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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION******CHAMBER SUMMONS No. 137 OF 2016******IN******PUBLIC INTEREST LITIGATION No. 87 OF 2006***

M/s. Ishwar Developers & Contractors ***....Applicants/
Intervenors***

In the matter between

***The Bombay Environmental Action Group
and Anr.*** ***....Petitioners***

Vs.

The State of Maharashtra and Ors. ***....Respondents***

WITH***CHAMBER SUMMONS No. 138 OF 2016******IN******PUBLIC INTEREST LITIGATION No.87 OF 2006***

M/s. Shiv Shankar Builders & Developers ***....Applicants***

In the matter between

***The Bombay Environmental Action Group
and Anr.*** ***....Petitioners***

Vs.

The State of Maharashtra and Ors. ***....Respondents***

Mr. Nityoah Mehta a/w. Siddhi Vora a/w. Rupali Akolkar i/b. Nityoah
Suneel & Associates for the Applicants

Ms. P.H. Kantharia -Government Pleader a/w. Hemant Haryan -AGP for
Respondent Nos.1,5 and 5A

Mr. Rui Rodrigues a/w. N.R. Prajapati for the Union of India.

Ms. Sharmila Deshmukh for Respondent No.3

Mr. Sandeep Marne a/w. Rmakant Patil for Respondent No.9
Ms. Trupti Puranik for Respondent -BMC

***CORAM : V. M. KANADE &
Ms. NUTAN D. SARDESSAI, JJ.***

DATE : DECEMBER 5, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the Applicants in Chamber Summons No. 137 of 2016 and the learned counsel for the Navi Mumbai Municipal Corporation (for short “NMMC”) and the learned counsel for the Bombay Environmental Action Group.
2. The Applicants are seeking to develop the Plot No. 88 at Sector No. 50 (E), Gaothan Expansion Scheme (G.E.S.), Nerul Node, Navi Mumbai. By virtue of the order dated 6th October, 2005, a restriction was imposed to carry on any development activity of any building which comes within a distance of 50 meters from the mangrove area. By a further order, this Court had directed that permission should be obtained from this Court before any plan is sanctioned. As a result of the leave granted by this Court, several applications had been filed and the Court, after satisfying itself that the plot of land does not fall within 50 meters of mangrove area, development permission has been granted.
3. In the present case, Plot No. 88 falls in Sector No. 50 (E),

Gaothan Expansion Scheme. Nerul Node, Navi Mumbai. All the plots in this Sector 50 (E) have been developed after permission was granted by NMMC and this Court.

4. It is now contended on behalf of the Bombay Environmental Action Group and by the NMMC that the said plot of land falls within 50 meters from the mangrove area, which is grown in the nala, adjacent to Sector 50 (E). We have seen the photographs. The photographs clearly reveal that the entire Sector 50(E) has been developed except this plot. In fact, the other plots situated in the said Sector 50 (E) are fully developed. That being the position, firstly, the NMMC cannot make discrimination between other plot owners and the plot of the Applicants viz. Plot No. 88. Secondly, while calculating 50 meters, calculation cannot be made from the Nala because these mangroves have now grown in this Nala since it contains saline water. The purpose for which the embargo was placed by this Court in its order dated 6th October, 2005 was to ensure that wherever there are mangroves, which are normally grown, they should be protected. It is accepted position that mangroves grow in saline water only. This can happen even after the entire area is developed. Obviously, new shrubs that have grown in new areas, such area cannot be calculated to mean being within 50 meters from the mangrove area.

6. Without going into this issue, it is sufficient to state in the present case that since the entire almost Sector 50 (E) is developed except Plot No. 88, there is no reason for the NMMC to refuse the permission to the Applicants for development of the Plot viz. Plot No.88. Hence, Chamber Summons is allowed in terms of prayer clauses (c) and (d) and is disposed of.

7. If all other conditions are fulfilled, the Corporation may grant occupation certificate and for that purpose, the Applicants need not approach again to the NMMC for grant of permission.

8. In Chamber Summons No. 138 of 2016, the learned counsel for the BMC seeks time to file a reply. Stand over to 22/12/2016.

Ms. NUTAN D. SARDESSAI, J.

V.M. KANADE, J.