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Shrikant ShitoleHon. Secretary, Mira Virar City
Shailesh SanghviPresident, Raigad
Rajesh PrajapatiPresident, Navi Mumbai
Arvind Goel

Ref. No. MCHI/PRES/13-14/003

May 27, 2013

To,
Hon'ble Prime Minister of India
Prime Minister Office
South Block, Raisina Hills
New Delhi - 110101

Sub: Issues faced in obtaining the Environment Clearance in MMR

Ref: (1) Letter No. MCHI/PRES/11-12/214 Dated 19th March 2012
(2) Office Memorandum of MoEF, Dated 07th February 2012
(3) Order of Hon'ble High Court, Bombay dated 10th April, 2013

Respected Hon'ble Prime Minister,

Greetings from MCHI-CREDAI

MCHI -CREDAI is an association of developers operating in MMR. We are a part of more than 1800 developers comprising of Thane, Kalayan, Dombavali, Vasai, Virar, and Navi Mumbai and Raigad.

As an association we seek personal intervention from PMO in this issue as we are facing several hurdles in obtaining Environmental Clearance for our real estate development projects in MMR.

The Office Memorandum above referred proposes certain guidelines linking height of building & width of road & the distance of the building from the nearest, available fire station.

In MMR region there are various Statutory Authorities like Municipal Corporation of Greater Mumbai (MCGM)/Mumbai Metropolitan Regional Development Authority (MMRDA)/ Slum Rehabilitation Authority (SRA), who scrutinize and consider various permissions for construction of High Rise buildings under the relevant Acts & Rules. They are the Local Bodies and Special Planning Authorities who have their specific departments with qualified professionals to pass the plans for Residential/Commercial Projects as per the statutory requirement.

Dr. K Kasturiangan Committee has submitted its report on the above issue. The report also mentioned that the guidelines are advisory in nature and not mandatory. It appears that the Department of MoEF is overlapping and interfering by issuing such directions and taking over of the statutory powers of the State and Local Bodies on such proposals. The Hon'ble High Court, Bombay has also stated that these guidelines are only advisory. However, pending the decision on the report, the Ministry has reiterated, as per the letter dated 04th May 2013, that the guidelines will continue to apply.

PAST PRESIDENTS

Sunil Mantri, Pravin Doshi, Mohan Deshmukh, Mofatraj Munot, Niranjan Hiranandani, Rajini S. Ajmera, G. L. Raheja, Lalit Gandhi, Babubhai Majethia

Because of this Memorandum almost in all the metro cities of our country, the real estate development is standstill which in turn jeopardizing the economy and GDP of the Country and the larger Development process and public interests.

We therefore seek your kind attention and intervention into this matter in getting permission and clearance on submissions from the Environment Department.

Thanking you,

With Respectful Regards,
For MCHI-CREDAI



Vimal Shah
President

Encl : As above

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
V/s.

The Union of India & Ors.

... Petitioner

... Respondents

WP NO.1668 OF 2012

Shripal Realty Private Limited

V/s.

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

... Petitioner

... 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 : 10th APRIL, 2013

P.C.

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 7th February, 2012 issued by the Ministry of Environment and Forests. On 13th 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 13th 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 7th February, 2012 in abeyance”.

2. On 27th June, 2012, the Writ Petitions were adjourned for filing a reply. Thereafter, from time to time the petitions were adjourned. On 16th July, 2012, time of two weeks was granted to file affidavit-in-reply. On 30th 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 14th August, 2012 as a last chance. Thereafter, the petitions were adjourned from time to time. Only on 7th January, 2013, the petitions were adjourned at the instance of the petitioners. The subsequent orders dated 12th March, 2013 and 2nd 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 12th March, 2013. We, therefore, request the learned Additional Solicitor General of India to appear in the matter. Stand over till 10th April, 2013.
2. Print out of e-mail dated 2nd 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 7th 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 111th Meeting of Infrastructure and Miscellaneous Projects and CRZ held on 16/17th April, 2012 of the Ministry of Environment and Forest. In the meeting Item No.4.19 was as regard the impugned memorandum dated 7th February, 2012. After discussion, the Committee members were of the view that guidelines are advisory in nature and may not be considered

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 16/17th 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 111th meeting of the Infrastructure and Miscellaneous Projects and CRZ held on 16/17th 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 7th February, 2012, these petitions will have to be heard and

disposed of finally at the admission stage. For that purpose, the petitions shall be fixed on daily board on 24th June, 2013. As we are fixing the petitions for final hearing, we grant one more opportunity to Union of India to file a reply. Reply, if any, shall be filed on or before 14th June, 2013. We make it clear that under no circumstances further time shall be granted for filing reply.

(MRS. MRIDULA BHATKAR, J)

(A.S. OKA, J)

Bombay High Court

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