

Item No.1

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

[Through Physical Hearing (with Hybrid Option)]

**ORIGINAL APPLICATION NO.28 OF 2023 (WZ)
WITH
I.A.NO.200/2023 (WZ) IN O.A. NO.28/2023 (WZ)**

Santosh Daundkar

.... Applicant

Versus

SEIAA, Environment Department,
Govt. of Maharashtra & Ors.

.... Respondents

Date of hearing : 22.09.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Aditya Pratap, Advocate

ORDER

I.A. No.200/2023 :

1. By this application (I.A.), the applicant has prayed that in the end of prayer clause (A) in paragraph No.5 of the Original Application, following relief may be permitted to be added:

“Such a direction be issued to Respondent No.3 i.e. the Tree Officer, who has been vested with statutory powers under the provisions of section 20 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, where the following has been provided for:

“20. The Tree Authority may, from time to time, give to the Tree Officer and other Officers and servants subordinate to him such general or special directions as it thinks fit as to the policy to be followed by them in the discharge of their functions and for carrying out effectively the purposes of this Act, and, such officers and servants shall comply with such directions.”

That it is further prayed that since Respondent No.2 i.e. the Municipal Corporation has got enormous physical resources to give effect to the dispensations traversed through in this Original Application, accordingly, the Commissioner of the Municipal Corporation (Respondent No.2) be directed to ensure that the Tree Officer (Respondent No.3) is provided with full infrastructure support, so that the latter executes the mandate of his duty under the said Section 20 of the Act.”

2. The applicant has filed the present Original Application (O.A. No.28/2023) with following reliefs:

- “(A) That the principle derived by the Hon’ble Tribunal in Appeal No.22 of 2016 (WZ), vide order dated 13th September, 2022, be applied on all other projects in Mumbai, where Recreation Ground has been put either above a concrete slab of the podium, or above a concrete slab of a basement, so as to enable plantation and pursuant thereto, all the constructions which took place after the cut-off date of 17th December, 2013, where the Recreation Ground has been shown to be above the podium concrete slab or a basement concrete slab be demolished, filled with earth, and then the plantation be done on the Mother Earth of the local variety of tropical trees in the requisite manner after keeping the biologically required distances for the trees to reach their full potential of trunk diameter, height and canopy diameter.*
- (B) That an independent expert committee be set up to objectively scrutinize all the building plans, which were given Commencement Certificate (including Commencement Certificate on amended plans) after the cut-off date of 17th December, 2013, and where the statutory RG has been placed on top of a concrete slab such as a basement or a podium.*
- (C) That the said independent committee identify the infringement through computer software so that there is no scope of an error.*
- (D) That consequent upon the findings of the independent committee, the Municipal Corporation be directed to effect the demolition of the infringing areas, after following the due*

process of the law, so that Recreation Ground could be placed on mother earth to enable plantation.”

3. By the relief clause (A) of the Original Application, the prayer is made that the order dated 13.09.2022 passed by this Tribunal in Appeal No.22 of 2016 be directed to be applied on all projects in Mumbai where Recreation Ground (RG) has been put either above a concrete slab of the podium, or above a concrete slab of a basement, so as to enable plantation and all the constructions which took place after the cut-off date i.e. 17.12.2013, where the Recreation Ground has been shown to be above the podium concrete slab or a basement concrete slab, be demolished, be filled with earth and then plantation be directed to be done of the local variety of tropical trees in the requisite manner keeping the biologically required distances for the trees to reach their full potential of trunk diameter, height and canopy diameter.

4. Much emphasis has been laid by the learned counsel for the applicant on prayer (D) of the Original Application, which is to the effect that after constitution of an expert Committee to scrutinize all the building plans, Municipal Corporation be directed to effect the demolition of the infringing areas after following due process of law so that Recreation Ground could be placed on the ground i.e. mother earth to enable the plantation.

5. We may make it clear here that we had directed the applicant to specify the names of all such Project Proponents who have committed violation of the directions issued by this Tribunal vide order dated 13.09.2022 passed in Original Application No.22 of 2016, pursuant to which a list was provided of such Project Proponents and they were added as respondent Nos.4 to 14 and the applicant has filed the amended

memo of the entire Original Application showing respondent Nos.4 to 14 in the array of parties.

6. We tried to understand the position of law in this regard from the learned counsel for the applicant. In this regard, he has drawn our attention to the judgment and order of the Hon'ble High Court of Bombay dated 27.01.2023 delivered in Writ Petition (L) No.35671 of 2022 **(Naredco West Foundation & Anr. Vs. Union of India & Ors.)**, wherein in paragraph No.29, following order has been passed:

“(i) We direct that the judgment and order dated 13 September 2022 passed by the National Green Tribunal in Appeal No.22 of 2016 shall not be an impediment for SEIAA to decide various proposals submitted by members of Petitioner No.1-Association for grant of environmental clearances on its own merits.

(ii) SEIAA shall consider and decide each of the proposals for grant of an environmental clearance by applying provisions of DCPR 2034 or UDCPR, as the case may be....

*(iii) to (v) *****”*

7. The learned counsel for the applicant argued that the Hon'ble Supreme Court has passed an order dated 17.12.2013 in Civil Appeal No.11150 of 2013 (Arising out of Special Leave Petition (Civil) No.33402/2012) **(Municipal Corporation of Greater Mumbai and Ors. Vs. Kohinoor CTNL Infrastructure Company Pvt.Ltd. and Ors.); MANU/SC/1315/2013** and in paragraph No.60, has held as follows:

“60. (1) The memorandum of settlement dated 18.4.2013, concerning the Public Parking Lot (PPL) arrived at between the Appellant – Municipal Corporation of Greater Mumbai and the Respondents was taken on record, as noted in Part-I order dated 25.7.2013, in the facts and circumstances of the present case. Both the parties shall act strictly in accordance with the same. It is clarified that as held in the said order, the Municipal circular dated 22.6.2011 is not in any way held to be bad in law.

(2) The four additional issues framed in Part-II of the above order are decided as follows:

Issue No. (i) - The minimum recreational space as laid down under Development Control Regulation (DCR) 23, cannot be reduced on the basis of DCR 38 (34). The recreational space, if any, provided on the podium as per DCR 38(34) (iv), shall be in addition to that provided as per DCR 23.

Issue Nos. (ii) & (iii) – The Government of Maharashtra, the Development Plan Drafting Committee, and the Appellant-Municipal Corporation shall consider the suggestions as contained in paragraph Nos.53 and 54 above, while framing the Development Plan for Greater Mumbai.

Issue No. (iv) : *****”

8. It is urged by him that the judgment of the Hon’ble Supreme Court in the case of **Kohinoor CTNL Infrastructure Company Pvt.Ltd.** (supra), it is laid down that the minimum recreational space as laid down under Development Control Regulation (DCR) 23 cannot be reduced on the basis of DCR 38(34), is a settled position of law and the recreational space, if any provided on the podium as per DCR 38(34) (iv) shall be in addition to the recreational space provided as per DCR 23, is a settled position of law, because the judgment of the Hon’ble High Court of Bombay passed in **Naredco West Foundation & Anr.** (supra) was appealed against before the Hon’ble Supreme Court, wherein in Special Leave Petition (Civil) Diary No.11843 of 2023, the Hon’ble Supreme Court, vide 08.05.2023, has stayed the said judgment of the Hon’ble High Court of Bombay . It is argued that because of that stay having been granted, the position of law shall be the same as is narrated in paragraph No.60 (1) and (2) of the judgment of the Hon’ble Supreme Court in the case of **Kohinoor CTNL Infrastructure Company Pvt.Ltd.** (supra), relying on which this Tribunal had passed an order dated 13.09.2022 passed by this Tribunal in Appeal No.22 of 2016, on which the applicant is relying upon.

9. Now this Tribunal has to see in the present case as to whether position of law shall be treated to be as has been laid down by the Hon'ble Supreme Court in **Kohinoor CTNL Infrastructure Company Pvt.Ltd.** (supra) or should await for the decision of the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No.11843 of 2023 where the matter has come up for its consideration again in view of the subsequent position of law as laid down in Regulation 27 of DCPR 2034, which has been re-produced by the Hon'ble High Court of Bombay in its order dated 27.01.2023 cited above, as under:

“19. The provisions of DCR 1991 came to be superseded/replaced by the provisions of the DCPR 2034 for areas within Greater Mumbai and the some of the principles enunciated in Regulation 23 of DCR 1991 prima facie appear to have been deviated in some of the provisions in Regulation 27 of DCPR 2034. While we do not propose to interpret the provisions of Regulation 27 of DCPR 2034, it would be apposite to reproduce Note 2 appended to Regulation 27 which reads thus :

“2. The minimum 60% of the required LOS shall be provided exclusively on the ground and at least 50% of this shall be provided on mother earth to facilitate the percolation of water and balance 50% of required LOS may be provided on podium area extending beyond the building line. The LOS on mother earth shall not be paved and all LOS shall be accessible to all the occupants of the plot/layout. Rest of the compound pavement other than stated above shall be paved with perforated paving having adequate strength, in order to facilitate percolation of rain water into the ground.”

20. Coming to the areas falling outside the limits of Municipal Corporation for Greater Mumbai, the provisions of Unified Development Control and Promotion Regulations also contain a provision in the form of Regulation 3.4.1 which apparently permits recreational open space being provided on terrace of podium in certain cases. Sub clause 3 of Regulation 3.4.1 of UDCPR provides as under:

“3. Not more than 50% of such recreational open space may be provided on the terrace of a podium in congested/non congested area subject to Regulation No.9.13.”

10. After having considered the prayers made by the learned counsel for the applicant, we tried to understand from him as to what exact relief he would want from this Tribunal, to which he responded that he wants that the Recreation Ground area, which has been provided by respondent Nos.4 to 14 on podium should be directed to be demolished and that the same should be directed to be provided on the ground level and that tree plantation be ordered to be done as per the position of law and for this, he wants a joint Committee to be constituted in order to ascertain as to where respondent Nos.4 to 14 have provided podium and which area would be required to be ordered to be demolished.

11. As on date, considering the position of law to be one which has been held by the Hon'ble Supreme Court in the case of ***Kohinoor CTNL Infrastructure Company Pvt.Ltd.*** (supra), we would decide during course of this matter as to whether the relief as prayed for by the applicant may be granted or not. As regards the prayer made by the applicant in I.A. No.200/2023 seeking relief, which has been cited above, we are not inclined to grant the same because it is not properly worded and the response which has been given by the learned counsel for the applicant regarding the relief which can be considered and granted without that amendment being incorporated. Hence, this application (I.A. NO.200/2023) is rejected.

12. If any joint Committee is required to be constituted, the same would be done after considering the replies that would be filed by the respondents.

13. In view of above discussion, we admit this Original Application and direct the Registry to issue notice to the respondents, returnable within four weeks.

14. The applicant is directed to provide copies of the Original Application and annexures thereto to the respondents, within a week.

15. The applicant is also directed to take necessary steps for service upon the respondents by both ways and also through available e-mail.

16. Put up this matter for next consideration on 09.01.2024.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 22, 2023
O.A. No.28/2023(WZ)
npj