

BEFORE HON'BLE THE NATIONAL GREEN TRIBUNAL**WESTERN ZONE, BENCH PUNE****Appeal No. 43 of 2022 (WZ)**

Dr. Kirit Jayantilal Somaiya ...Applicant/Intervener

IN THE MATTER OF:

Balaji Tirupati Cinemas ...Appellant

Versus

Maharashtra Coastal Zone Management

Authority (MCZMA) &

Mumbai Corporation of Greater Mumbai

(M.C.G.M) ... Respondents

ALONG WITH**Appeal No. 44 of 2022 (WZ)**

Dr. Kirit Jayantilal Somaiya ...Applicant/Intervener

IN THE MATTER OF:

Expression Studio ...Appellant

Versus

Maharashtra Coastal Zone Management

Authority (MCZMA) &

Mumbai Corporation of Greater Mumbai

(M.C.G.M) ... Respondents

COMMON WRITTEN SUBMISSIONS**ON BEHALF OF THE INTERVENER**

1. The Intervener submits at the outset that the Intervenor is the primary complainant on the basis of whose complaints the authorities have been compelled to address the present issue. As more particularly described hereinbelow the deliberate delays and wrong submissions on behalf of the Respondent authorities are in order to aid the Appellants case which has no standing on merits at all. The Intervener states that the Intervention ought to

NGT/WZ/PUNE/INWARD/271/2023
Date 27/08/2023
Sign. 

be allowed and these submissions ought to be considered while passing any orders by the Hon'ble Tribunal in order to bring on record the true and correct facts and to consider the correct propositions in law before taking any decision with respect to the said appeal.

Submissions on law

2. The only argument advanced by the Appellants is that no hearing/opportunity was accorded to the Appellants prior to passing of the impugned minutes, however, the same submission holds no water due to the following:
 - a. The impugned MCZMA minutes contains an administrative decision on whether or not a fresh application can be considered and not to per se take action on its own accord and therefore no show cause was required to be issued or hearing required to take place. Reference is requested to the decision in the matter of *Karnataka Public Service Commission and Ors. vs B. M. Vijay Shankar and Ors. (1992 AIR 952)* wherein it was held that in a purely administrative action where no direct punishment for misconduct was awarded no prejudice would be caused and therefore such action cannot be set aside for violation of principles of natural justice.
 - b. The impugned minutes do not decide on any adverse action and simply seek compliance of the conditions of the original permission granted by the MCGM and therefore it would not have been of any material consequence to have or not to have issued a show cause notice to the Appellant. It is well settled law that mere formality can not be the basis of setting aside any order or directions if no prejudice is made out.
 - c. The MCZMA have simply rejected the application of the Project Proponent since there is ex-facie no compliance

with the condition to restore the site after 6 months. From the application for further extension of permission itself is on the basis that these structures continue to be in existence and therefore from the applications themselves it is an admitted fact that the site has not been restored on expiry of the said period. Thus on this basis the permission sought is rejected. It is a well settled law that decision on such administrative applications are not hearings and therefore do not require any particular show cause notice.

d. In fact the role to issue show cause notices and take relevant action is that of MCGM. In fact it is recorded in the impugned minutes that MCGM has already initiated action. The MCZMA authority was not tasked with monitoring the adherence to the conditions of permission and the same was given to the MCGM and therefore there is no question of having issued show cause notice for violation of the same by MCZMA. Further it appears that the task to issue show cause notices was that of the MCGM who has already issued the relevant notices. Thus on basis of these notice it cannot be said that opportunity was not granted.

3. The Intervenor submits that Section 20 of National Green Tribunal Act 2010 ("NGT Act") states -

"20. The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principal."

As per these guidelines for deciding matters the present case ought to be dismissed on merits as the Appellants have been unable to show how their actions are in consonance with these principles.

4. The Intervener ought to bring on record the true and correct facts of what has transpired in order to paint the correct picture for the

Hon'ble Tribunal with regards to the blatant violation of law and directions and deliberate support of government authorities to aid the appellants.

Facts in Brief:

5. The Intervener submits that on 24.02.2021 MCZMA granted permission to 3 studios - namely, Balaji Tirupathi Cinemas, Bhatia Bollywood Studios and Expressions Studios for making temporary film sets. Various other permissions were also granted on these lines and many other studios were constructed. This permission expired automatically in 6 months.
6. The Intervener submits that as per the permission various conditions were imposed including:
 - a. Temporary sets will be only in the CRZ-II area and not CRZ-I area
 - b. After 6 months site shall be restored to original condition (i.e. removing sets) and a certificate confirming the same shall be issued by MCGM
 - c. After such restoration if further permission is required the same will be sought afresh

This was done in similar fashion to film sets allowed on Marine Drive, Gateway of India, Bandra Worli Sea Link, etc.
7. The Intervener submits that as per affidavit of MCGM, MCGM has granted permission to the studios on 02.03.2021 periodically renewed and last permission was granted on 21.06.2022 up to 12.10.2022. These extended permissions of MCGM are completely illegal since they are without MCZMA permission and proves that they were supporting the continuation of these illegal studios.
8. The Applicant submits that the construction on site is in complete violation of the permissions granted since:

- a. Instead of temporary sets full-fledged permanent studios with steel and Concrete were erected based on these permissions and too various constructions were in CRZ-I area as well as Mangroves Buffer Zone.
 - b. After expiry of 6 months these Permanent Studio structures continues to occupy the site
 - c. Only after various complaints were made by Shri. Kirit Somaiya and site inspections done the studio owners put up for extension of permission without first even removing the existing structures.
9. The Intervener further submits that the MCGM has in fact conducted an internal enquiry and based on which they have decided to initiate disciplinary action against their own officers. This fact has been suppressed by the MCGM while filing their affidavit. A copy of the internal correspondence evidencing the same is annexed hereto and marked as **Exhibit- "A"**.
10. The Intervener further submits that the stay granted by the Hon'ble High Court is purely on basis of procedure and due to the deliberate delay / inaction from Respondent Authorities in order to protect the Appellants. This can be ascertained from what is stated hereinbelow.

List of dates and events of litigation and protection of Courts due to illegal action/inaction from MCGM and MCZMA:

Date	Particulars	
30.08.2022	The studio owners challenged the minutes before the Hon'ble High Court vide multiple Writ Petitions (lead Petition - WPL/27784/2022 - Balaji Tirupathi Cinemas vs MCGM & Ors.). Petitioners made a wrong statement that MCZMA clearance for extension of permission is pending and that corporation has sent reminders for the	HC Order 30.08.2022

	permission (till date no such reminders are brought on record) and the Corporation wrongly agreed to this and so ad-interim protection was granted. In fact MCZMA did not appear.	
12.09.2022	MCZMA expressly rejected the extension of permission and in fact directed to take further steps against illegal studios	MCZMA minutes 12.09.2022
16.09.2022	When the matter came up for hearing again on 16.09.2022 this fact was suppressed by authorities and the ad-interim protection continued.	HC Order 16.09.2022
18.10.2022	The studio owners thereafter proceeded to challenge the MCZMA minutes dated 12.09.2022 before the National Green Tribunal and also filed fresh Writ Petitions (lead Petition WPL/33162/2022) and on the basis of the previous protection the ad-interim protection was continued. Even here as per appearances MCZMA was not present.	HC Order 18.10.2022
14.11.2022	HC disposed off Writ Petition due to pendency of NGT appeal and directed NGT to hear the matter finally and due to previous directions protection was continued till pendency of the NGT appeal. Even here MCZMA did not appear and MCGM practically assisted the Petitioner.	HC Order 14.11.2022
13.12.2022	Matter came up before NGT and corporation submitted that though reply is ready due to lack of approval the same could not be filed, so hearing could not take place and protection continued. The next date being 23.01.2023	NGT order 13.12.2022

11. It is very apparent from above that the protection from action (which is not a stay but only protection since NGT appeal is pending) has been granted due to support of MCGM/ Corporation which has favored the illegal studio owners and non-appearance by MCZMA. Even before the NGT the corporation has delayed the filing of reply so that matter gets delayed and protection continues. Thus such stay which is only due to deliberate laches on behalf of the government authorities on not on merits ought not to be continued.

Dated this th27 day of MARCH, 2023

Place - PUNE



ADV. ZARNA MEHTA

Advocate for Intervener

ilb M/S SOLICIS LEX.