

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

WRIT PETITION (L) NO.17 OF 2019

Maharashtra State Road Development
Corporation Ltd.

..Petitioner

Versus

Union of India and others

..Respondents

**WITH
CHAMBER SUMMONS NO.24 OF 2019
IN
WRIT PETITION (L) NO.17 OF 2019**

Zoru Darayus Bathena

..Applicant

IN THE MATTER OF

Maharashtra State Road Development
Corporation Ltd.

..Petitioner

Versus

Union of India and others

..Respondents

**WITH
CHAMBER SUMMONS (L) NO.63 OF 2019
IN
WRIT PETITION (L) NO.17 OF 2019**

Geeta Seshu

..Applicant

IN THE MATTER OF

Maharashtra State Road Development
Corporation Ltd.

..Petitioner

Versus

Union of India and others

..Respondents

WITH
CHAMBER SUMMONS (L) NO.70 OF 2019
IN
WRIT PETITION (L) NO.17 OF 2019
(Not on board)

Conservation Action Trust and another ..Applicants

IN THE MATTER OF

Maharashtra State Road Development
Corporation Ltd. ..Petitioner

Versus

Union of India and others ..Respondents

Dr. Milind Sathe, Senior Advocate a/w Mr. Saket Mone, Mr. Subit Chakrabarti I/by M/s. Vidhi Partners, Advocate for the Petitioner.

Mr. Rui A. Rodrigues a/w Mr. N. R. Prajapati, Advocate for Respondent No.1.

Ms. P. H. Kantharia, Govt. Pleader a/w Ms. Deepali Patankar, Hon. Asst. to Govt. Pleader for Respondent Nos.2 & 4 in WPL No.17 of 2019, CHSWL No.63 of 2019 & CHSW No.24 of 2019.

Ms. Sharmila U. Deshmukh a/w Ms. Jaya Bagwe, Advocate for Respondent No.3.

Ms. Gayatri Singh, Senior Advocate I/by Ms. Kruthi Venkatesh & Ms. Mini Mathew, Advocate for the Applicant in CHSW No.24 of 2019.

Mr. Mihir Desai, Senior Advocate a/w Ms. Devyani Kulkarni, Advocate for the Applicant in CHSWL No.63 of 2019.

Ms. Gulnar Mistry, Advocate for Conservation Actions Trust.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 8th FEBRUARY, 2019**

P.C.

1] The Petitioner - Maharashtra State Road Development Corporation Ltd. (MSRDC) has approached this Court seeking permission to execute construction of the proposed Versova-Bandra Sea Link in furtherance of the statutory permissions granted under law and grant leave as contemplated in the specific condition No. (iii) of the CRZ Clearance and under general condition No.(iv) and (4) of the EC in view of the public importance of the project. The permission is sought by the Petitioner, since 1585 number of mangrove trees would be required to be removed for the execution of the project in view of the judgment and order passed by this Court in PIL No.87 of 2006 decided on 29th June 2018. In view of the following directions, Division Bench of this Court has passed aforesaid judgment and order :-

“(iii) The project proponent should take appropriate clearance from the authorities such as Forest Department and/or Hon'ble High Court as the case may be for cutting of mangroves.”

2] We have heard Mr. Milind Sathe, learned senior counsel

appearing on behalf of the Petitioner, Ms. Gayatri Singh, learned senior counsel appearing on behalf of residents of Juhu area, wherein project land is situated and Ms. Devyani Kulkarni appears on behalf of the intervenors, who represents the residents of Carter Road at Bandra. The third intervention is on behalf of original Petitioner in the aforesaid PIL, in which order is passed by the Division Bench of this Court.

3] Mr. Milind Sathe, learned senior counsel appearing on behalf of the Petitioner submits that the Petitioner has obtained all the necessary statutory clearances from various authorities, including Ministry of Environment and Forest – Respondent No.1 herein and Respondent No.2 – Ministry of Environment and Forest in the State of Maharashtra, Respondent No.3 – MCZMA and Respondent No.4 - which is forest authority dealing with the mangroves. He submits that permissions have been granted by the aforesaid authorities after due deliberations with various stakeholders and after taking into consideration public importance of project. He submits that all necessary measures with regard to identification of piece of land suitable for compensatory

afforestation, handing over the said land to the Forest Department for the purpose of afforestation and deposit of the amount towards compensatory afforestation with the relevant authorities have been completed. He submits that however the mangroves cannot be removed unless there is permission of this Court in view of the judgment and order cited (supra), so also various conditions imposed by the statutory authorities. Learned senior counsel submits that the project is of vital importance for easing out traffic on the SV road and Western Express Highway and providing speedy link to the residents of Juhu, Versova and Bandra with South Bombay. He submits that therefore taking into consideration larger public interest, this Court should permit the Petitioner to go ahead with the project and remove mangroves.

4] Ms. Gayatri Singh, learned senior counsel on the contrary submits that initially permissions granted by the authorities for the project were on the condition that no mangroves would be disturbed. She further submits that permissions were granted on the terms and conditions that the construction of the road including connectors would be on the stilts and no mangroves would be

affected in the process. She submits that report of the Collector with regard to Forest Rights Act is totally baseless one, inasmuch as no hearing to the residents of the area has been given prior to giving this certification. She further submits that project is likely to endanger to the livelihood of the residents in Koliwada and Versova, inasmuch as they would be prevented from carrying out fishery activities. She further submits that the project is in utter disregard to the environmental concern as well as concerned statutory enactments. It is therefore submitted that intervention of the applicants be allowed and the Petition be dismissed.

5] Ms. Devyani Kulkarni and Ms. Gulnar Mistry appearing on behalf of other intervenors also adopt arguments of Ms. Gayatri Singh and prayed that the Petition be dismissed.

6] We have perused the material placed on record. It appears that the project is in the pipeline for considerable period of time. It has undergone scrutiny at various stages by the various authorities, who are entrusted with the function of ensuring that damage to the environment is avoided and in case it is unavoidable damage, compensatory measures are taken by the project

proponent. Perusal of the material placed on record would show that initially Respondent No.3 – MCZMA had granted its approval to the proposal of Versova-Bandra Sea Link (hereinafter referred to as “VBSL”) in its meeting dated on 26th August 2011. On 5th November 2011, Respondent No.3 – MCZMA issued order recommending VBSL project from CRZ point of view. However, this permission also required the Petitioner to obtain permission of this Court. On 3rd April 2012, the Maharashtra Maritime Board granted its No Objection Certificate approving horizontal and vertical clearance and no objection to commence construction activities. Respondent No.1 vide order dated 9th January 2013 granted its clearance subject to the terms and conditions contained therein. Initially permission was for a period of five years. However, vide order dated 7th February 2019, the validity has been extended till 7th January 2023.

7] The State Level Expert Appraisal Committee recommended the project for prior environmental clearance in its 136th meeting held between 5th October 2016 to 7th October 2016. The State Level Environment Impact Assessment Authority granted recommendation for grant of prior environment clearance to the

said project on various terms and conditions on 21st October 2016. On 13th April 2018, the Expert Appraisal Committee of Respondent No.1 recommended extension of the validity of the CRZ clearance dated 9th January 2013 for a further period of five years subject to compliance with the amended CRZ notification 2011 i.e. obtaining recommendation from MCZMA for extension. The MCZMA in its meeting dated 2nd November 2018, recommended the VBSL project for extension of validity of CRZ clearance. Thus, the condition as incorporated by the Expert Appraisal Committee of MOEF stood complied by the said resolution. The Maharashtra Pollution Control Board issued consent to establish VBSL project on 29th November 2018. Respondent No.1 granted forest clearance on the terms and conditions contained therein vide order dated 20th December 2018. On 4th January 2019, Respondent No.3 – MCZMA has taken decision in 127th meeting by communicating its recommendation for extending the validity of CRZ clearance to the MOEF. As already pointed out herein-above, the MOEF vide order dated 7th February 2019 has granted extension till 7th January 2023. The project concerned provides link from existing Worli – Bandra Sea Link to Versova. It also provides for three connectors, one at Bandra,

second at Juhu Koliwada and third at Versova. These connectors have been provided so as to enable the residents of Bandra, Juhu and Versova to conveniently use the said Sea Link. It is nobody's case that there is no traffic congestion on the SV road and the Western Express Highway. At times, it takes more than two hours to reach from South Mumbai to Versova. The project has been initiated by the State Government with an intention to ease out traffic congestion on the heavily congested SV road and the Western Express Highway. It could thus be seen that the project apart from providing speedy link to the residents of Versova, also provides speedy link to the residents of Bandra as well as Juhu.

8] It could further be seen that prior to the present alignment being granted permission by the Union of India, there were five alternatives suggested by the Petitioner. Out of these projects, the 3rd alignment i.e. Sea Link entirely in sea at 900 mtrs. away from coast was found to be suitable by the Petitioner and also approved by the Union of India. This alternative was preferred, since it did not involve cutting, covering and reclamation of the sea. It will further be seen that while granting permission vide order

dated 9th January 2013, Respondent No.1 had taken into consideration all the relevant aspects including concern of the fishermen. Perusal of the said order would reveal that important demands made by the fishermen of the area i.e. providing minimum navigation span of 50 mtrs. at Bandra and 90 mtrs. each at Chimbai Road, Khardanda and Juhu Koliwada were accepted by the Petitioner. On the contrary, the project provides for navigation place of 100 mtrs. at other locations, including 150 mtrs. at Juhu. It also provides that the channel will have 12 mtrs. vertical clearance. Not only that but the Union of India had taken into consideration the clearances given by Maharashtra Maritime Board. It will be relevant to refer to the following paragraphs of the order dated 9th January 2013 :-

“4. Marine Impact Assessment Studies for the project was carried out by the Life Sciences Department, University of Mumbai, through Fine Envirotech Engineers. The assessment of water up to 1.5 to 2 km from shore indicates that the water quality is already deteriorated due to partly treated/untreated sewage being released in it. The alignment of the sea link crosses the navigational channel (fishing) at four location viz. Bandra, Chimbai Road, Khar danda & Juhu Koliwada. Discussion was held with the fishermen and they demanded for navigation span of 50 mt at Bandra and 90 m each at Chimbai Road, Khar danda, juhu Koliwada.

MSRDC proposed to provide 50 m at Bandra and 100m at other locations, including 150 m at Juhu (Novotel hotel). The channel will have 12 m vertical clearance. Maharashtra Maritime Board has also confirmed the clearances vide letter dated 13.04.2012. The fishermen also requested (i) develop a small jetty and common area for their repairing of net and M & R activities, (ii) preference of employment, (iii) compensation to the affected fishermen, (iv) allotment of place near Bandra Fort for fishing. MSRDC informed that the requests (i) to (iii) are considered and will be included in the draft tender paper and the request at (iv) can not be considered as this land does not belong to MSRDC.”

It could thus be seen that various conditions were imposed by the Respondent No.1 including obtaining permission from this Court.

9] It would further reveal that the Principal Chief Conservator of Forest (Head of the Forest) Maharashtra State had addressed a communication to the Addl. Principal Chief Conservator of Forest of the Union of India on 14th December 2018. All the details with regard to the mangroves to be removed and compensatory afforestation were taken into consideration by the PCCF while addressing communication for moving the Central Government for diversion of 2.9907 hectare mangrove forest in favour of the Petitioner. It could thus be seen that in the said

communication, the PCCF has specifically observed that due to project, mangrove in an area of 2.9907 hectares would be adversely affected. It could further be seen that communication also records that the Divisional Forest Officer, Mumbai, Mangrove Conservation Unit, Mumbai has certified that an area of 2.9907 hectares land bearing Survey No.39, Compartment No.NA, at village Charkop, Tehsil – Borivali, District Mumbai Suburban was suitable for compensatory afforestation for undertaking plantation and it was also suitable from the management point of view. Various conditions are proposed by the PCCF in the said communication including the provision of compensatory afforestation. After the said communication was addressed by the PCCF to its counterpart in the Central Government, the Union of India vide communication dated 20th December 2018 granted approval for diversion of the forest land. It could thus be seen that all the conditions as were proposed by the PCCF, Government of Maharashtra have been incorporated in the said communication.

10] It could thus be seen that all necessary statutory approvals have been granted in favour of the project by various

authorities of the State Government as well as the Union of India. It will further be relevant to refer to para 4 of the affidavit filed by Shri. Vikas Ramchandra Jagtap, Divisional Forest Officer, Mumbai, Mangrove Conservation Unit, Kamgar Nagar, Kurla (East), Mumbai-400 024, dated 6th February 2019 :-

“4. I say that the proposal required 1585 mangrove trees to be felled for construction of Versova-Bandra Sea Link Project. In lieu of destruction of 1585 mangrove trees and diversion of 2.9907 hector Mangrove forest land, the Petitioner herein (user agency) has given an undertaking that they will provide 2.9907 hector of non forest land suitable for compensatory afforestation of mangrove plantation.

I further say that on non forest land which will be transferred to Forest Department, the Forest Department will plant 13332 mangrove trees (4444 plants per hector).”

11] It could therefore be seen that in place of 1585 mangrove trees, which will be felled by the Petitioner, the Forest Department will plant 13332 mangrove trees on the alternate land handed over to it for the purpose of compensatory afforestation. It could thus be seen that the number of trees to be planted is in multiple number of trees that will be felled. No doubt that environment aspects are required to be taken into consideration.

However, an appropriate balance has to be maintained in preserving and maintaining the eco system and at the same time ensuring that the sustainable development in the larger public interest takes place with minimum damage to the environment.

12] In the present case, as already pointed out herein-above, the project is of vital importance to the residents of Mumbai, inasmuch as it will ease traffic congestion to great level and curtail the travel distance from South Mumbai to Suburbs. A judicial notice can be taken of the fact that after the construction of Worli-Bandra Sea Link, there is substantial saving of travel time from South Mumbai to the Airport. We are therefore of the considered view that it would be in the larger public interest to grant permission as sought for. It is further to be noted that as already reproduced herein-above, concerns expressed by the fishermen have been duly taken care by the authorities. The navigation space of more than what has been demanded by them has been provided. It is further to be noted that all these aspects have undergone scrutiny from the various experts in the field at various levels. The authorities have also opined that it is in the larger public interest that the project is

permitted to go ahead while ensuring that adequate compensatory afforestation takes place. In the present case, the area for compensatory afforestation is not only earmarked but has been handed over to the Forest Department for undertaking the compensatory afforestation. The necessary compensatory funds have also been credited to the account of the competent authority.

13] We are therefore inclined to allow the Petition in terms of prayer clause (a), however, subject to the condition that the responsible officer of the Petitioner files an undertaking before this Court within a period of one week that the Petitioner shall strictly comply with the conditions as are imposed in the permissions granted by various authorities i.e. MCZMA, Environmental Clearance and the Forest Clearance.

14] Needless to state that in view of disposal of Writ Petition, Chamber Summonses shall also stand disposed of.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]