

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

WRIT PETITION NO. 15940 OF 2022

Mira Bhaindar Municipal Corporation,)
Through the Commissioner)
S/at : Indira Gandhi Bhavan,)
Chatrapati Shivaji Maharaj Marg,)
Bhaindar (W), Dist. Thane)...Petitioner

VERSUS

1. State of Maharashtra)
Through Secretary, Environment Deptt.)
S/at : Mantralaya, Mumbai.)
2. Addl. Principal Chief Conservator of Forests)
Mangrove Cell, S/at : 302, Wakefield House,)
Madam Kama Road, Mumbai 400 032)
3. State Environment Impact)
Assessment Authority)
Room No. 217, 2nd Floor, Mantralaya Annex,)
Madam Kama Road, Mumbai 400 032)
4. Maharashtra Coastal Zone)
Management Authority)
S/at 15th Floor, New Administrative Building,)
Opp. Mantralaya, Mumbai 400 032)
5. The Bombay Environment Action Group)
203, Rejendra Chambers, 19, Nanabhai lane,)
Fort, Mumbai 400 001.) ...Respondents

Mr. N. R. Bubna for Petitioner.
Ms. Nisha M. Mehra, AGP for State – Respondent Nos. 1 & 2.
Ms. Jaya Bagwe for Respondent No. 4 (MCZMA).
Ms. Sheetal Shah a/w. Ms. Dimple D. Bitra i/b. M/s. Mehta & Girdharlal for Respondent No. 5.

**CORAM : S. V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 17th FEBRUARY, 2023.

JUDGMENT (per : SANDEEP V. MARNE, J.)

1. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned AGP waives notice on behalf of respondent Nos. 1 & 2 – State. Ms. Jaya Bagwe waives notice on behalf of respondent No. 4 and Ms. Sheetal Shah waives notice on behalf of respondent No. 5.

2. This petition is filed by Mira Bhaindar Municipal Corporation seeking leave of this court to execute the project of proposed reconstruction of Community Hall (Samaj Mandir) and Wrestling Court at Dr. Babasaheb Ambedkar Nagar within the limits of the Municipal Corporation (**‘the project’**).

3. It is averred in the petition that there is existing Ground + 1 structure of Community Hall (Samaj Mandir) at Dr. Babasaheb

Ambedkar Nagar. The plot on which Samaj Mandir is located comes within 50 meter mangrove buffer zone and falls in CRZ II area on landward side. It is further averred that the existing structure of Samaj Mandir and Wrestling Court is not only old but also insufficient to cater to the growing population of the area. It has therefore been proposed to reconstruct a new Ground + 2 structure of Samaj Mandir and Wrestling Court on the same plot by demolishing old structure. It is contended that the project is for public purpose.

4. Petitioner approached Maharashtra Coastal Zone Management Authority (**MCZMA**) seeking its approval for execution of the project. MCZMA in its meeting held on 24th August, 2022 recommended the proposal of the petitioner from CRZ point of view. Petitioner has accordingly filed present petition seeking leave of this court to execute the project.

5. Leave is sought in view of judgment and order dated 17th September, 2018 passed by this court in P.I.L. No. 87 of 2006 filed by Bombay Environment Action Group (**BEAG**). This court has imposed total freeze of destruction or cutting of mangroves in the entire State of Maharashtra as well as stoppage of all constructions within 50 meters site of mangroves area. Leave of this Court is

required to be taken if any project is to be executed within CRZ areas or mangrove's buffer zone areas.

6. Appearing for petitioner Mr. Bubna the learned counsel would submit that execution of the proposed project is for public purpose. He assures the court that the reconstruction of Samaj Mandir and Wrestling Court would be done on the same plot without exceeding its boundaries. That there is no requirement of felling any mangrove tree nor there is any necessity of diversion of mangrove forest. He submitted that petitioner corporation has already obtained permission from MCZMA.

7. On our directions, petitioner has impleaded BEAG as respondent No. 5. Ms. Shah the learned counsel appearing for BEAG would submit that since petitioner has already obtained necessary permission of MCZMA for execution of the project and since such execution does not involve felling of any mangrove trees or diversion of any mangrove forest area, BEAG would not oppose execution the project.

8. Ms. Bagwe the learned counsel appearing for MCZMA confirms the position that petitioner corporation has obtained necessary permission from MCZMA for execution of the project. We

have also heard Ms. Mehra the learned AGP.

9. The site at which the proposed project is to be executed is located in mangrove buffer zone and CRZ II area. However, execution of the project does not involve falling of any mangrove trees. There already exists building of Samaj Mandir and Wrestling Court. The Municipal Corporation wants to demolish the existing Ground + 1 structure and intends to replace it with Ground + 2 structure within the same plot. Learned counsel for the petitioner has assured this court that petitioner corporation would not exceed the boundaries of plot on which the existing structure is located.

10. The MCZMA has already recommended the proposal of petitioner corporation in it's 160th meeting held on 24th August, 2022 and has imposed following conditions.

i. The Local Body to ensure that FSI for the proposed reconstruction is as per the town and country planning regulation existing as on 19.02.1991 before issuing commencement certificate to the project.

ii. PP to obtain the prior High Court permission, since the part of the project activity falls within 50 m mangrove buffer zone area.

iii. Debris generated during the project activity should not be dumped in CRZ area. It

should be processed scientifically at a designated place.

iv. All other required permission from different statutory authorities should be obtained.

11. Mr. Bubna the learned counsel appearing for the corporation further assures this court that all the conditions imposed by MCZMA would be scrupulously followed. Statement is accepted as an undertaking to this Court.

12. In view of position emerging before us, we deem it appropriate to grant leave to petitioner Municipal Corporation to execute the proposed project. The writ petition is accordingly allowed in terms of prayer clause (a) which reads thus-

a. "That permission may kindly be granted to execute the project of proposed reconstruction of Samaj Mandir and Wrestling Court at Dr. Babasaheb Ambedkar Nagar within limits of petitioner corporation as per recommendation of respondent No. 4 annexed to present petition at Exh. A."

13. Rule is made absolute in above terms.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ