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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14037 OF 2022

Kharghar Vikhroli Transmission Ltd.

....Petitioner

V/s.

Union of India and Ors.

...Respondents

Mr. Aspi Chinoy, Senior Counsel a/w Mr. Shrinivas Bobde, Mr. Rohan Dakshini, Ms. Shweta Jaydev and Ms. Pooja Vasandani i/b Rashmikanth and Partners for Petitioner.

Mr. Advait M. Sethna a/w Mr. Ashutosh Mishra, Mr. Sandeep Raman, Mr. Rangan Majumdar for Respondent No.1.

Ms. Jaya Bagwe for Respondent No.2.

Mr. PP. Kakade, GP a/w Mr. N.K. Rajpurohit, AGP for State.

Mr. Chirag Chanani a/w Mr. Arjun Dev i/b Dewani Associates for Respondent No.7.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.
DATED : 9th JANUARY 2023**

P.C. :

1. After hearing the parties, we pass the following order :

i. The judgment and order made by this Hon'ble Court in PIL 87 of 2006 & two other WPs provides in para 83(viii) :

"83 (viii). In view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destructed by the State for private, commercial or any other use unless the Court finds it necessary for the public good or public interest."

ii. Pursuant to a LOI issued by R-7/ Mah State Electricity Transmission Co, petitioners are undertaking the project of setting up the "400 KV

Vikhroli receiving station and associated transmission lines for strengthening of Mumbai Transmission System”.

The 400kV Vikhroli Project, covers :

- (i) 400 kV Kharghar-Vikhroli D/C & M/C line with bays at Kharghar & Vikhroli along with 400 kV Bus extension at 400 kV Kharghar end;
- (ii) Loop in Loop Out [LILO] of 400 kV Talegaon-Kalwa line from tower no 197A and terminating at Vikhroli sub station - distance of approx. 12 kms;
- (iii) Line extension from Vikhroli substation to join at Tower No 63 of 400 KV D/C Kharghar Vikhroli line : distance 2.35 kms;
- (iv) Installation of 47 transmission towers and stringing of conductors along ROW of 46 metres over length of 14.5 kms alongwith creation of approach paths to such towers.

iii. The first part of the project entailed the installation of about 31 towers of which 26 would fall under CRZ areas and 1184 mangrove trees .

Petitioners had filed Writ Petition (stamp) no.96276 of 2020 and had sought permission of this Hon'ble Court for the same under the said para 83(viii). Although the statutory scheme contemplated compensatory afforestation at a rate of five times the number of trees affected, i.e., 6000 saplings in lieu of 1184 trees in the present case, Petitioner had offered to plant about 10000 saplings. By a judgment and order dated 4th February 2021

this Hon'ble Court had held that :

*“ 17. Having heard learned Counsel for the parties and having perused the record, we are of the opinion that an exception is required to be made in favour of the Petitioner to remove the mangroves as prayed for on the conditions as imposed by the Respondent authorities as the work in question is for public good and in public interest as referred to and in accordance with paragraph 83 (viii) of the order passed by the Division Bench of this Court in **Bombay Environmental Action Group and another V/s. The State of Maharashtra & Ors.** The Petitioner through its Counsel has expressed willingness to plant 15,000 saplings as indicated above. The Petitioner has shown willingness to place on record an undertaking to the rigorous compliance of the conditions as imposed in the permissions granted by the Respondent Authorities. The public project in question cannot be stalled and we are inclined to grant the reliefs as prayed for. In these circumstances, we allow the Petition in terms of prayer clause “a” which reads thus:-*

“a. To permit the Petitioner to execute the proposed construction of 400 KV multi circuit transmission line Kharghar to Vikhroli in mangrove area and its buffer zone in view of the public importance of the project, by granting leave as contemplated in paragraph 83 (viii) of the Judgment and Order dated 17th September 2018 in PIL No. 87 of 2006”.

The relief granted above shall however be subject to the condition of the Petitioner placing on record of this Petition an undertaking of a responsible officer to the effect that the Petitioner will comply with the conditions imposed in the permissions granted by the Ministry of Environment and Forest and other authorities for carrying out the proposed project. The undertaking shall also state that the Petitioner shall plant 15000 saplings. Such undertaking shall be filed within a period of one week from today.”

iv. Petitioners have now filed the present petition seeking permission of this Hon'ble Court

under the said Para 83(viii) for the balance work of the Project which comprises of :

- i. Loop in Loop Out [LILO] of 400 kV Talegaon-Kalwa line from tower no 197A and terminating at Vikhroli sub station - distance of approx. 12 kms
- ii. Line extension from Vikhroli substation to join at Tower No 63 of 400 KV D/C Kharghar Vikhroli line : distance 2.35 kms and
- iii. Installation of 47 transmission towers and stringing of conductors along ROW of 46 metres over length of 14.5 kms alongwith creation of approach paths to such towers.
- v. On or about 28.10.2021, Respondent No. 1/ MOEF & CC gave CRZ clearance in respect of the work of the said Project, i.e., the 47 transmission towers over a length of 14.5 kms, and the LILO of the 400 KV Talegaon Kalwa transmission line. The Permission records that the Total area of the Project is 75.6135 Ha, out of which 52.5549 ha area is under Forest and 23.0586 Ha is non forest and that a total no of 1854 mangroves are likely to be cut.

Cl (ix) Of this clearance stipulates a compensatory mangrove tree plantation in 1 : 6 which is more than the existing norms, will be carried out at the suitable locations in coordination with Forest Department and Mangrove Cell, leading to creation of the new habitat.

Cl (xi) Of this clearance notes that the “ROW passes through Thane Creek Flamingo Sanctuary at Tower No 3 & 5 covering about 404 mtrs length.”

The Permission records that : *“2.. (i) The proposed transmission lines project would enable additional power supply of 1000 MW to be brought into Mumbai and suburbs, thereby helping to meet the ever-increasing energy demands of the city. The execution of such a public utility project will help the city of Mumbai in getting economic power from other sources, thus benefiting the consumers of Mumbai, in terms of assuring 24X7 supply, at competitive rates. The proposed transmission lines project is thus, premised on meeting the present and future energy requirements in an efficient and sustainable manner.”*

The MOEF Clearance also stipulates that :

Part A (ii) Pg 158 : *“ Prior High Court permission shall be obtained since the alignment of transmission line is passing through mangrove areas”*

“A (vi) The bird diverters should be installed in transmission line so as to avoid accidental collision of birds ie Flamingos etc with support of reputed institutions”

vi. On 26.08.2022, ‘In-principle’ [Stage 1] approval was granted by Respondent No.1, Ministry of Environment, Forests and Climate Change, Government of India under Section 2 of the Forest (Conservation) Act, 1980 for additional diversion of 52.5549 ha. forest land in favour of petitioner. It stipulates that after receipt on the compliance of stipulated conditions and undertakings duly authenticated by the Competent Authority in the State Govt, formal approval will be considered in this regard under Section 2 of the Forest (Conservation) Act 1980.

As observed in order dated 2nd March 2022 in Writ Petition No. 1207 of 2022, under the applicable guidelines of the MoEF & CC dated 7th May 2015, pursuant to an in principle approval, work can be commenced subject to petitioner's undertaking that they would abide by the Guidelines.

We are informed, in fact petitioners have submitted their compliance Report re the In Principle (Stage 1) forest approval to the Divisional Forest Officer, Mangrove Conservation Unit, by letter dated 14th December 2022, i.e., after the petition was filed .

vii. Since 68.9733 ha falls within the Eco Sensitive Zone, permission was required from the Thane Creek Flamingo Sanctuary Eco Sensitive Zone Monitoring Committee. On 5th April 2022 the Monitoring Committee recommended approval, subject to petitioner paying 2% of the project cost towards the Conservation and Protection Fund. The Final approval was given on 5th Sept 2022.

viii. Wildlife Clearance under the Wildlife (Protection) Act 1972 - has been sought since 1.86 Ha passes through the protected area of the Thane Creek Flamingo Sanctuary :

On 17.03.2022, Respondent No 5 – Chief Conservator of Forest (wildlife) has advised grant of sanction. Mr. Chinoy states as per the Parivesh Portal, the State Govt/State Board of wildlife has granted approval

on 14th Dec 2022 and forwarded to the National Board of Wildlife/MOEF & CC (WL) on 21.12.2022

For this 1.86 Ha area, petitioner undertakes that they will abide by any conditions that the NBWL may stipulate while granting permission.

ix. It is submitted that an order should be made in terms of the order dt 2nd March 2022 in Writ Petition No. 1207 of 2022.

x. We accordingly direct respondent authorities to permit petitioners to execute the proposed construction of LILO Of the 400 KV Talegaon Kalwa Transmission line in mangrove area and its buffer zone in view of the public importance of the project, subject to Petitioners complying with the conditions imposed in the clearances/permissions granted by the Respondent Authorities and the undertakings mentioned herein below.

The aforesaid order is subject to the condition that the responsible officer of Petitioners files an undertaking before this Court that Petitioners shall undertake the compensatory plantation of 15000 mangrove saplings, shall strictly comply with the conditions as imposed in the permissions/clearances granted by the various authorities such as Ministry of Environment, Forest and Climate Change, Maharashtra Coastal Zone Management Authority, Chief Conservator of Forest(Mangrove Cell), Forest Department and other authorities-that have granted permissions/ clearances as

well as the undertaking in terms of the in-principle approval dated 26.08.2022 to submit a compliance report of the conditions stipulated in Stage-I approval for grant of Stage-II approval. Petitioners shall also abide by and adhere to the guidelines dated 7th May 2015 issued by the Ministry of Environment, Forest and Climate Change for diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 as well as obtain any further approvals/permissions that may be necessary for executing the Project and to comply with the conditions therein. The aforesaid undertakings to be furnished to this Court within ten days from the date of uploading of this order.”

xi. In so far as 1.86 Ha is concerned in respect of which permission is yet to be granted by NBWL / MOEF & CC (WL), the work shall be commenced only after permission is granted by the NBWL and strictly in accordance with the terms and conditions therein.

2. Petition disposed.
3. No order as to costs.

(RAJESH S. PATIL, J.)

(K.R. SHRIRAM, J.)