

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3607 OF 2018

M/s. Sancheti Properties and Ors.

...Petitioners

Versus

Maharashtra Pollution Control Board & Anr.

...Respondents

.....

Mr.R.D.Soni i/b. Ram and Co. for the Petitioners.

Ms.Sharmila U.Deshmukh for Respondent No.1.

Mr.A.R.Patil, APP for Respondent No.2 – State.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: OCTOBER 24, 2018

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
2. This Petition is directed against the order dated 29th January 2015 of issuance of process passed by the learned Judicial Magistrate First Class, Pune in R.C.C. No.2926 of 2014.
3. On 22nd October 2018, this Court has passed the following order .:

“1. In this Petition, the petitioners, who are the builders, are praying for quashing and setting aside the order dated . They are also challenging the order dated 21st June 2018 passed by the learned Chief Judicial

Magistrate, Pune below application exhibit 17 in R.C.C. No. 2926 of 2014.

2. ...The process is issued against petitioner Nos. 1 to 3 for the offence punishable under Section 15 read with Section 16 of the Environment (Protection) Act, 1986 read with the Environment Impact Assessment Notification of 2006.

3. Admittedly, as per notification of 2006 and further circular dated 21st April 2015, prior permission of Environmental Department is not required for construction upto 20,000 sq.meters. If the construction is going beyond 20,000 sq. meters, then prior clearance from the Environmental Department is mandatory. The same view is taken by the Division Bench of this Court in the case of **M/s. Vardhman Developers Limited vs. Union of India & Ors.** (Writ Petition (L) No. 2305 of 2013 with Notice of Motion (L) No. 539 of 2013 decided on 18th December, 2013) by holding that no prior permission is required from the Environmental Department to put up construction below 20,000 sq. meters.

4. In the present case, admittedly, the petitioners have submitted plans for construction of more than 20885.18 sq. meters before the Corporation. The petitioners had started their construction in the year 2010. According to the petitioners, they have completed first phase upto 14750 sq. meters without obtaining prior approval from the Environmental Department. Subsequently, the environmental clearance was obtained on 7th September, 2012 for construction of 38980 sq. meters”.

4. The learned counsel for the petitioners has pointed out that in the case of **M/s. Vardhman Developers Limited vs. Union of India &**

Ors. (Writ Petition (L) No. 2305 of 2013 with Notice of Motion (L) No. 539 of 2013 decided on 18th December, 2013), the Division Bench of this Court while dealing with the similar issue has accepted the undertaking given by the petitioners that they would construct only upto 20,000 sq. meters and shall not construct further. It means that in the said case, the proposal was given for more than 20,000 sq. meters. He has submitted that the petitioners have constructed upto 14,750 sq meters in the first phase i.e., in 2010 for which the action was taken by respondent No.1. He has relied on the sanctioned plan of first phase wherein the Collector has approved the construction upto 13,027.37 sq. meters. He has further submitted that the petitioners have not violated the rules and the notification. If the construction is beyond 20,000 sq. meters, then prior clearance from the environmental department is required.

5. The learned counsel for respondent No.1 has mainly relied on Section 15 read with Section 16 of the Environment (Protection) Act, 1986. She has submitted that if the party proposes to construct more than 20,000 sq. meters, then at that time also, prior clearance from the environmental department is mandatory. She has further submitted that the petitioners had submitted their first proposal in the year 2009 and it was of 20,885 sq. meters and, therefore, it was binding on the

petitioners to obtain prior clearance from the environmental department.

6. Heard submissions. Considered the documents and record placed before this Court especially the circular dated 21st April, 2015 and the notification of 2006. Both the documents disclose that for construction beyond 20,000 sq. meters, prior clearance from the environmental department is mandatory. If the construction is below 20,000 sq. meters, such clearance is not required. In the case of **M/s. Vardhman Developers Limited** (supra), the Division Bench of this Court has accepted the undertaking given by the petitioners that they would not construct more than 20,000 sq.meters and restrict upto limit as prescribed in the circular. In the present case, though, the proposal was given above 20,000 sq. meters as pointed out by the learned counsel for the petitioners, the authority has approved the construction upto 13,027.37 sq.meters and the construction was upto 14,750 sq. meters.

7. Under such circumstances, it cannot be said that there is breach of law or rules under the Environment (Protection) Act, 1986. The environmental department gave clearance on 7th September, 2012 for construction upto to 38,983.59 sq. meters. Therefore, I do not find any breach or violation of the rules under Environment (Protection) Act,

1986 as per complained by respondent No.1. Hence, it is a fit case to invoke the supervisory jurisdiction of this Court. Writ Petition is allowed. Rule made absolute in terms of prayer clause (a).

(MRIDULA BHATKAR, J.)