

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

**INTERIM APPLICATION No. 1082 OF 2021
IN
WRIT PETITION No. 200 OF 2021**

M/s. Biovet Private LimitedApplicants

In the matter between

M/s. Biovet Private LimitedPetitioners

Vs.

The Collector, Pune and Ors.Respondents

Mr. R.D. Soni a/w. Mr. Sujay Gawde i/b. Shree and Co. for
Applicants/Petitioners

Mr. A.A. Kumbhakoni, Advocate General a/w. Mr. P.P.
Kakade, G.P., a/w. Mr. Akshay Shinde, 'B' Panel Counsel a/w.
Smt. R.M. Shinde, AGP for State.

Mr. Prathamesh Kamat a/w. Mr. Zoeb Cuterwala a/w. Mr.
Vikram Kamat i/b. M/s. Phoeni Legal for Respondent No.9

**CORAM: K.K.TATED &
N.R.BORKAR, JJ.**

**DATED : MAY 06, 2021
(VIDEO CONFERENCING)**

P.C.

. Heard learned counsel for parties.

2. By this Interim Application, the Applicants are seeking direction to the Respondents to hand over the peaceful possession of the ready to use BSL-3 vaccine manufacturing unit situated at land bearing Survey No. 27(Gat No.136) at village Manjari Khurd, Taluka Haveli, District Pune comprising land admeasuring 11.58 hectares and building/structures thereon and manufacturing equipment's therein from M/s. Intervet India Pvt. Ltd. to

the petitioners/ Applicants along with the requisite rights, responsibilities and obligations to deal with all the matters with respect to the vaccine manufacturing property. The Applicants also seek direction to grant appropriate licenses/permissions/ NOCs in a time-bound manner to enable manufacture of FMD vaccine/ Covaxin against Covid-19 and other life saving vaccine on the said land and unit. The Applicants are also seeking direction to the Respondents to permit the Applicants to carry out appropriate structural changes for enhancement and further carrying out manufacturing of lifesaving vaccines, including Covaxin to utilize the maximum installed capacity.

3. The learned counsel Mr. R.D. Soni appearing on behalf of the Applicants /Petitioners submits that in the present proceeding, the Petitioners filed Writ Petition No. 200 of 2021 challenging the order dated 2nd July, 2020 passed by Respondent No.5 Deputy Conservator of Forest, Pune, rejecting their application to re-examine and review the order passed by the Assistant Conservator of Forest, Pune dated 21st June, 2018. He submits that the said petition is pending for hearing and final disposal on its own merits.

4. The learned counsel for Applicants submits that because of the order passed by Respondent No.4 and Assistant Conservator of Forest, Pune dated 21st June, 2018, it is not possible for them to start manufacturing activities of Foot and Mouth Disease (FMD) vaccine and vaccine for Covid-19. He submits that a plant and machinery is lying

idle because of the dispute between the Petitioners and the Respondent-State. He submits that considering the present position of the Covid-19, this Hon'ble Court be pleased to direct the Respondent-State to allow the Applicants to start manufacturing of FMD vaccine and Covaxin, which is very useful in Covid-19 period.

5. In the course of arguments, the learned counsel Mr. R.D. Soni appearing for the Applicants/Petitioners, on 4th May, 2021 made a statement before this Court that Applicants are ready and willing to file affidavit-cum-undertaking, stating that they will not claim any equity in respect of the matter involved in Writ Petition No. 200/2021, if this Court allow the present application.

6. As per the earlier order dated 4th May, 2021, the Applicants through their authorized representative filed affidavit-cum-undertaking dated 30th April, 2021 stating that they will use the said unit/factory for manufacturing of life saving vaccine including Covaxin used for Covid-19. The said affidavit-cum-undertaking dated 30th April, 2021 is taken on record, accepted and marked as 'X' for identification. The Undertaking given by the Applicants reads thus:

“3. I, on behalf of the Applicant, hereby give an undertaking to this Hon'ble Court to the effect that:
(a) The Applicant shall upon taking over the possession of the said BSL-3 vaccine manufacturing facilities on the said land shall use the said vaccine

manufacturing plant only for manufacturing of lifesaving vaccines, including "Covaxin" used for Covid-19.

(b) The Applicant shall use the aforesaid manufacturing facility and the said land/property for the aforesaid purpose of manufacturing lifesaving vaccines subject to any further orders which this Hon'ble Court may pass in the aforesaid application and/or writ petition No. 200/2021.

(c) The Applicant shall not claim any equities in their favour as regards adjudication of the issue which is raised in the petition due to the Interim Application granted to the Applicant to take over the possession of the said property of BSL-3 vaccine manufacturing unit from M/s. Intervet India Pvt. Ltd. (Respondent no.9) and manufacture of vaccine therein and that the Applicant accepts the position that adjudication of the issue involved in the petition shall be decided on its own merits without the Applicant claiming any equities in view of the permission to take over the possession of the said vaccine manufacturing unit on the said land being granted by this Hon'ble Court in this Interim Application.

(d) That the entire responsibility and authority for technically, financially, and/or otherwise for manufacturing vaccines in the said plant on the said

land shall be that of the Applicant alone and Respondent No.9 (M/s. Intervet India Pvt. Ltd.) shall not be liable for any consequences which may arise due to the operation of the said Vaccine manufacturing plant on the said land for manufacturing of Vaccines by the Applicant.

(e) The Applicant undertakes to unequivocally take all the requisite rights, responsibilities and obligations to deal with all the matters with respect to said ready to use BSL-3 vaccine manufacturing facilities as well as take over and deal with all the past, current and future issues related to the said vaccine manufacturing facilities on the said land and absolve and indemnify the Respondent No.9 (M/s. Intervet India Pvt. Ltd.) from any and all rights, obligations and responsibilities in connection with the said vaccine manufacturing facility on the said land.

(f) The Applicant shall be solely responsible for implementing the said activity of producing and manufacturing of Vaccine in the said plant. The Applicant undertakes to abide by any orders which this Hon'ble Court may pass in this Interim Application or in the Writ Petition No. 200 of 2021 in its letter and spirit."

7. The Learned Advocate General Mr. Kumbhakoni appearing on behalf of the State submits that they have no

objection if interim application is allowed to the extend that the Applicants should use the said premises for manufacturing lifesaving vaccines including Covaxin used for Covid-19 without claiming any right, title and interest in respect of the said property and subject to the outcome of the Writ Petition No. 200/2021. He further made a statement that he received instructions from the concerned officers that they will cooperate to the Applicants, for grant of any permission, if required to start manufacturing activities. He submits that if such application made by the Applicants, those will be decided without wasting time, considering the present Covid-19 position in Maharashtra. The Learned Advocate General submits that the Applicants may be permitted to carry out the manufacturing activities till further orders with liberty to the State to move before this Court for appropriate orders.

8. The learned counsel Mr. Prathamesh Kamat, appearing on behalf of Respondent No.9 submits that they have already filed their affidavit-in-reply dated 26th March, 2021 in Writ Petition No.200 of 2021 stating that let the said unit to be kept functioning and running. The said paragraph 6.11 reads thus:

“6.11. I therefore say that until the larger issue is decided by this Hon’ble Court and/or by the Central Government as directed by this Hon’ble Court, it is necessary in the national interest to keep the said unit functional and running. I submit that the

reliefs as prayed for by the Petitioner in the present Writ Petition, if granted, would not amount to a contravention of the common order of this Hon'ble Court directing all sides to maintain status-quo as to possession and use of land passed by this Hon'ble Court on 03.09.2019."

The learned counsel for Respondent No.9 further makes a statement that Respondent No.9 will hand over possession of the said property including the manufacturing unit to the Applicants within seven days from today. He submits that even they have no objection if the Applicants carries out some addition and/or altercation in the said unit for starting manufacturing activities, but same to be subject to the outcome of Writ Petition No. 200 of 2021. He further submits that all contentions of both the parties to be kept open.

9. We heard both the sides at length. Considering the present position of Covid-19 and as the Applicants are ready and willing to start manufacturing activities without prejudice to the rights and contentions of both the parties in writ petition proceeding and considering the undertaking given by the Applicants by their affidavit-cum-undertaking dated 30th April, 2021 and as the Learned Advocate General has no objection to allow the present interim application, we are satisfied that the Applicants have made out a case for allowing this Interim Application.

10. Hence, the following order is passed:

ORDER

- (a) Interim Application is allowed in terms of prayer clauses (a), (b) and (c), which reads thus:
- (a) That pending the hearing and final disposal of the above petition, the Respondents be directed to handover peaceful possession of the ready to use BSL-3 vaccine manufacturing facilities situated at the land bearing Survey No. 27 (Gat No. 136) at village Manjari Khurd, Taluka Haveli, District Pune comprising land admeasuring 11.58 hectares and building / structures thereon and manufacturing equipment therein from M/s. Intervet India Pvt. Ltd. to Petitioner along with the requisite rights, responsibilities and obligations to deal with all matters with respect to this vaccine manufacturing property.
- (b) Respondents to be directed to grant appropriate licenses/permissions/NOCs required to the Applicant in a time-bound manner to enable manufacture of FMD vaccine, Covaxin against Covid-19 & other lifesaving vaccines in the said plant on the said land.

- (c) That this Hon'ble Court may direct the Respondents to permit the Applicant to carry out appropriate structural changes for enhancement & further scaling up of the manufacturing of lifesaving vaccines, including Covaxin to immediately utilize the maximum installed capacity.
- (b) It is made clear that all activities of the Applicants, shall be subject to the outcome of the Writ Petition NO. 200/2021.
- (c) If any addition/alterations made in manufacturing unit by the Applicants, that will be subject to the outcome of the writ petition.
- (d) The Applicants will not claim any equity on the basis of the order passed by this Court in the present interim application at the time of hearing of writ petition.
- (e) All contentions of both the parties are kept open.
- (f) Liberty is granted to the Respondents to move before this Court for modification of this order depending upon Covid-19 situation in future.
- (g) Interim Application is disposed of with these directions.

(h) No order as to costs.

(N.R.BORKAR, J.)

(K.K.TATED, J.)