

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10710 OF 2023

Mumbai Metropolitan Region Development]
Authority, Bandra (East), Mumbai.] .. Petitioner

Versus

1. Union of India,]
Through Ministry of Environment Forest]
& Climate Change, New Delhi.]
2. Maharashtra Coastal Zone Management]
Authority,]
Through Environment Department, Mumbai]
3. State of Maharashtra,]
Through Environment Department, Mumbai]
4. Additional Principal Chief Conservator of]
Forest (Mangrove Cell), Mumbai]
5. State Environmental Impact Assessment]
Authority, Mumbai]
6. Bombay Environment Action Group, Mumbai] .. Respondents

Mr. Saket Mone, with Mr. Shrey Shah, i/by Vidhi Partners, for the
Petitioner.

Mr. Devang Vyas, ASG, with Mr. Kedar B. Dighe, for Respondent No.1-
UOI.

Ms. Jaya Bagwe for Respondent No.2-MCZMA.

Mr. N.C. Walimbe, Addl. G.P. for Respondent Nos.3 to 5-State.

Ms. Sheetal Shah, with Mr. Sanjay Maji, i/by Mehta & Girdharilal, for
Respondent No.6.

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

DATE : 10TH JANUARY, 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner, a Statutory Body, established under the Mumbai Metropolitan Region Development Authority Act, 1974, has preferred this writ petition seeking permission to undertake construction of Metro Line – 5 at Kasheli Bridge and Durgadi Fort, Village Kasheli, Taluka Bhiwandi, District Thane. In view of the directions issued in Public Interest Litigation No.87 of 2006 (*Bombay Environmental Action Group and Anr. Vs. The State of Maharashtra and Ors.*) along with connected matters, decided on 17th September 2018, leave of the Court has been sought by urging that the project is of public importance.

3. According to the petitioner, under the Mumbai Metro Master Plan, about 118 kms. of elevated Metro Corridors are to be erected. In that regard, the petitioner has obtained various statutory permissions and approvals. On 9th May 2017, a proposal to that effect came to be submitted to the Maharashtra Coastal Zone Management Authority (**MCZMA**). In its 119th meeting held on 28th to 30th June 2017, the MCZMA vide Item No.88 considered the proposal that was presented by the petitioner and after due deliberations, it decided to recommend the project from CRZ point of view

to the State Level Environment Impact Assessment Authority (*SEIAA*). Thereafter, on 6th April 2021, the SEIAA considered the said proposal in its 217th meeting and proceeded to accord CRZ Clearance under the provisions of the Environment Impact Assessment Notification, 2006 as well as the CRZ Notification - 2011, subject to prescribed terms and conditions. One of the conditions was to re-plant five times the number of mangroves that would be destroyed or cut during the process of construction.

4. On 15th December 2022, the Additional Principal Chief Conservator of Forests, Mangrove Cell, Mumbai issued a communication to the Additional Principal Chief Conservator of Forest & Nodal Officer, Maharashtra State, Nagpur and stated therein that about thirty-one mangrove trees and thirty-one non-mangrove trees were proposed to be felled in the area proposed for diversion. An undertaking was referred to for transplanting nineteen trees from the project location to a suitable place at the cost of the petitioner. It was further noted that the proposed project was 7.8 kms. from the boundary of Thane Creek Flamingo Sanctuary and it was outside the Eco Sensitive Zone. Thereafter, on 26th May 2023, the Ministry of Environment, Forest & Climate Change informed the Principal Secretary (Forests), Revenue and Forest Department, that it was according “in principle” approval under Section 2

of the Forest (Conservation) Act, 1980 for diversion of 0.6983 hectares of forest land in favour of the petitioner for construction of Metro Line-5. Various conditions including compensatory afforestation were imposed. Based on the aforesaid, the Divisional Forest Officer, Mumbai Mangrove Conservation Unit called upon the petitioner to deposit the requisite amounts in accordance with the conditions imposed in the communication dated 26th May 2023. According to the petitioner, the aforesaid compliance has been thereafter undertaken. It is on the aforesaid basis that the petitioner has sought leave of the Court in terms of the directions contained in paragraph 83(viii) of the Judgment in *Bombay Environmental Action Group (supra)*.

5. On 7th September 2023, when this writ petition was heard, the Court observed that it was necessary on the part of the concerned Authorities – respondents to ascertain whether it was necessary to cut the mangroves or there could be a possibility of saving the same by suggesting certain alternate modalities. It was further observed that there was no clarity as to whether the mangroves that were proposed to be cut had been duly marked for such purpose. Pursuant to the aforesaid order, our attention is invited to the exercise undertaken for identifying any alternate alignment with regard to diversion of 0.6983 hectares of reserved forest. As per the report dated 30th November 2022, the alignment proposed was the

most suitable from the point of view of forestry. It has been further pointed out that about thirty-one mangroves have been duly marked and identified in the said process. In the aforesaid backdrop, we have heard the learned counsel for the parties and we have perused the documents on record.

6. Undoubtedly, the project in question is in public interest since the proposed Metro Corridors are being developed to meet the growing need of transportation and with a view to reduce vehicular traffic in the city of Mumbai and its suburbs. The fact that the said project is in public interest is not doubted by any of the Authorities and this fact has been noted in the earlier order dated 7th September 2023. It is further seen that all requisite permissions / approvals have been duly obtained from the Competent Authorities. The terms and conditions imposed therein would be binding on the petitioner when it undertakes the exercise of completing the said project. The exercise of examining whether any alternate alignment is possible or not has also been undertaken and it has been found that the proposed alignment is the most suitable. The trees to be felled have also been specifically marked. We, therefore, find that there is no impediment in granting leave as sought in view of the fact that necessary permissions / approvals are already granted.

7. According to the learned counsel appearing for respondent no.6, in the initial application that was moved by the petitioner seeking clearance, there was no mention of the requirement of cutting any trees while undertaking the said project. In this regard, it may be stated that while examining the said proposal, it was found that there were mangrove trees as well as non-mangrove trees that would be affected while undertaking the said project. It is on that basis that “in principle” approval has been granted by the Ministry of Environment, Forest & Climate Change. The Mangroves Cell has also considered this aspect and has referred to the undertaking for transplanting requisite number of trees in that regard. On this count, the approval, as sought, cannot be refused. It is also submitted by the learned counsel appearing for respondent no.6 that the communication dated 11th April 2005 issued by the Ministry of Environment and Forest, Government of India, stating therein that the proposed railway based Mass Rapid Transport System did not attract the provisions of Environmental Impact Assessment Notification – 1994, is the subject matter of challenge before the Hon’ble Supreme Court and that challenge is pending. It is, therefore, urged that this communication dated 11th April 2005 ought not to be taken into consideration. In this regard, it may be noted that the SEIAA in its communication dated 6th April 2021 has taken into consideration the Environment Impact Assessment Notification – 2006 as well as the CRZ Notification - 2011. It is on that

basis that the recommendation has been made. We, therefore, find that even on this ground, the approval cannot be denied.

8. Thus, for all the aforesaid reasons, we find that the petitioner is entitled to leave as sought in terms of paragraph 83(viii) of the judgment in *Bombay Environmental Action Group (supra)*. The writ petition is thus allowed in terms of prayer clause (a) to the extent as marked. Prayer clause (a) in that regard reads as under :-

“(a). This Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent Authorities to permit the petitioner to execute the proposed construction of Metro Line-5 at Kasheli Bridge and Durgadi Fort at Village Kasheli, Taluka Bhiwandi, District Thane, in view of the public importance of the project.”

9. The petitioner shall scrupulously comply with all the terms and conditions imposed in the statutory approvals.

10. Rule is made absolute in aforesaid terms with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]