

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO. 2537 OF 2019**

Nuvoco Vistas Corporation Ltd & Anr ...Petitioners

*Versus*

The State of Maharashtra & Ors ...Respondents

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**Mr Ashish Kamat**, *with Mr Ameya Gokhale & Ms Kriti Kalyani, i/b  
Shardul Amarchand Mangaldas & Co, for the Petitioners.*

**Mr Hemant Haryan, AGP**, *for the Respondent-State.*

**Mr Akshay Shinde**, *for Respondent No. 2.*

**Ms Rupali Adhate**, *for Respondent-MCGM.*

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**CORAM: S. C. Dharmadhikari &  
G. S. Patel, JJ.**

**DATED: 9th September 2019**

**PC:-**

1. The petitioner says that it has received a notice to forthwith close down a ready-mix concrete plant.

2. The challenge in this writ petition is to an action of the Mumbai Metropolitan Regional Development Authority

(‘**MMRDA**’), a Special Planning Authority within the meaning of the Maharashtra Regional & Town Planning Act, 1966.

3. The MMRDA has issued a notice, a copy of which is at Exhibit A, and a further notice at Exhibit B dated 9th August 2019. Both notices indicate, according to the petitioner, that the petitioner must discontinue the operation and functioning of this plant. Exhibit A and Exhibit B read as under:

**EXIHIBIT “A”**

“No. TCP(P02)/ODC/CC/3.1.19/II/700/2019

Date: 1 July 2019

To,

1. Ar. Rohan Sirpotdar, M/s. RHS Architects,  
B-101, Manek Kunj (Meghwadi), Dr S.S. Rao road,  
Lalbaug, Mumbai 400 012.
2. M/s. Nuvoco Vistas Corp. Ltd.  
Equinox Business Park,  
Tower 3, East Wing, 4<sup>th</sup> Floor,  
Off. B.K.C. LBS Road, Kurla (W),  
Mumbai 400 070.

Sub.: Proposed Ready Mix Concrete (RMC) plant on  
land bearing CTS No. 276 and 279 of Village  
Bandivali and CTS No. 468 of Village Oshiwara at  
ODC, Mumbai.

- Ref.: 1. MMRDA's letter No. TCP(P-2)/ODC/  
CC/3/3.1.19/II/598/2019 dated 10-06-2019
2. Your letter dated 19-06-2019.

Pleaser refer your above cited letter by which you  
have requested MMRDA to grant approval to the RMC  
plant on the subject land till validity of MPCB' consent

and MCGM's permission issued u/s 390 i.e. 31-03-2020. In this regard, you are informed as follows:

The subject land falls in Commercial Transformation Zone as per the sanctioned Planning Proposals of Oshiwara District Centre (ODC). As per Reg. No 4.2 of sanctioned Planning Proposals of ODC, uses permitted in the various land use zones shall be as given in Development Control Regulations for Greater Bombay 1991 unless otherwise mentioned. The MCGM DCR-1991 is now superseded by the sanctioned DCPR-2034.

As per Sr. No. 74 of Table C, Sub Reg. No. 3.2, Reg. No. 34 of the MCGM DCPR 2034, RMC plant is permissible in Industrial zone while except regulation No. 57 (xi), it is not permissible in Residential and Commercial Zone. As per the regulation No. 57(xi), temporary permission to on site RMC plant for the use at site under development can be granted.

However, as per the sanctioned Planning Proposals of ODC, land use of the subject land is not industrial. Also, there is no proposal of construction of any main building/structure for which RMC plant is proposed on the subject land.

Thus as the proposal of RMC plant on the subject land is not in accordance with the provisions of applicable development control regulations of ODC and MCGM DCPR-2034, refusal communicated by MMRDA vide its letter dated 10-06-2019 cited at (1) above, remains unchanged.

You are hereby also directed to stop operation of RMC Plant on the subject land immediately, demolish the said RMC plant and restore the land to its condition, existing before the construction was carried out on site within 30 days from the date of this letter, failing which necessary action as per the provisions of MR&TP Act, 1966 pertaining to the unauthorized development will be initiated at MMRDA's end.

This letter is issued with the approval of Addl. Metropolitan Commissioner, MMRDA.

Planner,  
Town and Country Planning Division

CC with a request to initiate necessary action for closure of RMC plant on the land under reference:

1. The Sub Regional Officer, Mumbai – II,  
Maharashtra Pollution Control Board,  
Sub Regional Office, Mumbai – II,  
Raikar Chambers, "A" Wing 216,  
2nd floor, Deonar Gaon Road,  
Near Jain Manndir, Govandi (E),  
Mumbai 400 088.
2. The Municipal Commissioner,  
Municipal Corp. of Greater Mumbai.  
Mahapalika Marg, Mumjbai 400 001.
3. The Designated Officer-I,  
Asst. Engineer (B&F) K/W,  
Office of the Asst. Comm. K/West,  
2nd floor, Paliram Path,  
Opp. BEST Bus Depot,  
Andheri (W), Mumbai 400 058.
4. The Sr. Police Inspector,  
Oshiwara Police Station,  
New Link Rd., near Marigold Building,  
Oshiwara, Jogeshwari (W),  
Mumbai 400 102.

**EXHIBIT "B"**

**NOTICE UNDER SECTION 53(1) OF THE MR&TP ACT 1966**

No. TCP(P-2)/ODC/CC/3.1.19/II/900/2019

Date: 9 AUGUST 2019

To,

**M/s. Nuvoco Vistas Corp. Ltd.**  
Equinox Business Park,  
Tower 3, East Wing, 4<sup>th</sup> Floor,  
Off. B.K.C. LBS Road, Kurla (W),  
Mumbai 400 070.

The undersigned has been appointed as Designated Officer by the Metropolitan Commissioner as per the notification dated 29th October 2015 under No. TCP(P-2)/Misc./common 47/1500/2015 for Oshiwara District centre Notified Area falling under Special Planning Authority of MMRDA to exercise and perform the powers and functions of the Planning Authority under Section **52, 53, 54 and 55 read with Maharashtra Regional and Town Planning Act, 1966 (herinafter, for brevity's sake, referred to as "the said Act")**

WHEREAS temporary permission for the development on land as described in the Schedule appended below has been granted on 20-12-2012 which was valid for a period of 6 months at a time in the aggregate not exceeding for a period of three years and accordingly was revalidated from time to time till 19-06-2015.

AND WHEREAS the first request for revised approval to the said development was made on 01-06-2016 which has been refused on 10-06-2019 and 01-07-2019 due to non fulfillment of all required documents and proposal's non conformity with the applicable MCGM Development Control and Promotion Regulations, 2034.

AND WHEREAS directions to demolish the said development are issued on 10-06-2019 and 01-07-2019.

AND WHEREAS the said development is continued and not yet demolished by you,

AND WHEREAS in view of the above facts, the said development qualifies as unauthorized development in accordance with Section 52(1) and 52(2) of the said Act.

NOW THEREFORE you are hereby directed to called upon to immediately demolish the said development and restore the land to its condition, existing before the construction was carried out on site within a period of one month from the date of receipt of this notice by you.

Please note that on failure to comply with the aforesaid requisition you will be liable for prosecution under the said Act and the aforesaid requisitions will be carried out at your risk and cost.

#### **SCUEDULE**

(Description of the unauthorized development together with the particulars of land).

Ready Mix Concrete (RMC) plant on the land bearing CTS No 276 and 279 of Village Bandivali and CTS No. 468 of Village Oshiwara at ODC, Mumbai.

Designated Officer and Dy. Planner  
Town & Country Planning Division.

Copy for information to:

1. Ar. Rohan Sirpotdar, M/s. RHS Architects,  
B-101, Manek Kunj (Meghwadi), Dr S.S. Rao road,  
Lalbaug, Mumbai 400 012.
2. The Sr. Police Inspector,  
Oshiwara Police Station,  
New Link Rd, near Marigold Building,  
Oshiwara, Jogeshwari (W), Mumbai 400 102."

4. In the writ petition, it is stated that this ready-mix plant is not a permanent fixture, though it has been in operation since 2014. At the relevant time, it was located in an industrial zone. The Development Control Regulations for Greater Mumbai were superseded by the Development Control and Promotion Regulations for Greater Mumbai 2034 (DCPR-2034). This supersession came about in 2018. Now the area where this plant is located is no longer an industrial zone. It is a Commercial Transformation Zone. In that zone, that such a ready-mix plant is not permitted is also conceded.

5. However, the initial permission was extended and the extensions as made by the very Authority, namely, MMRDA, come to an end on 31st March 2020.

6. The petitioner says that renewal of the factory permit was made with the permission of Respondent No. 2 by the 3rd Respondent. This renewal was of 3rd July 2017. Now the factory permit stands renewed from 1st April 2013 till 31st March 2020.

7. On instructions, Mr Kamat states that the petitioner will not seek an extension of this factory permit beyond 31st March 2020. That the plant is a factory and that it cannot be operated without such permit is therefore obvious.

8. The petitioner has also said in the writ petition itself that it will cease to carry out operations of this plant post 31st March 2020 (see ground (P) of the writ petition at page 29 of the paper-book).

9. We have seen that the notice of the Planning Authority is traceable to Sections 52, 53, 54 and 55 of the Maharashtra Regional and Town Planning Act 1966. When the notice also refers to these provisions but is essentially issued under sub-section (1) of Section 53, then it goes without saying that the petitioner could not have been called upon straightaway to stop its operations, and it should have been extended an opportunity to make an application within the meaning of sub-section (3) of Section 53 of the Maharashtra Regional and Town Planning Act 1966.

10. That such an application can be made within the time period specified in the notice and in the manner prescribed is evident. When it is challenged in this Court, in its discretion this Court can extend the time as well.

11. We find that when the notice dated 1st July 2019 was issued it called upon the petitioner to demolish and remove the plant and restore the land to its condition before the construction was carried out and to do so within thirty days from the date of the letter, whereas the notice at page 48, Exhibit B says that it is under 53(1) of Maharashtra Regional and Town Planning Act 1966 and calls upon the petitioner to immediately demolish it within a period of one month from the date of the receipt of this notice by the petitioner. Now within this thirty-day period, and which will commence from the date of the receipt of the notice, the petitioner can invoke sub-section 3 of Section 53 of the Maharashtra Regional and Town Planning Act 1966.

12. If such an application can still be made even today, then until that application, if made, is decided, the notice cannot be carried or taken to its logical conclusion.

13. In our view, no useful purpose will be served by allowing such an application to be made now, having it considered and decided, requiring an order to be passed thereon, and leaving that open to a fresh challenge again. Instead, we think that interest of justice would be fully served if we accept the statement of Mr Kamat made on instructions that the petitioner will not continue to carry on any operations from this ready-mix plant after 31st March 2020. This plan will be removed post 31st March 2020 by the petitioner itself. If the petitioner does not do so, the MMRDA and the MCGM can take steps and cause its removal within a period of fifteen days from the date the petitioner refuses or fails to remove it. This order is

passed because it is conceded that the plant was to be functional only till 31st March 2020.

14. Once we do not allow the MMRDA and MCGM to do anything till 31st March 2020 by accepting Mr Kamat's statement, needless to clarify that no coercive steps will be taken by the MMRDA and MCGM until 31st March 2020 provided the petitioner only operates the plant and does not make any other change.

15. The writ petition is disposed of in these terms. No costs.

**(S. C. DHARMADHIKARI, J)**

**(G. S. PATEL, J)**