

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1772 OF 2024

The Tata Power Company Ltd ...Petitioner
Versus
 State of Maharashtra through its Principal Secretary & Ors ...Respondents

Dr Milind Sathe, Senior Advocate, with Bhushan Deshmukh, HN Vakil, Samkit Shah & Kimi Mhapankar, i/b, Mulla and Mulla & Craigie Blunt & Caroe, for the Petitioner.
Mr Kedar Dighe, Addl GP, with AC Bhadang, AGP, for Respondents 1, 5 to 8-State.
Mr Rohit Sakhadeo, for Respondents Nos 2, 3 & 4.
Mr Vilas B Tapkir, for Respondent No 5.
Mr Mandar Limaye, with Omkar Kulkarni, i/b Chinmay Acharya, for Respondents Nos 9 to 14, 17, 18, 20, 21, 24 to 26.
Mr Kunal Mehta, with Prangnan Barua & Swarupini Srinath, i/b, Crawford Baley & Co, for Respondents Nos 15 & 16.

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**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 15th April 2024

PC:-

1. The Pune Metropolitan Regional Development Authority (“PMRDA”) Affidavit in Reply lists several properties that are according to the PMRDA within the proscribed distance of the High Flood Line (“HFL”). The distances vary from plot to plot. On 20th February 2024, we said that until further orders, no Regularization Application would be processed further without leave of this Court.

2. We modify that order today and permit the PMRDA to proceed in accordance with law against all structures, developments or constructions that according to the PMRDA are impermissible for being within the proscribed distance or zone of 100 mts from the HFL according to the applicable Development Control and Promotion Regulations. The individual plot holders will be entitled to notice and hearing and will be entitled to make a representation or submission to the PMRDA as to why further action should not be taken. Those proceedings will continue on merits unaffected by this order. We have not assessed the relative merits of these notices.

3. This order is necessary because the Petitioner is not concerned with the individual plots that may be the property of somebody else. It is concerned with the maintenance of a clear 100 mt zone from the HFL. This zone is to be measured from the HFL of the lake in question and indeed will probably apply to various water bodies across what is popularly called the lake district of Maharashtra.

4. The grievance of Dr Sathe for the Petitioners is that no action whatsoever is being taken and this is materially affecting the operations of the Petitioner which is a licensee under the Electricity Act 2003. Obviously, the PMRDA will bear all these considerations in mind.

5. The PMRDA will also do well to keep in mind our recent judgment in *Suo Motu Writ Petition No 2 of 2023* passed on 11th

March 2024,¹ where we had occasion to examine Sections 52 and 53 of the Maharashtra Regional and Town Planning Act 1966. Specifically, we addressed the question of what is and can be regularised and what is impossible to regularise. We had held, following settled law of several decades that an illegality is incapable of being regularised.

6. We have no doubt that the PMRDA will pass reasoned orders in each matter.

7. We make it clear, that we have not addressed the individual factual aspects about whether the measurement of the PMRDA is or is not accurate. Obviously, this will have to be done on a case-to-case basis because it is affected by the starting point of the measurement, mainly the HFL which has to be demarcated to begin with and the exact location or position of the structure in question.

8. We do not believe any further orders are required in this Writ Petition.

9. It is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)

1 2024 SCC OnLine Bom 918.