

Rev No. 430-2015

I

Received on : 12.8.2015

Registered on: 12.8.2015

Decided on : 06.9.2016

Duration : 01Y 00M 26D

IN THE SESSIONS COURT, FOR GREATER BOMBAY

CRIMINAL REVISION NO.430/2015

EXH. NO-

1. M/s Bhaveshwar Properties Pvt. Ltd  
Fine House, 5th Floor,  
Anandji Lane,  
Next to Bhaveshwar Market,  
M.G. Road, Ghatkoper(E).

2. D.K. Upadhyay  
Vice President Projects Fine House,  
5th Floor, Anandji Lane,  
Next to Bhaveshwar Market,  
M.G. Road, Ghatkoper(E).

..... Applicants

Versus

1. The State Of Maharashtra

2. Maharashtra Pollution Control Board  
3rd and 4th Floor,  
Kaipataroint Building,  
Sion(E), Mumbai- 400 022.

.... Respondents

**CORAM :** HIS HONOUR JUDGE SHRI Shridhar M. Bhosle  
ADDL. SESSIONS JUDGE.  
(COURT ROOM NO.23)

**DATE :** 6<sup>th</sup> October,2016

Appearance:

**Shri. K. Andrews, Advocate for the applicants.**

**Smt. Shelar, Addl.PP for respondent no.1/state.**

**Smt Kirti Purohit, Advocate for respondent no. 2.**

**JUDGMENT**

1. The legality and propriety of the order dtd. 4.3.2014 in C. C. No. 52/SW/2014 by the Ld Metropolitan Magistrate , 40<sup>th</sup> Court, Vikhroli, Mumbai issuing process against the applicant under section 15 and 16 of the Environment Protection Act, 1986 is under challenge in this proceeding.

2. In short, respondent no.2 (original complainant) is entrusted for implementation of the Environment Protection Act and rules made therein and to take cognizance of offence punishable of under provisions of Environment Protection Act and under rules made there in. Applicant no.1 is a company representative by applicant no 2, a president, who is directly in charge of and responsible to the company for the conduct of buisness as well as company responsible for the project and compliance under various provisions of the Act. The applicants started construction work of residential project namely Neelkanth Enclave, on plot bearing CTS no, 40-17 to 4056 of Village Kiroli, Ghatkoper, Mumbai- 86 and carried the construction more than 20,000 sq meter without obtaining prior environmental clearance as required under the provisions of Environmental Impact Assessment Notification 2006 from the Competent Authority under the Act. It is obligatory on the project or activities

mentioned in the scheduled of the notification to obtain prior clearance from the concerned Regulatory Authority for the matter following under the category A in the schedule from the Ministry of Environment and Forest, Government of India and for category B in the schedule from the State Environmental Impact Assessment Authority before starting construction work or preparation of land by project management except for securing the land listed in Schedule under Notification .

3. The applicants have started construction work without obtaining the clearance work and hence environment department the Government of Maharashtra had issued show cause notice dtd. 22.4.2013 for carrying out the construction of the project at the aforesaid site, without obtaining prior environment clearance from the Government of Maharashtra pointing out that it amounts to violation of EIE Notification 2006. The complainant replied to the letter and therefore personal hearing was given. During the personal hearing it was decided to call report of the Municipal Corporation of Gr. Mumbai about the various plans approved for Wing A, B,C and D and actual construction was carried out by the applicants at the site. Then a report was called from the Dy. Chief Engineer Building Proposal , Vikhroli (W) . The Executive Engineer BP(ES-2) MCGM submitted the report dtd 1.11.2013 giving details about the various plants approved wing wise and date wise with actual construction carried out by the applicant at site. As per the report of MCGM applicant has constructed total BUA ad measuring 19285 sq mtr of A and B wing . Even after the plan amended of 4.8.2007 i.e after EIA

notification 2006 for the total BUA of wing A and B exceeding 20,000 sq mtr ( i.e. 20697.1687 sq mtr. . The applicants had approached for the environment clearance of 3.8.2011 i.e. after four years from 4.8.2007 in violation of the Notification. Thereafter, the Principal Secretary Environment Department GOM issued direction on 21.1.2014 to the applicants to stop the construction work till the applicants obtained the clearance from the Authority and also directed the respondent no. 2 to file the case under section 15 of the Environment Act.

4. The Ld Metropolitan Magistrate on the basis of documents and complaint issued the process under section 15 and 16 of the Environment Protection Act.

5. Being aggrieved with the order the applicants have filed the present application . It is contended that the order is contrary to the order of the judgment of the Hon'ble High Court. It is further clear that when the project started concerned rules were not applicable. It is further contended that in respect of the projecte which are notmore than 20,000 sq mtr is have been clearly illustrated by the Division Bench of Hon'ble High Court.

6. In response to the notice respondent no.2 appeared and filed the reply Exh.3.

7. Heard Ld advocate Shri Kenny for the applicants and Ld adv

**Smt. Kirti Purohit for the respondents.**

8. Following points arose for my determination. My findings thereon followed by reasons thereof are as under:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether order dtd. 4.3.2014 in C. C. No. 52/SW/2014 by the Ld Metropolitan Magistrate, 40 <sup>th</sup> Court, Vikhroli, Mumbai is legal and proper?	No
2	What order ?	As per final order.

#### REASONS

9. The ld advocate for the applicant vehemently submitted that the entire project is below 20000 sq mtr which has been approved by the BMC from time to time. Moreover, after the amendment with the affect from 4.4.4.2011 in rules of MOFE parking area and other services are to be considered to derive 20,000 sq mtr limit, hence the project required MOFE clearance. But till that time project was not in preview of MOFA. It is further submitted that as per the new rule applicants have applied for MOFE clearance in August, 2011 to keep the project continue and maintain the criteria of the construction area as per the amendment of law after 18 months. It is further contended that applicants were never heard till 2013 by the authority. However, applicants have been informed through the letter dtd. 22.1.2014 not to carryout work and instructed the BMC to issue stop work notice. On 9.1.2014 respondent no.2 granted

the consent to the applicants project on the terms and conditions mentioned there in. Further, by letter dtd. 6.9.2014 the environment clearance for the project was granted by Government of Maharashtra. Moreover, by letter dtd. 18.5.2015 it was informed by the applicants to respondent no. 2 about the consent granted by the respondent no.2 for the expansion for building construction project of the applicants. It is further contended that the applicants have carried out the construction work as per the CEO NOC dtd. 26.3.2014. The applicants have referred the circular dtd. 21.4.2015 which deals with the requirement of Environment Clearance for building project modification. The Ld advocate also submitted that in view of the judgment of the Division Bench the issuance of process is not proper. He has placed on record the copy of the judgment dtd. 24.3.2014 in WP (L) 655 of the 2014, and judgment dtd. 18.12.2014 in W.P. No.1352/2014. between Glomore Construction and others v/s the Union of India and others, and

10. Per contra Ld advcoate for the respondent vehemently submitted that as per report submitted by BMC it makes clear that applicant has carried out the construction for more than 20,000 sq mtr and thus prior permission as per Notifiacion is required . He submitted that though, subsequently applicant has got approval, that cannot be the ground to show that the process issued is not proper. It is incumbent on part of applicants to obtain the permission before starting the work.

11. I have given thoughtful consideration to submission of both

the parties. As per the circular of the of the year 2015 it is very clear that environment clearance for the construction of the building above 20,000 sq meter is necessary. The applicants have referred letter dtd. 22.1.2014, wherein the applicant was informed that applicant has constructed BOU 19825 sq mt even after the plan amended.

12. Considering the letter dtd. 22.1.2014 addressed by Government of Maharashtra after receipt of the report it speaks that the Executive Engineer BP FS(2) MCJM has submitted the report dtd. 1.11.2013 by giving the details about the various plans approved year wise and date wise and actual construction carried by applicant at site. As per the report of the MCGM applicant has constructed the total BUA at 19825 sq mtr at site. In the last para of page 4 of the complaint the contents of the said letter are reproduced which state that applicant has constructed total BOU 19825 sq mtr site even after plan amended on 4.8.2007 i.e. after EMI notification the total BOU of A and B wing exceeding 20,000 sq mtr . The wording of the said letter itself is the contradictory as it's speaks that construction of A and B wing was carried out is 19825 sq mtr exceeding 20,000 sq mtr.

13. It is now settled that the environment clearance for the purpose of construction of building below 20,000 sq meter is not required. Therefore, taking into consideration all these aspects, it appears that the Ld Magistrate has not properly considered the plan and the documents. Therefore, the order passed by the Ld Metropolitan Magistrate is not legal

and proper which deserves to be set aside. Accordingly I proceed to pass following order :

**ORDER**

1. Revision Application No. 430/2016 filed by applicant M/s Bhaveshwar Properties Pvt. Ltd and D.K. Upadhyay is allowed.
2. Order dtd. 4.3.2014 in C.C. No. 52/SW/2014 by Metropolitan Magistrate, 49<sup>th</sup> Court, Vikhroli Mumbai is hereby set aside .
3. Consequently, complaint C.C. No. 52/SW/2014 stands dismissed under section 203 of Cr.PC.
4. Rev. No. 430/2016 stands disposed off accordingly.

Date : 06.10.2016

(Shridhar M. Bhosle)

Add. Sessions Judge,  
Sessions Court,  
Greater Mumbai

Dictated on : 06.10.2016

Transcribed on : 14.10.2016



**" I affirm that the contents of this PDF file judgment are the same, word to word, as per the original judgment."**

**Name of Steno with Post:-**

**Ms. Kashmiri Mansukhlal Rana, Higher Grade Stenographer.**

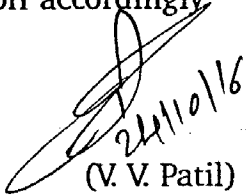
- **Name of the Judge with Post:-HIS HONOUR JUDGE SHRI S.M.BHOSLE  
ADBL. SESSIONS JUDGE. (COURT ROOM NO.23)**
- **Date of pronouncement of judgment:-6.10.2016**
- **Judgment signed by the EO. On :-15.10.2016**
- **Judgment uploaded on:-18.10.2016**

**C.C.NO.: 52/SW/2014**

**ORDER BELOW EXH.1 :**

Today learned advocate for the accused, produced on record certified copy of order of Hon'ble Sessions Court, Greater Bombay i Criminal Revision No.430/2016. On perusal of order it reveals that Hon'b Sessions Court has pleased to set aside order of issuance of process date 4/3/2014 passed in C.C.No.52/SW/2014 and pleased to dismiss C.C No.52/SW/2014 under section 203 of Cr.PC. In view of order of Hon'b Sessions Court present case has been disposed off accordingly.

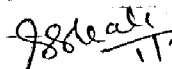
Date : ~~24~~/10/2016

  
(V. V. Patil)

Metropolitan Magistrate,  
73<sup>rd</sup> Court, Vikhroli, Mumbai.



**True Copy**

  
113TD  
Judicial Clerk  
Metropolitan Magistrate:  
73<sup>rd</sup> Court, Vikhroli, Mumbai