

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO. 96 OF 2017

(Mohammad Shahid Sharif s/o Jamshed Sharif vs. State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri M.G. Bhangde, Senior Advocate with Shri A.R. Patil, Advocate for petitioner.

Shri D.P. Thakare, Additional Government Pleader for respondent nos.1 and 6.

Shri S.M. Puranik, Advocate for respondent no.2.

Shri S.M. Ukey, Advocate for respondent no.3.

Shri S.K. Mishra, Senior Advocate with Shri K. Deogade, Advocate for respondent no.5.

CORAM : B.R. GAVAI AND M.G. GIRATKAR, JJ.

DATED : MARCH 21, 2018

The petitioner, who is a public spirited citizen, has approached this Court by way of present public interest litigation praying for calling entire record relating to permissions granted by Nagpur Municipal Corporation, Nagpur Improvement Trust, Heritage Conservation Committee, Town Planning Department, etc. under the provisions of various Acts for construction of Metro Rail Project, Metro Railway Station at the bottom of the earthen dam of Ambazari lake and around Nag river by suitable writ, order or direction for perusal of this Court. The petitioner has also prayed for setting aside all such permissions, which have been granted without looking into the safety of people residing down stream of Nag river as well as the safety of earthen dam of Ambazari lake. The petitioner has also prayed for

issuance of directions to respondents to stop construction of pillars for Metro Rail at the viaduct of earthen dam of Ambazari lake as well as Metro Rail Station around Nag river.

2) Respondent no.5 is an implementing Agency for execution of project of laying down of Metro Rail in the city of Nagpur and adjoining areas, which project is jointly owned by Union of India, State of Maharashtra, Nagpur Improvement Trust and Nagpur Municipal Corporation. For the purpose of execution of said project, respondent no.5 is laying down viaducts on different routes. One of such routes abuts Ambazari lake. It is the contention of petitioner that construction, which is being carried out by respondent no.5 abutting Ambazari dam, is in violation of Government Circular, which prohibits construction within 200 metres of dam and the same is also without obtaining valid permission.

3) We have heard Shri Bhangde, learned Senior Counsel for petitioner, Shri Mishra, learned Senior Counsel for respondent no.5, Shri Thakare, learned Additional Government Pleader for respondent nos.1 and 6, Shri Puranik, learned Counsel for respondent no.2, and Shri Ukey, learned Counsel for respondent no.3.

4) Shri Bhangde, learned Senior Counsel for petitioner, submits that perusal of material placed on record would reveal that respondent no.5 is working in a manner, which depicts that it has no respect for rule of law. He further submits that respondent no.5 having applied to respondent no.6 for grant of no objection certificate for construction of viaducts and after respondent no.6 informed it to

submit its plans, etc. for appraisal by respondent no.6, record shows that respondent no.5 has not submitted anything to respondent no.6. He submits that the documents, which are received by petitioner under Right to Information Act, would reveal that as late as upto January 2018, respondent no.5 had not submitted its plans to respondent no.6. The learned Senior Counsel submits that the construction, which is being carried out without obtaining necessary permission, would pose a great threat to the safety of residents and as such, it is in the larger interest that this Court should stop the said work until requisite permissions are obtained from the competent Authority.

5) Shri Mishra, learned Senior Counsel for respondent no.5, on the contrary submits that Division Bench of this Court (B.P. Dharmadhikari and A.D. Upadhye, JJ.) vide order dated 1/3/2018 had directed respondent no.5 to file an affidavit explaining as to how work of digging pits and elevated corridor near the hill does not in any way endanger the dam. He submits that accordingly respondent no.5, respondent no.3 and respondent no.6 have filed their affidavits. He submits that perusal of affidavits would reveal that there is no leakage to the dam and as such, there is no danger as is contended by petitioner.

6) Shri Mishra, learned Senior Counsel further submits that as a matter of fact in pursuance of the concern of respondent no.5 that safety measures should be executed, it had applied to the State Government as well as respondent no.6 for grant of necessary no objection certificates. However, respondent no.1 has informed

respondent no.5 that since respondent no.3 Corporation is owner of the dam, permission ought to be obtained by respondent no.5 from respondent no.3 and not respondent no.1. He submits that accordingly there has been correspondence between respondent no.3 Corporation and respondent no.5 and finally it has culminated into permission granted by respondent no.3 Corporation on 28/8/2017. The learned Senior Counsel further submits that permission, which is granted by respondent no.3 Corporation, is on the basis of certain conditions as have been found necessary by respondent no.6 for ensuring safety of dam.

7) Shri Mishra, learned Senior Counsel further submits that only mistake that respondent no.5 committed was of writing to respondent no.3 that since it does not possess the necessary expertise for carrying out the works for ensuring safety of dam, respondent no.3 should get the work executed through respondent no.6 for which it is willing to make payment. He submits that even as on today, respondent no.5 undertakes to execute all such works, which are necessary for ensuring safety of part of the dam, which abducts the Metro Rail. He, however, submits that report as submitted by respondent no.6 would reveal that entire dam, which is more than 146 years old and which is having length of 952 metres is in a dangerous condition. He submits that Metro Rail abuts only 342 metres of the total length of 952 metres of dam. Shri Mishra further submits that as a matter of fact, various buildings including commercial buildings, which are constructed within prohibited area of 200 metres and which are having no requisite no objection certificates are permitted to exist and on the contrary, if relief as

claimed by petitioner is granted, respondent no.5, which is having all requisite permissions, would be prohibited from proceeding further with its works. The learned Senior Counsel submits that such an order would result in permitting illegal activities to be continued and prohibiting an activity, which is in the larger public interest and which is being executed after necessary permissions are obtained.

8) Shri Ukey, learned Counsel appearing on behalf of respondent no.3 Corporation, submits that in a joint inspection, which was carried out after the orders passed by this Court, no leakage in the dam has been found.

9) Shri Thakare, learned Government Pleader for respondent nos.1 and 6, submits that if respondent no.5 is willing to get the works executed as per suggestions of respondent no.6, there would be no danger to the said dam. He submits that State Government has granted permission to respondent no.5 after considering all the aspects.

10) From the perusal of the material placed on record, it would reveal that there has been continuous correspondence between various Authorities of State Government and respondents. It appears that initially on 28/1/2016, respondent no.5 had addressed a communication to respondent no.6 seeking its technical opinion regarding impact of Metro viaduct pier foundation over the earthen bund of Ambazari lake. It also appears that on 13/10/2016, respondent no.5 had addressed a communication to respondent no.1 seeking its permission to make construction within a distance of 200

metres since Nagpur Metro Rail Project is an important urban transport project as notified by State of Maharashtra vide Government Resolution dated 30/7/2016. To the communication addressed by respondent no.5 to respondent no.1, respondent no.1 replied that since the dam is owned by respondent no.3 Corporation, respondent no.5 should obtain permission from respondent no.3 Corporation. Respondent no.6 also vide communication dated 21/10/2016 informed respondent no.5 that no objection certificate be obtained from Water Resources Department of Government of Maharashtra and thereafter from the owner of dam, i.e. Nagpur Municipal Corporation. It further appears from record that various communications were addressed by respondent no.3 Corporation to respondent no.5 between 8/12/2016 and 30/3/2017 with regard to certain issues including construction being carried out without obtaining its no objection certificate and leakage of dam. Perusal of record would reveal that respondent no.6 has addressed a communication to respondent no.5 on 21/10/2016 pointing out various issues, which were noticed by it with regard to Ambazari dam.

11) It appears that lastly the State of Maharashtra vide its communication dated 16/8/2017 has informed respondent no.3 Corporation that State Government has no objection for respondent no.3 Corporation issuing no objection certificate to respondent Metro Rail for carrying out works subject to condition nos. 1 to 6 mentioned in the said letter. Accordingly respondent no.3 Corporation has also granted its permission on 28/8/2017 thereby again incorporating the conditions as mentioned in the letter addressed by the State Government.

12) It could thus clearly be seen that construction, which was carried out by respondent no.5 prior to 16/8/2017 and/or 20/8/2017 was carried out by it without there being a valid permission in its favour. The respondent no.5 having applied to the State Government and to respondent no.3 Corporation for its no objection certificate ought to have waited for permission from the competent Authority before it undertook construction on the area abutting the site of dam. However, question that we pose to ourselves is as to whether at this stage, work which was already undertaken and work which is undertaken after August 2017, is admittedly in accordance with requisite permissions from State Government and Nagpur Municipal Corporation, should be stalled only because prior to that, no permission was obtained.

13) It is to be noted that the Metro Rail project is an important project for easing out traffic issues in the city. No doubt, it would be appropriate for Metro Rail to have obtained requisite permission prior to commencing the work. However, we find that if at this stage when a substantial work of project is already complete and the requisite permissions are already issued, any such directions as sought by petitioner rather than being in public interest, would be contrary to public interest at large.

14) Perusal of report prepared by respondent no.6 would reveal that it is not the work, which is being executed by respondent no.5 Metro, which is causing danger to the said dam. On the contrary, communication addressed by respondent no.6 to respondent

no.3 Corporation would reveal that life of Ambazari dam has already come to an end. It would further reveal that communication also states that respondent no.3 Corporation has created hazardous situation by permitting various residential structures and by construction of roads on the land abutting the dam to come up. On the contrary, it specifically states that on account of Metro Rail, there is no technical impediment to dam. It, therefore, informs the respondent no.3 Corporation that in order to prevent any hazardous situation in future on account of roads and buildings, which are already constructed and Metro Rail, which is to be constructed, certain precautions are necessary to be implemented. As such, respondent no.6 has found it necessary to impose six conditions while granting permission to Metro Rail, as mentioned in communication dated 16/8/2017 addressed by respondent no.6 to respondent no.3 Corporation.

15) We find that the present petition has come as a blessing in disguise for the residents residing in the Nagpur city. The technical opinion of respondent no.6, which is to be found out at pages 130-132 of paper book would reveal that there are various contributing factors, which may cause threat to said dam. One of the major contributing factors as has been found by respondent no.6 is a monumental structure, which is constructed immediately downstream of spillway bar in the tail channel. Perusal of paragraph 8 of inspection note would reveal that the said issue with regard to monumental structure poses much more threat to the safety of dam. It also specifically points out that construction of Metro Rail does not in any manner affect or encroach the flood discharging capacity of

downstream spill channel or bridge. When an Experts' Body having expertise in the field of dam safety has itself opined that on account of construction of Metro Rail, there is no danger to dam, there is no reason to disbelieve the same.

16) It could thus be seen that over the years varieties of reasons, namely, the Planning Authorities, which have granted permission to buildings within the prohibited zone of 200 metres, Planning Authorities, which have constructed roads within the distance of 200 metres from site of dam, Authorities which have permitted commercial activities to be carried out within the distance of 200 metres, politicians who for the reasons best known to every one have permitted construction of monuments, have created a situation, which has potential of creating a flood like situation, etc. These are only illustrative in nature and not exhaustive. On the contrary, experts in the field do not find that there is any threat by construction of Metro Rail to the safety of dam.

17) No doubt, a public spirited citizen like the petitioner ought to have approached this Court much earlier when such illegal constructions were permitted by the Planning Authorities or when such monuments were erected or when such commercial activities were permitted. However, we find that though belatedly, petitioner's approaching this Court has given us an opportunity to issue directions to various Authorities so as to ensure safety of dam so that a flood like situation is avoided. We, therefore, dispose of the petition with following directions :

(i) Respondent no.6 is directed either itself or through

Irrigation Authorities situated at Nagpur to execute the entire works, which are necessary for ensuring safety of dam as could be found in the letter dated 16/8/2017 and in the inspection report, which is to be found at pages 130 to 132 of paper book.

(ii) The respondent no.6 in consultation with respondent no.3 Corporation, respondent no.5 and local irrigation Agency shall prepare plans for ensuring safety of dam, which has outlived its life. The said plans be finalized by 15th April 2018. After the plans are finalized, respondent no.6 either itself or through local Irrigation Agency as chosen by it, shall forthwith start work for execution of such measures. Needless to state that work would not be restricted only to 342 metres stretch, which is adjoining alignment of metro, but for entire length of dam.

(iii) Respondent Metro Rail shall bear costs for executing the works, which are adjoining its alignment, i.e. 342 metres. The expenditure towards costs of strengthening remaining stretch of dam shall initially be borne by State Government. State Government would be at liberty to recover full or part of the amount from respondent no.3 Corporation or other Planning Authorities, which in the opinion of State Government, have contributed to such illegal structures.

18) We make it clear that for executing the aforesaid works, paucity of funds will not be considered an excuse. We direct Chief Secretary of State of Maharashtra to ensure that aforesaid directions are followed scrupulously.

19) Before disposing of the petition, we place on record our appreciation for petitioner, because of whom we could issue aforesaid directions and avoid a situation, which may have disastrous consequences of Panshet like situation.

20) With above directions, the petition stands disposed of.

JUDGE

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