

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

PRACHI
PRANESH
NANDIWADEKAR

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**CRIMINAL WRIT PETITION NO.1107 OF 2020
WITH
INTERIM APPLICATION NO.2790 OF 2020
IN
CRIMINAL WRIT PETITION NO.1107 OF 2020**

1. Samita Rajendra Patil,
Age: 39 Years, Occupation: Housewife,
Residing at: Sulbha Sadan, Prabhu
Aali Pen, Taluka Pen, Dist. Raigad.
 2. Sunil Moreshwar Kothekar,
Age: 47 years, Occ. Agriculturist,
Residing at village Kharmachela
Tal. Pen, District Raigad.
- .. Petitioners/Applicants

Versus

1. The State of Maharashtra,
Through The Director General
& Inspector General of Police,
Maharashtra State Having Office
at: Maharashtra State Police
Headquarters Opp- Regal Cinema,
Shahid Bhagatsingh Marg, Mumbai.
2. The Commissioner of Police, Raigad
Having Office at Alibaug, Raigad.
3. The Senior Inspector of Police
Vadkhal Police Station, Pen, Alibaug.
4. Konkan Commissioner
5, Madam Cama Rd, Mantralaya,
Fort, Mumbai, Maharashtra 400032.
5. Maharashtra Coastal Zone
Management Authority, Through
the Additional Chief Secretary,
Environment Dept. 2nd Floor,

Room No. 217, Annex Building,
Mantralaya, Mumbai- 400 032.

6. State of Maharashtra Environment
Dept. Through the office of Govt.
Pleader High Court, Bombay, PWD
Building, Fort, Mumbai- 400 001.
 7. Chief Conservator of Forest
(Mangrove cell), Through the office
of Govt. Pleader High Court, Bombay,
PWD Building, Fort, Mumbai- 400 001.
 8. Tahasildar,
Tahasil Office, Pen, Alibaug.
 9. Sub Divisional Officer,
SDO Office Pen, Alibaug.
 10. Forest Circle Officer,
Pen, Alibaug.
 11. JSW Steel Ltd.,
A Public Ltd. Com. Incorporated,
under the provisions of Indian
Companies Act, 1956 having its
Registered office at, JSW center,
Bandra Kurla Complex, Bandra- (E),
Mumbai-400 051
and its site office at; Dolvi works,
Geeta Puram, Dolvi, Taluka- Pen,
Dist. Raigad.
- .. Respondents

**WITH
INTERIM APPLICATION NO.1090 OF 2020
IN
CRIMINAL WRIT PETITION NO.1107 OF 2020**

1. Lahu Moreshwar Kothekar
Age Adult, Occ. Agriculturist
2. Narayan Moreshwar Kothekar
Age Adult, Occ. Agriculturist

3. Pandurang Moreshwar Kothekar
Age Adult, Occ. Agriculturist
4. Dnyaneshwar Rama Kothekar
Age Adult, Occ. Agriculturist
5. Mahendra Rama Kothekar
Age Adult, Occ. Agriculturist .. Applicants

In the matter between

1. Samita Rajendra Patil,
Age: 39 Years, Occupation: Housewife,
Residing at: Sulbha Sadan, Prabhu
Aali Pen, Taluka Pen, Dist. Raigad.
2. Sunil Moreshwar Kothekar,
Age: 47 years, Occ. Agriculturist,
Residing at village Kharmachela
Tal. Pen, District Raigad. .. Petitioners

Versus

1. The State of Maharashtra,
Through The Director General
& Inspector General of Police,
Maharashtra State Having Office
at: Maharashtra State Police
Headquarters Opp- Regal Cinema,
Shahid Bhagatsingh Marg, Mumbai.
2. The Commissioner of Police, Raigad
Having Office at Alibaug, Raigad.
3. The Senior Inspector of Police
Vadkhal Police Station, Pen, Alibaug.
4. Konkan Commissioner
5, Madam Cama Rd, Mantralaya,
Fort, Mumbai, Maharashtra 400032.

5. Maharashtra Coastal Zone Management Authority, Through the Additional Chief Secretary, Environment Dept. 2nd Floor, Room No. 217, Annex Building, Mantralaya, Mumbai- 400 032.
6. State of Maharashtra Environment Dept. Through the office of Govt. Pleader High Court, Bombay, PWD Building, Fort, Mumbai- 400 001.
7. Chief Conservator of Forest (Mangrove cell), Through the office of Govt. Pleader High Court, Bombay, PWD Building, Fort, Mumbai- 400 001.
8. Tahasildar, Tahasil Office, Pen, Alibaug.
9. Sub Divisional Officer, SDO Office Pen, Alibaug.
10. Forest Circle Officer, Pen, Alibaug.
11. JSW Steel Ltd., A Public Ltd. Com. Incorporated, under the provisions of Indian Companies Act, 1956 having its Registered office at, JSW center, Bandra Kurla Complex, Bandra- (E), Mumbai-400 051 and its site office at; Dolvi works, Geeta Puram, Dolvi, Taluka- Pen, Dist. Raigad.

.. Respondents

Mr. Shriram S. Kulkarni a/w Mr. Gaurav Ugale, Mr. Sujay Palshikar, Mr. Pranjal Khatavkar & Ms. Radhali Kadam i/by Mr. Gauresh Khandalekar for the Petitioners/Applicants.

Mr. A. R. Patil, Addl. G. P for Respondent Nos.1 to 4 & 6 to 10 (State).

Ms. Jaya Bagwe for Respondent No.5 (MCZMA).

Dr. Milind Sathe, Senior Advocate a/w Mr. Saket Mone & Mr. Abhishek Salian i/by Vidhii Partners for Respondent No.11 (JSW Steel Ltd.)

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which arguments were concluded : 13th FEBRUARY 2024

Date on which judgment is delivered : 23rd FEBRUARY 2024

JUDGMENT (Per Jitendra Jain, J.) :-

1. By this petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973, the Petitioners have prayed for following reliefs:-

"a) That this Hon'ble Court be pleased to issue any appropriate writ, order or direction as follows:

- i) Be pleased to direct the Respondent Nos. 1 to 10 to forthwith take action on the various representations submitted by the Petitioners dated 26.12.2019, 21.01.2020, 04.02.2020, 05.02.2020 and to take necessary action for destruction of mangroves on Survey No.94 in village Kharmachela, Tal. Pen, District Raigad to remove the slag/hazardous chemical waste deposited by Respondent No.11 on Survey No.94 and surrounding area of the company as well as the lands in village Kharmachela, village Dolvi to village Gadap and to restore the environment and to submit the report of compliance to this Hon'ble Court.*
- ii) Be pleased to direct the Respondent Nos.1 to 10 to visit village Kharmachela, Dolivi to Gadap, Vave Vadkhal, Kolve, Beneghat, Juibapuji and surrounding areas of Taluka Pen and Taluka Alibag and submit the report to locate the sites where the Respondent No.11 company has deposited the company slag/hazardous waste material in these areas and the same may be removed and the position may be restored to its original position.*
- iii) That the Hon'ble court may be pleased to direct Respondent Nos. 1 to 10 and Respondent No.11 company to remove the*

chemical wastes around site area and restore the position of natural creek and the kharbandisti destroyed by Respondent No.11 company to its original position;

- iv) That the permission granted by this Hon'ble Court by Order dated 15.10.2019 in Writ Petition No. 1643 of 2019 be set aside;*
- v) To register the offences punishable under section 15 of the Environment Protection Act, 1986, Section 30 & 32 of Indian Forest Act, 1927, Forest (conservation) regulation Act 1980, CRZ regulations, Section 55(1) & (2) of the Biodiversity Act, 2002 and Section 34 of Indian Forest Act, 1927 against the Respondent No.11, their Managing Director and office bearers.”*

However, the Petitioners at the time of hearing have not pressed for prayer clause a (ii).

2. The Petitioners are having agricultural lands adjoining the plant of Respondent No.11. The Petitioners are aggrieved by the action of Respondent No.11 for violation of various environmental laws and are further aggrieved by an order of this Court in Writ Petition No.1643 of 2019 granting permission to Respondent No.11 for construction of a bridge over nallah. The activities of Respondent No.11 are affecting the agricultural operations of the Petitioners and therefore, the present petition is filed for the above referred reliefs.

3. For adjudication of the present petition, it is relevant to note some of the events as stated in pleadings:-

- (i) In the year 2015, the Petitioners had filed an application being Application No.122 of 2015 before the National Green Tribunal,

Pune (NGT) against various respondents including present Respondent No.11. In the said application, the Petitioners had prayed for various reliefs, primarily being restraining the respondents from destroying mangroves, dumping any waste material of Respondent No.11, expansion of the project of Respondent No.11 and for a declaration that the area be declared as a forest area etc.

- (ii) Pursuant to above, on 27th November 2015, the NGT passed an interim order restraining cutting of mangroves. The subject matter of the proceedings before the NGT is substantially with respect to the activities of Respondent No.11. The said proceedings before the NGT are pending as of today.
- (iii) On 11th November 2016, the Respondent No.11 was granted a lease of 27 Ares of land in Survey Nos.93 and 94 by the State Government for expansion of its project for construction of bridges over the nallah to connect two parcels of land belonging to Respondent No.11.
- (iv) In February/April 2015, pursuant to the complaints made by the Petitioners, a *panchnama* was drawn of Survey No.94 wherein it is recorded that there are dumping of chemicals, mangroves etc. Similar *panchnamas* were drawn in January 2020 and also

complaints were made by the Petitioners to various authorities vide letters dated 20th January 2020, 27th January 2020 etc.

- (v) The Respondent No.11 with a view to construct a bridge made an application to MCZMA-Respondent No.5 seeking its permission. However, by order dated 20th December 2018, Respondent No.5-MCZMA deferred the permission and therefore, Respondent No.11 approached this Court in Writ Petition (L) No.2519 of 2019 seeking relief from order dated 20th December 2018. This Court directed Respondent No.5 to take a decision on the proposal of Respondent No.11. Respondent No.5 accordingly granted permission, subject to condition, for the construction of the bridge.
- (vi) On 15th October 2019, this Court in Writ Petition No.1643 of 2019 approved the project of construction of bridge of Respondent No.11. In the said order, the reference is made to Respondent No.5's-MCZMA permission and the approval given by the State Level Environmental Impact Authority (SLEIA). It is important to note that initially in 2018, Respondent No.11 proposed to construct three bridges and the said project included removal of mangroves from the site. However, subsequently this Court on 17th September 2018 in PIL No. 87 of 2006 imposed a total ban on cutting of mangroves. Therefore, Respondent No.11 resubmitted a new plan

for construction of only one bridge to develop transport connectivity between its current plant and expansion plan without there being any destruction of mangroves. The said bridge was to be constructed by connecting two pillars, one on Gat No. 93 of Village Khar Karavi and Gat No. 94 of Village Kharmachela. Respondent No.5-MCZMA approved the said project after receiving report from the Mangrove Cell wherein the Mangrove Cell in its report stated that the project did not involve any mangrove cutting. It is on the above backdrop that the Petitioners today in present petition are before us seeking reliefs as prayed for, one of them being setting aside of order dated 15th October 2019 passed in Writ Petition No.1643 of 2019.

Submissions of the Petitioners:-

4. The Petitioners submit that Respondent No.11-JSW did not disclose material and relevant facts to this Court in Writ Petition No.1643 of 2019 while seeking permission of this Court for constructing the bridge. The Petitioners submit that the Respondent No.11 did not disclose that land on Survey No.94 is owned by the State Government on which there are mangroves and further that in the past it had destroyed the mangroves on the said survey number. It is further contended that Respondent No.11 also did not disclose to the Court

various *panchnamas*, wherein the issue relating to destruction of mangroves and dumping of industrial wastes has been complained of. The proceedings before the NGT and the injunction for restraining from cutting of mangroves against all the Respondents therein to which Respondent No.11 is also a party was also not disclosed while seeking permission of this Court. It is further submitted that mangroves were destroyed in 2015 by Respondent No.11-JSW and same was not disclosed to this Court. It is the contention of the Petitioners that various criminal proceedings have been initiated against Respondent No.11 with regard to destruction of environment which Respondent No.11 ought to have disclosed before this Court while seeking permission.

5. The Petitioners further submitted that since the order granting permission to Respondent No.11 by this Court was obtained by not disclosing material facts, it amounted to fraud and misrepresentation and therefore this Court should set aside the order dated 15th October 2019 in Writ Petition No.1643 of 2019 passed by the co-ordinate bench. The Petitioners submitted that it has in its pleadings narrated all the facts which would constitute fraud or mis-representation by the Respondent No.11 in seeking permission from this Court. The Petitioners, therefore, submitted that this Court has the jurisdiction to

recall and set aside its own order. The Petitioners further submitted that from the records of Respondent No.5-MCZMA the site under consideration is not in buffer zone, but on mangroves and the same is evident from the *panchnama* and geo-coordinates referred to in MCZMA reports. The Petitioners, therefore, submitted that the Petition be allowed as prayed for in para no.9 of its petition except prayer a(ii) which they are not pressing.

Submissions of contesting Respondent No.11 :-

6. The Respondent No.11 submitted that the present Petition is not maintainable since this Court does not have the jurisdiction to recall and/or quash a co-ordinate bench order passed in Writ Petition No.1643 of 2019. The Petitioners, if at all aggrieved by such an order ought to have sought remedy by way of other proceedings by filing a review petition or approaching the Supreme Court to challenge the said order. The Respondent No.11 further submitted that the land under consideration is a private land allotted to them in the year 2016 and therefore the allegations that mangroves were destroyed in 2015 cannot be attributed to Respondent No.11. The Respondent No.11 further submitted that the issue raised in the present Petition is already a subject matter before NGT, Pune between the Petitioner and Respondent and therefore on this ground also the present Petition cannot be entertained.

The Respondent No.11 further denied any mis-representation or suppression of facts at the time of seeking permission of this Court for constructing the bridge and prayed for dismissal of the present Petition.

7. We have heard learned counsel for the Petitioners and the Respondents and have with their assistance perused the records including the written submissions filed by the parties.

Analysis and Conclusions:-

8. The following issues arise for our consideration:-

- (a) Whether the Petitioners are justified in contending that Respondent No.11 has suppressed material facts while obtaining permission of this court on 15th October 2019 in Writ Petition No.1643 of 2019 and therefore said order be set aside under Article 226 of the Constitution of India.
- (b) If the answer to (a) above is in affirmative then whether the present petition is maintainable to set aside the aforesaid order passed by the co-ordinate Bench of this Court?
- (c) Whether the Petitioner having approached the NGT, Pune can file the present petition seeking similar reliefs?

9. We now propose to consider issue (a):

- (i) Petitioners and Respondent No.11 have filed before us a copy of Writ Petition No.1643 of 2019 on the basis of which this Court had granted permission on 15th October 2019.
- (ii) The first objection of the Petitioners is that Respondent No.11 did not disclose that the land on which bridge is to be construed is not “private land” but “government land”. In our view, this fact is non-issue since as per paragraph 85(iii) of the order dated 17th September 2018 in PIL No.87 of 2006, this court has stated that regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 meters on all sides of all mangrove areas shall be forthwith stopped and be kept free of construction except construction of a compound wall for its protection. Therefore, whether a particular land is a “government land” or “private land” cannot be a factor to be considered for setting aside the order passed in Writ Petition No.1643 of 2019. The permission according to the order in PIL No.87 of 2006 should be taken, regardless of whether the land is a private or government land. Therefore in our view, this issue becomes non-consequential insofar as the permission granted in Writ Petition No.1643 of 2019 is concerned, since same was also not the basis of order dated 15th October 2019 in Writ Petition No.1643 of 2019 nor it is a factor to

be considered as per PIL No.87 of 2006.

10. The Respondent No.11 while seeking permission in Writ Petition No.1643 of 2019 had enclosed a letter dated 11th November 2016 issued by the State Government under the Maharashtra Land Revenue (Disposal of Land) Rules 1971 granting the subject land to Respondent No.11 for construction of bridge on terms and conditions specified therein. This letter forms part of Writ Petition No.1643 of 2019 as Exhibit-E. Therefore, the contention that the nature of the land on which the bridge is constructed has been misrepresented or not disclosed to this court is also not correct because said letter gives details of grant of land by government to Respondent No.11.

11. The Petitioners have relied upon the MCZMA's approval of 15th July 2019 wherein in the minutes of the meeting, it has been recorded that as per the Google map of the proposed site in 2015, mangroves trees were shown at the project site whereas in 2019 no mangroves trees are cited at the project site within the 50 meters buffer zone of the mangroves area. Based on this, the Petitioners have contended that Respondent No.11 has destroyed the mangroves and further they have also challenged the MCZMA's-Respondent No.5 decision in giving approval on such fact situation.

12. The Respondent No.11 was allotted the land in the year 2016 for construction of the bridge and therefore, allegation of non-disclosure of any fact prior to 2016 with respect to the mangroves being present in 2015 cannot be attributed to Respondent No.11. Even otherwise, this fact of there being mangroves in 2015 and same not being cited in 2019 was a fact recorded by Respondent No.5-MCZMA authorities in its minutes of meeting dated 15th July 2019 and the said minutes formed part of the Writ Petition No.1643 of 2019 on the basis of which an order came to be passed by this Court on 15th October 2019 granting permission to construct the bridge. Therefore in our view, on both these counts, there cannot be any allegation of suppression of facts. Whether Respondent No.5-MCZMA authorities were justified in giving permission on 15th July 2019, which according to the Petitioners, records contradictory findings cannot be a subject matter for this Court to set aside a co-ordinate Bench decision on the ground of fraud or misdeclaration. If the Petitioners are aggrieved then the remedy lies in challenging the order in Writ Petition No.1643 of 2019 before the higher forum. There is no finding by any Court which states that Respondent No.11 has cut the mangroves although same is alleged by the Petitioners and denied by Respondent No.11 before various authorities. Therefore in our view, it cannot be said that order in Writ Petition No.1643 of 2019 was obtained by fraud or misdeclaration.

13. If according to the Petitioners, there is any violation of the injunction order of NGT, Pune including on mangroves then appropriate proceedings would be to approach the NGT, Pune for such violation moreso because the Petitioners had approached NGT in 2015 itself. Therefore, on this account also, the allegations of obtaining the order of this Court in Writ Petition No.1643 of 2019 by Respondent No.11 by playing fraud cannot be sustained and therefore, prayer a(iv) for setting aside the order passed by co-ordinate Bench is misconceived.

14. The Petitioners have further contended that Respondent No. 11 has not disclosed to this Court in Writ Petition No. 1643 of 2019, the injunction order dated 27th November 2015 passed by NGT, Pune in the year 2015. The subject matter of permission in Writ Petition No. 1643 of 2019 was with regard to construction of bridge on land allotted to Respondent No. 11 in November 2016. The subject matter of NGT proceedings were in respect of all the activities of Respondent No. 11 for closing the plant. However, while obtaining permission in Writ Petition No. 1643 of 2019, approval of R-5 MCZMA dated 15th July 2019 was annexed to the petition and is also referred to in the said order. One of the condition was “no felling of mangrove”. Therefore, on the date of passing the order that is 15th October 2019 the effect of injunction granted by NGT was in effect expressly put as a condition by Respondent

no.5 MCZMA and therefore since in either case “no mangrove cutting” effect was same, non-disclosure of injunction order of NGT was taken care of by condition in Respondent no.5 MCZMA’s approval. Therefore, the said non-disclosure, in either case, becomes irrelevant on 15th October 2019. The NGT, Pune had not finally decided the application and therefore no final adjudication order was in existence on the date of the order passed by this Court in 2019.

15. Insofar as the averments made in the petition post 2019 is concerned, there cannot be any suppression of facts since these are the events post the order passed in Writ Petition No.1643 of 2019. This includes the *panchanama* dated 6th January 2020 and various complaints made by the Petitioners which are referred to in prayer clause a(i).

16. The Petitioners and Respondent No.11 have relied upon various case laws with regard to the maintainability of Writ Petition to quash a Coordinate Bench decision of this Court. The whole thrust of the Petitioner is that since the order dated 15th October 2019 in Writ Petition No.1643 of 2019 was obtained by suppression of material facts and fraud and which we have already observed above that there was no suppression of material facts, the case laws relied upon by the Petitioner would not be applicable.

17. We may also observe that this Court under Article 226 cannot enter the arena of disputed questions of facts to come to a conclusion whether Respondent No.11 has violated conditions imposed by R-5 MCZMA, that is, whether Respondent No.11 has destroyed the mangroves, etc. Therefore, even on this count we are not impressed with the submissions of the Petitioners to recall and set aside the co-ordinate bench decision of 15th October 2019. The Petitioners themselves in para 4(a) of the petition have stated that there are serious disputes amongst the villagers and Respondent No.11. The Petitioners have in para 4(i) of the petition stated that Respondent No.11 has been allotted huge land and the portion on which the bridge is constructed is not allotted to Respondent No.11. This would require us to go into factual determination and moreso in the present proceedings where the scope of enquiry and jurisdiction is even narrower. If as contended by the Petitioners that Respondent No.11 has obtained permissions illegally then the Petitioners ought to take appropriate proceedings to challenge the order dated 15th October 2019 before the higher forum and not in the present proceedings.

18. The Petitioners have prayed for a writ of certiorari for quashing the order passed by the coordinate bench of this Court on 15th October 2019 in Writ Petition No. 1643 of 2019. We are of the view that

a Writ Petition under Article 226 of the Constitution of India, in the facts of the present case of the Petitioner, would not be maintainable to challenge an order which has been passed by the coordinate bench in the exercise of its judicial powers. The Petitioners are not without remedies. If the Petitioners are aggrieved by the order of the coordinate bench of this Court, then the same can be assailed by way of a review or under Article 136 of the Constitution of India before the Supreme Court, but certainly cannot seek writ of certiorari from a coordinate bench of that very Court for quashing the same. In our view, and as observed above, since no clear-cut case is made out of fraud or misdeclaration by the Petitioners to contend that the order of 15th October 2019 was obtained by playing such a fraud, this would not be a case for us to interfere under Article 226 of the Constitution of India, moreso because the allegation of fraud and misdeclaration would require us to go into disputed questions of facts and furthermore these issues are already pending before the NGT and the High Court. We may clarify that the scope in the present proceedings is restricted and we are not exercising original jurisdiction of considering the prayers made in the original writ petition.

19. The Respondent No.11 is justified in placing reliance on the decision of the Supreme Court in the case of **Union of India Vs.**

Nareshkumar Badrikumar Jagad & Ors. reported in (2019) 18 SCC 586 and more particularly paragraph 18 for the proposition that the present proceedings are not the appropriate proceedings to challenge the co-ordinate bench decision of this Court. Paragraph 18 reads thus:-

“18. Reverting to the question of whether the Union of India has locus to file the review petition, we must immediately advert to Section 114 of the Code of Civil Procedure (CPC) which, inter alia, postulates that "any person considering himself aggrieved" would have locus to file a review petition. Order 47 CPC restates the position that any person considering himself aggrieved can file a review petition. Be that as it may, the Supreme Court exercises review jurisdiction by virtue of Article 137 of the Constitution which predicates that the Supreme Court shall have the power to review any judgment pronounced or order made by it. Besides, the Supreme Court has framed Rules to govern review petitions. Notably, neither Order 47 CPC nor Order 47 of the Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Therefore, we have no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect.”

In view of above, the prayer clause a(iv) is rejected.

20. Insofar as the other prayers are concerned, we have perused the application filed by the Petitioners before the NGT, Pune in the year 2015. On perusal of the same we find that the issues raised herein {excluding prayer a(iv)} has been exhaustively raised before the NGT. We have also perused the pleadings filed by the Petitioners and Respondents before the NGT which were produced before us by Respondent No.11. We find from pleadings that the issue of mangroves is at large before the NGT in the said proceedings and therefore it would

not be permissible to seek any relief before us on this count. Therefore, it would not be proper for this Court to adjudicate the same. The Enforcement Agencies including the Police are already parties in the proceedings before the NGT and, therefore, it would be appropriate for the Petitioner to seek their redressal before the said Tribunal.

21. We may note that Respondent Nos. 6, 7 and 10 – State and Mangroves Cell have taken action against Respondent No. 11 for encroaching on mangrove forest land by initiating proceedings under the Maharashtra Land Revenue Code, 1966 with respect to the land on Survey No. 94 for which approval for construction of bridge was granted by Respondent No.5-MCZMA and offence under the Indian Forest Act, 1927 is also registered. The order dated 29th March 2022 passed by the forest officer directs Respondent No.11 to remove the structure. The said proceedings are challenged by Respondent No.11 in Writ Petition No. 6521 of 2022 and the authorities have been directed by the High Court not to take coercive action against Respondent No.11. Therefore, in our view, the grievance of the Petitioners that the authorities are not taking action and therefore they should be directed to take action does not survive. The present petition is filed in 2020 and the authorities have taken action in 2022 and therefore in our opinion reliefs sought in prayer clauses a(i) and a(v) do not survive.

22. The Petitioners have prayed for setting aside of the order dated 15th October 2019 in Writ Petition No. 1643 of 2019 in prayer clause a(iv) on the ground of mangroves. In our view since the subject matter of Writ Petition No. 6521 of 2022 is based on these very grounds where action of the authorities in directing Respondent No.11 to stop activities and removing the structure is challenged, we do not deem it fit to adjudicate on the said prayer of setting aside the order dated 15th October 2019 since same would amount to giving findings on a petition not before us.

23. Insofar as, the initiation of criminal prosecution against Respondent No.11 is concerned, there is a set procedure under the Code of Criminal Procedure, 1973 and various environmental laws of which the violation is alleged for taking criminal action against the offender. Whenever the offences punishable under those laws are committed, the criminal law has to be set in motion in accordance with the relevant provisions under the Code of Criminal Procedure, 1973 and the law under which the offence is defined. The petitioners are free to avail alternate remedy in such matters, firstly under Section 154 (3) and Section 36 of the Criminal Procedure Code before the concerned officers and if that is of no avail then by approaching the concerned Magistrate under Section 156(3). In our view, since the larger issue is already

pending before the NGT, Pune, it would not be appropriate for us to give directions against any Authorities for taking action pursuant to the offence alleged/complaints made by the Petitioners herein. The petitioners are always free to take appropriate steps in accordance with law.

24. It is also important to note that if as alleged by the Petitioners there are violations of the conditions mentioned by the MCZM-Respondent No.5, then the Petitioners can approach the said Authority and seek its redressal. However, the Petitioners certainly would not be justified in approaching this Court and contending that since post the order of this Court on 15th October 2019, there is violation by cutting mangroves, the order passed on 15th October 2019 be set aside on ground of fraud or mis-declaration of facts.

25. Therefore, looked at from any angle and in view of our reasoning above, we do not see any reason for us to entertain present petition and, therefore, the petition is dismissed with no order as to costs. Consequently, interim applications do not survive.

26. Before parting, we may observe that any analysis in the present order is only to the limited extent of whether the order dated 15th October 2019 in Writ Petition No. 1643 of 2019 was obtained by

fraud or misdeclaration. The material brought on record by the petitioners does not indicate that the respondent no.11 is guilty of fraud or misrepresentation resulting in passing of the order dated 15th October 2019 in Writ Petition No.1643 of 2019. The Petitioners, Respondents and all other authorities can plead their issues before the appropriate forums without getting influenced by any of our observations made herein.

27. To conclude, in our view:-

- (a) No case is made out to allege that Respondent No.11 has obtained by fraud or suppression of facts the order dated 15th October 2019 in Writ Petition No. 1643 of 2019 and therefore this Court is not inclined to exercise its discretion to entertain the present petition.
- (b) Since answer to issue (a) is in the negative, issue (b) does not arise.
- (c) In the light of NGT proceedings and pendency of Writ Petition No. 6521 of 2022, other prayers are not adjudicated in the present proceedings.
- (d) In view of disposal of the writ petition, both the interim applications do not survive and the same are accordingly disposed of.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)