

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 555 OF 2017
IN
PUBLIC INTEREST LITIGATION NO. 87 OF 2006

National Highways Authority of India .. Applicant

In the matter between

The Bombay Environmental Action Group and anr. .. Petitioners
Vs.

The State of Maharashtra and ors. .. Respondents

Mr.Jai Chhabria I/b M.V.Jayakar & Co., for the Petitioners.
Ms.Geeta Shastri, Addl. GP for State – Respondents No. 1, 5 & 6.
Mr.S.S.Pakale a/w Mr.H.C.Pimple, for MCGM – Respondent No.4.
Ms.Jaya Bagwe I/b Ms.Sharmila Deshmukh, for Respondent No.3.
Mr.F.A.Wasif I/b Mr.N.R.Bubna, for Respondent No.20.
Mr.Rui Rodrigues a/w Mr.N.R.Prajapati, for Union of India.
Mr.Mushraf Shaikh I/b Mr.Kiran Bhagalia, for Respondent No.7.
Mr.Kevic Setalvad, Senior Advocate a/w Mr.S.D.Shetty I/b M.V.Kini & Co., for Applicant in NMW/555/2017.

**CORAM : NARESH H. PATIL, CHIEF JUSTICE &
M.S.KARNIK, J.**

DATE : 27th NOVEMBER, 2018

P.C. :

. This Notice of Motion is filed in disposed of Petition which is disposed of by the judgment and order delivered by the Division Bench of this Court (Coram : A.S.Oka and Riyaz I.Chagla, JJ.) on 17/09/2018.

2. In this Notice of Motion, the Applicant prays for the following reliefs.

a) That this Hon'ble Court be pleased to permit the Applicant to appear in Public Interest Litigation No. 87 of 2006 as per Rule 644 of the Rules of the High Court of Judicature at Bombay (Original Side), 1980;

b) That this Hon'ble Court may be pleased to grant permission to the present Applicant (i.e. National Highways Authority of India) to remove/fell mangrove trees in less than 60 metres and/or an area admeasuring 0.5525 ha of Mangrove Forest Land and/or of approaches at both the ends of the proposed construction of four-lane new bridge across Ulhas creek along NH-8 near Thane-Godbunder Junction in Taluka and District Thane in the State of Maharashtra.”

3. We have heard learned Senior Counsel Mr. Setalvad appearing for the Applicant. Learned Counsel appearing for the original Petitioner presented before us copies of the orders passed by us in the Notice of Motion 278 of 2018 and Notice of Motion No. 446 of 2018. We may reproduce paragraphs 3, 4 & 5 of the order passed by us in Notice of Motion 278 of 2018 on 02/11/2018 which read thus :

“3. The learned Counsel appearing for applicant in Notice of Motion submits that in view of the observations made in Paragraph 83(viii), the notice of motion is preferred in the disposed of public interest litigation.

4. Considering the grounds raised and the issues emerging out of the Notice of Motion, we find it appropriate to observe that in case the applicant desires, he may file a fresh petition independently raising issues for consideration of this Court. As and when such a petition is filed, the same would be considered on its own merits.

5. All issues on merits are kept open. The learned Counsel appearing for the applicant on instructions seeks leave to withdraw the Notice of Motion with liberty to resort to appropriate remedy. Leave is granted.”

4. We may also reproduce paragraphs 3 & 5 of the order passed by us in Notice of Motion 446 of 2018 on 21/11/2018 which read thus :

“3. Learned Counsel appearing for the Petitioners and learned AGP both have placed on record copy of the order passed by the Division Bench of this Court (Coram: Naresh H.Patel, C.J. & G.S.Kulkarni, J.) dated 02/11/2018.

5. In the facts, considering the grounds raised and the issues emerging out of Notice of Motion, we find it appropriate to observe that in case the Applicant desires, it may file a fresh Petition independently raising issues for consideration of this Court. As and when such a Petition is filed, the same would be considered on its own merits.”

5. In the facts and after considering the submissions of the learned Senior Counsel appearing for the Applicant and perusal of the record, we are of the view that the Applicant may raise these issues by adopting independent proceedings. If such proceedings are initiated, the same would be considered on its own merits.

6. With these observations, Notice of Motion stands disposed of.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)