

NATIONAL GREEN TRIBUNAL

Principal Bench, New Delhi

Appeal No. 16/2012
Wednesday, 3rd of October, 2012

Quorum:

1. Hon'ble Shri Justice V. R. Kingaonkar
(Judicial Member)
2. Hon'ble Shri Dr. Devendra Kumar Agrawal
(Expert Member)

BETWEEN:

1. Kshitija Infrastructure Private Limited a
Company duly incorporated under the
Provisions of the Companies Act, 1956,
And having its registered office at 216,
Tardeo Air-condition Market
Tardeo, Mumbai 400 034
 2. Mr. Kamlesh G. Mehta
Of Mumbai, Indian inhabitant,
Having its office at 216,
Tardeo Air-Condition market,
Tardeo, Mumbai – 400 034
- ... Appellants

AND

1. Union of India, Through
Ministry of Environment and Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi – 110 003

2. State of Maharashtra
Through the office of the Environment
Department, having its office at
217 (Annexe) Mantralaya,
Mumbai – 400 032

3. Secretary Environment Department
Having her office at
217 (Annexe) Mantralaya,
Mumbai – 400 032

4. Municipal Corporation of Greater Mumbai
(MCGM) Through
Commissioner, MCGM
Having his office at
Head Quarter,
Mumbai CST – 400 001

... Respondents

(Advocates appeared: Mr. S. Chakraborty for Appellant, Mr. Mukesh
Verma for Respondent Nos.2 and 3)

ORAL ORDER (BY BENCH)

We have heard learned Counsel for the parties as well as intervener Shri Amit Maru in person.

2. By consent of learned Counsel for the parties and also the intervener who appears in person, this appeal is being finally disposed of on following terms:-
- (i) Since it appears that Rule 4(3-a) of The Environment Protection Rules, 1986 has not been followed in *stricto sensu*, the Secretary, Environment Department of the State will restore the proceedings to the stage of issuance of the proposed direction as required under the Rule. The Authority shall issue a set of proposed directions to the appellant and shall give time of fifteen (15) days from the date of service of the Notice and thereafter to take final decision.
 - (ii) The intervener shall be permitted to file representation, inas much as the grievance of the intervener is that the buildings were already demolished by the appellants before the passing of even commencement certificate and that was in total disregard to directions of the Bombay High Court. The representation of the intervener may be considered while issuing the proposed directions and taking of the final decision by the State Authority.
 - (iii) The impugned order and communication dated 09.03.2012 is set aside and the matter is remitted to the Competent Authority for afresh decision which shall be taken in due compliance of the relevant Rules.
 - (iv) We make it clear that we have not touched the merits of the matter and have decided this appeal only on the ground that there appears

non-compliance of the relevant Rule and on basis of consent given by the learned Counsels and the intervener.

- (v) The Competent Authority to take afresh decision within a period of four (04) months. The intervener shall file the representation within the period of one (01) month hereinafter before the Competent Authority. The Competent Authority shall be free to take final decision after including the directions of the Bombay High Court; the fact that the buildings were demolished even before obtaining of necessary Environmental Clearance and permission of the Competent Authority; and the relevant circumstances. The appellants may be allowed to adduce any fresh material, in support of their contentions regarding so called "bonafide intention" of the alleged commencement of the work at the construction site. The intervener also shall be permitted to adduce any material in order to demonstrate malafides of the appellants.

The appeal is accordingly disposed of. No orders as to cost.

(Dr. Devendra Kumar Agrawal)
Expert Member

(Justice V.R. Kingaonkar)
Judicial Member