

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

PUBLIC INTEREST LITIGATION NO. 58 OF 2011

Shramik Mukti Sanghatana]
having its office at Sonarpada, Taluka]
and Post Murbad, Dist-Thane-4214-1]
Maharashtra] ... Petitioner

Vs

- 1 M/s. F.A. Enterprises]
TPS, 6th Road, Khar, Mumbai-400052]
- 2 Sub Divisional Engineer, Hetawane]
Medium Projects, Sub Division No.6,]
Washind, District Thane 421604.]
- 3 Executive Engineer, Raigad Irrigation]
Division 2, Konkan Bhavan,]
New Mumbai - 400611]
- 4 The Principal Secretary, Water]
Resources Department, State of]
Maharashtra, Mumbai 400 032.]
- 5 The Principal Secretary,]
Department of Revenue & Forest,]
Government of Maharashtra,]
Mantralaya, Mumbai 400 032.]
- 6 Chief Secretary, State of Maharashtra]
Mumbai - 400 032]
- 7 Secretary, Ministry of Environment]
& Forests, Paryavaran Bhavan,]
CGO Complex, Lodhi Road, New Delhi]
- 8 Metropolitan Commissioner,]

Mumbai Metropolitan Regional]
Development authority, Bandra-Kurla]
Complex, Bandra (E), Mumbai-51.] ... Respondents

Ms. Gayatri Singh, senior counsel with Kranti L.C. for the Petitioners.

Mr. Milind Sathe, senior counse, with Mr. Chidanand Kapil, Ms. Shilpa Kapil, Tejashree Kank, Mr. Sandeep Sarode and Mr. Sachin Shintre for the Respondent No.1.

Mr. Vijay D. Patil for the Respondent No.2 & 3.

Mr. Jaydeep S. Deo for the Respondent No.7.

Ms. Kiran Bagalia for the Respondent No.8-MMRDA.

**CORAM : S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

MONDAY, 13TH JANUARY, 2020

ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]

1 By this petition, which is styled as a Public Interest Litigation and which was listed today only because firstly it is pending from the date of its institution, namely, from 2011, and secondly there was a detailed order passed on the previous occasion, which reads as under :

“1 *Heard. We would expect respondent Nos.2 to 4 to file an affidavit setting out the latest position. In the event, the Project is still on, then they must indicate as to how that*

Project can continue at the very site in the teeth of serious allegations made in the petition and when there is an inquiry stated to be pending.

2 *We must also have an affidavit of the 8th respondent on record so that we are clear in our mind as to whether the authority is inclined to induct a fresh contractor so as to complete the Project.*

3 *Presently it is stated that the contract is terminated and the existing contractor has dragged the authorities to Civil Court.*

4 *Therefore, several questions arise, including whether the Project itself is shelved or it is likely to be taken ahead. Such affidavits be filed latest by 11-12-2019 with copies to the petitioner's Advocate.*

5 *We list these matters on 16-12-2019."*

2 Pursuant thereto, we have affidavits filed on behalf of the respondent Nos.2 to 4 and The Mumbai Metropolitan Regional Development Authority (for short "MMRDA").

3 The PIL is seeking a writ of certiorari or any other writ, order or direction in the nature of certiorari for quashing

and setting aside the work orders issued towards the execution of the proposed Kalu Dam at Murbad in Thane District.

4 The second relief seeks to stop all work of this proposed dam and the third relief is a writ of mandamus or any other writ, order or direction directing the respondents to remove the heavy machinery from the area and to restore the region to its original state prior to the initiation of the work. There are several reliefs claimed in prayer clause (c) and there are amendments to this PIL as well.

5 The foundation for the reliefs is that the petitioner before us is the representative organisation working for the poor and marginalized section of the society, particularly the tribals. In Thane District there is a Taluka Murbad and another Taluka Shahapur together with Ambarnath which has a sizable tribal population.

6 The first respondent is a Construction Company and the reason for its impleadment is that the contract for construction of a Dam known as Kalu Dam has been awarded to

this first respondent. The second, third and fourth respondents are concerned with the water resources projects, particularly under the auspices of the Water Resources Department of the Government of Maharashtra. The Sub-Divisional Engineer and the Executive Engineer are connected with the projects, particularly of irrigation and drinking water supply to the region whereas the Department of Revenue and Forests and the Chief Secretary of the State is impleaded on the understanding that this project which is conceived and, as per the understanding of the petitioner, under implementation, violates several enactments in the field and particularly those protecting eco-sensitive zones and the environment as a whole. The reason, therefore, for impleading even the Chief Secretary of the State and the Forest Department, Ministry of Environment and Forests, Government of India, is to ensure that the environment protection laws are not violated. The eighth respondent is the Metropolitan Commissioner of the MMRDA, impleaded subsequently by amendment.

7 The Writ Petition proceeds on the footing that Thane District is located on Salsette Island to the North-East of Mumbai

at an elevation of seven meters, spanning an area of about 147 kms. It is ensconced within Western Ghats portion of Thane District giving it its pristine and rare bio-diverse ecological system. There is a presence of diverse forest types, which support a multitude of wild life including the animals, particularly mentioned in a schedule referred in paragraph 4 of the petition. After the bio diversity end, other salient features of the region are pointed out. It is conceded that the area is inhabited by tribals, particularly those belonging to the Scheduled Tribes called Mahadev Koli, Katkari and Thakur. They have become vulnerable due to rapid urbanisation and industrialisation. It is stated that in October 2010, the petitioners came across a news of a Dam coming up in the area / zone and suddenly saw a spurt of activity, including presence of heavy duty machinery. It is claimed that works were undertaken towards a proposed Dam which would submerge approximately 2100 hectares of land of which 999.32 hectares would be forest land and 1259.544 hectares would be revenue land. The permission for implementing the proposed Kalu Dam on forest land has not been obtained from the Department of Forest and Environment and that is the reason why the large scale destruction including

felling of trees and foundational work should not be permitted.

8 The petition proceeds on the footing that all these works are commenced or are being carried out so as to implement this proposed Dam project. Then, the petitioner says as to how representations have been made from time to time and protesting against this project. After there was an affidavit-in-reply filed, the petition sets out the details of the work order issued and work commenced in October, 2010. Then the focus shifts from the primary one with regard to protection of the eco-sensitive zones, environment as a whole, to the wisdom of the Government releasing a huge amount of Rs.112 crores to the contractor – respondent No.1. The contractor has been projected as a wrong doer and was responsible for irregularities amounting to illegalities, including breaching and violating the contractual terms and conditions. The focus also shifts, after reference to a project report, to the wisdom of such a project. It is said that there are huge dams already constructed and cater to the needs of the villagers and residents in cities, including their demand for drinking water. There is, therefore, no requirement of another project or construction of a dam, namely, Kalu Dam. By

amendment, references have been made to the materials in the form of reports of Environmentalists and the action taken against the concerned persons for not complying with the Environment Protection Act, 1986.

9 Upon such a petition, which projects the violation of the constitutional provisions, including some of the directive principles of the State policy, the mandate of Article 21, the aforementioned reliefs have been claimed. The petition has been heard from time to time, but what we find is that after its institution, there are orders made by this Court. Though there were affidavits filed in reply from August, 2011, what has transpired is that firstly this Court was persuaded to pass an order and that order, in the first instance (the order dated 21st October, 2011) calls upon the respondents to place on record the details of the environment clearance. In fact, this Court categorically held in the order of 21st October, 2011, that there is no substance in the petitioners' contention that the respondents are carrying out any illegal activity without environment clearance under the EIA Notification, 2006. The petition was then placed in the month of December, 2011 and further

materials were placed on record. It is clear from the order passed on 11th January, 2012, that this Court noted that the construction of Kalu Dam has been entrusted to a contractor (the first respondent to this petition) under a work order dated 29th May, 2010. The argument of the petitioner's counsel was that the construction of the dam is on the forest as well as non forest land. Thereafter, the attention was invited of this Court to the Guideline 4.4 issued under the Forest (Conservation) Act, 1980. The argument was that this is attracted and if both types of land are involved in a project, then, the work should not be started in the forest land till final approval of the Central Government. Thus, such a project envisages release of forest land for non-forest work and, therefore, the Central Government's permission is a crucial factor. In paragraph 3 of this order, the Court noted the grievance of this nature raised by the petitioner's counsel and the answer thereto by the Government Pleader. The Government Pleader appearing for the State pointed out that an application / proposal seeking approval of the Central Government for release of forest land is pending the Central Government's decision. It is brought to the notice of this Court that there is a lengthy procedure followed and the State Government has to give non-

forest land equivalent to that of the forest land which is released by the Central Government for the dam in question. In other words, compensatory forestation has to be done for making up the loss of precious forest land.

10 Thereafter, in paragraph 5, this Court recorded that the application for permission will be considered by the Central Government and it will take a decision thereon within four weeks from the date of this order of 11th January, 2012. That decision would be duly communicated to the State Government. Passing such an order, the Court adjourned the proceedings to 17th February, 2012.

11 Thereafter, some materials were placed on record and on 1st March, 2012, the following order came to be made :

“1. Heard the learned counsel for the Petitioner, the learned Counsel for the Respondent No.1, the learned Senior Counsel appearing for Respondent Nos. 2 to 4 and the learned Counsel for Respondent No. 7.

2. This Court in paragraph 5 of the order dated 11.1.2012 passed in the present P.I.L. has recorded the

statement made by the learned counsel for Respondent No.7 on instructions that the proposal/ application submitted by the State Government dated 26.8.2011 for grant of permission to release the forest land for the purpose of project, shall be considered in accordance with law and procedure and the decision thereon shall be taken within a period of four weeks from that day. We also directed Respondent No. 7 to communicate the said decision to the State Government and copy thereof was directed to be placed on record of this Court. Pursuant to this order, affidavit dated 13.2.2012 has been filed by Mr. Pradip Vasudeva Conservator of Forests (Central) and in paragraph 3 thereof, has stated thus:

“I further say that the said site inspection report has been submitted to the Ministry of Environment and Forests on 9.2.2012. I say that the site inspection report shall be examined by the Ministry of Environment and Forests, New Delhi and the proposal for diversion placed before the Forest Advisory Committee for further consideration to accord approval under the Forest (Conservation) Act, 1980. I say that thereafter the recommendations of the Forest Advisory Committee will be placed before the Competent Authority in the Ministry for decision on the proposal. I say that the entire exercise could not be completed within four weeks. Therefore, I am seeking further time of three months to implement the order of this Court.”

3. *It is really unfortunate that the statement made before this Court by the learned Counsel for Respondent No. 7 on the earlier occasion that the entire exercise will be completed within four weeks, has not been honoured by Respondent No.7 nor in the affidavit dated 13.2.2012 Respondent No.7 has tendered any apology or expressed regret in this regard. However, the learned Counsel Ms. Gauri Godse for Respondent No. 7 today before this Court tendered an oral apology for not complying with the statement made on earlier occasion that the entire process shall be completed within four weeks. The learned Counsel has submitted that because of the procedural technicalities entire process could not be completed. Since the apology is tendered by the learned Counsel appearing on behalf of Respondent No.7, we do not want to take the said issue any further.*

4. *Be that as it may, the Counsel for the Petitioner has brought to our notice the site inspection report of proposal of diversion of 999.32 Hectors of forest land for drinking water supply project on Kallu river, District Thane particularly, sub-paragraph 2 of the observation of R.C.C.F. Perusal of the same shows that the Chief Conservator of Forests considered the fact that the project area lies in the environmental sensitive zone i.e. western Ghats, the State Government made very sensible recommendations vide paragraph 17. But unfortunately, the project proponent without adhering to any recommendations started the project activities in the non-forest area. The proposal was submitted by the State Government to Ministry of Environment and Forests only on 26.8.2011 but short tender notice for construction of earth*

and dam and appurtenant works was issued during July,2009 and the work order was given during May, 2010 and the responsibility to get clearance from Ministry of Environment and Forests was given to the contractor. This clearly shows that the project proponent had no respect for the law of the land and getting permission from the Ministry of Environment and Forests was taken for granted.

5. *The learned Counsel for the Petitioner also brought to our notice the recommendations given by the Chief Conservator of Forest (Central) which reads thus:*

“Considering the above facts, I am of the opinion that the State Government may be directed to stop all the construction related activities till all the legal formalities and the Forest, wildlife and environmental studies are completed and a well considered decision regarding the forest diversion is taken based on proper scientific and documentation and studies.”

6. *The learned Counsel for the Petitioner has submitted that it is, in these circumstances, interim order in terms of prayer clause d(ii), at this stage, may be granted. The learned Senior Counsel appearing for the State Government has submitted that the proposal for release of non-forest land for the purpose of the project was submitted way back on 26.8.2011, however, it is the Ministry of Environment and Forests which has failed to take a decision thereon and therefore, no fault can be attributed to the State Government*

in this regard. It is further contended that there is no work carried out on the forest land. The Counsel for the State Government conceded to the fact that in the work order, it is inadvertently mentioned that it will be the responsibility of the Contractor to obtain the approval from the Central Government relating to transfer of forest land though under the procedure and law, it is the obligation of the State Government.

7. On the backdrop of the above referred facts, it is evident that the proposal of the State Government for release of forest land is submitted to the Ministry of Environment and Forests on 26.8.2011. The Counsel for the Respondent No.7 has stated that the said proposal of the State Government has been placed before the Advisory Committee on 9.2.2012 for consideration whether the approval can be accorded or not to the said proposal under the provisions of Forests (Conservation) Act, 1980. The learned Counsel has further submitted that the recommendation of the Advisory Committee has yet not been received by the Ministry of Environment and Forest, however, the entire process including the decision of the Central Government shall be completed within a period of three months from 13.2.2012.

8. Considering the gravity of the issue, we direct the Advisory Committee to arrive at an appropriate conclusion in respect of the proposal of the State Government dated 26.8.2011 placed before it on 9.2.2012, within a period of two months from 13.2.2012 and submit a report to the Ministry of

Environment and Forests. We direct the Ministry of Environment and Forests to place the suggestions/recommendation/report of the Advisory Committee forthwith before the Central Government without further delay and we want the Central Government to take a final decision in respect of the proposal of the State Government dated 26.8.2011 considering the report of the Advisory Committee and other incidental and ancillary recommendations of the Advisory Committee.

9. *In the instant case, it is not in dispute that the earth work in respect of construction of dam has already been commenced without obtaining relevant permission by the State Government. In view of the above referred facts and circumstances, it will be appropriate to pass the following interim order.*

ORDER

(1) *We direct the Respondent No. 1 not to undertake any construction activities unless the permission is obtained from this Court;*

(2) *Place the matter on 14.6.2012."*

12 This order was continued upto 21st August, 2012. There were attempts made by the contesting respondents to have the same vacated, but from the record we notice that such applications were placed before the Bench in the months of June

and October, 2012. The Bench noted the controversy and the Central Government's decision having not been intimated, continued its earlier order. On 19th October, 2012, this Court has referred to the letter of 27th July, 2012, of the Ministry of Environment. It was addressed to the Principal Secretary (Forests), Government of Maharashtra. In that it has been stated that the case should be closed as there is no question of reconsideration of the decision. The diversion of the forest land in favour of the Raigad Irrigation Division is not for the purpose of Kalu Dam is covered by the above order covered and, therefore, the Civil Applications which have been filed by some others are kept pending. The proceedings thereafter were taken up only when a Bench was constituted. A Bench was constituted and that took up the matter on 21st March, 2013. There it noted that there is a meeting of the Ministry of Environment scheduled and, therefore, the said PIL should await the decision and ought to be placed after the same is taken. In the meanwhile the MMRDA was said to be the implementing authority. The MMRDA was directed to be impleaded as a party. The role of MMRDA will be referred by us a little later.

13 Thereafter, on 24th January, 2014, this Court was pleased to consider the request made by the contractor – respondent No.1 restraining the petitioners from obstructing the contract work. The respondent No.1 could not have made this grievance in a PIL for it has all the remedies open to it. Therefore, the grievance was disposed of. Thereafter, amendments were permitted to be carried out and we find that post the amendments, the MMRDA was questioned as to whether it intends to release the amount of Rs.203 crores or any part thereof for this project work. Such queries of the Court apart, what one finds is that in the year 2014, when the interim order was continued there were difficulties faced by the respondents. On one such occasion, this Court was persuaded to pass an order clarifying that when the application is made to seek an approval, then, subject to the approval being granted, the contract work should be allowed to be continued.

14 We placed this matter for we were given an impression that after seven years, the State and the authorities may not be interested in going ahead with the project or the project itself might have been shelved. Such an impression would not be in

public interest and stakeholders may not evince any interest in implementing a public project.

15 Now we are informed that the order passed on 1st
March, 2012, in the blanket form, is not continuing. Therefore,
we had to pass the order, which we have reproduced above, on
18th November, 2019.

16 Post that order, two affidavits have been filed by the
respondent Nos.2 and 4 and the MMRDA.

17 An affidavit-in-rejoinder has also been tendered today
to these affidavits by the petitioner's counsel.

18 Upon the above material, we have heard Ms. Gayatri
Singh, learned senior counsel appearing for the petitioner. She
would submit that the project would result in large scale
destruction of forest land. That is a vital cover and such greenery
has not to be disturbed or destroyed so casually. She would
submit that even if there was an application made for seeking
clearance of the Central Government so as to use forest land for

this project, the order on that application does not allow the respondents to proceed with the project work immediately. It is a conditional approval or permission. So long as the conditions are not complied with, there is no question of the construction work going ahead. Ms. Singh would submit that it is not as if because of this Court's order passed on 1st March, 2012, that everything has come to a standstill. In fact, there is a clarificatory order passed in the writ petition and our attention has been invited to that order as well. That order, copy of which is at pages 407 to 409 of the paper-book, has been passed on 20th June, 2014, on Civil Application No. 270 of 2013. That was an application made by the State of Maharashtra and the Executive Engineer. Though the prayer therein was to vacate the orders dated 1st March and 14th June, 2012, that relief was not pressed by the learned Government Pleader. He only sought a clarification and that was in terms of the letter dated 29th May, 2013 which communicated the in-principal approval for diversion of 999.328 hectares of forest land in Raigad Forest Division No.2 for drinking water supply project on Kalu River by Konkan Development Corporation in District Thane, Maharashtra. The Government Pleader, on instructions, made a statement that the Government

will not go ahead or proceed with construction at the project site without necessary permission from the Ministry of Environment & Forests, Government of India and various other authorities. Even the contractor endorsed this stand and, therefore, this Court held that a clarification is necessary and there is no reason for the applicant – Government of Maharashtra or concerned agency not to proceed to comply with the conditions mentioned in the letter dated 29th May, 2013. Granting such permission despite the blanket order of 1st March, 2012, the Civil Application was disposed of. Ms. Singh, therefore, would suggest that the prior order of this Court and its rigour has to be diluted. Rather, after the State Government voluntarily gave up its request to vacate that order, this Court, on being apprised of the clearance from the Government of India for using non forest land, allowed compliance with the terms and conditions of the clearance. The terms and conditions are elaborate and detailed. The clearance order imposed conditions, which are broad and comprehensive in nature. Ms. Singh would submit that there is no occasion, therefore, to rush with the contract work only because a conditional approval has been granted.

19 Secondly, she would submit that there are enough drinking water supply projects in the District and one more was not required. Assuming that was required, none could have ever envisaged, much less permitted faulty implementation and execution of such projects. There is no permission to violate the law. If every such project has to abide by the law, then, all the more this Court must continue its vigil and monitoring of the project and not allow the respondent Nos.2 to 4 and MMRDA to go ahead with the work.

20 The third contention of Ms. Singh is that the project work is entrusted to the respondent No.1 - M/s. F.A. Enterprises. The contractor for the project, despite not carrying on any substantial work, has been paid a huge sum. If the contractor has been the beneficiary of a largesse without doing any work, then, the Government has deviated from its another policy decision taken on 23rd September, 2016. Our attention is invited to Exhibit-9 to the affidavit of respondent Nos.2 to 4. It is submitted that Kalu Dam Project is subject matter of an inquiry. That is initiated to inquire the irregularities and illegalities committed by the contractor and the officials of the State in enforcement and

execution of numerous irrigation projects. There was, therefore, no justification for releasing a huge sum in favour of the contractor. The contract should have been terminated or is rather terminated by virtue of this Government Resolution.

21 The petition is essentially contested by the respondent Nos.2 to 4. Mr. V.D. Patil, learned advocate appearing for the respondent Nos.2 and 3 would submit that there is no reason to assume that the Government and its agencies or departments will not abide by the law. If the project involves both, a forest and a non-forest land, then, the focus cannot be shifted to everything else other than the issue of utilisation of the forest land. The petitioner was concerned about protection of ecology and environment and, therefore, filed the PIL. The substantial grievance is pertaining to the diversion of forest land for non-forest activities and destruction of an eco-sensitive zone or area. Now, the petitioner raises contentions unconnected with this issue and it should not be allowed to do so. The PIL cannot become a fishing or roving inquiry about the policy or wisdom of conceiving and implementing such a project. Mr. Patil would submit that much water has flown after the clearance or

permission from the Central Government. It may be an in-principle approval and subject to certain conditions, but the Government will take all care and precaution to comply with these conditions before the project is fully implemented. In fact, the conditions would be complied with and a beginning has been made. One of the condition is to allow the compensatory forestation to be carried out. For that, the Net Present Value (NPV), which would go into the project in the form of destruction of trees and removal of the other forest materials from the site is determined and a substantial amount has been directed to be deposited with the Central Government. Now that amount will be released in favour of the respondent Nos.2 to 4 and after that is deposited, the other conditions would be complied with. This was an obstacle and hurdle which has been crossed and our attention is invited to the minutes of the meeting held on 6th August, 2019, and in the month of November, 2019. Mr. Patil would submit that there is a regular follow up and particularly, on the intervention of the MMRDA and after that this project will be implemented. Mr. Patil would submit that the Court cannot be called upon to consider the legality and validity of a policy to provide clean drinking water and particularly to the residents and inhabitants

of the region. The Court is not an expert nor does the Court has the experience to continuously monitor and supervise such projects. The PIL cannot be converted into a litigation on the validity and legality of the project, the legality and validity of involving forest lands together with non-forest lands therein and also on the engagement or appointment of the contractor and the compliance of the terms and conditions of the contract by him. Therefore, Mr. Patil would submit that we should dispose of this PIL so as to subserve larger public interest.

22 After hearing both sides we find that the affidavit on behalf of the respondent Nos.2 to 4 and which affidavit is affirmed on 10th December, 2019, from page 381 of the paper-book, is clear. Apart from referring to the orders passed by this Court, including the order dated 18th November, 2019, it says that the population of Mumbai Metropolitan region is increasing rapidly day by day. The present resources to cater to the requirement of drinking water, water for industrial and other purposes are not adequate. It is a great task before the Government and Civic authorities to plan ahead taking into consideration the future requirement of water. There was a Committee appointed in the year 1998 under

the Chairmanship of a well known technocrat Mr. Madhavrao Chitale. That consisted of experts in the field, including top officials like the Commissioner of MMRDA, Secretary of Water Resources and the Chief Engineer of Maharashtra Jeevan Pradhikaran. The Committee studied the existing schemes and suggested certain measures by submitting a report on 27th September, 2005. That report was studied and it was accepted. Though it made a projection on the population growth till the year 2031, Ms. Gayatri Singh would submit that the existing drinking water supply schemes and projects would provide enough drinking water to the increased population, and till 2031. It is not as if we are considering only the population of the City of Mumbai. It is stated that the population of Mumbai area would be around 3.40 crores by 2031. However, what we have noted in the foregoing paragraphs is that this project is for the Thane District and particularly the tribal belt therein. The tribal belt may have been considered to be part and parcel of the Mumbai Metropolitan region and its population may have been assumed to be static, still it is evident that these tribal hamlets do not have drinking water supply schemes. In other words, the City inhabitants and residents enjoy drinking water through a tap and

that is provided from home to home in major housing colonies. However, the slums and other population of the Mumbai Suburbs, for a decade and more, still remains without such drinking water connection. The reasons may be very many, but the fact remains that both the tribal belts and such areas of Mumbai City and Thane are still deprived of direct drinking water connections. In the circumstances, in paragraph 3 of this affidavit, it is said that the requirement of water storage would be 3516 million cubic meter. That would be required for domestic and industrial purposes. The recommendation of the Committee was construction of various projects for storage of water for catering to the need of water requirement in future. One of the projects recommended was Kalu Dam Project for Mumbai Pradesh. The Government of Maharashtra, therefore, by Resolution dated 9th July, 2009, granted approval for construction of the dam on Kalu river for the purpose of storage of water for supplying drinking water to Mumbai Pradesh. The total storage capacity of the proposed project is 407.99 million cubic meter. The site was selected near village Kurshet in Taluka Murbad. The site was so selected because the aim was to minimize uprooting the locals. The expenditure was also conceived to be less considering that

the land admeasuring 2258.87 hectares was likely to be submerged after completion of the dam. Out of this 999.32 hectares land would be forest land while private land is 1259.54 hectares. The total project cost was estimated at around 736 crores at the base price of 2010-11. The project is being financed by MMRDA. On completion of the dam and storage of water, five villages completely and six villages partially would be submerged. Total 787 families having population of 3179 are likely to be affected. There is a rehabilitation package for those affected persons prepared way back in 2011. Thus, the affidavit says that at all levels, the project was studied and eventually approved. Even the rehabilitation plan was ready from 2011.

23 We would highly appreciate if such a rehabilitation plan, which is stated to be prepared, is widely publicised. If there are any modifications or changes required to be made to the rehabilitation package, that ought to be done expeditiously. A wide range consultation and discussion be initiated with all the stakeholders so that a comprehensive rehabilitation package can be offered and that measures for rehabilitation are taken before the project work commences and is fully completed. In other

words, phase and stage wise rehabilitation would be ideal. In the first phase, all those who are likely to be affected ought to be taken into confidence and measures of their rehabilitation must notify the areas earmarked for residence. The shifting would not be effective and complete unless such area is developed with basic and minimum infrastructure like ready homes, amenities including medical and educational facilities, and other schemes, particularly welfare measures. Given the fact that the villages have a predominant tribal presence, the assimilation of these tribes into the mainstream ought to be the focus and that should be achieved. The rehabilitation is always perceived to be only providing infrastructural facilities. We would like it to be more comprehensive and envisaging progress through development. If the word rehabilitation means reducing the impact of uprooting of the existing villagers, to give an assurance to those who would be dislocated of total settlement, then alone the projects in larger public interest can be effectively implemented. If the Government expects cooperation from all villagers of these affected villages, then, it must give them an assurance of total rehabilitation and no disruption in even tempo of life, much less uprooting of all villagers from the site.

24 No project can be successful if the existing village population is to be shifted forcibly. That should not be the aim, but pre-habitation must be the ideal. It is, therefore, clear that when there is a huge non-forest land which is going to be submerged, then, these vital aspects would have to be taken care of by the authorities. Equally, when the forest land is going to be submerged, a proposal was submitted by the State Government to the Principal Chief Conservator of Forest, Nagpur, and the officer forwarded the same to the Principal Secretary (Forest & Revenue Department), Government of Maharashtra as well. The Government of Maharashtra made available alternate land at Beed District for compensatory afforestation as per the requirement of the Act. The proposal for approval for diversion of forest land was initiated and submitted to the Ministry of Environment and Forest, Government of India. The land admeasuring 999.32 hectares at Beed District is reserved as alternate land in view of conversion of the subject land. The copies of these communications are annexed to this affidavit.

25 Thereafter, the affidavit refers to the earlier orders of this Court on this petition and says that the Government of India

by letter dated 29th May, 2013, granted in-principle approval for diversion of the above forest land in Raigad Forest Division No.2 for implementation of drinking water supply project on Kalu River by Konkan Irrigation Development Corporation. The affidavit itself says as to how this in-principle approval is conditional. Then, it is said that the Konkan Irrigation Development Corporation has been pursuing the issue with MMRDA and requesting it to release funds for payment of Net Present Value to the Central Government towards diversion of forest land. The Net Present Value to the tune of Rs.259.18 crores has to be paid to the Central Government towards such diversion. It is in this connection that a meeting was held on 6th August, 2019, where the MMRDA has approved in-principle to release the amount of Rs.259.18 crores for payment to the Central Government towards the NPV amount. On 8th November, 2019, a meeting was held in the office of the Chief Secretary, Government of Maharashtra, for transfer of funds to KIDC from MMRDA for Kalu Project. A decision was taken to transfer the funds towards diversion of forest lands and for acquisition of private lands. That decision was duly communicated to all and the Principal Secretary, Water Resources Department, by letter dated 27th

November, 2019, requested the Commissioner, MMRDA to release an amount of Rs.359.18 crores to KIDC for Kalu Project. The affidavit refers to these aspects of the matter and it is not as if it expresses a opinion on the complaints which have been made to the Anti Corruption Bureau and the inquiry or investigation by the Anti Corruption Bureau. The Government of India has directed the KIDC and other agencies to terminate the agreements in respect of the projects mentioned in the Government Resolution. Kalu Dam Project was one of the projects. The notice to terminate the contract of Kalu Dam was issued to the contractor on 8th November, 2016, but he has initiated a litigation in this Court by way of a Civil Writ Petition No.1759 of 2017 challenging the termination. The KIDC is an agency responsible for completing the project and the State Government as well as this KIDC is keen on completing the project. The project is not abandoned, but only the contractor appointed to do construction work has been now directed to stop or not to carry on the work. A letter of termination has been issued. It is in these circumstances and steps having been taken even to commence acquisition of required land by private negotiations that the affidavit ends by telling us that the project is

in public interest for providing drinking water to Mumbai urban areas and more particularly areas in and around Thane, Kalyan, Dombivali, Bhiwandi, Badlapur and Ambernath. For all these reasons it is stated that the PIL be dismissed and the interim orders be vacated.

26 There is an affidavit filed by the MMRDA styled as an additional affidavit. The MMRDA in its affidavit, apart from setting out its role, says as under :

*“5. I say that K.I.D.C. has been pursuing the project with M.M.R.D.A. and requesting M.M.R.D.A. to release funds for payment of Net Present Value to Central Government towards diversion of forest land. The Net Present Value (NPV) amount to the tune of Rs.259.18 crores has to be paid to the Central Government towards diversion of forest land. I say that a meeting was held by the Executive Committee of M.M.R.D.A. on 6.8.2019 wherein M.M.R.D.A. has approved in-principal to release the amount of Rs.259.18 crores for payment to the Central government towards NPV amount. Copy of the Minutes of the Meeting dated 6.8.2019 are annexed hereto and marked as **EXHIBIT “6”**.*

*6. I say that on 08/11/2019, a meeting was also held in the office of Chief Secretary, Government of Maharashtra for transfer of funds to K.I.D.C. from M.M.R.D.A. for Kalu Project. I say that a decision to transfer funds to K.I.D.C., towards diversion of Forest lands, and for acquisition of private lands was taken in the said meeting. Copy of the Minutes of the said Meeting are annexed hereto and marked as **EXHIBIT “7”**. I say that the Principal Secretary, Water Resources has by D.O. Letter dated 27.11.2019, requested Commissioner, M.M.R.D.A. to release an amount of Rs.359.18 crores to K.I.D.C. for Kalu Project. Copy of the said letter dated 27.11.2019 is annexed hereto and marked as **EXHIBIT “8”**. I*

therefore submit that efforts are being taken to comply with the conditions of the letter written by the Government to State Government, on 29.5.2013 for diversion of 999.328 H. of forest land for Kalu Project. I therefore submit that the project is still on and the same can continue at the very site. I say that the main objection in the petition to the project, is that, there is violation of Rule 4.4. of the Guidelines of the Forest Conservation Act, 1980 viz. that the work is being undertaken by the Respondents without clearance for diversion of Forest Land. I submit that actual construction work at the site is stayed since 01/03/2012 and further construction would commence only on compliance of the conditions mentioned by the Ministry of Environment & Forest, Government of India, in its letter dated 29.5.2013 and after seeking permission from this Hon'ble Court as mentioned in order dated 1.3.2012"

27 In the above circumstances, the MMRDA has endorsed the stand of the Konkan Irrigation Development Corporation (KIDC).

28 The petitioner, in the affidavit-of-rejoinder has, apart from urging that requisite permissions have not yet been obtained, necessary reports for obtaining the permissions have not been prepared and submitted, therefore, there is no question of the project going ahead, urged that the MMRDA unilaterally decided to release the amount. This could not have been done since the release of funds earlier resulted in their misapplication and an inquiry into this is already pending. The petitioner itself

suggests that no financial provision could be made for the Kalu Dam Project without the further approvals.

29 The petitioner has in the affidavit reiterated that this project falls in highly sensitive western ghats and only 7 kilometers away from Kalsubai Wildlife Sanctuary. No work could have been commenced without first obtaining permission for transfer of forest land for non-forest purposes. Additionally, without obtaining prior approval, no decision to release payment of the Net Present Value could have been taken.

30 The petitioner thus reiterates the contents of the petition and the amended memo to urge that the No Objection Certificate from the Forest Department is yet to be received. Therefore, the contract work cannot commence.

31 We have also perused the affidavit-in-rejoinder carefully and we find that it is not necessary for us to express any opinion as far as the allegations made against the contractor and the response of the contractor thereto. If the State and the Department / agencies of the State Government have made

serious allegations against the contractor of breach of the terms and conditions of the contract and the contractor has taken legal recourse, then, it would not be possible for us to express any opinion on such a dispute. The petitioner cannot be said to be interested in such a dispute at this stage. The petitioner seems to suggest that release of huge amount in favour of the contractor or making budgetary provision for the implementation and enforcement of the project is impermissible at this stage, particularly when all the approvals and permissions are not in place.

32 We do not think that the contention of the petitioner in that behalf is well founded. The contractual disputes have to be resolved in terms of the remedies available under the general law. The resolution of disputes in terms of the remedies available under the general law will go on and uninfluenced by the order in the PIL. This PIL concerns itself primarily with the project work affecting environmentally sensitive areas.

33 In that regard, we have carefully perused the letter of 29th May, 2013, copy of which has already been annexed to the

affidavit-in-reply filed on behalf of the respondent Nos.2 to 4. In that communication of 29th May, 2013, the Government of India, Ministry of Environment and Forests informs the Principal Secretary (Forests) Government of Maharashtra that the Government of Maharashtra's letter dated 26th August, 2011, on the diversion of forest land in Raigad Forest Division No.2 for drinking water supply project of Kalu River was considered by the Forest Advisory Committee (for short "FAC") in its meeting held on 2nd April, 2012. The said Committee was furnished with the proposal and related documents. This Forest Advisory Committee has been constituted by the Central Government under section 3 of the Forest Conservation Act, 1980. After careful examination of the proposal of the State Government and on the basis of the recommendation of the FAC, the Central Government conveyed its in-principle approval for diversion of forest land in Thane District subject to the conditions mentioned therein. The conditions are set out in this communication itself and the thirty conditions are indeed exhaustive. Over and above these conditions, there are additional conditions recommended by the FAC and accepted by the Central Government. Even they have to be fulfilled but before Stage-II approval. These conditions

are set out and then the letter / communication concludes by stating that after receipt of the compliance reports on fulfillment of the conditions mentioned in this communication, the proposal shall be considered for final approval under section 2 of the Forest Conservation Act, 1980. Till receipt of the said final / Stage II approval of the Central Government, transfer of the said forest land to the user agency shall not be done by the State Government.

34 To our mind, all the arguments of the petitioner's counsel overlook this communication and its legal consequences. In the first place, the respondents have to comply or fulfill the conditions set out in paragraph 2 of this communication. In addition, before the Stage-II approval, the additional conditions imposed on the respondents would have to be complied with. After receipt of the compliance reports, the proposal shall be considered for final approval and till project reaches the Stage-II, transfer of forest land to user agency shall not be effected by the State Government. This means that presently there is no transfer or vesting of the identified forest land for non-forest use. Before that happens or can take place, the conditions imposed on

the State and other respondents would have to be complied with. It is the Ministry of Environment, Government of India which is monitoring and supervising the implementation of these conditions. It will itself periodically and through the FAC review the matter of compliance with these conditions and then take an appropriate decision. Today, we do not think that the petitioner's apprehension that ecology and environment would be destroyed has any basis.

35 The letter of 29th May, 2013, with its conditions has not been challenged by the petitioner. Secondly, the petitioner has also not challenged the decisions taken at the level of the Chief Secretary and others insofar as making budgetary allocation and having the same approved through the competent Ministry. In such circumstances, we do not see any reason why the petitioner should insist on any order being passed to the effect that the contractor before us as also the Department must comply with the communication and if not they must face all legal consequences.

36 The petition was not argued with the concern for

ecology and environment alone in mind. On a perusal of the letter / communication dated 29th May, 2013, based on which the earlier order of 1st October, 2012, as clarified by the Division Bench of this Court is passed, in our view, should not continue further. In fact, that order has already been modified or varied by the subsequent order. The Division Bench of this Court expressly permitted the State to make application seeking approval of the Ministry of Environment and Forests, Government of India. This Court also noted the stand of the parties while passing the subsequent order. In our view, the subsequent order clearly modifies the earlier blanket direction. Now, the State Government and other agencies can enforce and implement the project in accordance with law. Once we feel that the project is in larger public interest and subserves it, then, all the more we are not inclined to grant any relief to the petitioner. We do not think that any case is made out for continuation of the interim relief.

37 We also do not find any substance in the arguments of the petitioner that there are enough drinking water projects in the subject District and one more drinking water supply scheme

is not required. We do not think that this Court possesses the necessary experience or expertise to comment on the merits of this project. Merely because the petitioner feels that there are several drinking water supply schemes or projects already in force and under execution and one more is, therefore, not required, we cannot interfere with the decision of the State Government. It is the Government and its agencies which have reviewed the existing water supply schemes. If the State and its agencies find that there should be one more scheme for making direct supply of potable, clean drinking water, then, we cannot, on the version of the petitioner, interfere with and quash such project. We do not think that public interest would be subserved if such project is quashed and set aside. Rather, we find that we would be exposing the State and all agencies to unnecessary and futile litigation in the event any opinion is expressed on the merits of the project. The project is in larger public interest. That opinion of the State and its agencies is not vitiated by *mala fides* or arbitrariness so as to interfere in writ jurisdiction. If the petitioners are aggrieved and dissatisfied with the project only because it would involve forest land, then, the authorities under the Forest Conservation Act have taken the necessary precaution

and care to ensure minimal damage, if any, to the forest land. In fact, its conversion to non-forest activities is permitted, but not absolutely. The application of the State Government has been granted conditionally. The State Government, as also its agencies have accepted the communication dated 29th May, 2013. If they have accepted the communication and conceded to the powers, jurisdiction and authority of the Ministry of Environment and Forests, Government of India, then, all the more we are reluctant to interfere with the project in writ jurisdiction. We have no power to suggest any alternatives nor do we think that the decision taken by the State is vitiated by non-application of mind or *mala fides*. We are aware of the fact that in matters of this nature, judicial review of the decision making process is permissible. The decision itself cannot be set aside merely because in the opinion of this Court, some other measure or step could have been taken. We are of the firm view that on the merits and feasibility of the project, this Court cannot express any opinion in its limited jurisdiction.

38 For the above reasons, we dispose of the PIL by observing that the order dated 1st October, 2012, stands modified

by the further order that has been made by this Court in Civil Application No. 270 of 2013 dated 20th June, 2014, in this very PIL. This order notes the stand of both sides and clarifies that neither the contractor nor the Government is going to proceed with the construction without complying with the terms and conditions of the letter dated 29th May, 2013. In the circumstances, this Court had clarified that the Government will have to comply with these terms and conditions to work this project. It is a drinking water supply scheme. This Court also expressed an opinion that steps have to be taken at the earliest to implement this project. Hence, our reluctance to continue the bar or prohibition on the project work. Further, we have no doubt in our mind that if compliance with the terms and conditions of the approval dated 29th May, 2013, is made, the ecology and environment will suffer minimal damage. Therefore, even this communication has rightly been not questioned by any of the parties. As far as disputes between the contractor and Government are concerned, the same have to be decided on their own merits and in accordance with law. Suffice it to say that this order in the PIL does not mean that there is an endorsement of the stand of the contractor or that of the State. The contractual

disputes shall be resolved by an exercise other than the PIL. The PIL need not be kept pending for that purpose.

39 As a result of the foregoing discussion, we dispose of this PIL. There will be no order as to costs.

40 At this stage, Ms. Singh says that the earlier order of 1st March, 2012, passed in the PIL, be continued for a period of eight weeks to enable the petitioner to test this order in a higher court or to take appropriate decision.

41 We have heard the parties on this point. Once we have clarified that the said blanket order does not continue and stands modified by the subsequent order of 14th June, 2012, in this very PIL, also because we have found no substance in the contention of the petitioner with regard to the project damaging ecology and environment, we decline to continue this order any further. The request in that behalf is refused.

R.I. CHAGLA, J.

S.C. DHARMADHIKARI, J.