

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.86 OF 2014

Balkrishna Bateshwar Kharade .. Petitioner
Versus
Tahsildar-Mohol, Solapur and ors .. Respondents

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Mr. Yashasvita Apte I/b Harshwardhan Salgaonkar for the petitioner.

Mr.P.P. Kakade, G.P with Mr.M.M. Pabale, AGP for the State – respondent nos.1 to 5 and 9.

Ms.Lakshmi Bussa I/b M.V. Kini & Co. for respondent no.6.

Mr.Girish S. Godbole with Mr.Rujuta Patil i/b Negandhi Shah & Himayatullah for respondent nos.7 and 8.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 5th SEPTEMBER, 2019

P.C:-

1 Heard learned counsel for the parties.

2 Exercising power under Section 18 of the Wildlife Protection Act, 1972, the Revenue and Forest Department of the State of Maharashtra declared 7818.47 sq km area in district Nagar and Solapur as a sanctuary.

3 Vide notification dated 6th September 1985, 677.97 sq km further area was added to the sanctuary. As directed by the Supreme Court an Expert Committee headed by Mr.Sawarkar was constituted to rationalize the land of the sanctuary and the Committee submitted a report to the State Government on 16th February 2018 suggesting rationalization as under :-

Sr. No.	Legal status of area	Total area in sq.kms
1	Reserved forest proposed by the Dy.C.F. Ahmednagar and Solapur.	163.54
2	Other forests	21.53
3	Gairan lands	8.82
4	Private lands (waste and barren lands) and few RFs	1028.72
	TOTAL	1222.61

4 Thus, 1222.61 sq.kms land came to be rationalized and this came to be accepted by the Supreme Court when I.A.No. 2882 of 2010 and I.A. No.2342 of 2008 in WP (Civil) No.202 of 1995 were disposed of vide order dated 22nd July 2011.

5 The National Highway Authority of India (NHAI) undertook the work of expansion of NH-9. NHAI and its concessionaire applied to the Tahsildar, Taluka Mohol, District Solapur to be granted a licence to excavate the minor mineral 'Murum' in Taluka Mohol and paid royalty.

6 The grievance of the petitioner pertains to excavation of Murum from land on the plea that it was excavated from land which was notified as the sanctuary and thus no mining activity could be carried out. The Gut numbers of the said land have been pleaded in paragraph no.16 to 20 of the writ petition.

7 The prayers made are that excavation of Murum in Mohol Taluka be prohibited forthwith and Respondent Nos. 7 and 8 be fined for the illegal activities causing environmental damage.

8 The facts pleaded in the petition being denied by the respondents, on 4th September 2014 this Court directed the Chief Conservator of Forests, State of Maharashtra to depute a senior officer of the Forest Department to visit the area and submit a report.

9 Under cover of an affidavit deposed to on 30th October 2014 Shri Vijay Hinge, Divisional Forest Officer, (Wildlife) Pune has submitted the report. The report highlights that NH-9 while passing through district Solapur abuts the sanctuary notified. The report refers to the inspections carried out and information sought and received from the Revenue Officer being Tahsildar, Mining Officer and Deputy Collector, Solapur. The findings are crystallized in para 6.2.5 of the report

and the annexures Exhibit-J to the report record the Gut Numbers along side which or within which, excavation of Murum was carried out. Para 6.3 of the report highlights that excavation of Murum was also carried out in the areas notified as the sanctuary – an activity which was impermissible and the opinion recorded is that the Tahsildar did not confirm the correctness of the quantity of Murum excavated, the royalty paid, meaning thereby the Tahsildar failed to initiate action under sub-section (7) of Section 48 of the Maharashtra Land Revenue Code, 1966. In para 6.4.1 of the report, it is brought out that lands listed in Exhibit-L comprised Gut nos. which will utilize for widening of NH-9 and this was not permissible without obtaining permission from the Supreme Court because of the orders passed by the Supreme Court in WP (Civil) 202/1995. Para 6.5 of the report highlights that the project authority misled the competent authority which granted the environmental clearance under the EI Notification-2006 for the reason it appears that the road was within 100 m of the sanctuary. It also highlights that part road passed through the sanctuary. In view of there being wildlife in the reserved area the report brings out that the authorities under the Wildlife Protection Act, 1972 should look into the issue and initiate action by issuing appropriate notices to the project propenance. Violation of The Forest (Conservation) Act, 1980 and the Indian Forest Act 1927 have *prima facie* been opined in the findings.

10 To put it simply, the report would require the appropriate/competent authority under the Wildlife Protection Act 1972, Environmental Protection Act 1986, Forest Conservation Act, 1980 read with Indian Forest Act, 1927 and the Maharashtra Land Revenue Code, 1966 to take cognizance of the report and take action as per the law by issuing notice to the project proponent.

11 Due to no interim order being passed, the activities have continued and the work of expansion of NH-9 has been completed.

12 Making it clear that we have not expressed any opinion on the findings returned in the report, save and except that in view of the findings returned in the report, case is made out to direct the authorities under the Wildlife Protection Act 1972, Environmental Protection Act, 1986, Forest Conservation Act, 1980 read with Indian Forest Act, 1927 to take cognizance of the report and proceed ahead by issuing show cause notice to the project proponent keeping in view the respective four legislations and along with the notice annex the report with its annexures to the project proponent and after hearing the project proponent pass necessary orders. Ordered accordingly.

13 Should the findings of the report be affirmed, penal action will be taken against those who have violated the law. Recompense on account of environmental damage shall also be resorted to as per law. The competent authorities under the four statutes shall issue the necessary show cause notice and proceed to pass orders within six months from today.

14 The petitioner would be furnished copies of the show cause notices issued to the project proponent as also the final orders passed.

15 Either party aggrieved by the decisions taken by the competent authorities under the four statutes would be entitled to approach this Court and avail remedies as per law.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE