

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of order: 30th May, 2008

W.P. (C) 4168/2008

SUNIL SINGH Petitioner
Through Ms. Nivedita Sharma and Mr.
Yakesh Anand, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Rakesh Tikku, Advocate for R-1 & 2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

WP(C) No. 4168/2008 & CM No. 8114/2008

1. This writ petition, styled as a Public Interest Litigation ('PIL') has been filed by Shri Sunil Singh, a resident of DLF Phase-IV, Gurgaon, Haryana seeking a direction to set aside the environmental clearance dated 3rd April 2007 granted by the Ministry of Environment and Forests ('MOEF'), Government of India in favour of "the project DLF cyber city" and award exemplary damages and compensation to "the

petitioner and residents of Gurgaon to improve environment”.

2. The facts in brief are that environmental clearance was granted by the MOEF at New Delhi in favour of DLF Cyber City Developers Ltd. having its office at DLF City Phase I, Gurgaon, Haryana for construction of a commercial complex “DLF Cyber City” in Sectors 24, 25 and 25A in Gurgaon. According to the petitioner the impugned order is in contravention of the environment impact assessment notification issued by the MOEF. It is submitted that given the precarious ground water situation in Gurgaon, no such environmental clearance could have been given. A further ground of challenge is that the mandatory procedure prescribed for environmental clearance has not been complied with.

3. Ms. Nivedita Sharma, the learned counsel for the petitioner was asked to first address the issue of the maintainability of this writ petition. She submitted that since the impugned order dated 3rd April, 2007 granting environmental clearance had been issued by the MOEF in New Delhi, a part of the cause of action has arisen within the territorial jurisdiction of this Court. According to her although DLF Cyber City Developers Ltd. is not a party to the petition, its parent company, DLF Universal Ltd., having its registered office in New Delhi has been arrayed as respondent No.3. Further, although respondent No.2 is the Central Ground Water Board having its office

at Faridabad in Haryana, the principal office of that entity is in New Delhi. She relies upon some of the judgments of this Court where, in similar circumstances, writ petitions have been entertained.

4. It cannot be disputed that since the impugned order has been passed by the MOEF in New Delhi, a part of the cause of action does arise within the jurisdiction of this Court. The amendment to Article 226(2) by the Constitution (Forty-second Amendment Act), 1976 in fact expands the jurisdiction of a High Court to entertain a petition even where the seat of the Government whose order is challenged before it is not within the territory of the High Court. However, the question in the instant case is one of *forum conveniens*. In other words, the question is whether, notwithstanding the fact that this Court has jurisdiction, it should exercise such jurisdiction to entertain the petition.

5. The above approach has been adopted by this Court in the past while declining to entertain writ petitions. For instance, this Court has dismissed, on the ground of maintainability, writ petitions challenging orders of Tribunals, having their seat in Delhi, but where the cause of action originated in a State outside Delhi. A sampling of such decisions are *Bombay Snuff (P) Limited v. Union of India* (2006) 194 ELT 264 (Del), *Seth Banarsi Dass Gupta v. Commissioner of Income Tax* (1978) 113 ITR 817 (Del), *Suraj Woolen Mills v.*

Collector of Customs (2000) 123 ELT 471 (Del), *CCE v. Enkay HWS India Limited (2002) 139 ELT 21 (Del)*. A reference may also be made to the decisions of this Court in *Sector Twenty One Owners Welfare Association v. Air Force Naval Housing Board 65 (1997) DLT 81 (DB)* and *Ela Kumar v. A.I.C.T.E. 117 (2005) DLT 371 (DB)*.

6. In *Kusum Ingots & Alloys Limited v. Union of India (2004) 6 SCC 254* after reviewing the entire case law a three-Judge Bench of the Supreme Court explained the doctrine of *forum conveniens* as under:

“30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. (See *Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal 670*; *Mandal Jalal v. Madanlal, (1945) 49 CWN 357*; *Bharat Coking Coal Limited v. M/s. Jharia Talkies and Cold Storage Pvt. Ltd. (1997) CWN 122*; *S.S. Jain and Co. and another v. Union of India and others (1994) CHN 445*; *M/s. New Horizon Ltd. v. Union of India, AIR 1994 Delhi 126*).”

7. Recently, in *Ambica Industries v. Commissioner of Central Excise (2007) 6 SCC 769* the Supreme Court again surveyed the entire law

including its earlier decisions in *Nasiruddin v. STAT (1975) 2 SCC 671* and *Kusum Ingots* and concluded:

“41. Keeping in view the expression “cause of action” used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of *forum conveniens* may also have to be considered.”

In the process the Supreme Court approved some of the judgments of this Court referred to para 5 hereinabove.

8. Turning to the case on hand, the bundle of facts pleaded by the petitioner, indicate that the substantial part of the cause of action arises within the jurisdiction of another Court before which the petitioner has an equally efficacious remedy. The environmental clearance issued by the impugned order dated 3rd April 2007 is in favour of M/s. DLF Cyber City Developers Limited which has its office in Gurgaon in Haryana. The clearance is in respect of construction of a commercial complex “DLF Cyber City” in Sectors 24, 25 and 25 A, Gurgaon, Haryana. The petitioner is a resident of Gurgaon in Haryana and he states that he is filing this PIL on behalf of the residents of Gurgaon. The complaint is about the grant of environment clearance notwithstanding the precarious ground water situation in Gurgaon. Given the facts pleaded, there can be no manner of doubt that the State of Haryana would be a necessary party.

9. For all the above reasons, although a small part of cause of action may be said to have arisen within the jurisdiction of this Court on account of the issuance of the impugned environmental clearance by the MOEF, Government of India located in New Delhi, a substantial part of the cause of action has in fact arisen within the jurisdiction of the High Court of Punjab and Haryana. The petitioner has an efficacious alternative remedy before that Court and has not shown how he is prevented in any manner from approaching that court. Accordingly, applying the doctrine of *forum conveniens* this Court declines to entertain this petition.

10. It is made clear that this Court is declining to entertain this petition not because it lacks jurisdiction but because on the facts as pleaded by the petitioner and on applying the doctrine of *forum conveniens* it is satisfied that the petitioner has an efficacious alternative remedy before another Court. It is further clarified that this order is not intended to constitute an opinion by this Court on the merits of the petition or on whether it is barred by laches.

11. While not entertaining this petition, this Court leaves it open to the petitioner to approach the appropriate High Court with a petition seeking similar relief.

12. The writ petition as well as the pending application are

accordingly dismissed.

CHIEF JUSTICE

S.MURALIDHAR, J

MAY 30, 2008

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