

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 59 OF 2016

Parisar Sanrakshan Sanwardhan Sanstha	.. Petitioner
V/s	
Union of India & Ors.	.. Respondents

Ms. Kiran Bagalia i/b Mr. Krishna Kelkar for the petitioner.
Mr. C.P. Yadav, A.G.P. for the respondent State.
Mr. Anil Yadav for respondent no.1.
Mr. A.P. Kulkarni for respondent no.3.
Ms. Lata Patne i/b Mr. Vinod Joshi for respondent nos.4 to 7.
Mr. D.A. Dube for respondent no.8.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 30th SEPTEMBER 2016

P.C.:

The petitioner is before this Court contending that the National Monuments Authority has totally failed and neglected to discharge its functions under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short “AMASR Act”) and the Rules made thereunder.

2. According to the petitioner, the Authority has given indiscriminate permission for construction of buildings within the prohibited areas which have to be considered as protected areas

thereby the invaluable wealth of the Nation is in danger. So far as the present case, according to the petitioner, the alignment of Metro Rail, Pune prepared by Delhi Metro Rail Corporation (DMRC) is only on road maps and no information whatsoever is given to DMRC regarding existence of ancient monuments declared under the AMASR Act thereby the Metro Rail alignment is going to pass through three ancient and valuable monuments, i.e. (i) Pataleshwar Temple situated at Jangli Maharaj Road in Shaniwar Peth, Pune, (ii) Aga Khan Palace situated on the Pune-Ahmednagar Road, and (iii) Old Citadel known as Shaniwar Wada. A detailed project prepared by DMRC came to be placed before the General Body of Pune Municipal Corporation in its meeting held on 27th January 2010. The said plan was approved by Pune Municipal Corporation without reference to the protected heritage / monument sites. There is prohibition and restriction on construction within 300 meters of the protected site. The Draft Development Plan for the old city limits of Pune came to be published on 28th March 2013 in accordance with section 26 of the Maharashtra Regional & Town Planning Act, 1976 (for short "MRTP Act") in which the Metro Rail alignment is also shown as tentative alignment. Though all this happened in 2010, only in the year 2013 the Pune Municipal Corporation approved the Draft Development Plan prepared by DMRC and notified to the public only in the year 2013. The Draft Development Plan indicates the Metro Rail alignment passing through the prohibited areas of all the three monuments. Even the two Metro Stations are shown in the

map within the prohibited areas and regulated areas of Pataleshwar Temple. When the Draft Development Plan was prepared, the petitioner filed its objection pointing out the alignment of Metro Rail through the prohibited distance from ancient monuments. Despite the said objection, the proposed Metro Rail alignment passes through the prohibited areas of three monuments and no cognizance of the complaint is taken by the Committee appointed by the State Government for consideration of suggestions and objections in order to revise the Draft Development Plan for submission to the State Government. Even in the Revised Plan published on 28th September 2015, the alignment of Metro Rail seems to remain the same and additional Metro Station is added by modification on top of Pataleshwar Temple itself.

3. It is agitated before us that the Pune Municipal Corporation being well aware of the statutory restrictions regarding construction within the prohibited distance of heritage structures, the construction has to be stopped since it also experienced the stoppage of work at the time of re-gradation of Jangli Maharaj Road, but failed to carry forward the objections. The establishment of Metro Rail includes extensive work requiring large scale constructions, tunneling, excavation and use of heavy machinery including Tunnel Boring Machines, etc. Unless the route of Metro Rail is realigned, all these monuments will be in danger, is the contention.

4. AMASR Act was enacted to protect and preserve historical monuments and archaeological sites which are of national importance and the Rules are framed in 1959 in terms of section 38 of the AMASR Act, which clearly prohibits several acts. AMASR Act has been extensively amended by Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 after the provisions of the said enactment was put to test before the High Courts and the Apex Court. In terms of section 4 of the AMASR Act, the Central Government has power to declare any ancient monument or archaeological site or remains of national importance. Under section 3 of AMASR Act, certain properties are declared as protected monuments. Different clauses of section 20 of AMASR Act and Rules 4 and 9 are enumerated to contend how the provisions of AMASR Act and Rules are provided to protect the national monuments.

5. In the year 2013, when the petitioner made an application under RTI, it was replied in 2014 that Annual Reports for 2012-13 onwards are under preparation and it has not recommended any construction in the prohibited areas of protected monuments or sites. They further informed that the website of National Monuments Authority is under construction and not operative, that no site plan is made. Heritage bye-laws for six monuments were under preparation, and that no heritage bye-laws for those monuments was notified till the filing of the petition.

6. It is further contended that for one of the monuments, i.e. Pataleshwar Temple, the Indian National Trust for Arts and Cultural Heritage authorised by section 20E(1) of AMASR Act has prepared the draft Heritage Bye-laws and submitted to National Monuments Authority in July 2012, but the same is not yet finalised. Once the enactment has come into effect, it is the duty of the Authorities concerned to implement the provisions of the enactment. The District Collector is the Authority so far as the limits of protected monuments and protected areas of the three monuments in question. The location of Metro Rail alignment and Metro Stations in the final DPR and Draft Plan Maps published under section 26 of the MRTP Act and revised under section 28 of the MRTP Act indicate the same alignment within the prohibited limits.

7. With these averments, the petitioner is before this Court seeking the following reliefs:

“(a) By a Writ of Certiorari or any other appropriate writ order or direction, the Respondent No.1 be enjoined from giving final approval for the Metro Rail project until such time that the Metro corridor alignment and stations are finalized in a manner that does not violate the provisions of the AMASR Act.

(b) By a Writ of Certiorari or any other appropriate writ order

or direction, the Respondent No.3 be injuncted from carrying out any work of Pune Metro including digging, blasting, excavating, construction within 100 meters in all directions and be further directed not to carry out any work of Pune Metro including digging, blasting, excavating, construction within 100 meters to 300 meters in all directions of the protected monuments of Pataleshwar Temple situated on Jangli Maharaj Road, Shaniwar Wada in Shaniwar Peth in the old city of Pune and Aga Khan Palace situated on the Pune-Ahmednagar Road without approval of the National Monuments Authority and Competent Authority under the AMASR Act.

- (c) By a Writ of Mandamus or any other appropriate writ order or direction, the Respondent No.4 be directed to forthwith cause to take measurements and prepare the site maps of the protected monuments of Pataleshwar Temple, Shaniwar Wada and Aga Khan Palace, Pune in a manner as prescribed in the AMASR Act.*
- (d) The Respondent No.8 be directed to note the location of the three heritage sites of Pataleshwar Temple, Shaniwar Wada and Aga Khan Palace, and revise the proposed alignment of the Pune Metro Rail corridors and location of Metro stations so as to abide by the restriction of 100-300 meters distance under sections 20A and 20B of the Act.*

- (e) *By a Writ of Mandamus or any other appropriate writ order or direction, the Respondent Nos.2 and 3 be directed to publish the revised and final (not tentative) alignment of the Metro Rail and station locations in the Development Plan of Pune, currently in the final stages of preparation in a manner as prescribed under the Maharashtra Regional and Town Planning Act.*
- (f) *By a Writ of Mandamus or any other appropriate writ order or direction, the Respondent Nos.5 and 7 be directed to forthwith prepare and notify Heritage Bye-laws for the three protected monuments of Pataleshwar Temple, Shaniwar Wada and Aga Khan Palace, Pune in a manner as prescribed in the AMASR Act.*
- (g) *For necessary directions to the Respondent No.7 not to give any permissions, until site plans and heritage bye-laws are finalised in accordance with the provisions of the AMASR Act.*
- (h) *For necessary directions to the Respondent No.7 to issue detailed guidelines to provide for the manner in which archaeological impact assessment of the Metro Rail project, which is a large scale development project within the meaning of the AMASR Act, shall be undertaken.*

(I) For necessary directions to the Respondent No.6 to carry out archaeological impact assessment study as per guidelines issued by the National Monuments Authority.”

8. In response, not only respondent no.3 – Pune Municipal Corporation, but also respondent nos.4 to 7 have placed the affidavits in reply. According to the Municipal Corporation, the financial approval from the Government of India is yet to be granted to the Metro Rail Project. After receiving such approval or sanction, minimum 5 months are required to form a Company who executes the Project after appointing consultants. Once such consultants are on work, minimum 4-5 months are required for approaching various departments and authorities to get all the requisite permissions and approvals. According to respondent no.3, Pune Metro Project is a joint venture initiated by Pune Municipal Corporation (respondent no.3) and the Municipal Corporation for the City of Pimpri Chinchwad. Both these Corporations have appointed DMRC as a technical consultant since it is the only agency in the country which has executed more than 180 kms. metro network in the entire country. Techno-Economic feasibility study is already conducted by DMRC to identify the need and ascertainment of justification of a Mass Rapid Transit System (MRTS) for Pune. A detailed project report for Metro Rail was prepared by DMRC basically recommending two Metro Corridors. They further categorically and emphatically mentioned that requisite prior permission required in law for execution or implementation of the Metro Project will be

obtained by the respondent Corporation and other authorities at the relevant point of time. Since large amount of human effort / man hours is required apart from spending huge public money, the petitioner cannot blame the respondents that they are irresponsible in executing the Project since this is a premature stage to allege anything. The Metro Project Phase-I consists of two corridors of length of 31.254 kms., out of which Corridor-I is having length of 16.59 kms. and Corridor-II is having length of 14.665 kms. In all 31 stations are proposed on the said stretch, out of which 25 would be elevated and 6 would be underground. The Government of India gave in-principle approval to the Metro Project as per the report of DMRC with minor changes in the alignment. In response to several suggestions and representations, revised alignment of Pataleshwar Caves is done. Revised proposal has been submitted on 7th December 2015 and joint measurements were taken at Pataleshwar Temple and other two places. The Metro Rail level is approximately 14 meters below the ground level near Engineering College ground and at Shaniwarwada, the rail level is approximately 19 meters and passes from a distance beyond 100 meters from the building structure. Similarly at Aga Khan Palace in Corridor-II, the alignment is elevated and passes beyond 100 meters distance from the prohibited building structure. All documents, i.e. alignment drawings and DPR, are sent by the respondent Corporation to Archaeological Survey of India for further action. After approval, then only a detailed engineering plan would be prepared and

necessary permissions would be obtained from various authorities including National Monuments Authority before commencement of the work.

9 The petitioner's grievance seems to be that invaluable wealth of the nation in the form of valuable monuments, Pataleshwar Temple situated at Jungli Maharaj Road, Aga Khan Palace and Old Citadel (Shanivar wada) are in danger on account of discriminate permissions given by the respondent authorities for the formation of alignment of Metro Rail, Pune. The project of Metro Rail consists of two corridors in all, and in all, 31 stations are proposed, 6 would be underground and balance 25 would be elevated stations. As on today, as could be ascertained from the affidavit in reply of the respondents, in principle, there is approval to the Metro Project by the Government of India as per the report of DMRC. While submitting a report, measurements have to be taken and minute details also to be furnished for the preparation of the report indicating the alignment and the distance between the Metro Rail and the places of importance. If it were to be monuments, it would constitute not only the asset of the country, but sentiments of the public also involved. Therefore, it becomes all the more a great responsibility on the part of the project proponent to pay attention to such places of importance and verify whether all necessary permissions and approvals are taken for completion of the project. The authority which approves or considers the request of the project

proponent must also pay attention to these details wherever places of importance like monuments etc. are involved, to see whether there is compliance of procedure contemplated under any statute. In the reply affidavit, exact measurements from these three important places which have monumental value and also sentimental value of general public are clearly mentioned. Archaeological survey of India has to take a call on these issues, especially in the matter of maintaining distance between the alignment of Metro Rail and the monument. Only after the approval by Archaeological Survey, the respondent authorities can form detailed engineering plan. Before commencement of the work, various authorities including National Monuments Authority must grant permission. If any of these permissions are lacking, the project should not commence. Even if it is commenced near the places of these monuments, the work cannot be undertaken. If, at all, the project has to be proceeded smoothly, it would be advisable to adhere to the procedure contemplated before the commencement of project by taking necessary approvals and 'No Objection' from the concerned authorities.

10 The petition seems to be an anxious exercise consumed by apprehension that there may be a damage to the monuments in question whereby the wealth of the country and the sentiments of general public would be affected. Having regard to the clear undertaking by the respondent authorities that they would comply with all the necessary requirements before commencing the project,

we are of the opinion that there is no need to keep the petition pending, except opining that if there is violation of any nature in commencing the project, or proceeding with the work ignoring the statutory requirement, public has a right to approach this Court.

11 With these observations, we dispose of the Petition directing the respondent authorities to strictly adhere to the statutory mandate and requirements in obtaining the necessary permission before proceeding with the project in question.

12 We also reserve liberty to the petitioner to approach this Court if there is violation of any of the statutory provisions or undertaking by the respondents in any manner.

(M.S. SONAK, J.)

(CHIEF JUSTICE)