

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO.6871/2019**

AVIVET Nutritional Services Pvt. Ltd.  
A/10, Anandwan, Vrundavan Complex,  
Kothrud, Paud Road, Pune – 411029,  
through its Director Shri Pradip Linge. ....**PETITIONER**

**...V E R S U S...**

1. State of Maharashtra through  
Secretary, Department of Irrigation,  
Mantralaya, Madam Cama road,  
Mumbai – 440 032.
2. Tahsildar, Umred, District Nagpur.
3. Sub Divisional Officer,  
Irrigation Department, Hinganghat,  
District Nagpur.
4. The Collector, Nagpur Collectorate  
Building, Civil Lines, Nagpur.
5. Zilla Parishad, Nagpur, through  
its Chief Executive Officer.
6. Town Planning and Valuation  
Department, through Assistant  
director, Town Planning, Nagpur.
7. The State of Maharashtra through  
Water Resources Department,  
Madam Cama road, Hutatma  
Rajguru Chowk, Mantralaya, Mumbai. ....**RESPONDENTS**

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Mr. Nikhil Wadikar with Mr.N.R.Bhishikar, Advocates for  
petitioner.

Mr. A. S. Fulzele, Addl. G. P. for respondent nos. 1, 4 and 7.

Mr. P. B. Patil, Advocate for respondent nos. 2 and 3.  
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**CORAM:- A. S. CHANDURKAR & ANIL L. PANSARE, JJ.**  
**DATE OF RESERVING THE JUDGMENT :- 13.12.2022**  
**DATE OF PRONOUNCING THE JUDGMENT :-11.01.2023**

**JUDGMENT** (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. To overcome the objection of maintainability of the petition, the petitioner has restricted its claim to the following prayers:

*“(C-1) In the alternative, direct the respondents to declare the land of the petitioner as Project Affected Land, and to acquire the same after paying compensation in accordance with law.*

*(C-2) Direct the Respondents to compensate the Petitioner by paying the cost of compensation admeasuring 10,902 Sq. Mt.”*

3. It is the case of the petitioner that the petitioner – Company is engaged in manufacturing of processed milk and other milk products. The petitioner started a dairy industry called ‘Mai Milk: Goodness of Cows’, along with other allied activities at Mouza Pipra, Tahsil Umred, District Nagpur in February, 2017 and became fully functional by 2018. The plant and machinery includes a homogenizer, pasteurizer, cream separator, packing

machine, BMC, mixer, etc. There is also a testing lab and a water purifying plant, along with 5 tractors, 1 compactor, 1 cold storage van and 3 passenger cars. The livestock, at present, consists of 241 cows. It has around 70 employees, and by purchasing milk from the villagers in surrounding areas, it also provides gainful employment to many others.

4. It is also the case of the petitioner that all the norms have been adhered to while completing the project. The Collector vide order dated 31.01.2018 has granted permission to convert the use of land for non agricultural purpose. The petitioner, thereafter submitted its plan and after obtaining permission, has carried out the construction. Thus, the project has been completed after taking due permission. The said industry is located in Khasra Nos. 441, 509, 510, 511 and 513, in an area of around 43 Acres. The said land is situated at a distance of around 5 kilometers from the Nand Dam.

5. It is submitted by the petitioner that on 06.07.2018, without any prior warning or intimation, 6 gates of the Nand dam were opened, thereby releasing a huge quantity of water into the Nand river. The entire area surrounding Nand river including the

area owned by the petitioner was completely inundated. The said gates continued to remain open until 07.07.2018 due to which the flooding continued for whole day, causing extensive damage to the plant and machinery belonging to the petitioner and thereby suffered losses to the tune of around Rs.2.05 Crores.

6. It is further the case of the petitioner that the petitioner has issued several communications to various authorities seeking compensation for the losses caused. One such communication is dated 07.07.2018 issued in favour of the respondent no.4 – Collector, stating therein that due to unprecedented release of water from Nand Dam, the property belonging to the petitioner company had been inundated and damage of around 2.05 crores has been caused. Similar communications were issued to the Tahsildar, Patwari, Sarpancha and other authorities. The petitioner received reply from the respondent no.3 – Sub Divisional Officer, Irrigation Department, Hinganghat, stating that the damage to the industry had not been caused due to the release of water from Nand dam.

7. The petitioner then submits that on 30.07.2019 again the gates of Nand dam were opened without any warning causing

the entire premises of the petitioner completely submerged. It caused the large scale damage. Twenty two employees working inside the industry as well as 241 cows present in the premises were left stranded in the water thereby causing grave threat to their lives and safety. It was only after receding of water, the rescue operations carried, the employees and cows stranded in the flood were rescued. The petitioner again issued communications claiming damages from the revenue department and irrigation department. The petitioner valued the loss to the tune of Rs.4.86 Crores approximately for the incident that occurred on 30.07.2019. According to the petitioner, owing to the frequent release of water and frequent inundation of land of the petitioner, its land is a project affected land and should be declared as such and should be acquired by the respondents. The communication to that effect was made to remain unanswered.

8. Mr. Wadikar, learned counsel for the petitioner, has invited our attention to order dated 27.03.2015 passed by the National Green Tribunal, Western Zone Bench, Pune. The question involved was in relation to the Government Resolutions and provisions made therein for construction of any special or like activity within the area near the embankment of the river and/or

implementation of the RRZ Policy. The Government Resolution dated 02.03.2015 provided that the blue line has to be drawn by the irrigation department after the demand is received from the Collector where it is found that there is possibility of danger of flood like situation nearby the river zone. It was observed that the Government Resolution has been issued with an intention to avoid any kind of environment damage as a result of flood in flood prone areas. The Tribunal then issued various directions to ensure that the illegal construction in such areas will not be overlooked by the irrigation department.

9. The learned counsel for the petitioner submits that the blue line was drawn in May 2020 and the land upon which the plant has been constructed is situated within the blue line. However, the project of the petitioner was completed prior to demarcation of the blue line. Therefore the petitioner cannot be blamed for carrying out construction in the area situated within the blue line.

10. Mr. Wadikar, learned counsel for the petitioner then referred to Government Resolution dated 21.09.2012. The Government has taken a decision to acquire the lands which

frequently gets submerged and the land owners suffer losses. The decision was taken in the backdrop of a fact that in such cases the land owners frequently seek compensations for losses suffered because of the floods. The Government was of the view that the acquisition of land will be better option and also a solution to recurring payments towards compensation of losses.

11. Learned counsel for the petitioner has relied upon the Maharashtra State Disaster Management Plan wherein, Clause 4.1 provides for Disaster Mitigation Measures. The Management Plan was published in April, 2016. The plan provides for several measures to be taken to provide preventive protection from disasters to mitigate damages caused by flood. The plan provides to permanently evacuate a portion of the land affected and to acquire the same. The measure may be expensive but in long term is beneficial. Thus, it is argued that by acquiring petitioner's land, the respondents will be benefited in the long term as the respondents will not be required to pay recurring damages caused by the uncontrolled release of water from the dam.

12. Mr. Wadikar has then taken us through the guidelines for environmental management on dairy farms and gaushalas.

The guidelines provide amongst others, that in order to avoid contamination of water bodies the dairy farms and gaushalas should not be located in the flood prone areas which are subject to flooding at once in 25 years or frequent levels. The petitioner's land got submerged twice within short span and that therefore its land may be declared as project affected land and further the respondents may be directed to pay compensation to the petitioner.

13. Mr. Patil, learned counsel for the respondent no.3 has referred to Sections 14 and 15 of the National Green Tribunals Act to contend that the compensation, if any, can be granted to the affected persons like the petitioner by the NGT. He, therefore, submits that there being alternate remedy available, the petition is not maintainable. Even otherwise, according to him, the land could be said to be affected by the project only if it is under permanent submergence. The lands situated in flood zones are not acquired by the Government. He submits that it is not even the case of the petitioner that the land in issue is frequently submerged. Hence, according to him, the land in issue cannot be acquired.

14. In response to the claim of damages made by the petitioner, the learned counsel for respondent no.3 submits that the petitioner has referred to only two instances. The first is dated 06.07.2018 and the second is dated 30.07.2019. According to him, a very heavy rainfall (216 mm) has occurred on 06.07.2018 in the catchment area of the dam, that too, within 3-4 hours. This caused sudden increase in the storage of water in the dam. Therefore, water was released by opening the gates. The action of releasing the water was taken by following the dam safety manual. Utmost care was taken to ascertain that the excessive flood will not occur on the downstream of the dam. Similar measures were taken for the second incident also. It is accordingly argued that the water was released from dam because of the heavy rains and is a rare phenomena.

15. Learned A.G.P. has also opposed the claim. According to him, the land in issue is for industrial purpose. Non agriculture certificate has been obtained for that purpose vide order dated 31.01.2018. The permission for construction was granted on 13.03.2020. Two instances mentioned in the petition are prior to 13.03.2020. Accordingly, he argued that when the permission for construction itself was granted on 13.03.2020, there cannot be

sufferance of loss as claimed by the petitioners. He, then argued in tune with the respondent no.3 on the point of release of water from the dam on account of heavy rainfall on two occasion. Thus, according to him, for such rare incidents, the petitioner's land cannot be acquired.

16. Mr. Wadikar, in rejoinder submits that the contentions of the respondent no.3 that the permanently submerged lands only are acquired by the Government, is not supported by any evidence. He submits, by referring to the guidelines for environmental management on dairy farms and gaushalas that the parameters laying down the said guidelines provide that gaushalas shall not be located in the areas where the incident of such a nature occurs once in 25 years and in the present case the petitioner's land falls in the flood prone area. Hence, the said criteria is fulfilled. On the point of construction, however, he has modified his original version of having entire project commenced in the year 2018 to only mobilization of material and cattle till that period and that the industry having been commenced after the year 2019.

17. Having heard both the sides, we would like to remind the petitioner that the jurisdiction under Article 226 of the Constitution is an equity jurisdiction. One must approach the

Court with clean hands, clean heart, clean mind and clean objective. We are saying so because the petitioner made us to believe through pleadings that the petitioner has constructed integrated dairy farm, milk processing unit by obtaining requisite permission in the year 2017 and that the industry became fully functional by the year 2018. It was only when the learned Assistant Government Pleader pointed out to us that permission for construction of the industry was itself granted on 13.03.2020, the petitioner modified his original version and stated that the industry became fully functional after the year 2019.

18. We however find from the record placed before us that the aforesaid submission that the petitioner's industry became fully functional after 2019 is also not true. The petitioner has made a complaint to Police Station, Bela on 08.07.2018 mentioning therein that he is involved in the business of milk production under the name and style as AVIVET Nutritional Services Pvt. Ltd. since the year 2017. He has further stated that on 06.07.2018, he suffered heavy loss because of the uncontrolled release of water from Nand dam. This obviously would mean that either the petitioner has commenced his business prior to obtaining permission for construction or that his claim of suffering loss in

July, 2018 is incorrect. The prayer clause C-2 indicates that the construction of the petitioner industry is admeasuring 10902.08 Square Meters. The area of construction is huge and will take substantial time to complete. If the petitioner states that he had commenced business in the year 2017, he must have commenced construction work much prior to the year 2017. The petitioner apparently has suppressed material facts. Thus, on this count itself the petition is liable to be dismissed.

19. Even otherwise, what has been pleaded by the petitioner is that he suffered loss because of the uncontrolled release of water from Nand dam by the respondents on 06.07.2018 and 30.07.2019. The petitioner has assessed the loss to the tune of Rs.2.05 Crores and 4.86 Crores. According to the petitioner 22 employees working inside the industry as well as 241 cows present in the premises were stranded in the water thereby causing a gross threat to their lives and safety and that it was only after receding of water the rescue operation was carried and employees and cows stranded in the flood were rescued. These pleadings would indicate that the industry was functional in the year 2018 though the permission to construct the industry was granted in March, 2020. The petitioner has conveniently

suppressed the fact that the permission for construction was granted in March, 2020. In that sense, the industry was constructed without permission and therefore the construction could be said to be an unauthorised construction. The petitioner cannot seek compensation for unauthorised structure.

20. Another limb of argument of the petitioner was that in September, 1989, the irrigation department, State of Maharashtra has issued a circular with respect to demarcation of blue line and red line so as to regulate the construction activities near the river. The NGT has passed order dated 27.03.2015 in Appeal No. 22/2014 directing the State of Maharashtra to demarcate the blue lines within twelve weeks. Mr. Wadikar submits that the State of Maharashtra did not demarcate the blue line for Nand river within the time prescribed but has done so on or about 14.05.2020. It is accordingly argued that the petitioner was not knowing that his land falls within the prohibited area until 14.05.2020. It is also the case of the petitioner that by that time, the petitioner has commenced and completed the project.

21. The above submission would again show that the petitioner has completed entire project prior to 14.05.2020. The permission for construction was granted on 13.03.2020. The huge

construction of 10902.08 Square Meters cannot be completed within the span of two months.

22. Mr. Fulzele, learned Additional Government Pleader has also referred to reply filed by respondent no.4 mentioning therein that the Sub Divisional Officer, Umrer has vide order dated 13.03.2020 issued permission to construct the premises subject to certain conditions. The Sub Divisional Officer, Umrer has informed the respondent no.4 that condition nos. 3 and 4 of the said order dated 13.03.2020 have not been complied with. These conditions would require the petitioner to give intimation before commencement of construction in Appendix-F and thereafter the intimation regarding completion of construction up to plinth level in Appendix-G. The petitioner was required to proceed with further construction after obtaining necessary certificate from the respondent no.6-Town Planning Department in Appendix-H and as per the condition no.5 of the said order, the petitioner was required to obtain occupancy certificate from respondent no.6. Thus, it appears that the petitioner has failed to comply certain important conditions. That apart, the details as to the exact date of commencement and completion of construction are not disclosed.

23. Thus, the permission for construction was granted on 13.03.2020. The blue line was demarcated on 14.05.2020. The land of the petitioner was thus located within the prohibited area at least on and after 14.05.2020. The petitioner could not have constructed 10902.08 Sq. Mtr. area within the span of two months i.e. between 13.03.2020 to 14.05.2020. The conditions granting permission for construction have not been complied with. Despite this, the petitioner is seeking direction against the respondents to compensate it by paying costs of construction admeasuring 10902.08 Sq. Mts. If said prayer is to be granted then the wrong doer will have to be rewarded.

24. Further, the learned Additional Government Pleader, by referring to the reply of respondent no.3 has raised a valid point. According to him, the petitioner had obtained permission to convert use of land for Khasra No. 441 and 513 but has not converted the use of land for non agriculture purpose for Khasra Nos.509/1, 510/1, 511 and 512. Respondent no.3 has also pleaded that Khasra No. 442 is Zudupi Jungle and that the petitioner has encroached this land to suit his purpose. It is also the case of the respondent no.3 that topography of the land on the spot would reveal that it is the land where Nand river join two

nullahs. It was low line flood affected land. The petitioner has closed the flow of nullahs by reclaiming the land with soil and murum. The flow of nullahs have been stopped by carrying out earthwork and placing murum on top for constructing the road over it. Accordingly, it is argued that this act being voluntary, the petitioner, cannot blame Water Resource Department.

25. The petitioner has denied the existence of nullahs so also of any work having been done which led to closing of nullahs. According to the petitioner there exists no nullah in petitioner's land but there exists Sahakar nullah (nahar) in Khasra No. 509/2, which is not part of the land of the petitioner. The petitioner has also denied that it has encroached upon Khasra no.442. However, the petitioner has not really denied that except for Khasra Nos. 441 and 513 he has not obtained permission to convert the use of other lands for non agriculture purpose. This raises doubt about the petitioner's version. The petitioner has been blamed for encroaching the adjoining land and for using the land for non agriculture purpose without obtaining necessary permission. These allegations would require detailed inquiry for which the remedy lies somewhere else.

26. The petitioner has blamed the respondent authorities

for releasing the water from Nand dam without any warning. The respondent no.3-Sub Divisional Officer however submitted that the message before releasing water from Nand Dam, was given. A telephonic message for flood management was also given to the Sub Divisional Officer, Umrer, Tahsildar, Umrer-Samudrapur, Sarpancha and reputed persons of above village. In addition, Siren was blown before releasing water from the dam. Thus, there are two versions. The petitioner states that the water was released without warning. The respondent states that the warning was given. The question is how could these disputed facts be adjudicated in writ jurisdiction.

27. Mr. Wadikar, learned counsel for the petitioner has relied upon judgment in Popatrao Vyankatrao Patil Vs. The State of Maharashtra an Ors.<sup>1</sup> in support of his argument that even if the disputed question of fact and law are involved, in an appropriate case, the High Court is not precluded from entertaining the petition under Article 226 of the Constitution. The petitioner has however conveniently ignored the rider put therein by the Hon'ble Apex Court, where it referred to the disputed questions of fact that do not require elaborate evidence.

1 Civil Appeal No. 1600 of 2020 arising out of SLP(C) No.5290 of 2012 decided on 14.02.2020

28. In the present case, there are many disputed questions of fact which require evidence. The elaborate evidence will be required on the point of commencement and completion of construction, compliance of conditions of permission for construction, encroachment on government land (zudpi jungle), closure of flow of water in adjoining nullahs, etc. The evidence will be required on the point of damages caused, if any, because of release of water. The another question is whether petitioner himself is responsible for the alleged losses suffered. The ruling therefore will not be of any help to the petitioner.

29. Learned counsel for the petitioner has further referred to the judgment of the Division Bench of Gujarat High Court in State of Gujarat & 3 Vs. Vijay Vallabhnbhai Patel & 2<sup>1</sup>. The Government upon recommendation of the expert committee, took a decision to construct a wall on the right bank of river Tapi. The decision was taken as there were large number of natural calamities and hazards because of the adverse effect due to flood in the river. The decision so taken resulted in deprivation of right of enjoyment of the property of the petitioner therein. The Court opined that in such a case, compensation is required to be paid and that State cannot undertake any action which results into

1 1986 (Sup) SCC 686

preventing enjoyment of the property without payment of compensation, in accordance with law.

30. We find that the reliance laid by the petitioner is misplaced. The facts before us are altogether different. There is nothing on record that would indicate that because of the respondents the petitioner is deprived of right of enjoyment of the property.

31. Mr. Wadikar has referred to policy issued by the Central Pollution Control Board. According to him, policy no. 4 under the head of 'Sitting Policy' provides that dairy farms and gaushalas should not be located in flood prone areas which are subject to flooding at once in 25 years or frequent levels in order to avoid contamination of water bodies. This provision has been referred, to contend that the petitioner's land is situated in flood prone area and that therefore it is entitled to be declared as project affected land and consequently for acquisition of land.

32. We however do not find any substance in the aforesaid submission. The policy referred, is to control waste management in the dairy farms and gaushalas. The term 'flooding at once in 25

years' is used in context with prohibiting dairy farms and gaushala business in the flood prone areas. It indicates that the business of farm and gaushala cannot be located in the flood prone areas where the flooding occurs once in 25 years or more frequently. This is to avoid contamination of water bodies. Such provision by itself cannot be said to be the provision granting declaration of the status of the lands located in the flood prone areas to be project affected lands.

33. Resultantly, the petition fails on multiple counts. The petition is accordingly dismissed. Rule is discharged.

**(Anil L. Pansare, J.)**

**(A. S. Chandurkar, J.)**

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