

ITEM NO.37

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).17471-17476/2019

(Arising out of impugned final judgment and order dated 16-07-2019 in WPL No. 560/2019, PIL No. 39/2019, PIL No. 44/2019, PIL No. 40/2019, PIL No. 36/2019 and PIL No. 25/2019 passed by the High Court of Judicature at Bombay)

MUNICIPAL CORPORATION OF GREATER MUMBAI

Petitioner(s)

VERSUS

WORLI KOLIWADA NAKHWA MATSYA VYAVASAY
SAKHARI SOCIETY LTD. & ORS.

Respondent(s)

([ONLY I.A. NO. 91674/2022 IS LISTED UNDER THIS ITEM.]
IA No. 91674/2022 - MODIFICATION)

Date : 30-09-2022 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s) Mr. Tushar Mehta, SG
Mr. Darias Khambata, Sr. Adv.
Mr. Anil Sakhre, Sr. Adv.
Mr. Ashish Wad, Adv.
Mr. Harshat Pimple, Adv.
Mrs. Tamali Wad, Adv.
Ms. Sukriti Jaggi, Adv.
Mr. Sidharth Mahajan, Adv.
Mr. Aditya Mehta, Adv.
Mr. Rohan Mirpury, Adv.
Mr. Bhushan Deshmukh, Adv.
Mr. Tushar Mathiranani, Adv.
M/S. J S Wad And Co, AOR

For Respondent(s) Ms. Aishwarya Bhati, ASG
Mr. S.S. Rebello, Adv.
Ms. Suhasini Sen, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Shyam Divan, Sr. Adv.
Ms. Madhusmita Bora, AOR
Mr. Riju Raj Singh Jamwal, Adv.
Mr. Saroj Kumar Padhy, Adv.

Mr. Pawan Kishore Singh, Adv.
Mr. Dipankar Singh, Adv.

Mr. Colin Gonsalves, Sr. Adv.
Ms. Mugdha, Adv.
Mr. Satya Mitra, AOR

Mr. Mukesh Verma, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Yash Pal Dhingra, AOR

Mr. Aaditya A. Pande, AOR.
Mr. Siddharath Dharmadhikari, Adv.
Mr. Bharat Bagla, Adv.

Ms. Ranjeeta Rohatgi, AOR

Mr. Chirag M. Shroff, AOR

Ms. Pinky Behera, AOR

Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Amit Thakkar, Adv.
Mr. Ankur Saigal, Adv.
Mr. Rutor Desai, Adv.
Ms. S. Lakshmi Iyer, Adv.
Mr. Shashwat Singh, Adv.
Mr. E. C. Agrawala, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

IA No. 91674/2022

- 1 The IA has been moved by the Municipal Corporation of Greater Mumbai for modification of the interim order dated 17 December 2019, to permit it to carry out certain work pertaining to the Coastal Road Project details of which are in paragraph 5 of the IA. For clarity of analysis, the contents of paragraph 5 of the IA are extracted below:

“The "other development work " which was not permitted to be carried out includes creation/ construction of gardens,

open green spaces, parks, cycle track, landscaping of seaside promenade and road-median, jogging track, butter fly park, amusement parks, underground car parks, recreation spaces etc. on the land required to be reclaimed to ensure smooth alignment of the Coastal Road.”

- 2 By the interim order of this Court, the judgment of the High Court dated 16 July 2019 was stayed. The petitioner was permitted to reclaim land, build the road (the coastal road as it is described) and secure the road. However, the petitioner was restrained from carrying on any other development work until further orders.
- 3 By an order dated 7 October 2020, this Court clarified that the judgment of the High Court governed the reclamation of 90 hectares of land. Since the CRZ clearance was for 90 hectares of land, the Court directed that no reclamation and/or development could be carried out beyond the area of 90 hectares until the CRZ clearance of the additional area was received. In this context, the Court observed:

“We are informed that an application has been made for obtaining clearance under CRZ for the excess land and the said application is likely to be processed by the end of this month i.e. October, 2020 and an early decision is likely to be rendered by the respondent - Maharashtra Coastal Zone Management Authority (MCZMA). Till such clearance is obtained, no activity whether by reclamation or development will be carried out in respect of the said area.”

- 4 The CRZ clearance which was issued on 11 May 2017 for the project was amended on 18 May 2021 to allow reclamation to the extent of 111 hectares. The present position of the work on the Coastal Road Project has been tabulated in paragraph 10 of the IA which is as follows:

“...as of now, 96.40% (about 107Ha) of reclamation work is completed (footprint area) & Physical progress of the Coastal Road Project achieved is about 55% and tentative schedule date of completion is November, 2023. The progress of the major components of the project is shown in the table.

Sr. No.	Activity	Scope	Achieved	Percentage
1	Reclamation	111 Ha	107 Ha	96.40%
2	Piles	837 Nos	664 Nos	79.33%
3	Seawall	7.47 Km	6.23 Km	83.40%
4	1) Tunnel RHS	2.072 km	2.072 km	100%
	2) Tunnel LHS	2.072 km	0.544 km	26.26%”

5 The petitioner has submitted that for carrying out other development work and activities such as landscaping of open space, preparatory steps have to be taken by inviting tenders, framing designs, layouts and methodology and appointing consultants. This preparatory work is anticipated to take about two years. Moreover, it has been submitted that construction of certain parts of the coastal road is required to be undertaken simultaneously with other development work, of which details have been furnished in paragraph 12 of the IA as set out below:

“...For instance, the ramp portion of the road at Haji-Ali Interchange Arm-7 (for the traffic to move from Bandra Worli Sea Link to Worli Naka) and its Reinforced Earth wall are planned to be constructed on the top slab of underground car park at Haji Ali. If this car park is constructed later (after completion of Reinforced Earth wall of Arm 7) , it may require dismantling of RE wall, along with associated pavement works and reconstruction them after completion of car park. Due to the construction restriction of Arm-7 as explained above, pedestrian underpass (PUP) under ramp of Arm-7 also cannot be constructed.”

6 Condition 6 of the CRZ clearance dated 11 May 2017 stipulated that:

“(vi) The project proponent will ensure that open spaces created by reclamation as well as any ancillary facilities related to road maintenance are fully protected against encroachment, illegal parking, public events/processions of any kind, hawkers, religious structures, street vendors or any illegal occupants etc. Violation of this will amount to revocation of clearance. A clearly drafted prevention plan with necessary budget allocations shall be permitted to the concerned authority, including the regional office of the Ministry within 30 days of receipt of the clearance.”

- 7 We have heard Mr Tushar Mehta, Solicitor General and Mr Darius Khambata, senior counsel appearing on behalf of the petitioner, Mr Colin Gonsalves, senior counsel appearing on behalf of the first respondent and Ms Rishika Harish, counsel appearing on behalf of Respondent Nos 32 and 33.
- 8 Mr Tushar Mehta and Mr Darius Khambata have pressed the IA for modification of this Court's order dated 17 December 2019 on the ground that the work now sought to be carried out is allied to the Coastal Road Project for which permission has already been granted on 17 December 2019. Moreover, in terms of paragraph 12 of the IA which has been extracted earlier, it has been submitted that certain work in the nature of the underground car parking at Haji-Ali has to be undertaken at this point of time, for if it is done later after the project is complete it would require dismantling the work which would be carried out in the meantime.
- 9 Mr Colin Gonsalves submitted that the High Court in a well-considered judgment has set aside the permissions which were granted for the Coastal Road Project. Hence, it has been submitted that unless the judgment of the High Court is considered at the stage of final hearing, it would be inappropriate to grant any further reliefs to the petitioner. Moreover, senior counsel sought to highlight the impact of climate change and urged that the Coastal Road Project would seriously impinge on the coastal environment.
- 10 At this stage, the reliefs in the IA which can be considered would be those that can reasonably be regarded of an allied nature.
- 11 Respondent Nos 32 and 33 have filed an affidavit in response to the IA stating that if the Court is inclined to grant the reliefs, the following undertakings should be obtained:

- “a. the MCGM will adhere strictly to all the conditions stipulated in the CRZ Clearance of May 11, 2017 as amended on May 18, 2021, particularly Specific Conditions A(v) and (vi) contained in the CRZ Clearance dated May 11, 2017;
- b. the land reclaimed should not be utilised for any residential or commercial development/purposes, presently or at any time in the future;
- c. no further land should be reclaimed for the purposes of the Coastal Road Project without prior permission of this Hon’ble Court;
- d. the project parameters of the Coastal Road Project should not be altered without the prior permission of this Hon’ble Court and all the Respondents should be given adequate notice if such an application is made to this Hon’ble Court.”

12 Out of the development work which has been set out in paragraph 5 of the IA, permission can be granted for carrying out the following:

- (i) The laying out of gardens, open green spaces and parks;
- (ii) The laying out of a cycle track and jogging track;
- (iii) Landscaping of seaside promenade and road-median;
- (iv) Butter fly park; and
- (v) Recreation spaces.

13 At this stage, we are not inclined to allow the construction of an amusement park.

14 As regards the underground car parking facilities, the IA contains a specific explanation of why the work is required to be carried out simultaneously together with the development of the road. Paragraph 12 of the IA has already been extracted earlier. Unless the work is permitted at this stage, a substantial

part of the work of the road which is done in the meantime will have to be reopened for the underground car park. The facility is in the public interest. Undoubtedly, sustainable development is an important ingredient in the protection of the environment. At this stage, prima facie, the effort to decongest the arterial roads of a congested metropolitan city cannot be interdicted. However, the conditions imposed in the CRZ clearance must be scrupulously observed. This includes the rehabilitation of the fishing community. Hence, the above work is be permitted to be carried out by the petitioner subject to the following undertaking:

- (i) The petitioner will adhere strictly to all the conditions stipulated in the CRZ clearance of 11 May 2017 as amended on 18 May 2021, particularly Specific Conditions A(v) and (vi) contained in the CRZ clearance dated 11 May 2017;
- (ii) The land reclaimed should not be utilised for any residential or commercial development /purposes, presently or at any time in the future;
- (iii) No further land should be reclaimed for the purposes of the Coastal Road Project without prior permission of this Court;
- (iv) This court must be apprised in advance if there is any substantial alteration of the project parameters;
- (v) In terms of condition (vi) imposed in the CRZ clearance dated 11 May 2017, the petitioner shall file the requisite plan within a period of three months from the date of the order; and
- (vi) The work which is permitted to be carried out in terms of the present order shall abide by the final result of the proceedings.

15 The earlier order of this Court dated 17 December 2019 shall stand modified to the above extent.

- 16 The petitioner shall, within a period of four weeks, file a further affidavit before this Court explaining the manner in which the conditions imposed in the CRZ clearance for the rehabilitation of fishermen shall be duly implemented.
- 17 The IA is allowed in the aforesaid terms.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR