

**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
(CRIMINAL) ON BEHALF OF RESPONDENT NO. 11**

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3607 OF 2018

M/s. Sancheti Properties and Ors.

...Petitioners

Versus

Maharashtra Pollution Control Board & Anr.

...Respondents

.....

Mr.R.D.Soni i/b. Ram and Co. for the Petitioners.

Ms.Sharmila U.Deshmukh for Respondent No.1.

Mr.A.R.Patil, APP for Respondent No.2 – State.

.....

CORAM: MRS.MRIDULA BHATKAR, J.

DATED: OCTOBER 24, 2018

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
2. This Petition is directed against the order dated 29th January 2015 of issuance of process passed by the learned Judicial Magistrate First Class, Pune in R.C.C. No.2926 of 2014.
3. On 22nd October 2018, this Court has passed the following order .:

“1. In this Petition, the petitioners, who are the builders, are praying for quashing and setting aside the order dated They are also challenging the order dated 21st June 2018 passed by the learned Chief Judicial

Magistrate, Pune below application exhibit 17 in R.C.C. No. 2926 of 2014.

2. ...The process is issued against petitioner Nos. 1 to 3 for the offence punishable under Section 15 read with Section 16 of the Environment (Protection) Act, 1986 read with the Environment Impact Assessment Notification of 2006.

3. Admittedly, as per notification of 2006 and further circular dated 21st April 2015, prior permission of Environmental Department is not required for construction upto 20,000 sq.meters. If the construction is going beyond 20,000 sq. meters, then prior clearance from the Environmental Department is mandatory. The same view is taken by the Division Bench of this Court in the case of **M/s. Vardhman Developers Limited vs. Union of India & Ors.** (Writ Petition (L) No. 2305 of 2013 with Notice of Motion (L) No. 539 of 2013 decided on 18th December, 2013) by holding that no prior permission is required from the Environmental Department to put up construction below 20,000 sq. meters.

4. In the present case, admittedly, the petitioners have submitted plans for construction of more than 20885.18 sq. meters before the Corporation. The petitioners had started their construction in the year 2010. According to the petitioners, they have completed first phase upto 14750 sq. meters without obtaining prior approval from the Environmental Department. Subsequently, the environmental clearance was obtained on 7th September, 2012 for construction of 38980 sq. meters”.

4. The learned counsel for the petitioners has pointed out that in the case of **M/s. Vardhman Developers Limited vs. Union of India &**

Ors. (Writ Petition (L) No. 2305 of 2013 with Notice of Motion (L) No. 539 of 2013 decided on 18th December, 2013), the Division Bench of this Court while dealing with the similar issue has accepted the undertaking given by the petitioners that they would construct only upto 20,000 sq. meters and shall not construct further. It means that in the said case, the proposal was given for more than 20,000 sq. meters. He has submitted that the petitioners have constructed upto 14,750 sq meters in the first phase i.e., in 2010 for which the action was taken by respondent No.1. He has relied on the sanctioned plan of first phase wherein the Collector has approved the construction upto 13,027.37 sq. meters. He has further submitted that the petitioners have not violated the rules and the notification. If the construction is beyond 20,000 sq. meters, then prior clearance from the environmental department is required.

5. The learned counsel for respondent No.1 has mainly relied on Section 15 read with Section 16 of the Environment (Protection) Act, 1986. She has submitted that if the party proposes to construct more than 20,000 sq. meters, then at that time also, prior clearance from the environmental department is mandatory. She has further submitted that the petitioners had submitted their first proposal in the year 2009 and it was of 20,885 sq. meters and, therefore, it was binding on the

petitioners to obtain prior clearance from the environmental department.

6. Heard submissions. Considered the documents and record placed before this Court especially the circular dated 21st April, 2015 and the notification of 2006. Both the documents disclose that for construction beyond 20,000 sq. meters, prior clearance from the environmental department is mandatory. If the construction is below 20,000 sq. meters, such clearance is not required. In the case of **M/s. Vardhman Developers Limited** (supra), the Division Bench of this Court has accepted the undertaking given by the petitioners that they would not construct more than 20,000 sq.meters and restrict upto limit as prescribed in the circular. In the present case, though, the proposal was given above 20,000 sq. meters as pointed out by the learned counsel for the petitioners, the authority has approved the construction upto 13,027.37 sq.meters and the construction was upto 14,750 sq. meters.

7. Under such circumstances, it cannot be said that there is breach of law or rules under the Environment (Protection) Act, 1986. The environmental department gave clearance on 7th September, 2012 for construction upto to 38,983.59 sq. meters. Therefore, I do not find any breach or violation of the rules under Environment (Protection) Act,

1986 as per complained by respondent No.1. Hence, it is a fit case to invoke the supervisory jurisdiction of this Court. Writ Petition is allowed. Rule made absolute in terms of prayer clause (a).

(MRIDULA BHATKAR, J.)



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 732 OF 2016

M/s. Suncity Corporation & Anr. ... Applicants
vs.
Maharashtra Pollution Control Board & Anr. ... Respondents

WITH
CRIMINAL APPLICATION NO. 733 OF 2016

Manoj Daisaria ... Applicant
vs.
Maharashtra Pollution Control Board & Ors. ... Respondents

Mr. Robin Jaisinghani a/w. Mr. Harshil Parekh i/b. M/s. Purnanand & Co. for the Applicants.

Ms. Rupali Dixit for Respondent no.1

Ms. P. N. Dabolkar, APP for the State.

CORAM : A. K. MENON, J.
DATE : 26th JULY, 2017

P.C.:

1. By these applications the applicant's challenges identical orders dated 10th March, 2015 issuing process against the petitioners under Section 15 of Environment (Protection) Act, 1986 r/w. Environment Impact Assessment Notification 2006 dated 14th September, 2006 which required any development or construction project in excess of 20000 sq.mtrs to obtain clearance under the said Environment Impact Assessment Notification dated 14th September, 2006, copy of which is at Exhibit "C".

2. It is common ground that a division bench of this court has in WP(L) 2305 of 2013 and WP(L) NO. 655 OF 2014 passed an order permitting construction upto 20000 sq.mtrs without obtaining environment clearance. Mr. Parekh, learned Counsel for the petitioner has tendered a copy of the order dated 18th December, 2013 passed in the aforesaid Writ Petition. The Writ Petition was disposed of. In paragraph 6 of the said order the Court noted that there was no impediment in granting any interim relief permitting the petitioner therein to carry out construction upto 20000 sq.mtrs without obtaining environment clearance.

3. It is not in dispute today that the aforesaid order dated 18th December, 2013 has not been challenged by the Board or any other respondent. The Writ Petition was finally disposed of by the said order. Process was issued on 10th March, 2015 well after the order dated 18th December, 2013 was passed and therefore process could not have been issued and probably may not have been issued if the Order of this Court was brought to the attention of the Ld. Magistrate. For these reasons the impugned orders must be set aside. Furthermore it is stated on behalf of the applicant that sanction has subsequently been obtained in respect of entire project from the said Environment Impact Assessment Authority on 12th January, 2016. Copy of sanction appears at Exhibit "E" to this application.

4. In view of the fact that the commencement of construction upto 20000 sq.mtrs was not objectionable, in view of the order dated 18th December, 2013 and in view of the fact that subsequently permission has been granted for the entire project, there is no justification in sustaining the impugned order. Hence, I pass the following order: -

- (i) Applications are allowed in terms of prayer clause (a)
- (ii) Regular Criminal Case No. 261/SS/2015 before the 53rd Court Mulund and the common impugned order dated 10th March, 2015 are quashed and set aside.
- (iii) No order as to costs.

(A. K. MENON, J.)



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No. 229 OF 2018

M/s.PS Developers & Ors.

...Applicants

Versus

The Maharashtra Pollution Control Board & Anr.

...Respondents

Mr.Niranjan Mundargi i/b.Mr.Siddharth R. Karpe for the Applicants.

Ms. A.R.Patil, APP for Respondent No.1-State.

Ms. Jaya J. Bagwe for Respondent No.2

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 15 MARCH 2019

P.C.:

1. This Criminal Application is filed under section 482 of the Code of Criminal Procedure.

2. This Criminal Application is directed against the order dated 07.12.2015 passed by the learned Chief Judicial Magistrate First Class, Pune in R.C.C. No. 1222 of 2015 thereby issuing process under section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006.

3. As per case of the complainant i.e., the Maharashtra Pollution Control Board (for short "Board"), the Board is having a policy decision if the construction is above more than 20,000 sq. meters and also as per Environment Impact Assessment Notification, 2006, then the environment clearance certificate is required to obtain for construction beyond 20,000 sq. meters.

4. Heard submissions. Perused complaint. In paragraph No. 9 of the complaint, the complainant has specifically stated that the applicants/accused have started construction having total built up area more than 20,000 sq. meters without obtaining such Environment Clearance. The words are started from "have started construction". This is not the requirement to constitute an offence. The construction should be complete more than 20,000 sq. meters.

5. The learned counsel for the applicants/accused has produced the plan. The Principal Secretary, Environment Department had written a letter dated 02.02.2015 to the applicants/accused wherein it was mentioned that the applicants have completed the construction of total built up area admeasuring 19959.06 sq. meters. It appears that the applicants/accused

want to construct more than 20,000 sq meters and accordingly they have made correspondence with the Municipal Corporation, other authorities and the Environment Department.

6. Undoubtedly, if the construction is going beyond 20,000 sq. meters, then the environment clearance certificate is required to obtain, is a rule and this is not to be breached. However, there is no *prima facie* material to show that the construction is beyond 20,000 sq. meters. Hence, the order of issuance of process is hereby quashed and set aside. Criminal Application is allowed in terms of prayer clause (b).

(MRIDULA BHATKAR, J.)