SUPREME COURT OF INDIA

The Secretary, Kerala State Coastal Management Authority

Vs.

DLF Universal Limited

C.A.No.117-120 of 2018

(R.F.Nariman and Sanjay Kishan Kaul,JJ.,)

10.01.2018

JUDGMENT

Sanjay Kishan Kaul, J.,

SLP (Civil) No.6929-6932/2017

1. Leave granted.

2. The battle of environment protection against development is a never ending one and the present dispute primarily is an offshoot of such a conflict. The dispute between the developers of a housing project and the environment authorities is also one where different authorities have taken variant stands. It is the say of the developer that they obtained all requisite permissions and have proceeded with the project in pursuance thereof while the coastal management authority and the environment authority plead otherwise. From the perspective of the Kerala State Coastal Management Authority, which is the main appellant before us, it has been a saga of a sleeping authority - not having an afternoon siesta but a Kumbhakarna sleep albeit of almost four years. On being woken up, it suddenly seeks to see various violations wanting to put the clock back. In this period things have been done and dusted and a huge project has taken shape, which is at the final stage.

3. Now coming to the facts of the case at hand, the project in question is of respondent No.1, which purchased nearly 5.12 acres of property from different vendors in the year 2006 envisaging a multi-storey residential complex of about 185 units located on the eastern bank of Chilavannurkayal (backwaters) in Kerala. The area in question, as apparent from the status report of the Coastal Regulation Zone (‘CRZ’) itself shows that the area falls in the Kochi Corporation and the said area, along with the adjoining panchayats is highly developed. A lot of low lying areas including tidal marshes and filtration ponds bordering the backwaters are alleged to have been reclaimed for construction and other development activities by various third parties and the area close to the site in question is well developed and built up.

4. Respondent No.1 obtained a building permit for the project in question issued by the Corporation of Cochin (hereinafter referred to as the 'Corporation') on 22.10.2007 under the Kerala Building Rules, 1984. It is also not really disputed that the other linked permissions such as NOC from State Pollution Control Board, NOC from the Fire & Rescue Department and height clearance from the Navy was also obtained. The builders DLF Universal Limited (formerly known as 'Adelie Builders & Developers Private Limited') (hereinafter referred to as 'DLF') applied for environment clearance to the Ministry of Environment and Forests on 27.11.2007. The intervening factor was a Notification dated 14.9.2006 issued by the Ministry of Environment and Forests in furtherance of the environment protection in exercise of power conferred by sub-section (1) and clause (v) of subsection (2) of Section 3 of the Environment Protection Act, 1986 (hereinafter referred to as the 'said Act') read with clause (d) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986. This Notification was in supersession of the earlier Notification of 27.1.1994. The Notification states that the process was followed duly and in accordance with the objective of the National Environment Policy as approved by the Union Cabinet on 18.5.2006, such process was being modified. All new projects required prior environmental clearance from the Central Government as applicable or as the case may be the State Environment Impact Assessment Authority (for short 'SEIAA') duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act. The Notification also provided that the SEIAA would base its decision on the recommendation of the State or Union Territory Level Expert Appraisal Committee (for short 'SEAC') as to be constituted following the Notification and in the absence of the setting up of these authorities, a category provided would be treated as category 'A' project. Clause 8 dealt with the Grant or Rejection of Prior Environmental Clearance (EC) and the relevant clauses of the same are reproduced hereunder:

> "8. Grant or Rejection of Prior Environmental Clearance (EC):
>
> (i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environmental Impact Assessment is not required, within one hundred and five days of the receipt of the complete application within requisite documents, except as provided below.
>
> (iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned."

5. As we have been informed, these authorities have been constituted subsequently only on 19.12.2011 and, thus, logically in view of what has been set out hereinabove, the project in question could possibly have been treated as a category 'A' project. The project of DLF was examined by the Central Expert Appraisal Committee (for short 'CEAC') in its 63rd meeting and was approved as a "Silver Grading" project. A suggestion was made by the CEAC that some of the project area falls under the Coastal Regulation Zone ('CRZ') and thus, the details of the project may be examined by the CRZ Committee of the Ministry and a separate clearance should be acquired under the CRZ project. In furtherance of this recommendation DLF was required to obtain the CRZ status report from the Centre for Earth Science Studies (for short 'CESS'), Thiruvanathapuram, which is stated to be one of the seven authorised/identified agencies. An application is stated to have been made by DLF on 23.9.2008 to CESS, which in turn made a positive recommendation in May, 2009, stating that the project land was situated at CRZ II and there was no area in CRZ (I and i) in the project area or close to it. It may be noted at this stage that there have been some subsequent reports by CESS in September, 2011 and a communication dated 11.8.2014 but the project was more or less over even by the first date or was sufficiently advanced. The purport of the subsequent developments will be considered hereinafter but suffice to say that the first report sought to point out reclamation of backwater by DLF after 2009, earlier reclamation of filtration ponds and paddy fields and shifting of high tide lines. The communication dated 11.8.2014 pertained to alleged replacement of some photographs from the CESS report of May, 2009 and referred to a stream/natural canal at site that had been mapped by the CESS.

6. It appears that DLF, however, did not wait for the environment clearance and the construction activity went on at rapid pace at site ostensibly on a perceived deemed clearance since there was no communication during this period of time. This is apparent from a visit report dated 29.10.2009 of Kerala Coastal Zone Management Authority (for short 'KCZMA')/appellant. This resulted in the KCZMA/appellant issuing a letter dated 21.1.2010, seeking explanation for having started construction without obtaining the necessary permissions/approval/clearance from KCZMA/appellant. However, subsequently on 20.3.2010 in its 40th meeting the KCZMA/appellant, post discussion of the site inspection report, decided to recommend the project proposal to the MoEF. The relevant portion of this is extracted hereinafter:

> "KCZMA has discussed the site inspection report in detail and decided to recommend the project proposal to MoEF. The contention of the Subcommittee that, the narrow canal encountered in the imaginary line drawn parallel to the High Tide Line from the Choice Garden building is only a drainage canal as has been agreed by the meeting, since the narrow drainage canal need not be considered as a canal. The Authority also decided to collect a full set of modified documents as per provisions of CRZ Notification, including existing FSI & FAR as on 19th February, 1991."

7. A sub-committee appointed by KCZMA/appellant visited the site again and made certain recommendations dated 19.7.2010. A perusal of the report of the sub-committee states that the construction had already commenced and the structure of a sizeable number of floors of a

multi-storey residential project was nearing completion. This is stated to have caused some impediment to the mandate to evaluate the proposed site for CRZ clearance. It, however, records that the site falls in CRZ II category and does not have any CRZ I(i) areas, such as mangroves. In Survey No.1019 Choice Garden Apartments existed which was, however, in existence prior to 19.2.1991. Insofar as the narrow canal was concerned it is noted that the same functioned as a municipal drain for waste water drainage from urban conglomeration of the northern side of the project site. The residential apartment construction NCR II was found to be permissible but the proposed construction has to be on the landward side of the existing road. The clarifications given by the MoEF were also noted that the imaginary line to be drawn should not cut across any river, creek, backwater, estuary,sand beach or mangroves. The recommendations were made and there were two significant aspects:

i. The shortest distance from the high tide line to existing authorized building of the adjoining plot (Choice Garden Apartments), being 13.5 mtrs., the imaginary line was drawn parallel to the HTL towards seaward side of the existing authorised building.

ii. DLF should have obtained CRZ clearance from KCZMA/appellant before starting the construction, which was a procedural violation.

8. In a nutshell while all aspects including the narrow canal was found not to be an impediment, there was a violation of lack of prior approval.

9. The aforesaid report of the sub-committee was examined and minutes drawn on 31.8.2010. The salient aspect recorded in these minutes is that the sub-committee examined the documents submitted by DLF and also obtained clarifications in respect of SFI from the City Town Planners. The case was examined in the light of recent amendments of the MoEF with regard to CRZ-II region and a site visit was also made on 19.7.2010. On a detailed examination, two aspects, which once again emerge are: (i) Any portion protruding beyond the imaginary line towards backwaters may be demolished (which has apparently been done); (ii) In view of "procedural violations" found by the sub-committee, a penalty for the same should be imposed.

10. The matter somehow did not end at this since the CESS is stated to have visited the site again in June, 2011 and submitted a report in September, 2011. This was in a sense the beginning of some further adverse observations for DLF. It was now opined that apparently land reclamation was carried out by DLF from 2009 onwards which had caused the shifting of the backwater's banks by five metres. A major part of the area, which was reclaimed was found to be part of low lying areas such as filtration ponds/paddy fields and lastly the lay out building complex needed to be superimposed on the local level CRZ map to get the exact distance from HTL.

11. The Revenue Divisional Officer, Fort Kochi on 21.11.2011 issued a provisional stock memo to DLF to hold back construction on the project land. There was an allegation made

by the village officer that about 50 cents of the Chilavannur river had been illegally reclaimed, which the RDO on 17.12.2011 reported to the Cochin Corporation.

12.The trigger for this letter was stated to be a complaint received from one Mr. Antony A.V. of Chilavannur, Kochi pursuant whereto a team of experts from KCZMA/appellant had visited the site. Mr. Antony is the original petitioner in the petition from which the present proceedings arise. The site was visited on 9.11.2012 by CESS on intimation by KCZMA/appellant and a report was submitted seeking to cast certain question marks over its own earlier reports. Thus issues, such as the status of the plot prior to 2009 having not been considered while delineating the HTL, reclamation/modification of the backwater site, area being part of water body were all sought to be raised. This was followed by a petition filed on 15.11.2012 by Mr. Antony, being Writ Petition No.27248/2012, seeking to interdict DLF from effecting any further construction and to direct Cochin Corporation to implement the various directions of KCZMA/appellant. The said Mr. Antony approached the Court alleging to be living in the vicinity of the area and being affected by the construction. Interestingly, why he chose to remain silent when the vast area of construction was coming up right next to his property, is a mystery. So is it a mystery, why DLF was singled out while no mention was made of the whole area which was highly constructed as noticed in the reports. The learned single Judge granted interim orders on 4.12.2012 against progress of the project. KCZMA/appellant also became active at that stage, asking DLF to submit a CRZ map of the project site with construction superimposed on it and addressed to the MoEF a letter dated 29.12.2012 for necessary action alleging that there was a land reclamation by DLF. The CEAC in its 124th meeting held on 13/14.5.2013 decided to consider the environment clearance and noted certain violations by DLF. However, since the SEIAA was set up in the meantime vide Notification dated 19.12.2011, file of the project was transferred to it. On 31.10.2013, the project was cleared by the SEIAA qua environment clearance but it also decided to issue a show cause notice to DLF as to why violation proceedings should not be initiated against it before issuance of EC. Finally on 11.12.2013, SEIAA issued an integrated CRZ-cum-environment clearance dated 11.12.2013 to the project subject to the outcome of the writ proceedings pending before the learned single Judge of the Kerala High Court. We may note here itself that one of the aspects pointed out by DLF is that this clearance has not been challenged in any proceedings nor were the writ proceedings amended to challenge the same.

13. It is the case of the KCZMA/appellant that there were complaints preferred by other persons with regard to the project of DLF and thus, in its meeting held on 17.2.2014 it was decided to constitute a three member committee to inquire into the CRZ status of the project. Apparently on 30.6.2014, the Chief Secretary submitted a report to the Chief Minister reporting certain violations and a three member committee report was available on 21.7.2014 alleging illegal reclamation of the land and other violations. CESS also sought to change its course on 11.8.2014 alleging that there was a natural stream canal from the CRZ map submitted to the MoEF for CRZ clearance and that some two photographs had been replaced. The challenge laid to the report by DLF by way of writ petition No.18483/2014 was disposed of on 19.8.2014 observing that the report of the Chief Secretary dated 30.6.2014 could only be treated as a piece of information.

14. The learned single Judge rendered his verdict on 8.12.2014 finding practically everything against DLF and categorised the whole construction as illegal and in violation of law, particularly the CRZ notification, and was thus not capable of being regularised. The illegal structure was directed to be demolished. This order was assailed in writ appeal No.1987/2014 by DLF. A separate writ petition was also filed, being writ petition No.20555/2015, challenging the report dated 21.7.2014 by the three member committee appointed by the KCZMA/appellant. The construction being complete and the flat buyers interest being involved, these apartment buyers also filed writ petition Nos.2810/2015 and 3375/2015 praying for issuance of occupancy certificates.

15. The Division Bench ultimately by the impugned order while broadly upholding the findings of the learned single Judge and setting aside the order of demolition, directed regularisation subject to fine/compensation amount of Rs.1 crore. This amount was to be deposited before the District Collector, Ernakulam to be kept in a separate account for being used exclusively for building up the environment, maintaining ecological balance in the area situated on the eastern side of the Chilavannur river, with a further direction to the District Collector to submit periodic reports before the Court as to the utilisation of the amount for the activities undertaken, in every six months. The writ petitions filed by the prospective buyers were dismissed but without prejudice to get the occupancy certificates for the building from the local authority subject to the satisfaction of the costs. Writ petition No.20555/2015 was also dismissed.

Stand of KCZMA/Appellant

16. The KCZMA/appellant are before us by appeal with Mr. Shyam Divan, learned Senior Advocate seeking to vehemently canvas that the various violations required the building to be demolished or in the alternative, the fine substantially enhanced. He took us meticulously through the development in the case as discussed above with each of the events to canvas the violations which have taken place. On the Court query about the silence of this important authority for such a long period of time, the only answer available was that it did not have an enforcement mechanism and is dependent on the Corporation for the same. That, in our view, could hardly be an answer for such inaction if there were violations. Enforcement is different from detection of violations. There can hardly be any doubt about the bounden duty of this authority to play a crucial role in preserving the environment in the coastal area and it cannot wash its hands off by giving an explanation for inaction as the alleged absence of an enforcement force. Had this authority kept an eye open right from the beginning and played the role which it was required to play, the situation which has come to pass would not have so occurred and the identification of the violations, if any, would have been made at the threshold stage itself. This did not happen here.

17. The reliance by the learned counsel has been on the subsequent report, after the horses had bolted from the stable, to allege violations from the beginning. The case, which was sought to be put up and canvassed, was that no reclamation was permissible since 1991, but land was actually reclaimed in 2005-06 and 2009-11. The aspects pointed out in the

subsequent reports including of the natural stream, as to how the HTL measuring norms were violated in coming to conclusions, were pointed out.

18. One of the main bedrocks of DLF, of having obtained the integrated environment/CRZ clearance granted by SEIAA on 11.12.2013 was not denied but it was sought to be contended that the clearances ought to have been obtained prior to the commencement of construction which would at the relevant stage have been granted by the MoEF. In any case SEIAA ought to have based its decisions on the recommendations of the SEAC, which was not done. The SEAC had only considered the environment clearance and not the CRZ clearance for the project. That file ought not to have been transferred to SEIAA by the MoEF.

19. Learned counsel also sought to contend that insofar as CRZ status of the project land and its implications are concerned, the project area in question included backwater and pokkali fields (filtration ponds) by referring to various documents, which also show that land reclamation was undertaken at the project site from 2005 onwards, which was a prohibited activity. It was also submitted that the imaginary line to be drawn was cutting across a natural backwater canal and not a manmade drainage canal as alleged by DLF.

20. An issue was also sought to be raised about the FSI and FAR status of the project as the same had been granted of 1.99 while the Town and Country Plan Regulation only provided for 1.5.

21. In the written synopsis filed, it has been stated that some action has been taken against some erring officials of Cochin Corporation and the former Chairman of the KCZMA/appellant, and vigilance cases are pending. It is admitted that a vigilance case is pending against the Chief Secretary who addressed the communication dated 10.12.2014, though not in respect of the project in question.

22. In order to establish that the action was not restricted to the project in question, actions taken against other violators also sought to be set up.

23. KCZMA/appellant sub-committee report of 31.8.2010 giving in principle approval/recommendation to the project and recommending imposition of fine is stated to be based on CESS report of May, 2005, which was based on HTL, which was subsequently found on superimposition, to involve land reclamation and resulted in a three member committee report dated 21.7.2014.

24. Learned senior counsel also referred to a catena of judgments to advance the proposition that in the 'no development zone' there could not be permissions granted and that this Court has frowned upon the practice of regularisation of unauthorised construction where environment issues are involved.

Stand of the Cochin Municipal Corporation:

25. The Corporation has largely confined itself to the issue of FAR sanction of 1.99. It is stated that the maximum FAR of the Corporation of Cochin is 2.5 as clarified by MoEF. In the Kerala Building Rules, 1999, the maximum FAR of 1.5 was extended to 2.5 FAR, which continued till 22.2.2001 when Rule 31 was amended and maximum FAR was increased to 3.00 extendable on payment of additional fee to 4.00.

26. The building permit in question was issued on 22.10.2007, when the maximum FAR for central city of Kochi was reduced to 2. It was in these circumstances that the FAR of 1.99 was made available.

Stand of the State of Kerala:

27. The State of Kerala has more or less supported the stand of KCZMA but in the course of arguments it does appear that one aspect which had really troubled it was the directions whereby the Collector was sought to be made responsible for the management of Rs.1 crore fine to be deposited as also the feasibility of utilising the same.

Stand of the Ministry of Environment and Forests:

28. The Ministry of Environment and Forests has indulged in a complete flip-flop-flip in its affidavit without even explaining the reasons for the same. The original affidavit was filed before the High Court on 19.5.2016 by one Dr. S.K. Susarla, Advisor with the Ministry. The affidavit records that the Ministry was made a party to the proceedings by the orders of the Court in the writ proceedings. The affidavit states that based on the recommendations of the KCZMA, SEIAA, Kerala, it was found that the project came under category 'B' and the project proponents adhered to the conditions laid down and the construction is in order. The relevant paras 19 & 20 are reproduced hereinbelow:

> "19. That the project proponents have adhered to the conditions laid down by the SEIAA and have not violated any of the provisions.
>
> 20.That the said constructions are technically as per the provisions of the CRZ Notifications 1991 and EIA Notifications 2006."

29. In the present proceedings also an affidavit dated 6.11.2017 is available, which affirms that SEIAA, Kerala was in place in 2013 and the project was a category 'B' project as per EIA notification of 2006, the appraisal was to be done at the State level by the SEIAA. The averments in para 17 are as under:

> "17. It is submitted that SEIAAs/SEACs comprises of members who are well qualified and have requisite expertise in various sectors to examine, appraise the projects and recommend them for grant of Environmental Clearance imposing all suitable environmental conditions to ensure sustainable environmental management. The consideration of such projects at SEIAA/SEAC level is to decentralise the powers

confined to the Union Government and to streamline and expedite the process of grant of Environmental Clearance to building construction projects in view of the growing demand of housing to all."

30. On the conclusion of the hearing, when crystallised written synopsis had to be filed, an affidavit is sought to be slipped in by one Mr. Ritesh Kumar Singh, Joint Secretary of the MoEF, stating that this affidavit is in "continuation" of the earlier affidavit dated 6.11.2017 filed on 7.11.2017. For the first time, it is sought to be now pleaded that CRZ Notification, 1991, CRZ Notification, 2011 and EIA Notification, 2006 have been violated and that prior clearance under the Notifications before the commencement of construction activity was mandatory. It is also sought to be alleged that reclaimed water bodies and land falling under CRZ for housing projects is prohibited under CRZ Notification. The post construction environment clearance is stated to have been granted to the project by SEIAA without appraisal and recommendations of SEAC and in the absence of approval of KCZMA. This affidavit runs into 31 paragraphs with annexures.

31. We fail to appreciate the contradictory stands of the authority and the endeavour to set up a different case after the conclusion of the hearing. Such conduct is unacceptable.
DLF's stand:

32. DLF has sought to emphasise that while an entrepreneur is obliged to obtain all the requisite permissions, there is also a corresponding obligation on the Regulatory Authorities to facilitate informed decisions and compliances by the entrepreneur. DLF is stated to have obtained all the requisite permissions for construction of the site from various authorities including the Municipal Authorities. The issue pertains only to the environment clearance and the CRZ on which aspects there have been varying stands by different authorities and also changing stands of the same authority.

33. The allegation of reclamation of land in 2005-2006 and 2009-2011 is strongly rebutted. It is pointed out that since there are registered sale deed documents of land, assuming without admitting, that there is any reclamation, DLF had no role to play in the same as the transactions took place in 2006. The Revenue Authority would certainly know what is the nature of the area, i.e., whether it is land or not. Linked to this issue, it is pointed out, that the Coastal Regulation Zone Land Use Map No.34A prepared in 1996, which had been received by DLF under RTI directly from CESS clearly mentions the nature of the property. The filtrations ponds are marked as 'FP'. There is no such FP marked in the area where DLF has constructed. The finding by the Court below is, thus, assailed as contrary to record.

34. The aforesaid fact is sought to be buttressed by a reference to a recital in the sale deeds where the district, sub-districts, taluk, village, kara, firka, tenure and survey numbers are all mentioned. Thus, the land certainly existed at the time of purchase. Not only that the sale deed dated 20.10.2006 mentions the boundary of the land with building Nos.CC 29/288 in Item No.7 and 29/201 in item No.9, thereby suggesting that a part of the land had housed two buildings.

35. Insofar as the Google maps images of February, 2005 and December, 2005 are concerned, it is sought to be denied that the dark area in the images is a water body as is sought to be made out by the KCZMA. In this behalf a reference has been made to the Google map of September, 2002 not suggesting any water body. The report of the Institute of Remote Sensing, where a closer study of Google map of February, 2005, through the process of separate enlargement would show that the embankment is well protected without any change that there was a large massof stagnant water in the property, which has shallow depth as vegetation below the water, could easily be noticed. This is not stated to have any permanent link with the back water of the Chillavannur canal. The Google map of 26.12.2005 was also enlarged by the Institute of Remote Sensing and the entire Chillavannur lake is seen to have green patches of Colocasia trees surviving in low salinity. The property is stated to have lush and thick vegetation and coconut trees in the middle, western, and southern side of the property and the Google map clearly distinguishes the geo morphology of the land which is totally different from the Chillavannur canal and confirms the well marked boundary line with the water body in the Chillavannur canal.

36. The December, 2012 map is stated to show thick vegetation with no mark of water body and the coastal line abutting Chillavannur canal is well defined and marked. It is also pointed out that the CESS in its report of May, 2009 published the coastal regulation zone status report for an apartment complex as Vytilla, Cochi and the photograph of the front page itself shows that the land in question before the construction in May, 2009 next to Choice Garden is full of coconut trees thereby suggesting that in May, 2009, it was clearly not a water body. Such coconut trees could not have come up overnight as they have a gestation period of 10-15 years.

37. The development arising from the successive CESS report is sought to be analysed and it is alleged that Mr. K.V. Thomas was a party to these reports. The reports were with KCZMA and, thus, there could not be any issue of replacement of photographs. The photograph on the front cover of the report also shows the coconut trees on the property. The CESS report prepared by the same Mr. Thomas and others in 2009 marks the drain in red colour and describes it as inter-tidal zone falling under CRZ-I(ii). In the 2010 report to which Mr. Joseph is a party while referring to the HTL, the canal is referred to as a drainage canal and, thus, the requirement of imaginary line not to cut across the water body would not be invoked. In another report in January, 2011, Mr. Thomas gave recommendations by naming various projects, which had committed CRZ violations on the banks of Chillavannur lake, which had committed violations by either constructing on a reclaimed filtration pond or backwater side of authorised buildings and respondent No.1 project was not named in the same. Thus, right till February, 2011 at least, it is submitted, that in the opinion of the KCZMA/appellant, DLF was stated to be in compliance of all statutory provisions.

38. DLF draws strength from the fact that only part of the area was found to be in CRZ-II, municipal authorities granted approvals and that no statutory provisions in 1991 Notification or of September, 2006, made prior CRZ approval before commencement of construction mandatory. Once KCZMA itself recommended the proposal to MoEF, it was submitted by

respondent No.1 that there was no impediment in the way of proceeding further with the project and there was really no occasion for the CESS to revisit the issue.

39. It has been sought to be emphasised by Mr. Kapil Sibal, learned senior counsel on behalf of DLF that no explanation was sought from DLF in respect of the observations of September, 2011. The 2012 report was also never put to the DLF. Why these aspects were not so put is unexplained.

40. Learned senior counsel sought to emphasise that the churning and the rigmarole ultimately did produce a clearance of the project at least on 11.12.2013 and it was only after construction was complete, the different aspects were triggered off at the behest of Mr. Antony, who had seen the whole project develop near his property as alleged without raising a finger on the issue over a number years. The FSI position stands explained by the Corporation. Lastly, however, it was conceded that though the fine was uncalled for, DLF has not sought overturning of the fine as it did not file an appeal against the impugned order.
Conclusion:

41. We commenced this order pointing out the sleeping role of the authorities which developed into contradictory claims by different authorities over factual issues and finally even by the same authority, like MoEF taking contradictory stands, even trying to slip in a further additional stand after conclusion of hearing. It is a matter of concern to us that authorities have not performed their task with promptitude, not realising the importance of the role they play including KCZMA/appellant.

42. We would like to deal with this matter on two planes - one is the general plane; and the other is in the given facts of the case.

43. It is trite to say that the importance of environment and ecological balance requires the enforcement of various Regulations, Rules and enactments to be strictly followed. Specialised bodies like the KCZMA/appellant have been created to deal with the CRZ Regulations for greater sensitivity. It is, thus, no answer to say that it does not have an enforcement mechanism and thus, cannot act.

44. The case law, which Mr. Shyam Divan took us through itself brings forth the importance of compliances.

45. In *Anil Hoble v. Kashinath Jairam Shety*e[1], it was held that any illegal structure falling within the 'No Development Zone' (200 mtrs. from the HTL) in a CRZ III area was directed to be demolished and even the permission granted by the Coastal Zone Management Authority was of no avail. Similarly, the practice of regularising unauthorised constructions effected by erring buildings in violation of law has not found approval from this Court and humanitarian and equitable grounds found no place in the same. In *Union Territory of Lakshadweep v. Seashells Beach Resort*[2], it has been observed as under:

"30. The High Court's order proceeds entirely onhumanitarian and equitable considerations, in the process neglecting equally, if notmore,important questions that have an impact on the future development and management of theLakshadweep Islands. We are not, therefore, satisfied with the manner in which the High Courthas proceeded in the matter.

31. The High Court obviously failed to appreciate that equitableconsiderations were wholly misplaced in a situation where the very erection of the building to beused as a resort violated the CRZ requirements or the conditions of land use diversion. No onecould in the teeth of those requirements claim equity or present the administration with a faitaccompli. The resort could not be commissioned under a judicial order in disregard of seriousobjections that were raised by the Administration, which objections had to be answered beforeany direction could issue from a writ Court."

46. To the aforesaid extent are also the observations in *Esha Ekta Apartments Cooperative Housing Society v. Municipal Corporation of Mumbai*[3].

47. In *Piedade Filomena Gonsalves v. State of Goa*[4], it has been observed as under:

"5. It is pertinent to note that during the pendency of the writ petition, the appellant had moved two applications, one of which is dated 11.7.1995, for the purpose of regularisation of the construction in question. The Goa State Coastal Committee for Environment, the then competent body constituted a sub-committee which inspected the site and found that the entire construction raised by the appellant fell within 200 metres of HTL and the construction had been carried out on existing sand dunes.
The Goa State Coastal Committee for Environment, in its meeting dated 20.10.1995, took a decision inter alia holding that the entire construction put up by the appellant was in violation of the Coastal Regulation Zone Notification.

6. The Coastal Regulation Zone Notifications have been issued in the interest of protecting environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment."

48. We are of the view that if the allegation of large scale violations by DLF were to be correct there would be no alternative but to bring down the structure. The moot point, however, remains is as to what is the correct analysis of the factual position in the case.

49. We would also like to emphasise that there has to be undoubtedly greater clarity on the processes and a better understanding between various authorities so that developers are not left in the lurch - violators have to be punished but it cannot be that the authorities continue to do a flip-flop-flip putting the large investments at stake in a jeopardy. This is what appears to have happened in the present case.

50. We also make it clear that in the future, wherever permissions are required to come and are to be obtained before commencement of construction, it would be no answer that activity can be carried on without obtaining the permissions. Simultaneously, the permissions itself are envisaged in a time bound schedule and not through improvement of cases by authorities running into years. Thus, from the inception itself, there should be clarity on what is permissible and what is not.

51. In the aforesaid conspectus, if the present project is seen, there is really no question mark over the various permissions to carry on construction having been obtained by DLF. The land was purchased through sale deeds and the sale deeds specified the nature of the area. It would, thus, be no answer to state that even the Revenue authorities are oblivious to what is the nature of the land. DLF, thus, purchased the land legally and obtained requisite permissions including qua the FAR, which aspect stands explained by the Corporation as to why it is not 1.50 as alleged by KCZMA/appellant nor 2.5 as is alleged by DLF but in the given case was taken as 2 and that is why 1.99 FAR was permitted so that there is no doubt about the legality of the FAR granted. We may not delve further on this aspect as the crucial question is relating to the environment clearance and the clearance required for the CRZ area.

52. The possibility of some area being CRZ-I area had given rise to the observations by the CEAC in its 63rd meeting on 16-18.8.2008 for the project to take CRZ clearance as well while granting environmental clearance. Thus, the environmental clearance was also granted and the aspect which remained was relating to the CRZ area.

53. There are stated to be notified authorities numbering seven at that stage, who would prepare reports for analysis by the KCZMA/appellant and one such notified agency was CESS. The CESS did give a report in May, 2009 categorically stating that there was no CRZ-I (i) land in project area or close to it but it was situated in CRZ-II. The well developed, constructed area in the large expanse around the property in question, also stood enumerated in that report.

54. The fault of DLF was that it should have stayed its hand till CRZ permission had also been obtained but the fact remains that on account of delay in the same it was perceived as a deemed permission case - rightly or wrongly. The construction in between was also stopped but the appellant itself decided to recommend the project proposal to MoEF on 20.3.2010 on the basis that the narrow canal was a drainage canal. If there was any doubt about the same, it should have been settled at that stage itself. The sub-committee appointed by the appellant also categorically observed that the narrow canal was a drainage canal but recommended a fine being imposed for not obtaining prior approval/clearance. Really speaking the matter should have ended with that, with a quantification of the fine to be imposed.

55. As to why after the initial report of CESS of May, 2009, should CESS,after two years be again asked to visit at the request of the appellant is not really understood. In the meantime most of the construction was apparently done. The complaints made by Mr. Antony started

playing a role from 2012, a person who, also for reasons best known to him, decided to knock at the doors of the authority and the Court when most of the project was over. Interestingly CESS, once again, visited based on recommendation of the appellant in November, 2012 at the same time when Mr. Antony filed the petition.

56. In our view it is undoubtedly the specialised authorities who have to carry out the task, but with promptitude. Their lackadaisical attitude has permitted DLF to raise the issue of a deemed environment clearance by virtue of Clause 8(3) of the EIA Notification of 2006, which has already been extracted hereinabove. While the environment clearance was applied on 27.11.2007, the integrated clearance was granted on 11.12.2013 after six years, while by 2012, the project stood completed.

57. Insofar as the nature of the area is concerned, we have given due weightage to the revenue records, which are reflected in the sale deeds executed. Some of the aspects which have weighed with the Courts below do not find favour with us. The reason is that the alleged violations have not emerged with clarity.

58. The Coastal Regulation Zone land use map 34A produced before us by DLF and as explained by Mr. Kapil Sibal, learned senior counsel shows that wherever filtration ponds existed they were so recorded. In 1995-96 much prior to the year 2000 no such filtration ponds are recorded in the area constructed upon. Therefore, the findings to the contrary cannot be sustained. There could not have been a reclamation of the filtration pond by DLF.

59. In the course of arguments, Mr. Shyam Divan, learned senior counsel has sought to rely upon the Google images of February, 2005 and December, 2005 to suggest that there has been obviously large scale reclamation. On behalf of DLF, Mr. Sibal has been able to throw grave doubts over reliance of such Google images for the purposes of coming to the conclusion that the dark area in the image is a water body apart from the fact that in the sale deed dated 20.10.2006 it is not so mentioned as per the revenue record. The Google images produced on behalf of DLF show that in September, 2003 there was no suggestion of a water body. DLF has also taken the assistance of a report of the Institute of Remote Sensing in respect of two Google images relied upon by the appellant to substantiate its case and explain that there was a large mass of stagnant water in the property of shallow depth with vegetation below the water visible. This water appears not to have any permanent link with the backwater of the Chillannavur canal. The existence of the coconut trees is another aspect which throws doubt on the submissions made on behalf of the appellant.

60. As noticed above, if the appellant had acted with promptitude at the relevant time, we are sure that the correct picture would have been available whether for or against.

61. On behalf of CESS also there have been meanderings and contradictions in the approach, even though Mr. K.V. Thomas was party to all of them. In the context of the drain, in the 2009 report it is clearly stated to be an inter tidal zone falling under CRZ 1(ii). The report has been prepared after inspection. The HTL from the Choice Garden building was found cutting the canal, which was labelled as a drainage canal and thus, was not cutting a

water body. It is not understood how the contradictions arose subsequently in the 2011 and 2012 reports.

62. The approach of MoEF also appears to be strange and a complete contradiction between what was stated before the High Court, before us three weeks before the conclusion of hearing and then the endeavour to slip in an additional affidavit post conclusion of hearing.

63. The CEAC in 2008 itself had suggested that the CRZ Committee may examine the proposal which was so done. This was discussed with the appellant and further requisite information was also sought. The report from the CESS was obtained in May, 2009 and only a part of the project area was found in CRZ II category. After going through all the procedural requirements, the appellant made a recommendation on 31.8.2010 that the construction falls in CRZ II areas and the narrow canal was not an impediment to the construction. The appellant itself decided to recommend the proposal to the MoEF.

64. It is the own wisdom of the MoEF that with the establishment of SEIAA the whole file should be forwarded to it and this was sought to be justified on the basis of the experts available with SEIAA. What weighs with us most is that post transfer of the file on 11.12.2013, the proposal was cleared by SEIAA, being the final authority, and that has never been withdrawn or cancelled or challenged. This clearance was post a show cause notice seeking explanation from DLF and on explanation being offered, was issued. Now for the authorities to say otherwise or contradict themselves would not be fair to DLF and would cause grave uncertainty if such an approach was to be permitted.

65. We are, thus, not in agreement with the findings of the Courts below on the violations alleged against DLF except to the extent that there is a question mark on the issue of not having obtained prior clearance and proceeding on the basis of a deemed clearance, which aspect, at least for the future we have clarified that whatever be the manner in which Clause 8(3) of Notification of 2006 is worded, it should imply henceforth a prior clearance and necessary clarifications should be issued by the concerned authorities in a time bound manner to obviate such situations to arise in the future. We feel that the direction contained in the impugned order to deposit Rs.1 crore (stated to be already deposited) can be treated as a fine for the said purpose.

66. We are also of the view that the operative directions against the Collector of the State Government to monitor and do this task would be non-workable and it is appropriate that this amount is transferred to the KCZMA/appellant for purposes of better enforcement and development of CRZ area.

67. In conclusion we set aside the findings of the impugned order while sustaining the fine of Rs.1 crore with the direction for strict adherence to the norms in future and avoidance of such contradictions by the authorities. We also feel it appropriate that in view of the professed policy to have more single window clearance, the methodology of such processing of such applications should be endeavoured to be simplified so that there is less uncertainty and better enforcement. The same may be done within a period three months from the receipt

of the copy of the order.

68. The appeals are disposed of in the aforesaid terms. The parties are left to bear their own costs.

Judgment Referred.

[1]*(2016) 10 SCC 0701*
[2]*(2012) 6 SCC 0136*
[3]*(2013) 5 SCC 0257*
[4]*(2004) 3 SCC 0445*