

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9368 OF 2021**

National Highways Authority of India ... Petitioner  
(Ministry of Road and Transport &  
Highways)  
GM(T) & Project Director, PIU-Thane  
MTNL Building, Opp. to Babubhai  
Petrol Pump, Near Castle Mill Circle,  
LBS Road,  
Thane (West) 400601

vs.

- 1 The State of Maharashtra through the  
Office at Govt. Pleader, High Court,  
Bombay
- 2 The Union of India  
Through the Advocate for Union of  
India, Aayakar Bhavan, Churchgate,  
Mumbai
- 3 Bombay Environmental Action Group  
41 Rajghir Chambers, Saheed Bhagat  
Singh Road, Fort, Mumbai - 400001,  
Opposite Old Custom House
- 4 Maharashtra Coastal Zone ... Respondents  
Management Authority  
Environment Department, 2<sup>nd</sup> Floor,  
Room No.217, Annexe Building,  
Mantralaya, Mumbai-32

Mr. Anil Singh, Additional Solicitor General of India a/w  
Mr. Pralhad Paranjape, Mr. S. D. Shetty, Mr. Rakesh Singh,  
Ms. Heena Shaikh i/b. M. V. Kini & Co. for Petitioner.

Mr. M.M. Pabale, AGP for the Respondent-State.

Mr. Rui Rodrigues for Respondent No.2 - Union of India.

Mr. Rohan Kelkar a/w Ms. Sheetal Shah i/b. M/s. Mehta Girdharlal for Respondent No.3.

Ms. Jaya Bagwe for Respondent No.4 (MCZMA).

**CORAM : S.V. GANGAPURWALA, ACJ. &  
SANDEEP V. MARNE, J.**

**DATED : 02 FEBRUARY, 2023**

**JUDGMENT ( Per SANDEEP V. MARNE, J.) :**

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. Petitioner - National Highways Authority of India has filed this Petition seeking leave of this Court to execute the project of development of Vadodara Mumbai Expressway (Phase-II Main Alignment) from Km 26+320 to km 104+700 (km 390.864 of NH-8) of Main Expressway (Length 78.118 km). Leave is sought as some portion of the project comes within Coastal Regulation Zone - IA area. The project would affect 2686 number of mangrove trees within proposed Right of Way, out of which 1,001 mangrove trees are located within

the construction zone, which are required to be felled. Leave is sought in view of directions of this Court in paragraph 85 of the judgment and order dated 17<sup>th</sup> September 2018 passed by this Court in Public Interest Litigation No.87 of 2006 in *Bombay Environmental Action Group and Another Versus State of Maharashtra and others*.

3. Petitioner - National Highways Authority of India (NHAI) is constituted under Section 3 of The National Highways Authority of India Act, 1988 and has been entrusted with the development, maintenance and management of National Highways and for matters connected therewith or incidental thereto. The Government of India has entrusted to Petitioner the project of development of Vadodara Mumbai Expressway, which is a part of Delhi-Mumbai expressway corridor. Petition concerns Phase-II Main Alignment from Km 26+320 to km 104+700 (km 390.864 of NH-8) of Main Expressway (Length 78.118 km) (for short, “**the project**”). The project of Vadodara Mumbai Expressway is part of the National Highways Development Project (“**NHDP**”) Phase-VI. It is averred by Petitioner that the present traffic on NH-48 (old NH-8) is about 94,322 PCUs (2020) and projected traffic is

1,41,533 PCUs in 2030 which would exceed the capacity of present 6 lane highway. Since, widening of NH-48(old N-8) is not feasible, the Government of India has decided to construct Greenfield Vadodara Mumbai Expressway.

4. The proposed expressway crosses Vaitarana River with Coastal Regulation Zone (CRZ) categories CRZ I, II, III and IV. The Village wise breakup of CRZ Categories as stated in the Petition is as under;

Village	CRZ IA		CRZ IB	CRZ II	CRZ III	CRZ IVA	CRZ IVB
	Mangrove	Mangrove Buffer					
Doliv	1,551.90	-	16,126.50	11,661.90	-	-	15,469.00
Wadhiv / Vaithi Village	10,322.60	9,635.60	5,743.90	-	806.80	-	21,735.40
Navghar Village	14,014.80	6,297.30	8,710.40	-	6,548.60	-	7,547.10
Penand Village	1,589.50	5,410.90	7,237.04	-	40,029.20	-	8,505.20
Sonave Village	4,455.90	5,407.20	13,247.40	-	58,492.40	-	8,085.60
Sakhare Village	-	-	1,195.10	-	6,764.30	-	1,469.10
Khamboli Village	-	-	3,372.50	-	12,213.94	-	10,397.60
Dahisar Village	32.10	-	7,947.80	-	3,491.80	-	6,292.90
<b>Total (in Sq. m.)</b>	<b>31,966.80</b>	<b>26751.00</b>	<b>63,580.64</b>	<b>11,661.90</b>	<b>128,347.04</b>	<b>-</b>	<b>79,501.9</b>
<b>Total (in ha)</b>	<b>3.20</b>	<b>2.68</b>	<b>6.36</b>	<b>1.17</b>	<b>12.83</b>	<b>0.00</b>	<b>7.95</b>
<b>Grand Total = 341809.3 Sq. m / 34.2 Ha</b>							

5. Petitioner approached the Maharashtra Coastal Zone Management Authority (“MCZMA”) with a proposal for seeking its approval for environmental clearance. MCZMA in its 144<sup>th</sup> meeting held on 11<sup>th</sup> June 2020 deliberated the proposal of Petitioner and decided to recommend the same to the Ministry of Environment, Forest and Climate Change (“MoEFCC”) subject to conditions specified therein. MCZMA accordingly conveyed its recommendations to the Director (IA-III), Coastal Zone Regulation, MoEFCC, vide its letter dated 3<sup>rd</sup> September 2020. This is how the project has received clearance from MCZMA.

6. Petitioner simultaneously approached MoEFCC seeking environmental clearance. After considering recommendations of the Expert Appraisal Committee (“EAC”) for infrastructure, CRZ and other miscellaneous projects, MoEFCC decided to grant environmental and CRZ clearance for the project subject to various conditions stated therein.

7. As execution of project also envisaged diversion of some portion of protected forest, mangrove private land and mangroves on Government land, reserved forest and private

forest land, Petitioner sought permission of MoEFCC for such diversion. Vide letter dated 26<sup>th</sup> August 2021, MoEFCC was pleased to grant permission for diversion of 193.1777 ha of forest land subject to various conditions mentioned therein.

8. Petitioner has also obtained various other permissions from the Monitoring Committee of Dahanu Taluka Environment Protection Authority (**DTEPA**) on 4<sup>th</sup> March 2021 and Maharashtra Pollution Control Board (**MPCB**) on 19<sup>th</sup> March 2021.

9. On 6<sup>th</sup> January, 2011, MoEFCC published in the Gazette Coastal Regulation Zone Notification (**“CRZ Notification”**) in exercise of powers conferred by clause (d) and sub rule (3) of rule 5 of Environment (Protection) Act, 1986. The CRZ Notification is issued *inter alia* to ensure livelihood & security to fisher communities and other local communities living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming. The Notifi-

cation declared coastal stretches of the country and the water area upto its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and marine area surrounding these islands upto its territorial limit, as Coastal Regulation Zone and restricted setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances in the aforesaid Coastal Regulation Zone.

10. CRZ Notification classified various CRZ areas as under:

**7. Classification of the CRZ** – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

**(i) CRZ-I,-**

- A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-
- (a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50meters along the mangroves shall be provided;
  - (b) Corals and coral reefs and associated biodiversity;
  - (c) Sand Dunes;
  - (d) Mudflats which are biologically active;
  - (e) National parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life (Protection) Act, 1972 (53 of 1972), the Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986); including Biosphere Reserves;
  - (f) Salt Marshes;
  - (g) Turtle nesting grounds;
  - (h) Horse shoe crabs habitats;
  - (i) Sea grass beds;
  - (j) Nesting grounds of birds;
  - (k) Areas or structures of archaeological importance and heritage sites.
- B. The area between Low Tide Line and High Tide Line;

**(ii) CRZ-II,-**

The areas that have been developed upto or close to the shoreline.

Explanation.- For the purposes of the expression “developed area” is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains;

**(iii) CRZ-III,-**

Areas that are relatively undisturbed and those do not belong to either CRZ-I or II which include coastal zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas, which are not substantially built up.

**(iv.) CRZ-IV,-**

- A. the water area from the Low Tide Line to twelve nautical miles on the seaward side;
- B. shall include the water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand during the driest season of the year.

**(v) Areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by local communities,-**

- A. (i) CRZ area falling within municipal limits of Greater Mumbai;
- (ii) the CRZ areas of Kerala including the backwaters and backwater islands;
- (iii) CRZ areas of Goa.
- B. Critically Vulnerable Coastal Areas (CVCA) such as Sunderbans region of West Bengal and other ecologically sensitive areas identified as under Environment (Protection) Act, 1986 and managed with the involvement of coastal communities including fisherfolk.

Thus, as per the CRZ Notifications, areas where mangrove trees are located as well as such area falling in 50 meters from mangrove area of 1000 sq. mtrs. comes under CRZ-1A.

11. Bombay Environmental Action Group (“BEAG”) – Respondent No.3 herein had filed PIL No.87 of 2006 raising issue of destruction of mangroves in the entire State of Maharashtra. PIL came to be disposed of by this Court vide its judgment and order dated 17<sup>th</sup> September 2018. In various directives issued in paragraph 85 of the said judgment, this Court has imposed total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra, stoppage of all constructions within 50 meters on all sides of all mangroves areas, prohibition of issuance of development permission by any authority on any mangrove areas etc. The said Order came to be modified by a further Order dated 27<sup>th</sup> January 2010 in *PIL No. 87 of 2006*, wherein this Hon’ble Court was pleased to direct that nothing would prevent statutory bodies from approaching competent authorities to seek permissions for their respective projects as required in accordance with law falling in mangrove areas and that such application would be considered strictly in accordance with law keeping in mind the principle of sustainable development and that grant of such permission would be subject to the approval of this Court.

12. Accordingly, Petitioner has filed present Petition seeking leave of this Court for execution of the project. It must be noted here that even though it is averred in paragraph 21 of the Petition that execution of the project would involve felling of 1,001 mangrove trees, Petitioner has filed an additional affidavit dated 19<sup>th</sup> January 2023 stating that only 350 number of mangrove trees are required to be felled for execution of entire project. Furthermore, even though it is stated in paragraph 23 of Petition that permission was needed for diversion of 3.950 ha of mangrove forest land, it has been clarified in affidavit dated 19<sup>th</sup> January 2023 that the mangrove affected area falling within CRZ-IA would be only 0.0785 ha.

13. Appearing for Petitioner Mr. Singh, the learned Additional Solicitor General of India would contend that Petitioner has procured all requisite permissions from various authorities like MCZMA, MoEFCC, DTEPA, MPCB etc for execution of the project. He would explain us the importance and need of the project involving public interest and would urge us to grant leave to execute the project by granting permission to fell 350 number of mangrove trees falling within

CRZ-IA by diverting about 0.0785 ha forest area. Mr. Singh would submit that this Court has granted permissions for execution of several other projects of public importance. In support of his contention Mr. Singh would rely on the following judgments;

- (i) ***National High Speed Rail Corporation Ltd. Versus State of Maharashtra and others***<sup>1</sup>, granting permission to Petitioner therein to execute the Mumbai-Ahmedabad High Speed Rail Project involving felling of large number of mangrove trees.
- (ii) ***Maharashtra Maritime Board Versus Union of India***<sup>2</sup>, granting permission to Petitioner therein to execute the project of construction of proposed passenger jetty and allied facilities at Kelwa, Palghar and the project of passenger jetties at various locations.
- (iii) ***National Highways Authority of India Versus The State of Maharashtra & ors***<sup>3</sup>: granting permission to Petitioner therein for execution of work of widening National Highway-3 involving felling of 91 number of mangrove trees.
- (iv) ***M.M.R.D.A. Versus Union of India and ors***<sup>4</sup>, granting permission to project of Metro Line 6 partly falling within CRZ – II.

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1 2022 SCC OnLine Bom 6701

2 WP No.759 of 2021 decided on 29<sup>th</sup> October 2021 of this Court.

3 WP No.2634 of 2021 decided on 22<sup>nd</sup> November 2021 of this Court.

4 WP-LD-VC No.87 of 2020 decided on 26<sup>th</sup> June 2020.

(v) ***Jawaharlal Nehru Port Trust Versus Union of India and ors***<sup>5</sup> granting permission to Petitioner therein to execute the project of proposed boat landing jetty at Nhava.

(vi) ***National Highways Authority of India Versus The State of Maharashtra and ors***<sup>6</sup> granting permission to Petitioner herein to fell mangrove trees for execution of four-lane new bridge across Versova Creek.

14. Mr. Rodrigues, the learned counsel appearing for Union of India, Mr. Pabale, the learned Assistant Govt. Pleader appearing for the State Government and Ms. Bagwe, the learned counsel appearing for MCZMA, would confirm grant of requisite permissions and clearances granted by their respective clients for execution of the project.

15. Mr. Kelkar, the learned counsel appearing for Respondent No.3 - BEAG would oppose the Petition. Firstly, he would urge to adjourn hearing of the present Petition till the Supreme Court decides the Special Leave Petition (Civil) Diary No.29692/2022 filed by BEAG challenging the judgment and order dated 29<sup>th</sup> October, 2021 passed by this Court in Writ

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5 WP ST No.424 of 2021 decided on 14<sup>th</sup> January 2021 of this Court.

6 WP (L) No.203 of 2019 decided on 21<sup>st</sup> February 2019 of this Court.

Petition No.442 of 2020 (*Maharashtra Maritime Board Versus Union of India*). He would then express an apprehension about Petitioner proposing to fell higher number of mangrove trees (10001) and affecting / diversing larger area (3.950 ha) for executing the project. This apprehension is expressed on the basis of averments in paragraphs 21 and 23 of Petition. Mr. Kelkar would take us through various provisions of Coastal Regulation Zone Notification dated 6<sup>th</sup> January 2011 to demonstrate as to how the proposed project of construction of Highway cannot be executed in area falling within CRZ-IA. Mr. Kelkar would urge this Court not to grant leave to Petitioner for felling any mangrove trees or for diversion of mangrove forest area in any manner. Mr. Kelkar would therefore pray for dismissal of the Petition.

16. After having heard learned counsels appearing for the parties, there appears to be no dispute on the position that Petitioner has procured all requisite permissions from all authorities such as MCZMA, MoEFCC, DTEPA, MPCB etc. for execution of proposed project. All authorities have imposed stringent conditions on Petitioner for grant of their respective permission. To illustrate, MoEFCC while granting permission

for diversion of forest lands on 26<sup>th</sup> August 2021 has imposed condition of compensatory afforestation through forest departments at lands indicated therein. Another condition is to develop a separate nursery to raise at least 1,00,000 seedlings of forestry species.

17. Though the Petition is opposed by BEAG, the need and importance of project is fairly not disputed by it. BEAG has essentially raised the issue about permissibility of development of the project in the area falling within CRZ - IA. Relying on the various provisions of the Notification dated 6<sup>th</sup> January 2011, BEAG has strenuously made efforts to show that development of road or bridge is impermissible in the area falling within CRZ-IA. We could have dealt with this aspect by examining various provisions of CRZ Notification and their interpretation. However, we observe that the issue sought to be raised by BEAG is no more *res integra* and all the submissions of Mr. Kelkar based on CRZ Notification are already dealt with by this Court in its judgment in ***Maharashtra Maritime Board Versus Union of India*** (supra). The contentions of BEAG with regard to permissibility of carrying out development work in CRZ-IA area has been negated by this Court. This Court in

paragraph nos. 26 to 29 of the judgment held as under:

26. In addition to the regulation of permissible activities in CRZ areas as provided in paragraph 4 of the said notification, the norms for regulation of activities permissible under the said notification are provided for in paragraph 8 and which are specific to the different regulations namely Regulations I to IV. In so far as CRZ-I is concerned, paragraph 8 provides that the development or construction activities in different categories of CRZ shall be regulated by the concerned Coastal Zone Management Authority (CZMA), in accordance with the norms as specified in each of the CRZ i.e. CRZ-I to CRZ-IV. In so far as CRZ-I is concerned, it clearly provides that no new construction shall be permitted in CRZ-I except for the activities expressly mentioned in sub-clauses (a) to (f). The relevant being sub-clause (c) of paragraph 8 which carves out an exception for the facilities that are essential for the activities permissible under CRZ-I. This has some relevance in so far as the permissible activities in CRZ-I are concerned, namely, those directly related to waterfront or directly needing foreshore facilities as provided in paragraph 3 read with paragraph 4 which also recognizes construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures etc. This apart, CRZ-I includes the area between Low Tide Line and High Tide Line. Paragraph 8 (I)(ii) provides that the areas between Low Tide Line and High Tide Line which are not ecologically sensitive, necessary safety measures will be incorporated while permitting inter alia construction of dispensaries, schools, public rain-shelter, community toilets, bridges, roads, jetties, erosion control measures, water supply etc. Thus, on a holistic reading of paragraph 8, it is not a case that no new construction is permitted in CRZ-I, when it permits construction of projects relating to Department of Atomic Energy, installation of pipelines, conveying systems including transmission lines, providing for facilities that are essential for activities permissible as provided in sub-clauses (a) to (f) under CRZ-I. In the present context, the relevant provision under paragraph 8 (I) (CRZ-I) is sub-clause (c) which permits setting up “the facilities that are essential for activities permissible under CRZ-I”. These are activities directly related to waterfront or directly needing foreshore facilities, held to be permissible under the said notification such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations as provided for in paragraph 3(i)(a) of the said notification as also falling under paragraph 4(i)(f) dealing with the regulation of permissible activities in relation to construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures and salt works.

27. It is thus difficult to accept Mr.Jagtiani's contention that the activity of construction of a jetty merely because it falls in a buffer zone of 50 meters along the mangrove area, would amount to a prohibited activity under the CRZ-I. Such interpretation certainly is not reflected from a cumulative reading of paragraphs 3, 4 and 8 of the 2011 Notification as understood in the context of paragraph 7 of the 2011 Notification, which classifies CRZ into such different categories. If the interpretation as suggested by Mr.Jagtiani is accepted, it would negate so many of the essential activities in the CRZ I, which are clearly specified in paragraph 3 and paragraph 4 read with paragraph 8 as permissible activities as discussed above, being activities requiring waterfront and foreshore facilities, construction and operation of ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures etc. to name some.

28. In interpreting the 2011 CRZ Notification, it cannot be overlooked that the object of the notification is not merely protecting the environment but also while doing so promoting the development through sustainable manner, which is also a significant object being achieved in regulating activities in the coastal zone areas. Thus, CRZ-I cannot be interpreted to mean a zone which freezes every activity. In other words, in the present context, merely because the area is a mangrove area which is more than 1000 sq.meters requiring buffer zone of 50 meters along the mangroves to be provided as prescribed in paragraph 7 of the 2011 Notification, it cannot be inferred that no activity such as the one intended to be undertaken by the petitioner, becomes a prohibited activity. Such a reading of the Notification would render nugatory the activities specifically permitted in the CRZ-I zone as clear from the reading of paragraph 3, 4 and 8 of the 2011 Notification.

29. From a holistic reading of the different paragraphs of the 2011 Notification as discussed above, it cannot be said that there is any prohibition to the permissible activities as recognized under the Notification itself. In our opinion, Mr. Mone would be correct in placing reliance on the decision of the Supreme Court in **N.D.Jayal & Anr. Vs. Union of India & Ors.** (supra) wherein the Supreme Court has reiterated the principles as laid down in **Vellore Citizens Welfare Forum v. Union of India** and **M C Mehta v. Union of India**, that a balance between environmental protection and developmental activities can only be maintained by strictly following the principles of 'sustainable development'. The Supreme Court held that the principle of sustainable development is a development strategy that caters to the needs of the present, without negotiating the ability of upcoming generations to satisfy their needs and that strict observance of sustainable development would put us on a path that ensures development while protecting the environment, a path that works for all people and for all generations. It is held that all

environmental related developmental activities should benefit more people while maintaining the environmental balance which could be ensured only by the strict adherence of sustainable development, without which life for coming generations will be in jeopardy. It was held that the adherence to the principles of sustainable development is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. It is also held that the right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. It is observed that right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental rights, which are an integral part of human rights. It is hence held that the construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development, and such works could very well be treated as integral component for development. To ensure sustainable development is held to be one of the goals of Environmental Protection Act, 1986 which is necessary to make effective the guarantee of 'right to life' under Article 21. The Supreme Court, hence, has observed that the concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development, hence, the Environment Protection Act cannot be treated as a power simpliciter, but it is a power coupled with duty.

18. Thus this Court in **Maharashtra Maritime Authority** rejected the contention of BEAG that no development activity can be carried out in CRZ-1A area. This Court also emphasized the importance and need of carrying out large projects of public importance by maintaining environment balance and adhering to the principle of sustainable development.

19. It must however be noted here that the judgment in **Maharashtra Maritime Board** (supra) has been assailed by BEAG before the Apex Court by filing Special Leave Petition (Civil) Diary No.29692 of 2022. While issuing notices in SLP

filed by BEAG, the Apex Court has stayed the directions of this Court by order dated 10<sup>th</sup> October 2022. We did adjourn the present Petition at the request of BEAG for some period. However mere grant of stay in ***Maharashtra Maritime Board*** cannot be a reason to keep present Petition pending indefinitely, particularly considering the importance and need involved in execution of the project. It is also well settled law that mere stay of this Court's Order by the Supreme Court would not wipe out that order. We may make useful reference in this regard to the Judgment of the Apex Court in ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.***, (1992) 3 SCC 1, in which it is held as under:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate

Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

20. After considering the provisions of CRZ Notification, we are convinced that development of roads and bridges is a permissible activity and in any case not a prohibited activity.

Relevant provision of the Notification reads thus:

**Prohibited activities within CRZ,-** The following are declared as prohibited activities within the CRZ,-

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(iv) Land reclamation, bunding or disturbing the natural course of seawater **except those,-**

(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, **bridges, sealink, road** on stilts, and such a s meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;

*(Emphasis supplied)*

21. As contended by Mr. Singh, this Court has granted permissions for execution of various projects by several proponents including the National Highways Authority of India for execution of works of public importance.

22. The concerns expressed by BEAG about felling of higher number of mangrove trees and diversion of larger area of mangrove forest are taken care of by the additional affidavit

dated 19<sup>th</sup> January 2023 filed by Petitioner in which it is clarified that only 350 mangrove trees would be felled and 0.0785 ha of mangrove forest would be diverted. Thus, even though Petitioner has requested clearance from the various authorities for diversion of larger area of mangrove forest it has undertaken before this Court to restrict the diversion only to 0.0785 of mangrove forest area as well as felling of 350 number of mangrove trees. Mr. Singh has assured this Court that NHAI would scrupulously comply with its statements made in additional affidavit with regard to number of mangrove trees to be felled and area of diversion of mangrove forest. We reproduce paragraph 1 of the additional affidavit filed on 19<sup>th</sup> January 2023 as under;

1. I am GM(T) & Project Director PIU-Thane, and I am aware of the facts of the above-mentioned case, and I am filing this Affidavit to place on record that the number of mangrove trees which will be affected due to construction of bridge over Vaitarna River for the purpose of connecting Vadodara-Mumbai Green Field Express Highway at Palghar District may be **approximately 350 mangrove trees**. The mangrove affected area (permanently) would be within CRZ-1A in about **0.0785 hectares**. The construction is by way of "well" foundation / pile foundation with 10 m dia periphery within the CRZ-1A area and major mangroves shall be affected at a total 10 nos of pier locations with scattered mangroves affected at other few locations. To show the location of bridge as well as the Pillars within CRZ-1A area, Hereto annexed to and marked Exhibit-A is the copy of sketch plan.

*(Emphasis supplied)*

23. Various authorities have already imposed strict conditions on NHAI including that of afforestation while

granting their respective permissions. NHAI will have to strictly comply those conditions. This will ensure adherence to the principle of sustainable development.

24. ***Bharatmala Pariyojana*** is a new umbrella program for the highways sector that focuses on optimizing efficiency of freight and passenger movement across the country by bridging critical infrastructure gaps through effective interventions like development of Economic Corridors, Inter Corridors and Feeder Routes, National Corridor Efficiency Improvement, Border and International connectivity roads, Coastal and Port connectivity roads and Green-field expressways. Its an ambitious and mammoth project of Government of India, of which Delhi-Mumbai express way is a part. Vadodara-Mumbai greenfield expressway which forms part of Delhi-Mumbai expressway corridor will benefit large sections of population in Maharashtra, Gujrat and Union Territory of Daman, Dadra & Nagar Haveli. Execution of project Considering the importance of the project proposed to be undertaken by Petitioner, we deem it appropriate to grant permission as sought for in the Petition.

25. The Petition is accordingly allowed in terms of prayer clause (a) which reads thus;

(a) That this Hon'ble Court may be pleased to grant permission to the Petitioner i.e. National Highways Authority of India to remove / fell mangrove trees in an area admeasuring 3.9500 ha of mangrove forest land for the Development of Vadodara Mumbai Expressway (Phase-II Main Alignment) from Km 26+320 to km 104+700 (km 390.864 of NH-8) of Main Expressway (Length 78.118 km) to be executed on Hybrid Annuity Mode in the State of Maharashtra.”

26. Rule is made absolute accordingly.

**(SANDEEP V. MARNE, J.)**

**(ACTING CHIEF JUSTICE)**