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

WRIT PETITION NO. 3170 OF 2022

Binod Agarwal	.. Petitioner
Versus	
State of Maharashtra & Ors.	.. Respondents

**WITH
INTERIM APPLICATION (L) NO. 13598 OF 2024
IN
WRIT PETITION NO. 3170 OF 2022**

Riju Shilpi	.. Applicant
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In the matter between:

Binod Agarwal	.. Petitioner
Versus	
State of Maharashtra & Ors.	.. Respondents

**WITH
INTERIM APPLICATION (L) NO. 202 OF 2023
IN
WRIT PETITION NO. 3170 OF 2022**

Vanashakti & Anr.	.. Applicants
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In the matter between:

Binod Agarwal	.. Petitioner
Versus	
State of Maharashtra & Ors.	.. Respondents

Mr. Binod Agarwal, petitioner-in-person present via VC.

Mr. Milind More, Addl. Government Pleader for respondent nos.1 and 2-State.

Mr. Ashutosh Kumbhakoni, Senior Advocate i/by Mr. Akshay Shinde for ECI, on request present.

Mr. Joel Carlos a/w Ms. Shilpa Redkar i/by S. K.

Sonawane for respondent no.3-BMC.

Mr. Zaman Ali for respondent nos. 4 and 5 (Applicants in IAL/202/2023).

Mr. Sagar Divekar a/w Abhimanyu Mhapankar for applicant in IAL/13958/2024.

Gunjan Dighavkar, Executive Engineer, Special Projects, Public Works Division, Aarey, Goregaon, present.

Mr. Rajesh Yadav, Assistant Engineer (Roads), P/South Ward, BMC, present.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & ARIF S. DOCTOR, J.

DATE: 30th APRIL, 2024

P.C.:

1. This Public Interest Litigation petition was filed raising the concern about poor condition of roads in Aarey Colony and accordingly a prayer has been made that the respondents be directed to maintain and repair the roads in the said Colony. The matter was heard on the earlier occasions and the learned counsel representing the parties had made their submissions. The concerns raised by the learned counsel representing various parties not only included need of repair and maintenance of the road, but also the requirement of taking adequate measures for ensuring preservation of wildlife by providing for adequate steps while repairing the road for free movement of the animals and other species. Such concerns was expressed by respondent nos.4 and 5 from the point of view of maintaining the ecology and protecting environment.

2. After considering the submissions of the learned counsel for the parties, the Court passed a detailed order on 6th March, 2024, which is extracted hereinbelow: -

"1. An Affidavit in response to the report submitted by the Committee constituted vide Court's order dated 2nd August, 2023 has been filed on behalf of Respondent No.5, which is taken on record.

2. We have perused the report submitted by the said Committee, which comprises of higher level officers of the State Government, an expert from National Environmental Engineering Research Institute and the Chief Executive Officer, Aarey Milk Colony. After various rounds of deliberations, the Committee has prepared the report and made certain recommendations. The first recommendation is that since the internal roads of Aarey Milk Colony are not in good condition and need repairs and that the stretch of 1.5 km. from Aarey Market to Mayur Nagar needs reconstruction instead of repairs by filling of potholes, hence the said work needs to be undertaken urgently. The Committee report also states that the total length of internal roads in Aarey Milk Colony is 52 km. which lie in the Eco-sensitive Zone, out of which, 7 km. is handed over to Municipal Corporation of Greater Mumbai in 2014. The report further states that out of remaining 45 km. internal road, 11.98 km. stretch falls in reserved forest area and 19.17 km. needs immediate repairs on priority basis, whereas, a stretch of 17.72 km. may require less treatment for repairs. The Committee also recommends that a stretch of 8.22 km. needs to be closed permanently as alternate routes are available.

3. Learned counsel representing Respondent No.5 has drawn our attention to a circular dated 9th March, 2021 issued by Government of Maharashtra, which has been annexed as Exhibit-D to the Affidavit filed today, according to which, there are certain guidelines which are to be followed for repair and up-gradation of roads constructed in forest lands. The said Government Resolution has been issued in tune with the guidelines issued by the Government of India in respect of repair and maintenance of roads constructed in forest lands.

Clause 7 of the circular dated 9th March, 2021 provides the procedure to be followed if any repair or maintenance or reconstruction of the road in forest area is to be undertaken, according to which, the Project Authority is required to submit a proposal to the concerned Deputy Conservator of Forests/Deputy Director of Tiger Reserve/Divisional Forest Officer/Independent Sub Divisional Officer. On receipt of the proposal, the authority concerned is required to conduct the site inspection, whereupon, the proposal submitted by the Project Authority and the site inspection report is to be examined and scrutinized in light of the parameters given in the said circular and if the authority concerned is of the opinion that proposal requires prior approval of the Competent Authority under the Forest (Conservation) Act, 1980, he shall communicate to the Project Authority accordingly. In case the authority on receiving the proposal in accordance with paragraph 7.3 of the said circular forms the opinion that the project requires prior approval of the Competent Authority under the Forest (Conservation) Act, 1980, the said fact shall be communicated to the Deputy Conservator of Forests/Deputy Director Tiger Reserve/Divisional Forest Officer/Independent Sub Divisional Officer as the case may be, otherwise, he himself is empowered to decide as to whether or not to grant the permission.

4. Our attention has also been drawn to a notification dated 5th December, 2016, issued by the Ministry of Environment, Forest and Climate Change, Government of India under Section 3(2)(v) and (xiv) of the Environment (Protection) Act, 1986 whereby the area of the Sanjay Gandhi National Park, Borivali has been declared to be Eco-sensitive Zone. It is stated that the entire 45 km. of internal road in Aarey Colony falls within Eco-sensitive Zone as per the said notification. Clause 4 of the said notification enlists certain activities which are prohibited or to be regulated within Eco-sensitive Zone. The table appended to clause 4 of the said notification provides that widening and straightening of existing roads, bridges, infrastructure and construction of new roads, public utility or community buildings is a regulated activity, which is to be done as per applicable laws to such activities without

any adverse impact within the Eco-sensitive Zone. Clause 6(d) of the said notification dated 5th December, 2016 provides that if such activities are falling in the Eco-sensitive Zone, except those which are prohibited in the table appended to clause 4 of the said notification, they shall be scrutinized by the Monitoring Committee based on the actual site-specific conditions.

5. Clause 5 of the notification dated 5th December, 2016 provides for constitution of a Monitoring Committee for effective monitoring of Eco-sensitive Zones.

6. Thus, in view of the provisions contained in the notification dated 5th December, 2016, repair/re-construction/maintenance of the internal roads stretching to 45 km. in Aarey Milk Colony will require clearance from the Monitoring Committee constituted under clause 5 of the notification dated 5th December, 2016.

7. Our attention has also been drawn to the Government Resolution dated 28th June, 2023, issued by the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra whereby a sum of Rs.48.41 crores has been sanctioned for repairs/straightening etc. of the internal roads in the Aarey Colony.

8. Having regard to the report submitted by the Committee and the respective submissions made by learned counsel representing the parties, so far as construction of 45 km. internal road is concerned, we issue the following directions;

a) The stretch of 8.22 km. road shall immediately be closed as per the recommendations made by the Committee. The closure of this stretch shall be effected within 10 days from today.

b) Repair/re-construction/maintenance etc. of rest of the stretch of the internal roads shall be undertaken immediately by the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra. For the said purpose, the requisite permission or approval etc. as required under

the Government Resolution dated 9th March, 2021, issued by the Revenue and Forest Department, Government of Maharashtra as also under the notification dated 5th December, 2016 issued by the Ministry of Environment, Forest and Climate Change, Government of India shall also be obtained at the earliest. For the purpose of seeking requisite permission/approval under these notifications, the appropriate proposal by the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra shall be submitted within a period of one week from today to the respective authorities as given in these notifications.

c) The authorities under the said notifications, on receipt of the proposal from the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra, shall process and scrutinize the same and take appropriate decision within a fortnight from the date such proposal is received by them.

d) It is also directed that in case the authorities under the notifications dated 9th March, 2021 and 5th December, 2016 issued respectively by the State Government and the Government of India find that the proposals submitted by the State Government for repair/re-construction/maintenance etc. needs certain changes to make it in conformity with the requirements, immediate suggestion shall be given by these authorities within three days, which shall be complied with by the State Government and the revised proposal will accordingly be submitted by the State Government within next 7 days thereafter. Such revised proposal, if any, shall thereafter be considered and appropriate decision shall be taken regarding permission/approval etc. within further 7 days.

e) In any case, the decision regarding approval and permission etc. by the authorities under the notification dated 9th March, 2011 of the State Government and dated 5th December, 2016 of the Central Government shall be taken within four weeks from the date the proposal from the State Government is received, which will be the maximum period available to the authorities.

f) We further direct that the authorities under the notification dated 9th March, 2021 and the Monitoring Committee constituted under the notification dated 5th December, 2016 shall be guided by the overwhelming public interest of having proper internal roads in the area as also by the measures to be taken for preserving the wildlife and ecology and accordingly take decision at the earliest.

g) Once the requisite permission/approval etc. is accorded under the notifications dated 9th March, 2021 and 5th December, 2016, the work relating to repair/maintenance/construction or reconstruction of the roads shall be started immediately thereafter. If any tender processes is to be resorted to by the State Government for undertaking repair / maintenance/ reconstruction/construction of the roads, the same shall also be expedited and if it is feasible legally, short term tender notice may be issued.

9. Regarding rest of the 7 km. stretch of internal road which has been handed over to MCGM, by the next date an Affidavit shall be filed about the stage of the repair/construction.

10. We further provide that in case during this period the State Government faces any difficulty in giving effect to these directions, it will be open to it to approach the Court and seek appropriate directions.

11. Stand over to 22nd April, 2024. Matter be placed high on board."

3. In compliance of the order dated 6th March, 2024 passed by the Court, learned Addl. Government Pleader has produced before the Court a letter dated 26th April, 2024 addressed to the Executive Engineer, Public Works Special Division, Aarey, Goregaon East, Mumbai by the Member Secretary, Sanjay Gandhi National Park Environmental Sensitive Zone, Monitoring Committee-cum-Deputy Conservator of Forest, Thane. The said letter along with its English translation, as

provided by the learned Addl. Govt. Pleader, is taken on record and marked as "A" for identification. As per the said letter dated 26th April, 2024, requisite permissions for repairing/upgradation of 45 kms road in Aarey Colony have been taken from the appropriate authority. Such permissions for the project of repair of the road is, however, subject to approval of the Election Commission of India as required under the Code of Conduct imposed on account of ongoing Lok Sabha elections.

4. On our request, learned senior counsel representing the Election Commission of India Mr. Ashutosh Kumbhakoni, has produced before us a letter dated 29th April, 2024 issued by the Secretary, Election Commission of India, whereby the Commission has expressed its no objection to the proposed repairs of the road with the condition that there shall be no mention in this regard by anyone to gain political mileage anyhow. The said letter dated 29th April, 2024 of the Election Commission of India is also taken on record and marked as "B" for identification.

5. Learned counsel representing the respondent nos.4 and 5 has, however, raised his concern about mitigation measures to be taken for protection and movement of wildlife on account of repair of road. Learned Addl. Government Pleader, on the basis of instructions received from Gunjan Dighavkar, Executive Engineer, Special Projects, Public Works Division, Aarey, Goregaon, who is present in Court, however, has assured the Court that all such measures will be taken and, in fact, the Member Secretary in its permission by means of letter dated 26th April, 2024 has clearly stated that the

provisions contained in the notification dated 14th September, 2006 and the provisions contained in the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972 shall be followed.

6. In respect of upgradation of road of a length of 7 kms., the learned counsel representing the BMC Mr. Joel Carlos has brought to our notice a letter of the Conservator of Forest-cum- Director, Sanjay Gandhi National Park, Borivali, which contains certain mitigation measures for repair work of existing Aarey road. He has stated that the said measures are being followed by the BMC for repairing the 7 kms length of the road. The said letter dated 14th October, 2021 along with the guidelines in relation to mitigation measures, is also taken on record and marked as "C" for identification. The learned Addl. Govt. Pleader was tendered a copy of the said letter and the guidelines who, on the basis of instructions received from the officer present today, has stated that such measures shall also be followed so far as the repair/maintenance work of the 42 kms road which is being undertaken by the Animal and Husbandry Department.

7. The learned Addl. Govt. Pleader has also assured the Court, on the basis of instructions, that out of 42 kms stretch of the road being repaired and maintained by the Animal and Husbandry Department, construction of 1.5 km stretch, which falls within the residential area, shall be prioritized.

8. In view of the aforesaid, we do not intend to carry on with the proceedings of this writ petition, which is disposed of in terms of the observations made and statements recorded above.

9. All pending applications are also stand disposed of.

10. We, however, observe that the repair/maintenance work of the road shall be completed within the minimum possible period by following all the relevant procedures. Learned Addl. Govt. Pleader, on the basis of instructions, assures the Court that all endeavours shall be made to complete the repair/maintenance of the road to be undertaken by the Animal and Husbandry Department within two years.

11. Mr. Joel Carlos, on the basis of instructions received from Mr. Rajesh Yadav, Assistant Engineer (Roads), P/South Ward, BMC, who is present in Court, also assures the Court that the entire stretch of 7 kms of road being repaired and maintained by the BMC, shall be completed by January, 2025. We expect with complete trust and faith in the officers of the Department of Animal and Husbandry and other connected departments and also those of the BMC that they shall abide by the assurance given to the Court from time to time in letter and spirit.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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