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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) No. 712 OF 2015
IN
PUBLIC INTEREST LITIGATION No. 87 OF 2006

The Bombay Environment Action
Group and Anr.

... Petitioners

Vs.

The State of Maharashtra & Ors.

... Respondents

AND

City and Industrial Development
Corporation of Maharashtra Ltd.

... Applicants
(in NMWL. 712/2015)

Ms. Shreya Parikh i/b M. V. Jaykar & Co., for the Petitioners.

Mr. N. P. Pandit, AGP for the Respondent No. 1 – State.

Mr. N. R. Prajapati a/w Rui Rodrigues, for Respondent – UOI.

Ms. Sharmila Deshmukh, for Respondent No. 3.

Mr. G. S. Hegde, for Applicant in NMWL No. 712/2015.

CORAM : V. M. KANADE, &
REVATI MOHITE-DERE, JJ.

DATE : DECEMBER 21, 2015

PC.

1. The Applicants – CIDCO have taken out this motion seeking following reliefs:

- (a) That the order dated 6.10.2005 passed in the above petition be modified and the applicants be permitted to construct the coastal road from Junction of NH-4B near Navghar, along Karanja creek to change, in Dronagiri Node area, Navi Mumbai.
- (b) that such other and further reliefs as this Hon'ble Court may deem fit and proper as the nature and circumstances of the present case may require.

2. It is an admitted position that in PIL No. 87 of 2006 this Court by order dated 6.10.2005 was pleased to give a general direction that in the event any fresh construction is being made by the authority or the government undertaking, they should obtain leave of this Court.

3. Pursuant to the said direction given by this Court dated 6.10.2015, the Applicant CIDCO has filed this motion. It is contention of the Applicants that they need fresh permission to construct three bridges and for that purpose they are required to remove the mangroves, which have grown on the said land due to non construction of the bridges. It is submitted that initially new road was built; permission was obtained by the CIDCO from the relevant authorities, including MCZMA. However, since the construction of

these bridges could not take place in time, they had applied for re-validation. Accordingly, re-validation was granted by all the concerned authorities. It is submitted that on account of lapse of time, mangroves came up through view on the said land where the bridges were to be constructed. It is submitted that therefore, applicants have filed this motion seeking to remove those mangroves.

4. Learned counsel Mrs. Sharmila Deshmukh, appearing on behalf of the MCZM has submitted that re-validation has been granted. The other concerned authorities have also granted their NOC.

5. Mr. G. S. Hegade, learned counsel appearing on behalf of the Applicants submitted that the question of again obtaining NOC from the various department did not arise since at the relevant time when permission was granted in 2007, at that time there were no mangroves and during the intervening period these mangroves have grown up. It is submitted that the connecting roads have been constructed after obtaining all relevant permissions and after spending huge amount of money, running into several hundred crores of rupees. However, only on account of non construction of these three Bridges, the Port Authorities have not been in a position to give this road for

quick clearance of the goods from the Port. He also invited our attention to the plan, which is annexed at Exhibit “B” (page 15) to the notice of motion, and also the permissions which have been granted by various authorities. He submitted that the motion may be allowed in terms of prayer clause (a).

6. The learned counsel appearing on behalf of the Original Petitioner i.e. Bombay Environment Action Group submitted that the said bridges are being constructed contrary to the restrictions imposed by this Court. She invited our attention to the conditions, which were imposed by the said order. Secondly, she submitted that while granting permission, the competent authority, including MCZMA, has imposed a specific condition that area of mangroves should not be disturbed. She submitted that acts of the Applicants are causing gross violation of order of this Court, as well as the conditions imposed by the authorities while granting the permission. She further submits no objection from the Forest Department has been taken.

7. We are afraid that we are not in a position to accept the submissions made by the learned counsel appearing on behalf of the Bombay Environment Action Group. It is admitted position that

initially when permission was granted to construct the bridges, there were no mangroves in the said area and only as a result of delay in construction, mangroves had cropped up to a certain extent. Even if the bridges are allowed to be constructed, only area of mangroves below the pillars of the bridge would be affected and these mangroves can be re-planted in other suitable and convenient area, and no ecological damage thereby would be caused by construction of these pillars, over which bridges are to be constructed. Moreover, the conditions which are imposed by this Court in the PIL No. 87 of 2006 are of a general nature and in appropriate cases the authorities after examining the fact of the case can always pass the suitable orders. It cannot be said that in view of the said condition which is being imposed, no construction can be carried out in the intervening period or for an indefinite period of time. Upon satisfaction, this Court itself would grant leave and such an infrastructural project can be undertaken. We are satisfied that in the present case no ecological damage would be caused since mangroves were not in existence when initially permission was granted.

8. It is a matter of common knowledge that as a result of

stay granted by this Court, several infrastructural projects which are initially for the benefit of the public at large and are public utilities are stalled. Whenever the Court intervenes and grants stay and this results in the escalation of costs and by the time when the stay is vacated, thousand crores of rupees go down the earth and public money is, therefore, wasted. Initially, the learned counsel appearing on behalf of the original Petitioner requested for time to file additional documents. However, said request has been refused, taking into consideration that this is an infrastructure project and the entire project has been stalled for several years only on the ground that leave was not being granted by this Court. We are, therefore, not inclined to grant further time to the Respondent / original Petitioner. When a query is made by this Court to the counsel appearing on behalf of the original Petitioner as to whether they are willing to give an undertaking to this Court that if finally permission is granted after reopening, the costs which would be incurred by the Applicants on account of delay in execution of the project, would be reimbursed by the Original Petitioner. The counsel on instructions of the Petitioner, who is present in the Court, informs us that no such statement can be made.

9. It is true that Bombay Environment Action Group has filed some important petitions and has brought important facts to the notice of the Court on the basis of which PILs were entertained and several orders were passed. However, we are of the view that such NGOs should not take adversarial stand and oppose every project for the sake of opposition, without taking into consideration the heavy burden which is cast on the public exchequer as a result of the delay in completion of such infrastructural projects. We are, therefore, satisfied that this is a fit case where permission can be granted to the Applicants to complete their project. In our view, therefore, question of obtaining NOC from the Forest Department in the present case does not arise. Notice of motion is, therefore, allowed in terms of prayer clause (a) and is accordingly disposed of.

Sd/-
[REVATI MOHITE-DERE, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemth