

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO. 55 OF 2014(WZ)

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)

HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)

In the matter of:

1. PARYAVARAN DAKSHTA MANCH

Having Registration No.F/1985/Thane
Through its Secretary
Prof. Vidyadhar Walwalkar
Having Registered Office at: Gala No.15,
Dadoji Kondadev Stadium,
Thane (West).

2. HOPE NATURE TRUST

Having Registration No.E/3041/Thane
Through its Secretary
Mr. Anil Damodar Kunte
Having Registered Office at: Thane
C/o Rotary Club of Thane,
Second Floor, Sahayog Mandir,
Sahayog Mandir Patha, Ghantali,
Thane (West)-400 602.

3. Prof. (Ms) CIARA CORREIA

Age: 52 Occupation: Service

Address: Owners Court CHS

Flat No.404, IV Floor

J.V.Marg, Uthalsar

Thane (West)-400 601.

Email Id: Clarac 02@yahoo.com

4. Mr. AVINASH BHAGAT

Age: 29 Occupation: Service

Address: 304,R1, Swami Samarth HCS

Opp. Dadoji Konddev Stadium

Thane (West)-400 601.

Email Id: avinashbhagat02@yahoo.com

...APPLICANTS

VERSUS

1. UNION OF INDIA,

Through the Secretary,

Ministry of Environment & Forest (MoEF),

Paryavaran Bhavan, CGO Complex,

Lodhi Road, New Delhi-110 003.

2. Central Pollution Control Board,

Parivesh Bhavan, CBD-cum-Office Complex,

East Arjun Nagar, Delhi-110 0032.

3. MAHARASHTRA POLLUTION CONTROL BOARD,

Kalpataru Point, 3rd and 4th Floor,

Opp. Cine Planet, Sion Circle,

Mumbai-400 022.

**4. MAHARASHTRA STATE ENVIORNMEN
DEPARTMENT,**

Through its Principal Secretary,
Having its office at Mantralaya,
Church gate, Mumbai.

5. STATE OF MAHARASHTRA

Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.

6. DISTRICT COLLECTOR,

Having its office At: Collector Office,
Court Naka, Thane (West) 400 601

Telephone: 022-2534 3636

Fax: 022- 2534 0200

Email ID: Collector.thane@maharashtra.govt.in

Rdc.thane@maharashtra.govt.in

7. THANE MUNICIPAL CORPORATION,

Having Office At:
Opposite Kachrali Talav, 1st Floor,
Mahapalika Bhavan, Chandan Wadi,
Thane West, Maharashtra-400 602.

8. TEHSILDAR

Having Office At:
Opposite of Zilla Parishad Office,
Station Road, Thane West,
Thane-400 601.

Telephone: 022 2533 1164

9. SUNSTREAM CITY PRIVATE LIMITED,

(Formerly known as “**ZEUS Infrastructure
Pvt. Ltd**”)

Akruti Trade Centre, 6th Floor,
Road No.7, Marol, MIDC,
Andheri (East) Mumbai-400093.
Maharashtra, INDIA..

**10. MAHARASHTRA COASTAL ZONE
MANAGEMENT AUTHORITY (MCZMA).**

Through Secretary,
Environment Department,
Room No.217 (Annex),
Mantralaya, Mumbai-400 032.

...RESPONDENTS

Counsel for Applicant (s):

Mr. Pravartak Pathak a/w Mr. Swarup Godbode, Mr. Nikhil Malani.

Counsel for Respondent (s):

Shweta Busar holding for Mr. Ranjan Nehru for Respondent No.1

Manda S. Gaikwad, for Respondent No.2.

Mr. D.M.Gupte a/w Supriya Dangare Mr. B.NI Patil Member Secretary, for Respondent Nos.3 to 5.

Ms. Vrushali L. Maindadi/b Mr. Abhijit A. Desai for Respondent No.7.

Mr. Ramesh Soni a/w Mr.Amit Agashe, Mayuri Kulkarni, Mr. Manoj Wadekar & Associates for Respondent No. 9.

DATE : JANUARY 15th, 2016

J U D G M E N T

1. This Application is filed under [Ss. 14\(1\)](#) read with Section [18\(1\)](#) and [Ss. 15 and 17](#) of the [National](#)

[Green Tribunal Act, 2010](#). Though, Ss.15 and 17, are inapplicable unless adjudicatory process under Section 14 (1), is completed and the Applicants are not directly affected by actions of the Respondents, yet casually they have mentioned both the above Sections in the Application. They claim to be the Members of a Non-Governmental Organization (NGO), registered under provisions of the [Bombay Public Trust Act, 1950](#). They further claim that one of them is Birdwatcher and currently studying biodiversity of Thane creek.

2. Subject matter of the Application is land bearing City Survey No.43(part)/ Gut No.86 (part), CTS No.1913 (P), consisting of 20.7013Ha of eastern of Thane city i.e. (Eastern) Thane creek. This part of the land has been shown in the wetland map prepared by the Central Government. The “wetlands” are part of lands transitional between terrestrial and aquatic system, where the water table is usually near the water surface and land is covered by shallow water. They are life support systems for public members living around and are effective in flood-control, waste water treatment, reducing sediment, recharging of aquifers and natural habitats for variety of birds for shelter and breeding. These saltpans are also used for breeding of fish and other aquatic small species.

The 'wetland' as defined under the [Wetland \(Conservation and Management\) Rules, 2010](#), is an area of Marsh, Fen, peat land and water, natural or artificial, permanent or temporary with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide.

The Thane Creek area is mostly divided into three (3) parts, namely, a) Creek including Mangroves, b) Abandoned Saltpan and (c) Wetlands (Reed Area). The salt pans are classified as "Manmade Wetlands" and there is explicit ban to reclaim or construct in the part of salt pans/wetlands. According to the Applicants, they came across development of buildings in the name of "Sun-stream City Pvt. Ltd" (formerly called "ZEUS Infrastructure Pvt. Ltd"). The project was jointly projected by Akruti City Pvt. Ltd and Mutha Groups. They inquired as to how development was being done within prohibited areas and debris was being dumped in the natural flow of seawater and the wetlands. They also found that Mangroves were being destructed. On inquiry, they came to know that by virtue of Notification dated April, 23rd, 2008, the Ministry of Commerce and Industry (MoCI), declared certain areas of Mulund in favour of the Respondent No.9 and certain areas of village Mulund, Taluka Kurla, as Special Economic Zone (SEZ). They noticed reclamation at the wetlands

during last week of April and first week of May, 2014. As a matter of fact, by exercising powers under [Section 25](#) of the [Environment \(Protection\) Act, 1986](#), the Respondent No.1 (MoEF) issued the [Wetland \(Protection\) Rules, 2010](#), which could not be violated. The development activities facilitated transportation over the wetlands and, therefore, Mangroves were trampled and destroyed. Certain patches of Mangroves dried up, and those were also burnt by the developers. The developer-Respondent No.9, has proceeded with construction activity without following conditions of the permission and the Wetland Rules. Destruction of Mangroves in question/development activities in question falls within category of CRZ-I (ii) and, therefore, there is legal prohibition of any kind of development of the said land. In spite of such clear violations of the CRZ Notifications of 1991 and 2011, the Respondents and particularly the Respondent No.9, had destroyed apart of Thane Creek due to development activity. The Disaster Management Plan has indicated Kopri area of Mulund, as flood prone area. Illegal activities of the Respondent No.9, in the flood prone area would cause more harm to the Respondents in the vicinity. Consequently, the Applicants have sought direction to restore the wetlands by removing obstructions, debris from the wetlands, direction to restrain the Respondents from

encroaching on the land in question, which is indicated as wetland in the wetland map prepared by the Central Government, and direct the Respondents to take step to declare Thane Creek (East) as Wetland Park or conserving the same to maintain protective natural habitat of birds, flora and fauna, in order to maintain biodiversity.

3. _ Respondent No.1- (MoEF), filed reply affidavit of Mr. Amardeep Raju, Deputy Director (P-394). His affidavit reveals that the site falling within Mulund is classified as Coastal Regulation Zone (CRZ)-III, while Thane site has been classified as CRZ-I (ii) in the approved Coastal Zone Management Plan (CZMP) of Maharashtra. The Chairman of Maharashtra Coastal Zone Management Authority (MCZMA), during course of 15th Meeting approved proposal for setting up of SEZ in two districts, namely, CTS No.1913 at Kopri, Thane and CTS No.1320A/18/A, 1320A/18/3, 100 Survey No.39(p) at Mulund (E), Mumbai. The affidavit categorically shows that the sites at Mulund and Thane are contiguous and fall within Coastal Regulation Zone Areas. His affidavit further shows that adjoining site proposed for SEZ is thickly built up and Thane district site saltpan activities have been discontinued and, therefore, it was requested by the MCZMA to recommend reclassification of the site

from CRZ-I(ii) to CRZ-III. The MoEF/MoEF accepted the proposed and issued letter dated 21st March, 2007 in this behalf. The reclassification of CRZ is done in good faith.

4. The affidavit of Developer is to the effect that the Application is barred by limitation and, therefore, is liable to be dismissed. The Developer further would submit that development of non-polluting industries is permissible activity in the CRZ area. The Developer further would submit that it has not destructed any wetland nor has reclaimed the land for construction activities. According to the Developer, there is no systematic destruction of Mangroves and drying up of the wetlands due to construction activity undertaken by the project. The case of Developer is that the construction activity is approved by the MCZMA and the Municipal Corporation and is not at all likely to destroy the birds nesting, flora and fauna, as alleed by the Applicants.

5. Mr. Ajay Fulmali, Scientist-I, attached to Environment Department of State of Maharashtra, filed reply affidavit on behalf of said Authority. It is contended that reclassification of CRZ-I(ii) into CRZ-III, was permitted by the MoEF, on rational basis and, therefore, construction activity of the Developer is permissible under provisions of the **Coastal**

Regulations. It is pointed that the Developer has obtained Environmental Clearance (EC), stating as IT/ITSEZ with necessary terms and conditions at village Kopri (Thane). The Developer (Respondent No.9), by his affidavit also has adopted the same stand. The other pleadings need not be set out, because question for determination, in this Application, lies in a narrow compass.

6. The real question is as to whether reclassification of CRZ-I(ii) of Thane district area, could be done (changed) and by virtue of Notification dated 27th September, 1996, the MoEF, could change the CZMP of Maharashtra, which was approved earlier to declare that subject matter the site comprising of 20.7Ha at Thane, could be reclassified as CRZ-III from CRZ-I(ii) for the reasons shown in the Minutes of Meeting held on 15th and 16th March, 2007 of the National Coastal Zone Management Authority (NCZMA), in the context of Agenda Item No. IV ?

7. So far as reclassification is concerned, the affidavit of MoEF, which is referred to above, clearly shows that the land at Kopri, consisting of 20.7Ha at CTS No.1913, is reclassified from CRZ-I(ii) to CRZ-III. This reclassification process is apparently carried out at instance of the Project Proponent (PP). The communication of MCZMA dated 2nd August, 2007, to

the Secretary, MoEF, reveals that the PP of both the proposed lands (Mulund and Thane) demonstrated that there was no physical and geographical difference as between two properties, except that the boundary between Mumbai and Bruhn-Mumbai Municipal Corporation, passes between the said properties. The sites shown by the Authorities continues, but CRZ classification of the properties on both sides of border differs. Therefore, the PP has requested that in the property bearing CTS No.1913, Kopri (Thane), be reclassified as CRZ-III. The MCZMA discussed the issue in the 13th Meeting held on 7th July, 2007 and recommended the proposal for such reclassification with necessary terms and conditions. This letter communication does not give any substantive reasons for reclassification of the property as CRZ-III, from CRZ-I(ii), in the context of CTS No.1913 of Kopri (Thane), except and save what the PP demonstrated to MCZMA. Obviously, we called for MoEF to explain legal provisions for reclassification of CRZ area, parameters to be applied and whether the impugned reclassification of Kopri CTS No.1913, was effective by applying such parameters. His reply affidavit in the context of such query gives certain interesting information. First, he has set out how the CRZ-I, CRZ-II, CRZ-III and CRZ-IV, areas are identified and designated under the CRZ

Regulations. His affidavit (P-563) shows that the States and Union Territories (UTs), are bound to prepare draft CZMP, as per provisions of the CRZ Notifications. He states that in view of decision of the Apex Court in the case of [M.C. Mehta vs Union of India & Ors](#) the CRZ area has to be demarcated by the MoEF and CZMPs in the coastal stretches were accordingly prepared by the MoEF on 27.9.1996. It follows, therefore, that the State Government has no authority to change CZMP, in relation to any loco of CRZ area. His affidavit shows that the MoEF was informed that the saltpan activity in the land CTS No.1913 at Kopri (Thane), had been discontinued. The plot is contiguous portion of the property in Mulund, which is within CRZ-III area. There are no Mangroves on the proposed site, nor does that part fall in intertidal area. Hence, the change of CRZ-I(ii) to CRZ-III, was permitted.

8. Now, it is pertinent to note that the coastal line was identified and demarcated on basis of report of the Centre for Earth Science Studies, Chennai. The MCZMA seeks to rely upon another report about wetland and Thane creek area, prepared by NIO, Goa. Both are accredited Agencies. Naturally, the MCZMA, should have given due and substantive reasons to

accept one of the report showing as to how it has got edged over another report.

9. It is pertinent to note that by order dated September 1st, 2015, we directed Sh. Sujit Kumar Srivastva to give due explanation about the procedure adopted in reclassification of CRZ area. He was found to be unable to explain the procedure for reclassification of the CRZ area. All said and done, merely because it will have contiguous with CRZ-I(ii) would not have been changed when final CZMP was prepared by the Authority in 1996 and that too by taking such administrative decision in a Meeting. In our opinion, reclamation of the land is likely to cause destruction of Mangroves, saltpans and will endanger environment. Therefore, the entire exercise of such reconversion or reclassification will have to be relooked by the MoEF. Under these circumstances, we partly allow the Application as follows:

- i) We direct that the MoEF shall take independent decision regarding reclassification of subject-land at Kopri from CRZ-I(ii) to CRZ-III, on basis of available legal parameters and if so required after obtaining necessary factual report from the Collector, Thane, who may take help of DSLR, to examine status of development and

Mangroves at the site and give appropriate report regarding existence of Mangroves-distance and height, existence of saltpans, natural habitats of birds, breeding grounds of birds, breeding areas of fishes and other aspects and whether it is essential and permissible to reclassify the subject-land on practical basis to CRZ-III, from CRZ-I(ii) for certain significant reasons, which will not cause harm to ecology and environment. Such a decision be taken within three (3) months.

ii) The Developer may proceed with the development subject to condition that in case of adverse order in the Application, he will not claim any equity and will inform the buyers accordingly. There will be no request for expansion or modification of the project during pendency of the reclassification proposal.

iii) The MoEF and MCZMA shall carry out inspection at the construction site to ensure compliance of CRZ/EC conditions and Environmental Regulations on quarterly basis. Till further orders these CRZ clearance order and EC are suspended.

iv) The Application is, accordingly,
disposed of with no order as to costs.

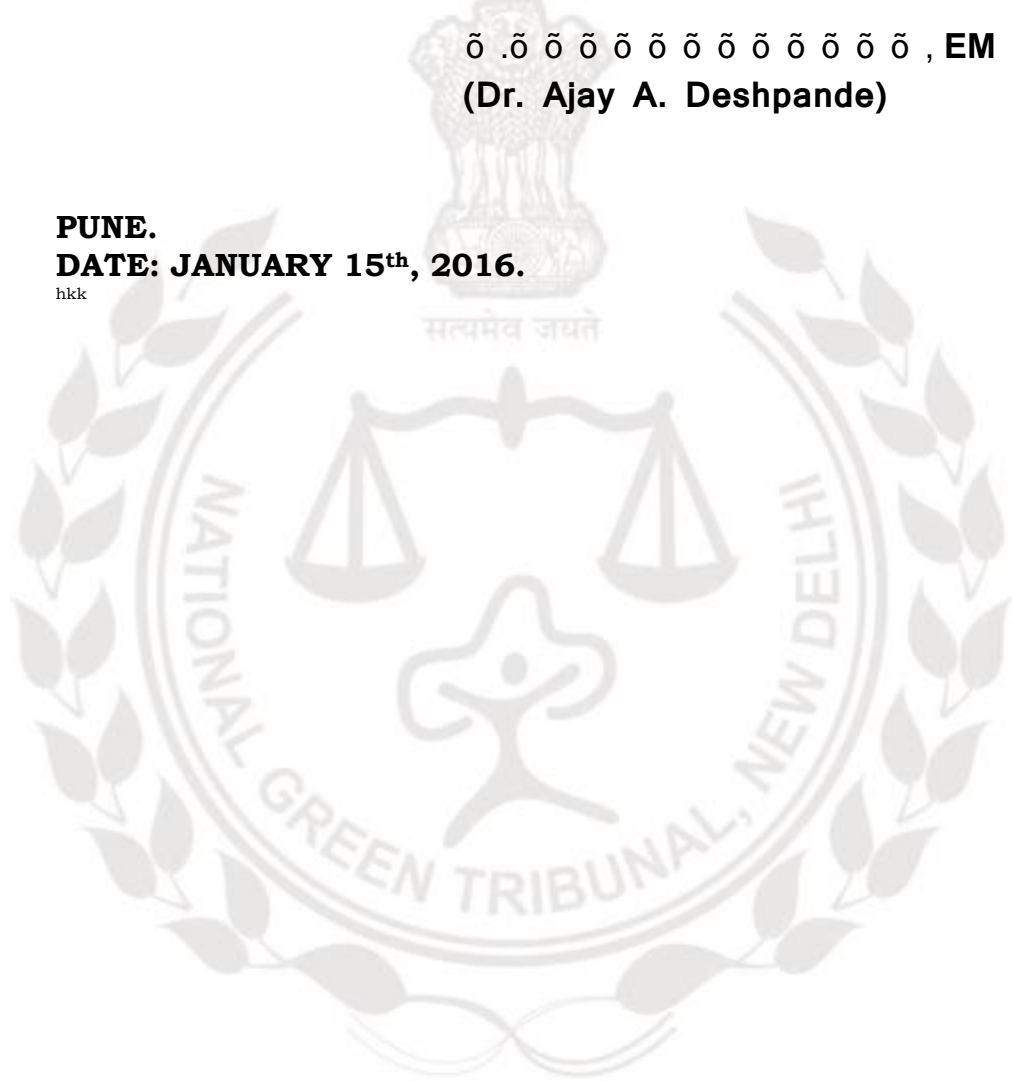
....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay A. Deshpande)

PUNE.

DATE: JANUARY 15th, 2016.

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