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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 88 OF 2018

Abhivyakti, an NGO

having its office at D-61/33/34,

Sector 12, Kharghar-410 201,

Dist. Raigad, through its

Honorary Secretary,

Shri Chandrabali Pandey

.. Petitioner

Versus

1. State of Maharashtra
(through the Under Secretary
to the Govt. of Maharashtra)
Urban Development Department,
Mantralaya, Mumbai
2. City Industrial Development
Corporation of Maharashtra Ltd.,
having their office at
CIDCO Bhavan, CBD Belapur,
Navi Mumbai – 400 614.
3. Panvel Municipal Corporation
having its office at Nityanand Road,
Old Panvel, Panvel,
Navi Mumbai – 410 206.
4. The Secretary,
Ministry of Environment and

Forests, Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi 110 003.

5. The Commissioner of Police
Office of the Commissioner of
Police, Sector 14, CBD,
Belapur, Navi Mumbai 400 614.
6. Swastik Infra-Logic (I) Pvt. Ltd.
A Company registered under
Companies Act, having its
office at P-201, 7th Tower, Belapur
Railway Station Complex,
CBD Belapur,
Navi Mumbai 400 614.

.. Respondents

Mr. Subhash Jha a/w Ms. Ankita Pawar I/by Law Global for
Petitioner.

Ms. Nisha Mehra, AGP for Respondent Nos.1, 5 & 6.

Mr. G. S. Hegde a/w Mr. C. M. Lokesh for Respondent No.2.

Mr. V. R. Kasle for Respondent No.3.

Mr. Rui Rodrigues a/w Mr. N. R. Prajapati for Respondent No.4-
UOI.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

RESERVED ON : SEPTEMBER 11, 2019.

PRONOUNCED ON: SEPTEMBER 16, 2019.

JUDGMENT: [Per Pradeep Nandrajog, CJ.] :

1. On 11th September, 2019 the matter was reserved for judgment requiring parties to file written submissions within two days.
2. None have been filed.
3. Case pleaded in the Public Interest Litigation is that 6 Hectare land situated between Sector 18 and 19 Kharghar, Navi Mumbai, District – Raigad is a water body due to it being connected to the main Panvel Creek. In other words, as per the writ petitioner, water flows from the Panvel Creek into the depression in the 6 Hectare of land, resulting in a pond being created.
4. Referring to the Environment (Protection) Act, 1986 and the Wetland (Conservation and Management) Rules, 2010 framed thereunder, it is pleaded that the land be declared as a Wetland and protected. It is pleaded in the PIL that debris is being dumped in the land. It is pleaded that 90% of the water body has already been encroached upon.

5. The land admittedly vests in City Industrial Development Corporation of Maharashtra Limited (CIDCO).

6. In the reply filed by CIDCO, it is pleaded that the subject land was comprised in the revenue estate of village Owe, Kharghar and Taloja. Vide notification dated 20th March 1971 land in said villages was notified for development, which included the subject land. It is pleaded that no pond ever existed. By way of compensation to the owners of the subject land, as per law, 12% of the developed land was handed over. It is denied that the subject land was connected to any Creek. With reference to the revenue record, it is pleaded that the land is jirayat, meaning thereby, only during monsoon water would accumulate in the land which was cultivated during the non-monsoon seasons. The pleading obviously is that there is a slight depression in the land where water accumulates only during monsoon.

7. In the rejoinder filed, the Petitioner has not traversed the averments made by the CIDCO in the counter affidavit and has chartered a different route. Referring to the decisions which highlight the importance of Wetland in the eco system, it is pleaded that the Supreme Court directed identification of

Wetlands in India under the Wetland (Conservation and Management) Rules 2010. It is pleaded that it is the duty of the authorities to notify Wetlands.

8. In view of the rejoinder filed wherein it is pleaded that after satellite imaging Wetlands need to be identified and declared Wetlands, an affidavit has been filed by the Sub Divisional Officer, Panvel annexing therewith a request made to the Director, Maharashtra Remote Sensing Application Centre by the Collector, Raigad to do the needful. Along with an affidavit filed by the Under Secretary, Urban Development Department, State of Maharashtra, letter dated 6th September, 2018 issued by the Maharashtra Remote Sensing Application Centre has been annexed as per which NWIA Atlas mapping was carried out during the year 2005 using IRS-1C LISS-III satellite data of 23.5m resolution as per which no Wetland was mapped either in Sector 18 or 19 i.e. at locations Latitude 19.047197 N, Longitude 73.079638 E.

9. Petitioner filed a rejoinder to the said affidavit filed by the Under Secretary, Urban Development Department, State of Maharashtra and pleaded therein that Indian Space Research Organization, Ahmedabad at Gujarat has done the necessary

mapping and has given Wetland code 1200 and 1202 to man made Wetlands.

10. In response to the said affidavit, under cover of an affidavit filed by Sub Divisional Officer, Panvel, response received from the Director, Space Applications Centre (ISRO) on 22nd November, 2018 has been annexed as per which satellite mapping by ISRO did not detect any Wetland at the latitude and longitude referred to in the satellite image mapping by the Maharashtra Remote Sensing Application Centre.

11. From the pleadings and the documents filed along with the pleadings, it is apparent that the case initially projected by the Petitioner was that the Wetland was created on account of the land in question being connected with the Panvel Creek. This is factually incorrect. The Petitioner thereafter changed track to plead that the water body was on account of the land being depressed and rain water accumulating. This fact was refuted effectively by the Respondents with reference to the revenue record showing that the land is jirayat land and water accumulates only during the monsoon and for the rest of the year the land is cultivated. Land was privately owned and was acquired by the State Government for development. The Petitioner then changed

the track by pleading that as per National Wetland Atlas prepared by ISRO, Ahmedabad, Wetland code 1200 and 1202 referred to man made ponds.

12. No material being placed by the Petitioner that the subject land was assigned Wetland code either 1200 or 1202, the Petitioner pleaded that unless satellite imaging by ISRO is done, reliance cannot be placed upon the satellite mapping by Maharashtra Remote Sensing Application Centre. The Respondents have obtained the information from ISRO pertaining to satellite imaging and as noted above on 2nd November, 2018 the Space Applications Centre (ISRO), Ahmedabad has informed that no water body was located when satellite imaging of the land in question was undertaken.

13. It is apparent that the PIL is motivated as pleaded in the counter affidavit filed by CIDCO. In the counter affidavit filed by CIDCO, it is pleaded that the attempt is to some how or the other stall development in Navi Mumbai. It is pleaded that the PIL was filed on assumptions and presumptions.

14. The pleadings and the documents which we have noted herein-above bring out the changing stand of the Petitioner

and additionally that the PIL was motivated to some how or the other stall development work in Navi Mumbai.

15. Raising the boogie of environment being damaged and annexing with the PIL Google images obtained during monsoon season, the PIL came to be filed.

16. We hold the PIL to be frivolous and dismissed the same imposing costs in sum of ₹ 1,00,000/- (Rupees One Lakh only) on the Petitioner. The costs shall be paid to the High Court Legal Aid Fund within two weeks.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE