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Court : Mumbai

Decided On : Feb-20-1995

Reported in : AIR1995Bom342; 1996(5)BomCR174; (1995)97BOMLR338

Judge : Dr E.S. Da Silva and; T.K. Chandrashekara Das, JJ.

Acts : [Constitution of India](#) - Article 226; [Environment Protection Act, 1986](#)

Appeal No. : Misc. Civil Appln. No. 403 of 1994, in Writ Petn. No. 333 of 1993

Appellant : The Goa Foundation and Others

Respondent : The North Goa Planning and Development Authority and Others

Advocate for Def. : V.B. Nadkarni, Adv. General, ;G.U. Bhohe, Govt. Adv., ;Ashok Dessai, Sr. Adv., ;R.M.S. Khandeparkar, Standing Counsel, ;M.S. Sonak, ;A.N.S. Nadkarni, ;A Mashalkar, ;A.P. Lawande, ;Rohan Shah, Advs.

Advocate for Pet/Ap. : Smt Norma Alvares, Adv.

Judgement :

ORDER

Dr. Silva, J.

1. This is an application for stay filed by the petitioners in Writ Petition No. 333/93 with regard to the construction of Palm Hotel of the respondent No. 7, situated at Miramar, on the ground that subsequent developments justify the intervention of the Court in order to halt the progress of the same construction which is going on in clear violation of the [Environment Protection Act, 1986](#) and its Rules (hereinafter called 'the Act').

2. The case of the petitioners is that consequent upon the admission of the aforesaid Writ Petition on 30th August, 1993 an interim application for stay was rejected by this Court vide Order dated 16th September, 1993 and thereafter on a Special Leave Petition the Supreme Court also, by its Order dated 10th January, 1994, refused to interfere with this Court's Order. On 6th September, 1994 the petitioners filed an application, being Miscellaneous Civil Application No. 307/94, for urgent final hearing of the petition which is pending before this Bench for consideration. In the meanwhile a team of Experts of the respondent No. 8, the Ministry of Environment, visited the site and an Interim Report was given by them which, according to the petitioners, unequivocally establishes that the hotel project of respondent No. 7 is in total violation of the Coastal Regulation Zone Notification dated 20th February, 1991. The petitioners are filing this application for stay also on the ground that the construction work is daily causing irreversible damage to the fragile ecology of the area. The Interim Report of the Committee appointed was prepared after its Members visited various places in Goa on a complaint that a series of violations were being done in this State in respect of constructions made in breach of the provisions of the Notification. The Report expressly observes that the construction of the respondent No. 7's hotel is abutting the water front and is coming up on the seaward side of the existing block of residential buildings. There is also no road between the sea and the construction site. On query the officials of the Goa Government informed that they regarded the site as a river front though they concede that it was affected by tidal action and that they had given the approval of 10 mts. set back on the basis of the river front assumption. Some Committee Members disagreed that this was a river front but even assuming that it was so, according to the Report, the minimum set back of 100 mts. or the width of the river as per the said Notification was required to be maintained. The Report also adds that the building was being constructed with

inadequate set backs. An inspection of the Regional Plan for Goa Surface Utilisation Plan (2001 AD) reveals that the site in question is categorised as a beach and the river Mandovi is shown much further. The Report further noted that on visual inspection of the beach the site of the construction is clearly located on a bay and since the river Mandovi flows into the bay this is an estuarine area which is ecologically sensitive and vital for marine life. The Report has taken notice also that water extends from the beach up to the hotel site and they have observed several marine organisms on the beach including crabs, cuttlefish remains and sea shells. It was also reported that there was natural beachfront vegetation on either side of the site. A casuarina plantation grown by the Goa Government as a wind break for shore protection was seen to be standing on either side of the construction site and it was apparent that the casuarina plantation was cut down to accommodate the construction. The Report also refers to the information given to the Committee that a temporary access road to the site was to be widened and made permanent which would clearly involve large scale tree cutting resulting in ecological imbalance. Further the construction extended right up to and within the High Tide Line and as such the wave impact was impeded by the building walls of one part of the complex. It was therefore pleaded that in the light of the Expert Committee's Report they are entitled to an injunction against the respondent No. 7 restraining it from moving any further with its construction on the Miramar beach. It was stated that since the hotel construction was not stayed by this Court, the respondent No. 6 is using the Order dated 16th July, 1993 as a licence to violate its approved building plans. The petition was admitted but the application for interim relief rejected. At that time the Chief Town Planner in his affidavit has averred that the construction was some 23 metres away from the river bank and therefore well within the set back allowed to the hotel. However, the Report of the Expert Committee indicates that such construction is now touching the water. This proves that the construction is also in violation of the very permission which was granted by the Town Planning Department when the set back of 10 mts. was imposed on the said construction. In addition and at a subsequent stage the petitioners have also brought to the notice of this Court that the Supreme Court by its Order dated 13th December, 1994 has laid down a ban on constructions of all sorts in the area, at least up to 500 mts. from the sea water, as a maximum High

Tide and therefore the said area from the High Tide Level up to 500 mts. should be kept free from constructions of any type. It was therefore pleaded by the petitioner that on the strength of this Order of the Supreme Court also the construction of respondent No. 7 should not be allowed to progress and thus the prayer made by the petitioner be granted in order to restrain the respondent from proceeding with the same.

3. The application was resisted by the respondents. On behalf of the respondent No. 7 an affidavit was filed wherein it has been stated that the purported Interim Site Visit Report of the Expert Committee appointed by the Government of India cannot be a valid ground for reconsideration of earlier orders refusing interim relief pending the hearing and final disposal of the petition. It was flatly denied that the hotel project and the site are within the Coastal Regulation Zone as the Coastal Zone Management Plan for Goa has not been approved till date. It was submitted that the findings of the Committee were not correct and instead are vitiated by misconstruction of the Coastal Regulation Zone Notification and misdirection in law as well. The Interim Report is under consideration of the Central Government and the petitioners could not in law require this Court to accept the same and preempt the decision of the Central Government who may reject the same. Besides, the respondent No. 7 was not represented before the Committee nor was it given an opportunity to show cause against those findings. Thus, the Report is a nullity being in breach of the principles of natural justice and fair play. It was denied that the Hotel Resort is situated at Miramar beach which is far away from the construction site. It was also denied that the construction is abutting the water front or coming up on the seaward side of the existing block of buildings within the meaning of the Coastal Regulation Zone Notification. It was also denied that there was sea near the site. It was submitted that the construction was carried out in accordance with the approved plans and the same was located on the river bank on the landward side of the existing buildings. Further between the respondent NO, 7's hotel project and the Mandovi river there is land through which the Government of Goa has proposed a road. Besides, the Government of Goa has erected a retaining wall on the land between the hotel site and the river at a distance from the hotel building. This is itself betrays the allegation that the hotel building touches the water. It was denied that the construction impedes the free

movement of persons across the beach area since the construction is not located on the beach at all.

4. The Government of Goa through the Chief Town Planner has also filed an affidavit wherein it was stated that the plans submitted by the respondent No. 7 for the construction of their hotel at Miramar were scrutinized by the Planning Development Authority and 'No Objection Certificate' was granted after considering all the aspects including the environmental aspects. The Committee which drew the Report came to Goa to inspect certain designated sites and report on violation of the norms and guidelines prescribed for development of beach resorts/hotels etc. in the Coastal Regulation Zone of the State. Mr. R. N. Ray, Senior Town Planner, accompanied them. Based on the interpretation given by the Goa Government to the Coastal Regulation Zone Notification in the Fourth Meeting of the G.S.C.E. held on 14th June, 1991 read with the earlier decision of the Town and Country Planning Board in its 40th meeting held on 6th October, 1989 the 7th respondent's hotel which is beyond 500 mts. from the High Tide Line does not lie within the Coastal Regulation Zone. Hence there is no question of the hotel project being in violation of the Coastal Regulation Zone Notification. The said project has also not violated any set backs or sanctioned plans or building permissions. It was further stated that the finding given by the Committee that the respondent No. 7's hotel project is on the seaward side of an existing block of residential buildings is incorrect and misleading. It is incorrect because the project is not on the sea coast but instead on the Mandovi river bank. It misleads because it fails to record that there are several existing buildings such as Kala Academy, Indoor Stadium and Youth Hostel which are far nearer to the Mandovi river when compared to the 7th respondent's hotel. Another statement which is factually incorrect in the report is that the construction extended right up and within the High Tide Line and as such the wave impact was impeded by the building walls of one part of the complex. As a matter of fact the High Tide Line is about 1.5 kms. away from the hotel site.

5. Several contentions were vehemently raised by the parties and a number of rulings cited in support of their positions. We have heard learned counsel and we are of the view that in the facts and circumstances of the case the petitioners are

not entitled to the interim relief sought for by them. At the outset we do not propose to make any observations with regard to the question as to whether the suit construction lies in the Coastal Regulation Zone or not or whether the same is located either on a beach or a seafront or along the bank of the Mandovi river. Similarly we need not be concerned at this stage as to whether the suit construction falls in an estuarine area or in a bay being therefore subject to tidal action which by itself would imply that it may be covered by the Coastal Regulation Zone within the meaning of the Notification dated 20th July, 1991. We were shown from the records the map of Goa depicting the position of the river Mandovi and its mouth as well as the site of the hotel project. We have also taken note of the coastal or shoreline of the State. Suffice is to say that in common parlance bay is to be defined as a wide indentation into a land formed by the sea or by a lake and beach is a strip of land or terrace bordering the sea usually recognized as that part which lies between the high and low water marks formed by the action of the sea. Coast is the part of the land which borders the sea or other extensive tract of water and so comes under the direct influence of the waves while coastline or shoreline is coastal outline of the land which includes bays that cross narrow inlets and river mouths. In its turn estuary is the mouth of the river where tidal effects are evident and where fresh water and sea water are mixed.

6. From these definitions which we have extracted from the Dictionary of Geography by W. G. Moore which was made available to us by the learned Advocate General we are prima facie satisfied that the location of the hotel project cannot be said as laying along the coastline or shoreline of this State or in a beach bordering the sea but instead along the bank of the river Mandovi on the basis of the interpretation given by the Goa Government to the Coastal Regulation Zone Notification and according to which the High Tide Line is represented about 1.5 kms. away from the site.

7. This being the position we find that the Interim Report of the Committee recorded by the Central Government and which seems to be just in the nature of a fact-finding mission meant to be considered by the Ministry of Environment and in respect whereof admittedly no follow-up has been taken by the Government or action initiated for its acceptance, cannot be neither deemed nor held as a new

fact or a fresh development which is likely to materially change the situation prevailing at the time of the passing of the earlier order of this Court refusing to entertain the petitioners' prayer for stay of the suit construction.

8. It is not in dispute that the said Report appears to have been prepared by a Committee in which no representative of the respondent No. 7 hotel was allowed to submit his views in order to enable its Members to help arriving at any findings with their active and direct assistance on the matter. Being so it is simply impermissible to seek to bind the said respondent to such a report on which it was not given an occasion to have its say according to the principles of natural justice. To be noted also that the record discloses that all the issues raised by the Committee in the Report have been borne in mind by this Court at the time of delivering its first order dated 16th September, 1993 whereby the temporary relief of stay moved by the petitioners against the suit construction was rejected.

9. Indeed this order was carried by the petitioners before the Supreme Court in a Special Leave Petition which was similarly refused by the Apex Court. While dismissing the said petition the Supreme Court made it clear that it did not find any ground to interfere in the matter. We are very much convinced and have reasons to believe that whatever submissions which were advanced by the learned counsel before us today have been certainly placed before the Apex Court for its consideration. In spite of that the Supreme Court chose not to stop the construction of the respondent No. 7's hotel on the basis of the arguments aimed at projecting a case of violation of the Coastal Regulation Zone or of the plans approved by the Goa Government after all clearances and No Objection Certificates were granted by the concerned authorities both at the State and Central level. The Supreme Court, however, advised while declining to accede to the petitioners' move to halt the respondent No. 7's construction that, if any construction elsewhere was being proceeded contrary to the Notification issued by the Government of India, it was open to the petitioners to take whatever steps are available in law and approach the High Court for getting adequate remedy. This means that the Apex Court in an overall and balanced view of the matter found in its wisdom that as far as the suit construction is concerned there was no need to restrain the respondent No. 7 to continue with the same in spite of the grounds

sought to be made out by the petitioners against such construction. Hence at this stage the question of the respondent No. 7 having violated the provisions of the Notification dated 20th February, 1991 in breach of the Coastal Regulation Zone does not seem to arise at all.

10. As we already held above, the findings of the Interim Report of the Committee cannot be said as advertent to the Court any new facts which might have given to the petitioners a fresh cause of action to apply again for the stoppage of the construction on the strength of any subsequent violation of the Environment Protection Act. In our judgment the attempt of the petitioners to re-open the issue of the stay of the construction would mean that the Order of this Court already upheld for all purposes by the Apex Court was to be now reviewed and which exercise seems to find no support either in facts or in law.

11. The contention of Mrs. Alvares, learned counsel for the petitioners, that the order of the Supreme Court dated 10th January, 1994 was not a speaking order or based on the merits of the case and therefore there is no scope for any incorporation of the order of this Court in the order of the Apex Court, with due regard, has not been able to impress us in the peculiar facts and circumstances of this case bearing specially in mind the very wording of the order which although did not spell out its reasons in detail has in so many words implicitly acknowledged as valid the grounds adopted by this Court in the order under challenge before it. We are therefore not prepared to accept the view taken by the learned counsel in this respect.

12. Reliance placed by the learned counsel on the following rulings, namely, Indian Oil Corporation Ltd. v. State of Bihar AIR 1986 SC 1780, The Workmen of Cochin Port Trust v. The Board of trustees, : (1978)11LLJ161SC and Arjun_Snigh v. Mohindra Kumar, : [1964]5SCR946 , has been duly considered by us and we are afraid that none of them is going to take the petitioners' case any further.

13. In Indian Oil Corporation Ltd. case AIR 1986 SC 1780 the Supreme Court has indeed held that the dismissal of the Special Leave Petition in limine by a non-speaking order does not justify inference that by necessary implication the contentions raised in the Special Leave Petition on the merits of the case have

been rejected by the Supreme Court. It was observed that neither on the principle of res judicata nor on any principle of public policy dismissing the Special Leave Petition operate to bar the trial of identical issues in a separate proceeding, namely, the writ proceedings before the High Court merely on the basis of an uncertain assumption that the issues have been decided by the Supreme Court at least by implication. We have to see however that the ruling refers to an order which is really non-speaking in its essence and nature and concerns solely on the implication regarding the matter of trial of identical issues in separate proceedings before the High Court. We have already seen that here is a case wherein the question of principles of res judicata is considered not in different proceedings but instead in the very same proceedings. We have also recorded in what context the order of the Supreme Court is unable to be deemed as a non-speaking order to the extent that the same implicitly adopts all the points and contentions which were raised before this Court at the time of delivering of the first order and reiterated before the Supreme Court at the time of the hearing of the Special Leave Petition. We say so because in our estimation the petitioners while prosecuting the present application have sought again to reopen the same issues although claiming to present new developments or fresh facts in respect whereof we have already dealt with in due course.

Further in the Workmen of Cochin Port Trust's case : (1978)11LLJ161SC also cited above the Supreme Court has clearly laid down that even if one writ petition is dismissed in limine by a non-speaking one word order 'dismissed', another writ petition would not be maintainable because even the one word order must necessarily be taken to have decided impliedly that the case is not a fit one for exercise of the writ jurisdiction of the High Court. Thus another writ does not lie. If it is so, obviously the narrow and limited issues involving this application for stay and which are deemed to have been settled by the Supreme Court cannot be brought to light once again before this Court unless the petitioners were able to satisfy that in substance fresh or new facts had arisen for that purpose. We so observe without prejudice to the view already taken by us in respect of the word 'elsewhere' used in the Supreme Court's order dated 10th January, 1994.

14. Similarly a reference to the observations of the Supreme Court in Arjun Singh's case : [1964]5SCR946 to the effect that interlocutory orders are capable of being altered or varied by subsequent applications are to be viewed in the light of the fact that this remedy seems to be available only on proof of new facts or new situations which subsequently emerge. In this regard it is needless to reiterate that we are not impressed nor inclined to accept that any of the grounds sought to be made out by the petitioners on this count can be considered as a new fact so as to create a fresh cause of action to the petitioners.

15. As far as the recent judgment of the Supreme Court dated 12th December, 1994 brought to our notice by the petitioners in our opinion the same does not appear to throw a blanket ban putting a total halt on each and every construction irrespective of the fact of the same being located or not within the Coastal Regulation Zone. In our view the said judgment seems to direct all the States only, which were parties in the petition, not to permit the setting up (which by itself suggests a fresh move on a new start) of an industry or construction of any type in an area at least up to 500 mts. from the sea water as the maximum High Tide Line and thus it does not seem that this judgment can be extended so as to apply its ratio to constructions which already started and are in full progress after having been cleared on all technical and environmental aspects by the concerned authorities.

16. In the result we see no merit in this application which is accordingly dismissed with however no order as to costs.

17. In view of the dismissal of this application the undertaking given by the respondent No. 1 on 22nd December, 1994 stands discharged.

18. Application dismissed.