



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 3170 OF 2022**

Binod Sitaram Agarwal

... Petitioner

**V/s.**

State of Maharashtra & Ors.

... Respondents

**WITH  
INTERIM APPLICATION (L) NO. 202 OF 2023  
IN  
WRIT PETITION NO. 3170 OF 2022**

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Mr. Binod Agarwal, Petitioner-in-person is present.

Mr. Milind More, Addl.G.P. for State.

Mr. Joel Carlos a/w Shilpa Redkar i/by S. K. Sonawane for Respondent-MCGM.

Mr. Zaman Ali for Respondent Nos.4 & 5.

Mr. Sagar Divekar a/w Abhimanyu Mhapankar appointed by High Court Legal Services for Ms. Navya Nayar and Ms. Riju Shilpi.

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &  
ARIF S. DOCTOR, J.**

**DATED : 6<sup>th</sup> MARCH, 2024**

**P.C. :**

1. An Affidavit in response to the report submitted by the Committee constituted vide Court's order dated 2<sup>nd</sup> August, 2023 has been filed on behalf of Respondent No.5, which is taken on record.

2. We have perused the report submitted by the said Committee, which comprises of higher level officers of the State Government, an expert from National Environmental Engineering Research Institute and the Chief Executive Officer, Aarey Milk Colony. After various rounds of deliberations, the Committee has prepared the report and made certain recommendations. The first recommendation is that since the internal roads of Aarey Milk Colony are not in good condition and need repairs and that the stretch of 1.5 km. from Aarey Market to Mayur Nagar needs reconstruction instead of repairs by filling of potholes, hence the said work needs to be undertaken urgently. The Committee report also states that the total length of internal roads in Aarey Milk Colony is 52 km. which lie in the Eco-sensitive Zone, out of which, 7 km. is

handed over to Municipal Corporation of Greater Mumbai in 2014. The report further states that out of remaining 45 km. internal road, 11.98 km. stretch falls in reserved forest area and 19.17 km. needs immediate repairs on priority basis, whereas, a stretch of 17.72 km. may require less treatment for repairs. The Committee also recommends that a stretch of 8.22 km. needs to be closed permanently as alternate routes are available.

3. Learned counsel representing Respondent No.5 has drawn our attention to a circular dated 9<sup>th</sup> March, 2021 issued by Government of Maharashtra, which has been annexed as Exhibit-D to the Affidavit filed today, according to which, there are certain guidelines which are to be followed for repair and up-gradation of roads constructed in forest lands. The said Government Resolution has been issued in tune with the guidelines issued by the Government of India in respect of repair and maintenance of roads constructed in forest lands. Clause 7 of the circular dated 9<sup>th</sup> March, 2021 provides the procedure to be followed if any repair or maintenance or reconstruction of the road in forest area is to be undertaken,

according to which, the Project Authority is required to submit a proposal to the concerned Deputy Conservator of Forests/Deputy Director of Tiger Reserve/Divisional Forest Officer/Independent Sub Divisional Officer. On receipt of the proposal, the authority concerned is required to conduct the site inspection, whereupon, the proposal submitted by the Project Authority and the site inspection report is to be examined and scrutinized in light of the parameters given in the said circular and if the authority concerned is of the opinion that proposal requires prior approval of the Competent Authority under the Forest (Conservation) Act, 1980, he shall communicate to the Project Authority accordingly. In case the authority on receiving the proposal in accordance with paragraph 7.3 of the said circular forms the opinion that the project requires prior approval of the Competent Authority under the Forest (Conservation) Act, 1980, the said fact shall be communicated to the Deputy Conservator of Forests/Deputy Director Tiger Reserve/Divisional Forest Officer/Independent Sub Divisional Officer as the case may be, otherwise, he himself is empowered to decide as to whether or not to grant the permission.

4. Our attention has also been drawn to a notification dated 5<sup>th</sup> December, 2016, issued by the Ministry of Environment, Forest and Climate Change, Government of India under Section 3(2)(v) and (xiv) of the Environment (Protection) Act, 1986 whereby the area of the Sanjay Gandhi National Park, Borivali has been declared to be Eco-sensitive Zone. It is stated that the entire 45 km. of internal road in Aarey Colony falls within Eco-sensitive Zone as per the said notification. Clause 4 of the said notification enlists certain activities which are prohibited or to be regulated within Eco-sensitive Zone. The table appended to clause 4 of the said notification provides that widening and straightening of existing roads, bridges, infrastructure and construction of new roads, public utility or community buildings is a regulated activity, which is to be done as per applicable laws to such activities without any adverse impact within the Eco-sensitive Zone. Clause 6(d) of the said notification dated 5<sup>th</sup> December, 2016 provides that if such activities are falling in the Eco-sensitive Zone, except those which are prohibited in the table appended to clause 4 of the said notification, they shall be scrutinized by the Monitoring Committee based on the actual site-specific conditions.

5. Clause 5 of the notification dated 5<sup>th</sup> December, 2016 provides for constitution of a Monitoring Committee for effective monitoring of Eco-sensitive Zones.

6. Thus, in view of the provisions contained in the notification dated 5<sup>th</sup> December, 2016, repair/re-construction/maintenance of the internal roads stretching to 45 km. in Aarey Milk Colony will require clearance from the Monitoring Committee constituted under clause 5 of the notification dated 5<sup>th</sup> December, 2016.

7. Our attention has also been drawn to the Government Resolution dated 28<sup>th</sup> June, 2023, issued by the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra whereby a sum of Rs.48.41 crores has been sanctioned for repairs/straightening etc. of the internal roads in the Aarey Colony.

8. Having regard to the report submitted by the Committee and the respective submissions made by learned

counsel representing the parties, so far as construction of 45 km. internal road is concerned, we issue the following directions;

- a) The stretch of 8.22 km. road shall immediately be closed as per the recommendations made by the Committee. The closure of this stretch shall be effected within 10 days from today.
- b) Repair/re-construction/maintenance etc. of rest of the stretch of the internal roads shall be undertaken immediately by the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra. For the said purpose, the requisite permission or approval etc. as required under the Government Resolution dated 9<sup>th</sup> March, 2021, issued by the Revenue and Forest Department, Government of Maharashtra as also under the notification dated 5<sup>th</sup> December, 2016 issued by the Ministry of Environment, Forest and Climate Change, Government of India shall also be obtained at the

earliest. For the purpose of seeking requisite permission/approval under these notifications, the appropriate proposal by the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra shall be submitted within a period of one week from today to the respective authorities as given in these notifications.

- c) The authorities under the said notifications, on receipt of the proposal from the Department of Agriculture, Animal Husbandry, Dairy and Fisheries Development, Government of Maharashtra, shall process and scrutinize the same and take appropriate decision within a fortnight from the date such proposal is received by them.
- d) It is also directed that in case the authorities under the notifications dated 9<sup>th</sup> March, 2021 and 5<sup>th</sup> December, 2016 issued respectively by the State Government and the Government of India find that



the proposals submitted by the State Government for repair/re-construction/maintenance etc. needs certain changes to make it in conformity with the requirements, immediate suggestion shall be given by these authorities within three days, which shall be complied with by the State Government and the revised proposal will accordingly be submitted by the State Government within next 7 days thereafter. Such revised proposal, if any, shall thereafter be considered and appropriate decision shall be taken regarding permission/approval etc. within further 7 days.

- e) In any case, the decision regarding approval and permission etc. by the authorities under the notification dated 9<sup>th</sup> March, 2011 of the State Government and dated 5<sup>th</sup> December, 2016 of the Central Government shall be taken within four weeks from the date the proposal from the State Government is received, which will be the maximum period available to the authorities.

- f) We further direct that the authorities under the notification dated 9<sup>th</sup> March, 2021 and the Monitoring Committee constituted under the notification dated 5<sup>th</sup> December, 2016 shall be guided by the overwhelming public interest of having proper internal roads in the area as also by the measures to be taken for preserving the wildlife and ecology and accordingly take decision at the earliest.
- g) Once the requisite permission/approval etc. is accorded under the notifications dated 9<sup>th</sup> March, 2021 and 5<sup>th</sup> December, 2016, the work relating to repair/maintenance/construction or reconstruction of the roads shall be started immediately thereafter. If any tender processes is to be resorted to by the State Government for undertaking repair/maintenance/reconstruction/construction of the roads, the same shall also be expedited and if it is feasible legally, short term tender notice may be issued.

9. Regarding rest of the 7 km. stretch of internal road which has been handed over to MCGM, by the next date an Affidavit shall be filed about the stage of the repair/construction.

10. We further provide that in case during this period the State Government faces any difficulty in giving effect to these directions, it will be open to it to approach the Court and seek appropriate directions.

11. Stand over to 22<sup>nd</sup> April, 2024. Matter be placed high on board.

**(ARIF S. DOCTOR, J.)**

**(CHIEF JUSTICE)**