

# Vanashakti, A Public Trust vs Union Of India And 4 Ors on 2 May, 2025

**Author: G. S. Kulkarni**

**Bench: G. S. Kulkarni**

2025:BHC-OS:7320-DB

F-J-Vanashakti - P

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 20 OF 2013

Vanashakti, a Public Trust

Versus

1. Union of India through the  
Secretary, Ministry of Environment and  
Forests
2. Maharashtra Coastal Zone Management  
Authority
3. State of Maharashtra  
(i) through its Principal Secretary,  
Department of Environment  
(ii) through its Principal Secretary  
(Forests), Department of Revenue
4. Municipal Corporation of Greater Mumbai
5. The Chief Forest Conservator,  
Thane Circle, Department of Revenue & ...Respondents  
Forest.

Ms. Gayatri Singh, Senior Advocate, a/w Mr. Zaman Ali and  
Mr. Yogesh H. Pandey for Petitioner.

Mr A. Y. Sakhare, Senior Advocate, a/w Mr. Yashodeep  
Deshmukh, Mr. Rohan Mirpury, Ms. Anuja Tirmali, i/b Sunil  
Sonawane for Respondent-MCGM.

Dr. Birendra Saraf, A. G., a/w Smt. P. H. Kantharia, GP & Smt.  
Jyoti Chavan, Addl. G.P. for Respondent-State.

Mr. Parag Vyas, a/w Mr. Vinit Jain, for Respondent No.1-UoI.

Ms. Shaba Khan, i/b Mr. Mihir R. Govilkar, for Respondent

Digitally

signed by

No. 2-MPCB.

ASHWINI  
ASHWINI JANARDAN  
JANARDAN VALLAKATI  
VALLAKATI Date:  
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Ms. Jaya Bagwe, for Respondent No. 3-MCZMA.

Page 1 of 87  
May 2, 2025

Ashwini Vallakati

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F-J-Vanashakti - PIL 20 of 2013.doc

CORAM: G. S. KULKARNI &  
SOMASEKHAR SUNDARESAN, JJ.

Reserved on : JULY 29, 2024  
Pronounced on : MAY 2, 2025

JUDGEMENT:

(Per, Somasekhar Sundaresan J.) Introduction:

1. This Petition essentially lays a challenge to the de-notification of 119.91 Hectares of land located at Survey No. 275 (Part) located at Village Kanjur (Kanjurmarg) in the coast of the Thane Creek ("Subject Land"), which was classified as a "protected forest". The de-notification was effected for creation of a landfill i.e. a site for dumping garbage over land admeasuring 141.77 Hectares.

2. The Subject Land was salt pan land, and over time has witnessed growth of mangroves. The salt pan land had entailed the use of tidal water whose inflow and outflow was controlled by the use of sluice gates for the making of salt. The lease of such land for production of salt expired around 2003. Under the regulations governing "Coastal Regulation Zone" ("CRZ") notified under the Environment Protection Act, 1986, it had been classified as "CRZ-1"

area.

3. The Petitioner, Vanashakti, is a Public Trust that pursues In this judgement, we variously use "landfill" and "garbage dump" to describe the activity in the Subject Land.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc environmental and other social causes in the field of conservation of forests, wetlands and wild life in and around Mumbai. The Ministry of Environment and Forests ("MOEF"), Union of India is Respondent No.1. The Maharashtra Coastal Zone Management Authority ("MCZMA"), which is responsible for protection of coasts and coastal ecology for areas that fall within CRZ in the State of Maharashtra is Respondent No.2. The Principal Secretary, Department of Environment; and the Principal Secretary (Forests), Department of Revenue - both departments of the State of Maharashtra - are Respondent Nos. 3(i) and 3(ii), respectively. The Municipal Corporation of Greater Mumbai ("MCGM") which is the promoter of the project for dumping of garbage is Respondent No.4. The Chief Forest Conservator, Thane Forest Circle, which is the authority responsible for protection of forest areas within Thane Forest Circle, within whose territorial jurisdiction the Subject Land earmarked for the garbage dump falls, is Respondent No.5.

4. It is at the request of MCGM, that the MOEF granted Environment Clearance dated March 17, 2009 ("Environment Clearance") for setting up the garbage dump on the Subject Land. This Petition essentially challenges the grant of the Environment Clearance for the Subject Land, which is a "protected forest". The grant of the Environment Clearance is assailed as a product of non-application of mind and without considering material conclusive May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc evidence about it being notified as a "protected forest" by a notification dated July 7, 2008 ("Forest Notification") under Section 29 of the Indian Forest Act, 1927 ("Forest Act").

5. The Petitioner contends that without compliance with the due process stipulated under the Forest Conservation Act, 1980 ("FCA"), the status of "protected forest" has been modified by another notification issued a year and half later, dated December 29, 2009 ("Impugned Notification"), effectively de-notifying the Subject Land from being a "protected forest". The Petitioner submits that the original notification of the land including the Subject Land as a protected forest was effected based on an evidence-based conclusion that such classification was appropriate. The Impugned Notification, the Petitioner submits, is without compliance with the stipulated due process under the FCA.

6. The Impugned Notification, effectively de-notifies an area of 119.91 Hectares of the total of 434 Hectares of forest land covered by the Forest Notification. The State and MCGM submit that the Impugned Notification merely corrected an error in the Forest Notification, using the power statutorily granted in Section 21 of the General Clauses Act, 1897 ("General Clauses Act"). According to The Forest Conservation Act, 1980 has been renamed as the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 with effect from December 1, 2023 by an amendment under Act No. 15 of 2023. Since a bulk of the material on record uses the old name, in this judgement, for convenience, the legislation is referred to as "FCA".

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc them, such correction does not require compliance with the process stipulated in the FCA.

7. The primary basis and justification offered by MGCM and the State is that the Forest Notification is a product of error. They contend that by an order dated November 21, 2003 passed by the Supreme Court in Special Leave Petition (Civil) No. 18717 of 2001 ("Enabling SC Order"), which was passed based on a joint affidavit filed by the Chief Secretary, Government of Maharashtra and the Commissioner, MCGM, it was confirmed that the Subject Land could be used as a site for landfill. The Enabling SC Order was passed in proceedings in which the Supreme Court was dealing with a challenge to the usage of land at Chincholi Bunder as a garbage dump and the Subject Land was identified in those proceedings as the place to which the landfill would be shifted.

8. After the grant of the Environmental Clearance for creation of a garbage dump inter alia over the Subject Land, the Petitioner had challenged the decision before the National Environment Appellate Authority ("NEAA"). The NEAA disposed of the challenge by an order dated February 12, 2010 ("Appellate Order"), primarily premised on the Enabling SC Order. In this Petition (Public Interest Litigation No. 20 of 2013), the attack is on the Environment Clearance, the Appellate Order and the Impugned Notification.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

9. Therefore, what lies at the heart of these proceedings is:-

- a) Whether the Forest Notification was simply erroneous in notifying the Subject Land as a protected forest; and
- b) Whether the Impugned Notification is defensible on the premise of it being a simple rectification of such error, in reliance upon Section 21 of the General Clauses Act, without having to follow the due process stipulated under the FCA.

Approach to the Adjudication:

10. This Petition came to be listed before us on various dates along with other connected petitions, which also relate to the garbage dump inter alia on the Subject Land, and the degradation of mangroves. These are Public Interest Litigation No. 63 of 2019; Public Interest Litigation No. 131 of 2012; and Review Petition No. 41 of 2017 in Writ Petition No. 1720 of 2014.

11. This Writ Petition was taken up for consideration, and the hearing of all other petitions was deferred for adjudication later. It is made clear that the assessment in this judgement is primarily of the challenge to the Impugned Notification, leaving all other facets raised in all the other petitions for adjudication at a subsequent stage. For ease of reference, the consolidated common compilation of May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc notifications, list of dates, written submissions and the other documents that were referred to and relied on by the parties in these petitions was considered for adjudicating this Writ Petition. Contentions and Submissions:

12. We have heard, at length, Ms. Gayatri Singh, Learned Senior Counsel on behalf of the Petitioner, Dr. Birendra Saraf, Learned Advocate General for Maharashtra on behalf of the State of

Maharashtra and its agencies, Mr. A.Y. Sakhare, Learned Senior Counsel on behalf of MCGM, Mr. Parag Vyas, Learned Counsel on behalf of MOEF & Ms. Jaya Bagwe, Learned Counsel on behalf of MCZMA.

13. Ms. Singh would submit that the legislation in question that the Subject Land would need to be compliant with would include the Forest Act, FCA, Environment (Protection) Act, 1927, Water Act, 1974, Maharashtra (Non-biodegradable) Garbage Control Act, 2006, EIA Notification of 2006, Municipal Solid Waste Rules, 2000, Solid Waste Management Rules, 2016 & CRZ Notifications of 1991 and 2011.

14. On October 24, 2005, the Subject Land was handed over to MCGM.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

15. Under the Forest Conservation Rules, 2003 ( FC Rules), there is an explicit framework to be followed. The State Government is required to examine and be satisfied that a certain project requires prior approval of the Central Government and accordingly a proposal is required to be sent by the State to the Central Government. The format in which such proposal is to be made has also been legislated in the FC Rules in Form A which requires disclosure of crucial information such as the site inspection report of the Deputy Conservator of Forests, enumeration of the diameter of class-wise trees on the site, the vulnerability of erosion, the legal status of the area etc.

16. Upon receipt of such a proposal from the State, the Central Government is required to refer the proposal to the Forest Advisory Committee which is then required to apply its mind to the facts stipulated in Rule 7 of the FC Rules, after which it would give its advise with suggestions and restrictions based on which the de- reservation and a de-notification may be effected. The Central Government is thereafter required to apply its mind under Rule 8 of the FC Rules to then accord its decision, factoring in the advice of the Forest Advisory Committee.

17. According to Ms. Singh, such detailed and finely balanced due procedure of law stipulated under the FCA has been given a go-by in the name of correcting a mistake and under the garb of complying May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc with the Enabling SC Order. She would contend that the Environmental Clearance had been granted without processing a Forest Clearance, and therefore illegal.

18. Dr. Birendra Saraf, Learned Advocate General on behalf of the State would contend that the land in question is only marginally covered by mangroves. The mangroves are primarily in two patches and restricted to 20.76 Hectares, as noticed in the report filed by the MCZMA. Taking note of such report, in May 2013, a Division Bench of this Court passed an order directing that no further mangroves must be destroyed. The Court, according to Dr. Saraf, noticing the report of the MCZMA directed that MCGM must ensure compliance with the recommendations of the MCZMA.

19. As a result, a submission on behalf of the State is that apart from the two patches covered by mangroves, aggregating 20.76 Hectares of land, there was no other area covered by mangroves, and

consequently, nothing in such area constitutes a forest, much less a "protected forest". Dr. Saraf would also allude to a site visit by the officials of the MCGM on June 24, 2013 pursuant to which a report analyzing satellite images from Google Maps for the period between November 2005 to 2012, also iterated that the mangroves vegetation was also restricted to two patches. One patch was covered by 11.27 Hectares and the other patch covered 12.09 Hectares. Consequently, steps to protect these patches were to be in place, the Learned May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Advocate General would submit and emphasize that the two patches in mangroves are indeed excluded from the dumping ground at Kanjurmarg.

20. The Learned Advocate General would submit that the power to amend a notification is explicitly included and inherent in the authority that issued the notification. As regards the import of Section 21 of the General Clauses Act, the Learned Advocate General would press into service a judgment of the Supreme Court in Nal Layout Resident Association Vs. Bangalore Development Authority and Ors.3 (NAL Layout), which essentially endorses the fact that an error made by the State in including a part of land that is not meant to be acquired could be rectified.

21. On a separate note, both Dr. Saraf and Mr. Sakhare highlighted the fact that the Union of India through the Deputy Salt Commissioner has filed Writ Petition (L) No.29077 of 2022 assailing the notification of various salt pan lands held by the Union of India as protected forests or reserved forests and that such notifications ought to be struck down. In that Writ Petition, the Union of India, as the owner of such land, has pleaded the following :-

9. The Petitioner submits that land bearing CTS No 657A (Survey No, 275) is at Kanjur and is owned by the (2018) 12 SCC 400 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Petitioner. The said land bearing CTS No. 657A (Survey No. 275) was granted on lease by the Govt. of India vide lease deeds dated 16/2/1922 to the then salt manufacturers of Arthur and Jenkins Salt Works and Shepherd & Shepherd Annex Salt Works. The lease of Arthur and Jenkins salt works were terminated prematurely and the ex lessees have filed suit no.

6256/2005 in City Civil Court, Mumbai, wherein an interim injunction has been passed against this petitioner which is still in force. Lands in Shepherd & Shepherd Annex salt works covered by CTS no. 657A (survey no. 275 pt) of Kanjur are subject matter of suit no. 54/2018 explained at above. 700 acres in CTS No. 657 A (Survey No. 275) was leased to Bombay Salt and Chemical Works in 1949 vide a registered lease deed dated 8.12.1949. The lease in favour of Bombay Salt and Chemical Works has expired and the Petitioner has taken possession of the said lands on 07.12.2000. Of the land that was in possession of Bombay Salt and Chemical Works, about 350 acres were handed over to the Respondent No.1 for dumping ground. The rest of the 350 acres is in possession of the Petitioner. Hereto annexed and marked "Exhibit S", and "Exhibit T" is a copy of the lease deed dated 16th February, 1922 for Arthur and Jenkins salt works, and 23 June, 1967 (effective from 8/12/1949) for Bombay Salt & Chemical Works.

22. We believe that our attention need not be detained by the aforesaid Writ Petition. It is apparent that one arm of the Union of India is dealing with its duties in respect of forests while another arm

of the Union of India i.e. the Deputy Salt Commissioner is pursuing its own perceived rights on the lands in question. Be that as it may, the aforesaid writ petition is not before us and we do not intend to comment on the same.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Reply Affidavit of the State:

23. The submissions of the State and MCGM were in line with the affidavit in reply dated October 10, 2023 (" Reply Affidavit") filed on behalf of Respondent No. 3(ii) (the Principal Secretary (Forest), Department of Revenue, State of Maharashtra) and Respondent No. 5 (the Chief Forest Conservator, Thane Circle). The MCGM largely adopted the submissions made by the Learned Advocate General on behalf of the State.

24. The stance of the State as seen in the Reply Affidavit and in the submissions of the Learned Advocate General, may be summarised thus:-

a) In view of the Enabling SC Order, the Subject Land at Kanjurmarg, which is partially covered by mangroves, had already been identified as the site for setting up a garbage dump instead of the site at Chincholi Bunder, and was approved by the Supreme Court for usage as a garbage dump;

b) Initially, an area of 425.893 Hectares had been notified as "protected forest" under the Forest Notification issued under Section 29 of the Forest Act. This is the precise area forming part of "protected forest" although the Petition May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc refers to the area as 434.01 Hectares;

c) Since it was found that 119.91 Hectares was required for the Municipal Solid Waste Dumping Ground, the Divisional Commissioner issued the correction notification i.e. the Impugned Notification, which showed the balance area of 305.983 Hectares as a "reserved forest" under Section 4 of the Forest Act, after removing the 119.91 Hectares of land from it;

d) Out of such land, 294.813 Hectares have been finally notified as a "reserved forest" under Section 20 of the Forest Act by a notification dated February 4, 2021. The designated 305.893 Hectares of "reserved forest" is indeed in the possession of the Forest Department and such area includes the 294.813 Hectares that has been finally notified as a "reserved forest";

e) Meanwhile, by an order dated October 6, 2005 ("HC Mangrove Direction") passed by a Division Bench of this Court in Writ Petition (L.) No. 3246 of 2004 (" Writ 3246"), this Court had directed a complete freeze on the destruction and cutting of any mangroves in the State of Maharashtra. All mangroves were to be identified by satellite imaging and "ground-truthing" and were to be notified as "protected May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc forest" in accordance with law;

f) The Forest Notification had been issued based on the HC Mangrove Direction, notifying all land covered by mangroves as "protected forest" including the Subject Land, despite the Enabling SC Order. This was a mistake since the Forest Notification covered the land already earmarked for transfer to MCGM pursuant to the Enabling SC Order. Such mistake is capable of being rectified pursuant to Section 21 of the General Clauses Act;

g) The rectification was not unilaterally done. This Court had been approached, and by an order dated April 29, 2009 ("April 2009 Order") passed by this Court in Notice of Motion No. 397 of 2007 in a Public Interest Litigation No. 87 of 2006 ("PIL 87"), the State was told that if the State had committed a mistake in notifying the land, it was for the State to use its ample powers to undo the mistake without involving this Court; and

h) Consequently, the State did not take the law into its own hands. It was merely exercising its inherent power to rectify a mistake in the notification made by it, and the source of such power is Section 21 of the General Clauses Act.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Stance of Union of India:

25. Mr. Parag Vyas, Learned Counsel appearing for Union of India pointed out that once a notification of some land is made as being a forest, it should necessarily have to be treated as a forest. Mr. Vyas would submit that by an order dated November 13, 2000, the Supreme Court in Writ Petition No.337 of 1995 has ruled that until further orders, no de-reservation of forests shall be effected without approval of the Supreme Court. Likewise, Mr. Vyas would submit that in the same Writ Petition, in an order dated September 8, 2016, after considering the provisions of Section 2 of the FCA, the Supreme Court has ruled as follows:

"Out of the kinds of land expressed in section 3, it is apparent, that if the land notified under Section 4 was not forest land but waste land, or some other kind of land over which Government has proprietary rights, on the deletion of the area notified under Section 4, such land would stand restored to its original nomenclature as forest land and/or alternatively such type of land, such as waste land, over which the Government has propriety rights. In the afore- mentioned latter category of land, no clearance contemplated under Section 2 of the Forest (Conservation) Act, 1980, can be insisted on. It is only with reference to reserved forest land, or land which is notified for being declared as reserved forest, or forest land, that a clearance is contemplated under Section 2 of the Forest (Conservation) Act, 1980."

[Emphasis Supplied]

26. The submission appears to be that Section 2 of the FCA would May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc apply only to the land that is notified as a "reserved forest" or land that is actually covered by the forest. Mr. Vyas has submitted that appropriate directions may be issued by this Court and the Union of India would abide by the same.

**Impugned Notification:**

27. Since the challenge in the Petition is primarily to the Impugned Notification, the contents of the same must be noticed and are extracted below:-

BY THE DIVISIONAL COMMISSIONER, KONKAN DIVISION NOTIFICATION No. RB/Desk-II/Forest/CR-2211/B-1.- In exercise of the powers conferred by Government of Maharashtra, Revenue and Forest Department No. FLD/1081/F-6, dated 21st October 1981 and read with Government, Revenue and Forest Department Resolution No. FLD. 1081/F-6, dated 16th February 1982 and Government, Revenue and Forest Department Memorandum No. S-30/2005/C, No. 62/F-1, dated 5th July 2008. The Divisional Commissioner, Konkan Division, Navi Mumbai under section 29 of the Indian Forest Act, 1927 was declared lands mentioned in the notification, dated 7th July 2008 as "Protected Forest".

Schedule Notified properties as on 7th July 2008 District : Mumbai Suburban, Taluka : Kurla Sr. Village C.T.S. S. Area Notified Boundaries (\*\*) No. No. No. Area North East South West (5) (6) (7) (8) (1) (2) (3) (3A) (4) (4A) 1 Kanjur 657A 275 Hectare/R Ha. V.B. of C.T.S. Creek Eastern May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc 434.01 425.893 Bhandup No. 1351 and New Express and V.B. C.S.T. Highway of No. 1351 V.B. of Bhandup Hariyali Hon. High Court's Order in the notice of Motion No. 397/2007, dated 29th April and Hon. Supreme Court's Order dated 21st November 2003 in special leave Petition No. 18717/2001. The said notification requires rectification in of village Kanjur C.T.S. No. 657/A, Survey No. 275 of 305.983 Ha.

notified instead of 425.893 Ha. as "Protected Forest" for the vital project of Municipal Corporation. The said Notification required rectifications which have been sanctioned and authorised vide Government, Revenue and Forest Department Letter No. S- 30/2005/Case No. 62/Part-5/F-1, dated 6th November 2009 and 21st November 2009 whereby the land 119.91 hectares required for the purpose of garbage dumping is deleted and accordingly I, Divisional Commissioner, Konkan Division by this Corrigendum hereby notify the Government lands under mangroves detailed hereinbelow as "Protected Forest":-

To be substituted notified as above in 7th July 2008 Notification Sr. Village C.T.S. S. Area Notified Boundaries (\*\*) No. No. No. Area North East South West (5) (6) (7) (8) (1) (2) (3) (3A) (4) (4A) 1 Kanjur 657A 275 Hectare/R Ha. V.B. of C.T.S. Creek Eastern 434.01 305.983 Bhandup No. 1351 and New Express and V.B. C.S.T. Highway of No. 1351 V.B. of Bhandup Hariyali (\*\*) These are boundaries of the entire S. No. (Col. No. 3) not necessarily of the notified area.

S.S. SANDHU, Navi Mumbai, Divisional Commissioner, dated 29th December 2009 Konkan Division [Emphasis Supplied]

28. Effectively, the Impugned Notification changes the area covered by the Forest Notification, and it does so one and half years after the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Forest Notification.

29. It is also noteworthy that the original notification i.e. the Forest Notification was one made under special laws governing forests i.e. under Section 29 of the Forest Act. A de-notification would be required to be issued under the special provisions of the FCA, a special legislation. The Impugned Notification has the effect of de-notifying a portion of the protected forest. However, it is issued as a corrigendum on the premise that the Forest Notification needed to be rectified. The act of de-notification would have been a fresh notification, which has its own attendant obligations to be met - in Section 2(1) of the FCA, which mandates the positive need for the previous approval of the Central Government to effect a de-notification.

30. The core controversy is whether the Impugned Notification is effectively a fresh notification, the issuance of which requires compliance with Section 2(1) of the FCA. Put differently, the question is whether it is effectively an exercise of power under Section 2(1) of the FCA without compliance with the attendant requirements, simply by casting it in the mould of an amendment, variation or rescission that is empowered under Section 21 of the General Clauses Act - in short, whether the Impugned Notification is a circumvention of Section 2(1) of the FCA.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Matrix of Legislation:

31. The Forest Notification was made pursuant to Section 29 of the Forest Act. The Impugned Notification was made by the State in reliance upon Section 21 of the General Clauses Act. After the Impugned Notification, the balance land was treated as a "reserved forest" under Section 27 of the Forest Act. It would be important to examine each of these provisions of legislation. For convenience, Section 21 of the General Clauses Act is examined first, since that lies at the heart of the reply by the State and the MCGM. Section 21 of the General Clauses Act:

32. The core issue in the controversy is whether Section 21 of the General Clauses Act, read with the flow of orders of various courts, would obviate the need for following the process stipulated for de-notification of a forest under the FCA. Therefore, at the threshold, for convenience, before analysing the contents of the Enabling SC Order, the HC Mangrove Direction (in Writ 3246, which was eventually clubbed with another Writ Petition and was consolidated into PIL 87) and other related orders, it would be useful to extract Section 21 of the General Clauses Act:-

Section 21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-law.

Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

[Emphasis Supplied]

33. It will be seen from a plain reading of the foregoing that the power contained in Section 21 stipulates that the power to issue notifications would include within its ambit, the power to amend, vary or rescind such notification. It is also clear that the exercise of such power to amend, vary or rescind the notification is exercisable in the like manner and subject to the like sanction and conditions, as would have been applicable for the original exercise of the power to issue notifications. Therefore, for making such amendment, variation or rescission, there would have to be compliance with conditions applicable in the law that applied in the first place for making the original notification.

34. The course of action adopted by the State to issue the Impugned Notification is what the Petitioners are aggrieved by, leading to this Writ Petition. The core contention of the Petitioners is that any method of subsequent correction would necessarily have to comply with Section 2 of the FCA, it is common ground that no such process has been followed. On the other hand, the contention of the State is that the process under Section 2 of the FCA need not be carried out May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc since Section 21 of the General Clauses Act permits them to rectify their own mistakes in exercise of the power contained in that provision.

Section 2 of the FCA:

35. Having noticed Section 21 of the General Clauses Act, it would be useful to note the provisions of Section 2 of the FCA, since that is the provision that the Petitioner alleges has not been complied with. Since Section 21 of the General Clauses Act is presented as a competing source of power to back the Impugned Notification, it would be necessary to extract the provision and examine it below: -

Section 2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.

(1) Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization subject to such terms and conditions, as the Central Government may,

by order, specify;

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation. Explanation.--For the purposes of this section "non- forest purpose" means the breaking up or clearing of any forest land or portion thereof for--

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reforestation, but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as--

(i) silvicultural operations including regeneration operations;

(ii) establishment of check-posts and infrastructure for the front line forest staff;

(iii) establishment and maintenance of fire lines;

(iv) wireless communications;

(v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;

(vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972 (53 of 1972), owned by the Government or any authority, in forest areas other than protected areas;

(vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

(viii) any other like purposes, which the Central Government may, by order, specify.

(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose.

[Emphasis Supplied]

36. A plain reading of the foregoing would show that the aforesaid provision imposes restrictions on de-reservation of forests, and on use of forest land for non-forest purposes. Towards this end, the primary provision in Section 2(1) of the FCA imposes a prohibition on the State Government and

any other authority from making any order directing that a reserved forest stands de-reserved. Likewise, the prohibition is also on issuing any order permitting the use of any forest land for any non-forest purpose. The prohibition also covers any order of assignment whether by way of lease or otherwise of any forest land to any authority, corporation or agency. The clearance of any trees from forest land too cannot be ordered by the State Government. For the issuance of any order to enable any such activity, the prior approval of the Central Government is mandatory.

37. Section 2(1) of the FCA is also notably a non-obstante provision and overrides anything contained in any other applicable law. The exceptions made to the stringent prohibition on usage for non-forest use are also ring-fenced by reference to purposes ancillary to forest May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc conservation, development and management.

38. Therefore, on the face of it, this provision requires prior approval of the Central Government for the State to issue any order. The Petitioner also pleads that in the field of environmental law, judgements of the Supreme Court now clearly declare that the term "prior approval" indeed means an approval that is truly taken before the action and post-facto approvals cannot remedy actions that are not compliant with requirements of needing prior approval.

39. Therefore, Petitioner would contend, the Impugned Notification admittedly having been issued without the prior approval of the Central Government, is clearly in violation of Section 2(1) of the FCA. Therefore, they would contend, the State has evidently diverted the Subject Land without approval of the Central Government, despite the Forest Notification being a prior notification of the Subject Land as part of a bigger area of land, as forest land under Section 29 of the Forest Act.

40. They would submit that it was incumbent on the State to have complied with Section 2(1) of the FCA as a necessary condition precedent to issuance of the Impugned Notification of the Subject Land and handing over of the same to the MCGM. The original Forest Notification was issued only pursuant to actual factual verification, satellite imaging and "ground-truthing". Therefore, they May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc would contend, the Subject Land has been factually ascertained to be forest land and it could not have been lightly de-notified and diverted in the teeth of Section 2(1) of the FCA. Section 27 and Section 29 of the Forest Act:

41. The power to declare a forest as being no longer a reserved forest is contained in Section 27 of the Forest Act. So also, it is under Section 29 of the Forest Act, which is the provision governing "protected forest", that the Forest Notification was issued in the first place. It would therefore be necessary to extract and examine both these Sections of the Forest Act.

42. The provisions of Section 27 of the Forest Act are extracted below:

Section 27. Power to declare forest no longer reserved.

(1) The State Government may, by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

[Emphasis Supplied]

43. The provisions of Section 29 of the Forest Act are extracted May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc below:

Section 29. Protected forests.

(1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forests produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a protected forests.

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste- land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the mean time to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

[Emphasis Supplied]

44. It will be seen from a plain reading of the foregoing provisions that under Section 27 of the Forest Act, the State Government has the powers to issue a notification directing that from a specified date, May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc any land that is a reserved forest shall cease to be a reserved forest. All rights that stand extinguished by such de-reservation of a reserved forest would be incapable of being revived. Therefore, this is a serious power to de-notify any forest land as such, and the de- notification would bring with it clear and certain finality.

45. On the other hand, a plain reading of Section 29 of the Forest Act would show that any forest land or waste land that is not declared to be a reserved forest could be notified as being a protected forest. The ingredients of Section 29 are that the land should be forest land or waste land. Once the State Government issues a notification declaring any such forest land or waste land as protected forest, the provisions of Chapter IV of the Forest Act, titled "Of Protected Forests" would become applicable to such land. Prior to making such a notification of any forest land or waste land as a protected forest, the State is required to conduct a survey of the ground reality. The contents of such survey enjoy a statutory presumption of truth in relation to rights asserted by any private person on such land. A survey of the forest land or waste land in question is a vital ingredient - even where the State believes that an urgent protection is warranted, it has the power to protect such land and conduct the survey immediately thereafter. Analysis and Findings:

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

46. Against this statutory framework, it would be vital to examine the actions of the State that form subject matter of this Writ Petition. The sequence of events critical to these proceedings is noteworthy. Sequence of Notifications:

47. The first in the sequence of relevant events was the Enabling SC Order passed way back on November 21, 2003, which took on record the joint statement by the State and MCGM that the Subject Land could be the alternate site for the garbage dump instead of the garbage dump at Chincholi Bunder. The next relevant event is the HC Mangrove Direction, which followed over two years later on October 6, 2005 in Writ 3246 (which became consolidated into PIL

87). This decision specifically directed a freeze on cutting and destruction of any mangroves. The HC Mangrove Direction specifically mandated actual factual verification and survey of the truthful factual position on the ground. The Forest Notification treating the Subject Land as protected forest followed nearly three years later on July 7, 2008. This was a notification under Section 29 of the Forest Act. The Forest Notification could have been done only after compliance with the due process stipulated in Section 29 and even more consciously, the examination required under the HC Mangrove Direction. This is the notification that specifically treated the Subject Land as a protected forest. The Impugned Notification, which sought to remove the Subject Land from the scope of Forest May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Notification was issued one and half years later on December 29, 2009. Each of these steps were clearly well spaced out in time and would evidently be taken only after due attention to the facts and the law.

48. When seen in this context, with the benefit of the objectivity obtaining by this distance of time, the factual basis on which the Forest Notification was grounded cannot be lightly wished away - evidently, it was vital to examine ground realities before issuing it, and that too because not only had there been a prior litigation on landfill in Chincholi Bunder that led to the Enabling SC Order but also because of the litigation that led to the HC Mangrove Direction, which imposed specific conditions for the protection of mangroves. The Forest Notification was issued fully conscious of the obligations arising out of the HC Mangrove Direction and the perceived coverage of the Enabling SC Order, and that too after the factual survey required under Section 29 of the Forest Act. The

implications of making the Forest Notification were well known to the State when it was issued.

#### Import of Legislative Provisions:

49. It would rationally follow that if the State had cause to change its mind about the Forest Notification, the statutory provision under which it was empowered to do so, is Section 27 of the Forest Act.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc The exercise of power under Section 27 of the Forest Act entails compliance with Section 2(1) of the FCA. The power to de-notify a forest under Section 27 of the Forest Act has conclusive and permanent repercussions, which is why the statute stipulates the process under Section 2(1) of the FCA with a non-obstante provision. Evidently, the requirement of the prior approval of the Central Government has not been complied with. Indeed, it is being argued that it was not necessary to be complied with.

50. It is in this backdrop that the argument that such a power exists under Section 21 of the General Clauses Act is being made by the State and the MCGM. Section 21 of the General Clauses Act leaves no manner of doubt that the power to issue notifications under any law made by Parliament would include a power to amend, vary or rescind the notification. The principle is simple and trite - the power to do something through a notification would include the power to undo it through a notification. However, Section 21 has a foundational requirement - the exercise of power to undo something that has been done must be done in the same "manner" and is subject to the same "sanction" and the same "conditions (if any)". The use of the phrases "like manner" and "like sanction and conditions" would indicate that any manner of conduct, due process and conditions that are applicable when a notification seeks to do something, must also be applied to a notification by which what was May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc done earlier is sought to be undone.

51. Therefore, the ground-truthing and survey that necessarily had to be complied with for purposes of issuing the Forest Notification under Section 29 of the Forest Act and pursuant to the HC Mangrove Direction, would have to be applied for exercise of the power under Section 21 of the General Clauses Act. In other words, survey and examination of the ground reality would need to show that it was necessary to alter the original position obtaining from the Forest Notification. It is noteworthy that the Impugned Notification was issued in 2009, six years after the Enabling SC Order and one and half years after the Forest Notification. When issuing it, the Enabling SC Order was well known and so was the HC Mangrove Direction. This is why the State even approached this Court in the course of PIL 87 and by an order dated April 29, 2009 this Court asked the State to be advised on its own and did not enter into endorsing this view.

52. This boils the matter down to the fact that the Subject Land has all the characteristics of forest land, which is why in compliance with Section 29 of the Forest Act and with the HC Mangrove Direction, the Subject Land came to be included into the Forest Notification - based on the reality that the Subject Land was forest land. Clearly, to de-notify such land as a protected forest, the provisions of Section 2(1) of the FCA would be attracted, and thereby the mandatory May 2, 2025

Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc statutory requirement of obtaining the prior approval of the Central Government became applicable. It is common ground that such approval has admittedly not been obtained.

53. This brings us to the contention on behalf of the State by Dr. Saraf and Mr. Sakhare that Section 21 of the General Clauses Act would adequately empower the State to issue the Impugned Notification regardless of the specific provisions contained in FCA, a special legislation on the subject of forest conservation. In our opinion, the proposition that Section 21 of the General Clauses Act could be resorted to as a means of not having to comply with Section 2(1) of the FCA, a special law, is an extreme proposition that is sweeping in its reach and holds far-reaching ramifications. Section 21 of the General Clauses Act would then be a license not to comply with a stipulation in a special legislation that mandates a due process for amending, varying or rescinding a notification.

54. In many regulatory frameworks, for instance, it is necessary to conduct pre-legislative public consultation (telecommunication regulations and insolvency regulations are just two examples) before notifying a regulation or amending it. If Section 21 of the General Clauses Act were to be read in the manner canvassed by the State, such requirement to effect pre-legislative public consultation could simply be ignored. Indeed, in each case, one must have regard to the requirement in the law that would be circumvented. In the case at May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc hand, the requirement for making an amendment, variation or rescission of a notification treating land as forest land in a manner that a portion of such land ceases to be forest land, requires compliance with Section 2(1) of the FCA. The interpretation given to Section 21 of the General Clauses Act circumvents Section 2(1) of the FCA.

55. Moreover, this is precisely why Section 21 of the General Clauses Act has its own inherent check and balance to protect against such usage of its provisions. The provision itself contains the check that the exercise of the power to amend, vary or rescind a notification is subjected to the very same manner, subject to the very same conditions and the very same sanction as applicable to the issuance of the original notification. Therefore, Section 21 of the General Clauses Act ensures that it does not present a blanket process of changing or rescinding every notification without due process applicable to the original notification.

56. De-reservation of forest land as a forest has its own stipulated procedures mandated in Section 2(1) of the FCA, with particular regard to the facts of this case and how PIL 87 came to be finally disposed of. We have elaborated on this later. Therefore, invoking Section 21 of the General Clauses Act to somehow set it up as a means to make Section 2(1) of the FCA inapplicable would render the latter provision otiose. The Impugned Notification purports to be a May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc corrigendum and the only basis for the corrigendum is the Enabling SC Order. The Enabling SC Order was well known to the State when the Forest Notification was made. The HC Mangrove Direction was also well known to the State when the Forest Notification was made. With full knowledge of the requirements for making the Forest Notification, the Subject Land was notified as a protected forest.

57. At this stage it would be appropriate to also deal with NAL Layout, which is relied upon by Dr. Saraf to justify the Impugned Notification as being legitimate in view of Section 21 of the General Clauses Act. In NAL Layout the Supreme Court relied upon its earlier decision in State of MP vs. Vishnu Prasad Sharma ( Vishnu Sharma)<sup>4</sup> where it was held that a notification issued by the government under Section 9 of the Land Acquisition Act, 1894 (" Land Acquisition Act") could be cancelled if the notification under Section 9 of that Act had not yet been issued, in reliance upon Section 21 of the General Clauses Act.

58. In fact, in NAL Layout, the Supreme Court has held that the powers under Section 21 of the General Clauses Act cannot be negated unless the statute itself (under which the original notification was issued) expressly or implicitly indicates so. In fact, citing another decision in Larsen & Toubro Ltd. Vs. State of Gujarat 5 AIR 1966 SC 1593 (1998) 4 SCC 387 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc (Larsen), the Supreme Court has held that if much has been done such as further steps under Section 4 and Section 6 of the Land Acquisition Act, then one could not utilise Section 21 of the General Clauses Act.

59. In these circumstances, taking note of the fact that in NAL Layout, the State had already exercised its power to withdraw from the acquisition under Section 48 of the Land Acquisition Act, the Supreme Court upheld the power to rescind the notification under Section 9 of that Act. It was noticed that there was nothing in the Land Acquisition Act that indicates that the after exercising the power under Section 48 to withdraw from an acquisition, the government could not resort to Section 21 of the General Clauses Act.

60. Both Vishnu Sharma and Larsen too are based on the same principle. Therefore, in our opinion, there is no parallel at all for NAL Layout to be relevant to bolster the case of the State and MCGM. On the contrary, the ratio in NAL Layout would clearly show that one should have regard to the legislation under which the first notification is issued to examine if there is any explicit or implied hurdle. In the matter at hand, clearly there is a hurdle in the form of the specific means by which one would need to de-reserve a forest in terms of Section 2(1) of the FCA. Therefore, in our opinion, the ratio in these judgements, in fact, supports the view we have taken.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Intervening Court Orders and Judgements:

61. Against the backdrop of the aforesaid legislative analysis, it would be necessary to examine the Enabling SC Order, the Appellate Order and the various court orders in litigation relating to mangroves, which also noticed the garbage dump on the Subject Land and their implications for our decision in this Writ Petition.

62. The Appellate Order dated February 12, 2010 passed by the National Environmental Appellate Authority also inter alia analyzed the factual matrix on the premise that the Enabling SC Order read with the assurance given by the State and the MCGM would result in the position that there would be no damage to the mangroves and consequently refused to interfere with the Environment Clearance. It is the same Environment Clearance, which has merged into the Appellate Order that is

impugned in this Petition.

63. A key element of this case is a wide number of orders passed in various matters both by this Court and the Supreme Court, which can have a bearing on the actions of the State that fall for consideration in these proceedings. It would be important to actually examine the contents of such orders which are being cited by the Respondents to justify their actions, which are assailed by the Petitioner on the ground of conflict with the statutory provisions in May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc law and also the judgments and orders themselves.

64. It would be instructive to extract from the Enabling SC Order 6 (K.G. Balakrishnan and B.N. Srikrishna, JJ.). Since the Enabling SC Order lies at the heart of the matter, it is reproduced substantially:

ORDER The matter relates to shifting of a dumping ground. The residents of the locality of the present dumping ground filed a petition alleging that the dumping of waste materials bio-medical waste caused serious hazard to the residents of the locality. The Pollution Control Board, Maharashtra also filed a petition alleging that the continuance of the dumping ground in that area would cause serious problem to the local citizens. In this SLP the order passed by the of Bombay dated 11.7.2003 is challenged and when the matter came up for consideration, parties on all sides explored the possibility of alternative dumping ground for the respondent Municipal Corporation. The Municipal Commissioner of Municipal Corporation of Greater Mumbai and the Chief Secretary of the State of Maharashtra jointly filed an affidavit dated 18 August, 2002. In the affidavit it is stated:

"In the said meeting the Collector M.S.D. of the Govt. of Maharashtra pointed out that the Salt Plan Land bearing Survey No.275 (pt) situated at Village Kanjur, Eastern Suburbs admeasuring about 283 hectares in vacant and free from encumbrances and therefore the said land can be used for landfill purpose. Out of the said 283 hectares of the said land, 141.77 hectares is free from CRZ-1, as shown in the plan by red colour dotted line. The said land admeasuring 141.77 hectares in equal proportion is required to be shared by the Govt. of Maharashtra This is the order passed in SLP (Civil) No. 18717 of 2001 on November 21, 2003.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc and Govt. of India. Hereto annexed a copy of the said plan showing the details of the land bearing Survey No.275 (pt) Village Kanjur as well as the copy of the plan showing the location of the existing and the proposed landfill site as Annexure 'D' collectively.

In view of the same, it was then decided that 50% of the said land admeasuring 141.77 hectares bearing Survey No.275 (pt) shall be handed over to M.C.G.M. free of cost by Govt. of Maharashtra for using the said land as a landfill site.

The remaining 50% of the plot of land admeasuring 141.77 hectares bearing Survey No.273 (pt), which is required to be shared by the Govt. of India, cannot be used by the Govt. of India for development purpose as the same would be in the vicinity of the proposed landfill site, thus, the M.C.G.M. will have 141.77 hectares of land as a landfill sites."

The Govt. of Maharashtra to hand over the 50% of the land admeasuring 141.77 hectares bearing Survey No.275 (pt) within a period of 3 months from today is the Municipal Corporation of Greater Mumbai and on completion of all the formalities regarding transfer are over the said land be used as dumping subject to strict observance of law relating pollution and present dumping ground which is continuing at Chincholi Bunder Area shall be discontinued.

The SLPs are disposed of.

[Emphasis Supplied]

65. From a plain reading of the foregoing, it would be apparent that the matter that was being dealt with by the Supreme Court related to challenge to the dumping ground at Chincholi Bunder in which waste May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc materials including biomedical waste was said to be dumped. The Pollution Control Board, State of Maharashtra had alleged that continuance of the dumping ground would cause serious problem to the local citizens and that all parties should explore an alternate location for the dumping ground. MCGM and the State of Maharashtra filed a joint affidavit dated August 26, 2002 stating that the Subject Land is vacant and free from encumbrances and can be used for purposes of landfill. It was this joint affidavit representing to the Supreme Court that the land could be used for landfill (a representation jointly made by the Municipal Commissioner, MCGM and the Chief Secretary, Government of Maharashtra), and that out of the 283 Hectares available at Kanjurmarg, an area of 141.77 Hectares is free from CRZ-1 coverage, that the Supreme Court agreed that such land is to be shared in equal proportion by the Union of India and the State of Maharashtra. Therefore, 50% of such land admeasuring 141.77 Hectares was intended to be handed over by the State of Maharashtra to MCGM free of cost for use as a landfill site. The remaining 50% which was to be shared by the Union of India was also confirmed to be unavailable for development purposes since it would be in the vicinity of the proposed landfill site, thereby enabling MCGM to have possession of 141.77 Hectares land as landfill site.

66. Based on such representation in an affidavit filed jointly by the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc MCGM and the State, the Supreme Court directed the State to hand over its share of the land to MCGM within three months from the date of the order. However, the Supreme Court made it clear that the use of the land as the dumping ground " shall be subject to strict observance of law relating [to] pollution and [the] present dumping ground which is continuing at Chincholi Bandar area shall be discontinued".

67. Consequently, it would be seen that the Enabling SC Order is primarily based on the position held out by Chief Executive Officers of MCGM and Government of Maharashtra stating that it was

feasible to use the Subject Land as a dumping ground, and confirming that it was not CRZ-1 land. There was no notification of the land as a "protected forest" at that time, and the Supreme Court had no occasion to consider the implications of the Forest Act or the FCA. The Supreme Court simply took on record the assurance given by the MCGM and the State and also added that the shifting of the dumping ground from Chincholi Bander to Kanjurmarg would be subject to strict observance of law relating to pollution.

68. The HC Mangrove Direction dated October 6, 2005 issued in Writ 3246 / PIL 87 is also vital. A Division Bench of this Court (Dalveer Bhandari and D.Y. Chandrachud JJ. )<sup>7</sup> directed a complete Writ Petition (L.) No. 3246 of 2004, Writ Petition No. 1470 of 2003 and Writ May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc freeze on any further destruction of mangroves in the entire State of Maharashtra. The HC Mangrove Direction is the basis on which the Forest Notification dated July 7, 2008 identifying the Subject Land as a "protected forest" came to be issued. Therefore, the contents of the HC Mangrove Direction must necessarily be noted and relevant portions are extracted below:-

. These writ petitions have been filed seeking urgent measures for the protection and preservation of the fast depleting mangrove forests which line the coast of State of Maharashtra. The petitioners in Writ Petition (Lodging) No. 3246 of 2005, state that 720 Kms. Long coastline of Maharashtra is indented by numerous rivers, estuaries, creeks, small bays, headlands, rocky shores, sand and muddy beaches. All such geomorphologic structures act as a habitat for different kinds of eco-systems which are essential for the protection of the coastline from the encroaching sea. The petitioners state that there are about 18 major estuaries along the coastline of Maharashtra harboring some of the biologically richest patches of mangroves along the entire western coast of India. All 52 creeks along the coast of the State are covered by mangroves to a certain extent.

2. The main concern of the petitioners is the destruction of mangroves in various ways. The petitioners have relied upon a number of articles contributed by well-known authors to depict that after the Tsunami, the scientific verdict has been unanimous - damage is greatest where beaches have been built on, dunes flattened, where ground water was pumped out and coral reefs killed. There seems to be unanimity amongst all counsel appearing for different parties that mangroves play an important role in eco-systems and mangroves have to be preserved at any cost.

3. The petitioners in the petition have incorporated that they have received a number of complaints from the citizens about the systematic destruction of mangroves in various localities by land grabbers and encroachers. The petitioners have identified five areas where indiscriminate destruction of May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc mangroves is taking place. Those areas are:

(i) Seven Bungalows, Andheri;

- (ii) Kanjurmarg;
- (iii) Link Road, Goregaon,
- (iv) Gorai; and
- (v) Malvani Village, Malad.

4. The petitioners have prayed that pending further hearing of these petitions, it is absolutely imperative that the respondents be restrained from destructing or denuding mangroves by dumping, obstructing water supply, cutting of mangroves or by any other method.

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8. The State Government is directed to designate a Senior Officer not below the rank of concerned District Magistrate and Collector and Deputy Commissioner of Police/Superintendent of Police to oversee the implementation of the following directions. They would entertain complaints from citizens in respect of mangrove destruction. The name, address and contact information of such officers shall be advertised prominently in one English newspaper and two Marathi newspapers, apart from the official websites of the Maharashtra Government and the Forest Department.

(i) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. We take note of the fact that in T.N. Godavarman Thirumulkpad vs. Union of India and Ors. etc. [Writ Petition (C) No. 202 of 1995 and 171 of 1996], an affidavit was filed on behalf of the State of Maharashtra by the Chief Conservator of Forests (Administration), in which on the basis of a report of an Expert Committee, it was stated that in the Mumbai Urban Area alone, 1,534 hectares of land were, inter alia, classified as mangrove areas.

(ii) All construction and rubble/garbage dumping on the mangrove areas shall be stopped forthwith;

(iii) Regardless of ownership of the land, all construction taking place within 50 metres on all sides of all mangroves shall be forthwith stopped ;

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

(iv) to (vii) \*\*\*\*\*

(viii) 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;

(ix) After the aforesaid process in clause (viii) is completed, the areas so identified which are government owned shall be declared and notified as "protected forests" in accordance with law after carrying out ground survey etc. The areas so identified that are privately owned shall be declared and notified as "forests" in accordance with law, after carrying out ground survey etc. The said declaration/notification will be completed within a period of 8 weeks of the completion of Phase-II mapping;

(x) The mangrove areas that are on government owned lands will be handed over to the Forest Department within a period of 12 weeks from the declaration of the same as "protected forests";

(xi) From the list of "mangrove areas" so identified, Government owned lands will automatically be declared/notified as "protected forests". Likewise, privately owned lands from the list of mangrove areas so identified, the same will be declared/notified as "forests";

(xii) The Secretary, Revenue Department, shall from the said date of taking over possession of the Government owned land by the Forest Department, update all the revenue records to ensure that the said Government lands are shown as "protected forests" in the said revenue records within a period of 12 weeks from the same being declared as May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc "protected forests". In the case of lands that are private owned, the secretary, Revenue Department, shall update all the revenue records to ensure that the said private lands are shown as "forests" in the said revenue records within a period of 12 weeks of completion of the steps in clause (x) above;

(xiii) In respect of Government lands, the Forest Department and other authorities of the State of Maharashtra shall take the following necessary steps of protection, conservation and regeneration of the areas that would be declared/notified as "protected forests: in terms of clause (x) above; Removal of all obstructions that are impeding the growth of mangroves as also the impediments which restrict the flow of sea water in the mangrove areas;

Wherever mangrove growth is found to be sparse and denuded (i.e. with forest density less than 0.4 which means canopy less than 40%) within these identified areas, taking necessary steps for rejuvenation;

On identification of the areas as forest, the Municipal Corporation of Greater Mumbai would remove garbage and debris within these areas within a period of three months as per the instructions of the Forest Department. These areas shall be rejuvenated with mangroves;

The Forest Department is directed to take necessary action against the offenders in accordance with law for damaging or destroying mangroves.

11. The Principal Secretaries of (i) Environment, (ii) Revenue and (iii) Forest Departments, Government of Maharashtra, shall be overall in charge of ensuring total compliance of this order.

13. The Chief Secretary of the State of Maharashtra is directed to send a circular to all concerned Collectors/Deputy Commissioners of Police/Superintendents of Police and all other concerned officials to ensure meticulous compliance of this order.

[Emphasis Supplied] May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

69. The HC Mangrove Direction leaves no manner of doubt as to what was to be done by the State. Specifically, the office of the Chief Secretary was made responsible for ensuring meticulous execution of the directions. The directions required the State to conduct high resolution satellite mapping and specifically identify the mangroves. The HC Mangrove Direction imposed a prohibition on dumping garbage, and directed the removal of the garbage dumped on mangroves. The State was required to ensure that flow of sea water was not impeded, to hold the construction in a 50-metre distance and remove any construction already made. The entire area to the extent it was State-owned was to be notified as a protected forest.

70. This was the set of directions that the State had to comply with when it issued the Forest Notification. The Division Bench was made aware that in Kanjurmarg where the Subject Land is situated, garbage was being dumped. Should the State have believed that the Enabling SC Order already gave it immunity from the issuance of such directions, it would be rational and logical that it would have approached the Supreme Court and informed that this Court was issuing directions contrary to what the Supreme Court had already permitted in the Enabling SC Order. On the contrary, this Court was informed about the situation, which is seen from an order dated May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc April 24, 2006 in WP 3246 ("April 2006 Order").

71. The inexorable position that emerges is that the Enabling SC Order only took on record the assurance of the Chief Secretary of the State of Maharashtra and the Municipal Commissioner, MCGM that it was feasible to create a garbage dump on the Subject Land. At that juncture, there was no consideration of the location having mangrove growth on it. Notifying the Subject Land as protected forest land was not even in conception at that stage. Taking note of the dumping of garbage on various mangrove land including the Subject Land, the Division Bench issued the detailed order in the HC Mangrove Direction - specifically taking note of garbage dumping, construction at the site, and requiring notification as a protected forest.

72. The use of the Subject Land as a dumping ground came up for consideration in WP 3246 on April 24, 2006. On this date, it was brought to this Court's attention that the Subject Land had been identified for establishment of a dumping ground in Kanjurmarg and the Court's interference was sought on the premise that it would have a deleterious impact on the ecological balance and reservation on mangroves in the area. A Division Bench with one member being the same as earlier (Kshitij R. Vyas, CJ and D.Y. Chandrachud, JJ. ) passed the April 2006 Order taking note of the Enabling SC Order and on that basis refrained from issuing the prohibitory order of the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc kind sought by the Petitioners in respect of the Subject Land for use as a municipal dumping ground. However, further directions were issued on the subject. Extracts from the April 2006 Order are therefore relevant, and have been set out

below:-

1. We propose by this order to address the issue of the dumping ground which has been established by the Mumbai Municipal Corporation on land bearing Survey No.275 (part) at village Kanjur. Diverse issues have been raised in the public interest proceedings before this Court relating to the conservation of mangroves. In so far as Survey No.275 (part) is concerned, Counsel appearing on behalf of the Petitioner has submitted that the establishment of the Municipal dumping ground is per se invalid and should be interfered with by this Court inasmuch as it is liable to have a deleterious impact on the ecological balance and on the preservation of mangroves in the area.

2. For the reasons which we now indicate, we are of the view that a prohibitory order of the kind that has been sought in respect of the use of Survey No.275 (part) as a Municipal dumping ground cannot be granted.

....

5. In the course of the hearing of this petition, we had by our order dated 4th April 2006 constituted a three member Expert Committee. One of them, Dr. Sham R. Asolekar is a Professor at I.I.T. Mumbai while the other Dr. Sanjay Deshmukh is a Professor of Life Sciences at the University of Mumbai. The Committee has submitted a report in which it has been clarified that on a part of the dumping ground on which activities are being carried on by the Municipal Corporation there are sparse mangroves present on the site. The Committee has observed that sparse mangroves have been seen and on some of the sparse mangroves actual dumping has been carried out. In the affidavit that has been filed by the Municipal Corporation, it has been clarified that the land which was given for the Kanjur landfill site was salt pan land with bunds having inlet culverts and sluice gates for controlling tidal water movement in or out of the salt pan area. In many places, the earthen bunds have been broken May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc and sluice gates at the culvert were removed. Therefore, as a result thereof the tidal water has been flowing in at many places across the bunds leading to growth of grass and sparse mangroves in some patches. The Municipal Corporation has stated that the Corporation and MMRDA have taken up the work of the cleaning up of the Mithi River which includes the removal of sludge and/or sediments accumulated over several years in the river belt. In order to address the issue relating to the disposal of sludge and/or sediments from the river belt, a meeting was convened by the Maharashtra Pollution Control Board on 14th March 2006. At the meeting, the Pollution Control Board issued directions to the effect that there would no objection for the Municipal Corporation using the Kanjur landfill site for dumping the sludge that has been removed from the river belt subject to the observance of the safeguards that have been directed to be observed. A copy of the Minutes of the meeting has been produced before the Court. Besides, the Municipal Corporation has drawn the attention of the Court to a letter addressed by the Ministry of Environment and Forests of the Government of India on 27th September 1996 to the Chief Secretary of the State Government by which the approval of the Union Government was conveyed to the Coastal Zone Management Plan of the State of Maharashtra in pursuance of the power conferred by Clause 3(3)(i) of the CRZ

notification dated 19th February 1991. Under Condition xii all mangroves with an area of at least 1000 sq.mtrs are to be classified as CRZ-I with a buffer Zone of at least 50 meters. In paragraph 7 of the affidavit filed by the Municipal Corporation, the following assurance has been made before the Court and it would be material for the purposes of these proceedings to extract therefrom :

"I say that the Sparse mangroves have developed on site as indicated in the map at Exhibit IV on account of the ingress of tidal water through the broken bunds and culverts from which the sluice gates have been removed. Although these mangroves are young and sparse and not protected by law the corporation will take due care and will not dump sludge/sediments on the groups of mangroves which have stabilized. The Corporation is also in the process of engaging an expert who will carry out survey of groups of mangroves which have stabilized and draw up a plan for their protection and regeneration."

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Shri K. K. Singhvi, Learned Senior Counsel appearing on behalf of the Municipal Corporation has assured the Court that steps would be taken by the Municipal Corporation to ensure that the use of the Kanjur landfill site for dumping shall be consistent with the aforesaid assurance and would ensure that the terms on which the Government of India granted its approval to the CZMP of the State Government on 27th September 1996 followed by a clarificatory letter dated 19th January 2000 would be observed. We record and accept the assurance made before the Court."

[Emphasis Supplied]

73. It will therefore be seen that the Division Bench dealing with the very same Writ Petition i.e. WP 3246 in which the HC Mangrove Direction came be passed, took note of the fact that a three-member Expert Committee was to submit a report on the subject. It is apparent that the Committee submitted a report clarifying that on a part of a dumping ground, there indeed were sparse mangroves present on site and that some of the actual dumping had been effected on such sparse mangroves. The MCGM clarified that a land given for the landfill site was salt pan land with sluice gates to control the movement of tidal water. Many of the bunds had been broken and the sluice gates had been removed. As a result, tidal water had indeed been flowing in and grass as well as mangroves have regenerated in some patches. The MCGM had stated that the Mithi river was being cleaned up by removal of sludge at the sediments accumulated over several years, and it was dealing with the issue of disposal of such sludge and sediments from the Mithi May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc river belt. The Pollution Control Board had issued directions that it would not have objections to using the landfill site of Kanjurmarg for dumping such sludge removed from the Mithi river belt, subject to observance the safeguards directed by it.

74. The MCGM had pointed out to this Court that the MOEF had approved to use of Subject Land pursuant to its powers relating to use of CRZ land by a letter dated September 27, 1996, and consequently, all mangroves with an area of at least 1,000 sq. mtrs. were to be classified as CRZ-1, with the buffer zone of at least 50 meters. Consequently, while the MCGM claimed that the sparse mangroves developed on site were young and sparse and were not protected by law, the MCGM

would take due care not to dump sludge or sediments on such sparse mangroves. The MCGM was also in the process of engaging an expert to carry out the survey of the mangroves that are stabilized at the site and also draw a plan for their protection and regeneration. Learned Senior Counsel appearing for MCGM had assured the Court that the use of the Subject Land would be consistent with such assurance which statement was taken on record by the said Division Bench so as to not interfere in the manner sought by the petitioners therein.

75. It will therefore be seen that at this stage, a Division Bench of this Court, drew comfort from the fact that it would only be sludge May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc and sediments that was being extracted from the Mithi river belt that would be dumped on the Subject Land and that no other dumping would take place on the mangroves and that the MCGM would take appropriate steps for protection and regeneration of the mangroves. Taking such factors and assurances on record, the said Division Bench indeed did not extend the blanket prohibition on the usage of the Subject Land as the municipal dumping ground, and allowed this assurance of MCGM to run its course. While this hearing took place in April 24, 2006, the Forest Notification was issued over two years later i.e. on July 7, 2008.

76. The purported error in the Forest Notification also came up for judicial scrutiny a year later, on April 29, 2009. A Division Bench of this Court (Bilal Nazki and V.K. Tahilramani, JJ. ), when dealing with PIL 87, dealt with a Notice of Motion taken out by the MCGM stating that the Forest Notification contained an error and sought a direction from this Court to rectify such error. The Learned Advocate General and Mr. Sakhare would submit that the April 2009 Order passed by the Division Bench enabled the issuance of the Impugned Notification. The contention is that apart from Section 21 of the General Clauses Act, this Court too had enabled the issuance of the Impugned Notification. Therefore, it would be useful to examine what this Bench had ruled, and the same is extracted below:-

This case has a long history and is going on in this May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Court for a long time, and then, it has gone even to the Supreme Court.

2. The crux of the matter is that the Municipal Corporation of Bombay is finding it difficult to dump the waste material generated on day-to-day basis in the City of Mumbai. According to Mr. Singhvi, senior counsel, 6500 Metric Tonnes of waste material is generated in the city per day. Therefore, it wanted a dumping site, and after a lot of litigations, the matter went to the Supreme Court, and the apex Court passed an order in Special Leave to Appeal (Civil) No. 18717 of 2001 on 21st November, 2003. The Supreme Court held:

"The Government of Maharashtra to hand over the 50% of the land admeasuring 141.77 hectares months from today at the Municipal Corporation of Greater Mumbai and on completion of all the formalities regarding transfer are over the said land to be used as dumping subject to strict observance of law relating to pollution and present dumping ground which is continuing at Chincholi Bunder Area shall be

discontinued."

3. Mr. Singhvi submits that an earlier order was passed by this Court in this petition, in which certain directions were given on 6th October, 2005. One of the directions was that the State shall identify the forest lands and accordingly notify them. After the Supreme Court's order, land admeasuring 141.71 hectares in Survey No. 270 was allotted by the Government to the Municipal Corporation, so that the land could be used as dumping ground in accordance with the directions of the Supreme Court. However, in pursuance of a direction of this Court that the land should be identified for being declared as "protected forest", this land also was declared by a Notification to be "land falling under protected forest" in terms of the Forest Act.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc

4. Now, an application has been moved by the Bombay Municipal Corporation that the Notification issued by the State notifying this land to be "forest land", which land has already been transferred to the Corporation in pursuance of the orders of the High Court, was a mistake.

5. The State has filed an affidavit, in which they have stated that inclusion of this piece of land in the Notification under the Forest Act was a mistake, and, therefore, the Corporation sought direction of this Court to the State to correct the mistake.

6. We have gone through the order of the Supreme Court and the order of this Court very carefully, and we observe that at no point of time, this Court or the Supreme Court had asked the State to notify this piece of land as forest land. The High Court has only directed the State to identify forest lands, and accordingly notify them, and we understand that a particular land can be notified as protected forest land, subject to conditions laid down in the Forest Act and Rules made thereunder. Therefore, such a direction could not have been given by this Court. If the State has committed mistake in notifying land as forest land, they have ample powers to undo it, without seeking any permission from this Court. However, if such a course is taken by the State, and any person, including the petitioners in this case, have any grievance, they are at liberty to agitate it.

7. With these observations, this Notice of Motion is disposed of.

8. We make it clear that we have not gone into the issue whether a mistake was committed or not.

[Emphasis Supplied]

77. What is clear is that the Division Bench did not delve on the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc issue whether there was a mistake in the Forest Notification. The Division Bench observed that there was no explicit reference to the Subject Land in the HC Mangrove Direction. The Division Bench noted that what was to be notified is land on which there are mangroves. The Division Bench noted that the Forest Notification could have been issued only in compliance with the Forest Act and the rules made under it. The Division Bench held that the State has enough powers to rectify its purported mistake without involving the Court in the process or

seeking an endorsement. Evidently, the Court declined making such an endorsement.

78. Therefore, far from recognizing or confirming that there had been a mistake and that it should be rectified, the Court refrained from getting into the merits. The Court indicated that the State had enough powers to take remedial action if it was indeed a mistake, and indeed it left open the potential for a challenge to any such measure of remedy of the purported mistake.

79. MCGM had evidently alluded to the Enabling SC Order and to the HC Mangrove Direction to submit that although the Subject Land had been handed over to the MCGM by the Government of Maharashtra for use as a dumping ground, when implementing the HC Mangrove Direction, the Subject Land also got identified and declared as a "protected forest". It is the observation of the said May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Division Bench, in particular in Paragraphs 6 and 8 that are noteworthy. The Division Bench was very clear that the HC Mangrove Direction had not asked the State to notify the Subject Land as Forest Land. The HC Mangrove Direction had directed the State to identify the forest lands and notify them in accordance with the provisions of the Forest Act and the Rules made thereunder. The Division Bench ruled that consequently, it was not the High Court that directed that the Subject Land should be notified as a protected forest, for the High Court to issue a direction to rectify the mistake. The Division Bench made it clear that if the State had indeed committed a mistake to issue the Notification (such Notification only being possible in compliance with applicable law), it was for the State to undo the mistake without seeking any permission from the Court (again in compliance with the law abiding the undoing of any mistake).

80. What is also noteworthy is that the claim of having made a mistake was raised by the MCGM and the State before the Court in 2009. The Forest Notification was made in 2008 after carrying out all the activity that was directed to be carried out in the HC Mangrove Direction in 2005. Therefore, yet again, it is clear that the State verily found that the Subject Land was mangrove area and it complied with the Forest Act and the HC Mangrove Direction. The argument for de-notification was therefore not based on the factual May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc position of the Subject Land not being protected forest as notified but by the fact that the State wanted the Court to clarify that in view of the Enabling SC Order, the notification of the Subject Land was a mistake.

81. In other words, the claim was that the Supreme Court had authorised the dumping of garbage on mangroves when it came to the Subject Land. Surprisingly, the view based on the Enabling SC Order was not sought to be clarified by moving an application in the Supreme Court.

Expert Committee Report:

82. It is also seen from the material on record that a report dated April 27, 2013 filed by two expert members and the members of MCZMA was an outcome of the visit by the said persons to the site to examine whether the Environment Clearance had been issued with application of mind and to ascertain the factual position on the ground. This investigating team was dealing with a complaint by the office bearers of the Petitioner alleging violation of CRZ norms in the landfill site and

violations of the terms of the Environment Clearance too, which clearance was itself being challenged. It was alleged that there was massive reclamation of water bodies at the site outside of the wall constructed by MCGM, which were resulting in destruction of mangroves. This would then be in violation of the assurance given May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc to the Division Bench of this Court and recorded in the April 2006 Order.

83. The following extracts from the said report are noteworthy :

3. CRZ STATUS OF THE SITE As per the CZMP of Mumbai approved by MoEF vide letter dated 19.1.2000 part of the Kanjur dumping site falls in CRZ (see the attached map). Total land area proposed for the project is 141.77 ha. Out of this 52.5 ha falls in CRZ III with 150m CRZ on three sides and 50m on the fourth side. There are two large mangrove patches in the site measuring 20.7 ha. Though this is not shown on the CZMP they are clearly visible in the Google map (Fig.2) attached and the MGCM has shown it clearly in their site plan attached here as Fig. 3.

Balance area of land available for the project is 65.96 ha. The Kanjur dumping site of MCGM has Environment clearance dated 17th March, 2009 issued by the Ministry of Environment and Forests, Govt. of India. The Ministry accorded the EC for the MSW processing and sanitary landfill project in the non CRZ area as per the provisions of EIA Notification, 2006 and CRZ. Notification, 1991 on an area of 65.96 ha only. For the implementation of MSW processing and sanitary landfill the project proponent is also allowed by the EC ancillary facilities such as road, conveyance system, etc in the CRZ. Details are there in the MoEF order attached.

4. OBSERVATIONS OF THE COMMITTEE During the site visit the CRZ status of the site, status of wetlands, status of mangroves and the activities undertaken by MCGM for implementation of MSW processing and disposal facilities were examined in the context of the provisions of the CRZ Notification and the conditions of stipulated in the environmental clearance granted by the MoEF.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc The Committee found that the MSW processing and disposal facilities are coming up in the area permitted. The MoEF has accorded EC for processing 4000 TPD waste by Windrow composting. As per the EC's condition, project proponent should explore the other options for processing of waste for obtaining energy and a detailed proposal should be submitted to MoEF. The Committee was informed that new technology has been adopted by MCGM which involves (1) 3000 TPD waste processing by bio-reactor (anaerobic digestion of MSW for energy recovery for which pilot plant project studies has already been carried out and now the site is almost capped) and 1000 TPD waste processing by windrow composting (aerobic composting). MCGM officials informed the Committee that CPCB has given consent for adoption of the new technology. Accordingly, the work is going on at site. Further, the proposal for CRZ clearance for new technology has been submitted to MoEF. The proposal of new technology for MSW processing and disposal has not been received by MCZMA from MoEF or from MCGM. A tall compound wall of more than 12 feet in height has been constructed all around the project site almost along the HTL CZMP demarcated in the CZMP (see FIG:1 and 2). The compound wall around the site has a length around 5.2 km. It was informed by the project

authorities that the compound wall around the project site is mandatory as per the MSW rule of 2000. The Committee noted that it has been constructed around 86 ha area, instead of 65, ha allotted to them for actual MSW development.

The Committee found that all around the Kanjur project site there is thick and extensive mangrove vegetation. The project area and the surrounding mangrove forest are separated by a tall compound wall. Within the compound wall also there are two mangrove patches. The mangrove patch on the left side of the Fig.3 has a water body of around one hectare area. The Committee found that this mangrove patch is highly degraded and the mangroves are either dying or cut (see Figs. 4 to 8). Pipe pillars installed by Forest Dept were found around the boundaries of both patches of mangroves. The MCGM informed that the poles were installed by the Forest department for protection of mangroves and it is reported that an employee of the Forest Dept. visits the mangrove area every day for monitoring. However, the Committee noted that May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc the boundary of the mangrove patch demarcated, with pipe pillars do not match with the actual extend of the mangroves. The flushing of tidal waters to this patch is blocked by the wall construction and insufficient culverts. There are only three culverts with just 1.2m diameter here for tidal flushing. This is a major cause for the degradation of the mangroves. The situation is different in the second site of the mangroves. Here they are flourishing due to proper influx of tidal waters through the 15 properly placed culverts. There is proper flushing of the tidal waters and the wetland and mangrove system is lively with tidal and avifauna. Birds were found wherever the wetland and mangroves patches were in good condition at the site.

The Committee then observed that all along the compound wall there is a good tarred road of about 10m width as it is permitted in the CRZ. However, the entire road length is now being widened by reclaiming the rest of the CRZ and mangrove buffer zone area. During the inspection, the dumpers carrying the soil were found at site. In this process the sides of the wetlands and mangroves are also getting filled up. The project authorities could not explain the purpose of this reclamation. The Committee did not find any necessity for further widening of the road for the functioning of the project.

5. CONCLUSIONS AND RECOMMENDATIONS Based on the site visit, discussions with the concerned and perusal of relevant documents/ information the Committee came to the following conclusions:

a. Dumping/filling activity by soil was going on beyond the 65 ha of land allotted for the project. The reclamation is rampant (and the only operation at present) and the main function of MSW processing and landfill has taken a back seat. Due to dumping /filling, the wetland is being reclaimed and mangroves patches at some location are seen being affected.

b. Due to less no. of culverts at one of the mangrove patches, the influx of tidal water was found insufficient for the survival of mangroves. Moreover, the diameter of the pipe at the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc culverts of both the mangroves patches seems to be carrying less volume of tidal water, therein degrading the mangroves. To allow sufficient

tidal water to cater the mangrove site in the place of the present three introduce at least another ten culverts. They should be at least half a meter below the present level of the inlet pipes. In contrast to this in the site 2 since 12 culverts are provided the mangroves are flourishing. c. MCGM has proposed in their plan allied activities such as administrative buildings, security cabins, toilets etc. The Committee found that construction work of administrative building up to the plinth level is completed in the CRZ area. The MCGM has not obtained CRZ clearance for these activities.

On the basis of the above observations and conclusions the Committee makes the following recommendations:

- i. Dumping/filling of wetland/mangroves patches inside the compound wall of project site should be stopped immediately.
  - ii. Culverts should be widened and also their number increased adequately to ensure five passage of tidal water into mangrove area.
  - iii. MCGM should have regular maintenance of all the culverts to ensure that tidal wains reaches the mangroves patches. Destruction of mangroves should be stopped. The mangrove area should be protected, replanted with the species prevalent in the locality and their survival ensured.
  - iv. Debris already dumped should be removed from the water bodies and the mangrove fringes. The CRZ area, except for the portion required for the present 10 meter road, the reclamation done should be removed.
  - v. The original mangrove area should be resurveyed and re- established. The forest poles should be along the actual original boundary line.
  - vi. The corner plot (at the side of the entrance) is CRZ and the plinth developed for the administrative block should be dismantled.
- May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc vii. Forest Department should be directed to ensure proper monitoring of the mangrove area.
- viii. MCGM should get CRZ clearance for the new technology.
  - ix. MCGM should take CRZ clearance for allied activities such as administrative building, security cabins, toilets etc. x. MCGM should strictly adhere to all the conditions of Environment Clearance granted by MoEF.

[Emphasis Supplied]

84. It is apparent that the report of the investigating team of the MCZMA had been obtained by the Petitioner in exercise of the Right to Information Act, 2005. It is also

apparent that by an order dated May 10, 2013 ("May 2013 Order"), a Division Bench (D.Y. Chandrachud and A.Y. Sayed, JJ.) took note of the findings of fact.

There is an allusion once again to the Enabling SC Order and inter alia the following was stated in the May 2013 Order:-

4. On 17 March 2009, the Union Ministry of Environment and Forests (MOEF), accorded environmental clearance for the development of a sanitary landfill and waste composting unit at Kanjurmarg, Mumbai. The permission which was granted by the MOEF stipulated that while the total area of land proposed for the project was 141.77 hectares, 52.5 hectares falls under Coastal Regulation Zone (CRZ) III and an area admeasuring 20.76 hectares was affected by mangroves. The environmental clearance posits that the balance area available for the project is 65.96 hectares. The permission which was granted by the MOEF was hence for the execution of the project on area "only of 65.96 hectares" in accordance with the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc provisions of the Environmental Impact Assessment Notification of 2006 and the Coastal Zone Regulation Notification of 1991. Clause 5 of the permission which incorporated other conditions stipulates that the composting plant / landfill facility shall be located outside the Coastal Regulation Zone area while other allied facilities such as roads and conveying systems can be located on the Coastal Regulation Zone area. The MOEF specifically directed that it shall be ensured that no mangroves are destroyed during construction and operation of the project. The gas generated from the landfill facility is to be collected and disposed as per rules and similarly, the Leachate from the facility has to be collected and treated to meet the prescribed standards before disposal. Paragraph 6(v) of the approval stipulated that in the event of a change in project profile or a change in the implementation agency, a fresh clearance shall be obtained from the MOEF. The environmental clearance granted by the MOEF takes note of the fact that the project involves the construction of an MSW processing facility (windrow composting for processing 4000 TPD), construction of sanitary landfill including landfill gas collection system, leachate collection and treatment.

5. The legality of the permission granted by the MOEF on 17 March 2009 was upheld by the National Environment Appellate Authority (NEAA) by an order dated 12 February 2010.

6. In November 2010, the Wetlands (Conservation and Management) Rules 2010 were notified. Protected wetlands under Rule 3(ii) include wetlands in areas that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitants, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity. Under Rule 4(1)(iv) activities which are prohibited in respect of wetlands include solid waste dumping.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc However, existing practices, if any, before the commencement of the Rules have to be phased out within a period not exceeding six months from the date of commencement of the Rules. Similarly, reclamation of wetlands has been prohibited.

7. The issue before the Court is primarily in regard to whether there is a breach on the part of the Municipal Corporation in complying with the terms of the environmental clearance that was granted by the MOEF on 17 March 2009.

8. The Maharashtra Coastal Zone Management Authority (MCZMA) deputed a team of experts to visit the site on 27 April 2013. This exercise was initiated on a complaint that (i) there was a violation of the conditions contained in MOEF's permission dated 17 March 2009; (ii) there was a destruction of wetlands on a massive scale by MCGM outside the permitted 65 hectares area; (iii) there was a destruction of mangroves. When the petitions initially came up before the Court the Learned Counsel for the Municipal Corporation was allowed an adjournment as sought to enable the Municipal Corporation to consider and respond to the report of the MCZMA. This exercise has been carried out and the Court has heard the submissions urged by the Municipal Corporation on the Report extensively. An affidavit has also been filed by the Maharashtra Pollution Control Board on 2 April 2013 in these proceedings.

9. Now, it will be necessary to consider the contents of the affidavit filed by the MPCB and the report of the Experts' Committee of MCZMA, both these authorities being expert statutory bodies set up by the State Government. The affidavit filed by the MPCB inter alia highlights the following aspects :-

(iii) Non-biodegradable inert waste, residues of waste processing unit and pre-processing rejects are being disposed off at the BLF Cell, in violation of the conditions May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc stipulated in the authorisation;

(iv) Though the operator of the facility - M/s Antony Lara Enviro Solutions Pvt.Ltd. was directed to make available the details of the buffer zone around the landfill site, this was not made available;

The report which has been submitted by the MCZMA highlights following aspects :-

(i) Though the permission granted by the MOEF was for processing 4000 TPD waste by windrow composting, MCGM has adopted alternate technology of 3000 TPD waste processing by bio-reactor and 1000 TPD waste processing by windrow composting based on the consent of the Central Pollution Control Board (CPCB). A proposal has been submitted to the MOEF; however the permission of MOEF is still to be received;

(ii) A compound wall about 12 feet in height has been constructed all around the project site, almost along the high tide line. The compound wall has been constructed

around the area of 86 hectares; (iii) Within the compound wall, there are two mangrove patches. One of those mangrove patches is highly degraded and the mangroves are either dying or cut. The flushing of tidal waters to this patch is blocked by the wall and insufficient culverts.

There are only three culverts with just 1.2 mtr. diameter for tidal flushing. This is a major cause for degradation of mangroves.

(iv) The second site of mangroves is however found to be flourishing due to proper influx of tidal waters through 15 properly placed culverts;

(v) Along the compound wall, there is a good tarred road of about 10 m. width. However, the entire road length is now being widened by reclaiming the rest of the CRZ and mangrove buffer zone area. The dumpers were carrying soil at site and in this process, the sides of the wetlands May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc and mangroves are also getting filled up. The Committee did not find any necessity for further widening of the road for functioning of the project.

The conclusions of the report of MCZMA are inter alia as under :-

"(a) Dumping / filling activity by soil was going on beyond the 65 ha of land allotted for the project. The reclamation is rampant (and the only operation at present) and the main function of MSW processing and landfill has taken a back seat. Due to dumping / filling, the wetland is being reclaimed and mangroves patches at some location are seen being affected.

(b) Due to less no. of culverts at one of the mangrove patches the influx of tidal water was found insufficient for the survival of mangroves. Moreover, the diameter of the pipe at the culverts of both the mangroves patches seems to be carrying less volume of tidal water, therein degrading the mangroves. To allow sufficient tidal water to enter the mangrove site 1 in the place of the present three introduce at least another ten culverts. They should be at least half a meter below the present level of the inlet pipes. In contrast to this in the site 2 since 12 culverts are provided the mangroves are flourishing."

12. The order of the Supreme Court dated 21 November 2003 mandates strict observance of the law relating to pollution. Two statutory authorities - MPCB and MCZMA have found the Municipal Corporation to be in violation of environmental norms including the environmental clearance of MOEF of which several requirements are found to be breached. Hence for the purpose of these proceedings, it is not necessary for the Court to embark on an enquiry of its own nor is it necessary for the Court to deal with any disputed question of fact. The available material on record is essentially based on inspection that was carried out by the MPCB and by the MCZMA. The permission which May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc was granted by MOEF on 17 March 2009 is specifically for the setting up of the project only on 65.96 hectares. MOEF's permission was for the construction of inter alia an MSW facility involving windrow

composting of 4000 TPD. The permission stipulates that the composting plant and landfill facility shall be located outside the CRZ area while other allied facilities including roads and conveying systems could be located in the CRZ area. The environmental clearance granted by the MOEF completely answers beyond doubt the issue as to whether the land in question is within the CRZ area. According to the petitioners, the issue has also been decided by the Supreme Court in *Krishnadevi M. Kamathia and others v/s Bombay Environmental Action Group* (2011) 3 SCR 292, where the Supreme Court laid down that mangroves fall for classification in CRZ I. The environmental clearance of MOEF of 17 March 2009 proceeds on the basis that out of the total land area of 141.77 hectares which was proposed for the project, 52.5 hectares falls in CRZ III and 20.76 hectares was affected by mangroves. The area available for the project development was hence computed at 65.96 hectares. The terms and conditions on which the MOEF has granted its permission would have to be scrupulously observed.

13. Both the MPCB and MCZMA have found serious violations on the part of the Municipal Corporation. These include :-

(i) The decision of the Municipal Corporation to adopt an alternate technology without seeking permission of the MOEF;

(ii) The degradation of one of the two patches of mangroves within the compound wall as a result of the exclusion of tidal waters to the mangroves;

(iii) Carrying out of dumping / filling activities beyond 65.96 hectares of land allotted to the project as a result of which the main function of the MSW processing and May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc landfill has been relegated to the background. MCZMA has in its report made specific recommendations for ensuring that the environmental hazards that have resulted during the course of the development of the site should be obviated.

14. We direct that the Municipal Corporation shall forthwith take steps to ensure compliance with the recommendations which have been made by the MCZMA. We also direct that the MOEF, which is impleaded as the fifth respondent to these proceedings, shall cause a site inspection to be carried out and on the basis thereof, a further affidavit shall be filed clarifying the impact, if any, inter alia of the Wetlands (Conservation and Management) Rules 2010 and what remedial steps, if any, are required to be taken in order to ensure conformity with the rules. The affidavit of MOEF shall indicate such remedial measures as are required to ensure conformity with all environmental norms. The affidavit shall be filed on or before 1 July 2013. We adjourn the further hearing on 9 July 2013. In the meantime, the MOEF shall consider the application which has been submitted by the Municipal Corporation for adoption of the bio-reactor technology in accordance with law.

[Emphasis Supplied]

85. It was specifically noticed that under subordinate law governing wetlands, an explicit prohibition on dumping of solid waste was introduced. Pre-existing activities had to be phased out

within six months.

86. Based on the aforesaid May 2013 Order, a further inspection was conducted of the landfill site by a visit on June 24, 2013 along with officials of MCGM, MCZMA, and the Maharashtra Pollution May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Control Board. The observations made by this team are extracted below:-

1. \*\*\*

2. \*\*\*

3. A time series Google maps from Nov. 2005 to Dec.

2012 (Maps 3-6) indicates that the salt pans having sparse mangrove vegetation in certain areas and little thick vegetation on north- east and south-west comers which have increased in density up to 2009. Thereafter, the mangrove vegetation has been restricted to 12.09 ha and 11.27 ha as protected mangrove vegetation in south- west and north-east corner of the site respectively.

4. It was observed that the MSW processing and disposal facilities are coming up in the permitted area. The MOEF has accorded EC for processing 4000 TPD waste by Windrow composting. As per the EC's condition, project proponent should explore the other options for processing of waste for obtaining energy and a detailed proposal should be submitted to MOEF. It was informed that new technology has been adopted by MCGM which involves (1) 3000 TPD waste processing by bio-reactor (anaerobic digestion of MSW for energy recovery for which pilot plant project studies has already been carried out and now the site is almost capped) and 1000 TPD waste processing by windrow composting (aerobic composting). MCGM officials informed that CPCB has given consent for adoption of the new technology. Accordingly, the work was in progress at site. Further, the proposal for CRZ clearance for new technology has been submitted to MOEF. The proposal of new technology for MSW processing and disposal has not been received by MCZMA from MOEF or from MCGM.

5. It was also noticed during the visit that about 12 feet high boundary wall has been constructed all around over 141.77 ha which is located us CKZ-III for which no May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc permission was obtained from the Ministry. This is in contravention to the specific condition no. ii.

6. \*\*\*

7. \*\*\*

8. It was also noticed that project site is surrounded by extensive thick mangrove vegetation on northern, southern and eastern sides (Photos 24 & 25). It is also evident from the Google maps provided with this report.

9. Two mangroves protected forests were located within 141.77 ha. The mangrove forest of 11.27 ha on the north-eastern side was found with luxuriant growth (Photos 9, 10 & 11) whereas the mangrove forest of 12.09 ha on southern and western side was found degraded due to reclamation (Photos 14, 15, 16 & 19).

10. to 12. \*\*\* Conclusion and Recommendation:

Based on the site visits and discussion held with the officers, the conclusions are as below:

a. MCGM has proposed in their plan allied activities such as administrative buildings, security cabins, toilets etc. The construction of building on south-west corner was observed at plinth level at reclaimed area which was used as wash area for vehicles as intimated by project proponent during the visit.

b. Reclamation activity was found more than the prescribed limits of 65 ha as visually observed and assessed.

c. Unscientific construction of culverts has changed the influx of tidal water within the boundary which has added to destruction of mangroves in certain pockets.

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc d. It is also evident from the photographs and Google maps enclosed with this report that mangrove vegetation on the south-west corner has been reduced due to change of influx of tidal water and reclamation.

e. The construction of landfill site was in progress for which rampant reclamation was carried out although landfill site is being developed as per the EIA.

[Emphasis Supplied]

87. Based on findings of the inspection referred to above, the Court passed an order dated August 7, 2013 (" August 2013 Order"), directing maintenance of status quo at the site. The following extracts are noteworthy :

8 Following the report, a notice to show cause was issued to the Municipal Corporation by MOEF on 25 July 2013. The notice calls upon the Corporation to show cause why action should not be taken under Section 5 of the Environment (Protection) Act, 1986 for violations of the environmental clearance. Pending a decision on the show cause notice, the Municipal Corporation has been directed to maintain the status quo ante in respect of any construction / development at the site.

9 In the affidavit, which has been filed by the Municipal Corporation, it has been stated that on 18 March 2013, an application has been submitted to the MOEF for

amendment of the Environmental Clearance at the Kanjur landfill site for adopting Bio-reactor technology.

However, from the following averments in para 15(d), it appears that the construction of a Bio-reactor Landfill cell on seven hectares is still in progress.

"d) At Kanjur Bioreactor Landfill tiny cell (BLFT) constructed and put in operational from 05.03.2012 to May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc 30.03.2013 wherein MCGM accommodated about 2,87,000 Metric Tons of MSW for scientific processing.

The Construction of Bioreactor Landfill Cell 1 on about 7 hectares of land is in progress."

Moreover, in the affidavit, it has been stated as follows :

" The allied activities as well as security cabins, toilets, administrative buildings and wash area for the vehicles are permitted outside 65.96 hectares of land as per Clause 5(ii) of the EC issued by MOEF dated 17th March 2009."

The Municipal Corporation contends that it is permitted to do so by the MOEF, though this is prima facie contrary to the findings in the report submitted to the Court by the MOEF.

10 At this stage, learned Senior Counsel appearing on behalf of the Municipal Corporation submitted that the Corporation would submit a reply to the notice to show cause that has been issued by the MOEF and that the Corporation shall comply with the interim direction of status quo so long as the direction continues to hold the field without prejudice to the right of the Corporation to adopt suitable proceedings in accordance with law. 11 We accordingly direct that pending further orders of this Court, the Municipal Corporation shall take all necessary steps to maintain the status quo as directed by the MOEF on 25 July 2013. Since the show cause notice has been received by the Municipal Corporation yesterday in court, the Municipal Corporation shall submit a copy of its reply to the notice to show cause as directed on or before 21 August 2013. The MOEF shall take a final decision thereon and submit a copy of its decision separately to this court by 25 September 2013. Before the MOEF takes a final decision, it shall furnish to the Municipal Corporation a reasonable opportunity of being heard. Liberty to the Petitioners to intervene in May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc the proceedings before the MOEF. The MOEF shall be at liberty to consider all the submissions in pursuance of the notice to show cause independently and on merits. 12 In the meantime, the MCZMA shall periodically visit the site for the purposes of monitoring that the vegetation of the mangroves on the land continues to regenerate and is not destroyed.

[Emphasis Supplied]

88. Eventually, the MOEF directed the MCGM to demolish the compound wall erected within the CRZ area and granted liberty to MCGM to replace the same with a barbed wire fencing with

vegetative cover. The MCGM challenged the same in Writ Petition No.1720 of 2014 which came to be disposed of on June 10, 2016. The crux of the conclusion in the said judgment castigating the MCGM, is extracted below:-

62. We are satisfied that this is not a case where the MCGM or its contractor had put up the compound wall either on account of any genuine misconstruction of the terms of EC dated 17 March 2009 or that deviation of such magnitude was unintentional, accidental or trivial.

The impact of such unauthorised construction of the compound wall within areas affected by CRZ notification and mangroves, has already been noted by this Court, inter alia, in its order dated 10 May 2013 in PIL Nos.131/2012 and 1/2013. On account of the construction of the compound wall within such ecologically sensitive areas, such areas as well as the mangroves therein have been degraded and destroyed. As observed by the Hon'ble Supreme Court in the decisions referred to herein above, it will not be appropriate to encourage such unauthorised constructions or permit their retention particularly, May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc when the same have been undertaken by the MCGM and its contractor by disregarding the terms of EC dated 17 March 2009 as also the provisions of CRZ notifications and the EPA. Accordingly, there is no case made out to interfere with the impugned directions made by the MoEF in its order dated 4 November 2013 or to issue any direction for regularisation or retention of the illegal and unauthorised construction.

63. For all the aforesaid reasons, we dismiss the present petition. Rule is discharged. Interim orders, if any, are hereby vacated.

64. Taking into consideration the report of the MCZMA with regard to environmental degradation within the area classified as CRZ and the area affected by mangroves on account of the construction of the compound wall in such areas, it is only appropriate that the MCGM complies with the impugned directions issued by MoEF and demolishes the compound wall to the extent directed within a period of two months from today. Accordingly, we issue directions to the MCGM to this effect and thereafter file a report / affidavit of compliance within a period of two weeks from the date of demolition. Copy of such report / affidavit to be served upon the MoEF, before the same is filed in the registry.

65. Although this would otherwise be a fit case for imposition of costs, considering that the brunt of such costs may have to be borne by the municipal tax payers, we refrain from the imposition of any costs upon the MCGM.

[Emphasis Supplied]

89. MCGM filed a special leave petition in the Supreme Court but on August 9, 2016, MCGM sought liberty to withdraw the petition, May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc with liberty to approach the High Court through a Review Petition.

90. Eventually, PIL 87, which dealt with the subject matter of mangroves, and the degradation of the mangroves in the State of Maharashtra<sup>8</sup> in which the HC Mangrove Direction had been passed, was disposed of by judgment dated September 17, 2018 ("PIL Judgement"). The important findings in the PIL judgment are extracted below:-

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 CRZ-I 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 CRZ-I. 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 It was Original Writ Petition (Lodg) No. 3246 of 2004 along with Writ Petition May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc CRZ-I. By order dated 9th January 2000, it was provided that 50 meter buffer zone will not be required, provided a road abutting the mangroves was constructed prior to February 1991. Under the 2011 notification, all mangroves lands fall in CRZ-I 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 CRZ-I. 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 CRZ-I.;

(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, May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destroyed by the State for 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.

\*\*\*\*

85. For the reasons recorded above, we dispose of the PIL by passing the following order:--

ORDER (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 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc in CRZ-I 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 CRZ-I area. Though buffer zone of 50 meters in case of mangroves area of less than 1000 meters will not be a part of CRZ-I, 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 2005 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 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc carried out within a period of 6 months from today";

(C) The directions in sub-clauses(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 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 sub-committees 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 sub-committees 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 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc public domain as observed in paragraph 68 above. As directed under the order dated 6 th 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 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 e-mail 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 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc 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 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 May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc 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 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;

[Emphasis Supplied] Conclusions:

91. The copious extraction from the orders and judgments in the march of litigation in this matter has been unavoidable. What the march of the litigation and the eventual culmination of the matter May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc indicates is summarised as follows:

a) The Subject Land was clearly land covered by mangroves;

b) PIL 87 culminated with the declaration of the law that land covered by mangroves is automatically CRZ-1 land and indeed falls in the category of protected forest;

c) The State had to conduct detailed satellite imaging of actual mangrove growth and coverage before it issued the Forest Notification. This was necessary not only because of the HC Mangrove Direction but also covered by the requirement to conduct a survey under Section 29 of the Forest Act. The Forest Notification was issued after such survey and study of the factual position, indicating that the Subject Land was indeed forest land and was notified as such because of the factual position;

d) The law governing de-notificaiton of forest land is contained in Section 2(1) of the FCA, which requires the prior approval of the Central Government. The due process of getting such prior approval of the Central Government is detailed in the FCA

Rules, which includes formation of a committee to examine the proposal and taking a view before the Central Government could approve the de-

May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc reservation of forest land. This judgement is not going into the requirements under the FCA Rules to avoid prolixity since the only counter to the absence of compliance with Section 2(1) of the FCA is that the Enabling SC Order precluded the need for any such compliance. It is in reliance of the Enabling SC Order that the State and MCGM claim that the Forest Notification was a mistake insofar as it included the Subject Land as a forest area;

e) This Court was indeed approached by MCGM asking for an endorsement of the issuance of a corrigendum, and this was clearly refused. The State was asked to fend for itself in its assessment of the law without involving the Court. The right of any party to challenge such de-reservation through the corrigendum was also preserved, explicitly endorsing that the Court had not gone into whether there was at all a mistake in the contents of the Forest Notification;

f) Before issuing the Impugned Notification, a Division Bench of this Court indeed clarified by the April 2006 Order that the blanket prohibition on dumping of garbage in mangrove land would not automatically apply to the Subject Land, but at the same time took on record the assurance of the MCGM that there would be no destruction of mangroves and allowed limited usage with such May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc assurance;

g) Eventually, disposing of PIL 87, the Court declared by the PIL Judgement that all mangrove land is automatically protected forest. Therefore, indeed, the Subject Land, to the extent it is covered by mangroves comprises protected forest. De-reserving such land would therefore necessarily entail compliance with Section 2(1) of the FCA, which has not been done;

h) The PIL Judgement explicitly prohibits dumping of garbage on mangroves. The Subject Land, which indeed is salt pan land attracts growth of mangroves and it is the violative construction of the wall by MCGM that led to mangroves being stunted and destroyed;

i) The short and narrow path for MCGM to defend the non-

compliance with Section 2(1) of the FCA in de-reserving the Subject Land is the reliance on the Enabling SC Order. It would be impossible to hold that the Enabling SC Order was in any manner determinative of the issue because the issue of mangroves growth on the Subject Land and the declaration of the law that mangrove land is indeed protected forest (and therefore cannot be used for garbage dumping) was not even brought up before the Supreme May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc Court and was not considered. At that stage, the focus of the litigation relating to the garbage dump at Chincholi Bunder was pollution control laws and the Supreme Court was not even apprised about the element of mangroves. The Supreme Court had been assured by a joint affidavit filed by the then Chief Secretary of the State and the then Municipal Commissioner of MCGM that the Subject Land was available as a replacement site for the garbage dump. The Supreme Court took that on record and directed that pollution laws should be strictly

complied with;

j) In any case, the mangrove issue came up squarely with the HC Mangrove Direction, which made it abundantly clear that any land covered by mangroves would have to be reserved as a forest. Thereafter, the interim prohibition was not extended to the Subject Land but clearly the issue was not closed at all. Eventually, the PIL Judgement concluded that mangrove land would be protected forest land. Therefore, the de-reservation necessitated compliance with the Section 2(1) of the FCA, which is missing.

92. In view of the foregoing, we answer the two questions framed by us at the threshold, as follows:

a) It would not be possible to hold that the Forest Notification May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc was simply erroneous in notifying the Subject Land as a protected forest, since the notification was a product of actual verification of facts, satellite imaging and ground-

truthing and indeed an outcome of due process of law; and

b) The Impugned Notification is not defensible on the premise of it being a simple rectification of such error, in reliance upon Section 21 of the General Clauses Act, without having to follow the due process stipulated under the FCA.

93. Therefore, we are of the opinion that the Impugned Notification is unsustainable and is in conflict with the requirement of law governing de-reservation of a forest in terms of Section 2(1) of the FCA. The absence of compliance with this requirement has led to the failure of due process stipulated in the FCA Rules. The Enabling SC Order does not give cover to the argument that the Forest Notification was a mistake, and in view of the Forest Notification having been a product of specific and clear factual review, the Impugned Notification insofar as it excludes the Subject Land from the Forest Notification i.e. excludes 119.91 Hectares of land by re-issuing the Forest Notification by way of a corrigendum, deserves to be quashed and set aside. The Subject Land i.e. 119.91 Hectares is consequently restored to the status of being a protected forest. Any proposal to de-notify the same would need to be compliant with the May 2, 2025 Ashwini Vallakati F-J-Vanashakti - PIL 20 of 2013.doc due process stipulated in Section 2(1) of the FCA.

94. In the circumstances, we grant MCGM three months time to comply with the consequences of this judgement.

95. Rule is made absolute and the Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

96. At this stage, Ms. Jyoti Chavan, Learned Additional Government Pleader submits that the operative order be stayed for some time. We have already granted three months' time to comply our orders, hence, we need not consider such request. [SOMASEKHAR SUNDARESAN J] [G.S. KULKARNI J] May 2, 2025 Ashwini Vallakati