

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12364 OF 2023

Labh Associates and Anr ...Petitioners
Versus
Vasai Virar City Municipal Corporation through ...Respondents
its Commissioner & Ors

WITH
WRIT PETITION NO. 12451 OF 2023

Yashodhan Shanti Realtors ...Petitioner
Versus
Vasai Virar City Municipal Corporation & Ors ...Respondents

WITH
WRIT PETITION NO. 12658 OF 2023

Parasnath Builders & Anr ...Petitioners
Versus
Vasai Virar City Municipal Corporation through ...Respondents
its Commissioner & Ors

WITH
WRIT PETITION NO. 12708 OF 2023

Arsiwala Construction Pvt Ltd ...Petitioner
Versus
Vasai Virar City Municipal Corporation through ...Respondents
its Commissioner & Ors

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Ms Sneha Prabhu, *i/b, Kinnari Mehta, for the Petitioners in all WPs.*
Ms Swati Sagvekar, *for Respondent No. 1 (VVMC) in all WPs.*
Ms MP Thakur, AGP, *for the Respondent-State.*
Mr Vishwanath Patil, *for Respondent No. 4 (MPCB) in all WPs.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 13th October 2023

PC:-

1. In similar Writ Petitions, we directed Vasai Virar City Municipal Corporation (“VVMC”) to proceed to consider on merits the applications for an Occupancy Certificate (“OC”) without insisting on a renewal of the environmental clearance. In every case, it is pointed out to us that there is no expansion of the original project. In doing so, we followed the findings returned by a Bench of coordinate strength of this Court. We make the same order in this group Writ Petitions as well.

“1. The Vasai Virar City Municipal Corporation (“VVCMC”) seems to be under the impression that it can make the same untenable demand from every developer by insisting on a revalidation or something like a revalidation of an Environmental Clearance already obtained. Without it, the VVCMC will not process an occupancy certificate application.

2. The Division Bench of GS Kulkarni & RN Laddha, JJ has in two recent orders of 21st March 2023 and 24th March 2023 in Writ Petition No. 2825 of 2022 (*Velsons Developers v Vasai Virar City Municipal Corporation*) made it abundantly clear that this is an untenable ground. In that

case, there was also an Environmental Clearance of 17th July 2010. There is an Environmental Clearance of the very same date in the present case also.

3. On 21st March in the *Velsons Developers* case the Division Bench asked the VVCMC to reconsider its position. This led to the order of 24th March 2023 when a statement was made on behalf of the VVCMC that without being influenced by the impugned order the application for an occupancy certificate application would be processed.

4. Now another developer Cosmos Prime Projects Ltd seeks the same relief for occupancy certificates for its constructions Cosmos Solitaire, Cosmos Regency and Cosmos Legend. Applications for these three projects were respectively dated 17th September 2019, 11 November 2019 and 9 September 2019. The only ground for rejection is that there was no “renewal” of the Environmental Clearance although the Consent To Operate or CTO has been periodically renewed (as was the case before the Division Bench of GS Kulkarni & RN Laddha, JJ).

5. We do not expect the VVCMC to make the same demand again and again. To make this clear, we quote the order of 21st March 2023 from paragraphs 1 to 6. It reads thus:

“1. We have heard Ms. Prabhu, learned counsel for the petitioners, Ms. Sagvekar, learned counsel for respondent no. 1/Municipal Corporation, Mr. Vyas, learned counsel for respondent no. 4-UOI and Mr. Shetye, learned counsel for respondent no. 6/Maharashtra Pollution Control Board for sometime.

2. The grievance of the petitioners is in regard to non-issuance of an Occupancy Certificate in respect of buildings which are completed almost more than 2 years back. The Occupancy Certificate has been withheld by the Municipal Corporation and in our prima facie opinion, it appears to be on totally untenable ground that environment clearance has not been obtained. It appears to be quite clear from the record that environment clearance necessary for commencement of the project was in fact obtained by the petitioner and accordingly construction was undertaken. Today, the project stands fully completed and an occupancy certificate is awaited. Also from time to time, the Maharashtra Pollution Control Board had also issued to the petitioners "consent to operate".

3. We have examined the environment clearance, which was granted by the Competent Authority dated 17 July, 2010. It clearly appears to us that consent to operate as issued by the Maharashtra Pollution Control Board was granted to the petitioners from time to time including a renewal consent to operate, on the basis of which the petitioners have undertaken the construction and have completed the construction.

4. We have also gone through the relevant conditions and more particularly, condition nos. (ii), (xxiv) and (xxv) (Page nos. 44 and 45) of the Environment Clearance, which are also referred in the reply affidavit filed by the

Maharashtra Pollution Control Board. There also appears to be compliance of such conditions of the Environment Clearance, which is not disputed by the Maharashtra Pollution Control Board as seen from its affidavit. The conditions read thus:

“(ii) “Consent for Establishment” shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.

(xxiv) Project proponent shall ensure completion of STP, MSW disposal facility prior to occupation of the buildings and should obtain completion certificate for these systems/aspects from MPCB.

(xxv) Local body should ensure that no occupation certification is issued prior to operation of STP/MSW site etc. with due permission of MPCB.”

5. In this view of the matter, we are quite astonished with the contents of the impugned order dated 3 August, 2022 in refusing to the petitioners the occupancy certificate. It clearly appears to us that the ground of rejection of the occupancy certificate is not the requirement of the Municipal Corporation but the requirement

of Maharashtra Pollution Control Board as categorically referred in the impugned order, when in fact on 16 May, 2019 as also subsequently on 15 November, 2022 respectively, consent to operate as also the grant of renewal of consent to operate was granted by the Maharashtra Pollution Control Board in favour of the petitioners.

6. Considering that there is a renewal of consent to operate dated 15 November, 2022 as also there being a compliance of the requirements under the environment clearance, learned counsel for the Municipal Corporation on instructions states that the Designated officer shall reconsider the position. To enable the learned counsel for respondent no.1-Municipal Corporation to take instructions and make a statement before the Court, we adjourn the proceedings.”

(Emphasis added)

6. We therefore return a specific finding that there is no requirement of revalidation or renewal of Environmental Clearances although a Consent To Operate requires or may require to be renewed periodically. Once that is done, the VVCMC, or for that matter any other Municipal Corporation, or the MPCB cannot insist on a ‘renewal’ of the ‘Environmental Clearance’.

7. This is also logical, because an Environmental Clearance is granted on the project proposal at its inception or proposal stage, in cases where it is mandated. There is no concept of a constant cycle of Environmental Clearances. Adherence to the stipulated norms is ensured

by periodic renewals of the CTO. MPCB permission is required for the operationalizing of the MSW/STP etc.

8. Accordingly, in order to facilitate a final disposal of the Petition on the first date, we direct the registry to issue notice urgently to the VVCMC returnable in Court on 4th September 2023.

9. The notice will be accompanied by an authenticated copy of this order. The Respondents are put to notice that we will dispose of the Petition in the terms indicated above unless it is shown that there is a positive statutory requirement for a renewal of an Environmental Clearance.

10. In addition to service through Court, private service, including by email and courier, is permitted.

2. The Petitions are disposed of in these terms. There will be no orders as to costs.

(Kamal Khata, J)

(G. S. Patel, J)