

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.4209 OF 2024**

Brihanmumbai Municipal Corporation	]	..	Petitioner
vs.			
Union of India & Ors.	]	..	Respondents

Mr.Saket Mone a/w Ms.Oorja Dhond, Ms.Chaitalee Deochake and Ms.Anchita Nair i/b Ms.Komal R. Punjabi for the Petitioner.

Ms.Savita Ganoo a/w Ms.Priyanka Chavan for Respondent No.1-UOI.

Ms.Jaya Bagwe for Respondent No.2.

Ms.P.H. Kantharia, GP a/w Ms.Jyoti Chavan, Addl. GP for Respondent Nos.3 and 4.

Mr.Nirman Sharma a/w Ms.Anjali Ghelani i/b M/s.Mehta & Girdharlal for Respondent No.6.

**CORAM : ALOK ARADHE, C.J. &
BHARATI DANGRE, J.**

DATE : 7th FEBRUARY, 2025.

ORDER (PER BHARATI DANGRE, J) :

1. Brihanmumbai Municipal Corporation has filed the Writ Petition under Article 226 of the Constitution of India, seeking direction to Respondent Authorities to permit it to carry out construction, widening and training of RCC retaining wall (Storm Water Drain) at discharge point at NL Complex Nall at Dahisar (West) in R/North Ward, for flood

management, as the said structure is to be developed for protecting the area from dumping of debris and flood during Monsoon season.

2. Heard the learned counsel Mr.Saket Mone for the Petitioner, Ms.Savita Ganoo for Respondent No.1-Union of India, Ms.Poornima Kantharia, the learned Government Pleader for Respondent Nos.3 and 4, Ms.Jaya Bagwe for Respondent No.2 and Mr.Nirman Sharma for Respondent No.6.

3. By consent of parties, we issue 'Rule'. Rule is made returnable forthwith.

4. In the wake of the direction of this Court issued in PIL No.87/2006 in form of Para 83(viii) of the Judgment and Order dated 17/09/2018, the Petitioner after seeking approval of the project from Maharashtra Coastal Zone Management Authority (MCZMA) i.e. Respondent No.2, would submit that this Court should grant approval to its project, which is in the public interest.

Our attention is invited to the Minutes of 162nd Meeting of the MCZMA held on 07/12/2022, which has highlighted the purpose of the project and its necessity in public interest.

5. The learned counsel for Respondent No.6 Mr.Nirman Sharma has invited our attention to the Minutes of 162nd Meeting of the MCZMA held on 07/12/2022, which has noted as below :-

"The Authority noted that as per para 7(iii) of the CRZ Notification,2019:
"For all other permissible and regulated activities as per this Notification, which fall purely in CRZ-II areas, the CRZ clearance shall be considered by the concerned Coastal Zone Management Authority and such projects in CRZ -II and III, which also happen to be traversing through CRZ-I or CRZ-IV areas or both, CRZ clearance shall, however be considered only by the Ministry of Environment, Forest and Climate Change, concerned Coastal Zone Management Authority" based on recommendations of the concerned Coastal Zone Management Authority."

Decision:

In the light of above, the Authority after deliberation decided to grant the clearance under CRZ Notification, 2019 subject to following conditions:

1. The proposed construction should be carried out strictly as per the provisions of CRZ Notification, 2019 (as amended from time to time) and guidelines/clarifications given by MoEF from time to time.
2. Prior High Court permission should be obtained, since part of proposed work is situated within 50 m mangrove buffer zone area.
3. All other required permission from different statutory authorities should be obtained prior to commencement of work."

6. It is urged before us that since the proposed project is situated within 50 meters of mangrove buffer zone area, and it falls within CRZ-1, as per the Notification dated 18/01/2019, which covers a buffer of 50 meters along the mangroves.

While raising objection to the project it is pointed out to us that after obtaining the approval from the MCZMA, neither State Environment Impact Assessment Authority (SEIAA) nor the Respondent No.1- Ministry of Environment Forest and Climate Change (MOEFCC), has been approached.

Our attention is invited to clause 7 (iii) of the Notification dated 18/01/2019 issued by Respondent No.1, which reads thus :-

“7. CRZ clearance for permissible and regulated activities- Delegation:

(iii) For all other permissible and regulated activities as per this notification, which fall purely in CRZ-II and CRZ-III areas, the CRZ clearance shall be considered by the concerned Coastal Zone Management Authority and such projects in CRZ –II and III, which also happen to be traversing through CRZ– I or CRZ-IV areas or both, CRZ clearance shall, however be considered only by the Ministry of Environment, Forest and Climate Change, based on recommendations of the concerned Coastal Zone Management Authority.”

7. The learned counsel Ms.Jaya Bagwe representing MCZMA however, submit that the the observation in the Minutes of Meeting is based on the report of the Mangroves Cell, but when we specifically inquired with her as to whether MCZMA has ever disputed the said report, her answer in specific is in the negative.

8. MCZMA as well as the Respondent Authorities who are responsible for protection of environment must ensure strict compliance of the Notifications issued by the Ministry of Environment and Forest, with an intention to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in coastal area, sea level rise due to global warming and since the Notification has imposed restrictions on the activities prescribed in the Coastal Regulation Zone, there must be

strict adherence to the said directions.

The Division Bench of this Court in PIL No.87/2006 had taken cognizance of the issue pertaining to “Mangroves” at the instance of the Respondent No.6, Society and has laid down guidelines for its protection and conservation and has specifically directed that the Authorities shall strictly follow the mandate prescribed by the Ministry of Environment and Forest and shall not allow any deviation, so that the mangroves are protected.

9. Once it is noted that the project of the present Petitioner falls within 50 meters of mangroves i.e. the buffer zone and, therefore, in CRZ-I, we deem it appropriate to direct the Petitioner to obtain necessary approvals from SEIAA or MOEF&CC as contemplated under the CRZ Notification dated 06/01/2011 as amended from time to time.

10. Since the project cannot receive our approval in the wake of the aforesaid deficiency, by reserving the liberty to the Petitioner to take appropriate steps as per law, the Writ Petition is disposed off.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)