

**NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

Appeal No. 13, 14, 19 & 20 of 2012

Wednesday, 17th of October, 2012

Quorum:

1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)
2. Hon'ble Dr. Devendra Kumar Agrawal
(Expert Member)

Appeal No. 13/2012

BETWEEN:

1. M/s Hubtown Limited,
(formerly known as Akruti City Ltd.,)
Having its registered Office at
4th Floor, Plaza Panchsil, Huges Road,
Next to reliance jewels, Opp Ghanasingh,
Jewelers Chowpatty, Mumbai- 400 007

2. Maya Nagar Achanak CHS
Through its Secretary Vilas Patel
having its office at
Mayanagar Slum Colony
RMBC Press, B.G. Kher Marg,
Worli, Mumbai 400 019

..... Appellant's

AND

1. The Principal Secretary,
Ministry of Environment & Forests
Government of India
Kadeshwari Mandir Marg,
Off. Baptist Road (Bandra West)
Mumbai-400050
 2. National Coastal Zone Management Authority
Having its office at
Paryavaran Bhawan, CGO Complex, New Delhi
 3. Union Of India
Through Its Secretary,
Ministry of Environment & Forests
Paryavaran Bhawan, CGO Complex,
New Delhi
 4. Maharashtra Coastal Zone Management
Authority, having its office at
New Administrative Building, 15th Floor
Mantralaya, Mumbai-400 032
 5. The State of Maharashtra.
Through its Secretary,
Ministry of Environment & Forest
New Administrative Building, 15th Floor
Mantralaya, Mumbai-400 032
- Respondent's

(Advocates appeared: Mr. C. A. Sundram, Sr. Advocate, Dr. Abhishek Manu Singhvi, Sr. Advocate, Mr. P. S. Narsimha, Sr. Advocate with Mr. Vikas Mehta, Mr. Parameshwar, Ms. Aditi Bhat, Ms. Renuka Iyer, Mr. Vivek Jain and Mr. Parimal Shroff, Advs. for Appellant and Ms Neelam Rathore with Prasoon Sharma for Respondent No. 2 & Respondent No.

3, Mr. Mukesh Verma with Mr. Pravesh Thakur, Advs. for Respondent No. 4 & 5.

Appeal No.14/2012

BETWEEN:

1. M/s Hubtown Limited,
(formely known as Akruti City Ltd.,)
having its registered Office at Office at
4th Floor, Plaza Panchsil, Huges Road,
Next to reliance jewels, Opp Ghanasingh,
Jewelers Chowpatty, Mumbai- 400 007
 2. Durgamata Cooperative Housing
Society Limited, having its office at
Kadeshwari Madir Marg,
Off. Baptist Road, Bandra (west),
Mumbai 400 050
- Appellant's

A N D

1. The Principal Secretary,
Ministry of Environment & Forests
Government of India
Kadeshwari Mandir Marg,
Off. Baptist Road (Bandra West)
Mumbai-400050
2. National Coastal Zone Management Authority
Having its office at
Paryavaran Bhavan, CGO Complex, New Delhi

3. Union Of India

Through Its Secretary,
Ministry of Environment & Forests
Paryavaran Bhawan, CGO Complex,
New Delhi

4. Maharashtra Coastal Zone Management

Authority, having its office at
New Administrative Building, 15th Floor
Mantralaya, Mumbai-400 032

5. The State of Maharashtra.

Through its Secretary,
Ministry of Environment & Forest
New Administrative Building, 15th Floor
Mantralaya, Mumbai-400 032

..... Respondent's

(Advocates appeared: Mr. C.A. Sundram, Sr. Advocate, Dr. Abhishek Manu Singhvi, Sr. Advocate, Mr. P. S. Narsimha, Sr. Advocate with Mr. Vikas Mehta, Mr. Parameshwar, Ms. Aditi Bhat, Ms. Renuka Iyer, Mr. Vivek Jain and Mr. Parimal Shroff, Advs. for Appellant and Ms Neelam Rathore with Prasoon Sharma for Respondent No. 2 & Respondent No. 3, Mr. Mukesh Verma with Mr. Pravesh Thakur, Advs. for Respondent No. 4 & 5.)

Appeal No. 19/2012

BETWEEN:

1. M/s. Hubtown Limited,
(Formerly Known as Akruti City Ltd.,)
Having its registered Office at Office at

Hubtown Solaris, IInd floor, N.S. Phadke Marg, Andheri
East, Mumbai 69

2. Maya Nagar Achanak CHS

Through its Secretary Vilas Patel

Having its office at

Mayanagar Slum Colony

RMBC Press, B.G. Kher Marg,

Worli, Mumbai 400 019

..... Appellant's

A N D

1. Union Of India

Through Its Secretary,

Ministry of Environment & Forests

Paryavaran Bhawan, CGO Complex,

New Delhi

2. National Coastal Zone Management Authority

having its office at

Paryavaran Bhavan, CGO Complex, New Delhi

3. Maharashtra Coastal Zone Management

Authority, having its office at

New Administrative Building, 15th Floor

Mantralaya, Mumbai-400 032

4. The State of Maharashtra,

Through its Secretary,

Ministry of Environment & Forest

New Administrative Building, 15th Floor

Mantralaya, Mumbai-400 032

..... Respondent's

(Advocates appeared: Mr. C.A. Sundram, Sr. Advocate, Dr. Abhishek Manu Singhvi, Sr. Advocate, Mr. P. S. Narsimha, Sr. Advocate with Mr. Vikas Mehta, Mr. Parameshwar, Ms. Aditi Bhat , Ms. Renuka Iyer, Mr. Vivek Jain & Mr. Parimal Shroff Advs. for Appellant and Ms Neelam Rathore with Prasoon Sharma for Respondent No. 1 & Respondent No. 2 and Mr. Mukesh Verma with Mr. Pravesh Thakur for Respondent No. 3 and Respondent No. 4)

Appeal No. 20/2012

BETWEEN:

1. M/s. Hubtown Limited,
(Formerly Known as Akruti City Ltd.,)
having its registered Office at
Hubtown Solaris, IInd floor, N.S. Phadke Marg, Andheri
East, Mumbai 69
 2. Durgamata Cooperative Housing
Society Limited, having its office at
Kadeshwari Madir Marg,
Off. Baptist Road, Bandra (west),
Mumbai- 400 050
- Appellant's

A N D

1. Union of India
Through Its Secretary,
Ministry of Environment & Forests
Paryavaran Bhawan, CGO Complex,
New Delhi

2. National Coastal Zone Management Authority
Having its office at
Paryavaran Bhavan, CGO Complex, New Delhi

3. Maharashtra Coastal Zone Management
Authority, having its office at
New Administrative Building, 15th Floor
Mantralaya, Mumbai-400 032

4. The State of Maharashtra.
Through its Secretary,
Ministry of Environment & Forest
New Administrative Building, 15th Floor
Mantralaya, Mumbai-400 032

..... Respondent's

(Advocates appeared: Mr. C.A. Sundram, Sr. Advocate, Dr. Abhishek Manu Singhvi, Sr. Advocate, Mr. P. S. Narsimha, Sr. Advocate with Mr. Vikas Mehta, Mr. Parameshwar, Ms. Aditi Bhat , Ms. Renuka Iyer, Mr. Vivek Jain & Mr. Parimal Shroff Advs. for Appellant and Ms Neelam Rathore with Prasoon Sharma for Respondent No. 1 & Respondent No. 2 and Mr. Mukesh Verma with Mr. Pravesh Thakur for Respondent No. 3 and Respondent No. 4)

JUDGMENT

1. These four appeals were clubbed together for common hearing and decision in as much as they are interlinked. They are being disposed of by common Judgment in order to avoid repetition of facts and overlapping consideration of the documents filed by the parties.

2. Appellant No. 1 M/s Hubtown Ltd. was previously styled as “Akruti City Ltd.” The Appellant No. 1 is developer and deals in construction activities. The Appellant No. 1, admittedly, undertook construction of buildings for Maya Nagar Cooperative Housing Society Ltd. and Durgamata Cooperative Housing Society Ltd. There is no dispute about the fact that both the housing societies are formed by slum dwellers. The rehabilitation project of slum dwellers was to be implemented by the Housing Societies formed by the slum dwellers. There is no dispute about the fact that one of such project is contemplated to be executed on a plot at Worli (Survey No. 32 Pt) and 38(Pt) admeasuring 5665 sq.meters and another at Bandra (CTS No. B-908, B-909, B-910 & B-911 (part) admeasuring 15,295 sq.mtrs. There is no dispute about the fact that certain slum dwellers having their hutments on the subject plots were censused in/or about 1976. The State Government issued photo passes to them. It appears that the plots in question were already occupied by the slum dwellers prior to 19.2.1991.
3. On 19.2.1991 a Notification was issued by the Ministry of Environment & Forests (MoEF). Under the said notification, classification was made in respect of Coastal Area for the purpose of Development Regulations. By the said classification, Category-II CRZ (III) was declared to consist of the area which had already been developed up to limit of the shore land. The expression “developed area” was purported to mean the area within the Municipal Limits or in other designated urban area which was already substantially build up and which had been provided with drainage and project roads and other infrastructural facilities, such as water supply and Sewerage. Category-III (CRZ-III) was declared to consist of the areas within the Municipal Limits or other designated area, which were not substantially build up, and had been neglected. The development or construction activities in such areas was regulated by virtue of the said notification. On 27.9.1996 Coastal Zone Management Plan (CZMP) for the

State of Maharashtra was approved by the MoEF as per the general conditions. In the order of approval, it has been mentioned that the Parks, Playgrounds, Regional Parks, General Green zones and other non-buildable areas, which are in the category “CRZ-II”, shall be treated as “CRZ-III.” Thus, by fiction the non-buildable areas as well as the parks ground general areas etc. were shifted from Category-II (CRZ-II) areas to category-III (CRZ-III) areas.

4. Slum Rehabilitation Authority (“SRA”) issued Letter Of Intent (LOI) to the appellants for grant of approval to the proposed redevelopment of the subject plots. The slum dwellers were permitted to be rehabilitated in the new buildings proposed to be constructed on the plots in question. On 4.1.2002, Maharashtra Coastal Zone Management (MCZMA) was requested to grant clearance for construction of the buildings over the subject plots for the rehabilitation of slum dwellers. Slum Development Rehabilitation Authority (SRA) issued amended Letter Of Intent (LOI) on 30th October, 2004. It appears that the appellants submitted an application to the MoEF for grant of clearance to their projects under the Environment Impact Assessment Notification. The appellant submitted proposals to MCZMA for no objection certificate. The MCZMA recommend for approval to proposals of the appellants on 14.5.2009. The MCZMA forwarded the recommendations to the Director, Coastal Zone Regulation, MoEF along with the proposals submitted by the appellants. The MoEF did not give approval to the proposals in view of the CRZ Notification of 1991, on the ground that these subject plots were reserved for “garden” and therefore reclassification of the plots from Category-II (CRZ-II) to Category CRZ –III could not be approved. The appellants preferred an appeal to NCZMA (National Coastal Zone Management Authority). The appeals were not decided by the NCZMA and therefore the appellants filed two writ petitions in the High Court of Bombay, bearing Writ Petition No. 930 of 2011 and Writ Petition No. 931 of 2011. The High Court of Bombay disposed of both the Writ Petitions on 17.8.2011, directing the NCZMA to decide representation of the

appellants though the appeals were not maintainable under the law. The appellants were granted leave to make supplementary representations and additional submissions before the NCZMA. They accordingly filed fresh representations to the NCZMA. The NCZMA eventually declined to accord permission for both the projects. The said orders of the NCZMA are subject matter of challenge in Appeal No. 13/2012 and Appeal No. 14/2012 which were taken in its 23rd meeting of 04.01.2012 on the above subject, which was Item No. 4 on agenda of the meeting of the NCZMA.

5. The NCZMA held that although the subject plots were being used by the slum dwellers even prior to 1976, due to reservation of the plots as per the development plan under CRZ Notification, 1991, because those plots were reserved for “garden” and therefore the request of the appellants for reclassification of CRZ areas from CRZ-III to CRZ-II cannot be considered. Still, however, the NCZMA observed that since scheme is for slum improvement, the MCZMA to consider such issues in the CZMP to be prepared under CRZ Notification, 2011 to protect the socially important project.

In other words, the NCZMA asked the MCZMA to place the proposals in the subsequent plan of CZMP as would be required under the CRZ Notification of 2011. It clearly appears that the NCZMA came to the conclusion that it was necessary to prevent the hurdles for such “socially important projects”.

6. Feeling aggrieved by the decision taken by the NCZMA in its 23rd meeting of 04.01.2012 declining to approve the projects as stated above, the two(2) appeals (Appeal No. 13/2012 and 14/2012) have been preferred by the appellants.

The other two appeals (Appeal No. 19/2012 and Appeal No. 20/2012) are between the same parties and the issues involved are also the similar. In those two appeals the appellants have challenged letters dated 31.8.2009 and dated 16.2.2010 issued by the MoEF whereby the projects were not

approved. The MoEF asked the NCZMA to refrain itself from making references of such cases which were not in accordance with CRZ Notification, 1991.

7. In all the four appeals, the appellants have filed delay condonation applications. We propose to deal with the delay condonation applications in Appeal No. 19/2012 and Appeal No. 20/2012 at the outset. Thereafter we propose to deal with the other two applications for delay condonation and merits of the appeals (Appeal No. 13/2012 and Appeal No. 14/2012).
8. We have heard Learned Counsel for the parties. We have carefully perused the relevant documents and pleadings of the parties.
9. On behalf of the appellants, Learned Senior Counsel Dr. Abhishek Manu Singhvi and Mr. P.S. Narsimha contended that the Appeal Nos. 19 & 20 of 2012 are not barred by limitation because the appellants were litigating before the NCZMA and the High Court of Bombay during the relevant period as well as awaiting final outcome of representation presented to the NCZMA in pursuance to order of the High Court of Bombay. They submitted that the appellants were bonafidely litigating before the authorities and the High Court of Bombay, challenging the order dated 31st August, 2009 rendered by the MoEF and therefore the time spent by them should be excluded from consideration. They submitted that exclusion of the time is required to be made in order to meet ends of justice because of continuity of the legal process. We find it difficult to countenance the arguments of Learned Senior Counsel of the appellants. It is pertinent to note that Section 16 of the National Green Tribunal Act prescribes limitation of 30 days for filing of an appeal. A further period of 60 days is available on the appellant's furnishing sufficient explanation for the delay. Thus a total of 90 days prescribed period of limitation is envisaged under Section 16 of the National Green Tribunal Act. Perusal of the order dated 17th August, 2011 passed by the High Court of Bombay, in Writ Petition No. 930/2011 and Writ Petition No. 946/2011, makes it

amply clear that the appeals filed by the appellants before the Chairman, NCZMA were not maintainable and therefore the MoEF was called upon to decide representation of the appellants within period of 2 months. It is explicit, therefore, that the appellants had approached wrong forum when they preferred appeals before the Chairman, NCZMA. Once it is found that by order dated 17th August, 2011, the High Court held that the appeals before the NCZMA were not maintainable, the appellants ought to have promptly preferred appeals under Section 16 of the National Green Tribunal Act. The orders dated 31.8.2009 and 16.2.2010 are the subject matter of Appeal Nos. 19/2012 and Appeal No.20/2012. Perusal of Section 16 of the National Green Tribunal Act will make it clear that only the orders passed after 18.10.2010 are susceptible to appeal. The orders passed prior to 18.10.2010 cannot be challenged before NGT by way of appeal. Needless to say, those orders dated 31.8.2009 and 16.2.2010 could not have been challenged by appellants before the NGT. Consequently, both the Appeal Nos. 19/2012 and 20/2012 are not maintainable at all. Nor the delay caused in filing of those appeals can be condoned. It may be stated such a view has already been taken by this Tribunal in a similar matter while deciding Appeal No. 14/2012 (Thervoy Gramam Munnetra Nala Sangam Vs. Union of India & Ors.). Adopting the same reasons, we hold that the Appeal No. 19/2012 and Appeal No. 20/2012 are covered by the Judgment dated 26th April, 2012 rendered by this Tribunal in Appeal No. 14/2012. Hence both these appeals are dismissed as not maintainable.

10. Coming to the delay condonation applications in other two appeals (Appeal No. 13/2012 and Appeal No. 14/2012), it may be gathered that the impugned decision taken by the NCZMA in its 23rd meeting of 04.01.2012 was not communicated to the appellants. They were not given any intimation about the adverse decision. What transpires from the record is that the appellants gathered knowledge of the impugned decision after downloading the information from the internet. The version of the appellants that they learnt about the impugned decisions,

at belated stage is acceptable. The appellants were not to gain anything by committing the delay. The delay appears to be unintentional. We are inclined, therefore, to accept their explanation and condone the delay. The delay condonation applications in both the above appeals are accordingly allowed.

11. Ms. Neelam Rathore, Learned Counsel appearing for MoEF, would submit that neither appeal is maintainable. She would submit that the impugned decisions are not an appealable orders. She pointed out that the impugned decisions were outcome of the minutes of meeting held on 4.1.2012.

12. Section 16(i) reads as follows:

“Section 16-

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water(Prevention and Control of Pollution) Act, 1974(6 of 1974):

(b) xxxxxxxxxxxx

(c) xxxxxxxxxxxx

(d) xxxxxxxxxxxx

(e) xxxxxxxxxxxx

(f) xxxxxxxxxxxx

(g) xxxxxxxxxxxx

(h) xxxxxxxxxxxx

(i) An order made on after commencing of the National Green Tribunal Act, 2010 refusing to Environment Clearance for carrying out any activity or operation or process under the Environment(Protection) Act (29 of 1986) or refusing to grant Environment Clearance for carrying out any activity.”

In our opinion, impugned decisions are appealable orders within the meaning of Section 16(i) of National Green Tribunal Act, 2010. The objection raised in this behalf is therefore rejected.

13. Perusal of the impugned orders show that proposals of the projects were rejected only on a ground that site in question was shown as garden in the development plan and was governed by CRZ Notification, 1991. It appears that the MoEF declined to consider the proposals on the ground that it would mean to allow reclassification of the subject plots from CRZ Category III to CRZ Category II. It is stated in the impugned orders that the remarks of the Urban Development Department, Government of Maharashtra indicated that the parks and play grounds and other non-buildable areas falling within CRZ-II Category have been categorised as CRZ-III. That appears to be main reason assigned by the MoEF in the impugned decisions.
14. A close scrutiny of the record shows that there was no existence of garden or park on the subject plots since much prior to 1991. It is an admitted fact that the area is covered by hutments. It is a fact that a large group of hutment dwellers falls under the census carried out by the Government agency in or about 1976. In other words, the subject plots were treated as gardens/parks only because of the Coastal Regulations Zone Notification, 1991.
15. The question that needs to be addressed is whether the plots already covered by the slums could be treated as reserved gardens/parks. Such a reservation is assumed by giving “deeming effect” on account of issuance of the CRZ Notification, 1991. Needless to say, what did not exist, in reality, is assumed to be in existence by virtue of the CRZ Notification,

1991 with retrospective effect. In our opinion, legal fiction may give deeming effect to the proposition or thing which does not exist as on the date of regulation or Law. However, no deeming effect can be given to assume non existence of thing to be an existing thing with retrospective effect. Such an interpretation may create anomalous position. For example, where a building is constructed and stands and the same was constructed by obtaining necessary permission as per the Law, which was in force at the time of such construction, by subsequent executive Instructions or Regulations, the existence of such a building cannot be made to “disappear” by legal fiction. We mean to say that subsequent executive Instructions or Regulations cannot be interpreted so as to make the same unworkable and impracticable. There is no magic wand under the CRZ Notification, 1991 to make disappear such slums which already existed since long before issuance of the CRZ Notification, 1991.

16. This takes us to subsequent Notification dated 3.6.1992 issued by the Urban Development Department, State of Maharashtra, under Section 31(1) of the MRTP Act, the said Notification recognised the fact that the slums were in existence in the areas which were not designated as residential areas. This subsequent notification of the Urban Development Department dated 3.6.1992 appears to have been ignored by the NCZMA. The NCZMA did not consider whether both the subject plots are fully seaward or partly seaward or totally landward. In case, a part of the proposed project falls within no-go zone, then the same has to be identified and segregated for the purpose of consideration. In our opinion, the NCZMA (MoEF) appears to have given no much tangible reasons in support of the impugned decisions. The communications served by the MoEF which are challenged in the present appeals are therefore passed by rendering non-speaking orders. Thus, both the impugned decisions are contrary to the principles of natural justice. It is well-settled that non-speaking order is one of the category which violates the principles of natural justice.

17. The learned Counsel for the appellants invited our attention to certain observations in “Suresh Estates Private Limited and Ors. Vs. Municipal Corporation of Greater Mumbai and Ors.” **(2007) 14 SCC 439**. The Apex Court observed:

19. *“The word “existing” as employed in the CRZ Notification means the town and country planning regulations in force as on 19.2.1991. If it had been the intention that the town and country planning regulations as in force on the date of the grant of permission for building would apply to the building activity, it would have been so specified. It is well to remember that CRZ notification refers also to structures which were in existence on the date of the notification. What is stressed by the notification is that irrespective of what local town and country planning regulations may provide in future the building activity permitted under the notification shall be frozen to the laws and norms existing on the date of the notification”.*

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30. *“The contention that even if it is assumed that the appellants are entitled to higher FSI, they cannot use the plot in question for construction of a hotel as the land was reserved for public purpose on the date when CRZ notification was issued, cannot be accepted. As noticed earlier the plot was reserved as playground for secondary school as well as for primary school and also for DP Road. The appellants had caused the purchase notice dated 16.6.2005 served to the competent authority under Section 127 of the MRTP Act, 1966”.*

In the above case, the Apex Court further held that a statute confers a discretionary power to be exercised by Competent Authority, the Court cannot direct the competent authority to exercise discretion in a particular manner. The Court can always direct competent authority to exercise discretion in accordance with Law.

18. Considering the legal, and factual position, we are of the opinion that the NCZMA and MoEF ought to have properly exercised the discretion by harmonious interpretation of CRZ Notification, 1991 and subsequent Notification, 1992 as well as the purpose of classification under the CRZ Notification, 1991. In view of the discussion made above, we are of the opinion that the impugned decisions are required to be interfered with.
19. For the reasons discussed herein above, we partly allow both the appeals (Appeal Nos. 13 and 14 of 2012) and direct the MoEF to restore the earlier representation of the appellants and to take a fresh decision in the light of observations made above. It is made clear that we have not given any finding on merits of the matter and it will be within discretion of the competent authority to take any decision which will be backed by reasons.

The other two appeals (Appeal Nos. 19 and 20 of 2012) are dismissed.

No costs in either appeal.

(Dr. Devendra Kumar Agrawal)
Expert Member

(Justice V. R. Kingaonkar)
Judicial Member

