

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

WRIT PETITION NO.3810 OF 2021

M/s Vidushi Technical & Commercial
Services Private Limited

... Petitioner

V/s.

Union of India & Ors.

... Respondents

Ms. Fatima Barodawalla, Mr. Vikram Ahirwar i/b. Mr. Uttam S. Rane
for the Petitioner.

Mr. Rui Rodrigues a/w. Adv. Anusha P. Amin i/b for Respondent
No.1-UOI

Mr. P. H. Kantharia, GP for the Respondent Nos. 2, 3 and 7-State
Adv. Jaya Joil Bagwe for Respondent No.4-MPCB.

Dr. Milind Sathe, Senior Advocate a/w. Mr. Simil L. Purohit, Mr.
Nitesh Ranavat Mr. Nikhil Apte, Mr. Mustaquee Bagsaria i/by M/s
Wadia Ghandy and Co., Advocates for Respondent No.6.

CORAM : **A. A. SAYED &
ABHAY AHUJA, JJ**

DATED : **7th January, 2022
(Through VC)**

P.C.:

As averred in paragraph 1 of the Petition, the challenge of the Petitioner is two fold – First, the Office Memorandum dated 7th July, 2021 issued by the Respondent No. 1-Ministry of Environment, Forest and Climate Change, UOI and second, illegalities alleged to have been committed by the Respondent No. 6-Developer in construction of the subject commercial complex, contrary to the sanctioned plan and in violation of the

Environment Protection Act 1986.

2. The Petitioner is a holder of a unit in the said Commercial Complex. It is the case of the Petitioner that after obtaining part Occupation Certificate sometime in the year 2010, the Respondent No. 6-Developer has already carried out the unauthorized constructions and has made Applications on 7th December, 2019 and 29th November, 2020 for regularization of the constructions under guise of being proposed additions/ alterations. It is the further case of the Petitioner that the Respondent No 6-Developer was granted Environment Clearance on 1st August, 2007 on the basis of the plans then submitted and the same has expired on 31st July, 2012. Thereafter, the additions/alterations were carried out without obtaining fresh approvals and Environment Clearance. According to the Petitioner, as per Environment Impact Assessment (EIA) Notification dated 14th September, 2006, the Respondent No. 6-Developer ought to have mandatorily obtained necessary prior approvals and clearances.

3. It is required to be noted that the Petitioner had earlier filed a Writ Petition being WPL/962/2020. The relief sought in the said Writ Petition were as under:-

“(a) That this Hon’ble Court may be pleased to issue a writ of mandamus or any other similar writ in the nature of mandamus, order or direction to Respondent No. 1 to 4 to take necessary steps/action under the MRTTP Act to restore the commercial complex as per the plans sanctioned by Respondent No. 1 in the year 2007.

(b) That this Hon’ble Court may be pleased to issue a writ of mandamus or any other similar writ in the nature of mandamus, thereby restraining the Respondent No. 1 from processing/considering/implementing/accepting the application dated 16th August, 2018 or any other similar application for additions / alterations / expansion / modification of the project”

4. In the said earlier WPL/962/2020 the Petitioner had raised grievances about the additions and alterations being in violation of the Environment Protection Act, 1986 and about approvals being sought by the Respondent No. 6-Developer to utilize 0.5 balance FSI as per DCPR 2034.

5. The Division Bench of this Court (Coram: S.J. KATHAWALLA AND RIYAZ I. CHAGLA, JJ) had while disposing of the Petition passed an order dated 18th December, 2020, which reads as follows:

“1. The main grievance of the Petitioners in the above Writ Petition is that the Respondent No.5 is making several applications to the Corporation seeking additions, alterations, expansion, modification of the project and the Petitioners apprehend that the Corporation may sanction/approve the said plans/applications

submitted to them by the Respondent No.5.

2. Since the above Writ Petition is at this stage fled by the Petitioners on the basis of a mere apprehension, we direct the Corporation to grant sanctions/approvals to Respondent No.5 strictly in accordance with law. Needless to add that if the Petitioners are aggrieved by any approval/sanction given by the Corporation to Respondent No.5, they shall be at liberty to impugn the same. The above Writ Petition is accordingly disposed of.”

6. Thus, the Division Bench of this Court while dismissing the earlier Writ Petition, specifically directed the Respondent-Corporation to grant sanctions / approvals to the Respondent No. 6-Developer strictly in accordance with law and further made it clear that if the Petitioner is aggrieved by any approvals/sanctions given by the Respondent-Corporation to the Respondent No. 6-Developer, it would be at liberty to impugn the same.

7. In our view, merely because some concessions were granted by the Respondent-Corporation to the Petitioner, which are conditional, would not entitle the Petitioner to file the present Petition, particularly when the aforesaid order of the Division Bench has been accepted by the Petitioner and has not been challenged. We note that the Respondent No. 6-Developer in its Affidavit-in-Reply has averred that the concessions expressly

stipulate that the Environment Clearance shall be obtained before the sanction of plan. It is further averred in the Affidavit-in-Reply of the Respondent No. 6-Developer that it has not yet made an Application for grant of Environmental clearance under the impugned Office Memorandum and the Respondent-Corporation has yet not sanctioned any plans in respect of the proposed additions and alterations.

8. The impugned Office Memorandum has been stayed by the Madurai Bench of the Madras High Court vide order dated 17th July, 2021 in WP(MD) No. 11757 of 2021 and WP(MD) No. 9242 of 2021. The issue of prior Environment Clearance was also raised in the earlier Petition.

9. In the aforesaid circumstances when a co-ordinate Division Bench of this Court did not think it fit to interfere until the approval/sanction is given by the Respondent-Corporation, it would be inapposite for this Court to interfere at this stage merely because the Petitioner has added a prayer challenging the Office Memorandum dated 7th July, 2021, which Office Memorandum has already been stayed by the Madurai Bench of the Madras High Court. Hence, at this stage, we are not inclined to entertain the

Petition. The Petition is dismissed with liberty as granted by the order dated 18th December, 2020 in Writ Petition (L) No. 962 of 2020.

10. We record the statement of learned Senior Counsel for the Respondent No. 6-Developer that if any plans are to be submitted by the Respondent-Developer to the Respondent-Corporation, the same would be submitted by Respondent No. 6-Developer not later than eight weeks from the date this order is uploaded.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)