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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.44 OF 2019**

Maharashtra Maritime Board	..Petitioner
Versus	
Union of India and others	..Respondents

Mr. Saket Mone a/w Mr. Subit Chakrabarti, Mr. Vishesh Kalra, M/s. Neha Joshi & Mr. Vishal Dushing I/by M/s. Vidhi Partners, Advocate for the Petitioner.

Mr. Rui A. Rodrigues a/w Mr. N. R. Prajapati, Mr. Kunal K. Changvani, Advocate for Respondent No.1 – UOI.

Ms. Sharmila U. Deshmukh a/w Ms. Jaya Bagwe, Advocate for Respondent No.2.

Ms. Geeta Shastri, Addl. Govt. Pleader for Respondent Nos.3 & 4 – State.

Ms. Ronita Bhattacharya, Advocate for Respondent Nos.5 to 7.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ.**

DATE: 25th FEBRUARY, 2019

P.C.:-

1] Petitioners have approached this Court, seeking direction to the Respondents – Authorities to permit the Petitioners to carry out the works of its Projects, which are described as under:-

(i) Proposed Ferry Jetty services at Borivali and
Gorai (hereinafter referred to as Gorai/Borivali

Project).

(ii) Proposed passenger jetty services at Ghodbunder (hereinafter referred to as “Ghodbunder Project”).

(iii) Proposed Roll-on/Roll-off (“RO-RO”) Jetty Services at Manori (hereinafter referred to as “Manori Project”).

2] Permission of this Court is sought in view of the directions issued by Division Bench of this Court in PIL No. 87 of 2006 decided on 29th June, 2018 to the following effect :-

“(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.”

3] We have heard Mr Mone, learned Counsel appearing on behalf of the Petitioner, Mr. Rodrigues, learned Counsel appearing on behalf of Respondent No.1 - Union of India, Ms. Sharmila Deshmukh, learned Counsel for Respondent No.2 – MCZMA, Ms. Geeta Shastri, learned AGP appearing on behalf of Respondent Nos. 3 – State of

Maharashtra and Respondent No. 4 – Chief Conservator of Forest (Mangrove Cell) and Ms. Bhattacharya, learned Counsel for Respondent Nos. 5 to 7 – Intervenors.

4] When the matter was listed before us on 11/2/2019, we had passed the following order:

“PC:-

1. We find that prior to considering the request made in the petition, it will be more appropriate that Respondent no.4 inspects the site along with the Petitioner and submit the report to the Court, as to whether the contention of the Petitioner that there will be no destruction of mangroves is correct or not. The Petitioner shall make an application today itself to Respondent no.4.

2. Respondent no.4 or its authorised officer is directed to conduct the inspection and submit the report within one week from today

3. Stand over to 18th February, 2019.

4. Copy of the order be supplied to the learned AGP.”

The aforesaid order came to be passed since this Court was of the view that though the Petitioner had obtained all other requisite permissions, still the permission of Respondent No.4 was yet to be obtained by it. We were of the view that since Respondent No.4 is the Officer concerned with protection of the mangroves, unless he examines the issue, it would not be appropriate for this Court to consider the request made by the Petitioner.

5] Accordingly, Mr. Vikas Ramchandra Jagtap, Divisional Forest Officer, Mumbai Mangrove Conservation Unit, has filed an affidavit dated 18th February, 2019. It will be relevant to refer to paras 3 and 4 of the said affidavit, which read thus:-

“3. I say that, as per the direction of the Hon'ble Court, the Petitioner through its Executive Engineer, Maharashtra Maritime Board (MMB) has communicated by letter dated 12.02.2019 the details of the location with geo-coordinates to Mangrove Cell on 12.02.2019. Hereto annexed and marked as **Exhibit 2** is the copy of the said letter dated 12.02.2019 given to the office of Respondent

No.4 by the Petitioner. I say that the staff of Mangrove Cell of the Respondent No.4 had conducted a joint site inspection along with the officers of the Petitioner on 13.02.2019. The alignments of the proposed jetties were shown to the representatives of the Mangrove Cell of the Respondent No.4 during the site inspection, which was compared with the maps made available by the Petitioner. As per the alignment explained by the officers of the Petitioner, mangrove cutting will not be necessary in any of the above mentioned four sites.”

“4. In view of the aforesaid, this Hon'ble Court may be pleased to pass appropriate orders and directions, subject to the Petitioner taking permissions, if any that may be required under the Forest Conservation Act, 1980 as the said jetty project construction by the Petitioner is in the interest and good of the public.”

6] Perusal of the averments made in the Petition would reveal that insofar as the Gorai/Borivali Project is concerned, the said Project would reduce travelling distance by 30 kilometers between Gorai and

Borivali. It is not in dispute that the road between Gorai and Borivali is heavily congested and it takes travelling time of about 2 hours each way. As such, after implementation of the said Project, not only the travelling time between Gorai and Borivali would be reduced but the pollution which would be caused by thousands of vehicles plying on the said road would also be substantially reduced. The said Project would provide an easy access to the residents of Gorai from Mumbai and will also substantially save the fuel.

7] Insofar as the Project at Ghodbunder and Vasai is concerned, the said Project would reduce the travelling distance of about 42 kilometers. Again, the road between Ghodbunder and Vasai is also heavily congested road. Apart from a faster access to the residents of Mumbai, it will provide an easy and faster access to residents of Vasai and Mira Road and surrounding areas. This will also substantially reduce the pollution.

8] Insofar as Manori Project is concerned, as of now, the Jetty is already in existence and it is being expanded so as to make it useable for Roll On – Roll Off services (hereinafter referred to as “RO – RO

services”) The RO – RO services will enable the vehicles to be transported from one side of the creek to other side of the creek. As such, apart from providing an easy access to the citizens, this expansion will also substantially save the fuel and reduce the pollution.

9] The Intervenors, who have been impleaded as Respondent Nos. 5, 6 and 7, are vehemently opposing the Petition. According to the intervening Respondents, the affidavit filed by the Office of Respondent No.4 does not depict the correct picture. It is submitted that the said Projects would involve destruction of mangroves and as such, they vehemently opposed the prayers made in the Petition.

10] When an affidavit is filed by the Officer of Respondent No.4 and that too under the orders of this Court and after the Officer visiting the spots, comparing them with the maps placed on record by the Petitioner, we see no reason, as to why the said affidavit should be disbelieved. Apart from that, this Court does not possess an expertise to sit in appeal over the decisions of experts in the field. In

any case, the affidavit of Respondent No.4 also states that permission to be granted by this Court shall be subject to the other clearances to be obtained by the Petitioner from all the concerned authorities.

11] Taking into consideration the importance of the aforesaid Projects, for the reasons which we have recorded hereinabove, and taking into consideration the fact that the Court has already granted permission in respect of other similar Projects of larger public importance, we are also inclined to allow the present Petition in terms of prayer clauses (a) to (c), 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 Department and the Forest Department.

12] Petition is allowed in the aforesaid terms and disposed of.

(N. J. JAMADAR, J.)

(B. R. GAVAI, J.)