

Minutes of the 23rd Meeting of the National Coastal Zone Management Authority (NCZMA) held on 04.01.2012 in Ministry of Environment and Forests, New Delhi

The 23rd Meeting of the National Coastal Zone Management Authority (NCZMA) was held on 04th January 2012 under the Chairmanship of Dr. T. Chatterjee, Secretary (E&F). At the outset, the Chairman welcomed the Members and suggested that after confirmation of the minutes of last meeting and review of action taken, the two agenda items arising out of Court orders would be taken up for discussion. He also added that a separate meeting will be held to review the progress on preparation of Coastal Zone Management Plans (CZMP) under the CRZ Notification, 2011 and the action taken by the State Coastal Zone Management Authority on the violation cases.

Agenda Item No. 1. : Confirmation of the Minutes of the previous meeting

1.1 Before initiating the proceedings, Dr. Nalini Bhat, Adviser, MoEF informed that as no comments/suggestions have been received on the Minutes of the 22nd Meeting held on 30.05.2011, the same were confirmed. The Authority was informed of the extension of its tenure up to 7th February, 2012.

Agenda Item No. 2: Action taken on the Minutes of the previous Meeting

2.1 Dr. Nalini Bhat informed about the follow up action taken, which includes issue of direction to the KCZMA in the matter of "Petition made by Dr. V. S. Gopalan against the order of the Kerala Coastal Zone Management

Authority as per the order of Hon'ble High Court, Kerala in WP 31146/2010, the classification of stretches in Goa from CRZ-II to CRZ-III under notification, 1991 and the O.M issued on 8th August, 2011 regarding Reclassification of Coastal Regulation Zone area on the grounds of Error apparent on face of the Record on 08th August, 2011.

2.3 The functioning of Coastal Zone Management Authorities of Goa, Kerala, Orissa, West Bengal, Karnataka and Andaman Nicobar Islands were reviewed in last meeting of NCZMA. However, it was decided that a separate meeting of NCZMA would be convened to review the functioning of the Coastal Zone Management Authorities.

Agenda item No. 3. Consideration of appeal by M/s Quilon Education Trust as per the order of Hon'ble High Court, Kerala in WP 22652 of 2011.

3.1 The matter relates to construction of an engineering college at Adichannlor Village of Kollam District, Kerala in violation to the Coastal Regulation Zone Notification, 1991. The matter was dealt by the Kerala Coastal Zone Management Authority (KSCZMA) who had issued Direction on 25.03.2011 to stop the construction. M/s Quilon Education Trust has challenged the order of KCZMA before the Hon'ble High Court of Kerala.

3.2 Hon'ble Court directed the petitioner to approach the Ministry and the Ministry to place the matter before the NCZMA and pass an order after hearing all the concerned.

3.3 Accordingly, the Petitioner filed appeal before NCZMA Shri Mohamed. Nowfal, Chairman, Quilon Education Trust (QET), and P.B.

Sahasranaman, Advocate, attended the meeting and informed that the plot of 14 acres is at the junction where the Pallimon thodu joins the Ithikkara river in Adichanallor Grama Panchayat. Sanction for the construction of an engineering college with built up area of about 3000 sqm, at a total cost of Rs. 6 crores was obtained from Grama Panchayat and started construction works like leveling, pile foundation etc. Based on the complaint, the KCZMA issued direction to the project proponent on 25.3.2011 to stop the construction and accordingly the construction was stopped.

According to the petitioner, the said site falls in Adichanalloor Panchayat which has not been demarcated in the approved CZMP and therefore it is not in CRZ. The adjoining river is fresh water and therefore is not a coastal water body. The land adjoining the river has submerged leading to the increase of the river body. The original river width was less than 15-20 meters and it has now increased due to excessive sand mining by the previous owner of the land. The constructions carried out are beyond 25 meters and is thus not against the CRZ norms. The petitioner produced Google maps for the year 2003 and 2011. The petitioner has also referred to the Judgment of Hon'ble Supreme Court - 2010 AIR SCW 1937 that the approved CZMP was valid for identification and classification of CRZ area and prayed that the HTL of the approved CZMP should be considered for deciding the CRZ requirement for the site.

3.4 Member Secretary, KCZMA informed that the area falls under the approved CZMP of Map No. 14 A. Based on the complaints, a notice was issued to QET and an Expert Committee was constituted to inspect and report. The Expert Committee has submitted its report. The Expert Committee recommendation includes:

- i) the HTL got modified since 1991 when the boundaries of river /Kayal got extended in to the land part expanding the river/ kayal because of anthropogenic activities like mining. KCZMA may take a decision whether the HTL and CRZ of 1996 or the present HTL and CRZ would be made applicable in regulating activities in CRZ. If required a clarification may be obtained from MoEF in this regards.
- ii) The decision on whether the construction initiated in the referred plot are in violation of the provisions of CRZ will depend on the above decision/clarification.

3.5 After the submissions of the petitioner and KCZMA, the National Authority noted that

- (a) there are two issues viz. (i) decision on the order of KCZMA dated 25.03.2011 and (ii) clarification on the consideration of the HTL of 1991 vs present one. The Hon'ble High Court directed the Ministry to decide on the order of KCZMA dated 25.03.2011 since the KCZMA was not in existence at that point of time. Since now, the KCZMA has been reconstituted, it can decide the issue.
- (b) The sanction was granted to M/s QET by the Gram Panchayat with a condition to obtain the CRZ clearance but M/s QET had not applied for CRZ clearance. Simply it presumed that the plot

was out side the CRZ. It had not demarcated HTL from the authorized agency to verify the status of the plot with respect to CRZ. M/s QET has not addressed this particular issue in its appeal. M/s QET shall submit its response to KCZMA and shall demarcate the HTL/LTL for the site through one of the authorized agencies on 1: 4000 scale map, superimpose the plot boundary & building layout and submit to KCZMA.

- (c) Though the expert committee constituted by KCZMA examined the issues and submitted its report, which was not examined by the KCZMA or by the State Government, since its tenure was over by the time the report was submitted. The stand of the Government of Kerala / KCZMA on the expert committee report is not available to the NCZMA.
- (d) The petitioner and Expert Committee of KCZMA opined that the widening of the river /Kayal might be due to illegal mining. But the geographic features of the site reveals the widening of river could be due natural factors also. This needs to be examined by the KCZMA.
- (e) The google map produced by the petitioner for the year 2003 and 2011 reveals that the width of river has widened since 2003.

3.6 After detailed discussion, it was decided that

- (i) Since KCZMA has now been reconstituted vide S.O 2843 (E) dated 21.12.2011, it may examine the Expert Committee report and also the possible natural factors for widening of the river/kayal and send its comments/ recommendations to NCZMA within a Month so as to take a final decision on the consideration of the HTL.

- (i) KCZMA based on the details of HTL map mentioned under 3.5 (b) above shall verify the location of the petitioner site with respect to CRZ and based decision of NCZMA on 3.6 (i) decide on its order dated 25.03.2011.

- (ii) KCZMA shall take necessary action including issue of direction to the concerned Department to take action against the illegal mining. Also the restoration of the mined area shall be carried out as far as possible.

- (iii) Ministry may seek extension of time to comply with the order of Hon'ble High Court of Kerala.

Agenda item No. 4 Consideration of representations on categorization of CRZ areas in Bandra and Worli, Mumbai as per the Order of the Hon'ble High Court of Bombay in WP No. 930 of 2011 and 946 of 2011.

4.1 The two representations from M/s Akruti City Ltd, Mumbai viz. (i) Slum rehabilitation scheme at Worli and (ii) Slum rehabilitation scheme at Bandra (W) at Mount Mary Hill, Mumbai are against the rejection of two proposals of Slum rehabilitation scheme at Bandra and Worli. The proposals

were rejected as they were in the area reserved for garden in CRZ-II which was categorized into CRZ-III as per the approved CZMP of Maharashtra. The parks, play grounds falling within CRZ-II are categorized into CRZ-III as per the approved CZMP of Maharashtra and the development of residential/ commercial use of such garden/ open spaces are not permissible.

4.2 The applicant had filed a Writ Petition in the Hon'ble High Court of Bombay stating that he had filed an appeal before the NCZMA to retain the parks, play grounds falling within CRZ-II itself instead categorizing into CRZ-III since said plot, though reserved as garden is encroached and occupied by the slum dwellers and also declared in census as slum prior to the date of CRZ Notification, 1991.

4.3 With reference to the above Writ Petitions, the Ministry informed the Hon'ble Court that

- (i) The appeal is not maintainable since the order dated 31.08.2009 was a rejection of the clearance for the project proposal which is not under the purview of NCZMA and NCZMA deals only the policy/ classification of CRZ areas.
- (ii) The prayer made out in the appeal is for reclassification of CRZ - III area into CRZ-II. As per Para, II (ii) of MCZMA Notification such reclassification proposals shall be examined and recommended by the MCZMA to the NCZMA. In this case such recommendation is not in record. Hence, appeal is not maintainable.

(iii) Further, Ministry has issued CRZ Notification, 2011 on 06.01.2011. The issues related to reclassification of CRZ area were discussed by the NCZMA on 19.04.2011 and 31.05.2011 and decided that "no reclassification of CRZ areas of CZMP approved in 1996 under the CRZ Notification, 1991, except for Defence / Security matters, Court directions and error evident on record, will be considered by the Ministry. The respective SCZMAs shall consider such reclassification issues as appropriate in the CZMPs under the provisions of the new CRZ Notification of 2011" Accordingly an office Memorandum was issued on 01.07.2011 which is available on the Ministry's website.

4.4 Hon'ble Court had disposed off the Writ Petition directing the NCZMA to consider the appeal as representation and decide on merits. Petitioner accordingly submitted representation before NCZMA.

4.5 Shri.Vimal Shah, Managing Director, M/s Akruti City Ltd, Mumbai and Ms. Madhavi Divan, Advocate representing M/s Akruti City Ltd attended the meeting and informed that both the plots that the Applicant are concerned with, one at Worli (Survey no.32 (Pt) and 38 (Pt) admeasuring 5565 sq meters) and the other at Bandra (CTS no. B 908 to B 910, B 911 (Pt) adm 15295 sq.m) were designated as garden under the Development Plan. However, in both cases since 1976 that is for over 35 years the land has been encroached by slum dwellers. In Worli plot, the slums were regularized in 1985 and photo passes issued. It is under these circumstances that the MCGM granted its NOC for redevelopment. It is municipal land fully developed with roads SWD water mains, drainage etc. In the case of Bandra plot, the structures and the slum dwellers were enumerated in 1976 and

photo passes issued. The Applicants relied on photographs, plans and maps to show the level of encroachment/developments on the plots. The MCZMA in the minutes of its 52nd Meeting, recognized the extent of encroachment and the fact that the same was in existence since 1976. The only issue is whether lands on which extensive tenements and settlements existed for the last 35 years can be described as "open" or "vacant" lands, or "substantially built up" areas- whether such lands ought not be classified as falling within CRZ II. They stated that although the original reservation under the Development Plan was for a garden, no "garden" or open space has existed on the plot for over 35 years even prior to 1976. In addition, there is the second issue, ie whether the development is to be carried out on the landward side of an existing road. In Worli Plot, after obtaining all the permissions, they have completed 2 buildings out of 4. If the project is allowed, to be completed, not only 33 % of the land will be ceded for the public purpose of garden as required by the UDD notification dated 03.06.1992, but about 81 % of the plot will be made available as open space as development will be vertical.

4.6 The Member Secretary, MCZMA has informed that the sites falls within the area reserved for garden and the parks, play grounds falling within CRZ-II are categorized into CRZ-III as per the approved CZMP of Maharashtra and the development of residential/ commercial use of such garden/ open spaces are not permissible. As per the Urban Development Department, the SRA Scheme was originally approved on 14.03.1996 and LOI was issued on 13.06.1996 before the clarification of Ministry dated 08.09.1998 and 18.08.2000 on categorization of open spaces of CRZ-II into CRZ-III. In view of the above, the proposal was recommended to Ministry for further action. "He also informed that work on the Bandra plot is stopped".

4.7 After detailed discussion, it was decided that

- (i) The averment of the petitioner that although the original reservation under the Development Plan was for a garden, no "garden" or open space existed on the plot for over 35 years ie even prior to 1976, hence it should not be categorized as CRZ-III as per submission of petitions is not acceptable since the land use as per the Development Plan, as on the date of CRZ Notification, 1991, is reserved for garden.

- (ii) The petitioner request amounts to reclassification of the CRZ areas from CRZ-III to CRZ-II which cannot be considered as re-engineered CRZ Notification, 2011 has been issued and the procedure has been detailed in the OM dated 08th August, 2011.

- (iii) Since scheme is for slum improvement, the MCZMA shall consider such issues in the CZMP to be prepared under CRZ, Notification, 2011 so as to prevent the hurdles for such socially important projects.

Agenda Item No. 5: Any other matter with the permission of the Chair

The Chairman informed that the next meeting will be convened in the end of January, 2012 to review the progress on preparation of Coastal Zone Management Plans (CZMP) under the CRZ Notification, 2011 and the action taken by the State Coastal Zone Management Authority on the violation cases.

Meeting ended with a vote of thanks to the Chair.

23rd Meeting of the National Coastal Zone Management Authority (NCZMA) held on 04th January, 2012 in Ministry of Environment and Forests, New Delhi

List of participants

Ministry of Environment and Forests

1. Dr. T. Chatterjee, Secretary (E&F) and Chairman, NCZMA
2. J.M. Mauskar, Special Secretary,
3. Dr. Nalini Bhat, Adviser and Member Secretary, NCZMA
4. Shri Lalit Kapur, Director
5. Shri. E. Thirunavukkarasu, Deputy Director

Members of NCZMA

6. Dr. M. Baba, ED, Advanced Training Centre, Pune
7. Dr. Ramchandran Ramesh, IOM, Anna University, Chennai
8. Shri S.T. Puttaraju, Chief Town Planner & Ex-officio Jt.Secy, Goa
9. Dr. A.R.Gujar, Scientist 'G' representing NIO, Goa
10. Shri V. Vivekanandan, South Indian Federation of Fishermen Societies, Trivandrum
11. Shri D.Venkatesan, Asst. Director General, Ministry of Tourism, New Delhi

State Coastal Zone Management Authorities

- 12 Dr. B.N. Patil, Director, Environment and Member Secretary, Maharashtra Coastal Zone Management Authority
- 13 Dr. K.K. Ramachandran, Member Secretary, Kerala Coastal Zone Management Authority

Others

- 14 Shri Mohamed. Nowfal, Chairman, M/s Quilon Education Trust
- 15 Shri P.B. Sahasranaman, Advocate, representing M/s Quilon Education Trust
- 16 Shri.Vimal Shah, Managing Director, M/s Akruti City Ltd, Mumbai
- 17 Ms. Madhavi Divan, Advocate representing M/s Akruti City Ltd, Mumbai.