

Varsha

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1481 of 2022

Pooja Balasaheb Shinde ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Rajaram V Bansode, for the Petitioner.
Mr KS Thorat, AGP, for the Respondent-State.

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 14th October 2022

PC:-

1. Heard.
2. On 21st April 2022 a Division Bench of this Court (SV Gangapurwala & MG Sewlikar JJ) passed the following order:

“ The learned counsel submits that the under ground pipeline constructed by the Petitioner with the permission of the Forest Department. Abruptly, the Authorities have damaged and demolished the said pipeline, even the crop was destroyed. The Petitioner seeks direction from the Respondents to reconstruct and restore the said pipeline.

2. We do not find express permission granted by the Forest Department to the Petitioner on record.

3. As far as prayer clause(b) is concerned the learned counsel for the Petitioner submits that the Petitioner will not press the said prayer clause.

3. To get clarification from the Respondents, issue notice to respondents, returnable on 14th July 2022.

4. The learned AGP waives service for Respondent Nos. 1, 2 and 3.”

3. On perusing the papers and hearing counsel, we find that in fact there is no permission from the State Government for the work admittedly done by the Petitioner of laying an underground pipe line through forest land.

4. The Petition also does not point out how the provisions of the Forest (Conservation) Act, 1980 and particularly Section 2 have been complied. That Section reads as follows :

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. —

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation.—For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation.”

5. It is fairly accepted by counsel for the Petitioner that there is no Central Government permission at all.

6. In this view of the matter, there is no question of this court directing the Respondents at the instance of such a Petitioner to restore the removed pipeline.

7. We will, however, grant the Petitioner limited liberty of making a representation to the State Government to obtain the necessary clearance from the Central Government within a reasonable period to permit the Petitioner to install such a pipeline along the same alignment, but at her own cost.

8. The Petitioner may choose to avail of this remedy provided such an application is made within eight weeks from today. If it is not made within that time, the Petitioner will be deemed to have given up her right to obtain to seek permission. If made within eight weeks from today, the State Government will process the application within a period of six weeks thereafter. The Central Government is not a party. Nonetheless, the Union of India through the Ministry of Environment, Forest and Climate Change will process that application if and when received from the State Government within a period of eight weeks of receipt.

9. The Petition is disposed of in these terms.

10. The prayer for compensation is rejected. It cannot be granted in a Writ Petition, being a claim in the nature of damages.

11. No costs.

(Gauri Godse, J)

(G. S. Patel, J)