

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

WRIT PETITION NO. 2629 OF 2023

- | | | | |
|----|--|---|-----------------|
| 1. | Prakhyat Dwelling LLP |] | |
| | A Limited Liability Partnership, |] | |
| | registered under the limited Liability |] | |
| | Partnership Act, 2008 |] | |
| | having its registered address at |] | |
| | Godrej One, 5 th Floor, |] | |
| | Pirojshanagar, Eastern Express Highway, |] | |
| | Vikhroli (East), Mumbai 400 079. |] | |
| | |] | |
| 2. | Rahul Laddha, |] | |
| | Designated Partner of the Petitioner No.1, |] | |
| | Having address at Godrej One, 5 th Floor, |] | |
| | Pirojshanagar, Eastern Express Highway, |] | ... Petitioners |
| | Vikhroli (East), Mumbai 400 079. |] | |

Versus

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|----|--|---|--|
| 1. | Union of India through Ministry of |] | |
| | Environment and Forest and Climate |] | |
| | Change, 6 th Floor, Vayu Wing, Indira |] | |
| | Paryavaran Bhavan, Jorbagh Road, |] | |
| | Aliganj, New Delhi -110003. |] | |
| | |] | |
| 2. | National Board of Wild Life CGO Complex, |] | |
| | Paryavaran Bhavan, Lodhi Road, |] | |
| | New Delhi-100003. |] | |
| | |] | |
| 3. | State of Maharashtra |] | |
| | through Principal Secretary, |] | |
| | Urban development, |] | |
| | Mantralaya, Mumbai 400 032. |] | |
| | |] | |
| 4. | State of Maharashtra |] | |
| | through Principal Secretary, |] | |

Ministry of Environment & Forest and
Climate Change, Mantralaya,
Mumbai 400 032.

5. Additional Principal Chief Conservator of Forest (Wild Life) (West), Mumbai, Near Old MHB Colony, L T Road, Borivali (West), Mumbai 400 091.
6. Chief Conservator of Forests & Director of Sanjay Gandhi National Park, Borivali (East), Mumbai-400 066.
7. Bhiwandi Nizampur City, Municipal Corporation, Old S.T. Stand, Kap-Ali, Bhiwandi, Dist. Thane 421 302.
8. State Board for Wildlife Through Principal Chief Conservator of Forests/Additional Principal Chief Conservator of Forests, Revenue and Forest Department, Mantralaya, Mumbai 400 032.

]...Respondents

* * * * *

Dr.Milind Sathe, Senior Advocate a/w. Mr.Vishal Kanade, Ms. Dipti Das, Mr.Sunil Vyas and Ms.Shraddha Ambre i/b Fox Mandal & Associates, Advocate for petitioners.

Ms.K.N. Solunke, AGP for respondent Nos. 3 to 6 and 8-State.

Mr.Narayan Bubna, Advocate for respondent No.7.

**CORAM : DHIRAJ SINGH THAKUR &
ARIF S. DOCTOR, JJ.**

DATE : 14th JUNE, 2023.

PC :

1. Rule. Rule is made returnable forthwith. By consent of the parties, taken up for final disposal.

2. The petitioners are aggrieved of the letters which are impugned in the present petition demanding an amount of Rs.12,00,00,000/- (Rupees Twelve Crore Only) (being 2% of the estimated cost of the project of approximately Rs.600 Crores) which the petitioners are executing in Village Bhadwad and Village Temghar over parcels of land which the petitioner No.1 claims belonged to it as an owner. The amount is being demanded in terms of the 35th meeting of the Standing Committee of the National Board for Wildlife, New Delhi as per which decision, 2% of the project costs was sought to be recovered to meet the costs of impact mitigation for various projects affecting the environment and for protection and wildlife conservation.

3. Briefly stated the material facts are as under :

The petitioner No.2 is involved in the business of land development and building construction. The proposal of the petitioner No.1, a Limited Liability Partnership Firm, was considered by the Standing Committee of the National Board for Wildlife, New Delhi in its 49th meeting held on 13th June 2018. In the said meeting, the Standing Committee of respondent No.2 decided to recommend the proposal of petitioner No.1 amongst other on the condition that an amount equivalent to 2% of the total costs of the project is paid. The proposed project of the petitioners is stated to at a distance of 8.80 km. from the boundary of Tungareshwar Wildlife Sanctuary. The amount was demanded on the presumption that the project was in the deemed eco-sensitive zone of Tungareshwar Wildlife Sanctuary.

4. Learned counsel for the petitioners Dr.Sathe stated that the demand was unsustainable and *non-est* in the eyes of law inasmuch as the area where the project was being developed was outside the eco-sensitive zone. Reference in this regard was made to a draft notification dated 24th December 2018 published by respondent No.1, Ministry of Environment and Forest and Climate Change providing the limits of the eco-sensitive zone around Tungareshwar Wildlife Sanctuary as also the final notification dated 11th

September 2019 bearing No.S.O.3250-C, as per which, the extent of eco-sensitive zone would range from 100 meters to 4 kms around the Tungareshwar Wildlife Sanctuary.

5. It is urged by learned counsel for the petitioners that village Bhadwad and village Temghar do not at all figure in the notification, dated 11th September 2019 as the two villages are much beyond the outer limits of the eco-sensitive zone. It is stated that the demand being in the nature of a fee/tax could not be levied without the authority of law. Reliance was also placed upon a judgment of this Court in *M/s. Sai Pushp Enterprises & Anr. Vs. Thane Municipal Corporation & 6 Ors.*¹. In this case, in almost similar circumstances, where the said petitioners were required to deposit 2% of the project costs as per the decision of the Standing Committee of the National Board for Wildlife, New Delhi, though the property of the petitioners was not situated within the eco-sensitive zone, this Court held as under :

“19 It is not disputed that the project of the Petitioner is beyond the ESZ of Tungareshwar Wildlife Sanctuary and Sanjay Gandhi National Park. The Notifications prescribing ESZ are issued to conserve and protect the area, the extent of boundaries specified in the said Notification around Sanjay Gandhi National Park and Tungareshwar Wildlife Sanctuary from ecological and environmental point of view and to

¹ Writ Petition No.4725 of 2021 dt.5-05-2022

prohibit industries or class of industries and their operations and processes in the said ESZ. The zonal plan is also required to be prepared for the purpose of ESZ. The said Notification deals with powers of the Monitoring Committee and other Authorities over the activities within the ESZ and not beyond it. The Respondent Nos.5 and 6 may not be in a position to exercise their authority beyond the ESZ as per the Notifications. When the activity of the Petitioner is beyond the ESZ then in that case, they would not have any authority to demand the deposit of the amount. For demanding the amount, the powers referable to Statute, Regulations and Rules should exist and/or the executive instructions to that effect. In the present case, we do not find any authority with the Respondents to demand 2% deposit of the project cost either under the Statute or the Executive Instructions on the development activity beyond the ESZ. The said demand would be without authority of law and arbitrary. The Apex Court in the case of Tata Iron & Steel Co. (Supra) has observed as under:

“21. A nine-Judge Constitution Bench of this Court in Jindal Stainless Ltd. Vs. State of Haryana (2017) 12 SCC 1, quoted the abovementioned statement of law with approval. Therefore, it is now well settled that the expression “fee” is also comprehended in the expression “tax” for the purpose of Article 265 and even for the collection of a “fee”, authority of law (i.e. legislative support) is mandatorily required under the Constitution.”

.....

23 In the present case, the issue is about the authority of the Respondents to direct payment of 2% of the project cost as conservation fees. The Respondents are not in a position to point out any provision of law authorizing the Respondents to levy conservation fee in the shape of a deposit. For levying fee, the authority under the statute should exist. In absence of any statutory authority, the Respondents may not have the authority and/or right to demand a particular amount as conservation fee. No such provision has been referred to before us to even remotely suggest that the

Respondents have authority under the Statute, Rules or the Regulations to claim the deposit from the Petitioner for its development activities beyond the ESZ. If the Petitioners engage in any activity thereby jeopardizing the Wildlife conservation and forest, the Respondents have every right to take action against the Petitioners. However, demanding 2% of project cost as conservation fee would be acting beyond the authority. In absence of source of power to demand deposit, the action of the Respondents in demanding the said fee, cannot be sustained.”

6. Counsel of the respondents do not dispute that the facts of the present case are similar to the facts which were before the Court in the case of *M/s.Sai Pushp Enterprises* (Supra). Even otherwise, they were unable to convince us to the legality of the demand so raised from the petitioners.

7. In these circumstances, we cannot persuade ourselves to take a view different from the one which has already been taken in the above-mentioned case.

8. Be that as it may, the present petition is allowed. The impugned letters dated 18th December 2019, 18th May 2020, 28th January 2021 and 27th July 2021, respectively, are quashed and set aside. We hold that demand of 2% of the project costs as conservation fees is without any authority of law and thus illegal and is unsustainable in law.

9. Respondents are directed to process all the applications of the petitioners on its own merits without insisting on the deposit of the 2% of the project costs.

However, it is made clear that the petitioners would ensure that all other conditions prescribed by the Authorities are complied with in letter and spirit.

10. The petition is disposed of.

Rule is made absolute in above terms.

(ARIF S. DOCTOR, J.)

(DHIRAJ SINGH THAKUR, J.)