

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

914 PUBLIC INTEREST LITIGATION NO. 112 OF 2017

KISAN MAHADEV AVHAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. N.B.Narwade, Advocate for Petitioner
Mrs. A.V.Gondhalekar, AGP for Respondents-State
Mr. R.R.Bangar, Advocate for Respondent No.4
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**CORAM : PRASANNA B. VARALE AND
MANGESH S. PATIL, JJ.**

DATE : 29.11.2018

PER COURT :-

1. Heard the learned counsel for the petitioner. The petitioner claimed to be a social worker and in the present Public Interest Litigation, the basic prayer is issuance of direction to the respondents-authorities to close down tar plant situated on National Highway No.222 (New No.61) at Village Tribhuwanwadi, Taluka Pathardi, District Ahmednagar.

2. The learned counsel for the petitioner vehemently submitted that the said tar plant is erected at the instance of Respondent No.10. Then it is submitted that the said tar plant is causing health hazardous for the residents as well as

it unleads to a hazardous situation for the agricultural yield. The villagers submitted representation to Respondent No.6 - Tahsildar, Pathardi. Respondent No.6 - Tahsildar initially called a report from the Circle Officer and then by communication dated 27.01.2017, issued directions to Respondent No.8 - Taluka Agricultural Officer to submit a self speaking report. In response to this communication, a report is submitted and copy of the said report dated 16.03.2017 is placed on record. The said Officer i.e. Respondent No.8 submits to the Tahsildar that on his spot inspection he is of an opinion that there is an adverse effect on the agricultural yield. There was also report submitted by Taluka Health Officer i.e. Respondent No.7. On receipt of these two reports, the Tahsildar immediately passed order dated 21.03.2017. The learned counsel for the petitioner vehemently submitted that in spite of the order passed by the Tahsildar, Respondent No.10 is not shifting the plant to another place. As such, the directions be issued to the respondents-authorities for shifting the plant to another place.

3. Notice was issued by this Court on 14.12.2017. In response to the notice, an affidavit-in-reply is filed on behalf

of the Sub-Divisional Officer. It would be useful to refer certain statements made in the affidavit-in-reply. It is stated in the affidavit-in-reply that the work of rehabilitation and up-gradation of National Highway 222 from end of Ahmednagar bypass to Kharwandi Kasar (Pathardi) Section from k.m. 232/00 to 284/00 was sanctioned by the Ministry of Road Transport and Highway vide Job No.222-MAH-NHDP-IV-2014-15-026, dated 05.01.2015. The work is allotted to M/s Gannon Dunkerly and Company Ltd., Navi Mumbai, on 18.01.2016. The contractor erected a Batch Mix plant at village Tribhuwanwadi, Taluka Pathardi, District Ahmednagar. Now work is in progress from EPC Contractor.

4. Then along with the affidavit-in-reply, a communication is placed on record directing the Project Manager of M/s Gannon Dunkerly and Company Ltd. dated 03.02.2017 to shift the plant where is no population. On perusal of the material and more particularly the material in the form of the report submitted by the Taluka Agricultural Officer, Pathardi, we find that this is only an opinion expressed by the Taluka Agricultural Officer. Same is the situation in respect of the report of the Taluka Health Officer. None of these reports show that there is any scientific

material collected by these authorities to arrive at a positive conclusion and the Tahsildar, Pathardi relying on these reports interestingly enough, without giving any opportunity to the party against whom the order is passed, directed to shift the plant from one place to another place.

5. It is admitted position that the plant is erected in furtherance of a project referred to in the affidavit-in-reply of the Sub-Divisional Officer namely rehabilitation and up-gradation of part of National Highway 222. It is also not in dispute that if the project was undertaken, it must have been processed through various permissions being granted by the respective authorities. The Tahsildar passed the order of shifting of the plant only on the basis of the representation submitted to him and the Tahsildar failed to take any care for calling upon the requisite material apart from the report and the representation and also failed to call upon the party against whom he is passing an order for shifting plant from one place to another place by giving an opportunity of hearing. As such, the order of the Tahsildar was a unilateral order. The petitioner is under an assumption and presumption that as two reports are submitted firstly by the Taluka Agricultural Officer and another by the Taluka Health

Officer, Panchayat Samiti, Pathardi, this is the conclusive material to say and submit that the tar plant is a health hazardous plant when there is nothing in the nature of any scientific material or any scientific report being drawn by an agency having expertise in the field. We are unable to reach to a conclusion that the plant against which the grievance is raised is health hazardous in absence of any positive scientific material being placed before us. At the cost of repetition, we state that the order passed by the Tahsildar is only on the representation submitted and the reports submitted to him without considering any other aspect of the matter. On the basis of such incomplete material to accept the submission of the petitioner would be unreasonable and stretching the logic too far.

7. In view of these facts, we are not inclined to entertain the petition resultantly, the Writ Petition is dismissed at the threshold.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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