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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO.35560 OF 2023**VAIBHAV
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The Union of India, through the
General Manager, Western Railway,
Churchgate, Mumbai 400 020 & Anr. ... Petitioners

V/s.

Deputy Director General of Forests
(C), through Ministry of Environment,
Forest and Climate Change,
Regional Office (WCZ) & Ors. ... Respondents

Mr. Atharva A. Dandekar with Mr. Hitendra V. Parab
for the petitioner.

Mr. Abhay L. Patki, Additional Government Pleader
for respondent Nos.1 to 3 – State.

Mr. Kurl Shroff, Senior Advocate with Ms. Sheetal
Shah i/by M/s. Mehta & Girdharlal for respondent
No.4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : AUGUST 30, 2024

ORAL ORDER.: (PER AMIT BORKAR, J.)

1. Through this writ petition, the petitioners seek the permission of this Court to remove approximately 2,612 mangroves from the land impacted by the construction of the 5th and 6th railway lines between Borivali and Virar stations,

as part of the Mumbai Urban Transport Project III-A. Additionally, the petitioners seek authorization to execute the necessary works related to the proposed 5th and 6th lines, in accordance with the principal approval dated 17 November 2023, granted by the Regional Empowered Committee. This petition is filed in compliance with the directions issued by this Court in paragraph 83(viii) of the judgment and order dated 17 September 2018 in Public Interest Litigation No. 87 of 2006.

2. The petitioners, in their petition, provide the following factual background: The Suburban Railway System in Mumbai is the most complex, heavily loaded, and intensively utilized railway system globally. It has the highest passenger density in the world, with approximately 8 million commuters traveling daily. The system is operated by two Zonal Railways, Western Railway (WR) and Central Railway (CR), and spans an expanse of 376 route kilometers. The suburban services are operated using Electric Multiple Units (EMU), comprising 284 rakes of 12-car and 15-car configurations, which are utilized to run over 3,000 train services daily.

3. The Mumbai Urban Transport Project is intended to

enhance mass transportation services in Mumbai and to address the steadily increasing demand of the Mumbai Suburban Rail System. MUTP Phase-I commenced in 2002 and was completed in 2011.

4. The Western Railway suburban line is the most congested suburban service in the Mumbai suburbs. The traffic density is significantly higher than desirable levels, causing considerable hardship for commuters. Currently, there are four railway tracks between Borivali and Virar stations within the Mumbai Division of Western Railway. Two of these tracks are utilized for mainline services, including long-distance mail/express trains on the Mumbai–Ahmedabad/Jaipur/New Delhi section, as well as suburban and goods traffic. The other two tracks are primarily used for suburban services. The mainline is oversaturated, with no scope for augmenting suburban services through it. Consequently, a substantial number of commuters between Borivali and Virar face insurmountable commuting challenges. These lines serve the Mira-Bhayander Municipal Corporation, with an estimated population of 11,15,000 in 2023, and the Vasai Virar City Municipal Corporation, with an estimated population of 16,85,000 in 2023. Additionally, they cater to

the commuters from the Virar Dahanu Road section. The construction of the additional double lines, i.e., the 5th and 6th lines between Borivali and Virar, will meet the demand for additional services in this sector and alleviate the commuting difficulties. The work of constructing the 5th and 6th lines between Borivali–Virar stations on Western Railway is included in the MUTP III-A project to address the growing commuter traffic demand.

5. According to the petitioners, the construction of the 5th and 6th lines between Borivali and Virar is a Western Railway project and will fall within the alignment of Western Railway. The proposed project is expected to benefit approximately 1.7 million additional commuters of the Western Railway suburban service. The alignment of the 5th and 6th lines between the Borivali and Virar sections is adjacent to the existing Western Railway lines, which is the most suitable location available. Moreover, the said land belongs to the railway and is deemed most suitable from technical, economic, and functional perspectives.

6. The most critical aspect of completing the project is the construction of Bridge Nos. 73 and 75 over the Vasai Creek,

with lengths of 1,550 meters and 550 meters, respectively. The mangroves, for whose removal permission is sought in the present petition, are located in the path of the work on Bridge Nos. 73 and 75. To facilitate the construction of the 5th and 6th lines, the petitioners are required to remove approximately 2,612 mangroves, the loss of which can be effectively compensated through afforestation.

7. The Additional Inspector General of Forests (Central), Nagpur, Ministry of Environment, Forest and Climate Change (MOEFC), Government of India, granted in-principle clearance to the petitioners by communication dated 17 November 2023, subject to the conditions stated therein. The conditions, enumerated in the petition as (i) to (xxiii), have, according to the petitioners, been complied with.

8. Respondent No. 4, in its affidavit-in-reply, has contested the petition, asserting that the petitioners cannot rely on Section 11 of the Railways Act, 1989, to argue that the proposed project does not require compliance with the Environment Protection Act, CRZ Notification, and FCA. Respondent No. 4 has further contended that the failure to notify the mangroves as reserved forests does not exempt

them from the protection afforded by the judgment dated 17 September 2018 in Public Interest Litigation No. 87 of 2006. Additionally, the judgment of this Court in Writ Petition No. 2889 of 2022 is currently under challenge before the Supreme Court in SPL(C) No. 154 of 2024, wherein the Supreme Court has issued notice to the respondent.

9. The learned advocate for the petitioners, relying on the judgment in ***Union of India & Anr. vs. Deputy Director General of Forests (C) & Ors.***, Writ Petition No. 2889 of 2022, dated 31 October 2023, submitted that this Court permitted the construction of a railway line of a similar nature for the Virar-Dahanu Road section, subject to the conditions stated in the operative part of the said judgment. He contends that although the judgment is currently under challenge before the Supreme Court, in the absence of a stay on the effect and operation of the judgment dated 31 October 2023, the petitioners are entitled to similar relief. In light of Section 11 of the Railways Act, permission under the provisions of the Environment Protection Act, CRZ Notification, and the Forest Conservation Act (FCA) is not necessary.

10. The learned advocate for respondent No. 4 has fairly

conceded to the aforementioned submissions. He submitted that the rights of the parties regarding interpretation of Section 11 of the Railways Act would ultimately be governed by the judgment of the Supreme Court in SLP(C) Diary No. 29692 of 2022.

11. The rival contentions are now up for consideration.

12. At the outset, it is pertinent to note that paragraph 83(viii), which mandates the petitioners to seek permission from this Court, reads as follows:

“83(viii). In view of the applicability of the public trust doctrine, the State is duty-bound to protect and preserve mangroves. Mangroves cannot be permitted to be destroyed by the State for private, commercial, or any other use unless the Court deems it necessary for the public good or public interest.”

13. It is undisputed that the Ministry of Environment and Forests has granted in-principle approval to the petitioners' proposed project, subject to the conditions enumerated in the said order, from (i) to (xxiii). The petitioners have affirmed on oath that all the aforementioned conditions have been complied with, and they have also prepared a Wildlife Conservation Plan for the proposed project. In an additional affidavit, the petitioners have stated that, in addition to

mandatory compensatory afforestation, they have requested the Additional Chief Principal Conservator of Forests (Mangroves) to identify land and determine the cost for implementing a 1:3 ratio of compensatory mangrove plantation, to balance the loss of mangroves proposed to be felled. The Additional Chief Principal Conservator of Forests (Mangroves) has identified land for the plantation of 7,823 mangroves at Survey No. 70, Village Sandor, Taluka Vasai, District Palghar, for the purpose of mangrove afforestation (in the vicinity of the mangroves proposed to be cut). The cost of plantation and subsequent maintenance has been fixed at Rs. 15,00,000/-.The petitioners deposited the amount of Rs. 15,00,000/- on 29 January 2024.

14. The broader public interest and welfare, when weighed against the environmental consequences of cutting the mangroves, is balanced by the fact that the construction of the 5th and 6th lines between Borivali and Virar will alleviate congestion on the existing lines used by local trains, thereby allowing for the operation of additional local trains. The railway system is an eco-friendly mode of mass transportation and one of the most efficient in the world. The construction of these lines will reduce emissions, alleviate traffic congestion,

and conserve precious fuel. Therefore, in our opinion, the project is overwhelmingly in the public interest and has significant ecological benefits.

15. In the present case, the additional circumstance rendering the implementation of the project absolutely necessary, with no viable alternative, is the fact that the proposed project is adjacent to the existing railway line, situated on land owned by the railways. Accordingly, this alignment has been determined to be the most suitable from technical, economic, and functional perspectives.

16. The affected mangrove area is required to be effectively compensated through compensatory afforestation by planting 7,823 mangroves at Survey No. 70, Village Sandor, Taluka Vasai, District Palghar, which is in close proximity to the mangroves proposed to be cut. The petitioners have deposited the costs of Rs. 15,00,000/- for the plantation and maintenance on 29 January 2024.

17. Furthermore, the Ministry of Environment and Forests has granted in-principle approval for the project by an order dated 17 November 2023, subject to the compliance with Conditions Nos. (i) to (xxiii) of the said order.

18. As we are granting permission based on the satisfaction of the compliance with the parameters set forth in the judgment in Public Interest Litigation No. 87 of 2006, dated 17 September 2018, we have not addressed the legal point raised by the petitioners regarding whether, in light of Section 11 of the Railways Act, permission under the provisions of the Environment Protection Act, CRZ Notification, and the Forest Conservation Act (FCA) is necessary. This question is specifically reserved for adjudication in an appropriate case.

19. In view of the reasons stated above, we pass the following order:

a) The petitioners are permitted to remove 2,612 mangroves from the land impacted by the construction of the 5th and 6th railway lines between Borivali and Virar stations, as part of the Mumbai Urban Transport Project III-A, and to carry out all necessary works in connection with the proposed 5th and 6th lines, in accordance with the in-principle approval dated 17 November 2023 granted by the Regional Empowered Committee, subject to compliance with the conditions imposed by the Ministry of Environment and Forests in

the order dated 17 November 2023.

b) A responsible officer on behalf of petitioner No. 1 shall file an undertaking before this Court within four weeks from the date of uploading of this order, stating that the petitioner will complete the plantation and maintenance of 7,823 mangroves at Survey No. 70, Village Sandor, Taluka Vasai, District Palghar before the removal of the existing 2,612 mangroves at project site.

c) In the event that the petitioners fail to comply with the conditions imposed by the Ministry of Environment and Forests in the order dated 17 November 2023, it shall be open to respondent No. 4 to bring this fact to the attention of this Court, and upon being satisfied of such non-compliance, this Court may pass appropriate orders as are necessary and permissible in accordance with law.

20. The writ petition stands disposed of. No costs.

21. Interlocutory application(s), if any, shall stand disposed of.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)