
(1999) 12 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 1019 of 1999

Buildarch and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 3, 4, 5

Citation : (2000) 102 BOMLR 20

Hon'ble Judges : S. Radhakrishnan, J; A.P. Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution seeks to challenge letter dated 8.9.1998 addressed by the Joint Secretary, Ministry of Environment and Forest, Government of India to the Chief Secretary to the State of Maharashtra by the Joint Secretary, Ministry of Environment and Forest, Government of India issuing clarification with regard to Coastal Regulation Zone notification dated 19th February, 1991 (for short "CRZ Notification") particularly with regard to annexure-1, Clause 6(2) CRZ-II of the Regulations.

2. The above notification dated 19.2.1991 has been issued by the Central Government in exercise of power u/s 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3)(d) of the Environment Protection Rules, 1986 declaring coastal stretches as Coastal Regulation Zone (CRZ) and Regulating Activities in the CRZ. The said CRZ are divided in four categories as set out in Annexure-I to the CRZ notification. In the present case we are concerned with CRZ-II which is defined in the notification as follows:-

Category -II (CRZ-II) : The areas that have already been developed unto or close to the shore line. For this purpose "developed area" is referred to as that area within the Municipal Limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and

approach roads and other infrastructural facilities, such as water supply and sewerage mains.

3. Clause 6(2) of the Annexure I laid down norms for regulation of activities in CRZ-II as follows:

6(2) The Development of construction activities in different categories of CRZ areas shall be regulated by the concerned authorities at the State/Union Territory level, in accordance with the following norms : CRZ II

(i) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI/FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject with the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architect style.

4. By the impugned letter dated 19.2.1999 the Respondent No, 2 issued clarification with regard to clause "6(2) Annexure-I as follows:-

3. It is clarified that the phrase "Existing Authorised Buildings" means those buildings of a permanent nature that were existing prior to 19.2.1 991, and was constructed in accordance with the building regulations and bye-laws in vogue prior to 19.2.91, and had received necessary sanctions, including commencement and occupation certificates from the concerned local authority prior to 19.2.1991. Further, the construction of buildings, including expansion and reconstruction should be in accordance with the FSI/FAR norms and all other Town and Country Planning regulations, Including maximum permissible density, height, zoning etc. that, were prevalent and in force as on 19.2.1991. The phrase "building? means a permanent fixed structure with a roof forming an enclosure and providing protection from the elements.

5. Mr. Jahagirdar the learned Counsel for the Petitioner submitted that the Respondent No. 2 while issuing the directions to the State Government has sought to amend the CRZ notification under the guise of clarification. He submitted that as per Annexure-I to the CRZ notification permissible developmental activities can be carried out in CRZ-II in conformity with the Development Control Regulations and existing norms of FSI/FAR which has been increased by Respondent No. 1 from time to time so that the housing problems can be solved speedily. He submitted that the expression "existing FSI" cannot be interpreted to mean FSI which was available on 19.2.1991 when the notification was published. Such an interpretation would lead to absurd results. The FSI permissible in a particular area is not static and changes from time to

time according to the Development Control Regulations and prevalent needs in the locality from that area. It is possible that higher FSI may be available on the date of notification and the same may have reduced when the permission is granted. It is not, therefore, correct to say that the words existing FSI are used with reference to FSI/FAR as on 19.2.1991. He, therefore, submitted that the impugned letter dated 8.9.1998 is totally illegal and without jurisdiction.

6. In our view the issue stands concluded by the decision of the Division Bench of this Court in the case of Overseas Chinese Cuisine (India) Put. Ltd. and Anr. v. Municipal Corporation of Greater Bombay 1999 (3) Bom. L.R. 610. The Division Bench while dealing with this issue has held as under:-

67. It is contended by Mr. Singhvi that there was some doubt expressed in certain quarters with regard to the interpretation of this provision in the CRZ Notification imposing restrictions on building activity in CRZ II areas. The doubt was whether the Notification contemplated that buildings as permitted to the landward of the existing authorised structures/existing and proposed roads were required to be subject to the local Town and Country Planning Regulations and the norms of Floor Space Index existing on the date of the Notification i.e. 19th February, 1991 or existing on the date on which the building permission was applied for and sanctioned. In order to clear the doubt, the Ministry of Environment and Forests had issued a clarification dated 8th. September, 1998. Mr. Singhvi contended that, in fact, the Government of Maharashtra is also of the view that the restrictions and F.S.I, norms would apply as on the date of permission and that is why the Government had by its letter dated 1st February, 1999 requested the Government of India to make a modification so that some of the permission already granted would not become legal.

68. Mr. Singhvi contends that there is good reason for accepting the view adopted by the Municipal Commissioner that the "existing" local Town and Country Planning laws and "existing" Floor Space Index norms contemplated by the concerned CRZ Notification were the ones in operation and current on the date on which the CRZ Notification itself came into force and not the ones in existence on any given date in future when applications may be made for development permission. He referred to the Statement of Objects and Reasons of the Environment (Protection) Act, 1986 which show the growing concern of the Central Government about the decline in environmental quality as evidenced by the increase in pollution, loss or vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, Government of India participated in the said Conference and strongly voiced their environmental concerns. Taking stock of the existing legal provisions dealing with environment protection and finding them to be hazardously inadequate,

Parliament enacted the Environment (Protection) Act, 1986. Under this Act, Sections 3, 4 and 5 invest the Central Government with plenary powers to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution. The Statute also contemplates appointment of several officers for the purpose of overseeing the effective implementation of the environment protection policy envisaged in the Act. Section 5 invest specific powers to the Central Government for issuing directions in writing to any person or officer of any authority in connection with the Act which such person shall be bound to comply with. The Central Government is the authority to monitor the implementation of the Act. The Act is intended to put severe restrictions on untrammelled depreciation of environmental resources. It is contended by the Respondents that, if this background is kept in view while interpreting the CRZ Notifications, then, irrespective of the clarification given by the Ministry of Environment and Forests dated 8th September, 1998, it would be clear that what was being preserved at least in the areas falling within the CRZ was the status quo as on the date of the Notification. Any other view would not only dilute the provisions of the Environment (Protection) Act, 1986, but also reduce them into mere teasing illusion,

69. There appears to be great merit in the contentions of the Respondents based on the CRZ Notifications. We too are inclined to think that the purpose of imposing severe restrictions as done in the CRZ Notification would be rendered nugatory if these restrictions are capable of being abrogated or watered down by subsequent amendments made by the local authorities or local town planning laws. We cannot lose sight of the fact that this is a salutary piece of Central legislation intended for the benefit of the entire country. That it might cause hardship to some one in some corner of the country, can hardly be a ground for tilting against it. True, that by the time the Central Government sat up and took notice and Parliament enacted this piece of legislation, considerable amount of development activity had already taken place all along the coastal areas. Which are now technically defined as the Coastal Regulations Zones, it would have been eminently unjust to undo all that had already been done. Parliament, therefore, adopted what we may call as "Doctrine of Toleration" that development activity already carried out and in existence in accordance with laws and norms then existed, had to be tolerated. Simultaneously, the legislative policy is also reflected in what we may style as the "doctrine of containment", which means that even though what existed on the date of the Notification is to be tolerated, it should not be permitted to grow beyond the dimensions upto which it was tolerated. When looked at from this point of view, particularly keeping in mind the responsibilities of the country towards the world community as a whole and to its future generations, it appears to us that the construction sought to be put on the CRZ Notification by the Respondents is perfectly justified and would have to be upheld irrespective of the clarification given by the letter dated 8th September, 1998 by the Ministry of Environment and Forests.

70. In our view, the word "existing", as used in the concerned part of the Notification, cannot be read differently at different places within the same part. We have already quoted the material part on restriction of development activity in CRZ-II. The word "existing" used in the material part of the Notification refers in several places to structures which were already physically existing on the date of the Notification and to roads existing already on the date of the Notification. If, the intention of the Notification was to refer to and deal with local Town and Country Planning Regulation and FSI norms as on the date of the grant of permission for building activity, then it would have sufficed to say that the building permitted on the landward side of the existing and proposed roads/ existing authorised structures "shall be subject to the local Town and Country Planning Regulations including the norms of Floor Space Index /Floor Area Ratio". The use of participate "existing" to qualify "local Town and Country Planning Regulations" and "norms of Floor Space Index/Floor Area Ratio" is, in our view, not merely accidental. It serves an important purpose, namely, to highlight that irrespective of what local Town and Country Planning Regulations may provide for in future in any hook or corner of the country, and irrespective of how the norms of Floor Space Index/Floor Space Ratio might be revised at some future point of time, the building activity permitted under the Notification in CRZ-II shall be frozen to the laws and norms existing on the date of the Notification. This interpretation, in our view, is perfectly in consonance with the legislative intention behind the Environment (Protection) Act, 1986.

71. Counsel for the Petitioners contend that adopting this construction would mean that with regard to the CRZ. where development activity had already been permitted shall development activity would be put in a time-wrap, freezing as it were on the date of the CRZ Regulation. Progress is reflected in change and not frozen action, contend the Petitioners Counsel. But, progress is a concept with deeper philosophical, ethical and moral overtone. One man's meat may be another's poison. So with progress too. Ultimately, it is for the collective will of the people, as expressed by law, to assert itself and answer this question. Whether degradation of environment is progress or regress is a matter of collective wisdom reflected in legislative policy. If Parliament intended that there shall be no "progress" of such type in future, one cannot demur or protest, at least in a court of law. Considering the overall legislative policy behind the Act, we are in agreement with the contentions of Mr. Singhvi that the word "existing" used throughout the material part of the CRZ Notification, should carry the same meaning, viz. existing as on the date of the Notification.

72. The Petitioners rejoin that if we adopt such a rigid construction of the Notification it may lead to absurdity. If the local Town and Country Planning Regulation bring about a reduction in the F.S.I, norms in future, a plot of land falling within the CRZ-II area may become entitled to F.S.I, higher than the ones in existence than on the date the application for development permission is made. In our view, this is not such an alarming or astounding situation as to found an argument of Reductio ad Absurdum. The situation contemplated is

perfectly feasible and compatible with the legislative intent as we see it. After all, what the Notification intends is that the F.S.I, norms be pegged at the level at which they existed to which the coastal area had already been built upon. If, therefore, even in future, notwithstanding reduction of the F.S.I, norms elsewhere, the CRZ-II zone is given this benefit, we see nothing wrong or objectionable therein, nor any reason against such construction being adopted. At the highest, this may be a factor to be reckoned with in the future legislation. We decline to consider the construction of the CRZ Notification done by the Petitioners as arbitrary, absurd or irrational.

7. We are in respectful agreement with the view expressed by the Division Bench. In our opinion the aforesaid clarification issued by the Respondent No. 2, is in consonance with the said notification dated 19.2.1991 and the said clarification in no manner amend, modify or alter the original notification dated 19.2.1991. If the interpretation as sought to be canvassed before us is accepted, it would seriously affect the delicate balance between the preservation of crucial area and the development permissible under the CRZ Notification which is the very object for which the said notification has been issued by the Central Government. In our opinion, the petition is devoid of any substance and hence dismissed.

8. Personal Assistant to issue an ordinary copy of the order to the parties.

9. Issuance of certified copy is expedited.