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

NOTICE OF MOTION No. 406 OF 2016
IN
WRIT PETITION No. 87 OF 2006

The Mun. Corporation of Greater Mumbai ... Applicants

In the matter between

Bombay Environment Action Group & Anr. ... Petitioner

Vs.

The State of Maharashtra & Anr. ... Respondents

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

Mr. S. U. Kamdar, Sr. Counsel a/w Trupti Puranik, for the Applicants
in NMW. 406/2016.

Mrs. P. H. Kantharia, AGP a/w Abhay Patki, AGP for Respondent
Nos. 1, 5 & 5A in NMW. 404/2016, NMW. 406/2016 and NMWL.
784/2015.

Mr. Rui Rodrigues a/w N. R. Prajapati a/w Y. R. Mishra, D. A. Dube,
H. V. Mehta, Upendra Lokegaonkar, for the Respondent – UOI.

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

DATE : NOVEMBER 22, 2016

PC.

1. Heard Mr. S. U. Kamdar, learned senior counsel

appearing for the Applicants – the Municipal Corporation of Greater Mumbai and the learned counsel appearing for the Bombay Environmental Action Group.

2. This Court in PIL No. 87/2006 by an order dated 6.10.2005 has imposed a restriction on carrying out the developmental activities in the areas where mangroves are situated. One of the conditions being that no development work should be done within 50 mtrs. of mangroves.

3. An application was made by several government and other authorities for modification of the said order on the ground that whenever any public utility projects are to be undertaken by the government and semi government authorities, this restriction may be modified. The said application was partly allowed by the Division Bench of this Court by an order dated 27.1.2010. This Court was pleased to permit the applicants therein to carry out public utility project, however, imposed a condition that whenever any public utility project is undertaken, such authority shall obtain leave of this Court.

4. The Applicants have taken out this motion seeking leave

of this Court for carrying out widening and reconstruction of bridge at Mahim Causeway, Vaitarana Pipeline Bridge and Tansa Pipeline Bridge, all at C. S. Nos. 1470, 1471 & 1505 at Mahim Division, Mumbai.

5. It appears that permission was granted by this Court to the Mithi River Development and Protection Authority (for short “MRDPA”) for widening of the Mithi river. After this work was carried out by using blasting method for widening the river bed, a petition was filed by Bombay Environmental Action Group before the National Green Tribunal (for short “NGT”). The NGT observed that by virtue of the method, which was adopted for the purpose of widening of the river, damage was caused to the environment, and the water should be free to enter in the Mithi river. Several directions were given by the NGT in its order dated 31.5.2016.

6. Mr. Kamdar, the learned senior counsel submitted that the Applicants do not propose to carry out further widening of the river bed, but they propose to ensure that flow of water which is being freed after widening of the river bed, which was blocked by the Mahim Causeway bridge. He submitted that pipeline of Vaitarna and Tansa

are required to be placed under the concrete structure by extending the bridge and thus, allow the water flow towards the sea, accumulated in the river bed, which has been widened by the MRDPA. This would enable the water flow into Mahim bay. Secondly, he submitted that because of widening of the river, two pipelines viz. Vaitarana and Tansa will supply drinking water to South Mumbai. He submitted that it was necessary to put concrete structure below these pipelines, firstly, in order to ensure that no damage is caused to these pipelines; and secondly, to ensure that the water is not blocked by these pipelines which will flow below the structure, which would be erected for protecting the pipelines. He submitted that the order passed by the NGT was not relevant for the purpose of the work, which was being undertaken by the Corporation.

7. On the other hand, the learned counsel appearing for the Bombay Environmental Action Group submitted that all this material has not been placed before them and they did not have a chance to evaluate the said material. Further, she invited our attention to the permission which was granted to the Corporation. She submitted that at two places there is a reference of widening of the river. She

expressed her apprehension that further ecological damage would be caused if the Applicants are permitted to carry out the said work. She further submitted that the order passed by the NGT also would come in the way of granting permission to the Corporation. She invited our attention to the operative part of the order passed by the NGT on 31st May, 2016.

8. After having heard the learned counsel appearing for the parties at length and after having perused the permission which was granted by the Maharashtra Coastal Zone Management Authority (for short “MCZMA”) and State Environment Impact Assessment Authority (for short “SEIAA”), we are satisfied that the apprehension expressed by the Petitioners is misconceived. From the said permissions which were granted, it is absolutely clear that the Applicants do not propose to widen the Mithi river but they propose to widen the flow of water below the pipelines and below the bridge. So what is going to be widened is the water course below the bridge and the pipelines and the Corporation does not propose to widen Mithi river. On the contrary, if this work is allowed to be carried out, it will help the smooth flow of water, which is now blocked by two water

pipelines and the bridge, which was the basic purpose for which widening of the Mithi river is permitted. We have minutely scrutinised the orders passed by the NGT on 31st May, 2016 and we have also gone through the detail affidavit in reply and the annexures thereto filed by the original Petitioners. We are of the view that contentions of the Bombay Environmental Action Group that the order of stay granted by the NGT will apply to the project of the Applicants, is not correct.

9. One another factor which must be mentioned here is that a Chitale Committee was appointed for the purpose of making recommendation in respect of sewage in Mithi river. The said Committee has mentioned that there is accumulation of raw sewage at Dharavi and other places in the in the river and this has resulted in spreading the water borne diseases, which are increasing every couple of years. If there is a smooth flow of water in the Mithi river, to a large extent the recommendations given by Chitale Committee would be fulfilled.

10. We must appreciate the efforts made by the Petitioners for bringing all these facts to the notice of this Court. However,

ultimately it is for the Court to assess the entire material on record and consider whether the proposed actions of the Applicants should be approved or not. In this particular case, we are of the view that if something was wrong and there is damage to the water pipelines at Vaitarna and Tansa bridges, which are supplying water to the city of Mumbai, the entire city of Mumbai will have to face the problem of drinking water and it will result the chaotic situation to the residents of the city of Mumbai.

11. We are, therefore, of the view that in the public interest, the permission needs to be granted to the Applicants to carry out the said work. Notice of motion is accordingly allowed in terms of prayer clause (a). It is clarified that all conditions imposed by both the authorities should be complied and if there is destruction of mangroves, it should be done under the supervision of Dy. Conservator of Forest. Notice of motion is accordingly disposed of in the aforesaid terms.

Sd/-

[Ms. NUTAN D. SARDESSAI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemth