
(2009) 08 BOM CK 0023

In the Bombay High Court

Case No : Misc. Civil Application No.611 of 2009 in Writ Petition No.316 of 2009

Franky Monteiro and 4 Others

APPELLANT

Vs

State of Goa and 6 Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 08 BOM CK 0023

Hon'ble Judges : U.D. Salvi, J;S.B. Deshmukh, J

Bench : Division Bench

Advocate : Krishnendu Mukherjee, for the Appellant; A. Kamat, Additional Government Advocate for the respondent No.1, Mr. A.D. Bhobe, Advocate for the respondent No. 2, Mr. B. Saraf, Advocate with Mr. R.G. Ramani, Advocate for the respondent No. 3 and 4, Mr. S.G. Bhobe, Advocate for the respondent no.5 and 6, Mr. S.G. Dessai with Mr. V. Parsekar, Advocate for the respondent No. 7, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel Mr. Krishnendu Mukherjee, for the applicants, learned Additional Government counsel Mr. A. Kamat, for the respondent no.1, learned counsel, Mr. A. D. Bhobe, for the respondent no.2, learned counsel, Mr. B. Saraf, for the respondent no.3 and 4, learned counsel, Mr. S.G. Bhobe, for the respondent no.5 and 6 and learned senior counsel, S.G. Dessai, for the respondent no.7. At the outset, no objection for this application is raised on behalf of the respondentno.1/State of Goa, respondent no.2/Goa Industrial Development Corporation Ltd. They have also not filed reply opposing this Misc. Civil application seeking amendment. However, this application is vehemently opposed on behalf of the respondent no. 3 and 4, out of these two respondents, on behalf of respondent no.3 affidavit in reply sworn by one Shabbir Kanchwala is presented today in the Court. Copy is served on the counsel appearing for the petitioner. We have taken this affidavit in reply on behalf of the respondent no.3

on record. On behalf of the respondent no.3 and 4 learned counsel has addressed this Court. Learned counsel on behalf of the respondent no.3 took us to the prayer in the petition. Apart from the prayer made in the petition, he also invited our attention to the affidavit-in-reply filed on behalf of the respondentno.3 along with its annexure. Our attention is invited to page 1300 of the compilation where in various dates with details have been mentioned in tabular form. According to the learned counsel on behalf of the respondent no.3 and 4 the land in question was acquired by Goa Industrial Development Corporation somewhere 2001-02. He pointed out from page 1300, the letter of approval sent by the respondent no.2/Goa Industrial Development Corporation to the respondents more specifically to the respondent no.3 and 4 for the purpose of allotment of land in Phase IV, Verna Industrial Estate somewhere in April, 2006. Possession seems to have been handed over by the respondent no.2 to the respondents on 10.05.2006. According to the learned counsel for the respondent no.3 and 4 these respondents applied to the Union of India for setting up of a IT/ITES SEZ (Special Economic Zone) at the land allotted at Verna Industrial Estate some time in July, 2006. Lease deed was executed between these respondents and respondent no.2 on 26.07.2006. He has further submitted that the respondent no.1/State of Goa, considering the application of the respondents, more specifically respondent no. 3 and 4 recommended the proposal of these respondents u/s 3 (6) of the SEZ Act read with Rule 4 of the SEZ Rules. He further submitted that the respondentno.1 forwarded with its recommendation to the Board of Approval the application made by these respondents along with a project report on 04.08.2006. Central Government, after giving detailed hearing before the Board of Approval and after compliances issued letter of approval for setting up of the SEZ at the land allotted to these respondents on 25.10.2006. 22nd February, 2007 is the date on which it has been contended that the respondents were authorized to carry out construction activities inside the SEZ. The respondents commenced development activities and carried out substantial activities on the said plot of land incurring huge costs. February, 2007 envisages activities which have been alleged to have taken place have been listed down and the list containing items (i) to (xviii). Last activity in the list is complete road development work within the plot of an area of approximately 1000 mtrs. The last event pointed out to us, by the learned counsel for the respondent no.3 and 4 is at page 1300 of the compilation. It has been pleaded that the Government of India on 06.11.2007, in exercise of the powers u/s 4 (1) of the SEZ Act and Rule 8 of the SEZ Rules notified Verna Industrial Estate as SEZ by publication in the Official Gazette.

2. It has been urged before us after pointing out all these events, on behalf of the respondentno.3 and 4 that the petitioners were well aware of the date of filing of the petition, all these activities and/or issuance of the Notification/publication thereof on behalf of the Union of India, Central Government. It is further submitted that during the pendency of this petition and other petitions, the respondent no.1 and more specifically council of Cabinet Ministers, State of

Goa have resolved to withdraw the policy decision. It has been criticized that the petitioners/applicants have no bonafide while moving this Court under Article 226 and 227 of the Constitution. The applicants are now trying to expand the scope of the writ petition pending before this Court. In substance, the submission on behalf of the respondent no.3 and 4 is alleged delay and latches while moving this Court by an application for amendment. The counsel for respondent no.3 and 4 therefore, seeks dismissal of this application.

3. We have carefully considered the prayers made by the petitioners in paragraph 32 of the writ petition. In view of the submissions on behalf of the respondent no.3 and 4, we have referred to our own orders specifically in Writ petition No.316/2008. This petition was filed by the petitioner in this Court somewhere on 06.06.2008. This petition was taken up for admission/hearing before this Court on 09.07.2008, on that day itself amendment was allowed by this Court with further directions to carry out the amendment within a period of three days. From the records, it is clear that the respondent no.3 and 4 on that day were before this Court, apart from the counsel for other parties including the petitioners. Next is the order passed by this Court on 18.07.2008, by this order, this Court issued notice to the respondents returnable on 08.09.2008. On behalf of the respondent no.3 and 4, learned counsel submitted that four weeks time was granted to file affidavits-in-reply and leave was also granted to the petitioners/public interest litigants to file additional affidavits and annex additional documents which they wish to reply upon. Further the petition was adjourned to 08.09.2008 and was directed to put before the Court along with Writ petition No.316/2008. On 08.09.2008, though the farad sheet of this petition does not indicate the order in this writ petition and other writ petitions pertaining to the issue involved were adjourned to 13.10.2008. On 13.10.2008 also this petition along with other petitions was before the Court and all were adjourned to 17.11.2008 enabling the parties to complete their pleadings in the proceedings. Thereafter on 20.01.2009, this petition along with the other petitions of the group were before this Court and on the joint request of the counsel appearing for the parties was adjourned to 17.03.2009. Time for filing the pleadings was extended to 12.03.2009. Order passed on 07.05.2009 in this group of petitions including writ petition no.316/2008 records that sufficient opportunity was given to the parties to complete their pleadings. Further hearing of the petition was adjourned to 16.06.2009. This Court had further afforded opportunity to the parties to complete their pleadings by 10.06.2009.

4. On 16.06.2009, relevant and important date so far as this group of petitions is concerned, this Court recorded the submissions of the learned Senior counsel pertaining to the news item appearing in the local daily that pertained to the cabinet decision on SEZ. This Court recorded the prayer of the respective counsel for an opportunity to study the said policy decision and to amend the writ petition, if necessary or to file appropriate fresh challenge. Statement of the learned Advocate General was recorded that the decision taken was about withdrawal of the earlier policy. This Court opined that at this stage, we cannot

go into the merits of the controversy. However, the petitioners were permitted to move appropriate application for amendment in their respective petitions within a period of two weeks from that day. Oral request of some of the learned counsel seeking discharge was considered and order was passed. Matters including Writ petition NO.316/2008 were adjourned to 27.07.2009 and on that day the matters were posted to 10.08.2009.

5. We have carefully considered the controversy, significance and magnitude of the matter and issue involved in the petition. The respondent no.2/Goa Industrial Development Corporation, is a corporation established in view of the provision of Goa, Daman and Diu Industrial Development Act 1965 (hereinafter referred to as the "Act of 1965" for short). Act of 1965, section 1 provides that, it applies to the whole state of Goa. Section 2 of the Act provides definition of few words: "Industrial area" means any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated. Another definition which is relevant is u/s 2 (h) "Industrial Estate" means any site selected by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries.

6. So far as the source or the cause of the entire dispute is concerned, Chapter 5 is relevant. Section 27 provides that any land required by the Corporation for carrying out any of its functions shall be deemed to be needed for a public purpose and may be acquired under the provisions of the Land Acquisition Act 1894 or any other law for the time being in force. Further relevant section is 28 which empowers the Goa Industrial Development Corporation for disposal of the land by the corporation. With this, it is clear that corporation was not possessing its own land other than the source of landed properties acquired from citizens or persons in the area i.e. the State of Goa. In substance, it is the citizens' property acquired by the State of Goa and for the purposes or activities of the respondent no.2/Goa Industrial Development Corporation. On this background premise, writ petition No.316/2008 and other petitions in the interest of public at large needs to be considered by this Court. Competitive interest of the litigants will have to be evaluated by this Court. Earth or land cannot be created by the person or the Government either the State or the Central. It is gift received by mankind/society. Bearing this important aspect of the subject matter in our mind, we would have to appreciate the submissions of the counsel.

7. Amendments, to be considered largely under Order 6 Rule 17 of the Civil Procedure Code. So far, Writs under the Constitution, no special procedure is prescribed. We are, therefore considering the parameters and or the provisions of the Civil Procedure Code. In the case on hand objection on behalf of the respondent no.3 and 4 largely is on the point of delay and laches. For this learned counsel for the respondent no.3 and 4 took us to page 1300 to 1302. Special Economic Zone legislation is promulgated by the Union of India with rules thereof. In this Misc. Civil Application, apart from seeking proposed amendment

after paragraph 20, one more amendment is sought i.e. joining Union of India as a party respondent. Special Economic Zone, its legality and actions of the Union/ State Government, which needs to be considered either by this Court or the Supreme Court of India. In our view at the outset joining of Union of India is necessary. On the contrary, this should have been the first move of the petitioners.

We have considered the status of the petitioners who are five to six in number. We have also taken notice of the respondent no.3 and 4 who are companies. Delay and laches principally cannot be a ground defeating the amendment more so when the cabinet decision of State of Goa is subsequent event. Amendments to be considered liberally has been held in the judgment of the Supreme Court in L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., . In the case on hand we are considering the amendment to the writ petition which is already filed on 06.06.2008. We are inclined to consider the application favourably.

8. Civil application is accordingly allowed in terms of prayer clause 4. (a) and 4. (b). Amendment to be carried out within two weeks. Amendment sought in paragraph 4. (b) pertains to joining of the Union of India to the petition, such description of Union of India, we find inadequate. Learned counsel for the petitioners seeks liberty of this Court to furnish correct description within a week. Liberty granted. Issue notice to the added respondent/Union of India returnable within two weeks thereafter. We are permitting the service of such notice by registered Post A.D./Speed Post and or service of notice to the Central Government through the Standing Counsel of Union of India. Advocate for the applicants/ petitioners to serve copy of the amended petition as we have said in the foregoing paragraph, within two weeks. The respondents if they so desire to file additional affidavit are permitted. Copy thereof to be served on the counsel on behalf of the petitioners.

9. At this stage, learned counsel on behalf of the respondent no.3 and 4 seeks clarification that the observations we have made in this order are pertaining to the amendment application. Our order speaks for itself. But we clarify that the observations made in this order are confined to the amendment application. Misc. Civil Application is allowed and disposed of. List the Writ Petition No.316/2008, after four weeks i.e. on 14.09.2009.