

# RAJASTHAN HIGH COURT

E. I. H. Ltd.

Vs.

State of Rajasthan

Civ. W.P. No. 4816 of 2000  
(N.N. Mathur, D.N. Joshi, JJ.)

06.02.2001

## JUDGEMENT

**Mathur, J.**

1. This writ petition under Article 226 of the Constitution of India by E.I.H. Limited is offshoot of the two pending writ petitions known as "Udaipur Lakes System," challenging the order dated 8/9-12-2000 (Annex. 12) passed by the Collector, Udaipur, directing the petitioner Company to stop construction work with immediate effect of Phase Second of "Hotel Trident".

2. The City of Udaipur is known for its lakes system and for its scenic beauty. However, a concern was expressed by the citizens about increasing number of hotels around the Pichhola Lake polluting the water. The lakes which are lifeline of all the inhabitants of Udaipur have rapidly turned into a death trap on account of pollution in water, heavy siltation and encroachments. The writ petition in the public interest was filed before this Court as back as in the year 1982. The State Government realizing that Udaipur lakes are facing environmental problems, siltation and also shrinkage in its area, with a view to protect the water of the lakes from further pollution, in exercise of powers under Section 299 read with Section 171 of the Rajasthan Municipalities Act issued a notification dated 17-1-1997 declaring a prohibited area known as "No Construction Zone" around the lakes. The construction in the area specified in the notification was completely banned. Later-on, in view of certain difficulties faced because of the notification dated 17-1-1997, a decision was taken to frame the building construction bye laws in the said restricted zone. Accordingly, superseding the notification dated 17-1-1997, another notification dated 10-12-1999 was issued whereby some of the areas which are neither attached nor related to Lakes System,

have been excluded. However, a complaint was made that in spite of government notification, the constructions are being raised in the "No Construction Zone". It was also pointed out that in the garb of the Byelaws of 1999, the U.I.T. has permitted or deliberately ignored raising of construction in the "No Construction Zone." It was also brought to the notice of the Court that Udaipur Lakes System has been recognized and included in the "National Conservation Plans" of the Ministry of Environment and Pollution, Govt. of India. It was pointed out that the Central Government has ambitious plans for conservation and development of National Lakes. However, the pre-condition to take up the Udaipur Lakes System under the said plan is that the State Government should give free environmental status of the area within 200 metres of the high flood level of the lakes so that further deterioration does not take place. It was emphasized that 200 metres zone around the lakes may be declared as "No Construction Zone." It was realized that if the construction in the "No Construction Zone" is not strictly prohibited, efforts made in the public interest litigation pertaining to the Udaipur Lakes System would be a futile exercise. Thus, this Court directed the State Government and other local authorities to prepare a time bound programme. The time bound programme has been submitted by the authorities and this Court is monitoring the same. In this background, first directions were given by interim order dated 8th May, 2000. In the instant writ petition, we are concerned with the directions contained in sub para (vii) of Para 23 of the interim order dated 8th May, 2000, which reads as under :

"23. (vii) Keeping in view the decision of the Apex Court in *M. C. Mehta v. Union of India*, reported in <sup>1</sup> whereby the "Precautionary Principle" and the "Pollute Pays" principle have been accepted as essential features of "sustainable development as part of the environmental law of the Country. We direct that no construction of any type shall be permitted now under "No Construction Zone" under the Notification dated 17-1-1997 except in a case where the plots have already been sold/allotted prior to 17-1-1997, if the construction extended/re-construction of the house is for the personal use and further has an approval under the relevant building Bye Laws/Rules. Any building/house/commercial premises already under construction on the basis of express sanctioned plan shall not be effected by this order. However, all such constructions shall be subject to the clearance of the Pollution Board before the occupation certificate is issued in respect of the building by the authorities concerned."

3. When the matter came up before us on 5-9-2000 for reporting compliance of the

order dated 8-5-2000, it was brought to the notice by the Court Commissioner that they have noticed massive construction activity at the Trident Hotel on the bank of Pichhola Lake. According to the Court Commissioners, the construction activity was within the "No Construction Zone" stipulated by the notification dated 17-1-1997. It was suggested that an enquiry into the matter concerning the title of the land, legality of the approvals for construction and deviations in the actual construction from the approved plans may be ordered to bring out irregularities, if any, at any levels. In view of this, this Court in sub para (ii) of Para 23 of the order dated 5-9-2000 directed as follows:

"23. Directions:

(ii) As regards the offending construction raised by Trident Hotel, the Collector, Udaipur, shall file an affidavit as to whether he has verified that construction is within "No construction (sic) Trident Hotel is raising construction within "No Construction Zone", he is expected to take appropriate action. The non-action shall be entirely on his (Collector) risk. The Collector, Udaipur is duty bound to punctually, faithfully and religiously comply with the orders of this Court dated 8-5-2000 and issued from time to time."

4. Sri Prem Singh Mehra, Collector and District Magistrate, Udaipur, in his affidavit, has stated that the land on which construction of Trident Hotel is going-on, comprised of Khasra No. 148 and the same has been recorded in the name of Place Households. The Lake Palace Hotels and Motels Private Limited Company transferred 75 acres of land in favor of East India Hotel Ltd. vide a registered lease deed dated 7-12-1992. The life of the lease deed is of 72 years. The East India Hotel Ltd. applied for grant of permission for construction of a hotel on the said land. The permission was granted for construction of a hotel as per plan vide Order dated 24-11-1995. The permission remained valid for a period of one year i.e. upto 23-11-1996. It was further extended for a further period of three years vide Order dated 12-5-1997. Prior to the said order, the State Govt. issued a notification dated 17-1-1997 declaring the areas around the lake to be "No Construction Zone". Pursuant to the said notification, the U.I.T., Udaipur stopped the second phase construction of the said hotel vide Order dated 12-8-1997. However, the State Government by Order dated 17-9-1999 clarified that as the permission was granted to the East India Hotel Ltd. Prior to notification dated 17-1-1997 prohibiting the construction within the "No Construction Zone," the said notification shall not have retrospective effect. In view of this, the Collector has stated in his affidavit that-

"It is a fact that the land where the East India Hotel Ltd. is making construction of a hotel, comes within the "No Construction Zone". But according to the clarification made by the State Government vide Order dated 17-9-1997 the notification issued on 17-1-1997 shall not operate retrospectively. However, the directions given by this Hon'ble Court vide Order dated 8-5-2000 vide para 7 were carefully considered."

He has further stated that –

"According to the answering respondent's humble submission the construction of the Hotel in questions falls within the exception as pointed-out by this Hon'ble Court. It is clear from the directions given by this Hon'ble Court that any building/house/commercial premises already under construction on the basis of express sanctioned plan shall not be effected by this order and all such constructions shall be subject to the clearance of the Pollution Board before the occupation certificate is issued in respect of the building by the authorities concerned. The construction of the Hotel in question was commenced just after the Order dated 24-11-1995 was passed and the construction of the building continued for years together. The East India Hotel Ltd. obtained extension of period for continuing the construction and the same was extended upto 11-5-2000. The area was declared as "No Construction Zone" vide notification dated 17-1-1997 and at that time, the construction of the Hotel was going on and was also in progress. In view of those dates the answering respondent bonafidely and with all sincerity formed an opinion that the continuation of the construction of the said Hotel as per sanctioned plans shall not be effected by the order of this Hon'ble Court and, therefore, no action was required to be taken against the Hotel owner.

That so far as the 1st phase of the said Hotel building is concerned, the Pollution Control Board has already granted a permission vide its letter dated 15-4-1997 which was valid upto 30-9-2000 and thereafter, the case for renewal is pending with RDCB, Jaipur. That besides, the Pollution Control Board has also granted permission to the said Hotel owner for second phase construction upto 31-3-2001. Therefore, the second part of the order passed by this Hon'ble Court also stands complied with by the owner of the Hotel.

That in order to know the exact position of construction as to whether the same

is going on in accordance with the permission granted to the owner of the Hotel, a Committee was constituted by the District Collector, Udaipur and said Committee was directed to submit its report immediately. The Chairman of the Committee was the Officer on Special Duty, U.I.T., Udaipur as many as 5 other members were included in the said Committee. The said Committee submitted its report before the District Collector, Udaipur on 9-11-2000. A photostat copy of the report is submitted herewith for the kind perusal of this Hon'ble Court and marked as Ex. R./C. 3. As the permission for construction was valid upto 11-5-2000 and it has not been further renewed by U.I.T. the Hotel authorities have been asked to stop the construction immediately marked as Ex. R./C. 4."

5. It is contended by Dr. A. M. Singhvi, learned Senior Advocate for the petitioner, that the impugned Order dated 8/9.12.2000 (Annex. 12) passed by the Collector, Udaipur, is illegal being based on misconstruction or the perverse misreading of the orders of this Court dated 8-5-2000 and 5-9-2000. It is submitted that the case of the petitioner clearly falls under the exception carved out by the Court in Para 23 (vii) of the Order dated 8-5- 2000. Learned counsel after reading the directions contained in para 23 (vii) has submitted that this Court has saved the construction which has been approved under the relevant building bye laws or the rules or any building/house/commercial premises already under construction on the basis of express sanctioned plan prior to 17-1-1997. Learned Counsel has further submitted that by the subsequent Order dated 5-9-2000 the Court only asked the Collector, Udaipur to file an affidavit as to whether the offending construction raised by the Trident Hotel falls within the "No Construction Zone" or not. It is also submitted that the petitioner Company is not raising construction within the "No Construction Zone". It is pointed out that the subject construction is on the area known as Hardasji Ki Magri. This area has been excluded in the subsequent notification dated 10-12-1999. It is also submitted that the first phase of the Hotel is complete and has started functioning. The second phase of the project is estimated to cost around Rs. one hundred crore. The petitioner has already spent more than forty crores for second project. It is pointed out that the construction has been raised in conformity with the conditions mentioned in the permission letter and the bye-laws. It is pointed out that the petitioner Company has installed imported biological treatment plant for re-cycling waste water and for other related activities at the cost of Rs. 50 lacs. The petitioner Company has left a buffer strip of land of 65 metres width between the Pichhola Lake and the Hotel. It is submitted that at the first instance, as the petitioner Company has

commenced the construction within the stipulated period and, as such, there is no requirement of the renewal of permission and secondly, even if it is so, in the facts of the case, the doctrine of legitimate expectation is attracted and the petitioner Company is entitled to such extension of time. Learned counsel has placed reliance on two decisions of the Apex Court in *M. P. Oil Extraction v. State of M.P. reported in* <sup>2</sup> and *Navjyoti Coop. Group Housing Society v. Union of India reported in* <sup>3</sup> Learned counsel has also referred-to decisions of the Apex Court in *Century Spinning and Manufacturing Company Ltd. v. Ulhasnagar Municipal Council reported in* <sup>4</sup> and *M/s. Vij Rasins Pvt. Ltd. v. State of Jammu and Kashmir reported in* <sup>5</sup> for the proposition that the theory of promissory estoppel is attracted in the facts of the case.

6. On the other hand, it is submitted by Mr. R. L. Jangid, learned Additional Advocate General, that the construction of the Trident Hotel is going-on in Khasra No. 148 which finds place in the subsequent notification dated 10-12- 1999 (Annex. 11) and, as such, it is wrong to contened that the subject area does not fall within the "No Construction Zone". It is further submitted that Clause 15 of the permission letter dated. 24-11-1995 clearly stipulates that permission is valid for a period of one year from the date of issue. However, it was further extended for a period of three years by Order dated 12-5-1997, which expired on 11-5-2000. The application for extension was filed on 8-5- 2000 i.e. prior to 11-5-2000 but in the facts and circumstances of the case, it was considered appropriate not to give further extension more particularly in view of directions of this Court.

7. Mr. Rajendra Rajdan, who has been permitted to intervene in the matter, submitted that this petition is not maintainable for the reason that after the impugned Order dated 8/9-12-2000, the U.I.T. Udaipur has passed an Order dated 20th Oct. 2000, whereby the application submitted by the petitioner Company for extension of time has been rejected and the said order has not yet been challenged and, as such, this petition is not maintainable.

8. We have considered the rival contentions. At the outset, we may say that there does not appear to be serious dispute on the point that the subject construction i.e. second phase of the Hotel Trident falls within the "No Construction Zone." It is of-course true that the area known as Haridasji Ki Magri does not find place in the subsequent notification dated 10-12-1999 but there is a reference of Khasra No. 148. Even according to the petitioner, the construction is being raised on Khasra No. 148.

9. It is also not in dispute that this Court while prohibiting the construction within the "No Construction Zone", has carved out an exception by making the order non-effective for the construction on the premises on the basis of express sanctioned plan prior to 17-1-1997. It is also not in dispute that the petitioner Company was granted permission to construct a hotel on the subject land. This permission has continued up to 20-5-2000. Therefore, the only question which survives for consideration is whether in the facts of the case, the petitioner Company can be permitted to continue the construction of the hotel even after the expiry of the extended period granted by the respondent U.I.T.?

10. Sub-section (2) of Section 72 of the Urban Improvement Act imposes restrictions on use of land or building otherwise than in conformity with the master plan or scheme in operation or general approval of the Trust. For these activities, permission from the Trust has to be obtained. Section 73 deals with the application for such permission and its procedure. Sub-section (3) of Section 73 provides that on receipt of an application for permission under sub-section (1) the officer or authority competent under Section 72 to grant the permission after making such inquiry as may be considered necessary in relation to any matter, shall, by order in writing, either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission. There is no provision for renewal of permission in the event the life of permission is restricted to certain period. A letter of grant of permission under Section 72 of the Rajasthan Urban Improvement Trust Act is a statutory document. While granting the permission, the authority may provide a reasonable period for completion of the work. It is expected from the permission holder to commence the erection of building and complete the same within the stipulated period. However, there may be delay in construction for various reasons. If, for good reason, the period originally fixed has expired, it does not mean that the plan has become a dead document. In our opinion, it merely lies dormant and is re-activated with the grant of extension. It is of- course true that there is no provision for extension of time but such power is inherent in the authority granting permission. We do not mean to say that an application for extension of period can be made at any time after the original period has expired but it must be made within a reasonable period and as to what would be a reasonable period, would depend upon the facts and circumstances of each case. A learned single Judge of this Court while considering the identical provisions of Section 170(9) of the Rajasthan Municipalities Act, 1959 in

*Durga Shanker v. State of Rajasthan, reported in* <sup>6</sup> has observed that if the work is not commenced within the stipulated period then the fresh permission would be necessary but if the work has already commenced within the prescribed period then it is not necessary to complete the construction within the said period.

11. Once it is held that the U.I.T. has power to renew permission of construction, the case of the petitioner falls within the exception carved in Para 23(vii) of our order. While directing ban in "No Construction Zone", we kept in view the "sustainable development as part of the environmental law" as is evident from the opening part of the relevant directions. Thus, there is apparent misreading or misconstruction of our order, leading a faulty impugned order.

12. We are to take a reasonable and balanced view of the entire situation. It is necessary to accommodate all the essential components for a healthy and developing Society. We cannot retract our steps from industrialization to simplistic nature. Proper planning with a will to improving the environment is the basic need to control pollution. On the world map, Udaipur is one of the choicest Tourist destination. For the development of the Tourism industry, Udaipur needs at least some hotels providing accommodation of international standard to foreign and local guests, but not at the cost of polluting the lakes. They must bear in mind that by polluting the lakes, they will not survive. Lakes are to be respected and worshipped. Even slightest disturbance polluting the lakes shall not be tolerated, howsoever, high or mighty one may be, he/she shall be dealt with in an exemplary manner. It must be ensured that sufficient technical and preventive measures are taken. The problem calls for popular vigil. All these aspects are required to be kept in view by the authority concerned, while considering the application for renewal of permission.

13. Consequently, this writ petition is allowed. The order of the Collector, Udaipur dated 8/9-12-2000 (Annex. 12) and the Order dated 20th Dec. 2000 are quashed and set aside. The U.I.T., Udaipur is directed to pass a fresh order on the application filed by the petitioner for extension of time for completion of second phase of Hotel Trident. The application shall be decided within a period of one month from today after giving an opportunity of hearing to the petitioner. Cost easy.

Petition allowed.

Cases Referred.

1. (1997) 3 SCC 715
2. (1997) 7 SCC 592 (AIR 1998 SC 145)

3. (1992) 4 SCC 477
4. 1970 (1) SCC 582
5. (1989) 3 SCC 115
6. 1997 (1) RLW 83