

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

PIL WRIT PETITION NO. 87 OF 2006

1. Bombay Environmental Action Group &]
Anr.] .. Petitioners

Versus

1. The State of Maharashtra & 6 ors.] .. Respondents

Mr. N.H. Seervai, senior counsel with Ms. Madhavi Divan and Mr. Sharan Jagtiani i/b M/s. M.V. Jaykar & Co. for the petitioners.

Mr. R.M. Kadam, Advocate General with Mr. Amjad Sayyed, AGP, for the respondent No.1.

Mr. B.A. Desai, Addl. Solicitor General with Mr. Rajiv Chavan i/b Mr. Pankaj Kapoor for respondent No.2.

Dr. Virendra Tulzapurkar, senior counsel with Mr. R.D. Soni & Mr. Aditya Khandeparkar i/b M/s. Khaitan & Jayakar for CIDCO.

Mr. Janak Dwarkadas, senior counsel with Mr. Kamal Khata i/b M/s. N. Suneel & Ass. for applicants in Notice of Motion No.416 of 2006 & 417 of 2006.

Mr. V.M. Thorat for applicant in Chamber Summons No.196 of 2006.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 05TH OCTOBER, 2006

P.C. :

. On 27th September, 2006, Further Affidavit was filed by the petitioners. In the said Affidavit the petitioners stated that they were informed about the

destruction of mangroves on a large scale at Palm Beach Road on 19th September, 2006 by the residents of Seawood Estate. According to the petitioners, they lodged the complaint with the Commissioner, Konkan Division on or about 19th September, 2006 regarding destruction of mangroves at the said place. The petitioners have also stated that the subject site appears to have been visited by press reporters who proceeded to carry the news report on 25th September, 2006. The said report states that as much as 52 acres of lush mangroves have been destroyed at Palm Beach Road with the connivance of CIDCO and Navi Mumbai Municipal Corporation (NMMC). The said destruction was carried out by hacking the mangroves and ensuring that they do not grow back by constructing artificial embankments to cut off tidal flow. According to the petitioners, thereby, the orders of this Court have been grossly violated and notice of contempt be issued to the officers responsible for granting development permission in respect of the said plot and also against the private parties involved in the project.

2. On behalf of the petitioners on that very day i.e. 27th September, 2006, the request was made for passing appropriate order on the said Affidavit.

3. We, accordingly, took up the matter on 27th September, 2006 and heard the various parties. In paragraph 3 of our order dated 27th September, 2006 we recorded that as the copy of the Further Affidavit has been handed in on that day to the Court, the respondents, particularly the State Government and its functionaries and CIDCO had no occasion to respond to the Affidavit. We also recorded that the Advocate General as well as Mr. R.D. Soni, the counsel for CIDCO were not very sure about the existence of mangroves in the subject 52 acres as alleged in the Affidavit. We, accordingly, directed the Commissioner, Konkan Division to have the map/s examined and report as to whether the photographs shown in Exhibit-"A" and Exhibit-"B" annexed with the Affidavit are of the subject 52 acres of land at Palm Beach Road and as to whether the mangroves have been destroyed as averred in the Affidavit dated 27th September, 2006. In the meanwhile, we also directed CIDCO to create 10 breaches, each breach 25 ft. wide in the existing embankment as shown in the photographs (Exhibit-"A" and Exhibit-"B") at equal distance on the seaward side to restore tidal flow on or before 3rd October, 2006 and submit the compliance report by 4th October, 2006. The matter was kept for today.

4. Two Affidavits have been filed today. One by Shri Gahininath Tukaram Bandri, Divisional Commissioner, Konkan Division and the other by Shri K.V.R.K. Ravi Kumar, the Senior Planner (In-Charge) of CIDCO.

5. In his Affidavit, the Divisional Commissioner has averred that he visited the site on 3rd October, 2006 along with the Collector of Thane, CIDCO officials, NMMC officials and the representative of the petitioners. He also went through Phase-II maps prepared by MRSAC. According to him, from the satellite map pertaining to the subject site which is part of Survey No.261-A, it is seen that the subject site is water body and the same is so shown in the map prepared by MRSAC. He also stated that even at the time of the visit, water body was clearly seen at the subject site and insofar as mangroves are concerned, there are negligible, stray and sporadic mangroves plants at the said site. In his Affidavit, the Divisional Commissioner has further stated that as per the information received from CIDCO, the subject site is not earmarked for the golf course and sector Nos.54, 56 and 58 are also not the subject site and also no mangroves

are found at the said sectors.

6. Shri K.V.R.K. Ravi Kumar who has filed his Affidavit on behalf of CIDCO has stated that after the order was passed by us on 27th September, 2006 certain directions were issued by the Divisional Commissioner, Konkan Division to CIDCO and that a team comprising of senior officers of CIDCO was immediately deputed to visit the site and make on-site inspection to verify the contents as regards the destruction of any mangroves and/or construction of any embankment to obstruct the flow of water in the subject site as alleged by the petitioners. Accordingly, the subject site was visited and it was observed thus: (a) the area referred to in the newspaper report and identified by the photographs is not 52 acres, but appears to be about 6 acres only; (b) no permission whatsoever has been granted by CIDCO to any developer/builder for development of any activity in the said area; (c) that no construction activity is being carried out by CIDCO on the subject land and that CIDCO has no proposal as of now for development of the said piece of land; and (d) that the said area is not identified for setting up the golf course, as alleged.

7. The Further Affidavit filed by the petitioners

on 27th September, 2006 and the two Affidavits filed by the Divisional Commissioner, Konkan Division and the Senior Planner (In-Charge), CIDCO referred to above give rise to serious dispute as to whether the subject site referred to in the Affidavit of 27th September, 2006 filed by the petitioners had the mangroves and whether such mangroves have been destroyed or whether the subject site is a water body having no mangroves as suggested in the Affidavit of the Divisional Commissioner.

8. Having considered all the aspects of the matter and the order passed by this Court on 6th October, 2005, we are of the view that the correctness of the factual aspects set out in the Further Affidavit dated 27th September, 2006 filed by the petitioners need to be enquired into in view of the denial of the said factual aspects in the Affidavits filed by the Divisional Commissioner, Konkan Division and the Senior Planner (In-Charge), CIDCO. In our view, the enquiry needs to be conducted by the District Judge, Thane. We, accordingly, pass the following order:

(1) The Registry shall transmit the copy of the Further Affidavit dated 27th September, 2006 filed by Shri Manish Moghe on

behalf of the petitioners on 27th September, 2006, the copy of the Affidavit of Shri Gahininath Tukaram Bandri, Divisional Commissioner, Konkan Division dated 5th October, 2006 and the copy of the Affidavit of Shri K.V.R.K. Ravi Kumar, Senior Planner (In-Charge), CIDCO dated 4th October, 2006, to the District Judge, Thane, forthwith.

(2) The petitioners as well as the Divisional Commissioner, Konkan Division and the CIDCO are directed to appear before the District Judge, Thane through their Advocates or representatives on 16th October, 2006.

(3) The District Judge, Thane may record oral evidence and also take on record the documentary evidence that may be produced by the parties during the course of enquiry. The District Judge, Thane shall also visit the subject site personally and may also record the evidence of MRSAC, Nagpur and any other Expert in that regard. The District Judge, Thane, shall also to identify from the

revenue record, the survey numbers of the site which is referred to in paragraphs 2 and 3 of the Further Affidavit dated 27th September, 2006.

(4) The District Judge, Thane shall submit his report on the following aspects:

(a) Whether the subject site referred to in paragraphs 2 and 3 of the Further Affidavit dated 27th September, 2006 is part of Survey No.261-A of village map of village Karawe ?

(b) Whether the subject site referred to in paragraphs 2 and 3 of the Further Affidavit dated 27th September, 2006 had mangroves and whether such mangroves have been destroyed ? And if yes, whether such destruction is with the connivance of CIDCO and NMMC ?

(c) Whether the proposed golf course is part of the subject site referred

to in paragraphs 2 and 3 of the Further Affidavit dated 27th September, 2006 or whether no golf course is earmarked on the subject site as referred to in paragraph 10 of the Affidavit of the Divisional Commissioner, Konkan Division dated 5th October, 2006 ?

(5) The District Judge, Thane shall submit his report as early as possible and in no case later than 5th February, 2007.

9. In the meanwhile, we accept the statement of CIDCO that no permission whatsoever has been granted by CIDCO to any developer/builder for development of any activity on the subject site and that no construction activity is being carried out by CIDCO on the subject land and that CIDCO has no proposal as of now for the development of the subject land and that the said area is not identified for setting up a golf course.

. Let the matter come up for Directions on 7th February, 2007.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]