

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 06 OF 2015

M/s. Shree Richa Realtors and another v/s State of Maharashtra and others	... Petitioners ... Respondents
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Dr Birendra Saraf with Mr. S.N. Vimadalal, Mr. Gauraj Shah, Mr. Manish Doshi and Ms. Henna Udaipurwala i/b. M/s. Vimadalal & Co. for Petitioners.

Ms Geeta Shastri, AGP for Respondents No.1 - State.

Ms S.V. Bharucha with Mr P.S. Jetley for Respondent No.2.

Ms. Sharmila Deshmukh for Respondent No. 3.

Ms T.H. Puranik for Respondent Nos.4 to 6.

**CORAM : MOHIT S. SHAH, C. J. &
B.P. COLABAWALLA, J.**

DATE : 7 JANUARY 2015

P.C.:

1. Rule, with consent of the parties, Rule is made returnable forthwith.
2. The subject matter of the present petition is similar to the subject matter of Writ Petition (L) No. 2383 of 2014 (Hoary Realty Ltd. &

Anr v/s. MCGM & Ors.), Writ Petition (L) No. 2431 of 2014 (Kalpavruksha Developers & Ors. v/s. SOM & Ors.) which are covered under our Orders and Judgments both dated 7th October, 2014 in the above two matters and similar orders passed in other matters.

3. The petitioners have prayed for the direction to respondent Nos. 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 C.S Nos. 1588, 1/1588 and 2/1588 of Mahim Division, Ranade Road, Shivaji Park Road No. 4, Dadar (W), Mumbai 400 028 in all admeasuring 845.42 sq.mts. (approximately). The petitioners have also prayed for a 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 2 of 9 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 subparagraph 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 report and plan certified by Institute of Remote Sensing, Anna University, Chennai-600025 indicating that the Petitioners' land bearing C.S Nos. 1588, 1/1588 and 2/1588 falls outside 100 metres 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 letter/certificate dated 20th May,

2014 (Exhibit 'F-2' page 90 of paper book), 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 C.S. No. 1588, 1/1588 and 2/1588 of Mahim Division, Mumbai does not fall within the 100m buffer from HTL for Mahim Bay.”

6. The MCZMA at its 91st meeting held on 29th, 30th and 31st May, 2014 while considering the Petitioners proposal raised an objection as follows:

“Authority observed that IRS report concludes that the project site containing C.S. No. 1588 of Mahim Division, Mumbai does not fall within the 100m buffer from HTL for Mahim Bay. CRZ map also mentions water body as a “Mahim Bay”. However, legend mentioned in CRZ map shows, water body as ‘CRZ-IVA’, which indicates seafront and not tidally influenced water bodies.

Authority decided to direct the proponent to get clarification regarding the issue from IRS, Chennai who prepared the said CRZ map.”

7. Having heard learned counsel for the parties, we are of the

view that the petitioners' case is similar to the case of Hoary Realty's matter (supra) having already held by MCZMA that CRZ area extends to 100 metres from the high tide line. In its 88th meeting held on 31 January 2014 in Deepak Rao's case (Exhibit 'H' page 100 of paper book) 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.

8. As far as the present case is concerned, the Institute of Remote Sensing, has clearly certified that the said property falls outside the 100 meters. 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). CRZIV

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.”

9. 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.

10. 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 a 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 as also of Hoary Realty Ltd. and Kalpavruksha Developers. It is important to mention that by an order dated 19 November 2014, the Supreme Court has also dismissed the SLP against the order dated 7 October 2014 in Hoary Realty Ltd.'s case (supra).

11. 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 the 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 Coop. 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.

12. The petition is accordingly disposed of with a direction to MCZMA to issue clearance certificate to the petitioners on the basis of the certificate granted by Institute of remote Sensing that the Petitioners' land bearing C.S. Nos. 1588, 1/1588 and 2/1588 of Mahim Division falls outside CRZ area. This shall be done at the next meeting of the MCZMA, after 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 in accordance with law and on the basis that the Petitioners' land bearing C.S. Nos. 1588, 1/1588 and 2/1588 of Mahim Division falls outside CRZ area.

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

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

CHIEF JUSTICE

B.P. COLABAWALLA,J.