



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

WRIT PETITION NO. 3156 OF 2024

Mayura Co-op. Housing Society Ltd.
Situated at CTS no.305/6,
Govind Pariyani Lane, Off. Marve Road,
Malad (W), Mumbai – 400 064

... Petitioner

Versus

1. The Union of India
Through Ministry of Environment and Forests
& Climate Change, Paryavaran Bhavan,
CGO Complex, Lodi Estate,
New Delhi - 110 003
Also at: Aayakar Bhavan, 2nd Floor,
Maharashi Karve Road,
New Marine Lines, Mumbai-020
2. Maharashtra Coastal Zone
Management Authority
Through the Additional Chief Secretary
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
3. The State of Maharashtra
Through Government Pleader,
High Court, Mumbai
4. Chief Conservator of Forest
(Wildlife), Secretary of the State Level
Steering Committee, for Management of
Mangroves and Coral Reefs having Office at
Dr. B. Ambedkar Bhavan, MECL,
Seminary Hills, Civil Lines,
Nagpur – 440 001
5. State Environmental Impact
Assessment Authority,
Maharashtra

Through the Office of Government Pleader
Bombay High Court, PWD Building, Fort
Mumbai 400 001

6. Municipal Corporation of Greater Mumbai
A Statutory Corporation incorporate under
The BMC Act, 1888 and having its address
Municipal Head Office, 5th Floor, Extn.,
Building Mahapalika Marg, Fort,
Mumbai – 400 001.

.... Respondents

Mr. Pritesh Burad a/w Mrs. Samita Vaviya, Mr. Mohd.,
Mr. Sahid, Mr. Chagan Thakare i/b. Pritesh Burad Associates,
for the Petitioner.

Mr. Shreeram Shirsat a/w Mr. Dashrath A. Dube, Mr. Rui
Rodrigues, for Respondent No.1.

Ms. Jaya Bagwe, for Respondent No.2 (MCZMA)

Smt. P. H. Kantharia, Government Pleader a/w Smt. Anupama
Pawar, AGP, for Respondent Nos.3 and 4.

Ms. Chaitalee Deochake i/b. Ms. Komal Punjabi, for
Respondent No.6-BMC.

Mr. Darius Khambata, Senior Advocate a/w Mr. Karan Rukhana
i/b. Dastur Kalambi & Associates for Noticee.

***CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.***

DATE : 21st APRIL, 2025

ORDER (PER M. S. KARNIK, J.) :

1. This Petition under Article 226 of the Constitution
of India is filed by Mayura Co-op. Housing Society Ltd. for a

direction to the Respondent authorities to permit the Petitioner to carry out construction to redevelop the vacant plot in view of the great need of the project in consonance with the finding of this Court recorded at paragraph 83 (viii) of the judgement and order dated 17th September 2018 in PIL No.87 of 2006.

2. Briefly the facts are as follows :-

The Petitioner is a Co-operative Housing Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 situated at CTS No.305/6, Govind Pariyani Lane, Off. Marve Road, Malad (West), Mumbai. The building of the Petitioner -Society ('Society' for short) constructed in the year 1980 comprised of Ground + 3 floors and part 4th floor consisting of 9 residential units which was duly owned and occupied by the members of the Society till the time the building was in existence. The OC was granted on 1st September 1982. The Petitioner wants permission to carry out the work of its redevelopment project being proposed to be developed for the members of the Society in accordance with Development Control Regulations ('DCR' for short) 2034.

It is the contention that if the building is not redeveloped, the members of the Society will be homeless. As the building was in a dilapidated condition the same came to be demolished around October 2020.

3. The members of the Society appointed a developer - M/s. REFACE BUILDCON LLP ('developer' for short) to undertake the redevelopment of the project of the residential building on the said plot. A proposal for redevelopment was submitted by the Architect. Since some portion of the land was affected by Coastal Regulation Zone ('CRZ' for short), the proposal submitted to the Respondent No.6 - Municipal Corporation of Greater Mumbai ('Corporation' for short) was forwarded to the Respondent No.2 - Maharashtra Coastal Zone Management Authority ('MCZMA' for short) seeking their approval to the proposal submitted on behalf of the Petitioner. After submission of the proposal vide communication dated 1st April 2021 and other related documents like IRS plan for CRZ and Mumbai Pollution Control Board ('MPCB' for short) minutes as required by Respondent No.3, the Petitioner was given a hearing on 30th November

2021. The developer as the agent of the Society gave a presentation as to how the project would be redeveloped. The developer underscored the fact that the redevelopment is not going to cause any destruction to any natural habitat. The MCZMA was requested to grant its approval.

4. The proposal of the Society was discussed by the MCZMA in its 159th meeting held on 6th June 2022 at Agenda Item No.15. The Society approached the Institute of Remote Sensing (IRS), Chennai for preparing of Local Level Coastal Regulation Zone Map for the said plot. The survey was conducted in December 2020 and the report dated 28th October 2022 was submitted by the IRS, Chennai.

5. Learned counsel for the Petitioner submitted that there is a garden and access road between the mangrove and the redevelopment project. The location plan issued by IRS, Chennai shows that the portion highlighted in yellow colour is the plot of the Society. Towards the western side of the plot is an access road and towards the western side of the access road is a garden marked as "Girdhar Park Society Garden".

The nala wall is highlighted in blue colour line and towards the western side of the nala wall are the mangroves.

6. According to learned counsel for the Petitioner, the project being a redevelopment project of old dilapidated building is permissible under the provisions of the CRZ Notification dated 6th January 2011. Clause 3 (xi) of the Notification prohibits construction activities in CRZ-I except those specified in paragraph 8 of the Notification. Clause 8 (V) (iii)(c) provides for redevelopment of dilapidated, cessed and unsafe buildings.

7. The proposal of the Petitioner was considered by the MCZMA in its 159th meeting held on 6th June 2022. The Petitioner was informed that the prior leave of this court is required for the redevelopment project as the project partly falls within the 50 meters buffer zone of mangroves. The decision of this Court dated 17th September 2018 in Public Interest Litigation ('PIL') No.87 of 2006 provides that construction activities is prohibited in 50 meters buffer zone.

8. Learned counsel for the Petitioner submitted that the building of the Society was in existence at the time of passing of the order dated 17th September 2018 and the proposed new building is to be constructed on the same portion where it existed prior to its demolition. The existence of the building has not caused any harm to the mangroves situated in the vicinity. The proposal for redevelopment demonstrates that all measures in redevelopment on the said plot will be taken in such a manner that it causes no harm and danger to the mangroves. No mangrove destruction is contemplated in the execution of the proposed project of the Petitioner.

9. Learned counsel Mr. Shreeram Shirsat appearing for the Respondent No.1 – The Union of India through Ministry of Environment, Forest and Climate Change invited our attention to the reply affidavit filed on behalf of Respondent No.1. Mr. Shirsat submitted that in exercise of the powers conferred by sub-section (1) and clause (V) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rules of the Environment (Protection) Rules, 1986, Ministry of Environment and Forest

had notified the Coastal Regulation Zone Notification, 1991 on 19th February, 1991. In supersession of the CRZ Notification 1991, the Coastal Regulation Zone Notification, 2011 was notified on 6th January 2011, for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches.

10. Mr. Shirsat further submitted that in supersession of the CRZ Notification, 2011, the Coastal Regulation Zone Notification, 2019 was notified on 18th January, 2019, having specific focus on conservation and management plans of Ecologically Sensitive Areas (ESAs) which did not feature in the CRZ Notification, 2011. It is pointed out that as per paragraph 6 (i) of the CRZ Notification, 2019, "All coastal States and Union territory administrations shall revise or update their respective coastal zone management plan (CZMP) framed under CRZ Notification, 2011 number S.O.19(E), dated 6th January, 2011, as per provisions of this notification and to submit before the Ministry of Environment,

Forest and Climate Change for approval at the earliest and all the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under this notification and until and unless the CZMPs is so revised or updated, provisions of this notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects.” It is submitted that as on date, CZMP as per CRZ Notification, 2019 have been approved for the State of Odisha, Karnataka, Kerala and Maharashtra.

11. It is further submitted that CZMP for the State of Maharashtra was approved in two phases i.e., for the Districts of Mumbai City and Mumbai Sub-urban, it was approved on 29.09.2021 and for the Districts of Raigad, Ratnagiri, Sindhudurg, Thane and Palghar, it was approved on 25.08.2023. The ICRZP as per ICRZ Notification, 2019 has been approved for Great Nicobar Island and Little Andaman Island. That, for the rest of the Coastal States, CZMP/ICRZP as per CRZ Notification, 2011 and IPZ Notification, 2011 are

presently applicable. Our attention is invited to Para 7(i)(a) of CRZ Notification 2011 Mangroves which says that in case mangrove area is more than 1000 sq.mts, a buffer of 50 meters along the mangroves shall be provided.

12. It is then pointed out that Para 8(V)(c) of the CRZ Notification of 2011 deals with redevelopment of dilapidated, cessed and unsafe buildings in Greater Mumbai within CRZ area. The relevant portion of Para 8(V)(c) of the CRZ Notification 2011 reads as under :-

"1. In the Greater Mumbai, there are, also a large number of old and dilapidated, cessed and unsafe buildings in the CRZ areas and due to their age these structures are extremely vulnerable and disaster prone and therefore there is an urgent need for the redevelopment or reconstruction of these identified buildings.

2. These projects shall be taken up subject to the following conditions and safeguards :

i. such redevelopment or reconstruction projects as identified on the date of issue of this notification shall be allowed to be taken up involving the owners of these buildings either above or with private developers in accordance with the prevailing Regulation, directly or through joint ventures or through other similar models.

ii. the Floor Space Index or Floor Area Ratio for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on which the project is granted approval by the competent authority."

13. It is then submitted that CZMP as per CRZ Notification, 2019 is applicable in the State of Maharashtra. That Para 2.1.1. (a) (i) CRZ-I A of the CRZ Notification, 2019 states as follows:

"...(i) Mangroves (in case mangrove area is more than 1000 square meters, a buffer of 50 meters along the mangroves shall be provided and such area shall also constitute CRZ-I A); ..."

14. It is submitted that as per para 5.1.1. of CRZ Notification, 2019:

"...5.1.1. CRZ-IA

(ii) In the mangrove buffer, only such activities shall be permitted like laying of pipelines, transmission lines, conveyance systems or mechanisms and construction of road on stilts, etc. that are required for public utilities.."

15. Referring to para 5.2.iv of CRZ Notification, 2019 it is submitted that reconstruction of authorized buildings shall be permitted in CRZ II areas. The relevant portion is reproduced herein :

"...(iv) Reconstruction of authorised buildings shall be permitted, without change in present land use, subject to the local town and country planning regulations as applicable from time to time, and the norms for the Floor Space Index or Floor Area Ratio, prevailing as on the date of publication of this notification in the official Gazette and in the event that there is a need for amendment of the FSI after the said date of this notification, the Urban Local Body or State Government or Union territory Administration shall approach the Ministry of Environment, Forest and Climate Change through the concerned State Coastal Zone Management

Authority (SCZMA) or Union Territory Coastal Zone Management Authority, as the case may be and the CZMA shall forward the proposal to the National Coastal Zone Management Authority (NCZMA) with its views in the matter, and the NCZMA shall thereafter examine various aspects like availability of public amenities, environmental protection measures etc., and take a suitable decision on the proposal and it shall be the responsibility of the concerned Town Planning Authority to ensure that the Solid Wastes are handled as per respective Solid Waste Management Rules and no untreated sewage is discharged on to the coast or coastal waters..."

16. It is also significant to refer to the amendment i.e., S.O.5495(E) dated 24th November, 2022, para 7 of the CRZ Notification, 2019 that deals with delegation with respect to CRZ clearance for permissible and regulated activities reads as follows:

"(i) All permitted or regulated project activities attracting the provisions of this notification shall be required to obtain CRZ Clearance prior to their commencement.

(ii) All development activities or projects in CRZ-I and CRZ-IV areas which are regulated or permissible as per this notification, shall be dealt with by the Central Government for Coastal Regulation Zone Clearance, based on the recommendation of the concerned Coastal Zone Management Authority with the following exceptions, namely:-

Standalone jetties, Salt works, Slipways, Temporary Structures and Erosion Control Measures (like Bunds, Seawall, Groynes, Breakwaters, Submerged reef, Sand Nourishments, etc) which shall be dealt by concerned Coastal Zone Management Authority..."

17. It is then pointed out by Mr. Shirsat that Annexure-I Para 1.1.1 (ii)(b) deals with Conservation,

Protection and Management Framework for Ecologically Sensitive Areas which states that "... (b) Mangroves in private land will not require a buffer zone."

18. At this stage it will be relevant to reproduce the directions issued by this Court vide order dated 17th September 2018 in PIL No.87 of 2006 which read thus :-

"...(I) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra;

(II) Dumping of rubble/garbage/solid waste on the mangrove areas shall be stopped forthwith;

(III) Regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 metres on all sides of all mangroves areas shall be forthwith stopped. The area of 50 meters shall be kept free of construction except construction of a compound wall/fencing for its protection;

(IV) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves. All authorities including the Planning Authorities shall note that all mangroves lands irrespective of its area will fall in CRZI as per both the CRZ notifications of 1991 and 2011. In case of all mangrove areas of 1000 sq. meter or more, a buffer zone of 50 meters along the mangroves will also be a part of CRZI area. Though buffer zone of 50 meters in case of mangroves area of less than 1000 meters will not be a part of CRZI, it will be subject to above restrictions specified in clause III above;..."

19. The MCZMA vide its letter dated 8th June 2022 has recorded as follows :-

"...5. As per approved CZMP under CRZ Notification 2011, the plot under reference is partly falls in CRZ-II area and partly falls in 5m buffer zone. It is situated on landward side of existing road. PP has submitted the CRZ map in 1:4000 scale prepared by IRS, Chennai.

6. As per the map and report, out of total plot area 381.20 sqm, the plot area situated on 50 m mangrove buffer zone is 240.587 Sqm. and CRZ II portion of the plot is 140.63 Sqm.

7. The authority noted that the major portion (i.e. plot area admeasuring 240.57 Sqm, out of total plot area 381.20 Sqm) of the project site is situated in 50 m mangrove buffer zone area. As per the Hon'ble High Court order dated 17th Sep. 2018 in PIL 87/2006, construction is prohibited in 50 m mangrove buffer zone area.

8. The Authority after deliberation decided that considering the above said Hon'ble High Court order dated 17th Sep, 2018 in PIL 87/2006, it is requested to obtain prior High Court approval first for the proposal. According the matter was deferred..."

20. Mr. Shirsat submitted that therefore no construction activity can be permitted in CRZ-I area.

21. Mr. Darius Khambata, learned Senior Advocate for Bombay Environmental Action Group (Noticee) relying on the various CRZ Notifications made submissions on the environmental importance of mangroves and the 50 meters buffer zone. Our attention is then invited to the mangrove judgment (PIL No.87 of 2006) and the observations made therein. In the submission of Mr. Khambata, learned Senior

Advocate, in the context of public trust doctrine, it is only the State that can apply for this Court's permission to carry out the activities. He submits that this Court did not extend this courtesy to private individual or entities, such as the Petitioner. It is submitted that the plain language of the 2019 Notification does not allow redevelopment in CRZ-I (A).

22. Having considered the materials on record and the submissions made in context of the location of the plot in question we find that it is not clear as to what portion of the plot is affected by the CRZ Notification. We find that according to the MCZMA, major portion i.e. plot admeasuring 240.57 sq.mtrs., out of total plot area 381.20 sq.mtrs. of the project site is situated in 50 meters mangrove buffer zone area and hence according to the MCZMA, as per the 'mangrove judgment, construction is prohibited in 50 meters mangrove buffer zone area. We have perused the affidavit-in-reply filed on behalf of the Respondent No.2 - MCZMA and heard learned counsel appearing on behalf of the MCZMA. In paragraph 8 the MCZMA has taken a stand that as per approved Coastal Zone Management Plan under CRZ Notification, 2011 the plot under reference partly falls in CRZ-II and partly falls in 50

meter mangrove buffer zone and it is situated on landward side of exiting road. It is then stated that the Petitioner has submitted the CRZ map in 1:4000 scale made by IRS, Chennai and as per the CRZ map and report, out of total plot area 381.20 sq.mtrs., the plot area situated in 50 meters mangroves buffer zone is 240.57 sq.mtrs. and CRZ-II portion of the plot is 140.63 sq.mtrs. The MCZMA therefore noted that as the major portion of the plot is situated in 50 meter mangroves buffer zone hence as per the mangrove judgment, the construction is prohibited in 50 meter mangroves buffer zone area. The MCZMA however noted that the said building has been constructed prior to the year 1980 which is prior to the issuance of the CRZ Notification, 1991.

23. The Society filed an affidavit in rejoinder to the reply of Respondent No.2 - MCZMA. It is pointed out that during the pendency of this Petition, vide email dated 23rd February 2024, Respondent No.3 - The State of Maharashtra directed the Office of Divisional Forest Officer, Mumbai Mangrove Conservation Unit ('MMCU' for short), Kurla to carry out site inspection and provide a report. Vide letter

dated 23rd February 2024, Forest Range Officer, MMCU sent a letter to the Society for inspection and the inspection was conducted on 27th February 2024. After duly inspecting the said plot of the Society, the MMCU submitted an inspection report dated 29th February 2024 to the Divisional Forest Officer, MMCU. The salient observations of the said report have some bearing on the controversy and hence need to be stated. The same read thus :-

"a. The site is at CTS no. 305/6 at Valnai, Marve Rd, Malad West, Mumbai;

b. 4 GPS readings were taken of the site from all 4 sides; only (01) one reading lies within 50 mtrs buffer zone from mangroves whereas the remaining 3 GPS readings show the site as being outside the 50 mtrs buffer zone. Therefore, it is evident that the mangroves are at distance of more than 50 mtrs from three sides of the said Plot of the Petitioner Society.

c. It is also recorded in the Inspection Report that there are no Mangroves on-site as can be seen in column 9 of the Annexure of Mangrove Cell report.

d. The site is not in possession of the Forest Department, it is privately owned."

24. Relying on this report, the Society submitted that the said plot does not fall within 50 meters buffer zone.

25. Having regard to this report of the Range Forest Officer, MMCU, it appears that there is some discrepancy in

the report of the MCZMA which reveals that major portion of the plot is in the buffer zone; whereas the report of the Range Forest Officer, MMCU says that only a small portion of the plot is in the buffer zone. The Society submits that the construction will be undertaken only on the plot which does not fall within the buffer zone for in any case if any construction activity is to be undertaken in the buffer zone, the permission of this Court will have to be obtained.

26. In our opinion there is a discrepancy reported as regards the area of the plot which is falling in the buffer zone and hence the reports need to be reconciled. In these circumstances we are inclined to direct the Respondent No.2 MCZMA to cause a fresh inspection of the location of the plot. Such inspection be carried out in the presence of the representatives of the Society and all concerned. Based on such inspection about the location of the plot and upon verifying whether some portion of the plot falls within the 50 meters buffer zone, a report be prepared. Based on this report the proposal made by the Society for redevelopment seeking the approval of the Respondent No.2 be considered

afresh and the decision be communicated to the Society. Let this exercise be completed within a period of six weeks from the date of uploading of this order. Necessary charges for such inspection to be borne by the Society. It is made clear that we have not expressed any opinion on the merits of the contentions raised by learned counsel for the parties. The proposal be considered afresh by the Respondent No.2 - MCZMA without being influenced by the contents of the MCZMA letter dated 8th June 2022.

27. The Writ Petition is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)