

(2006) 04 AHC CK 0139

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 44916 of 2000 and 13333 of 2006

Hindalco Industries Limited

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Constitution of India, 1950 — Article 243Q, 243Q(1)

Constitution of India, 1950 — Article 243Q, 243Q(1)

Constitution of India, 1950 — Article 243Q, 243Q(1)

Citation : (2006) 04 AHC CK 0139

Hon'ble Judges : Yatindra Singh, J;R.K. Rastogi, J

Bench : Division Bench

Advocate : V.K. Upadhya, Vibhav Upadhyay and Surendra Singh, for the Appellant; K.P. Singh, R.K. Jain, K.K. Mani and Rahul Jain and C.S.C., for the Respondent

Judgement

Yatindra Singh, J.—These writ petitions are against the orders passed under chapter II of the UP Municipalities Act, 1916 (the Act) delimiting the wards of Nagar Panchayat, Renukoot, district Sonebhadra (Nagar Panchayat, Renukoot).

THE FACTS

2. Hindalco Industries Limited (the petitioner) is a registered limited company. It had requested the State Government to transfer some forest land situate in erstwhile Mirzapur district (now part of Sonebhadra district) in its favour for establishing its factory. The State Government by three different GOs dated 10.3.1960, 24.10.1960 and 15.7.1971 passed orders transferring certain forest land to the Petitioner. In pursuance of these GOs, two different transfer deeds were executed. One is dated 9.9.1962 for 771 acres of land and the other is dated 29.1.1985 for 322.35 acres of land. The factory has been established and is manufacturing Aluminium and its products.

3. A dispute arose under the Forest Act between the forest department and the

petitioner regarding boundaries of the land transferred to the petitioner by the aforesaid two sale deeds. The Forest Settlement Officer, Mirzapur passed an order on 21.2.1987 settling the boundaries of this land. An appeal was filed against this order, which was dismissed on 24.2.1988. Thereafter the review application was also dismissed on 4.3.1989. Then the Divisional Forest Officer, Renukoot division Sonebhadra and the State of UP filed writ petition No. 21164 of 1989 against these orders. During pendency of the aforementioned writ petition, the parties settled their dispute amicably in the following manner:

? A joint survey map was prepared by them (the agreed map);

? It was signed by the Divisional Forest Officer, Renukoot, Forest Officer, Renukoot and Senior Vice President of the petitioner;

4. An application alongwith joint affidavit was filed before this Court stating aforesaid facts in writ petition No. 21164 of 1989. The court dismissed the writ petition as withdrawn on the basis of the aforesaid application.

5. During pendency of the aforesaid writ petition vide the Constitution (Seventy-fourth Amendment) Act, 1992 part IX-A was inserted in the Constitution and enforced. This part provides for establishment of local bodies. Article 243Q provides constitution of three kinds of local bodies in an urban area:

(1) Nagar Panchayat: The Nagar Panchayat is for transitional area i.e. the area in transition from rural area to urban area.

(2) Municipal Council: Municipal council is for smaller urban area, and

(3) Municipal Corporation: The Municipal Corporation is for larger urban area.

6. Some urban area may not to be included in any local body. This is provided in proviso to Sub-clause 1 of Article 243Q {Article 243Q(1) of the Constitution}. It enables the Governor to establish an Industrial township in an area provided the conditions mentioned in the proviso are satisfied.

7. During pendency of WP No. 21164 of 1989, the Petitioner filed an application under the proviso to Article 243Q(1) of the Constitution for declaring the area held by it as an Industrial township, and the State Government by notification dated 7.4.2000 passed the following order:

In exercise of the powers under the proviso to Clause (1) of Article 243Q of the Constitution, the Governor, having regard to the size of the area of the following industrial establishment and the municipal services being provided therein by the said industrial establishment is pleased to specify with effect from date of expiration of present duration of Nagar Panchayat, Renukoot, district Sonebhadra, the area of the following establishment to be an industrial townshp. 1. Hindalco Industries Limited, Renukoot in district Sonebhadra.

8. After enforcement of Part IX-A of the Constitution, the elections for local bodies in the State including for Nagar Panchayat Renukoot were held in the year

1995. The term of the Nagar Panchayat is for five years. After expiry of this term, the election process in the State was again started in the year 2000. By that time, the GO declaring the area held by the Petitioner to be Industrial township had come into existence. According to the Petitioner, some part of area which was part of the Industrial township was included in different wards of Nagar Panchayat, Renukoot. It filed writ petition No. 44916 of 2000 for excluding that area. In this writ petition, this Court passed the following interim orders on 20.10.2000:

Issue notice to respondent No. 4, fixing a date in the week commencing 27.11.2000. Learned standing counsel, who appears for respondent Nos. 1 and 3 and Sri Aditya Narain for respondent No. 2 are granted three weeks time to file counter affidavit. Steps for respondent No. 4 will be taken in the office within three days and the office will send notice within two days thereafter. List for orders in the week commencing 27.11.2000.

Meanwhile, it is directed that the election for Nagar Panchayat, Renukoot, district Sonbhadra shall not be held in the area of Hindalco Industries Limited, Renukoot, district Sonbhadra as notified in the notification dated 7.4.2000 (Annexure-5 to the writ petition) till 11.12.2000.

Sd/-GP Mathur, J. Sd/-Bhagwan Din, J.

9. No counter affidavit has been filed in this writ petition. We are informed by the parties that no elections for the Nagar Panchayat, Renukoot were held in the year 2000 though the elections for other Nagar Panchayats in the State were held.

10. The term of different Nagar Panchayats came to an end and the process of election has been restarted. The extent of wards of the Nagar Panchayat, Renukoot was provisionally determined and a draft delimitation order was published on 31.1.2006. According to the Petitioner, it again includes the area declared to be the Industrial township. The Petitioner filed an objection on 8.2.2006 against the draft delimitation order. This objection was rejected on 16.2.2006 by the District Magistrate. Thereafter the petitioner filed writ petition No. 13333 of 2006 against this order. During pendency of this writ petition, the State Government passed an order on 10.3.2006, substantially accepting the proposals of the District Magistrate. It has published the final delimitation order on 10.3.2006. The Petitioner has amended the writ petition and is challenging this order also.

POINTS FOR DETERMINATION

11. We have heard Sri Vibhav Upadhyaya, Sr. Advocate, Sri VK Upadhyaya and Sri Surendra Singh, counsel for the Petitioner; Standing counsel for the State of UP and State Officers; Sri KP Singh for the Election Commission; Sri KK Mani for Nagar Panchayat, Renukoot; Sri Raj Kumar Jain, Sr. Advocate assisted by Sri Rahul Jain for the residents seeking impleadment in the writ petition. The following points arise for determination:

(1) Whether the boundaries of the Industrial Township are fixed.

(2) Whether the area of Industrial township has been excluded from the wards of the Nagar Panchayat, Renukoot.

POINT No. 1: THE BOUNDARIES OF INDUSTRIAL TOWNSHIP - FIXED

12. Writ Petition No. 44916 of 2000 was regarding delimitation of the wards for the election to be held in the year 2000. The elections in the entire State have been held. The process for the fresh elections has started. A fresh delimitation order has been passed, which is challenged in WP No. 13333 of 2006. In view of this, writ petition No. 44916 of 2000 has become infructuous and is accordingly dismissed.

13. The State of UP had issued a notification on 7.4.2000 declaring the area of the Petitioner to be an Industrial township. It is correct that no details of the area have been mentioned, but the notification states that the area of the Petitioner has been declared as Industrial township. In any case, the short coming if any is of the State government and so the petitioner can not be penalised for it. The notification dated 7.4.2000 had come into force on the date of the notification itself. The boundaries of the area held by the petitioner on that date namely 7.4.2000 are the boundaries of the area of the Industrial township. Its boundaries are frozen with reference to that date. This area has to be excluded from the area of Nagar Panchayat, Renukoot or from any of its wards.

14. The two transfer deeds by the State of UP were executed prior to 7.4.2000. The area of these two transfer deeds by the State Government is included in the Industrial township. According to the Petitioner, apart from these two transfer deeds, it has also partly purchased and partly taken on lease about 110 acres of land from private owners at different times in district Sonbhadra. If this is correct and the sale/lease deeds are prior to 7.4.2000 then their that area will also be included in the Industrial township. Thus the area of Industrial township consists of the following areas.

(i) The area consisting of two transfer deeds executed by the State Government.

(ii) The area purchased/or taken on lease by the petitioner prior to 7.4.2000.

15. The boundaries of the Industrial township should be determined first. The area covered by those boundaries should be excluded from the area of the Nagar Panchayat, Renukoot. The wards be delimited after the area of Industrial township is excluded from the Nagar Panchayat, Renukoot.

POINT No. 2: AREA NOT EXCLUDED What Is The Boundary Of The Land Transferred By The State Government

16. There was some dispute regarding the boundaries of the land transferred to the Petitioner by means of two different transfer deeds dated 9.9.1962 and 29.11.1986. This dispute was amicably settled and an agreed map was prepared. Thereafter both the parties filed a joint affidavit accepting the map and got the

WP 21164 of 1989 dismissed in the light of their compromise. The petitioner has produced the blue print of this map alongwith the writ petition, It is signed by the officers of the forest department as well as by the petitioner. This map is final and it determines the boundaries of the land transferred to the petitioner. That land should be excluded from the wards of Nagar Panchayat.

17. Sri Raj Kumar Jain, counsel for the residents of the Town Area Renukoot, submitted that there is Railway land which was acquired and given to the Railway department and this is not part of the Industrial township and cannot be excluded from the wards.

18. It is correct to say that some land of the forest department had been given to the Railway department. However, this land is not included in the Industrial township. It is separately shown in the agreed map. The petitioner also does not claim that the land of the Railway should be excluded from the area of Nagar Panchayat, Renukoot. It is simply claiming that its land which forms part of the Industrial township should be excluded from the wards of Nagar Panchayat, Renukoot.

Objections Not Rightly Decided

19. The draft delimitation order was published on 31.1.2006. The petitioner has filed a detailed objection against it. The District Magistrate rejected his objection on 16.2.2006. The order of the District Magistrate is not a speaking order. He in his order, has merely said that the area of the petitioner is not included in the town area, Renukoot. This is incorrect. For example, the area adjacent to Pipari-Chopan road has been given in different wards of the Nagar Panchayat, Renukoot; whereas most of this area was transferred to the petitioner by the State Government, as is evident from the agreed map. This area can not be part of any ward of the Nagar Panchayat, Renukoot. The State Government has substantially accepted the order of the District Magistrate in this regard. In view of this, the delimitation orders passed by the District Magistrate on 16.2.2006 and by the State Government on 10.3.2006 are illegal.

CONCLUSIONS

20. Our conclusions are as follows :

(i) The order of the District Magistrate dated 16.2.2006 and that of the State Government dated 10.3.2006 are illegal and are quashed.

(ii) The respondent may redetermine the delimitation of different wards of the Nagar Panchayat of Ranukoot. This may be done in the following manner:

(a) The Petitioner may appear before the District Magistrate on 17.4.2006 and file its objections . The petitioner alongwith its objection will file a copy of the agreed map alongwith marking of the area alleged to have been purchased or taken on lease from private persons prior to 7.4.2000. The petitioner will also file certified or photo copy of the original sale/lease deeds.

(b) The Petitioner may file separate scaled map or show in the agreed map the overlapping area between the wards of Town Area Renukoot as shown in the draft delimitation order and the area of the Industrial township.

(c) The District Magistrate may in his discretion summon the original map agreed between the petitioner and the State of UP which is alleged to be with the forest department.

(d) The District Magistrate may in his discretion also require the petitioner to produce original sale/lease deeds taken by the petitioner from the private persons.

(e) The respondents after scrutiny of the aforesaid documents shall first fix the area of Industrial Township. Thereafter this area shall be excluded from the Nagar Panchayat, Renukoot and from its wards. The final delimitation order of the wards be issued accordingly.

(f) The District Magistrate may, in his discretion, hear Nagar Panchayat, Renukoot while passing the order on the objection of the petitioner, However, it will not be necessary to hear any of the residents of the area.

22. With these observations, WP 13333 of 2006 is allowed and the order of the District Magistrate dated 16.2.2006 and that of the State Government dated 10.3.2006 are quashed. WP 44916 of 2000 is dismissed having become infructuous. Let a copy of this judgement be placed in the record of WP 44916 of 2000