

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.36 OF 2013

Shri Ganesh Dattatraya Kate 7 Others. .. Petitioners
Vs
Union of India and Others. .. Respondents

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Shri Birendra Saraf along with Ms. Monisha Bhangale & Shri Chandansingh Shekhawat i/by ALMT Legal for the Petitioners.
Shri Anil C. Singh, Additional Solicitor General along with Shri S.R.Rajguru and Shri Ashok R. Verma for the Respondent No.1.
Shri A.I. Patel, AGP for the Respondent No.2.
Shri A.A. Kumbhakoni, Senior Advocate i/by Shri G.H. Keluskar for the Respondent No.3.
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CORAM : A.S. OKA &
K.R.SHRIRAM, JJ
DATED : 28TH AUGUST 2015

PC.

1. The submissions of the learned counsel appearing for the parties were heard yesterday. The Petition was adjourned till today to enable the learned Additional Solicitor General to take instructions and make a statement.

2. This Public Interest Litigation has been filed by the Petitioners who are claiming to be the residents of Village Pimple Soudagar for several years. Their case is that the residents of the Village Pimple Soudagar were using the road starting from Katewasti/Kunjirwasti to Aundh Road through the Defence land

adjacent to Pimple Soudagar. It is pointed out that in the year 1997, the said road was closed down without following the due process of law and thereafter, another road from Katewasti/Kunjirwasti to Rakshak Chowk which connects the old Mumbai Pune Road/Aundh Ravet Road was opened and the said road became available to the residents/villagers of Pimple Soudagar. It is contended that the population of the said village is about 50,000/-.

3. By this PIL, the Petitioners are challenging the action of closure of the road from Rakshak Chowk to Pimple Soudagar. The challenge is to the communication dated 29th January 2013 issued by the Lieutenant Colonel Raman Varma for Administration Commandant of Station Headquarters, Kirkee/Aundh addressed to the Commissioner of Pimpri Chinchwad Municipal Corporation. By the said communication, the Commissioner of Pimpri Chinchwad Municipal Corporation was informed that the said road from Rakshak Chowk to Pimple Soudagar was seriously affecting the security and traffic of Aundh Military Station and, therefore, the road will be closed down shortly.

4. The Petitioners are relying upon the proposal dated 31st July 2012/3rd August 2012 made by the third Respondent which is the Municipal Corporation of Pimpri Chinchwad to the first Respondent. In the said proposal on which a reliance is placed by the Petitioners, the

Municipal Commissioner of Pimpri Chinchwad Municipal Corporation informed the Commander of 330 Infantry Brigade that the option for the two lane Grade Separator for the general traffic between Rakshak Chowk and Kunjirwasti with connection passage of 50 meters width between the two Defence areas may be possible. Another suggestion was incorporated in the said letter as regards the construction of a compound wall along the road on both sides.

5. There is an affidavit-in-reply filed by the first Respondent which is dated 6th April 2013. It is pointed out therein that the road from Katewasti/ Pimple Soudagar to Rakshaw Chowk is on Defence land of Aundh Military Station which is A1 Defence land as defined in Cantonment Land Administration Rules, 1937. It is contended that by a letter dated 2nd May 2012, the Headquarters 330 Infantry Brigade, Kirkee prepared a case for closure of the road because of vulnerability of the defence installations and the jeopardy of security which was being affected owing to sudden traffic pressure on the said road.

6. It is contended in the reply that if the road passing through A1 Defence land is allowed to be used by the civilian population, the same will adversely affect the security. Various other contentions were raised in the said reply filed on behalf of the first Respondent. One Pratibha Bhadane, the Deputy Director of Town Planning of the Pimpri Chinchwad Municipal Corporation also filed an affidavit dated 14th

August 2013. The affidavit only contains a reference to the correspondence exchanged between the parties and the letter dated 29th January 2013 which is the subject matter of challenge in this PIL. There is an affidavit-in-rejoinder filed to the reply filed by the first Respondent by the Petitioner No.2. Apart from the merits, it was contended that a workable solution can be found in terms of the suggestions made by the third Respondent to the first Respondent.

7. There are further affidavits filed on record. There is an affidavit filed by Major Venkatesh which is affirmed on 10th September 2014. Reliance is placed therein on the various orders passed by this Court from time to time. In the affidavit, it was contended that by a letter dated 30th January 2013 addressed by the Staff Officer (Land) for Administration Commandant, Station HQs, Kirkee/Aundh, addressed to local Military Authority of HQs 330 Infantry Brigade, the Station Commander had directed that the road would be closed after 1st April 2013 after giving due warning to the civil administration. It is stated that the case would be reviewed after 1st April 2013 for finalization of the order of closure of the road. Along with the affidavit dated 20th November 2014 filed by Major Venkata S. Tanneru of Station Hqs, Kirkee/Aundh, the order of review dated 3rd November 2014 passed by the Brigadier Anurag Bhasin, Station Commander of the Station HQs Kirkee/Aundh has been annexed. There is a further affidavit filed by the second Petitioner pointing out the consequences of the closure. It is

pointed out that the hardship will be caused to 1,50,000/- people including the school children. Reliance is placed in the said affidavit on the order dated 29th September 2011 passed by the First Court in PIL No.107 of 2011 (M/s. Yogi Holiday Resorts Pvt. Ltd. v. Union of India and Others). Lastly, there is an affidavit filed by Major Venkata S. Tanneru in terms of the directions issued by this Court. The said affidavit is dated 6th January 2015.

8. The learned counsel appearing for the Petitioners has invited our attention to the topography of the road as can be seen from the maps placed on record. He urged that there is another road which passes through the middle portion of the said military land and the length of the said road is much longer than the road between Katewasti/Kunjirwasti and Rakshak Chowk. He invited our attention to the correspondence made by the Commissioner of Pimpri Chinchwad Municipal Corporation. He pointed out that the earlier road which was available was closed in the year 1997. He pointed out that large number of persons acquired the properties at Village Pimple Soudagar 40 years back after knowing that there was a road available through the Defence land. His submission is that the fundamental right guaranteed under Clause (d) of Article 19(1) of the Constitution of India has been infringed by the Respondents. He submitted that the residents of the village have been using the present road for more than 15 years and during the long period of 15 years, there has never been a security

threat or any issue of threat to the security. He urged that the proposal submitted by the Municipal Corporation of providing two lane Grade Separator on the same road can be considered. Inviting our attention to the affidavit of Major Venkata S. Tanneru dated 6th January 2015, he urged that the threat perception is based on the letters which are received from December 2014 onwards. He urged that nothing untoward has taken place for all these years and, therefore, the right of the villagers cannot be taken away in this fashion.

9. The learned Additional Solicitor General of India submitted that he has spoken to the officers concerned. He states that considering the grave threats to the security of the military installations, no modification of the decision can be made. He invited our attention to the affidavit of Major Venkata Tanneru and pointed out that what is stated therein is based on the confidential inputs received from the intelligence department. He urged that after the year 1997, the situation has undergone a drastic change in terms of the security. He relied upon a decision of the Division Bench of this Court in the case of TCI Industries Limited v. Municipal Corporation of Greater Bombay & Others¹

10. The learned Additional Solicitor General of India on instructions of Shri Ashwinikumar, Colonel Military Camp states that

1 2012(5) Bom.C.R. 353

the Respondent No.1 is willing to allow the emergency traffic and school buses to pass through the said road to enable the children in the village to attend their respective schools. This arrangement for school buses will be permitted for a period of three months from today, but use of the said road by the emergency vehicles such as ambulance carrying the patients and fire engines will be permitted even thereafter. We accept the said statement.

11. The learned senior counsel appearing for the third Respondent urged that the first Respondent will have to find out some workable solution. He relied upon the order dated 29th September 2011 in PIL No.107 of 2011. He urged that extreme hardship will be caused to the local residents as a result of closure of the road. He urged that some workable arrangement as done by the Division Bench under the order dated 29th September 2011 can be worked out.

12. By way of rejoinder, the learned counsel appearing for the Petitioners relied upon a decision of the Karnataka High Court in the case of *Dr.Nitin G. Khot and Others v. Station Commandant, Belgaum & Others*². Relying upon the said decision, he urged that for the last 15 years, the area covered by the said road has been very peaceful and, therefore, the Army Authority cannot impose any restriction so as to affect 1,50,000 people.

2 AIR 1998 Karnataka 300

13. We have carefully considered the submissions. It will be necessary to make a reference to the various orders passed by this Court from time to time. Initially, this Court on 4th March 2013 granted an order of status quo. In the further order dated 13th March 2014, this Court noted the statement of the first Respondent that the Petitioners have been permitted to use the road during the day time. But during the night, the road is kept closed. Under the said order, the status quo in terms of this arrangement was continued.

14. In the order dated 28th July 2014, this Court made a reference to a reply filed by Captain/Major, Quartermaster dated 6th April 2013 in which it is stated that the road shall be finally closed for civil public after the approval of the HQs, Southern Command is received. It is stated that the road shall be closed in a progressive manner rather than closing it suddenly. This Court adjourned the matter to enable the learned Advocate appearing for the First Respondent to take instructions as to whether the permission of the Headquarters of the Southern Command has been granted for closing the road. A direction was issued to file an affidavit stating in what manner the road will be closed if a permission is granted.

15. The order dated 13th October 2014 passed by this Court makes a note of the affidavit dated 10th September 2014 filed by Major Venkatesh, Quarter Master, Mahar Regiment, Pune, in which a

contention was raised that the review of the case will be made and thereafter, final order of closure will be passed. A public notice published on 28th September 2014 regarding the closure of the road from 20th October 2014 was produced on record. This Court adjourned the matter to ascertain whether the final order has been passed after the review. Accordingly, the final order passed on review which is dated 3rd November 2014 has been placed on record along with the affidavit dated 20th November 2014.

16. In the impugned communication, it is stated that the road is being closed on account of threat to the security of the Aundh Military Station. We have perused the order dated 3rd November 2014 passed by the Brigadier, Station Commander, Station Headquarters, Kirkee/Aundh after review of all the facts. It is a detailed order which refers to the fact that the road is passing through the Defence land. It refers to the orders passed by this Court from time to time. It also records that pursuant to the concurrence of the Ministry of Defence by letter dated 4th April 2008 and thereafter by letter dated 16th April 2009, the Defence land admeasuring 3,41,377.07 sq. meters was transferred to the Pimpri Chinchwad Municipal Corporation for various road development projects. It is observed that the said road in dispute is not included in the said land transferred to the Municipal Corporation. The order further records that with effect from 30th May 2012, the access from the Pimple Soudagar to Rakshak Chowk was closed from

9.00 p.m. till 5 am. Thereafter, by the letter dated 7th June 2012, the Commissioner of Pimpri Chinchwad Municipal Corporation was informed that the road will have to be kept closed as it is seriously affecting the security of the Aundh Military Station. The order also refers to the joint meeting held in the presence of the municipal Commissioner. It is stated that by letter dated 30th January 2013 issued by the Station HQs to 330 Infantry Brigade, it was informed that the Station Commander had directed the closure of the road after 1st April 2013. It records that the closure shall be effected after giving due warning to the civil Administration. It refers to the further correspondence made by with the Commissioner of the Pimpri Chinchwad Municipal Corporation. It stated that the Pimpri Chinchwad Municipal Corporation was called upon to give warning to the persons regarding closure of the road. Thus, the Station Commandant has taken into consideration all the aspects.

17. A submission was sought to be made by the Petitioners that what is stated in the affidavit dated 6th January 2015 of Major Venkata S. Tanneru is based on the communications received from December 2014 onwards. We have perused the affidavit dated 6th April 2013 filed by Captain/Major, Quartermaster of Mahar Regiment, Pune. In the said affidavit, it is noted that the road passes through the Defence land of A1 category. In Paragraph 5, it is specifically stated that the case for closure of the road was taken up due to vulnerability of defence

installations and the jeopardy of security which was being affected owing to sudden traffic pressure on the said road. Thus, the action of closure of the road has been initiated due to security reasons. The fact that the large area of the Defence land was handed over to the Municipal Corporation is also set out in the said affidavit. Even the proposal for construction of underpass or grade separators has been referred and it is stated that the same was rejected as the same was passing between married accommodation project and construction of Key Location Plan for 3rd Infantry Battalion on A1 Defence land. It is stated that the said proposal was affecting the homogeneity of Aundh Military Station. Apart from the threat to security, it is observed that all the Defence personnel have to cross the said road about Five to six times a day for various official engagements. Moreover, the Army School is located in the said camp requiring the parents and children to cross the road. It is not wide enough for two way traffic. It is submitted that all the civil vehicles for Pimple Soudagar from Rakshak Chowk be re-routed via Jagtap Dairy. The fact that the closure of the road will cause inconvenience to the civilian has been taken into consideration and it is stated that the said road was running between the married accommodation and key location project for infantry battalion dividing the Military establishment into two parts. It is again reiterated that the same would create security threat because of rapid increase of the traffic of all kinds of vehicles. In Paragraph 14, it is stated that the security situation in the country has undergone sea

change and that the cantonment areas and military stations have now come on the radar of hostile elements. Therefore, it is stated that the security concern should take precedence over all the other aspects. There is a reference in the said affidavit to the meeting held with the officers of the Pimpri Chinchwad Municipal Corporation. The said affidavit shows that the ground of threat to the security is not at all an afterthought and in fact, the action of closure of the road commenced due to the said threat.

18. The affidavit dated 6th January 2015 has been filed in the light of the specific order passed by this Court on 25th November 2014 directing the first Respondent to place on record the apprehension of the security and other related aspects. In fact, the submission of the learned Additional Solicitor General was that considering the nature of the security threat, even disclosing the material which is disclosed in the affidavit may create serious issues. However, in view of the order of this Court dated 25th November 2014, the said affidavit has been filed. In Clauses (a) to (k) of the affidavit dated 6th January 2015, the security related aspects have been highlighted. Considering what is stated in the said clauses and considering the grave security concern, we are not reproducing what is stated therein. However, we may note that what is stated therein is based on the confidential messages received from the Intelligence Department. We must note here that a reference is made to the inputs received from various agencies apart from the general staff

and intelligence branch. In the same affidavit, it is stated that an incident of attack by the terrorists/anti national elements upon the Defence personnel in one of the cantonment areas had taken place on 14th May 2002 wherein the persons residing in the married accommodation have been targeted. It is pointed out that 31 personnel including 10 civilians and several others were brutally killed. To summarize what is stated in the said affidavit dated 6th January 2015, there is a grave threat to the security of the military establishment on the said A1 category land.

19. It is further stated in the affidavit that the restrictions upon the entry of the civilians are necessitated on account of serious internal threats to Aundh/Kirkee Military Camps as they have a large contingent of troops/jawans. Even the nature of training which is imparted in the said defence area is also set out. It is stated that Aundh Military Camp caters to the need of Army personnel who have earlier served inhospitable areas, counter insurgency areas, high altitude areas etc. It is stated that a large number of troops trained in the establishment have become soft target of extremists. It is stated that the road in question is 20 feet wide and no private buildings/establishment exist by side of the said road and, therefore, if vehicles enter into any unit of the Army, it would be a security threat. It is contended that though the Army is empowered to impose restrictions at a short notice, with a view not to cause inconvenience to the civilians, the closure has been directed to be

imposed in a phasewise manner.

20. The question is whether the extent of security threat or factum of security threat can be gone into by this Court under Article 226 of the Constitution of India. In the present case, the action of closure is based on the threats to the security of the establishment of the Army. In the affidavit dated 6th January 2015, certain details of the inputs received by the Army from various agencies concerning the threats to the security have been relied upon.

21. The learned Additional Solicitor General relied upon a decision of the Division Bench in the case of *TCI Industries Limited*. What is material is what is held in Paragraph 37. The relevant part of Paragraph 37 reads thus:-

“37. Considering the case law cited by both the sides, we are of the opinion that whether the security point raised by Navy is merely a bogey or is a matter of substance is not a question which we can decide in a petition under Article 226 of the Constitution of India and this aspect should be squarely left to the defence authority. It is not for this court to pronounce the aforesaid aspect as it is completely in the realm of the defence department. It is also not for this Court to pronounce upon the decision of the Navy that the point of defence raised by them is justified or not. During the course of hearing Mr. Khambata has pointed out that in the recent past Mumbai was attacked by terrorists on 26th November, 2008 and from the said experience, there is nothing wrong if the Department has become wiser by taking most stringent security measures. It is submitted by Mr. Khambata that even if in the past in the nearby area high rise buildings were permitted to come, that

cannot be taken into consideration as a basis for refusing permission to the petitioner's development especially when petitioner's property is just touching and adjoining the property of Navy wherein important armaments and missiles are kept there. Even VVIPs helicopters are landing at the said place. This Court cannot ignore all these facts and cannot come to the conclusion that the theory of security is nothing but an afterthought and that it should be ignored. If element of security is involved and if there is a clash between commercial interest and national interest, it is always the national interest which should prevail and simply because the petitioner may not be allowed to develop its property in a particular way, this Court cannot strike down the decision of the planning authority by which they have refused to grant permission to the petitioner. The instructions given by the State Government cannot be ignored by the planning authority, which we have incorporated above. The paramount interest is the security of the country and the same cannot be ignored by anyone including the planning authority, State Government or by any other authority. Considering the submissions made by the counsel appearing for the parties and considering the material on record, we are of the view that the security aspect which is pressed into service by Navy cannot be said to be a mere bogey or imaginary one, as appropriate material has been placed on record to buttress the stand of the Navy. As pointed out earlier, there are various provisions in various enactments which require that in a particular area certain high rise buildings or developmental activities are not permitted, especially in the vicinity of refinery or chemical industries which may affect health hazards to the persons staying nearby. In the instant case simply because construction activity is not permitted, it cannot be said that such action is violative of Article [300-A](#) of the Constitution of India. Even at the cost of repetition, we may say that under D.C. Regulation 16, no development activity is permissible in certain eventuality which includes public interest also. The said Regulation is not challenged before us. Therefore, in our view, the Corporation has acted within its authority and in view of that it cannot be said that the petitioner is deprived of its property without any authority of law. Even the Supreme Court, as pointed out earlier, in the case of S.N. Rao (supra) has clearly

held that there could be no doubt that if there be any other material or relevant fact, Section 46 of the MRTTP Act does not stand in the way of such material or fact being considered by the Municipal Corporation for the grant or refusal to grant sanction of any development plan. In view of the same, the reliance placed on the Division Bench judgment of this Court in the case of Lok Holding (supra) has no application to the facts of the present case”.

(Underlines supplied)

22. What is held by the Division Bench of this Court is whether the issue of security raised by Navy is merely is bogey or not is a question which cannot be decided in a Petition under Article 226 of the Constitution of India and this aspect should be best left to the Defence Authorities. In the present case, obviously, the security threat is not a mere bogey as there is a material placed on record. In a Petition under Article 226 of the Constitution of India, this Court cannot go into the question whether the threats to the security are of such nature which warrant the closure of the road passing through the Defence land. This is a matter to be decided solely by the concerned Authority of the Defence as it is only the concerned Authority of Defence which can decide what steps should be taken in the light of the serious security threats. The paramount consideration should be of the security of the nation and its defence installations and the same cannot be ignored by any one including the local authorities. Reliance was sought to be placed on the decision of the Karnataka High Court in the case of **Dr. Nitin G. Khot and Others**. The decision of the Karnataka High Court

was rendered on 24th February 1997. Thereafter, the entire scenario in the country has undertaken change. There have been large number of terrorist attacks in a different parts of the Country including a terrorist attack on the Parliament. We have carefully perused the said decision. The decision is based on a concession that the City of Belgaum is a peaceful and historic city where no untoward incidents involving security risk have taken place. Therefore, in our opinion, the said decision of the Karnataka High Court will not help the Petitioners. In the light of the inputs regarding the threats received, it is the prerogative of the Defence department to decide what precautionary measures should be taken. The argument that so far nothing untoward has happened deserves to be rejected. The Writ Court cannot interfere with the perception of Military Authorities based on inputs.

23. Reliance was placed on the order dated 29th September 2011 passed by the First Court in a Public Interest Litigation. From the said order, it appears that certain restrictions were imposed by the National Defence Academy for use of the road from Chandni Chowk to the establishment of the National Defence Academy at Pune. Apart from the fact that, this is not a case where the road was passing through the category A1 Defence land affecting the military installations, the issue was whether the entry of the vehicles on the entire stretch of road should be prohibited. It is in the facts of the case before this Court that the interim order has been passed subject to the compliance with

various terms and conditions. The order dated 29th September 2011 is an interim order which does not lay down any law. The order does not show that the Division Bench was dealing with the case where there was a grave threat to the security. Even the said order is of no assistance to the Petitioners.

24. Therefore, we find it impossible to interfere with the order of closure of the said road.

25. From the affidavits on record, even the Defence Authorities are not disputing that inconvenience will be caused to the residents of the village. Perhaps that is the reason why a limited concession has been made by the learned Additional Solicitor General of India.

26. If it is possible to provide another road which will not affect the security of the Defence land in any manner, the Petitioners and the third Respondent can always make a representation to the Defence Authorities. We are sure that if the proposal is not likely to affect the security in any manner, the Defence Authority will consider it sympathetically. By granting liberty both to the Petitioners and to the third Respondent to make a representation to the Defence Authorities, we reject this Petition. We make it clear that as far as the representations are concerned, it is for the Defence Authorities to take appropriate decision considering the threat perception and we have not

made any adjudication on that aspect.

27. At this stage, the learned counsel appearing for the Petitioners seeks continuation of the ad-interim relief. The prayer is opposed by the learned counsel appearing for the first Respondent. Considering the fact that the ad-interim relief is operating for a considerably long time i.e. for a period of more than two years, we continue the ad-interim relief which was continued in terms of the order dated 13th March 2015 for a period of six weeks from today.

(K.R. SHRIRAM, J)

(A.S. OKA, J)

Certified to be true and correct copy of the original signed Judgment/Order.