

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2383 OF 2014

Hoary Realty Ltd. & Anr.

.. Petitioners

versus

Municipal Corporation of Greater
Mumbai & Ors.

.. Respondents

Dr. Milind Sathe – Senior Advocate, Mr. Parimal Shroff, Mr. D. V. Deokar, Ms. Rishita Gandhi i/b. Parimal K. Shroff & Co. for Petitioners.

Mr. N. P. Pandit – AGP for Respondents No. 2 - State.

Smt. S. V. Bharucha with P. S. Jetley for Respondent No. 7.

Ms. Sharmila Deshmukh for Respondent No. 3.

Mr. E. P. Bharucha - Senior Advocate with Ms. T. H. Puranik for Respondents – MCGM.

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

DATE : 07 October 2014

P.C.:

1] Leave to amend the prayer clause, as prayed for granted. Amendment shall be carried out forthwith.

2] Rule, with consent of the parties, Rule is made returnable forthwith.

3] The petitioners have prayed for the direction to respondent nos. 1, 3 to 6 the Municipal Corporation of Greater Mumbai and its officers to process, consider and sanction the petitioners application for development of the petitioners property being Final Plot No. 1211 of TPS IV, Mahim Division, admeasuring 21,475.6 sq. mtrs. The petitioners have also prayed for direction to MCZMA to grant clearance that the petitioners property falls outside the purview of the CRZ area and CRZ Notification.

4] The petitioners rely upon CRZ Notification dated 6 January 2011, the classification of CRZ areas is as under:

“.....the Central Government hereby declares the following areas as CRZ and imposes with effect from the date of the notification the following restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ,-

- (i) the land area from High Tide Line (hereinafter referred to as the HTL) to 500 mts on the landward side along the sea front.*
- (ii) CRZ shall apply to the land area between HTL to 100 mts or width of the creek whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt) measured*

during the driest period of the year and distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans (hereinafter referred to as the CZMPs).

Explanation.- For the purposes of this sub-paragraph the expression tidal influenced water bodies means the water bodies influenced by tidal effects from sea, in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds connected to the sea or creeks and the like."

5] The petitioners rely upon the certificate dated 17 April 2014 issued by Institute of Remote Sensing, Anna University, Chennai -600025 (Exhibit 'J-1' page 173) certifying that as per the CRZ map submitted by IRS at 1:4,000 scale, an area of 1475.6 sq. m. falls within 100 meters from high tide line of Mahim Bay (CRZ-II) and an area of 20013.7 sq. meters falls outside CRZ.

6] Dr. Sathe, learned counsel for the petitioners states that the petitioners does not propose to put up any construction or undertake any developmental activity on the said portion of land admeasuring 1475.6 sq. meters falling within 100 meters from HTL of Mahim Bay (CRZ-II) and the petitioners application for development is only on land admeasuring 20013.7 sq. meters which falls outside CRZ.

7] However, in the affidavit in reply dated 4 October 2014 filed on behalf of the MCZMA, the MCZMA itself has

contended that the petitioners has relied upon the plan certified by the Institute of Remote Sensing in which the water body is CRZ IVA but in respect of the same Mahim Bay in the case of Deepak Rao the water body is not classified as CRZ IVA and therefore in view of these conflicting certificates issued by the Institute of Remote Sensing, MCZMA has sought for clarification from the petitioners, which the petitioners may obtain from the Institute of Remote Sensing, Chennai.

8] Having heard learned counsel for the parties, we are of the view that there is no substance in the contention being raised by MCZMA. The petitioners' case is similar to the case of Deepak Rao. In its 88th meeting held on 31 January 2014 (Exhibit 'T' page 140) the MCZMA took the following decision:

"In view of the above, the Authority after detailed deliberations decided that project site i.e. plot bearing C.S. No. 1463 in Mahim Division at G/N Ward, Mumbai is situated outside CRZ area i.e. beyond 100m CRZ line from the HTL of Mahim Bay and Creek, as per the provisions of CRZ Notification 2011. hence, the said plot will not fall under the ambit of CRZ Notification, 2011.

9] As far as the present case is concerned, the Institute of Remote Sensing, has clearly certified how much area falls within 100 meters of high tide line of Mahim Bay and how much area falls outside 100 meters. Once this position is not disputed, it is of no consequence whether in petitioners' case the Institute of

Remote Sensing has classified the water body as CRZ IVA and in case of Deepak Rao, no specific classification is made. Classification of water body as CRZ IVA and IVB is made in paragraph 7. B. (iv) as under:

“(iv). CRZ-IV

A. the water area from the Low Tide Line to twelve nautical miles on the seaward side;

B. shall include the water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand during the driest season of the year.”

10] The aforesaid classification would show that CRZ IVA would be the water body from the low tide line to twelve nautical miles on the seaward side. This is precisely what the Institute of Remote Sensing has indicated in the report / map prepared by it in the context of the petitioners' property. Merely because the same water body is not given any classification in the report / map prepared in the context of Deepak Rao's property, is really of no consequence when it is an admitted fact that both the reports pertain to the lands abutting the Mahim Bay. In both the cases, the Institute of Remote Sensing was basically concerned with determining whether the water body at Mahim was indeed a 'Bay' and if so, demarcation of the HTL and area of 100 meters therefrom, which could be identified as CRZ area. Therefore, the circumstance that in one of the reports / maps there was an icon demarcating CRZ IVA area and similar icon was not there in the other report / map, is really not at all relevant for the issue which

arises in the present petition. Suffice that both the reports / maps identify the water body at Mahim as a 'Bay' and further the development proposed is in the area beyond 100 meters from the HTL of such Mahim Bay.

11] We also find that in the petitioners case the National Hydrographer Office at Dehradun has also certified that Mahim Bay is considered as a Bay and is also depicted as Bay on the Official Navigational Chart of the National Hydrographer Office. The petitioner is therefore justified in contending that the petitioners case is similar to the case of Deepak Rao.

12] Learned counsel for the Municipal Corporation of Greater Mumbai however submitted that they may have to go by Coastal Zone Management Plan as it obtains today since the new Coastal Zone Management Plan is not yet prepared, published or implemented. We had the occasion to consider and reject identical submission in the case of *Murlidhar Ramchandra Panvelkar & Ors. vs. The State of Maharashtra and Ors. in writ petition no. 1694 of 2013 decided on 12 August 2013*, in which one of us (Mohit S. Shah, C.J.) was a party. Therein, we observed thus:-

"9. In the above factual background, the question is whether the respondents authorities should be permitted to stop the petitioner-developer from proceeding with the construction as per the approved plans on the ground that new coastal zone management plans is not yet prepared, published or implemented.

10. In similar case being that of *Rustomjee Realty Private Limited & anr. v/s Union of India & ors.* (Writ Petition No.647 of 2012) decided on 25 March 2013 as well as in *Andheri New Kapaswadi Juhu Ekta Co-op. Hsg. Soc. Ltd. and ors. v/s. State of Maharashtra and ors.* (Writ Petition No. 161 of 2008) decided on 21 June 2013, after considering provisions of CRZ Notification dated 6 January 2011 this Court dealt with similar situation and held as under:“

16. It appears that the NCZMA is in the process of preparing a New Coastal Zone Management Plan for the Mumbai region and Raigad district. The question is whether the respondent- authorities should be permitted to stop the petitioner - developer from proceeding with the construction as per the approved Municipal plans on the ground that the new Coastal Zone Management Plan is not yet prepared, published and implemented.

17. It is clear that the petitioner's case is not a borderline case, with uncertainties whether the land would fall in CRZ area in the new Coastal Zone Management Plan. The present case is a clear case that while measuring CRZ area, instead of taking the creek as the tidal body, sea was erroneously taken as the tidal body. The MCZMA's view in favour of the petitioner is based on the survey conducted by National Institute of Oceanography (NIO) Goa and Centre for Earth Science and Studies (CESS) Trivendrum, both expert agencies recognized by NCZMA. “The doubt about dusk is not the doubt about noon” (Salmond on Jurisprudence).”

11. In the present case also, as recorded in the minutes of the meeting of the MCZMA on 10 June 2013, it is specifically noted that the project proponent i.e. petitioner-developer has submitted CRZ map prepared by the Institute of Remote Sensing, (IRS) Chennai in 1:4000 scale, which shows the site is at 240.6 mt. from Ulhas River. Learned counsel for the petitioners also pointed out that the site is also at about 1.5 km from the distance up to which tidal effects are exercised, as indicated in the CRZ Notification dated 6 January 2011 (Exh.H page 136).

12. In view of the above material on record, we are of the view that petitioners' case is similar to the case of Rustomjee Realty Private Limited and another (supra) and therefore respondents Nos.3, 4 & 5 are required to be directed not to raise any objection against the petitioners commencing construction on lands in question as per the approved municipal plans, merely on the ground that new coastal zone management plan is not yet prepared, published or implemented or on the ground that petitioners have not obtained any CRZ clearance from MCZMA or NCZMA.

13] The petition is accordingly disposed of with a direction to MCZMA to issue clearance certificate to the petitioners on the basis of certificate granted by Institute of remote Sensing indicating how much land is within 100 meters from the high tide line of Mahim Bay i.e. within CRZ area and how much land falls outside the CRZ area. This shall be done within a period of four weeks from the date of receipt of this order. After receiving

clearance from the MCZMA, the Municipal Corporation for Greater Mumbai, is directed to consider the petitioners' application for development on the land which falls outside the CRZ area, in accordance with law.

14] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

15] Parties to act on the basis of an authenticated copy of this order.

(CHIEF JUSTICE)

(M. S. SONAK, J.)

Chandka