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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 2035 of 2014

Orbit Corporation Limited & Anr .. Petitioners.

Vs

Union of India & others .. Respondents.

Mr Milind Sathe, Senior Counsel a/with Ms Veenu C.

Khatri for the petitioners.

Mr Parag Vyas a/with Mr D.R.Shah for Respondent No.1.

Ms Manasi Joshi i/by Sharmila Deshmukh for Respondent No.2.

Ms Vandana Mahadik for Respondent No.3.

Mr Umashankar Upadhyay, AGP for Respondent No.4.

CORAM : V.M.KANADE & A.R. JOSHI, JJ.

DATE : 17th FEBRUARY, 2015.

P.C.

1) Rule. Rule is made returnable forthwith. The respondents waive service. By consent of parties, Petition is taken up for final hearing.

2) By this Petition which is filed under Article 226 of the Constitution of India, the Petitioner is challenging the validity of Corrigendum dated 29th March, 2011 which purported to modify, amend and alter the Coastal Regulations Zone (CRZ) Notification

dated 6th January, 2011.

3) Brief facts are that the Central Government, Ministry of Environment issued Notification dated 6th January, 2011. In the said Notification, it was expressly provided vide clause (c) (ii) that the Floor Space Index (FSI) or Floor Area Ratio for the redevelopment of old and dilapidated, cessed and unsafe buildings in CRZ areas shall be in accordance with the Town and Country Planning Regulations prevailing as on the date on which the project is granted approval by the competent authority.

4) However, by issuing office memorandum dated 29th March, 2011 which was issued in the name of one Dr Nalini Bhat, Scientist 'G', modification was made and it was provided that so far as the sentence "as on the date on which the project is granted approval by the competent authority" should be read as "as on 6th January, 2011". It is submitted by the learned counsel appearing for the petitioner that the Government Resolution dated 29th March, 2011 which was issued at the instance of the Central Government, Ministry of Environment could not be

modified / amended by a Corrigendum which was issued by an officer of the Central Government. It is submitted that before issuance of the Government Notification dated 6th January, 2011 procedure laid down under Rule 5 sub-clause (iii) of the Environment Protection Rules 1986 was followed and, therefore, if any, amendment / notification is to be made to the said notification, the same procedure shall have to be followed. An affidavit-in-reply has been filed on behalf of the State Government and it is stated in paragraph 9 that an Expert Committee under Chairmanship of Secretary, Ministry of Earth Sciences has been constituted to examine and submit a report. It is stated that the report by the Committee has been placed before us in a sealed envelope. It is stated insofar as the old and dilapidated buildings are concerned, the Committee has given an opinion that the request made by the State Government needs to be accepted as this will facilitate people to have safe and decent housing. It is an admitted position that the said recommendation of the Committee has been placed before the Central

Government. However, the same has not been accepted.

5) Be that as it may, the question that remains to be considered is whether the Notification has been issued by the Central Government after following the procedure prescribed under Rule 5 sub-rule 3(a) of the said Rules can be modified by Corrigendum and that too issued without following procedure which is prescribed under the said rule. In our view, there is much substance made in the submissions by the learned Senior Counsel on behalf of the Petitioner. Sub-rule 3(a) of Rule 5 of the Environment (Protection) Rules, 1986 reads as under:-

“5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas. –

- (i)...
- (ii)...
- (iii)..- (iv)..- (v)..- (vi)..- (viii)..- (ix)..- (x).
- (2)...

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the

carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.”

6) The Notification dated 6th January, 2011 was issued after following the said procedure and said Notification provides that FSI should be granted on the date on which the project is granted approval by the competent authority. That being the position, it is not now open for an Officer of the Central Government to alter the said Notification while substituting the said clause and replacing it with another date, namely, the date of issuance of the Notification dated 6th January, 2011. The said modification, therefore, in our view is without any authority of law and, therefore, the said modification will have to be set aside. It will be open for the Central Government to modify the said Notification dated 6th January, 2011 by following the procedure laid down under Rule 3(a) of the said Rules.

7) The petition is accordingly allowed in the aforesaid terms. Rule is made absolute in terms of prayer clause (a) and (c).

(A.R. JOSHI, J)

(V.M.KANADE,J)