

agk

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.176 OF 2012

Mr.Rajesh Madhukar Pandit and others

..Petitioners.

Versus

The Nashik Municipal Corporation and others

..Respondents.

Mr.Pravartak S. Pathak for the petitioners.

Mr.M.L. Patil for respondent Nos.1 and 2.

Mr.R.B. Raghuwanshi i/by Ms.Rutuja Ambekar for respondent No.3.

Mr.Ravindra A. Lokhande with Mr.D.A. Nalawade for respondent No.4.

Mr.D.J. Khambatta, Advocate General with Mr.A.B. Vagyani, AGP for respondent No.5.

Ms.Shyamali Gadre i/by Little & Company for respondent No.6.

**CORAM : A.S. Oka, &
G.S. Patel, JJ.**

DATE : 20th August 2013

PC. :

1. We have heard the learned Advocate General mainly on two aspects, the first is regarding the process of land acquisition for setting up STPs at Gangapur and Pimpalgaon Kham. The second aspect is regarding the present financial status of the Nashik Municipal Corporation.

2. As far as the land acquisition in relation to setting up of STP at Gangapur is concerned, learned Advocate General invited our attention to the order dated 27th February 2013 passed by a Division Bench of this Court in Writ Petition No.11174 of 2012. He pointed out that a Special Leave Petition has been filed by the Nashik Municipal Corporation for challenging the said order in which ad-interim order directing maintenance of status-quo has been passed. He submitted that in view of the order of status-quo passed by the Apex Court, the State Government could not take any further steps in the matter of land acquisition. Learned counsel appearing for the Nashik Municipal Corporation states that the Special Leave Petition has been fixed on 27th August 2013.

As regards setting up of STP at Pimpalgaon Kham, learned Advocate General has relied upon the affidavit of Shri. Ramchandra B Pawar, Deputy Collector (Land Acquisition) No.2, Nashik. In paragraph 9 onwards of the said affidavit, a detailed schedule has been set out by the said Officer for completing the proceedings of acquisition. In paragraph 14, the Officer has stated that the entire acquisition is likely to be completed by 31st May 2014. As regards the question of applying urgency clause, the learned Advocate General stated that the State will wait for the order of the Apex Court in the pending Special Leave Petition in relation to the land at Gangapur. He states that even if the urgency clause is not applied, the State

shall endeavor to complete the acquisition within the time-frame as set out in the affidavit.

3. As regards the financial condition of the Nashik Municipal Corporation, learned Advocate General has relied upon affidavit of Prabhakar Rao Baburao Pawar, Deputy Secretary, Urban Development Department. In paragraphs 5 to 7 of the affidavit, it is stated thus :

“5. I say that the Government of India has filed its affidavit in the above matter and has stated that under the JNNURM scheme they have sanctioned and disbursed the funds for the Godavari river and therefore they cannot further provide additional funds and has stated that the Government of Maharashtra provide necessary funds for the said project and NEERI. I say that under JNNURM scheme the Government of India has released Rs.101.18 cr. as its share. The State Government has released Rs.40.52 cr. as State share to the Nashik Municipal Corporation in regard to the sewerage schemes of the Nashik Municipal Corporation.

6. I say that as per the provisions of Maharashtra Municipal Corporation Act, 1949, it is the duty of the corporation to maintain sewerage plant as well as to take all such steps to reduce the pollution in Gadavari river.

7. I say that the Government of Maharashtra has already sanctioned and disbursed an amount of Rs.40.52 crores as State share besides Government of India share of Rs.101.18 cr. to the Nashik Municipal Corporation under the JNNURM scheme for sewerage plants and for further measures required to reduce the pollution in the Godavari river.”

In further part of paragraph 7, it is pointed out that the Nashik Municipal Corporation has submitted a proposal for a sanction to raise a loan of Rs.200 crores under Section 109 of the Maharashtra Municipal

Corporations Act, 1949. The proposal has been processed and submitted to the Government for “in principle” approval.

4. We have already directed the Municipal Corporation to pay the charges payable to NEERI. In view of what is set out in the affidavit of Mr. Prabhakar Rao Baburao Pawar, we find that the case made out by the Municipal Corporation that it does not possess sufficient funds to pay to NEERI cannot be accepted.

5. Our attention has been invited to the order passed by the Maharashtra Pollution Control Board (for short “MPCB”), which is at page 115 of the petition (Exhibit R-8 annexed to the affidavit of MPCB). The said order records that there are existing six STPs of the Nashik Municipal Corporation. Various directions have been issued by the Pollution Control Board to the Municipal Corporation as regards the functioning of existing six STPs. We find from the affidavits filed by the Municipal Corporation that none of the affidavits deal with compliance with very comprehensive and elaborate directions contained in communication dated 12th March 2013. We direct the Appropriate Officer of the Nashik Municipal Corporation to file an affidavit dealing with the issue of compliance of said order. Said affidavit shall be filed within a period of two weeks from today.

6. Our attention is invited to the affidavit filed by the Nashik

Municipal Corporation on 16th August 2013. In paragraph 16 of the affidavit, it is pointed out that a proposal has been submitted by the Municipal Corporation to the Urban Development Department of the State Government for effecting change of name of the post of the Environment Conservation Officer to the Executive Engineer (Environment) and Environment and Conservation Officer (Group – A). The said proposal has been submitted on 22nd October 2012.

In the affidavit of Shri Prabhakar Rao Baburao Pawar, it is stated that the proposal will be decided within a period of two months. We may note here that the proposal is not for creation of any new posts but the proposal is for the change of designation of the existing post. We, therefore, direct the State Government to process the said proposal dated 22nd October 2012 and take appropriate decision thereon within a period of one month from today.

7. Our attention is also invited to the proposal dated 2nd August 2013 submitted by the Commissioner of Police of Nashik City to the Director General of Police, Maharashtra State. The said proposal is for creation of additional posts of four Sub Inspector of Police and thirty Police Constables. We direct the Director General of Police, Maharashtra State to consider the said proposal and to take appropriate decision thereon within a period of one month from today.

8. This takes us to the affidavit in reply of Mr.J.C. Borse, Executive Engineer of the Maharashtra Industrial Development Corporation, the respondent No.6. In the said affidavit, it is stated that Satpur Industrial Area is spread over about 630 Hectares. It is stated that it has mainly engineering, automotive and electrical sector industries. There are around 1100 industrial units, out of which only 48 units are engaged in electroplating, phosphating, anodizing, electro-polishing and allied metal finishing activities. A stand has been taken that in the industrial areas of the respondent No.6 – Corporation, Common Effluent Treatment Plant (CETP) have been set up by the Associations of Industries. It is contended that the CETPs are set up only by the Associations and not by the respondent No.6. In paragraph 12, reliance has been placed on the proposal submitted on 16th August 2012 by the Association of Industries for allotting area for setting up of CETP in Satpur. The learned counsel appearing for respondent No.6 states that a plot has been earmarked for setting up CEPT but no final decision has been taken on the application dated 16th August 2012.

9. We have examined what is set out in the affidavit. As far as Satpur Industrial Area is concerned, the Respondent No.6 is the Special Planning Authority under Section 40(1A) of the Maharashtra Regional and Town Planning Act, 1966. Under sub-section (19) of Section 2 of the Maharashtra Regional Town Planning Act, 1966, a Special Planning Authority

is also a Planning Authority. The affidavit discloses that there is a need to set up a CETP. Being the Planning Authority for the area, the primary responsibility of setting up of CETP is that of the respondent No.6 – Corporation. In our view, the respondent No.6 cannot wait till the Association of Industries comes forward and offers to set up a CETP. The stand taken in the affidavit indicates that if the Association of Industries does not come forward, the respondent No.6 is under no obligation to set up a CETP. Once it is accepted that setting up of a CETP is necessary, the respondent No.6 being the Planning Authority is under an obligation to ensure that CETP is set up as expeditiously as possible. Whether the CETP is established by the Corporation by itself or through the Association, the respondent No.6 will have to specify the outer limit within which the CETP shall become functional. We direct the respondent No.6 to file a further affidavit setting out the outer limit. The affidavit shall be filed within a period of three weeks from today.

10. The learned counsel appearing for the Maharashtra Pollution Control Board pointed out that in case of ten defaulting industries in Satpur and Ambad Industrial Area, action has been taken. He states that in case of five industries, it was found that the same were being run without permission and in respect of five other industries, action has been taken on account of breach of norms. As regards the effluent generated by the industries in the industrial estates set up by respondent No.6, the concerned Officer of the

Maharashtra Pollution Control Board will file a detailed affidavit setting out the steps taken by the Maharashtra Pollution Control Board. The affidavit shall be filed within four weeks from today.

11. Place the petition on 30th September 2013 at 3.00 p.m.

(G.S. Patel, J.)

(A.S. Oka, J.)

Bombay High Court