



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

WRIT PETITION (L) NO.1844 OF 2024

1. **Macrotech Developers Limited,**
having its registered office at 412,
Floor – 4, 17G Vardhaman Chamber,
Cawasji Patel Road, Horniman Circle,
Fort Mumbai – 400 001.
2. **Piyush Thakkar,**
aged 52 years, Indian inhabitant,
having office at Lodha Excelus,
Apollo Mills Compound, NM Joshi
Marg, Mahalakshmi, Mumbai – 400 001.

..Petitioners

Versus

1. **State of Maharashtra**
Environment Department,
Through the Office of Government
Pleader, Bombay High Court, PWD
Building, Fort, Mumbai – 400 001.
2. **State Level Environment Impact
Assessment Authority,**
Through the Office of Government
Pleader, Bombay High Court, PWD
Building, Fort, Mumbai – 400 001.
3. **State Level Expert Appraisal Committee,**
Through the Office of Government
Pleader, Bombay High Court, PWD
Building, Fort, Mumbai – 400 001.
4. **Mumbai Metropolitan Region
Development Authority,**
Bandra-Kurla Complex, E-Block,
Kala Nagar, Bandra (East),
Mumbai – 400 051.

..Respondents

Mr. Milind Sathe, Senior Advocate with Mr. Saket Mone, Ms. Pooja T. Singhvi & Ms. Anchita Nair i/by Vidhii Partners for the Petitioners.

Mr. Milind More, Addl. G. P for the Respondent (State).

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE : 22nd FEBRUARY 2024

JUDGMENT: (per Jitendra Jain, J.)

1. **Rule.** By consent of the parties, the petition is heard finally.
2. By this Petition under Article 226 of the Constitution of India, the Petitioners have challenged the Minutes of Meeting dated 11th July 2023 issued by Respondent No.2-SEIAA, whereby the Petitioners application for environment clearance is deferred by directing the Petitioner to submit revised plan for approval with mandatory recreation ground (RG) on mother earth.

Brief facts are as under :-

3. The Petitioner No. 1 is engaged in the business of real estate development of various residential and commercial properties. Pursuant to the tender issued by Respondent No.4-MMRDA, the bid of the Petitioner No. 1 for construction / development of the project at Block-C, Wadala, Terminus, Mumbai was accepted and lease agreement came to be executed between them on 1st August 2011.

4. On 24th May 2011, initial layout plan was approved by the Respondent No.4-MMRDA and environment clearance for the said project was issued by Respondent No.2-SEIAA on 5th September 2011.
5. On 9th December 2011, Commencement Certificate for the said project was issued by Respondent No.4-MMRDA and a notification was issued under Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') for the said project on 25th April 2013.
6. The Petitioner subsequently made applications for environment clearance and same were granted on 17th January 2013, 11th June 2014, 15th January 2019 and 15th January 2020.
7. Based on the environment clearances granted by Respondent No.2-SEIAA from time to time, the Petitioner completed 85% of the project and obtained part Occupation Certificate.
8. On 22nd February 2023, the Petitioner made an application with the office of Respondent No.2-SEIAA for conversion of certain commercial buildings to residential buildings for revised environment clearance.
9. The aforesaid application was discussed in the meeting of Respondent No.2 and by the Minutes of Meetings issued by Respondent No.2-SEIAA on 11th July 2023, the Petitioner was directed to submit

revised plan of approval with mandatory RG on mother earth and till then the consideration of the application for environment clearance was deferred subject to the compliance of submission of revised plan. The said direction was given by relying upon the decision of the Supreme Court in the case of ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr.***¹.

10. Thereafter, the Petitioners made various representations to Respondent No.2-MMRDA stating therein how the judgment of ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr. (supra)*** is not applicable since same is prospective. However, Respondent No.2-MMRDA did not agree on the same. It is on this said backdrop that the Petitioner is before us being aggrieved by the Minutes of the Meeting of Respondent No.2-SEIAA dated 11th July 2023.

11. We have heard the learned counsel for the Petitioners and Respondents and have also perused letter dated 21st February 2024 addressed by Respondent No.2-SEIAA to its Advocate.

12. It is not disputed that the initial layout plan of the Petitioner was approved by Respondent No.4-MMRDA on 24th May 2011 and the Commencement Certificate was issued on 9th December 2011 by

¹ Civil Appeal No.11150 of 2013

Respondent No.4-MMRDA. The first environment clearance for the said project was granted by Respondent No.2-SEIAA on 5th September 2011 and same was revised on 17th January 2013.

13. The Supreme Court decided the case of ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr. (supra)*** on 17th December 2013. In the operative part of its order observed as under ;

“(3) The decision as contained in Clauses 2(i) and 2(iv) above, will apply to those constructions where plans are still not approved, or where the Commencement Certificate (CC) has not yet been issued. All authorities concerned are directed to ensure strict compliance accordingly”.

14. Therefore, it is very clear that the decision of the Supreme Court was to apply to those plans which were not approved on the date of its decision or where Commencement Certificate had not been issued. In the Petitioner’s case, the layout plan was approved on 24th May 2011 and Commencement Certificate was issued on 9th December 2011. Therefore, the Respondent No.2-SEIAA is not justified in directing the Petitioner to submit revised plan with mandatory RG on mother earth, since the date of approval and Commencement Certificate is before the date of decision of the Supreme Court. Therefore, directions to this extent in the Minutes of Meeting of Respondent No.2-SEIAA on 11th July 2023 is contrary to the decision of the Supreme Court in the case of

Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr.

15. It is also important to note that post the decision of the Supreme Court i.e. on 17th December 2013, the Respondent No.2-SEIAA on applications made by the Petitioner granted environment clearance on 11th June 2014, 15th January 2019 and 15th January 2020 and at no point of time the Petitioner was directed to submit the revised plan in accordance with the decision of the ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr. (supra)***. This could be only on the basis that Respondent No.2 and rightly so were of the opinion that the decision of the ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr. (supra)*** was not applicable since the project of the Petitioner was approved much prior to the decision of the Supreme Court. Therefore insistence of Respondent No.2-SEIAA now to the Petitioner to submit revised plan with RG on mother earth is contrary to its own environment clearance issued post the decision of the Supreme Court.

16. It is also important to note that the Petitioners have completed 85% of the project by constructing 10 towers, community hall, club house, commercial building etc. To insist the Petitioner now to change

the plan by providing for mandatory RG on mother earth at this stage of the project is impossible and would amount to undo what has already been constructed in accordance with the permissions and clearances obtained by various authorities including that from Respondent No.2. Therefore on this count also, the direction of Respondent No.2 is vitiated.

17. The Respondent No.2 in its meeting of 11th July 2023 have observed that the Petitioners are seeking amendment and expansion of earlier environment clearance. This observation is contrary to the tabular statement reproduced in this very Minutes where with respect to each of the item referred to therein is a reduction and not an expansion. For example, plot area as per the previous EC dated 15th January 2020 was 92,600 sq. mtrs. whereas under revised EC what is sought is only 81,740 sq.mtrs. Resulting into decrease of 10,860 sq.mtrs. Similarly, figures with respect to FSI, total area, construction area, RG area etc. with respect to each of the item there is a reduction and therefore observation and the premise of Respondent No.2 that the revised environment clearance is sought for expansion is contrary to their own tabular statement.

18. In view of the above, we pass the following order :-

ORDER

- (i) The direction of Respondent No.2 SEIAA to the Petitioners in its Minutes of Meeting held on 11th July 2023 to submit revised plan for approval with mandatory RC on mother earth is quashed and set aside.
- (ii) The decision to defer the consideration of the proposal dated 22nd February 2023 till the compliance of submission of revised plan is set aside.
- (iii) The Respondent No.2 is directed to consider the proposal of the Petitioners within a period of 8 week from today by taking into consideration the decision of the Supreme Court in the case of ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr. (supra)***, wherein it is observed that the said decision would be applicable only to the projects which are not approved and/or where Commencement Certificate has not been issued on 17th December 2013.
- (v) The Writ Petition is allowed in terms of prayer clause (a) which reads thus :-

(a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or Order under Article 226 of the Constitution of India,

thereby calling for the papers and proceedings culminating in the impugned deferment in Item No.26 in the 262nd Minutes of Meeting dated 11th July 2023 issued by Respondent No.2-SEIAA and after going through the legality and validity thereof, may be pleased to quash and set aside the same ;

18. Before parting, we may, however, note that in prayer clause (c), the Petitioners have sought a writ of mandamus directing Respondents to process application of environment clearance in respect of other similarly placed projects in accordance with law. We may observe that our decision is restricted to the project which is the subject matter of the Minutes of Meeting of Respondent No.2 dated 11th July 2023 and since Respondent No.2 have not taken any decision with respect to other projects, prayer of the Petitioners with regard to the same is premature. The Petitioners are permitted to agitate the same if the need arises as and when any decision is taken by Respondent No.2.

19. The Writ Petition is allowed in above terms. Rule is made absolute. No order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)