

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

PUBLIC INTEREST LITIGATION NO. 102 OF 2014

Surendra V. Dhawale .. Petitioner
V/s.
State of Maharashtra and ors. .. Respondents.

Mr. Aditya Pratap for the Petitioner.
Mr. Vikas Mali, AGP for the Respondent – State.
Ms Sharmila U. Deshmukh for the Respondent - MCZMA.
Mr. Parag Vyas for the Respondent - Union of India.
Dr. Milind Sathe, Sr. Advocate a/w. Ms Pooja Gera for Respondent No.14.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 13 NOVEMBER 2017.

PC.

- 1] Heard learned counsel for the parties.
- 2] The main challenges raised by instituting this public interest litigation are two fold:

(a) That the proposed expansion of JSEL Ispat Steel Project is covered under CRZ Notification 2011 and therefore, the expansion cannot be permitted unless, there are necessary compliances under Notification of 2011;

(b) That the project is being undertaken on lands which

belong to the State and by encroaching upon such lands. Therefore, the project cannot be permitted to proceed.

3] So far as the first issue is concerned, the Maharashtra Coastal Zone Management Authority has filed detailed affidavit. In the affidavit, it is pointed out that at present, what is in operation is Coastal Zone Management Plan prepared under CRZ Notification 1991. It is pointed out that this CZMP is prepared on the map of 1:25000 scale. On the basis of such CZMP, it is stated that at least a portion of the proposed expansion may be affected by the CRZ Notification. However, it is also stated that the draft CZMP as per CRZ Notification 2011 has also been prepared and is pending final approval. It is stated that this draft CZMP is on a scale of 1:4000. The CZMA is naturally non committal of the status of the project in the draft CZMP.

4] Mr. Milind Sathe, learned senior advocate for respondent No.14, i.e., JSW Ispat Steel Limited, however, submits that as per the draft Notification, the project cannot be construed as affected by CRZ Notification 2011. Mr. Sathe also refers to an affidavit filed on behalf of Union of India, which according to him, fortifies this position.

5] As of today, the objections have been called for in respect of draft CZMP prepared under CRZ Notification 2011. Therefore, it will not be appropriate for us to make any observation on the rival contentions. The parties are always at liberty to file their

objections and there is no need to presume that such objections will not be considered by the concerned authorities in accordance with law.

6] In facts of present case, we grant the petitioner specific liberty to file his objections before the concerned authorities within a period of one month from today. If such objections are indeed filed, the concerned authorities are directed to look into such objections together with all other objections as may have been received. For this reason, it is not necessary to keep this public interest litigation pending.

7] The second issue relates to allegation of encroachment on Government's land.

8] The Sub-Divisional Officer of the State Government, i.e., respondent No. 9 has filed an affidavit in pursuance of our directions. The averments in paragraph 3 to paragraph 10 of the affidavit-in-reply read as follows:

*“3. I say that in order to ascertain whether there is any encroachment on government land, this Respondent had directed vide its letter dated 21.11.2016, addressed to the Superintendent of Land Records, Raigad, to conduct the Survey and demarcate the boundaries of the land owned and which are in possession of Respondent Nos.14. Accordingly, the Deputy Superintendent of Land Records, Pen, has conducted the Survey on 12.4.2017, and submitted his report dated 29.4.2017. Hereto annexed and marked as **Exhibit-1** is copy of report dated 29.4.2017. In the said report of Deputy Superintendent of Land Record, Pen, it is stated that, land*

bearing Survey Nos.117/1,117/2, 118/1, 118/2, which are situated in village Dolivli, Tal. Pen, Dist. Raigad are Government lands i.e. of Public Works Department and that 4 illegal structures alongwith compound wall are being constructed on above mentioned lands. I say that Sub Divisional Officer vide its letter dated 7.11.2017 directed the Circle Officer, Vashi to further enquire about the ownership of the structures. Accordingly, the Circle Officer, Vashi has carried out further enquiry and submitted his report dated 7.11.2017. Hereto annexed and marked as **Exhibit -2** is copy of the report dated 7.11.2017. The report forwarded by the Circle Officer, Vashi, it was revealed that out of 4 structures, 3 structures belong to Shri Murlidhar Rambhau Karlekar, while 1 structure belongs to Shri Anil Hiranman Thakur. This Respondent, therefore, vide letter dated 30.10.2017 has informed the Public Works Department, about illegal structure standing on their lands and that appropriate steps to be initiated by them to demolish these 4 structures standing on their lands. Hereto annexed and marked as **Exhibit -3** is copy of the letter dated 30.10.2017 addressed by this Respondent to the office of Public Works Department.

4. I say that the Conveyor Belt connecting JSE Steel Ltd. Captive Jetty and JSE steel plant passes over Survey Nos. 118/1, 118/2, 119, 121/2, 122/2, 186/A, 186/B, 186/C and 190/1 and ownership of these lands is as follows:-

Sr. No	S.No.	Ownership of Land	Area Permitted
1	118/1	Public Works Department	
2	118/2	Public Works Department	2400 Sq.mtr.
3	119	Public Works Department	1824 Sq.mtr.
4	121	Public Works Department	
5	122	Public Works Department	4080 Sq.mtr.
6	186/B	Maharashtra Maritime Board	1453 Sq.mtr.

7	186/C	Maharashtra Maritime Board	709 Sq.mtr.
8	190/1B	Government of Maharashtra	0.11.0 H.R.
9	186/A	Government of Maharashtra	2.54.0 H.R.

5. I say that the Public Works Department has leased out the Survey Nos.118/1, 118/2, 119, 121, etc. situated at village Dolvi, Tal. Pen, Dist. Raigad to JSW, as per the order of Chief Engineer, Regional Division, Mumbai, dated 26.8.2015 for the period of 5 years. This lease is for constructing Conveyor Belt connecting JSW Steel Ltd. captive Jetty and JSW Steel Plant. Hereto annexed and marked as **Exhibit-4** is copy of the order dated 26.8.2015 issued by Chief Engineer, Regional Division, Mumbai to Respondent No.14.

6. I say that as far as Survey Nos. 186/B and 186/C are concerned, these lands are owned by Maharashtra Maritime Board. I say that, Maharashtra Maritime Board has permitted Respondent No.14, to install cross country conveyor belt from existing captive jetty at Dharamtar Creek to JSW Steel Plant which is situated in village Dolvi, Tal. Pan, Dist. Raigad. I say that this cross country conveyor belt is used by Respondent No.14 for transportation of raw material from jetty to the plant of Respondent No.14. I say that the pillars which are embedded on Survey Nos.186/B, 186/C are on the land of Maharashtra Maritime Board, who has permitted Respondent No.14 to install this cross country conveyor belt. Hereto annexed and marked as **Exhibit - 5** is copy of the letter dated 9.5.2015, wherein permission is granted by Maharashtra Maritime Board to Respondent No.14.

7. I say that as far as land bearing Survey No. 190/1B is concerned, land admeasuring 0.11.0 H.R. is granted to Respondent No. 14 by Collector, Raigad which is situated at village Dolvi, Tal. Pen, Dist. Raigad. Hereto annexed and marked as **Exhibit-6** is copy of the order dated 31.1.1995, granted by Collector Raigad to Respondent No.14.

8. I say that an area admeasuring 2-54-0 H.R. out of land bearing Survey No. 186, having total area 6-69-0 H.R. situated at village Wave, Tal-Pen, Dist – Raigad had been leased to Nippon Denro Ltd. vide order dated 20.07.1995, for construction of Jetty for a period of thirty years, on certain terms and conditions. I say that the name of said Nippon Denro Ltd. was changed as Ispat Industries Ltd. in the year 2009. I further say that JSW Steel Ltd., the Respondent No.14, has acquired the said Ispat Industries Ltd. in the year 2011. Annexed hereto and marked as **Exhibit-7** is the copy of said lease order dated 20/07/1995. I say that the balance land of survey No.186/A is marshy land.

9. I say that after the receipt of application of the Petitioner dated 29/04/2011, the Panchanama dated 5/08/2011 was carried out stating about filling of the earth on Government land and construction of the Temple on Government land. I say that in order to verify said facts, Residential Naib Tahsildar, Pen, Circle Inspector, Washi and Surveyor of the office of Deputy Superintendent of Land Records, Pen, Tal-Pen, Dist-Raigad, carried out inquiry as per the directions of the Sub Divisional Office, Pen. I say that this report is submitted by Circle Officer, Vashi clarifying that Kasumata Temple is built on the land bearing Survey No.48/1 having area 1-01-40 H.R. in village Jui-Bapuji, Tal. Alibaug, which is owned by the JSW Steel Ltd. The said temple is managed by Kasumata Temple Trust having Registration No. A - 1285, Raigad. I further say that, it is stated in the said Panchanama that the temple is situated in the vicinity of Jui-Bapuji village, east side of Dharmatar Creek and near JSW Company wall compound and the approach road towards the temple has been made by the villagers to facilitate devotees. Hereto annexed and marked as **Exhibit – 8** is the copy of said Panchanama dated 8.11.2017.

10. I say that in the present Petition, the Petitioner has stated that before 5.8.2011 in village Dolvi, Tal. Pen, Dist. Raigad Survey Nos.117/1,117/2,118/1, 118/2, officers of Respondent No.14 have done filling by dumping earth and

mangroves have been damaged by filling on earth. Accordingly, a panchanama of these Survey numbers of the land is made by Sub Divisional Officer, Pen, Residential Naib Tahsildar, Pen and Circle Officer, Vashi on 5.8.2011, when it was revealed that, there was destruction of mangroves. Therefore, a complaint is filed under the provision of Section 15 of the Environment Protection Act, 1986 and Section 4 of Maharashtra Felling of Trees (Regulation) Act, 1964. The said Criminal Case was tried by JMFC Pen and said case has been disposed on 19.8.2014. The accused officers are acquitted by the Court”.

9] All the aforesaid averments have been denied by respondent No.14. They submit that there is no encroachment on Government lands and whatever is undertaken on Government lands is backed by necessary permissions from the concerned authorities.

10] At this stage, it will not be appropriate for us to go into these issues particularly since the affidavit filed by respondent No.9 indicates that the concerned authorities propose to examine the matter and if necessary, initiate action in accordance with law.

11] In addition to what is stated in the affidavit-in-reply of respondent No.9, in case, the petitioner seeks to point out any other instances, where according to him, there is encroachment on Government lands, the petitioner is at liberty to point out such instances to the concerned authorities. If, the petitioner lodges an additional complaint in this regard within a period of one month from today, the concerned authorities to look into such complaint

together with action as proposed and referred to in the affidavit-in-reply of respondent No.9.

12] In a public interest litigation, ordinarily it is not for this Court to examine issues of alleged encroachment in the first instance. No doubt, if the authorities who are enjoined to initiate action, fail to initiate action or, if there is a case of dereliction of duties, then, it is for this Court, to activate the concerned authorities into initiation of action in accordance with law and prescribed procedures. Since, respondent No.9 has stated in the affidavit that the concerned authorities propose to examine the matter and initiate action, there is no necessity to keep the present public interest litigation pending.

13] We make it clear that we have not examined the allegation of encroachment and therefore, we have not expressed any opinion on the merits of such issue. Accordingly, it will be open to the concerned authorities including respondent No.9 to take action in accordance with law and established procedures. We also add as a matter of abundant caution that any such action shall be consistent with principles of natural justice and fair play.

14] With aforesaid observations and directions, the present public interest litigation is disposed of.

(M.S.SONAK, J.)

(CHIEF JUSTICE)