

IN THE HIGH COURT OF JUDICATURE AT BOMBAY *Cna*

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2431 OF 2014

M/s. Kalpavruksha Developers & Ors.

.. Petitioners

versus

State of Maharashtra & Ors.

.. Respondents

Dr. Birendra Saraf with Mr. Simil Purohit, Ms. Azmin Irani, Mr. Gauraj Shah, Mr. S. N. Vimadalal, Mr. Manish Doshi and Ms. Henna Udaipurwalla i/b. M/s. Vimadalal & Co. for Petitioners.
Mr. M. A. Sayyed – AGP for Respondents - State.
Smt. S. V. Bharucha with P. S. Jetley for Respondent No. 2.
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. 4 to 6 i.e. 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. 1204 of TPS IV, Mahim Division, admeasuring 11889.74 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 plan certified by Institute of Remote Sensing, Anna University, Chennai -600025 indicating that the petitioners plot no. 1204 falls outside 100 meters from the high tide line. The petitioners submit that since the said Institute of Remote Sensing is recognized by MOEF, MCZMA is bound to act upon the said certificate dated 17 April 2014 (Exhibit 'Q' page 106), which reads as under:

"Conclusion :

- 1. The HTL demarcated by the IRS, Chennai corresponds to the HTL shown in approved CZMP subjected to the generalization error caused by the variation in scale of mapping.*
- 2. CRZ shall be applied for the land/site within the 100m buffer zone from HTL for Bay / Creek as per Para (ii) of CRZ Notification 2011 of MOEF vide S.O. 19(E), dated 06.01.2011. In this case, the project site containing F.P. No. 1204 of TPS IV of Mahim Division, Mumbai does not fall within the 100m buffer from HTL for Mahim Bay."*

6] However, in the affidavit in reply dated 4 October 2014 filed on behalf of the MCZMA, it is contended that the issue of CRZ is within the purview of implementing authorities i.e. MCZMA and that unless the decision is taken by MCZMA, the plans cannot be sanctioned by the Municipal Corporation by considering the subject plot as Non CRZ Area. It is stated that the project proponent i.e. the petitioners have to submit the CRZ map in 1:4000 scale from IRS, Chennai indicating water body as per provisions of CRZ Notification, 2011.

7] The MCZMA does not dispute the fact that the petitioners plot bearing F.P. No. 1204 is situate 100 meters beyond the high tide line towards the landward side, therefore, as per the aforesaid CRZ Notification dated 6 January 2011, the land does not fall within the CRZ area.

8] It needs to be noted that in a similar case of Deepak Rao at the 91st meeting of MCZMA held on 29, 30 and 31 May 2014, MCZMA took the following decision:

“CRZ issue in respect of 'Bay' as per CRZ Notification, 2011 Authority deliberated upon the matter of extent of CRZ area limit along the 'Bay', which is classified as tidally influenced water bodies as per provisions of CRZ Notification 2011. Earlier, as per CRZ Notification, 1991 there was 500 m CRZ area limit along the 'Bay'. Accordingly, CRZ areas extent was indicated in approved CZMP of Mumbai.

MoEF, New Delhi published new CRZ Notification on 6.1.2011 superseding the old CRZ Notification of 1991. Para (ii) of CRZ Notification, 2011, applies the max. 100 m CRZ area limit along tidally influenced water body such as creeks, estuaries including bay:

Further, as per para II. 9 of Annexure I of CRZ Notification, 2011, for classifying water body, such as sea, lagoon, backwater, creek, bay, estuary, the terminology used by Naval Hydrographic office shall be relied upon.

MCZMA is in receipt of cases of 'Bay' matter, which were deliberated in 88th, 91st and 92nd meeting of the MCZMA. In this context, Principal Secretary, Urban Development Department and Municipal Commissioner, MCGM represented their views in the matter and expressed that the matter needs to be deliberated comprehensively considering the town planning aspects in view of the provision of CRZ Notification, 2011 for 'Bay'. They would need more time to present their view in detail.

It was brought to the notice of PS, UDD and MC, MCGM that there was already an advisory issued by MoEF which restricts CRZ limit to 100 m from HTL for 'tidally influenced water bodies' including bay, even if new CZMP as per CRZ Notification, 2011 is not prepared and has advised CZMAs to apprise projects accordingly. Since PS, UDD and MC, MCGM could not attend the full proceedings of the meeting and left after half an hour, the discussion could not be completed.

Authority also noted after their departure that the PS, UDD has already given his department's view before the review committee appointed by MoEF about the uniformity in application of DCR in CRZ and non CRZ area in the

meeting held on 8th July, 2014 at Mumbai. It was also pointed out that the matter was extensively discussed / deliberated during Deepak Rao v/s. State of Maharashtra (WP 327/2013) in MCZMA's various meetings and MCZMA had to finally decide the matter and submit its decision to Hon' High Court of Mumbai by 17th February, 2014 based on the reports submitted by IRS, Chennai and National Hydrographer office, Deharadun and hence all other cases of Bay matter are being addressed by MCZMA on similar lines."

Accordingly, it is clear that MCZMA had already decided that since the matter was extensively discussed during Deepak Rao's case (which was as per the directions of this Court in writ petition no. 327/2013), the other matters based on the report submitted by IRS Chennai and National Hydrographer Office, Dehradun, relating to the cases of Bay matter will be decided on similar lines.

9] Only ground canvassed in the affidavit on behalf of the MCZMA is that in the map certified by the Institute of Remote Sensing, Chennai, there is no water body indicated. There is no merit whatsoever in the ground so contended. The map clearly shows the Mahim Bay and also the area of 100 meters from the high tide line on the landward side in colour yellow. The petitioners plot no. 1204 is shown beyond the yellow strip towards the landward side. As there is absolutely no dispute with regard to either the existence or the location of the water body, the report / map may not have separately indicated the same. Even otherwise, there have been several cases pertaining to water body

at Mahim, which has been classified as the Mahim Bay and such classification has been duly accepted by the MCZMA. The case of Deepak Rao is one such instance.

10] The MCZMA shall accordingly follow its decision in the case of Deepak Rao and on that basis issue the clearance within four weeks from the date of receipt of this order and send the same to Municipal Corporation of Greater Bombay. Upon receiving the said clearance, the Municipal Corporation shall proceed to consider the petitioners' application for development on the above lines in accordance with law.

11] We further direct that once MCZMA issues clearance in favour of the petitioners that the petitioners' land bearing plot No. 1204 falls outside CRZ area, the Municipal Corporation shall act on that basis while considering the petitioners application for development.

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

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

(CHIEF JUSTICE)

Chandka

(M. S. SONAK, J.)