

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2982 Of 2024

Raheja Universal (Pvt) Ltd and anr .. Petitioners
Versus
State of Maharashtra and ors .. Respondents

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Ms. Aksha Hudda (thru V.C) i/b Hudda & Associates for the petitioners.
Smt.Jaymala J. Ostwal, Addl. G.P for the State – respondent no.1.
Ms.Jaya Bagwe for respondent nos.2 and 3.
Ms.Oorja Dhond i/b Ms.Komal Punjabi for respondent no.4.

**CORAM : ALOK ARADHE, CJ &
BHARATI DANGRE, J**

DATED : 5th FEBRUARY, 2025

P.C:- (Per Bharati Dangre, J)

1 The petitioner no.1, a real estate Company engaged in development of residential and commercial properties in relation to its real estate project of property bearing C.S.No. 434 of Lower Parel division situated at Shankar Rao Naram Path, Gowalia Chawl Lane, Lower Parel, Mumbai, has approached this Court, seeking issuance of writ of certiorari or any other appropriate, writ, direction or order, thereby calling for the papers and proceedings culminating into the impugned deferment of Item

No.35 in the Minutes of Meeting dated 24/8/2023 of the respondent no.2 – SEIAA and for quashing and setting aside of the same. A writ of mandamus is also sought against respondent no.2 to forthwith consider and grant revised Environment Clearance to the petitioner in terms of its application dated 18/3/2024.

2 The petitioner is represented by Ms. Aksha Hudda who marked her presence through Video Conferencing and she seeks grant of revised Environmental Clearance pursuant to the application of the petitioner dated 17/3/2023, which has been deferred without any cogent reasons. It is her specific submission that the deferment is based on an incorrect interpretation of the directions contained in the judgment of the Apex Court in *MCGM Vs. Kohinoor CTNL Infrastructure Company Private Limited*,¹. She would submit that the SEIAA i.e. respondent no.2 has ignored the fact that certain projects, including the said project of development are expressly exempted from the directions issued by the Hon'ble Apex Court, and hence, the respondent no.2 has acted contrary to the said judgment, although from 2014 to 2017, the petitioner's project received Environmental Clearance from respondent no.2 SEIAA and Environment Cell of MCGM. However, on the premise of the decision in *Kohinoor (supra)*, the proposals are now deferred.

1 (2013) 16 SCR 1119

3 Ms.Hudda has invited our attention to the Minutes of Meeting of SEIAA held on 24/8/2023 in regard to the Environmental Clearance.

A perusal of the Minutes reflect the SEAC deliberation which take note of the fact that project had received earlier Environmental Clearance in 2017 from Environmental Cell of MCGM, and note is taken of the Recreation Ground (RG) required for the proposed project to be of 25% of the net plot area being provided on the top of the podium and some of the area being provided on mother earth. The proposal of the project proponent of having area on mother earth, considering the pro-rata basis portion of plot under development, reference is made to the order of the Apex Court which contemplate 100% Recreation Ground to be provided on mother earth. Considering the pronouncement of the Apex Court, since the Recreation Ground area is already developed as per the earlier EC, it was deemed appropriate to seek guidance from SEIAA and the proposal was deferred.

4 The Division Bench of this Court in **Macrotech Developers Ltd. Vs. State of Maharashtra (WPL No.1844/2024)** was confronted with an identical issue, when the SEIAA in its meeting directed the petitioner to submit the revised plan of approval with mandatory Recreation Ground on mother earth and the consideration of the application for Environment Clearance was

deferred subject to compliance of submission of revised plan by relying upon the decision in case of Kohinoor (supra).

5 With reference to the decision of the Apex Court, and in particular, operative portion thereof, the Division Bench recorded thus:-

“14 Therefore, it is very clear that the decision of the Supreme Court was to apply to those plans which were not approved on the date of its decision or where Commencement Certificate had not been issued. In the petitioner’s case, the lay out plan was approved on 24th May 2011 and Commencement Certificate was issued on 9th December 2011. Therefore, the respondent no.2 SEIAA is not justified in directing the petitioner to submit revised with mandatory RG on mother earth since the date of approval and Commencement Certificate is before the date of decision of the Supreme Court. Therefore, directions to this extent in the Minutes of Meeting of respondent no.2 SEIAA on 11th July 2023 is contrary to the decision of the Supreme Court in the case of Municipal Corporation of Greater Mumbai & Ors Vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr.

15 It is also important to note that post the decision of the Supreme Court i.e. on 17th December 2013, the respondent no.2 SEIAA on application made by the petitioner granted environment clearance on 11th June 2014, 15th January 2019 and 15th January 2020 and at no point of time the petitioner was directed to submit the revised plan in accordance with the decision of the Municipal Corporation of Greater Mumbai & Ors Vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr. This would be only on the basis that respondent no.2 and rightly so were of the opinion that the decision of the Municipal Corporation of Greater Mumbai & Ors Vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr was not applicable since the project of the petitioner was approved much prior to the decision of the Supreme Court. Therefore, insistence of respondent no.2 SEIAA now to the petitioner to submit revised plan with RG on mother earth is contrary to its own environment clearance issued post the decision of the Supreme Court.

6 In the wake of the aforesaid observation, the following order was passed:-

(i) The direction of respondent no.2 SEIAA to the petitioners in its Minutes of Meeting held on 11th July 2023 to submit revised plan for approval with mandatory RG on mother earth is quashed

and set aside.

(ii) The decision to defer the consideration of the proposal dated 22nd February 2023 till the compliance of submission of revised plan is set aside.

(iii) The respondent no.2 is directed to consider the proposal of the the petitioners within a period of 8 week from today by taking into consideration the decision of the Supreme Court in the case of Municipal Corporation of Greater Mumbai & Ors Vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr (supra), wherein it is observed that the said decision would be applicable only to the projects which are not approved and/or where Commencement Certificate has not been issued on 17th December, 2013.

(iv) The Writ Petition is allowed in terms of prayer clause (a) which reads thus :-

(a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India, thereby calling for the papers and proceedings culminating in the impugned deferment in Item No.26 in the 262nd Minutes of Meeting dated 11th July 2023 issued by respondent no.2 SEIAA and after going through the legality and validity thereof, may be pleased to quash and set aside the same”

7 According to us, the case of the petitioner would be squarely covered by the above observation of this Court on 22/2/2024.

8 The learned counsel Ms.Bagwe representing respondent no.2 has placed before us the Minutes of Meeting of SEIAA held on 4/9/2024 in regards to the proposal of the petitioner and on going through it, we take note we take note that the Committee opined that the provisions of pro-rata Recreation Ground will not suffice to the order of the Apex Court and in order to seek the necessary guidance, the proposal was forwarded to SEIAA.

9 The Minutes produced before us reflect the deliberation in SEIAA which specifically record thus:-

Deliberation in SEIAA

Proposal is an expansion of existing construction project. Proposal is referred by SEAC-2 in its 208th meeting for obtaining guidance to decide the applicability of Hon'ble Supreme Court's order to the projects received for expansion/amendment in the earlier EC's wherein RG area is already developed as per earlier EC.

Proposal was then considered by SEIAA in its 265th meeting and deferred for say of PP if any, in this regard. PP submitted that, in another petition filed by Credai-MCHI Vs. State of Maharashtra in Civil Appeal Diary No. 19266/2024 Hon'ble Supreme Court vide order dated 10/5/2024 has stayed the paragraph 8 of NGT order dated 13/09/2022. PP further submitted that in view of above, stay of NGT order of keeping RG on ground shall not be made applicable and the RG be allowed as per layout approved by planning authority. Hence, PP requested to refer back their proposal to SEAC for appraisal.

SEIAA deliberated upon the issue in detail and decided to refer back the proposal to SEAC for appraisal in the view of stay order issued by Civil Appeal Diary No. 19266/20224."

In wake of the aforesaid, the SEIAA decided to refer back the proposal for consideration.

10 In the light of the aforesaid, we deem it appropriate to dispose of the Writ Petition by directing the SEIAA to take a decision on the application of the petitioner for Environmental Clearance within a period of eight weeks from today and communicate the same to the petitioner.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)