

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5065 OF 2021**

Sangharsh CHS ...Petitioner
Versus
The Divisional Forest Officer & Ors ...Respondents

**WITH
WRIT PETITION NO. 5063 OF 2021**

Nilkamal CHS ...Petitioner
Versus
The Range Forest Officer Mumbai & Ors ...Respondents

**Ms Gulnar Mistry, with Niket Harit, i/b Manoj Harit & Co, for the
Petitioners in both Writ Petitions.**

**Ms Jaya Bagwe, for Respondent No 6 in WP/5065/2021 (MCZMA)
and for Respondent No 7 in WP/5063/2021 (MCZMA).**

Mrs Rupali Shinde, AGP, for the Respondent-State.

Mr Tejesh Dande, for the Respondent-NMMC in both Writ Petitions.

Mr BB Sharma, for the Respondent-CIDCO in both Writ Petitions.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 18th January 2024

PC:-

1. Two societies are before us complaining that their permissions to add additional floors to existing buildings are being

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delayed or held up for, what Ms Mistry describes as an utterly extraordinary, if not bizarre reason: a solitary mangrove tree at a distance of just under half a kilometre from the societies.

2. The facts in the Nilkamal CHS Writ Petition will suffice. That society has a building on a plot leased to it by the City and Industrial Development Corporation of Maharashtra (“**CIDCO**”). There are two buildings on this. One is the ground and 12 floor structure the other is the ground and two floor structure. The societies have available additional Floor Space Index (“**FSI**”) and seek to utilize and exploit it.

3. The prayers in the Nilkamal Petition run like this:

“(a) This Hon’ble Court may be please to issue a writ in the nature of mandamus or any other writ, direction, order in the nature of mandamus, calling for all records and proceedings from the office of the Respondent no. 1, 2, 3 and 5 all the papers and proceedings in respect of sanction / permission to construct according to additional 0.5 FSI on the Petitioners one of the pre-existing buildings on Plot no. 30, Sector 25, Nerul, Navi Mumbai.

(b) Upon scrutiny as to the legality, validity, propriety, and correctness of the letter (At Exhibit-G) issued by the NMMC (i.e. Respondent no. 5) informing petitioner to seek NOC from the MCZMA for consumption of additional FSI on the Petitioners pre-existing building and letter dated 19/07/2021 (At Exhibit – J) issued by the Respondent no. 2, refusing NOC for construction on the existing building be quashed and set aside.

(c) That this Hon’ble High Court may be pleased to issue a writ in the nature of mandamus or any other writ,

direction or order in the nature of mandamus directing the Respondent no. 1,2,3, 5 and more particularly the Respondent no. 7 (i.e. MCZMA) to consider the Petitioners proposal for construction / availing additional 0.5 FSI on the pre-existing building of the Petitioners on the plot no.30, Sector 25, Nerul, Navi Mumbai and issued further directions to take appropriate decision within 4 weeks and inform the Petitioners the said decision.

(d) That this Hon'ble High Court may be pleased to issue a writ in the nature of mandamus or any other writ, direction or order in the nature of mandamus directing the Respondent no. 5 to issue a development permission and commencement certificate to the Petitioners to construct and avail additional 0.5 FSI on the Petitioners pre-existing building on plot no. 30, Sector no. 25, Nerul, Navi Mumbai."

4. There is no dispute about the Petitioners rights, their buildings, their lease and so on. The narrative cannot be controverted on merits up to paragraph 6B. It is here that the Petitioners mention a communication by the Municipal Commissioner of the Navi Mumbai Municipal Corporation ("NMMC") saying that according to the Coastal Regulation Zone ("CRZ") Notification of 6th January 2011, although the Nilkamal plot is not affected by CR Zone-II, it allegedly falls within a 50 mts mangrove buffer zone. Therefore, according to the NMMC and its Municipal Commissioner the Petitioners would have to get a No Objection Certificate ("NOC") from the Maharashtra Coastal Zone Management Authority ("MCZMA").

5. But a buffer zone around what? That is the question. It turns out, this is really not in controversy any longer because of a communication dated 19th July 2021 from the office of the Divisional Range Forest Officer Mumbai Mangrove Conservation Unit, that there is a *solitary mangrove tree* at a distance of 48.20 mts from one of the plots. The boundary of the notified reserved mangrove forest is 425 mts away.

6. Neither society wants to remove the mangrove tree. Neither society has made any such application. All that Ms Mistry says is that it is impossible that there is a 50 mts buffer around a solitary mangrove tree. That is irrational, arbitrary, unreasonable, violates the doctrine of proportionality and is contrary to plain common sense. She is right on all of these, but perhaps most especially the last. On the one hand the public authorities are routinely engaged in mega projects, and the Navi Mumbai Municipal Corporation itself is no exception. If the low-lying areas at the proposed new airport are any indication, they routinely make applications to this Court for permission to destroy acres and acres of mangroves, citing an overriding public interest. But here apparently a few additional floors on an existing building cannot be allowed because that construction will somehow — no one can quite tell us how — pose a deathly peril to this one solitary mangrove tree.

7. The facts in this case are so stark that they really required no greater discussion beyond this bare statement of facts. The requirement for an MCZMA approval is unjustified and uncalled for. We are not suggesting a dispensation from the buffer zone but a

solitary tree does not require a 50 or 500 mts buffer zone and can well be protected otherwise.

8. Rule is made absolute in terms of prayer clause (d) of the Nilkamal Petition. For the same reason and on the same principle there will be an order in terms of prayer clause (d) of the Sangharsh CHS.

“(d) That this Hon’ble High Court may be pleased to issue a writ in the nature of mandamus or any other writ, direction or order in the nature of mandamus directing the Respondent no. 4 to issue a development permission and commencement certificate to the Petitioners to construct and avail additional 0.5 FSI on the Petitioners pre-existing building on plot no. 29, Sector no. 25, Nerul, Navi Mumbai.”

9. Both Petitions are disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)