HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 218 OF 2013

1. Navi Mumbai Environment Preservation Society.
2. Vinod Kumar Punshi. … Petitioners.

V/s.

1. Ministry of Environment through its Secretary, Department of Environment, Government of Maharashtra, Mantralaya, Mumbai-400 001.
2. The Managing Director, City and Industrial Development Corporation,
3. The Municipal Commissioner, Navi Mumbai Municipal Corporation,
4. The Chief Conservator of Forest (Mangrove Cell), Government of Maharashtra.
5. Commissioner, Konkan Division,
6. Commissioner of Police, CBD Belapur, Navi Mumbai.
7. Maharashtra Coastal Zone Management Authority.
8. Chairman, Maharashtra Pollution Control Board.
9. Secretary, Ministry of Environment & Forest, New Delhi.
10. M/s.Mistry Contractor Co.Pvt.Ltd. … Respondents.

WITH

PUBLIC INTEREST LITIGATION NO. 58 OF 2018

Sunil Sureshchandra Agarwal. … Petitioner.

V/s.

1. The State of Maharashtra.
2. City Industrial Development Corporation of Maharashtra Ltd.

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3. The Chief Conservator of Forests
   (Mangrove Cell).
4. The Municipal Commissioner,
   Navi Mumbai Municipal Corporation.
5. The Commissioner,
   Konkan Division, Navi Mumbai.
6. Maharashtra Coastal Zone Authority.
7. The Principal Secretary and Chairman,
   Maharashtra Pollution Control Board.
8. The Secretary,
   Ministry of Environment and Forests,
   New Delhi.
9. The Commissioner of Police,
   CBD Belapur, Navi Mumbai-400 614.
10. The Senior Inspector of Police,
    NRI Sagari Police Station.
11. Mistry Construction Company Private Ltd. … Respondents.

PIL/218/2013

Mr.Shiraz Rustomjee, Senior Advocate as Amicus Curiae.
Mr.Vinod Kumar Punshi, the petitioner No.2 in person.
Mr.A.B.Vagyani, GP with Ms.Nisha Mehra, AGP for the respondent Nos.1 and 4 to 6.
Mr.S.U.Kamdar, Senior Advocate with Mr.Ranjith Nair and Ms.Amrita Joshi and Mr.Nikhil Kapoor i/b. the Law Point for the respondent No.2.
Mr.Sandeep V. Marne for the respondent No.3.
Mr.P.K.Dhakephalkar, Senior Advocate i/b. Mrs.Sharmila U. Deshmukh for the respondent Nos.7 and 8.
Mr.Parag Vyas for the respondent No.9.
Mr.Ravi Kadam, Senior Advocate with Mr.Vikram Nankani, Senior Advocate, Mr.Saket Mone, Mr.Ashish Rao, Mr.Subit Chakrabarti, Mr.Vishesh Kalra and Ms.Neha Joshi i/b. Vidhi Partners for the respondent No.10.
Mr.Vijay Hiremath for the respondent No.11.

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PIL/58/2018

Mr.Subhash Jha with Ms.Siddh Vidya and Ms.Ankita Pawar, Mr.Siddharth Jha and Ms.Sanjana Pardeshi I/b. Law Global Advocates for the petitioner.
Mr.A.B.Vagyani, GP Ms.Nisha Mehra, AGP for the respondent Nos.1, 3 and 7 to 10.
Mr.G.S.Hegde with Mr.C.M.Lokesh and Ms.P.M.Bhansali for the respondent No.2.
Mr.Sandeep V. Marne for the respondent No.4.
Mr.P.K.Dhakephalkar, Senior Advocate i/b. Mrs.Sharmila U. Deshmukh for the respondent No.6.
Mr.R.V.Govilkar with Mr.Parag Vyas for the respondent No.8.
Mr.Vikram Nankani, Senior Advocate with Mr.Saket Mone, Mr.Ashish Rao, Mr.Subit Chakrabarti, Mr.Vishesh Kalra and Ms.Neha Joshi i/b. Vidhi Partners for the respondent No.11.

CORAM : **A.S.OKA AND RIYAZ I. CHAGLA, JJ.**

RESERVED ON : **17th September 2018.**

PRONOUNCED ON : **1st November 2018.**

JUDGMENT : (Per A.S. Oka, J.)

OVERVIEW

PIL No.218/2013 is filed *inter alia* for inviting attention of the Court to destruction of mangroves in Navi Mumbai (New Bombay). A judicial notice will have to be taken of the fact that in early 60s, on the recommendations made by the committee headed by Shri S.G.Barve, a retired Civil Servant, the State Government took a decision to set up a satellite city of Navi Mumbai to reduce congestion in the city of Mumbai. Accordingly, from the year 1970, lands in 95 villages in Thane and Raigad districts were en-bloc acquired under the provisions of the Land Acquisition Act, 1894 for setting up a satellite city of Navi Mumbai. The

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area of Navi Mumbai is about 344 square kilometers. It is pointed out in the petition that Navi Mumbai is known for its picturesque wetlands. It is pointed out that Navi Mumbai has a creek line of 150 km with a dense mangroves bed of about 50 sq.km, various water bodies and mud flats which support various categories of flora and fauna. It is pointed out that Navi Mumbai is located 1 meter below mean high tide level and hence, it is important to protect the coastal areas like the mangroves belt, lakes, holding ponds and wetlands to combat the harsh impacts of adverse environmental calamities.

2. Three broad issues are urged in PIL No.218 of 2013. The first is regarding large scale destruction of mangroves though mangrove areas have been classified as protected forest. It is pointed out that there are instances of burning of mangroves or destruction of mangroves by dumping of construction waste or other debris. The second issue is of protecting the mangroves which are classified as forest. The third issue is about the protection of wetlands in Navi Mumbai. It is pointed out that wetlands are adversely affected by dumping activities undertaken in a systematic and deliberate manner. The specific issues raised in PIL No.218 of 2013 concern two lakes in Navi Mumbai. The first is called as DPS Lake behind Delhi Public School in Sector-52 of Nerul, Navi Mumbai. It is alleged that it is a natural wetland of having an area of about 30 acres which surrounded by mangroves. What is pointed out is that for diverse reasons such as dumping of garbage and construction debris over the lake as well as adjoining mangroves, the DPS Lake is being destroyed. The other lake subject matter of this petition is located in Sector-34 of Navi

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Mumbai behind Indian Maritime University (also known as T.S.Chanakya) on Palm Beach Road. It is hereafter referred as second lake. It is pointed out that this lake is also facing the same difficulties. By amending the petition, one more challenge has been incorporated in PIL No.218 of 2013. The said challenge is to the notification dated 5th October 2016 (for short "the impugned notification") issued by the Government of Maharashtra through its Urban Development Department. A development plan for Navi Mumbai was sanctioned by the State Government by notification dated 18th August 1973 read with the notification dated 18th January 1980 with effect from 1st March 1980. The plan was sanctioned in exercise of powers under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). The draft development plan was prepared by the City and Industrial Development Corporation Limited (for short "CIDCO") which was appointed as the New Town Development Authority for the area comprised in Navi Mumbai in exercise of powers under sub-section 3(A) of section 113 of the MRTP Act. It is also a Special Planning Authority within the meaning of the MRTP Act. The process of modification of the sanctioned development plan of 1980 was commenced in the year 2002 by a notification dated 27th June 2002 published in the Government Gazette dated 18th July 2002. The modification was initiated in respect of the three land pockets in Karave village described therein as pockets A, B and D . Pocket-A consists of an area 20 Hectares which is on the West of NRI Housing Scheme in Karave village. Pocket-C consists of an area of 47 Hectares which is at West of proposed golf course and South of village Karate. Pocket-D is having an area of 0.85 Hectares which on the West of proposed CIDCO Officers' Club and East of

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CRZ boundary in Karave village. The proposal was to remove the said three pockets from No Development Zone in the sanctioned development plan and to put first two pockets in Regional Park Zone and the third one into predominantly Residential Zone. The reason for the proposed change in pocket A was to facilitate development of golf course and to make it economically viable. The reason for the proposed change in pocket B was to provide complimentary activities related to golf course. The reason for the proposed change in pocket D was to make the golf course viable. By the impugned notification dated 5th October 2016, the proposed modification of the development plan in respect of two pockets described as Pockets-A and D was approved and sanctioned by the State Government. The proposal regarding the pocket C was kept in abeyance. While sanctioning the said modification by including Pocket-A as Regional Park Zone, a condition was added that development will be permissible only after prior approval of the Maharashtra Coastal Zone Management Authority (for short "MCZMA").

3. In PIL No.218/2013, large number of orders were passed by this Court from time to time. We are referring to the said orders in subsequent part of the judgment. We may note here that admittedly, the issue regarding DPS Lake is sorted out on the basis of the interim orders and, the said lake has been rejuvenated and restored to its original condition which is now frequented by migratory birds.

4. PIL No.58/2018 has been filed essentially for challenging the impugned notification. The second challenge in the said petition is to the

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permission granted by CIDCO on 18th September 2017 for constructing a boundary wall. Further prayer is against the respondent No.11 who is the project proponent for the golf course to be set up on pocket A directing the said respondent to restore back the area reclaimed in furtherance of the permission dated 18th September 2017. Further prayer is regarding taking actions both civil and criminal against the respondent No.11 in the said PIL M/s. Mistry Construction Company Private Limited (hereinafter referred to as "the Project Proponent") and personnel of CIDCO for violating the interim orders passed in PIL No.218/2013 as well as violation of Environmental laws.

INTERIM ORDERS IN PIL NO.218 OF 2013

5. Before we refer to the submissions, it will be appropriate if we make a reference to various interim orders passed in PIL No.218/2013. We may note that as the petitioners in PIL were appearing in person, at the request made by this Court, Shri Shiraz Rustomjee, learned senior counsel agreed to act as an Amicus Curiae. The first material order is of 29th April 2014. Paragraph-12 of the said order contains operative directions which read thus:

> "12. We, accordingly, issue the following interim directions.
>
> (a) **We restrain the City and Industrial Development Corporation Ltd. (CIDCO) from destructing the DPS lake in any manner by carrying on any development activity on the area covered by the DPS lake which is approximately 30 Acres. The CIDCO shall take immediate steps to remove the debris dumped on the inlet through which creek water enters the DPS lake. The CIDCO shall be**

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under an obligation to clear the dumping near the pipe which is referred to in the affidavit of the CIDCO. The CIDCO shall ensure free flow of creek water through the pipe and through the inlet to the DPS lake.

(b) Pendency of this Petition and this order will not prevent the State Government from passing any appropriate order on the Application made by the CIDCO. However, the State Government will have to consider various orders of this Court including this order while passing an order on the said Application. **We make it clear that even if a preventive order is vacated by the State Government, in view of the interim directions issued by this Court, the CIDCO shall not be entitled to develop the area covered by the DPS lake. We make it clear that the CIDCO shall not carry out the dumping activities in or near the DPS lake.**

(c) As regards the unauthorized place of worship is concerned, a notice under Subsection (1) of Section 54 of the said Act of 1966 has been issued. If there is no restraint order from any competent Court, the notice issued by the CIDCO shall be executed and implemented within a period of six weeks from today.

(d) **The State Government and the CIDCO shall take all possible steps for preventing the dumping on or near the mangroves along the Palm Beach Road as well as the second lake.**

(e) As stated earlier, Shri Anil Patil, the Chief Controller of Unauthorized Constructions of CIDCO and Smt. Seema Adgaonkar, the Range Forest Officer, Mangrove Cell, Navi Mumbai, shall be the Nodal Officers and they will be responsible for preventing the dumping of debris on or near mangroves near Palm Beach Road and the second Lake. The CIDCO shall provide toll free numbers so that citizens can complain about the illegal destruction of mangroves in the area. Wide publicity shall be given to the toll

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free numbers. As stated above, we direct the CIDCO to erect barricades so as to prevent the entry of the trucks and dumpers near the mangroves.

(f) We direct the State Government to provide necessary police assistance to the Nodal Officers and their staff. The Nodal Officers shall be entitled to call upon Shri Vivek Masal, the Assistant Commissioner of Police, Turbhe Division, to provide police assistance for protecting the members of the staff of Navi Mumbai Municipal Corporation and various departments including forest department as well as for keeping regular vigil especially during nights for preventing dumping on or near mangroves along the Palm Beach Road and dumping in or near the second lake. The Assistant Commissioner of Police shall provide a team of Police for keeping regular vigil;

(g) The Assistant Commissioner of Police, Turbhe Division, shall be under an obligation to provide all necessary police assistance on the request being made by the Nodal Officers. We make it clear that in case of transfer of the Nodal Officers and the present Assistant Commissioner of Police of Turbhe Division, their successors will be bound by the orders passed by this Court and the successors of Shri Patil and Smt. Adgaonkar, shall act as the Nodal Officers without specific orders being passed by this Court.

(h) The CIDCO shall take steps for removal of debris which is dumped on or near the mangroves in the area. The CIDCO shall file an affidavit setting out a time-bound schedule for removal of the debris and other materials.

(i) Such affidavit shall be filed by an appropriate officer of the CIDCO on or before 13th June 2014.

(j) The affidavit filed by the CIDCO shall also deal with the compliance of these directions including the direction to erect the barricades.

(k) For dealing with the affidavit which may be filed by the CIDCO and for issuing further directions, if any, the Petition shall be listed on 20th June 2014 under

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the caption of "Directions".

(l) We also direct all concerned Authorities including the Forest Authorities as well as the Police Authorities to initiate civil and criminal action against the wrong doers in accordance with law."

(emphasis added)

Another material interim order is of 3rd and 4th August 2015. In addition to the interim directions which were operating till then, further interim directions were issued under the said order. Paragraph-26 contains further interim directions which read thus:

"26. In addition to the interim orders which are operating till today, we issue the following interim directions:

(i) We direct the Forest Department of the State Government to remove the road approximately admeasuring 50 meters x 3 meters constructed by dumping of debris on mangroves as stated in clause 3 of the affidavit of Shri Makarand Baburao Ghodke dated 15th July, 2015. The Forest Department shall ensure that the entire material dumped on the mangroves is removed and if necessary, the mangroves are replanted in the area covered by the road. This action shall be completed by the Forest Department within a period of two months from today. The Forest Department shall also take steps to remove encroachment on Forest land in Navi Mumbai;

(ii) We direct the NMMC and/or the CIDCO to forthwith 14 of 21 stop dumping in Sector 50 at Nerul on the areas covered by the mangroves. Not only that the debris shall be removed but also mangroves shall be replanted in place of the destructed mangroves. This action shall be completed within a period of two months from

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today;

(iii) We direct that in the event of any dispute arising between the NMMC and the CIDCO regarding the jurisdiction, for the purposes of implementation of the interim orders of this Court, the dispute shall be resolved by the Committee headed by the Divisional Commissioner appointed under this order and the decision taken by the Committee shall bind both the CIDCO and the NMMC;

(iv) In addition to the Nodal Officer already appointed by the CIDCO, it will be open for the CIDCO to appoint one or two more Nodal Officers. This action shall be taken within a period of one month from today. We direct the NMMC to appoint one or more Nodal Officers within a period of one month from today;

(v) The Assistant Commissioners of Police shall assist the Nodal Officers to implement the orders of this Court within their respective area of jurisdiction. We direct the Commissioner of Police, Navi Mumbai to notify the Assistant Commissioners of Police with reference to their territorial jurisdiction who shall be responsible for assisting the Nodal Officers of the CIDCO, the NMMC, the Forest Department as well as the members of the staff of the said Authorities;

(vi) We direct the State Government to constitute a Committee headed by the Divisional Commissioner, Konkan Division. The Committee shall consist of one Senior officers each of the CIDCO, the NMMC and the Forest Department. The nomination shall be made by the respective authorities within one month from today. The Officers so nominated shall be higher in rank than the rank of the Nodal Officers. We direct that a Deputy Commissioner of Police nominated by the Commissioner of Police of Navi Mumbai shall be also a member of the Committee headed by the Divisional Commissioner. The Nodal Officers of the

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CIDCO, the NMMC and Forest Department shall be entitled to attend the meetings of the Committee as Special Invitees. We direct the Divisional Commissioner to appoint representatives of one or two NGOs including the first Petitioner working in the field of environment as member/s of the Committee. In any event, a representative of the first Petitioner shall be invited to attend all the meetings of the Committee as a Special Invitee;

(vii) The Committee headed by the Divisional Commissioner shall meet at least one in a month to take review of the implementation of the directions issued by this Court from time to time. It will be the responsibility of the Committee to ensure that a proper coordination is established amongst all agencies (the CIDCO, NMMC, Forest Department and the Police) involved in the exercise;

(viii) We direct that the NMMC and the CIDCO shall be responsible for ensuring that there is no dumping of debris or any material on the mangroves as well as within 50 meters buffer zone from the existing mangroves within their respective jurisdictions. Both the authorities shall be responsible for ensuring that there is no destruction of mangroves made within their respective jurisdictions. In the event, there is a destruction of mangroves, both the authorities will be responsible for ensuring that the mangroves are replanted. As far as the area within the jurisdiction of Forest Department is concerned, naturally it will be the responsibility of the Forest Department to ensure that the mangroves are not destructed and in the eventuality of the destruction, the mangroves are replanted. The barricades/stones installed on the basis of the earlier orders of this Court shall be maintained properly;

(ix) We direct the CIDCO to comply with the directions issued earlier of creating a mechanism in the form of toll free number to receive complaints including

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anonymous complaints. We direct the CIDCO to ensure that facility of registering complaints on the toll free number as well as the cell phone number provided for that purpose is available on all seven days of the week. We also direct the CIDCO to provide a mechanism for registering complaints by email. We also direct the CIDCO to make a provision of registering the complaints by uploading photographs of the sites of mangroves on the website of the CIDCO. Appropriate mechanism shall be created for providing information on the website of the CIDCO regarding the action taken on the basis of complaints received by all modes;

(x) We direct the NMMC to create a similar grievance redress mechanism in terms of clause (ix) above;

(xi) We direct the CIDCO and NMMC to ensure that notices giving details of the availability of the grievance redress mechanism are permanently displayed in all their offices including all ward offices of the NMMC. We direct the CIDCO and the NMMC to give adequate publicity to the grievance redress mechanism at least once in every four months in English, Marathi and Hindi Newspapers having wide circulation in the area. Compliance affidavit regarding creation of the mechanism as directed above shall be filed by CIDCO and NMMC within a period of two months from today;

(xii) We direct the Divisional Commissioner, Konkan Division to give adequate publicity to the constitution of the Committee. After the Committee is constituted it will be open for the citizens to lodge complaints in writing directly to the said Committee complaining about inaction on the part of the CIDCO and the NMMC. The mode of filing complaints by different methods shall be also notified;

(xiii) We make it clear that it will be the responsibility of the Committee to monitor implementation of the

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interim orders passed by this Court from time to time. In case the Committee finds any difficulty in implementation of the interim directions of this Court, it will be open for the Divisional Commissioner to submit a report to this Court through the office of the Government Pleader to enable this Court to issue appropriate directions;

(xiv) The action taken reports shall be filed by the Committee headed by the Divisional Commissioner in this Court in the first week of January and first week of June in every calender year;

(xv) We direct the Forest Department to submit a proposal to the State Government for strengthening of its Mangrove Conservation Units by providing adequate infrastructure such as vehicles for patrolling mangrove forest areas. We direct the State Government to consider such proposal as and when it is submitted by the Forest Department. We direct the Forest Department to submit the proposal within a period of two months from today. We make it clear that unless proper infrastructure including vehicles for patrolling is provided to the Mangrove Conservation Unit, it will be difficult for the said Conservation Unit to implement various directions issued by this Court in this particular PIL as also various directions issued under the order dated 6th October, 2005 by the first Court;

(xvi) We make it clear that all interim directions issued earlier subject to modification made by this order shall continue to operate till further orders;

(xvii) We direct the CIDCO to ensure that wherever barriers/stones installed under the orders of this Court have been removed or destroyed, the work of restoration shall be completed within a period of one month from today;

(xviii) We direct that this PIL shall be listed on 21st October, 2015 for considering the compliance affidavits. Compliance affidavits shall be filed by

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the State Government, CIDCO as well as NMMC on or before 15th October, 2015."
(emphasis added)

In terms of the said order, a Committee was constituted by the State Government headed by the Divisional Commissioner.

6. One of the issues raised in these PILs was of setting criminal law in motion for violation of section 15 of the Environment Protection Act, 1986 (for short "the said Act of 1986"). On this aspect, further interim directions have been issued vide order dated 22nd December 2016. Paragraph-15 of the said order reads thus:

"15 Hence, we issue further interim directions.

(I) We direct the Committee headed by the Divisional Commissioner, Konkan Division to coordinate the work of filing of complaints by the authorised officers under clause (a) of Section 19 of the said Act of 1986. Proper procedure shall be laid down by the said Committee to ensure that the authorised officers promptly file complaints in case of the violations attracting the penal provisions under Section 15. The Committee will have to ensure that the authorised officers properly coordinate with the concerned Police officers;

(II) We direct the Central Government to consider the question of appointing Police officers of appropriate rank as authorised officers under clause (a) of Section 19 of the said Act of 1986 in different areas with a view to make implementation of the said Act of 1986 more effective. Appropriate decision shall be taken by the Central Government within a period of one month from the date on which an

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authenticated copy of this order is produced by the Petitioners in the office of the Secretary in charge of the Department of Environment of the Central Government. The concerned Ministry shall act upon an authenticated copy of this order;

(III) We clarify that registration of offences by the Police under Sub-Section (1) of Section 15 of the said Act of 1986 and the investigation carried out thereon is not *per se* illegal. The officers authorised under clause (a) of Section 19 can always file complaints in accordance with the said Code by relying upon the material collected during the investigation and material forming part of the charge sheet prepared by the Police;

(IV) We direct the Committee appointed under the Chairmanship of the Divisional Commissioner to ensure that the prosecutions which are lodged for commission of offences punishable under Sub-Section (1) of Section 15 are properly conducted;

(V) For considering the compliance by the Central Government and for issuing further directions on the basis of the decisions taken by the Committee headed by the Divisional Commissioner, the Petition shall be listed on 27th January, 2017 before this Court (a Division Bench presided over by A.S.Oka, J. in terms of the directions of the Hon'ble the Chief Justice);

(VI) Issue of compliances made by the Committee, CIDCO and other authorities shall be considered on that date.

ISSUES INVOLVED

7. Broadly the following issues arise in these PILs:

(i) Protection of mangroves;

(ii) Protection of wetlands, water bodies and the lakes in Navi Mumbai; and

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(iii) Legality and validity of the impugned notification which removes Pockets-A and D from No Development Zone for facilitating construction of golf course and a residential complex.

PROTECTION AND PRESERVATION OF MANGROVES

As far as issue regarding mangroves is concerned, this Bench has extensively dealt with the said issue by judgment and order dated 17th September 2018 passed in PIL No.87/2006. The findings/ conclusions recorded in the said judgment read thus:

"83 The summary of some of the important conclusions read thus:

(I) **A land regardless of its ownership on which there are mangroves, is a forest within the meaning of the said Act of 1980 and therefore, the provisions of Section 2 of the said Act of 1980 and the law laid down by the Apex Court in the case of T.N. Godavarman will squarely apply to such land;**

(ii) **A mangroves area on a Government land is liable to be declared as a protected forest or a reserved forest, as the case may be, within the meaning of the said Act of 1927;**

(iii) All mangroves lands irrespective of its area will fall in CRZI as per both the CRZ notifications of 1991 and 2011;

(iv) In 1991 CRZ notification, it is provided that all mangrove areas will fall in CRZI. By virtue of the order dated 27th September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZI. By order dated 9th January 2000, it was provided that 50 meter buffer zone will not be

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required, provided a road abutting the mangroves was constructed prior to February 1991. Under the 2011 notification, all mangroves lands fall in CRZI and in case the area of such land is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of CRZI. But, the buffer zone of 50 meters which is required to be kept free of constructions in respect of the mangroves area of less than 1000 square meters will not be a part of CRZI.;

(v) if there is any violation of the CRZ notifications regarding mangroves area, it will attract penal provision under Section 15 of the said Act of 1986 which is attracted in case of the failure to comply with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 as amended will have to be construed as an order or direction under the said Act of 1986 as CZMP is required to be approved by the Central government in view of the clause 3(i) in the CRZ notification of 1991 which is an order or direction under the said Act of 1986. Hence, if there is any violation of the condition in the letter dated 27th September 1996 in respect of the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986.

(vi) **The destruction of mangroves offends the fundamental rights of the citizens under Article 21 of the Constitution of India.**

(vii) **In view of the provisions of Articles 21, 47, 48A and 51A(g) of the Constitution of India, it is a mandatory duty of the State and its agencies and instrumentalities to protect and preserve mangroves;**

(viii) In view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destructed by the State for

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private, commercial or any other use unless the Court finds it necessary for the public good or public interest;

(ix) The Precautionary Principle makes it mandatory for the State and its agencies and instrumentality to anticipate and attack causes and consequences of degradation of mangroves.

(emphasis added)

The operative part of the directions issued in the said judgment reads thus:

"(A) The following directions issued in the interim order dated 6th October 2005 shall continue to operate as final directions in following terms;

(I) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra;

(II) Dumping of rubble/garbage/solid waste on the mangrove areas shall be stopped forthwith;

(III) Regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 metres on all sides of all mangroves areas shall be forthwith stopped. The area of 50 meters shall be kept free of construction except construction of a compound wall/fencing for its protection;

(IV) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves. All authorities including the Planning Authorities shall note that all mangroves lands irrespective of its area will fall in CRZI as per both the CRZ notifications of 1991 and 2011. In case of all mangrove areas of 1000 sq. meter or more, a buffer zone of 50 meters along the mangroves will also be a part of CRZI area. Though buffer zone of 50 meters in case of

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mangroves area of less than 1000 meters will not be a part of CRZI, it will be subject to above restrictions specified in clause III above;

(V) The State of Maharashtra is directed to file in this Court and furnish to the petitioner copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr.Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today. The soft or hard copies of the maps be supplied to the Petitioner within the same period;

(B) The following direction issued in terms of clause 8(viii) of the order dated 6th October 1005 has been substantially complied with :

"The areas shown as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today";

(C) The directions in subclauses(ix) to (xiii) of clause 8 of the order dated 6th October 2005 shall continue to operate as final directions in respect of mangrove areas only on the government lands and the lands held by Planning Authorities like CIDCO, MMRDA etc. In respect of the lands admeasuring 2823.8493 Hectares as stated in the affidavit dated 14th February 2018 of Shri Milind Panditrao, the direction regarding transfer of the lands to

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the Forest Department and consequential directions regarding making revenue entries shall be complied with within a period of three months from the date on which this Judgment and Order is uploaded. The State Government shall identify the mangroves lands which were vested in it by virtue of section 3(1) of the Private Forest Act and shall take appropriate steps in respect of such lands for transferring such lands to Forest Department within a period of 18 months from today. It will be also open for the State Government to take recourse to section 21 of the Private Forest Act in appropriate cases;

(D) **We direct the State Government to constitute a Committee headed by the Divisional Commissioner, as agreed by the State Government. The Committee and subcommittees shall be formed in accordance with the observations made in paragraph 68 above. The committee shall be responsible for the preservation and conservation of mangroves, for restoration of reclaimed mangroves areas set out in paragraph 73 above and for implementation of the directions in this Judgment. The Committee shall be constituted within a period of one month from today. The subcommittees as observed in paragraph 68 shall be constituted within two months from today. The Committee shall hold regular meetings and the minutes of the meeting shall be made available on public domain as observed in paragraph 68 above. As directed under the order dated 6th October 2005, the Principal Secretaries of (1) Environment, (2) Revenue and (3) Forest Department of the Government of Maharashtra shall be overall in-charge for ensuring total compliance with the directions issued under this Judgment and Order. They will monitor the working of the Committee headed by the Divisional Commissioner;**

(E) **The State Government shall create a Grievance Redress Mechanism for enabling the members of the public to lodge complaints about the activity of destruction /removal of the mangroves.** An opportunity must be

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made available to file complaints about any acts or omission which may ultimately result in destruction or causing damage to the mangroves area. The State Government shall make arrangements for receiving complaints on dedicated website, on toll free numbers and in physical form to the officers or offices nominated by the State Government in all districts and especially in the areas where there are mangroves. A facility shall be made available for uploading the photographs of the affected area by email and by whats app or similar media by use of cell phone. The State Government must also create a machinery to ensure that the said complaints are immediately transferred to the Committee headed by the Divisional Commissioner. The Committees will ensure that immediate action is taken of stopping the illegal destruction or acts amounting to causing damage to the mangrove areas, if necessary with the police help. Necessary register shall be maintained of the complaints received and action taken thereon. The State Government must lay down the procedure by which complainant is kept posted about the action taken on his or her complaint. On the request made by the complainant, the identity of the complainant shall be masked and the names of the complainant shall not be disclosed to the violators;

(F) The Grievance Redress Mechanism shall be set up within a period of three months from today. Adequate publicity shall be given to the availability of the Grievance Redress Mechanism in leading newspapers as well as local newspapers. Information about availability of the Grievance Redress Mechanism shall be prominently displayed in the offices of District Collectors, Sub-Divisional Officers, Tahasildar in the Coastal Districts as well as in the offices of the Maharashtra Pollution Control Board and the Maharashtra Maritime Board in the coastal districts. The information shall be displayed prominently in the offices of the Municipal Corporations/Municipal Councils provided any coastal area forms part of the limits of such Municipal Corporation or such Municipal Council. Publicity shall be given at regular intervals of at least six

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months to the details of the grievance redress mechanism in leading newspapers having good circulation in the coastal areas;

(G) **We direct that it is the obligation of the State to replant destructed mangroves and to restore mangroves areas which are illegally reclaimed.** The said areas shall be restored to its original condition. In what manner restoration shall be done must be decided by the Committee headed by the Divisional Commissioner after consulting experts in the field. The Committee shall identify the vulnerable mangroves areas in the State and direct its constant surveillance by the Police/Forest Guards/Security Guards of the Maharashtra Security Corporation. The Committee shall ensure that barricades are erected for preventing the entry of vehicles in such vulnerable area. The Committee shall also consider of installing CCTVs along the vulnerable stretches to keep a vigil. The Committee shall also cause to undertake satellite mapping of mangroves area in the state at periodical intervals of not more than six months by using resolution as suggested in paragraph no.28 of the note submitted by the learned senior counsel appearing for the petitioner. Any changes seen shall be considered by the Committee and remedial measures shall be taken. The State Government shall sanction necessary amount for that purpose;

(H) The State Government shall ensure that criminal law is set in motion against all those who commit offences punishable under section 15 of the said Act of 1986 as observed in the Judgment. The Committee shall monitor implementation of this direction;

(I) The State Government shall issue a direction under section 154 of the MRTP Act to all concerned Planning Authorities and Regional Boards under the MRTP Act to to show mangroves areas and 50 meter buffer zone around it while making or revising Development Plans/Regional Plans. Such a direction shall be issued within a period of three months from today;

(J) Quarterly Compliance reports shall be filed by the

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Committee reporting compliance with the aforesaid directions. The first of such reports shall be filed on or before 1st December 2018;

(K) Rule issued in PIL No.87 of 2006 is disposed of on above terms;

(L) For reporting compliance, PIL shall be listed on 1st December 2018. It will be appropriate if PIL is placed for monitoring the compliance before this Bench or a Bench of which one of us is a party. The Prothonotary and Senior Master shall seek appropriate directions in this behalf from Hon'ble the Chief Justice;

(M) Writ Petition No. 2208 of 2004 stands disposed of. No separate directions are required to be issued in this Petition. Writ Petition No. 2741 of 2004 stands disposed of by a separate order passed today;"

(emphasis added)

7. In fact, on the date of pronouncement of the aforesaid judgment in PIL No.87/2006, this Court modified interim order dated 3rd and 4th August 2015 in PIL No.218/2013 by directing that the Committee constituted under the said order headed by the chairmanship of the Divisional Commissioner, Konkan Division will continue to function only till a new committee is constituted as per the directions in PIL No.87/2006.

8. Therefore, as far as the issue of preservation and protection of mangroves in Navi Mumbai is concerned, the same will be governed by the judgment and order dated 17th September 2018 passed in PIL No.87/2006. Therefore, the other issues will have to be decided in these two PILs.

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SUBMISSIONS

9. Now, we refer to the submissions made across the bar. Firstly, we refer to the submissions made by Shri Shiraz Rustomjee, the learned senior counsel appointed as Amicus Curiae.

10. The main submissions are made by the learned Amicus Curiae on the issue of wetlands and the impugned notification. He pointed out that before the impugned notification was published, a public notice inviting objections was published which proposed a change of reservation in respect of pockets-A, C and D. But the impugned notification is now confined to Pockets A and D. He pointed out various steps taken by CIDCO right from the year 2002. He also pointed out the disputes between the Project Proponent and CIDCO which eventually went up to the Apex Court. He also pointed out another development regarding decision taken to set up International Airport at Navi Mumbai. The Ministry of Environment and Forest granted conditional clearance to the project subject to the undertaking an avifaunal study in consultation with the Bombay Natural History Society (for short "BNHS") which is a well known NGO engaged in conservation and bio-diversity research. He pointed out that BNHS survey was designed to document the bird diversity and species composition at various survey sites in a 10 kilometer radius from the proposed Airport. He referred to the report of BNHS on record which makes a reference to wetlands described as DSP wetlands and NRI wetlands which fall within the project site of proposed golf course. He pointed out that the impugned notification makes a reference to the plan showing sanctioned modification. The said plan shows that

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Pocket-A is partly falling within CRZ-II and Pocket-D is falling entirely out of CRZ.

11. The impugned notification provides that development in Pocket-A should be carried out after obtaining prior approval of MCZMA. He pointed out that the proposal for grant of approval was considered in the meeting of MCZMA held on 17th and 18th January 2017. It was resolved by MCZMA that the Project Proponent should obtain clarification from CIDCO whether the land under project is wetland. The Project Proponent was directed to submit a layout of of the proposed development on CRZ map. The Project Proponent was also directed to produce a clear report from BNHS regarding the status of the land. He pointed out that condition of obtaining report of BNHS was subsequently not insisted upon by MCZMA. He invited out attention to minutes of 117th meeting of MCZMA which record that CIDCO maintained that Pocket-A was partly situated within CRZ-II area and on landward side of an existing road constructed prior to the date of issue of CRZ notification of 1991. He also pointed out various parts of the project report. He pointed out that as far as Pocket-A is concerned, in the affidavit dated 28th June 2017 of the Shri N.Vasudevan, Additional Chief Conservator of Forest and the head of Mangroves Cell,Mumbai, it is stated that it is a water body as per the map and as per the field observation. It also records that Sparse mangroves are seen on the fringes and number of birds including Flamingos visit the area. He pointed out that even CIDCO in its affidavit dated 6th April 2017 has stated that Pocket-A and D are water bodies. He pointed out that BNHS report refers to Pocket-A as NRI wetland. He pointed out that EIA

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report records that entire project site is inundated and could be best described as water body. He pointed out that it is stated that a part of Pocket-A forms part of CRZ-II. As regards Pocket-C, he pointed out that it is falling in CRZ-I and it is partly covered by mangroves. He pointed out that according to the Forest Department, number of birds including Flamingos visit this area and it is full of mangroves. As regards Pocket-D, he pointed out that according to the case of CIDCO, as per approved CZMP, Pocket-D falls outside CRZ.

12. We must note here that after the submissions were partly heard, this Court sought certain clarifications from the parties and, accordingly, various affidavits were filed on record. The learned senior counsel appointed as an Amicus Curiae pointed out relevant affidavits. He pointed out the affidavit filed by Shri Jayramegowda R., Deputy Conservator of Forest filed on 4th October 2017. The said affidavit was filed in terms of the order dated 19th September 2017. He pointed out that in the said affidavit of the Deputy Conservator of Forests, it is specifically stated that Pockets-A and D are contiguous water bodies and that both the pockets belong to wetland which was mentioned in National Wetlands Inventory and Assessment prepared by Space Application Centre, Ahmedabad. He pointed out that in view of the affidavit that both the pockets are shown as wetlands in National Wetlands Inventory Assessment, the same will be covered by interim orders of this Court. He also invited our attention to the affidavit of Dr. P.T. Gedam, Senior Planner of CIDCO. The learned senior counsel invited our attention to various orders passed by this Court concerning the wetlands in PIL

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No.87/2013. He invited our attention to ad-interim order passed in the said PIL on 14th October 2013 which directed that on the areas which are identified as wetland areas in the Wetland Atlas prepared by the Central Government, there shall be no reclamation of the lands and no construction of whatsoever nature should be permitted without leave of the Court. He pointed out that the said ad-interim order has been continued by the order dated 25th July 2016 as interim order while issuing rule. He pointed out that under the said order, a Grievance Redress Mechanism has been set up and a Committee headed by the Divisional Commissioner of Konkan Division has been constituted to implement the interim orders passed by this Court.

13. Thereafter, he invited our attention to Wetlands (Conservation and Management) Rules, 2017 (for short "the Wetland Rules of 2017") and the definition of wetland in the said Rules. He pointed out that the order dated 4th October 2017 passed by the Apex Court in Writ Petition (C) No.230/2001 (***M.K.Balakrishnan and others v. Union of India***) which directs that the wetlands that have been mapped by the Union of India should be continued to remain protected on the same principles as were formulated in Rule 4 of the Wetland (Conservation and Management) Rules, 2010 (for short "the Wetlands Rules of 2010"). He pointed out that the said order continues to operate and by virtue of the said order, now there cannot be destruction of any wetland as shown on the Wetland Atlas.

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14. He submitted that as both Pockets- A and D are admittedly shown as wetland in Wetland Atlas, no construction is permissible thereon and, therefore, by the impugned notification issued under the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"), the same could not have been taken out of No Development Zone. He relied upon the provisions of the MRTP Act.

15. He placed reliance on the decision of the Apex Court in the case of ***M.C.Mehta v. Kamal Nath and others***[1], and urged that in view of doctrine of public trust which is held to be applicable in India, both the pockets being wetlands will have to be protected under any circumstances. He also relied upon another decision of the Apex Court in the case of ***Association for Environment Protection v. State of Kerala and others***[2]. He relied upon another decision of the Apex Court in the case of ***State (NCT of Delhi) v. Sanjay***[3]. He submitted that considering the constitutional mandate and doctrine of public trust, it is an obligation of the State and instrumentalities of the State to maintain and preserve all wetland. He also invited our attention to the reports of BNHS and the stand taken by BNHS in its affidavit.

16. The learned senior counsel appearing for the CIDCO pointed out that average ground level in Navi Mumbai is lower than the creek water level at high tide. He pointed out that Navi Mumbai was developed by CIDCO by adopting Dutch Method wherein bunds were created to

1 (1997) 1 SCC 388
2 (2013) 7 SCC 226
3 (2014) 9 SCC 772

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protect low lying areas from being submerged under the sea or creek. He submitted that development of Navi Mumbai was undertaken in a phase-wise manner and certain undeveloped parts of Navi Mumbai are at low level compared to developed parts and, therefore, such parts cannot be considered to be water bodies or wetland. He submitted that the lands covered by both the pockets were, in fact, salt pan lands. He submitted that merely because water is collected in the low lying lands because of the breaches in the bund, the same cannot become wetlands. He submitted that even under the Wetland Rules of 2010, the said pockets cannot be termed as wetlands. He submitted that as per the definition of wetland, portions covered by CRZ are excluded from the definition. He pointed out that a part of Pocket-A is covered by CRZ-II. However, he accepted that in the Wetland Atlas, both the pockets are marked as wetland and, therefore, the interim orders passed by the Apex Court and this Court do not permit any development thereon.

17. He submitted that clause-3 in CRZ Notification of 2011 will have to be harmoniously read with clauses 7 and 8. He submitted that something which is permitted by clause-8 cannot be taken away by clause-3. He relied upon the decision of the Apex Court in the case of ***Krishan Kumar v. State of Rajasthan and others***[4]; ***Venkataramana Devaru v. State of Mysore***[5]; and ***UCO Bank v. Rajinder Lal Capoor***[6]. He submitted that the proposed activities are permissible activities as per CRZ Regulations of 2011. It is submitted that as both the pockets are covered

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4(1991) 4 SCC 258
5AIR (1958) SCC 255
6(2008) 5 SCC 257

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by CRZ-II and CRZ-III, the activities contemplated are permitted activities under the CRZ Regulations of 2011.

18. Dealing with the reports submitted by BNHS, he submitted that the recommendation of BNHS that the said pockets be preserved for migratory birds habitat cannot be accepted for the reason that new international airport at Navi Mumbai is coming in close vicinity of these pockets. In fact, it is within 4 km. of inner horizontal surface which is sensitive for operations of aircraft. He invited our attention to averments made to that effect in the affidavit dated 16th April 2017 filed on behalf of the second respondent. He submitted that if the area covered by the pockets is reserved for migratory birds as suggested by BNHS, it will pose a serious security threats to the airport.

19. He pointed out that as per the directions of this Court, a photocopy of the entire file containing relevant documents concerning the pockets is placed on record. He urged that it is no doubt true that ecology has to be preserved. However, a balance has to be maintained between the development and preservation of ecology. He submitted that Navi Mumbai is a growing city which has a growing population. He urged that growing population needs better infrastructure and various modern facilities. He submitted that it is necessary to develop both the pockets and, obviously, all efforts will be made to preserve ecology while developing the said pockets.

20. The learned senior counsel appearing for the Project Proponent (respondent No.10 in PIL No.218/2013) has made detailed

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submissions. He pointed out that now we are concerned with only two pockets, viz; Pocket-A admeasuring 20 Hectares. and Pocket-D admeasuring 0.85 Hectares. He pointed out that way back in the year 2004, the second respondent- CIDCO approved the award of contract to the Project Proponent for establishing golf course and Country Club. He pointed out that there are various litigations concerning the appointment of the Project Proponent which, ultimately, culminated into the order dated 25th February 2014 passed by the Apex Court. The said order directing CIDCO to appoint the Project Proponent was attempted to be challenged by way of review petition and thereafter by way of curative petition which attempts failed.

21. He pointed out that a procedure contemplated by section 37 of the MRTP Act was followed before publication of the impugned notification dated 5th October 2016. He pointed out that the change of use as contemplated by the impugned notification was necessitated due to the fact that a considerable amount of residential land in Navi Mumbai area had to be diverted by CIDCO for providing infrastructural facilities like Special Economic Zone, Navi Mumbai International Airport, Holding Ponds etc. He submitted that as Coastal Zone Management Plan (for short "CZMP") for Navi Mumbai was brought into force, it was not necessary to maintain No Development Zone on the landward side of defined High Tide Line (HTL). He submitted that due process of law under section 37 of the MRTP Act was followed before issuing the impugned notification on 5th October 2016 and, therefore, the challenge at the belated stage by the petitioners cannot be entertained. He submitted

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that the process of making a development plan under the MRTP Act has a character of a delegated legislative powers as held in the case of ***Pune Municipal Corporation v. Promoters and Builders Association and another***[7]. He submitted that making of Development Control Regulations and amendment thereto is a legislative function. He submitted that exercise of such a delegated legislative powers cannot be questioned on the ground of unreasonableness and arbitrariness. He submitted that the impugned notification imposes condition with regard to Pocket-A that development thereof is not permissible without prior approval of MCZMA. He submitted that entire Pocket-D falls outside the CRZ area. He submitted that in view of law laid down by this Court in the case of ***Parisar v. Pune Municipal Corporation***[8], a development plan cannot be challenged on the basis of other laws. He submitted that the object of preparation of development plan has to be understood. It only contains proposal for development of various lands within the jurisdiction of Planning Authority and various reservations. If a development as proposed in the development plan is to be carried out, it can be done only after obtaining necessary permissions. The object of the development plan is to make the development policy transparent. By way of illustration, he pointed out that in a given case, the development plan may propose certain developments by reclaiming sea. Merely because such a proposal is included in the development plan, the same does not become illegal. The development as proposed can be carried out only after it is permitted under other provisions of law. Therefore, the alleged violation of CRZ Regulations or laws or directions issued by the Court pertaining to the

7 (2004) 10 SCC 796
8 2013 (1) All MR 328

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wetlands cannot be a ground to challenge the development plan. Thereafter, he pointed out the provisions of the Wetland Rules of 2010. He urged that coastal wetlands covered under the CRZ Notification of 1991 have been excluded from the definition of wetland under the Wetland Rules of 2010. He would, therefore, submit that Pocket-A which is substantially covered by CRZ Notification of 2011 would be substantially governed by the CRZ Regulations and not by Wetland Rules of 2010. He pointed out that even the Wetland Rules of 2017 are not applicable to areas covered by CRZ Regulations of 2011. He accepted that as of today, both the Pockets-A and D are covered by Wetland Atlas/ Inventory though the same are not wetlands within the meaning of both the Wetland Rules. He submitted that so long as the order dated 14th October 2013 in PIL No.87/2013 and the order dated 8th February 2017 passed by the Apex Court in the case of ***M.K.Balakrishnan*** (supra) continue to apply to Pockets-A and D, no activities as permitted under the impugned notification dated 5th October 2016 can be carried out. He urged that the Project Proponent has applied for deleting the said lands from the Wetland Atlas. He invited our attention to the copy of the said application at page-1582. He submitted that this Court should allow the committees established under the Wetland Rules of 2017 to deal with these issues. He submitted that a consistent view has been expressed by the Apex Court that such matters be left to the decision of expert bodies. He would rely upon a decision of the Apex Court in the case of ***G.Sundarajan v. Union of India and others***[9].

9 (2013) 6 SCC 620

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22. Thereafter, he invited our attention to CRZ Regulations. His basic submission is that in Pocket-A which is substantially affected by both the CRZ Notifications, activity of golf course will be a permitted activity as portion of Pocket-A is partly affected by CRZ-II. He invited our attention to CRZ Notifications both of 1991 and 2011 and entire scheme of CRZ Notifications. He also addressed the Court on the decision making process adopted by MCZMA. He invited our attention to the minutes of 115th meeting of MCZMA held in January 2017 as well as decision taken in 117th meeting held in April 2017 which was corrected in the 118th meeting by which MCZMA decided to recommend the project of golf course. He has taken us through the relevant portions of the said minutes. He pointed out that MCZMA noted that the area of 13.29 Hectares out of Pocket-A falls in CRZ-II area. The recommendation records that only the golf course and its allied activities will be permitted in the portion of Pocket-A which is partly affected by CRZ-II. He pointed out that recommendation of MCZMA has not been challenged in PIL No.218/2013. He submitted that in view of recommendation by an expert body like MCZMA, the issue regarding the effect of CRZ Notification on the said project stands concluded. He submitted that the activity recommended by MCZMA is a permissible activity, whether the area is in CRZ-II or CRZ-III. Relying upon the clarification dated 19th January 2000 issued by the Ministry of Environment and Forest, he submitted that in CRZ-II, the land uses permissible would be *inter alia* construction of civic amenities, stadium, gymnasium and other recreational facilities and sports related activities and, therefore, the golf course is a permitted activity in

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the portion of Pocket-A affected by CRZ-II. He submitted that in any event parks and play grounds are permitted activities in CRZ-III.

23. Thereafter, the learned senior counsel made submission on the scheme of CRZ Notifications of 1991 and 2011. He submitted that there is no complete embargo on all developmental activities in CRZ areas. He urged that regulation of activities in CRZ areas cannot entail prohibition on such activities. He invited our attention to the General Development Control Regulations for Navi Mumbai, 1975 (for short "the said DCR"). He pointed out that Regulation 14 divides Navi Mumbai into various zones. He invited out attention to Regulation 14.4.7 which provides for permissible land uses in No Development Zones which include promenades, gardens, parks and play fields. He, therefore, submitted that *de hors* the notification dated 5th October 2016 and change of zones permitted thereunder, the activity of golf course is a permitted activity. He urged that a map prepared by the Maharashtra Remote Sensing Application Centre shows that there are no mangroves on Pocket-A land and mangroves are beyond HTL towards seaward side. He submitted that even on Pocket-D, there are no mangroves. He submitted that Pocket-A is towards landward side of HTL and is partly affected by CRZ-II area and Pocket-D which is located on the landward side of Pocket-A is not affected by CRZ. He submitted that the reports dated 6th April 2018 and 26th April 2018 submitted by the authorities as per the orders of the Court show that there is no destruction of mangroves on both the pockets.

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24. He submitted that there were original bunds existed prior to 1991 which were breached by the villagers for converting areas into aquaculture ponds by physically breaking the bunds. He submitted that bunds also breached due to non-maintenance as a consequence of which water entered upon various low lying plots of land. He submitted that most of the areas of Navi Mumbai are low lying. He submitted that though contract was awarded in the year 2004, possession of the plots was not given till 2016. He submitted that due to breaches in the bunds, creek water entered part of the pockets during HTL which brought in fishes and other sea creatures. He submitted that Pockets-A and D are neither natural wetlands nor man-made wetlands.

25. He made submissions on the reports submitted by BNHS including final report of March 2017. He submitted that there is variance between the final report and the earlier reports of BNHS. He submitted that the purported need to keep the area of the said project as habitat for birds as set out in the final report of March 2017 does not find place in the earlier reports submitted by BNHS which note that there is a high risk of bird strikes in the proposed airport area. In fact, in the earlier reports, BNHS recommended that the adjoining area ought to be made unattractive for birds which has been approved in the 34th meeting of the Standing Committee of National Bird Wild Life. He submitted that CIDCO carried out Baseline Survey through BNHS in the year 2014 and BNHS in its report recommended that the proposed site of airport and adjoining area should be made unattractive for birds to avoid bird strikes. He submitted that reports of BNHS are inconsistent. He pointed out that

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the Colour-Coded Zonal Map prepared by the Airport Authority of India shows that the lands consisted in these two pockets are very close to flying path of the proposed Navi Mumbai Aerodrome. Therefore, said areas are not conducive for habitat of bird species. He relied upon Aerodrome Advisory Circular dated 4th August 2017 issued by the Director General of Civil Aviation. He relied upon a chart setting out inconsistent and conflicting stands taken by BNHS. He submitted that a permission has been granted by CIDCO for fencing lands covered by Pockets-D and E. He submitted that fencing work is permissible under EIA Notification of 2006. He submitted that there is no merit in the challenge to the impugned notification.

26. The learned Government Pleader appearing for the State Government made oral submissions and has also filed written submissions. In the written submissions, it is mentioned that current inspection shows that Pocket-A is low lying and contains tidal water. He pointed out that Sparse mangroves are seen on the fringes. It is pointed out that it is a water body as per the map and as per field observation. He pointed out that even Pocket-D is low lying and contains tidal water. He accepted that it is a water body as per the map and as per the field observation and number of birds including flamingos visit the area. He specifically accepted that lands covered by Pockets-A and D belong to wetland as mentioned in National Wetland Inventory and Assessment (for short "NWIA") prepared by Space Application Centre, Ahmedabad and the interim orders passed by this Court are applicable to both the pockets.

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27. The learned senior counsel appearing for MCZMA contended that Pocket-A falls partly in CRZ-II area and in CRZ-II area, the activity like golf course is permissible. He submitted that as of today the CZMP of 1996 is the only approved CZMP. It was pointed out that the validity of the existing CZMP has been extended up to 31st July 2018. He submitted that open spaces are marked as CRZ-II in approved CZMP and are treated as CRZ-III while scrutinizing the project proposals. He submitted that golf course being species of play field is a permissible activity in CRZ-III area and, therefore, no fault can be found in the recommendation made by MCZMA.

28. The second petitioner appearing in person has tendered a written submission. These submissions are about the two lakes which are subject of these PILs. Moreover, it is submitted that all coastal wetlands are required to be protected and construction activities on the creek side on Palm Beach Road are required to be prohibited except for minimum defence operational purposes. The learned senior counsel appearing as Amicus Curiae has also made submissions dealing with the submission made across the bar by the respondents.

29. In PIL No.58/2018, the learned counsel appearing for the petitioner invited our attention to the decision of the Division Bench of this Court in the case of ***Makhija Developers Private Limited v. CIDCO and others***[10]. He made number of submission regarding the manner in which the bids are invited by CIDCO. He pointed out that a bid was an

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integrated bid regarding Pockets-A to E.

30. He submitted that Pockets-A, C and D described in the impugned notification are water bodies and wetlands. He relied upon number of documents to that effect including the map prepared by Maharashtra Remote Sensing Application Centre (MRSAC). He relied upon the decision of the Apex Court in the case of **M.K.Balakrishnan** (supra) and the order dated 25th July 2016 passed in PIL No.87/2013 (***Vanashakti Public Trust v. Union of India***). He submitted that in view of the orders passed in these matters, there cannot be any construction on the wetlands. He also referred to the Wetland Rules of 2010 and 2017. He also pointed out Wetland Report submitted by CIDCO.

31. CIDCO has adopted the submissions made in PIL No.218/2013 while dealing with PIL No.58/2018. The learned senior counsel appearing for the Project Proponent also relied upon the submissions made in PIL No.218/2013. In addition, he submitted that it is not open for the petitioner to urge any submission regarding illegality in the tender process of CIDCO inasmuch as the whole issue has been settled by the decision of the Apex Court in Special Leave Petition as well as in review and curative petitions. He submitted that Site Visit Reports of 28th March 2018 and 24th April 2018 clearly show that there is no destruction of mangroves. He pointed out that construction of compound wall is permissible under EIA Notification of 2006.

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32. The learned counsel representing BNHS also made extensive submissions by pointing out all the reports and submitted that it was a continuous activity undertaken in stages and therefore, different reports were submitted from time to time which culminated into final report. He also pointed out the affidavit of Dr. Apte which explains all the reports. He urged that the reports are not inconsistent.

CONSIDERATION OF SUBMISSIONS

33. We have given careful consideration to the submissions. We have considered written submissions and the decisions relied upon by the parties. Broadly, we will have to deal with the following aspects in these matters:

(a) Issue of protection of DPS Lake and adjacent mangroves;

(b) Issue of the second lake behind Indian Maritime University also known as T.S.Chanakya on Palm Beach Road;

(c) Issue of other lakes and wetlands in Navi Mumbai;

(d) Protection of mangroves vegetation in Navi Mumbai and restoration of destructed mangroves in Navi Mumbai;

(e) The legality and validity of the notification dated 5th October 2016; and

(f) Penal action against the violators of law regarding environment.

DPS LAKE AND THE SECOND LAKE

34. As far as issue regarding DPS Lake is concerned, we have also referred to various interim orders passed from time to time. The main

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order regarding lakes is of 29th April 2014 which records that there is *prima facie* material on record to show that DPS Lake is in existence for several years. As of today, there is no dispute between the parties that DPS Lake has been restored and migratory birds have started visiting the lake. As regards the second lake, we must note here that existence of the same has not been disputed and, therefore, the law and directions which will apply to the DPS Lake will also apply to the said lake.

35. As regards the first lake (DPS Lake), now there is no dispute that the said lake exists and in terms of the interim orders passed by this Court from time to time, the lake has been rejuvenated. Perusal of the affidavits on record show that none of the parties have disputed the existence of the second lake. As far as lakes are concerned, a Division Bench of this Court in the case of ***Pankaj Babulal Kotecha v. Municipal Corporation of Greater Mumbai and others***, PIL No.6/2013 (original side) decided on 3rd August 2018 has laid down the law on the subject. Paragraphs-13 to 21 of the said decision read thus:

> "13. This duty of the State can be inferred from the Chapter of Directive Principles of the State Policy viz. Article 48A of the Constitution of India, which provides thus:
>
> > "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."
>
> 14. Further, under the same Chapter Article 51A Sub-Clause (g) provides that it shall be the duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". It is thus, equally the duty of every citizen of

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India to protect forests, lakes, rivers and wild life, which are essential for a natural environment.

15. The Supreme Court in Jagpal Singh Vs. State of Punjab (supra) in paragraphs 20 and 23 held thus:

> "20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so-called auctions is not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop. 23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

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16. The Supreme Court has thus observed that there is illegal auctioning of many Ponds at throw away prices to businessman in collusion with the public authorities/Gram Panchayat and the money collected from such auctions is not used for the common benefit of villagers, but misappropriated by certain individuals. The Supreme Court has therefore, directed restoration of the said land for common use of the villagers.

17. This Court has in Avinash Laxman Kandalgaonkar (supra) in the context of illegal acts done by the Corporators at paragraph 10 held thus :

> "The Corporation or any of its officers or public representative were bound by the reservation which had the force of the law. It was expected of the Corporation to construct the school which has not been done over such a long period of 17 years. In our opinion, both the Corporation and its officers have admittedly failed in discharging their duty towards the public at large. Furthermore, the Corporator concerned exceeded his jurisdiction in spending public funds over construction of beautification of a park or jogging park, which admittedly was impermissible keeping in view the reservation. The Corporation and the Corporator both are answerable to public as to why the public funds were spent for such a purpose and why these funds could not be utilized for construction of the school. May be the construction of the school would require much more expenditure, but surely this could be beginning of a cause of a greater legal significance and larger public interest. We have no hesitation in observing that this was not expected of either of the Corporation nor the Corporator that they would ignore their legal and public duty and act contrary to law just to appease certain people. We are hopeful that the Corporation would ensure that in future public funds are not wasted in this absolutely discretionary manner. Every Corporator is expected to spend the public money for a public cause but in accordance with law."

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This Court has thus held the Corporation and the Corporator to be answerable to the public for public funds being spent for a purpose which was impermissible. The Division Bench of this Court presided over by one of us (A.S. Oka, J) has in Edwin Britto and another (supra) referred to the Directive Principles of the State Policy and the fundamental duty under clause (g) of Article 51A as well as the law laid down by the Apex Court in Hinch Lal Tiwari Vs. Kamala Devi & Ors. which has held that forests, tanks, ponds, hillocks, mountains are nature's bounty which maintain the delicate ecological balance and thus, needed to be protected as these are essential for a healthy environment and for enabling people to enjoy a quality life which is the essence of the right guaranteed under Article 21 of the Constitution. **Accordingly, it was held therein that the obligation is of the State to ensure that the lakes must continue to exist and cannot be filled up for carrying out so called beautification work which leads to their disappearance.**

18. The Supreme Court has time and again enunciated the public trust doctrine. A few of these decisions are worth referring to in the present context.

19. The Supreme Court in Intellectuals Forum Vs. State of A.P.5 whilst invoking the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati town and by referring to some judicial precedents including M.C.Mehta Vs. Kamal Nath6, M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu7, National Audubon Society Vs. Superior Court of Alpine County8, observed at paragraph 76 thus:

> "...This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny

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on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources....."

20. The Supreme Court has enunciated the public trust doctrine in the case of *Fomento Resorts and Hotels Ltd. Vs. Minguel Martins*9 and at paragraph 55 held thus:

"55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the longterm and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's longterm interest in that property or resource, including down slope lands, waters and resources."

65. **We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.**"

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21. The Supreme Court has considered the above two decisions in the case of *Association For Environment Protection Vs State Of Kerala & Ors.10* and at paragraphs 9 and 10 held thus:

> "9. We have prefaced disposal of this appeal by discussing the public trust doctrine and its applicability in different situations because the Division Bench of the Kerala High Court, which dealt with the writ petition filed by the appellant for restraining the respondents from constructing a building (hotel/restaurant) on the banks of River Periyar within the area of Aluva Municipality skirted the real issue and casually dismissed the writ petition only on the ground that while the appellant had questioned the construction of a hotel, the respondents were actually constructing a restaurant as part of the project for renovation and beautification of Manalpuram Park.
>
> 10. The people of the State of Kerala, which is also known world over as the 'God's Own Country' are very much conscious of the imperative of protecting environment and ecology in general and the water bodies, i.e., the rivers and the lakes in particular, which are integral part of their culture, heritage and an important source of livelihood. This appeal is illustrative of the continuing endeavour of the people of the State to ensure that their rivers are protected from all kinds of man made pollutions and/or other devastations."

The Supreme Court has in so observing allowed the Writ Petition filed by the Appellant and directed the Respondents to demolish the structure raised for establishing a restaurant as part of the renovation and beautification of Manalpuram Park at Aluva.

22. From the above decisions, it is clear that the State being a trustee on behalf of the people is enjoined to protect and preserve the natural resources which would include water bodies such as Lakes and allow the public interrupted use thereof......"

(emphasis added)

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36. Hence, the law laid down by this Bench will squarely apply to the two lakes. Thus, it is the constitutional obligation of the State Government, the Government of India, CIDCO and the Navi Mumbai Municipal Corporation to protect in all respects the two lakes as well as other lakes within the limits of Navi Mumbai. The breach thereof will lead to violation of the fundamental rights of citizens under Article 21 of the Constitution of India of living a dignified and meaningful life. Therefore, directions will have to be issued to ensure that free flow of creek/ sea water to the said lakes will not be obstructed. Hence, the interim order dated 29th April 2014 in terms of clauses (a) (c) and (d) of its operative part which is quoted earlier must continue to apply not only to the two lakes but also all the lakes in Navi Mumbai.

WETLANDS

37. Now, we turn to the issue of wetlands. The Convention on Wetlands, called the Ramsar Convention, is the intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources. India is a signatory to the treaty. The Convention was adopted in the Iranian city of Ramsar in 1971 and came into force in 1975. Since then, almost 90% of UN member states, from all the world's geographic regions, have acceded to become "Contracting Parties". The relevant part of the treaty reads thus:

> "RECOGNIZING the interdependence of Man and his environment;
> **CONSIDERING the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially**

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waterfowl;
BEING CONVINCED that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;
DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future;
RECOGNIZING that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;
BEING CONFIDENT that the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with co-ordinated international action;
Have agreed as follows:

Article 1
1. For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether 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 does not exceed six metres.
2. For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands.

Article 2
1. Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as "the List" which is maintained by the bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.
2. Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands

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of international importance to waterfowl at any season should be included.

3. .....

4. .....

5. Any Contracting Party shall have the right to add to the List further wetlands situated within its territory, to extend the boundaries of those wetlands already included by it in the List, or, because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List and shall, at the earliest possible time, inform the organization or government responsible for the continuing bureau duties specified in Article 8 of any such changes.

6. Each Contracting Party shall consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl, both when designating entries for the List and when exercising its right to change entries in the List relating to wetlands within its territory.

Article 3

1. **The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.**

2. Each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the organization or government responsible for the continuing bureau duties specified in Article 8.

Article 4

1. **Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.**

2. Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the

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List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

3. The Contracting Parties shall encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.

4. The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands.

5. …….

Article 5

The Contracting Parties shall consult with each other about implementing obligations arising from the Convention especially in the case of a wetland extending over the territories of more than one Contracting Party or where a water system is shared by Contracting Parties. They shall at the same time endeavour to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna. Contracting Parties convened for that purpose in accordance with this article.

….. ….. ….. ….. ….. ….. ….. …..

Article 11

1. **This Convention shall continue in force for an indefinite period.**

….. ….. ….. ….. ….. ….. ….. …..

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at Ramsar this 2nd day of February 1971, in a single original in the English, French, German and Russian languages, all texts being equally authentic* which shall be deposited with the Depositary which shall send true copies thereof to all Contracting Parties."

(emphasis added)

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38. The learned counsel appearing for the parties have invited our attention to Wetland Rules of 2010 and 2017. The Rules give effect to the Ramsar Convention. In the recitals in the Rules the commitment of the Government of India to implement Ramsar convention is noted. Wetlands Rules of 2017 have been published in the Government Gazette on 26th September 2017. The said rules have been framed in exercise of powers conferred by section 25 read with sub-clause (1) of clause (v) of sub-section (2) of sub-section 3 of section 3 and section 23 of the Environment (Protection) Act, 1986 (for short "the said Act of 1996"). The said Rules supersede the Wetland Rules of the year 2010. It will be necessary to make reference to the recital in the notification dated 25th September 2017 containing the Wetland Rules of 2017. The relevant recitals therein read thus:

> "Whereas the wetlands, vital parts of the hydrological cycle, are highly productive ecosystems which support rich biodiversity and provide a wide range of ecosystem services such as water storage, water purification, flood mitigation, erosion control, aquifer recharge, micro-climate regulation, aesthetic enhancement of landscapes while simultaneously supporting many significant recreational, social and cultural activities, being part of our rich cultural heritage;
>
> And whereas many wetlands are threatened by reclamation and degradation through drainage and landfill, pollution (discharge of domestic and industrial effluents, disposal of solid wastes), hydrological alteration (water withdrawal and changes in inflow and outflow), over-exploitation of their natural resources resulting in loss of biodiversity and disruption in ecosystem services provided by wetlands;
>
> And whereas clause (g) of article 51A of the Constitution

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stipulates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;

And whereas the Environment (Protection) Act, 1986 is a comprehensive legislation to provide protection and improvement of the environment, including inter-alia, wetlands, and for matters connected therewith;

And whereas the National Environment Policy, 2006 recognises the ecosystem services provided by wetlands and emphasizes the need to set up a regulatory mechanism for all wetlands so as to maintain their ecological character, and ultimately support their integrated management;

And whereas India is a signatory to the Ramsar Convention on Wetlands and is committed to conservation and wise use of all wetlands within its territory;

And whereas the Central Government has published the Wetlands (Conservation and Management) Rules, 2010, vide number G.S.R. 951(E), dated the 4th December, 2010;

And whereas conservation and wise use of wetlands can provide substantial direct and indirect economic benefits to state and national economy, and thereby the Central Government stands committed to mainstreaming full range of wetland biodiversity and ecosystem services in development planning and decision making for various sectors;

Wetland is defined in clause (g) of rule 2 which reads thus:

2. Definitions.—

….. ….. ….. ….. ….. ….. ….. …..

(g) “wetland" means an area of marsh, fen, peat-land or water; whether 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 does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and

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structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes;

The wide definition of wetland has been adopted on the basis of the definition of 'wetland' in Convention on Wetlands which is quoted earlier. Rules 3 and 4 are also material which read thus:

> **3. Applicability of rules.—**These rules shall apply to the following wetlands or wetlands complexes, namely:—
>
> **(a) wetlands categorised as 'wetlands of international importance' under the Ramsar Convention;**
>
> **(b) wetlands as notified by the Central Government, State Government and Union Territory Administration:**
>
> **Provided that these rules shall not apply to the wetlands falling in areas covered under the Indian Forest Act, 1927, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the State Forest Acts, and the Coastal Regulation Zone Notification, 2011 as amended from time to time.**
>
> **4. Restrictions of activities in wetlands.—**(1) The wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority.
>
> (2) The following activities shall be prohibited within the wetlands, namely,-
>
> (i) conversion for non-wetland uses including encroachment of any kind;
>
> (ii) setting up of any industry and expansion of existing industries;
>
> (iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the

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Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching.

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority.

Under rule 5, the State Wetland Authorities have been constituted for each State. As far as inventory of wetlands in the country is concerned, it will be necessary to make a reference to an order made by the Apex Court in **M.K.Balakrishnan** (supra). In the said decision, the Apex Court has dealt with the Wetland Rules of 2010. In paragraph-2, the Apex Court has noted that National Wetland Inventory and Assessment (NWIA) project sponsored by the Ministry of Environment and Forest, Government of India through Space Application Centre, ISRO, Ahmedabad has undertaken a task of making an inventory of the wetlands in the country at the scales of 1:50,000. It is noted that the said exercise has been undertaken in the year 2010. In the subsequent order dated 8th February 2017 passed in the said matter [(2017) 7 SCC 810 (2)], the Apex Court has made a reference to a Draft Wetlands (Conservation and Management) Rules 2016. Paragraph-21 of the said order refers to an

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additional affidavit filed on record by the Union of India to which an information brochure "National Wetland Inventory & Assessment" has been annexed. It is noted in said paragraph that the said brochure records that 2,01,503 wetlands have been mapped at 1:50,000 scale and all these wetlands have an area of more than 2.25 hectare. In paragraph-23, the Apex Court issued the following directions:

> "**23. Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventorize all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010,** that is to say:
>
> > "4(1)(i) reclamation of wetlands;
> >
> > (ii) setting up of new industries and expansion of existing industries;
> >
> > (iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. No. 966(E), dated 27-11-1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/Genetically engineered organisms or cells notified vide GSR No. 1037(E), dated the 5-12-1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 notified vide S.O. No. 2265(E), dated the 24-9-2008;
> >
> > (iv) solid waste dumping:
> >
> > provided that the existing practices, if any, existed before the commencement of these rules shall be phased out within a period not exceeding six months from the

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date of commencement of these rules;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements:

Provided that the practices, if any, existed before the commencement of these rules shall be phased out within a period not exceeding one year from the date of commencement of these rules;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules;

(vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these rules."

39. Thus, there is a total ban on reclamation on wetlands identified under NWIA. There is ban on any permanent construction on such identified wetlands. We may note here that by a subsequent order of 4th October 2017 passed by the Apex Court in the said case, it is noted that Wetland Rules of 2017 have come into force from 26th September 2017. The Apex Court noted that there were serious objections raised to the Wetland Rules of 2017 and, therefore, the Apex Court permitted the parties to file objections to the Wetland Rules of 2017. The Apex Court specifically directed that in terms of its order dated 8th February 2017, 2,01,503 wetlands that have been mapped by the Union of India will continue to remain protected on the same principles as were formulated under rule 4 of the Wetlands (Conservation and Management), Rules 2010. We are informed across the bar that the said order dated 8th February 2017 read with the order dated 4th October 2017 continue to

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operate and the same have not been modified. We may note here that PIL No.87/2013 has been filed on the original side of this Court by an organization known as Vanashakti Public Trust for protection of wetlands. On 14th October 2013, a Division Bench of this Court issued following direction:

> "1. By order dated 16th September, 2013, we had directed the State Government to take a decision whether they propose to adopt the Wetland Atlas prepared by the Central Government, and whether they would like to prepare a brief document in respect of Wetland Atlas for the State of Maharashtra as envisaged under Rules 6(2) and 6(3) of the Wetland Rules, 2010. Unfortunately, the said direction does not appear to have been incorporated in our order dated 16th September, 2013. We, therefore, now direct the Secretary, Department of Environment and the Secretary of Forest Department, State of Maharashtra to take a decision whether they propose to adopt Wetland Atlas, prepared by the Central Government under the said Rules and whether they would like to prepare their own brief document in respect of Wetland Atlas for the State of Maharashtra. If the State of Maharashtra does not propose to adopt the Wetland Atlas prepared by the Central Government, the Secretary, Department of Environment and the Secretary of Forest Department, State of Maharashtra to inform this Court the time frame within which the said brief document shall be prepared for the State of Maharashtra.
>
> 2. In the meantime, however, we deem it fit and proper to **give a direction, in respect of the areas which have been identified as Wetland Areas in the Wetland Atlas by the Central Government, that no reclamation of land and any kind of construction shall be permitted without leave of this Court. The Secretary, Urban Development Department, State of Maharashtra is directed to issue a circular, informing the direction given by this Court to all the Corporations and the Zilha Parishads.** Stand over to 29th October, 2013."
>
> (emphasis added)

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There is a further order passed in the same PIL on 25th July 2016 by which rule was issued and ad-interim directions which are quoted above issued on 14th October 2014 were continued as interim directions which are operative till the disposal of PIL. In paragraphs-5 to 10 of the said order, the following directions were issued:

> "5. **Considering the need to protect the Wetlands in the State and for ensuring compliance with the interim orders passed by this Court, a Grievance Redressal Mechanism will have be created. We, accordingly, direct to State Government to constitute a committee headed by the Divisional Commissioner of Konkan Division to monitor the implementation of the interim orders passed by this Court in the Konkan area of the State. We direct that a representative of the first petitioner shall be a member of the committee. The State Government shall appoint Senior Revenue Officers working under the Divisional Commissioner Konkan Division as well as Senior Police Officers having jurisdiction over various areas of districts in the Kokan Region to be part of the committee. It will be open for the State Government to include any expert as a member of the committee. Even a representative of the Maharashtra Pollution Control Board shall be a part of the committee. Needless to add that all Planning Authorities within the meaning of the Maharashtra Regional and Town Planning Act, 1966, in the said districts of Kokan Region be given a representation of the committee.**
>
> 6. The committee shall be constituted within the period of six weeks from today. The State Government shall give responsibility of the implementation of the orders passed by this Court at Taluka level to the officers not below the rank of Tahasildar. The officers so nominated shall work under the control of committee constituted under the orders of this Court.

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7. The committee shall ensure that a Grievance Redressal Mechanism is set up for receiving and dealing with the complaints regarding destruction of the Wetlands in breach of orders of this Court. The committee shall make arrangements for receiving complaints about the destruction of Wetlands by Email and by way of Whatsapp messages. Arrangements should be made to receive complaints by providing toll free numbers. The Divisional Commissioner shall either create a separate website or use the Website of his office to receive online complaints about destruction of Wetlands in breach of orders of this Court. Arrangements shall be made to provide for uploading photographs.

8. The necessary Grievance Redressal Mechanism shall be setup within a period of eight weeks from today. Wide publicity shall be given by the State Government in Local News papers, Television Channels, FM news channels etc., to the interim orders of this Court and to the availability of the Grievance Redressal Mechanism to receive complaints. We make it clear that it will not be necessary for the complainant to disclose his or her name. If anonymous complaints are received giving full particulars of the violation, the same shall be acted upon.

9. Action taken on the basis of complaints received by all possible modes shall be reported either on the specially created Website or on the Website of the Divisional Commissioner within a period of two weeks from the date on which the complaints are received. Adequate publicity shall be given to the Grievance Redressal Mechanism in all offices of Tahasildars in Konkan area. The State Government shall ensure that a Police Officer is made responsible at each Taluka level to assist the Tahasildars and other Revenue Officers for taking actions in case of violations.

10. As soon as complaints are received in any form, needless to add that a team of officers shall be immediately deputed to the site to carry out site inspection. If

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complainant has given his name, address and contact details, even the complainant shall be informed about the proposed site visit of the Government Officers.

40. The orders of the Apex Court refer to NWIA prepared by the Space Application Centre, Ahmedabad and MRSAC, Nagpur. The reference to Wetland Atlas prepared by the Central Government in the order passed in PIL No.83/2013 appears to be the same NWIA.

41. In terms of the order passed in PIL No.218/2013, Shri Jayramegauda R., Deputy Conservator of Forest (Mangroves Cell), Mumbai has filed an affidavit dated 4th October 2017 in which he has stated that the Pockets-A and D described in the impugned notification are water bodies situated in the Thane district. Paragraphs-3 to 5 of the said affidavit read thus:

> "3. **Pocket A and D are contiguous water bodies situated in Thane District of Maharashtra state. Both these land pockets belong to a wetland, which was mentioned in National wetland Inventory and Assessment (NWIA) prepared by Space Application Centre (SAC), Ahmedabad and MRSAC, Nagpur.** The status of the land pockets as per this inventory is as follows :

District	Wet Code	Wett code	Description	Wet name	Area in HA	Aqveg	Turbidity	Latitude	Longitude
Thane	27210947504023	1202	Tank/ Pond	-------	22.57	N	L	19° O' 15.173" N	73° O' 44.252" E

> 4 The above inferences were drawn based on the following data :

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i) The list of wetlands of Maharashtra, which are mentioned in the National Wetland Inventory and Assessment of their Geo coordinates received from the MRSAC, Nagpur (Annexure 1, 2 and 3).

ii) The maps (NWIA), which are available on Water Resource Department (Government of Maharashtra) portal (mrsac.maharashtra.gov.in/wrd), which are prepared by MRSAC, Nagpur. (Annexure 4, 5, 6, 7, 8, 9 & 10).

iii) The Geo coordinate 19° O' 15.173" N 73° O' 44.252" E, which is mentioned in NWIA as a wetland Tank/ Pond with an area of 22.57 ha is exactly falling inside the polygon which was prepared by the coordinates recorded during the site inspection on 27th September 2017. (Annexure 11,12 & 13).

5. As this wetland, figures in the National Wetland Inventory and Assessment, the interim orders passed by the Honourable Court are applicable to these pockets of land (Pocket A and Pocket D) which are in the petition."

The above factual statements are not disputed by any party to PILs. Thus, as far as Pockets-A and D subject matters of the impugned notification are concerned, they are shown as wetlands in NWIA and are, thus, protected both under the order dated 8th February 2017 of the Apex Court and the order of this Court dated 14th October 2017 in PIL No.87/2013. None of the parties have disputed the fact that Pockets-A and D are shown as wetlands in NWIA and, in fact, the Project Proponent has stated that they have applied for change of status of lands forming part of Pockets-A and D. Thus, it is an accepted position that so long as the aforesaid orders continue to operate, both the pockets cannot be put to use which is contemplated in the impugned notification. Admittedly, a part of pocket-A is not included in CRZ and Pocket-D is not covered by CRZ.

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Under Wetland Rules of 2017, a wetland whether natural or artificial is included definition of wetland. Even if the wetland is temporary, it is included in the definition of wetland. Thus, Pocket-A (except CRZ area) and Pocket-D are wetlands under both 2010 and 2017 Wetland Rules. Hence, prohibition under Rule 4 of Wetland Rules of 2017 apply to the same.

APPLICABILITY OF PUBLIC TRUST DOCTRINE

42. Now, the other question which arises is whether both the pockets cannot be used for the purposes provided in the impugned notification *de hors* the aforesaid orders of the Apex Court and this Court. In PIL No.218/2013, we are dealing with two lakes which are originally subject matter of PIL and two water bodies which are Pockets-A and D. As far as mangroves are concerned, the mangroves in and around the said lakes/water bodies are protected as per the judgment and order dated 17th September 2018 in PIL No.86/2006. We may also note what is stated in the affidavit dated 28th June 2018 filed by Shri N.Vasudevan, Additional Chief Conservator of Forests, Head of Mangrove Cell, Mumbai. The said affidavit is filed after holding a joint inspection in presence of petitioners and representatives of CIDCO. In paragraph 3 to 5 of the said affidavit it is stated thus:

> "3. Pocket A of 20 ha. has been kept in Regional Park Zone by the said notification, subject to the condition that the development will be permissible only after prior approval of MCZMA/ Respondent no 7 herein. It was earlier included in "No Development Zone" and it was a Salt Pan. The current inspection shows that at present the area is low lying and contains tidal water. Sparse mangroves are seen on the fringes. A number of birds including flamingos visit

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the area. It is a water body as per the map and as per field observation.

4. The decision on pocket C has been kept in abeyance as per the said notification. The current inspection shows that at present the area is low lying and contains tidal water. A number of birds including flamingos visit the area. The area is full of mangroves, but it has not been notified as forests. The said pocket is adjacent to pocket B, located on its Northern and Western side and pocket A, located on its Eastern side.

5. Pocket D has been kept in predominantly Residential Zone by the said notification which was earlier in "No Development Zone" and it was Salt Pan. The area is continuous with pocket A and a burn divides A and B. The current inspection shows that at present the area is low lying and contains tidal water. Sparse mangroves are seen on the fringes. A number of birds, including flamingos visit the area. It is a water body as per the map and as per field observation."

(Underlines added)

Merely because the pockets were earlier salt pan lands, its status as wetlands and water bodies is not affected.

43. In the case of ***M.C. Mehta Vs. Kamal Nath and Ors***[11], the Apex Court in paragraphs-34 and 35 held thus:

"34. **Our legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands.** The State as a trustee is under a legal duty to protect the natural resources. These

11 (1997) 1 SCC 388

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resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. **The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."**

(emphasis added)

In the case of ***Fomento Resorts & Hotels Limited and Anr. vs. Minguel Martins and Ors***.[12], in paragraphs 53 to 55 and 65, the Apex Court held thus :

"53. **The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial**

12 (2009) 3 SCC 571

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purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. **The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations.** For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. **The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law : Effective Judicial Intervention" (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.**

55. **The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain.** Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term

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interest in that property or resource, including down slope lands, waters and resources.

65. **We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof.** The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."

(emphasis added)

In the case of ***Nature Lovers Movement vs State of Kerala***[13], in paragraph 2, the Apex Court observed thus:

"2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. **It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life."**

(emphasis added)

13 (2009) 5 SCC 373

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In the case of ***Association for Environment Protection vs. State of Kerala***[14]***,*** the Apex Court observed thus:

> **"2.** The ancient Roman Empire developed a legal theory known as the "doctrine of the public trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. **The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few."**
>
> (emphasis added)

44. The argument of CIDCO and the Project Proponent is that the water bodies in Pockets-A and D and to some extent the other two lakes have been created because substantial part of area of Navi Mumbai was a low lying area. As regards Pockets-A and D, it is claimed that the same were salt pans and it is contended that the same are inundated with water due to acts of human being. As held earlier, the said two pockets are water bodies and wetlands within the meaning of Wetland Rules of 2017 (except the portion to which CRZ is applicable). We do not consider it necessary to enter into the larger controversy whether BNHS in the earlier report suggested that presence of migratory birds on Pockets-A and D will pose a threat to the proposed airport at Navi Mumbai. However, the

14 (2013)7 SCC 226

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reports and the affidavit of Shri Vasudevan record that both the pockets are frequented by large number migratory birds. In fact, there are photographs on record showing the presence of migratory birds in said areas. Moreover, in part of the said pockets, even fishing is done. Apart from the fact that in National Wetland Atlas both the pockets are shown as water bodies or wetlands, the affidavit of the Forest Department clearly records that the same are water bodies. Such water bodies play an important role in the environment. The water bodies maintain ecological balance and, therefore, public trust doctrine imposes obligation upon the State Government as well as agencies and instrumentalities of the State to protect the said water bodies as well as lakes. The State Government and its agencies and instrumentalities will have to act as trustees on behalf of the people. These water bodies form essential and important part of our ecosystem which cannot be eroded for providing for commercial or other use, unless the Court finds it necessary to do so in good faith and for the public good. The question whether establishing golf course will prevent bird hits to aircrafts using the proposed airport at Navi Mumbai is beyond the scope of this PIL. However, for preventing bird hits, the authorities can always take action in accordance with law and take such precautionary measures as are permissible in law. There is no material placed on record in the form of an opinion of experts to show that for preventing possible bird hits, making of golf course is the only solution.

45. We have perused the agenda note of 435th meeting of the Board of Directors of CIDCO held on 9th May 2002 which proposes modification of the development plan. It is stated in the introduction that CIDCO has

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envisaged golf course as a value addition project as well as a city level facility in Navi Mumbai and hence it is included as a part of "Advantage Maharashtra" Projects. It is stated that the area identified for the golf course forms part of Regional Park Zone and No Development Zone. It is stated that in the No Development Zone of Greater Mumbai, golf course is a permitted activity. It is stated that prospective developers will come forward to develop golf course provided the project is made economically viable and, therefore, it is proposed that residential construction activity has to be permitted and that is why the two pockets admeasuring 20 hectare and 0.85 hectare were proposed to be converted from No Development Zone into Regional Park Zone and Predominantly Residential Zone respectively. What is material is that the said note does not refer to the fact that both the pockets are water bodies and they are frequented by migratory birds. The agenda note will show that the decision of proposing change of development plan was taken mainly for commercial reasons. There is no greater public interest reflected from the agenda note for converting the water bodies in No Development Zone into a golf course and a residential complex. There is no affidavit filed to show that golf course is necessary for public good. The residential complex proposed in pocket D is only to make golf course economically viable. It is for purely commercial reasons. It is not the case of the Respondents that they are going to create water bodies elsewhere to compensate for the destruction of water bodies in pockets A and D. Thus, apart from the lakes in Navi Mumbai, applicability of doctrine of public trust enjoins the State Government and its agencies and instrumentalities to protect the water bodies covered by Pockets-A and D. Thus, the public trust doctrine

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will have to be invoked for protecting the lakes in Navi Mumbai and for the said pockets-A and D.

46. Article 48-A in Chapter IV under the title Directive Principles of State Policy of the Constitution of India reads thus :-

> "48-A. Protection and improvement of environment and safeguarding of forests and wild life.—**The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.**"
>
> (emphasis added)

The environment will include the water bodies and lakes. Moreover, Article 48A has to be considered in the light of Article 51A of the Constitution of India and, particularly clause (g) thereof which reads thus:

> "**51-A. Fundamental duties**.-- It shall be the duty of every citizen of India.-
>
> ….. ….. ….. ….. ….. ….. ….. …..
>
> (g) to protect and improve the natural environment including forests, lakes rivers wild life, and to have compassion for living creatures:"

Therefore, it is the duty of the State as well as citizens to protect the lakes.

PRECAUTIONARY PRINCIPLES

47. Any damage to the lakes and the water bodies will attract precautionary principles. In the case of ***M.C.Mehta (Badhkal and Surajkund Lakes matter) vs Union of India***[15], the Apex Court held thus:

> **"10.** In *M.C. Mehta* v. *Union of India* [(1987) 4 SCC 463] this Court held as under:

15 (1997) 3 SCC 715

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> "The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public. Life, public health and ecology have priority over unemployment and loss of revenue problem."
>
> **The "Precautionary Principle" has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51-A(*g*) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation.** We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes."
>
> (emphasis added)

Therefore, the State Government and its agencies and instrumentalities such as CIDCO are under obligation to anticipate attacks and prevent reclamation of lakes and water bodies/ wetlands which play important role in eco-system.

48. Thus, the public trust doctrine and precautionary principles will be applicable to the lakes and water bodies in Navi Mumbai.

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49. The conclusion is that even assuming that the impugned notification is valid, it only proposes use of pockets A and D. The use thereof as proposed will amount to destruction of water bodies and /or wetlands which will be infringe the fundamental rights of citizens under Article 21 of the Constitution of India. Moreover, the doctrine of public trust and precautionary principles enjoin the State and CIDCO to maintain and preserve the water bodies as well as to prevent its destruction.

CONSIDERATION OF CHALLENGE TO THE IMPUGNED NOTIFICATION

50. Now, coming to the development plan under the MRTP Act, the contents thereof are provided in section 22 which reads thus:

> **22. Contents of Development Planning**
>
> A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—
>
> (a) proposals for allocating the use of land for purposes, such as residential,
> industrial, commercial, agricultural, recreational ;
>
> (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;
>
> (c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

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(d) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and air ports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value 1[and of heritage buildings and heritage precincts];

(j) proposals for flood control and prevention of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority 1[including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of] conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number,

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> size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act.

Preparation of development plan is very elaborate process which starts from sub-section (1) of section 21 which provides that every Planning Authority is under an obligation to carry out survey and prepare an existing land-use map. The object for making the preparation of land-use map mandatory appears to be that the proposals for reservation and designation can be made only if such a land-use map indicating existing uses of land is available. Clause (h) of section 22 provides for preservation, conservation and development of areas of national scenery and landscape.

51. The argument of the Project Proponent was that preparation and modification of a development plan partakes character of a legislative function. This submission is well founded. It is in terms of a settled law. His submission is that merely because the development plan provides for a particular user, it does not mean that that user is otherwise permissible. It is contended that the user shown is only an aspect of or a part of planning. However, when the impugned notification was issued and when the State Government took a decision to approve modification under sub-section (1) of section 37 of the MRTP Act, the order dated 14th

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October 2013 in PIL No.87/2013 of this Court protecting water bodies was operative. The lands in pockets A and D were shown as wetland area in the Wetland Atlas and therefore, as per the said ad-interim order, no reclamation or construction was permitted on the said pockets. The order dated 10th September 2014 passed by the Apex Court in the case of ***M.K.Balakrishnan*** (supra) records that extensive and comprehensive inventory of wetlands in the country under the National Wetland Inventory and Assessment Project was being done. In fact affidavit dated 9th September 2014 filed in the Apex Court notes that the exercise of mapping was completed. The interim order passed by this Court as well as this inventory of water bodies under NWIA have not been considered by either the Planning Authority or the State Government. Thus, by the impugned notification, the State Government has permitted something which was expressly prohibited under the orders of this Court and Rule 4 of the Wetland Rules of 2010 (except area covered by CRZ in Pocket-A). By a statutory instrument, the basis of a decision of Court of law can be taken away. But nothing is produced on record to show that the impugned notification was issued to take away the basis of the order of this Court. Therefore, the reservations as provided in the impugned notification cannot be implemented.

52. Now, we go to the other aspects of the cases in hand. An argument was canvassed that when the State Government exercises power of granting approval to the development plan it exercises delegated legislative power. Reliance is placed on the decision of the Apex Court in the case of ***Pune Municipal Corporation v. Promoters and Builders***

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Association and another (supra). The delegated legislation can be challenged on the ground that it is ultra vires the main legislation. Moreover, it can be challenged on the ground that is in violation of provisions of the Constitution of India. The issue whether a legislation can be held to be unconstitutional on the ground of it being arbitrary and in violation of Article 14 of the Constitution is no longer *res integra*. There is a recent decision of the Constitution Bench consisting of five Hon'ble Judges. The said decision is in the case of ***Shayara Bano v. Union of India***[16]. On this aspect, the judgment rendered by Rohinton Fali Nariman, J. for himself and on behalf of Lalit, J. is relevant. After considering all the earlier decisions of the Apex Court, a conclusion was recorded in the said decision that the test of manifest arbitrariness laid down would apply to invalidate legislation as well as subordinate legislation under Article 14 of the Constitution. Paragraphs-100 and 101 of the said decision reads thus:

> **"100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution.** In *Cellular Operators Assn. of India* v. *TRAI* [*Cellular Operators Assn. of India* v. *TRAI*, (2016) 7 SCC 703], this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44)
> "*Violation of fundamental rights*
> *42*. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers*

16 (2017) 9 SCC 1

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(Bombay) (P) Ltd. v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, para 75.]

43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In *Khoday Distilleries Ltd.* v. *State of Karnataka* [*Khoday Distilleries Ltd.* v. *State of Karnataka*, (1996) 10 SCC 304] , this Court held: (SCC p. 314, para 13)

> '*13*. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(*g*) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. *The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power*. In *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. *A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary*". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such rules; they are unreasonable and ultra vires". *In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution.*

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> *But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution*.'

44. Also, in *Sharma Transport* v. *State of A.P.* [*Sharma Transport* v. *State of A.P.*, (2002) 2 SCC 188] , this Court held: (SCC pp. 203-04, para 25)

> '*25*. … The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.'

101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14. "

(emphasis in original)

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Kurian Joseph, J who was part of the Constitution Bench consisting of five Hon'ble Judges, in his judgment specifically approved the view taken by Nariman, J. Hence, the view quoted above is the law laid down by Constitution Bench of the Apex Court consisting of five Judges.

53. In the present case, neither in the affidavit-in-reply filed by the State Government nor in the reply filed by the Planning Authority, a case is made out that the fact that the Pockets-A and D are water bodies has been considered. As stated earlier, in the resolution of CIDCO of 2002 which proposes modification does not refer to the fact that the said pockets are water bodies. Moreover, when the impugned notification was issued as indicated in the order of the Apex Court dated 10th September 2014 in the case of ***M.K.Balkrishnan*** (supra), the National Wetland Inventory and Assessment for all wetlands in the country was already made. When the impugned notification was issued, interim order in PIL No.87/2013 which is admittedly applicable to the pockets-A and D was in force. The impugned notification proposes the use of pockets which is prohibited under the said order. If the impugned notification is taken as a subordinate legislation, it does not take away the basis of the order of this Court. But it permits something which is expressly prohibited by the Court. In fact, an affidavit was filed before the Apex Court on 9th September 2014 by the Union of India showing that 2,01,503 wetlands were mapped under the National Wetlands Inventory and Assessment Project. Even this crucial aspect was not taken into consideration either by the Planning Authority (CIDCO) or by the State Government.

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Moreover, there is nothing placed on record to show that the impact on the ecosystem and environment of filling in of water bodies for making construction of residential complex and for making golf course was assessed or at least such assessment was made available to the Planning Authority or the State Government. For the aforesaid reasons, the violation of Article 14 comes into picture as there is manifest arbitrariness on admitted facts.

54. Therefore, we have no manner of doubt that the impugned notification is illegal and is liable to be struck down. Even if it is not struck down, for the reasons recorded earlier, the reservations provided therein cannot be implemented.

OTHER ASPECTS

55. In PIL No.218/2013, there is a prayer for protecting mangroves. A committee under the chairmanship of the Divisional Commissioner of Konkan Division was established under the interim order passed in PIL No.218/2013. Under the judgment and order dated 17th September 2018 in PIL No.87/2006, a similar committee was ordered to be constituted for all the coastal districts of the State. In fact, in the same judgment and order dated 17th September 2018, this Court ordered that as soon as the monitoring committee is constituted in terms of the said order, the committee constituted in PIL No.218/2013 will cease to function. Considering the directions issued in PIL No.87/2006 for protection of mangroves in the entire State, it is not necessary to issue any further directions.

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56. As far as wetlands are concerned, by order dated 25th July 2016 in PIL No.87/2013, in paragraphs 5 to 10, this Court has issued comprehensive directions which hold the field. It is an admitted position that in terms of the said directions, the State Government has appointed a committee headed by the Divisional Commissioner. It is not necessary to issue separate directions in this behalf.

57. Another issue which was canvassed was on the basis of various reports submitted by BNHS. There are several reports on record submitted by BNHS ending with the report of October 2017 which show exhaustive work done by BNHS. There was an issue canvassed that establishment of golf course will be necessary for protecting an air traffic on the proposed airport as Pockets-A and D are frequented by migratory birds and if the birds continue to visit the said land, there will be incidents of bird hits. It is not necessary for us to decide the said issue for the purpose of deciding the controversy involved in these PILs. The law will take care of the security and safety of the Airport as appropriate statutory powers can be exercised for that purpose.

58. As regards the work awarded to the Project Proponent, we must note that the decision of CIDCO to appoint them is of 2004 when both the Pockets-A and D were in No Development Zone. That is how the possession was allegedly handed over after the impugned notification.

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59. The application made by the Project Proponent to the authorities for not treating the pockets as wetlands is pending. The same shall be decided in accordance with law. We are sure that the concerned Authority while deciding the application will consider this judgment.

60. Before we part with this judgment, we must record our sincere appreciation for very valuable assistance rendered by Shri Shiraz Rustomjee, Senior Advocate who has been appointed as Amicus Curiae. He has appeared on several dates and ably assisted the Court in PIL No.218/2013 and has made detailed submissions at different stages. We must also record our appreciation for his commitment to the cause of environment.

61. All interim orders in PIL No.218/2013 will continue to operate as final directions in so far as the same are not inconsistent with this judgment.

62. Hence, we dispose of these petitions by passing the following order:

(i) The impugned notification dated 5th October 2016 is hereby quashed and set aside;

(ii) We hold that even assuming that the impugned notification is legal and valid, the reservations provided therein cannot be implemented for the reasons recorded by us and, therefore, CIDCO and the Project Proponent

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shall not proceed with the work of making golf course and construction of residential complex on Pockets-A and D;

(iii) As far as issue of preservation and rejuvenation of mangroves in the city of Navi Mumbai is concerned, these petitions will be governed by the judgment and order dated 17th September 2018 delivered in PIL No.87/2006 (Bombay Environmental Action Group and another v. State Of Maharashtra and others).

(iv) The interim directions issued under the order dated 22nd December 2016 for setting criminal law in motion will continue to apply as final directions;

(v) As regards lakes in Navi Mumbai and, in particular the two lakes subject matter of PIL No.218/2013, we hold that it is the obligation of CIDCO and other local authorities as well as the State to protect and preserve the two subject lakes and to ensure that the same are not destructed. Interim order dated 29th April 2014 and in particular clauses (a), (c) and (d) of its operative part will continue to operate as final directions;

(vi) As regards wetlands shown in NWIA in Navi Mumbai including Pockets-A and D subject matter of the

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impugned notification are concerned, apart from what we have held in this judgment, the same remain protected by virtue of the orders of the Apex Court in the case of ***M.K.Balkrishan*** (supra) and order of this Court dated 25th July 2016 passed in the case of ***Vanashakti Public Trust v. Union of India*** (supra) in PIL 87 of 2013;

(vii) All interim orders in PIL 218 of 2013 which are not inconsistent with the directions issued above will continue as final directions:

(viii) Rule issued in both PILs is made partly absolute in the above terms.

(RIYAZ I. CHAGLA) (A.S.OKA, J.)

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