

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE, BENCH PUNE
MEMORANDUM OF APPLICATION
UNDER SECTION 14, 15, 18, 20 & 23 OF NGT ACT, 2010
r/w RULE NO. 24 OF NGT (P&P) RULES, 2011
ORIGINAL APPLICATION NO. 107/2022 (WZ)**

In the matter between:

Mr. Irba Mashnaji Konapure & Anr. ... Applicants

Versus

Union of India & Ors. ... Respondents

**COMPILATION OF JUDGMENTS OF HON'BLE BOMBAY HIGH COURT
(CIVIL) ON BEHALF OF RESPONDENT NO. 11**

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VAT

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No.655 OF 2014

Glomore Constructions and Ors. ...Petitioners
Vs.
The Union of India and Ors. ...Respondents

Mr.Virag Tulzapurkar, Senior Counsel with Mr. Rafi Patni with Ms.
Anjali S. Mohan i/b. Wadia Ghandy & Co. for Petitioners
None for Respondents

CORAM : V. M. KANADE &
A.K. MENON, JJ.

DATE : MARCH 24, 2014

P.C.

1. Heard the learned counsel appearing on behalf of the Petitioners. None appears on behalf of the Respondents, though they were served. Two affidavit of services are taken on record.

2. The grievance of the Petitioners is that though the Petitioners propose to construct the buildings, which are less than 20000 sq.mtrs. and though this Court, in number of cases, has held that for construction of buildings, which are below 20000 sq.mtrs., environmental clearance is not required, even then, Respondents State have issued a stop work notice, directing the Petitioners to stop the construction work of the buildings which are in project and are admittedly below 20000 sq.mtrs. It is submitted that the

Petitioners have given an undertaking that they shall not carry out construction work of the buildings beyond 20000 sq.mtrs. It is submitted that in view of this, the impugned notice which has been issued by Respondent No.3 may be stayed.

3. This Court in several petitions, has already held that environmental clearance for the purpose of construction of buildings below 20000 sq. mtrs. is not required and the said orders have not been challenged by the Government in the Apex Court. A Notification, accordingly, has been issued by the State Government recently, taking into consideration, the law laid down by this Court. In spite of that, the impugned notice has been issued by Respondent No. 2. Prima facie, therefore, case is made out for grant of ad-interim relief.

4. Ad-interim relief is granted in terms of prayer clauses (j) and (k). Undertaking given by the Petitioners in Ground (M) is accepted. The Petitioners, however, shall file a further undertaking that they shall not carry out any construction beyond 20000 sq.mtrs., within one week. It is clarified that the Petitioners may be permitted to carry out construction of the free sell component of the buildings in the said project.

5. Issue notice to Respondent Nos.1 to 7, returnable on 28.4.2014. Humdust permitted.

[A.K. MENON, J.]

[V. M. KANADE, J.]

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION LODGING NO.470 OF 2013

M/s.Saumya Buildcon Pvt. Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Dr. Milind Sathe, Senior Advocate with Mr. Vishal Kanade and Mr. Hemant Shah i/b. IC Legal and Mira Lalani for petitioner.

Mr. N.D. Sharma with Mr. H.V. Mehta for respondent No.1.

Mr. Niranjana Pandit, AGP for respondent State.

Ms. Sharmila Deshmukh for respondent MCZMA.

Ms. Sharmila Modle for respondent B.M.C.

**CORAM : MOHIT S. SHAH, C.J. &
ANOOP V. MOHTA, J.**

DATE : 06 March 2013

ORAL JUDGMENT (PER CHIEF JUSTICE)

Rule. Respective counsel waive service of Rule. In the facts and circumstances, the matter is taken up for final hearing today.

2. The petitioner is a developer who had acquired development rights over the land situated and lying at Survey No.777, 778, 779 and 780 (Part) of Worli Division, Mumbai admeasuring 7872.14 sq. meters. The petitioner is in the process of implementing the project as contemplated under Article 33(7) of the Development Control Regulation, 1991.

3. The land belongs to respondent No.4 which had constructed flats for municipal tenants, who have formed a Co-operative Housing Society which is respondent No.6 herein. The petitioner had submitted

building plans to the Municipal Corporation for construction of buildings with 99 flats for rehabilitation of the municipal tenants and 9 shops, municipal school building, having ground plus 5 floors and a free sale building having various floors, for parking, club, etc. and first to 33 upper residential floors.

4. When the building plans were submitted in the year 2004 and they were approved, the applicable notification was Environment Impact Notification dated 14 September 2006 which lays down the following requirements for obtaining environmental clearance:-

“2. Requirement of prior Environmental Clearance (EC):-

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be the Central Government in the Ministry of Environment and Forests for matters falling under Category “A” in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category “B” in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this Notification.
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”

(See Paragraph 2 and 7)
LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR
ENVIRONMENTAL CLEARANCE:

Project or Activity	Category with threshold limit		Conditions if any
	A	B	

1	2	3	4	5
8	Building/Construction projects/Area Development projects and Townships.			
8(a)	Building and Construction project		> 20000 sq.mtrs and < 1m 50,000 sq. mtrs. of built-up area #	# (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area > 50 ha and or built up area > 1,50,000 sq. mtrs. ++	++ All projects under Item 8(b) shall be appraised as Category B1.

5. The petitioner also applied to the MCZMA which granted approval by communication dated 14 February 2007 at Exhibit "F", in the following terms:-

"Accordingly, the proposal was forwarded to the Ministry of Environment & Forests, Govt. of India for grant of necessary CRZ clearance vide letter No.MCZMA/54, dtd. 16/10/2006. Now, the Ministry of Environment & Forests, Govt. of India (1A-III Division) vide letter dtd.24/1/2007 (copy enclosed) accorded CRZ clearance for the above project, subject to the following conditions:"

.....

6. It is necessary to note that as per the criteria laid down in the aforesaid Notification dated 14 September 2006 the proposed construction was to the extent of 15,645.70 sq. meters. It is also necessary to note that as per Environment Impact Notification dated 14 September 2006 in the

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case of facilities open to the sky, it was to be treated as the activity area and not built up area and only covered construction was to be treated as built up area.

7. As per the IOD and the commencement certificate granted by the Municipal Corporation the petitioner proceeded to construct the buildings having 99 flats for rehabilitation of municipal tenants and 9 shops. The construction is almost complete. Similarly, the petitioner also proceeded to construct the Municipal School building of ground plus 5 floors and it is stated that the construction is almost complete.

8. It is necessary to note that when the petitioner was granted the MCZMA clearance in the year 2007 the built up area for the residential building and the shops was 6373.57 sq. meters and the built up area of the Municipal School building was 1045.54 sq. meters. However, by MOEF Notification dated 4 April 2011 the definition “built up area” was substituted as under:-

“The built up area for the purpose of this Notification is defined as “the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.”

In other words, what was earlier known non-FSI area was not included in the definition of built up area but by the aforesaid Notification dated 4 April 2011 the definition of “built up area” was expanded to include construction of not only covered area, but also basement and other service areas which were earlier not included in the definition of built up area. In view of the above Notification, the built up area of the residential building

for 99 flats and 9 shops was re-computed at 8720.51 sq. meters and the built up area of the municipal school was re-computed at 1196.16 sq. meters aggregating to 9916.67 sq. meters as against the previous area aggregating to 7419.06 sq. meters.

9. In view of the above amended Notification the built up area of the proposed sale component building which was earlier computed at 8226.57 sq. meters would now be 14,000 and odd sq. meters and aggregating all the three built up areas of the residential building, 9 shops, municipal school building and the free sale component building the aggregate area would work out to 39,681.13 sq. meters.

10. In view of the above, as the construction area is to exceed 20,000 sq. meters, the petitioner is required to obtain environmental clearance from the State Expert Appraisal Committee (SEAC). The SEAC would forward its recommendation to the State Environment Impact Assessment Authority (SEIAA). The petitioner has accordingly submitted its application to the SEAC in June 2011. However, by the impugned decision dated 16 November 2011 the petitioner has been informed about the following decision :-

“Decision:

The case was discussed on the basis of the presentation made by the proponent. The proponent is requested to **comply** with the following observations:

1. The proponent shall obtain CRZ Clearance as per 4(d) of CRZ Notification 2011 which states that any construction involving more than 20000 m² BUA in CRZ-II, prior recommendation of concerned CZMA shall be essential for considering grant of environmental clearance as per EIA Notification 2006 or grant of approval by the relevant planning authority.
 2. The proponent shall submit letter from MCGM (Municipal Corporation of Greater Mumbai) with detailed clarification on the following points:
 - a. Total area of the plot nearing C S No.777, 778 and 780.
 - b. Plot area on which “Prerna Co-op. Housing Society” is proposed.
 - 3.
 - c. Remaining plot area and details, if any other scheme, proposed thereon.
 4. The draft general guidelines of MCGM dated 16th July 2011, including fire safety norms, for High Rise Building Proposals, shall be complied with.
 5. Details of car park arrangement calculations.”
11. In the meantime, the petitioner has also been served with stop work notice dated 21 June 2011 from the Secretary, Environment Department of the State Government stating that since the petitioner's project construction is more than 20,000 sq. meters, it was obligatory on the petitioner's part to obtain prior environmental clearance from competent authority as per EIA Notification dated 14 September 2006

before starting any building construction activity. The notice further stated that since the petitioner had failed to obtain prior environmental clearance before starting construction activities, there is violation of Notification dated 14 September 2006 and, therefore, the petitioner must stop the construction work forthwith. Consequently the Municipal Corporation of Greater Mumbai has also issued stop work notice dated 27 July 2011.

12. According to the petitioner the petitioner has complied with both the stop work notices and the petitioner has filed this petition under Article 226 of the Constitution challenging the above decision dated 16 November 2011 and the aforesaid two stop work notices.

13. Dr.Milind Sathe, learned counsel for the petitioner has urged the following contentions:

(i) That the petitioner's project was approved and the CRZ clearance was granted on 14 February 2007 by MCZMA. The project was for construction with built up area of only 15,645.70 sq. meters in view of the definition of "built up area" then prevailing. In fact, the petitioner has only constructed the residential building for rehabilitation of municipal tenants for 99 flats, 9 shops and the Municipal School building of ground plus 5 floors which is to be handed over to the Municipal Corporation of Greater Mumbai free of costs.

(ii) In any view of the matter, even the built up area of the sale component building added to the above constructions

would be within 20,000 sq. meters (15,645.70 sq. meters as per the definition of “built up area” when CRZ clearance for the project was granted by MCZMA). The changed definition of built up area as per Notification dated 11 April 2011 cannot apply to a project which was sanctioned prior to 11 April 2011.

(iii) In any view of the matter, even if the changed definition under Notification dated 11 April 2011 were to apply to the petitioner's project, the petitioner has already applied to SEAC for environmental clearance for a project having built up area exceeding 20,000 sq. meters and the petitioner is awaiting the said environmental clearance, but there can be no requirement again to go back to MCZMA for getting CRZ clearance which was already granted earlier on 14 February 2007. The proposed construction at the time of grant of CRZ clearance on 14 February 2007 and the proposed constructions now are for the same construction areas and merely because there is change in the definition of built up area, there is no justification for the State Expert Appraisal Committee to require the petitioner to obtain CRZ clearance again from MCZMA.

(iv) Without prejudice to the above submissions, it is submitted that in any view of the matter since the environmental clearance from State Expert Appraisal Committee and the State Environment Impact Assessment Authority under the EIA Notification dated 14 September,

2006 is required only when the construction exceeds 20,000 sq. meters, the petitioner is entitled to continue with the construction which would not exceed 20,000 sq. meters.

(v) Reliance is placed on orders dated 16 January 2013 in Writ Petition No.2809 of 2012 and 24 September 2012 in Writ Petition No.1919 of 2012 and other matters in support of the contention that the authorities cannot be permitted to object to the developer proceeding to construct upto 20,000 sq. meters without obtaining environmental clearance which is required to be obtained only when the construction is to exceed 20,000.

14. On the other hand, Ms. Sharmila Deshmukh, learned counsel for MCZMA and Mr. Niranjana Pandit, learned A.G.P., for the State Authorities have opposed the petition and submitted that the notification dated 4 April 2011 of the MOEF is merely clarificatory amendment relating back to the original Notification dated 14 September 2006. As per the amended definition of built up area, even the open construction areas are included in the built up area and since the petitioner's application to the said Expert Appraisal Committee itself indicates that as per the amended definition, the total construction area is going to be 39681.13 sq. meters, the authorities are justified in requiring the appellant to obtain not only environmental clearance, but also CRZ clearance from MCZMA. It is submitted that when the MCZMA had granted clearance on 14 February 2007 it was on the basis of the built up area being less than 20,000 sq. meters. Now that the built up area is going to exceed 20,000 sq. meters fresh CRZ clearance will be required from the MCZMA.

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15. It is further submitted that the petitioner cannot be allowed to put up any construction and that the authorities are justified in issuing the stop work notices as the project is for construction exceeding 20,000 sq. meters of built up area.

16. As regards the decision of the State Expert Appraisal Committee that the petitioner should obtain CRZ clearance as per the CRZ Notification of 2011, when construction area remains the same, two views may be possible on the question whether the petitioner having obtained CRZ clearance from MCZMA with proposal for built up area upto 20,000 sq. meters should again be required to approach MCZMA for CRZ clearance when the built up area as per the amended definition is exceeding 20,000 sq. meters. However, in matters of environment concern, we would prefer to err on the safer side. We, therefore, do not find any fault with the decision of the State Appraisal Committee requiring the petitioner to move the MCZMA for environmental clearance because now the built up area of the project is computed at 39,681.13 sq. meters. We do not accept the petitioner's contention that because the petitioner's project was earlier granted CRZ clearance before 4 April 2011, the clarificatory amendment provided by the said Notification will not apply to the petitioner's project. The amendment dated 4 April 2011 is clarificatory as indicated in the preamble to the Notification itself. The change in the definition of built up area from merely covered area to areas including basement and service areas will significantly increase the construction area. After all, CRZ clearance is all about construction activity in a coastal zone and, therefore, merely because the construction is open to sky would not make it any less the construction than the construction of the covered area. We, therefore, find considerable substance in the submission made

on behalf of the MCZMA that the Notification dated 4 April 2011 will apply to the pending projects as well, meaning thereby the projects are not already executed.

17. We do, however, find some substance in the last submission made by the learned counsel for the petitioner that even if the petitioner is required to obtain CRZ clearance from MCZMA again on the basis that the built up area of the project will exceed 20,000 sq. meters, the petitioner is entitled to get the same reliefs which this Court has been granting in case of many other parties where similar prayer was made. In **Writ Petition No.1916 of 2012 (Vardhman Developers Limited vs. Union of India & Ors.)** and **Writ Petition No.2809 of 2012 (Nahur Vivekanand Co-operative Housing Society Ltd. & Anr. vs. Union of India & Ors.)**. We have rejected a similar contention urged on behalf of the respondent authorities that when the project proponent cannot undertake construction project for more than 20,000 sq. meters of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq. meters, without obtaining prior environmental clearance. This Court has held that when clearances are required only for projects with built up area exceeding 20,000 sq. meters, redevelopment projects for residential buildings should not be unnecessarily delayed even to the extent of construction upto 20,000 sq. meters when the developer is ready to give undertaking not to exceed the construction beyond 20,000 sq. meters without first obtaining environmental clearance. This Court has noted that the Authorities take considerable time for taking a decision on the application for environmental clearance or for CRZ clearance. In the meantime the redevelopment projects are being delayed. This Court has been granting

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relief in such cases on the basis that even if ultimately the authorities were to reject the applications for clearance, there will be no illegality in so far as the developer has made construction upto 20,000 sq. meters.

18. Following the orders in the aforesaid cases i.e. orders dated January 16, 2013 in Writ Petition No.2809 of 2012 and 24 September 2012 in Writ Petition No.1916 of 2012, we are of the view that the respondent authorities are not justified in calling upon the petitioner to stop work even within 20,000 sq. meters of work, particularly when the petitioner has already completed the construction of residential building for rehabilitation of 99 municipal tenants, 9 shops required for the ordinary needs of the residents and municipal school constructed by the petitioner for the benefit of the Municipal Corporation all free of costs. As regards the free sale building also, learned counsel for the petitioner gives an undertaking that the petitioner will construct only a portion of the free sale building to the extent that the aggregate construction of the rehabilitation building for 99 flats, 9 shops, municipal school building and the free sale building will not exceed 20,000 sq. meters, without first obtaining the CRZ clearance from the MCZMA and the environmental clearance from the State Environment Impact Assessment Authority.

19. Accordingly, the petition is partly allowed and the stop work notices dated 21 June 2011 issued by the Secretary, Environment Department, (Exhibit "I") and 27 July 2011 (Exhibit AA) issued by the Executive Engineer (Building Proposal, City) Municipal E-Ward of the Municipal Corporation of Greater Mumbai shall stand modified to the effect that the petitioner is restrained from putting up any construction in excess of 20,000 sq. meters computed on the basis of the MOEF

Notification 4 April 2011, including the construction of the rehabilitation building for 99 flats, 9 shops and the municipal school building already constructed or almost constructed. An undertaking to this effect shall be filed by a Director of the petitioner company within two weeks from today and the petitioner shall commence construction only after such an undertaking is filed before this Court.

20. It is clarified that the above direction is given only in respect of the environmental clearance and the CRZ clearance and this judgment does not exempt the petitioner from complying with the other legal requirements in the matter of construction of the buildings in question.

21. It will be open to the petitioner to pursue their application for CRZ clearance before the MCZMA and for environment clearance before the State Expert Appraisal Committee and the State Environment Impact Assessment Authority.

22. Writ Petition accordingly stands disposed of.

CHIEF JUSTICE

ANOOP V. MOHTA, J.



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1916 OF 2012

Vardhman Developers Limited ...Petitioner

v/s.

Union of India & Ors. ...Respondents

Mr.Milind Sathe, Senior Advocate with Mr.D.H.Mehta i/b
Mr.Jitendra J. Shah for petitioner.

Ms.Navina Kumai for respondent no.1.

Mr.G.W.Mattos, AGP for State.

Ms.Sharmila Modle for respondent No.4-(BMC).

Mr.Parag Shah with Mr.Mahesh Shah for respondent No.5.

**CORAM: MOHIT S. SHAH, C.J. &
N.M. JAMDAR, J.**

DATE : 24 September 2012.

P.C.

Rule. Respective counsel waive service of rule.

2. In the facts and circumstances of the case, the matter is taken up for final hearing.

3. The petitioner-company is a developer, which has acquired development rights from respondent No.5-Mazgaon Dholkawala Co.operative Housing Society (proposed) having premises on City Survey No.366(part) and City Survey No.1/367 of Mazgaon Division, 'E' Ward in Mumbai. The land admeasures about 13,098.96 sq.meters.

4. It is the petitioner's case that part of the above land is reserved for municipal primary school as per the Development Plan. However, some portion of the land was encroached upon by slum dwellers. The other land is occupied by 54 municipal tenants. In view of the above situation, the development agreement has been entered into between respondent No.5-society and the petitioner-developer, and the Municipal Corporation has also agreed to the arrangement under which-

(i) the petitioner will construct municipal school on the land admeasuring 1045 sq.meters and hand over the same to the Municipal Corporation free of costs.

(ii) the petitioner will also construct, free of costs, municipal employees quarters on the land of 1,952.84 sq.meters.

(iii) the Municipal Corporation will also get Rs.51,33,11,059/- over and above the above constructed properties.

(iv) all the municipal tenants/ and eligible slum dwellers will be rehabilitated and will be allotted permanent accommodation free of costs and they will also receive corpus fund each of the commercial occupants Rs.37,500 and each of the residential tenants/eligible slum dwellers Rs.18,750/-.

5. According to the petitioner, the Municipal Corporation has already sanctioned the above proposal and the Municipal Corporation has also issued Intimation of Disapproval (IOD) under section 346 of the Mumbai Municipal Corporation Act on 25 April 2012. In accordance with the said redevelopment agreement, the petitioner has already demolished the existing structures on the land and is also paying compensation in lieu of transit accommodation to tenants and eligible slum dwellers, who are going to be allotted permanent accommodation free of costs.

6. The grievance of the petitioner in this petition is that clause 29 of the IOD provides that the petitioner cannot obtain commencement certificate before obtaining NOC from the Ministry of Environment and Forest. It is submitted that such NOC from Ministry of Environment and Forest is required because the total built up area of the project submitted by the petitioner is 46,200 sq. meters and as per the notification dated 14 September 2006 issued by the Ministry of Environment and Forest, prior environmental clearance is required from the Ministry of Environment and Forest, where the built-up area exceeds 20,000 sq.meters. The State Environmental Impact Assessment Authority, which is appointed for considering such proposal for environmental clearance has a large number of pending applications. The petitioner's application for prior environmental clearance was submitted to the said authority on 15 June 2012. However, the application is still at serial No.296 of the list of applications, from which so far only first ten applications have been considered by respondent No.3-the State

Environmental Impact Assessment Authority. It is, therefore, submitted that the petitioner does not expect its application to be considered for another 6 to 12 months, which would unnecessarily delay implementation of the project, which would include construction of a municipal school free of costs, and construction of municipal employees quarters, free of costs, to be provided by the petitioner to the Municipal Corporation, and also construction of rehabilitation buildings for 54 municipal tenants and 29 eligible slum dwellers, free of costs. It is submitted that the total built-up area of this part of the project will be hardly about 11,000 sq.meters, which is well below the stipulated limit of 20,000 sq.meters, beyond which the developer cannot construct without obtaining prior environmental clearance.

7. Mr.Sathe, learned Senior Counsel for the petitioner relies upon the order dated 29 March 2012 passed by this Court in Writ Petition No.504 of 2012 and submits that in the said case this Court had permitted the concerned developer to take up construction of area up to 18,031.78 sq.meters, for which the concerned developer had obtained approval from the Municipal Corporation and had observed that having regard to the fact that a large number of environmental clearance applications are pending with the Government and that environmental clearance is required only when the built up area exceeds 20,000 sq.meters and an undertaking being given by the developer not to exceed construction of more than 20,000 sq.meters before getting environmental clearance, can be acted upon so that project for rehabilitation of slum dwellers is not delayed.

8. The writ petition is opposed by Mr.Mattos, learned AGP appearing for respondent No.2-State of Maharashtra and respondent No.3-State Environmental Impact Assessment Authority. The learned counsel for Municipal Corporation, Gr.Mumbai also submits that since clause 29 of the IOD requires the petitioner to obtain NOC from the State Environment Impact Assessment Authority before applying for commencement certificate, prayer made by the petitioner may not be granted. Mr.Mattos further states the petitioner's grievance about delay in disposal of applications for environmental clearance is not justified, because it was on account of pendency of a large number of applications that the State Government has appointed another committee to expedite consideration of applications for environmental clearance for projects in Mumbai Metropolitan Region. The learned counsel for the Union of India states that she has no instructions in the matter.

9. Before proceeding further, we note that while issuing notice on this petition on 11 September 2012, we had indicated the petitioner's grievance and suggestion that prima facie no prejudice will be caused to any party if the petitioner is permitted to put up construction not exceeding 20,000 sq.meters, because environmental clearance is required only if the project involves construction of built up area exceeding 20,000 sq.meters.

10. The learned counsel for the respondents have not addressed us on this particular issue of prejudice. As already indicated above, out of 46,200 sq.meters of built-up area for which the petitioner has been granted IOD by the Municipal Corporation about 11,000 sq.meters of the construction is going to be for the benefit of the municipal tenants, eligible slum dwellers and also the Municipal Corporation itself, because the petitioner is required to construct municipal staff quarters as well as municipal school, all free of costs. The learned counsel for the petitioner further states that since these buildings for the municipal school, municipal staff quarters and rehabilitation buildings for 84 families are going to have a separate foundation from the foundation for the free sale component buildings, the foundation for buildings with built up area of 11,000 sq.meters will not have the same impact which will be caused by laying foundation for construction of free sale component buildings for more than 30,000 sq.meters. The learned counsel further states that the petitioner undertakes not to construct built-up area in excess of the built-up area for municipal school, municipal staff quarters and the rehabilitation buildings for 84 families or any further construction on the basis of free FSI available to the developer on account of development of above buildings.

11. The learned counsel further states that the Director of the petitioner-company with an authority of the resolution of the Board of Directors will file an undertaking on the above lines within two weeks from today.

12. Having heard the learned counsel for parties, we are of the view that since what the petitioner proposes to construct in the first phase is only about 11,000 sq.meters of built-up area and that too only construction of a municipal school buildings, to be provided free of costs to the Municipal Corporation, construction of municipal staff quarters, to be provided free of costs to the Municipal Corporation and rehabilitation building for municipal tenants and eligible slum dwellers, all aggregating to about 84, free of costs, and also payment of pro-rata amount to the Municipal Corporation out of Rs.51.33 crores, no prejudice will be caused to any of the respondent-authorities or to any public interest if the petitioner is permitted to put up above construction of about 11,000 sq.meters in the first phase, before the petitioner's application for prior environmental clearance is considered by respondent No.3-authority. As already indicated above, prior environmental clearance is required only where the proposed construction exceeds 20,000 sq.meters.

13. For the reasons aforesaid, the petition is partly allowed. Respondent No.4 is directed to consider the petitioner's application for grant of commencement certificate only for the construction of municipal school, municipal staff quarters and rehabilitation building for 84 families of municipal tenants/eligible slum dwellers, after the petitioner files an undertaking in terms of the contents of para 10 hereinabove.

14. It is clarified that this order shall not create any equity in favour of the petitioner when its application for environmental clearance is considered by respondent No.3-Authority. It is also clarified that respondent No.3-Authority shall consider such proposal for environmental clearance on its own merits without being influenced by this order, but as expeditiously as possible.

15. Rule is made absolute to the above extent only.

CHIEF JUSTICE

(N.M. JAMDAR, J.)



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.504 OF 2012

Naresh Janardhan Mali	... Petitioner
Versus	
The State of Maharashtra and others	... Respondents

Mr. Niranjan pandit, Assistant Government Pleader for respondent No.1.
 Mr. Mukul Taly with Ms. Mallika Taly, Mr.Yusuf Shaikh, Mr.Rakesh Misar
 i/by M/s. S. Mahomedbhai & Co. for respondent Nos.3 and 4.

**CORAM : MOHIT S. SHAH, C.J. &
 RANJIT MORE, J.**

Thursday, March 29, 2012

P.C.

In this petition purporting to be PIL, the petitioner has challenged the letter dated 3 January 2012 (Exhibit `K' at page 49 of the petition) by which the Slum Rehabilitation Authority has withdrawn the stop-work notice dated 3 September 2011.

2. It is the petitioner's contention that respondent Nos.3 and 4 are carrying on the construction of more than 20,000 sq. meters. without getting environmental clearance from the State Government and, therefore, the Slum Rehabilitation Authority which had initially issued stop-work notice dated 3 January 2011 is not justified in withdrawing the same.

3. Our attention is invited to the applications made by respondent Nos.3 and 4 for construction of 28,000 sq.mtrs of built up area.

4. The learned counsel for respondent Nos.3 and 4 submits that at present respondent Nos.3 and 4 are only proposing to construct the rehabilitation tenements for resettling 370 slum dwellers out of whom 160 slum dwellers have already been shifted to the transit accommodation and, therefore, respondent Nos.3 and 4 cannot be restrained from proceeding with the project of constructing rehabilitation tenements. The learned counsel for respondent Nos.3 and 4 submits that when about 650 applications for environmental clearance are pending with the State Government, the applicant does not expect to get environmental clearance immediately and that since the CRZ notification requires environmental clearance from the State Government only when the construction is in excess of 20,000 sq.meters, no useful purpose will be served by requiring respondent Nos.3 and 4 not to proceed with the construction of rehabilitation tenements which will be only for construction of about 14,000 sq.mtrs and which would come to about 18,000 sq.mtrs if construction of closed area and area open to the the sky is taken into consideration.

5. Mr. Niranjana Pandit, learned Assistant Government Pleader has submitted that when the project proponent cannot undertake construction project for more than 20,000 sq.meters of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq.meters also without obtaining prior environmental clearance.

6. In order to assure the Court that respondent Nos.3 and 4 will not undertake any construction activity equal to or exceeding the limit of 20,000 sq.meters as prescribed by notification dated 14 September 2006, Mr. Percy S. Chowdhry, Director of respondent No.3 company-developer has filed affidavit dated 29 March 2012 giving the following undertaking:-

“8. I undertake to this Hon'ble Court that I as the Developer will not carry out any construction exceeding the limit i.e. equal to or beyond 20,000 sq.meters, as prescribed by the provisions of Notification No.S.O. 1533 dated September 14, 2006 on the land bearing CTS No.G/626 and G/164 A (Part) of Village Bandra under the Slum Rehabilitation Scheme for Narli Agripada (SRA) Co-operative Housing Society (Prop.) at Ram Krishna Mission Road, Khar (West), Mumbai, without obtaining prior environmental clearance from the State Environment Impact Assessment Authority (SEIAA).”

7. Having heard the learned counsel for the parties and also having regard to the fact that the project in question is for rehabilitation of 370 slum dwellers out of whom 160 slum dwellers have already shifted to the transit accommodation, and also having regard to the fact that a large number of environmental clearance applications are pending with the Government and that environmental clearance is required only when the built up area exceeds 20,000 sq.meters and having regard to the aforesaid undertaking given on behalf of respondent No.3, we are inclined to accept the submissions made on behalf of respondent Nos.3 and 4.

8. We accordingly accept the above undertaking and direct that while calculating the area, respondent Nos.3 and 4 shall take into account notification No. S.O.1533 dated September 14, 2006 under which built up area is to include covered construction and in the case of facilities open to the sky continue to be activity area. As per the current approvals, respondent Nos.3 and 4 have approval for built up area of 18,031.78 sq meters.

9. Accordingly, subject to the direction that respondent Nos.3 and 4 shall act in accordance with the aforesaid undertaking and shall not undertake any construction in excess of 20,000 sq.meters without obtaining prior environmental clearance from the Competent Authority of the State Government, the petition is disposed of.

CHIEF JUSTICE

RANJIT MORE, J.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 654 OF 2013

Tridhaatu Ventures LLP ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

...

Dr.Milind Sathe, Senior Advocate with Mr. Saket Mane i/b. Vidhii Partners for the petitioner.

Mr. D.J. Khambata, Advocate General with Ms. Geeta Shastri, AGP for respondent State.

Ms. Sharmila Modle for respondent-BMC.

CORAM: MOHIT S. SHAH, C.J. &
M.S.SANKLECHA, J.

DATE : 9 May 2013

P.C.

Rule.

Heard learned counsel for the parties on the question of interim relief.

2. Under Environment Impact Assessment Notification dated 14 September 2006 a person proposing construction exceeding 20,000 sq. mtrs is required to take environmental clearance from the Ministry of Environment & Forest (MoEF) through the State Environment Impact

Assessment Authority (SEIAA). The relevant clause in the said Notification reads as under:-

“ Requirement of prior Environmental Clearance (EC):- *The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central government in the Ministry of Environment and Forests for matters falling under Category `A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category `B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:*

(i) *All new projects or activities listed in the Schedule to this notification.*

(ii) *Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization.*

(iii) *Any change in product, mix in an existing manufacturing unit included in Schedule beyond the specified range.”*

(emphasis supplied)

3. Relevant portion of the Schedule in Clause (2) of the Notification reads as under:-

Project or activity	Category with threshold limit			Condition if any
	A		B	
8	Building/Construction projects/Area Development projects and Townships			
1	2	3	4	5
8(a)	Building and Construction projects		>20000 sq.mtrs and < 1,50,000 sq.mtrs. of built-up area	The built up area for the purpose of this Notification is defined as “the built up or covered area on all the floors put together including basement(s) and other service area, which are proposed in the building/construction projects.
8(b)	Township and Area Development projects.		Covering an area >50 ha and or built up area >1,50,000 sq.mtrs.++	All projects under item 8(b) shall be appraised as Category B1

4. The petitioner herein submits that it had applied for environmental clearance for a project of 40,000 & odd sq. mtrs., but the petitioner's application has been rejected by the State Expert Appraisal Committee on the ground that there will be violation of the Office Memorandum dated 7 February 2012 of the Ministry of Environment and Forests, which prescribes the minimum width of the road abutting which the proposed building is to be constructed. As per the said Office Memorandum for a building with height of 69 meters i.e. above 60 meters, the width of the road should be minimum 30 meters and desirable 45 meters.

5. The impugned decision dated 1 to 3 January 2013 of SEAC reads as under:-

Item No.21: Proposed residential cum commercial development project 'Sri Swati CHS' at CTS No.275, 27/1 to 276/1 to 16 & 277 village of Borla, Govandi.

The project proposal was discussed on the basis of the presentation made and documents submitted by the proponent, PP claimed that access to the project site is through a road junction having a width above 36 m. Hence, his case will not be affected by OM dated 7 February 2012. However, the Committee observed that the plot actually abuts on to 9.15 m wide road, and PP's contention is not acceptable. The project in its present form is not in accordance with the OM dated 7 February 2012. The PP may recast the project as per the above OM, if he so desires.

In view of the above, the proposal is delisted."

6. Dr. Sathe, learned senior counsel for the petitioner submits that the petitioner has challenged the above OM dated 7 February 2012 as the question of width of the road for proposed construction of the building is governed by Development Control Regulations for Greater Mumbai 1991 and not by any of the provisions of the Environment (Protection) Act, 1986 and Rules made thereunder. Relying upon Regulation 31 prescribing the height of building, it is submitted that the petitioner's case meets with the requirements of Regulation 31(1) and therefore, the State Expert Appraisal Committee had no authority to delist the petitioner's proposal. It is submitted that there is no other objection raised by the Committee except the above objection.

7. Learned counsel for the petitioner further relies upon the order dated 10 April 2013, wherein another Division Bench of this Court had an occasion to examine the challenge to the said OM and the Court made the following observations in the said order dated 10 April 2013:

“5. In both the petitions, the challenge is to the same Office Memorandum dated 7th February, 2012 which purports to incorporate the guidelines regarding height of the buildings. The contention of the petitioners is that apart from the fact that the challenge is to the very authority of the Union of India to issue the Memorandum, in a City like Mumbai, several building projects will be stalled. The learned Senior Counsel appearing for the petitioner in Writ Petition No.1180 of 2012 invited our attention to the minutes of the 111th Meeting of Infrastructure and Miscellaneous Projects and CRZ held on 16/17th April, 2012 of the Ministry of Environment and Forest. In the meeting Item No.4.19 was as regard the impugned memorandum dated 7th February, 2012. After discussion, the Committee members were of the view that guidelines are advisory in nature and may not be considered as mandatory. “

(emphasis supplied)

In the said order the Division Bench also referred to the letter dated 27 April 2012 of the Chief Minister of the State of Maharashtra to the Minister of State for Environment and Forests of Union of India in the following terms:-

“6. The learned Government Pleader has placed on record a photocopy of letter dated 27th April, 2012 addressed by the Hon'ble Chief Minister to the Hon'ble Minister of State for Environment and Forests of Union of India, requesting that the Office Memorandum dated 7th February, 2012 should be kept in abeyance. In the said letter, he has stated that in the State like Mumbai most of the construction projects are those of redevelopment of old, cessed, dilapidated buildings. It is also pointed out that there are schemes of Slum Rehabilitation (SRA) in the City of Mumbai. It is pointed out that the restrictions in the guidelines incorporated in Memorandum dated 7th February, 2012 will hamper the progress of the said projects and the construction activities would be

brought to stand still. It is pointed out that the width of the roads in most of the States is well below the requisite standards prescribed by the Memorandum.”

8. It is submitted by learned counsel for the petitioner that in view of lack of jurisdiction of the authority under the Notification of 2006 and in view of the fact that guidelines contained in OM dated 7 February 2011 are clearly advisory in nature and cannot be treated as mandatory, the petitioner's proposal ought not to have been delisted for non-compliance with the said OM, when the petitioner complies with the DCR 1991 prescribing width of the road.

9. Learned counsel for the petitioner submits that in any view of the matter the petitioner is presently concerned with rehabilitation of 75 members of Sri Swati Co-operative Housing Society. Flats of 78 members of the society were demolished in 2010 for the purpose of redevelopment. The Municipal Corporation has already granted IOD and Commencement Certificate for 4,935 sq. mtrs for three floors, and the petitioner being developer for the said society has submitted plans for total construction of 19,833.41 sq. mtrs. including 4,935 sq. mtrs. already constructed. It is submitted that, however, the Municipal Corporation is not considering the petitioner's application on the ground that the petitioner has not obtained environmental clearance under the aforesaid EIA Notification dated 14 September 2006.

10. Learned counsel submits that the question of obtaining environmental clearance arises only when the petitioner proposes to construct more than 20,000 sq. mtrs. of built up area. The petitioner's proposal for the construction of more than 20,000 sq. mtrs. has been

delisted of non-compliance of OM dated 7 February 2011, which the petitioner has already challenged in the present petition. However, merely because those contentions will be dealt with later on, that should not be treated as ground for not permitting the petitioner to put up construction of 19,833.41 sq. mtrs. built up areas, which is necessary for accommodating 75 members of 'Sri Swati Co-operative Housing Society.'

11. Learned counsel has placed reliance on judgment dated 6 March 2013 in Writ Petition (I) No.470 of 2013 and orders passed in several other matters being orders dated 16 January 2013 and 24 September 2012.

12. On the other hand, learned Advocate General has opposed the grant of any interim relief and has submitted that granting any such permission would amount to violation of Notification dated 14 September 2006, which provides that expansion and modernization of existing project or activities scheduled in the Notification which crosses the threshold limits given in the schedule will require prior environmental clearances. It is submitted that the project of the construction of more than 20,000 sq. mtrs. cannot be divided into two phases and the petitioner cannot be allowed to contend that since the first phase of the project is less than 20,000 sq. mtrs. no prior environmental clearance will be required. Reliance is also placed on the OM dated 19 August 2010 issued by the Government of India in Ministry of Environment & Forests, which provides that no activities relating to any project can be undertaken at site without obtaining prior environmental clearance as is mandated under the EIA Notification,

2006 except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guards.

13. Learned Advocate General further submitted that environment clearance is required to monitor, control the local construction activities, water/air/noise pollution, traffic congestion and other construction activities affecting human health by various standards, code and rules laid down under the Environment (Protection) Act and Rules which other departments like Municipal Corporation for Greater Mumbai, Maharashtra Pollution Control Board will not be able to monitor. It is submitted that proper infrastructure facilities are required to be provided from inception of the construction activity from the environment point of view.

14. It is brought to our notice that on the basis of IOD and Commencement Certificate granted by the Municipal Corporation, the petitioner has already constructed 4,935 & odd sq. mtrs. of built-up area and photograph indicating the present construction is placed on record.

Learned counsel for the petitioner submitted that further construction upto to 19,000 sq. mtrs. including 4,935 & odd sq. mtrs. built up area will not require any further digging in the earth or laying any further foundation structure. It is, therefore, submitted that apprehension of the respondent-authority that even if the proposed construction in the first phase will be less than 20,000 sq. mtrs, but the foundation structure and other facilities and amenities for bigger project may cause serious damage to the environment will not arise in the facts of the present case.

15. We have given anxious consideration to the rival submissions on the question of interim relief.

16. In judgment dated 6 March 2013 in Writ Petition (L) No. 470 of 2013, this Court has dealt with a similar controversy and held as under:-

“17. We do, however, find some substance in the last submission made by the learned counsel for the petitioner that even if the petitioner is required to obtain CRZ clearance from MCZMA again on the basis that the built up area of the project will exceed 20,000 sq. meters, the petitioner is entitled to get the same reliefs which this Court has been granting in case of many other parties where similar prayer was made. In Writ Petition No.1916 of 2012 (Vardhman Developers Limited vs. Union of India & Ors.) and Writ Petition No.2809 of 2012 (Nahur Vivekanand Cooperative Housing Society Ltd. & Anr. vs. Union of India & Ors). We have rejected a similar contention urged on behalf of the respondent authorities that when the project proponent cannot undertake construction project for more than 20,000 sq. meters of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq. meters, without obtaining prior environmental clearance. This Court has held that when clearances are required only for projects with built up area exceeding 20,000 sq. meters, redevelopment projects for residential buildings should not be unnecessarily delayed even to the extent of construction upto 20,000 sq. meters when the developer is ready to give undertaking not to exceed the construction beyond 20,000 sq. meters without first obtaining environmental clearance. This Court has noted that the Authorities take considerable time for taking a decision on the application for environmental clearance or for CRZ clearance. In the meantime the redevelopment projects are being

delayed. This Court has been granting relief in such cases on the basis that even if ultimately the authorities were to reject the applications for clearance, there will be no illegality in so far as the developer has made construction upto 20,000 sq. meters.”

(emphasis supplied)

17. Having heard learned counsel for parties, and in the facts and circumstances of the case and particularly in view of the fact that the width of the road is sufficient as required by the DCR 1991 and as far as OM is concerned, the same is treated as advisory and not mandatory and in the facts of the present case where the petitioner does not propose to make any further digging in the earth or laying any further foundation structure for the purpose of putting up construction upto to 19,000 sq. mtrs. of built-up area including 4935 sq. mtrs already put up by the petitioner, we are inclined to direct the respondent-Municipal Corporation to permit the petitioner to put up construction upto to 19,000 sq. mtrs. including 4935 sq. mtrs. already put up, subject to following conditions:-

- (i) that the petitioner as well as the Chairman of 'Sri Swati Co-operative Housing Society' shall file undertakings stating that the petitioner and the society shall not put up any construction exceeding 20,000 sq. mtrs including the existing construction on the site being land CTS No.275, 275/1 to 276/1 to 16 & 277 village of Borla, Govandi.
- (ii) that the petitioner will be putting up construction of 19,000 sq. mtrs for the purpose of accommodating 75 or maximum 78 members of 'Sri Swati Co-operative Housing Society',

whose flats have already been demolished in 2010 for the purpose of redevelopment and not for any other purpose.

(iii) that the petitioner shall not do any further digging on the ground for laying foundation and shall only continue with the construction on the existing construction by raising height of the building within the limits permissible as per the DCR 1991 and in accordance with plans which may be sanctioned by the Municipal Corporation.

(iv) that the petitioner will not claim equity on the basis of this order.

17. It is directed accordingly.

CHIEF JUSTICE

M.S. SANKLECHA, J.