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

WRIT PETITION (L) No. 1588 OF 2016

Makwana Properties Private Limited ... Petitioner
Vs.
Union of India & Ors. ... Respondents

Mr. Milind Sathe, Sr. Counsel a/w Nikhil Sakhardande i/b Wadia
Ghandy & Co., for the Petitioner.

Mr. S. K. Shinde, Govt. Pleader, for Respondent Nos. 1 & 2.

Ms. Sharmila Deshmukh, for Respondent No. 3.

Mr. Vijay Patil, for Respondent No. 5.

CORAM : V. M. KANADE, &
M. S. SONAK, JJ.

DATE : AUGUST 9, 2016

PC.

1. The grievance of the Petitioner is that the land, on which building of the Petitioner is situated, and which is declared as a Slum area, does not fall under the CRZ as per CRZ Notification, 1991, as recommended by the Maharashtra Coastal Zone Management (for short "MCZMA").

2. Brief facts, which are relevant for the purpose of deciding the present case, are as under:

On 19th February, 1991 a Notification was issued by Respondent No. 1 and it was sought to be amended by the Central Government by bringing a new Notification dated 6th January, 2011. In the said Notification, it was clarified that the new Coastal Zone Management Plan (for short “CZMP”) will be prepared within a period of two years i.e. on or before December, 2013, and till then the existing CZMP , which was prepared as per the 1991 Notification will continue. Thereafter since the new CZMP could not be prepared within the stipulated time, the time to prepare that plan was extended from time to time and finally, now it is further extended upto 31st January, 2017. There were several cases wherein there was clear error apparent in respect of the actual position of the land and buildings which were situated. According to the owners of these lands and buildings were situated outside the CRZ.

3. Taking into consideration the aforesaid difficulty, Respondent No. 1 – the Ministry of Environment & Forest issued two Office Memorandums (OMs), dated 1st July, 2011 and 8th August,

2011. In the said two OMs it was clarified that in cases where there was error apparent from the record regarding location of the building, the Maharashtra Coastal Zone Management Authority (for short “MCZMA”) may consider the proposal of said person and make its recommendation to the National Coastal Zone Management Authority (for short “NCZMA”). It was further clarified in the two OMs that in such cases, NCZMA shall consider the proposal though the final CZMP was still under preparation.

4. In the present case, the Petitioner gave a proposal to the MCZMA on 20.9.2011, and the MCZMA gave their approval at their meeting dated 23rd April, 2012 and sent it to NCZMA on 12th September, 2012. This fact is not denied by the NCZMA. The grievance of the Petitioner is that though the recommendation was received by the NCZMA, they have not processed the said proposal though more than four years are over. The learned Government Pleader Mr. S. K. Shinde has invited our attention to a letter dated 4th August, 2016 written by the NCZMA, in which it is stated that MCZMA should sent the proposal and thereafter the NCZMA would consider it.

5. In the present case, it is not in dispute that the said proposal was already sent by MCZM on 12.9.2012 and it was received by the NCZMA, which fact also is not in dispute. That being the position, NCZMA is duty bound to consider the recommendations made by the MCZMA alongwith the documents, which are submitted by the Petitioner with its proposal, viz. two reports, one of the National Institute of Oceanography (NIO), and the other of the Institute of Remote Sensing (IRS), which two institutions have been recognized and accredited by the Central Government as the expert agencies. The NCZMA shall decide the proposal on or before 5th September, 2016 and communicate its order to the Petitioner. If the meeting is not scheduled to be held, we direct them to hold the meeting for this purpose.

6. We have come across several cases, which have been filed before us in which the procedure is being followed under the OMs dated 1.7.2011 and 8.8.2011 but the NCZMA has not taken any decisions, whatsoever, and sit over the file for more than five years, whereas selectively they have decided some cases. We fail to understand the approach of the NCZMA to sit over the file

indefinitely. We, therefore, direct that if the meeting is not scheduled, the members of NCZMA may be called for this purpose and in that meeting, they should also decide the other applications also. If we find that no such applications / proposals are decided, appropriate orders will be passed by us.

7. It is no doubt true that NCZMA and MCZMA are under the legal obligation to ensure that there is no violation of CRZ, but at the same time when they themselves have issued the OM's to the Ministry of Environment and Forest, they are duty bound to comply with the directions given in the said two OM's. We find that without assigning any reasons, these files are kept pending. In most of these cases, old buildings are in existence and they have now become dilapidated, and are likely to fall at any time. The NCZMA is therefore duty bound to decide the proposals, which are sent along with recommendation by the MCZM, in one way or the other. Writ petition is accordingly disposed of in the aforesaid terms.

Sd/-
[M. S. SONAK, J.]

Sd/-
[V. M. KANADE, J.]