

non-forestry activities in wild life habitats. It is further stated in the said O.M. that, the matter has been discussed in detail in the Ministry of Environment & Forest and the old guidelines have been revived in light of the existing provisions of law and rules. It is further recorded that, the highlighted in the review that, unless there is a clear delineation of elephant habitats and corridors, the implementation of the guidelines with respect to Elephant Reserves and Corridors becomes very difficult. It is further recorded that, till the habitats acquire legal status, the revised guidelines annexed to the said letter will be used as guidelines for NBWL Clearance for non-forestry activities to be taken up in the Wild Life area.

It is further recorded in para 2 of the O.M. dt.19.12.2012 which is reproduced as under :-

"2. It is clarified that while project proponents may simultaneously apply for Environment, Forest and NBWL clearances, in order to complete the formalities without undue delay, no rights will vest in or accrue to them unless all clearances are obtained. In other words, project proponents cannot rely upon the concept of fail accompli, if they have already received any of the clearances. The Environmental, Forest and NBWL clearances will all be processed on their respective merits, and the clearance of one aspect will not confer any right upon the project proponent. Complete clearance is obtained only when all the requisite clearances have been obtained by the Project Proponent. This approach would protect the integrity of the flora and fauna of the country, as well as bring in clarity and transparency in the issue of Environmental, Forest and NBWL clearance."

Lastly it is stated in the said O.M. dt.19.12.2012 that "this is in supersession of the orders of the even numbers dt.15.03.2011, any communication related to these documents thereafter. The copy of the O.M. dt.19.12.2012 along with the guidelines for taking non-forestry activity in wild life habitates at page C-11 to C-26.

On perusal of the complete file papers especially the order of The National Green Tribunal Western Zone Bench, Pune dated 03.12.2015 the said ad-interim relief / order is applicable to the new projects in the area until the proposal forwarded by the State of Maharashtra is newly notified by MOEF / NBWL with respect to the distance from the protected area / National Park.

In view of the above, as far as Query No.1 is concerned, the undersigned is of the opinion that no permission of whatsoever nature should be granted to any new proposals submitted on or after 03.12.2015. The Query No.1 is answered accordingly.

As far as the point No.2 is concerned where the amendments to the plans for the IOD already granted and having built-up area more than 20000 sq.mtrs further C.C. for proposals which are already sanctioned, full C.C. for the proposals which are already sanctioned, occupation to the proposals which are already sanctioned will not be treated as a new permission as per the order dated 03.12.2015. The permission can be issued like amended plans, C.C., part O.C., Full O.C. for the ongoing proposals having built-up area more than 20,000 sq.mtrs within the buffer zone of Sanjay Gandhi National Park can be continued subject to any further orders if any by The National Green Tribunal, Western Zone, Pune as the matter is kept on 5th of January, 2015.

Submitted please.

(F)

LOP/5540

23/12/15

Hon'ble Municipal Commissioner,
Sir,

[Signature] 23/12/15
 Joint Law Officer
 (S.C.C., I.L. & C)

Seen. Please take action
as per opinion of law officer.

[Signature]
30/12/15

Municipal Commissioner

मुहूर्तुपर शासनकार्यालया
आयुक्त्याये कार्यालय

23 DEC 2015

समय ११, १२, १३, १४
१५, १६, १७, १८

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the proposals which are already sanctioned, will be treated as new permissions as per order dtd 3rd December, 2015 and whether further permissions can be issued like, amended plans, C.C. further C.C. part O.C., full O.C. for the running projects having built up area more than 20000 sq.mt. within buffer zone of Sanjay Gandhi National Park.

Perused the note at page N-1 and N-2 and the complete file from C-1 to C-9. From the file it is seen that from 3rd December, 2015 The National Green Tribunal, Western Zone Bench, Pune have passed an ad-interim order in M.A. No.125 of 2014, M/s.Omkar Realtors and Developers Pvt.Ltd., in Appeal No.14 of 2014 Santosh Daundkar V/s Secretary, MOEF, New Delhi & Ors And Appeal No.14 of 2014 Santosh Daundkar V/s Secretary, MOEF, New Delhi & Ors. By the said order The National Green Tribunal **by way of abundant precaution as an ad-interim relief directed that no further construction shall be granted to any new project in area until the proposal forwarded by the State of Maharashtra is duly notified by MOEF / MBWL with respect to distance from the protected area / National Park atleast to keep the status-quo.** The copy of the order is at (page C-5 to C-7).

It is seen from the file papers that Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali wrote a letter dated 0312.2014 addressed to the E.E. (B.P.) Kandivali referring 1) Hon'ble Supreme Court order dated 04.12.2006 in PIL W.P. No.460 of 2004 filed by Goa Foundation and 2) Government of India, Ministry of Environment and Forest (Wild Life Division) F.No.6-10/2011 WN dated 19.12.2012.

In the said letter it is stated that with reference to 1) The State Forest Department has submitted the proposal of Eco Sensitive Zone around the forest boundary of Sanjay Gandhi National Park Division, Borivali. It is further recorded that as per the proposed Eco Sensitive Zone, the privately owner land / area around the forest division boundary ranging from 0.1 km to 2 kms of Sanjay Gandhi National Park is proposed as Eco Sensitive Area.

It is further stated that this Eco Sensitive Zone is yet to be approved by Government of India, Ministry of Environment and Forest and till then for any non Forestry activity, within a distance of 10 kms from the boundary of Sanjay Gandhi National Park, the user agency / project proponent is required to obtain recommendation of the Standing Committee of National Board of Wild Life.

It is further stated that in pursuance to the order of Hon'ble Supreme Court in Writ Petition (Civil) No.460 of 2004 the Ministry of Environment and Forest has

issued an office Memorandum on 14.09.2006, 01.12.2009 and 04.04.2011 indicating that environmental clearances from all non Forestry work that fall within any Eco Sensitive Zone will be subject to recommendation of the Standing Committee of National Board of Wild Life.

It is further stated in the letter dated 03.12.2014 issued by the Ministry of Environment and Forest apply only to any building and other construction projects having built up area more than 20000 sq.mts which will then need the clearance of NBWL.

Lastly, by the said letter Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali have requested the E.E. (D.P.) 'R' Ward MCGM, Kandivali to take cognizance of the above and insist the upcoming project falling in the category of 20000 sqmts built-up area to submit their relevant document to their office for getting NBWL permission (Pg C-9).

It is also seen from the letter dtd 03.12.2015 of Asstt. Conservator of Forest (Wild Life), Sanjay Gandhi National Park, Borivali addressed to Dy.Ch.E. (B.P)(E.S.) referring the same matter of Goa Foundation of the Supreme Court and the circular of Environment and Forest Department, Central Government (Wild Life Division). By the said letter they have stated that in view of the order of the Hon'ble Supreme Court in the matter of Goa Foundation W.P. No.460 of 2004, Order dtd. 04.12.2006 Government had submitted the proposal for declaration of Eco Sensitive Zone around Sanjay Gandhi National Park and approval yet to be granted by Government of India. Till that time, as per the reference received by the order under No.F.No.6-10/2011 dated 19.12.2012, within 10 kms buffer zone surrounding the Sanjay Gandhi National Park the NOC from NBWL is mandatory for the proposed construction and the ongoing construction proposals having area of construction more than 20000 sq.mtrs.

In the said letter dated 03.12.2015 the reference of M/s.Oberoi Cosntruction Ltd., is given stating that even their project is of more than 20000 sq. mtrs built-up area they have not obtained the permission from the concerned authority i.e.NBWL (pg C-1 to C-5).

The undersigned also perused the Office Memorandum of the Government of India, Ministry of Environment & Forest Wild Life Division dated 19.12.2012, which is issued by the Deputy Inspector General of Forest (WL). By the said O.M. which is in respect of Guidance Documents for taking up non-forestry activities in wild life habitats. In the said O.M., reference is invited to the same Ministry's letter dated 15.3.2011 regarding the Guidance Documents for taking up



MUNICIPAL CORPORATION OF GREATER MUMBAI
LEGAL DEPARTMENT

Date : 23.12.2015.

- Sub : 1) Court order from National Green Tribunal, Western Zone dtd. 3rd December, 2015 (Pg C-5 to C-7).
2) Letter from Chief Conservator of Forest dtd 3rd Dec., 2014 (Pg C-9 to C-).

Ref : CHE/DP/40127 dated 16.12.2015.

Reference is requested to the note of Ch. E. (D.P.) under No. CHE/DP/40127 dated 16.12.2015. By the said note, Law Officer is requested to give an opinion as per the direction of Hon'ble Municipal Commissioner in view of the order passed by The National Green Tribunal, Western Zone, Bench Pune in M.A. no.125/2014 M/s.Omkar Realtors and Developers Pvt.Ltd., in Appeal No.14 of 2014 Santosh Daundkar V/s Secretary, MOEF, New Delhi & Ors. and Appeal No.14 of 2014 order dated 3rd December, 2015 and the letter dated 3rd December, 2015 of Asstt. Conservator of Forest (Wild Life), Sanjay Gandhi National Park, Borivali as well as the earlier letter dated 3rd December, 2014 of Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali.

It is stated in the note that a meeting was held in the Chamber of Hon'le M.C. on 15.12.2015 in the presence of MCHI, PEATA members and Chief Engineer (D.P.). It is further stated that, the issue is of grant of permission within the buffer zone of Sanjay Gandhi National Park which was discussed at length in light of the order from The National Green Tribunal, Western Zone dated 03.12.2015. It is further stated that, the Hon'ble M.C. directed the Ch.E, (D.P.) to obtain the specific opinion from Law Officer as per the order dated 03.12.2015 (pg C5- to C-7) and as per the letter from Chief Conservator of Forest dated 03.12.2014 (pg C-9) on the following points :-

- 1) Whether the order is exclusively applicable to new projects having BUA area more than 20000 sq.mt i.e. the proposal submitted on or after 3rd December, 2015 to MCGM within buffer zone of Sanjay Gandhi National Park.
- 2) Whether the amendments to the plans for the IOD already granted and having built up area more than 20000 sq.mt. further C.C. for proposals which are already sanctioned, full C.C. for the proposals which are already sanctioned, occupation to

N-2

In view of above, Law Officer is therefore, requested to submit the remarks immediately to Hon.M.C. on the above highlighted issues as per directions given by Hon.M.C.

This may treat as urgent. For any clarification you may contact undersigned please.

Sh.E.(D.P.)
16/12/15

Law Officer

Hon. M.C.
Sir,

बृहन्मुंबई महानगरपालिका
विधी विभाग 3008
16 DEC 2015
विधी क्रमांक LOP/5540

L.O. 1/2
17/12/18

Dy Law Officer (DRT)
Smt. Karis

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