

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

PRACHI
PRANESH
NANDIWADEKAR

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PRACHI PRANESH
NANDIWADEKAR
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WRIT PETITION NO.9193 OF 2023

Navi Mumbai Municipal Corporation
Established Under the provisions of
Maharashtra Municipal Corporation Act,
1949
Having its office at Plot No.1
Near Kille Gaothan, Palm Beach Junction
Sector 15-A, Belapur, Navi Mumbai – 400 614

.. Petitioner

Versus

1. Union of India
Through the Ministry of Environment
Forest & Climate Bhavan,
New Delhi 110 002.
And also at : Aayakar Bhavan, 2nd Floor,
Maharashi Karve Road, New Marine Lines,
Mumbai – 400 020.
2. Maharashtra Coastal Zone Management
Authority
Through the Additional Chief Secretary,
Environment Department, 2nd Floor,
Room No.217, Annex Building,
Mantralaya, Mumbai – 400 032.
3. State of Maharashtra
Environment Department,
through the Office of Government
Pleader, Bombay High Court PWD
Building, Fort, Mumbai – 400 001.
4. Chief Conservator of Forest
(Mangrove Cell)
through the Office of Government
Pleader, Bombay High Court PWD
Building, Fort, Mumbai – 400 001.

5. State Environmental Impact
Assessment Authority, Maharashtra
through the Office of Government
Pleader, Bombay High Court PWD
Building, Fort, Mumbai – 400 001.

6. Bombay Environment Action Group
203, Rajendra Chambers
19, Nanabhai Lane, Fort,
Mumbai – 400 001.

.. Respondents

Mr. Saket Mone a/w Ms. Anchita Nair i/by Mr. Vishal P. Shirke for the
Petitioner.

Mr. N.K. Rajpurohit, AGP a/w Ms. Kavita N. Solunkhe, AGP for the
Respondent-State

Mr. Rohil Bandekar a/w Ms. Sheetal Shah i/by M/s. Mehta & Girdharlal
for Respondent No.6-BEAG

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE : 26th April 2024

Judgment (Per Jitendra Jain, J.):-

. **Rule.** Rule made returnable forthwith.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks permission of this Court to reconstruct storm water pumping station on existing plinth of pumping station by demolishing the old pumping station on land bearing Survey No.466A, Section 12, Belapur, Navit Mumbai. This permission is sought in view of the order dated 17th September 2018 passed by this Court in PIL No.87 of 2006.

3. The petitioner is a Corporation entrusted with providing and maintaining various basic amenities to the citizens residing in the city of Navi Mumbai. The pumping station under consideration was first constructed in the year 1980 and has not been repaired for last several years. On account of various reasons, the said pumping station is in a dilapidated condition and therefore as per the report of an expert body is required to be immediately re-constructed. The said pumping station pumps out the water from the city during the monsoon and during high tide. Therefore, in our view, there cannot be any doubt that the said project is in the larger public interest and is in discharge of the duties and obligations cast on the Corporation.

4. The petitioner has pleaded in the writ petition that the proposed project would not destroy a single mangrove tree since there are no mangrove areas where the storm water pumping station is situated. The said station is within 50 mtrs. of mangrove buffer zone and hence the present petition is filed for seeking permission.

5. The petitioner has enclosed the photographs of the said pumping station and on a perusal of the same, we find that the same is in a very dilapidated condition and therefore, the petitioner is justified in undertaking the proposed project. In the 163rd meeting of respondent

no.2-MCZMA, the aforesaid project of the petitioner was deliberated and the Sub-Committee of the said authority also inspected the site at which the said station is located. After deliberation in the said meeting held on 2nd or 3rd February 2023, respondent no.2-MCZMA recommended the project from CRZ point of view to respondent no.5-SEIAA on the conditions specified in the said minutes. The respondent no.2 has also filed an affidavit dated 31st August 2023 giving its permission to the said project.

6. On 4th May 2023, respondent no.5-SEIAA informed the petitioner that in their meeting held on 10th March 2023 it was decided to accord CRZ clearance, subject to the specific and general conditions mentioned in the said letter.

7. The petitioner, on a query raised by this Court, has filed an affidavit dated 13th March 2024 wherein it is stated that as per paragraph 17 of the Report of IIT, Bombay, it is recommended that the available pumps should be restored to working condition to use during the monsoon. The said affidavit also states that the existing pumping capacity of 1600 horse. power would continue to remain the same after the said project and there would not be any change in flow of the water on account of the said project. The area of the project would also remain same.

8. The respondent no.6-BEAG has stated that the proposal to respondent no.2-MCZMA was of reconstruction of pumping station and not replacement of the pumps. Respondent no.6 has further stated that the MCZMA has not been apprised of subsequent development of IIT, Bombay Report etc. and therefore, the project is required to be reconsidered by respondent no.2-MCZMA. In our view, the MCZMA is only concerned with the issue of mangrove and since in the instant case, there is no destruction of any mangrove, the objection raised is of no relevance for considering the permission sought to be obtained. There is no dispute that the pumping station would include the pumps already installed. The condition of the pumps and the pumping station are shown to be in a very dilapidated condition. There is also no dispute that there will be no destruction of mangrove while executing the proposed project. Therefore, only for the reason that the existing old pumps are to be replaced without there being any change in the flow of water from the pumping house, it would not be necessary for the petitioner to again approach the MCZMA. Therefore, in our view, in the larger public interest, the objection raised by respondent no.6 cannot be upheld.

9. In view of above, we pass the following order :-

- (i) The petition is allowed in terms of prayer clause (a).

“This Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent Authorities to permit the Petitioner to execute the proposed project of reconstruction of storm water pumping station on existing plinth of pumping station, by first demolishing the existing storm water pumping station on land bearing Survey No.466A, Sector 12, Belapur, Navi Mumbai, in view of the public importance of the project finding of this Hon’ble Court recorded at paragraph 83(viii) of the Judgment and Order dated 17th September 2018 passed by this Hon’ble Court in PIL No. 87 of 2006;”

- (ii) The petitioner will file an affidavit/undertaking of its responsible officer stating therein that it would comply with all the conditions which are required to be satisfied and on the basis of which respondent no.2 and respondent no.5 have given their permission. The aforesaid affidavit should be filed within a period of four weeks from the date of uploading of this order.
- (iii) The present order will be effective only on filing of the aforesaid affidavit. The writ petition is allowed. Rule is made absolute with no order as to costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.