

Chitra Sonawane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION (L) 23 OF 2019**

- 1. Rabindra Nath Kakar**  
Aged 83 years, Indian Inhabitant,  
having his address at 501,  
Jai Bharat CHSL, Panch Marg,  
Opp. Amarnath Tower, Versova  
Andheri(W), Mumbai-400 061.
- 2. Sandeep Kakar**  
Aged 46 years, Indian Inhabitant,  
having his address at 602,  
Jai Bharat CHSL, Panch Marg,  
Opp. Amarnath Tower, Versova  
Andheri(W), Mumbai-400 061
- 3. Amit Suri**  
Aged 42 years, Indian Inhabitant,  
having his address at 68,  
Aramnagar 1, Harminder Singh  
road, Versova, Andheri(W),  
Mumbai-400 061
- 4. Vikrant Thakur**  
Aged 37 years, Indian Inhabitant,  
having his address at 701,  
Jai Bharat CHSL, Panch Marg,  
Opp. Amarnath Tower, Versova  
Andheri(W), Mumbai-400 061
- 5. Bapi Bit**  
Aged 52 years, Indian Inhabitant,  
having his address at B-504,  
Vasant Prakash, Off Yari road,  
plot no.1, Seven Bungalows,  
Andheri West, Mumbai-400 061.

**6. Shashanka Ghosh**

Age 56 years, Indian Inhabitant  
having his address at A8 Sangam  
CHS, off Juhu Versova Link  
road, Andheri West, Mumbai-  
400 053.

**7. Pushpita Banerji**

Aged 60 years, Indian Inhabitant,  
having his address at B-143 ,  
Park Plaza Condominium, New  
Yari road, Opp.Central  
Fisheries Education Institute,  
Versova,Andheri(W), Mumbai-400 061

**8. Anupama Kinagi**

Aged 43 years, Indian Inhabitant,  
having his address at B-1013-10141,  
Samartha Deep, Off Link road,  
Near Oshiwara Police Station,  
Lokhandwala, Mumbai 400 053.

**9. Sangeeta Bahuguna**

Aged 56 years, Indian Inhabitant,  
having his address at C-706,  
Abhar Society, Fisheries University  
road, Off Yari road, Versova  
Mumbai 400 061.

**10. Sarmistha Roy**

Aged 38 years, Indian Inhabitant,  
having his address at 702,  
Jai Bharat CHSL, Panch Marg,  
Opp. Amarnath Tower, Versova  
Andheri(W), Mumbai-400 061

**11. Darshan Singh Sandher**

Aged 69 years, Indian Inhabitant,  
having his address at 1101,  
Horizon Heights, Ekta Association,  
Near RTO office, 4 Bungalows,

Andheri West, Mumbai-400 053

**12. Vipin Mishra**

Aged 43 years, Indian Inhabitant,  
having his address at A-1405,  
Imperial Heights, Off New Link  
road,Goregaon West, Mumbai 400 104.

**13. Anupama Srivastava**

Aged 40 years, Indian Inhabitant,  
having his address at 109,  
Parmarth Apartment, D block  
Vikaspuri, New Delhi-110018

**14. Jai Bharat Cooperative Housing  
Society Limited.**

A Cooperative Society registered  
under the Maharashtra Cooperative  
Societies Act, 1960, having its address  
at Panch Marg, Opp Amarnath Tower,  
Versova,Andheri(W), Mumbai- 400 061..... **PETITIONERS.**

**Versus**

**1. Union of India**

Ministry of Environment and  
Forest, through the Government  
Pleader, High Court, Mumbai.

**2. State of Maharashtra**

Department of Urban Development  
and Environment Department,  
through the Government Pleader,  
High Court, Mumbai.

**3. Municipal Corporation of Greater  
Mumbai.**

Through the Municipal Commissioner,  
Town Planning Officer, the Chief  
Engineer (Development Plan),Head  
Quarters, Opp.Chatrapati  
Shivaji Maharaj Terminus,  
Mumbai- 400 001.

**4. Mumbai Metropolitan**

Through the Metropolitan Commissioner.  
MMRDA building, Bandra Kurla Complex,  
C-14 & 15, E block, Bandra East,  
Mumbai- 400 051.

**4 A. Maharashtra Coastal Zone**

**Management Authority**, Member  
Secretary, Through its Director,  
Environment Department,  
15<sup>th</sup> floor, New Administrative  
building, Opp. Mantralaya,  
Mumbai 400 032.

**5. Maharashtra Pollution Control  
Board,**

Through its Chairman  
Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup>  
floor, Opp.Cine Planet, Sion  
Circle, Mumbai 400 032.

..... **RESPONDENTS.**

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Mr.Vikramaditya Deshmukh a/w Ms. Shreni Shetty i/b ANB Legal,  
Advocate for Petitioner.

Mr.Kedar Dighe, Additional Government Pleader for State.

Mr.Y.R.Mishra, Advocate with Atul Singh for Union of India.

Mr.Rajesh Patil, Advocate a/w Ms. K.H. Mastakar for M.C.G.M Resp  
No.3.

Ms.Sharmila U.Deshmukh, Advocate for Respondent no 4A & 5.

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**CORAM : DIPANKAR DATTA CJ &  
G. S. KULKARNI, J.**

**RESERVED ON : December 2, 2020.**

**PRONOUNCED ON : December 4, 2020.**

**JUDGMENT ( Per G.S.Kulkarni J ) :**

1. The petitioners in this public interest litigation primarily question the infrastructure project undertaken by the Municipal Corporation alongwith other authorities namely the State Government and the Mumbai Metropolitan Regional Development Authority to connect the areas of Versova and Lokhandwala. The public project interalia is to construct vehicular bridge at the junction of Yari Road and Lokhandwala Back Road, near Amarnath Tower building having single span steel arch of length of 110 meters with approach road on either side( for short "**the said project**")

2. The petitioners no 1 to 13 are stated to be residents of Versova- Mumbai and claim to be active participants in the conservation and beautification of environment. Petitioner no.14 is the Co-operative Housing Society of the other petitioners (for short "**the co-operative-society**").

3. Case of the petitioners is that in or around May 2013 the petitioner no.14 issued letters to various authorities including respondent no 1 to 5 informing them that the contractor appointed by the Municipal Corporation of Greater Mumbai (**MCGM**), had off loaded Soil Testing Equipment, next to the mangroves close to the premises of petitioner

no.14 Cooperative Society. The co-operative Society requested the authorities, to appraise it, as to the reason behind off-loading of the equipment next to the mangroves. There was no response to these letters from any of the authorities. The members of the co-operative society, hence enquired with the workers/contractor undertaking the work, of the reason behind soil testing, when they were informed that the same was being undertaken for the proposed work of the MCGM, to construct link road/bridges to connect certain regions of Versova to Lokhandwala.

4. The petitioners contend that thereafter the co-operative society pulled out the relevant plans from the website of respondent no.2. The western suburbs part of the plan showed that amongst other constructions of public roads in the western region, there were three proposed link roads which would pass through the mangroves so as to link Versova and Lokhandwala region. Details of the three proposed roads are set out in paragraph 6 of the petition.

5. The petitioners contend that execution of the project work would involve uprooting of mangroves. They say that the project plan portrays an unwarranted development as according to them, it would not, in any manner resolve the prevailing traffic situation in the area.

They say that on the contrary, the MCGM's plan would increase traffic and bottlenecks and add to the citizens woes. The petitioners contend that during 2014-2015, the co-operative society again issued various letters to the concerned authorities raising their concern on the proposed link road/bridges passing through mangroves and the possible encroachment in and around the mangroves. They also pointed out that the plan had too many defects which were elaborated in these letters issued to the authorities. However again no reply was received to these letters.

6. In paragraph nine of the petition, the 'major or immediate concern' for the petitioners is that the plan for development/construction of road 2 and 3 under the project was designed in such manner that it would result in uprooting the mangrove vegetation. It is their case that road no.3 was completely unnecessary and it would also encourage encroachment. On 1/1/2018 the co-operative society by its letter of the even date urged the authorities to re-consider the plan regarding the proposed link roads as also recorded their concern on the proposed destruction of mangroves.

7. The petitioners have averred that 'Bombay Environmental Action Group' (for short" **the BEAG**") had approached this Court in a public

interest petition against State of Maharashtra and others (PIL No. 86 of 2006) which was filed seeking protection of the mangrove areas. In the said PIL this Court had passed an interim order dated 6 October 2005 directing total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. Finally a co-ordinate Bench of this Court had delivered a judgment on 17 September 2018, interalia directing that irrespective of ownership of land on which the mangroves were situated, such land shall be deemed to be a forest and would come under the definition of Forest (Conservation) Act 1980. This order of the Court also penalised destruction of the mangroves in the entire State of Maharashtra and declared that the mangroves in the State of Maharashtra fall under CRZ-1 irrespective of their area.

8. The petitioners noticed dumping of raw materials and some activity appearing on the site of proposed road no.3. The petitioners hence issued a notice dated 31 January 2019 to the different authorities raising their concern as also informing about the said orders passed by this Court in the BEAG's PIL, according to which any construction taking place within 50 mtrs from all sides of the mangroves could not be undertaken and was required to be stopped. As no action was taken present petition was filed.

9. By an order dated 22 March 2019 passed by a co-ordinate Bench leave to amend the action was granted to the petitioners to implead the Maharashtra Coastal Zone Management Authority (for short "**the MCZMA**") as a respondent. MCZMA is a body constituted by the Central Government in exercise of the powers conferred under Section 3(3) of the Environment Protection Act 1986 with powers inter alia to take necessary measures for protecting and improving the quality of the coastal environment. The MCZMA is authorised to receive applications for approval of the project proposals and examine the same for its compliance with the approved coastal zone management plan and the Coastal Regulation Zone (**CRZ**) notification issued by the Central Government and to regulate all development activities in the coastal regulation zones.

10. On 25 April 2019 a co-ordinate Bench of this Court was pleased to pass the following interim order :-

“We grant respondent last opportunity to file a counter affidavit. Needful shall be done within 4 weeks.

2. List the petition on 25/06/2019.

3. In view of the averments made in the petition to which respondents have yet to file a reply in spite of the fact that on 22/03/2019 counsel had appeared for the State Government so also Municipal Corporation of Greater Mumbai, **we direct that no tree shall be cut to lay down link road**

**connecting Versova to Lokhandwala.”**

(emphasis supplied)

11. The above interim order has remained in operation since then, the effect being the project could not proceed. In these circumstances petition was moved before us at the behest of the MCGM. The MCGM contends that the interim order in the facts of the case ought not to be continued as it would withheld the project and more particularly the installation of a vehicular bridge, except for which, construction of the roads on both the sides is already completed.

12. On the above premise we have heard learned counsel for the parties.

13. Reply affidavit dated 31 May 2019 of Shri. Sanjay Baliram Sandanshiv, Under Secretary, Environment Department is filed on behalf of the MCZMA to state that a proposal dated 14 August 2013 was received by the MCZMA from the MCGM for construction of vehicular bridge at the junction of Yari road and Lokhandwala back Road, near Amarnath Tower building, Andheri (West) Mumbai. The MCGM had proposed a bridge over the creeklet of Malad creek alongwith two connecting ramps on either side of the bridge. The project site of the bridge and of the ramps was in a area classified as CRZ-1 and CRZ-2 as

per the approved Coastal Zone Management Plan (CZMP), prepared under the CRZ notification of 1991. The affidavit records that the proposal of MCGM was deliberated in the 90th meeting of the MCZMA held on 19 July 2014 wherein after a detailed deliberation, the MCZMA called upon the MCGM to submit a Rapid Environment Impact Assessment (EIA) and an 'Environment Management Plan'. It is stated that these requirements were fulfilled by the MCGM by submitting such plans on 27 July 2015 which were prepared by the National Institute Oceanology (**NIO**) and the National Environment Engineering Research Institute (**NEERI**). Thereafter, the MCGM's proposal was deliberated in the 103<sup>rd</sup> meeting of the MCZMA held on 20 August 2015 when it was found that such project was permissible. As per the requirement of paragraph 3 and 8 of the CRZ notification of 2011, it was decided to recommend the project subject to the conditions. One of the conditions as imposed on the MCGM was of a prior permission to be obtained from this Court, in the proceedings of the BEAG's PIL, in which prohibitory orders were passed qua the mangroves. Since the project involved clearing of mangroves, also a condition was incorporated that five times of the mangroves being cut during the construction process should be re-planted. The MCZMA has stated that this Court vide order dated 7 March 2017 passed on Notice of motion (L) No.662 in the BEAG's PIL (PIL no.86/2016), granted permission to the MCGM to undertake the

said project, which involved cutting of mangroves. It is stated that the BEAG's PIL was disposed of by a judgment and order dated 17 September 2018. In paragraph 7 of the affidavit the MCZMA has stated as under :-

"I say that the proposal of MCGM was considered in accordance of the CRZ Notification and in the light of the order dated 27.1.2010 which permitted the Competent Authority to consider the project in accordance with law and in the light of interim orders passed by this Hon'ble Court. I further say that subsequently, MCGM in accordance with the order dated 27<sup>th</sup> January 2010 also obtained permission of this Hon'ble Court."

14. A reply affidavit has also been filed on behalf of the MCGM of Shri Sanjaykumar D. Pandav dated 30 August 2019. The affidavit states that the MCGM had proposed construction of a bridge along the 18.30 mtr wide DP road as per SRDP 1991 and DDP 2034 across the Kawathe creek connecting the missing link between the two land marks i.e. Lokhandwala and Versova areas. It is stated that the DP road work on both the sides is almost complete and the proposed bridge is the only missing link which would now be required to be completed. The installation of the bridge and the completion of the project is essential for the public need, as the proposed road would be a shortcut for the movement of traffic connecting Lokhandwala Complex and Versova areas which would reduce the travel time from 35 minutes to 5 minutes. The public advantage would also be of reducing traffic congestion and the consequent fuel consumption, which will ultimately help to promote

healthy environment in the area in question. It is stated that the MCGM had appointed NEERI, NIO, and the Mangrove Society of India for carrying out the Rapid Environment Impact Assessment (EIA) study. These bodies examined the MCGM's project and made their respective reports which came to be submitted by the MCGM to the MCZMA. There was a deliberation on the said reports in the 103rd meeting of the MCZMA held on 20 August 2015 in which a decision was taken by the MCZMA to approve the project. It is stated that the State level Expert Appraisal Committee-1 (SEAC) also discussed the proposal in its 121<sup>st</sup> meeting and took a decision to recommend the said proposal to the State Environmental Impact Assessment Authority (SEIAA -Maharashtra). The SEIAA in its meeting held on 5th and 7th March 2016 also granted its clearance. It is stated that as the status of the land over which the bridge was proposed, was a mangrove area, the MCGM also approached this Court in the BEAG's PIL (No.86/2006) by filing Notice of motion (L) 662/2016, inter alia praying for the permission of this Court to undertake the project in question. The MCGM's Notice of Motion came to be granted by this Court by an order dated 7 March 2017. The MCGM on 11 September 2018 also applied for the NOC from the Forest department which is pending consideration. The affidavit further states that the proposed bridge is single span steel arch bridge having length of 110 meter over the creek without intermediate support in the creek. It is

stated that after construction of the bridge there will be no access to the public directly to the creek. It is also stated that there would be re-plantation of trees as per the direction of the tree authority. It is stated that work order was issued to the contractors for construction of said vehicular bridge on 31 August 2018 and the work would immediately commence after issuance of NOC from the forest department. It is, accordingly, contended that the PIL petition is totally misconceived and deserves to be dismissed.

15. The petitioners have filed a consolidated rejoinder-affidavit inter alia contending that the construction of the proposed bridge would have an adverse environmental impact on the mangroves, marine life, flora and fauna etc. As regards the order dated 7 March 2017 passed by this Court on the MCGM's application Notice of Motion in the BEAG's PIL it is contended that the said order was required to be confirmed in the final judgment and order which was passed on 17 September 2018 and hence, it is the final order which would prevail.

16. We now note the submissions of Mr.Deshmukh, learned counsel for the petitioners in support of the prayers as made in the petition Mr.Deshmukh would submit that the proposed project being undertaken by the MCGM and more particularly to install the missing link by way of

installation of the bridge would cause an adverse environmental impact. He submits that the MCGM cannot take benefit of the permissions granted by the various authorities as also by this Court by its order dated 7 March 2017 in notice of motion (L) 662/2016 (supra) in view of the final orders/judgment dated 17 September 2018 passed by this Court on the BEAG's PIL. He submits that this Court in the said judgment, has prohibited granting permissions by any authority on mangrove lands falling in CRZ-1 as per CRZ Notification of 1991 and 2011 irrespective of its area and for all mangrove areas of 1000 sq.mtr or more, a buffer zone of 50 mtrs. along the mangroves is held be a part of CRZ-1. Mr. Deshmukh submits that it was also directed that there shall be a total freeze on the destruction and cutting of mangroves in the entire state of Maharashtra, regardless ownership of the land. He submits that it was also directed that all constructions taking place within 50 mtrs on all sides of the mangrove areas, shall be forthwith stopped and area of 50 mtrs shall be kept free of construction except construction of a compound wall/fence for its protection. He therefore, submits that the MCGM cannot be permitted to proceed with the project. Mr. Deshmukh next submits that the plan for this public project is even otherwise defective. Mr. Deshmukh would not dispute that the petitioners in filing this petition did not bring to the notice of the Court the order dated 7 March 2017 passed on the notice of motion as filed on behalf of the

MCGM. Mr.Deshmukh is not in a position to justify the reason for non disclosure of the said order and more particularly when an interim order was prayed for by the petitioners and granted by this Court on 25 April 2019. Mr.Deshmukh on the contrary would also submit that it is the MCGM which has suppressed material from the Court when it passed the order dated 7 March 2017 namely that a forest permission was also necessary, when a statement was made by the MCGM that all permissions were obtained by the MCGM as recorded by the Court in its order dated 7 March 2017. It is therefore, submitted that the prayers made in the petition ought to be granted.

17. On the other hand, Mr. Rajesh Patil, learned counsel for the MCGM has submitted that the project in question is a public project for which all necessary permissions as set out in the reply affidavit filed on behalf of MCGM are obtained and further as some mangrove portion is affected, subsequently on 11 September 2018 a permission from the Forest department is also sought for by the MCGM. Mr. Patil referring to the order dated 7 March 2017 passed by this Court on the MCGM's notice of motion would submit that in pursuance of the recommendations of the MCZMA, the MCGM had approached this Court seeking a relief that the MCGM be permitted to proceed with the project in question. He submits that the Court considered such

permissions obtained by the MCGM and on being satisfied that it was a important public project passed the said order permitting the MCGM to undertake the project, by removing the affected mangroves. Mr.Patil submits that it is not correct for the petitioners to contend that the MCGM has in any manner suppressed material from this Court at any point of time much less when the order dated 7 March 2017 was passed by this Court. He submits that in fact it is the petitioners who have suppressed from this Court the specific order dated 7 March 2017 passed by this Court which concerns the very project in question, and more particularly when the petitioners have approached this Court invoking the public interest jurisdiction. He would submit that it was certainly an obligation on the part of the petitioner when it relied upon a subsequent order dated 17 September 2018 passed in BEAG's PIL not to suppress the said order dated 7th March 2017. Mr. Patil therefore, submits that not only the interim order passed by this Court on 25 April 2019 be vacated but the petition be dismissed being totally misconceived and filed against the public interest including on the ground of suppression of material facts by the petitioners.

18. Ms. Sharmila Deshmukh, learned counsel for the MCZMA also would support the contention of Mr. Patil that, her clients have granted the requisite permissions to the MCGM to undertake

construction of the said bridge which involve destruction of mangroves to certain extent.

19. We have heard learned counsel for the parties. At the outset we may note that the primary concern of the petitioners is not only that the mangroves would be adversely affected by the public road project being undertaken by MCGM to the point of destruction, but also the project plan of the MCGM being defective and faulty. We may observe that the second contention appears to be totally untenable. From the frame of the petition, it appears that the petitioners are not in a position to contend that they are super experts in the field of planning and thus are in a position to either displace the planning of the road project in question by the MCGM and/or are in a position to sit in appeal over the project planning, as undertaken by the MCGM with the help of experts in the filed of planning the public need and utilities. There is no material to sustain such an argument. Hence, the petitioners contention of the project plan being faulty is required to be outrightly rejected.

20. As regards the petitioners contention on the mangroves being affected by the project in question, it is clear that that the MCGM during the pendency of the PIL filed by the BEAG, had approached

different authorities as noted above and has obtained clearances for the said project including under the CRZ notifications of 1991 and 2011. This apart, the MCGM in view of the interim orders passed by this court in the BEAG's petition freezing the mangroves, had approached this Court in Notice of Motion (L) 662/2016 seeking permission of this Court to proceed with the said project . This Court allowed MCGM's Notice of Motion by the following order:-

- “1. Heard Shri Pakale, learned counsel appearing on behalf of the BMC- Applicant herein.
2. The Applicant is seeking permission of this Court to construct vehicular bridge at the junction of Yari Road and Lokhandwala Back Road, Near Amarnath Tower Building, Andheri (West) having a single span steel arch of length 110 mt. with approach road on either side.
3. There is no manner of doubt that this is a public utility projection. We, therefore, grant permission to the Corporation to do the said work/project. The Corporation has already obtained all the relevant permission from all the authorities. All these permissions are annexed at Exhibits I, II, II and IV respectively.
4. This link will become an additional facility for movement of traffic between the two landmarks i.e. Versova and Lokhandwala. As a result of which, the traveling time would be reduced substantially from about 35 minutes to 5 minutes. The said bridge will also serve as a feeder route to nearest Metro Station i.e. Versova Metro Station & D.N. Nagar Metro Station.
5. We are satisfied that it is a public utility project. We, therefore, grant permission to the Corporation to construct vehicular bridge at the junction of Yari Road and Lokhandwala Back Road, Near Amarnath Tower Building, Andheri (West) having a single span steel arch of length 110 mt. Notice of motion is allowed and disposed of in terms of prayer clause (a).”

21. We may observe that the above order passed by this Court is specific to the project in question as undertaken by the MCGM. However, what is disturbing is that although the petitioners referred to the final orders passed on the BEAG's PIL (dated 17.9.2018) in seeking the reliefs in the present petition, they have suppressed the order dated 7 March 2017 passed by this Court on the MCGM's Notice of Motion. We may note that all the orders passed by this Court are available in the public domain namely on the official Website. When the present PIL was filed the said order dated 7 March 2017 was certainly available in the public domain and to the petitioners. The petitioners however chose to suppress the said order from this Court, significantly when they sought a stay on the public project and intended to be the beneficiaries of the interim order dated 25 April 2019, which operated as an injunction on the MCGM to proceed with the project. This more particularly when the order dated 7 March 2017 was passed by this Court permitting the MCGM to proceed with the project by undertaking construction of the road including installation of the bridge joining Versova and Lokhandwala areas. In the said order this Court categorically recorded that it is a public utility project which was required to be permitted as all permissions were obtained by MCGM. It was also observed that the link to be installed by constructing the vehicular bridge at the junction of the Yari Road and Lokhandwala Back

Road, will become an additional facility for movement of traffic between two land marks that is Versova and Lokhandwala as a result of which traveling time would be reduced from 35 to 5 minutes. It was observed that the said bridge would also serve as a feeder route with the nearest metro station Versova and the DN Nagar station. This Court also recorded that it was a public utility project hence permission was required to be granted to MCGM to construct the vehicular bridge of length of 110 mtrs having single span steel arch.

22. It is quite clear to us that the order dated 7 March 2017 on the MCGM's notice of motion was not only crucial but material to the issues as raised by the petitioners in the present PIL. This order was suppressed by the petitioners and such suppression was certainly not innocuous. The petitioners intended to have an unfair advantage by such suppression. Moreover, they were successful in obtaining an interim order dated 25 April 2019 when the Court was made to believe the petitioners case as pleaded in the petition in passing the said interim order. If the petitioners were to point out the said order, even in those circumstances as prevailing and as recorded in the said order dated 25 April 2019, the consequence would have been different. The said order was for the first time brought to the notice of the Court by way of an affidavit as filed on behalf of the MCZMA on 31 May 2019 and

thereafter by the MCGM in its affidavit. The petition is therefore, clearly hit by the principles of *suppressio veri and suggestio falsi* and more particularly when the petitioners had approached this Court invoking the public interest jurisdiction. No litigant however placed is permitted to take such liberties and seek discretionary and equitable reliefs invoking jurisdiction of this Court under Article 226 by suppressing material facts. The Court would certainly not interfere to grant any relief whatsoever when the litigant approaches the Court with dirty pair of hands. The principles in this regard are well settled. Hence in our view this is a fit case where the Court would refuse to exercise its discretionary jurisdiction. In this context we may usefully refer to the decision of the Supreme Court in **Arunima Baruah vs. Union of India, (2007) 6 SCC 120**. Mr. Justice S.B. Sinha speaking for the Bench in paragraph 12 of the report observed as under:

“It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands.

But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

23. Although for the above reasons the PIL deserves to be dismissed *in limine*, however for the sake of completeness, we discuss the other contentions as urged on behalf of the petitioner. Mr. Deshmukh's submission that in view of the order dated 17 September 2018 passed by this Court on the BEAG's PIL, the MCGM cannot be permitted to undertake the project is required to be stated to be rejected. This for two reasons, firstly, there was a specific order passed by this Court in the BEAG's PIL on 07 March 2017 permitting the project to proceed. There is nothing to show that the said order when it granted substantive reliefs to the MCGM and which entailed specific consequences in public interest was either set aside by this Court or by the Supreme Court. Even the PIL petitioner namely the BEAG did not challenge the said order. Hence, the MCGM was entitled to the substantive benefit as conferred to it by the said order. The petitioner's contention that the said order was an interim order and not confirmed in the final order passed on the BEAG's PIL is not only wholly untenable but lacks complete bonafides, for the reason that such submission overlooks that the Court by its interim orders is not powerless to pass substantive orders depending on the facts and circumstances as would come before it. Secondly even in the final judgment of the Division Bench on the BEAG's PIL, the Court in

paragraph no. 87 (viii) observed that the mangroves cannot be permitted to be destructed by the State for private, commercial or any other use '*unless the Court finds it necessary for the public good or public interest.*' This is what was effected by the Court, when it passed the order on the MCGM's notice of motion.

24. The submission of Mr. Deshmukh that the MCGM has misled the Court to pass the order dated 7<sup>th</sup> March, 2017 and/or there was suppression on the part of MCGM, for the reason that the application for a forest permission was not disclosed, is an absurd argument if tested on the record of these proceedings. It is clear from the record that the MCGM took steps to move an application on 11 September 2018, seeking permission of the Forest Department, hence, there was no question that at the relevant time, such application could be said to be suppressed by the MCGM when it was yet to be made.

25. Before parting we have grave doubt as to whether this is a genuine public interest litigation. The reason being that the petitioners appear to be persons aggrieved by the public utility project, which is being undertaken in the vicinity of their premises, as clear from the averments as made in the petition. The petitioners appear to be those persons who have some private interest of whatsoever nature to prevent

such public works. In these circumstances, it cannot be said that the petitioners are espousing a genuine public interest and/or have absolutely no private interest. This public interest litigation is hence, an abuse of the process of law.

26. For the above reasons, we are clear that the petition deserves to be dismissed. It is dismissed with cost of Rs.2,00,000/- to be deposited with the Maharashtra State Legal Service Authority within four weeks from today.

**[G.S. KULKARNI, J.]**

**[CHIEF JUSTICE]**