

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
INTERLOCUTORY APPLICATION NO. OF 2019
IN
SPECIAL LEAVE PETITION (CIVIL) NO. 31178 OF 2018

IN THE MATTER OF:

Ms. Amrita Prithwishwar Bhattacharjee & Anr. ...Petitioners

VERSUS

State Government of Maharashtra & Ors. ...Respondents

Application for Interim Relief

[PAPERBOOK]
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ADVOCATE FOR PETITIONER(S): MR. JATIN ZAVERI
Filed on: 22.02.2019

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To,

The Hon'ble Chief Justice of India
And His Companion Justices of this
Hon'ble Supreme Court of India

The humble application of
the Petitioners abovenamed

MOST RESPECTFULLY SHEWETH

1. The Petitioners abovenamed have filed the petition seeking special leave to appeal under Article 136 of the Constitution of India against the impugned final Judgment dated 26.10.2018 passed by the High Court of Judicature at Bombay in Writ Petition (L) No.2766 of 2017.
2. That the Petitioners had approached the High Court against the non-application of mind by the State Government in changing the area of 33 hectares of land in Aarey Milk Colony from No Development Zone to Metro Car Depot/Workshop, allied user for the Mumbai Metro 3 line. Such a change of user is posing grave danger to the Aarey Milk Colony which constitutes a 'green lung' and a 'green sponge' for the city of Mumbai. Indeed, the Environmental Experts in the Technical Committee formed by the State Government have dissented

with the proposal of using even 20.82 hectares of Aarey land for Metro Car depot.

3. That it is submitted that the Technical Committee had considered the alternative sites and recommended the land at Kanjur Marg for Metro Car depot. It is submitted that there are other sites available for Metro Car depot. Such sites are as under:

i). Kanjur Marg

41 hectares of vacant land is available at this site. Moreover, part of this land is going to be used for the Mumbai Metro Line 6 depot. It was the specific recommendation of the Technical Committee that larger benefits would be achieved by integrating the Metro 3 and Metro 6 Depots at Kanjurmarg.

ii) Mahalaxmi Race Course

26.7 hectares of land is available at this site. According to the Technical Committee report, about 500 trees would be affected. However, the number of trees affected in the land in question at Aarey is about 3381 trees plus construction of a Depot at Aarey would lead to the destruction of the critical flood plains at the bank of Mithi River.

iii) Bandra Kurla Complex

30 hectares of land is available at this site and part of that land has been handed over to Mumbai Metro Line 2B for a casting yard, though it was not made available for the Metro 3 line as the land was considered an

extremely valuable economic asset, with huge revenue generation potential.

iv) Mumbai University, Kalina

Over 50 hectares of land is available at this site. As per Technical Committee's report, the area is earmarked for expansion of University facility and hence cannot be comprised for depot facility. The Technical Committee has overlooked the fact that a Car Depot does not require to be built 'open to sky' and that any building can easily be constructed over the Depot area.

v) Backbay Reclamation

According to the Technical Committee report, an area of about 15-20 hectares need to be reclaimed from the Sea and approximately 3.5 hectares of Mangroves exists on the site. It submitted that reservation of the land is now changed to residential and play ground to be reclaimed with muck excavated during construction of Metro 3 line and, therefore, the apprehension of reclamation does no longer survive.

vi) Mumbai Port Trust Land

According to the Technical Committee report, the land at the site was inadequate to develop a depot. It is, however, submitted that recently an area of 966 hectares of port land has been opened up for commercial and residential development. In view of this development, the Respondents ought to consider setting up Metro Car Depot on the Mumbai Port Trust land and spare the forest of Aarey.

vii) Dharavi land

According to the Technical Committee the land was encumbered by slums and no vacant land was available. However, on 23.11.2018 a proposal was floated for the planned redevelopment of 240 Hectares, which would give ample opportunity to accommodate a Metro Depot. In view of this development, the Respondents ought to consider setting up Metro Car Depot on Dharavi land and spare the forest of Aarey.

Details of these available alternate sites is Annexure I-1.(p.10-19)

4. That it is submitted that instead of destroying forested area of the land in question, the Respondents have alternative sites for setting up depot facility in the city of Mumbai.
5. That it is submitted that the Technical Committee had recommended that Metro Car depot be built at Kanjur Marg and in the alternative the Committee had recommended use of 20.82 hectares of Aarey land impacting only 446 trees.
6. That for one reason or another neither the State Government nor Respondent No.4 took any concrete and serious steps to get the land at Kanjur Marg and subsequently changed the user of the land in question measuring 33 hectares from No Development Zone to Metro Car depot. It is relevant the Committee had recommended use of 20.82 hectares of land and State Government had accepted the recommendation in toto. However, instead of changing user of 20.82 hectares of land with an impact on just 446 trees the Government

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changed the user of much larger area impacting more than 3380 trees.

7. Moreover, the Respondent No.4 has commenced the work without complying with the conditions imposed for mitigating the environmental impact to Aarey Colony. Thus, though the Respondent No.4 is required to keep open the open area shown on part plan of the proposed modification, it is using the open area and has filled up the land in question with mud leading to complete destruction of the natural ground water, perennial rivulets and flood plain. The trees standing on the land in question have been buried under mud and roads are being diverted through densely treed areas. Photographs depicting the mud filling work, structures erected in the open area, blockage of perennial rivulets, extent of mud filling, road diversion work and the ecological destruction of the Aarey forest is **Annexure I-2**. (p.20-24)

8. Similarly, the Respondent No.4 has failed to provide ground water recharging arrangements. Indeed, to the best of the Petitioners knowledge it has failed to obtain necessary approvals from Central Ground Water Resources Authority. Similarly, the Respondent No.4 was required to obtain permissions from various departments under the prevailing laws before development of the land. However, it has commenced development of land without any permission from the Tree Authority. Indeed, Tree Authority had not granted the permission sought for cutting 444 trees and 'deemed permission' was illegally issued in contempt of specific orders by the Hon'ble Bombay High Court. Over 33,000 members of

the public filed their objections for the proposed removal of further 2702 trees for the Aarey Metro Depot. A true copy of the news report dated 10.10.2018 is **Annexure I-3.** (p.25-26) Due to the extremely high number of objections received the Tree Authority decided to publish another notice for hearing objections. By Order dated 11.10.2018, the Hon'ble Bombay High Court directed the Tree Authority to provide proper hearing to the objectors. A true copy of the Order dated 11.10.2018 passed by the Bombay High Court is **Annexure I-4.** (p.27-29) I More than 5 months have lapsed yet fresh hearing has not been provided and still the issue of whether 2702 trees can be permitted to be removed for a Metro Depot has not yet been decided.

9. Similarly, the plantation of trees is not being done with sincerity and sensitivity resulting in non-survival of more than 50% of the 1462 already transplanted trees from the station areas. A true copy of Minutes of Meeting dtd.29.1.2019 of Committee formed by High Court is **Annexure I-5.** (p.30-34)
10. That it is submitted that in paragraph 80 at page 92 of the impugned order, the High Court has held that "*... it is erroneous to term Aarey or Aarey Milk Colony area as a forest. There is no question to the same being referred to as a forest....*". This observation of the High Court and the change of land use of Aarey Land for Metro Car depot has opened up the entire Aarey Milk Colony land for development and now the Government has come out with the reservation with rehabilitation scheme in another part of the Aarey Milk Colony. A true copy of the DP Plan depicting the aforesaid

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development is Annexure I-6. (p.35) The Government has also changed the land use zone for some other parts of Aarey/Eco-Sensitive Zone from No Development Zone (NDZ) to (i) Metro Bhavan, (ii) Industrial use, (ii) Public Parking Lot, (iii) RTO office and Test Track. Bit by bit the pristine Aarey land is being eaten into and the Petitioners apprehend that in this manner the entire Aarey land would be up for grabs for commercial exploitation.

11. In Counter the Respondent No. 4 have for the first time informed that the area for the Metro Car Depot has now been more than doubled to 61.6 Hectares (Annexures R-5 and R-6), which clearly shows that that the Respondent No. 4 has no intention to contain the ecological destruction of the pristine and naturally forested Aarey area.
12. It is pertinent to note that the Mumbai Metro 3 line is being developed at a budgeted cost of approx Rs 23,000 Crores which is funded by Rs 13,000 Crores from Japanese (JICA) loan and the remainder Rs 10,000 Crores was to be raised by way of real estate development of the land in question at Aarey (paras 9 & 15 of impugned Judgement). By the impugned Judgement it is confirmed that No Commercial use is permitted at the land in question (Paras 72 & 86 of impugned Judgement), therefore funding for the entire Metro 3 project, to the tune of Rs 10,000 Crores, has come to a halt. The Petitioners find it extremely hard to believe that the Respondent No. 4 is okay with losing funding of Rs 10,000 Crores, but yet refuses to spend Rs 750-1,500 Crores to move the Car Depot to Kanjur Marg where it would be integrated

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with the Metro 6 line for the larger public good. The Petitioners verily believe and reiterate their contention that the Depot is sought to be located at Aarey Milk Colony as the first of several steps to exploit the entire Aarey Milk Colony commercially (Para 28(3) of impugned Judgment).

:: P R A Y E R ::

In the premises above, it is most respectfully prayed that this Hon'ble Court may kindly:

- a) pass an interim order stopping all activities being carried out by the Respondent No.4 on the land in question inside Aarey Colony;
- b) pass an interim order directing the Respondents to carry out the activities for setting up Metro Car depot at the alternative sites referred to in paragraph 3 of the present application;
- c) pass an interim order staying the operation of the observations made at page 92 of the impugned order to the effect that Aarey Milk Colony area cannot be referred to as forest; and
- d) pass any other order or further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY
BOUND SHALL EVER PRAY

Drawn & filed by

(JATIN ZAVERI)
Advocate for Petitioner(s)

Filed on: 22.02.2019

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AFFIDAVIT

I, Amrita Prithwishwar Bhattacharjee, W/o. Sh. Prithwishwar Bhattacharjee, aged about 44 years, having my address at A-401, Raj Rudram, Golkuldham, Goregaon (East), Mumbai-400063, do hereby state on solemn affirmation as under:

1. That I am one of the Petitioners. I am well conversant with the facts of the case and able to depose to the same.
2. That the documents filed along with the present affidavit are true copies of their respective original and formed part of the record of the courts below.
3. That documents at Annexure I-1 to I-6 to the application are true/correct copies of their respective originals.

DEPONENT

VERIFICATION

Verified at Mumbai on this 21st day of February, 2019, that the contents of my above affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

DEPONENT