



Ministry of Environment and Forests
GOVERNMENT OF INDIA

ADARSH COOPERATIVE HOUSING SOCIETY:
Dossier Containing Final Order and Other Relevant Documents

16th January 2011

- *Minister's Statement*
 - *Final Order*
 - *Report*
 - *Summary of Proceedings of Oral Hearing*
 - *Analysis of Written Submissions*
 - *Discussion, Consideration and Reasoning*
 - *Conclusions*
-



Sub: Adarsh Cooperative Housing Society (ACHS)

The MoE&F decision on the Adarsh Cooperative Housing Society (ACHS) building case in Mumbai is available in all its details on www.moef.nic.in.

The ACHS dossier on the website contains the following:

1. The Final Order
2. Summary of Proceedings of Oral Hearing
3. Analysis of Oral Submissions
4. Analysis of Written Submissions
5. Discussion, Consideration and Reasoning
6. Conclusions

There were **three** options available:-

- I. Removal of the entire structure since it is unauthorised and no clearance whatsoever under the Coastal Regulation Zone (CRZ) Notification, 1991 was obtained.
- II. Removal of that part of the structure in excess of the FSI that might have been allowed had the requisite permission been sought from the appropriate authority.
- III. Recommending government takeover of the building for a public use to be determined later.

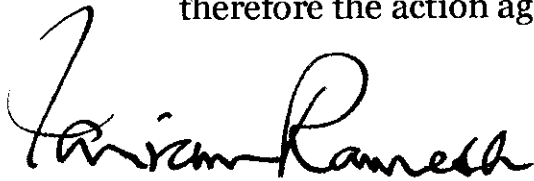
Option II was rejected since this would have been tantamount to regularising or condoning an egregious violation of the CRZ Notification, 1991.

Option III was considered but rejected because (i) even though the final use may be in the public interest, it would still be tantamount to regularising a violation of the CRZ Notification, 1991; and (ii) there would be substantial discretionary powers that would vest with the State or Central Government in case of takeover.

Therefore, in light of all facts, circumstances, discussion, consideration, reasoning and analysis presented in the ACHS dossier, I have decided on Option I. The fact that there may well be other cases of similar violations provides no grounds for mitigation of the penalty attracted by such an egregious violation as that by ACHS. Any other decision would have diluted the strong precedents that have been set in judgments of the Supreme Court and different High Courts.

ACHS has violated the very spirit of the CRZ Notification, 1991 by not even acknowledging the need for clearance under this Notification. Whether they were aware of such requirement or not is immaterial as ignorance of law can never be an excuse for non-compliance.

Finally, I wish to reiterate that the CRZ Notification, 2011 published on January 7th, 2011 makes **no** difference to ACHS-like cases. In addition to the safeguards provided for such cases in the CRZ Notification, 2011 itself, this practice is substantiated by the principle enshrined in Article 20(1) of the Constitution which states "*No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence...*". Thus, ACHS was in violation when the CRZ Notification, 1991 was extant, action was initiated by the MoE&F when the CRZ Notification, 1991 was extant and therefore the action against ACHS will continue to be pursued.



Jairam Ramesh
MOS(I/C)E&F
January 16th, 2011

Most Urgent/By speed post

**No. 19-94/2010-IA-III
Government of India
Ministry of Environment and Forests
(IA-III Division)**

**Paryavaran Bhavan,
CGO Complex, Lodi Road
New Delhi -110003.**

Dated the 14th January, 2011

ORDER

Final Directions: Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of Coastal Regulation Zone Notification, 1991 by M/s Adarsh Cooperative Housing Society at Colaba, Mumbai - regarding.

Whereas, the Ministry of Environment and Forests (MoEF) had issued the Coastal Regulation Zone Notification (CRZ) on 19th February, 1991 under Environment (Protection) Act, 1986, and

2. Whereas, the CRZ Notification, 1991 regulates all developmental activities in the coastal areas including housing projects in the said zone, and

3. Whereas, vide amendment to the CRZ Notification, 1991 dated 9th July, 1997 the powers for according clearance to housing project above Rs. 5 crores was delegated to the State Government, and

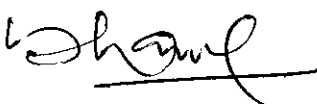
4. Whereas, the MoEF has set up the National Coastal Zone Management Authority (NCZMA) and Maharashtra State Coastal Zone Management Authority (MCZMA) on 26th November, 1998 under the Environment (Protection) Act, 1986 to implement and enforce the CRZ Notification, 1991, and

5. Whereas, the MCZMA is required to give the recommendations before the project proposals are referred to the Central Government or the agencies who have been entrusted to clear such projects under the CRZ Notification, 1991, and

6. Whereas, the alleged violations of Adarsh Cooperative Housing Society (ACHS) pertaining to construction in Block-6, Backbay Reclamation Area, Near Backbay Bus Depot, Capt. Prakash Pathe Marg, Colaba, Mumbai-400005, A- Ward undertaken in the CRZ area were brought to the notice of the Ministry through the print media, and



7. Whereas, the NCZMA discussed the above alleged violation of ACHS in its 20th meeting held on 11th November, 2010 in MoEF (a copy of the NCZMA minutes is at **Annexure-XI** of the Report), and
8. Whereas, the Ministry issued the Show Cause Notice to ACHS vide letter No.19-94/2010-IA-III, dated 12th November, 2010, (a copy of the notice is at **Annexure-I** of the Report) in which ACHS was directed to show cause as to why action should not be taken under Section 5 of Environment (Protection) Act, 1986 for removal of the unauthorized structure erected by ACHS in Coastal Regulation Zone area in Colaba of Mumbai, Maharashtra and ACHS were give fifteen days time to respond to the Show Cause Notice, and
9. Whereas, the Ministry after considering the request made by ACHS has provided adequate time and opportunity to inspect the records/documents in the Ministry relevant to the project and submit their reply to the Show Cause Notice, and
10. Whereas, ACHS was provided an opportunity to present their case before Dr. Nalini Bhat, Adviser, MoEF on 4th January, 2011 at 12:00noon in Room No.402 of Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi at MoEF, and
11. Whereas, ACHS provided their oral submission during the hearing and written submission on 10th January, 2011, and
12. Whereas, Dr. Nalini Bhat, Adviser, MoEF had submitted her report covering the hearing undertaken on 4th January, 2011, the analysis of oral and written submissions made by ACHS, the discussions, considerations and reasoning and the conclusions (a copy of the report dated 13th January, 2011 is at **Annexure-A**), and
13. Whereas, Dr. Nalini Bhat mentioned in the above report that sufficient time and opportunity was provided to ACHS for inspecting the documents and submitting their response as they had sought for that the opportunity for inspection of documents as mentioned in the reply dated 15th December, 2010 may be due to overlapping of time of communication and that this was agreed upon by ACHS and stated that they inspected and also collected certain documents on 20th December, 2010, and
14. Whereas, the Ministry has examined the above report submitted by Dr. Nalini Bhat, Adviser, MoEF and accepted the report in its entirety.
15. Now, therefore, taking into consideration the report of Dr. Nalini Bhat, Adviser, MoEF dated 13th January, 2011, the Ministry, in accordance with the provisions of Section 5 of the Environment (Protection) Act, 1986 hereby directs ACHS:



“The unauthorised structure built at Block-6, Backbay Reclamation Area, Near Backbay Bus Depot, Capt. Prakash Pathe Marg, Colaba, Mumbai-400005, A- Ward should be removed in its entirety and the area restored to its original condition.”

16. In case, the above directions are not complied within three months from the date of receipt of this order, the Ministry will be constrained to enforce this direction, and undertake action under Section 15 of the Environment (Protection) Act, 1986.

These directions issue with the approval of the Competent Authority.

Encl: As above


(~~Bharat Bhushan~~)
Director

14.01.2011

To,

M/s Adarsh Cooperative Housing Society Limited,
CTS No.652, Block-6,
Colaba Division, Capt. Prakash, Pathe Marg,
Adjacent to Backbay Bus Depot,
Colaba, Mumbai-400005.

Through

Mr. Chandar Uday Singh,
Senior Advocate Supreme Court,
7, Nizamuddin East,
New Delhi - 110013.

Copy to:-

1. Chairman, Maharashtra Coastal Zone Management Authority, Mantralaya, Mumbai.
2. Secretary, Department of Environment, Government of Maharashtra.
3. Principal Secretary, Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai.
4. Principal Secretary, Revenue Department, Government of Maharashtra, Mantralaya, Mumbai.
5. Managing Director, MMRDA, Government of Maharashtra, Mumbai.
6. Managing Director, BMC, Government of Maharashtra, Mumbai.
7. Chief Conservator of Forests, Ministry of Env & Forests, Regional Office (West Zone), E-5, Kendriya Paryavaran Bhawan, E-5, Arera Colony, Link Road-3, Ravishankar Colony, Bhopal - 462 016

Report

Introduction:

The undersigned was authorized to be the Competent Authority to hold the hearing in case of violation of the Coastal Regulation Zone Notification, 1991 by Adarsh Co-operative Housing Society, Colaba, Mumbai, Maharashtra where a Show Cause Notice had been issued on 12th November, 2010.

The Report which follows contains the following sections:

- I. Proceedings of the Hearing held on 4th January, 2011;
- II. Analysis of the oral submissions;
- III. Analysis of written submission made by ACHS vide their letter dated 10th January, 2011;
- IV. Discussion, consideration and Reasoning;
- V. Conclusion.

I. Proceedings of the Hearing held on 04.01.2011

1. After acceptance of the recommendations of the National Coastal Zone Management Authority as contained in the minutes of its meeting held on 11th November, 2010, the MoEF had issued a Show Cause Notice to Adarsh Cooperative Housing Society (ACHS) on 12th November, 2010, a copy of which is enclosed at Annexure-I. Under the Notice, ACHS were directed to show cause as to why action not be taken under Section 5 of Environment (Protection) Act, 1986 for removal of the unauthorized structure erected by ACHS in Coastal Regulation Zone area in Colaba of Mumbai, Maharashtra. ACHS were give fifteen days time to respond to the Show Cause Notice.

2. In response to the above Show Cause Notice, ACHS vide their letter dated 24th November, 2010 sought extension of time of four weeks for replying to it, a copy of which is enclosed at Annexure-II.

3. The Ministry after examining the request, provided time extension of 7 days from 29th November, 2010 for responding to the Show Cause Notice and in the same letter it was conveyed that, if so desired by ACHS, personal hearing of the case would be held on 28th December, 2010 at 12:00 noon in Room No.403, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi, a copy of the letter is enclosed at Annexure-III.

4. On 29th November, 2010 and 6th December, 2010 ACHS requested for inspection of relevant documents, which were referred in the Show Cause Notice, a copy each of the two letter are enclosed at Annexure-IV. Subsequently, on 15th December, 2010, ACHS submitted the reply to the Show Cause Notice, a copy of which is enclosed at Annexure-V. Further, ACHS vide their letter dated 18th December, 2010 requested for the postponement of the hearing and to fix the same after 10th January, 2011 preferably, excluding Monday, a copy of the letter is enclosed at Annexure-VI. The request was examined and the hearing was re-fixed on 29th December, 2010. ACHS once again requested for a postponement after 3rd January, 2011 vide their letter dated 27th December, 2010, and the hearing was re-fixed again on 4th January, 2011. A copy of ACHS letter and the notice issued by MoEF are enclosed at Annexure-VII & VIII, respectively.

5. Dr. Nalini Bhat, Adviser, MoEF had been authorized to hold the hearing and Dr. Bharat Bhushan, Director, MoEF, Dr. A. Senthil Vel, Additional Director, MoEF and Shri E. Thiruvnavukkarasu, Deputy Director, MoEF were present therein to assist her.

6. Accordingly, Dr. Nalini Bhat, Adviser, MoEF heard ACHS on 4th January, 2011 at 12:00 noon in Room No.402 of Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi. The list of representatives of ACHS and of officials present is at Annexure-IX.

7. On account of the delay of arrival of representatives of ACHS, the hearing began at 12:20 P.M. onwards. Dr. Nalini Bhat referred to the Show Cause Notice issued and requested the representative of ACHS to address relevant issues, clarifying that the present hearing under the Environment (Protection) Act, 1986 was in the nature of a technical hearing. She mentioned that sufficient time and opportunity has been provided to ACHS for inspecting the documents and submitting their response as requested by them.

8. ACHS while apologizing for the delay caused said that the Ministry had indeed provided adequate opportunity for inspecting of documents and requested that no note be taken of the letter dated 15th December, 2010, since, it had crossed the Ministry's communication dated 15th December, 2010 in which the opportunity for inspection the documents were provided.

9. The representative of ACHS said that the MCZMA had hastily decided the issue in its meeting held on 3rd November, 2010 and the minutes was confirmed on 9th November, 2010. A copy of the minutes of the MCZMA is

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enclosed at Annexure-X. The representatives of ACHS stated that the Ministry had shown undue urgency based on media reports and issued the Show Cause Notice solely on the decisions taken by National Coastal Zone Management Authority in its meeting held on 11th November, 2010, a copy of the minutes of the NCZMA is enclosed at Annexure-XI. Further, the NCZMA had considered the issue when the matter was not listed in its agenda and the decision was taken purely on the statements made by the Secretary (UDD) & Secretary (Revenue) without any supporting documents and evidence. The representatives claimed that though the officials of MMRDA and BMC had been invited but the NCZMA did not hear them.

10. The representative of ACHS dwelt on two major issues which are as follows:-

A. Applicability of Coastal Regulation Zone Notification, 1991

(i) The representative argued in detail with regard to the applicability of the CRZ Notification, 1991 issued under Environment (Protection) Act, 1986. He stated that the CRZ Notification, 1991 was issued under section 3(2)(v) of Environment (Protection) Act, 1986. He read out the section which provides for 'restriction of areas' in which any industries, operations or process of class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. As per Rules 2(a), 'areas' means all areas where hazardous substance are handled and the section 3(2)(v) has to be read in consonance with section 5, and rule 2 (aa). These provisions expressly apply to the industrial processes and operations and do not apply to the residential building. Based on the above it was argued that the housing project undertaken by ACHS did not fall within the purview of industries, operations or processes or the area where the housing complex is being constructed do not handle any hazardous substance. To substantiate this argument the judgment of Hon'ble High Court of Bombay in Writ Petition No.170 of 1992 filed by Goa Foundation and Anr. Vs The Konkan Railway Corporation and Ors. was quoted, wherein, the applicability of the CRZ Notification, 1991 to the Railway line project had been challenged. Based on the judgment in the matter the representative of ACHS argued that the said project does not attract CRZ Notification as it is not a industrial activity.

(ii) The representative of ACHS also placed a alternative stating that if the Ministry at all considered that the constructions undertaken by ACHS,

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which is for residential purposes, attracted the Coastal Regulation Zone Notification, 1991 than the following are the facts which indicate that ACHS have undertaken the construction in accordance with the CRZ Notification, 1991 and CZMP of Greater Mumbai:-

(a) The Urban Development Department, had enclosed the land allotment proposal of ACHS dated 3rd August, 2002 to MoEF on 5th February, 2002, who had sought additional information on 2nd December, 2002 which was provided by the Urban Development Department on 4th January, 2003. Based on which MoEF had issued a clarification on 11th March, 2003 to the Urban Development Department, "*This has reference to your letter No. TPB 2009/1095/CR-154/99/UD 12, dated 4th January, 2003 regarding the subject mentioned above. As per the information provided in the above letter and the revised Coastal Zone Management Plan of Greater Mumbai, it is noted that the proposed residential complex falls within the Coastal Regulation Zone-II area. This Ministry has already delegated the powers to the concerned State Government for undertaking development in Coastal Regulation Zone-II. Accordingly, the proposed construction may be taken up as per the Coastal Regulation Zone Notification, 1991(as amended from time to time) and the approved revised Coastal Zone Management Plan of Greater Mumbai.*" Based on the above clarification the Urban Development Department who had the powers for according clearance to the Coastal Regulation Zone projects had accorded clearance vide letter dated 15th March, 2003.

(b) The representative of ACHS admitted that the aforesaid proposal had not been routed through the MCZMA and in this regard indicated that they were willing to obtain post facto clearance for the project from MCZMA.

B. Use of additional Floor Space Index (FSI)

- (i) With regard to the FSI issue, the representative of ACHS argued that the building had been constructed with the FSI of 1.32 which was permitted by MMRDA and the fact in the NCZMA minutes, where it is mentioned that ACHS have consumed 1.77 are incorrect.
- (ii) It was submitted that the land in Block No.6, Backbay Reclamation admeasuring 3758.82 sqm which belonged to Government of

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Maharashtra was allotted to ACHS on occupancy basis. Thereafter, at the behest of ACHS an additional land adjoining BEST property admeasuring 2669.58 sqm was allotted to the Society by District Collector, Government of Maharashtra on occupancy basis vide letter dated 5th August, 2005. The occupancy rights of the plot was given with a condition to keep it open, and not build, for the purpose of BEST use.

- (iii) As per DCR 1967, the FSI permissible on Block No.6 in Backbay Reclamation is 3.5. and ACHS had not exceeded the FSI restriction. In fact ACHS had only consumed an FSI of 1.32 for the purpose of construction of its building. These facts are available in the sanctioned plan of MMRDA, who had issued sanction for building plans.
- (iv) It was further argued that the provisions of the MRTP Act, MMRDA Act, the rules framed thereunder or the Development Control Regulation applicable to the city of Mumbai do not prevent/bar utilization of FSI of a plot of land on any particular area identified by the owner on the same land or allowed to be identified by him on the said land. Further, the provisions of the above Acts/Regulations also do not prohibit utilization of FSI of one plot by the contiguous/adjacent plot by authorized occupants of the two plots of land under the ownership of the same owner. Thus, there is no requirement of amalgamation of plots to utilize the FSI.

11. It was also stated that MCZMA had issued a Show Cause Notice on 3rd November, 2009 to ACHS seeking details and documents relating to clearance obtained from statutory authorities regarding the Coastal Regulation Zone clearance. ACHS had responded and provided all the relevant clearances obtained for the project in its communication dated 17th December, 2009 and the MCMZA being satisfied with the explanation furnished by ACHS took no further steps in the matter. Thus, MCZMA has already exercised power under section 5 of Environment (Protection) Act, 1986 and therefore separate proceeding by MoEF for the same alleged violation is not permissible in law.

12. The representative of ACHS concluded that,-

- (i) The CRZ Notification, 1991 does not apply to their Housing Complex as the provisions of this Notification expressly apply to the industrial processes and operations and do not apply to the residential building;

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- (ii) if at all the CRZ Notification was considered as applicable, then the permission dated 15th March, 2003 is the clearance under this Notification.

13. Dr. Nalini Bhat concluded the hearing and requested the representatives of ACHS to provide within one week their written submissions alongwith the copies of the documents cited by them.

II. Analysis of the oral submissions:-

14. Based on the oral submissions made by ACHS during the hearing that the "CRZ Notification does not apply to their Housing Complex as the provisions of the Notification expressly applies for the industrial processes and operations and does not apply to the residential building", the following are the comments.

Comments:-

- (i) This is a incorrect interpretation. The CRZ Notification, 1991 has been issued under section 3(2)(v) of Environment (Protection) Act, 1986. As per the provision of the Act which provides for 'restriction of areas' in which any industries, operations or process of class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Construction of buildings falls within the category of "process". The para 6(2) Annexure-I of the Coastal Regulation Zone Notification, 1991 lists out the various activities including construction activities, which require clearance from Ministry, State Authority or other agencies with respect to construction in CRZ-II and CRZ-III areas.
- (ii) The Ministry has set up the National and State level CZMA including MCZMA in November, 1998 in compliance with the Orders of Hon'ble Supreme Court 664 of 1993.
- (iii) With regard to the projects in Mumbai attracting CRZ Notification, 1991, the projects are to be examined under the provisions of CRZ Notification, 1991 and approved Coastal Zone Management Plan of Mumbai.
- (iv) In March 2003, all construction in the Coastal Regulation Zone area, which were permissible under the CRZ Notification and were in consonance with the approved Coastal Zone Management Plan of Mumbai,

Nalini Bhat

had to be considered by Maharashtra State Coastal Zone Management Authority (MCZMA). At that time, the approval authority was meant to be the State Government; in the case of Maharashtra. MoEF is not aware of any Government Order or instruction of Government of Maharashtra which authorise any Department other than Environment Department including the Urban Development Department to issue clearances under the CRZ Notification, 1991.

- (v) The Ministry had approved the revised Coastal Zone Management Plan of Mumbai on 19th January, 2000. To obtain clearance the under Coastal Regulation Zone Notification, 1991 the project proponent needed to submit the proposal enclosing the details of construction, classification of Coastal Regulation Zone area in the requisite format to the concerned Coastal Zone Management Authority, in this case this proposal should have been submitted to the MCZMA.
- (vi) MCZMA was constituted vide S.O. No.18(E) dated 4th January, 2002 in compliance with the Hon'ble Supreme Court order 664/1993. As per para (VII) of the Notification constituting the MCZMA: "The Authority shall examine all projects proposed in Coastal Regulation Zone areas and give their recommendations before the project proposals are referred to the Central Government or the agencies who have been entrusted to clear such projects under the notification, of the Government of India in the Ministry of Environment and Forests vide Number S.O.114 (E) dated 19th February, 1991."
- (vii) The clearance under the Coastal Regulation Zone Notification 1991 by MOEF is in a prescribed format prescribing the environmental safeguard conditions relevant to the project. The proposal for CRZ clearance is received from the MCZMA and after examination of the project in accordance with the CRZ Notification, 1991 and the approved CZMP of Greater Mumbai including the concerned environmental impacts due to such projects. Clearance letter of similar residential project is enclosed.
- (viii) The power to issue of Coastal Regulation Zone clearance was withdrawn from the State Government by an amendment S.O.No.460(E) dated 22nd April, 2003 to the CRZ Notification, 1991 in respect of projects costing more than Rs. 5 crores for the reason that the State Governments were misutilising the powers and permitting constructions in non-permissible area.

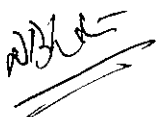
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(ix) The NCZMA based its conclusions on the recommendation for ACHS case on the statements made by the Principal Secretary, Urban Development and Revenue Department stated that, "

"III. The Chairman requested Chairperson, MCZMA to brief the Authority regarding the matter and the action taken so far. The Chairperson, MCZMA informed that the said structure (building) of Adarsh Cooperative Housing Society had been constructed in violation of CRZ Notification, 1991, since no permission had been obtained under the CRZ Notification 1991 from the competent Authority nor did MSCZMA ever consider this Project. Further, the said structure had violated CRZ norms by utilizing higher Floor Space Index (FSI) than that stipulated in the CRZ Notification, 1991. She also informed that based on a complaint received from the National Alliance of People's Movement a direction under Section 5 has been issued on 3rd November, 2009. Lastly, the Chairperson, MCZMA explained that the conclusion of the Deputy Secretary, Urban Development Department, to the effect that the MoEF letter of 11th March, 2003 amounted to a "No Objection Certificate" to the project, was clearly wrong.

IV. The position with regard to the amendment to the CRZ Notification, 1991 dated 21st May, 2002, because of which MSCZMA thought that the powers for clearance of housing project were vested in MoEF during March 2003, was discussed. It was clarified that as on 11th March, 2003 the amendment of MoEF dated 9th July, 1997 was in vogue, which delegated the power to the State Government and Authorities for according clearances to the projects under the CRZ Notification. Hence the Ministry's letter of 11th March, 2003 is in order.

V. The Chairman invited Shri T. C. Benjamin, Principal Secretary, Urban Development Department to brief the Authority. Shri Benjamin informed that the land area for Adarsh Cooperative Housing Society (the Society) in BBR Block, No.6 admeasuring 3758.82mts² was fenced and was in physical position of the local military Authority. On 21st September, 1999 an application was filed by the Society for allotment of land for welfare of serving and retired personnel of Defence. On 18th January, 2003 the Revenue Department issued a Letter of Intent, in which one of the conditions imposed was to obtain the requisite clearance of MoEF. However, it is clear from records that this clearance has not been obtained by the Society from MoEF or from



the MCZMA. Initially in 2000 the housing project was meant for nineteen civilian members and thirty one Defence members. In 2004 it was increased to seventy one members and in 2005 additional twenty nine were added thereby finally the membership became one hundred two members. The building has been provided electricity, water after occupation certificate issued by MMRDA. Shri Benjamin clarified that the proposal by UD Department in 2002/2003 sent to the Ministry was for the change of land use and no proposal pertaining to the housing project of the Society was ever sent to MoEF. He also informed that for reckoning FSI, the said plot of the Society included a revenue plot and also a plot belonging to BEST. The FSI had been increased by adding on the plot belonging to BEST and as on today the FSI utilized was 1.77 against the norm of 1.33, which is another violation of the Coastal Regulation Zone Notification, 1991, which cannot be rectified.

VI. The Chairman requested Shri Kunte, Principal Secretary, Revenue Development Department, Government of Maharashtra to briefly state his views. Shri Kunte also clarified that the permission for change of land use was sought by the UD Department vide their letter dated 10th April, 2002. He said that there was a clear misinterpretation of the response given by MoEF dated 11th March, 2003 by the Deputy Secretary, Urban Development Department since this response clearly stated that the proposed construction may be taken up as per the Coastal Regulation Zone Notification, 1991, which meant that the proposal could be placed before MCZMA which at that point of time had all the powers to sanction the constructions projects in the Coastal Regulation Zone. He said that when the Society approached the Planning Authority (BMC/MMRDA) for permission for the buildings in 2005, 2007 and 2008 this aspect of getting the CRZ clearance from MCZMA/MoEF was overlooked. He concluded that building of Society had the following serious lacunae:-

- (i) Permission of the competent Authority under the Coastal Regulation Zone Notification had not been taken.*
- (ii) The FSI allowed for the building exceeded the prescribed FSI for development in the CRZ.*

VII. After the above submissions made by Chairperson, MCZMA, Secretary, Urban Development Department and Secretary, Revenue,

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Government of Maharashtra, the Authority deliberated on the case. It was noted that this is a case of clear violation of the Environment (Protection) Act, 1986 and the CRZ regulations thereunder by the Society on two counts, namely, by not obtaining prior permission under the Coastal Regulation Zone Notification, 1991 from the concerned Authorities and the use of higher FSI (1.77 against 1.33), in view of the additional FSI loaded from the adjoining plot of BEST, which plot has not been amalgamated with the Society's plot as on date. The Authority noted that while this case involved violation of the norms of Defence and security, service rules, propriety, providing true information of various factual data including income etc., and while there may be some dispute about original ownership/possession of the plot, the NCZMA was concerned only with the compliance under the Environment (Protection) Act, 1986 and CRZ Notification thereunder, which is its basic mandate. Accordingly, there was no option other than to remove forthwith the unauthorized structures constructed in violation of the Coastal Regulation Zone Notification, 1991 under the provisions of the Environment (Protection) Act, 1986. It was also observed that keeping this case in mind the State Coastal Zone Management Authority needed to be more proactive and vigilant about CRZ implementation and enhance the inter-Departmental coordination with utmost transparency to avoid such incidents in future."

(VIII) Regarding the request of site visit, it is stated that ACHS has agreed that their housing complex is in CRZ-II and that they had constructed the building and got occupation certificate on 16th September, 2010. The MCZMA, Principal Secretaries, of Urban Development Department and Revenue have also confirmed this facts. Under the circumstances,, no fruitful purpose will be served from the proposed site visit for which no reasons have been given by ACHS in any case.

(IX) Regarding the argument of the representative of ACHS that the CRZ Notification, 1991 does not contemplate 'prior clearance', it is evident that CRZ clearance is for a specific activity at a particular site. In CRZ area, certain activities are permissible in certain locations and these may not be permissible in other locations. Construction of residential buildings is permissible in CRZ-II, and not in CRZ-III, where only reconstruction and repair is permissible. Hence, the clearance contemplated in the Notification is prerequisite for any development activity in CRZ area.

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(X) Regarding the argument about the separate proceeding by the Ministry on the same alleged violation not being permissible in law, it is stated that as per the II (b) of the Notification constituting MCZMA, it shall examine the violations and report to the NCZMA. Similarly, as per III (a) of constitution of NCZMA, the NCZMA has to examine the violations and take action. Accordingly, the violations of the Adarsh has been reported by MCZMA to NCZMA, which after detailed deliberation recommended to the Ministry for the appropriate action as per the provisions of EP Act, 1986. The action of the NCZMA is therefore in consonance with the law.

(XI) Regarding the issue of FSI, it is stated by the representatives of ACHS that the statements of Principal Secretaries, of Urban Development Department and Revenue Department before the NCZMA about the FSI are incorrect and contrary to their own records and need to be got verified from the State Authorities. NCZMA has considered the statement as well as the written documents submitted by the Principal Secretaries, of Urban Development Department and Revenue Department before taking its decision.

15. In view of the above facts, it is abundantly clear that the said project which is a residential building falling within the CRZ-II as claimed by the Urban Development Department, Government of Maharashtra vide their letter dated 4th January, 2003 attracts CRZ Notification, 1991 and had to obtain necessary prior clearances under CRZ Notification, 1991 from the concerned Authorities, including prior recommendations from MCZMA. Any violation of the CRZ Notification, 1991 attracts punitive action under Environment (Protection) Act, 1986. The NCZMA who are the statutory Authority constituted under the Act had examined the violation in its meeting held on 11.11.2010 and recommended for appropriate action by MoEF under the Environment (Protection) Act, 1986 against Adarsh Cooperative Housing Society.

III. Analysis of written submission made by ACHS vide their letter dated 10th January, 2011

16. ACHS as noted above had given a reply to the Show Cause Notice on 15th December, 2010. Subsequently, after the hearing, they had given more detailed reply (Annexure-XII) which had covered all the points and new points that emerged during hearing. The latest written submissions are examined below:

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(i) Item No.1-

Comments:- No comments since, ACHS are referring to the hearing on 4th January, 2011.

(ii) Item No.2, 3, 4, 5

Comments:- Dr. Nalini Bhat who heard the party on 4th January, 2011 had made it clear that the said hearing is the technical hearing which will be limited to the issues raised in the Show Cause Notice dated 12th November, 2010 issued to ACHS. During the hearing ACHS had dwelt upon the issues that were considered by the Maharashtra Coastal Zone Management Authority and National Coastal Zone Management Authority also including all the clearances and letters obtained from various Departments of the State Government of Maharashtra.

(iii) Item No.(a)(page 2)

Comments:- No comments since, MoEF is not aware.

(iv) Item No.(b)(i)(ii) and (iii) (page 3-4)

Comments:- No comments since, ACHS are listing out the various letters of the State Government with regard to the allotment of the property.

(v) Issue No.1 - Item (I)(A)(1)(i) (page 4-5)

Comments:- No comments, since, ACHS are quoting the provisions of Environment (Protection) Act, 1986 and Environment (Protection) Rule, 1986.

(vi) Item (I)(A)(1)(ii) (page 5)

Comments:- No comments, since, ACHS are quoting the CRZ provisions relevant to the Environment (Protection) Act, 1986.

Nalini Bhat

(vii) Item (I)(A)(1)(iii) and (iv) (page 5)

Comments:-No comments, since, ACHs are quoting the provisions of the CRZ Notification, 1991.

(viii) Item (I)(A)(1)(v) (page 5-6)

Comments:- The para 3(1) and 3(2) of the CRZ Notification, 1991 reads as follows:-

"3. Regulation of permissible Activities:

All other activities, except those prohibited in para 2 above, will be regulated as under:-

1) Clearance shall be given for any activity within the Coastal Regulation Zone only if it requires waterfront and foreshore facilities. (The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities, and the decision shall be conveyed within thirty days thereafter).

2) The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:"

Further, para 3(iiiia) of the CRZ Notification reads, "*Housing schemes in Coastal Regulation Zone area as specified in sub-paragraph of 2 of paragraph 6*".

From the reading of the above provisions it is clear that the housing projects do attract the CRZ Notification, 1991. Such housing projects are to be regulated in the CRZ area since, projects including housing have an impact on the coastal environment.

(ix) Item (I)(A)(1)(vi) (page 6)

Comments:-The statement is not correct, since, the clearances are accorded under Coastal Regulation Zone Notification to such projects which are listed under the said Notification.

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(x) Item (I)(A)(1)(vii) (page 6)

Comments:- The stand taken by ACHS is not correct. In accordance with the provisions of the CRZ Notification, para 3(2)(iii) the said project requires clearance under the CRZ notification.

(xi) Item (I)(A)(1)(viii) (page 6)

Comments:- The interpretation is not correct, since, the CRZ Notification, 1991 provided for regulating development of housing projects in CRZ area.

(xii) Item (I)(A)(1)(ix) (page 6-7)

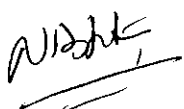
Comments:- The judgement quoted in the para pertaining to railways cannot be related or equated to a housing project in the CRZ area.

(xiii) Item (I)(A)(2)(i), (ii), (iii), (iv), (v), (vi) and (vii) (page 7, 8, 9)

Comments:- The averments made by ACHS are not correct. The housing projects are considered under the word "process" indicated under the Environment (Protection) Act, 1986. Hence, the CRZ notification, regulates the housing projects also which have impact on the coastal environment also.

(xiv) Item (I)(A)(1)(i)(a) (page 9-10)

Comments:- It is not clear as to when or whether ACHS had applied for CRZ clearance to the Urban Development Department, Government of Maharashtra. It is also not clear as to why the Urban Development Department had not forwarded such a proposal, if and when received, to the MCZMA, as had been done by it for other cases which require the Coastal Regulation Zone clearance. Further, it is also not clear as to why ACHS had not submitted the proposal or its copy directly to MCZMA which is a statutory notified body under Environment (Protection) Act, 1986 to consider projects under the CRZ Notification, 1991. It is the responsibility of the project proponent to submit the proposal to the concerned/relevant agencies/authorities and seek their permission/approval. Further, it is also not clear why the Urban Development Department had not forwarded the proposal to the MCZMA as was done for other cases which required the CRZ clearance.



(xv) Item (I)(A)(1)(b) (page 10)

Comments:- It may be seen from the above para that Shri P. V. Deshmukh, Deputy Secretary, Urban Development Department, Government of Maharashtra had sent a communication to the Ministry on 5th December, 2002 informing about the decision of the State Government, who had modified the sanctioned development plan of Backbay reclamation area reducing the width of 60mt. wide road to 18.40mt. road and its proposal to allot some land deleted from the road to the Cooperative Society subject to MoEF's CRZ Notification dated 19th February, 1991. In the letter Shri Deshmukh has claimed that the said area has all infrastructural facilities and is classified as CRZ-II and the said plot is situated between existing Backbay Reclamation, BEST Bus Depot and of existing road and the development is permissible as per the Development and Controlled Regulations prevailing as on 19th February, 1991. It is also stated in the letter that, "*considering these facts the State Government has decided to allot the plot under reference to ACHS for residential development*". A copy of the letter was marked to the Chief Promoter, ACHS, but no copy was marked to MCZMA. Hence, it is abundantly clear that neither the Urban Development Department nor the ACHS had submitted any proposal with regard to any residential construction to the said site.

This position was also informed by the Principal Secretary, Urban Development Department when he provided the facts before the NCZMA which met on 11th November, 2010.

"V. The Chairman invited Shri T. C. Benjamin, Principal Secretary, Urban Development Department to brief the Authority. Shri Benjamin informed that the land area for Adarsh Cooperative Housing Society (the Society) in BBR Block, No.6 admeasuring 3758.82mts² was fenced and was in physical position of the local military Authority. On 21st September, 1999 an application was filed by the Society for allotment of land for welfare of serving and retired personnel of Defence. On 18th January, 2003 the Revenue Department issued a Letter of Intent, in which one of the conditions imposed was to obtain the requisite clearance of MoEF. However, it is clear from records that this clearance has not been obtained by the Society from MoEF or from the MCZMA. Initially in 2000 the housing project was meant for nineteen civilian members and thirty one Defence members. In 2004 it was increased to seventy one members and in 2005 additional twenty nine were added thereby finally the membership became one hundred two members. The building has been provided electricity, water

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after occupation certificate issued by MMRDA. Shri Benjamin clarified that the proposal by UD Department in 2002/2003 sent to the Ministry was for the change of land use and no proposal pertaining to the housing project of the Society was ever sent to MoEF. He also informed that for reckoning FSI, the said plot of the Society included a revenue plot and also a plot belonging to BEST. The FSI had been increased by adding on the plot belonging to BEST and as on today the FSI utilized was 1.77 against the norm of 1.33, which is another violation of the Coastal Regulation Zone Notification, 1991, which cannot be rectified."

(xvi) Item (I)(A)(1)(c), (d) and (e) (page 11 -12)

Comments:- In para (d) the statement made, "MoEF had already delegated its powers to the Government of Maharashtra for undertaking development in Coastal Regulation Zone-II and accorded its no objection for the proposed construction to come up on the designated land as per 1991 Notification" is totally incorrect and mischievous statement. The Ministry's letter dated 11th March, 2003 is in response to the letter of Urban Development Department dated 5th October, 2002 in which NOC for development of plot was sought and not for construction. It is clear from the MoEF letter dated 11th March, 2003 that at no stage the Ministry has accorded NOC for the proposed construction. The letter only clarified the provisions of the CRZ Notification, 1991 as existed on 11th March, 2003. Therefore, the Urban Development Department's letter dated 15th March, 2003 which states, "The Ministry of Environment and Forests have communicated their no objection to allow the said residential development since it falls within the CRZ-II area which satisfies the norms of the notification dated 19th February, 1991 and amendments made therein made upto 21st May, 2002" is totally incorrect and is a total distortion of facts provided in the letter of MoEF dated 11th March, 2003.

(xvii) Item (I)(A)(1)(f) (page 12)

Comments:- Hence, the further clearances obtained based on the incorrect letter of Urban Development Department dated 15th March, 2003 are invalid and should be withdrawn by all the concerned agencies.

(xviii) Item (I)(A)(1)(g), (h), (i) and (j) (page 12-14)

Comments:- Not a correct statement. It is clear that Shri Deshmukh, Deputy Secretary Urban Development Department, Government of

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Maharashtra had not only issued a letter misinterpreting MoEF letter of 11th March, 2003 but had not kept the MCZMA in the picture, as was requisite.

(xix) Item (I)(A)(1)(k)(i), (ii), (iii), (iv) and (v) (page 14-16)

Comments:- ACHS in this para is challenging the fact that the CRZ Notification, 1991 does not provide for prior clearance. It only provides for obtaining clearance. This interpretation is not correct. Further, this statement also contradicts the para (1)(i) (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) wherein ACHS have claimed that they have obtained necessary clearances under the CRZ notification for the construction of the project.

All the projects which are considered and cleared under various notifications, including the CRZ Notification, 1991, issued under the Environment (Protection) Act, 1986 seek to assess the impacts prior to undertaking construction/operation so that necessary mitigative measures are incorporated well in advance before the project is initiated.

(xx) Issue(II) Use of FSI within the Coastal Regulation Zone limits - (1), (2), (page 16-17)

Comments:- As per para 6(2), sub-heading CRZ-II(i) provides for undertaking constructions on the landward side of the existing and proposed roads/existing authorized structures subject to existing town and country planning regulations including the existing norms of FSI/FAR. The Ministry vide its Office Memorandum dated 9th September, 1998 had clarified that the word "existing" means "as existed on 19th February, 1991" which is the date of issue of the Coastal Regulation Zone Notification, 1991. This clarification has been upheld in the Writ Petition No.1019 of 1999 vide Order 8th December, 1999 in the matter Builder Arch Vs Union of India in the High Court of Bombay. With regard to the consumption of FSI by ACHS the Principal Secretary, Urban Development Department and Principal Secretary, Revenue Department have stated in the meeting of the NCZMA that,-

"V. The Chairman invited Shri T. C. Benjamin, Principal Secretary, Urban Development Department to brief the Authority. Shri Benjamin informed that the land area for Adarsh Cooperative Housing Society (the Society) in BBR Block, No.6 admeasuring 3758.82 mts² was fenced and was in physical position of the local military Authority. On 21st September, 1999 an application was filed by the Society for allotment of land for welfare of

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serving and retired personnel of Defence. On 18th January, 2003 the Revenue Department issued a Letter of Intent, in which one of the conditions imposed was to obtain the requisite clearance of MoEF. However, it is clear from records that this clearance has not been obtained by the Society from MoEF or from the MCZMA. Initially in 2000 the housing project was meant for nineteen civilian members and thirty one Defence members. In 2004 it was increased to seventy one members and in 2005 additional twenty nine were added thereby finally the membership became one hundred two members. The building has been provided electricity, water after occupation certificate issued by MMRDA. Shri Benjamin clarified that the proposal by UD Department in 2002/2003 sent to the Ministry was for the change of land use and no proposal pertaining to the housing project of the Society was ever sent to MoEF. He also informed that for reckoning FSI, the said plot of the Society included a revenue plot and also a plot belonging to BEST. The FSI had been increased by adding on the plot belonging to BEST and as on today the FSI utilized was 1.77 against the norm of 1.33, which is another violation of the Coastal Regulation Zone Notification, 1991, which cannot be rectified.

VI. The Chairman requested Shri Kunte, Principal Secretary, Revenue Development Department, Government of Maharashtra to briefly state his views. Shri Kunte also clarified that the permission for change of land use was sought by the UD Department vide their letter dated 10th April, 2002. He said that there was a clear misinterpretation of the response given by MoEF dated 11th March, 2003 by the Deputy Secretary, Urban Development Department since this response clearly stated that the proposed construction may be taken up as per the Coastal Regulation Zone Notification, 1991, which meant that the proposal could be placed before MCZMA which at that point of time had all the powers to sanction the constructions projects in the Coastal Regulation Zone. He said that when the Society approached the Planning Authority (BMC/MMRDA) for permission for the buildings in 2005, 2007 and 2008 this aspect of getting the CRZ clearance from MCZMA/MoEF was overlooked. He concluded that building of Society had the following serious lacunae:-

- (i) Permission of the competent Authority under the Coastal Regulation Zone Notification had not been taken.
- (ii) The FSI allowed for the building exceeded the prescribed FSI for development in the CRZ."

W.S. Kunte

IV. DISCUSSION, CONSIDERATION AND REASONING

17. After careful consideration and analysis of the oral and written submissions including the arguments put forth by the project proponent, ACHS, and having regard to the above, the following issues arise for consideration.

I. Did the project in question attract and require CRZ Clearance?

- (i) That project proponents have urged that the CRZ Notification 1991 could only be interpreted to apply to industrial processes and not housing complexes. Therefore no clearance under the notification was required for the construction of the property in question.
- (ii) This interpretation put forth by the project proponent is wholly untenable and completely unsubstantiated. No such constraints were ever intended to be read into the CRZ Notification, 1991. This position is further supported by the Supreme Court repeatedly upholding the need for compliance with CRZ safeguards. Violations of FSI have also been treated seriously and the floors that were built in contravention of the FSI have been demolished previously. The Courts have also issued warnings to builders in this regard.
- (iii) When contrasted with above, the argument of the project proponents that the CRZ Notification does not apply to housing projects seems specious and may not be accepted as a valid ground to exempt them from the purview and applicability of the CRZ Notification 1991.

II. Did the Project Proponents seek and exhaust the procedure for the grant of environmental clearance?

- (i) Without prejudice to their first argument, the project proponents have argued that they did seek clearance under the CRZ Notification 1991. They argue that the process was duly exhausted and discharged by them when their land allotment proposal dated 3rd August, 2002 was forwarded to the MoEF on 5th February, 2002, by the Urban Development Department of the State.

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- (ii) Not only do the above actions constitute the entirety of the procedure exhausted by them for the obtainment of CRZ clearance, it also demonstrates a lack of diligence on the part of the project proponents to even ascertain the correct procedure established by law.
- (iii) As detailed in the preceding Sections, in March 2003, all constructions in the Coastal Regulation Zone area, that were allowed under the CRZ Notification 1991 and were in compliance with the approved Coastal Zone Management Plan of Mumbai, had to be considered by Maharashtra State Coastal Zone Management Authority (MCZMA). At that time, the approval authority was meant to be the State Government of Maharashtra.
- (iv) The Ministry had approved the revised Coastal Zone Management Plan of Mumbai on 19th January, 2000. To obtain clearance under Coastal Regulation Zone Notification, 1991 the project proponent needed to submit the proposal enclosing the details of construction, classification of Coastal Regulation Zone area in the requisite format and submitted to the concerned Coastal Zone Management Authority. In this case this proposal should have been submitted to the MCZMA or at the very least MCZMA should have been in the picture.
- (v) However this was never done and the project proponents instead construed and held out that the response of the MoEF dated 11.03.2003 had waived any necessity to obtain CRZ clearance. The clarificatory letter which has been quoted in preceding section categorically stated that:

"...This Ministry has already delegated the powers to the concerned State Government for undertaking development in Coastal Regulation Zone -II. Accordingly, the proposed construction may be taken up as per the Coastal Regulation Zone Notification, 1991 (as amended from time to time) and the approved revised Coastal Zone Management Plan of Greater Mumbai."[Emphasis Added]

- (vi) It was thus made amply clear that the power to grant clearances vested in the State Government. Nowhere in the body of the letter

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did the MoEF lead the project proponent to believe that the provisions of CRZ Notification 1991 are not attracted.

- (vii) Relying on the above letter the project proponents obtained some clearance from the Urban Development Authority. This absence of intent on the part of the project proponents to approach the MCZMA or to determine if the CRZ clearance had indeed been properly obtained is plainly evidenced by the complete lack of any further steps by them, following the MoEF response on 11.03.2003, to ascertain what the procedure that the MoEF referred to in their letter would be.
- (viii) In this light, this action of the project proponent is either an act of negligence or an act of gross and deliberate misrepresentation. Neither of these interpretations exonerates the project proponents from obtaining the CRZ clearance nor do they support the idea that the project proponents have sought and obtained CRZ clearance as prescribed by the law prevalent at the time.

III. Can the Project Proponents claim the FSI of the adjacent plot and build as per the combined FSI of the two plots? Also do the instant proceedings amount to second hearing on the same issue?

- (i) As stated above, an additional piece of adjoining land (which was BEST property) was allotted to the project proponents by the District Collector, Government of Maharashtra on 05.08.2005. The occupancy rights to the plot were given with a condition to keep it open for the purpose of BEST use. In other words, the project proponents could not build on the adjoining land.

With reference to the captive Floor Space Index, it is noted that the project proponents has proceeded to build their housing society, factoring in and adding to their limit, the increased FSI that would result from the larger plot size (including the adjoining BEST land). They have claimed that the FSI of the adjoining plot can be considered for the Society building as the plot should be considered as one whole unit. In this regard the relevant paras at para (xx) of Part-III of this Report may be seen. Constructions in the CRZ-II area can be taken up with the existing (as on 19.2.1991) Floor Space Index/Floor Area Ratio norms that were applicable under Town and Country Planning. The Principal Secretary, Urban

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Development Departments in his statement before the NCZMA meeting held on 11th November, 2010 had indicated that ACHS have utilized higher Floor Space Index of 1.77 against the norms of 1.33. Further, the Principal Secretary, Revenue, Government of Maharashtra in his statement before the NCZMA had indicated that, *"It was noted that this is a case of clear violation of the E(P) Act and the CRZ regulations thereunder by the Society on two counts, namely, by not obtaining prior permission under the Coastal Regulation Zone Notification, 1991 from the concerned Authorities and the use of higher FSI (1.77 against 1.33), in view of the additional FSI loaded from the adjoining plot of BEST, which plot has not been amalgamated with the Society's plot as on date."*

Both the arguments put forth by the project proponents fail to explain, much less justify, their actions, which cannot be considered a valid defense to these clear violations.

IV. Can the MoEF order a removal of the unauthorised structure in question?

In cases where no clearance is obtained the illegality obviously vitiates and extends to the entire structure and not just to the offending floors. This means that this issue cannot be resolved by separating the illegality from the main structure as the entire structure is in violation of the CRZ Notification, 1991.

18. The above discussions also mean that regardless of whether there has been a significant investment in the construction of the unauthorised structure, the same simply cannot be condoned.

V. Conclusion

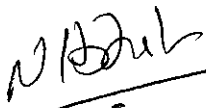
19. After taking into account the facts available with the Ministry, recommendations of the National Coastal Zone Management Authority in its meeting held on 11th November, 2010 the documents and statements made available by ACHS, the analysis of the documents and statements and the discussions, consideration and reasoning above, the following are the conclusions:-

- NB*
- (i) Adarsh Cooperative Housing Society have not obtained necessary prior clearance under the CRZ Notification, 1991 and its amendment

dated 9th July, 1997 from the State Government of Maharashtra after obtaining necessary recommendations from the Maharashtra Coastal Zone Management Authority which is a violation of the notification and the Environment (Protection) Act, 1986:

- (ii) The said structure which has been completed for residential purpose at Block-6, Backbay Reclamation Area, Near Backbay Bus Depot, Capt. Prakash Pathe Marg, Colaba, Mumbai-400005, A- Ward is unauthorized;
- (iii) The said unauthorized structure build on the above address should be removed in entirety and the area restored forthwith.

13th January, 2011


(Dr. Nalini Bhat)
Adviser