

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

PUBLIC INTEREST LITIGATION (L) NO.23928 OF 2021

1) MR.OMKAR MAHADEO SUPEKAR)
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)
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)
)
2) MR.ABHISHEK RAM GOPAL TRIPATHI)
)
)
)
)
)...PETITIONERS

Versus

1) MUNICIPAL CORPORATION OF)
GREATER MUMBAI, Through the)
Municipal Commissioner having its)
Office at Municipal Corporation Head)
Office, Mahapalika Marg, Mumbai – 1)
)
2) MAHARASHTRA TOURISM)
DEVELOPMENT CORPORATION LTD.)
Through its Managing Director having)
having office at Apeejay House, 4th Floor)
3 Dinsaw Vaccha Road, Near K.C.College)
Churchgate, Mumbai – 400020)
)
3) REVENUE AND FOREST DEPARTMENT))
Through the Principal Secretary(Forests))
& having office at Hutatma Rajguru)
Chowk, Madam Cama Marg, Mantralaya)
Mumbai – 400032)
)
4) URBAN DEVELOPMENT DEPARTMENT))
Through its Principal Secretary)
)
5) MAHARASHTRA POLLUTION CONTROL))
BOARD, Through its Secretary, having)
office at Kalpataru building, Sion East,)
Mumbai – 400022)
)

- 6) MAHARASHTRA STATE FOREST DEPARTMENT,** Through its Additional Principal Chief Conservator of Forests & Mangrove Cell having Office at Room No. 302, 3rd Floor, Wekfield House, Near Britannia Restaurant, Bellard Estate Mumbai - 400001
 - 7) MAHARASHTRA STATE FOREST DEPARTMENT, WILDLIFE WING,** Through its Additional Principal Chief Conservator of Forests (Wildlife west) having its office at Borivali Mumbai L.T. Road, Near Old MBB Bus Stop, Forest Qtr., Borivali (W) 400091
 - 8) THE MAHARASHTRA STATE,** Environment Department, Through its Principal Secretary, having office at Madam Kama Road, Mantralaya, Mumbai - 400032
 - 9) MAHARASHTRA STATE WETLAND AUTHORITY,** Working through or having their office Borivali Mumbai L.T.Road, Near Old MHB Bus Stop, Forest Qtr., Borivali (W) 400091
 - 10) CENTRAL POLLUTION CONTROL BOARD,** Through its Chairman having Office at Parivesh Bhawan, CBD-cum-Office Complex, East Arjun Nagar, Delhi - 110032
 - 11) UNION OF INDIA** Through Ministry of Environment, Forest and Climate Change, Government of India, having their office at Paraya varan Bhavan, C.G.O. Complex, Lodhi Road, New Delhi - 110003
 - 12) DISTRICT COLLECTOR** Administrative Building, Near Chetana College, Government Colony, Bandra (East), Mumbai - 400051
-)..RESPONDENTS**

WITH

INTERIM APPLICATION NO.716 OF 2022

IN

PUBLIC INTEREST LITIGATION (L) NO.23928 OF 2021

ZORU DARAYUS BHATHENA)
)
)
)
)...**APPLICANT**

IN THE MATTER BETWEEN

1) OMKAR MAHADEO SUPEKAR)
IIT Bombay, Mumbai 400076)
)
2) ABHISHEK RAM GOPAL TRIVEDI)
IIT Bombay, Mumbai 400076)...**PETITIONERS**

Versus

1) MCGM)
Mahapalika Marg, Mumbai - 400001)
)
2) MAHARASHTRA TOURISM)
DEVELOPMENT CORPORATION LTD.)
Apeejay House, 4th Floor, 3 Dinsaw)
Vaccha Road, Churchgate, Mumbai - 20)
)
3) REVENUE AND FOREST DEPARTMENT)
Mantralaya, Mumbai - 400032)
)
4) URBAN DEVELOPMENT DEPARTMENT)
Mantralaya, Mumbai - 400032)
)
5) MAHARASHTRA POLLUTION CONTROL)
BOARD)
Kalpataru building, Sion East, Mumbai-22)
)
6) MAHARASHTRA STATE FOREST)
DEPARTMENT)
(APCCF & Mangrove Cell)
302, 3rd Floor, Wekfield House, Near)
Britannia Restaurant, Bellard Estate)
Mumbai - 400001)

- 7) MAHARASHTRA STATE FOREST DEPARTMENT**)
 (APCCF Wildlife))
 L.T.Road, Near Old MBB Bus Stop,)
 Borivali (W) 400091)
)
- 8) MAHARASHTRA STATE**)
 Environment Department, Mantralaya,)
 Mumbai - 400032)
)
- 9) MAHARASHTRA STATE WETLAND AUTHORITY**)
 L.T.Road, Near Old MHB Bus Stop,)
 Borivali (W) 400091)
)
- 10) CENTRAL POLLUTION CONTROL BOARD**)
 Parivesh Bhawan, CBD,)
 East Arjun Nagar, Delhi - 110032)
)
- 11) UNION OF INDIA**)
 Ministry of Environment, Forest and)
 Climate Change, Parayavaran Bhavan,)
 C.G.O. Complex, Lodhi Road,)
 New Delhi - 110003)
)
- 12) DISTRICT COLLECTOR**)
 Administrative Building, Near Chetana)
 College, Bandra (E), Mumbai - 400051) **..RESPONDENTS**

AND

PUBLIC INTEREST LITIGATION (L) NO.5111 OF 2022

- 1) VANASHAKTI**)
 A Mumbai based, non-profit)
 Environmental non-governmental)
 organization having its office at Nanda)
 Kumar Pawar House, Opp. Shri)
 Jagannath Darshan Building, M.D.Kini)
 Marg, Bhandup Village (E), Mumbai-42)
)
- 2) STALIN DAYANAND**)
 Aged 56 years, Indian Inhabitant,)
 Director of Vanashakti, having its office)
 at Nandakumar Pawar House, Opp. Shri)

Jagannath Darshan Building, M.D.Kini)
Marg, Bhandup Village (E), Mumbai-42)...**PETITIONERS**

Versus

- 1) MUNICIPAL CORPORATION OF GREATER MUMBAI**, Through the Municipal Commissioner having its Office at Municipal Corporation Head Office, Mahapalika Marg, Mumbai – 1)
)
- 2) ENVIRONMENT DEPARTMENT** Through its Principal Secretary, having office at Madam Cama Road, Mantralaya, Mumbai – 400032)
)
- 3) MAHARASHTRA POLLUTION CONTROL BOARD**, Through its Member Secretary, & having its office at Kalpataru building, Sion East, Mumbai – 400022)
)
- 4) UNION OF INDIA** Through Ministry of Environment, Forest and Climate Change, Government of India) Parayavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi – 110003)..**RESPONDENTS**

Mr. Rajmani Verma, Advocate for the Petitioners in PIL(L) No.23928 of 2021.

Smt. Gayatri Singh, Senior Counsel a/w. Mr. Zaman Ali, Advocate for the Petitioner in PIL(L) No.5111 of 2022.

Mr. Aspi Chinoy, Senior Counsel a/w. Mr. Joel Carlos and Ms. K. H. Mastakar, Advocate for the Respondent No.1/MCGM in PIL(L) No.23928 of 2021 and PIL(L) No.5111 of 2022.

Mr. A. A. Kumbhakoni, learned Advocate General a/w. Mr. Abhay Patki, Additional Government Pleader for Respondent Nos.3, 4, 6, 7, 8 and 12 / State in PIL(L) No.23928 of 2021.

Mr. H. B. Takke, AGP for Respondent No.2 / State in PIL(L) No.5111 of 2022.

Mr. D. P. Singh a/w. Mr. Aditya Thakkar, Advocate for Respondent No.11 / UOI in PIL(L) No.23928 of 2021.

Mr. D. A. Dubey a/w. Mr. Y. R. Mishra, Advocate for Respondent No.4 / UOI in PIL(L) No.5111 of 2022.

Mr. C. M. Lokeshappa, Advocate for Respondent No.10 in PIL(L) No.23928 of 2021.

Mr. Anish Khandekar, Advocate for Respondent No.2 in PIL(L) No.23928 of 2021.

Mr. Manoj Shirsat i/by. Pushpa Thapa, Advocate for the Intervenor in I.A.No.716 of 2022.

Mr. Sachindra Shetye, Advocate for (MPCB) Respondent No.5 in PIL(L) No.23928 of 2021 and for Respondent No.3 in PIL(L) No.5111 of 2022.

**CORAM : DIPANKAR DATTA, CJ &
V. G. BISHT, J.**

**RESERVED ON : 25th APRIL 2022
PRONOUNCED ON : 6th MAY 2022**

JUDGMENT : (PER : V. G. BISHT, J.)

1 The petitioners in both these Public Interest Litigations (PILs) have raised a common and concerned question as to construction and reclamation activities for the project of cycling and jogging track undertaken inside Powai lake by respondent Municipal Corporation of Greater Mumbai (MCGM) in violation of provisions of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) and notified Development Control Regulation for Greater Mumbai 2034 (DCR) and hence they are disposed of by this common judgment and order.

2 Interim Application No.716 of 2022 is allowed and stands disposed of.

3 The common facts leading to insitution of these PILs, in brief, are as follows :

- (a) Petitioners are earnestly concerned about the Powai Lake Wetland and hazardous impact caused by the construction activities for a proposed Cycle Track over the Water Body, Catchment Area, Crocodile Habitat of the Powai Lake Wetland, carried by the respondent-MCGM by uprooting and cutting the trees, digging and dumping boulders and filling the sand crush and stones etc.
- (b) According to petitioners, the Powai Lake is a notified wetland by National Wetland Atlas 2011 and has been included in the unified scheme - National Plan for Conservation of Aquatic Eco-systems (NPCA), after merging the National Lake Conservation Plan with National Wetland Conservation Program.
- (c) Petitioners came to know that the respondent-MCGM had reclaimed the Powai Lake Wetland and are carrying out construction activities by uprooting the trees, digging the ground and dumping the stones, crushed-sand over the water body, water catchment area, crocodile habitat and ecologically sensitive and fragile wetland of Powai Lake. There are two construction sites, first being the reclamation water body adjacent to the Renaissance Hotel Compound Wall inside the Powai Lake riparian area, besides the Pipeline Road, Powai. The second site is known as Deer Park, besides the Ambedkar Udyan, Powai. The petitioners allege that site no.1 has been exploited by the respondent-MCGM since July 2021 and around 100

meters of the area has been constructed over a natural water body. Similarly, the wetland area between site no.1 and site no.2 has been used by crocodiles as a basking site for a long time and during night the crocodiles come out of the water and rest there. The area between site no.1 and site no.2 is the “zone of influence” means that part of the catchment area of the wetland or wetland complex, developmental activities induce adverse changes in ecosystem structure and ecosystem services.

4 The petitioners then contend that any kind of reclamation followed by construction over water body, water catchment area / crocodile habitat and Powai Lake Wetland would destroy this pristine and rich shoreline food web, increase siltation and cause loss of native water plants that would be a critical turning point in eutrophication and destruction of the lake.

5 The petitioners have, therefore, filed these PILs to protect, conserve and restore the extremely vulnerable Powai Lake Wetland from reclamation and ongoing construction activities carried out by the respondents - MCGM and Maharashtra Tourism Development Corporation Ltd. (MTDCL).

6 Reply affidavit has been filed by respondent-MCGM wherein it contends that there is a dearth of community recreation spaces in the eastern suburbs of Greater Mumbai and there are practically no major community open space in this part of the city. Powai Lake, with its 10.2 km of waterfront, offers an opportunity to create a large community open space for the citizens of Mumbai. Powai Lake, after rejuvenation, has the potential of becoming a major

community open space. Moreover, the said walkway will enable MCGM's maintenance Department and staff to have ready access to all portions of the lake front.

7 It is next contended that by developing the proposed walkway along the periphery of the Powai Lake, the respondents will create an ecological destination which is accessible to the common citizen / public. The proposed cycle path and walkway closely follows the alignment of the existing motorable lake front road of IIT Mumbai and thereafter the Renaissance Hotel compound wall and pathway. The proposed pathway will be situated substantially in the Natural Area beyond the perimeter of Powai Lake. Only some limited portions fall in areas which are covered by water during the monsoon season and the few months thereafter.

8 According to respondent-MCGM in order not to impede the flow of water into the lake as also the flow of lake waters during the monsoon months, the walkway is to be developed using 'Gabion Technology' which is porous and does not prevent the flow of water. 'Gabion Technology' consists of placing PVC coated galvanized iron wire mesh baskets in place, containing stones of various sizes, without any joinery, fixing or cement mortar. These wire baskets containing stones of diverse sizes are merely placed on the surface, without there being any foundation, or other means used to fix it to the earth. On top of the gabion wall there will be a thin layer of cement board / synthetic composite board and macadam / tar to enable walking / cycling. There is no dumping of debris into the lake, nor any reclamation in the lake. 'Gabion Technology' does not involve any construction or reclamation. Gabions also provide refuge for small aquatic

life and have the potential of becoming a breeding ground for small and micro aquatic life. Therefore, the respondent-MCGM denies that development of the walkway using 'Gabion Technology' as aforesaid involves any reclamation of any part of the lake, or any construction activity in the vicinity of the lake front. In the light of these facts, the PILs are liable to be dismissed with costs, urges respondent-MCGM.

9 Another reply affidavit of respondent-Forest Department i.e. respondent nos.3, 6 and 7 contends that there is also an "Original Application No.68 of 2021" filed by an NGO, Vanashakti, which is pending before the National Green Tribunal, West Zone Bench at Pune, raising the identical issues about "Powai Lake". Therefore, it is desirable that both matters should be heard and decided by the same judicial forum. The said respondents have suggested various measures for preventing the further pollution of the Powai Lake and forming a team of Wildlife experts, who can suggest measures for avoiding the damage to the Powai Lake, habitat of crocodiles with a special emphasis on their basking and nesting sites.

10 Another reply affidavit of respondent-Maharashtra Pollution Control Board (MPCB) submits that it has not granted any consent to the alleged construction and the site of the alleged construction was visited by its Field Officer along with official of respondent-MCGM on 27th October 2021 and it was informed by the official of respondent-MCGM that it is a project for natural walkway, bicycle and jogging track along the periphery of Powai Lake and for rejuvenation and reinvigoration of the Powai Lake. At the time of the visit, about 100 mtrs. work of gabion (in which GI net and stone used) was

completed and remaining work was in progress. During visit gabion work was not in operation.

11 According to respondent-MPCB, respondent-Ministry of Environment, Forest & Climate Change (MoEF&CC), Government of India, vide letter 9th August 2021 informed it about alleged construction activities inside the water body of the Powai Lake and this respondent vide letter dated 28th October 2021 forwarded the said complaint to respondent-MCGM as the said activity does not come under its purview.

12 Another reply affidavit of respondents i.e. Maharashtra State, Environment Department and Maharashtra State Wetland Authority contends that till today the said Powai Lake has not been notified to be a Wetland in accordance with the Notification dated 26th September 2017, Ministry of Environment, Forest and Climate Change, Government of India, New Delhi. According to them, the State Wetland Authority constituted under the provision of the Rules of 2017 has also designated and formed a Grievance Redresser Committee to look into the various complaints and grievances made by the general public with regard to the various activities concerning the Wetland within the State. One of the complaints submitted by Mr.Stalin D. i.e. the petitioner in PIL(L) No.5111 of 2022 concerning the very activity of construction of cycle track on the periphery of the said Powai Lake, is presently being looked into by the Expert Committee constituted by the State Wetland Authority. In such circumstances, according to them, the present petitioners be directed to approach State Wetland Authority with all the details as regards the status of the Powai Lake and their

grievance regarding construction of cycle track around the Powai lake.

13 The petitioners, by way of affidavit in rejoinder to the affidavit-in-reply of respondent-MCGM contends that the respondent-MCGM has devised a theory of using 'Gabion Technology' which is nothing but construction of a road under the garb of "board walk / walkway / cycle track which is evidently going to be a work of permanent construction and the same is also a prohibited activity and cannot be termed as "wise use". The claim that the so-called 'Gabion Technology' is porous and eco-friendly is incorrect and misleading which is clear from the averments made in paragraph 8(h) of the reply wherein the respondent-MCGM has admitted that "on the top layer of the gabion wall there will be a thin layer of cement board/synthetic composite board and macadam/tar to enable the walking/cycling". Hence, the respondent-MCGM's own claim about the porousness and it being eco-friendly are self-contradictory and incorrect.

14 After having noticed the pleadings of the rival parties elaborately, it is now time to consider the arguments of the learned counsel for the parties. We have heard the learned counsel for the petitioners and respondents at length. There are two-fold arguments raised on behalf of learned counsel for the petitioners. First, as part of the project on National Wetland Inventory and Assessment (NWIA), National Wetlands Atlas was prepared by Space Applications Centre, Indian Space Research Organisation (ISRO) and the same was sponsored by Ministry of Environment and Forest, Government of India. Powai Lake is, thus, notified as a wetland in the National Wetland Atlas in the map. Since Union of India is a

signatory to ‘Ramsar Convention’ on Wetlands, thus it is obligated to conserve and wise-use of all wetlands within its territory. Second, Government of Maharashtra, through its UDD in consultation with its Director, Town Planning Department under the provisions of the MRTP Act, 1966 notified DC Regulations for Greater Mumbai, 2034 (DCR). Part VII of DCR provides for Land Use Classification and Uses Permitted. Under this Part VII of Sub-Regulation 3.3 of Regulation 34 a specific regulation for Powai and Vihar Lake has been made, which contemplates that in order to prevent erosion of soil and silting in lakes, an exclusive green belt of 100 m shall be provided around the periphery of Vihar and Powai Lake in which no construction whatsoever shall be allowed. If within 100 m from the periphery of Vihar and Powai lake there exists Municipal/Public road, then buffer of green belt beyond Municipal / Public road may not be insisted.

15 As far as the first issue of Powai lake being a wetland is concerned, in our view, the respondent namely Member Secretary of Environment, Forest and Climate Change and as also State Wetland Authority, Maharashtra, rightly pointed out that the said Powai Lake has not been notified to be a wetland in accordance with Notification dated 26th September 2017 issued by Ministry of Environment, Forest and Climate Change, Government of India, New Delhi. Clause (3) of the said Notification deals with ‘Applicability of Rules’ which provides that these rules shall apply to the following wetlands or wetlands complexes namely -

- (a) wetlands categorised as ‘wetlands of international importance’ under the Ramsar Convention;

(b) wetlands as notified by the Central Government, State Government and Union Territory Administration”

16 Clause 3(b) is very clear and categorically lays emphasis on Notification in respect of wetlands. In the case in hand, merely showing that the Powai Lake has been notified as a wetland in the National Wetlands Atlas in the map will not satisfy the requirement of aforesaid Notification dated 26th September 2017. It essentially requires a Notification. Powai Lake must and necessarily be notified to be a wetland in accordance with the Notification dated 26th September 2017 issued by Ministry of Environment, Forest and Climate Change, Government of India, New Delhi. Admittedly, no such Notification exists as of now notifying the Powai Lake to be a wetland. Therefore, as far as the first issue is concerned, we do not find merit in the submission of the learned counsel for the petitioners.

17 We have also gone through Part VII of DCR 2034 which provides for ‘Land Use Classification and Uses Permitted’. Under Part VII of Sub-Regulation 3.3 of Regulation 34, a specific regulation for Powai and Vihar Lakes has been made which is as follows :

“(VII) Periphery of Vihar and Pawai Lake :

In order to prevent erosion of soil and silting in lakes, an exclusive green belt of 100 m shall be provided around the periphery of Vihar and Pawai Lake, in which no construction whatsoever shall be allowed. If within 100 m from the periphery of Vihar and Pawai Lake there exists Municipal / Public Road, then buffer of green belt beyond Municipal /Public Road may not be insisted.”

18 A bare reading of the above Regulation would show that an exclusive green belt of 100 m would be provided around

the periphery of Vihar and Powai Lakes and in order to prevent erosion of soil and silting in lakes, no construction activity of whatsoever nature shall be allowed. Apparently, the activity of the respondent-MCGM is in the teeth of this Regulation.

19 As against above, Mr. Chinoy, the learned senior counsel for respondent-MCGM has vehemently submitted that the jogging and cycling track-cum-walkway will be developed by using 'Gabion Technology' and such technology will not require construction or reclamation of the lake and that it will not impede the flow of water. The learned senior counsel has strenuously laid emphasis on the word "construction" and according to the learned senior counsel, since the 'Gabion Technology' does not involve the use of cement or mortar, by no stretch of imagination, the technology so used would amount to construction activity.

20 In our studied view, this is the core issue and the principle point on which the parties are at issue. It will be unwise to read too much into submission of the learned senior counsel, the same being essentially a self serving explanation.

21 Of major concern is the fact that the word "construction" is nowhere defined in DCR 2034. In absence thereof, a plain and natural meaning will have to be assigned. The Oxford English Reference Dictionary, Edition 1995 defines 'construct' and means make by fitting parts together, build, form. Similarly, in Concise Oxford Dictionary, Twelfth Edition, 2011, 'construct' means build or erect. Thus, simply stating, construction is the act to build or erect.

22 Apart from pleadings, we have also carefully glanced over the photographs of the site where the jogging and

cycling track-cum-walkway is being developed by using 'Gabion Technology'. We may note here with alacrity that respondent-MCGM has not filed any material on record to satisfy us that 'Gabion Technology' is sufficiently proven technology or is backed and supported by scientific study about its utility sans failures. The petitioners [in PIL(L) No.5111 of 2022] have enumerated various failures of 'Gabion Technology' in paragraphs 34, 35 and 36. There is no response on that count from respondent-MCGM.

23 Although the acclaimed project undertaken by respondent-MCGM suggests 'rejuvenation and reinvigoration' of the physical and natural environment of Powai Lake, Mumbai, but the obtaining situation as discernible and decipherable from photographs, which is not disputed, shows land filling / reclamation, metallic frames raised on water body for dumping stones and laying of tar road along with peripheral area of the lake which cannot by any stretch of imagination be termed or construed 'rejuvenation and reinvigoration' of the physical and natural environment of Powai Lake. Common sense would prompt a disturbing conclusion that construction of cycle track or any slightest disturbance to the otherwise serene water body of the surrounding area would have far-reaching effects on the ecology and aquatic life of the lake, which already has excessive silting, sewage ingress and extended hyacinth growth leading to eutrophication of the lake water. Needless to say, the respondent-MCGM in the present case has induced itself to undertake the reclamation under the garb of use of 'Gabion Technology'. To show and submit that the project is being carried out to create a community access to the lake

front and to enable access to the lake front for maintenance of lake, its periphery and for preservation of erosion, siltation and encroachment, is a bit hard to swallow, considering the material on record.

24 Viewed above and for the reasons stated aforesaid, these two PILs deserve to be allowed. We, therefore, pass the following order :

ORDER

1) PIL(L) Nos.23928 of 2021 and 5111 of 2022 are allowed as under :

(a) In view of law as it stands, It is declared that the work of cycling and jogging track being carried out by respondent-MCGM inside the boundaries and its catchment area of the Powai Lake is illegal and respondent-MCGM is restrained from carrying out any reclamation or construction for the project of cycling and jogging track or for any other project inside Powai Lake, Mumbai and its catchment area.

(b) Respondent-MCGM is hereby directed to immediately remove all construction carried out in furtherance of the cycling and jogging track inside the Powai Lake and its catchment area and restore all reclaimed sites to its original position.

2) Both PILs stand disposed of accordingly.

(V. G. BISHT, J.)

(CHIEF JUSTICE)

Prayer for stay of the operation of the order made by Mr. Carlos, learned counsel for MCGM is considered and rejected.

(V. G. BISHT, J.)

(CHIEF JUSTICE)