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

**PUBLIC INTEREST LITIGATION NO. 22 OF 2010
WITH
NOTICE OF MOTION NO. 292 OF 2015**

Amit Maru ... Petitioner
Versus
State of Maharashtra & Ors. ... Respondents

Mr. Aditya Pratap, i/b Mr. Kiran Bhalerao for the Petitioner.
Ms. Geeta Shastri, AGP – State – Respondent Nos. 1 and 1B.
Ms. Sharmila Deshmukh, for Respondent No.1A.
Ms. Prachi Tatake, with Ms. Pallavi Thakkar, for Respondent Nos.
2 to 4 – M.C.G.M.
Mr. Ashish Khandekar, i/b Mr. L.M. Acharya, for Respondent No.9.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 21ST JUNE, 2018.

ORAL JUDGMENT (Per A.S. Oka,J.)

1. This PIL concerns famous chowpaty beach at Mumbai. Out of the area of the famous beach, there is a small section known as 'Chhoti Chowpaty Beach' which the Petitioner alleges that has been classified as CRZ-I. It is pointed out in the Petition that the Maharashtra Tourism Development Corporation (for short "MTDC") obtained permission from the Collector of Mumbai to start water sports activities on the beach. It is pointed out that MTDC granted permission to M/s. Drishti Adventure Sports Pvt. Limited to operate facilities for water sports on the chowpaty area.

It is pointed out that Maharashtra Coastal Zone Management Authority (for short "MCZMA") raised an objection as M/s. Drishti Adventure Sports Pvt. Limited, taking undue advantage of permission granted by MTDC, constructed a restaurant by the name 'Salt Water Grill' on the beach. The grievance in the Petition is that though completely illegal construction was carried out in CRZ-I, no action was taken by any of the authorities.

2. The first prayer in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the Respondents to remove all illegal constructions done in the CRZ-1 area. The second prayer made in this Petition is on the basis of a decision of the Apex Court in the case of ***Dr. G.N. Khajuria and Others Vs. Delhi Development Authority and Others***¹. The contention is that the illegal construction came up with the connivance of the Municipal and State Government officials and therefore, it is imperative that while ordering undoing of the mischief created by the illegal construction, the officers who are responsible for inaction or the officers who are responsible for allowing the illegal construction to come up should be subjected to a legal action. The next prayer is for directing the Respondent Nos. 5 to 7 (Directors of M/s. Drishti Adventure Sports Pvt.

1 AIR 1996 SC 253.

Limited, a Director of Popcorn Entertainment and Partner of H2O complex as well as M/s. Drishti Adventure Sports Pvt. Limited) to pay compensation for the damage which is caused by them to the beach on account of illegal construction carried out by them. The last prayer is that MCZMA be instructed to take action for CRZ-1 violations.

3. The learned counsel appearing for the Petitioner invited our attention to the Affidavits filed on record. He submitted that the fact that illegal construction was carried on the basis of permission granted to the Respondent No.8 has been accepted by all concerned authorities. Our attention is invited to various photographs placed on record for showing the extent of construction carried out on the beach. In fact there are photographs annexed to the Affidavit filed by Respondent No.8. The learned counsel appearing for the Petitioner on instructions stated that even though the offending structure has been removed, the fact remains that such a gross violation was tolerated by all the authorities and that the same remained in existence for such a long time. He submitted that all this happened under the guise of permission granted by the State Government as well as the Municipal Corporation to the Respondent No.8. He pointed out that a permission was also

granted by MTDC which allowed the Respondent No.8 to take undue advantage and to construct the structure of a hotel.

4. The learned AGP on the last date pointed out that offending structure has been completely removed. The learned counsel for the Petitioner submits that the damage done by gross illegality remains.

5. We have considered the submissions. In Writ Petition Nos. 2197 of 1998 and 1963 of 2000, a Division Bench of this Court passed a detailed order on 16th March, 2001 providing for relocation of existing structures on the said beach and for removal of various structures. A Monitoring Committee was appointed under the said order which at the relevant time was headed by a retired Judge of this Court. Now, the Monitoring Committee is headed by a designated senior practising Advocate in this Court. The Monitoring Committee framed guidelines imposing several restrictions on user of the said beach. The said guidelines were approved by a Division Bench of this Court by the order dated 13th October, 2005.

6. The order dated 22nd June, 2018 passed in the said two Writ Petitions takes a note of not only the illegal construction carried out on Chowpaty area but it also takes a note of illegal

Kabutarkhana as well as illegal structures in existence behind Birla Kreedha Kendra. By the aforesaid order, the Division Bench has directed the Collector to ensure that illegal structures behind Birla Kreedha Kendra are removed by the end of next month. There are various directions issued for maintaining sanctity of the said beach and for ensuring that except for three designated functions which are referred in order dated 13th October, 2005, no other function is permitted to be held.

7. The orders passed in the aforesaid two writ petitions note that the said committee is over all incharge for ensuring implementation of the scheme accepted by the Court by order dated 16th March, 2001 as well as the preservation and beautification of the said beach.

8. The structure complained of in the present PIL is no longer in existence. The law laid down by the Apex Court in ***Dr. G.N. Khajuria (Supra)*** is well known. Moreover, the Affidavit of Dr. Bhagwantrao N. Patil, the Member Secretary of the MCZMA – (Respondent No.1A) records that construction activity was carried out which was not permissible in CRZ-1 which resulted in violation of CRZ notification of the year 1991. In fact the said Affidavit refers to several directions issued to the State Government to remove unauthorised structures erected in violation of the CRZ

notification of the year 1991. However, the stand taken is that water sport activity is a permissible activity as per the CRZ notification. However, construction of any structure permanent or temporary relating to serving of foods, cooking of food, eating house or cafeteria is not a permissible activity in CRZ – I.

9. There is some substance in the grievance made by the learned counsel for the Petitioner that when MCZMA accepted that there were CRZ violations and when the District Collector acting upon the directions of the said authority took action, even criminal law ought to have been set in motion against those who are responsible for committing breaches.

10. As far as action against Municipal Officers and State Government officers is concerned, though we are not issuing a writ of mandamus, both Municipal Corporation and the State Government will have to consider of initiating action against the erring officers in accordance with law.

11. If the Petitioner has any grievance about any other objectionable activity on the beach, the Petitioner can always make an appropriate representation to the Monitoring Committee appointed by this Court in Writ Petition No. 2197 of 1998 and 1963 of 2000.

12. Accordingly, we dispose of the Petition by passing the following order:-

(i) As of today, prayer (a) cannot be granted and in any case, the issue of illegal construction on the said date is taken care of by the orders passed in Writ Petition No. 2197 of 1998 and 1963 of 2000;

(ii) We direct the MCZMA to initiate action in accordance with law including action of setting criminal law in motion against those who are responsible for violating CRZ Regulations of 1991 and consequently the provisions of the Environment (Protection) Act, 1986. Appropriate action shall be taken by MCZMA within a period of three months from today and action taken by the said authority shall be communicated to the Petitioner;

(iii) The State Government as well as the Municipal Commissioner of Mumbai Municipal Corporation will ascertain whether any role was played by its employees in allowing the illegal construction on Chhoti Chowpaty. If it is found that any of the said employees are responsible and if they are still in service, it will be necessary to initiate action in accordance with law against them. The action taken on

this behalf shall be communicated by the State Government as well as Municipal Corporation to the Petitioner within a period of three months from today;

(iv) No other relief can be granted in this PIL. Accordingly, Rule is partly made absolute and the Petition is disposed of on the above terms;

(v) Notices of Motion, if any, pending also stand disposed of.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)