
(2015) 02 BOM CK 0291

In the Bombay High Court

Case No : Public Interest Litigation No. 70 of 2003

Bhaskar Ganesh Datar

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 47, 48A, 48-A, 51-A

Citation : (2015) 02 BOM CK 0291

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.K. Menon, J

Bench : Division Bench

Advocate : Swaraj Jadhav i/b Mihir Desai, for the Appellant; S.N. Patil, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Abhay Shreeniwas Oka, J—The petitioner, who appears to be a resident of village Murud, Taluka Dapoli, District Ratnagiri has filed this PIL for inviting the attention to this Court to the alleged practice of immersion of Ganesh Idols and organic material like nirmalaya etc. in a lake situated within the premises of Durga Devi temple in the same village. The petitioner claims that he is vahivatdar and pujari of a temple of Durga Devi. He claims that his family is connected with the temple for a period of more than 50 years. A contention has been raised in the petition that the said lake is a source of drinking water for the villagers. It is contended that the area of the lake is only 600 sq. ft. It is stated that the seashore is at a distance of 300 meters from the said lake. It is contended that the earlier tradition was to discharge nirmalaya or organic material in the sea water. It is stated that earlier, only 4 to 5 idols were being immersed in the said lake and other idols used to be immersed in the sea. It is stated that now suddenly there is an increase in the numbers of Ganesh idols which are being immersed in the said lake. The contention is that the lake is a public property and a source of drinking water for the villagers. It is contended that the right to life under Article 21 includes right to clean, healthy and potable water. It is urged that the

pollution of the lake by the discharge organic material like nirmalaya and immersion of idols be prevented by issuing necessary directions.

2. The fourth respondent is the Durga Devi Devasthan Trust. More than one affidavit has been filed by the fourth respondent trust. It is pointed out by the said respondent that the petitioner has a personal interest in the property of the fourth respondent trust. In the first affidavit dated 11th August, 2003 the said contention has been raised. It is contended in the affidavit that the water in the lake is not being used for the purpose of drinking. There is a denial of the allegation that large number of idols are being immersed in the said lake. It is stated that Ganesh idols are made up of Shadoo (a kind of mud) and the same are not made up of Plaster of Paris and therefore, immersion of such idols does not cause pollution. It is contended that the petitioner has tried to raise the issues which do not exist. There is a rejoinder filed by the petitioner whereby the petitioner has denied that the lake is used only for washing hands and he reiterated that the lake water is being used for drinking purposes.

3. There is an affidavit filed by Shri Shailesh Shashikant More, a Member of Grampanchayat, Murud. He has supported the petitioner to an extent by stating that there is no custom in the village that the Ganesh idols are immersed in the said lake. It is stated that most of the villagers used to immerse their idols in the sea. He has stated that the lake water is used for drinking. He has described condition of the Well held by the village panchayat. It is alleged that the trustees of the Durga Devi temple are not keeping the lake clean. There are affidavits filed by several villagers in support of the said contention which are annexed to the said affidavit of the member of village panchayat. There is another affidavit filed by Shri Raghunath Narayan Joshi on behalf of the fourth respondent.

4. The learned counsel appearing for the petitioner who appeared on an earlier date stated that he has not received any instructions. However, he has placed on record the compilation of guidelines issued for Immersion of Idols and certain orders of this Court as well as the Apex Court. The learned counsel appearing for the fourth respondent stated that she has not received any specific instructions. However, she invited our attention to the statements made in various affidavits.

5. It will be necessary to make a reference to the decision of the Apex Court in the case of Association for Environment Protection Vs. State of Kerala and Others, (2013) 7 AD 425 : AIR 2013 SC 2500 : (2013) 116 CLT 1062 : (2013) 3 EFLT 598 : (2013) 10 JT 57 : (2014) 1 RCR(Civil) 14 : (2013) 8 SCALE 532 : (2013) 7 SCC 226 : (2013) AIRSCW 3840 : (2013) 4 Supreme 547 . Paragraph 3 of the said decision reads thus :

" 3. Although the Constitution of India, which was enforced on 26.1.1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48-A was inserted in Part IV of the Constitution and that State was burdened with the

responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, fundamental duties of the citizens were enumerated in the form of Article 51-A (Part IV-A). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51-A(g)]".

It is the fundamental duty of every citizen to protect and improve the natural Environment including forests, lakes, rivers and wildlife. Another relevant decision of the Apex Court is in the case of Virender Gaur and Others Vs. State of Haryana and Others, (1998) 1 CTC 143 : (1997) 10 JT 600 : (1995) 109 PLR 591 : (1994) 5 SCALE 211 : (1995) 2 SCC 577 : (1994) 6 SCR 78 Supp : (1995) 1 UJ 529 It will be necessary to consider what is observed in paragraph 7 of the said decision which reads thus :

"Article 48-A in Part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests lakes, rivers and wild life and to have compassion for living creatures." The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence, Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment Therefore, there is a constitutional imperative on me State Government and the municipalities, not injure to ensure and safe-guard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment".

(underlines supplied)

6. Thus, the Apex Court has extended the scope of Article 21. The Apex Court

held that right to live with human dignity encompasses within its ambit, the protection and preservation of environment, as well as right to live in hygienic and pollution free atmosphere. The Apex Court held that any contravention of this right will amount to violation of Article 21 of the Constitution of India.

7. Another important decision is in the case of M.C. Mehta Vs. Union of India (UOI) and Others, (1996) 8 AD 40 : (1997) 1 SCALE 4 : (1997) 1 SCALE 11 : (1996) 7 SCALE 579 : (1997) 3 SCC 715 : (1996) 7 SCR 465 Supp : (1997) 1 UJ 13 in which the Apex Court observed that the "Precautionary Principle" has been accepted as a part of the law of land. It will be necessary to make a reference to what is held in paragraph 10 of the judgment which reads thus :

" 10. The "Precautionary Principle" has been accepted as a part of law of the land. Articles 21, 47, 48A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The lakes "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes."

The existence of Precautionary Principle as a part of law of the land makes it mandatory for the state to anticipate, prevent and attack the causes of environment degradation. The judgment reiterates that it is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, wildlife etc.

8. Turning to the facts of the case we must note here that there is no material on record to decide whether the lake forms a part of the private property held by the Temple trust or is vesting in the State. There is a dispute whether there is a tradition to immerse Ganesh idols in the said lake. The law of land is clear. It is duty of every citizen to protect the said lake. It is also obligation of the State to prevent pollution of the said lake. Though in the affidavit in reply, it is claimed that the idols are not made up of Plaster of Paris but they are made up some kind of a mud. The Central Pollution Control Board has issued the guidelines for the immersion of idols. In the said guidelines, a note is taken of the change insofar as material used in making the idol is concerned.

9. Suffice it to say that it is duty of the first to third respondents to ensure that all the citizens perform their fundamental duty of protecting the said lake. In the facts of the case it is an admitted position that the sea is very close to the said lake.

10. The first and third respondents will have to consider of providing artificial ponds in the village to enable the villagers to immerse the Ganesh idols and other idols so as to prevent the pollution of not only the lake in question but also

the pollution of the sea. From the affidavits on record, it appears to us that the temple is visited by large number of devotees. It is necessary to ensure that nirmalaya or organic material is discharged in the lake. Therefore, the first and third respondents will have to ensure that large pots are placed in the premises of temple as well as near temple so as to ensure that the nirmalaya is not discharged in the lake. The District Collector will have to appoint appropriate the revenue officer with direction to visit the village and to take appropriate steps for preserving the pollution of the lake with assistance of village panchayat, considering the precautionary principle which we have reproduced above. As the Village Panchayat is not a party to the petition, we are unable to issue any direction to the Village Panchayat.

11. We accordingly dispose of the petition by passing the following order :

(i) We direct the District Collector, Ratnagiri to nominate any revenue officer not below the rank of Tahsildar, who shall visit village Murud, Taluka Dapoli;

(ii) The officer so appointed shall hold meetings of the members of the village panchayat, persons associated with the management of the Durga Devi temple and prominent citizens of the village;

(iii) The officer so nominated shall ensure that at the time of Ganesh festival and Navratri festival, every year, artificial ponds are made for immersion of idols. During the festivals, an appeal shall be made to the villagers not to immerse idols in the said lake and also in the sea and to maintain the lake free of pollution. We make it clear that this order shall not be construed to mean that there is any prohibition on immersion of idols in the sea;

(iv) The boards be displayed in the village at prominent places displaying an appeal to the citizens to immerse idols in artificial ponds. The officer so appointed by the Collector shall ensure that large pots are placed within the premises of the temple and just outside the temple with a written appeal to use said pots for discharge of organic material including Nirmalaya;

(v) We direct the Tahsildar to invite the trustees of Durga Devi Trust to the meeting convened by him. The Tahsildar shall impress upon the trustees of the Trust to discontinue practice of permitting the idols to be immersed in the said lake;

(vi) The petition is disposed of in above terms.

(vii) An authenticated copy of the order shall be forwarded by the office of the Government Pleader to the District Collector of Ratnagiri who shall act upon the same.