

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 4138 OF 2022
WITH
INTERIM APPLICATION NO. 4665 OF 2022**

Municipal Corporation of Greater Mumbai
A Body constituted under the Mumbai Corporation Act,
1888, through the Chief Executive Officer and the Executive
Engineer Water Work (Civil) Having its office at MCGM
Head Office, 5, Mahapalika Marg, Dhobi Talao,
Chhatrapati Shivaji Terminus Area,
Fort, Mumbai – 400 001.Petitioner

Versus

1. Union of India
Through the Ministry of Environment Forest
& Climate Change, Paryavaran Bhavan,
New Delhi 110002.
And also At : Aayakar Bhavan, 2nd floor,
Maharshi Karve Road, New Marine
Lines, Mumbai 400 020.
2. Maharashtra Coastal Zone Management Authority
Through the Additional Chief Secretary, Environment
Department, 2nd Floor, Room No. 217, Annexe
Building, Mantralaya, Mumbai – 32.
3. State of Maharashtra
Environment Department, through the
Office of Government Pleader, Bombay High Court,
PWD Building, Fort, Mumbai 400 001
4. Chief Conservator of Forest (Mangrove Cell),
Through the Office of Government Pleader,
Bombay High Court, PWD Building Fort,
Mumbai 400 001

5. State Environmental Impact Assessment Authority,
Maharashtra Through the Office of Government Pleader,
Bombay High Court, PWD Building Fort,
Mumbai 400 001
6. Bombay, Environment Action Group (BEAG)
203, Rajendra Chambers, 19, Nanabhai Lane,
Fort, Mumbai – 400001Respondents

Mr. Saket Mone a/w Ms. Shilpa Redkar and Mr. Subit Chakrabarti, for the
Petitioner.

Mr. Rui Rodrigues a/w Mr. N.R. Prajapati, for Respondent No. 1.

Ms. Jaya Bagwe, For the Respondent No. 2/MCZMA.

Mr. Amit Shastri, AGP, State for the Respondent Nos. 3 to 5.

Ms. Sheetal Shah i/by M/s. Mehta and Girdharlal for Respondent No. 6.

CORAM	:	R. D. DHANUKA
		M.M. SATHAYE, JJ.
RESERVED ON	:	15 th FEBRUARY, 2023
PRONOUNCED ON	:	24 th FEBRUARY, 2023

: JUDGMENT (PER : M. M. SATHAYE, J.):

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioner (Municipal Corporation of Greater Mumbai) is seeking a writ in the nature of *mandamus* directing the Respondent authorities to permit the Petitioner to execute a project of proposed suction tank for providing adequate water supply to citizens around Gorai Village. The

Petition is filed in view of the finding of this Court recorded at paragraph 83(viii) of the Judgment and Order dated 17th September 2018 passed in PIL No. 87 of 2006 (Respondent No. 6 – *Bombay Environment Action Group Vs. State of Maharashtra* (hereinafter “**the BEAG’s case**” for short).

2. It is the case of the Petitioner that it is a statutory body established under Mumbai Municipal Corporation Act, 1888 tasked with various duties including providing potable water to citizens residing within its jurisdiction. As a part of the endeavour to provide potable water, the Petitioner has envisaged developing a project site for suction tank of about 40 sq mtrs near the Fish market, Gorai Village at CTS No. 1145 (Survey No. 265/A) which is a land owned by the Government of Maharashtra, and the said project site is partly affected by 50 meter mangrove buffer zone area.

3. It is contended that Village Gorai is a tourist destination and recently population has increased multi fold times. However, there is no adequate water supply in the region. It is further case of the Petitioner that due to high elevation along Uttan Road, the area is facing acute shortage of water supply and this difficulty in providing water is due to the fact that the water is to be transported against gravity. Therefore, the Petitioner is proposing to carry out the said project to augment water supply in the area around Gorai Village for improving the living condition and hygiene

of the residents there. It is therefore contended that the proposed project is of great public importance.

4. It is further case of the Petitioner that the Petitioner is seeking directions to the Authorities of Respondent Nos. 1 to 5 in accordance with the BEAG's case r/w the Order dated 02nd November, 2018 passed in Notice of Motion No. 278 of 2018 in said PIL, as well as condition imposed in the NOC granted by the Tahsildar, Mumbai Suburban Division dated 2nd August 2019 and in accordance with condition No. 3 imposed by the Respondent No.5 State Environmental Impact Assessment Authority ('SEIAA') made in the 140th Meeting dated 26th November, 2019 and in accordance with Special condition No. 3 imposed by the Respondent No. 5 in the CRZ clearance granted to the Petitioner for carrying out construction in the buffer zone of mangrove area. It is urged that no mangrove destruction is contemplated in the execution of the said project. However, in view of the specific condition imposed in the aforesaid clearance dated 29th March 2022 issued by Respondent No. 5/ (SEIAA), and finding recorded in paragraph 83(viii) of the BAEG's case, the Petitioner is applying for directions in this Petition.

5. In these set of circumstances, considering the importance and necessity of the said project, the Tahsildar, Mumbai Suburban District, has

granted portion of land owned by the State Government for the carrying out the said project, on 2nd August 2019 and NOC has been issued with condition that Petitioner shall obtain appropriate direction from this Court before carrying out construction in mangrove buffer zone. It is further submitted that in its 140th Meeting dated 26th November 2019, the Respondent No.2/Maharashtra Coastal Zone Management Authority (hereinafter '**MCZMA**' for short) has noted that the said project is permissible under the CRZ notification subject to clearance by the Respondent No.5 / State Environmental Impact Assessment Authority, Maharashtra (hereinafter '**SEIAA**' for short) based on the recommendation of Respondent No. 2. It is contended that after due deliberation and detailed study, Respondent No. 2 (MCZMA) was pleased to recommend the said project for grant of CRZ clearance subject to the Petitioner's complying with the terms and conditions mentioned therein, including obtaining permission of this Court.

6. It is contended that pursuant to the recommendation by Respondent No. 2 (MCZMA), Respondent No.5 (SEIAA) was pleased to consider the said project in its 240th meeting dt. 25th March 2022 and noted that the construction of said project is permissible as per the CRZ notification. After considering all the relevant facts, Respondent No. 5 (SEIAA) was pleased to grant clearance to the Petitioner under letter dated 29th March 2022,

subject to conditions including obtaining permission of this Court.

7. In these facts and circumstances, considering the importance of the project for fulfilling basic necessity of the citizens in the area in the vicinity of Village Gorai, the Petitioner has prayed for permission to carry out the said project.

8. Mr. Saket Mone, learned Counsel for the Petitioner has invited our attention to various permissions and sanctions granted by the Respondent No. 2 (MCZMA) and Respondent No. 5 (SEIAA) including minutes of 140th Meeting of Respondent No. 2 dated 26th November 2018, pointing out that the proposal is recommended subject to condition that Petitioner ensures that mangroves, if any, should not be cut/affected due to proposed construction of suction tank. He invited our attention to clearance dated 29th March 2022 issued by Respondent No. 5 (SEIAA) in which under Specific Condition No. II stated in para 4 thereof, the Petitioner is directed to ensure that mangroves should not be cut/affected due to proposed construction.

9. Learned Counsel further pointed out that under the General Condition No. I, Respondent No. 5 (SEIAA) has reserved its rights to revoke recommendation if conditions stipulated are not complied with to

the satisfaction of Respondent No. 2 (MCZMA) or Environment Department and under clause 5 it is also provided that in case of submission of false document and non-compliance of stipulated condition, the Authority/Environment Department will revoke or suspend the CRZ clearance, without any intimation and initiate appropriate legal action under Environment Protection Act 1986. He further pointed out that under clause 8 of the said clearance, it is provided that in case of any deviation or alteration in the project proposed, a fresh reference should be made to the department to assess the adequacy of the conditions imposed and to incorporate additional environmental protection measures required, if any. He therefore urged that sufficient safeguards are already provided in the permissions / sanctions granted and the said project being for public good or public interest, should be permitted by this Court.

10. Mr. Rodrigues learned Counsel appearing for Respondent No. 1 - Union of India has also invited our attention to various sanctions granted, in which, according to him, adequate precautions are taken by imposing various conditions, as explained above. Heard Ms. Bagwe for MCZMA and Mr. Shastri, Ld. AGP for Respondent Nos. 3 to 5 / State, who have no objection to the said project, subject to Petitioner complying with conditions prescribed in the sanction / approval granted by Authorities.

11. *Per Contra* learned Counsel Ms. Sheetal Shah, appearing for Respondent No. 6/Bombay Environment Action Group (BEAG) vehemently opposed the grant of permission to the Petitioner on the ground that the said project is proposed in buffer zone of mangroves. She contended that all mangroves, including buffer zone, fall in CRZ-I. She expressed concerns that what is actually carried out within the buffer zone should not differ from what is proposed before the Court. She, however, fairly conceded that the said project is for public good being related to making potable water supply available to the citizens.

12. We have considered the rival submissions. When the issue of development for public good/interest is pitched against restrictions put in place for environment protection, the Court has to strike a balance. On perusal of the various conditions and sanctions issued by authorities including Respondent No. 2 (MCZMA) and Respondent No. 5 (SEIAA), we are of the opinion that sufficient safeguards have been provided. Also no destruction of mangroves is involved as the said project is only partly affected by buffer zone. We have to be alive to the fact that the Petitioner's proposed project is for providing absolutely basic necessity (water) for the citizens of area in the vicinity of Village Gorai and as such, the said project certainly falls under the permitted exceptions in the scheme of the things

provided for CRZ as well as protection of mangroves.

13. It must be noted that none of the permissions / sanctions viz. NOC dated 02.08.2019 issued by Collector Mumbai for use of Govt. land for the said project, recommendation of the said project by Respondent No. 2 (MCZMA) dated 26.11.2019 and Sanction dated 29.03.2022 by the Respondent No. 5 (SEIAA) to the said project, are challenged by anybody including Respondent No. 6 (BEAG). It is provided that in case of deviation from the proposed work of the said project, Petitioner will have to apply for fresh permission. Mr. Mone, on instructions from the Petitioner states that, a responsible officer of the Petitioner is ready to give undertaking to this Court that all conditions under sanction dated 29.03.2022 granted by Respondent No. 5 (SEIAA) will be followed till completion of the said project. Statement is accepted.

14. Therefore, in the overall facts and circumstances narrated above, this Court is of the opinion that the said project, for which Petitioner is seeking permission in this petition, is for public good and is in public interest.

15. Since Respondent No. 6 (BEAG) has already argued the matter, nothing survives in Interim Application No. 4665 of 2022 filed for

permission to file additional affidavit in reply after receipt of additional documents.

16. Hence following order is passed :

- (i) Writ Petition is allowed in terms of prayer clause (a) on an undertaking by a responsible officer of the Petitioner to this Court that all conditions in sanction granted by Respondent No. 5 (SEIAA) dated 29.03.2022 will be complied till completion of the said project.
- (ii) Such undertaking be filed within 1 week from today, with its copy to be served upon the Respondents.
- (iii) This Court expects that the Respondent Nos. 1 to 5 through its Officers, will remain vigilant during completion of the said project and will take appropriate action in case of any deviation from the sanction conditions.
- (iv) Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. In view of disposal of writ petition, nothing survives in IA No. 4665 of 2022 and the same is disposed off. No order as to costs. Parties to act on the authenticated copy of this order.

(M. M. SATHAYE, J.)

(R. D. DHANUKA, J.)

17. At this stage, learned Counsel for Respondent No. 6 applies for stay of the order passed today. In the facts and circumstances of this case, the request for stay is rejected.

(M. M. SATHAYE, J.)

(R. D. DHANUKA, J.)