

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

WRIT PETITION NO. 5903 OF 2021

Mira Bhayandar Municipal Corporation ... Petitioner.
through the Commissioner.

V/s.

State of Maharashtra & Ors. ... Respondents.

Mr. N. R. Bubna, Advocate for the Petitioner.
Smt. R. A. Salunkhe, AGP for the State-Respondents.
Mrs. Sharmila Deshmukh, Advocate for Respondent No.
4 (MCZMA).

**CORAM : A.A.SAYED & S.G.DIGE, JJ.
DATE : OCTOBER 01, 2021.**

P.C. : (Per S. G. DIGE, J.)

1 Rule, returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2 By this Petition under Article 226 of the Constitution of India, the Petitioner-Mira Bhayandar Municipal Corporation (for short "Corporation") seeks following relief in the interest of public project to be undertaken by it :-

SHALIKRAM
PRALHADRAO
BOREY

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by SHALIKRAM
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“(a) That permission may kindly be granted to execute the project of proposed development of four storm water drains four drains viz. drain no. 12A (drain from Saint Thomas School to Wards Khadi at Kanakia Road), drain no. 3 (from Om Sai Complex to Ambe Nagar No.1, Bhayandar), drain no. 3b (from Krantinagar Toilet to Bajrangnagar, Bhayandar) and drain no. 28 (from Saint Joseph School to Srusthi Bridge, Mira Road) within limits of petitioner Corporation as detailed in recommendation of respondent no.3 annexed to present petition at Exh. A and recommendation of respondent no. 4 annexed to present petition at Exh.B.”

3 A Co-ordinate Bench of this Court (Coram : A.S.Oka & Riyaz I. Chagla, JJ.) in its decision in the case of **Bombay Environmental Action Group vs. State of Maharashtra**, Public Interest Litigation No. 87 of 2006 decided on 17.09.2018 [2018 MhLJ Online 123] has issued several directions in regard to the preservation of mangroves in the entire State of Maharashtra and it has been directed that there shall be a total freeze on the destruction and cutting of mangroves unless it is necessary for the public good or public interest. It is in the light of directions by the co-ordinate Bench of this Court in the said case, the Petitioner Corporation has filed the present Petition for permission to execute a public utility project being

construction of storm water drains under AMRUT Mission of Government of India.

4 According to the Petitioner, it being a local and planning authority established under the provisions of Maharashtra Municipal Corporation Act, 1949 undertakes the construction work of public utility projects in public interest within the limits of the Corporation. The Petitioner had proposed the construction work of five storm water drains to avoid water-logging in the surrounding area. The proposal of the Petitioner was scrutinized and considered by Respondent No. 3 - State Environment Impact Assessment Authority (for short "SEIAA") in its meeting held on 27th & 28th October, 2020 and out of 5 storm water drains, it recommended 4 storm water drains viz. drain no. 12A (drain from Saint Thomas School to Wards Khadi at Kanakia Road), drain no. 3 (from Om Sai Complex to Ambe Nagar No.1, Bhayandar), drain no. 3b (from Krantinagar Toilet to Bajrangnagar, Bhayandar) and drain no. 28 (from Saint Joseph School to Srusthi Bridge, Mira Road) within the limits of the petitioner Corporation as detailed in recommendation of Respondent No.3 which is annexed to present petition at Exh. A. It was observed that out of 5 storm water drains, 4 were in 50 meter mangrove buffer zone whereas 150 mangroves were required to be

cut from one storm water drain. Respondent No. 3 after deliberation, recommended 4 storm water drains viz. Drain no. 12A, 3, 3b and 28 and deferred decision of one storm water drain which required cutting of 150 mangroves. The proposal was discussed in the meeting of Respondent No.4 - Maharashtra Coastal Zone Management Authority (for short, "MCZMA") held on 18.03.2021 and, after deliberation, granted clearance for 4 storm water drains viz. drain no. 12A, 3, 3b and 28 subject to compliance with conditions and Petitioner obtaining leave of this Court. The relevant extract of the minutes of meeting of Respondent No. 4 is annexed at Exh. "B" to the Petition.

5 According to the Petitioner, it has already ensured compliance with the conditions stipulated by Respondent No. 3-SEIAA and Respondent No. 4-MCZMA. The Petitioner has stated that the said work is necessary to be carried out so to avoid water logging in the area and the said work will not require cutting of any mangrove and the debris out of project will be disposed of scientifically and would not be dumped in CRZ area. The Petitioner has further stated that the project is scrutinized by the expert authorities in detail and they confirmed that no mangroves are required to be cut nor tidal flow of water to mangroves is obstructed. The

Petitioner has stated that if it is permitted to undertake the project, it will prevent water-logging in the area and will sub-serve larger public interest and that it will be in the interest of environment and, hence, the necessary permission for construction of the said storm water drains is essential in public interest.

6 Learned AGP appearing for the Respondent-State and learned Counsel for the Respondent No. 4-MCZMA submit that the Respondent- State and the Respondent No.4-MCZMA have no objection to the project being undertaken in the public interest by the Petitioner-Corporation, particularly as the project is without cutting or removing the mangroves, subject to the Petitioner complying the conditions imposed by the Respondent Authorities for carrying out the proposed work strictly in the light of the directions issued by the Co-ordinate Bench of this Court vide judgment dated 17.09.2018 in PIL No. 87/ 2006.

7 Having heard the learned Counsel for the parties and having perused the record, we are of the opinion that the Petition deserves to be allowed and accordingly allowed in the public interest for public good, as laid down in paragraph 83(iii) of the order of the Division Bench of this Court in the case of Bombay Environmental

Action Group vs. State of Maharashtra (supra) and subject to the Petitioner strictly complying with the conditions imposed in the permissions granted by the Respondent No.3-SEIAA and Respondent No. 4-MCZMA and permission of the other Authorities, if any, for carrying out the proposed project. Such Undertaking be filed within one week from the date this order is uploaded.

8 The Petition is allowed. Rule is made absolute in the above terms.

(S.G.DIGE, J.)

(A.A. SAYED, J.)

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