

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2137 OF 2023**

The Thane Municipal Corporation,)
Mahapalika Bhawan,)
Dr. Almeida Road,)
Chandanwadi, Panchpakhadi,)
Thane (West), PIN-400 602)... Petitioner

VERSUS

1. The State of Maharashtra)
Through it's Principal Secretary)
Mantralaya, Mumbai-32)
2. The Maharashtra Coastal Zone)
Management Authority,)
Through it's Member Secretary,)
2nd floor, Annex Building,)
Mantralaya, Mumbai-400 032.)
3. The State Environmental Impact)
Assessment Authority (SEIAA))
Environment Department,)
R. No. 217, Mantralaya,)
Mumbai-400 032.)
4. The Addl. Principal Chief Conservator)
Of forests, mangrove Cell, Mumbai)
302, Wakefield House, 3rd floor,)
Ballard Estate, Fort,)
Mumbai-400 001)
5. Union of India)
Through Secretary,)
Ministry of Environment, Forests &)
Climate Change, Indira Paryavaran)
Bhavan, Jorbagh Road,)
New Delhi-110 003.)

6. Bombay Environmental Action Group)
41, Rejghir Chambers,)
Shahid Bhagatsingh Marg,)
Fort, Opp. Old Custom House,)
Mumbai-400 001)... Respondents

Appearances

Mr. R. S. Apte, *Sr. Advocate i/b. Mr. Ajit R. Pitale a/w. Mr. Amey Abhay Pitale for the Petitioner*

Mrs. Nisha M. Mehra, *AGP for State Respondent No.1.*

Ms. Jaya Bagwe, *for Respondent No.2 (MCZMA).*

Mr. Jeyhaan Carnac, *a/w. Ms. Dimple D. Bitra i/b. M/s. Mehta & Girdharilal, for Respondent No.6.*

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

RESERVED ON : 12th April 2023.
PRONOUNCED ON : 17th April 2023.

JUDGMENT : (Per - Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final hearing.

2. Petitioner-Thane Municipal Corporation has filed present petition seeking leave of this court for executing the project of construction of bridge at Desai Creek in DP road from Agasan to Kalyan Road. Leave of this court is sought as project site is located under CRZ-I-B, CRZ-II and CRZ-IV areas. Leave is sought in view of directions of this court in paragraph No.83 of the Judgment

and order dated 17th September 2018 in Public Interest Litigation No.87 of 2006 in **Bombay Environmental Action Group and Anr. Vs. State of Maharashtra and Anr.**

3. Petitioner-Thane Municipal Corporation has proposed construction of a bridge on Desai Creek on DP road from Agasan to Kalyan Road. The proposed project site is located near Agasan village within territorial jurisdiction of the Thane Municipal Corporation. The proposed project is aimed at connecting Kalyan-Shilphata Road to Agasan village. The project would provide connectivity to nearby villages such as Diva, Dativali, Usarghar and Mhatardi located at northern part of the creek as well as villages such as Desai, Khidkali, Padle, Talepada and Palva located at southern side of the creek. The proposed project would also provide connectivity with the proposed bullet train alignment which is in the vicinity of the proposed project. It is averred that after completion of Desai creek bridge, there would be reduction in traffic congestion about more than 25% on Kalyan to Shilphata road and will reduce the travel distance and time by more than 60% thereby saving fuel and time. The total construction of bridge area is about 5400 sq. mtr. The project falls in CRZ-I-B, CRZ-II and CRZ-IV areas.

4. Petitioner-Municipal Corporation accordingly submitted a proposal to the Maharashtra Coastal Zone Management Authority (**MCZMA**) on 28th June 2018 seeking CRZ clearance. Initially few mangroves trees were proposed to be felled for execution of the project. MCZMA deliberated proposal in 141st meeting on 5th December 2019. After deliberating the proposal, MCZMA directed the site visit to be carried out by the Mangroves Cell and that the matter would be re-considered after receipt of the report of Mangrove Cell. The proposal was accordingly deferred. Accordingly, the site inspection was

carried out and Assistant Conservator of Forests, Mangrove Cell, Mumbai submitted its report on 18th February 2021. It was inter alia observed that though 8 mangrove trees are present at the site, the same fall outside the footing of the project and that therefore there would be no necessity of felling the mangrove trees.

5. MCZMA thereafter took up the proposal of Petitioner-Municipal Corporation in its 158th meeting held on 25th May 2022. After deliberations, MCZMA decided to recommend the proposal to State Environmental Impact Assessment Authority (**SEIAA**) subject to compliance of the following conditions.

1. The proposed creek bridge should be carried out strictly as per the provisions of CRZ notification, 2011 as amended from time to time and with a commitment of protection and conservation of coastal environment.
2. PP to obtain the NoC from mangrove cell. Compensatory afforestation of the mangroves should be carried out with the help of the Forest Department.
3. PP to obtain the prior High Court permission since, the project involve cutting of the mangroves.
4. Debris generated during the project activity should not be dumped in CRZ area. It should be processed scientifically at a designated place.
5. PP to ensure that best industrial practices should be followed for conservation of coastal environment.
6. Project proponent should implement Mitigation measures and Environment Management plan as stipulated in the EIA report, effectively and efficiently in letter and spirit during construction and operational phase of the project to ensure that coastal environment is protected.
7. All other required permissions from different statutory authorities should be obtained prior to commencement of work.

6. Petitioner thereafter submitted the proposal to SEIAA on 16th June 2022 for its clearance. SEIAA discussed the proposal of petitioner in its 244th meeting held on 14th June 2022 and SEIAA accorded CRZ clearance to the project proponent under the provisions of Environment Impact Assessment

Notification, 2006 and CRZ Notification 2011 subject to implementation of the following terms and conditions.

Specific Conditions:

I	The proposed creek bridge should be carried out strictly as per the provisions of CRZ Notification, 2011 as amended from time to time and with a commitment of protection and conservation of coastal environment.
II	PP to obtain NoC from the mangrove cell. Compensatory afforestation of the mangroves should be carried out with the help of the Forest Department.
III	PP to obtain the prior High Court permission since, the project involve cutting of the mangroves.
IV	Debris generated during the project activity should not be dumped in CRZ area. It should be processed scientifically at a designated place.
V	PP to ensure that best industrial practices should be followed for conservation of coastal environment.
VI	Project proponent should implement Mitigation measures and Environment Management plan as stipulated in the EIA report, effectively and efficiently in letter and spirit during construction and operational phase of the project to ensure that coastal environment is protected.
VII	All other required permissions from different statutory authorities should be obtained prior to commencement of work.
VIII	This is only CRZ clearance.

General Conditions:

I	The SEIAA reserves the right to revoke this recommendation, if the conditions stipulated are not complied with to the satisfaction of the MCZMA or Environment Department.
II	The SEIAA or any other competent authority, may stipulate any additional conditions subsequently, if deemed necessary, for environmental protection, which shall be complied with.
III	A copy of the recommendation letter shall be marked to the concerned local body/local NGO, if any, from whom any suggestion/ representation has been received while processing the proposal.
IV	The environmental safeguard measures should be implemented in letter and spirit
V	The clearance from CRZ point of view is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this clearance does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.

7. Thus, Thane Municipal Corporation has already received clearances from MCZMA and SEIAA. No mangrove trees are proposed to be destroyed during execution of the project.

8. Bombay Environmental Action Group (**BEAG**) came to be impleaded as respondent No.6 to the petition. We have heard Mr. Jeyhaan Carnac, learned counsel appearing for BEAG, who after perusal of the clearances granted by MCZMA and SEIAA as well as details of the project, does not raise any objection to execution of the project.

9. Ms. Bagwe, the learned counsel appearing for MCZMA confirms that the project has been granted necessary clearances by MCZMA. Ms. Mehara, the learned AGP appearing for the State and representing SEIAA, confirms grant of CRZ clearance by SEIAA for execution of the project.

10. The project proposed to be executed by petitioner-Municipal Corporation is of public importance. Construction of project on Desai creek would offer vital connectivity and reduce traffic congestion and save time and fuel as observed above. Considering the doctrine of sustainable development, we are of the view that petitioner-Municipal Corporation deserves to be granted necessary leave for execution of the project in CRZ areas. Both MCZMA and SEIAA already considered proposals of the Municipal Corporation from environmental point of view and have granted their respective clearances subject to observance of conditions. Petitioner-Municipal Corporation will have to strictly observe conditions imposed by MCZMA and SEIAA during execution of the project.

11. Considering the fact that clearances for the project are already granted by MCZMA and SEIAA and also in view of the fact that respondent BEAG has not raised any objection to execution of the project, we are of the considered view that this would be a fit case for grant of leave to petitioner Municipal Corporation for execution of the project.

12. Writ Petition is accordingly allowed in terms of prayer clause (a) which reads thus:

“(a) this Hon’ble Court may be pleased to call for the records and proceedings of Environment / CRZ Clearance granted by SEIAA dated 20.06.202 and Site Report of Assistant Conservator of Forest, Mangrove Cell, Mumbai dated 18.02.2021 and after examining the legality and propriety thereof, this Hon’ble Court be pleased to grant permission for construction of Bridge on Desai Creek, which may affect 50 meters mangrove buffer zone, in public interest and public good.”

13. Rule is made absolute accordingly. There shall be no orders as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ