



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13191 OF 2024

M/s. Octal Suppliers Private Limited
A Company incorporated under the
Indian Companies Act, 1956, having
its registered office at 15-B,
Everest House, 46-C, Chowrangee Road
Kolkata AND
Work place at Plot No. SW-2, village
Brahamanvel, Tq. Sakri, Dist. Dhule,
Through its Director.

... Petitioner

VERSUS

- 1) The State of Maharashtra
Industry, Energy & Labour Department,
Mantralaya, Mumbai.
- 2) Maharashtra Industrial Development
Corporation, through its
Executive Engineer, Dhule.
- 3) The Collector, Dhule.
- 4) The Superintendent of Police, Dhule
- 5) The Police Inspector,
Nizampur Police Station, Sakri, Dhule.
- 6) K.P. Power Private Limited,
229/230, Arun Chambers, Next to
AC Market, Tardeo, Mumbai-400034.

... Respondents.

...

Advocate for Petitioner : Mr. S.V. Adwant
A.G.P. for Respondent/State : Mrs. P.J. Bharad

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.

DATE : 03.12.2024

ORDER : (MANGESH S. PATIL, J.)

Heard learned advocate Mr. Adwant for the petitioner and the learned A.G.P. Mrs. Bharad.

2. The petitioner, which is a private limited company, is coming with following prayers:

“B) By issuing appropriate writ, order or direction, the respondent nos. 1 to 5, be directed to arrest the illegal activities and nuisance caused by the intruders, as complained by the petitioner in its complaint dated 23.08.2024.

C) By issuing appropriate writ, order or direction, the respondent nos. 4 and 5 be directed to provide protection and depute an officer at the site to enable the petitioner to restart the windmill turbines, the operation of which has been stopped due to the nuisance created by the intruders.

D) By issuing appropriate writ, order or direction, the respondent no. 3 be directed to identify and locate the boundaries of the leasehold land allocated to the petitioner.”

3. Mr. Adwant, at the outset submits that though the petitioner is seeking relief in terms of prayer ‘D’, the measurement has already been carried out and the boundaries have been fixed in respect of the petitioner’s property which is originally owned by respondent no. 2-Maharashtra Industrial Development Corporation (MIDC), taken on lease by respondent no. 6-Company and is in petitioner’s possession as a sub-lease, with the consent of respondent no. 2-MIDC. He, therefore, submits that the petitioner is merely seeking a copy of the measurement map. Its request is not being conceded to by respondent nos. 2 and 3.

4. In response to our query as to why the petitioner should not be

relegated to the remedy of filing a suit in a civil court in respect of the prayer clauses 'B' and 'C' (supra), in the facts and circumstances of the case, Mr. Adwant would submit that the plot in possession of the petitioner belongs to respondent no. 2 MIDC. The petitioner is in the business of energy generation with renewable sources. The State has evolved a policy for maximum use of such renewable sources for generation of electricity. The petitioner had taken the plot SW-2 on a sub-lease for 25 years for setting up a 'wind farm project' under the agreement dated 03.01.2006, with the consent of respondent no. 2-MIDC. It has been operating the wind mills since the year 2006. It has invested huge money to erect the paraphernalia. The State and the State instrumentalities like respondent no.2-MIDC, are bound to protect petitioner's property. But, there is dearth of action.

5. Mr. Adwant would then submit that some miscreants/intruders are obstructing the petitioner in smooth functioning of the wind mills. These persons have been claiming that the land, over which the wind mills have been erected belongs to one Ms. Fulabai Fulsing Sonware, and she has been demanding money. Since the petitioner's activities had come to a standstill, under compulsion, having been left with no option, it entered into an agreement with that lady on 16.07.2024 and paid her a sum of Rs. 5,50,000/-. Still the obstruction has continued. In spite of petitioner's employees having approached respondent nos. 1 to 5, they are not paying any heed. The F.I.R. had to be lodged. Offence has been registered and still the obstruction continues.

6. Left with no alternative, the petitioner is invoking the powers of this Court under Article 226 of the Constitution of India to protect its rights in the property, which would otherwise adversely affect the public interest since the petitioner would not be able to generate and supply the energy.

7. Mr. Adwant would submit that it is a public law remedy and this Court should intervene. He would rely upon following decisions:

(1) Hari Krishna Mandir Trust Vs. State of Maharashtra and others; (2020) 9 SCC 356.

(2) Binny Ltd. and another Vs. V. Sadasivan and others; (2005) 6 Supreme Court Cases 657.

(3) St. Mary's Education Society & another Vs. Rajendra Prasad Bhargava & others; (2023) 4 SCC 498.

(4) Sivanandan C.T. and others Vs. High Court of Kerala and others; (2024) 3 Supreme Court Cases 799.

8. The learned A.G.P. would submit that the petitioner is seeking to protect his personal interests by resorting to the extant remedy under Article 226 of the Constitution of India, as a shortcut. She submits that if all such individual centric disputes are brought to the High Court, that would paralyze its functioning. Merely because the petitioner is a private limited company and can afford to approach the High Court directly, cannot be heard particularly when it is quite aware about the dispute and can very well take recourse to the common law remedy of filing a suit.

9. We have considered the rival submissions and perused the papers. As is mentioned herein above, so far as prayer clause 'D' is concerned, indeed, once the measurement has been carried out, it would be appropriate for the public offices to issue certified copies of the measurement maps to the petitioner in accordance with the rules applicable to it.

10. So far as the other two prayer clauses 'B' and 'C' are concerned, the submission of Mr. Advant that this Court should exercise extraordinary power under Article 226 of the Constitution of India on the ground that the State is duty bound to protect the individual interest, is too broad a statement to persuade us to exercise that power. If this parameter is to be applied, every conceivable dispute would land in the High Court, for it is the State's responsibility ultimately to maintain the rule of law and protect the rights of its citizens.

11. The decisions cited by Mr. Adwant will have to be understood in the context in which those were rendered. The basic principles, which can be deduced from catena of judgments, including the ones cited by Mr. Adwant are to the effect that the power of judicial review is designed to prevent abuse of power and neglect of duty by public authorities. Merely because there are some factual disputes that by itself cannot be a ground for the High Court to refuse to exercise the powers under Article 226 of the Constitution of India, it would depend upon the facts and circumstances of each case, as has been laid down in the matter of ***Gunwant Kaur Vs. Municipal Committee, Bhatinda; (1969) 3 Supreme Court Cases 769***, which has been referred to and relied upon with emphasis in the matter of **Hari Krishna Mandir Trust (supra)**.

12. If the petitioner admittedly has taken a property owned by respondent no. 2-MIDC, which was leased out by it to respondent no. 6-Company, on a sub-lease from the latter, once the measurements have been carried out, the petitioner cannot expect the authorities to protect his possession. To the extent of lodging of the F.I.R., the police have already registered the offence. So far as abatement of the alleged illegal activities of causing obstruction or of intrusion into the petitioner's property, it is always open for it to resort to the common law remedies of approaching a Civil Court for vindication of its rights in the property. It would be utopian thought to expect the State machinery to guard such individual properties.

13. When the petitioner is aware about the nature of obstruction and even the reason therefor, in our considered view, this case presents the circumstances wherein the appropriate remedy for the petitioner is to approach the Civil Court. We are of the considered view that under the guise of invoking a public law remedy as a shortcut, the petitioner is avoiding to approach the Civil Court. Even that lady is not being arrayed as a respondent nor is the petition specifically attributing any direct role of the lady in creating the obstruction. The petitioner, in all probability, is trying to

merely suggest seeking to draw insinuations, by pleading about the obstruction by that lady and the agreement entered into with her.

14. Another limb of argument of Mr. Adwant, and as has been mentioned in the ground in the petition, the petitioner is trying to suggest that the remedy of approaching the Civil Court would be a time consuming one, meaning thereby that its stand buttresses our inference that the petitioner is finding a shortcut. We are not impressed with even this ground being agitated by the petitioner for this Court to entertain the petition.

15. In the circumstances, we dismiss the petition to the extent of prayer clauses 'B' and 'C' with liberty to the petitioner to resort to the appropriate remedies as are available to it in law including approaching the Civil Court.

16. To the extent of prayer clause 'D', we direct respondent nos. 2 and 3 to ensure that the petitioner is issued with certified copies of the measurement maps in accordance with the relevant rules, as expeditiously as possible.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

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