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

WRIT PETITION NO. 2634 OF 2021

**National Highways Authority
Of India**

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respnodents

Mr. Anil Singh, Addl. Solicitor General a/w Mr. S. D. Shetty, R. L. Singh, Lakshmi Bussa i/by Mr. Kini & Co. for petitioner.

Mr. B. V. Samant, AGP for State.

Mr. Parag A. Vyas a/w Karuna Yadav, Mr. Aditya Thakkar a/w D. P. Singh i/by A. A. Ansari for respondent no.2-UOI.

Ms. Sheetal Shah i/by Mehta & Girdharlal for respondent no.3.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE :- NOVEMBER 22, 2021

PC: -

1. This writ petition is at the instance of the National Highways Authority of India (NHAI). NHAI has undertaken a project for widening National Highway-3, from a 4-lane highway to an 8-lane highway between Vadape and Thane from km. 539.202 to km. 563.000. For the purpose of execution of the project, 91 number of mangrove trees are likely to be felled, although it is the case of the NHAI that not

all such mangrove trees would be destroyed; care would be taken to ensure that affectation is kept at the bare minimum.

2. Institution of this writ petition by the NHAI has been necessitated by reason of the order dated 17th September, 2018 passed by a coordinate Bench of this Court while disposing of PIL No. 87 of 2006 [**Bombay Environmental Action Group & Anr. vs. State of Maharashtra & Ors.**]. While summing-up the conclusions reached by the Bench, it was directed in paragraph 83 (viii) as follows: -

“83(viii). In view of the applicability of public trust doctrine, the State is duty bound to protect and preserve the mangroves. The mangroves cannot be permitted to be destructed by the State for private, commercial or any other use, unless the Court finds it necessary for the public good or public interest.”

(emphasis supplied)

3. Mr. Singh, learned Additional Solicitor General representing the NHAI submits that the project undertaken by it is of great public importance having regard to increase in traffic after development of surrounding network and growth of urban conglomerations like Thane Municipal Corporation, Kalyan-Dombivali Municipal Corporation, Navi Mumbai Municipal Corporation and Bhiwandi Nizampur Municipal Corporation. To control the traffic as well as to remove congestion caused by traffic, it was decided to widen the 4-lane highway into an 8-lane highway and in accordance with the statutory requirements, the NHAI had approached the Maharashtra Coastal Zone Management Authority (MCZMA) as well as the State Environment Impact Assessment Authority

(SEIAA) for the necessary clearances. It has been pleaded in the writ petition that the MCZMA in its meeting held on 1st March, 2019 decided to recommend the proposal from CRZ point of view to the SEIAA, whereupon the SEIAA in its meeting dated 2nd March, 2019 recommended the proposal with certain conditions which, *inter alia*, included a condition that permission from this Court should be obtained by the NHAI for construction activities in mangrove areas or within 50-meter buffer zone area. Mr. Singh contends that compliance of each and every statutory requirement would be secured before execution of the project and since one of the conditions imposed by the SEIAA relates to obtaining permission from this Court and the particular project under consideration being one of public interest designed to serve public good, the requisite permission may be granted.

4. In course of his argument, Mr. Singh has drawn our attention to the minutes of meeting of the MCZMA, minutes of meeting of the SEIAA as well as what the petitioner intends to do in view of the objections which were raised in an earlier affidavit filed on behalf of the respondent no.3, i.e., Bombay Environmental Action Group.

5. The Bombay Environmental Action Group is represented before us by Ms. Shah, learned advocate. She has not disputed that the project undertaken by the NHAI is of public importance and designed to serve public good; however, it is her submission that the NHAI ought to obtain all statutory clearances, and if all the clearances are obtained for proceeding further with execution of the project, the respondent no.3 would not have any serious objection.

6. Mr. Samant, learned AGP appears for the State. According to him, the NHAI ought to obtain a clearance from the Divisional Forest Officer, Mumbai Mangrove Conservation Unit for which no approach has yet been made. Responding to such submission of Mr. Samant, Mr. Singh has assured us that in executing the project there would not be any omission on the part of the NHAI to comply with even the requirement of obtaining a clearance from the Divisional Forest Officer, Mumbai Mangrove Conservation Unit, if mandated by law.

7. Having heard submissions advanced on behalf of the respective parties and considering the need of widening National Highway-3, from a 4-lane highway to an 8-lane highway between Vadape and Thane from km. 539.202 to km.563.000, as projected in the writ petition as well as the other affidavits filed on behalf of the NHAI, which is of course intended for public good, and also bearing in mind the assurance of the NHAI that honest endeavours would be made to ensure that minimum number of mangrove trees are felled (out of the 91 trees identified as likely to be affected) in the course of execution of the project, we are of the considered opinion that this is a fit and proper case where permission, as prayed for, by the NHAI from this Court in terms of the order dated 17th September, 2018, in PIL No. 87 of 2006, ought to be granted.

8. We, accordingly, allow the writ petition by passing an order in terms of prayer (a) thereof, which reads as follows: -

“(a) That this Hon’ble Court may be pleased to grant permission to the Petitioner i.e. National Highways Authority of India to remove/fell mangrove trees in an

area admeasuring 0.839 ha. of mangrove forest land and/or of approaches of Bridges across Kalwa and Kasheli creeks at both the ends and for the proposed Construction of 8 laning of existing 4 lane Vadape to Thane from km. 539.202 to Km. 563.000 section of NH-3 (New NH-848) to be executed on Hybrid Annuity Mode in the State of Maharashtra.”

9. Needless to observe, the petitioner shall be under obligation not only to obtain all the statutory clearances but also to ensure that minimum number of mangrove trees are felled in the process of widening of the relevant national highway. We also grant liberty to the Divisional Forest Officer, Mumbai Mangrove Conservation Unit, to write to the NHA, requesting it to obtain whatever clearance is required by law and if such a request is made, supported by any statutory provision, the NHA shall proceed to obtain such clearance in accordance with law.

10. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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