



W.P.No.22733 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on:	Judgment delivered on:
08.02.2023	10.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.22733 of 2022

and

W.M.P.No.21762 of 2022

The Managing Director,
D.S.Propertyei,
AP 2261, H-Block,
10th Street, Kathiravan Colony,
Annanagar West, Chennai – 600 040.

.. Petitioner

Vs.

- 1.A.Anthony Raj Williams
- 2.The Ministry of Environment, Forests and Climate Change,
Rep. by its Secretary,
Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi – 110 003.
- 3.The District Collector,
Collector Office Rd, Moovendar Nagar,
Villuppuram, Tamil Nadu – 605 602.
- 4.The Member Secretary,
Tamil Nadu Coastal Zone Management Authority,
Panagal Building G.H.Road,
Villupuram, Tamil Nadu – 605 602.



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5.The Assistant Director of Town and Country Planning,
Villupuram Region,
TADCO Building G.H.Road,
Villupuram – 605 602.

6.The Managing Director,
Indira Projects and Developments (T) Pvt. Ltd.,
No.116/1, Anna Salai (Behind IDBI Bank),
Saidapet, Chennai – 600 015.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records in respect of order dated 11.07.2022 passed in Appeal No.55 of 2021 (SZ) by the Hon'ble National Green Tribunal, Southern Zone, Chennai and quash the same.

For Petitioner	:	Mr.Abdul Saleem Senior Advocate for Mr.S.Saravanan
For R1	:	Mr.S.Kamalesh Kannan
For R2	:	Mr.K.Srinivasa Murthy Senior Panel Counsel
For RR 3 to 5	:	Mr.J.Ravindran, Additional Advocate General Assisted by Dr.T.Seenivasan, Special Government Pleader (Forest)
For R6	:	No appearance



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ORDER

(Order of the Court was delivered by V.M.VELUMANI, J.)

The petitioner has come out with the present Writ Petition to quash the order dated 11.07.2022 passed in Appeal No.55 of 2021 (SZ) by the Hon'ble National Green Tribunal, Southern Zone, Chennai.

2.The 1st respondent herein filed the said appeal before the National Green Tribunal, challenging the order of the 4th respondent dated 31.07.2019 in Proc.No.P1/1721/2019(Annexure-1), granting CRZ clearance to the petitioner. The said appeal was allowed by the order dated 11.07.2022. Challenging the said order dated 11.07.2022, the petitioner has come out with the present Writ Petition.

Case of the Petitioner:

3.The petitioner is absolute owner of the vacant land situated at Marakkanam North Village (Thalangadu Village), Marakkanam Taluk, Villupuram District. The petitioner proposed to develop the said land into a residential plots in the name of “Doctor's Beach Project”. A part of the said land is within Coastal Regulation Zone (CRZ) - II and petitioner



applied to 5th respondent for clearance. On receipt of said application, the 5th respondent referred the matter to the Revenue Department calling for a report on the application. In pursuant to the above, the Tahsildar, Marakkanam Taluk, had requested to conduct joint inspection of the site by Deputy Inspector, Taluk Deputy Inspector, Zonal Deputy Tahsildar and Village Administrative Officer and to file an independent report. The Village Administrative Officer and others inspected the site, verified the records and sent a report stating that patta has been issued for Survey Nos.108/8, 108/9, 108/10, 109/1A5C4, 109/1B2, 109/2B1C4, 109/4A1A4, 115/1B, 115/2B, 115/3B, 115/4B in the name of Executive Officer (Town Panchayat) and confirmed the existence of 15 feet wide mud road in the seaward side of the property of the petitioner from Vasavankuppam to graveyard. All the authorities sent a report after conducting physical inspection and necessary report confirming the existence of 15 feet wide mud road. Based on the said report in the meeting held on 21.02.2019, the District Coastal Zone Management Authority, Villupuram recommended to 4th respondent for issuance of clearance with certain conditions.



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3(a). There are three graveyards and Harichandra Temple is situated in Survey Nos.107/2, 110/6 and 108/1C2. In the report of the Revenue officials, it has been stated that compound of the petitioner is situated at a distance of 60 meters from the tideline and the said layout is found between 200 meters and 871 meters from the tideline. There is a 15 feet wide mud road situated at a distance of 60 meters between the compound wall constructed by the petitioners and tideline, which road has been in use for many years as a passage to the graveyard.

3(b). Further patta for the above land was mutated in the name of the petitioner and there is no Government Poramboke land in the above land. All the villagers use the mud road to reach the graveyard and are carrying the dead bodies in the motorized carts through the mud road to reach the graveyard. The villagers are also using the mud road to go to the Temple. During the enquiry, the villagers confirmed the same. The revenue records and Field Measurement Book (FMB), Sketch and Adangal for the Fasli year 1431 also substantiate the existence of seaward mud road. Adangal for Fasli year 1431 reads “Mud road of Vasavankuppam Village”. The Executive Officer, Town Panchayat Office, Marakkanam, sent a letter dated 23.02.2019 vide



Na.Ka.No.A1/33/2019, to the District Collector, Villupuram stating that the petitioner gifted lands in

(i)Survey Nos.108/2B1A1, 108/2C1J, 108/2C2F – 400 X 15 feet = 6000 sq.ft.

(ii)Survey Nos.109/1A5C, 109/1B, 109/2B1C, 109/4A1A – 265 X 15 feet = 3975 sq.ft.

(iii)Survey Nos.115/1, 2 , 3, 4 – 457 X 15 sq.ft. = 6855 sq.ft.
(Totalling : 16,830 sq.ft.)

in Ward No.1, Vasavankuppam Village, Marakkanam Taluk, which is used by the villagers as road to reach the graveyard. The proposal of the petitioner was placed before the 4th respondent in the meeting held on 27.02.2019 and 21.05.2019. The 4th respondent called upon the petitioner to furnish the details of the plots, which fall in CRZ-II area and outside CRZ-II area and resolved to issue No Objection Certificate for the plots falling outside CRZ-II area. The petitioner complied with the details called for by the 4th respondent and considering the same, the 4th respondent issued No Objection Certificate for the project as per the HTL demarcation map issued by the Institute of Remote Sensing, Anna University, dated 14.12.2018.



3(c).The petitioner applied for grant for CRZ clearance for the plots falling within the CRZ area. The 4th respondent after considering the materials, granted CRZ clearance by the proceedings dated 31.07.2019. On the application by the petitioner, the 5th respondent granted approval for the layout with certain conditions. The Executive Officer, Markkanam Town Panchayat in his proceedings in Na.Ka.No.226/2019/B1 dated 25.10.2019 issued In-Principle approval for the subject project with certain conditions. The petitioner registered the project with the Tamil Nadu Real Estate Regulatory Authority as mandated under the Real Estate (Regulations and Development) Act, 2016. After complying with all the mandatory provisions and conditions, the petitioner sold 75 vacant plots and the purchasers are in possession of their respective plots.

3(d).The 1st respondent already challenged the impugned order by filing application before the Hon'ble National Green Tribunal. The 1st respondent was aware that only an appeal lies against the impugned order and to avoid limitation, filed application. When the Tribunal pointed out that the application is not maintainable, the 1st respondent withdrew the same and filed the present appeal. The 1st respondent has no *locus standi*



to file the appeal and the appeal is barred by limitation. As per the provisions of the National Green Tribunal Act, 2010, the 1st respondent ought to have filed appeal within 30 days of order granting clearance. The 1st respondent has approached the NGT with a delay of two years. The 1st respondent has filed the appeal with ulterior motive.

3(e).The petitioner has obtained all the necessary clearance from the statutory authorities for the present project as provided under law. There is no environmental violation or statutory violation on the part of the petitioner. The Joint Committee has not properly verified the revenue records and the finding of the Joint Committee is contrary to the enquiry made from the local villagers. The local villagers have categorically stated that the mud road is being used by them for long time to carry dead bodies to graveyard from the village, which was also recorded by the Joint Committee in its report. The Joint Committee failed to consider that due to climatic changes, the road was covered with sand deposits and it cannot be said that there is no mud road and it is admitted fact that dead bodies are being taken in a motorized cart which cannot be carried, unless there is a mud road.



3(f).The said statement is in consonance with all the independent and joint inspection reports given by the authorities and non-existence of mud road in the year 2021 will not in any way vitiate the fact that there was a mud road existed two years back in the year 2019, at the time of inspection and layout approval. The 1st respondent filed appeal only with ulterior motive for extraneous consideration.

3(g).The learned Senior Counsel appearing for the petitioner submitted that to protect and conserve the environment and ecosystem on the coastal line of the country under the Environment (Protection) Act, 1986, the Ministry of Environment and Forests (MOEF), the 2nd respondent herein issued a Coastal Regulation Zone (CRZ) Notification, in February 1991, for regulation of activities in the coastal areas. Subsequently, the said Notification was superseded by CRZ Notification 2011. In the Notification 2011, the zones were categorized as CRZ-I, CRZ-II, CRZ-III & CRZ-IV. As per the above Notification, the State Governments have to prepare a Coastal Zone Management Plan (CZMP) for their respective States based on a study conducted by the experts from the National Centre for Sustainable Coastal Management (NCSCM). The plan so prepared has to be approved by the 2nd respondent, the Ministry



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of Environment and Forests (MOEF), based on a recommendation of National Coastal Zone Management Authority (NCZMA).

3(h).The Coastal Zone Management Plan (CZMP) for the State of Tamil Nadu was prepared by National Centre for Sustainable Coastal Management (NCSCM), based on the site inspection and the same was placed before the National Coastal Zone Management Authority (NCZMA), who recommended the same for approval to the 2nd respondent, the Ministry of Environment and Forests (MOEF). The 2nd respondent by the proceedings dated 24.10.2018, approved the Coastal Zone Management Plan (CZMP). The National Centre for Sustainable Coastal Management (NCSCM) has submitted the approved Coastal Zone Management Plan (CZMP) in 117 maps to the Department of Environment on 26.11.2018 and to all the 13 District Coastal Zone Management Authorities and other departments like Chennai Metropolitan Development Authority, Greater Chennai Corporation, Directorate of Town and Country Planning Department, Directorate of Municipal Administration to implement / regulate the activities in CRZ area as per Coastal Zone Management Plan (CZMP) by the letter dated 30.11.2018. The learned Senior Counsel appearing for the petitioner



submitted that the Notification of 2019 has not been approved and notified and not applicable at present. Only 2011 Notification is applicable.

3(i).The petitioner is the absolute owner of the vacant land measuring 86.614 acres, situated at Marakkanam North Village (Thalangadu Village), Marakkanam Taluk, Villupuram District. The petitioner proposed to develop the above land. On verification, it was found that some portion of the land falls within Coastal Regulation Zone (CRZ). Bordering south of petitioner's property, the road is used for a long period of time connecting the village to the graveyard. At the request of the public, the petitioner gifted a portion of the land measuring 16,830 sq.ft to the local body by the gift deed dated 10.01.2019. The revenue record was mutated in the name of the local body to show that local body is the owner. The petitioner is owning 3,64,443.702 sq.mts of land. Out of the said land, the petitioner proposed to develop a layout called "Doctor's Beach Project", to an extent of 1,64,759 sq.mts. On verification, it was found that an extent of 1,01,625 sq.mts of land falling under CRZ-II as per the CRZ Notification 2011. The petitioner applied to



4th respondent under the para 8(i) II, CRZ II (i), (ii) & (iii) of Coastal Regulation Zone (CRZ) Notification 2011.

3(j).Coastal Zone Management Plan (CZMP) of Tamil Nadu confirmed that there were no sand dunes in the proposed layout. The convenor of District Coastal Zone Management Authority, Villupuram, had requested the Revenue Department to furnish a report on the application of the petitioner.

3(k).The petitioner reiterated the averments made in the reply affidavit filed in the appeal before the National Green Tribunal with regard to inspection made by the authorities and filing of report and submitted that all the authorities confirmed the existence of 15 feet wide mud road connecting the Village and graveyard. In the affidavit filed in the present Writ Petition, the petitioner reiterated the averments with regard to limitation made in the reply affidavit and referred to Sections relating to limitation.

3(l).The Tribunal in its order dated 13.08.2021 constituted a Joint Committee comprising of (1) The District Collector, Villupuram; (2) a



Senior Officer from Tamil Nadu Coastal Zone Management Authority;

(3) District Environmental Engineer of Tamil Nadu Pollution Control Board and (4) a Senior Officer from Ministry of Environment, Forest and Climate Change, Integrated Regional Office, Chennai, to inspect the project area and to find out if there is any violation, whether a road exists in the locality and whether any suppression of material facts.

3(m).The Joint Committee inspected the site on 19.10.2021 and filed report stating that

“The committee did not notice any apparent violation of Coastal Regulation Zone Notification in so far as the recommendation for clearance”.

The Committee also recorded that on enquiries, the villagers informed the Committee that they carry the dead bodies along the eastern boundary of layout. The Joint Committee failed to properly verify the revenue records and report is contrary to the enquiries made from local villagers, who have stated that mud road is being used by them for long time and they carry dead bodies through the said mud road.



3(n).Even though, the petitioner properly defended various grounds of challenge by the 1st respondent, the Tribunal without properly considering the same, allowed the appeal filed by the 1st respondent. When the 1st respondent himself has admitted that land in question situate in CRZ-II, the Tribunal erroneously framed such an issue on the back of the parties and without giving any opportunity to the petitioner, allowed the appeal. The Tribunal exceeded its jurisdiction in considering and deciding the issue, which was neither raised in the appeal nor during arguments. The Principles of Natural Justice is violated and therefore, the petitioner is entitled to challenge the said order by filing the Writ Petition in this Court.

3(o).The Tribunal failed to consider only CRZ Notification 2011 will be applicable and not CRZ Notification 2019 dated 18.01.2019, which is yet to be approved and published. Coastal Zone Management Plan (CZMP) was approved and published on 24.10.2018 based on CRZ Notification 2011. The petitioner extracted the portion of CRZ Notification 2011 relating to the lands which fall under CRZ-II category, the learned Senior Counsel appearing for the petitioner submitted that adjacent to the land in which layout is formed is developed area and



about 300 families are residing in Ward No.1 of Marakkanam Town Panchayat (Vasavankuppam Village) with all the facilities. This apart, one hatchery namely, “Pavani Hatchery” is also located nearby. In view of such development, the site falls only in CRZ-II area.

3(p).Coastal Zone Management Plan (CZMP) of Tamil Nadu was prepared by National Centre for Sustainable Coastal Management (NCSCM), based on the site inspection and the same was placed before the National Coastal Zone Management Authority (NCZMA). The Tribunal failed to consider in Coastal Zone Management Plan (CZMP) of Tamil Nadu, there were no sand dunes where the layout is formed.

3(q).The layout is located at a distance of 142 meters measured inward from the compound wall and compound wall is situate at a distance of 60 meters from the tideline and road. The layout is situated at a distance of 202 meters from the tideline.

3(r).The area was declared as CRZ-II category as per the criteria specified in CRZ Notification 2011 and Coastal Zone Management Plan (CZMP) of Tamil Nadu was prepared by the National Centre for



Sustainable Coastal Management (NCSCM) on site inspection. The National Coastal Zone Management Authority (NCZMA), who in turn recommended the same for approval to Ministry of Environment and Forests (MOEF). The Ministry of Environment and Forests (MOEF) granted approval of Coastal Zone Management Plan (CZMP) for the State of Tamil Nadu by proceedings dated 24.10.2018.

3(s).The petitioner had developed only a house site layout and no construction was put up by the petitioner. Clearance was given only based on the existing road and any building to be constructed, must be on the landward side of existing road. The report of the Joint Committee has to be considered in its entirety. The Tribunal erred in upholding the validity of one of its observations while invalidating other observations. This method would amount to miscarriage of justice. The observation of the Committee that there was no CRZ violation has to be upheld and considered together with the observation that there is no existing road on the land. The presence or absence of a road would not amount to any compliance or violation of CRZ-II criteria as per CRZ Notification 2011.



3(t).The Tribunal failed to consider the fact that the categorization of CRZ II was based on the study conducted by the experts of National Centre for Sustainable Coastal Management, which was recommended by the National Coastal Zone Management Authority. The Ministry of Environment and Forests (MOEF) accorded its approval for Coastal Zone Management Plan (CZMP) for the State of Tamil Nadu vide proceedings dated 24.10.2018.

3(u).The Tribunal failed to consider that as per Office Memorandum dated 26.04.2022 issued by the 2nd respondent, Ministry of Environment and Forests (MOEF), the state Coastal Zone Management Authority (CZMA) is the approving authority for permissible activities as per CRZ Notification 2011. The project was approved and clearance was granted on 31.07.2019 with various stringent conditions. Further, based on the CRZ clearance, the State Planning Authority, i.e., Director of Town and Country Planning, has approved the layout and granted approval for the same vide proceedings dated 19.09.2019.

3(v).The Tribunal failed to consider the fact that Clause 4(i)(d) of the CRZ Notification of 2011, whereby construction involving more than



20,000 sq.mts., of built up area in CRZ-II has to be considered for approval in accordance with the EIA Notification, 2006, will not be applicable for the subject site.

3(w).The learned Senior Counsel appearing for the petitioner further submitted that the 1st respondent filed appeal before NGT challenging CRZ clearance dated 31.07.2019 issued to the petitioner on two grounds.

(I)there was no existing road;

(II)the Environmental clearance was not issued by proper application of mind.

3(x).The 1st respondent admitted that land in which the layout is formed by the petitioner is in CRZ-II zone and made specific averments in his appeal that layout is in CRZ-II. While so, the Tribunal framed the following two issues:

(I)Whether impugned location is CRZ-II.

(II)Whether impugned clearance issued by the 3rd respondent is based on proper application of mind and in accordance with law or not.



3(x)(i). As far as first issue is concerned, when the 1st respondent did not dispute that layout is located in CRZ-II and admitted that layout is in CRZ-II, the Tribunal erroneously framed the said issue after hearing the arguments of counsel for 1st respondent as well as petitioner and other respondents. The Tribunal did not put on notice that they are framing such an issue for consideration and did not give any opportunity to the petitioner and other respondents to put forth their submissions and to produce the documents to show that site is located in CRZ-II. Without giving an opportunity, the Tribunal decided the said issue which violates principles of natural justice. The learned Senior Counsel appearing for the petitioner further submitted that principles of natural justice not confined to opportunity of hearing only, but extend to effective hearing and relied on the judgment reported in **(2012) 134 FLR 460 Delhi, (Delhi Transport Corporation Vs. Shyam Singh)**, wherein it has been held as follows:

“...

12.The Supreme Court yet again in Syndicate Bank v. The General Secretary, Syndicate Bank Staff Association (2000) 5 SCC 65 held that the requirements of the principles of natural justice which are required to be observed



are:-

- (i) workman should know the nature of the complaint or accusation;*
- (ii) an opportunity to state his case;*
- (iii) the management should act in good faith which means that the action of the management should be fair, reasonable and just.*

13. It would thus be seen that the principles of natural justice which are required to be observed are not confined to opportunity of hearing alone, giving of opportunity of hearing alone cannot bar the Industrial Adjudicator from interfering with the disciplinary action of the management/employer. If inspite of giving appropriate opportunity of hearing the action of the management is found to be arbitrary and unreasonable, it would qualify as perverse and on which ground it is interferable as also held in Apparel Export Promotion Council v. A.K. Chopra AIR 1999 SC 625.

14. In the present case each of the three reasons given by the Industrial Adjudicator for holding the inquiry to be bad was sufficient for setting aside the same. The Industrial



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*Adjudicator has held that the non-appointment of the Presenting Officer led to the truth having not been unraveled. The principles of natural justice are not confined to opportunity of hearing only but extend to effective hearing. The purport of the order dated 17th December, 2009 of the Industrial Adjudicator is that no effective hearing was possible or held in the absence of the Presenting Officer. We are also of the view that the inquiry can also be held to be bad when the outcome thereof is not in consonance with its content and that is precisely the finding of the Industrial Adjudicator in the present case. The Supreme Court in *M.V. Bijlani v. Union of India* (2006) 5 SCC 88 held the findings of the departmental inquiry to be interferable if there is no evidence to prove the charge or where the relevant facts have not been considered. A Division Bench of this Court also in *Union of India v. S.R. Tewari* MANU/DE/0345/2012 held a finding of the departmental inquiry based on no evidence to be perverse. It was further observed that if on the basis of the material available no reasonable person could have recorded the finding, it would qualify as perverse.”*

3(x)(ii). The learned Senior Counsel appearing for the petitioner



further submitted that the Tribunal erroneously considered the definition of CRZ-II as mentioned in CRZ Notification 2019, instead of CRZ Notification 2011. CRZ Notification 2019 is not yet been approved and published and only CRZ Notification 2011 is in force. In view of CRZ Notification 2019 dated 18.01.2019 has not come into force and Coastal Zone Management Plan (CZMP) approved and published by the 2nd respondent on 24.02.2018 based on CRZ Notification 2011, CRZ Notification 2011 is only applicable to the present case. This has been clarified by the 2nd respondent herein, the Ministry of Environment and Forests (MOEF) circular dated 07.06.2019.

3(y).In the approved Coastal Zone Management Plan (CZMP) of Tamil Nadu, there were no sand dunes in the land where the petitioner formed layout. The contention of the 1st respondent that sand dunes were destroyed prior to Coastal Zone Management Plan (CZMP) is not supported by any documents and it is not proved. If Coastal Zone Management Plan (CZMP) is not correct, the 1st respondent ought to have challenged the said plan. On the other hand, the 1st respondent in the appeal as well as in the arguments admitted that layout is in the CRZ-II Zone. In view of the above materials, the issues framed by the



Tribunal and finding of the Tribunal that land is not in CRZ-II is erroneous.

3(z).The existence of road is pre requisite for granting clearance. In the present case, the villagers and authorities, who inspected the site have categorically confirmed the existence of mud road between the compound wall of the petitioner and seashore. The Joint Committee, inspite of villagers asserting that there exist a mud road, which they use to carry the dead body to the graveyard, erroneously recorded that there is no road.

3(aa).The learned Senior Counsel appearing for the petitioner further submitted that the Tribunal failed to consider that EIA Notification 2006 is not applicable to the present site as the layout is formed about 1,64,755 sq.mts, which is less than 5 lakhs sq.mts as per clause 8b of the Schedule of the EIA Notification 2006. Secondly, the petitioner is not seeking the clearance for any construction and as and when any construction is proposed to be made, necessary clearance as per CRZ and EIA Notification will be obtained.

3(ab). Learned Senior Counsel appearing for the petitioner



submitted that Section 22 of the National Green Tribunal Act, 2010 provides an appeal to Hon'ble Apex Court against the order passed by the Tribunal. The said appeal remedy is only directory and it is not mandatory. By Section 22, the power of the High Court under Articles 226 and 227 of the Constitution of India is not taken away. This issue was considered by the Hon'ble Apex Court in the judgment reported in

(i)2022 SCC Online SC 639, [Madhya Pradesh High Court Advocates Bar Association and another Vs. Union of India and another], wherein it has been held as follows:

“...

11.Insofar as the creation and setting up of the NGT and the location of their Benches, the learned AG submits that this was done under the active supervision of the Supreme Court and only after the proposed places of sitting recommended by the Central Government received the concurrence of this Court, the concerned Benches and their place of sitting was notified by the Central Government. It is therefore argued that the related notification had the imprimatur of the Supreme Court. The respondents point out that the Supreme Court monitored and oversaw the implementation of



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the NGT Act and setting up of its Benches in Union of India Vs. Vimal Bhai (SLP(C) No. 12065 of 2009) and the various orders passed on 19.9.2011, 6.12.2012 and 15.3.2013 by this Court would reflect that individual Bench of the NGT was set up to cater to multiple States and the location so chosen for the NGT at Bhopal, also had the approval of the Supreme Court.

12.The learned Attorney General next contends that the remedy before the High Court for a litigant under Article 226 and 227 continues to be available notwithstanding the enactment of the NGT Act and the provision for appeal to the Supreme Court under Section 22 of the NGT Act. It is specifically submitted by the learned AG that the High Court's power of judicial review remains unaffected by the NGT Act as it is a part of the basic structure of our constitution, as was declared in L Chandra Kumar v. UOI7.

.. ..

.. ..

21. It can further be noted that in terms of the above ratio in L. Chandra Kumar [supra], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution



against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in Whirlpool Corpn. Vs. Registrar of Trade Marks, Mumbai and Others¹²;

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

22. It is also noteworthy that nothing



contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.

B. Whether a seat of the NGT should be in every State? If yes, should they invariably be established at the principal seat of High Court, which in this case would be Jabalpur instead of Bhopal?"

(ii) (2000) 7 SCC 522, (*Shama Prashant Raje Vs. Ganpatrao and others*), wherein it has been held as follows:

“...

5. *In view of the rival submissions we have carefully scrutinised the orders of the Controller,*



that of the Appellate Authority under the Control Order and the order of the learned Single Judge which has been affirmed by the Division Bench. Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the high court will be fully justified in interfering with the findings of



the inferior tribunal.”

and prayed for allowing the Writ Petition.

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Case of the 1st respondent:

4.The petitioner and 6th respondent are jointly promoting the lands in Survey Nos.106/2, 106/3, 106/4, 106/5, 106/6, 108/1, 1-8/2A(p), 108/2B, 108/2C1(p), 108/2C2, 109/1, 109/2, 109/3(p), 109/4, 110/1(p), 110/2(p), 110/3, 110/4, 110/5, 111/1, 111/3, 111/4 situate in Marakkanam North Village (Thalangadu Village), Marakkanam Taluk, Villupuram District as layout and resorts. The said lands are located within the Coastal Zone.

4(a).The Coastal Regulation Zone Notification, 2011, (CRZ Notification), regulate development in coastal areas. The impugned site is classified as CRZ-II as per the Coastal Zone Management Plan (CZMP) of the year 2018.

4(b).As per clause 8 of CRZ Notification 2011, the following activities are permitted in CRZ-II area:

“...II. CRZ-II,



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(i) buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;

(ii) buildings permitted on the landward side of the existing and proposed roads or existing authorized structures shall be subject to the existing local town and country planning regulations including the 'existing' norms of Floor Space Index or Floor Area Ratio:

Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road..."

4(c).For promoting the layout in question, the CRZ clearance is mandatory under Coastal Zone Regulation Notification 2011, as the lands are located within 500 meters from the sea. Without such clearance, the 5th respondent cannot process the application for DTCP approval.

4(d).As per CRZ Notification 2011, promotion of layout are permitted only on the landward side on existing road or existing authorized structures. The petitioner furnished false data as though the road exists between the land and sea. But for false information given by the petitioner, no permission by TNCZMA or DTCP or RERA could have



been issued to the impugned lands. The authorities without physically verifying, have granted CRZ clearance to the petitioner and there is no road in the approved Coastal Zone Management Plan (CZMP) 2018 is available. A Full Bench of this Court in the judgment reported in **2006 (4) CTC 460, [The Union of India (UOI) and Ors. Vs. Member Secretary, Chennai Metropolitan Development Authority and Ors.]**, clarified that CRZ Notification is applicable for all development activities. Hence, No Objection Certificate from the 4th respondent is mandatory for DTCP approval.

4(e). As per the CRZ Notification 2011, the 4th respondent is only a recommending authority for the project and has no power to issue clearance. The 4th respondent in the present case without jurisdiction, acting beyond the powers, had issued clearance. The respondents 4 & 5 without considering the actual and geographical fact of the impugned Survey Numbers, had granted clearance in a mechanical manner. **The authorities considered “mere pathway” which is not developed as road and issued clearance under CRZ Notification** and the same will be destroying the coast throughout the country.

4(f). Even though the area is classified as CRZ-II, there were sand



dunes in the site in question which is evident when compared to the adjacent sites. The said sand dunes were destroyed recently prior to preparation of Coastal Zone Management Plan (CZMP). The 4th respondent acted beyond the delegated powers under Notification, issued the impugned clearance when Notification permits the 4th respondent only to recommend the applications submitted. The petitioner and the 6th respondent owns more than 50 hectares of land and they had not obtained mandatory environmental clearance under EIA Notification 2006.

4(g).The learned counsel appearing for the 1st respondent submitted that he is admitting the following three facts:

(I)There exist mud road between the property of the petitioner and seashore.

(II)The petitioner is the owner of the property. The documents of title filed by the petitioner in the typed set of papers are irrelevant.

(III)For the present case, CRZ Notification 2011 only is applicable and not CRZ Notification 2019.

4(h).The learned counsel appearing for the 1st respondent further



submitted that even though the land falls in CRZ-II area, the 4th respondent has no jurisdiction and has no power to give clearance.

Further, even though the 1st respondent has stated that land in question falls in CRZ-II area, in the land in question, there are sand dunes, which were destroyed prior to preparation of Coastal Zone Management Plan (CZMP), 2018. Even in Coastal Zone Management Plan (CZMP) of 1996, sand dunes was not mentioned. Taking advantage of the same, the petitioner obtained clearance. When there are sand dunes in the locality, no CRZ clearance can be granted.

4(i).CRZ Notification of 1991 was issued to protect the coastal area. As per this Notification, no activity is permitted within 500 meters from High Tide Line. Prior to 1991 notification, there is no restriction in the coastal area. In CRZ-I area, the only activities permitted are construction of light house, harbour, resort, etc., Any area in coastal line of Chennai and Pondicherry like Marakkanam are classified as CRZ-II area. Irrespect of such classification, if there are sand dunes, no CRZ clearance can be given. In the present site, the petitioner has constructed a compound wall, road and buildings and clearance given by the 4th respondent is not correct.

4(j).When construction are made in the area, clearance as per EIA



Notification 2006 and recommendation of 4th respondent is necessary.

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4(k).As per the Notification, any activity on the landward side of the road is permissible. A mud road cannot be construed as a road, it must be developed. The contention of the learned Senior Counsel appearing for the petitioner that he is not constructing any building, but only forming a layout and clearance from EIA Notification 2006 is not necessary is not acceptable. Any innocent purchaser, who want to construct a building has to obtain building permission from the concerned authorities and he has to spend more than Rs.10 lakhs for the same. Even in the Marina Beach, there are service road and no activities are permitted in the service road. For the benefit of differently abled persons, the Government has put up only temporary structure and not constructed any permanent structure. In the Writ Proceedings initiated by Elephant Rajendran, with regard to Elephant corridor, clearance is made necessary even for agricultural activities.

4(l).CRZ Notification 2011 clearly set up elaborate procedure for granting CRZ clearance. As per the procedure, when an application is made to the 4th respondent, the 4th respondent has to examine the



documents in accordance with the approved Coastal Zone Management Plan (CZMP) and in compliance with CRZ Notification, make recommendations within a period of sixty days from the date of receipt of application. The 4th respondent has no power to issue clearance. The 2nd respondent is the authority to issue clearance. The learned counsel appearing for the 1st respondent relied on the judgment reported in **2010 (14) SCC 1, [DLF Universal Limited and another Vs. Director, Town and Country Planning Department, Haryana and others]**, wherein it has been held as follows:

“...

54.It is thus clear that there is no provision in the Act, the Rules or in the licence that empowers the Director to fix the sale price of the plots or the cost of flats. The impugned directions issued by the Director are beyond the limits provided by the empowering Act. The directions so issued by the Director suffer from lack of power. It needs no restatement that any order which is ultra vires or outside jurisdiction is void in law, i.e., deprived of its legal effect. An order which is not within the powers given by the empowering Act, it has no legal leg to stand on. The order which is ultra vires is a nullity, utterly



without existence or effect in law.”

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4(m).The learned counsel appearing for the 1st respondent submitted that this Court can entertain a Writ Petition only on the following four grounds:

- (I) Breach of fundamental right;
- (II) Violation of Principles of Natural Justice;
- (III) If National Green Tribunal exceeds its jurisdiction and
- (IV) If any challenge to vires of statute.

4(n).None of these conditions exist in the present case. The Tribunal has jurisdiction to entertain the appeal and after considering all the materials, passed the order setting aside the order granting clearance. The Writ Petition is not maintainable and the petitioner's remedy is only to approach the Hon'ble Apex Court and relied on paragraph 21 of the judgment reported in *2022 SCC Online SC 639*, cited supra.

Case of the 2nd respondent:

5.The 2nd respondent filed affidavit before the NGT and stated that as per the powers conferred under the provisions of The Environment



(Protection) Act, 1986, the 2nd respondent issued Notification 1991 dated 19.02.1991 for classification of Coastal Regulation Zone (CRZ) and norms for regulating developmental activities. Subsequently, on 06.01.2011, superseding earlier Notification, the 2nd respondent issued another Notification with the objective to conserve and protect the coastal stretches by regulation of developmental activities along the coastal stretches and to ensure livelihood security to the fisherman communities and other local communities, living in the coastal areas. The said CRZ Notification, 2011 was amended from time to time based on representations received and need of the people of said locality. All construction activities / building projects falling within CRZ-II areas shall require prior CRZ clearance from the Competent Authority as per the existing norms of the CRZ Notification, 2011.

5(a).The construction activities in CRZ-II area involving built-up area more than 20,000 sq.m shall attract the provisions of the EIA Notification, 2006 and requires prior composite EC+CRZ clearance from the concerned State Environment Impact Assessment Authority (hereinafter referred to as SEIAA), along with recommendations of the concerned State Coastal Zone Management Authority (hereinafter



referred to as SCZMA). The construction activities in CRZ-II area involving built-up area less than 20,000 sq.m shall require prior CRZ clearance by concerned Town Planning Authority based on the recommendations of the concerned SCZMA.

5(b).The land in question falls in CRZ-II area and the Tamil Nadu State Coastal Zone Management Authority has issued CRZ clearance vide its letter No.Proc No.P1/1721/2019, dated 31.07.2019, subject to specific and general conditions. The powers to implement the Notification either original or delegated are available under the Environment (Protection) Act, 1986, with the State Government and the State Coastal Zone Management Authority (SCZMAs). The CRZ Regulations are to be implemented and monitored (including violations thereof) by the concerned State Coastal Zone Management Authority in accordance with the approved Coastal Zone Management Plans (CZMPs) of the respective State.

5(c).The learned Senior Panel Counsel appearing for the 2nd respondent submitted that both the petitioner and 1st respondent admitted that only 2011 Notification is applicable for the present land. For the



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purpose of implementation and enforcement of the provisions of the CRZ Notification, 2011 and compliance with the conditions stipulated there under, the powers either original or delegated are available under the Environment (Protection) Act, 1986, with the State Government and the State Coastal Zone Management Authority (SCZMAs). The composition, tenure and mandate of State/UT CZMAs, have been notified from time to time by the Ministry. Further, the Ministry vide three Notifications dated 30.09.2022, empowered SCZMAs under Section 5, Section 10 and Section 19 of the Environment (Protection) Act, 1986, to enforce and monitor the provisions of the CRZ Notification. The 4th respondent as per the provisions of CRZ Notification 2011, can exercise the power either original or delegated as per The Environment (Protection) Act, 1986 and the 4th respondent has power to issue clearance as per delegated power. The authorities after following the procedure contemplated in CRZ 2011 and conditions stipulated thereunder, has granted clearance. It is not correct to state that only the 2nd respondent has power to grant clearance, whereas, the 4th respondent is the competent authority as per delegated power to grant clearance. The clearance granted by the 2nd respondent is proper and valid.

5(d).The Senior Panel Counsel appearing for the 2nd respondent



reiterated the averments made in the counter affidavit and submitted that when a built up area is more than 20 thousand sq.mts, clearance as per EIA Notification is required. When a party seeks approval to put up superstructure of area more than 20 thousand sq.mts., they have to get clearance as per EIA Notification 2006 and approval from the authorities under Town and Country Planning Act. As far as 2nd respondent is concerned, there is a mud road which is used by the villagers and layout is in the landward side of the mud road and prayed for passing suitable orders.

Case of the 4th respondent:

6.The 4th respondent filed reply affidavit before the Tribunal. The 4th respondent submitted that the petitioner sent proposal for the proposed Doctor's Beach Project of Residential Plots in S.F.Nos. at S.Nos.106/2, 106/3, 106/4, 106/5, 106/6, 108/1, 108/2A(p), 108/2B, 108/2C1(p), 108/2C2, 109/1, 109/2, 109/3(p), 109/4, 110/1(p), 110/2(p), 110/3, 110/4, 110/5, 111/1, 111/2, 111/3 and 111/4 at Marakkanam North Village (Thalangadu Village), Marakkanam Taluk, Villupuram District. The DCZMA of Villupuram have indicated that the petitioner has proposed to develop 545 Nos. of housing plots for residential purposes.



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The entire layout is on the landward side of the existing earthen burial ground road available for public use, connecting the Vasavankuppam Village and burial ground of Vasavankuppam Village. The project area at S.Nos.108/1, 108/2A(p), 108/2B, 108/2C1(p), 108/2C2, 109/1, 109/2, 109/3(p), 109/4, 110/1(p), 110/2(p), 110/3, 110/4 and 110/5 is falling in CRZ-II comprising in 1,01,625 sq.mts and the area at S.Nos.106/2, 106/3(p), 106/4, 106/5, 106/6, 108/2A(pt), 108/2C1(pt), 109/3(pt), 110/1(pt), 111/1(p), 111/2, 111/3 & 111/4 is falling outside CRZ. The plot area varies between 85 sq.mts and 434 sq.mts. The DCZMA for Villupuram District has recommended for issuance of clearance with certain conditions.

6(a).The authorities sought particulars from the petitioner about plots falling within CRZ-II and plots falling outside CRZ-II.

6(b).As per the HTL demarcation map issued by the Institute of Remote Sensing, Anna University, Chennai – 600 025, dated 14.12.2018. No Objection Certificate was issued to issue planning permission in respect of plots, which are falling outside CRZ areas. The applicant has requested to issue clearance for the layout which is falling in CRZ areas.



As per CRZ Notification 2011, vide para 8(i) II CRZ II (i) & (ii), construction of buildings for residential purposes is permissible only on the landward side of the existing road or on the landward side of the existing authorized structures and the buildings so permitted shall be subject to the local town and country planning regulations as applicable from time to time except the FSI, which shall be as per 1991 level. The proposal was placed in the meeting and authority decided to issue clearance, subject to conditions.

6(c).The 4th respondent filed separate counter affidavit in the present Writ Petition. The learned Additional Advocate General appearing for 4th respondent referred to the averments in the counter affidavit filed by the 4th respondent and submitted that application for the petitioner for CRZ Notification was processed as per the procedure. The Tahsildar, Marakkanam Taluk, Executive Officer, Town Panchayat have reported that there exist a 15 feet wide mud road connecting the Vasavankuppam Village and burial ground on the seaward side of the land in question. Considering all the materials placed in the meeting of the Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) and getting further particulars, the 4th respondent granted clearance for



the project. The 4th respondent is competent authority to issue clearance as per delegated powers with specific conditions.

6(d).The learned Additional Advocate General further submitted that as per CRZ Notification 2011, provisions of Coastal Zone Management Plan (CZMP) entrusted to National Centre for Sustainable Coastal Management (NCSCM), Chennai, which is authorized Institute by the Government of India. The said Institute prepared draft Coastal Zone Management Plan (CZMP) and after conducting public consultation and public hearing, the Government of India approved Coastal Zone Management Plan (CZMP) in October 2018. Based on the approved map, the present area falls in CRZ-II area. There is a compound wall situated at a distance of 60 meters from the tideline and one mud road is also situated on the seaward side of the compound wall, which is confirmed by the Tahsildar, Marakkanam Taluk and Village Administrative Officer and referred to Annexure I & II and prayed for passing suitable orders by this Court.

7.Though notice has been served on the 6th respondent and its



name is printed in the cause list, there is no representation for the 6th respondent either in person or through counsel.

8. Heard the learned Senior Counsel appearing for petitioner, learned counsel appearing for 1st respondent, learned Senior Panel Counsel appearing for 2nd respondent, learned Additional Advocate General appearing for respondents 3 to 5 and perused the entire materials on record.

9. The following are the points to be decided in the present Writ Petition:

(I) Whether the Writ Petition challenging the order of the National Green Tribunal dated 11.07.2022 passed in Appeal No.55 of 2021 is maintainable, in view of Sections 14 and 22 of the National Green Tribunal Act, 2010.

(II) Whether the CRZ clearance given by the 4th respondent is proper and valid.

Point I:



(I) Whether the Writ Petition challenging the order of the National Green Tribunal dated 11.07.2022 passed in Appeal No.55 of 2021 is maintainable, in view of Sections 14 and 22 of the National Green Tribunal Act, 2010:

9(a).The jurisdiction of High Courts to issue Writs under Article 226 and 227 of the Constitution of India is part of basic structure of Constitution. The High Court has power to issue of Writs, not only in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for enforcement of fundamental rights contained in Part III of Constitution of India, but also for any other purposes.

9(b).The High Court has a supervisory power over all the Subordinate Courts and also the Tribunals. The High Court does not act as Appellate Court.

9(c).The High Court under Article 226 of the Constitution of India on the facts of the case has discretion either to entertain or not to entertain the Writ Petition. The High Court has imposed upon itself certain restrictions. When alternate effective remedy is available, the



High Court would not normally exercise Writ jurisdiction. But, it has been held that availability of alternate remedy would not operate as a bar in atleast four contingencies viz.,

(i)Writ Petition has been filed for enforcement of the fundamental rights.

(ii)Where there has been violation of principles of natural justice.

(iii)Where the order or proceedings are wholly without jurisdiction.

(iv)Vires of the Act is challenged.

9(c)(i).Above principles have been confirmed in number of judgments of the Hon'ble Apex Court.

9(c)(ii).The learned counsel appearing for the petitioner submitted that the Writ Petition is maintainable in view of violation of principles of natural justice. The 1st respondent himself admitted that the land in question, where the layout is formed is situate in CRZ-II. The petitioner and official respondents also stated that property is in CRZ-II. None of the parties disputed that the property in question is in CRZ-II. The learned counsel further contended that the Tribunal without any claim of the parties with regard to dispute of the area, framed the issue “Whether



the impugned location is CRZ-II". The Tribunal did not put on notice about framing of such an issue and no opportunity was given to the petitioner to putforth their case to prove that property is located in CRZ-II. The Tribunal violated the principles of natural justice and therefore, the Writ Petition is maintainable.

9(d).The learned counsel appearing for the 1st respondent submitted that even though the 1st respondent stated in the appeal before the Tribunal that the property is located in CRZ-II, he also raised grounds claiming that as there were sand dunes in the property and CRZ clearance cannot be given. At the time of hearing of Writ Petition also, the learned counsel appearing for 1st respondent submitted that the property is in CRZ-II, but sand dunes were destroyed.

9(d)(i). The learned counsel appearing for the 1st respondent did not dispute the contention of the learned Senior Counsel appearing for the petitioner that the issue of location was not raised before the Tribunal or it is not the case of the 1st respondent that he raised the said issue and only after giving opportunity to the petitioner and after hearing the counsel for petitioner,the Tribunal decided the issue of location of the



property in question. The Tribunal has violated the principles of natural justice having framed the issue of location of the property, when parties have not raised the said issue and without giving opportunity to parties, decided the said issue.

9(e).The issue whether the Writ Petition filed challenging the order of the National Green Tribunal is maintainable in view of Sections 14 & 22 of the National Green Tribunal Act, 2010, was considered by the Hon'ble Apex Court in the judgment reported in **2022 SCC Online SC 639, [Madhya Pradesh High Court Advocates Bar Association and another Vs. Union of India and another]**. During the arguments before the Hon'ble Apex Court, the learned Attorney General, who represented the Government contended as follows:

“ ...

12.The learned Attorney General next contends that the remedy before the High Court for a litigant under Article 226 and 227 continues to be available notwithstanding the enactment of the NGT Act and the provision for appeal to the Supreme Court under Section 22 of the NGT Act. It is specifically submitted by the learned AG that the High Court's power of judicial review



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remains unaffected by the NGT Act as it is a part of the basic structure of our constitution, as was declared in L Chandra Kumar v. UOI.”

The Hon'ble Apex Court after considering the rival contentions of the parties and the judgments on this issue, held in paragraph No.22 as follows:

“ ...

22.. It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.”

9(f). The ratio in the judgment reported in **(2012) 134 FLR 460**



Delhi, (Delhi Transport Corporation Vs. Shyam Singh), relied on by the learned Senior Counsel appearing for the petitioner is squarely applicable to the facts of the present case and substantiate the case of the petitioner that Tribunal violated the principles of natural justice.

9(g).In the facts of the case and the judgment of the Hon'ble Apex Court, we have no hesitation to hold that the present Writ Petition challenging the impugned order of the Tribunal is maintainable. The point is answered in favour of petitioner.

Point II:

(II) Whether the CRZ clearance given by the 4th respondent is proper and valid:

9(h).The petitioner sought for clearance for the layout formed by them in the Coastal Area. Earlier there was no Act or Rules controlling the development in the Coastal Area. In view of the lack of control for development in Coastal Area, indiscriminate developments have come up in the Coastal Area affecting the environment in the Coastal Area and fisherman community and other local communities living in the Coastal Area. In order to regulate the development in Coastal Area, the



Environment (Protection) Act, 1986 was passed and Environment (Protection) Rules were framed. As per the provisions of the Act and Rules, the Ministry of Environment and Forest (MOEF) had notified on 19.02.1991, the Coastal Regulation Zone Notification, which classified the Coastal Regulation Zones as I, II, III and IV. This Notification specified the norms for development in each zone. Subsequently, 1991 Notification was superseded on 06.11.2011 by Notification 2011. This Notification was issued in order to conserve and protect the coastal stretches and by regulating developments and to ensure the livelihood of fisherman communities and other local communities living in the Coastal Areas. This 2011 Notification was approved and published on 24.02.2018 in the Gazatee and has come into force.

9(i).Again a Notification was issued on 18.01.2019. This 2019 Notification has not come into force, as the same was not approved and published by the 2nd respondent. Therefore, only 2011 Notification is in force and coastal clearance for development can be given by applying the procedure and conditions contemplated in 2011 Notification.

9(j).The property for which the petitioner has sought for



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development as house site layout is situate in Coastal Area. As per the classification of Coastal Zone, in Notification, the property is in Coastal Regulation Zone (CRZ) - II. The authorities considered the application of petitioner for clearance taking the property situate in CRZ-II. The 1st respondent also in the appeal before the Tribunal stated that the property is situate in CRZ-II. Now, the 1st respondent has taken a stand that there were sand dunes in the property, which were destroyed. In view of sand dunes, CRZ clearance cannot be granted. This stand is contrary to the documents on record and is not supported by any acceptable materials. From the materials on record, it is seen that as per Office Memorandum dated 08.09.2019, Institute of Remote Sensing, Anna University, Chennai – 600 025 and six other Institute / Agencies have been authorised to prepare Coastal Zone Management Plans (CZMPs) and other plans. The Coastal Zone Management Plan (CZMP) prepared by authorised Institute does not mention about any sand dunes in the property in question. The 1st respondent contended that Coastal Zone Management Plan (CZMP) is not correct as the Institute did not properly consider all the materials available and failed to mention the existing sand dunes and the petitioner taking advantage of the failure to mention the sand dunes, has obtained CRZ clearance. If really the existing Coastal Zone



Management Plan (CZMP) is not correct, the 1st respondent ought to have challenged the said plan. The 1st respondent or anybody else has not challenged the Coastal Zone Management Plan (CZMP). In view of the unchallenged Coastal Zone Management Plan (CZMP) in force, the application of the petitioner was rightly considered taking into account the said Coastal Zone Management Plan (CZMP).

9(k). The petitioner proposed to develop their land as residential layout in Marakkanam North Village (Thalangadu Village), Marakkanam Taluk, Villupuram District. The said property is situate in Coastal Regulation Zone (CRZ) - II area. The compound wall of the property is 60 meters from Tideline and layout is between 202 and 871 meters from the Tideline. According to the petitioner, there is a 15 feet wide mud road situate between the compound wall of petitioner's property and Tideline. The said road connects Vasavankuppam Village and graveyard. The said road is used by villagers for many years as a passage including for carrying the dead bodies by motorized carts to reach the graveyard.

9(l). In view of the situation of the property in CRZ-II area, no development can be permitted without CRZ clearance. Both the petitioner and 1st respondent admit that clause 8 of CRZ Notification



2011 is applicable to the present case. The said clause has been extracted supra in paragraph 4(b) of this order while recording submission of the learned counsel appearing for the 1st respondent. As per this clause, buildings shall be permitted only on landward side of the existing road or landward side of existing authorised structures. Only when a person satisfies either one of the above conditions, building activities can be permitted on the landward side. The 4th respondent on receiving application from the petitioner for CRZ clearance, referred the matter to the Tahsildhar, Marakkanam Taluk, requesting him to conduct joint inspection of the site by Taluk Deputy Inspector, Zonal Deputy Tahsildar and Village Administrative Officer and to file a report. As per such instructions, the authorities referred to above inspected the site and submitted separate reports. As per the reports, there exists 15 feet wide mud road connecting Vasanvakkuppam village and graveyard. The Executive Officer is shown as owner of said survey number in which the road is situate. During the inspection by the Revenue Officials, villagers were enquired by the Revenue Officials. The villagers informed them that there exist mud road and they are using the same for many years including for carrying dead bodies by motorised carts. On receipt of the said report, the 4th respondent placed the matter in the meeting of the



Tamil Nadu State Coastal Zone Management Authority (TNSCZMA). In the meeting, it was found that certain plots in the layout are situate in CRZ(II) area and other plots are outside of the said area. In view of the same, 4th respondent sought for certain clarifications and details from the petitioner. The petitioner furnished the details sought for and after considering all the materials placed before it, by the order dated 31.07.2019, granted clearance.

9(m). Challenging the said order, the 1st respondent filed Appeal No.55 of 2021 (SZ) before the Hon'ble National Green Tribunal, Southern Zone, Chennai.

10. The 1st respondent in the said appeal challenged the clearance granted to the petitioner on the following grounds:

(i) The petitioner by furnishing false statement that there exists a mud road between compound wall of the petitioner's property and HTL.

(ii) Authorities did not conduct physical inspection of the property in question and submitted reports in a mechanical manner.

(iii) The 4th respondent is only a recommending authority and has no power to issue clearance. Only the 2nd respondent is the authority to



grant clearance.

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11. As far as grounds (i) & (ii) are concerned, it is the specific case of the petitioner that there exists 15 feet wide mud road between the compound wall of the petitioner and High Tide Line. It is the further case of the petitioner that said road connects Vasavankuppam Village and graveyard and the villagers are using the same for many years. This claim of the petitioner is substantiated by the reports of the Taluk Deputy Inspector, Zonal Deputy Tahsildar and Village Administrative Officer. They have given reports stating that they inspected the site in question and found existence of the mud road between compound wall of the petitioner and HTL. They also stated that the said property is shown as owned by Executive Officer. This report is in consonance of the statement of the petitioner that at request of the villagers, they gifted the land in question to the Panchayat. There is no reason to disbelieve the statement of the said authorities about their physical inspection and finding of existence of the mud road. Further, they have stated that on enquiries, villagers confirmed the existence of the said road. Again there is no reason to disbelieve the statement of the villagers about the existence of the said road. During the argument in the writ petition,



learned counsel appearing for the 1st respondent submitted that existence of the mud path cannot be termed as mud road. The said contention is not acceptable for the simple reason that there is no definition of road in the CRZ Notification 2011. It cannot be said that only a Tar road, cement road etc., will be considered as road as per clause 8 of the CRZ Notification 2011. The dictionary meaning of path includes a track, a way worn by foot steps and **also a road**. National Green Tribunal rejected the claim of the petitioner about existence of the mud road on the ground that a road in the private property cannot be termed as road as contemplated in the Notification. This reasoning is erroneous and is liable to be set aside.

12. Further, the National Green Tribunal also relied on the report of the Joint Committee appointed by the Tribunal. Joint Committee has submitted its report. It is useful to extract operative portion of the said report for better appreciation and the same reads as follows:

“The Joint Committee visited the residential layout site on 19.10.2021. It found it lying within the CRZ-II Zone. Though the plots have been marked on the layout, there has been no construction on any of them. They are all lying vacant. The Committee has also



perused the papers pertaining to the recommendation made by the District Coastal Zone Management Authority, Villupuram District. The recommendation made by this Authority was based on the information that there was a mud road connecting Vasavankuppam Village to the burial ground located beyond the northern boundary of the layout site under reference as reported by the authority concerned. The Committee did not notice any apparent violation of Coastal Regulation Zone Notification, in so far as the recommendation for clearance in the case, as seen from the relevant records.

The Committee inspected the stretch abutting the fenced eastern boundary of the layout. As regards the road claimed to be running on the eastern side of the layout separating it from High Tide Line, the Committee found no such road existing, from the sea front up to the fenced eastern boundary of the layout, it is a seamless sandy stretch. However, the villagers of Vasavankuppam while being enquired, told the Committee that they carry the dead bodies to the burial ground along the eastern boundary of the layout.

In the absence of a road abutting the eastern boundary of the layout, it cannot be claimed that it has come up on the landward side of an existing road. The



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most crucial condition that buildings shall be permitted only on the landward side of an existing road as per CRZ Notification, 2011 is not fulfilled in the case.”

In the first paragraph, the Committee has stated that **“Committee did not notice any apparent violation of Coastal Regulation Zone Notification, insofar as recommendation for clearance in the case, as seen from the relevant records.”**

12(i). Contrary to the said finding, the Committee in the last paragraph has stated that in the absence of the road abutting on the eastern boundary of layout, CRZ Notification, 2011 is not fulfilled in this case. If there is no road between the boundary of the property of the petitioner and HTL, clearance granted by 4th respondent is in violation of CRZ Notification 2011. The Committee having stated that there is no violation of CRZ Notification 2011, has erroneously stated in the last paragraph that condition in the said Notification is not fulfilled. The Committee in their report has mentioned that when they enquired villagers of the Vasavankuppam Village, they informed the Committee that they carry dead bodies to the burial ground on the eastern boundary of the layout. The Committee has not given any reason for not believing the statement of the villagers in this regard. National Green Tribunal has



not considered the first portion of the report of the Joint Committee, wherein the Committee has stated that there is no apparent violation of Coastal Regulation Zone Notification in granting clearance in this matter. The Tribunal only took note of the last portion of the report with regard to non existence of the road and proceeded to set aside the proceedings of the 4th respondent granting clearance to the petitioner. The said reasoning is erroneous.

13. Further, as per clause 8 of CRZ Notification 2011 if any one of the two conditions mentioned therein is in existence, CRZ clearance can be granted for development on the landward side. The first condition mentioned therein is existence of the road between the property of the petitioner and HTL. We have elaborately dealt with existence of the mud road. As far as second condition mentioned in clause 8 is that if property sought to be developed is in developed area, then CRZ clearance can be granted. The petitioner has stated that there are 300 families living in the area in Ward No.1 of Marakkanam Town Panchayat, Vasavankuppam Village with all the facilities and one hatchery namely “Pavani Hatchery” is also located in that area. The 1st respondent did not dispute such a stand taken by the petitioner and has not denied that 300 families are residing with all the facilities and also Pavani hatchery is being run in



that area.

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14. The learned counsel appearing for the 1st respondent contended that the petitioner did not get clearance as per EIA Notification 2006 which burdens the innocent purchaser more than ten lakhs, when they put up construction. This contention is not relevant to the issue in the present writ petition and is not acceptable. The clearance under EIA Notification 2006 is necessary only when a person put up construction of 20000 sq.ft. or more. When the construction is less than 20000 sq.ft., it is sufficient to get CRZ clearance and DTCP approval. In the present case, the petitioner is seeking clearance for the house site layout and not for any construction to be put up in the said land.

15. The learned counsel appearing for the petitioner further submitted that layout consists of 545 plots measuring 1,01,625 sq.mts and the plot area varies from 85 sq.mts (915 sq.ft.) and 434 sq.mts. (4672 sq.ft.) only. The petitioner has already obtained DTCP approval and registered with the Tamil Nadu Real Estate Regulatory Authority as mandated under the Real Estate (Regulations and Development) Act, 2016 (RERA). The copies of the said approval and registration are filed



in the typed set of papers. Learned counsel appearing for the petitioner submitted that in view of the above, the purchasers will not be put to any additional expenses.

16. In view of undisputed contention of the petitioner that area is developed one and layout formed by petitioner is in the developed area, we have no hesitation to hold that both criterias mentioned in clause 8 of CRZ Notification 2011 is in existence and there is no violation of said Notification by 4th respondent in granting CRZ clearance and petitioner has not made any false statement to the 4th respondent for obtaining clearance. We further hold that there is no reason to disbelieve the statement of the Revenue Authorities that only after physical inspection of the site, they have filed report.

17. The next ground of challenge of the 1st respondent is that 4th respondent has no power to grant clearance and he has power only to recommend the clearance and only the 2nd respondent, Ministry of Environment and Forest (MOEF) is the authority to grant clearance. The 2nd respondent appeared before the National Green Tribunal as well as before this Court through the learned Senior Panel Counsel and filed



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counter affidavit. In the counter affidavit, the 2nd respondent, Ministry of Environment and Forest (MOEF) has stated that 2nd respondent has delegated the power to the 4th respondent to grant clearance. The learned Senior Panel Counsel appearing for the 2nd respondent during argument has reiterated the said contention. The 2nd respondent in paragraph 12 of the counter affidavit has stated as follows:

“12.It is humbly submitted that for the purpose of implementation and enforcement of the provisions the CRZ Notification, 2011 and compliance with the conditions stipulated there under, the powers either original or delegated are available under the Environment (Protection) Act, 1986 with the State Government and the State Coastal Zone Management Authority (SCZMAs). The composition, tenure and mandate of State/UT CZMAs, have been notified from time to time by the Ministry. Further, the Ministry vide three Notifications dated 30 September, 2022 empowered SCZMAs under Section 5, Section 10 and Section 19 of the Environment (Protection) Act, 1986 to enforce and monitor the provisions of the CRZ Notification.”

18. In view of the same, CRZ clearance granted by 4th respondent is in order and the contention of the 1st respondent that 4th respondent has



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no power to grant clearance is contrary to the above materials.

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19. For the above reasons, order of the National Green Tribunal, Southern Zone, Chennai, dated 11.07.2022 passed in Appeal No.55 of 2021 (SZ) is liable to be set aside and is hereby set aside. Order of the 4th respondent dated 31.07.2019 in Proc.No.P1/1721/2019 (Annexure-1), granting CRZ clearance to the petitioner is restored and the same is confirmed.

20. In the result, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (R.H., J)
10.03.2023

Index : Yes/No
Neutral Citation : Yes/No

krk/kj

To

1.The Ministry of Environment, Forests and Climate Change,
Rep. by its Secretary,



W.P.No.22733 of 2022

Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi – 110 003.

2.The District Collector,
Collector Office Rd, Moovendar Nagar,
Villuppuram, Tamil Nadu – 605 602.

3.The Member Secretary,
Tamil Nadu Coastal Zone Management Authority,
Panagal Building G.H.Road,
Villuppuram, Tamil Nadu – 605 602.

4.The Assistant Director of Town and Country Planning,
Villuppuram Region,
TADCO Building G.H.Road,
Villuppuram – 605 602.

5.The Managing Director,
Indira Projects and Developments (T) Pvt. Ltd.,
No.116/1, Anna Salai (Behind IDBI Bank),
Saidapet, Chennai – 600 015.

V.M.VELUMANI, J.
and

R.HEMALATHA, J.



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Pre-delivery Judgment
in W.P.No.22733 of 2022

10.03.2023