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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14630 OF 2022

City and Industrial Development]
Corporation of Maharashtra Ltd.,]
CIDCO Bhavan, C.B.D. Belapur]
Navi Mumbai – 400 614] ...Petitioner.

V/s

1] The State of Maharashtra]
Through the office of Government]
Pleader, High Court, Mumbai]

2] The Union of India through the]
Ministry of Environment and Forests]
(MOEF), Parayavaran Bhavan, CGO]
Complex Lodi Estates, New Delhi-110003]

3] The Coastal Zone Management]
Authority having its office at]
Kalpataru Point, Sion Circle, Sion(E)]
Mumbai – 400 022]

4] Chief Conservator of Forest(Wildlife),]
Secretary of State Level Steering]
Committee for Management of]
mangroves & coral reefs having his]
office at Dr. B.R. Ambedkar Bhavan,]
MECL, Seminary Hills, Civil Lines,]
Nagpur – 440 001]

5] Bombay Environment Action Group]
Registered Society having address at]
203 Rajendra Chambers 19, Manabhai]
Lane, Fort, Mumbai]

6] Deputy Conservator of Forest,]
Police Line, Alibaug, Maharashtra-402201]Respondents.

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

DATE: 16th 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 - CIDCO is a Government Company incorporated under the Companies Act, 1956. It has been appointed as the New Town Development Authority for Navi Mumbai under Section 113 (3A) of the Maharashtra Regional Town Planning Act, 1966. The Petitioner seeks leave to undertake necessary work including permission to cut mangroves to enable it to start the work of constructing coastal road from Amra Marg to MTHL junction including Airport Link at Navi Mumbai as per the statutory approvals granted to it. By urging that the aforesaid project is of public importance, leave of the Court is sought 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*) alongwith connected matters decided on 17/09/2018.

3] The prayer made by the Petitioner was considered by a co-ordinate Bench and by the order dated 25/04/2023 it was found that the manner in which the Maharashtra Coastal Zone Management Authority – MCZMA as well as the State Level Environment Impact Assessment Authority – SLEIAA had granted their respective clearances was not satisfactory. It was noted that these clearances had been granted prior to the judgment in *Bombay Environmental Action Group* (supra) and hence it was directed that the proposal submitted by the Petitioner be re-considered in the light of the directions issued. The aspect of cutting of mangroves was also directed to be gone into.

4] Pursuant to this order, the Petitioner on 10/07/2023 submitted a fresh proposal for the proposed coastal road from Amra Marg to JNPT at Ulwe Node, Navi Mumbai. MCZMA in its 168th meeting that was held on 10/08/2023 considered the matter and after deliberation, decided to recommend the said proposal from CRZ point of view to the Ministry of Environment, Forest and Climate Change - MoEFCC subject to complying with various conditions. These conditions included obtaining a no objection from the Mangroves Cell alongwith

undertaking compensatory afforestation. On 23/08/2023 its recommendation was accordingly forwarded to the MoEFCC.

5] On 12/09/2023, the Department of Fisheries, State Government issued a communication to the Chief Engineer of CIDCO indicating issuance of no objection certificate for undertaking the aforesaid work. Thereafter on 26/09/2023, a meeting of the Expert Appraisal Committee was held, which, after due deliberations, recommended the proposal made by CIDCO for CRZ clearance subject to various conditions which included the stipulation that the road across CRZ-1A and CRZ-1B areas should be on stilts as per CRZ Notification, 2011. Thereafter, the MoEFCC considered the said proposal and proceeded to recommend the same. By filing an additional affidavit of the Assistant Conservator of Forest on 10/01/2024, it has been stated that the subject area comprising of 32.6921 hectares had been surveyed and 3728 trees/plants had been identified for being felled while undertaking the project. It has been further stated that subject to such survey, permission to fell the trees could be granted. Reference is made to the communication dated 08/01/2024 issued by the the Ministry of Environment, Forest and Climate Change to the Principal Secretary

(Forest) conveying “final approval” under Section 2(i) of the Forest (Conservation) Act, 1980 for diversion of 32.6921 hectares.

6] We have heard the learned Counsel for the parties. Perusal of the documentary material on record indicates that pursuant to the order dated 25/04/2023, the exercise with regard to seeking approval from the statutory authorities has been undertaken by CIDCO vide its fresh proposal dated 10/07/2023. This proposal has been moved pursuant to the directions issued by MCZMA in its meeting held on 18/05/2023. Alongwith the said proposal, all requisite information has been furnished. The same indicates that about 3728 trees at the mangroves would be required to be felled and there would be reclamation works also. All these aspects are shown to have been considered by the MCZMA in its meeting held on 10/08/2023. The importance of the public infrastructure project has been noted by the MCZMA and by imposing various conditions, recommendation has been made from CRZ point of view. The conditions include obtaining no objection from Mangrove Cell as well as the aspect of compensatory afforestation. Based on the aforesaid, CIDCO has proceeded to submit its action plan to the MoEFCC on 29/08/2023. It is seen that Indian Institute of

Technology has also applied its mind to the project in question and has submitted its report on 23/09/2023. It has concluded that the proposed (selected) alignment was appropriate to take care of the uninterrupted tidal flow and minimum destruction of mangroves. Thereafter on 26/09/2023 a meeting of the Expert Appraisal Committee for projects related to coastal regulation zone was held. As per Agenda 3.4 the present proposal was considered after which the Expert Appraisal Committee recommended the proposal for CRZ clearance subject to various conditions. One of the conditions imposed was that the road passing through CRZ-1A and CRZ-1B areas should be on stilts as per CRZ Notification, 2011. The matter was communicated to CIDCO vide communication dated 25/10/2023. In response to the additional information sought by the said Committee, CIDCO on 26/09/2023 furnished information that the project involved cutting of 3728 mangroves and that CIDCO would plant three times number of mangroves to be cut which was 11184 in number. Other aspects such as bird location site as well as efforts of reducing mangroves cutting by proposing the road on stilts was also indicated. CIDCO thereafter on 31/10/2023 submitted a report to the MoEFCC giving various details including appointment of the Bombay Natural History Society for

preparing a management report for the Airport, avoidance of bird hazard problem and also to maintain avian fauna. The Department of Fisheries of the State Government on 12/09/2023 has communicated its no objection to undertaking of the said project by stating that compensation would be liable to be provided in case any loss is caused to fishermen in terms of Government decision dated 09/03/2023.

7] CIDCO through its Executive Engineer (Ulwe Coastal Road), Shri Suresh B. Thakur has filed an affidavit dated 07/12/2023 stating therein that on 08/11/2023 the MoEFCC has granted CRZ clearance subject to various terms and conditions as mentioned. It has been undertaken that CIDCO shall abide by all the terms and conditions imposed by various authorities. An affidavit-in-reply has also been filed on behalf of the Respondent No.6 – Deputy Conservator of Forest which Authority was impleaded pursuant to the leave granted to the Petitioner on 08/01/2024. In the said affidavit, it has been stated that after undertaking a survey, 3728 trees/plants have been identified that are required to be felled. It has been further stated that felling of trees could be permitted subject to survey to be done at the time of construction. Reference has been made to communication dated

08/01/2024 that has been issued by the MoEFCC to the Revenue and Forest Department of the State Government, conveying the Central Government's "final approval" under Section 2(i) of the Forest (Conservation) Act, 1980 for diversion of 32.6921 hectares of forest land in favour of CIDCO. This was subject to terms and conditions mentioned therein.

8] From the aforesaid material therefore we find that all statutory authorities have approved of the work to be done under the project of constructing a coastal road from Amra Marg to MTHL junction including Airport Link at Navi Mumbai. It may be stated that during pendency of the proceedings, the Respondent No.5 had filed Interim Application No.1522 of 2023 seeking inspection of documents mentioned therein as well as clarification as sought by the said Respondent in its communications addressed to CIDCO. An affidavit-in-reply has been filed to the same by the CIDCO dated 16/02/2023. Various documents alongwith said reply indicate the details with regard to 3728 trees to be felled while undertaking the project. It may be stated that this interim application was considered while the Court passed its earlier order on 25/04/2023. Apprehension expressed by

the Respondent No.5 to the destruction of mangroves has been taken care of by the approvals granted by the statutory authorities by imposing a condition that the construction should be undertaken on stilts that would reduce the number of trees to be felled as well as the aspect of compensatory afforestation by which CIDCO is required to plant trees to the extent of three times the number of trees that are to be felled while undertaking the construction. It is not in dispute that the project in question is of great public utility and the object is to facilitate provision of modes of smooth travel through the coastal road as indicated. This aspect is not in dispute. We are therefore satisfied that subject to all terms and conditions imposed by the statutory authorities being complied with by CIDCO, it is entitled to leave as sought in terms of paragraph 83(viii) of the judgment in *Bombay Environmental Action Group* (supra).

9] For aforesaid reasons, Writ Petition is allowed in terms of prayer clause 'a' which reads as under:-

“a. That this Hon’ble Court be pleased to permit the Petitioners to cut the mangroves in accordance with the

permission granted by the environment & forest authorities, so as to enable the Petitioner to start the work of *Design & Construct Coastal Road from Amra Marg to MTHL junction including Airport Link at Navi Mumbai*, as per conditions imposed by MCZMA, MoEF & CC;”

The Petitioner shall scrupulously comply with all the terms and conditions imposed in the statutory approvals granted by the competent authorities. The undertaking submitted on behalf of CIDCO in its affidavit dated 07/12/2023 that it would abide by all the terms and conditions as imposed is accepted as an undertaking to the Court. The same shall bind the CIDCO and it shall take all necessary steps to comply with the same with a view to protect the environment.

10] Rule is made absolute in the aforesaid terms with no order as to costs. Interim Application No.1522 of 2023 is disposed of.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]