

Satish Sabharwal and Others

Vs

State of Maharashtra and Others

Civil Appeal Nos. 256 of 1985 and 4875 of 1984

(CJI P. N. Bhagwati, V. Khalid, G. L. Oza JJ)

20.12.1986

JUDGMENT

OZA, J. :-

1. These two appeals were heard by us and by our order dated March 10, 1986 we maintained the judgment of the High Court and dismissed both the appeals; by this order we modified the order for compensation which was passed by the High Court. Our reasons for the same are :

2. The necessary facts for the disposal of these appeals are that the appellant in one of the appeals before this Court who was the third petitioner before the high Court is a private limited company incorporated for the purposes of carrying among others the business of exporting frozen meat of buffaloes, sheep and goats. The Al Kabeer Exports Pvt. Ltd. along with other two tool initiative in the business and obtained an import licence, the project being 100 per cent export-oriented. The licence they obtained stipulated the entire production of the plant to be exported for 10 years and the construction and the operation of the project were to be according to the standards of hygienes prevailing in the European Economic Community Countries and of the U. S. Foods and Drugs Administration. The plant was to be equipped with the most modern equipments. The petitioners selected a site of agricultural land in village Savandhe in Bhiwandi Taluka of Thane District, comprised in Survey Nos. 40/2, 41, 42, 44, 45 and 70 totality admeasuring about 68, 327 square metres. This site was included in "U" Zone in the Bombay Metropolitan Regional Plan for the period from 1970 to 1991 prepared under the Bombay Metropolitan Region Development Authority Act, 1974, "U" Zone denoting that the land was future urbanisable area.

3. The site is situated at a distance of 2 kilometres from Bhiwandi Town having Muslim majority which has been a trouble spot for communal riots for past some years, with the surrounding villages of Savandhe, Gorsai, Shelar, Chavindra, Pogoan and Bhorpada situate at a distance of 1/2 km., 1 km., 1/2 kms., 1 1/2 kms., 2 kms and 2 kms. respectively. These villages have a population of about 400, 1500, 3000, 2500, 500 and 1500 respectively, majority of the population of altheas villages being Hindus. This site is situated on the bank or river Kamawari whose water is used for the purposes of drinking and washing by the inhabitants of the surrounding villages and where the Hindus from Bhiwandi and the aforesaid surrounding villages immerse their Ganesh idols on the Ganpati Immersion Day.

4. After selecting the site the petitioners obtained the requisite permission from the relevant authorities, and on April 4, 1980 they obtained permission from the Sarpanch of the Group Gram Panchayat of Savandhe which certificate state that if the land comprised in the site of the plant was converted into non-agricultural plot in favour of the petitioners, the Panchayat would not have any

objection whatsoever as it will increase the income of the Panchayat. Petitioners (before High Court) obtained the consent from the Maharashtra Prevention of Water Pollution Board under Section 28 of the Maharashtra Prevention of Water Pollution Act, 1969 to discharge the effluents from the proposed plant in the water pollution prevention area of Ulhas River basin as notified under Section 18 of the Act subject to certain terms and conditions. The proposed plant was registered as an industry by the Director General of Technical Development on January 8, 1981. On August 11, 1980 Collector Thane was approached for permission to use the land for non-agricultural purposes for the said plant under Section 44 of the Maharashtra Land Revenue Code, 1966. Collector granted the said permission by his order dated April 5, 1982 subject to certain terms and conditions.

5. It appears that thereafter some trouble started and the villagers round about Bhiwandi town which included also the villages mentioned above addressed a complaint to one Shri Sadanand Varde, MLA from Bombay, making the following grievances : (i) that the construction of the abattoir has been started without the permission of the Gram Panchayat, (ii) that cows, bulls and buffaloes were to be slaughtered in the abattoir, (iii) the abattoir was likely to pollute the air giving rise to diseases endangering the health of the villagers, (iv) that discharge of effluent from the abattoir in the river would pollute the river water which was used for drinking both by the villagers and cattle thereby endangering the life of the villagers as well as the cattle which is the means of livelihood of the villagers, (v) that the prices of land would be reduced on account of pollution there by preventing the industrial development of the villages and (vi) the religious feelings of the Hindus in Bhiwandi town and the villages would be hurt since the effluents from the abattoir would be discharged in the river where traditionally Hindus were immersing their Ganesh idols. The villagers therefore, prayed that under no circumstances, the abattoir should be permitted. Shri Varde in his turn along with a letter dated January 24, 1983 forwarded the said complaint to the Revenue Minister of the State Government with a request to consider the objections of the villagers and to stop the construction in the meanwhile. On the basis of this letter it appears that the government on February 17, 1983 called for a report in the matter from the Collector Thane who in turn called for a report from the Tehsildar Thane and Tehsildar Thane in his turn issued a notice to all the parties including the promoters of this project and on March 7, 1983 recorded the statements of respective parties including Shri Rizwan Bubere the holder of a General Power of Attorney and the Tehsildar sent his report on the same day to the Collector. Meanwhile on April 5, 1983 a detailed representation was received against the venture (abattoir) by the Revenue Minister of the State from the Sarpanch of Savandhe-Gorsai Group of Gram Panchayat and others. In this representation more or less similar grounds as were initially raised in representation to the MLA were raised. The government by its order dated April 28, 1983 directed the petitioners to stop the construction works for a period of 15 days pending investigation and on April 30, 1983 the government directed the Commissioner, Konkan Division to submit his detailed report on the complaint received from the villagers by holding an on the spot inspection. The Commissioner made enquiries and on the spot inspection on May 9 and 11, 1983, submitted his report on May 17, 1983 and it was received by the government on May 18, 1983. By order dated May 25, 1983 government further stayed the construction for a period of one month.

6. On June 7, 1983 Al Kabeer Exports Pvt. Ltd. and others filed a petition before the High Court challenging the order of stay granted by the government and obtained an ad interim stay of the government's order pending admission of the writ petition. Government filed their affidavit on June 13, 1983 and stated that the government was reconsidering the matter and ultimately by order dated June 14, 1983 High Court admitted the writ petition and continued the interim relief of stay granted but government was directed to pass its final orders in the matter.

7. On August 16, 1983 one Dr. Vyas his writ petition before the High Court being No. 2717 of 1983 challenging the order dated April 5, 1982 of Additional Collector, Thane granting permission to the petitioners for covering the land to non-agricultural use and prayed for stoppage of construction work and on the same day ad interim stay was granted by the High Court. It appears that on a statement made by the government counsel that government would take a final decision in the matter on or before October 15, 1983 the court modified its interim order passed earlier and permitted construction work to continue at the risk of the persons concerned without prejudice to the writ petition.

8. On October 7, 1983 the government issued a show cause notice in its revisional jurisdiction under Section 257 of the Code and on October 14, 1983 the petitioners were supplied with the grounds on which the government proposed to revise the order of Additional Collector, Thane. The appellants herein replied to the show cause notice and the grounds by their written submissions dated November 2, 1983. Hon'ble Minister heard the revision on the same day and by his order dated November 25, 1983 set aside the order of Additional Collector and cancelled the permission granted to the appellants to use the land for purposes of their said project. In the meanwhile, on November 18, 1983 violent riots had taken place directed against the setting up of the abattoir in the village Savandhe and in the clashed of rioters with the police personnel four person were killed, may others injured, and property was damaged to a considerable extent. Against the decision of the Minister cancelling the permission granted by Additional Collector the petition was filed in the High Court on December 5, 1983 under Articles 226 and 227 of the Constitution for quashing the decision of the government and it is that petition which gave rise to the present two appeals.

9. The main question which was raised before the High Court and also before us is about the scope of Section 257 of the said Revenue Code and power of State Government in exercise of revisional jurisdiction. It was also incidentally raised that revisional powers could not be exercised beyond 90 days. Grounds under Article 19 (1) (g) also were raised. The learned Judges of the High Court have examined the scope of Sections 44 and 257 of the Revenue Code in detail and after considering all the facts and circumstances came to the conclusion that the government had the power to revise even suo motu orders passed by Additional Collector and found that the grounds on the basis of which the government acted existed and therefore the action on the part of the government was bona fide and in public interest although the learned Judges felt that the government did not act diligently but still in the public interest the High Court maintained the order passed by the government with the directions to compensate the persons concerned. Mainly it is on this ground that the learned Judges of the High Court have maintained the order passed by the government. After hearing arguments at length, in our opinion, the view taken by the High Court appears to be correct. We see no reason to interfere with the view taken by the High Court, as we have observed earlier. We therefore dismissed both the appeals.

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