

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9448 OF 2010

Lavasa Corporation Limited & Anr. ...Petitioners.
Vs.
Union of India & Ors. ...Respondents.

WITH
WRIT PETITION NO. 2 OF 2009

Shamsundar Haribhau Potare. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

WITH
WRIT PETITION NO. 122 OF 2008

Bhagatraj G. AhujaPetitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

WITH
WRIT PETITION NO. 148 OF 2006

Shamsundar Haribhau Potare. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

Mr. Shekhar Naphade, Sr. Advocate a/w Mr. Janak Dwarkadas, Sr. Advocate, Girish Godbole, Aniruddha Joshi, Gaurav Joshi, Suresh Pakale, Makrand Gandhi, Satyen Vora, Tanvi Gandhi, Prashant Ghelani, Pratik Naphade, Amisha Shah, Janbhana Mehta, Sahil Gandhi, Sanmish Gala, Ashish Suryavanshi, Rohan Yagnik, Disha Kanakia i/b Markand Gandhi & Co., for the Petitioners in WP. No.9448 of 2010.

Mr. Sagar Joshi, for the Petitioner in PIL No.2/2009 and PIL 148/2006.

Mr. B.G. Ahuja, for the petitioners in PIL 122 of 2008.

Mr. D.J. Khambata, Additional Solicitor General with Mr. Nitin Jamdar, Spl.Counsel, A.M. Sethna, Mrs. S.V. Bharucha i/b Ms. Naveena Kumari for Union of India in all Petitions.

Mr. Ravi Kadam, Advocate General, with Mr. Girish Godbole, Mr. A. Joshi, Mr. Christine Rewrie i/b M/s Little & Co., for Respondent no.3 in PIL 2/2009 and Respondent 9 in PIL 148/2006.

Mr. Shekhar Naphade, Sr. Advocate a/w Mr. G.S. Godbole, Mr. A. Joshi, Mr. S.S. Pakale and Cristine R. i/b Little & Co., for Respondent no.9 in PIL 122/2008.

Mr. A.P. Kulkarni for Respondent No. 7 in PIL 2/2009 and PIL 122/2008, PIL 148/2006.

Mr. Vijay Patil, for Respondent no.2 in PIL 122/08 and PIL 148/06.

Mr. S.B.Deshmukh for Respondent no.6 in PIL 122/2008 and PIL 148/06.

Mr. S.S. Kanetkar for Respondent no.3 in PIL 122/08 and 148/06.

CORAM: B. H. MARLAPALLE &
U. D. SALVI, JJ.

DECEMBER 22, 2010.

P.C.

1] We have heard Mr. Naphade and Mr. Dwarkadas, learned Senior Counsel for the Petitioners, Mr. Khambata, learned Additional Solicitor General for Respondent Nos.1 to 3 and Mr. Kadam, learned Advocate General for the State of Maharashtra.

2] This Petition filed under Article 226 of Constitution of India, at the first instance, challenges the show cause notice dated 25.11.2010 issued by the Government of India through the Ministry of Environment and Forests. On 7.12.2010, this court after hearing the parties concerned, had stayed the impugned show cause notice to the extent of directing status

quo to be maintained, and the Petitioners were directed to appear before Respondent No.3 on 9.12.2010. Respondent No.3 in turn was directed to hear the Petitioners on the question whether the interim order to continue till the final order on the show cause notice would to be passed and Respondent No.3 was expected to pass the final order by 16.12.2010. The undertaking of the Petitioners that they shall not carry out any construction/development work till 16.12.2010 when the Petition would appear before this court, was also recorded.

3] Subsequently, the Petitioners filed their reply to the show cause notice, and were heard and the order dated 14.12.2010 came to be passed. In the said order, the request made by the Petitioners to vacate the order of status quo has been turned down. By amending the Petition, the order dated 14.12.2010 has also been challenged by the Petitioners.

4] It has been submitted by the Petitioners that its project of establishment of new township, covering eighteen villages in Pune District, has been commenced sometime in March 2004 after obtaining all permissions/clearances from the State Government as well as its various authorities. In all 76 permissions were obtained and the development work

has been continued. N.A. Permission was obtained on 31.8.2006. The Petitioners were informed by the State Government authorities at the Notification dated 27.1.1994 issued by the Ministry of Environment and Forest, Government of India would not be applicable to it as the project undertaken was a tourism hill station development project and it falls under Entry 18 in Schedule-1 of the said Notification. Though this Notification dated 27.1.1994 has been subsequently amended by the Notification dated 7.7.2004, it is claimed that the amended Notification is not applicable to the Petitioners' project, in as much as the project cannot be covered by entry no.31 i.e. "New construction Projects" added in Schedule-1 of the notification dated 27.1.1994.

5] Mr. Naphade, the learned Senior Counsel for the Petitioners urged that the Petitioners' project could not be termed as a new construction project even as of 7.7.2004 as it had already commenced the development/construction with sufficient progress. He emphasized that the project would remain to be covered under Entry no.18 of Schedule-1 of the Notification dated 27.1.1994

6] These two Notifications have been superseded by a subsequent Notification dated 14.9.2006 issued by the Ministry of Environment and Forests, Government of India and by the said Notification, the Government of India has directed that on and from the date of publication of the said Notification, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule to the Notification entailing capacity addition with change in process and/ or technology, shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986 is obtained.

7] As per Shri Naphade, this Notification is not applicable to the Petitioners' project because it is not a new project or the Petitioner is not expanding its activities and that it does not fall under any of the categories for which the said Notification has been issued. It is, therefore, urged before us that if the Petitioners' project is covered by Entry 18 of

Schedule 1 of the Notification dated 27.1.1994, the show cause notice issued has no legal support and the project work must be allowed to be continued.

8] It was also urged before us that while undertaking the project, Petitioner No.1-Company has invested as of today a sum of rupees three thousand crores and though, the township is expected to be developed in an area admeasuring 5000 hectors, the first phase covering an area of about 2000 hectors has been undertaken and sufficient steps have been taken by Petitioner No.1-Company to enrich the environment and ecology, leave alone degradation caused or likely to be caused. It is further contended that about six lacs trees have been planted and reports from various experts have already been placed on record which show that the Petitioners are doing not only the development of the township, but also overall development including providing basic amenities like water to the neighboring villages, schools and medical facilities etc. On overall considerations, it was urged that there is no justification to continue with the status quo order and when the final order would be passed by the

Ministry of Environment and Forest, Government of India, the same can be examined in this Petition as well.

9] Mr. Khambata, the learned Additional Solicitor General on the other hand while supporting the show cause notice and the order of status quo, has taken us through all abovementioned three notifications and submitted that issuance of clearance by the Ministry of Environment and Forest is a precondition even to commence the township development work. He also submitted that even if it is assumed that the Government of India did not call upon the Petitioners to comply with the requirements of the Notification that by itself would not stop implementation of the statutory provisions. He also pointed out that the Petitioner No.1-Company by its letter dated 5.8.2009 has also approached the State Level Environment Impact Assessment Authority created under the Notification dated 14.9.2006, and therefore, now the Petitioners cannot be allowed to turn back and take a contrary position to contend that it was not required for the Petitioner No.1-Company to obtain environmental clearance for its project. He has placed before us some reports made by the NGOs and

pointed that in addition to the main issue of environmental clearance there are other issues as well and they will have to be addressed to by the Ministry of Environment and Forest, Government of India, while passing the final order.

10] The People's Commission of Inquiry has submitted its report dated 20.4.2009 and raised the following issues:

- (a) Transfer of land and water from Krishna Valley Development Corporation
- (b) Transfer of the surplus land available under the Maharashtra Agricultural lands (Ceiling on Holdings) Act, 1961 to Petitioner No. 1-Company rather than returning it to the original owner as per the existing policy of the State Government.
- (c) Forest land covered under the project.
- (d) Transfer of Inam land which could have been regranted to the original land holders after accepting statutory price.
- (e) Acquisition of private land,
- (f) Rehabilitation of the displaced families.

This report claims that the transfer of Government/Corporation land to the Petitioner-1 Company is illegal.

11] We have noticed that there are three other PILs pending before this court viz. PIL No.148/2006, 122/2008 and 2/2009 challenging either allocation of land by Krishna Valley Development Corporation or the Government land or Inam land to Petitioner no.1-Company by the Government of Maharashtra or the adverse impact that may cause on the supply of water to the Pune city as well as for the irrigation purposes.

12] We are satisfied that the issues raised by the Petitioners regarding applicability of the Notifications referred to hereinabove is required to be considered, and it would not be appropriate to advert at this stage to the merits and de-merits of the arguments advanced by the respective parties.

13] Hence Rule. Respondents waive service. PIL Petition Nos. 148/2006, 122/2008 and 2/2009 to be clubbed with this Petition. Let this Petition alongwith the above PILs be listed for final hearing peremptorily on 27.1.2011 at 3.00 p.m.

14] Mr. Naphade, learned Senior Counsel for the Petitioners invited our attention to the earlier order passed on 7.12.2010, as well as the list of Exhibit-V (at page 182) and submitted that pending the final order from Respondent No.1, on the show cause notice, the Petitioner-Company should be allowed to continue with the construction of the buildings listed in the said Exhibit. It was urged that allowing such constructions to be continued on a very limited land i.e. 40 to 70 hectares could not be in anyway adverse to the alleged violations. The construction is in progress since more than five years and by the impugned show cause notice it has been abruptly stopped without pointing out any specific case of damage/degradation caused either to the environment/forests/ecology/water and even in the order dated 14.12.2010, there is no specific case made out, even prima facie, that the Petitioner-Company is guilty of causing any such degradation. The construction was undertaken after obtaining of permissions/clearance and the State Government had not at any point of time, objected to the same on account of any violations. It was also submitted that a fairly large number of employees are engaged in the project and the Petitioners are ready and willing to give an undertaking

that they would not claim any equity even if the final order on the show cause notice goes against them.

15] A separate Civil Application has been filed by some residents of the villages concerned and while praying for being impleaded as additional respondents so as to support the Petitioners, they have urged to vacate the status quo order.

16] Mr. Khambata, the learned Additional Solicitor General, on the other hand, referred to the letter dated 5.11.2008 addressed by the Assistant Director of Town Planning, Pune Branch to the Petitioner No.1-Company, in which it has been stated that as on 7.7.2004 the investments made in the development of the project was less than 25% and therefore the environment and forests clearance is essential. Relying upon this letter, Mr. Khambata submitted that the Notification dated 14.9.2006 applies to the Petitioner-Company, and when environment clearance is a pre-condition for commencing any activity by the Company, it cannot be permitted to continue with the construction of some selected projects at this

stage. He has also relied upon the following decisions to support his case that when there is a clash between the economic and environmental considerations, the latter must prevail and that the illegality which goes to the root of the case can be proceeded against by the competent authority and is required to be upheld by the courts, despite the lapse of time:

- i) K. Ramdas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and others [AIR 1974 SC 2177];
- ii) Friends Colony Development Committee Vs. State of Orissa and others [AIR 2005 SC 1];
- iii) M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and others [AIR 1999 SC 2468];
- iv) M.C. Mehta Vs. Union of India and others [(2004) 12 SCC 118]

The learned Additional Solicitor General submits that there is no prima facie case made out to vacate/lift the order of status quo and even the Petitioners cannot invoke equity solely on the ground that they had obtained due clearances from the Government of Maharashtra. He also submitted that the Petitioner No.1 being a Company engaged in such huge investments, it ought to be aware of the requirements to be complied with under the Environment (Protection) Act, 1986 including the environmental

clearances required under the Notifications dated 27.1.1995, 7.7.2004 and 14.9.2006.

17] We have also noted that the hearing before the competent authority on the show cause notice is in progress and in addition to the reply submitted by the Petitioners, they may place on record additional material for the hearing fixed tomorrow i.e. on 23.12.2010. Though it was urged before us by the learned Senior Counsel for the Petitioners that the order dated 14.12.2010 is exfacie illegal, in as much as the said order has not been passed after they were heard by Respondent No.3, we have noted that the hearing was before Dr. Nalini Bhatt and she has passed the order and subsequently it has also been endorsed by Respondent No.3. Mr. Khambata has explained before us the circumstances under which this court directed Respondent No.3 to hear the Petitioners and pass the order. Prima facie, we are not inclined to accept that the said order is in breach of the principles of natural justice.

18] Hence, as of now we are not inclined to stay the status quo order dated 14.12.2010. However, we direct that Respondent No.3 and the

State Level Environment Impact Assessment Authority or the Central Level Committee as the case may be, shall visit the Petitioners' project and inspect it thoroughly. We expect this team should camp, for at least three days, at the site at Lavasa City and undertake the survey/inspection, either in the last week of December 2010 or in the first week of January 2011. The reports of such an inspection may be of great consequence for the competent authority to pass the final order on the show cause notice.

We direct that the final order shall be passed by 10.1.2011 and forward a copy thereof to the Petitioner No.1-Company. Such order shall be placed before us by 14.1.2011.

19] Liberty to the Petitioners to renew their request for interim relief on the next date in case the Petitions are not taken up for final hearing.

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(U.D. SALVI, J.)

(B. H. MARLAPALLE, J.)