

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13657 OF 2024

1. Harne Pradeshik Nal Pani Purvtha Yojna
Sukanu Samiti/Steering Committee through
Chairman Shri. Somnath Poshiram Pavshe

2. Harne Pradeshik Nal Pani Purvtha Yojna
Sukanu Samiti/Steering Committee through
Secretary Shri. Bhaskar Pandurang
Dorkhulkar

...Petitioners

Versus

1. Nirmal Group Gram Panchayat,
Gimavhane – Vanand, Taluka Dapoli through
Sarpanch

2. Nirmal Group Gram Panchayat,
Gimavhane – Vanand, Taluka Dapoli through
Gram Vikas Adhikari (Village Development
Officer)

3. Shreeji Jal Yojna, through its Director
Shri. Jayesh Shroff

4. The State of Maharashtra, Through its
Principal Secretary, Water Supply and
Sanitation Department, Mantralaya, Mumbai ...Respondents

Mr. Sumit Kothari, for the Petitioners.

Mr. Saurabh Railkar, for the Respondent No.1 to 3.

Ms. Tanu Bhatia, AGP for the State – Respondent No.4.

CORAM: N. J. JAMADAR, J.

DATED: 25th MARCH, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the
consent of the learned Counsel for the parties, heard finally.

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2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 22nd August, 2024 passed by the learned District Judge, Khed, in Misc. Civil Appeal No.10 of 2021 dismissing the said appeal preferred by the petitioners – plaintiffs by affirming the order passed by the Civil Court on an application (Exhibit-5) in Regular Civil Suit No.68 of 2021.

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:

3.1 The plaintiffs are the Chairman and Secretary of the Steering Committee of Harne Pradeshik Nal Pani Puravtha Yojna, (Harne Regional Water Supply Scheme). In the year 1998, the State Government had sanctioned a water supply scheme for villages Harne, Pajpandhari, Juikar Mohalla (Part of Adkhal Gram Panchyat), Adkhal and Shivaji Nagar Gram Panchayat, titled Harne Regional Water Supply Scheme. Under the said scheme, the water stored by embankment at Sondegghar Dam on Jog River was allowed to be utilized for the supply of water to the said five villages. Eventually, the additional Harne Water Supply Scheme was implemented and handed over to four Grampanchayats for management.

3.2 Asserting that defendant Nos.1 to 2, who represented Gimhavane and Vanand village panchayats, in collusion with defendant No.3 Contractor, without obtaining the sanction of the plaintiffs and the permission of the competent authorities started to excavate the land to install the plant to unauthorizedly extract water from the reservoir. The plaintiffs claim the unauthorized lifting of the water from the reservoir by the defendants would severally affect the source of water for Harne Regional Water Supply Scheme and thereby jeopardize plaintiffs water supply scheme. The plaintiffs, thus, instituted a suit to restrain the defendants from implementing the water supply scheme for the defendants and lifting the water from the reservoir.

3.3 An application for temporary injunction was filed. By an order dated 25th June, 2021 the learned Civil Judge, Dapoli, was persuaded to reject the application, observing that the plaintiffs failed to make out a *prima facie* case. The plaintiffs had no exclusive right to draw water from the said reservoir. The defendants were also entitled to draw water from the reservoir by obtaining necessary permission from the State Government.

3.4 Aggrieved, the plaintiffs preferred an appeal before the District Judge, Khed. By the impugned order, the learned

District Judge dismissed the appeal concurring with the view of the learned Civil Judge. It was *inter alia* noted that the plaintiffs failed to establish that the implementation of the scheme for water supply for Gimhavane and Vanand would diminish the water supply for the plaintiffs. Balance of convenience tilted in favour of the defendants and grant of stay would cause irreparable loss to the defendants.

4. Being further aggrieved, the plaintiffs have invoked the writ jurisdiction.

5. While issuing notice by an order dated 11th September, 2024, this Court directed that the State Government be impleaded as party respondent to this petition, and the State Government shall file an affidavit as to the legality, validity and status of Harne Scheme, its extension and applicability, and also assist the Court as to whether the defendants, who represent villages Gimhavane and Vanand, would be entitled to draw water from the said reservoir in the wake of the permission granted by the State Government or otherwise.

6. Pursuant to the said order, the State Government has filed the affidavits. Defendant Nos.1 to 3 – Respondent Nos.1 to 3 have also filed an affidavit-in-reply in opposition to the petition.

7. I have heard Mr. Sumit Kothari, the learned Counsel for the petitioners – plaintiffs, and Mr. Saurabh Railkar, the learned Counsel for respondent Nos.1 to 3 – defendant Nos.1 to 3, and Ms. Tanu Bhatia, the learned AGP for the State – respondent No.4, at some length. The learned Counsel took the Court through the pleadings, affidavits and the material on record.

8. Mr. Kothari, the learned Counsel for the plaintiffs, took the Court through the documents, which evidence the sanction and implementation of Harne Regional Water Supply Scheme. An endeavour was made to draw home to the point that the said scheme was sanctioned for the specified five villages. Gimhavane and Vanand villages, which are located at a considerable distance from the five villages for which this Harne Water Supply Scheme has been sanctioned, have no right to draw the water from the reservoir from the point, near which the water collection and storage unit of the plaintiffs scheme is situated. If the defendants draw the water from the same reservoir by constructing a water collection and storage unit near the scheme of the plaintiffs, the water supply to the five villages for whom Harne Scheme has been implemented would be prejudicially affected. Mr. Kothari was at pains to assert that the plaintiffs have no objection to the defendant Nos.1 and 2

drawing water from Jog River from any other location. However, the construction of the collection and storage unit in close proximity to the unit of the plaintiffs cannot be permitted as it would affect the plaintiffs scheme.

9. Mr. Railkar, the learned Counsel for defendant Nos.1 to 3 – respondent Nos.1 to 3, on the other hand, would urge that the objection of the plaintiffs to the implementation of the scheme of defendant Nos.1 to 3 is factually unfounded and legally misconceived. Mr. Railkar submitted that both the courts below have categorically recorded findings that the plaintiffs do not have exclusive right to draw water from the said reservoir. Nor the plaintiffs are likely to be affected by the implementation of the water supply scheme for defendant Nos.1 to 3.

10. Mr. Railkar submitted that the State Government has sanctioned the water supply scheme for defendant Nos.1 to 3 in accordance with the provisions contained in Maharashtra Water Resources Regulatory Authority Act, 2005. A committee appointed under Section 16 of the said Act has examined the matter and approved sectoral allocation of water for various purposes. The resolutions passed by the Government and the assessment of the expert body indicates that Jog River is a perennial river and only 0.205 TMC water is required for

implementation of the scheme of defendant Nos.1 and 2. Pursuant to the sanction accorded by the Government, an agreement has been executed between defendant Nos.1 and 2 Village panchayats in the capacity of Bulk Water User Entity ("BWUE") and Executive Engineer, Ratnagiri, Irrigation Department, Ratnagiri, a Bulk Water Supply Entity ("BWSE). It was, thus, submitted that once the concerned Department has taken an informed decision, based on expert assessment, the plaintiffs cannot seek to restrain the implementation of the scheme, which is for the benefit of more than 7500 inhabitants of defendant Nos.1 and 2 of Gimhavane and Vanand villages. The continued resistance of the plaintiffs to the implementation of the scheme has caused grave prejudice to the inhabitants of villages Gimhavane and Vanand and has also resulted in the project overrun and escalation in the cost of the project.

11. Ms. Bhatia, the learned AGP, also supported the submissions of Mr. Railkar. It was submitted that the scheme for Gimhavane and Vanand village has been approved after considering the availability of water and sectoral allocation plan. The plaintiffs do not have any right to restrain the State from permitting the other village panchayats to draw water from the said reservoir.

12. To start with, the remit of jurisdiction of this Court in a petition against the discretionary orders passed by the Civil Courts. In exercise of supervisory jurisdiction, this Court is not supposed to act as an Appellate Court. This Court cannot re-appreciate the evidence and material. Nor is it open to correct error of facts and law. This Court is expected to intervene where the courts below have transgressed the jurisdictional limits and committed patent errors of law. Supervisory jurisdiction is primarily to ensure that the Civil Courts act within the bounds of their jurisdiction.

13. Keeping in view the aforesaid limits of the jurisdiction of this Court, at the outset, it is imperative to note that the concurrent *prima facie* findings of facts by the courts below are generally not amenable to interference unless the findings are plainly perverse. Perversity in the findings of the Courts may arise either on account of non-consideration of material which bears upon the determination of the issue or consideration of the extraneous factors in exercising the discretion to grant or refuse the injunction.

14. On the aforesaid touchstone, it is imperative to note that, even if the case of the plaintiffs is taken at par, the plaintiffs do not have any proprietary title and interest either in the source of

the water or the scheme that has been implemented for the water supply to their villages. The scheme was sanctioned and implemented by the Government and, thereafter, its management is entrusted to the local bodies i.e. Gram Panchayats. On first principles, the plaintiffs do not have any right to restrain the State Government from sanctioning the scheme for other village panchayats. The learned Civil Judge was justified in observing that the water is a natural resource and nobody can assert an exclusive claim over the natural resources.

15. The only question that warrants consideration is, whether the water supply scheme for Gimhavane and Vanand village panchayats has been sanctioned by the State Government by following the due process. The affidavit-in-reply filed on behalf of defendant Nos.1 and 2 makes it clear that the authority constituted under the Maharashtra Water Resources Regulatory Authority Act, 2005 has considered the proposal, in the light of the input of the experts and thereafter sanctioned the scheme. The technical evaluation sheet annexed to the communication dated 12th October, 2023 indicates that the available water storage is 2.211 TMC. Out of that, only 0.205 TMC water was proposed to be utilized for the scheme for Gimhavane and

Vanand villages. Upon consideration of the technical evaluation report, the Government has sanctioned the scheme vide Resolution dated 14th March, 2024. And an agreement also came to be executed on 7th August, 2024 between Gimhavane and Vanand village panchayats, as BWUE, and BWSE.

16. The material on record indicates that Jog River is a perennial river. There is more than adequate storage of water even at the embankment near which the plaintiffs water collection and storage unit is located. The quantity of water which is proposed to be utilized for implementation of the scheme for Gimhavane and Vanand is such that it would not prejudicially affect the supply of water for the plaintiffs. The objection of the plaintiffs to the construction of the water collection and storage unit for Gimhavane and Vanand water supply scheme is wrongly grounded in facts and unsustainable in law. It defies comprehension as to how the construction of a collection and storage unit even at a close distance of the unit of the plaintiffs, would affect the scheme of the plaintiffs, when there is more than adequate water storage to meet the requirements of water supply, under both the schemes.

17. *Prima facie* it appears that the plaintiffs do not have any right to either restrain the defendants from drawing water from

the reservoir or the State Government from sanctioning such scheme for Gimhavane and Vanand village panchayats. On the aspect of the balance of convenience, the courts below were fully justified in returning the finding that the balance of convenience tilted in favour of the defendants. An order of injunction would cause serious prejudice to the inhabitants of Gimhavane and Vanand villages, which are stated to be parched for water.

18. In the totality of circumstances, the courts below were fully justified in declining the prayer for interim injunction. This Court does not find that there is any infirmity in the impugned orders. Resultantly, no interference is warranted in exercise of supervisory jurisdiction. The petition, therefore, deserves to be dismissed.

19. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed with costs.
- (ii) Rule discharged.

[N. J. JAMADAR, J.]