
(1993) 02 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 578 of 1991

Bayer India Ltd. and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Citation : (1993) 4 JT 141 : (1993) 1 SCALE 672 : (1993) 3 SCC 29

Hon'ble Judges : N. Venkatachala, J;Kuldip Singh, J;B.P. Jeevan Reddy, J

Bench : Full Bench

Advocate : P.H.Parekh, A.M. Khanwilkar, J.B.D., E.C. Agrawala, Ashok Kumar Gupta and Vijay Laxmi Menon, for the Appellant;

Final Decision : Disposed Of

Judgement

1. By an order made on February 6, 1991, this Court (Ranganath Misra, C.J., M.H. Kania and Kuldip Singh, JJ.) disposed of Civil Appeal No. 578 of 1991 directing the appellants (applicants herein) to file a petition in the Bombay High Court seeking review of the order impugned in the said appeal. It was directed that if such a review petition is filed within the period prescribed, "the hearing of the review application will not be confined to the normal ground on which review can be sought but the entire controversy will be regarded as open as between the appellants herein and the respondents." It was further directed that "the interim order made by this Court on January 8, 1991 will continue to remain in operation till the review petition is decided by the High Court. However, it will be open for the High Court to vary or vacate the interim order on appropriate applications made to it by any of the parties or by any of the interveners here...in our opinion the review petition deserves to be disposed of with expedition and we would, therefore, request the High Court to dispose of the review petition, if filed as aforesaid, within four months from today and in any event by September 30, 1991." The matter was directed to be posted before the learned Chief Justice of the Bombay High Court for making appropriate directions.

2. The appellants have now come forward with this application complaining that

while not disposing of the review petition filed by them till now, the High Court has, under the orders impugned herein, directed that municipal corporation of city of Thane and the State of Maharashtra "to implement the order dated November 29, 1990 and writ petition No. 5189 of 1990 on or before January 15, 1993 without prejudice to the rights and contentions of both sides." Under the order dated 29th November, 1990 the Bombay High Court quashed the communication of the respondent-corporation dated January 9, 1990 and directed the corporation to "consider revalidation of the petitioners' plan sanctioned on August 11, 1989 vide commencement certificate Exh.B to the petition in accordance with law without taking into consideration the reason mentioned in the said communication dated January 9, 1990 Exh.C to the petition within eight weeks from today." In short, the effect of the order is that it directs the corporation to revalidate the plans submitted by Sri Sai Baba Construction Company and certain other persons (petitioners in writ petition No. 5186 of 1990) which were sanctioned earlier on August 11, 1989 but which came to nought by virtue of the communication dated January 9, 1990.

3. Briefly stated the dispute is this: The appellants are manufacturers of chemicals and drugs. They have their factories within the limits of Thane municipality. At the time these factories were established there were no residential buildings anywhere near these factories. In course of time, however, many builders and other private persons have come forward to construct buildings in the vicinity of these factories. The appellants-applicants say that hazardous substances and gases are stored and utilised in the said factories and that the danger of an explosion or a leak like the one that took place in Bhopal in 1984, cannot be ruled out. If any such accident happens it may lead to greater damage to human life than at Bhopal. To guard against any such eventuality, they say that within a radius of one kilometer, no residential buildings should be allowed to be constructed. It is on this basis that they had come to this Court in Civil Appeal 578 of 1991 and it was this submission which this Court requested the Bombay High Court to consider in the review petition filed by the applicants.

4. It may be noted that civil appeal 578 of 1991 was preferred against the judgment of the Bombay High Court in writ petition 4497 of 1990. Besides the petitioners in writ petition 4497 of 1990 there are several other builders and other persons who have obtained permission and who propose to construct residential complexes and houses nearby these factories. Probably, their construction may fall within one kilometer radius. Since all of them were not parties to civil appeal 578 of 1991 the appellants-applicants have sought to implead them. The persons proposed to be pleaded say that they were not parties to the order passed February 6, 1991 in civil appeal 578 of 1991 and, are therefore, not bound by the said order. They also say that their plans were sanctioned by the corporation earlier and that they are entitled to construct according to the sanctioned plan. They have referred to the development plan said to have been approved by the corporation recently, based upon expert opinion, regulating the construction activity in the vicinity of the said factories. They say that this

approved plan negatives the claims and apprehensions urged by the applicants. It is, however, not necessary for us to pronounce upon the correctness and validity of submissions of either of the parties in view of the directions we are making herein.

5. We are saddened to notice that inspite of the court's request contained in its order dated February 6, 1991, the High Court has not disposed of the review petition till now. The High Court was requested to dispose of the said writ petition within four months from the date of the said order and, at any rate, by September 30, 1991. It is more than two years since the order was made. While we certainly respect the independence of the High Court and recognise that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India. The request made in this case was contained in a judicial order. It does no credit to either institution that it has not been heeded to. We hope and trust that the delay in disposal of the review is either accidental or on account of some or other procedural problem. Be that as it may, the present situation would not have arisen if only the review petition had been disposed of within the time contemplated in the order dated February 6, 1990. We cannot also reject out of hand the contention of the appellants-applicants that the order dated December 18, 1992 in Civil Application 5.929 of 1992 in writ petition No. 5189 of 1990 tends to make the review infructuous; if constructions are allowed to come up within one kilometer radius before the review petition is disposed of, the review petition even if allowed, would be of little effect.

6. In this view of the matter, the I.A. is disposed of with the following directions:

(1) We reiterate our request to the High Court to dispose of the review petition expeditiously, at any rate within two months of this order.

(2) Pending disposal of the review petition, the status quo obtaining as on today shall continue within one kilometer radius of the appellants' factories. While the constructions already made shall remain as they are, no further construction activity shall be carried on within the said area.

(3) The applications pending for permission for construction or for sanction of construction plans may be processed by the Corporation in accordance with law and orders passed. But no construction activity shall take place within the said radius even if permissions are granted or sanctions are revalidated, as the case may be. The orders passed, permissions granted or sanctions revalidated shall be subject to the result of the review petition aforesaid.

7. There shall be no order as to costs.