

(Pune Bench)

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

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

**ORIGINAL APPLICATION NO.74 OF 2022 (WZ)**

Navi Mumbai Environment Preservation Society,  
A Society registered under the Societies  
Registration Act, 1860, bearing Registration  
No. MAH/1208/12 Thane, through its  
& having its office at  
205, CITI Tower, "C" Wing, Plot No.55,  
Sector 15, CBD Belapur, Navi Mumbai – 400 614

.... **Applicant**

**Versus**

1. City and Industrial Development Corporation  
Of Maharashtra (CIDCO), through  
its Managing Director and having  
its office at CIDCO Bhavan,  
CBD Belapur, Navi Mumbai – 400 614
2. Maharashtra Coastal Zone Management Authority,  
Through its Chairman and having its office at  
Environment Department,  
Room No.217, Mantralaya,  
Mumbai, Maharashtra – 400 032
3. State of Maharashtra,  
Through its Environment Department and  
Having its office at Madam Cama Road,  
Mantralaya, Mumbai – 400 032
4. Union of India,  
Through Ministry of Environment, Forest  
And Climate Change,  
Government of India,  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi – 110 003

....**Respondents**

**AND**

**ORIGINAL APPLICATION NO.75 OF 2022 (WZ)**

1. Rekha Sankhala,  
12/801, NRI Complex, Nerul,  
Navi Mumbai – 400 706
2. Manmeet Singh Khurana,  
16/902, Seawoods Estates, NRI Complex,  
Nerul, Navi Mumbai – 400 076
3. Ritu Mittal,  
42/1002, NRI Complex,

Nerul, Navi Mumbai – 400 076

4. RK Narayan,  
12/101, NRI Complex,  
Nerul, Navi Mumbai – 400 076
5. Mahendra Singh Panghaal,  
A-1/702, Sneh CHS Ltd. Plot No.16,  
Sector 19A, Nerul, Navi Mumbai – 400 076
6. Anjali Agarwal,  
12, 402, NRI Complex,  
Nerul, Navi Mumbai – 400 076

.... **Applicants**

**Versus**

1. City and Industrial Development Corporation  
Of Maharashtra (CIDCO), through  
its Chairman and Managing Director,  
Nirmal, 2<sup>nd</sup> Floor, Nariman Point,  
Mumbai – 400 021
2. Union of India through the  
Ministry of Environment, Forest  
And Climate Change,  
Paryavaran Bhavan, Jorbagh Road,  
New Delhi – 110 003
3. State of Maharashtra  
Through the Environment Department,  
Room No.217, New Administrative Building,  
Mantralaya, Mumbai – 400 032
4. Maharashtra Coastal Zone Management Authority,  
Through its Member Secretary,  
Environment Department,  
Room No.217, New Admin. Building,  
Mantralaya, Mumbai, Maharashtra – 400 032

....**Respondents**

**APPEARANCE :**

**O.A. No.74/2022 (WZ) :**

Applicant : Mr. Zaman Ali, Advocate

Respondents : Ms. Ayushi Anandpara, Advocate along with  
Mr. Shivshankar Swaminathan, Advocate and  
Dr. Priya K., Senior Planner, CIDCO for R-1  
Mr. Aniruddha Kulkarni, Advocate for R-2  
and R-3  
Mr. D.M. Gupte, Advocate for R-4

**O.A. No.75/2022 (WZ) :**

Applicants : Mr. Akash Rebello, Advocate along with  
Ms. Meenaz Kakalia, Advocate

Respondents : Ms. Ayushi Anandpara, Advocate along with  
Mr. Shivshankar Swaminathan, Advocate and  
Dr. Priya K., Senior Planner, CIDCO for R-1  
Mr. D.M. Gupte, Advocate for R-2  
Mr. Aniruddha Kulkarni, Advocate for R-3  
and R-4

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

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**Reserved on : 15.09.2023**

**Pronounced on : 11.10.2023**  
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### **JUDGMENT**

01. Since the prayers made in both the Original Applications are identical and relate to the same plot i.e. Plot No.2A, Sector 54, 56 and 58 of Nerul (West), Navi Mumbai, except the applicants being different, these Applications are being decided by this common judgment.

**Original Application No.74/2022 (WZ) :**

02. This application has been moved with the prayers that respondent No.1 (CIDCO) be restrained permanently from selling, transferring or granting any leasehold rights on the CRZ-I and CRZ-II affected areas of Plot No.2A, Sector 54, 56 and 58 in Nerul (West), Navi Mumbai for the purposes of construction of residential and commercial buildings/structures; further direction be issued to respondent No.1 to restrain from taking any further action under e-tender scheme in respect of the said plot.

03. The facts of this case, in brief, are that the applicant is a registered Society under the Societies Registration Act through Mr. Anupam Verma, who is authorized signatory on behalf of the said Society, who alleged that respondent No.1 – CIDCO, which is a special Planning Authority for Navi Mumbai under the Maharashtra Regional and Town Planning Act,

1966 ("MRTP Act", for short), leases various plots of lands which are under ownership and control for development purposes in Navi Mumbai. The plot number in question mentioned above admittedly falls in CRZ-I and CRZ-II as per CRZ Notification, 2011. This plot falls on the seaward side on the existing road under the Development Plan as existed in 2011 as well as in the latest Development Plan. Therefore, this plot attracts the prohibition for grant of any building permission under Clause 8(II)(i) of CRZ Notification, 2011. Despite being aware of the same, respondent No.1 has proceeded to e-auction this plot to the builders and developers for construction of residential and commercial buildings. Plot No.2A is designated as "No Development Zone" under the Development Plan of 2011 and also 2020. It is clearly reflected from this Development Plans that the said plot falls on the seaward side of the existing road, which is used by local residents as playground. This plot admeasuring 25,138.36 sq.mtrs. is located in Sectors 54, 56 and 58 of Nerul (West), Navi Mumbai and surrounded by thick mangrove forests on its South, DPS Lake on its East and NRI Complex on its West/North, of which respondent No.1 is the owner and accordingly, has prepared various Development Plans for the said plot.

04. It is further submitted that as per the Coastal Zone Management Plan (CZMP) of Navi Mumbai, the plot in question has been earmarked for (i) partly CRZ-I by virtue of the said plot falling within 50 mtrs buffer zone of mangroves; and (ii) partly CRZ-II. Copy of CZMP prepared for Navi Mumbai under the CRZ Notification, 2011 is annexed as Annexure A-5. Clause 8(II)(i) of CRZ Notification, 2011 provides as under:

*"buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures."*

05. Further it is submitted that respondent No.1 has floated an E-tender scheme some time in July and is now seeking grant of lease of the said plot to builders and developers for the construction of residential and commercial buildings. The bid opening date for the said e-auction was fixed on 22.08.2022 after which it was likely that third-party rights would be created. This action on the part of respondent No.1 is nothing but mala fide intention in order to earn the money through Earnest Money Deposit (EMD). Hence, the above prayers have been made.

**Original Application No.75/2022 (WZ) :**

06. This application has been filed by six applicants, who are residents of NRI complex and the nearby area, who have raised the same issue of E-tender by respondent No.1 for lease of 16 plots of land for “Residential and Residential-cum-Commercial Use” at various nodes of Navi Mumbai. Out of 16 plots, which are sought to be auctioned, is plot No.2A located in Sectors 54, 56 and 58 of Nerul node, which is also subject property of Original Application No.74/2022.

07. It is further submitted in this application by the applicants that the said plot No.2A is bounded on the South by Thane Creek and thick mangroves. Towards the East, it is bounded by an estuary of the Thane Creek. Before the land around this plot was developed by CIDCO inhibiting the natural flow of tidal water, it used to be inundated with water during the high tide and DPS lake is adjacent to the said plot and is listed as a wetland by the Bombay Natural History Society for significant destination for flamingos. 2/3<sup>rd</sup> of the plot falls within the coastal regulation zone demarcated under the CRZ Notification, 2011. The auction notice itself indicates that part of the plot falls within CRZ-IA and CRZ-II as a thick patch of mangroves is located in close proximity to the said plot. A part of this area is located in mangrove buffer zone. The Development Plan (D.P.) of Navi Mumbai was sanctioned by the State

Government in 1980. Since then, respondent No.1 has, through modifications under Section 37 of the MRTP Act, amended the DP from time to time. The DPs are available on the website of respondent No.1 of the years 2008, 2012 and 2021, all indicate that plot No.2A falls within “No Development Zone”. The only road indicated on the said DPs is Palm Beach road located to the north of the said plot. The nodal plan prepared by respondent No.1 indicates that the said plot is reserved as an ‘open space’. Copy of the nodal plan for Nerul Node is annexed as Annexure A-6. In the cadastral level maps prepared by respondent No.1, the DPS lake is shown as significant wetland, which has been shown as ‘proposed higher FSI Zone Future Development’, which is annexed as Annexure A-7. The attempts made by respondent No.1 to lease out the area for development would impact the ecologically sensitive area adversely. Therefore, respondent No.1 should be stopped from auctioning the plot in question. The other facts are almost the same which have already been stated by us while dealing with the facts of Original Application No.74/2022.

08. Vide order dated 22.08.2022, we had directed the Registry to issue notices to the respondents, who were served as per the service-affidavit filed by the applicants.

09. The stand taken by respondent No.1 – CIDCO, as per their affidavit dated 14.11.2022 filed in O.A. No.74/2022, is that this Tribunal has no jurisdiction to restrict the alienation of land. The tender issued by respondent No.1 itself provides sufficient safeguards to ensure protection of the environment. The tender makes full disclosure that plot No.2A falls in CRZ area as per CZMP 2011 and that the successful bidder would be required to obtain necessary approval from the competent authority for carrying on any construction/development work. No imminent construction is going to take place as the tender issued by respondent

No.1 is only for the purposes of leasing out the plots to successful bidders, who thereafter would take steps to develop or carry out construction on the said plots. CRZ Notification, 2011 in no way prohibits the sale of lands and is limited to only monitoring the development in the CRZ area. Therefore, the applications are premature.

10. Further it is submitted by respondent No.1 that according to regulation of developmental activities under CRZ Notification, they are required to be ascertained on the basis of the CZMP and not Navi Mumbai Development Plan as has been submitted by the applicants. On perusal of CZMP approved under the CRZ Notification, 1991 and thereafter under CRZ Notification, 2011, it is clarified that only small part of plot No.2A falls under CRZ-IA, which is 50 mtrs wide from mangrove buffer zone. It is denied that there are any mangroves within plot no.2A. Though there are constraints in carrying out development in the mangrove buffer zone, but there is no restriction imposed by law, regulation or order in force towards inclusion of mangrove buffer zone as part of a larger plot. In fact, the Hon'ble High Court of Bombay, vide order dated 01.11.2018 passed in PIL 218 of 2013, has clarified that "only area of 50 mtrs shall be kept free of construction except construction of compound wall/fencing for its protection". Accordingly, apart from the above constraints in the area of 50 mtrs buffer zone under CRZ-IA, there is no impediment in law for construction or development on the land of such large plot. A copy of the order passed by the Hon'ble High Court is annexed at Annexure-R-3.

11. Further it is submitted that by perusal of CZMP, it is clear that only part of the plot No. 2A falls in CRZ-II, wherein as per Clause 8(II) of CRZ Notification, 2011, construction of buildings in CRZ-II areas is only permitted either on the landward side of the existing road or on the landward side of existing authorized structures in accordance with the

Town and Country Planning Regulation (TCPR) of 1991. The applicants have wrongly placed reliance on the map/plan prepared per Navi Mumbai Development Plan, which shows only major city roads, that Plot No.2A is on seaward side of the existing road and hence, construction of buildings on plot No.2A would not be permitted. This allegation is wrong, untenable and contrary to the CZMP for Navi Mumbai. Perusal of CZMP of Navi Mumbai would demonstrate existence of an existing road on the southern/seaward side of plot No.2A, resulting in Plot No.2A falling on the landward side of the existing road, hence, amenable to the development under Clause 8(II) of the CRZ Notification, 2011. Further it is mentioned that CZMP would also demonstrate that the plot in question is adjoining authorized existing structures being the NRI Housing complex on the landward side of the same existing road and is sharing a common compound wall and hence, plot No.2A being on the landward side of existing authorized structures would fulfill the criteria as laid down in Clause 8(II) (i) of the CRZ Notification, 2011.

12. It is further submitted that apart from the area, which is affected by CRZ-IA, substantial part of plot No.2A is either under CRZ-II or unaffected by CRZ. Accordingly, there is no restriction on the development and construction on plot No.2A to the extent the same falls in CRZ-II and non-CRZ area. Further it is mentioned that even draft CZMP prepared under CRZ Notification, 2019, the present area of plot No.2A falling under CRZ-II would become non-CRZ area and the construction thereon would be permissible. The said CZMP prepared under CRZ Notification, 2019 is annexed as Annexure-R-4.

13. Based on above facts, it is mentioned that the development/construction of plot No.2A is within the ambit of CRZ Notification, 2011 which ought to be permitted.

14. Further it is submitted that as per allegation of the applicants, plot No.2A falls in 'No Development Zone' as per Navi Mumbai Development Plan. In this regard, it is submitted that the Development Plan referred to by the applicants was sanctioned on 18.08.1979 under Section 31 of the MRTP Act in which, exercise for preparation of the Development Plan was undertaken in the 1970s when there was no law with Central level with regard to protection of environment, particularly with respect to the coastal area. At such time, while designating the land use zones in the Development Plan for the area of about 344 sq.kms., no physical survey of each land parcel was carried out and the lands were only surveyed subsequently at the time of taking up for development. In absence of the advanced survey technologies at that point of time 34.2 sq.kms. (almost 10% of the total new town area) conceptually comprising the inter-tidal areas were broadly earmarked in an indicative manner as 'No Development Zone' in the Development Plan that was sanctioned.

15. It is further submitted in the reply-affidavit that subsequently, in 1991, MoEF promulgated the CRZ Notification for preparation of CZMPs. The Chief Hydrographer, Government of India was designated for delineation of High Tide Line, Low Tide Line and inter-tidal areas in Navi Mumbai. Based on this delineation, the CZMPs were prepared and finalized. After finalization and approval of the CZMPs, the ecologically sensitive areas were mapped thereon. The said maps were followed for the purpose of ascertaining whether a particular land could be developed or not. As per the CZMP, the land in question is categorized (probably means residential area) under built-up and in a plain area and not part of any inter tidal area.

16. Further it is mentioned that the Navi Mumbai Municipal Corporation Draft Development Plan published on 10.08.2022 no longer shows the plot in question to be 'No Development Zone' but has been

shown partly as 'social facility' and partly as 'garden'. A copy of the same is annexed at Annexure-R-5. Respondent No.1 has filed an objection to the said Draft Development Plan published by Navi Mumbai Municipal Corporation based on the CRZ status and the order passed by the Hon'ble High Court in PIL 22/2021 and 37/2021 upholding CIDCO's power as the NTDA and the Planning Authority.

17. It is further submitted that the appointment of CIDCO as the New Town Development Authority under Section 113(3A) of the MRTP Act, 1966, is exclusively entitled to take steps for the development of the undeveloped plots, including the power to assign the use of the plots, dispose of the plots and also grant necessary permission for development/usage.

18. As regards plot No.2A being water body adjacent to DPS lake which falls within Thane Creek Flamingo Sanctuary, it is submitted that the same is erroneous. It was once a salt pan land as shown in the Cadastral Village maps. Due to stagnation of seasonal water in that area, water had accumulated and hence this is not a natural lake. The area under reference is also dry area. The water body adjacent to DPS, pursuant to the orders passed by the Hon'ble High Court of Bombay in PIL No.218 of 2013, has been preserved and restored and has not been identified as a 'wetland' as per the Brief Document prepared by the District Collector for approval of the Government of Maharashtra, pursuant to the directions of the Hon'ble High Court in PIL 87 of 2013. In any case, the said water body is situated at a distance and is separated by 30 mtrs wide road from the plot in question. Therefore, the development permission on the said plot will not effect the said water body. Further it is submitted that the said plot is not a part of Thane Creek Flamingo Sanctuary sanctioned as per the Gazette notification dated 14.10.2021 and lies about 8 kms to South-East of the said

sanctuary. Further it is mentioned that keeping in mind the Baseline Survey of Birds at the proposed Navi Mumbai International Airport Annual Report-III for January to December, 2014, prepared by the Bombay Natural History Society, it has been recommended that 'attempts should be done to make the proposed Navi Mumbai International Airport site and adjoining areas non-attractive to the birds'. In response to the tender for the plot in question, three financial bids were received and only the process of awarding the tender on evaluation of the bids remains to be done which exercise has been halted pursuant to the interim order dated 22.08.2022.

19. The stand taken by respondent No.2 – MCZMA, vide their affidavit dated 17.11.2022, is that prima facie on comparing the CZMP and the google image, it is observed that the area in dispute i.e. plot No.2A located in Sectors 54, 56 and 58 of Nerul falls partly in CRZ-I and partly in CRZ-II area. In order to determine the exact CRZ status of the subject plot, its demarcation is required to be got done from one of the authorized agencies of MoEF. Pursuant to the said submission on the part of respondent No.2 – MCZMA, we had directed the MCZMA to get the map prepared on scale of 1:4000 from National Centre for Sustainable Coastal Management (NCSCM) and the NCSCM has submitted its draft report on 11.07.2023, wherein in summary and conclusions, it is recorded that as per the field survey conducted during February, 2023, the south part of the proposed project boundary falls on CRZ-IA (50 mtrs. mangrove buffer zone) and CRZ landward of HTL (CRZ II) categories. It is also observed therein that in existing road, creek side of the proposed project boundary was observed.

20. Pursuant to the said report, which was considered by us in our order dated 12.07.2023, we had directed the applicants to file objection against the same, which is filed through their affidavit dated 11.09.2023

wherein it is submitted that the report submitted is only a final draft report and not a final report and that it does not bear any date or signature of any officer/scientist. No entry number demonstrates that the same is from the file of NCSCM. Therefore, it should be held to be inadmissible. It is further mentioned that the Senior Planner of CIDCO – Dr. Priya K., who was present before the Tribunal, had stated that the said report should be treated to be a final report, to which it is submitted that the CIDCO has no role in deciding the said report to be taken as a final report because NCSCM is an autonomous expert institution under the MoEF&CC. Therefore, it is only the NCSCM either itself or through MoEF&CC which can inform this Tribunal about this report to be treated as final. Secondly, the said report is not prepared at the behest of CIDCO, rather it has been prepared in pursuance of the letter dated 15.02.2022 issued by the Under Secretary, Environment Department of the State of Maharashtra to the Director of NCSCM seeking the CRZ map on the scale of 1:4000 of the plot in question. Further it is submitted that the report confirms the plot in question to be affected by CRZ-I as the project boundary covers mangroves i.e. 50 mtrs buffer zone and by CRZ-II on the basis of approved CZMP map and field verification by its scientific team. And that the landcover around the site comprises of mangroves and water-bodies. Therefore, it is clear that the plot in question is affected by CRZ-I and CRZ-II. At the time of issuance of CRZ Notification, 2011, the Development Plan was in operation which reveals that the plot in question continued to be earmarked as a 'No Development Zone' and falls on the seaward side of the existing road, which is indicated in the red coloured line and runs north of the said plot. Subsequently, in the Development Plans of 2012 and upto 2020, no proposed roads or new roads have been earmarked on the said plot. Therefore, the plot always remained on the seaward side of the existing

road. The alleged reference to a road in figure “3” prepared by NCSCM is not found on any of the Development Plan or CZMP as existing or proposed road, for the simple reason that the dirt-laden patch cannot be termed as a road as this patch is an isolated and a solitary patch that has no connection to any road in any direction and connects to anywhere. As held by the Hon’ble Apex Court, the words “existing road” will have to be interpreted to mean “the road which was existing as on the date of promulgation of the CRZ Notification, 2011”. Therefore, the Development Plan of Navi Mumbai as existed on January, 2011 demonstrated that no road exists to the south of the plot and therefore, the plot falls on the seaward side of the existing road and attracts the restrictions on building permissions on the CRZ-II portion. It is further emphasized that the road shown by NCSCM has no route, as it does not lead to or connect from one place to another and no vehicle of any kind has ever used the said road for any travel. The said road is merely an isolated patchy path which is unusable and non-operational. The Cambridge dictionary defines a road to mean “a long, hard surface built for vehicles to travel along”. The final report is required to be produced by respondent No.1 or the MoEF and until then, the genuineness of the document cannot be presumed.

21. We make it clear that the final report has been filed by the NCSCM, which is at pages 380 to 389, wherein there is no date and signature below the summary and conclusions and the maps attached therewith are the same as were attached with draft final report.

22. We have heard the arguments of the learned counsel for the parties and perused the record.

23. The following issues are framed to be determined by us in this matter:

- (i) Whether there exists any road in CRZ-II area ?
- (ii) Whether the plot No.2A situated in Sectors 54, 56 and 58 of Nerul West, Navi Mumbai falls in CRZ-I and CRZ-II areas ?
- (iii) Whether any part of the aforesaid plot, if it falls in CRZ-II area, would be barred for the purposes of making any construction/development, on the ground that there is a road seaward side of which no construction can be done?
- (iv) How-much area falls in CRZ area ? and whether any area of the plot in question lies beyond CRZ area ?
- (v) What relief, if any the applicants would be entitled to ?

**Findings** :

24. We take the map, which has been submitted by NCSCM at page 387 of the paper-book at the scale of 1:4000 to be a correct map as per which we would be making analysis in respect of the above mentioned issues. This map consists of dotted green which is mangrove buffer zone wherein no construction can take place. If we read the provisions of Regulation 7 Clause (i) (A) read with Regulation 8 Clause (i) and then Clause (I) i.e. CRZ-I sub-clauses (i) (a) to (c) thereof of the CRZ Notification, 2011, it is apparent that the mangroves area along with its buffer zone of 50 mtrs is treated to be ecologically sensitive and construction activities are not permitted except the activities which are enumerated in Regulation 8 sub-clauses (a) to (f) of Clause (I) i.e. CRZ-I. The activity which is likely to be taken would not be found covered in any of the above clauses. Hence, we are of the opinion that the said area is

absolutely prohibited for the construction. Towards north of that, the remaining part of the plot in question is shown by pink colour, which is found to fall in CRZ area and in this area, the construction of any kind is permissible only on the landward side of the existing road or on the landward side of the of the authorized structure.

25. In this map on which we are relying, the NCSCM has shown the road in purple colour, situated to the south of the plot and sea is towards southern side of the said road. Therefore, if that road is taken to be a recognized road in actual sense, then CRZ-II area, shown by pink colour would be permitted for the purpose of construction. The said area being shown towards the landward side of the road and not seaward side thereof. But the question is whether this road would actually qualify to fall in the definition of the road. We find that this road is not shown connected to the broader road, which is shown existing to the east nor it is shown to connect to the left side with any road. Therefore, it is a single patch of smaller width, which may be treated to be patchwork. In order to determine whether the said road shown in the map, relied upon, should be treated to be a road or not, is crucial question to be determined. For this, we took assistance from the definition of “road” provided under <https://en.wikipedia.org/wiki/Road#> wherein “road” is defined as “a road is a thoroughfare for the convenience of traffic that mostly has an improved surface for use by vehicles (motorized and non-motorized) and pedestrians, unlike streets, whose primary function is to serve as public spaces, the main function of roads is transportation.”

26. The primary features of roads include lanes, sidewalks (pavement), roadways (carriageways), medians, shoulders, verges, bike paths (cycle paths) and shared-use paths. Similarly in 1968 *Vienna Convention on Road Traffic*, it has defined a “road” as the entire surface of any way or street open to public traffic. If we see the map which is shown by purple

colour, which is relied upon, the same does not appear to be connected to any other road on either side and the width of it does not appear to be more than 1-2 mtrs approximately as it is shown on the scale of 1:4000. Therefore, such a strip of land could be used for traffic or as a thoroughfare for public is extremely doubtful. Moreover it's not being connected to either side also raises doubt about its being treated as a road. Besides that, this road is also shown in the map located in buffer zone of mangroves where no such construction is permissible.

27. If we go back to the same map, we find that the remaining part of plot No.2A is very small which is outside CRZ-II area and the area which is shown by pink colour is found to fall in CRZ area, is not found to be seaward, rather is found to be landward side of the existing road. Therefore, it would be out of bound area for the purpose of construction.

28. We also took into consideration the arguments raised by the learned counsel for respondent No.1 – CIDCO that the area which is falling outside CRZ can be permitted by them for raising construction taking FSI of the entire area, which is falling in CRZ-IA as well as CRZ-II, but in this regard, we are of the opinion that since no construction is permissible in CRZ-II and CRZ-1A areas, their FSI cannot be allowed to be taken for construction in adjoining area as has been argued by the learned counsel for CIDCO.

29. Now we have to take into consideration as to whether even though area of the plot in question which is found to fall outside CRZ-1A and CRZ-II area, the same may be permitted for the purpose of lease granted with a view to raise construction thereon. In this regard, we may refer here to the averments made by respondent No.1 CIDCO in their affidavit dated 14.11.2022 that Navi Mumbai Municipal Corporation Draft Development Plan published on 10.08.2022 no longer shows the plot No.2A is in 'No Development Zone' but has been shown partly as 'social

facility' and partly as 'garden'. Therefore, as per Navi Mumbai Municipal Corporation, the said area is shown to be a 'social facility' or as 'garden' area. Though the same is being opposed by respondent No.1, in our estimation, the said area should continue to be maintained or used for 'social facility' or 'garden' instead of for raising any construction thereon.

30. In view of the above analysis made by us, we are answering the issues as follows:

- (i) The Issue No. (i) is decided in the negative holding that there is no recognized existing road on the map, which has been relied on by us.
- (ii) Issue No. (ii) is decided in the affirmative holding that the area which is shown by dotted green part in plot No.2A in the map which we have relied on, falls in CRZ-IA and CRZ-II area.
- (iii) We decide issue no. (iii) to the effect that since we do not find any road to exist, therefore, no construction could be permitted in the CRZ-II area in question because the same is not found to be lying on the landward side of the road. This issue is decided accordingly.
- (v) As regards issue no. (iv), we suggest that even the area which we have found in the said map to fall outside CRZ area, preferably be used for the garden or social facilities as per the Navi Mumbai Municipal Corporation Draft Development Plan.

31. In view of above findings, we are of the view that these applications deserve to be allowed to the extent that we direct respondent No.1 – CIDCO that it shall not sell, transfer or grant any leasehold rights in Plot No.2A, Sectors 54, 56 and 58 of Nerul (West), Navi Mumbai for the purposes of construction of residential and commercial buildings/structures except the area falling outside CRZ.

32. With above direction, we dispose of both these Original Applications.

33. No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

OCTOBER 11 , 2023  
O.A. NO.74/2022 and 75/2022 (WZ)  
npj