

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.47 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.63 OF 2012
WITH
CIVIL APPLICATION NO.2392 OF 2014
WITH
WRIT PETITION NO.11974 OF 2013**

PIL No.63 of 2012

Mayank Ramesh Gandhi & Ors. .. Applicants.
Vs.
F.A. Enterprises & Ors. .. Respondents.

WITH
WP No.11974 of 2013

Kondane Dharan Parisar Vikas Manch .. Petitioners.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr.Mihir Desai for the Petitioners in PIL 63/2012 and for the Applicant in CA Nos.47/2015 and 2372/2014.
Mr.Vishwajit Sawant for the Petitioner in WP No.11974/2013.
Mr.A.V. Anturkar,Sr. Advocate a/w Ravi Adsure i/b Avadesh Nathani for Respondent No.1.
Mr.A.Y. Sakhare, Sr. Advocate a/w Ravi Adsure i/b Avadesh Nathani for Respondent No.2.
Mr.A.B. Vagyani GP for State in both petitions.
Mr.Amol Mhatre for Respondent No.6 in PIL 63/2012.
Mr.Pradeep Patil for Respondent No.7 in PIL 63/2012 and Respondent No.2 in WP No.11974/2013.
Mr.Jaydeep Deo for Respondent No.14 in PIL 63/2012.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 13TH MARCH, 2015

P.C.

1. The submissions of the learned counsel appearing for the Applicants and learned senior counsel appearing for the first

respondent on this Application for amendment were heard on the last date. By this application for amendment, the petitioners in the PIL desire to incorporate additional averments and prayers for pointing out that in respect of 12 irrigation projects subject matter of the main PIL, there are violations of the provisions of Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980 and the Ancient Monuments and Archaeological Sites and Remains Act, 1959.

2. The learned senior counsel representing the first and second respondents have vehemently opposed this application. Their contention is that the issue of locus of two petitioners in the PIL has been specifically kept open. Their submission is that without deciding the issue of locus, the scope of this PIL cannot be allowed to be expanded. Another objection raised by them is of a gross delay in making the application for incorporating the said averments. Therefore, the submission is that the application for amendment should not be entertained. It was also submitted that the reliefs sought to be added can be sought only in a criminal writ petition and therefore, this application is not maintainable.

3. The learned Government Pleader submitted that his instructions are to oppose the application for amendment and therefore, he is seeking time of three weeks.

4. It will be necessary to make reference to the order dated 17th February, 2015 passed by this Court in the main PIL. The learned Advocate General tendered across the bar a sealed envelope containing a report dated 13th February, 2015 by an officer of the Anti Corruption Bureau regarding the scope of open inquiry initiated by the State Government.

5. From the orders passed by this Court from time to time and in particular what is recorded in the order dated 17th February, 2015 it appears to us that the State Government acting upon the recommendations of Chitale committee appointed by it has started an inquiry into various illegalities alleged as regards the irrigation projects subject matter of this PIL. On the last date, after hearing the submissions for sometime, we had requested the learned AGP to take instructions whether the scope of open inquiry will cover the issues which are sought to be raised by way of an amendment. However, today the learned AGP states that he has instructions to oppose the application.

6. The order dated 17th February, 2015 shows that the State Government has decided to probe into the allegations of illegalities/irregularities in connection with various irrigation projects. What is sought to be pointed out by the proposed amendment is the alleged violations of laws relating to environment, forests and Ancient Monuments. We find no difficulty

in allowing the amendment in PIL considering the scope of PIL and considering the fact that the State Government could have looked into the allegations in the proposed amendment. We must note here that objection regarding maintainability of the PIL is only as regards two of the four petitioners. As far as request for grant of time to file reply by the State Government is concerned when the State itself has started an open inquiry, we fail to understand what objection the State can have, if the grievances regarding violation of laws is considered by this Court. We are of the view that none of the respondents will be prejudiced by permitting the amendment.

7. One of the argument canvassed by the learned senior counsel appearing for the first respondent is that by adding the prayers for prosecuting the concerned respondents, this petition will become a criminal writ petition or a criminal PIL. The substantive grievance in the PIL is as regards various illegalities associated with the irrigation projects. We fail to understand the nature of objection raised by the first respondent. There is no prohibition in law for seeking a prayer for prosecution in a regularly filed PIL where grievance is regarding the illegalities by the State or its instrumentalities.

8. The State Government is holding an inquiry into allegations of illegalities in the irrigation project. We fail to understand as to why the State Government is not even ready to look

into the allegations made in the proposed amendment.

9. Hence, Application is allowed in terms of prayer (a). Amendment to be carried out within three weeks. Respondent shall be entitled to file reply to the amended petition.

10. The PIL shall be listed on 23rd April, 2015 for hearing as to interim relief.

11. The learned senior counsel appearing for the first respondent seeks stay of this order. The prayer is rejected.

(A.K. MENON, J.)

(A.S. OKA, J.)