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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2390 OF 2023**

Brihanmumbai Municipal Corporation)
A Body constituted under the MMC Act, 1888)
through Chief Engineer (S.W.M.) Project)
having office at 3rd, 4th, Floor, F.P. No.92, TPS-3)
Municipal Primary School, Bldg., Bai)
Padmabai Thakkar Marg, Kotwadi, Mahim,)
(Shivaji Park), Mahim, Mumbai – 16) ...Petitioner.

V/s

- 1] **Union of India, Through the Ministry**)
of Environment Forest & Climate Change)
Paryavaran Bhavan, New Delhi-110002)
Also at:)
Branch Secretariat, 2nd Floor, Ayakar Bhavan,)
New Marine Lines, Mumbai – 400020)
)
- 2] **Maharashtra Coastal Zone Management**)
Authority)
Through its Chairman, the Principal Secretary,)
Environment Department, 2nd Floor, Room)
No.217, Annex Building, Mantralaya,)
Mumbai – 400 032.)
)
- 3] **State of Maharashtra, Environment Department**)
through the Office of Government Pleader,)
Bombay High Court, PWD Building, Fort,)
Mumbai – 400001.)
)
- 4] **Additional Principal Chief Conservator of Forest**)
Mangroves Cell, Mumbai)
through the Office of Government Pleader,)
Bombay High Court, PWD Building, Fort,)
Mumbai – 400001)
)
- 5] **Additional Principal Chief Conservator of Forest**)

and Nodal Officer (Forest Conservation Act, 1980),)
Nagpur

through the Office of Government Pleader, Bombay)
High Court, PWD Building, Fort, Mumbai-400001)

6] **State Level Environment Impact Assessment**)
Authority)

through the Office of Government Pleader,)
Bombay High Court, PWD Building,)
Fort, Mumbai-400001)

7] **Bombay Environment Action Group**)

80, 2nd Floor, Empire Building, CST Area,)
Mumbai – 400001)

) ...Respondents. -

Mr. Saket Mone i/b Ms. Shilpa Redkar for the Petitioner/BMC.

Ms. Savita Ganoo i/b Ms. Priyanka Chavan for Respondent No.1.

Ms. Jaya Bagwe for Respondent 2 (MCZMA) and for Respondent No.6
(SEIAA).

Ms. P.H. Kantharia, Government Pleader a/w Mr. Manish Upadhyae,
AGP for Respondent Nos. 3 to 5.

Mr. Kevin Johnson i/b M/s Mehta & Girdharlal for Respondent No.7.

**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 learned Counsel
for the parties.

2] The Petitioner, a Planning Authority constituted under the
provisions of the Mumbai Municipal Corporation Act, 1888 has

preferred this Writ Petition, seeking leave to carry out the work of laying of 3.5 kilometers long pipeline along with the pump room to carry secondary treated sewage from Ghatkopar pumping station to the main processing plant at Deonar for the development of 600 TPD Waste to Energy (WTE) Project at Deonar, Mumbai on Design, Build and Operate (DBO) basis in view of the directions issued in Public Interest Litigation No.87 of 2006 (*Bombay Environmental Action Group and another vs. The State of Maharashtra and others*) along with connected matters decided on 17/09/2018. Leave of the Court has been sought by urging that aforesaid project is of public importance.

3] According to the learned Counsel for the Petitioner, it is necessary to carry out the work of laying down pipeline for carrying secondary treated sewage and this project is being carried out with a view to ensure compliance of the requirement of Solid Waste Management Rules, 2016. The said project is expected to generate about 4 MW of power and is treated as a priority public utility project by the Petitioner. In that regard, Petitioner has obtained various statutory permissions and approvals. On 22/05/2019, the Additional Principal Chief Conservator of Forest and Nodal Officer, Maharashtra had addressed

communication to the Ministry of Environment, Forest and Climate Change, seeking its approval under Section 2 of the Forest Conservation Act, 1980 (for short “the Act of 1980”) for diversion of 0.0450 hectares of affected mangrove land in favour of the Petitioner. The same was necessary for undertaking the aforesaid project. On 14/06/2019, the Ministry of Environment, Forest and Climate Change granted “in principle” approval under Section 2 of the Act of 1980, subject to compliance of the conditions mentioned therein. One of the conditions laid down was of compensatory afforestation to the extent of 10 times number of mangrove trees to be felled. According to the Petitioner, three mangrove trees are proposed to be felled during the course of execution of the project and in its place 4444 mangrove trees over 1 hectare of forest land would be planted as compensatory afforestation. Thereafter, the Maharashtra Coastal Zone Authority (MCZA) in its 154th meeting held on 15/04/2021 after deliberation has recommended proposal from CRZ point of view to the Ministry of Environment, Forest and Climate Change, subject to various conditions. On 05/04/2022, the Thane Creek Flamingo Sanctuary Eco Sensitive Zone Monitoring Committee held its meeting and the application seeking its approval came to be recommended subject to the Petitioner

defraying 2% of the project cost as “Conservation and Protection Fund” for conservation and protection of Mangroves and Marine Biodiversity. On the strength of these statutory permissions and approvals, the Petitioner has sought leave of the Court in terms of directions contained in paragraph 83 (viii) of the judgment in *Bombay Environmental Action Group* (supra).

4] On 04/01/2024 when the Writ Petition was heard, it was submitted by the learned Counsel appearing for Respondent No.7 that in the Writ Petition, leave had been sought not only to lay down 3.5 kilometers long pipeline but also a pump room for carrying secondary treated waste. In the proposal submitted by the Petitioner, reference was made only to the 3.5 kilometers long pipeline and the pump room was not mentioned. Accordingly, time was granted to the learned Counsel for the Petitioner to seek instructions in that regard. Today the learned Counsel for the Petitioner has tendered an affidavit sworn by Mr. Ajay Ramesh Rane, Executive Engineer (SWM-Project) on behalf of the Municipal Corporation in which it is stated that the pump room indicated in the project would be constructed inside the Ghatkopar pumping station lagoon and that the said area did not fall within the

Buffer Zone of 50 meters relating to mangroves. On this basis, it is urged that the activity of constructing pumping room can also be approved. The learned Counsel for the Petitioner further submitted that the requisite amount to the extent of 2% as directed to be deposited by the Monitoring Committee on 05/04/2022 has also been deposited.

5] In the aforesaid backdrop, we have heard the learned Counsel for the parties and we have perused the documents on record. Undoubtedly, the project in question is in public interest and has been treated as a priority public utility project that is sought to be carried out with a view to comply with the requirement of the Solid Waste Management Rules 2016. This aspect is not doubted by any of the authorities concerned. We find that all requisite permissions/approvals have been duly obtained from the concerned authorities. The terms and conditions imposed while granting such permissions/approvals would be binding on the Petitioner when it undertakes the exercise of completing the project. As regards the three mangrove trees to be felled, the condition with regard to compensatory afforestation has been imposed and the said condition is binding on the Petitioner. In

the aforesaid backdrop, therefore, we find that there is no impediment in granting leave as sought in the Writ Petition especially since all requisite permissions and approvals have been granted.

6] In that view of the matter, for the reasons stated hereinabove, we find that the Petitioner is entitled to leave as sought by it 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 carry out work of ‘Laying of 3.5 km long pipeline alongwith pump room for carrying secondary treated sewage from Ghatkopar pumping station to main processing plant at Deonar’ for the ‘Development of 600 TPD Waste to Energy (WTE) Project at Deonar, Mumbai on DBO basis’.”

The Petitioner shall scrupulously comply with all the terms and conditions that have been imposed in the statutory approvals granted by the competent authorities.

7] Rule is made absolute in the aforesaid terms with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]