

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.992 OF 2010**

Dileep B. Nevatia and ors.	..Petitioners.
Vs.	
Ministry of Environment and Forests and ors.	..Respondents.

Mr.E.N.Kotwal, Mr. Prem Gidwani and Ms.Rita Panjwani for  
Petitioners.  
Mr. Kevick Setalwad with Dhiren Shah for Respondent Nos. 1 to 3.  
Mrs. Sharmila Deshmukh for Respondent Nos. 7 and 11.  
Mr.K.K.Singhavi, Sr. Advocate with Prashant Chavan i/by Little &Co.  
for Respondent No.9.  
Mr.D.A. Nalawade, Govt. Pleader with L.T.Satelkar, AGP. for State.

**CORAM : MOHIT S. SHAH, C. J. AND  
D. G. KARNIK, J.  
Thursday, 31st March, 2011**

PC :

In this petition under Article 226 of the Constitution, the petitioners, four in number, have prayed for the following substantive reliefs:-

- a) to declare as unauthorized and illegal the construction of the Sea Link connector for Bandra Worli Sea Link on Khan Abdul Gaffar Khan Road in Worli Sea face area, Mumbai in front of Pratiksha building (in which the petitioners are residing).
  
- b) In the event this Court comes to the conclusion that the construction of the said connector in front of Pratiksha

building is unauthorized and illegal, to direct the respondent authorities to take appropriate action in accordance with law.

c) to direct status quo ante on the Khan Abdul Gaffar Khan road in the said Worli Sea Face area.

2 The gravamen of the challenge is that when MOEF had originally granted the permission for Bandra Worli Sea Link in 1999, the length of the bridge was only 1.2 KM. and the connector was at a different place. By changing the alignment, increasing the length of bridge to 4 KM. and by changing location of the connector, the respondents have committed gross illegality.

3 In our view, this petition with the prayers for above reliefs is not maintainable in view of the previous decision dated 7<sup>th</sup> July, 2006 of this Court in Writ Petition (PIL) No.50 of 2006 wherein this Court had examined the same challenge and dismissed the said writ petition after considering the various issues:-

3.1 In Paragraph 9 of the judgment this Court recorded that the project of Bandra Worli Sea Link was initially challenged by the petitioners and the said petition came to be dismissed by judgment dated 9<sup>th</sup> October, 2001.

3.2 Again it was challenged in PIL No.50 of 2006 and while dismissing the said PIL by judgment dated 7<sup>th</sup> July, 2006, the Division Bench of this Court headed by R.M.Lodha, J. (as His Lordship then was) noted that in the earlier judgment dated 9<sup>th</sup> October, 2001, the

Division Bench of this Court was conscious of the fact that the total length of the bridge is about 4-KM. and the length of the bridge was increased from 1.2 to 4 KM. The Division Bench then noted that the contention that the length of the bridge has been increased from 1.2 KM to 4 KM. is inconsistent with the development plan and coastal zone management plan cannot be permitted to be reopened.

3.3 the Court specifically considered the petitioners' grievance against the location of the connector towards Worli end opposite Pratiksha building and framed the controversy before the Court in the second petition in the following words:-

“In the earlier judgment dated 9.10.2001, the Division Bench while considering the question whether in a public interest litigation, the project like this should be quashed, held that the city of Bombay faces an acute traffic problem; the existing infrastructure is over burdened, and that there is need to take steps which may reduce the traffic burden on the existing infrastructure. The Division Bench highlighted that while maintaining and observing environment and ecology, the Government is also required to solve other problems, which are of varied nature and also involving public interest, and therefore, a balance has to be struck between the two. The question before us is whether at this distance of time when substantial progress has been made in construction of Western freeway and huge expenditure exceeding Rs.500 crores has already been incurred, the project should be quashed and for the alleged lack of environmental impact assessment with regard to the change of alignment, direction needs to be issued to the MOEF to carry out the environmental impact assessment under the notifications dated 27.1.1994 and 10.4.1997”.

3.4 The Court also noted that the total cost of the entire project was estimated at Rs.665 crores in 1999 and then in 2006 it was estimated at Rs.1306 crores. In Para 11 of the judgment, the Court gave the following reasons:-

“It is admitted position that in the month of August, 1999, MSRDC submitted the proposal for environmental clearance of Western freeway from Worli to Nariman Point sea link are two segments of one project namely Western freeway sea link project is beyond doubt. From the affidavit of Dr. A. Mehrotra dated 28.12.2005, it is clear and we accept that the MSRDC informed the MOEF on 9.10.2001 regarding the change in the alignment of Worli side and introduction of long span bridge. As a matter of fact, in the rejoinder the petitioners have not challenged this aspect. It would be thus seen that in the month of October, 2001, the MOEF was informed about the change in the alignment of Worli site and also introduction of the long span bridge. We have no justifiable reason to disbelieve the statement made in the affidavit of Dr. A. Mehrotra that by study area for environmental impact assessment from Worli to Nariman Point, Worli village area also Worli point of Bandra Worli sea link was assessed. It was thereafter that on 10.2.2003 MOEF accorded the environmental clearance to the Worli Nariman Point Sea Link project. If the study area from Worli to Nariman Point (from southern side) include Worli village area and also where the Worli sea link is located, it can safely be held that while according the environmental clearance on 10.2.2003, the MOEF did consider the environmental impact assessment of Worli village area and also Worli point of the Bandra Worli sea link. This is not disputed before us that before according the environmental clearance to Worli Nariman point project on 10.2.2003, the public hearing as contemplated by the notifications dated 27.1.1994 and 10.4.1997 was given. In the back drop of these facts, in our view the contention of the counsel for the petitioners that

the change in the alignment from Worli point to Pratiksha building was without statutory environmental clearance pales into insignificance”.

(emphasis supplied)

4 The above judgment was challenged before the Supreme Court by filing Special Leave Petition No.17303 of 2006 and the said Special Leave Petition came to be dismissed by order dated 6<sup>th</sup> November, 2006.

5 The learned counsel for the petitioners submits that this Court while dismissing the earlier petition relied only on the affidavit of Mr. A. Mehrotra and on account of the incorrect statements made in the said affidavit, this Court held that for change in the alignment, MOEF had granted permission to the project. It is submitted that in view of the reply received by the petitioner in response to the query under the Right of Information Act (at Page 354) it is clear that the MOEF had not granted any such clearance to the change in the alignment because clearance dated 10<sup>th</sup> February, 2003 was for connecting Worli to Nariman Point and there was no amendment for shifting the Worli Point connector to Pratiksha building.

6 Mr. Singhavi, learned counsel for the MSRDC has opposed the petition and submitted that the writ petition having been dismissed by this Court and the Special Leave Petition having been dismissed by the Supreme Court, the present petition is not maintainable.

7           Thereupon, the learned counsel for the petitioner has submitted that the Government Officer has played fraud by filing false affidavit and that in view of the judgment in **A. V. Papayya Sastry and ors. Vs. Government of A.P. And ors. AIR 2007 S.C. 1546**, this Court would be justified in recalling the judgment dated 7<sup>th</sup> July, 2006.

8           Having heard the learned counsel for the parties and upon carefully going through the judgment of the Division Bench rendered in WP (PIL) No.50 of 2006, we are of the view that the judgment did not rest upon any clearance granted by MOEF for change in the alignment of the Bandra Worli Sea Link. This Court specifically noted that the project was commenced as far as back in 1999 and though initially project was estimated at Rs.665.81 crores by the time rendered the judgment in July, 2006, the total cost of the entire project was estimated at Rs.1306 crores. This Court noted that an investment of Rs.500 crores was already made by the time the judgment came to be delivered on 7<sup>th</sup> July, 2006. The Court further noted that the project in question is need of the day for city of Mumbai which is already facing acute traffic congestion. The project is in larger public interest and the challenge to the construction of the project was elaborately considered in the group of writ petitions decided on 9<sup>th</sup> October, 2001. The Court also held that the project in question would not cause any ecological or environmental damage. The Court further noted that while according environment clearance on 10<sup>th</sup> February, 2003 and while granting environmental clearance to Worli to Nariman Point Sea Link, project assessment of Worli village area was considered and Worli point of Bandra Worli Sea

Link was also considered. Before granting clearance public hearing was also given and therefore, this Court took the view that the change in the alignment of Worli side and introduction of long span bridge was not likely to cause any ecological or environmental damage.

9           It needs to be appreciated that after MOEF granted environmental clearance to Bandra Worli Sea Link project in 1999, MOEF was informed in October, 2001 about the change of alignment of the said Sea Link and thereafter, MOEF granted clearance for the Western Freeway Sea Link (WFSL) which is only an extension of the Bandra Woli Sea Link as per the changed alignment. The Division Bench, while rendering the decision dated 7<sup>th</sup> July, 2006 never stated that MOEF had granted express clearance for changed alignment of Bandra Worli Sea Link. The Division Bench merely indicated that while granting clearance in 2003, MOEF had made Environmental Impact Assessment of Worli Village and Worli Point of Bandra Worli Sea Link opposite Pratiksha Building.

10           This Court declined to exercise extra ordinary jurisdiction under Article 226 of the Constitution to interfere with a project which was found to be of larger public interest.

11           In view of the above, we are of the view that it could never be said that any fraud was practised on this Court. The petition, therefore, deserves to be dismissed in so far as the substantive prayers made in Paragraph 148(a) to (c) are concerned.

12           The learned counsel for the petitioners referred to other prayers for interim reliefs regarding the air quality levels, noise pollution etc. opposite Pratiksha building. For ventilating such grievances, the petitioners may file separate proceedings, but as far as challenge to change of location of Worli Connector of the Bandra Worli Sea Link project is concerned, the petition must fail. The petition is accordingly dismissed.

**CHIEF JUSTICE**

**D.G. KARNIK, J.**