

(2023) 03 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 4887 Of 2022

MRK Enterprises

APPELLANT

Vs

Maharashtra Coastal Zone Management) Authority And
Others

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Environment (Protection) Rules, 1986 — Rule 5(3)
Development Control Regulations, 1991 — Regulation 33(6), 35(ii)(c), 35(iv)
Environmental (Protection) Act, 1986 — Section 3(i), 3 (1)(ii)(v)

Citation : (2023) 03 BOM CK 0061

Hon'ble Judges : S. V. Gangapurwala, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Aseem Naphade, Sanjeel Kadam, Nitisha Lad Kadam, Jaya Bagwe,
Shilpa Redkar

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. Petitioner challenges the decision of Maharashtra Coastal Zone Management Authority (MCZMA) dated 20th April 2021 declining Coastal Zone Regulation clearance for issuance of occupancy certificate for its building. MCZMA has treated the case of Petitioner as violation of CRZ Notification 2011 calling it upon to submit requisite information for regularization of construction under Office Memorandum dated 19th February 2021. Objection of MCZMA is to the act of Municipal Corporation in granting development permission under Development Control Regulations 1991, when the CRZ clearance envisaged carrying out the construction in accordance with Development Control Regulations 1967.

3. Petitioner is the owner of the property being land bearing C.S. No.79 of Colaba

Division, Nathalal Parekh Marg (Wood House Road), Wing A, Mumbai alongwith building standing thereon known as 'Amir House' (Property).

4. In exercise of powers conferred under Section 3(i) and 1(ii)(v) of the Environmental (Protection) Act, 1986 r/w. Sub-Rule 3 of Rule 5 of the Environmental (Protection) Act, 1986, the Ministry of Environment, Forests and Climate Change, Government of India (MOEF) issued the Coastal Regularization Zone Notification 1991 (CRZ Notification 1991) on 19th February 1991 declaring the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action upto 500 meters from the High Tide Line and the land between the Low Tide Line and High Tide Line as Coastal Regularization Zone (CRZ) and imposed restrictions on setting up and expansion of industries, operations or processes etc in the Coastal Regularization Zone. As per the Coastal Zone Management Plan prepared in pursuance of the CRZ Notification 1991, the areas falling within CRZ are classified into various groups. The property involved in the present petition is situated in CRZ II area on landward side of the existing road.

5. At the time when CRZ Notification of 1991 was issued on 19th February 1991m the applicable local town and country planning regulations in the city of Mumbai were the Development Control Regularization of 1967 (DCR 1967). Petitioner submitted a proposal for re-development of the property with the Municipal Corporation of Greater Mumbai (MCGM). Since the property is situated in CRZ II, it became necessary to obtain CRZ clearance of MCZMA. Accordingly, a proposal for CRZ clearance was submitted by the Project Proponent-MCGM on behalf of Petitioner to MCZMA on 12th May 2010 for proposed reconstruction of the building 'Amir House'. By letter dated 9th June 2010, MCZMA granted CRZ clearance for the project in accordance with provisions of CRZ Notification of 1991. One of the conditions of CRZ clearance was that the FSI and building plan proposed in the reconstruction of the building would be as per the DCR 1967. In the meantime, the building 'Amir House' came to be declared as a dilapidated building by MCGM vide letter dated 1st June 2010.

6. On 25th March 1991, DCR 1967 came to be replaced by the provisions of the Development Control Regulations 1991 (DCR 1991). The DCR 1991 contains a special provision for reconstruction / redevelopment of old dilapidated buildings under Regulation 33(6). The Intimation of Disapproval (IOD) was issued by MCGM on 15th October 2010 by considering Petitioner's proposal under Regulation 33(6) of DCR 1991. The development permission/commencement certificate (CC) was amended from time to time by issuance of commencement certificates dated 6th December 2010, 17th August 2011, 22nd March 2012 and 17th September 2012.

7. By the time petitioner commenced construction of the new building, MOEF issued CRZ Notification on 6th January 2011 (CRZ Notification 2011) in supersession of CRZ Notification 1991. Paragraph 8(V)(c) of the CRZ Notification 2011 permits reconstruction / redevelopment of dilapidated cessed and unsafe

buildings by using FSI in accordance with the applicable DCR Regulations.

8. Construction of the redeveloped building comprising of G + 11 floors was completed by Petitioner in the year 2013. When petitioner applied for issuance of occupancy certificate, MCGM observed that CRZ clearance of MCZMA would be necessary to the amended development permissions issued from time to time. Therefore, MCGM submitted a proposal dated 3rd October 2019 seeking revised CRZ clearance of MCZMA for redevelopment proposal under Regulation 33(6) of DCR 1991 to the subject building. MCZMA deliberated the proposal in its 143rd meeting held on 4th February 2020, wherein it was observed that the earlier CRZ clearance was granted subject to the condition of construction being carried out as per DCR 1967, whereas the development permission was granted to petitioner by MCGM under DCR 1991 without obtaining prior permission of the MCZMA. It was therefore held that project involved violation of CRZ clearance granted by MCZMA. Office Memorandum dated 19th February 2021 was issued by the Government of India dealing with cases of violation of CRZ Notifications. MCZMA therefore granted liberty to the project proponent to submit the requisite information for consideration of the case for regularization of violation in terms of Office Memorandum dated 19th February 2021. However, this court by its interim order dated 7th May 2021 passed in Public Interest Litigation (L) No. 8540 of 2021, restrained grant of any permission for clearance based on the said Office Memorandum.

9. In the wake of the above factual background, Petitioner, who earlier applied for revised CRZ clearance through MCGM to MCZMA, now contends that such revised CRZ clearance is not necessary in view of provisions of Para 8 (V)(c)(2)(i) of CRZ Notification 2011.

10. Appearing for petitioner, Mr. Naphade the learned counsel would submit that it is not necessary to procure revised CRZ clearance of MCZMA as such clearance has already been granted on 9th June 2010. He would submit that mere change in applicable DCR would not entail procurement of fresh CRZ clearance. That the impugned decision of MCZMA overlooks the fact that the CRZ clearance dated 9th June 2010 was for construction 'as per CRZ Notification 1991 as amended from time to time', which would include CRZ Notification 2011 as well. That Para 8(V)(c)(2)(i) of the CRZ Notification 2011 clearly provide that for redevelopment of the dilapidated buildings, the applicable regulations would be the one prevailing on the date on which the project is granted approval. That the project is approved vide IOD dated 15th October 2010, when DCR 2011 had come into effect. That petitioner's redevelopment is sanctioned under Regulation 33(6) of DCR 1991 and that therefore the approval is as per CRZ Notification 2011 and in accordance with CRZ clearance dated 9th June 2010 granted by MCZMA. Mr. Naphade would rely upon letter dated 30th June, 2016 of MOEF clarifying that subsequent recommendation of MCZMA after issuance of first recommendation is not required in view of Para 8(V)(c)(2)(i) of the CRZ Notification 2011. Mr. Naphade would further submit that in respect of a building for which occupancy

certificate is not issued as on the date of coming into force CRZ Notification 2011, the same would be treated as an ongoing project covered by the provisions of clause 8V(c)(2)(i) of the CRZ Notification 2011. In support of his contention, Mr. Naphade would rely upon judgment of Division Bench of this Court in *Sea Green Co-Operative Housing Society Ltd. Vs. Union of India & Ors.*, (2015) 1 Mh.LJ 686.

11. Ms. Bagwe the learned counsel appearing for respondent-MCZMA would oppose the petition. She would submit that CRZ Notification 1991 is not amended but is superseded by CRZ Notification 2011. That CRZ clearance granted by MCZMA contemplated construction in accordance with the DCR 1967. That MCGM ought to have sought appropriate clearance from MCZMA before processing proposal for grant of development permission under Regulation 33(6) of DCR, 1991. That this is a clear case of violation of CRZ clearance. Ms. Bagwe would further submit that even though construction of the building was completed in the year 2013, the project proponent (MCGM) submitted proposal for modified CRZ clearance to MCZMA 6 years later, on 3rd October 2019. That both petitioner and MCGM violated condition of CRZ clearance granted by MCZMA on 9th June 2010. That Petitioner's interpretation of letter dated 30th June 2016 of MOEF is faulty as that letter is issued in clarification of the Ministry's earlier letter dated 28th September 2015 and dealt with case involving different facts. Ms. Bagwe would further submit that though MCGM and petitioner were granted liberty to submit requisite documents for regularization of violation under the provisions of Office Memorandum dated 19th February 2021, the interim order granted by this court on 7th May 2021 in PIL(L) No.8540 of 2021 restrains MCZMA from regularizing any violations. Lastly, and in the alternative, Ms. Bagwe would urge that in the event of this court granting any relief to Petitioner, the judgment may not be treated as a precedent.

12. We have also heard Ms. Redkar the learned counsel for MCGM. She would invite out attention to paragraph No.5 (g) of Affidavit in reply filed on behalf of MCGM clarifying that the amended development permission granted to petitioner does not involve change in height or footprint of the building. She would further submit that development permission was modified only for the purpose of regularization of niches and other areas by counting them into FSI, by availing the benefit of areas of staircase, lift and lift lobby free of FSI. She would submit that there has been no FSI violation in the building and that except the revised CRZ clearance from MCZMA, the building is fit to be granted occupancy certificate.

13. Rival contentions of the parties now fall for our consideration.

14. The present case is peculiar one where MCZMA was required to direct construction in accordance with DCR 1967 in its clearance issued on 9th June 2010, as the applicable Notification on that day was CRZ Notification 1991, on the date of issuance of which, DCR 1967 was in force. Thus, though DCR 1991 had come into effect as on the date of issuance of CRZ clearance on 9th June

2010, MCZMA permitted construction using DCR 1967. Within few months of grant of CRZ clearance, CRZ Notification 2011 was issued on 6th January 2011, which envisaged constructions as per DCR 1991. The narrow time gap between issuance of CRZ clearance by MCZMA (9th June 2010) and issuance of CRZ Notification 2011 (6th January 2011) has essentially given rise to the peculiar conundrum in the present case. If CRZ clearance was to be issued after 6th January 2011, MCZMA would have permitted construction as per DCR 1991. Because the clearance was issued on 9th June 2010 (before issuance of CRZ Notification 2011), MCZMA permitted construction as per DCR 1967, which was long since replaced by DCR 1991. Another and a simpler manner in which the problem could have been solved was by seeking revised CRZ clearance by MCGM immediately after 6th January 2011 to permit construction in accordance with DCR 1991. Failure to do so has resulted in construction being treated as a case of violation of CRZ clearance.

15. Having set out the resultant anomalous situation in the present case, we now proceed to examine whether the same can be salvaged in a manner as suggested by Petitioner.

16. As observed above, when CRZ clearance was granted by MCZMA on 9th June 2010, CRZ Notification 1991 was in force, on the date of issuance of which the applicable regulations were DCR 1967. Under clause 6(2) of Annexure-I of CRZ Notification 1991, following norm was provided for reconstruction of authorized buildings in CRZ II:

CRZ II

"Reconstruction of the authorized buildings to be permitted subject with the existing FSI/FAR norms and without change in the existing use."

17. Petitioner submitted its proposal for redevelopment of the property in the year 2010 when CRZ Notification 1991 was in force. As per CRZ Notification 1991, reconstruction could be carried out by using FSI permitted under DCR 1967. This the reason why MCZMA, while granting CRZ clearance on 9th June 2010, imposed following conditions therein:

"4. Considering the above, permission for the above said reconstruction on property situated at C.S. No.79 of Colaba Division, Nathalal Parekh Marg (Wood House Road) in A ward Mumbai is accorded hereby from CRZ point of view, as per the provisions of CRZ Notification 1991 amended time to time, subject to following conditions:-

1. MCGM should ensure that there is no violation of provisions of CRZ Notification, 1991 (amended time to time) while according permission for proposed reconstruction and construction should be carried out as per CRZ Notification, 1991 amended time to time.

2. The proposed reconstruction should be as per the sanctioned Development Control Rules, 1967 as existing & in force on 19.02.1991.

3. The proposed reconstruction should be as per the clarifications given by MoEF vide letters dated 08.09.1998 & 18.08.2006 and as per the conditions mentioned in letter dated 19.01.2000 while approving CZMP of Mumbai.

4. MCGM should ensure that investment of the proposal is less than Rs. 5 Crores and reconstruction is as per the provisions of CRZ Notification, 19.2.1991,

5. MCGM should examine the authorization of proposed area through its records,

6. Municipal Commissioner to ensure that reconstruction is in compliance of provision 7(v) of DCR 1967.

7. FSI & building plan proposed in the reconstruction of the building under consideration should be as per DCR 1967.

8. Other permissions, as required from Government Departments, agencies, Planning authorities, etc. shall be obtained before commencement of the work. This is issued with the approval of the competent authority.)”

18. Thus, as per CRZ clearance granted by MCZMA on 9th June 2010, it was specifically directed that proposed reconstruction should be as per the DCR 1967 as existing and in force on 19th February 1991. It was further stipulated that FSI and building plan proposed in the reconstruction of the building should be as per DCR 1967.

19. Little before grant of clearance by MCZMA on 9th June 2010, MCGM declared the building ‘Amir House’ as a dilapidated structure on 1st June 2010. Regulation 33(6) of DCR 1991, which came into effect from 25th March 1991, contained separate provision for reconstruction / redevelopment of old dilapidated buildings in the city of Mumbai as under:-

“33(6) Reconstruction of buildings destroyed by fire, which have collapsed or which have been demolished etc:-Reconstruction in whole or in part of a building (not being a building wholly occupied by warehousing user and also not being a ground floor structure) which existed or after 10th June, 1977 which has ceased to exist in consequence of an accidental fire, natural collapse or demolition for the reason of the same having been declared unsafe by or under a lawful order of the Corporation or the Bombay Housing & Area Development Board or is likely to be demolished for the reason of the same having been declared unsafe by or under a lawful order of the said Corporation or the said Board and duly certified them shall be allowed with an FSI in the new building not exceeding that of the original building or the FSI permissible under these regulations whichever is more. This FSI will be subject to the Regulations in Appendix-II hereto.”

20. Thus, when the proposal for issuance of development permission was submitted by petitioner to MCGM, two different sets of regulations were made applicable for such construction viz:-

a) DCR 1967 as provided in the CRZ clearance granted by MCZMA on 9th June, 2010 and;

b) Regulation 33(6) of DCR 1991 applicable to old dilapidated buildings.

21. MCGM proceeded to grant development permission to petitioner under DCR 33(6) and issued IOD on 15th October 2010. This was done in violation of CRZ clearance which envisaged construction as per DCR 1967. MCGM further amended the development permission from time to time on 6th December 2010, 17th August 2010, 22nd March 2012 and 17th September

2012. At this stage, MCGM ought to have approached MCZMA for procuring revised CRZ clearance for DCR 1991 as CRZ Notification 1991 had come into effect on 6th January 2011. It must be observed here that if MCGM was to submit a proposal to MCZMA for revised CRZ clearance before issuance of modified CC (after coming into effect of CRZ Notification 2011 on 6th January 2011), the same could have apparently been issued by MCZMA. By doing so, MCGM would have ensured permission from MCZMA to invoke provisions of DCR 1991 for construction of Petitioner. This again was not done.

22. Be that as it may, based on the development permission granted by MCGM on 15th October 2010, petitioner commenced construction at the site. Petitioner also submitted modified plans of construction to MCGM which were sanctioned from time to time on 6th December 2010, 17th August 2010, 22nd March 2012, and 17th September 2012. We do not wish to go deeper into modifications sanctioned in the development permission on account of specific statement made by MCGM in its affidavit that there is neither violation of FSI nor any change in height or footprint of the building.

23. In CRZ Notification 2011, a special provision is made for redevelopment of dilapidated, cessed and unsafe buildings in paragraph 8(V)(c) as under:

8. ...

V.

(c) REDEVELOPMENT OF DILAPIDATED, CESSED AND UNSAFE BUILDINGS:

1. In the Greater Mumbai, there are, also a large number of old dilapidated, cessed and unsafe buildings in the CRZ areas and due to their age these structures are extremely vulnerable and disaster prone and therefore there is an urgent need for the redevelopment or reconstruction of these identified buildings.

2. These projects shall be taken up subject to the following conditions and safeguards:

(i) such redevelopment or reconstruction projects as identified on the date of issue of this notification shall be allowed to be taken up involving the owners of these buildings either above or with private developers in accordance with the prevailing regulation, directly or through joint ventures or through other similar models.

(ii) the Floor Space Index or Floor Area Ratio for such redevelopment schemes

shall be in accordance with the Townand Country Planning Regulations prevailing as on the date on which the project is granted approval by the competent authority.

(iii) suitable accommodation to the original tenants of the specified buildings shall be ensured during the course of redevelopment or reconstruction of the buildings by the project proponents, undertaking the redevelopment through condition 2(i) above.”

24. Thus, under paragraph 8(V)(c)(2)(i), the projects involving redevelopment of dilapidated, cessed and unsafe buildings in CRZ areas can be taken up subject to the condition that the FSI shall be in accordance with the regulations ‘prevailing as on the date on which the project is granted approval by the competent authority’. It is common ground that the development permission for Petitioner’s project has been issued by the MCGM in accordance with DCR 1991. The issue of applicability of provisions of paragraph 8(V)(c)(2)(i) of CRZ Notification 2011 to projects in respect of which development permission was granted prior to issuance of CRZ Notification 2011 came up before this court in Sea Green Co-Operative Housing Society (supra). In that case, MCGM had granted development permission by issuing IOD on 1st October 2001 which was modified from time to time. MCZMA issued stop work notice on the ground that its clearance was not obtained before grant of development permission and that Municipal Corporation acted contrary to law in sanctioning building plans wherein staircase, lift and lift lobby areas were granted free of FSI on payment of premium. It was MCZMA’s contention that those areas could not be excluded from computation of FSI and that therefore the construction was contrary to law. The case thus involved similar situation where applicable CRZ Notification as on date of issuance of IOD was CRZ Notification 1991 (and consequently applicable regulations were DCR 1967) and construction of building was incomplete by the time CRZ Notification 2011 came to be issued. So far as the issue of exclusion of staircase, lift and lift lobby areas from computation of FSI is concerned, this court held that under the provisions of paragraph 8(V)(c)(2)(i) of CRZ Notification 2011, the DCR applicable to the project would be DCR 1991, which were prevailing as on the date of issuance of IOD in 2001. It was further held that under DCR 1991, those areas could be excluded from computation of FSI.

This court held in paragraph 14 to 17 of the judgment as under.

14. There is no dispute about the fact that the building of the Petitioner society being reconstructed is not in commercial Zone and that FSI 1s being computed for the building under reconstruction and not in respect of existing building. Similarly, the Municipal Corporation has considered the proposal of the Petitioner society after coming into force of the DC Regulations, 1991 and, therefore, the proviso does not take away the rights of Petitioner society to get exclusion of areas covered by staircase, lift and lift lobbies. Therefore, we do not find any substance in the submission of learned counsel for MCZMA that Petitioner society is not entitled to exclusion of staircase, lift and lift lobby areas while computing

the FSI calculations.

15. In case of Federation of Churchgate Residents (*supra*), this Court has held as under:

"8. The Petitioners have also challenged the applicability of CRZ Notification dated 6 January, 2011 to the facts of Vasant Sagar's case. Therefore, it is the Petitioner's case that the benefit of extra FSI etc available under the 2011 Notification is not available. The Petitioners contended that CRZ Notification 2011 itself provides that it would apply to old and dilapidated projects which can be identified on the date of the issue of the notification. It is the Petitioner's contention that the earlier building which was in a dilapidated condition was not in existence when 2011 Notification was issued for the reason it was demolished earlier and reconstruction of building on the said property was in progress. Therefore, there was no dilapidated building which could be identified on the date of Notification dated 6 January, 2011. As against the above, the Respondents and the Advocate General have submitted that the CRZ Notification of 2011 would apply as the project of reconstruction on the said property is still in progress. Therefore, it is possible to identify the project.

9. We find that till the date of the issue of notification on 6 January, 2011, no occupation certificate in respect of the building which was being reconstructed, was issued. Therefore, the reconstruction of the building in place of dilapidated building was still an on going project on the date of notification. The benefit under the CRZ Notification of 2011 is given to an on going project having its origin in a dilapidated building.

16. In view of the ratio laid down in the above decision, if occupation certificate is not issued for any building under reconstruction/redevelopment on the date of coming into force of the CRZ Notification dated 6 January, 2011, it is an ongoing project which would be covered by paragraph 8(V)(I)(iii)(c) of the CRZ Notification dated 6 January, 2011. Further, in the present case, the material on record indicates that the ongoing project had its origin in a dilapidated building. Therefore, applying the ratio as aforesaid, the benefit of CRZ Notification 2011 shall have to be extended to the building in question.

17. In the facts of the present case, there is no dispute about the fact that the construction had commenced in 2007 and the construction was not completed on 6 January, 2011 when CRZ Notification came into force. Admittedly, occupation certificate has not been issued even now. In fact, by our interim order dated 2 April, 2014, we had while granting interim relief permitting the Petitioner society to complete the construction SO as to avoid any damage to the building which was already completed to the extent of more than 95%, we had directed the Municipal Corporation not to issue any occupation certificate till final disposal of the writ petition. In other words, we are Clearly of the view that the Petitioner society is entitled to get the benefit of paragraph 8(V)(I)(iii)(c) of CRZ Notification dated 6 January, 2011 and, therefore, also the Petitioner society is

entitled to the benefit of DC Regulations for Greater Mumbai of 1991 and particularly Regulation 35 (ii)(c) and Regulation 35(iv) thereof. Admittedly, the Petitioner had paid the premium for getting the above benefit in the year 2006-07 and the Municipal Corporation has no grievance on this score.”

(emphasis ours)

25. Thus, in *Sea Green Co-Operative Housing Society Ltd.* (supra) this court held that if occupation certificate is not issued to any building under reconstruction / redevelopment on the date of coming into force of CRZ Notification dated 6th January 2011, it needs to be treated as an on-going project, which would be covered by the provisions of paragraph 8(V)(c) of the CRZ Notification dated 11th January 2011. In the present case also since occupancy certificate was not issued to Petitioner’s project, it would be clearly covered by the provisions of paragraph 8(V)(c)(2)(i) of the CRZ Notification 2011.

26. Perusal of the minutes of meeting of MCZMA held on 20th April 2021 indicates that MCZMA does not seriously dispute application of provisions of paragraph 8(V)(c)(2)(i) of CRZ Notification 2011 to the present case. However MCZMA has not sanctioned the proposal of MCGM on a technical plea that CRZ clearance in the year 2010 was granted under CRZ Notification 1991 subject to DCR 1967 whereas the MCGM got the plans amended as per DCR 1991. In this regard, the relevant part of the minutes of MCZMA’s meeting dated 20th April 2021 are reproduced below.

“The Authority noted that earlier, the proposal was considered in 143rd meeting Ce held on 04.02.2020, wherein it was noted that MCZMA granted the CRZ NoC on 9.6.2010 to the proposal subject to condition that proposed reconstruction should be as per DCR 1967. MCGM need to clarify the applicability of DCR 1991 to the proposal under reference.

The MCGM vide letter dated 07.07.2020 stated that the existing building on plot under reference was cessed structure & same was declared dilapidated by MCGM on 01.06.2010. PP submitted amended plans by taking area of staircase, lift, lift free of FSI as permissible as per provisions of DCR 1991. There is no change in permissible FSI and height of building only internal changes. It is seen that the present proposal is in accordance with clause 8.V.1.C of CRZ Notification, 2011.

The MCGM reply also states that approval was obtained for amended plan and to regularize the unauthorized work carried out beyond approved plan as there was no change in height and footprint of proposed building. MCGM has put a condition to obtain revised Noc from MCZMA and clarification from the deference authorities.

Now, the PP is seeking the revision of plans based on the dilapidated letter dated 1.6.2010 for the building and requesting to allow development as per DC 1991, by availed area of staircase, lift are as free of FSI.

However, building has got full CC based and work is completed. Applicability of

DCR 1991 to the revised plans needs to be discussed. MCGM reply dated 7.7.2020 states that approval was obtained for amended plan and to regularize the unauthorized work carried out beyond approved plan as there was no change in height and footprint of proposed building. MCGM has put a condition to obtain revised Noc from MCZMA and clarification from the deference authorities.

The Authority noted that even though the MCZMA had granted the CRZ recommendation in the year 2010 under CRZ Notification, 1991 subject to DCR 1967, however, the PP has got the plans amended as per the DCR 1991 and now construction of building on site under reference is as per DCR 1991. The MCGM reports states that there was existing dilapidated building on the site under reference and there a notice from the MCGM declaring the building as dilapidated. MCGM states that redevelopment attracts para 8.v.c of the CRZ Notification, 2011 wherein DCR 1991 is applicable.

The Authority noted that the PP could have obtained the prior CRZ recommendation from the MCZMA before amending plans and carrying out construction as per DCR 1991. This is a case of violation of the CRZ Notification, 2011 and attracts the OM dated 19th Feb, 2021 issued by the MoEF&CC, New Delhi. The PP should submit the requisite information as per the OM dated Feb, 2021 so that the matter could be deliberated within the framework of above said OM of MoEF&CC, for further appropriate decision. The Authority decided that the PP need to apply afresh as, per the OM dated 19th Feb, 2021 with all requisite information to MCZMA for further appropriate decision in the matter."

27. As observed above, MCZMA does not seriously dispute application of provisions of paragraph 8(V)(c)(2)(i) of CRZ Notification 2011. In its affidavit in reply also, MCZMA has not disputed application of provisions of paragraph 8(V)(c)(2)(i) of CRZ Notification 2011. What MCZMA essentially contends is that its clearance by applying provisions of para 8(V)(c)(2)(i) ought to have been obtained before amending the CC as per DCR 1991.

28. The Government of India, Ministry of Environment, Forests and Climate Change has issued clarification dated 20th June 2016 conveying that the necessity of appraisal and recommendations of MCZMA on subsequent occasion after the first recommendations is not required in view of paragraph 8(V)(c)2 of CRZ Notification 2011 which relates to redevelopment / reconstruction of old and dilapidated, cessed and unsafe buildings in CRZ areas.

29. MCZMA has however disputed application of clarification issued by MOEF on 30th June 2016 to the present case. It is contended by MCZMA that the clarification applied to a case where CRZ clearance is granted in accordance with CRZ Notification 2011 and there is change / modification proposed by developer. That it would have no application to the present case where CRZ clearance was granted for construction as per DCR 1967 and construction is carried out as per DCR 2011.

30. Since the letter dated 30th June 2016 clarifies the Ministry's earlier letter

dated 28th September 2015, it would be necessary to reproduce that letter as under:

"1. This has reference to your letter dated 24.09.2015 seeking clarification in the above subject matter as to when the Maharashtra State Coastal Zone Management Authority (MCZMA) has granted clearance to a building construction project in CRZ-II areas as per CRZ Notification, 2011 for a certain construction area and height of the building for any additional construction in lieu of additional FSI / TDR, whether it will be required to obtain the revised clearance from the MCZMA before sanction of plans or of obtaining revised Environmental Clearance from the Environment Department.

2. In view of the provisions of the CRZ Notification, 2011 para 8(V) (1)(ii)(c) relating to redevelopment / reconstruction of old and dilapidated, cessed and unsafe buildings in CRZ areas falling within the limits of Greater Mumbai, FSI/FAR and other Town and Country Planning conditions shall be in accordance with and Town and Country Planning regulations as on the date on which the project is granted approval by the competent authority.

3. I am directed to inform that once the project is appraised and recommended by MCZMA for re-development/reconstruction in this specific provision of CRZ Notification, there is no need of subsequent CRZ clearance/clearance from the Coastal Zone Management Authority on every occasion as and when there is a change in the building configuration applicable under local TCP regulations, for which the local authorities are competent to take decision.

4. This issues with approval of the competent authority."

31. The letter dated 28th September 2015 was clarified by MOEF on 30th June 2016 as under:

"1. This has reference to letter No. ChE/3032/DPCity dated 28.04.2016 received from the Chief Engineer (DP) seeking authentication of this Ministry's letter F.No.11-70/2007-IA.III dated 28" September, 2015. It is confirmed that the letter mentioned above has been issued by this Ministry. The Ministry has taken note of the further confirmation sought in the said letter of Chief Engineer, MCGM to which this Ministry has no comment because these are not related to the subject matter of Ministry's letter.

2. However, it is clarified that para 2 of this Ministry's letter mentioned above is explicit in conveying that the necessity of appraisal and recommendation of MCZMA on subsequent occasion after first recommendation is not required in view of para 8(V)(1)(ii)(c) of CRZ Notification, 2011 which relates to redevelopment reconstruction of old and dilapidated, cessed and unsafe buildings in CRZ areas failing within the limits of Greater Mumbai which is eligible for TCPR prevailing as on the date on which the project is granted approval by the competent authority."

32. True it is that the facts of the case in which clarifications were issued on 28th

February 2015 and 30th June 2016 involved grant of CRZ clearance under CRZ Notification 2011. However, we fail to comprehend as to what difference would it make if the earlier CRZ clearance is granted under CRZ Notification 1991 and the one expected to be sought now is under CRZ Notification 2011. Under provision of paragraph 8(V)(c)(2)(i) of CRZ Notification 2011, reconstruction of dilapidated buildings falling in CRZ area can be carried out in accordance with DCR 'prevailing as on the date of which project is granted approval by the competent authority'. In *Sea Green Co-operative Housing Society Ltd.* (supra), this court has held that the provisions of paragraph 8(V)(c)(2)(i) would apply even to the project for which development permission is granted during application of CRZ Notification 1991, but occupancy certificate is not issued after coming into effect of CRZ Notification 2011. Once it is held that the provisions of paragraph 8(V)(c)(2)(i) apply to the project of the petitioner, we see no difficulty in applying the clarification issued by the MOEF vide letter dated 30th June 2016 to the present case, in the light of its peculiar facts. The objective behind issuance of clarification dated 30th June 2016 is to obviate the requirement of obtaining repeated CRZ clearances each time the CC is modified.

33. In the present case, the nature of construction might have undergone some change on account of application of regulation 33(6) of DCR 1991. There is some degree of debate on the issue of increase or decrease in permissible area of construction under the 1967 and 1991 DCRs. While Petitioner contends that the height of the building has come down from 17 floors to 11 floors on account of application of 1991 DCR, MCZMA counters the contention stating that there is increase in permissible area of construction under DCR 1991 on account of staircase, lift, lift lobby areas being excluded in computation of FSI. We would steer clear of the debate as MCGM has confirmed in its affidavit that there is no change in height or footprint of the building nor there is any FSI violation in the construction put up by Petitioner. True it is that MCZMA may be entitled to examine whether such change in construction was permissible from environmental point of view. However, we cannot lose sight of the fact that the building has already come up and is waiting issuance of occupancy certificate since long. It is not that CRZ clearance was never obtained in the present case (as in the case of *Sea Green*, where this court ultimately directed procurement of CRZ clearance). CRZ clearance has been granted on 9th June 2010 and there is no change in height or footprint of the building. Few minor changes in the building or alleged consumption of extra FSI (which is permissible under DCR 1991) would not be a reason enough to insist on revised CRZ clearance of MCZMA. It is not that MCZMA ordered demolition of the building. All that it directed was to submit proposal for regularization of violations. However, on account of interim order passed in PIL (L) No.8540 of 2021 by this Court, it has not been able to process the proposal for regularization.

34. After taking conspectus of the entire case what weighs on our mind are the following factors:

- i. the building has CRZ clearance of MCZMA, albeit under CRZ Notification 1991 and DCR 1967;
- ii. there is no change in the height or footprint of the building, thereby putting to rest the environmental concerns in modified plans under DCR 1991;
- iii. MOEF has clarified, albeit in different factual circumstances, that repeated CRZ clearances of MCZMA would not be necessary each time development permission is modified;
- iv. Construction of the building is complete in 2013 which is waiting issuance of occupancy certificate;
- v. MCGM has found the construction to be compliant to the development permission;
- vi. combined effect of ratio of Sea Green (supra) and paragraph 8(V)(c)(2)(i) of CRZ Notification 2011 would make DCR 1991 applicable to Petitioner's construction.

35. Though presence of any one out of the above factors may not be sufficient to find fault with MCZMA's decision, the combined effect of the above factors would certainly weigh heavily on our mind for granting relief to it. In these peculiar facts and circumstances of the case, we permit the proposal for issuance of Occupancy Certificate being processed by MCGM without insisting upon issuance of revised CRZ clearance by MCZMA. However, since the directions are being issued in the peculiar facts and circumstances of the case, this would not be treated as a precedent.

36. Accordingly, writ petition succeeds. MCGM shall proceed to process the proposal submitted by petitioner for grant of occupancy certificate without insisting for revised CRZ clearance from MCZMA. If the proposal for occupancy certificate is otherwise found compliant with the DCR, MCGM shall proceed to issue occupancy certificate to the project. Writ petition is accordingly allowed. Rule is made absolute in the above terms.