

Most Urgent
By speed post

No.19-94/2010-IA-III
Government of India
Ministry of Environment and Forests

Paryavaran Bhavan,
CGO Complex, Lodi Road
New Delhi -110003.

Dated the 12th November, 2010

To,

M/s Adarsh Cooperative Housing Society Limited
CTS No.652, Block VI, Colaba Division
Captain Prakash Pethe Marg
Adjacent to Backbay Bus Depot
Colaba, Mumbai-400 005

Sub: Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of Coastal Regulation Zone Notification, 1991 by M/s Adarsh Cooperative Housing Society at Colaba, Mumbai - regarding.

1. Whereas, the Government of India issued the Coastal Regulation Zone (CRZ) Notification, 1991 vide S.O.No.114(E), dated 19th February, 1991 under the Environment (Protection) Act, 1986 for protecting and conserving the coastal environment and to regulate development in the CRZ area; and
2. Whereas, the Ministry of Environment and Forests (MoEF) approved, with certain modifications the Maharashtra State Coastal Zone Management Plan on 27th September, 1996 with stipulated conditions and thereafter approved the revised CZM Plan of the Greater Mumbai similarly on 19th January, 2000; and
3. Whereas, vide amendment S.O.No.494(E), dated 9th July, 1997 to the CRZ Notification, 1991, powers were delegated to the State Authorities to accord clearance to the activities involving an investment of more than Rs. 5 crores; and



4. Whereas, the Ministry of Environment and Forests constituted by a Notification dated 25th March, 2008 the National Coastal Zone Management Authority (NCZMA) and constituted various State/Union territory level Coastal Zone Management Authorities including the Maharashtra Coastal Zone Management Authority (MCZMA) on 26th November, 1998 and thereafter subsequently amended this Notification on 4th January, 2002 and also reconstituted NCZMA/MCZMA from time to time for implementation of the provisions of CRZ Notification; and

5. Whereas, vide amendment S.O.No.460(E), dated 22nd April, 2003 the Ministry withdrew the powers under the CRZ Notification delegated to the State Governments with the following preambular explanation :

“And whereas it has been brought to the notice of the Central Government that destruction of mangroves, depletion of ground water and certain other activities involving severe ecological damages have been caused as a result of large sized projects being implemented without clearance from the Government of India in the Ministry of Environment and Forests; And whereas the issue has been examined by the Government of India in the Ministry of Environment and Forests; And whereas the Central Government is of the opinion that the said notification should be amended with a view to preventing further ecological damages;” and thereby the status quo as existed on 19th February, 1991 for construction activities namely; all CRZ Clearances for project above 5 crores to be approved by the Ministry was restored; and

6. Whereas, based on a complaint of National Alliance of People Movement, the Maharashtra Coastal Zone Management Authority issued directions on 3rd November, 2009 under Section 5 of the Environment (Protection) Act, 1986 to the promoters of M/s Adarsh Cooperative Housing Society directing submission of necessary documents, permissions/ clearance obtained from the different statutory Authorities to it within fifteen days; and



7. Whereas, the MoEF was made aware through various news item appearing in major news dailies and also in electronic media regarding the construction by Adarsh Cooperative Housing Society at Colaba, Mumbai claimed to be in violation of the Coastal Regulation Zone Notification, 1991; and

8. Whereas, the MoEF issued a letter addressed to the Secretary, Environment, Government of Maharashtra and Chairperson, Maharashtra Coastal Zone Management Authority vide letter of even number dated 26th October, 2010 requesting for examination of the facts of the project, the clearance obtained and action taken against violations, if any; and

9. Whereas, MoEF received an interim reply from the Secretary Environment, Government of Maharashtra vide letter dated 27th October, 2010 stating that prime-facie the above mention project had not been granted a Coastal Regulation Zone clearance by the Department of Environment/Maharashtra Coastal Zone Management Authority nor has it been recommended by the MCZMA for such clearance to MoEF and that a final report will be submitted as soon as all the information was received from the concerned Departments; and

10. Whereas, in the mean time Ministry had issued a clarificatory statement with regard to the Ministry's letter of 11th March, 2003 stating that "The letter of MOEF dated 11th March 2003 was obviously a clarification to the queries raised by the Urban Development Department, Government of Maharashtra. This letter was neither a Clearance under the Coastal Regulation Zone (CRZ) Notification, 1991, nor a No-Objection Certificate (NOC). Any State Government where CRZ Notification, 1991 is applicable or any project proponent putting up a project in a coastal area would be aware of these procedures and the format of communications of the MoEF"; and



11. Whereas, the MCZMA, based on the documents received by them deliberated on the case of M/s Adarsh Cooperative Housing Society in its meeting held on 3rd November, 2010 and on 9th November, 2010 and concluded and decided that :

- a) Required permission from the competent authority under CRZ regulation has not been taken by the Adarsh Cooperative Housing Society.
- b) No CRZ clearance was taken for amalgamating part of the BEST plot admeasuring 2669 sq.mtrs. and the transfer of FSI to the construction though this was a mandatory condition in the order of Revenue Department dated 5.8.2005 allotting the said plot to the Society.
- c) The Floor Space Index (FSI) allowed and consumed in the building construction exceeded the FSI permissible as per the Development and Control Regulations (DCR), 1967, which were applicable in CRZ-II area of island city of Mumbai and the DCR 1967 prescribes that the FSI of any building in island city of Mumbai should be inclusive of lift, lobby and stair-case area, which is admeasuring 2814.92 sq.mtrs.

d) Considering MoEF's letter dated 26.10.2010 and the fact that the project cost exceeds Rs. 5 crores, the case of CRZ violation of the Society be referred to MoEF for further action; and

12. Whereas, the NCZMA had already scheduled a meeting on 11th November, 2010 in Delhi to consider various proposals and in view of the recommendations of MCZMA and the sensitivity and urgency of the case, NCZMA decided to consider this case and after detailed discussions NCZMA recommended that this was a blatant case of violation, and the unauthorized structure of the Society needed to be removed from CRZ forthwith under the provision of E(P) Act, 1986, a copy of relevant extracts of the Minutes of NCZMA is enclosed herewith; and



13. Whereas, the Ministry of Environment and Forests has decided to accept the recommendations of NCZMA in totality.

14. Now, therefore, under the Section 5 of the Environment (Protection) Act, 1986, you are hereby directed to show cause within fifteen days of the receipt of this notice as to why the following directions may not be made final.

"The unauthorized structure erected by M/s Adarsh Cooperative Housing Society in CRZ area in Colaba area be removed forthwith in entirety.

Please note that in case you desire to be heard in person, this should be explicitly indicated in your reply and that such a hearing will be held within one week of the receipt of this reply.

Please note also that in case no response is received within the time frame of fifteen days indicated above, final directions may be passed without any further reference to you and formal action in terms of E(P) Act, 1986 may also be initiated.

These directions issue with the approval of the Competent Authority.



(Bharat Bhushan)
Director

12.11.2010

Encl : As above

Copy for information to:-

The Chairperson, Maharashtra Coastal Zone Management Authority,
Government of Maharashtra, Secretariat, Mumbai.

Appendix

Extracts from NCZMA meeting held on November 11, 2010, related to Adarsh Cooperative Housing Society, Mumbai

4.1 Adarsh Cooperative Housing Society, Mumbai

- I. Permission was sought from the Chairman to table the matter relating to erection of a structure by Adarsh Cooperative Housing Society, Colaba, Mumbai matter which is a serious violation of the CRZ Notification, 1991. The Chairman elicited the opinion of all the Members and thereafter permitted the taking up of the matter.
- II. The Authority was informed regarding the issues relating to the above violation. The Chairperson, Maharashtra Coastal Zone Management Authority (MCZMA) who is also the Secretary, Environment Department, the Principal Secretary, Urban Development Department, the Principal Secretary, Revenue Department as also Secretaries from MMRDA and BMC were available to assist the Authority.
- III. The Chairman requested Chairperson, MCZMA to brief the Authority regarding the matter and the action taken so far. The Chairperson, MCZMA informed that the said structure (building) of M/s Adarsh Cooperative Housing Society had been constructed in violation of CRZ Notification, 1991, since no permission had been obtained under the CRZ Notification 1991 from the competent Authority nor did MSCZMA ever consider this Project. Further, the said structure had violated CRZ norms by utilizing higher Floor Space Index (FSI) than that stipulated in the CRZ Notification, 1991. She also informed that based on a complaint received from the National Alliance of People's Movement a direction under Section 5 has been issued on 3rd November, 2009. Lastly, the Chairperson, MCZMA explained that the conclusion of the Deputy Secretary, Urban Development Department, to the effect that the MoEF letter of 11/3/2003 amounted to a "No Objection Certificate" to the project, was clearly wrong.
- IV. The position with regard to the amendment to the CRZ Notification, 1991 dated 21st May, 2002, because of which MSCZMA thought that the powers for clearance of housing project were vested in MoEF during March 2003, was discussed. It was clarified that as on 11th March, 2003 the amendment of MoEF dated 9th July, 1997 was in vogue, which delegated the power to the State Government and Authorities for according clearances to the projects under the CRZ Notification. Hence the Ministry's letter of 11.03.2003 is in order.

- V. The Chairman invited Shri T. C. Benjamin, Principal Secretary, Urban Development Department to brief the Authority. Shri Benjamin informed that the land area for Adarsh Cooperative Housing Society (the Society) in BBR Block, No.6 admeasuring 3758.82mts² was fenced and was in physical position of the local military Authority. On 21st September, 1999 an application was filed by the Society for allotment of land for welfare of serving and retired personnel of Defence. On 18th January, 2003 the Revenue Department issued a Letter of Intent, in which one of the conditions imposed was to obtain the requisite clearance of MoEF. However, it is clear from records that this clearance has not been obtained by the Society from MoEF or from the MCZMA. Initially in 2000 the housing project was meant for nineteen civilian members and thirty one Defence members. In 2004 it was increased to seventy one members and in 2005 additional twenty nine were added thereby finally the membership became one hundred two members. The building has been provided electricity, water after occupation certificate issued by MMRDA. Shri Benjamin clarified that the proposal by UD Department in 2002/2003 sent to the Ministry was for the change of land use and no proposal pertaining to the housing project of the Society was ever sent to MoEF. He also informed that for reckoning FSI, the said plot of the Society included a revenue plot and also a plot belonging to BEST. The FSI had been increased by adding on the plot belonging to BEST and as on today the FSI utilized was 1.77 against the norm of 1.33, which is another violation of the Coastal Regulation Zone Notification, 1991, which cannot be rectified.
- VI. The Chairman requested Shri Kunte, Principal Secretary, Revenue Development Department, Government of Maharashtra to briefly state his views. Shri Kunte also clarified that the permission for change of land use was sought by the UD Department vide their letter dated 10th April, 2002. He said that there was a clear misinterpretation of the response given by MoEF dated 11th March, 2003 by the Deputy Secretary, Urban Development Department since this response clearly stated that the proposed construction may be taken up as per the Coastal Regulation Zone Notification, 1991, which meant that the proposal could be placed before MCZMA which at that point of time had all the powers to sanction the constructions projects in the Coastal Regulation Zone. He said that when the Society approached the Planning Authority (BMC/MMRDA) for permission for the buildings in 2005, 2007 and 2008 this aspect of getting the CRZ clearance from MCZMA/MoEF was overlooked. He concluded that building of Society had the following serious lacunae:-
- (i) Permission of the competent Authority under the Coastal Regulation Zone Notification had not been taken.

- (ii) The FSI allowed for the building exceeded the prescribed FSI for development in the CRZ.
- VII. After the above submissions made by Chairperson, MCZMA, Secretary, Urban Development Department and Secretary, Revenue, Government of Maharashtra, the Authority deliberated on the case. It was noted that this is a case of clear violation of the E(P) Act and the CRZ regulations thereunder by the Society on two counts, namely, by not obtaining prior permission under the Coastal Regulation Zone Notification, 1991 from the concerned Authorities and the use of higher FSI (1.77 against 1.33), in view of the additional FSI loaded from the adjoining plot of BEST, which plot has not been amalgamated with the Society's plot as on date. The Authority noted that while this case involved violation of the norms of Defence and security, service rules, propriety, providing true information of various factual data including income etc., and while there may be some dispute about original ownership/possession of the plot, the NCZMA was concerned only with the compliance under the E(P) Act and CRZ Notification thereunder, which is its basic mandate. Accordingly, there was no option other than to remove forthwith the unauthorized structures constructed in violation of the Coastal Regulation Zone Notification, 1991 under the provisions of the E(P) Act. It was also observed that keeping this case in mind the State Coastal Zone Management Authority needed to be more proactive and vigilant about CRZ implementation and enhance the inter-Departmental coordination with utmost transparency to avoid such incidents in future.

The National Coastal Zone Management Authority felt that this was a blatant case of violation of CRZ Notification, 1991 and recommended that the unauthorized structure be removed from CRZ immediately under the provision of Environment (Protection) Act, 1986.

The Authority also directed that all State / UT Coastal Zone Management Authorities should be suitably requested about the need to be more proactive in future to guard the fragile Coastal Areas and guided by the Ministry about action desired in this regard.