

(2005) 10 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition (Lodging) No. 3246 of 2004 and Writ Petition No's. 1470 of 2003 and 2208 of 2004

The Bombay Environmental Action Group and Another

APPELLANT

Vs

The State of Maharashtra and Others
 Usha Madhu
Development Co-op. Hsg. Soc. Ltd. and Another Vs Union of
India (UOI) and Others
 Maharashtra Manav Seva
Sangh Vs The Tahasildar and Others

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Citation : (2005) 10 BOM CK 0008

Hon'ble Judges : Dalveer Bhandari, C.J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Janak Dwarkadas, instructed by P.K. Shroff and Co. in Writ Petition Lodging No. 3246 of 2004 and A.V. Anturkar and S.B. Deshmukh, in Writ Petition No. 2208 of 2004, K.K. Singhvi and P.A. Purandare, N.H. Seervani, Gautam Patel, Madhavi Diwan and S. Jagtiani, instructed by M.V. Jaykar and Co. and E.P. Bharucha and Presswala, instructed by Rustomji Ginwala, for intervenors in Writ Petition Lodging No. 3246 of 2004 and Janak Dwarkadas and P.K. Shroff, instructed by Parimal K. Shroff and Company in Writ Petition No. 1470 of 2003, for the Appellant; Ravi Kadam, General and Amjad Syed, Assistant Government Pleader for respondent Nos. 1, 5 and 6 and B.A. Desai, A.S.G. and Suresh Kumar, in Writ Petition (Lodging) No. 3246 of 2004, B.A. Desai, A.S.G. and Suresh Kumar, for respondent No. 1, Ravi Kadam, General and Amjad Syed, Assistant Government Pleader for respondent Nos. 2 and 3, K.K. Singhvi and P.A. Purandare, for respondent Nos. 4 and 5 and Aspi Chinoy instructed by M.V. Jaykar and Co. for respondent Nos. 6 and 7 in Writ Petition No. 1470 of 2003 and Ravi Kadam, General and Amjad Syed, Assistant Government Pleader for respondent Nos. 1 to 4 and 12, B.A. Desai, A.S.G. and Suresh Kumar, for respondent No. 5, Shashikala Sharma, instructed by Yogesh Adhia, for respondent No. 6, S.A. Abhyankar, for respondent No. 10 and K.K. Singhvi and P.A. Purandare, for respondent No. 11 in Writ Petition No. 2208 of 2004, for the Respondent

Judgement

1. These writ petitions have been filed seeking urgent measures for the

protection and preservation of the fast depleting mangrove forests which line the coast of State of Maharashtra. The petitioners in Writ Petition (Lodging) No. 3246 of 2005, state that 720 Kms. long coastline of Maharashtra is indented by numerous rivers, estuaries, creeks, small bays, headlands, rocky shores, sand and muddy beaches. All such geomorphologic structures act as a habitat for different kinds of eco-systems which are essential for the protection of the coastline from the encroaching sea. The petitioners state that there are about 18 major estuaries along the coastline of Maharashtra harboring some of the biologically richest patches of mangroves along the entire western coast of India. All 52 creeks along the coast of the State are covered by mangroves to a certain extent.

2. The main concern of the petitioners is the- destruction of mangroves in various ways. The petitioners have relied upon a number of articles contributed by well-known authors to depict that after the Tsunami, the scientific verdict has been unanimous - damage is greatest where beaches have been built on, dunes flattened, where ground water was pumped out and coral reefs killed. There seems to be unanimity amongst all counsel appearing for different parties that mangroves play an important role in eco-systems and mangroves have to be preserved at any cost.

3. The petitioners in the petition have incorporated that they have received a number of complaints from the citizens about the systematic destruction of mangroves in various localities by land grabbers and encroachers. The petitioners have identified five areas where indiscriminate, destruction of man groves is taking place. Those area are:

- (i) Seven Bungalows, Andheri;
- (ii) Kanjurmarg;
- (iii) Link Road, Goregaon,
- (iv) Gorai; and
- (v) Malvani Village, Malad.

4. The petitioners have prayed that pending further hearing of these petitions, it is absolutely imperative that the respondents be restrained from destructing or denuding mangroves by dumping, obstructing water supply, cutting of mangroves or by any other method.

5. We have heard the learned Counsel for the parties including the learned Advocate General for the State of Maharashtra.

6. This order is passed to prevent further destruction of mangroves and to ensure the conservation and rejuvenation of mangroves in the State of Maharashtra.

7. The Maharashtra State using Satellite Remote Sensing directed to prepare

Phase-II of the mapping for carrying out mangroves study using high resolution satellite data of 65 cms. spatial resolution/one meter spatial resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas. After receiving the satellite data, transfer of mangrove details on city survey/village maps (cadastral map) would be done. According to the learned Advocate General, this exercise is likely to take about six months. It has become imperative to pass interim order to protect the mangroves during the interregnum. We direct that this order shall not apply to all those cases which are specifically governed by injunction or stay order passed by the Courts of law before this date.

8. The State Government is directed to designate a Senior Officer not below the rank of concerned District Magistrate and Collector and Deputy Commissioner of Police/Superintendent of Police to oversee the implementation of the following directions. They would entertain complaints from citizens in respect of mangrove destruction. The name, address and contact information of such, officers shall be advertised prominently in one English newspaper and two Marathi newspapers, apart from the official websites of the Maharashtra Government and the Forest Department.

(i) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. We take note of the fact that In T.N. Godavarman Thirumulkpad v. Union of India and Ors. etc. Writ Petition (C) No. 202 of 1995 and 171 of 1996, an affidavit was filed on behalf of the State of Maharashtra by the Chief Conservator of Forests (Administration), in which on the basis of a report of an Expert Committee, it was stated that in the Mumbai Urban Area alone, 1,534 hectares" of land were, inter alia, classified as mangrove areas.

(ii) All construction and rubble/garbage dumping on the mangrove areas shall be stopped forthwith:

(iii) Regardless of ownership of the land, all construction taking place within 50 metres on all sides of all mangroves shall be forthwith stopped;

(iv) No development permission whatsoever shall be authority in the State of Maharashtra in respect of under mangroves.

(v) The Municipal Commissioner of Greater Mumbai shall forthwith issue the necessary directions to the Municipal Corporation of Greater Mumbai Building Proposals Department not to entertain any applications for development (as defined in the Maharashtra Regional and Town Planning Act, 1966) on or in respect of (sic) mangrove lands, regardless of the nature of ownership;

(vi) The State Government and the Maharashtra Coastal Zone Management Authority (MCZMA) are directed to file monthly report on the above action plan to this Court. The first report will be submitted within four weeks from today. The report shall specifically state, in addition to the progress/action taken,

(a) the number of complaints received, if any,

(b) the action taken thereon, if any,

(c) the number of offenders named, and

(d) the details of prosecutions/action launched/taken against such offenders.

(vii) The State of Maharashtra is directed to file in Court and furnish to the petitioners copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr. Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from-today;

(viii) The areas shown, as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove area in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today;

(ix) After the aforesaid process in Clause (viii) is completed, the (sic) so identified which are government owned shall be declared and notified as "protected forests", in accordance with law after carrying out ground survey etc. The areas so identified that are privately owned shall be declared and notified as "forests", in accordance with law, after carrying out ground survey etc. The said declaration/notification will be completed within a period of 8 weeks of the completion of Phase-II mapping;

(x) The mangrove areas that are on government owned lands will be handed over to the Forest Department within a period of 12 weeks from the declaration, of the same as "protected forests";

(xi) From the list of "mangrove areas" so- identified, Government owned lands will automatically be declared/notified as "protected forests". Likewise, privately "owned lands from the list of mangrove areas so identified, the same will be declared/notified as "forests";

(xii) The Secretary, Revenue Department, shall from the said date of taking over possession of the Government owned land by the Forest Department, update all the revenue records to ensure that the said Government lands are shown as "protected forests" in the said revenue records within a period of 12 weeks from the same being declared as "protected forests". In the case of lands that are private owned, the secretary, Revenue Department, shall update all the revenue records to ensure that-the said private lands are shown as "forests " in the said

revenue records within a period of 12 weeks of completion of the steps in Clause (x) above:

(xiii) In respect of Government lands, the Forest Department and other authorities of the State of Maharashtra shall take the following necessary steps of protection, conservation and regeneration of the areas that would be declared/notified as "protected forests: in terms of Clause (x) above;

(a) Removal of all obstructions that are impeding the growth of mangroves as also the impediments which restrict the flow of sea water in the mangrove areas;

(b) Where mangrove growth is found to (sic) denuded (i.e. with forest density less than (sic) means canopy less than 40%) within these identified area, taking necessary steps for rejuvenation;

(c) On identification of the areas as forest, the Municipal Corporation of Greater Mumbai would remove garbage and debris within these areas within a period of three months as per the instructions of the Forest Department. These areas shall be rejuvenated with mangroves;

(d) The Forest Department is directed to take necessary action against the offenders in accordance with law for damaging, or destroying mangroves.

9. The Officers so designated in paragraph 8 above shall submit a report on the above action plan every three months to this Court. The first of such reports shall be submitted within four weeks from the date of declaration/notification as "protected forest". In addition to the progress/action taken, the reports shall specifically state the action taken as regards (a) number of complaints received, if any, (b) the action taken thereon, if any, (c) the number of offenders named, and (d) the details of the prosecutions/action launched/taken against such offenders.

10. The State Government shall provide the necessary staff and funds for implementing the aforesaid directions to all concerned departments of the State.

11. The Principal Secretaries of (i) Environment, (ii) Revenue and (iii) Forest Departments Government of Maharashtra, shall be overall in-charge of ensuring total compliance of this order.

12. This order shall partly modify the order dated 9th June, 2004 of this Court passed in Writ Petition No. 2208 of 2004.

13. The Chief Secretary of the State of Maharashtra is directed to send a circular to all concerned Collectors/Deputy Commissioners of Police/Superintendents of Police and all other concerned officials to ensure meticulous compliance of this order.

14. A copy of this order shall be sent to the Chief Secretary of the State of Maharashtra with a special messenger.

15. List these matters on 16th November, 2005 for further directions and to

ensure implementation of our order.