

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

WRIT PETITION NO.1180 OF 2012  
WITH  
WRIT PETITION NO.1668 OF 2012

**WP NO.1180 OF 2012**

Maharashtra Chamber of Housing Industries

... Petitioner

V/s.

The Union of India & Ors.

... Respondents

**WP NO.1668 OF 2012**

Shripal Realty Private Limited

... Petitioner

V/s.

The Union of India,  
through the Secretary, Ministry of Environment  
and Forests and others

... Respondents

Mr. D.A. Nalawade, Government Pleader with Mr. B.B. Sharma A.G.P,  
for State.

Mr. P.K. Samdani, Sr. Advocate i/b M/s. Wadia Gandhi & Co. Advocate  
for petitioner in WP No.1180 of 2012.

Mr. Janak Dwarkadas, Sr. Advocate with Mr. Cyrus Ardeshir i/b M/s.  
Ganesh and Co. for petitioner in WP No.1688 of 2012.

Dr. G.R. Sharma with Shri G. Hariharan a/w Mr. D.P. Singh i/b Dr. T.C.  
Kaushik for Respondent No.1 – Union of India.

CORAM : A.S. OKA &  
MRS. MRIDULA BHATKAR, JJ.

DATE : 10<sup>th</sup> APRIL, 2013

PC.

Heard the learned Senior Counsel appearing for the  
petitioners, learned counsel appearing for the Union of India and

learned Government Pleader for the State. The challenge is to the office Memorandum dated 7<sup>th</sup> February, 2012 issued by the Ministry of Environment and Forests. On 13<sup>th</sup> June, 2012, Division Bench of this Court issued a notice to the Union of India. The service was waived on that day. Clause 2 of the order dated 13<sup>th</sup> June, 2012 reads thus :-

“2. The Respondent No.1 is directed to make a specific statement as to whether it has kept the Office Memorandum dated 7<sup>th</sup> February, 2012 in abeyance”.

2. On 27<sup>th</sup> June, 2012, the Writ Petitions were adjourned for filing a reply. Thereafter, from time to time the petitions were adjourned. On 16<sup>th</sup> July, 2012, time of two weeks was granted to file affidavit-in-reply. On 30<sup>th</sup> July, 2012, a specific request was made on behalf of the Union of India for grant of time to file affidavit-in-reply. The petitions were adjourned on 14<sup>th</sup> August, 2012 as a last chance. Thereafter, the petitions were adjourned from time to time. Only on 7<sup>th</sup> January, 2013, the petitions were adjourned at the instance of the petitioners. The subsequent orders dated 12<sup>th</sup> March, 2013 and 2<sup>nd</sup> April, 2013 read thus :-

Order dated 12.03.2013:

“1. Only by way of indulgence, we grant time to the first respondent to file a reply. Reply

shall be filed on or before 28.3.2013. No further extension shall be granted.

2. The learned Counsel appearing for the first respondent states that a Review Committee is constituted to review the impugned office memorandum at Exhibit - A. However, we direct the first respondent to file a reply on merits.
3. Place the petition for admission on 2.4.2013."

Order dated 02.04.2013:

1. We find that the Union of India has not complied with the order dated 12<sup>th</sup> March, 2013. We, therefore, request the learned Additional Solicitor General of India to appear in the matter. Stand over till 10<sup>th</sup> April, 2013.
2. Print out of e-mail dated 2<sup>nd</sup> April, 2013 tendered by the learned counsel appearing for the Union of India is taken on record."
3. Today, the learned counsel appearing for the first respondent states that the Review Committee, which considered the review of the impugned Memorandum at Exhibit "A", has submitted a

report to the Hon'ble Minister. He states that a reply can be filed only after report is placed before the Hon'ble Minister and appropriate decision is taken.

4. We fail to appreciate as to how Union of India is not filing a reply dealing with the merits of the challenge in the petition, though from time to time this Court adjourned the matter to enable the Union of India to file a reply.

5. In both the petitions, the challenge is to the same Office Memorandum dated 7<sup>th</sup> 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 111<sup>th</sup> Meeting of Infrastructure and Miscellaneous Projects and CRZ held on 16/17<sup>th</sup> April, 2012 of the Ministry of Environment and Forest. In the meeting Item No.4.19 was as regard the impugned memorandum dated 7<sup>th</sup> February, 2012. After discussion, the Committee members were of the view that guidelines are advisory in nature and may not be considered

as mandatory. Relying upon the further affidavit tendered today, he pointed out that the State Level Expert Committee has rejected the proposal submitted by several members of the petitioner in the said Writ Petition. The learned Senior Counsel appearing for the petitioner in Writ Petition No.1668 of 2012 invited our attention to the fact that the proposal submitted by the petitioner therein has been turned down by the State Level Expert Appraisal Committee on 2<sup>nd</sup> May, 2012.

6. The learned Government Pleader has placed on record a photocopy of letter dated 27<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> 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.

7. On one hand, it is stated that the Review Committee has reconsidered the Memorandum but no final decision has been taken and on the other hand, there is no reply filed by Union of India dealing with the merits of the controversy though this Court has repeatedly granted time. As we have noted earlier, in the minutes of the meeting of Infrastructure and Miscellaneous Projects and CRZ held on 16/17<sup>th</sup> April, 2012, the members have clearly expressed an opinion that the guidelines incorporated in the impugned memorandum are not mandatory and the same are directory in nature.

8. Considering what is set out in the letter of the Hon'ble Chief Minister and other averments made in the Writ Petition No.1180 of 2012, it is necessary that before this Court considers the petitions on merits, the State Level Expert Appraisal Committee should reconsider the case of the petitioners in Writ Petition No.1668 of 2012 in the light of what is recorded in the aforesaid minutes. The Committee will have to also reconsider the cases of the members of the petitioner in Writ Petition No.1180 of 2012. We permit the petitioners in Writ Petition No.1180 of 2012 to implead State Level Expert Appraisal Committee, Maharashtra as party Respondent No.4. Amendment to be carried out within two weeks.

9. We permit the petitioners in Writ Petition No.1668 of 2012 as well as those members of the petitioner in Writ Petition No.1180 of 2012 whose proposals have been turned down by the State Level Expert Appraisal Committee to apply to the said Committee for reconsideration of the proposals for environmental clearance in the light of the decision noted in the minutes of 111<sup>th</sup> meeting of the Infrastructure and Miscellaneous Projects and CRZ held on 16/17<sup>th</sup> April, 2012. If applications are made by the concerned parties for reconsideration of their proposal, the fourth respondent in both the petitions shall reconsider the proposals in the light of what is recorded in the aforesaid minutes within a period of eight weeks from the date on which the applications are made by the concerned parties.

10. It is obvious that if some other proposals of the members of the petitioner in Writ Petition No.1180 of 2012 are pending before the fourth respondent, while considering the same on merits, the fourth respondent will have to consider what is recorded in the aforesaid minutes.

11. Considering the drastic effect of impugned memorandum dated 7<sup>th</sup> February, 2012, these petitions will have to be heard and