and (iii) the approval of the

CZMP would not imply approval of any proposed project including jetties, ports, harbours and buildings indicated in the plan/map.

21. On 27th March, 1998 MOEF in a clarificatory communication to the Chief Secretary to the State Government inter alia stated that in areas

categorised as CRZ-II, construction of buildings can be permitted on the landward side of the imaginary line drawn along existing authorised

structures. On 8th September, 1998, this was followed by a further clarification by MOEF in regard to the manner in which the imaginary line

should be drawn. The clarification was in the following terms:

I. Construction of new buildings/reconstruction/expansion of existing authorised buildings shall not be permitted in the seaward side direction in the

CRZ-II area of Mumbai Municipal Corporation, unless the following conditions are satisfied;

i. The CRZ-II area should be within the territorial jurisdiction of the Mumbai Municipal Corporation as it existed on 19-2-91, i.e. the date of

coming it no effect of the Coastal Regulation Zone Notification, 1991.

ii. This construction/protrusion towards the seaward side should not go beyond the imaginary line drawn from the seaward side of the existing

authorised structure on the adjoining plot.

iii. The imaginary line will be parallel to the High Tide Line.

iv. The building(s) to be constructed will be restricted to the single plot (plot boundary as on 19-2-91) immediately abutting/adjoining the existing

authorised structures between which the imaginary line is drawn.

v. The imaginary line to be drawn should not cut across any river, creeks, backwater, estuary, water body, sandy beach or mangroves.

vi. In case of reconstruction, change in the existing use of the building shall not be permitted. Further any permissible extension of the plinth in

seaward direction vis-a-vis the existing plinth limits will be governed by the stipulation mentioned in the above paras.

The submissions considered:

22. In this background, the submissions which have been urged on behalf of the petitioners can now be considered.

(1) Breach of the clearance dated 23rd October, 1991:

The admitted fact in the present case is that the clearance by MOEF is after the CRZ notification was issued; the notification was issued on 19th

February, 1991 while clearance to FSI was granted on 23rd October, 1991. Another admitted position that emerges from the facts of the present

case is that the construction involves an investment in excess of Rs. 5 crores since it has been admitted in paragraph 5 of the affidavit of FSI dated

8th October, 2002 that the affidavit of FSI dated 8th October, 2002 that the financial expenditure came to be sanctioned in 1998 for a sum of Rs.

9.09 crores.

23. The CRZ notification contains in paragraph 2 a list of prohibited activities and in paragraph 3 a statement as regards regulation of permissible

activities. Those activities which are prohibited within the CRZ include the setting up of new industries and expansion of existing industries except

those directly related to the water front or directly needing foreshore facilities. The test, therefore, is whether an industry is directly related to the

water front or directly needs foreshore facilities. In S. Jagannath Vs. Union of India and others, , for instance, the Supreme Court held that the

shrimp culture industry is neither directly related to the waterfront nor does it directly need foreshore facilities since the requirement of brackish

water could be met from any source and was not necessarily confined only to sea water. Clause (1) of paragraph 3 of the CRZ notification then

specifies that clearance can be given for an activity within the CRZ only if it requires water front and foreshore facilities.

24. MOEF has filed an affidavit in these proceedings setting out the basis on which it issued an environmental clearance on 23rd October, 1991. In

paragraph 2 of the affidavit, MOEF states thus:

The Ministry has accorded environmental clearance vide its letter dated 23.10.1991 for construction of certain facilities by Fisheries Survey of

India. This clearance is in accordance with para 3(1) of the CRZ Notification of 1991 which provides for constructions requiring water front and

foreshore facilities.

MOEF has in its affidavit stated that the State Government submitted its Coastal Zone Management Plan for the State of Maharashtra to which an

approval was granted on 26th September, 1996. According to MOEF, the categorization of coastal stretches came into operation only in 1996. In

the absence of such categorization, it has been stated, the Ministry while processing the proposal of FSI relied on Clause 3(1) of the CRZ

notification which contemplates the grant of clearance to activities within the CRZ subject to such activities requiring water front and foreshore

facilities. MOEF has explained that it was, therefore, provided as part of its conditions for approval that the publication and extension services are

to be located beyond 500 meters from the High Tide Line since such services do not require water front. MOEF then states thus:

The Fisheries Survey of India should ensure that the above condition including the other conditions listed in the above clearance letter are

complied with while taking up development activities in the area.

MOEF then reiterates that clearance can be accorded for any activities within the CRZ if the activities require water front and foreshore facilities

and clearance was accordingly granted since the Facility Centre of the Fishery Survey of India constituted permissible activity. MOEF states that it

accorded clearance to the facilities of FSI ""as their activities are foreshore requiring facilities which are permissible under the CRZ Regulations.

25. FSI, in the course of the affidavits which have been filed before this Court described the nature of the activities undertaken by it and the range

of its functions. FSI was established in 1946 as a Pilot Project with the object of augmenting the food supply by the development of deep sea

fishing. The institution attained the status of a Survey Institute in 1974 under the name of ""Exploratory Fishery Project"". On the enactment by

Parliament of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, the Institution was

reorganised in 1983 as a national institute and named as the Fishery Survey of India. According to FSI, with the declaration of the 200 nautical

miles legal regime in the year 1976, India acquired sovereign rights with attendant responsibilities to explore, utilize and manage Marine Living

Resources over 2.02 million Sq. Kms. of the Exclusive Economic Zone. FSI has stated that it plays a significant role in the development of fisheries

and the management of activities in relation thereto. Fishing operatives, it has been stated, require practical sea service for appearing for the

competency examinations and for this purpose training is imparting is imparted on board the vessels of FSI. FSI also states that it has vital linkages

with several national agencies and institutions associated with ocean studies and fisheries development. FSI has seven Bases located at Porbandar,

Mumbai, Marmugao, Cochin, Chennai, Visakhapatnam and Port Blair and operates 13 vessels for survey and stock assessment of Marine Fishery

Resources within the Exclusive Economic Zone.

26. According to FSI, the Facilities Research Centre is being constructed on Plot No. 2A, admeasuring about 4972 sq. mtrs. with a carpet area of

3254 st. mtrs. 84% of the area is to be utilised to house facilities relating to the operation of survey vessels. Of the 13 Survey Vessels in the fleet of

FSI, 2 are presently based in Mumbai and a few more are likely to be added to the fleet in the ensuing year. FSI thus contends that the Facilities

Centre would include a Marine Engineering Workshop, Laboratory, Store Rooms, a Display/Demonstration Section, Conference Hall, Library,

Electronic and Radio Telephone section and such facilities which are directly related to the water front and to the foreshore. FSI has stated that it

proposes also to construct certain Guest Rooms for the use of Scientists and Engineers who return back in the odd hours of the night often after 20

days of voyage on high seas. These rooms, it has been stated, are not meant for public use or to accommodate officers of other departments.

According to FSI, all its activities are related to the welfare of fishermen and fisherwomen and the fishing harbour activity requires water front with

its ancillary facilities.

27. In this background, the grant of permission by MOEF of 23rd October 1991 cannot be regarded as falling within the Zone of prohibited

activities contained in paragraph 2 of the CRZ notification or as outside the fold of permissible activities stipulated in paragraph 3(1) thereof. The

documentary material on record shows that as far back as on 15th March, 1997, the Government of India in the Ministry of Agriculture had

communicated its administrative approval for the construction of a Fishing Harbour at Sassoon Dock, subject, inter alia, to the condition that one

hectare of land in the newly reclaimed area of Sassoon Dock would be allotted to the Exploratory Fisheries Project, Bombay. The Exploratory

Fisheries Project has now grown into a full-fledged institution, the Fishery Survey of India. As originally envisaged, the requirement of FSI was of

one hectare of land, but that was subsequently reduce to half a hectare in view of the directive of the then Prime Minister of India that 50% of the

area required for the Fishing Harbour Project should be converted into a Botanical garden. Meeting the requirement of FSI was thus, an integral

part of the Project for the development of the Fishing Harbour at Sassoon Dock, which ultimately led to the grant of the administrative sanction on

15th March, 1977. The material which has been placed on the record by FSI is sufficient to enable the Court to accept the submission of FSI that

there is indeed, a close nexus between the activities of FSI, the water front and the foreshore. Equally, MOEF while granting its permission of 23rd

October, 1991 could not have been unmindful of the fact that the notification of 19th February, 1991 was conceived with the salutary public

purpose of preserving the ecology in mind. The notification, therefore, stipulated that even if an activity is not prohibited, clearance shall be granted

for locating it within the Coastal Regulation Zone only if it requires water front and foreshore facilities. The mandate is that the activity must require

water front and foreshore facilities. That requirement would not be met by a remote or indirect connection with the water front or foreshore. Only if

the activity requires a water front or foreshore, could it be permitted. The correspondence between the Ministry of Food Processing Industries and

MOEF prior to the grant of the sanction emphasised the concern of MOEF which led to the formulation of its position that it would not grant

approval for an office or administrative building. Even prior to the issuance of the notification dated 19th February, 1991. MOEF had declined to

permit the construction of an office building for FSI within 500 meters of High Tide Line. A distinction was, however, mae as regards such

construction required for operation of the harbour which are essentially required to be located on the sea front. Again, on 29th June, 1991, the

Ministry of Food Processing Industries revived the proposal for the construction of an office building for FSI stating that the complex would now

include inter alia, a museum, computer room, laboratory, reference collection facility etc. Discussions took place between the parent Ministry of

FSI and MOEF in pursuance whereof, the letter dated 19th August, 1991 recorded that a revised preliminary plan was being submitted for the

construction of a Facility Centre for FSI. In this letter, it was stated that the proposal for the construction of a museum, computer room etc. had

been eliminated and activities to be located were restricted only to foreshore operations. It was on the basis of this revised proposal that FSI

granted its approval on 23rd October, 1991. While granting its approval FSI made it clear that it was not granting clearance for the location of

publication and extension service to Fishing Industries.

28. The approach of MOEF to the problem is thus clear both from the correspondence on the record and the affidavit which has been filed in

these proceedings. MOEF made it abundantly clear that an office building within a distance of 500 meters of the High Tide Line could not be

sanctioned. Similarly, what would be sanctioned and permitted was a Facilities Centre relatable to those activities of FSI which required water

front and foreshore facilities. Consistent with the approach, even the publication and extension services were to be excluded from the proposal.

Indeed, that is how FSI understood the position of MOEF because its letter dated 19th August, 1991 sated that it was eliminating various activities

from the ambit of the proposal and was restricting the proposal to foreshore operations only. Subsequent letters addressed by MOEF on 4th

December, 1992, 5th July, 1993, 3rd July, 1995, 6th May, 1996, 27th January, 1997 and 18th January, 2001 expressly referred to the

construction of a facility by FSI, ""requiring water front"".

29. A perusal of the revised preliminary plan submitted by FSI to MOEF would reveal the following salient features:

(i) The structure was to consist of a ground floor and one upper storey;

(ii) The structure would be located on a portion of the reclaimed land which abutted on the water front and it was shown in the site plan as being in

the South-Western portion of the reclaimed land; and

(iii) The activities that would be carried on in the proposed building would be: (a) A Maintenance Workshop, (b) A Gear Repair Room, (c)

Laboratories, (d) Store rooms, (e) A Fish Processing Section, (f) Demonstration Hall, (g) A Library, (h) Rooms for scientists, (i) Rest Rooms for

the staff, and (j) Sorting Rooms.

30. Now, the admitted position in the present case is that instead of a construction consisting of a ground floor and one upper floor, the proposed

construction that is being carried out by FSI is of a ground floor and four upper floors. The construction which is actually being carried on is not at

the same location as originally envisaged but on an adjacent plot. FSI has sought to place reliance on paragraph 3 of MOEF"s letter dated 23rd

October, 1991 which provides that any deviation or alteration in the project proposals from those submitted to the Ministry may warrant an

imposition of new or modified conditions. This is not a charter to FSI to make deviations or alterations from the plan submitted to MOEF without

the written approval of MOEF. Paragraph 3 of the permission granted by MOEF cannot in any circumstances be construed as conferring liberty

upon FSI to construct a structure of a nature and character different from that which was envisaged in the original permission dated 23rd october,

1991. The contention of Counsel for MOEF is that the height of the structure, the number of storeys and location is a matter for the Planning

Authority and not for MOEF. This cannot be accepted. The acceptance of the proposition which was urged on behalf of FSI would have serious

ramifications for it would then permit a developer having obtained a restricted permission from MOEF to alter the conditions by constructing a

building in violation of those stipulations. Indeed, what program 3 of the permission would mean is that there shall be no deviation or alteration in

the project proposal and that if there was any intention to deviate therefrom MOEF would modify the stipulations which it had already imposed or

impose new conditions. The question of MOEF modifying its conditions or imposing new conditions would arise if it were to be informed in

advance of the proposed modification of the plan on the basis of which permission was sought and granted. A developer cannot confront MOEF

with a fait accompli by a unilateral modification of plans.

31. MOEF in its letters dated 4th December, 1992, 5th July, 1993, 3rd July, 1995, 6th May, 1996, 22nd January, 1997, 18th January, 2001 and

28th January, 2002 continued to insist that there must be a compliance with all the conditions which it had stipulated for the grant of its permission.

As late as on 31st October, 2002, the Government of India in the Ministry of Environment and Forests, wrote to FSI drawing attention to an

earlier letter dated 28th January, 2002, recording that information which had been sought had not been submitted till then. The letter dated 31st

October, 2002 which was addressed by an Additional Director in the Regional Office of MOEF at Bhopal, adverts to the earlier letter. The plinth

level was completed in January 2002, according to FSI. Between then and October 2002, there was an obvious failure to keep MOEF apprised

of the construction, as would be borne out by MOEF''s letter dated 31st October, 2002.

32. We have repeatedly enquired both of the Learned Counsel appearing on behalf of FSI and the Learned Counsel appearing on behalf of

MOEF as to whether FSI informed MOEF of the change in its plans which would warrant the increase in the height of the structure, the change in

the location of the building and the increase in the upper storeys from one, as originally envisaged, to four. Counsel for FSI and MOEF have not

been able to produce any such letter on the record. There is only a solitary letter of 29th November, 2002 by which FSI has purported to inform

the Additional Director of MOEF that the work of construction was in progress and had reached upto the second floor of the super-structure.

Significantly, this letter has been addressed after the petition was filed in this Court; after the order of injunction was passed by this Court on 22nd

August, 2002 and, indeed after MOEF had filed its affidavit dated 6th September, 2002 in these proceedings.

33. All these circumstances, are sufficient for us to hold that FSI had failed to inform MOEF of the change in its plans submitted to MOEF on 19th

August, 1991 which originally envisaged a structure consisting only of a ground and first floor. We also find it impossible to accept the contention

of FSI that the clearance under Regulation 3(1) of the CRZ notification was only in respect of the activity to be undertaken and that once clearance

was granted, the builder or developer would be free to locate the construction at any location or to construct a building of a height or dimensions at

variance with what had been approved by MOEF. There is merit in the submission which has been urged on behalf of the petitioners that the CRZ

notification would indicate that the location, height and the number of storeys of a proposed building/development within the CRZ is of crucial

environmental importance. This is more so in respect of a clearance under Regulation 3(1) which can be granted only where a waterfront and

foreshore facility is required. FSI has in a passing reference in one of its affidavits suggesting that the project was being monitored by the MOEF.

There is, however, merit in the submission of the petitioners that once an environmental clearance has been granted, any monitoring can only be in

aid of the enforcement of the environmental clearance and, that a written clearance which had been granted cannot be construed to have been

modified or altered on the basis of silence or acquiescence on the part of MOEF. Be that as it may, the successive letters addressed on behalf of

MOEF to FSI would reveal that in the present case, MOEF repeatedly called upon FSI to inform it as regards compliance with the conditions

which had been imposed on 23rd October, 1991.

34. Counsel for FSI submits that the location of the building was altered to an adjoining plot so as to accommodate the requirement of BPT.

Similarly, as regards the increase in the height of the structure and the number of storeys, it has been stated that this was occasioned due to the

building regulations of the Municipal Corporation which required certain open spaces and that as a result of the increase in height, the built up area

would be marginally less than what has been originally envisaged. The crux of the matter, however, is that the construction which is being carried

out at present by FSI is neither at the specific location that was originally envisaged in the approval granted by MOEF, nor in conformity with the

height or the number of storeys envisaged in the plan submitted by FSI on the basis of which approval was obtained from MOEF.

35. In so far as the user of the building is concerned, the Court would have to take due notice of the fact that while submitting the revised proposal

on 19th August, 1991, FSI made an express representation to MOEF that it was restricting its activities ""to foreshore operations only"" and that

consequently, the proposal for housing a museum, computer rooms etc. had been eliminated. On the other hand, the approvals which were granted

by the local authorities to FSI on the basis of applications submitted by FSI after 19th August, 1991, would belie the representation made by FSI

in its letter dated 19th August, 1991. On 26th June, 1992, the Bombay Metropolitan Region Development Authority granted its approval to the

proposed development of a structure which would be used as a Faculty Centre, reference collection, Lecture hall, computer centre, laboratory,

museum, auditorium etc. This was on the basis of applications dated 30th March, 1992 and 27th April, 1992 submitted by FSI. Therefore, even

after an express representation to the MOEF on 19th August, 1991 that FSI was eliminating the proposal for a museum, computer room etc. and

was restricting its proposal to those activities which require foreshore operations, the approval of the Municipal Corporation and local authorities

was taken for the activities at variance with those reference to in the letter dated 19th August, 1991 addressed to MOEF. The approval granted by

the Heritage Conservation Committee of the Municipal Corporation on 12th April, 1999, refers to a proposal for construction of a Facility Centre

building consisting of a ground floor and three upper storeys and the central wing with a ground floor and four upper storeys. The approval

specified that the Facility Centre will house a laboratory, computer centre, library and connected office space. Similarly, the approval granted by

the Fire Department of the Municipal Corporation on 28th April, 1999 would show that on the second floor of the proposed buildings, FSI

proposed to house an administrative office and cabins for officers. The third floor would be used as a Canteen and for cabins for officers, while the

fourth floor would be used for Guest Rooms. This course of conduct on the part of the FSI leaves much to be desired for it would be apparent

therefrom that while on the one hand an express representation was made to MOEF that the activities which were being envisaged were ""restricted

to foreshore operation only"", the approval of the local authorities was being taken to a much wider range of activities, many of which do not require

a waterfront or foreshore. Confronted with these difficulties, the Learned Counsel appearing on behalf of FSI has made a statement before the

Court that FSI will ensure that the use to which the proposed building is employed will abide by the terms enunciated by MOEF on 23rd October,

1991.

36. The provisions of the CRZ notification dated 19th February, 1991 have been conceived keeping in mind the high public purpose to be

subserved in protecting the ecology and conserving the environment. The notification constitutes a recognition of the fact that coastal stretches of

seas, bays, estuaries, creeks, rivers and backwaters especially those influenced by tidal action upto 500 meters from the HTL and land between

the LTL and HTL are ecologically vulnerable and require special measure of protection against environmental degradation. The natural resources

of the community are held in trust by the community for the benefit of not merely the present generation, but for succeeding generations as well.

The uncontrolled march of urbanization poses serious dangers to the preservation of the environment. Policy makers undoubtedly have to preserve

the balance between the urgent need for economic development and the protection of the natural resources against rapacious denudation. The

CRZ notification dated 19th February, 1991 makes that balance and dwells upon a specific part of the environment, and an important one at that,

which is defined as the Coastal Regulation Zone. Within the Coastal Regulation Zone any development either by a private or a public body must be

in accordance with the provisions of the notification. The burden must lie on the developer to establish before the authority before whom he seeks

a sanction that the development which he proposes to undertake is in strict compliance of the parameters set out in the notification. The law must

impose an absolute and unconditional obligation upon the developer to make a full, fair and candid disclosure to the sanctioning authority of all the

features of the proposed development and to demonstrate that the development will not have a deleterious effect on the environment. The material

disclosed to the authority (in the present case, MOEF) constitutes the basis for the grant of a sanction or permission. Consequently, a failure to

disclose all relevant material and information will invalidate the grant of sanction. Furthermore, once a sanction has been granted, it is the written

sanction which must operate at all times unless it is modified by a subsequent order having the force of law or by the operation of a legislative

provision. The basis on which the sanction has been granted or the conditions subject to which the sanction has been granted, cannot be altered by

the developer at his option. If the developer were to be permitted to alter the nature of the construction which is proposed after the sanction has

been issued that would have far reaching ramifications which the law cannot possibly countenance. MOEF is vested with the duty and power of

protecting the environment in its diverse aspects - aspects as unique as the manifold hues of nature itself and against all possible sources of pollution

and contamination. These sources, as contemporary history would tell us, are infinite, if not insidious, and, therefore, a developer who is in breach

of the basis on which an approval was granted by MOEF cannot be heard in law to say that he was after all relying upon MOEF to monitor the

project. Caveat emptor is not a principle known to the law of environmental protection. That MOEF has a statutory power to monitor the

implementation of its approval does not dilute from the obligation of the developer to discharge the duty of complying both with the CRZ

notification and the permission which has been granted by MOEF. Provisions such as the CRZ notification of 19th February, 1991 are conceived

in the public interest, the interest which protects the welfare not merely of the society as it exists, but the society of the morrow. In the present case,

FSI has in our view, failed to discharge its bounden obligation of ensuring that its development would be strictly in accord with the permission

granted by MOEF. Whatever the reasons would be on the basis of which FSI sought to alter the location, height, number of storeys or use of the

structure beyond what was envisaged in the permission granted by MOEF, it ought to have brought this to the attention of MOEF. The

modification ought to have been drawn to the attention of MOEF and its permission sought thereto. This was evidently not done. A breach by any

person or authority whatsoever, be it a private or public body, is a serious matter, but it is even more so in a case such as the present, where a

public body must be expected to enforce the law correctly and scrupulously.

(ii) Imaginary line:

37. The petitioners have urged before the Court that the development which has been undertaken by FSI is in violation of the restrictions imposed

in Annexure-I of the notification dated 19th February, 1991 which prescribes that in CRZ-II areas, buildings shall be permitted only on the

landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan) or on the landward side of existing

authorised structures.

38. In the CRZ notification, the following restriction has been imposed in relation to development in the CRZ-II areas:

CRZ-II

(i) Buildings shall be permitted only on the landward side of the existing road (or road proposed in the approved Coastal Zone Management Plan

of the area) or on the landward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed

roads/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of

Floor Space Index/Floor Area Ratio.

Provided that no permission for construction of buildings shall be given on landward side of any new roads (except roads proposed in the

approved Coastal Zone Management Plan) which are constructed on the seaward side of an existing road.

(ii) Reconstruction of the authorised building to be permitted subject to the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of building shall be consistent with the surrounding landscape and local architectural style.

39. While approving the CZMP submitted by the State of Maharashtra, MOEF stipulated on 27th September, 1996 that all the relevant provisions

of the CRZ notification of 1991 as amended in 1994 after incorporating the directions contained in the judgment of the Supreme Court of 18th

April, 1996 shall be strictly incorporated in the CZMP. On 27th March, 1998, MOEF clarified the provisions of the CRZ notification in a letter

addressed to the Chief Secretary to the Government of Maharashtra thus:

8. New Constructions along Waterfront:

In the areas categorised as CRZ-II, construction of buildings can be permitted on the landward side of the imaginary line drawn along the existing

authorised structures.

Thereafter, there was a further clarification dated 8th September, 1998 which has already been adverted to earlier. That clarification was to the

effect that new constructions, reconstruction and expansion of existing buildings shall not be permitted in the seaward side direction of the CRZ-II

area under the Bombay Municipal Corporation unless several conditions were satisfied. Important amongst those conditions were :(i) The

construction towards the seaward side should not go beyond the imaginary line drawn from the seaward side of the existing authorised structure on

the adjoining plot; (ii) The imaginary line should be parallel to the High Tide Line: (iii) The building to be constructed should be restricted to the

single plot immediately abutting or adjoining the existing authorised structures between while the imaginary line is drawn; and (i) The imaginary line

to be drawn should not cut across any river, creek, backwater etc.

40. A Division Bench of the Madras High Court in a judgment delivered on 14th December, 1995 in K.V. Ramanathan v. The State of Tamil

Nadu. (Writ Appeal No. 1287 of 1995) had construed the provisions of the notification dated 19th February, 1991, as not requiring the presence

of an existing authorised structure or road directly between the impugned construction and the sea. The Madras High Court held that once the area

was a developed area, the construction could be said to be on the landward side of the existing roads/structures. Though a SLP against the

judgment of the Madras High Court was dismissed by the Supreme Court on 12th February, 1998, the Court made it clear that the questions of

law argued before and decided by the High Court were left open to be decided in an appropriate case, by the Supreme Court. When a matter

came up for consideration before this Court in Sneha Mandal Co-operative Housing Society Limited and others Vs. The Union of India and

others, , a Division Bench of this Court consisting of the Learned Chief Justice, Mr. Justice Y.K. Sabharwal (as he then was) and Mr. Justice S.H.

Kapadia noted that the judgment of the Madras High Court had been delivered prior to the preparation of the Coastal Zone Management Plan.

Moreover, the Central Government had subsequently issued several guidelines which were not in existence when the Madras High Court delivered

its judgment. This Court, therefore, noted that the issue would have to be considered in the context of the CRZ notification of 1991 as well as in

view of the subsequent directions issued by MOEF and the approved Coastal Zone Management Plan of the State of Maharashtra. The Division

Bench held that the test which had been laid down by the Madras High Court with regard to a structure falling in a developed area could be

usefully applied in a restricted sense. The Learned Counsel appearing on behalf of the Petitioners has fairly accepted the position that in view of the

judgment of this Court in the Sneha Mandal case, it is a settled principle that an imaginary line does not required to be anchored at both ends. The

judgment of the Division Bench was delivered on 1st October, 1999.

41. In the present case, in the affidavit filed by MOEF, there is no reference to the imaginary line at all. According to MOEF, the CZMP submitted

by the State was approved on 27th September, 1996 and the categorisation of coastal areas came into operation only 1996. MOEF has sought to

defend the permission which was granted by it on the basis that in the absence of categorisation of coastal stretches, the permission was issued

under para 3(1) of the CRZ notification. MOEF is not correct in asserting that there was no categorisation of coastal stretches prior to 27th

September, 1996 or, when its permission was granted. MOEF approval was granted on 23rd October, 1991 which is after the CRZ notification

dated 19th February 1991. The CRZ notification had provided a categorisation of coastal stretches into CRZ I, II, III and IV which would apply

even pending the sanction of the Coastal Zone Management Plan. MOEF permission in the present case is after the CRZ notification. The actual

construction began after the approval of the CZMP on 27th September, 1996 and after MOEF had issued its clarifications of 27th March, 1998

and 8th September, 1998. Consequently, there is no material in the affidavit of the MOEF which would enable the Court to deduce as the whether

MOEF considered that the construction in question was on the landward side of existing authorised structures.

42. FSI in the first affidavit which was filed before this Court on 19th August, 2002 stated thus in justification of the construction with reference to

the imaginary line:

Between the setting up of the Facility Centre and the sea the Bombay Port Trust have set up a facility called ""fishing auction halls 1 & 2"" for the

economic welfare of the fishermen and thereafter there is a Pump house, as overhead water tank, a truck parking facility and thereafter there is a

12.20 mtr. wide road and it may be noted that for constructing the fishing auction halls 1 and 2, together with pump house and a overhead tank a

permission was granted to the Bombay Port Trust by the Municipal Corporation of Greater Mumbai by a communication dated 6-11-1995.

Then again, it was averred as follows in the same affidavit:

i further say that there are two auction halls, i.e. auction hall Nos. 1 and 2, and that the said auction halls are authorised structures and that the

same has been constructed by the Bombay Port Trust after obtaining permission from the Municipal Corporation of Greater Mumbai and that in an

area categorised as CRZ-II, new construction along the water front can be permitted on the landward side of the imaginary line drawn along the

existing authorised structure. In other words if there exists authorised structures along the water front, then an imaginary line parallel to the High

Tide Line is required to be drawn between two existing authorised structures and that the new construction is permissible behind the imaginary line

connecting the two authorised structures because it would fall on the landward side of the imaginary line parallel to the High Tide Line.

Now, it is an admitted posit on that all the structures which have been referred to in the aforesaid affidavit of FSI have come up after the CRZ

notification dated 19th February, 1991. The CRZ notification refers to ""existing authorised structures"" and, therefore, necessarily refers to those

structures which were authorised and in existence on the date of the notification. This principle of law is now, indeed, well settled in view of the

judgment of Mr. Justice B.N. Srikrishna (as the Learned Judge then was) speaking for a Division Bench of this Court in Overseas Chinese Cuisine

(India) Pvt. Ltd. and another Vs. The Municipal Corporation of Greater Bombay and others, . The Division Bench of this Court held that the CRZ

notification embodied the principles of ""containment'' and ""toleration"" and that building activity permitted under the notification in CRZ-II areas

shall be frozen to the laws and norms existing on the date of the Notification"". (paras 69 and 70 pages 365 and 366). Constructions made after

19th February 1991 are, therefore, not ""existing authorised structures"".

43. Confronted with this difficulty, in the subsequent affidavit filed by FSI before this Court on 8th October, 2002, the position which has been

taken in that clearance was granted by MOEF on 23rd October, 1991 under Clause 3(1) of the notification for the construction of a building

requiring water front and foreshore facilities. Consequently, it has been urged that no question would arise of drawing an imaginary line to decide

on the area of the plot falling on the landward side. According to FSI, the building has to be within the harbour.

44. During the course of the submission which has been urged before the Court, the Learned Counsel appearing on behalf of FSI has submitted

that the restrictions contained in Annexure-1 to the notification dated 19th February, 1991 will not be attracted to a case where permission has

been granted by the MOEF under Clause 3(1) of the notification. Paragraph 2 of the notification deals with prohibited activities while paragraph 3

deals with regulation of permitted activities. Paragraph 3 provides that all other activities except those which are prohibited in paragraph 2 will be

regulated as therein provided. Clause (1) of paragraph 3 provides that clearance shall be given for any activity within the Coastal Regulation zone

only if it requires water front and foreshore facilities. Clause (1) of paragraph 3, does not speak of clearance by a particular authority. On the

contrary, it speaks of clearance for any activity within the Coastal Regulation Zone. Clause (2) of paragraph 3 stipulates that certain activities will

require environmental clearance of MOEF. These include construction related to defence requirements, operational constructions for ports and

harbours, thermal power plants and all other activities with investment exceeding rupees five crores. Under Sub-clause (iv) of Clause (2) of

paragraph 3, permission of the MOEF is required for ""all other activities wit investment exceeding rupees five crores except those activities which

are to be regulated by the concerned authorities at the State/Union Territory level in accordance with the provisions of paragraph 6, sub-paragraph

(2) of Annexure 1 of the notification"". In para 6(2) of Annexure 1, specific provisions have been made in certain cases where either the State

Government or a designated authority of that Government may permit the construction of specified structures such as community toilets, water

supply, drainage, sewerage, roads and bridges. Under Clause (3) of paragraph 3 of the notification, the coastal States and Union Territories were

to prepare Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the

guidelines given in Annexure-I and II of the notification. Clause (3)(ii) of paragraph 3 then provides that within the framework of such plans as

approved by MOEF, all development and activities within the CRZ other than those covered in para 2 and para 3(2) shall be regulated by the

State Government in accordance with the guidelines contained in Annexure-I and II. Counsel for FSI relies on the expression ""other than those

covered in ... para 3(2)"". MOEF has, while approving the Coastal Zone Management Plan of he Government of Maharashtra clarified that all the

relevant provisions of the Coastal Regulation Zone Notification of 1991 as amended in 1994 shall be strictly incorporated in the CZMP.

Moreover, the approval of the CZMP contains the following stipulation:

The permissible activities shall be regulated in accordance with Section 3 and follow the norms for regulation as indicated in Section 6(2) of the

CRZ Notification, 1991 as amended in 1994"". (Para 2A iii of letter dated 27th September, 1996).

MOEF also clarified that the approval of the CZMP would not mean the approval of any proposed project including jetties, ports and harbors and

buildings. Neither the affidavit of MOEF nor the submissions of its Counsel before this Court throws any light on these issues. In that view of the

matter, it would be inappropriate for this Court to express a final or conclusive opinion on this aspect of the matter since, in view of the final order

which we propose to pass, it would be necessary for MOEF to re-examine the issue. In the submissions of FSI at the Bar, it was urged that the

Plan annexed at Exhibit-A to the writ petition would show that in the North-Eastern direction of the construction in question, there are authorised

structures which are in existence prior to 1991. On the other hand, the submission of the Petitioners ins that the expression ""drawn along"" when

used in the context of the imaginary line means ""through the length of."" The reclaimed land is bordered by the sea on three sides. It was urged that

an imaginary line drawn to cover one side cannot save the construction on the other sides because such a line would then be drawn to allow

several new developments in Mumbai which would render nugatory the provisions of CRZ II and the MOEF directions dated 27th March, 1998.

45. In the state of the record as it stands, we are of the view that it would be appropriate and proper if the issue is directed to be re-examined by

MOEF. FSI has been anything but consistent in its affidavits. The first affidavit relies on structures constructed by BP1 after 19th February 1991

on the seaward side. The second affidavit adopts the position that the question of assessing whether the construction was on the seaward side of

the imaginary line would not arise where the permission of MOEF is under para 3(1). MOEF in its affidavit is silent on this issue. MOEF was silent

on this issue in its submissions before the Court. MOEF a submission in the affidavit that in the absence of a categorisation of coastal stretches,

permission was granted under para 3(1) does not take into consideration the admitted position that (i) the permission was in the present case

granted after the CRZ notification: (ii) the CRZ notification contains a categorisation of coastal stretches and (iii) that in any event, actual

construction commenced after the Coastal Zone Management Plan was approved on 27th September, 1996 and after the clarifications of MOEF

of 27th March and 8th September, 1998. Moreover, even if the alternate submission of FSI wit regard to Para 3(1) of the Notification is

accepted, the major premise articulated in para 3(1) is that the activity can be cleared only if it requires waterfront and foreshore facilities. We have

found earlier that while on 19th August, 1991. FSI represented to MOEF that it was eliminating several activities from its proposal and confining

itself to foreshore operation,s permissions were sought from the Municipal Corporation and BMRDA on the basis that the structure would house

activities, several of which did not require waterfront or foreshore facilities. If the articulated major premise of para 3(1) is not fulfilled, namely that

the activity must require waterfront and foreshore facilities, then the assertion of FSI would in any event require re-examination by MOEF. We are,

hence, of the view that MOEF will have to re-examine the matter particularly since the correspondence on the record reveals that in successive

letters culminating on 31st October, 2002, MOEF stated that FSI had not furnished to it the information that was sought. The Bombay Port Trust

has appeared before us in these proceedings. The Learned Counsel appearing on behalf of the Port Trust stated that the Port Trust may be

prejudicially affected if this Court were to make a final determination to the effect that the construction of FSI falls on the seaward side of the

existing authorised structures since that would affect the future developments by the Port Trust in the area. We have indicated to the Learned

Counsel appearing on behalf of the Port Trust that the Court would not in these proceedings expand the nature of the controversy strictly beyond

what was necessary for the adjudication of the present case. We, therefore, do not express opinion on the position of the Bombay Port Trust

which is left open to be decided in appropriate proceedings when the issue arises. The Learned Counsel appearing on behalf of the Petitioners has

also in the submissions accepted this course of action. Since, however, we propose to direct MOEF to re-examine the issue, we grant liberty to

BPT, should it be so advised so to do, to submit a written memorial explaining its position on the matter to MOEF.

Locus :

46. Counsel for FSI has sought to challenge the locus of the Petitioners to move this Court. The submission that was urged before the Court was

that this petition has not been filed in the public interest and that it was filed in order to subserve the interest of the petitioners who reside in a

nearby building by the name of Bakhtavar. According to Counsel for FSI, it was the view of the occupants of Bakhtavar Building which would be

affected by the impugned construction. Counsel for FSI has also sought to urge that the Second Petitioner (Colaba (P.O.) Advance Locality

Management) was formed only for the purpose of pursuing the present proceedings. Having considered the submission urged on the part of FSI,

we do not find any merit therein. First and foremost, Counsel appearing on behalf of the Petitioners has produced material on record to establish

that the Second Petitioner is an Association comprising of the residents of Colaba, Mumbai. The petitioners have stated that the Second Petitioner

has a membership of about 75 building extending from Cuffe Parade to Colaba Cause Way. The Court has been informed that the Second

Petitioner has in fact been formed in the year 2000. Correspondence has been produced on record which would show that the Second Petitioner

had corresponded with the Municipal Corporation as far back as in September, 2000. The Association has hence been formed much before the

Petition was filed and there is nothing on the record to question its bona fides. The judgment of the Supreme Court in Bangalore Medical Trust Vs.

B.S. Muddappa and others, , is an authority for the proposition that the residents of the locality have a sufficient interest to move the Court in

proceedings under Article 226 of the Constitution for the protection of the environment. Counsel appearing on behalf of the Petitioners has also

produced photographs of the construction in question before the Court in order to demonstrate that the view of the residents of Bakhtavar Building

is in fact, not affected by the present site of the construction, but that in fact, it would be somewhat affected if the original site of the construction as

approved by the MOEF has been built upon. To the extent to which the petitioners complain of a breach of the terms and conditions of the original

permission granted by the MOEF, and the change in the location, we are of the view that Counsel for the petitioners is justified in submitting that

there is no want of bonafides on the part of the Petitioners. Besides is none of the affidavits filed on behalf of FSI has the locus or bonafides of the

Petitioners been questioned. We, therefore, do not find any merit in that submission.

Delay:

47. Counsel for FSI has submitted that the petition filed before this Court, suffers from delay which has been unexplained. Reliance is sought to be

placed on paragraph 5 of the affidavit dated 8th October, 2002 in which it has been stated that the construction of the compound wall commenced

in 1995 and in paragraph 22 of the affidavit dated 23rd September, 2002 in which it has been stated that the construction of the building began on

23rd August, 2000. The writ petition was filed on 9th August, 2002 and an interim order was passed by a Division Bench of this Court on 22nd

August, 2002.

48. In so far as the question of delay is concerned, it is now well settled that a petitioner, who files a petition in the public interest, must move the

Court with despatch. Delay is liable to cause serious prejudice in the implementation of a public project and may lead to an escalation of costs.

This aspect was emphasized in the judgment of the Supreme Court in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . The

question of delay was also taken into consideration in the judgment of this court in the Sneha Mandal Co-operative Housing Society Limited and

others Vs. The Union of India and others, . Ultimately, whether there has been delay on the part of the Petitioner in moving the Court must depend

upon a given set of facts. No hard and fast rule can be laid down.

49. In this case, FSI in its affidavit dated 19th August, 2002 has stated that the construction of the plinth level was completed on 21st January,

2002. In their submissions before the Court, the petitioners have drawn attention to the fact that there is a wall about 15 to 20 feet in height

between the botanical garden and the plot of land on which the construction is being carried on and there are several trees which grow higher than

the said wall. The petitioners have stated that they have no access to the impugned construction and became aware of the construction only when it

became visible beyond the wall and tree line. The petitioners have placed reliance on photographs taken from the flat of the First Petitioners on the

8th floor of the neighbouring building to demonstrate that it is only in July/August, 2002 that the impugned construction which by then reached the

level of the third floor became visible above the tree line. Counsel appearing on behalf of the Petitioners also submitted that the statement contained

in paragraph 22 of the affidavit dated 23rd September, 2002 in which it has been averred that on 23rd August, 2000, the work had commenced

and was in full swing is inconsistent with the record. The permission of the Port Trust was granted for the proposed construction only on 2nd May,

2001 and the letter in that regard required compliance with such additional conditions as its Chief Engineer may impose before the construction is

taken in hand. In the present case, having regard to the fact that the construction upto the plinth level had been completed only towards the end of

January, 2002, we are of the view that the delay in the present case is not of such a nature as would oust the petitioners from the benefit of the

exercise of the jurisdiction of this Court under Article 226 of the Constitution. The case raises important issues relating to the environment and we

have already noted that it has been instituted bona fide in the public interest. In M/s. Dehri Rohtas Light Railway Company Limited Vs. District

Board, Bhojpur and and District Board, Shahabad and others, , the Supreme Court held that the principle on which relief to a party is denied on

the ground of laches or delay is that rights which have accrued to others by reason of a delay in filing the petition should not be allowed to be

disturbed unless there is reasonable explanation for the delay. The real test, the Supreme Court held, is that the petitioner should come to the writ

Court before a parallel right is created and the lapse of time should not be attributable to any laches or negligence.

50. In the present case, the petitioners represent the interests of the residents of the locality who have come to the Court with a significant

grievance which is that the construction which is being carried on by FS1 is in breach of the permission granted by MOEF. We find that there is no

inaction, want of bona fides or negligence on the part of the petitioners and no delay of a magnitude that would warrant the dismissal of the writ

petition.

CONCLUSION:

51. In the circumstances, we are of the view that FSI has, in failing to draw the attention of MOEF to the modification of the plan on the basis of

which the approval was sought for the proposed construction and in failing to obtain the approval of MOEF in respect thereof acted in breach of

the permission granted on 23rd October, 1991. We are of the view that FSI ought to have drawn the attention of the MOEF to the proposed

change in the location, the number of storeys, height and the use as originally envisaged, and to the impact, if any, that this would have on the

requirement of paragraph 3(1) of CRZ notification that clearance should be given within the CRZ only if the activity requires waterfront and

foreshore facilities. We have also come to the conclusion that FSI is not justified in contending that the change in the dimensions of the structure

from a ground floor and one additional floor as proposed to MOEF, to a structure comprising of a ground floor and four upper floors is a matter

which did not relate to MOEF but only to the local Planning authority. We hold that this ought to have been placed before the MOEF by seeking a

modification of the approval granted on 23rd October, 1991. Finally, as we have noted in the course of the judgment, while on the one hand FSI

had represented to MOEF on 19th August, 1991 that it was confining its proposal for constructing a Facility Research Centre only to those

activities which require a foreshore location, permission was sought from the local authorities including BMRDA and the Municipal Corporation for

the construction of a structure which would house activities which were not strictly in accord with the permission granted by MOEF and the CRZ

notification.

52. Having come to this conclusion, we are of the view that this is not a case where an order of demolition should presently be passed. We are

conscious of the principle of law enunciated by the Supreme Court in the judgment in M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others,

. The Supreme Court held there that no consideration should be shown to a builder or to any other person where a construction is unauthorised.

An unauthorised construction, it has been held, if it is illegal and cannot be compounded has to be demolished. In the present case, we are of the

view that the appropriate order to be passed would be to direct that FSI shall now once again move the MOEF with a complete set of

documentary material in order to seek a modification of the proposal which was approved by the MOEF on 23rd October, 1991. FSI, in our

view, should be directed to provide a statement of justification of the basis upon which change in the location of the structure, of the height of the

structure, the number of storeys and the use, if any, is sought. In fairness, it must be stated that before the conclusion of the hearing before the

Court, Learned Counsel for FSI has stated that his client has no reservation about moving MOEF so as to obtain a modified permission

incorporating such terms and conditions as MOEF may impose. In holding that this is not a fit case for ordering a demolition in the meantime, we

have been guided by several circumstances. Amongst them is the fact that right from 1977, the project for the construction of Sassoon Dock

Harbour envisaged housing a facility for FSI on the reclaimed plot of land. FSI originally required 1 hectare of land which was subsequently

reduced to half a hectare in order to accommodate a Botanical garden which has already come up in the area. There can be no gainsaying the fact

that a significant part of the activities of FSI are related to the exploration of the sea and some of those activities would require a waterfront or

foreshore facilities. This is not a case where the construction has been carried out without any colour of authority at all because admittedly after

detailed correspondence in this regard, permission came to be granted on 23rd October, 1991.

Directions:

53. In the circumstances, the appropriate direction to be issued in the present case would be to direct FSI to move the MOEF once again which

FSI shall do within a period of two weeks from today. MOEF shall be moved in a representation to which FSI shall annex all relevant

documentary material in support of its justification for a modification of the original basis on which the approval of the MOEF was obtained on

23rd October, 1991. FSI would be at liberty to point out those circumstances which have warranted a change in the location, in the height and in

the number of storeys of the structure. No charge in use from what was originally envisaged shall be permissible without the permission of MOEF

which shall act in accordance with the principle contained in the CRL notification that the activity will be permitted only if it requires foreshore and

waterfront facilities. We also direct that meantime, until MOEF takes a final decision on the matter no further construction shall be carried out by

FSI. The status of the present construction shall abide by such final directions which may be issued by MOEF either to grant or refuse the

permission. Having regard to the fact that further construction has been stayed by an interim order passed by this Court on 22nd August, 2002, we

direct that MOEF shall dispose of the representation and take an appropriate decision preferably within a period of eight weeks of being moved

by FSI in a representation. The Writ Petition is accordingly disposed of in the aforesaid terms. In the facts and circumstances, there shall be no

order as to costs.