

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

WRIT PETITION NO.1207 OF 2022

1. The Tata Power Company Limited
A Company incorporated under the
provisions of Indian Companies Act, 1913
having its registered office at 24, Bombay House,
Homi Modi Street, Mumbai – 400 001.

2. Hanoz Minoo Mistry
Shareholder of Petitioner No.1,
residing at 36A, Engineer's Bungalow,
Block No.1, Sunmill Road,
Lower Parel, Mumbai – 400013.

... Petitioners

Versus

1. Union of India
Through the Ministry of Environment Forest
& Climate Change,
Paryavaran Bhavan, New Delhi 110002.
And also at :
Aayakar Bhavan, 2nd Floor,
Maharshi Karve Road, New Marine Lines,
Mumbai – 400 020.

2. Maharashtra Coastal Zone Management Authority
Environment Department, 2nd Floor, Room No.217,
Annexe Building, Mantralaya, Mumbai – 32.

3. State of Maharashtra
Environment Department, through the
Office of Government Pleader, (O.S.),
Bombay High Court, PWD Building,
Fort, Mumbai 400 001.

4. Chief Conservator of Forest (Mangrove Cell)
through the Office of Government Pleader, (O.S.),
Bombay High Court, PWD Building,
Fort, Mumbai 400 001.

5. Principal Chief Conservator of Forest
(Head of Forest Force)
Nagpur, State of Maharashtra
through the office of the Government Pleader, (O.S.),
Bombay High Court, PWD Building,
Fort, Mumbai 400 001.

6. Maharashtra State Electricity Transmission
Company Ltd.
A wholly owned corporate entity under
the State of Maharashtra incorporated under
the provisions of the Companies Act, 1956
having its registered office at Prakashganga,
Plot No.C, 19-E Block, Bandra Kurla Complex,
Bandra (E), Mumbai 400 051.

... Respondents

Dr. Milind Sathe, Senior Counsel & Mr. Bhushan Deshmukh, Counsel a/w
Mr. H.N. Vakil i/by Mulla & Mulla and Craigie Blunt & Caroe for the
Petitioners.

Mr. Advait M. Sethna i/by Mr. N.R. Bubna for Respondent No.1-UOI.

Mr. A.L. Patki, Additional GP for Respondent-State.

Mr. Abhijeet A. Joshi a/w Ms. Varsha Sawant for Respondent No.6-
MSETCL.

Mr. Pheroze F. Mehta and Ms. Rishika Harish – Amicus Curiae.

CORAM : **A.A. SAYED AND
ABHAY AHUJA, JJ.**

DATE : **2ND MARCH 2022**

ORAL JUDGMENT : (PER ABHAY AHUJA, J.)

1. By this Petition, filed under Article 226 of the Constitution of India, Petitioners are seeking a direction of this Court to the Respondent Authorities to allow Petitioners to implement the project for 220 KV transmission line between Kalwa and Salsette pursuant to the permissions granted under the provisions of the Environment (Protection) Act, 1986 (for short “EPA, 1986”), Forest (Conservation) Act, 1980 (for short “FCA, 1980”) and the Notifications issued under the provisions of EPA, 1986.

2. Petitioner No.1 is a Company supplying electricity to the consumers in the island city of Mumbai. To implement the scheme approved by the State Transmission Utility (“STU”) and the Maharashtra Electricity Regulatory Commission (“MERC”), Petitioners propose to construct of 220 KV transmission line of about 5 kilometers from Kalwa to Salsette (the “Project”) to augment the existing 110 KV transmission line corridor, which will be passing through the existing Right of Way (“ROW”) of 22 meters width over an area consisting of mangroves and also falling within 50 meters mangrove buffer zone.

3. Dr. Milind Sathe, learned Senior Counsel for the Petitioners submits that in this regard, Petitioner No.1 has obtained the Environmental Impact Assessment (“EIA”) report from the Bombay Natural History Society (“BNHS”) regarding the possible impact of the Project on the mangroves in the existing ROW. The said Report has highlighted the following :-

- (i) Total number of transmission towers are 29 out of which 14 transmission towers are falling in Coastal Regulatory Zone (“CRZ”).
- (ii) About 477 number of mangroves will be displaced due to the proposed project.
- (iii) BNHS has suggested compensatory plantation about 5000 mangroves saplings.

Learned Senior Counsel submits, on instructions, that Petitioners would undertake the compensatory plantation as above for protection of the environment.

4. He submits that Petitioner No.1 has also received the following approvals which are necessary for execution of the Project :-

- (i) The Maharashtra Electricity Regulatory Commission (MERC) has granted “in-principle” clearance/ permission to the Petitioner No.1 on 8th November

2020 for the said Project to augment its transmission lines to 220 KV (Exhibit “D” to the Petition).

- (ii) Coastal Regulation Zone (CRZ) clearance dated 24th November 2015 and CRZ clearance validity extension dated 21st May 2021 from Ministry of Environment, Forest and Climate Change (MoEFCC) valid upto 23rd November 2025 where Specific Condition No.(iv), Part A, I-Construction Phase requires prior permission of this Court for activity in Mangroves and its buffer zone.
- (iii) Forest Stage-I “in-principle” clearance dated 13th December 2021, from Regional Office of Ministry of Environment, Forest and Climate Change (MoEFCC), Nagpur.

5. It is submitted that the current power generation in Mumbai is 1877 MW, whereas, the power demand is 3800 MW. The gap of about 2000 MW is bridged by procuring power from outside Mumbai through transmission lines connected with State Grid. Due to upcoming infrastructure projects, the power demand is expected to increase, which can lead to shortage of power. Many of the generating plants located in Mumbai are more than 25 years old and are ageing fast. Therefore, the need to augment the existing 110 KV transmission line connecting Kalwa Receiving Station to various generating stations is a project in public interest.

6. Learned Senior Counsel submits that pursuant to judgment dated 17th September 2018 in **Public Interest Litigation No.87 of 2006 (Bombay Environment Action Group and Another Vs. The State of Maharashtra and Others)** alongwith connected Petitions (2019 (1) Bom CR 1), any development in respect of mangroves of 1000 sq. meters or more, including a buffer zone of 50 meters being part of CRZ-I has been banned except with the leave of this Court. It is in these circumstances, Petitioners have approached this Court for directions to the Respondent Authorities to permit execution of the Project in public interest. It is further submitted that many such similar projects have commenced work after directions of this Court. Learned Senior Counsel has taken us through various orders in the compilation forming part of the Petition.

7. Respondent No.1, viz., Ministry of Environment Forest and Climate Change has filed an affidavit submitting that the approval dated 13th December 2021 is an in-principle approval and that in accordance with the said approval, Petitioner No.1 has not yet submitted the compliance report of the conditions stipulated in Stage-I approval and the same is awaited for grant of Stage-II approval. It is submitted that after

receipt of compliance report duly authenticated by the competent authority in the State Government, the Stage-II approval will be considered under Section 2 of the FCA, 1980.

8. Mr. Adwait Sethna, Learned Counsel for the Respondent-MoEFCC takes us to the conditions in the in-principle approval and submits that it is only after the receipt of report on the compliance of conditions and undertakings duly authenticated by the competent authority in the State Government that formal approval will be considered under the FCA, 1980. He submits that this Court may therefore consider directing the Respondent Authorities to postpone the commencement of work by Petitioners until the said formal approval, as stated in the in-principle approval, is obtained. In support of his contention, he refers to the order dated **19th December 2019** in **Writ Petition No.2188 of 2019** in the case of **Mumbai Metropolitan Region Development Authority Vs. Union of India & Ors.** as set out in the compilation of orders in similar projects where a compliance report had been filed.

9. Dr. Sathe, Learned Senior Counsel for the Petitioners takes us through the decision of this Court in **Writ Petition No.1646 of 2019** in the

case of **Mumbai Metropolitan Region Development Authority Vs. Union of India & Ors.** dated **19th December 2019** and other orders to submit that even in these cases where there was an in-principle Stage-I approval accorded, this Court had directed the authorities to permit the execution of the proposed project therein, subject to the undertakings to comply with the conditions contained in the said approvals/permissions.

10. Learned Senior Counsel further submits that for commencement of work, the Guidelines dated 7th May 2015 by the MoEFCC are applicable which should allay the apprehension expressed by learned Counsel for Respondents. He would submit that the said guidelines have been issued in compliance of directions issued by the National Green Tribunal in Original Application No.52 of 2015 in the matter of **Milind Pariwakam & Anr. Vs. Union of India**. He takes us through the following guidelines and submits that the said guidelines are applicable to the present Project :-

“3. In compliance of directions issued by the Hon’ble NGT in the said O.A. and in supersession of this Ministry’s said letters/guidelines of even number dated 8th August 2014 and 15th January 2015, I am directed to say as below :

- (i) *With a view to facilitate speedy execution of projects involving linear diversion of forest land such as laying of new roads, widening of existing highways, transmission lines, water supply lines, optic fiber cabling, railway lines, etc., in-principle approval under the Forest (Conservation) Act, 1980 (FC Act) issued by the Central Government may be deemed as the working permission for tree cutting and commencement of work, if the required funds for compensatory afforestation, net present value (NPV), wildlife conservation plan, plantation of dwarf species of medicinal plants, and all such other compensatory levies specified in the in-principle approval are realised from the user agency and where necessary, for compensatory afforestation, transfer and mutation of non-forest/revenue forest land in favour of State Forest Department is affected;*
- (ii) *After the afore-mentioned compensatory levies specified in the in-principle approval are realised from the user agency and where necessary, for compensatory afforestation, transfer and mutation of non-forest/revenue forest land in favour of State Forest Department is affected, the State Government or a Senior Officer not below the Rank of a Division Forest Officer, having jurisdiction over the forest land proposed to be diverted, duly authorized in this behalf by the State Government, shall pass an order for tree cutting and commencement of work of a linear project in forest land;*
- (iii) *No non-forest activity in the forest area that is covered under Section 2 of the FC Act would be permitted and carried on in any manner whatsoever*

unless an order specified in para (ii) above has been passed by the competent authority of that State Government and is placed in the public domain by putting it on its website and all other requirements in accordance with law are complied with;

(iv) For the purpose of Section 2A of the FC Act and Section 16(e) of the National Green Tribunal Act, 2010 (NGT Act) the Order for tree cutting and commencement of work of linear project in forest land, order specified in para (ii) above, shall be an order under Section 2 of the FC Act;”

Dr. Sathe submits that therefore pursuant to the “in-principle” approval dated 13th December 2021, Petitioners can commence work and that Petitioners would undertake to abide by the aforesaid guidelines. Learned Senior Counsel submits that this should take care of the concerns raised on behalf of the Respondent-MoEFCC.

11. Considering that mangroves being centres of biodiversity and the most productive ecosystems that play a crucial role in protecting and preserving the environment, on 8th February 2022, we deemed it appropriate to appoint Mr. Pheroze Mehta and Ms. Rishika Harish as Amicus Curiae to assist the Court in the present matter.

12. Learned Amicus Curiae were present in the Court on 1st March 2022 and are also present today to assist the Court. Learned Amicus Curiae submit that a bare perusal of the Guidelines dated 7th May 2015 for diversion of forest land for non-forest purpose under the FCA, 1980 indicate that the in-principle approval under EPA, 1986 issued by the Central Government is to be deemed as the working permission for tree cutting and commencement of work if the required conditions including compensatory afforestation, etc., as specified in the in-principle approval are complied with. They would submit that if three fold undertakings, viz., (1) for compliance of conditions under the existing clearances/permissions including the in-principle approval dated 13th December 2021 *inter alia* in respect of the compliance of the condition with respect to the formal approval, (2) to abide by the guidelines dated 7th May 2015, (3) to obtain all necessary/further clearances for the Project and to comply with the conditions therein, are obtained and furnished by Petitioners, that should be sufficient to direct the respective authorities to commence the Project work.

13. We have heard the learned Counsel for the parties and the learned Amicus Curiae and with their able assistance we have perused the papers, proceedings, the orders passed in similar matters and in particular the conclusions in the Environmental Impact Assessment by BNHS and the conditions in the approvals/permissions obtained by Petitioners, the Guidelines dated 7th May 2015 by MoEFCC and given our thoughtful consideration to the matter.

14. The concept of public trusteeship/the public trust doctrine primarily rest on the principle that certain resources like air, sea, water and the forests have such great importance to the people as a whole that their preservation, protection and conservation would be the responsibility of the State such that these gifts of nature should be made available to everyone irrespective of their status in life. The doctrine enjoins upon the Government to protect the resources for enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The Hon'ble Supreme Court in the case of **Karnataka Industrial Areas Development Board Vs. C. Kenchappa & Ors., AIR 2006 Supreme Court 2038** has in a judgment authored by Hon'ble Shri Justice Dalveer Bhandari (as His Lordship then was) with respect to the "public trust

doctrine” observed as under :-

“82. *In the case of M.C. Mehta vs. Kamal Nath, ((1997) 1 SCC 388), this Court dealt with the Public Trust Doctrine in great detail. The Court observed as under:*

"35. We are fully aware, that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities, who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the court. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

83. *Joseph L. Sax, Professor of Law, University of Michigan-proponent of the modern Public Trust*

Doctrine - in an erudite article "Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be presented for the benefit of the public; accordingly; property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways and running water - 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

15. Similarly, the concept of "sustainable development" has been a matter of several judicial expositions by the Hon'ble Supreme Court. It has been consistently observed that while economic development should not be allowed to take place at the cost of ecology or or by causing

widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. The concept of sustainable development has been aptly described in Paragraph 4 of the Rio Declaration on environment and development of 1992 held in Rio de Janeiro, wherein in Principle 4, it has been agreed that in order to achieve sustainable development, environmental protection shall constitute an integral part of development process and the same cannot be considered in isolation of it. The same principle was articulated in the 1997 "Earth Summit". The following Paragraphs 96, 99 and 100 from the decision in the case of **Karnataka Industrial Areas Development Board (supra)** are apt in this regard and are quoted as under :-

“96. In the Rio Conference of 1992 great concern has been shown about sustainable development. "Sustainable development" means ‘a development which can be sustained by nature with or without mitigation’. In other words, it is to maintain delicate balance between industrialization and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the

ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of ecosystem. The Courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients such as - Precautionary Principle, Polluter Pays and Public Trust Doctrine. We can trace foundation of these ingredients in number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

99. *Sustainable use of natural resources should essentially be based on maintaining a balance between development and ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved.*

100. *The concept of sustainable development was propounded by the 'World Commission on Environment and Development', which very aptly and comprehensively defined it as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Survival of mankind depends on following the said definition in letter and spirit."*

16. This Court on 17th September 2018 in Public Interest Litigation No.87 of 2006 in the case of **Bombay Environmental Action Group and Anr. (supra)**, authored by Hon'ble Shri Justice Abhay S. Oka,

(as His Lordship then was), after invoking the public trust doctrine in respect of mangroves, in Paragraph 83(viii) has observed that the State is duty bound to protect and preserve mangroves and they 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.

17. After extensively analysing the provisions of the FCA, 1980, EPA, 1986 as well as the concept of ‘forest’ pursuant to the decision of the Apex Court in the case of **T.N. Godavarman Thirumulkpad Vs. Union of India & Ors., (1997) 2 SCC 267** as well as the decision of this Court in the case of **Laxman Ichharam Vs. Divisional Forest, AIR 1953 Nagpur 51**, this Court in the judgment dated 17th September 2018 has observed that a land covered by mangroves would be a ‘forest’. Further, after considering the “Coastal Regulation Zone” (CRZ) notifications of 1991, 2001 and various orders by the Government of India thereunder, it was observed that all mangroves fall in CRZ-I irrespective of its area and in case the said area is one thousand square meter or more, even a buffer zone of fifty meters along the said area shall be a part of CRZ-I, where no new construction shall be permitted except *inter alia*, pipelines, conveying systems, including

transmission lines. Highlighting the fundamental duty of the State and the citizens to protect and improve the environment and to safeguard the forests and the wildlife of the country as enshrined in Article 48-A as well as 51-A (g) of the Constitution of India and taking into account the public trust doctrine, precautionary principle, the RAMSAR Convention and Article 21 of the Constitution of India, this Court observed that mangrove eco systems play vital role in human life and if a citizen is to lead a meaningful life as contemplated by Article 21 of the Constitution of India, the mangroves will have to be preserved and protected and the destruction of the mangroves and the failure of the State to take steps for its restoration will amount to violation of the fundamental rights guaranteed by Article 21 of the Constitution. This Court, accordingly, directed a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. In Paragraph No.83, a summary of all important findings was set out. The said Paragraph 83 is quoted as under :-

“SUMMARY OF IMPORTANT FINDINGS

83 The summary of some of the important conclusions read thus :

- (i) A land regardless of its ownership on which there are mangroves, is a forest within the meaning of the said Act of 1980 and therefore, the provisions of Section 2*

of the said Act of 1980 and the law laid down by the Apex Court in the case of T.N. Godavarman will squarely apply to such land;

- (ii) A mangroves area on a Government land is liable to be declared as a protected forest or a reserved forest, as the case may be, within the meaning of the said Act of 1927;*
- (iii) All mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications of 1991 and 2011;*
- (iv) In 1991 CRZ notification, it is provided that all mangrove areas will fall in CRZ-I. By virtue of the order dated 27th September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZ-I. By order dated 9th January 2000, it was provided that 50 meter buffer zone will not be required, provided a road abutting the mangroves was constructed prior to February 1991. Under the 2011 notification, all mangroves lands fall in CRZ-I and in case the area of such land is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of CRZ-I. But, the buffer zone of 50 meters which is required to be kept free of constructions in respect of the mangroves area of less than 1000 square meters will not be a part of CRZ-I.;*
- (v) if there is any violation of the CRZ notifications regarding mangroves area, it will attract penal provision under Section 15 of the said Act of 1986 which is attracted in case of the failure to comply with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 as amended will have to be construed as an order or direction under the said*

Act of 1986 as CZMP is required to be approved by the Central government in view of the clause 3(i) in the CRZ notification of 1991 which is an order or direction under the said Act of 1986. Hence, if there is any violation of the condition in the letter dated 27th September 1996 in respect of the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986.

- (vi) The destruction of mangroves offends the fundamental rights of the citizens under Article 21 of the Constitution of India.*
- (vii) In view of the provisions of Articles 21, 47, 48A and 51A(g) of the Constitution of India, it is a mandatory duty of the State and its agencies and instrumentalities to protect and preserve mangroves;*
- (viii) In view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. 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;*
- (ix) The Precautionary Principle makes it mandatory for the State and its agencies and instrumentality to anticipate and attack causes and consequences of degradation of mangroves”.*

18. The following directions in the operative part of the order in Paragraph 85-A are relevant and are quoted as under :-

ORDER

- (A) The following directions issued in the interim order dated 6th October 2005 shall continue to operate as final directions in following terms;*

- (I) *That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra;*
- (II) *Dumping of rubble/garbage/solid waste on the mangrove areas shall be stopped forthwith;*
- (III) *Regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 metres on all sides of all mangroves areas shall be forthwith stopped. The area of 50 meters shall be kept free of construction except construction of a compound wall/fencing for its protection.;*
- (IV) *No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves. All authorities including the Planning Authorities shall note that all mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications of 1991 and 2011. In case of all mangrove areas of 1000 sq. meter or more, a buffer zone of 50 meters along the mangroves will also be a part of CRZ-I area. Though buffer zone of 50 meters in case of mangroves area of less than 1000 meters will not be a part of CRZ-I, it will be subject to above restrictions specified in clause III above;*
- (V) *The State of Maharashtra is directed to file in this Court and furnish to the petitioner 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. The soft or hard copies of the maps be supplied to the Petitioner within the same period;”*

19. It is not in dispute that electricity supply is an essential service under the Essential Services Maintenance Act and has become a basic necessity in modern day living and working. Considering the industrial growth and the need to provide livelihood to the growing population of the nation, a balance would need to be struck between development and protection and conservation of environment. Therefore, the need for sustainable development where both the needs of development and economy on the one hand and protection and conservation of the environment on the other are balanced. The aforesaid exposition on the public trust doctrine and sustainable development in the Hon'ble Supreme Court's decision in the case of **Karnataka Industrial Areas Development Board (supra)** lends credence to our view.

20. Further, the decision of this Court in the case of **Bombay Environmental Action Group and another (supra)**, not only highlights these principles, but also re-enforces the trust that the public reposes in the Courts when in Paragraph 83 (viii); it states 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. The Courts therefore need to be fully aware and conscious of its responsibility as a guardian of public good and public interest.

21. This Court in the case of **Mumbai Metropolitan Region Development Authority Vs. Union of India & Ors.** in **Writ Petition No.1646 of 2019** while considering a similar petition seeking to execute a project involving construction of car maintenance yard at Malvani for the Mumbai Metro Line – 2A and construction of piers at Valnai involving cutting of 86 mangroves where Stage-1 in principle approval under Section 2 of the FC Act, 1980 was granted and after considering the judgment in the case of **Bombay Environmental Action Group and another (supra)**, directed the execution of the car maintenance yard at Malvani and construction of the piers at Valnai, subject to Petitioners strictly complying with the conditions imposed in the permissions granted by the Respondent Authorities.

22. We note that this is a Project which will be augmenting the existing 110 KV transmission line to 220 KV transmission line to meet the growing needs of electricity demand in the city of Mumbai. The selected route passes through existing ROW including non-mangrove areas and mangrove areas and the Project falls within the 50 meters mangrove

buffer zone. The BNHS' EIA Report has suggested three alternates to mitigate the possible environmental impact. It is observed that about 477 number of mangroves will be displaced due to the proposed project and has suggested compensatory plantation of about 5000 mangroves saplings, which as recorded earlier, Petitioners have undertaken to comply. It is also observed that 14 transmission towers out of a total number of 29 are falling in CRZ. Petitioners have received the necessary permissions from the MERC dated 8th February 2020, from the CRZ dated 24th November 2015 and CRZ validity extension dated 21st May 2021 from the Ministry of Environment Forest and Climate Change and the MoEFCC, Nagpur has issued its in-principle clearance dated 13th December 2021. The condition of the in-principle approval requires submission of the compliance report of conditions stipulated in Stage-I approval for grant of Stage-II approval. It is noted that it is only after receipt of compliance report duly authenticated by the competent authority in the State Government that Stage-II approval will be considered under Section 2 of the FCA, 1980.

23. It would be pertinent here to briefly refer to the decision of the Supreme Court in the case of **T.N. Godavarman Thirumulpad vs Union Of India & Ors. (supra)**, where on the issue of net present value (NPV)

and compensatory afforestation management and planning authority the Hon'ble Supreme Court observed that the forest policy had a statutory flavour and the non fulfillment of the principal aim of the policy which is environmental stability and maintenance of ecological balance would be violative of Articles 14 and 21 of the Constitution. The Hon'ble Supreme Court emphasized compulsory afforestation and a need for a systematic approach so as to balance economic development and environmental protection. It held that in the ultimate analysis, economic development at the cost of degradation of environment and depreciation of forest cover would be counter productive and that there was an absolute need to take all precautionary measures when forest lands were sought to be diverted for non forest use. This decision as well as the decision of the National Green Tribunal in the case of Milind Pariwakan and Another V/s. Union of India (supra) led to the 7th May 2015 guidelines. We note from the guidelines dated 7th May 2015 that with a view to facilitate speedy execution of projects, the in-principle approval granted by the Central Government under FC Act, 1980 which in this case is the approval dated 13th December 2021, may be deemed as a working permission for tree cutting and commencement of work, if the conditions and the other directions *inter alia* with respect to realisation of funds for compensatory

afforestation/compensatory levies, NPV Wildlife Conservation Plan etc. as well as other requirements contained therein are complied with.

24. We also note that this Court has in several matters including in **Writ Petition No.164 of 2019** in the case of **MMRDA Vs. Union of India (supra)** considered similar projects in public interest as well as the in-principle approvals and granted orders directing the Respondent Authorities to permit execution of the projects of *bona fide* public utility.

25. In our view, the project for the construction of 220 KV transmission line between Kalwa and Salsette is necessary for the public good and in the public interest and a project of *bonafide* public utility.

26. Having considered the aforesaid submissions and the above discussion, it would appear to us that if the Petitioner is put to terms by way of 'undertaking' for compulsory afforestation for recommendation of the BNHS in its EIA report as well as undertaking to comply with the conditions of the permissions/clearances already granted as well as to be granted and more particularly, in terms of the in principle approval dated 13th December 2021, to submit a compliance report of the conditions

stipulated in the Stage-I approval and to obtain a formal approval thereupon under the FCA, 1980 and an undertaking that the Petitioners shall abide by and adhere to the guidelines dated 7th May 2015, issued by the MoEFCC, that should adequately meet the requirements of sustainable development discussed above.

27. Considering that similar directions have been previously issued by this Court in appropriate cases where the projects have been sought to be executed for public good or in *bona fide* public interest, permission would also need to be granted in this case, subject to the undertakings from Petitioners as discussed above.

28. Coming to the order dated **19th December 2019** in **Writ Petition No.2188 of 2019** in the case of **Mumbai Metropolitan Region Development Authority (supra)** referred to by learned Counsel for MoEFCC in support of his contention that this Court had therein permitted execution of the proposed construction of elevated corridor in the nature of flyover/link road between Airoli Bridge to Thane Belapur Road in Thane District, at a stage wherein the compliance report pursuant to Stage-I approval had already been submitted by the various authorities,

we note that though there is an observation that the compliance report had been submitted in that case, however, there is no mention that the formal Stage-II approval was in place and, therefore, in our view learned Counsel's reference to the said decision would not really assist the case of the Respondent-MoEFCC, particularly in view of our discussion above as well as the guidelines dated 7th May 2015 and the proposed safeguards in the form of undertakings.

29. We accordingly direct the Respondent Authorities to permit Petitioners to execute the proposed construction of 220 KV Kalwa Salesette Transmission Line (Upgradation of old 110 KV Transmission Line in Mumbai) in mangrove area and its buffer zone in view of the public importance of the project, subject to Petitioners complying with the conditions imposed in the clearances/permissions granted by the Respondent Authorities and the undertakings mentioned hereinbelow and the undertakings mentioned hereinbelow.

30. The aforesaid order is subject to the condition that the responsible officer of Petitioners files an undertaking before this Court that Petitioners shall undertake the compensatory plantation of 5000 mangrove

saplings as suggested by BNHS, shall strictly comply with the conditions as imposed in the permissions/clearances granted by the various authorities such as Ministry of Environment, Forest and Climate Change, Maharashtra Coastal Zone Management Authority, Chief Conservator of Forest (Mangrove Cell), Forest Department and other authorities-that have granted permissions/ clearances as well as the undertaking in terms of the in-principle approval dated 13th December 2021 to submit a compliance report of the conditions stipulated in Stage-I approval for grant of Stage-II approval and that Petitioners will abide by and adhere to the guidelines dated 7th May 2015 issued by the Ministry of Environment, Forest and Climate Change for diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 as well as obtain any further approvals/permissions that may be necessary for executing the Project and to comply with the conditions therein. The aforesaid undertakings to be furnished to this Court within ten days from the date of uploading of this order.

31. We record our appreciation of Mr. Pheroze F. Mehta and Ms. Rishika Harish, learned Amicus Curiae for ably assisting this Court.

32. Writ Petition is accordingly allowed in the above terms. There shall be no order as to costs.

(ABHAY AHUJA, J.)

(A.A. SAYED, J.)