

ORISSA HIGH COURT, CUTTACK.

O.J.C. No.2816 of 2000

An application under Articles 226 & 227 of the Constitution of India read with sub section 3(1) (3) and 3 (2) and Rule 5 (3) of the Environment Protection Act.

**Bijaya Krushna Das, President,
Hotel Association of Puri**

... Petitioner

Versus

State of Odisha & Others

... Opposite Parties

For Petitioner

:

Sri Ashok Mohanty,
Senior Advocate,
Sri Sanjeet Mohanty,
Senior Advocate

For Opp. Party Nos.1 & 5

:

Sri Surya Prasad Mishra,
Advocate General

For Opp. Party Nos.2 & 3

:

Sri A. Bose,
Assistant Solicitor General

For Opp. Party No.4

:

Sri S.K. Padhi,
Senior Advocate
Sri Gautam Mishra

PRESENT :

THE HONOURABLE MR. JUSTICE BISWANATH RATH

Date of hearing : 20.01.2015 Date of Judgment : 20.02.2015

Biswanath Rath, J. This is a writ petition filed by the Hotel Association of Puri represented through its President one Bijaykrushna Das challenging the inaction of the State Government and Puri-Konark Development Authority in not allowing the construction activities within the prescribed norms of Coastal Regulation Zone -II hereinafter in short called as CRZ-II in the town of Puri after the Puri town has been declared to have come under the CRZ-II. The petitioner also assails the jurisdiction of the Puri-Konark Development Authority in so far as the provisions contained in Odisha Development Authorities Act, 1982 (in short hereinafter referred to “the ODA Act, 1982”) in view of the 74th Amendment to the Constitution of India which has taken away the powers of the development authorities, so far it relates to the provisions contained in the ODA Act. The case of the petitioner is that the members of petitioner have constructed their buildings as per the existing rules and guidelines at the relevant time as provided in Orissa Municipal Act, 1950 and Orissa Municipal Rules, 1953, Rule 531 (2) of the Orissa Municipal Rules 1953 which provides for height of ground floor and seven upper floors for non-residential buildings and ground floor and five upper floors for residential buildings whereas Rule 534-B(I) of Orissa Municipal Rules, 1953 allows for a plinth area up to three fourth i.e. a floor area ratio of 75% for the buildings in Bazar areas.

(2) The further case of the petitioner is that in course of time the Government of India in the Ministry of Environment and Forest Department vide Notification dtd.19.02.1991 in exercise of powers U/s.-3(1) & Section 3 (2) (V) of the Environment (Protection) Act, 1986 and Rule 5 (3) (d) of Environment (Protection) Rules 1986 declared Coastal stretches regulation zone and regulating the activities in the CRZ. Clause (II) of the said notification stipulates that within the framework of such approved plans, development and activities within the CRZ other than those covered in paragraph-2 and paragraph 3(2) of the above notification shall be regulated by the State Government, Union Territory Administration or the Local Authority as the case may be in accordance with the guidelines given in Annexures-I & II of the said notification.

(3) Classification of the CRZ has been made in Annexure-I and CRZ-II has been defined as the areas that have already been developed up to or close to the shoreline and for this purpose developed areas are referred to as that area within the Municipal limits or in other legally designated urban areas which is substantially built up and which has been provided within the drainage and approach road over the infrastructural facilities such as water supply, sewerage, drains. The norms of regulation of activities 6 (II) defines that the building shall be permitted neither on the seaward side of the existing road or roads purposed in the approved Coastal Zone Management plans of the area nor on seaward side of the existing authorized structures and the buildings permitted on the landward side of the existing and purposed road i.e. existing authorized structures shall be

subject to the existing local town and country planning regulation including the existing norms of FSI / FAR.

(4) It is further contended by the petitioner that the above notification was further amended by Government of India Notification dtd.9.07.1997 in clause 4 (2). The following has been substituted namely:

“Buildings shall be permitted only on the landward side of the existing road (or roads proposed in the approval coastal Zone Management plan of the area) on the landward side of existing authorized structures Buildings permitted on the landward side of the existing and proposed road / existing authorized structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of Floor space Index/ Floor Area Ratio.

Provided that no permission for buildings shall be given on landward side of new roads (except roads proposed in the approved Coastal Zone Management Plan) which constructed on the seaward side of an existing road.”

(5) It is next contended that when the matter stood thus the Government of Odisha in Forest & Environment Development Department notified the Puri Municipal area to come under CRZ (II) (Annexure-3). Consequent upon a direction of the Hon’ble Minister of Urban & Development Department, the Puri-Konark Development Authority after making some researches brought out a notification on 22.09.1998 in the Orissa Gazette in exercise of powers U/s.124 & 125 of the Orissa Development Authorities Act thereby prescribing the construction activities within 200 meters of High Tide Line requires a

maximum height of 15 meters within 200 meters and maximum 22 meters within 200 and 500 meters of High Tide Line (Annexure-5).

In the meanwhile, the Government of India published a notification dtd.16.11.1998 constituting the Orissa Coastal Zone Management Authority and such authority was vested with all powers for examination of proposals for changes / modification in classification of the Coastal Plan received from the Orissa State Government and making specific recommendations to the National Coastal Zone Management Authority.

(6) It is contended by the petitioner that after publication of the notification dtd.22.09.1998, the Puri-Konark Development Authority without any apparent reason published another notice on 19.06.1999 for cancellation of the notification dtd.22.09.1998 (Annexure-6).

(7) It is next contended by the petitioner that while the matter stood as above the Director H & UD Department by issuing a letter to the Vice Chairman-cum-Collector requested him to cancel the notification dtd.22.09.1998 and 19.06.1999 and from the pleadings made in the writ petition thereafter, it appears that both the Notifications have been recalled / cancelled. In the meanwhile a clarification was sought for from the Law Department about the competency of the Puri-Konark Development Authority to amend the existing planning norms and in the process Government of India in the Ministry of Environment and forest Department by letter dtd.9.12.1999 addressed to the Chairman, Orissa State Coastal Zone

Management authority regarding construction of building in the Coastal Regulation Zone-II area of Puri-Konark Development Authority stating therein the norms laid down by the State Government are contrary to the Coastal Regulation Zone Notification 1991 and categorically indicating therein that the FSI / FAR norms should be followed as existed on February, 1991.

(8) On the plea that there is no height restriction for construction of any structures / buildings towards landward side of the areas covered under the CRZ-II throughout India and particularly in view of the existing local town and country planning regulations including the height and floor area ratio, the restrictions on the height of the building as imposed by the Puri-Konark Development Authority runs contra the provision of the Orissa Municipal Act 1951 and Orissa Municipal rules 1953 regulating the permissible built up area which is also a claim consistent to the plea of the Puri-Konark Development Authority even in the Court of Appellate Authority as at Annexure-12& 13. The petitioner further claimed that the provisions governing field in this particular matter is Orissa Municipal Act, 1950 and Rules 1953 as prescribed under Chapter 17 of the Act, 1950 and chapter 14 of rules 1953.

(9) The petitioner next contended that the buildings of the members of petitioner's Association which were constructed prior to publication of the CRZ notification were approved as per the Rules in part 14 of the Municipal Rules 1953 i.e. Rules 531 (1) (2) & 534-B (1) & (2) and also had been approved by the 9th Trust Board in its meeting

held on 8.10.1984 and the buildings which were constructed after the CRZ notification, the plans were approved / recommended by the State Level Committee as per the same rules referred to hereinabove. The petitioner also further referring to a decision of the Appellate Authority dtd.26.04.2014 as appearing at Annexure-17 contended that the Appellate Court in deciding a matter has also expressed that the restriction imposed in the matter of height of the building is without any basis and norm should be fixed in connection with the CRZ-II area following the provisions contained in part 14 of the Municipal Rules taking the cue, from the letter of the PKDA as appearing at Annexure-18 obtained applying the RTI Act.

(10) Petitioner further contended that the Puri-Konark Development Authority intimates the parties following the norms of nine meters height and 33% floor area ratio (FAR) for the buildings within the CRZ II as a matter of practice, which is not permissible in the eyes of Law.

(11) The petitioner further took reliance of the letter dtd.19.12.1999 issued by the Ministry of the Environment and Forest, Government of India addressed to Orissa State Coastal Zone Management Authority and the Principal Secretary, Forest & Development Department, Orissa directed the Puri-Konark Development Authority to be strictly abided by the existing rules of building constructions (Annexure-19).

(12) Taking support of the provisions contained in the Article 234ZF of the Constitution of India following 74th Amendment Act, 1992, the petitioners submitted that the provisions contained in the Municipal Act being consistent, shall govern the field and the restrictions imposed by the Puri-Konark Development Authority in exercise of powers in Orissa Development Authority Act is inconsistent with the constitutional mandate relating to planning regulation as provided in the Article 243 W, Article 243ZF and the 12th Schedule of the Constitution. The powers vested in Puri-Konark Development Authority under the Orissa Development Authority Act is no more available to be exercised by the Puri-Konark Development Authority. Relying on a further CRZ Notification by the Ministry of Environment and Forest, Department of Environment Forest and Wild-life dtd.6.1.2011 clearly indicating that the Rules for regulation within CRZ-II will apply as it prevailed at the time of original CRZ Notification dtd.19.02.1991. The petitioner thus claimed the action of the Puri-Konark Development Authority as also otherwise bad in law.

(13) It is on these premises the petitioner claims that the action of the opposite party No.4 i.e. the Puri-Konark Development Authority in the matter of issuing notice for demolition to the members of the petitioners'-Association is not only without jurisdiction but also is in violation of the provisions contained in the Constitution of India and Municipal Act as well as rules therein.

(14) The impugned action of the Puri-Konark Development Authority is challenged mainly on two counts. First count is that the Puri-Konark Development Authority has no jurisdiction to interfere in the matter of construction and development of buildings may be for residential or non-residential areas in exercise of powers under the Orissa Development Authority Act secondly, even if the Puri-Konark Development Authority had jurisdiction in the above matter being an authority under the CRZ Regulation yet it had no authority to deviate building and construction norms as stipulated under the Municipal Act and Rules therein. In establishing the same Mr. Mohanty, learned Senior Counsel appearing for the petitioner's Association placed reliance on Section 273 A, 263 & 264, 531 as well as 534 of the Municipal Act, 1950, provision at Article 243W, 243ZF of the Constitution of India and Section 15 & 16 of the Orissa Development Authorities Act. Besides the above, Mr. Mohanty, learned Senior Counsel appearing for the petitioner's Association also made reference to certain documents such as CRZ Notification dtd.19.02.1991, 9th Trust Board Meeting of the PKRIT on 08.10.1984. Notification dtd.01.04.1997 bringing in Puri-Konark Development Authority to force, notification dtd.27.09.1997 by which the Puri-Konark Development Authority adopted Bhubaneswar Development Authority Regulation, 1993. Notification dtd.21.07.1997 bringing Puri Municipality under CRZ-II, the letter dtd.09.12.1999, a letter from MOEF to the Chairman OSCZMA and the Government of Odisha indicating that FSI/FAR norms should be followed as existed on 19.02.1991, Puri-Konark Development Authority in response to a query of the Senior Scientist of Forest and Environment Department,

Government of Odisha on existing the local town and country planning regulations by letter dtd.13.09.2006 and the reply in response to the above query dtd.09.03.2007, a letter dtd.28.10.2009 from the Department of Forest & Environment, Government of Odisha to Puri-Konark Development Authority clarifying to abide by rules and norms prevalent in 19.02.1991. Mr. Mohanty, learned Senior Counsel also referred to specific stand taken by the Puri-Konark Development Authority in Appeal Case No.78 of 2003 vide an order dtd.26.04.2014 passed by the Appellate Authority in the above appeal.

(15) During course of argument Mr. Mohanty, learned Senior Counsel also referred to citations as follows:

2007 (14) SCC 439, 1983 (3) SCC 579, 1992 AIR (SC) 711, 2007 ITR 322, 2010 (7) SCC 129 and finally relying on the Gazette Notification at 30th March of 2010. Based on the above submission and reliance. Mr. Mohanty, learned Senior Counsel submitted that Puri-Konark Development Authority is not only bereft of jurisdiction in the particular issue but has also exceeded in its power in dealing with particular issue.

(16) Petitioner further contended that in view of the provisions contained in the Municipal Act and Rules, the provisions under the Central Legislation under the CRZ Notification and in view of the above series of correspondences indicating that the provision contained as on 19.02.1991 submitted that even though the Puri-Konark Development Authority became an instrumental of the Orissa Development Authority Act its role was to function as an

implementing agency and implementing the provisions contained in the Municipal Act and Rules therein. It has no authority of creating its own norms and further after the Gazette Notification dtd.30th March, 2010, it has totally lost its independent existence in the particular area. The impugned action under Annexure-14 is all contrary to the statutory provision contained in Municipal Act, Rules therein and the restrictions imposed in the CRZ Notification. Thus, submitted that the impugned actions are not only without jurisdiction but also contrary to law.

(17) Petitioner has strongly placed reliance on the Constitutional provision under Article 243 W and 243 ZF vis-a-vis the provisions contained in the 12th scheduled of the Constitution of India and submitted that in view of 74th amendment of the Constitution and bringing in provisions as contained in Article 243 W and 243 ZF, the State has endowed the power particularly the performance, functions and the implementation of scheme as may be entrusted to them including those in relation to the matters listed in the twelfth schedule of the Constitution. Since dealing with Urban Planning including Town Planning the provisions contained in the Municipal Act as well as the Municipal Rules is maintained in the circumstances P.K.D.A. is not authorized to act in accordance with the provisions as contained in ODA Act.

(18) The opposite party No. 4 on its appearance filed a counter affidavit inter alia contending therein that the allegation leveled against the P.K.D.A. are incorrect. The role of the P.K.D.A is to curve the unauthorized construction in implementation of the

Coastal Regulatory Zone norms. The allegation that the State Govt. as well as P.K.D.A. is not permitting construction activities within the prescribed norms of CRZ-II is not correct. P.K.D.A. was directed by the competent Authority to visit some coastal cities of India to compare and give report relating to norms/ stipulation regarding construction activities followed by different authorities. It is as a consequence of which P.K.D.A. published a notification in Odisha Gazette under Sections 124 and 125 of Odisha Development Authorities Act modifying norms for construction activities within 200 meters of high tide line from 200 meters to 500 meters of high tide line. The notification published on 22.09.1998 was superseded by another Notification dated 19.06.1999 on technical ground as there was mistake in the earlier notification. It is a fact that the P.K.D.A. was directed to cancel the Notification made calling for changes in the parameters of development in CRZ-II in pursuance of request of Ministry of Environment and Forests (MOEF). P.K.D.A. admitted that the power to frame, modify and amend norms with CRZ is vested with Coastal Regulation Management Authority of Odisha as well as with the Govt. of India. P.K.D.A. also admitted that it is permitting construction in pursuance to the provisions introduced by Ministry of Environment and Forests (in short' the MOEF') and Notification No.SO-114(E) dated 19.02.1991 and subsequent amendments thereafter. P.K.D.A. contended that the maximum ground coverage permissible is 33% of Plot area with Height restriction of 9 meters of FAR-I. Though the P.K.D.A. has formulated its own building regulation under the provisions of the Act but the same is in draft stage. Similarly, a Draft Sea Beach Development Plan was also

prepared and the same also remained not finalised. P.K.D.A. contended that the prescription of 33% of ground coverage and 9 meters of high FAR-I in CRZ-II of Puri has been made to maintain low density development thereby reducing the pressure on existing infrastructure such as drainage, sewerage, electricity, water supply etc. Before hearing of the writ petition taken place, the P.K.D.A. filed another counter affidavit claiming it to be a counter affidavit in connection with W.P.(C) No.20958 of 2014 a writ petition from amongst another batch of writ petitions filed challenging the action of the P.K.D.A. after bringing out a Gazette Notification under Section 111 of Odisha Development Authorities Act thereby taking out the authority of the Development Authorities Act in the matter of building plan developments and putting back the said authority on the Municipalities. In view of the facts and circumstances of the present case, I do not feel that the said notification has anything to do with the P.K.D.A. as it remains as an implementing agency under the Coastal Zone Regulation-II. Hence, I do not want to refer this counter in the present case, as I am of the view that the said Gazette Notification has nothing to do with the case at hand and it has nothing to do with P.K.D.A. which no more remains as an Agency / Instrumentality under the O.D.A. Act.

(19) Similarly, opposite party no.5 representing the Forests and Environment Department, Government of Odisha filed a counter affidavit inter alia contending therein that the Ministry of Environment and Forests, Government of India in exercise of powers conferred under Sections 3(1) and 3(2)(v) of the Environment

(Protection) Act, 1986 issued a notification vide S.O.114(E) dated 19.02.1991 imposing restriction on certain activities in the Coastal Regulation Zone. As per the said notification, the Coastal States were required to prepare Coastal Zone Management Plans (CZMP) identifying and classifying CRZ Areas within their respective territories and obtained approval of the Central Government in the Ministry of Environment and Forests and in this connection all Coastal States were directed to submit their CZMPs to the MOEF by 30.06.1996 following a direction of the Hon'ble Supreme Court dated 18.04.1996 in W.P.(C) No.664 of 1993. It also submitted that the Government of India in the MOEF had also constituted Task Force to examine the CZMP of Coastal States. The CZMP of Odisha was discussed by the Task Force in the MOEF on 3rd and 4th of July, 1996. In the meeting the Commissioner-cum-Secretary of HUD Department and Director, Town Planning, Odisha suggested that the area from Mangala river to Balukhanda Reserve Forests of Puri Municipality to be designated as CRZ-II under the Master Plan of Puri. After lot of consultation the MOEF conveyed its approval to the CZMP of Odisha, subject to incorporating contains/modification vide their letter No.J-17011/11/92-IA-III dated 27.09.1996. As a consequence of which a committee has been constituted under the Chairmanship of Chief Secretary to identify and demarcate CRZ-II thus within the proposed CRZ-II areas. Considering the suggestions and recommendations of the committee, the State Government in the Forests and Environment Department in their letter dated 21.07.1997 (Annexure-3) to the writ petition designated certain Coastal Zone of the State of Odisha CRZ-II areas including Puri Municipality Area

pending clarification from Government of India. Following a notification dated 19.02.1991, the committee has already identified and demarcated the CRZ-II area of Puri. It is next contended by the opposite party no.5 that the illegal notification by the P.K.D.A. was cancelled being contrary to the provisions contained in notification dated 19.02.1991. The opposite party no.5 further submitted that as per the norms for regulation of the activities of CRZ-II there is no provision for giving any permission for construction of the area within 200 meters and between 200 – 500 meters of the high tide line, on the other hand, the said provision meant for CRZ-III and contended that the Puri Urban Area has been designated under CRZ-II and claimed that the contention of the petitioner in Paragraphs-21 to 26 in this regard are confusing. The opposite party no.5 further submitted that pursuance of sub-clause (2) of Clause-6 of Annexure-I to the Notification issued under S.O. No.114 (E) dated 19.02.1991 of the Government of India, the State Government in Forests and Environment Department vide their Resolution No.3849 dated 26.09.2000 declared the P.K.D.A. as the Regulatory Authority for granting permission for regulating construction activities and according clearance of CRZ areas of Puri as demarcated by MOEF and the Committee constituted by the State Government.

(20) The opposite party no.5 further contended that as Puri Urban Area is categorized as CRZ-II, the existing Local Town Planning Regulations including the existing norms of floor space indicator (FSI)/Floor Area Ratio (FAR) are applicable for buildings permitted on the land ward site on the existing and proposed road /

existing forest structures and contended that the allegations of the petitioners in this regard are not correct. The opposite party no.5 also submitted that following the provisions contained in the notification dated 19.02.1991 of MOEF and approved CZMP building construction shall be permitted only on the landward site of the existing road or proposed roads in the approved CZMP subject to the existing Local Town Planning Regulation including the existing norms of FSI/FAR comparison of existing building regulations of Chennai, Mumbai etc. with Puri may not be justified in view of Notification of Government of India dated 19.02.1991. In paragraph 15 at Page 8 of their counter it has categorically submitted that following the stipulation in the MOEF Notification dated 19.02.1991 P.K.D.A./State Government has no power to modify/alter the CRZ norms/CZM plan as construction within 200 meters from H.T.L and within 200 meters to 500 meters from H.T.L and modification of FSI/FAR as on 19.02.1991 is not permissible under CRZ. Consequently, the opposite party no.5 also claimed that the notices issued vide Annexures-5 and 6 to the writ petition by the P.K.D.A are irregular and unlawful. While concluding its objection, it is submitted that the MOEF and the State Government shall be responsible for monitoring enforcement of the provisions of CRZ Notification and CZM Plan and that Odisha State Coastal Zone Management Authority has been constituted by the Central Government in the MOEF empowering for proposal for changes or modification in the CZM Plan received from the State Government and making specific recommendation to the National Coastal Zone Management Authority thereafter.

(21) For better appreciation of the case, it is relevant to take note of Article 243W and 12th Schedule of the Constitution of India which runs as follows:-

“243-W. Powers, authority and responsibilities of Municipalities, etc-

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities

conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

⁷⁶[TWELFTH SCHEDULE
(Article 243-W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purpose.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.]”

It is under the above provision of the Constitution, Municipal Act, 1959 has come into existence and followed with the Municipal Rules and upon creation of Municipalities, it functions in the matter of Buildings Regulation etc. following Rules 531 and 534 of the Municipal Rules, 1953.

(22) In view of 74th Amendment of the Constitution of India there is no doubt that for purpose of Urban Planning including Town Planning needs to be done following the provisions contained in Municipal Act and Rules therein. Further even after the Puri Municipal area is brought under Coastal Regulation Zone the Notification vide Annexure-1 also makes it clear that Law as existed in February, 1991 will be the law for all purposes i.e. law to be followed as prevailing in the field will be Municipal Act and Rules therein.

Similarly, from the point of view of 243 ZF which reads as follows:-

“243-ZF. Continuance of existing laws and Municipalities-
Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State

immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

The opposite parties are unable to focus on any inconsistency in the prevailing Law under the Municipal Act or Rules therein in this particular matter. Further even if there existed any inconsistency, it is for the P.K.D.A. framed therein to bring any such inconsistency to the notice of the competent authority like Coastal Zone Authority Management for bringing any amendment in the existing law. I do not feel any such exigency in the present case.

Under the circumstances, I do not feel attraction of Article 243 ZF of the Constitution to the present case under any circumstances.

(23) From the above, it is amply clear that P.K.D.A. is merely an Agency or body to function under the Coastal Regulation Zone and will have to work following the provision contained in the Coastal Regulation Zone as admissible vide notification dtd.19.02.1991 at Annexure-1.

(24) There is no dispute at the Bar that by notification dtd.19.02.1991, the Government of India has already declared the Coastal stretches as the Coastal Regulation Zone (CRZ). There is also no denial to the fact that under clause 3 (II) of the said notification, it has already been stipulated that within the framework of such approved plans and development activities within the CRZ covered in para-2 & para-3 (2) shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexure-I & II of the notification.

(25) Further there is also no denial to the fact that the Government of India by notification dtd.9.07.1997 has brought out an amendment as quoted hereinabove in para-4. Further there is no denial to the fact that the Government of Odisha in the Forest & Environment Department already notified the Puri Municipal area to have already come under the CRZ-II as available under Annexure-3. It is under these premises after the Puri town has been brought under

CRZ-II and after the PKDA being treated as an authority under the notification dtd.9.07.1997 having jurisdiction to decide over the buildings planning particularly in respect of the Puri town coming under the Puri Municipality, it became an authority under the Environment (Protection) Act, 1986 and it has to act following the provisions contained in the Environment (Protection) Act 1986, the Environment (Protection) Rules 1986 and the provisions as contained in the Orissa Municipal Act and the Rules therein in view of the specific provision as contained in Annexure I and Annexure II as available at page 32 of the brief in relation to the CRZ-II. Its activities on the buildings shall be subject to the existing local towns and country planning regulations including the existing norms of FSI / FAR. Being an authority under the Central Act hereinafter called as E.P. Act so far as its action relates to Puri town coming under the Puri Municipality are to be covered under the above provision and it has no role to play taking the help of provisions from the Odisha Development Authority Act consequently any action undertaken by the Puri-Konark Development Authority under the provisions of Section 15, Section 16 or Section 91 & 92 of the Odisha Development Authority Act are per se illegal and such action cannot be sustained in the eye of law.

(26) From reading of the Annexure-10 a letter from the Government of India, Ministry of Environment & Forest addressed to the Chairman, Odisha State Coastal Zone Management Authority regarding construction of the buildings in the Coastal Regulation Zone-II area of Puri-Konark stretches, it has been made clear that as

per the CRZ-II the FSI/FAR norms should be followed as existed on February, 1991.

It is under these circumstances any action undertaken by the Puri-Konark Development Authority in the matter of any illegality or deviation in the building planning either residential or non-residential ought to be as per the FSI/FAR norms as existed on February, 1991. Therefore it is incumbent upon the Puri-Konark Development Authority to exercise their power in the matter of deviation in the planning either in the residential construction or non-residential construction following the provisions as available on 19th February, 1991. As such there is no application of either Orissa Development Authorities Act or the circulars issued in that connection from time to time.

(27) Further in view of Hon'ble Apex Court judgment as reported in AIR 1995 (SC) 2252, all the Coastal States of India is required to meticulously follow the CRZ Notification dt.19.02.1991, which includes the powers of approval of plans for the construction of the buildings in the CRZ areas.

(28) A decision as reported in (2007) 14 SCC 439, between Suresh Estates (P.) Ltd. Vs. Municipal Corporation, Mumbai the Hon'ble Apex Court in paragraph-19 held as follows:

“the word “existing” as employed in the CRZ notification means the town and country planning regulations in force as on 19-02-1991. If it had been the intention that the town and country planning regulations as in force on the date of the grant of permission for building would apply to the

building activity, it would have been so specified. It is well to remember that CRZ notification refers also to structures which were in existence on the date of the notification. What is stressed by the notification is that irrespective of what local town and country planning regulations may provide in future the building activity permitted under the notification shall be frozen to the laws and norms existing on the date of the notification.

It is therefore amply clear that Law for all practical purposes shall be the Law as existed on the date of Notification dtd.19.02.1991.

(29) The CRZ Notification vide Sl.19 (E) Ministry of Environment & Forest, MOEF, Department of Environment Forest and Wildlife dtd.6.01.2011 at clause 8(i) reads as follows :

“Norms for regulation of activities permissible under this notification,-

- (i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-

Note:-The word existing use hereinafter in relation to existence of various features or existence of regularization or norms shall mean existence of these features or regularization or norms as on 19.02.1991 wherein CRZ notification, was notified.”

Above provision made it clear that the development or construction activities shall be regulated by Coastal Zone Management Authority and in this context the P.K.D.A. is only to act as an implementing agency.

(30) In view of any finding hereinabove particularly holding that Puri Municipal Area having been brought within the CRZ-II as per letter dtd.21.07.1997 issued by the Forest and Environment Department, Government of Orissa vide Annexure-3 of the writ petition, further in view of CRZ notification dtd.19.02.1991 vide Annexure-1 specifically indicating following of the Law relating Town and Country planning as existed on 19.02.1991 including existing norms on FSI / FAR in force as on 19.02.1991, further P.K.D.A. being appointed as an implementing Agency of the CRZ II became a creature of Environmental Protection Act and looking to Law as existed on 19.02.1991 was the Orissa Municipal Act, 1950 and Municipal Rules, 1953 therein. Norms with regards to FSI and FAR for building in such Municipal Area are governed by Rule 531 and Rule 534-B of the Municipal Rules, 1953 and under the circumstances, I find the approval vide Annexure-14 runs contrary to the above.

(31) Law is well settled that Law made by Central Legislation shall prevail over the State Legislation. In this case P.K.D.A. being an instrumentality of Environment Protection Act being a Central Legislation cannot be overridden by the Orissa Development Authority Act which is a State Legislation. Law as referred to herein below has settled this position.

AIR 1983 (SC) 150 in the case of T. Barai v. Henry Ah Hoe

(2011) 3 SCC 139 Offshore Holdings Pvt. Ltd. v. Bangalore Dev Authority

AIR 2010 KAR 124 Pushpalatha v. V. Padma.

AIR 2012 BOM 89 Mohan Sudame v. State of Maharashtra

(32) Consequently, I find the impugned order vide Annexure-14 being an action contemplated under Sub-section 3 of Section 16 of the Odisha Development Authority Act, the same is illegal being without competency and thus the same is hereby quashed. It is hereby made clear that in view of my findings that the Puri-Konark Development Authority being an implementing agency under the E.P. Act, 1986 needs to act following the provisions under the CRZ Notifications.

In the event any dispute exists, it is open to the Puri-Konark Development Authority to take up the issues involving the members of petitioner-association in strict terms of the CRZ notification and the particular Act and Rules referred to therein. In view of the fact that Annexure-14 is set-aside it is open to the Puri-Konark Development Authority to restart the proceeding and to decide the particular case strictly following the CRZ Notification and the provision of Law as referred to therein and after providing opportunity of showing cause and hearing.

(33) On the submission of the petitioner that the action of the opposite party No.4 in the matter of notice of demolition to the members of the petitioner Association being contrary to the provisions set in the Constitution of India and also in the Municipal Act and Rules therein, I am of the view that since no such order has been impugned in the present writ petition, this Court cannot enter into any such arena. However, since I have already held that the Puri-Konark Development Authority is to act under the CRZ Notification and following the provisions as contained in the Municipal Act and Rules

therein, this Court expects that P.K.D.A. will act strictly in terms of the Municipal Act as well as Municipal Rules therein and in strict terms of the CRZ Notification and the amended notifications thereon.

(34) Similarly coming to the relief as claimed by the petitioner so far it relates to challenge concerning Annexure-24 & 25, the document vide Annexure-24 is a press note dtd.24.05.2000 released through Gazattee notifying the people in general regarding the demarcation / reservation of about 705 Acre of land at Chakratirtha and Baliapanda located at two opposite ends of the town and thereby warned the local persons from dealing the particular lands in any manner and by further notifying that the construction over this area shall be treated as illegal. Similarly Annexure 25 is a press note in Orissa Gazettee identifying the plots involved in the reservation of 705.00 Acre and as published on 27.11.2000. These two notifications appear to have been made by the Housing and Urban Development Department. In view of my detailed observations made hereinabove, I am to hold that the State Government in its H&UD Department has absolutely no jurisdiction in such matters and that the Coastal Zone Regulating Authority is competent in this regard. Therefore the notifications / press notes vide Annexures-24 & 25 basing on the decision of H&UD Department of Government of Odisha are passed without authority and hence both the notifications / press notes are hereby set-aside.

(35) The writ petition succeeds to extent directed hereinabove.
However, there shall be no order as to cost.

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Biswanath Rath, J.

Orissa High Court, Cuttack.
The th day of February, 2015.