

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

WRIT PETITION NO. 7718 OF 2017

M/s. Deccan Explotech Pvt. Ltd. ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

**ALONG WITH
WRIT PETITION NO. 10629 OF 2017
WITH
CIVIL APPLICATION NO. 2726 OF 2017
IN
WRIT PETITION NO. 10629 OF 2017**

Shri Manik Baburao Kokare ... Petitioner

Versus

Sub Divisional Officer, Daund-Purandar
and Ors. ... Respondents

Mr. A.V. Anturkar, Sr. counsel a/w Mr. Rushikesh Barge for the
petitioner in WP No. 7718 of 2017.

Mr. Shriram Kulkarni for the petitioner in WP No.10629 of 2017.

Mr. Atul Vanarse, AGP for the State.

**CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : AUGUST 19, 2019**

P.C.:

Two adjacent owners are before this Court in these
petitions. M/s. Deccan Explotech Pvt.Ltd the petitioner in WP No.

7718 of 2017 is owner of gut no. 17 where it stores explosives. Other petitioner owns gut no. 18 where he is carrying out mining activity and for that purposes he also carries out blasts.

2. The storage ceiling provided for the petitioner M/s. Deccan Explotech Pvt. Ltd by two separate orders is 100 metric tonnes. Considering the plot size and the storage capacity sanctioned to petitioner, the Explosives Rules, 2008 Table I obliged it to have a buffer zone of 820 mtrs.

3. The grievance of the petitioner M/s. Deccan Explotech Pvt. Ltd is because their neighbour (other petitioner Shri. Manik Kokre and others) have carried out illegal and unauthorized construction/development on their gut no. 18, the Explosive Authorities have reduced their sanctioned storage since the buffer margin is decreased. Learned counsel for M/s. Deccan Explotech Pvt. Ltd at the cost of repeation added that the petitioners do not wish to control in any way the legal development and user of gut no. 18 by Shri. Kokare and others. The contention is in the development plan sanctioned by the Collector as per section 18 of MRTP Act, in between the proposed construction and gut no. 17, plantation has been mandated.

Shri. Kokare and others have in violation of this mandate, raised a construction at the place of plantation which effectively reduced the buffer zone for the purpose of Explosive Rules, 2008.

4. Petitioner (Shri. Kokare and others) in WP No. 10629 of 2017 point out that because of placement of mining pits in gut no. 18 and blast operations, it became essential to relocate the office structure and accordingly it has been shifted in the site reserved for the plantation but it is well within the boundary of gut no. 18. As the office was essential, it has been constructed and an application has been moved to Collector to grant approval to that construction.

5. Learned APP appearing for the State of Maharashtra and District Collector, does not dispute the basic facts.

6. As the office structure has come up within the buffer zone of 820 mtrs, the Explosive Department has reduced the storage capacity of the petitioner (M/s. Deccan) and therefore, petitioner is before this court with a prayer for directing the Collector to remove the unauthorized development on gut no. 18. Submission is as the development is unauthorized, it cannot be

allowed to stand. It is further added that the provisions of section 53 and section 44 of MRTP Act are attracted only after the development plan is finalized under section 31 and in the present matter, the stage is of regional plan under section 18. Hence, moving of an application after raising the illegal structure and protecting it under the shelter of such pending application, cannot be legally allowed.

7. Counsel for the other petitioner (Kokare and Others) submits that no legal provision disallowing the structure as raised in gut no. 18 has been pointed out. The structure therefore, cannot be labelled as illegal and to cure the irregularities, if any, the office of Collector has already been moved. Submission is buffer zone mandatory for the petitioner (M/s. Deccan) cannot be extended to and projected on any part of gut no. 18 for any purposes.

8. Perusal of table 1 of Explosive Rules, 2008, shows that it deals with the safety distance for manufacturing factory, magazine of category "ZZ". It then in first column prescribes the quantity in kilograms and then in last column points out the distance by which dwelling houses, offices, factories, etc need to

be separated.

9. This distance in case of the petitioner M/s. Deccan is 820 mtrs. The table when read completely, shows that it is for manufacturing factory, magazine category "ZZ". It prescribes the distance to and between the magazine or magazine office etc and also distance to and between the process buildings. It also deals with the distance between the Railway, road etc. Thus in this backdrop the last column dealing with the distance to dwelling houses, offices, factories etc. is provided for.

10. Effort of M/s. Deccan is to calculate the buffer zone/margin from the periphery of their stock to the existing structure standing in gut no. 18. At the relevant time, adding the open portion of gut no. 18 to open portion available in gut no. 17, the requirement of buffer zone of 820 mtrs was met with.

11. When the facts at hand are looked into, the petitioner (M/s. Deccan) does not claim any right to have the buffer zone and cannot claim any right to extend the buffer zone in the adjoining plot. Shifting or relocation of office block by Manik Kokare and others on gut no. 18 therefore, cannot have any

bearing on the grievance of the petitioner. M/s. Deccan Explotech cannot create any easement or encumbrance in such manner on lands of others. Relocation of office block by Manik Kokare and others cannot give rise to any cause of action in their favour. We therefore, find that the grievance made in Writ Petition No.7718 of 2017 is misconceived. Accordingly the said petition is rejected.

12. In so far as other petition is concerned, as the petitioner Kokare and others have already moved the respondent Collector for approving relocated office site, we direct the state authorities to consider and complete the exercise within three months from the date of communication of this order to District Collector, Pune as per law.

13. With these directions, we dispose of both the petitions.

14. In view of the disposal of writ petition, Civil Application No. 2226 of 2017 also stands disposed of.

(SANDEEP KASHINATH SHINDE, J.)

(B.P. DHARMADHIKARI, J.)