

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 135 OF 2013

Grampanchayat Aashti,]
Taluka : Mohol, District : Solapur]
Through its Sarpanch,]
Shri. Madansinh Mohan Patil] ..Petitioner.

Versus

1. The State of Maharashtra,]
Through the Chief Secretary, having his]
office at Mantralaya, Mumbai – 400032.]
]
2. The Commissioner of Sugar,]
Office of Commissioner of Sugar,]
Sakhar Sankul, Shivaji Nagar,]
Pune – 411 005.]
]
3. The Collector, Solapur,]
Collector Office, Solapur District,]
Solapur]
]
4. The Maharashtra State Pollution Control]
Board, Kalpataru point, 3, Second Floor,]
Sion – Matunga Scheme Road No. 8,]
in front of Sion Cir., Sion (East),]
Mumbai – 400 022]
]
5. The Deputy Regional Officer,]
the Maharashtra Pollution Control Board,]
B/4, Bali Building, Civil Lines, in front of]
Government Milk Dairy, Saat Rasta,]
Solapur.]
6. Tahsildar, Mohol,]
Taluka : Mohol, Dist: Solapur.]
]
7. Zilla Parishad, Solapur]
Through its Chief Executive Officer,]
Solapur, Dist : Solapur.]

-]
8. Audumbarraoji Patil Sakhar Karkhana Ltd.,]
Ashti, Taluka : Mohol, Dist.Solapur,]
Through its Chairman & Managing]
Director, Sou. Bhagyashree Harshwardhan]
Patil, Gut No. 195, at/post : Ashti, taluka :]
Mohol, Dist. Solapur.] ..Respondents.

With
WRIT PETITION NO. 6799 OF 2010

Lokshakti Sugars & Allied Industries Ltd.]
Through its Chairman]
Shri. Manohar Siddu Dongre]
Address : Dr. Dwarkanath Koitnees] ..Petitioner.
Shopping Centre Park Chowk,]
Solapur 413 001]

Versus

1. The State of Maharashtra,]
Through the Government Pleader]
Appellate Side, High Court,]
Mumbai.]
]
2. The Commissioner of Sugar,]
Sakhar Ayuktalay,]
Maharashtra State, Pune]
Sakhar Sankul, Shivaji Nagar,]
Pune – 5.]
]
3. Audumbarraoji Patil Sakhar Karkhana Ltd.,]
Ashti, Taluka- Mohol, District-Solapur,]
]
4. Union of India]
Ministry of Consumer Affairs,]
Food and PD Department of Food and PD,]
Directorate of Sugar,]
Krishi Bhavan, New Delhi] ..Respondents.

With
WRIT PETITION NO. 4773 OF 2010

Lokshakti Sugars & Allied Industries Ltd.]
 Through its Chairman]
 Shri. Manohar Siddu Dongre]
 Address : Dr. Dwarkanath Koitnees]
 Shopping Centre Park Chowk,]
 Solapur 413 001] ..Petitioner.

Versus

1. The State of Maharashtra,]
 Through the Government Pleader]
 Appellate Side, High Court,]
 Mumbai.]
]
2. The Commissioner of Sugar,]
 Sakhar Ayuktalay,]
 Maharashtra State, Pune]
 Sakhar Sankul, Shivaji Nagar,]
 Pune – 5.]
]
3. Audumbarraoji Patil Sakhar Karkhana Ltd.,]
 Ashti, Taluka- Mohol, District-Solapur,]
]
4. Union of India]
 Ministry of Consumer Affairs,]
 Food and PD Department of Food and PD,]
 Directorate of Sugar,]
 Krishi Bhavan, New Delhi] ..Respondents.

With

WRIT PETITION NO. 4542 OF 2013

1. Siddeshwar Navnad Wagaz,]
 Age 38 years, having his residential]
 address at Mukham Post, Shethphal,]
 Taluka – Mohal, Dist. - Solapur.]
]
2. Shivaji Nanadev Surve]
 Age 41, having his residential address]
 at Post Modalimb,]
 Taluka-Mhada, Dist. Solapur.]
3. Amol Sakshan Chavan]

Age 38 years, having his residential]
address at Mukham Post, Aashti,]
Taluka – Mohal, Dist. - Solapur.]
]

4. Balaji Mangal Patil]
Age 36 years, having his residential]
address at Mukham Post, Modalin,]
Taluka – MHADA, Dist. - Solapur.] ..Petitioners.

Versus

1. The State of Maharashtra,]
]
2. The Commissioner of Sugar,]
Office of Commissioner of Sugar,]
Sakhar Sankul, Shivaji Nagar,]
Pune – 5.]
]
3. The Collector, Solapur,]
Collector Office, Solapur District,]
Solapur.]
]
4. The Maharashtra State Pollution Control]
Board, Kalpataru point, 3, Second Floor,]
Sion – Matunga Scheme Road No. 8,]
in front of Sion Cir., Sion (East),]
Mumbai – 400 022]
]
5. The Deputy Regional Officer,]
the Maharashtra Pollution Control Board,]
B/4, Bali Building, Civil Lines, in fornt of]
Government Milk Dairy, Saat Rasta,]
Solapur.]
6. Tahsildar, Mohol,]
Taluka : Mohol, Dist: Solapur.]
]
7. Zilla Parishad, Solapur]
Through its Chief Executive Officer,]
Solapur, Dist : Solapur.]
]

8. Audumbarraoji Patil Sakhar Karkhana Ltd.,]
 Ashti, Taluka : Mohol, Dist.Solapur,]
 Through its Chairman & Managing]
 Director, Sou. Bhagyashree Harshwardhan]
 Patil, Gut No. 195, at/post : Ashti, taluka :]
 Mohol, Dist. Solapur.] ..Respondents.

With
PUBLIC INTEREST LITIGATION NO. 23 OF 2013

Shri. Mahaveer Digambar Aware]
 Age : 43 years, Occ. Agriculturist]
 R/at: Velapur, Taluka Malshiras]
 Dist Solapur] ..Petitioner.

Versus

1. The Commissioner of Sugar]
 Maharashtra State, Pune.]
 [Summons to be served on the Learned]
 Government pleader appearing for State]
 of Maharashtra under Order XXVII, Rule 4,]
 of the Code of Civil Procedure, 1908]]
]
 2. Audumbar Raoji Patil Sakhar Karkhana]
 Ltd. Village Ashti, Gat No. 699/1/A]
 Taluka Mohal, District Solapur]
 [Actually carrying on the Business in]
 Gat No.195/1, 195/2, 195/3, 196/1A,]
 196/2, 198/2/2B/198/2/L/2,]
 198/2/L, 198/2/L/1, 198/2A]
 situated at village Ashti,] ..Respondents.
 Taluka Mohal, District Solapur.]

With
WRIT PETITION NO. 4049 OF 2014

Shri. Mahaveer Digambar Aware]
 Age : 44 years, Occ. Agriculturist]
 R/at: Velapur, Taluka Malshiras]
 Dist Solapur] ..Petitioner.

Versus

1. The Commissioner of Sugar]

- Maharashtra State, Pune.]
 [Summons to be served on the Learned]
 Government pleader appearing for State]
 of Maharashtra under Order XXVII, Rule 4,]
 of the Code of Civil Procedure, 1908]]
]
2. Audumbar Raoji Patil Sakhar Karkhana]
 Ltd. Village Ashti,]
 Taluka Mohal, District Solapur]
]
3. Union of India]
 [Summons to be served on the Learned]
 Government pleader appearing for Unon]
 of India under Order XXVII, Rule 4, of the]
 Code of Civil Procedure, 1908]]
]
4. Chief Director,]
 Department of Food and Public]
 Distribution,]
 Ministry of Consumer Affairs and the Food]
 and Public Distribution]
 Krishi Bhavan New Delhi]
]
5. The Secretary,]
 Department of Industries, Policy and]
 Promotion Ministry of Industries, Udyog]
 Bhavan, New Delhi]
]
6. State of Maharashtra]
 [Summons to be served on the Learned]
 Government pleader appearing for State]
 of Maharashtra under Order XXVII, Rule 4,]
 of the Code of Civil Procedure, 1908]] ..Respondents.

With
WRIT PETITION NO. 8499 OF 2014

Siddeshwar Navnad Wagaz,]
 Age : 38 years, having his residential]
 address at Mukham Pot, Shethphal]
 Taluka- Mohal, Dist- Solapur] ..Petitioner.

Versus

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|----|---|----------------|
| 1. | The State of Maharashtra
Through Its Department of Co-operation,
Mantralaya, Madam Kama Road, Mumbai. |] |
| 2. | The Commissioner of Sugar
Sakhar Ayuktalay,
Maharashtra State, Pune
situated office at Sakhar Sankul,
Shivaji Nagar, Pune-5. |] |
| 3. | Audumbar Raoji Patil Sakhar Karkhana
Ltd. Village Ashti,
Taluka Mohal, District Solapur |] |
| 4. | The Union of India
through its Department of Industrial
Policy and Promotion (Public Relation and
Complaint Section), New Delhi. |] |
| 5. | Mr. Harshwardhan Patil
Minister for Co-operation,
Mantralaya, Mumbai. |] |
| | | ..Respondents. |

With

WRIT PETITION NO. 2903 OF 2016

Mr. Shankar Baburao Vyavahare,	]
Age 42 years, presenting residing at	]
village Aashti, Taluka Mohol,	]
Dist : Solapur.	] ..Petitioner.

Versus

1. The State of Maharashtra,
Through its Department of
Co-operation, Mantralaya, Mumbai.
2. The Commissioner of Sugar,
Maharashtra State, Pune, having office at
Sakhar Sankul, Shivaji Nagar, Pune.

3. Union of India]
Ministry of Consumer Affairs,]
Food and PD Department of Food and PD,]
Directorate of Sugar,]
Krishi Bhavan, New Delhi]
]
4. Audumbarraoji Patil Sakhar Karkhana Ltd.,]
Ashti, Taluka- Mohol, District-Solapur,]
]
5. Secretary (Food)]
Department of Food, Ministry of Food]
and Consumer Affairs, Krushi Bhavan,]
New Delhi 110001]
]
6. Joint Secretary (Sugar)]
Department of Food, Ministry of Food]
and Consumer Affairs, Krushi Bhavan,]
New Delhi 110001]
]
7. Chief Director (Sugar)]
Directorate of Sugar, Ministry of Food]
and Consumer Affairs, Krushi Bhavan,]
New Delhi 110001]
]
8. Secretary,]
Department of Industrial Policy and]
Promotion, Ministry of Industries &]
Commerce, Udyog Bhavan,]
New Delhi 110001]
]
- 9 Joint Secretary (SIA)]
Department of Industrial Policy and]
Promotion, Ministry of Industries &]
Commerce, Udyog Bhavan,]
New Delhi 110001.] ..Respondents.

Mr. A. V. Anturkar, Senior Advocate with Mr. Sandeep Pathak i/b Mr. S. B. Deshmukh for the Petitioner in WP No. 4049 of 2014 and PIL No. 23 of 2013.

Mr. A. Y. Sakhare, Senior Advocate along with Mr. V. M. Thorat for the Petitioner in W.P. No.4542 of 2013, 4773 of 2010, 6799 of 2010, 8499 of 2014 and 2903 of 2016.

Mr. S. S. Patwardhan along with Mr. P. G. Chavan for the Petitioner in W.P. No. 135 of 2013.

Mr.Vineet Naik, Senior Advocate along with Mr. Ajit Kenjle for R.No.8 in W.P.No. 135/2013 and Applicant in CAW No.2758/2013.

Mr.N. V. Walavalkar, Senior Advocate along with Mr.Ajit Kenjale for R.No.3 in WP.No. 4773/2010 and W.P.No.6799/2010.

Mr. Ravi Kadam and Mr. Vineet Naik, Senior Advocates with Mr. Ajit Kenjale for Respondent No. 2 in PIL No. 23 of 2013.

Mr. Ravi Kadam, Senior Advocate along with Ms. Tanmai Gadre i/b Ajit Kenjale for Respondent No. 2 in W.P. No.4049 of 2014.

Mr. Ajit Kenjale and Sohil Gulabani for Respondent No. 3 in WP No. 4542 of 2013 and W.P. No. 2903 of 2016.

Mr.Y.S. Jahagirdar, Sr. Adv. A/w. Vikram Walavalkar i/by Ajit Kenjale for R.No.3 in W.P.No.8499/2014.

Mrs. M. P. Thakur, AGP for the State in all matters.

Ms.Nisha N. Valani for R.No.3 in W.P.No.135/2013.

Mr.A.S. Kulkarni for R.No.7 in W.P. No.135/2013.

Mr.Parag Vyas and Mr. N.D. Sharma for UOI in W.P.No.4049/2014.

Mr.Y.S.Bhate and Mr.Jaydeep Deo for Respondent No.4-UOI in WP Nos.4773/2010 & 6799/2010.

Mr.H.V.Mehta and Mr.D.P. Singh for the UOI in W.P.No.2903/2016.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date of reserving judgment : **December 6, 2017.**

Date of pronouncement of judgment: **March 16, 2018.**

JUDGMENT [Per Ranjit More, J.]

1. Writ Petition No. 4773 of 2010 and Writ Petition No.6799 of 2010 are filed by Lokshakti Sugar and Allied Industries Ltd *[for the sake of brevity and convenience hereinafter referred to as "Lokshakti"]* against Audumbarraoji Patil Sakhar Karkhana Limited *[for the sake of brevity and convenience hereinafter referred to as "Audumbarraoji"]*. Writ Petition No.4773 of 2010 is filed challenging the grant of aerial distance certificate in favour of Audumbarraoji. Writ Petition No. 6799 of 2010 is filed challenging the rejection of Lokshakti's application for aerial distance certificate. Writ Petition No.135 of 2013 came to be filed by Grampanchayat Aashti seeking directions to forthwith stop all construction activity, erection of sugar factory undertaken by Audumbarraoji on land Gat No.195 at village Aashti. One Mahavir Digambar Aware filed Public Interest Litigation bearing No.23 of 2013 challenging the licence granted to Audumbarraoji. Writ Petition No. 4542 of 2013 is filed by one Siddeshwar Navnad Wagaz challenging the licence granted in favour of Audumbarraoji and seeking directions to stop construction of Audumbarraoji to avoid dumping or leaving or emitting its chemically composed waste products and material in whatsoever form into the Aashti water reservoir. Said Siddeshwar

Wagaz has filed Writ Petition No. 8499 of 2014 challenging the order of the Commissioner of Sugar dated 30th September 2013 authenticating change of location of factory of Audumbarraoji. One Shankar Baburao Vyavahare has filed Writ Petition No. 2903 of 2016 challenging the said order authenticating the change of location of the factory of Audumbarraoji. Mahavir Aaware filed Writ Petition No.8499 of 2014 challenging the order dated 30th September 2013 made by the Commissioner of Sugar certifying the change in location of Audumbarraoji's factory.

. Since the issue involved in these petitions and PIL being similar, all these matters were tagged together, heard together and are being disposed of by this common judgment.

2. It would be advantageous to synchronize the chronology of dates and events at the outset :

On 12th October 1998, the IEM in favour of Narveer Bapu Gokhale Sakhar Karkhana Ltd was granted. In the month of December 1998, the Registrar of Companies certified change in the name of Narveer Bapu Sakhar Karkhana Ltd to Gopalkrishna Sakhar Karkhana Limited. On 10th November 2006, the Government of India amended the Sugarcane Control Order, 1996 by inserting Clauses 6A to 6E. On

11th April 2007, the Registrar of Companies certified the change in the name of Gopalkrishna Sakhar Karkhana Limited to Audumbarraoji Patil Sakhar Karkhana Limited.

On 26th March 2007, pursuant to the application made by Gopalkrishna Sakhar Karkhana Limited (changed name Audumbarraoji Sakhar Karkhana Limited), the Survey of India authenticated the aerial distance between the proposed Karkhana of the Applicant and other Karkhanas in that area. On 29th March 2007 Gopalkrishna Sakhar Karkhana Limited (changed name Audumberraoji Sakhar Karkhana Limited) made an application to the Commissioner of Sugar for grant of certificate as contemplated under Clause 6B of the amended provisions of Sugarcane Control Order, 1966 (i.e., aerial distance certificate). On 11th May 2008, the Commissioner of Sugar issued public notice calling upon the existing sugar factories, the IEM holder sugar factories and proposed sugar factories to submit objections, if any.

. Pursuant to an application made by Lokshakti, the Survey of India authenticated the aerial distance between the proposed factory of Lokshakti and other factories on 2nd March 2009. On 6th March 2009, Lokshakti made an application to the Commissioner of Sugar for grant of aerial distance certificate under

Clause 6-B of Sugarcane Control Order. On 26th March 2009, the Commissioner of Sugar issued public notice calling for the objections from the existing and the new sugar factories to the grant of aerial distance certificate in favour Lokshakti. On 13th April 2009, Audumbarraoji raised objection in response to the said public notice.

. By this order dated 28th July 2009, pursuant to an application made by Audumbarraoji, Survey of India authenticated the aerial distance between its proposed sugar factory and other additional sugar factories which were set up between 2007 and 2009.

. In the meanwhile on 12th July 2006, ad-interim order was passed by the Division Bench of this Court in PIL No. 20 of 2006, directing the Commissioner of Sugar and the State Government not to issue any fresh permission for new sugar factories in the State of Maharashtra. In the light of this restraint order passed by the High Court, the Commissioner of Sugar on 12th November 2009, rejected the application filed by Lokshakti as well as application filed by Audumbarraoji for grant of aerial distance certificate.

. By the order dated 21st January 2010 passed in Civil Application Nos.128 of 2009, 130 of 2009 and 20 of 2009 taken out in PIL No.20 of 2006, this Court modified / clarified the interim order dated 12th July 2006 passed in PIL No. 20 of 2006. The modification

was to the effect that order dated 12th July 2006 would not come in the way of the State Government in considering the applications for opening of private sugar factories, provided that no financial assistance in the nature of grant, subsidy or guarantee is granted to the said Applicants. Both Audumbarraoji and Lokshakti being private sugar factories, in terms of the modified order, were at liberty to apply for the aerial distance certificate.

. Lokshakti accordingly filed an application with the Commissioner of Sugar for grant of aerial distance certificate under the amended Sugarcane Control Order, relying upon their old application dated 6th March 2009, which was rejected by the Commissioner of Sugar at an earlier stage. On 24th February 2010, Audumbarraoji also made an application to the Commissioner of Sugar relying upon their old application dated 29th March 2007 for grant of aerial distance certificate as provided under Clause 6-B of Sugarcane Control Order, 1966.

. By the order dated 24th February 2010, the Commissioner of Sugar granted to Audumbarraoji the aerial distance certificate under Clause 6-B of the Sugarcane Control Order, 1966. On 25th February 2010, Audumbarraoji filed an IEM for construction of sugar factory in village Aashti, taluka Mohol. On 26th February 2010,

Audumbarraoji submitted the performance bank guarantee of Rs.1 crore to the concerned authorities. On 28th April 2010, the Government of India declared that Audumbarraoji is new sugar factory. By intimation dated 3rd May 2010, Audumbarraoji informed the Director of Sugar, New Delhi that location of sugar factory which was to come up upon land Gat No.699 of village Asthi, was changed to Gat No. 195 to 197 of the same village.

The commissioner of sugar by his order dated 16th August 2010 rejected Lokshakti's application for grant of aerial distance certificate. Lokshakti thereafter filed writ petitions in this Court, namely, Writ Petition No.4773 of 2010 and 6799 of 2010, first challenging the grant of aerial distance certificate in favour of Audumbarraoji and the second challenging the rejection of their application for aerial distance certificate.

. It is the claim of Audumbarraoji that in the interregnum of 25th February 2010 and 25th February 2012, they have taken all effective steps as contemplated under Clause 6-A of the Sugarcane Control Order, 1966, namely, the purchase of land for construction of Karkhana was made, they had placed orders for purchase of plant and machinery and made payment of requisite advance amount, commenced the civil work and construction of building, availed loans

from different banks and financial institutions. It is the claim of Audumbarraoji that they have obtained required permissions from various departments, including the Pollution Control Board and started construction work.

. Writ Petition No.135 of 2013 came to be filed by Grampanchayat Aashti seeking directions to forthwith stop all construction activity, erection of sugar factory undertaken by Audumbarraoji on land Gat No.195 at village Aashti. One Mahavir Digambar Aware filed Public Interest Litigation bearing No.23 of 2013 challenging the licence granted to Audumbarraoji. By the order dated 9th April 2013 the Division Bench of this Court restrained Audumbarraoji from putting up and continuing with the construction work on land Gat No. 195 to 197 without placing on record the permissions granted by the competent authorities. Audumbarraoji thereafter obtained authentication certificate from the Survey of India regarding the aerial distance between the existing / new sugar factories in respect of Gat No. 195 to 197. Audumbarraoji thereafter filed civil application in Writ Petition No. 135 of 2013, being Civil Application No.2758 of 2013 seeking to vacate the interim injunction granted on 9th April 2013. It was the contention of Audumbarraoji that they have obtained all the permissions and prayed for vacating the

interim order granted on 9th April 2013. In view of this application, Writ Petition No. 135 of 2013 was placed before the Court for orders on 10th May 2013. On that day, after hearing parties, the Court observed that interest of justice will be served if the Collector, Solapur is asked to examine the permissions relied upon by Audumbarraoji and if the Collector, Solapur finds that Audumbarraoji has obtained all necessary permissions for construction of sugar factory on the said land, the Collector Solapur shall accordingly give intimation to the State Government and submit a report to this Court. If the report of the collector is in favour of Audumbarraoji, Audumbarraoji may restart the construction. It was also observed that order dated 9th April 2013 stands modified in above terms.

. Meanwhile, on 7th May 2013, one Siddheshwar N. Wagaz filed Writ Petition No.4543 of 2013 praying that Audumbarraoji should stop construction of sugar factory to avoid dumping of its chemically composed waste product in Aashti water reservior.

. By the report dated 26th June 2013, the Collector, Solapur examined all the permissions and allowed Audumbarraoji to restart construction. Accordingly, report dated 26th June 2013 was submitted to this Court through the office of Government Pleader. Audumbarraoji thereafter recommenced the construction and almost

completed 60% of the work.

. The Petitioner in Writ Petition No. 135 of 2013 objected to the construction of the factory by Audumbarraoji on the ground that certificate under Clause 6-B of the Sugarcane Control Order, 1966 in respect of Gat No. 195 to 197 was not secured by Audumbarraoji. This Court by the order dated 14th August 2013 revived its earlier interim order dated 9th April 2013. Audumbarraoji was restrained from carrying out any construction of the sugar factory in respect of land Gat No. 195 to 197 of village Aashti without placing on record other permissions which are required to be taken from the Director (Sugar), Maharashtra State. It was also observed that only after obtaining all the permissions / certificates required for construction of sugar factory, Audumbarraoji may apply to this Court for obtaining permission for reconstruction of work. On the same day, i.e., on 14th August 2013, Audumbarraoji made an application to the Commissioner of Sugar for grant of certificate authenticating change in the location of its factory. The Commissioner of Sugar issued public notice on 19th August 2013 calling for the objections for the establishment of the sugar factory at Gat No. 195 to 197. In all nine objections were received, mostly by the Petitioners in the present writ petitions/PIL. On 27th September 2013, pending consideration of these

objections, the Commissioner of Sugar directed Audumbarraoji to obtain aerial distance certificate from the Survey of India in respect of other sugar factories, namely, Loknete Agro Industries, Laxmi Nagar and Vithalrao Shinde Co-operative Sugar Factory and Shivrtna Sugar Pvt. Limited. On 25th September 2013, Audumbarraoji obtained authentication of aerial distance certificates in respect of above factories from the office of Survey of India. On 30th September 2013, the Commissioner of Sugar heard the objections and acknowledged the change in location of Audumbarraoji's sugar factory. The Commissioner of Sugar certified that the distance between Audumbarraoji's proposed sugar factory in Gat No. 195 of village Aashti is more than 15 kms from the existing sugar factories.

. On 11th October 2013, Audumbarraoji filed civil application bearing No.1758 of 2013 in Writ Petition No.135 of 2013 for vacating the ad-interim relief granted on 14th August 2013 on the ground that the certification as required, has been obtained by it. Thereafter one Shankar Baburao Vyavahare, Mahavir Aaware and Siddheshwar N. Wagaz filed Writ Petition No.2903 of 2013, 4049 of 2014 and 8499 of 2014 respectively challenging the order dated 30th September 2013 made by the Commissioner of Sugar certifying the change in location of Audumbarraoji's factory.

3. The rival submissions advanced by the respective counsel cannot be appreciated unless we consider the amended provisions of Clauses 6A to 6E of the Sugarcane Control Order, 1966, which are reproduced below for ready reference :

6A. Restriction on setting up of two sugar factories within the radius of 15 kms.- Notwithstanding anything contained in clause 6, no new sugar factory shall be set up within the radius of 15 kms of any existing sugar factory or another new sugar factory in a state or two or more states;

Provided that the State Government may with the prior approval of the Central Government, where it considers necessary and expedient in public interest, notify such minimum distance higher than 15 kms or different minimum distances not less than 15 kms for different regions in their respective States.

Explanation 1.- An existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for last five sugar seasons.

Explanation 2.- A new sugar factory shall mean a sugar factory, which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in clause 6C.

Explanation 3.- The minimum distance shall be determined as measured by the Survey of India.

Explanation 4.- The effective steps shall mean the following steps taken by the concerned person to implement the Industrial Entrepreneur Memorandum for setting up of sugar factory:-

- (a) purchase of required land in the name of the factory;
- (b) placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of Irrevocable letter of credit with suppliers;
- (c) commencement of civil work and construction of building for the factory;
- (d) sanction of requisite term loans from banks or financial institutions;
- (e) any other step prescribed by the Central Government in this regard through a notification.

6B. Requirements for filing the Industrial Entrepreneur Memorandum:-

(1) Before filing the Industrial Entrepreneur Memorandum with the Central Government, the concerned person shall obtain a certificate from the Cane Commissioner or Director (Sugar) or Specified Authority of the concerned State Government that the distance between the site where he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the Central Government or the State Government, as the case may be, and the concerned person shall file the Industrial Entrepreneur Memorandum with the Central Government within one month of issue of such certificate failing which validity of the certificate shall expire.

(2) After filing the Industrial Entrepreneur Memorandum, the concerned person shall submit a performance guarantee of rupees one crore to Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within thirty days of filing the Industrial Entrepreneur Memorandum as a surety for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in clause 6C failing which Industrial

Entrepreneur Memorandum shall stand de-recognized as far as provisions of this Order are concerned.

6C. Time limit to implement Industrial Entrepreneur Memorandum:-

The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing the Industrial Entrepreneur Memorandum with the Central Government, failing which the Industrial Entrepreneur Memorandum shall stand de-recognized as far as provisions of this Order are concerned and the performance guarantee shall be forfeited;

Provided that the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution on the recommendation of the concerned State Government, may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

6D. Consequences of non-implementation of the provisions laid down in clauses 6B and 6C:-

If an Industrial Entrepreneur Memorandum remains unimplemented within the time specified in clause 6C, the performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard.

6E. Application of clauses 6B, 6C and 6D to the person whose Industrial Entrepreneur Memorandum has already been acknowledged.

(1) Except the period specified in sub-clause (2) of clause 6B of this Order, the other provisions specified in clauses 6B, 6C and 6D shall also be applicable to the person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to the clause 6A.

(2) The person whose Industrial Entrepreneur Memorandum has already been acknowledged as on

date of this notification but who has not taken effective steps as specified in Explanation 4 to the clause 6A shall furnish a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within a period of six months of issue of this notification failing which the Industrial Entrepreneur Memorandum of the concerned person shall stand de-recognized as far as provisions of this Order are concerned."

Writ Petition No. 4773 of 2010 and 6799 of 2010

4. The Petitioners' objections to the licence granted to Audumbarraoji will have to be considered in the light of above provisions of the Sugarcane Control Order 1966. In this regard, firstly we propose to consider the objections of Lokshakti. As stated above Lokshakti has filed two writ petitions, namely, Writ Petition No. 4773 of 2010 and 6799 of 2010. In the first petition, Lokshakti challenged the grant of aerial distance certificate to Audumbarraoji. In the second petition, Lokshakti has taken exception to the order rejecting its application for grant of aerial distance certificate.

5. Mr. V. M. Thorat, learned Counsel for the Petitioners in these two petitions relied upon the decision of the Division Bench of this Court bench at Aurangabad in Gangamai Industries & Construction Limited vs. State of Maharashtra and Others¹ and

1 Writ Petition No. 8145 of 2009 (Aurangabad Bench) decided on 11th March 2010.

submitted that grant of aerial distance certificate is just a ministerial act and the same ought to have been issued in favour of Lokshakti, who had submitted its application prior in point of time than other Applicants. In short, he submitted that the application of Lokshakti for grant of aerial distance certificate was received first in point of time, then, the same has to be granted and there is no discretion left with the Commissioner of Sugar / Authority as to in whose favour such certificate should be granted. In support of his submissions, Mr. Thorat contended that for the purpose of obtaining the aerial distance certificate from Commissioner of Sugar, one is required to have with him aerial distance authentication certificate issued by the Surveyor General of India; and Lokshakti applied for the same on 6th February 2009 and the Surveyor General of India issued such authentication certificate on 2nd March 2009, confirming the distance between the Lokshakti and neighbouring sugar factories as more than 16 kms. and with this certificate, on 6th March 2009 Lokshakti applied to the Commissioner of Sugar for obtaining the aerial distance certificate for the purpose of submission of IEM with the Central Government. Mr. Thorat contended that application of Lokshakti was first in point of time, as prior to this there was no application for the same area. He however conceded that for the same area there was one IEM granted /

acknowledged in favour of Audumbarraoji [earlier name Gopalkrishna Sakhar Karkhana Limited]. He further submitted that Lokshakti's application for aerial distance certificate being the only application, the Commissioner of Sugar ought to have granted the same immediately. The commissioner of Sugar without any reason issued public notice dated 26th March 2009 and invited objections for the grant of aerial distance certificate in favour of Lokshakti and in pursuance of this notice, Audumbarraoji by its objection dated 13th April 2009 objected to the grant of aerial distance certificate to Lokshakti. He submitted that Audumbarraoji took objection to grant of aerial distance certificate to Lokshakti on the false ground that it had also applied for the same certificate with the Commissioner of Sugar and the same was pending. Mr. Thorat contended that by the order dated 25th November 2009, the Commissioner of Sugar in view of the interim order passed by this Court on 12th July 2006 [in PIL No. 20 of 2006], rejected the applications of both, Lokshakti and Audumbarraoji, for grant aerial distance certificate. However, since this interim order was subsequently modified on 21st January 2010, both Lokshakti and Audumbarraoji filed applications with the Commissioner of Sugar to consider their earlier applications for aerial distance certificate. The grievance of Mr. Thorat is that the application

of Audumbarraoji for aerial distance certificate was granted on 24th February 2010 without inviting objections, relying upon their earlier application [dated 29th March 2007] for the aerial distance certificate and thereafter by the order dated 12th/19th July 2010 rejected application of the Lokshakti for the aerial distance certificate.

6. Mr. Walawalkar, learned Senior Counsel appearing for Audumbarraoji opposed these petitions very vehemently. He did not seriously dispute the proposition of Mr. Thorat that aerial distance certificate should be granted to the Applicant first in point of time. He however submitted that Audumbarraoji's application for the aerial distance certificate was made in the year 2007, the objections were also called for by issuing public notice by the Commissioner of Sugar; the application for such certificate by Lokshakti was much later, i.e., in the year 2009, to which Audumbarraoji has taken objection. It was, therefore, the submission of Mr. Walawalkar that the Commissioner of Sugar was justified in granting the aerial distance certificate to Audumbarraoji and refusing the same to Lokshakti.

7. The Division Bench of this Court in Gangamai (supra) has held thus :

“13. The authority vested with power to determine the minimum distance, is Survey of India and if that be so, the Commissioner of Sugar cannot take any decision contrary to the decision of Survey of India in the matter of measurement of distance from an existing sugar factory and the proposed sugar factory. Clause-B lays down the requirements for filing the Industrial Entrepreneur Memorandum. Before filing the Industrial Entrepreneur Memorandum with the Central Government, a proposed sugar factory need to obtain a certificate from the Commissioner of Sugar that the distance between the site where he proposes to set up a sugar factory and adjacent existing sugar factories and new sugar factories if any is not less than the minimum distance prescribed by the Central Government or the the State Government, as the case may be. The certificate to be issued by Commissioner of Sugar has to be in conformity with the certificate issued by Survey of India as the said authority is vested with the power to determine the minimum distance. If that be so, then it is obvious that the Commissioner of Sugar, while issuing a certificate under clause 6-B(1) only performs a ministerial act of issuing a certificate in consonance with the certificate issued by Survey of India. If that be the position, we have no iota of doubt that as the Survey of India has already issued a certificate in favour of the present Petitioner that the Petitioner's proposed sugar factory is at a distance of 27 Kms. from the existing sugar factory of Respondent No. 4, the Commissioner of Sugar could not have rejected the application moved by the present Petitioner.”

8. If the scheme of the provisions of Clauses 6A to 6E of the Sugarcane Control Order, 1966 (as amended) is considered along with the observations made by the Division Bench of this Court in *Gangamai (supra)*, it clearly support the contention of Mr. Thorat, the learned Counsel for Lokshakti. Now, therefore, we have to consider whose application, ie., Lokshakti's application or Audumbarraoji's

application, was first in point of time.

9. Document at page No. 123 of Writ Petition No. 6799 of 2010 is authentication certificate issued by the Survey of India in favour of Gopal Krishna Sakhar Karkhana Limited (now Audumbarraoji) certifying that distance between Gopal Krishna Sakhar Karkhana (now Audumbarraoji) and four other sugar factories / Karkhanas is more than 15 kilometers. The document at page No. 128 of Writ Petition No. 6799 of 2010 is an application dated 29th March 2007 made by Gopal Krishna Sakhar Karkhana Limited (now Audumbarraoji) to the Commissioner of Sugar for aerial distance certificate. Mr. Thorat, learned Counsel for the Lokshakti contended that said application was not for aerial distance certificate. However, on perusal of the same, we are of the opinion that the said application was filed for the grant of aerial distance certificate as per the requirements of Clause 6A of the Sugarcane Control Order, 1966 (as amended). In pursuance of the application of Gopal Krishna Sakhar Karkhana Limited (now, Audumbarraoji), the Commissioner of Sugar issued public notice on 11th May 2008 calling upon the IEM-holder sugar factories and other sugar factories to submit objection, if any.

10. Admittedly, Survey of India has granted authenticated aerial distance certificate for the distance between Lokshakti and other Karkhanas on 2nd March 2009 and subsequent to the grant of such authentication certificate, on 6th March 2009 Lokshakti made an application for the aerial distance certificate to the Commissioner of Sugar, Maharashtra State and the Commissioner of Sugar thereafter issued public notice on 26th March 2009 calling upon the objections from the existing / new sugar factories. Audumbarraoji filed / raised objections on 13th April 2009. Both these applications, i.e., application made by Audumbarraoji and application made by Lokshakti were rejected in view of the order dated 12th July 2006 passed in PIL No. 20 of 2006. This order was subsequently modified and the private factories / karkhanas were permitted to apply for the aerial distance certificate. Thereafter both Lokshakti and Audumbarraoji relying upon their old applications, made applications on 12th February 2010 and 24th February 2010 respectively, for the grant of aerial distance certificate and the Commissioner of Sugar granted the aerial distance certificate to Audumbarraoji and rejected the application of Lokshakti for grant of aerial distance certificate.

11. Mr. Thorat in this regard submitted that original

application dated 29th March 2007 for aerial distance certificate was by one Gopal Krishna Sakhar Karkhana Limited and Audumbarraoji is a different entity who used these documents for its benefit and therefore aerial distance certificate granted in favour of Audumbarraoji by Commissioner of Sugar was erroneously granted. Mr. Thorat in this regard also pointed that after the modification of interim order in PIL No. 20 of 2006, on 10th February 2010 Lokshakti filed an application for aerial distance certificate whereas Audumbarraoji filed application for the same purpose on 24th February 2010; the application of the Lokshakti was therefore prior in point of time and it could not have been rejected. We do not find merit in the submission of Mr. Thorat. Firstly, change of name of Gopal Krishna Sakhar Karkhana Limited to Audumberraoji Sakhar Karkhana Limited was legal under the authority of Registrar of Companies. Gopal Krishna Sakhar Karkhana Limited and Audumbarraoji are one and the same entity and this fact is admitted by Lokshakti in paragraph "J" on Page no.22 of Writ petition No. 6799 of 2010.

12. That apart, in the applications filed by both, viz., Lokshakti and Audumbarraoji, subsequent to the modification of interim order in PIL No.20 of 2006, there is reference to their earlier

applications for grant of aerial distance certificate. In short, both karkhanas claimed aerial distance certificate relying upon their old applications. Lokshakti having requested Commissioner of Sugar to grant application dated 6th March 2009, then, surely they cannot take objection to the Commissioner of Sugar acting on Audumbarraoji's old application dated 29th March 2007 which is certainly prior in point of time to Loakshakti's application.

13. Mr. Thorat, learned Counsel for Lokshakti also pointed out that aerial distance authentication certificate was granted to Audumbarraoji on 28th July 2009. We have perused this certificate which is annexed at page No.134 of Writ Petition No. 6799 of 2010. This certificate is issued by Survey of India authenticating the aerial distance between Audumbarraoji's proposed sugar factory and other sugar factories set up during the period between 2007 to 2009. Audumbarraoji was required to obtain this certificate as during the period between 2007, i.e., when the first application for aerial distance certificate was made and 2009 when one Shree Sant Kusumdas Sahakari Sakhar Karkhana Limited came into existence and distance between Audumbarraoji and said Shree Sant Kusumdas Sahakari Sakhar Karkhana was required to be certified. This aerial distance

certificate, in our view, will relate back to Audumbarraoji's earlier application dated 29th March 2007.

To sum up, even if Mr. Thorat's contention that Applicant first in point of time must be granted aerial distance certificate is accepted, in that case also we find that Audumbarraoji's application for aerial distance certificate was filed on 29th March 2007 and the application of Lokshakti for such certificate was filed on 6th March 2009. We also find that in response to the public notice issued in pursuance of Audumbarraoji's application for aerial distance certificate, not a single objection was received. However, Audumbarraoji raised objection to the grant of aerial distance certificate to Lokshakti in response to public notice issued by the Commissioner of Sugar on 26th March 2009. In the backdrop of above discussion, we are of the view that the Commissioner of Sugar was justified in granting aerial distance certificate to Audumbarraoji and refusing the same to Lokshakti. And therefore we find that these petitions have no merit.

PIL No. 23 of 2013 and Writ Petition No. 4049 of 2014 :

14. Mr. Mahavir Digambar Aware has filed Public Interest Litigation No.23 of 2013 seeking directions to Respondent No.1-

Commissioner of Sugar to implement the circular dated 17th September 2012 and not to give crushing licence in respect sugar karkhanas which have constructed their factories at location different from the location mentioned in the Survey of India or in the IEM. Said Mr. Mahavir Aware also challenged the order of the Commissioner of Sugar passed on 30th September 2013 authenticating the change in location of Audumbarraoji's factory by filing Writ Petition No. 4049 of 2014.

15. Mr. Anturkar, the learned Senior Counsel appeared and argued the PIL and Writ Petition on behalf of said Petitioner – Mahavir Aware whereas, Mr. Ravi Kadam and Mr. Vineet Naik, the learned Senior Counsel appeared and defended these matters for and on behalf of Audumbarraoji.

16. Mr. Anturkar in support of this petition submitted that the IEM was given to Audumbarraoji on 25th February 2010 and as per the provisions of Clause 6C of the Sugarcane Control Order, 1966 (as amended), maximum stipulated time/period for taking effective steps is two years and commercial production shall commence within 4 years from the date of filing of the IEM with the Central Government. He submitted that two different slots have been provided by Clause 6-C of the Sugarcane Control Order, 1966 for taking effective steps for

different purposes and it is not open for any person in whose favour the IEM is given that he will not take effective steps in the two years and he will commence the commercial production and still the IEM will remain valid. Mr. Anturkar submitted that since Audumbarraoji has not taken all effective steps within the period of two years as per the provisions of Clause 6A of the Sugarcane Control Order, 1966, the IEM in their favour has automatically derecognised and becomes inoperative. He submitted that mandatory period of 2 years for taking effective steps by Audumbarraoji was already over on 25th February 2012. Thereafter on 9th April 2013, first interim order was passed in Writ Petition No.135 of 2013. This interim order was subsequently revived by another Division Bench on 10th May 2013. He submitted that in any case the interim stay granted by this Court against Audumbarraoji does not result in stopping of running of time, therefore, even the period of 4 years contemplated for commencing the commercial production has elapsed on 25th February 2014. To support this contention, Mr. Anturkar relied upon Sukumar Khot vs. State of Maharashtra². In that view of the matter, he submitted that, the IEM in favour of Audumbarraoji has become inoperative. Mr. Anturkar also submitted that the effective steps contemplated under Clause 6-C read with Clause 6-A of the Sugarcane Control Order, 1966

2 2007(4) Bom. C.R.779.

are the effective steps which are location centric. In this regard, he submitted that the IEM granted to Audumbarraoji on 25th February 2010 was in respect of Gat No. 699/1/A of village Aashti, Taluka Mohol and therefore taking effective steps in respect of Gat Nos.195 to 197 of village Aashti cannot be accepted. Mr. Anturkar also submitted that in view of the order certifying change of location by the Commissioner of Sugar on 14th August 2013, it is not open to Audumbarraoji to contend that on 3rd May 2010, i.e., after the IEM dated 25th February 2010, the intimation regarding the change in location was given by Audumbarraoji to the Chief Director of Sugar. He submitted that Audumbarraoji's case that it made an application on 3rd May 2010 to the Chief Director of Sugar for change of location of the factory, cannot be accepted for the reasons that Chief Director of Sugar is not the authority who issues the IEM, and secondly there is no provision for change of location and thirdly even if it is assumed that letter dated 3rd May 2010 was given to the correct authority, even then, the precondition mentioned in Clause 6B, namely, before filing of the IEM with the Central Government, the person concerned shall obtain the certificate from the Commissioner of Sugar or the Director (Sugar) or specified authority of the the State Government concerned, that the distance between site where the Applicant proposes to set up factory

and adjacent existing sugar factories and the new sugar factories is not less than the minimum distance prescribed by the Central Government or the State Government, ought to have been followed. In support of these submissions, the learned Senior Counsel Mr. Anturkar relied upon the decision of the Division Bench of this Court in Khandoba P. Sakhar Karkhana v. Union of India³

17. Per contra, Mr. Ravi Kadam and Mr. Vineet Naik, the learned Senior Counsel appearing for Audumbarraoji submitted that not only there is document on record to support Audumbarraoji's contention that effective steps were taken within the period of two years but there is also finding by the Commissioner of Sugar to that effect. He submitted that decision in Sukumar Khot (supra) cannot be made applicable to the facts and circumstances of the present case to contend that stay granted by the Court does not result in stopping of running of time. Mr. Kadam also submitted that immediately after grant of IEM in favour of Audumbarraoji, intimation was given to the authority regarding the change of location and this is permissible under the Press Note No.7 of 1998. He submitted that all effective steps are taken by Audumbarraoji within the stipulated time at changed location and the application for change of location will relate

³ 2011(5) Bom. C.R.104.

back to the date of IEM. He submitted that in that view of the matter, notification dated 23rd November 2011 made by the State Government changing the minimum aerial distance requirement in respect of new sugar factories from 15 to 25 kms. is not applicable to the present case. Mr. Naik relying upon the decision in *Khandoba (supra)* contended that date of change of location will relate back to the date of IEM. He submitted that order dated 30th September 2013 was passed by the Commissioner of Sugar in pursuance of the directions given by the Division Bench of this Court in its order dated 14th August 2013 passed in Writ Petition No. 135 of 2013 coupled with the prayers made in the public interest litigation. He lastly submitted that the finding of fact recorded by the Commissioner of Sugar in the said order cannot be disturbed by this Court in exercise of writ jurisdiction and therefore above writ petition and PIL may be dismissed.

18. We have given our anxious thoughts to the rival submissions advanced by the respective senior advocates and advocates. At the outset, we will consider the relief claimed in the PIL No. 23 of 2013. By the said PIL, the Petitioner sought implementation of Circular dated 17th December 2012 and not to give crushing licence in respect of those sugar factories who have constructed the sugar

factory at the location different than the location mentioned by the Survey of India. We have perused the said Circular. The circular mentions that in some cases, the Karkhana / factory is not constructed in the Gat Number for which the aerial distance certificate is given. That will result in the breach of provisions of Sugarcane Control Order, 1966. It is further provided by the said circular that it is binding on the sugar factories who wish to undertake crushing season for the first time, having already obtained aerial distance certificate, to get admeasured from the office of Survey of India, the aerial distance between its factory and other existing factories and ensure that longitude and latitude of its factory tallies with the longitude and latitude mentioned in the aerial distance certificate.

19. As a matter of fact, when the PIL was filed there was no occasion for Audumbarraoji to commence its crushing season. Under the said circular, the factory / karkhana intending to commence its first crushing season was obliged to obtain required certificate from the Office of Survey of India. In that view of the matter, in our view, the PIL insofar as Audumbarraoji is concerned is premature. Be that as it may, such certificate is given by the Commissioner of Sugar vide its order dated 30th September 2013, which is impugned in Writ Petition

No. 4049 of 2014. By this order, the Commissioner of Sugar relying upon various aerial distance certificates obtained by Audumbarraoji, has certified that distance between the proposed factory of Audumbarraoji at location – land bearing Gat No. 195 to 199 at village Aashti, taluka Mohol and other existing factories is more than 15 kilometers.

20. This takes us to deal with the submission of Mr. Anturkar, the learned Senior Counsel regarding the taking of effective steps by Audumbarraoji within the period of 2 years from the date of IEM and that these steps should be location centric. In other words, it must be taken at a location for which the IEM is granted. As stated above, it is a matter of record that the IEM of Audumbarraoji which was acknowledged on 25th February 2010, does not mention specific gat number. It only mentions village Aashti. The IEM was on the basis of aerial distance certificate by the office of Survey of India between Gat No. 699 of village Ashti and other existing karkhanas. There was difficulty in the way of Audumbarraoji in acquiring this Gat No.699 and thereafter they purchased land bearing Gat No.195 to 197 in **the same village**, namely, village Aashti, Taluka Mohol. It is also matter of record that immediately after acknowledging of the IEM of

Audumbarraoji on 25th February 2010, the intimation was given to the Director of Sugar New Delhi on 3rd May 2010 about the change of location of Audumbarraoji's factory from Gat No. 699 to Gat Nos. 195 to 197. This is permissible in the light of provisions of Press Note No. 7 of 1998.

21. The question is whether such change in the location is permissible. Audumbarraoji in this regard relied upon the Press Note No. 7 of 1998. We have perused the same. In the beginning paragraph, it is mentioned that many of entrepreneurs have represented to the Government that since the IEM once filed is not serviced for amendment thereafter, they face hardships in case after initial filing of the IEM, the project parameters like location, the name of company, the items and capacities proposed to be manufactured undergo change, as a result of which for the same investment proposal, they have to file multiple IEMs. The Central Government in the light of above observations, decided that IEM filed in the new form made effective from 1st July 1998 and notified through Press Note No. 4 of 1998 dated 15th June 1998 would be amended/modified as per the requests of the entrepreneurs. Mr. Anturkar, the learned Senior Counsel also seriously did not dispute that the change of location is

permissible. However, he submitted that such application for change of location has to be treated as an application for fresh IEM. This submission cannot be accepted in the light of language of Press Note No.7 of 1998, under which the amendment / modification in the IEM was allowed to remove hardships of the entrepreneurs to file multiple IEMs. Naturally, the change of location of factory would relate back to the date of IEM. We have arrived at this conclusion especially when in the present case though Gat Numbers are changed, both are in the same village in respect of which the IEM is granted and even aerial distance certificate is granted in favour of Audumbarraoji in compliance with amended Sugarcane Control Order, certifying that distance between Audumbarraoji's factory and other existing factories is more than the minimum distance as required from the changed location. We are also supported by the decision of Division Bench of this Court in *Khandoba (supra)*. In that case, M/s. Mahavir Sugar Works on 10th January 2006 applied for the amendment to the IEM dated 12th October 1998. It was prayed that name of the IEM holder be amended from M/s. Mahavir Sugar Works to Jaywant Sugars of India. The Government of India amended the IEM by its letter dated 12th January 2006 in the name of Jaywant Sugars Limited. On 16th March 2016 M/s. Jaywant Sugars Limited submitted an application to

Department of Industrial Development, Government of India, for further amendment in its IEM so as to correct location of village Dhavadwadi of the proposed sugar factory. It was contended that the location of village Dhavadwadi of the proposed sugar factory was correct but the name of tehsil was wrongly mentioned in the IEM registered on 12th October 1998 and amended on 12th January 2006. The Division Bench held that the modification and substitution in the acknowledgement dated 12th January 2006 was to be treated as a fresh IEM registered in favour of Jaywant for the first time and the acknowledgment dated 20th March 2006 was validly granted but it shall operate from 12th January 2006.

22. This takes us to consider whether Audumbarraoji has taken effective steps within the stipulated period of two years from the date of IEM. The commissioner of sugar in this regard relied upon the Collector's report dated 26th June 2013 in order to arrive at conclusion that permissions required under the relevant laws are obtained by Audumbarraoji and the commissioner of sugar also relied upon the spot inspection dated 27th August 2013 by Tahsildar, Mohol, which disclosed that Audumbarraoji has purchased machinery and completed construction of the civil work. The finding of facts recorded

by the Commissioner of Sugar on the basis of spot inspection by the Tahsildar Mohol cannot be disturbed in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

23. Nevertheless, Audumbarraoji has placed on record the documentary evidence in support of its contention that they have taken effective steps within the stipulated time and after perusal of the same we are satisfied that as a matter of fact effective steps are taken by Audumbarraoji within the stipulated time. Mr. Anturkar's submission in this regard that effective steps are required to be taken at Survey No. 699 and not at Gat No. 195 to 197 cannot be accepted for the reasons stated hereinabove.

24. At this stage, we must consider the argument of Mr. Antukrar that in terms of the provisions of amended Sugarcane Control Order, it was obligatory on the part of Audumbarraoji to commence commercial production within the period of four years from the date of acknowledgement of IEM. He submitted that since the period of four years was completed on 25th February 2014 and admittedly Audumbarraoji has not started commercial production, the IEM in their favour becomes inoperative. This submission is without

any substance. Reliance placed by Mr. Anturkar on the decision of this Court in *Sukumar Khot (supra)* is also misplaced. In *Sukumnar Khot* this Court was considering the provisions of Land Acquisition Act, 1894. In that case, the notification under section 4 of the Land Acquisition, 1894 was issued on 20th September 2004 and declaration under section 6 was made on 23rd June 2005 within the time prescribed by section 6 of the Land Acquisition Act, 1894. The petition was filed on 25th September 2006 challenging this declaration under section 6 and by the order dated 21st March 2016, declaration made under section 6 was quashed and set aside and matter was remanded back to the Collector for completing the enquiry under section 5A of the said Act. Subsequent to this order, fresh hearing was given to the Petitioner under section 5A and fresh declaration under section 6 was issued on 10th August 2006. This declaration was objected to on the ground that same is beyond the statutory period of one year. The Division Bench relying upon the decision of the Apex Court in *Padma Sundara Rao vs. State of Tamil Nadu*⁴ held that the period prescribed for issuance of declaration under section 6 cannot be extended and the subsequent declaration is clearly beyond the prescribed period. The facts of *Sukumar Khot's case (supra)* are distinguishable from the facts of the present case. In the present case, since the initial stay

4 (2002) 3 SCC 533.

order granted by the Division Bench of this Court on 9th April 2013 which was subsequently revived on 14th August 2013, Audumbarraoji could not have commenced the construction work. Had Audumbarraoji commenced work of factory, it would have invited actions for contempt of Court.

25. Before parting with the discussion on these petitions, we must also consider Mr. Anturkar's submissions that the Director (Sugar) is not the authority which issues the IEM and therefore application for change of location cannot be made to him and there is no provision for change of location in the IEM. He supplemented this contention by submitting that it was obligatory on the part of Audumbarraoji to obtain fresh aerial distance certificate from the Commissioner of Sugar subsequent to the change of location of its factory. This submission, in our view, is also without any substance. Regarding the provision of change of location, we have already observed that it is permissible under the Press Note No. 7 of 1998. We have also held that in the present case application for change of location will relate back to the date of acknowledgement of IEM. So far as the Competent Authority with whom the change of location application is to be filed, we find no provision either under the

Sugarcane Control Order, 1966 or the various press notes issued by the Central Government. In any case, the Petitioner himself relied upon the Circular of the Commissioner of Sugar dated 17th September 2012 under which change of location is to be certified by the commissioner of sugar while giving permission for the first crushing season and such certification is made on the basis of aerial authentication certificate by the Commissioner of Sugar under the impugned order. In the light of discussion made hereinabove, we do not find any merit either in the Public Interest Litigation No. 23 of 2013 and writ petition.

Writ Petition No. 135 of 2013 :

26. Writ petition 135 of 2013 is filed by Grampanchayat Aashti, seeking directions to Respondent Nos. 1 to 7, namely, State of Maharashtra, the Commissioner of Sugar, the Collector of Solapur, the Maharashtra State Pollution Control Board, the Tahsildar Mohol and the Zilla Parishad Solapur to forthwith stop all construction activity, erection of sugar factory undertaken by Audumbarraoji on land Gat No. 195(3), situated at Aashti, taluka Mohol, district Solapur. The main contention of the Petitioner-Aashti grampanchayat is that following

mandatory permissions are not obtained by Audumbarraoji

- 1] permissions previous to acquisition of agricultural lands under the provisions of the Maharashtra Tenancy and Agricultural Lands Act;
- 2] previous permission for conversion of user of the land and carrying out development is not obtained from the Collector under Article 226 of the Constitution of India 18 of the the Maharashtra Regional and Town Planning Act, 1966;
- 3] previous consent under the provisions of Section 25 and 26 of the Water (Prevention and Control of Pollution) Act are not obtained.
- 4] previous consent under the provisions of section 21 of Air (Prevention and Control of Pollution) Act, 1981 is not obtained from the Competent Authority.
- 5] previous consent under Rule 5 of Hazardous Wastes (Management and Handling) Rules 1989 is not obtained from the MPCB.

. It is also alleged by the Petitioner – Aashti Grampanchat that Audumbarraoji has changed the location of the factory unauthorisedly.

27. Mr. S. S. Patwardhan argued on behalf of the Petitioner in Writ Petition No. 135 of 2013 and Mr. Vineet Naik, the learned Senior Counsel made submissions on behalf of Audumbarraoji and

the learned AGP appeared and argued on behalf of Respondent Nos. 1 to 7.

28. As observed earlier, the Division Bench of this Court by the order dated 9th April 2013 restrained Audumbarraoji from putting up and continuing with the construction on land bearing plot Nos.195 to 197 without placing on record the permissions granted by the competent authorities. This order was subsequently modified by the order dated 10th May 2013 by observing that the interests of justice will be served if the Collector, Solapur is asked to examine the permissions relied upon by Audumbarraoji and if the Collector finds that Audumbarraoji has obtained all necessary permissions for construction of the sugar factory on plot of lands bearing Gat No. 195 to 197, the Collector Solapur shall accordingly give an intimation to the State and submit a report to this Court. It was also observed that if the report of the Collector is in favour of Audumbarraoji, Audumbarraoji may restart construction. In pursuant of the directions contained in the order dated 10th May 2013, the Collector Solapur appointed two member committee consisting of Resident Deputy Collector, Solapur and Tahasildar (Revenue) Solapur to examine all documents and submit the report. Accordingly, the committee

submitted reports dated 11th June 2013 and 21st June 2013 to the Collector. The collector having gone through those reports and applying his mind made further report to this Court through the office of Government Pleader. That compliance was made by the Collector on 26th June 2013. This report shows that Audumbarraoji has obtained following permissions :

- 1] Letter by Deputy Conservator of Forest, Solapur dated 29th November 2011 addressed to Tahsildar, Mohol stating that Gat Nos. 195, 196, 198A, 198B do not fall in Maldhok Bird Sanctuary as per letter of Hon'ble Supreme Court dated 22nd July 2013
- 2] No-Objection Certificate (dated 8th February 2012) given by the Director, Geology and Mining Directorate, Maharashtra State, Nagpur on certain terms and conditions.
- 3] Consent to establish under section 25 of the Water (Prevention and Control of Pollution) Act, 1971 and consent under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Rule 5 of the Hazardous Wastes (Management, Handling & Trans-boundary Movement Rules, 2008 dated 1st September 2012 granted by Member Secretary, Maharashtra Pollution Control Board.
- 4] Certificates about Gat No. 195 and 196 issued on 8th March 2013, 4th March 2013 and 8th March 2013 by Deputy Collectors, Land Acquisition .
- 5] No-Objection Certificate issued by the Assistant Engineer,

MSEDCL, Mohol to do non agricultural of Gat No. 195 and 196 of village Aashti, taluka Mohol.

- 6] Letter by the Executive Engineer, Zilla Parishad Works Division No.1, Solapur dated 8th March 2013 giving No-Objection Certificate to do non agriculture of Gat No. 195, 196 on certain terms and conditions.
- 7] No-Objection Certificate dated 22nd March 2013 given by the District Health Officer, Zilla Parishad, Solapur. Afresh No-Objection Certificate dated 11th June 2013 granted by the District Health Officer, Solapur on certain terms and conditions.
- 8] Letter dated 20th May 2013 about measurement "C" issued by the Deputy Superintendent of Land Records, Mohol in respect of land Gat Nos. 195 and 196.
- 9] Recommendations dated 20th April 2013 to do measurement of land by Assistant Director, Town Planning, Solapur to do temporary non-agriculture of Gat No.195/1, 195/2, 195/3, 196/1A, 196/1B and 196/2.
- 10] Temporary non agricultural permission dated 23rd April 2013 granted by the SDO, Madha with respect to Gat No.195/1, 195/2, 195/3, 196/1A, 196/1B and 196/2.
- 11] Letter – NoC from Assistant Director, Town Planning Solapur dated 21st May 2013 to do final NA layout of Gat Nos.195/1, 195/2, 195/3, 196/1A, 196/1B and 196/2.
- 12] Final non agricultural permission by SDO Madha dated 23rd May 2013 with respect to land Gat No.195/1, 195/2, 195/3, 196/1A, 196/1B and 196/2.
- 13] Letter dated 28th May 2013 by the Assistant Director, Town

Planning, Solapur, addressed to SDO Madha recommending commencement certificate to start construction on certain terms and conditions.

- 14] Letter dated 24th February 2010 by Commissioner of Sugar, Maharashtra State, Pune about aerial distance.
- 15] Building permission dated 11th June 2013 by SDO, Madha with respect to Gat No.195/1, 195/2, 195/3, 196/1A, 196/1B and 196/2.
- 16] Permission dated 25th June 2013 granted under section 63 of Bombay Tenancy and Agricultural Lands Act, 1948 by the SDO, Madha, Kurduwadi.

29. As a matter of fact, Audumbarraoji thereafter commenced construction of the factory and almost completed the civil work and this was done pursuant to the directions given by this Court in its order dated 10th May 2013. However, the Petitioners in above writ petitions again approached this Court and obtained the order dated 14th August 2013 restraining Audumbarraoji from carrying out any construction work of the sugar factory on plot of land bearing Gat Nos. 195 to 197 of village Aashti on the ground that Clause 6-B certificate, i.e., aerial distance certificate is not in respect of changed location. The action of Audumbarraoji in changing the location of its factory has been dealt with by us in earlier part of this judgment and

we have recorded our finding that same relates back to the date of acknowledgement of IEM, especially when the aerial distance certificate is also taken by Audumbarraoji in respect of land Gat Nos. 195 to 197.

30. Since the Competent Authority – Collector in pursuance of the order of this Court has given a report to this Court that required mandatory permissions are obtained by Audumbarraoji, we accept the same and we do not propose to interfere with the same in exercise of our jurisdiction under Article 226 of the Constitution of India. It is pertinent to note that none of the Petitioners herein has challenged the said report of the collector either by adopting appropriate proceedings taking exception to the said report nor they have amended the extant petitions so as to raise challenge to the said report. We, therefore, do not find any merit in these petitions.

Writ Petition Nos. 4542 of 2013, 8499 of 2014 and 2903 of 2016 :

31. Writ Petition No. 4542 of 2013 is filed by one Siddeshwar Navnad Wagaz challenging the licence granted in favour of Audumbarraoji and seeking directions to stop construction of Audumbarraoji to avoid dumping or leaving or emitting its chemically composed waste products and material in whatsoever form into the

Aashti water reservoir. Said Siddeshwar Wagaz has filed Writ Petition No. 8499 of 2014 challenging the order of the Commissioner of Sugar dated 30th September 2013 authenticating change of location of factory of Audumbarraoji. One Shankar Baburao Vyavahare has filed Writ Petition No. 2903 of 2016 challenging the said order authenticating the change of location of the factory of Audumbarraoji.

32. The Petitioner in Writ Petition No. 4542 of 2013 and Writ Petition No. 8499 of 2014, i.e., Siddeshwar Wagaz is not the resident of village Aashti and he has no concern whatsoever with the establishment of sugar factory by Audumbarraoji at village Aashti. The Petitioner in Writ Petition No. 2903 of 2016, namely, Shankar Baburao Vyavahare has challenged the said order of the Commissioner of Sugar on the ground that Audumbarraoji has not taken all the necessary steps for setting up of sugar factory.

33. Under Clause 6A of the Sugarcane Control Order, 1966 (as amended), no new sugar factory shall be set up within the radius of 15 kilometers of any existing sugar factory or another new sugar factory in a State or two or more States. Explanation 1 of Clause 6A defines "the existing sugar factory" means a sugar factory in operation and shall also include a sugar factory that has taken all effective steps

specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for the last five sugar seasons.

. Explanation 2 of Clause 6A defines the “new sugar factory”. According to this definition new sugar factory means a sugar factory which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in Clause 6C.

34. If the entire scheme of Clauses 6A to 6E of the Sugarcane Control Order, 1966 (as amended) is perused, then, in our opinion, the objection for setting up of the sugar factory can be taken either by the existing sugar factory or new sugar factory in a State or two or more States. The Petitioners in above writ petitions are individuals and they are not entitled as a matter of right to object either the grant of aerial distance certificate or grant of the IEM to

Audumbarraoji. These Petitioners, in our view, have no locus and they cannot be said to be aggrieved parties. The issue of locus of aggrieved party has been explained by the Hon'ble Apex Court in Jasbhai Motibhai Desai v. Roshan Kumar⁵. In paragraph 34 and 35, the Apex Court has held thus :

"34. This Court has laid down in a number of decisions that in order to have the *locus standi* to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like *habeas corpus* or *quo warranto* this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest in hearing the petitioner is necessary to give him a *locus standi* in the matter....."

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject- matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule."

35. In our considered opinion, the above decision of the Apex Court is perfectly applicable to present three petitions and these petitions deserve to be dismissed on that ground alone. In that view of the matter, we are not inclined to entertain the petition on behalf of

5 (1976) 1 SCC 671.

these Petitioners.

Conclusion :

36. Taking totality of the facts and circumstances into consideration, in our considered opinion, all these petitions including the PIL are devoid of any merit and the same are, therefore, dismissed. Needless to state that interim orders passed in these petitions stand vacated.

37. In view of the disposal of above petitions / PIL, all applications taken out in these writ petitions / PIL do not survive and same are accordingly disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]

38. At this stage, learned Counsel for the Petitioners appearing in the respective petitions / PIL seek stay to the operation of this judgment and order. Request is opposed by learned Counsel for the Respondents. In the interest of justice, in order to enable the Petitioners to approach the Apex Court, this order is stayed for the period of three weeks from today.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]