

(1998) 11 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2754 of 1997

Bombay Environmental Action Group and another

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Regional and Town Planning Act, 1966 — Section 20, 37

Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 25

Citation : (1999) 2 BomCR 243 : (1999) 2 MhLj 747

Hon'ble Judges : M.B. Shah, C.J.; S. Radhakrishnan, J

Bench : Division Bench

Advocate : I.M. Chhagla, Janak Dwarkadas, D.J. Khambata, G.S. Patel and M.S. Doctor, instructed by M.V. Jaykar and Co., Ms. Kiran Bhagalia, Anand Grover, Ms. U.M. Zaveri, N.B. Raut, P.K. Samdhani, Mrs. Uma Khanna and Arif Bookwala, instructed by P.V. Samant, for the Appellant; C.J. Sawant, A.G., V.M. Parshurami, A.G.P., V.V. Pai, T.C. Kaushik, V.B. Naik, N.K. Mudnani, W.S. Devanani, A.V. Antukar, R.C. Shah and Prafulla B. Shah, Mahendra H. Shah and B.B. Saraf, instructed by y. M.V. Kini, H.H. Thakkar, instructed by y. M/s. Thakore Jariwala and Ass., Vijay Kumar and Rajiv Wagh, instructed by y. Ms. Reshma Ruparel, S.V. Doijode, instructed by y. Desai, Doijode and Phatarphekar, for the Respondent

Judgement

M.B. Shah, C.J.—Heard the learned Counsel for all the parties exhaustively.

2. The petitioners in this public interest petition contend that there is large-scale illegal construction activity and deforestation in the Mahabaleshwar-Panchgani region, resulting in widespread environmental and ecological damage to these two hill stations and the area around them. It is the case of the petitioners that the provisions of the Regional Plan for Mahabaleshwar-Panchgani (1984-2001) are being violated and that construction is being carried on in breach of the provisions of the Building Bye Laws and Development Control Rules. The petitioners further contend that agricultural land is being extensively used for non-agricultural purposes such as hotels, holiday homes, luxurious private bungalows. The petitioners also contend that the forests of the Mahabaleshwar-

Panchgani region are being depleted at an alarming rate and that there are continuing non-forest activities being carried on in forest areas and which are not being curbed. The petitioners have also submitted that the natural and man-made heritage of Mahabaleshwar and Panchgani need to be protected and preserved. The petitioners therefore filed this petition on 15th May 1997 seeking orders and directions for the protection of the environment of Mahabaleshwar-Panchgani.

3. Rule was issued on 23rd June 1997 and, till further orders, the State Government was directed to form a committee comprising-

- (1) Mr. Arun Bhatia, Commissioner, Pune Division.
- (2) Mrs. Vandana Khullar, Collector, Satara District.
- (3) Mr. G.S. Pantbalekundri, Officer on Special Duty, BMRDA (formerly Deputy Secretary, Urban Development Department and former Deputy Director of Town Planning)
- (4) Mr. J.G. Keskar (retired Director of Town Planning.)
- (5) Mrs. Asha Javdekar, Deputy Director of Town Planning, Poona Division.
- (6) Col S. Mohite (retired).

The above Committee was to find out -

- (a) Illegal construction and deforestation in the hill station of Mahabaleshwar and in the Mahabaleshwar-Panchgani region.
- (b) Purchase or use of the land in violation of the land Revenue Code or Regional Town Plan for the Mahabaleshwar-Panchgani region.
- (c) Violation of Building Bye-laws and Development Control Rules for Mahabaleshwar Panchgani region.
- (d) Measures for preventing deforestation and to protect the forest from encroachment.
- (e) To find out construction of ostensible farmhouses in uncultivated agricultural lands.

The Committee was directed to submit a report within eight weeks suggesting remedial measures. Respondent Nos. 2, 5 and 6 were directed to take immediate action to prevent construction of building in violation of any statutory provisions including its limit for construction at a particular height as well as user of the basement. The learned Advocate General appearing on behalf of the State submitted that, according to the Bye-Laws, basement cannot be used for the purpose of restaurant or as a dining hall and that it can only be used for car parking or storage of goods. In view of the aforesaid statement, respondent No. 2 was directed to issue necessary orders and directions to see that violation of

the Bye-Laws or the Rules is immediately prevented.

4. The Committee submitted its report dated 17th November 1997. In this Report, the Committee identified approximately 1060 building and other violations in the Mahabaleshwar-Panchgani region, including in the gaathan areas and suggested various remedial measures. The Committee also made recommendations for the protection and regeneration of the forests in the region. The said Report also noted the pollution being caused to the Venna Lake by residential structures, including those erected by the Railway Department and, further that discharge from septic tanks is not being directed to soakage pits but is being allowed to flow into the Venna Lake which supplies drinking water to Mahabaleshwar. As regard the river, the said report noted that the waste from some Hotels was polluting the river and that no sewage treatment plant appears to have been made. The Committee noted that the river water used for drinking by villages only a short distance away.

5. Considering the recommendations of the Court-appointed Committee and the provisions of sections 24 and 25 of the Water {Prevention & Control of Pollution} Act, 1974, by an order dated 14th January, 1998, the Maharashtra Pollution Control Board was directed to take immediate action to stop the discharge of polluted water into the lake as well as the river and also to take further action under the said Act immediately so that no further pollution is caused to the lake and river waters. If required, the Board was directed to take legal action, including prosecution of the concerned persons.

6. Similarly, by the order of 14th January 1998, the Collector of the Satara District and the Chief Officer of the Mahabaleshwar Municipal Council were directed to take immediate action against erring parties, to prohibit the discharge of polluted waters into the lake and the river and to take immediate action for preventing the waters of the Venna Lake and the river from being polluted. These directions were passed after considering the relevant" provisions of the Maharashtra Municipal Councils. Nagar Panchayats and Industrial Townships Act, 1965.

7. As regards illegal constructions, by the said order dated 14th January, 1998, the Chief Officer of the Mahabaleshwar Municipal Council was further directed to take immediate action against those persons who make further constructions in violation of the sanctioned plan. An Action Taken Report was directed to be submitted to this Court on 2nd February, 1998. On 2nd February, 1998 certain necessary directions were passed as regards adding of new parties to the petition and requiring the presence of the Collector and the Chief Officers of the Mahabaleshwar Municipal Council and the Panchgani Municipal Council in Court on 10th February, 1998.

8. At the hearing of the matter on 10th February, 1998, the learned Advocate General appearing on behalf of the respondent Authorities stated that on the basis of the report submitted by the Court-appointed Committee, show cause

notices would be issued to the concerned persons who have committed breaches of the Building Regulations or permissions granted to them to use the premises, within one month, along with the particulars stated in the report with regard to each person separately or to any other persons or parties who have committed similar breaches. It was directed that, on receipt of the replies from such persons and after giving opportunity of being heard, appropriate orders would be passed by the Competent Authority. The Officers were directed to pass necessary orders notwithstanding any orders that may or might have been passed by lower courts in the State with a further direction not to implement the same as the affected persons were to be heard by this Court. It was clarified that the orders passed by this Court prior to 14th January, 1998 and thereafter would apply to the newly added parties.

9. On 27th April, 1998, the 2nd petitioner filed an Affidavit, along with a copy of the Minutes of the Meeting held at Hirda Bungalow, Mahabaleshwar at which meeting, the following persons were present:

1. Shri Kanwarjit Singh, C.C.P. (C) Forest Department, Maharashtra.
2. Shri B.I. Shaikh, President, MMC.
3. Shri P.O. Partha, Councillor, MMC.
4. Shri Salunkhe, Councillor, MMC.
5. Shri P.N. Munde, DCD (Satara).
6. Shri S.P. Kulkarni Chief Officer, MMC.
7. Col. S.P. Mohite, (retd.)
8. Shri Debi Goenka, BEAG.

Various decisions were taken at this meeting. In regard to the said Minutes, by the Order dated 29th April, 1998, respondents No. 1 and 5 were directed to submit a compliance report by 22nd June, 1998. This report is still awaited. By the order of 29th April, 1998, this Court directed the Court appointed Committee to continue its function and verify suo-motu or on receipt of complaints from anyone, any additional irregularities or illegalities in construction or deforestation.

10. On 22nd June, 1998, the learned Advocate General appearing for the respondent authorities stated that the Competent Authority had already prepared orders against persons who had violated statutory provisions and that such orders would be filed before this Court on or before 22nd July, 1998 and that appropriate action would follow. In respect of construction going on in violation of the permissions granted, the learned Advocate General stated that stop work orders would be-issued.

11. On 22nd July, 1998, the learned Advocate General placed on record a copy of the Government Resolution dated 21st July, 1998 appointing a Heritage Committee for the Mahabaleshwar-Panchgani region for conservation of such

areas. It may be mentioned that in March, 1998, the 2nd petitioner had filed an Affidavit suggesting the appointment of such a Committee and various steps required to preserve the heritage of the region. As regard the illegal constructions being carried on, the learned Advocate General stated that, in all, some 72 orders had been passed and produced on record copies of such Orders. This Court directed the Competent Authority to communicate the orders to the parties concerned with a specific statement that, if no objection was filed before this Court on or before 18th August, 1998, the appropriate action as mentioned in the said orders would be taken against them.

12. At the next hearing on 7th September, 1998, parties were heard on the question with regard to the interpretation of Bye-Law 20.7.2 of the Building Bye-Laws and Development Control Rules for Mahabaleshwar. The learned Advocate General submitted that the basement used for any purpose other than parking, storage or air-conditioning plant was required to be included in the covered area for built up area calculations. As against this, learned Counsel appearing on behalf of some applicants who had filed Civil Applications against the orders passed by the Competent Authority in respect of their unauthorised constructions, contended that even if the basement was used for other purposes, the same could not be included in built-up area calculations. Learned Counsel for some of the persons who had received notices and orders submitted that they were prepared to give undertaking to this Court that the basement would only be used for parking, storage or air-conditioning plant room and not for any other purpose. In our view, on such undertakings being given by the parties to whom notices were issued, no further action would be required to be taken on the ground that the basement area is to be included for built-up area calculations. It was directed that such undertakings be given to this Court and to the Chief Officer of the Municipal Council on or before 15th September, 1998. As regard the interpretation of the Bye-Law, the learned Counsel for the respondent sought time.

13. On 15th September, 1998, the parties were heard at length. With regard to the Building Bye-Laws and Development Control Rules for Mahabaleshwar and Panchgani Municipal Councils, the statements made by the learned Advocate General were recorded, viz.,

"(a) For deciding the permissible maximum height, the Council is taking into consideration the height of average of the four corners of the surrounding ground level;

(b) The lower storey of the building, if constructed below or partly below the ground-level, is considered as basement and if basement is used for the purpose specified in the Rules such as parking space, store room or air-conditioning plant room, then it is not included for calculation of total built-up area and it is also not considered as one storey or floor;

and

(c) the Council is following Bye law 20.6, which provides that the overall height of any building shall not be more than 9 mtrs. In sector 1, S. No. 52 and area selected for MIG/LIG/EWS housing with approval of Government and shall not be more than 11 mtrs. in all other areas."

The learned Advocate General also stated that if the basement is used for any other purpose it would be considered as one storey or floor and that if the person concerned filed an undertaking to the effect that the basement would not be used for any other purpose except parking, storage or air-conditioning plant room, then the basement would not be considered for calculating the built-up area. In this view of the matter, the Municipal Councils were directed to exclude the basement area from built up area calculations if the owners of the building filed necessary undertakings before this Court as well as before the Municipal Council that the basement would be used only as parking space, store room or air-conditioning plant room and would not be used for any other purpose. Upon such undertakings being filed on or before 30th September, 1998, the Municipal Councils were directed not to take any action against such persons. As regards the violation of height restrictions, the Planning Authority was directed, at its discretion, to condone violation of 1 or 2 feet wherever such violation was there and that it was not to be treated as a license to grant permission to violate the height limit. Further height should be counted by taking average height of the four corners of the plot. The applications for condonation of such height violations were required to be filed on or before 30th September, 1998. Such condonation was directed to be granted on recovering a penalty of Rs. 1, 000/- to Rs. 25, 000/-. It was also clarified that this would not give the authority to the Councils to sanction plans in violation of the height regulation. With regard to such minor violations, parties were given liberty to approach the Municipal Councils for reconsideration of the orders passed against them. As regards persons residing in other villages or towns and to persons who had constructed farm houses, and to whom notices had been issued, liberty was granted to approach the Appellate Authority under the Land Revenue Code.

14. On 6th October 1998, parties were heard again. The learned Counsel appearing for the parties who had received notices requested an extension of time till 30th November, 1998 to file the necessary undertakings. This was granted. It was clarified that the undertaking directed to be given by our order of 15th September, 1998 was only in respect of basements and such undertaking would not be the basis for condoning other violations. With regard to the application for condonation of height restriction, time to file such applications was also extended to 30th November, 1998. Mahabaleshwar Municipal Council was directed to publish the gist of the order of 15th September, 1998 in local newspapers. It was also directed that, for the time being, if the basement was not used for parking, storage or air-conditioning plant, then the area of the basement would be included in the built-up area calculations.

15. On 15th November, 1998 the matter was once again heard. Further time was

sought to file the aforesaid undertakings. The learned Counsel for the petitioners also submitted that the issues regarding forests and heritage required the passing of further directions and orders.

16. Today after hearing the parties, it is clarified that if there is any balance F.S.I. on that plot or on an adjoining plot of which the same person or party is the owner, then the area of the basement/stilt being used for any other purposes, other than sanctioned purposes, the same be adjusted (if requested by the occupier) towards balance F.S.I. of the same plot subject to height limit.

17. It is also clarified that if any construction in the Gaothan area of Mahabaleshwar/Panchgani is carried prior to 1979, or constructed with the prior permission of the Municipal Council and the construction does not violate the height and storey restriction and not constructed after 15th May, 1997 which are carried out on plots of area not exceeding 300 sq. mtrs. and the basement is used for personal use than no action be taken against such persons for the user of the basement for purposes other than those prescribed by the Rules. It is also clarified that the orders passed against such persons would be reviewed in the light of the aforesaid observations.

18. As regards the question of forests, we have heard parties and perused the Affidavit dated 13th August, 1998, filed by the State Government and the Affidavit dated 14th September, 1998 of the Petitioners in rejoinder thereto. We have heard the learned Counsel for the petitioners and the learned Advocate General for the Respondent Authorities on this aspect of the matter. The learned Counsel for the petitioners submits that the compliance report called for by our earlier order dated 29th April 1998 has still not been filed and that, instead, the Affidavit dated 13th August, 1998 has come to be filed. He submits that there is need to monitor the implementation of the decisions taken at the meeting held at Hirda Bungalow on 5th March, 1998. As against this, the learned Advocate General invited our attention to the Affidavit of 13th August, 1998 wherein it is pointed out that there is a comprehensive working plan for the Satara Region which is being implemented.

19. It may be noted that the various builders and/or persons having undertaken construction have filed their Affidavits in this petition. Person to whom notices have been issued pursuant to our earlier directions have also filed civil applications.

20. In view of the serious nature of the contentions raised by the petitioners and the concern to preserve the environment and eco-systems of hill stations such as Mahabaleshwar and other environmentally sensitive areas which by their very nature require the intervention of this Court, this Court has from time to time passed orders. In our view, considering the fact that the preservation of the ecology of the Mahabaleshwar-Panchgani region being a continuous process and considering the fact that issues with regard to environmental and ecological damage raised in the present petition would require constant monitoring and/or

vigilance, we consider it fit and in the interest of the preservation of the environment, ecology and heritage of this region that a Monitoring Committee comprising of the following persons be constituted forthwith.

1) The Deputy Conservator of Forests, Satara.

2) Sub Divisional Officer (S.D.O.), Satara.

3} Dr. Farrokh Wadia.

4) Col. S. Mohite.

5) Mr. Sujit Patwardhan.

21. The role of this Committee shall be to monitor the developments within the Mahabaleshwar-Panchgani region so as to ensure that all development and/or construction activity within the region is carried out in accordance with law. The Monitoring Committee shall either suo-motu or on receipt of complaint front any person (which shall be examined by the Monitoring Committee) bring to the attention of the statutory authorities concerned any irregularity, illegality or any act or action either of omission or commission including in respect of any development or issue relating to deforestation by any person and which is likely to or has caused any damage to the environment, ecology or heritage of the Mahabaleshwar-Panchgani region. It is clarified that our earlier order dated 29th April, 1998 stands modified to the above extent.

22. It is hereby directed that on receipt of complaints from any of the Monitoring Committee, the statutory authority shall adopt necessary proceedings or measures in accordance with law, against the person or persons concerned forthwith but not later than a period of four weeks from receipt of the complaint, to either prevent, rectify and/or ensure that no damage is caused to the environment, ecology and heritage of the region.

23. It is clarified that the aforesaid committee is entrusted with the task of assisting the Forest Department officials in strictly enforcing the provisions of the working plan referred in the Affidavit of 13th August, 1998 and the decisions taken at the meeting held on 5th March, 1998 at Hirda Bungalow, including the following:-

(a) To ensure that non-forest activities are not carried on in forest areas (except in accordance with law).

(b) To survey and demarcate forest lands in accordance with the directions laid down by the Supreme Court vide its order dated 12th December, 1995 in T.N. Godivarman (SLP 202 of 1995).

(c) To take all measures necessary to protect the rides and points, including repairs to railings and steps, provisions of trenches across the entry point of all rides in such a way that only pedestrians and horses could enter and for maintenance of paths and rides.

(d) To ensure that no sewage is being discharged into forest lands, lakes or rivers and to co-ordinate with the Municipal Council to ensure that all hotel owners take immediate steps to treat sewage before discharge.

24. As regards the question of infrastructural requirements and facilities mentioned in the Minutes of Meeting of 5th March 1998, the State Government is directed to expeditiously and favourably consider the same, especially as to the provision of adequate housing and vehicles for Forest Department staff, stationing of women police personnel, granting of subsidy for wood depot, establishing a kerosene pump in a suitable location in Ma-habaleshwar to serve as an alternative fuel source and making available funds for soil conservation and forest preservation.

25. With regard to the question of stalls at Venna Lake and various scenic spots or points, including Bombay point, learned Counsel for the petitioners submits that there is an uncontrolled proliferation in the number of these stalls which is causing environmental damage to the area. We have perused the statements made in this behalf in the Affidavit dated 13th August, 1998 filed by the State Government as also the Minutes of the Meeting held on 5th March, 1998. We direct that the State Government and the Forest Department shall take steps to relocate all the 28 authorised stalls from Venna Lake to some suitable centralised location, such location to be decided jointly by the Municipal Council, the Forest Department and the aforesaid Forests Committee directed to be constituted by this order. All unauthorised stalls from Venna Lake shall be removed. The State Government and the Forest Department shall not grant any new license or permission for any further stalls at various points. In no circumstances would any stalls be permitted in the catchment area of Venna Lake. All unauthorised stalls at the various points shall be removed within two months. The Forest Department and the State Government are directed to submit an Action Taken Report to this Court by 15th January. 1999.

26. With regard to the Heritage Committee constituted by the State Government vide the Government Resolution dated 21st July 1998, we are informed that a meeting of this Committee was held on 9th November, 1998. The Heritage Committee is directed to finalize the list of heritage structures and sites (both natural and man-made), including scenic points, walks, rides, etc. within four months from today. The Heritage Committee shall also, within the said period, formulate and finalize the draft heritage Regulations for Mahabaleshwar-Panchgani region in conformity with the Draft Model Regulations for Conservation of Natural and Man-made Heritage formulated by the Union Government's Ministry of Environment & Forests and which has been circulated to all State Government in 1995. Within one month of the receipt of the said list and draft Regulations, the State Government shall publish and notify the same following the procedure stipulated in section 37 and 20 of the Maharashtra Regional & Town Planning Act, 1966.

27. The Court appointed Committee in its report dated 12th November, 1997 at

page 23 noted that several 3 star hotels in the Mahabaleshwar-Panchgani region have been granted additional F.S.I. based on a Government Circular No. TPS/971/55629/W-2 dated 7-10-1971. The Committee rightly concluded that this G.R. was issued when the present Development Control Rules were not in force. The present Development Controls Rules for Mahabaleshwar-Panchgani were sanctioned in 1979 and 1988 respectively. The Committee therefore concluded that such of the three star hotels as have been given the additional F.S.I. based on the 1971 Government Resolution should be proceeded against inasmuch as the present Development Control Rules do not incorporate the provisions contained in the 1971 Government Resolution, particularly with respect to grant of additional F.S.I. to three star hotels in the region. We are of the view that the benefit of additional F.S.I. as per the 1971 Government Resolution is not available to 3 star hotels construction of which commenced after the published/sanctioned Development Control Rules came into force. However, it is clarified that if the benefit of the Government Resolution of the year 1971 is already given then those cases are not to be disturbed and are not to be reviewed. Henceforth, the benefit of the said Resolution is not to be given.

28. In respect of the construction made by Jijamata and Munawar Cooperative Societies at Mahabaleshwar and Siddharth Nagar Society at Panchgani, constructed in Green Zone, the proposals for conversion of Zone is pending before the State Government. If the State Government rejects the proposals, then the planning authority to take action against them according to law. However, no action is to be taken so long as the proposal is pending. Similarly in respect of the construction made by the members of Ramgad Co-operative Society, subject to the Development Rules, their proposals for regularisation may be considered by the Planning Authority and no action be taken so long as the society's proposals is decided by the Planning Authority.

29. In the result, it is clarified that the orders made on 14th January, 1998, 10th February 1998 and 29th April 1998, 15th September 1998 and 6th October 1998 as modified above shall continue to operate and shall form part of the present order Specifically-

(a) The Maharashtra Pollution Control Board is directed to take immediate action to stop the discharge of polluted water into the lake as well as the river and also to take further action under the said Act immediately so that no further pollution is caused to the lake and river waters. If required, the Board is directed to take legal action, including prosecution of the concerned persons.

(b) The Collector of the Satara District and the Chief Officer of the Mahabaleshwar Municipal Council are directed to take immediate action against erring parties, to prohibit the discharge of polluted waters into the lake and river and to take immediate action for preventing the waters of the Venna Lake and the river from being polluted.

(c) The Chief Officers of the Mahabaleshwar and Panchgani Municipal Councils

are directed to take immediate action against those persons who make further construction or are making construction in violation of the sanctioned plan.

(d) The statutory authorities concerned are directed to issue show cause notices to persons who have committed breaches of the Building Regulations or permissions granted to them to use the premises, within one month, if such notices have not already been issued. On receipt of the replies from such person and after giving opportunity of being heard, appropriate orders be passed by the Competent Authority in accordance with Act, Rules and aforesaid directions.

30. The petition stands disposed of accordingly.

31. Liberty to apply.

32. Petition disposed of with directions.