

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

**WRIT PETITION (L) NO.424 OF 2019**

Wheelabrator Alloy Casting Ltd. & Anr. ..Petitioners  
V/s.  
The Municipal Corporation of Greater  
Mumbai & Ors. ..Respondents

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Mr.Virag Tulzapurkar, Senior Advocate a/w Ms.Sowmya Shrikrishna  
Dhawal Mehta, Denzil Arambhav, Shlok Bola, Yash Sethna, Ms.K.  
Vasania i/b Wadia Chandy & Co. for the Petitioners.

Ms.Vandana Mahadik for MCGM.

Mr.Aditya Thakkar i/b Geeta Gandhi for Respondent Nos.2 and 3.

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**CORAM : RANJIT MORE &  
SMT.BHARATI H. DANGRE, JJ.**

**ORDER RESERVED ON : 15<sup>th</sup> FEBRUARY 2019  
ORDER PRONOUNCED ON : 27<sup>th</sup> FEBRUARY 2019**

**P.C.**

1. The petitioners are aggrieved by the impugned notice by which they are directed to stop the development/construction undertaken on property admeasuring 61,665.60 sq.m. situated at Village-Kanjur Marg, LBS, Kanjur Marg(W) and directing them not to create any third party interest by transferring the ownership or possession of any of the area constructed to far. The said notice dated 25.01.2019 which is impugned is passed by the Rear Admiral,

Chief Staff Officer, Western Naval Commanding Officer. Based on the said notice the MCGM has also issued a notice on 05.02.2019 to the petitioner directing to stop the ongoing construction work on plot owned by the petitioner in absence of further No Objection Certificate (for short 'NOC') from the Government of India/Ministry of Defence.

2. We have heard the learned Senior Counsel Mr.Tulzapurkar. He would submit that the petitioner was issued an Intimation of Disapproval (for short 'IOD') for development of the said land by the MCGM which is a Planning Authority on 06.09.2014 and on 07.01.2015 a Commencement Certificate (CC) was also issued. He would further submit that after Commencement of the development of the said land, the respondent No.1 sought NOC for the development of the said land from the respondent Nos.2 and 3, in the backdrop of the fact that there exists a Naval Civil Housing Colony (NCHC) in the vicinity of the said land. It is then submitted that initially the respondent No.3 refused to grant the NOC and resultantly the construction activity of the petitioner on the subject land was required to be brought to a grinding halt. However, the decision was reviewed at the level of respondent Nos.2 and 3 and on 09.03.2017 and the Rear Admiral, Chief Staff Officer

(P&A) for a Flag Officer Commanding-in-Chief accorded its NOC for the proposed residential building on the plot owned by the petitioner. The said NOC categorically stated that the restrictions around the Naval Stations/Area of Mumbai having reviewed and “No Objection Certificate” is issued for the proposed residential building located at Village-Kanjur at LBS Marg, Kanjur, Mumbai. It is clarified that the construction will be undertaken at the risk of the owner, subject to the condition that the Department/ Indian Navy/ Ministry of Defence/ Government of India is totally indemnified against any claim, whatsoever, under all circumstances. The earlier letter refusing the NOC came to be cancelled. The petitioner thereafter resumed its construction in accordance with the permissions/ sanctions/ approvals conferred by respondent No.1.

3. The learned Senior Counsel would submit that in pursuance of the said permission, the petitioners have substantially completed the construction upto tower 8 and all the apartments are already sold. Shri.Tulzapurkar, makes a categorical statement that the construction of tower 9, 10 and 11 has already commenced and 97 apartments out of the said Towers have already been sold and the construction of tower No.12 is about to commence. Amidst this work being undertaken, the petitioner was served with the

impugned notice dated 05.02.2019 by the respondent No.1 to stop work, purportedly under provisions of Section 354-A of the Mumbai Municipal Corporation Act, 1888 alleging that the work is unlawful and in absence of further NOC from the Government of India/Ministry of Defence, the construction would be pulled down. On enquiry with the office of the respondent No.1 the petitioner has gained information that the respondent No.3 had addressed a communication to the MCGM thereby intimating that the Naval NOC accorded on 09.03.2017 be kept in abeyance and it was also directed that respondent No.1 should ensure that no further construction activity is undertaken or any third party rights are created by the petitioners. Shri.Tulzapurkar, thus submits that this has come at the stage when the 8 towers are already raised and this contains 1306 flats, out of which 1103 flats are already sold and the petitioners are in process of obtaining Occupation Certificate.

4. We have also heard the learned Additional Solicitor General Shri.Anil Singh appearing for the respondent Nos.2 and 3. He would submit that the said impugned communication is based on the guidelines issued by the Ministry of Defence on 18.05.2011 and since the area where the construction is being undertaken falls within the restriction imposed by the said circular. Shri.Singh

would vehemently submit that satisfaction of the Defence Authorities be given a primacy and when it is of the opinion that the establishment of the petitioner would be a security hazard being located within the restricted radius of the Housing Colony of the Naval Forces, this Court should not interfere since the matter is being examined at a higher level. He makes a categorical submission that a Writ Petition Lodging No.1243 of 2018 came to be filed in this Court and in connection with the same when inputs were sought from Naval Headquarters. On scrutiny it has come to the notice of Ministry that the MCGM was granted NOC in respect of M/s.Runwal Forest, Mumbai, by Naval Authorities in violation of the guidelines issued by the Ministry of Defence on NOC dated 18.05.2011 and a review process is being undertaken. It is also categorically stated by Shri.Singh that the matter relating to grant of irregular NOC to MCGM in respect of the M/s.Runwal Forest, Mumbai has been referred to the Central Bureau of Investigation (CBI) for an in-depth investigation on 24.01.1999 and the decision will be taken by the Ministry after ascertaining all the relevant facts related to the case, as a result of which the NOC which was granted earlier has been directed to be kept in abeyance till a final decision is taken. The Assistant Solicitor General would thus urge to the Court to await the decision being taken at a higher level in view of the

above mentioned facts.

5. It is not in dispute that the petitioners have commenced the construction activity after obtaining necessary permissions from the Planning Authority and the Development has been permitted strictly in conformity with the provisions of the Mumbai Municipal Corporation Act as well as Maharashtra Regional and Town Planning Act, 1966 and also in terms of the Development Control Regulations.

In terms of the circular issued by the Ministry of Defence, holding the field imposing restrictions on development of areas in the vicinity of the Defence Headquarters, the permission from the concerned Commanding Officer was sought by the MCGM. The same was initially refused but the said refusal was reviewed and Competent Authority of the respondent No.3 issued a NOC on 09.03.2017. The construction development activity of the petitioners therefore, continued in the backdrop of the said NOC and perusal of the policy of the Ministry of Defence contained its circular dated 18.05.2011 contemplate a provision to the effect that NOC once issued shall not be withdrawn without the approval of the service Headquarter. However, at this stage when the construction of the petitioner has advanced and construction of 8 towers is

almost completed and the construction of the 9, 10 and 11 towers is in progress and most of the flats are already been sold out, the respondent No.3 intimates that the NOC issued be held in abeyance till the final decision in the matter is taken. The said communication is issued by the same authority who has earlier issued the NOC i.e. the Rear Admiral, Chief Staff Officer (P & A) and is in clear violation of the own guidelines issued by the Ministry of Defence. Perusal of the Guidelines issued by the Ministry of Defence on 18.05.2011 disclosed that pending amendment to the Works of Defence Act, 1903 it imposes restrictions upon use and enjoyment of land in the vicinity of Defence Establishment. The guidelines are framed with object of striking a balance between the security concerns of the forces and the right of public to undertake the construction activities on different parcels of land.

6. We are therefore, *prima facie* convinced that the respondents are not justified in issuing the impugned notice without taking into consideration the progress of the construction activity and specifically when there is no change in circumstances which are pointed out from the point of time when the Naval NOC was earlier granted. The respondent No.1 according to Local Planning Laws have issued the IOD and C.C. and all other approvals, permissions

and sanctions and has also procured the Naval NOC which was desired in terms of the policy of the Ministry of Defence. The petitioners have invested huge sums of money towards implementation of the project on the said land. It is also an obligation to honour an undertaking/ representation made by it under the RERA. The impugned notice has brought the development of the land by the petitioner No.1 to stand still and this would cause irreparable loss and damage/injury and prejudice to the petitioner since third party rights have already been created. The justification submitted by Shri.Singh to the effect that the earlier NOC did not ensure any compliance of the guidelines issued by the Ministry of Defence cannot be accepted and merely because one of the officer of the respondent No.3 has been alleged of some misdemeanor or impropriety that cannot be a justification for putting the petitioners to irreparable inconvenience. The flat purchasers who have purchased the flats must have invested huge amount of money and in terms of the new RERA regime the petitioner is also duty bound to deliver the possession by prescribe dead line. The threat perception convinced by the Defence Authorities is no doubt of prime importance but the satisfaction reached by the authorities cannot be said to be completely outside the purview of the judicial review, when the act is *prima facie*



arbitrary, when it is pointed out that the authorities have once conferred the NOC. More-so-ever the establishment in respect of which the protection is sought by putting a restriction on development is a Naval Housing Colony and not a functional Naval Establishment or a prohibited area governed by the Official Secrets Act. The safety and security of the Defence Establishment no doubt deserves a priority but this cannot extend to a housing colony located in a Prime residential area.

The learned Senior Counsel Shri.Tulzapurkar has also invited our attention to the other multi storied structures in existence around the said Naval Housing Colony which have been standing on the close vicinity of the NCHC. For the aforesaid reasons we think that this is a fit case for grant of interim relief. Taking into consideration the *prima facie* view of the matter, by way of interim relief we are inclined to stay the effect an operation of the impugned notice dated 25<sup>th</sup> January 2019 issued by respondent No.3 and also the subsequent impugned notice dated 05.02.2019 issued by the respondent No.1, based on it. We issue direction to the respondent No.1 to permit the petitioner to proceed with the construction of the remaining towers at the works site in accordance with the approved building plans and permissions.

Since, the learned Assistant Solicitor General seeks time

to file the response, we grant time of two weeks to file an affidavit.  
Let the matter be listed after two weeks.

**(SMT.BHARATI H. DANGRE, J.)**

**(RANJIT MORE, J.)**

At this stage Mr.Anil Singh, learned Assistant Solicitor General prays that this order be stayed for the period of 4 weeks. Since we have already recorded our *prima facie* view of the matter that the balance of convenience is in favour of the petitioners and irreparable loss would be caused by the impugned notices, we are not ready to accept the request made by Shri.Singh. The same is accordingly rejected.

**(SMT.BHARATI H. DANGRE, J.)**

**(RANJIT MORE, J.)**