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SATISH SABHARWAL & ORS. ETC.

v.

STATE OF MAHARASHTRA ETC.

DECEMBER 20, 1986

B

[P.N. BHAGWATI, C.J., V. KHALID AND G.L. OZA, JJ.]

Maharashtra Land Revenue Code, 1966; ss.44 & 257—Government—Whether has power to revise suo motu order passed by Collector—Cancellation of permission to use land for non-agricultural purposes—State to pay compensation for cost incurred on project set up on the land.

The petitioner-appellant carrying on the business of exporting frozen meat of buffaloes, sheep and goat, sought to establish an abattoir, meat processing plant and a cold storage in a riots prone area near D. Bombay. The site was situated on the bank of a river whose water is used for purposes of drinking and washing, besides religious usage, by the inhabitants of the surrounding villages. The Sarpanch of the Group Gram Panchayat granted no objection certificate. The District Collector granted permission to use the land for non-agricultural purposes for the said plant under s.44 of the Maharashtra Land Revenue Code, 1966 E. on April 5, 1982.

At this stage the villagers raised objections to the setting-up of the plant and made a representation to the Revenue Minister alleging that construction of the abattoir and discharge of effluent from the abattoir into the river would pollute the river water which was used for drinking F. purposes. The Government issued a show cause notice to the appellants on October 7, 1983 under s.257 of the Code for cancellation of the order of the District Collector. The Minister heard the revision and by his order dated November 25, 1983 set aside the order of the District Collector.

G. Aggrieved by the said order the appellants filed a petition in the High Court under Arts. 226 and 227 of the Constitution for quashing the decision of the Government cancelling the permission.

H. The High Court upheld the order of the Government but directed it to pay compensation for the cost incurred in setting up the project up to October 7, 1983, being the date when show cause notice was issued.

The petitioners appealed to this Court by special leave against upholding of the impugned order while the State preferred the appeal by special leave against the direction for payment of the compensation. A

Dismissing the cross appeals this Court confirmed the judgment of the High Court upholding the order of the Government. It also held the appellants entitled to compensation in lieu of costs incurred on the project and interest on the compensation amount for the period subsequent to October, 7, 1983. B

Pronouncing the reasons, the Court,

HELD: The High Court has examined the scope of ss.44 and 257 of the Maharashtra Land Revenue Code, 1966 in detail and after considering all the facts and circumstances come to the conclusion that the Government had the power to revise even *suo motu* orders passed by the 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 it did not act diligently, but still in public interest the High Court maintained the order passed by the Government with the direction to compensate the persons concerned. The view taken by the High Court appears to be correct. There is no reason to interfere with it. [879D-F] C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 256 of 1985 and 4875 of 1984. E

From the Judgment and Order dated 24th August, 1984 of the Bombay High Court in Writ Petition No. 4232 of 1983.

Ram Jethmalani, Khatu Cooper, S.B. Bhasme, Ms. Rani Jethmalani, Tushad Cooper, G. Subramaniam, Ashok Sharma, Ajai Singh Chandal, V.S. Desai, A.S. Bhasme, A.M. Khanwilkar for the appearing parties. F

K. Parasaran, Attorney General, P.H. Parekh and Ms. Indu Malhotra for the Interveners. G

The Judgment of the Court was delivered by

OZA, J. 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 H

A for compensation which was passed by the High Court. Our reasons for the same are:

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 in-

B corporated for the purposes of carrying among others the business of exporting frozen meat of buffaloes, sheep and goats. The Al Kabeer Exports Pvt. Ltd. alongwith other two took initiative in the business and obtained an import licence, a project being 100% 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 hygiene 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 lands in village Savandhe in Bhiwandi Taluka of Thane District, comprised in Survey No. 40/2, 41, 42, 44, 45 and 70 totally D 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.

E 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 km, 1½ km, 2 km, and 2kms respectively. These villages have a population of about 400, 1500, F 3000, 2500, 500 and 1500 respectively, majority of the population of all these villages being Hindus. This site is situated on the bank of 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.

G After selecting the site the petitioners obtained the requisite permission from the relevant authorities and on 4.4.1980 they obtained permission from the Sarpanch of the Group Gram Panchayat of Savandhe which certificate stated that if the land comprised in the site of the plant was converted into non-agricultural plot in favour of H the petitioner, the Panchayat would not have any objection what-

soever as it will increase the income of the Panchayat. Petitioners (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 8th January 1981. On 11.8.80 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 Act, 1966. Collector granted the said permission by his order dated 5.4.1982 subject to certain terms and conditions.

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, M.L.A. 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 thereby 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 alongwith a letter dated 24th January, 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 17.2.83 called for a report in the matter from the Collector Thane who in turn called 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 7.3.83 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. In the

- A meantime on 5.4.83 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 M.L.A. were raised. The Government by its order dated 28th April, 1983 directed the petitioners to stop the construction work for a period of 15 days pending investigation and on 30th April, 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 9th and 11th May, 1983, submitted his report on 17th May, 1983, it was received by the Government on 18th May, 1983. By order dated 25.5.1983 Government further stayed the construction for a period of one month.

- B On 7th June, 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 13.6.83 and stated that the Government was reconsidering the matter and ultimately by order dated 14.6.83 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.

- E On 16.8.1983 one Dr. Vyas filed his Writ Petition before the High Court being No. 2717 of 1983 challenging the order dated 5.4.1982 of Additional Collector, Thane granting permission to the petitioners for converting 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 15.10.83 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.

- G On 7th October, 1983 the Government issued a show-cause notice in its revisional jurisdiction under Section 257 of the Code and on 14.10.83 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 2.11.83. Hon'ble Minister H heard the revision on the same day and by his order dated 25.11.1983

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 18.11.83 violent riots had taken place directed against the setting up of the abattoir in the village Savandhe and in the clashes of rioters with the police personnel 4 persons were killed, many 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 5.12.83 under Arts. 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.

The main question which was raised before the High Court and also before us 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.

P.S.S

Appeals dismissed.