

(2002) 04 SC CK 0151

In the Supreme Court Of India

Case No : Writ Petn. (Civil) No. 13381 of 1984 etc.

M.C. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Environment (Protection) Act, 1986 — Section 3

Citation : AIR 2002 SC 3696 : (2002) AIRSCW 4356 : (2003) 1 JCR 270 : (2002) 2 SCALE 57 : (2002) 4 SCALE 50 : (2002) 7 SCALE 45 : (2002) 5 SCALE 2 : (2002) 9 SCC 534(1)

Hon'ble Judges : M. B. Shah, J;H. K. Sema, J;B. P. Singh, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. In pursuance of Court's order dated 7th November, 2000 and 27th November, 2001 Dr. S.D. Makhijani, Additional Director, Central Pollution Control Board (CPCB) has filed an affidavit dated 26th March, 2002 stating that CPCB has received an amount of Rs. 71.13 lacs from the Mission Management Board, Government of U.P. for the purpose of purchase and procurement of hardware components and an amount of Rs. 49.45 lacs have been received from the Ministry of Environment and Forests, Government of India as operational cost including salary and rent towards establishment of four monitoring stations in Agra. Further the feasibility of purchasing Solar Photovoltaic power for essential equipment for the Air quality Monitoring Laboratory was discussed but considering its costs CPCB has decided to procure 5 KVA Battery operating Uninterrupted Power Supply (UPS) system for all four monitoring stations with adequate back up time in compliance of the order passed by this Court.

2. This affidavit also indicates that on the basis of the said four monitoring stations the air quality has still not improved and there is 100 per cent. violation with regard to the RSPM level. In this view of the matter CPCB as well as the U.P. Station Pollution Control Board are directed to find out the reasons responsible

for such violation of standards for RSPM and submit their report within two weeks from today. The State Government is also directed to find out whether unauthorised brick kilns/foundries/factories causing such increase in the level of RSPM are still functioning within the 20 KM radial circle of Taj Monument.

3. With regard to the functioning of the Agra Heritage Fund, learned counsel for the U.P. Government states that necessary report including the utilization of funds for providing better facilities to the tourists would be submitted on or before 30th April, 2002. He further states that the copies of the said report would be given to the learned counsel appearing for the CPCB, ASI and to the petitioner appearing in person as well as Mr. Krishan Mahajan.

I.A. 345 in W.P. (C) 13381/84

4. Petitioner-in-person, has filed this IA stating a sorry state of management by the District authorities of the State of U.P. despite the various directions issued by this Court for maintaining cultural heritage and historical importance within the Taj Trapezium. In this application paragraphs 3 and 16 to 19 reads as under :

"3. That under the Agra Development Master Plan, the Shamshabad-Fatehabad Marg, area measuring 89.87 hectares has been earmarked as Zonal Park In the Zonal Plan. In this area the trees curbing pollution should have been planted by now and this area should have been developed into 'green lungs' and a place of scenic beauty as lakhs of Indian and foreign tourists visit Agra every year. Instead of developing Zonal Park, the U.P. Govt. has Issued a notice in the newspaper stating therein that the above said area meant for Zonal Park will be changed to light Industrial use in the Master Plan. If the light Industries are set up in this area, it will cause further congestion, vehicular traffic will increase manifold and will further degrade environment and ecology of Agra. It is submitted that the land use meant for Zonal Park as shown in the zonal Plan/ Master Plan should not be changed to industrial use. It will further negate the objective of protection of environment.

16. That a forest belt measuring about 10 acres situated on the northern side of Astha Sakhi Kund in Plot No. 27 of Non-Zamindari Abolition Area (NZA) of Town Radha Kund map, has been recorded in the Records of Rights as "Jhari" (Forest). This area was full of different varieties of trees which increased the panoramic view of Astha Sakhi Kunds as well as Shri Shyam Kund and Shri Radha Kund. The standing trees have been cut and removed. Similarly the talab (pond) land bearing Khasra Nos. 20, 30 and 41 measuring 9.81 acres is being encroached, filled with earth and being sold illegally for housing purposes.

These plots/lands have also been classified as "uncultivable land" and also recorded as Tank (Talab) in the Record of Rights. The character of land as manifest from the Record of Rights is clear as the same has been reserved for uses by the General Public for their common good i.e. for the conservation of water resources, protection of environment and enhancement of spiritual values and cultural heritage. In short, places of national importance as the Astha Sakhi

Kunds, Balram Kund and Bhanokhar religiously known to be of great significance where millions of pilgrims during the course of their parikarma of "Giri Raj Goverdhan" or otherwise take a holy dip for purification of their hearts and souls, are being encroached. The acts of such unscrupulous land encroachers are creating an ecological imbalance, destruction of cultural heritage by filling up these Kunds and converting them for housing purposes.

That the Department of Archaeological Survey of India despite knowing the Importance of historical monuments and cultural heritage sites within the Taj Trapezium has not been able to protect Astha Sakhi Kund, Balram Kund and Bhanokhar from encroachments, illegal constructions and defilement of the Kunds.

17. That Shri Shyam Kund and Shri Radha Kund are filled with water drawn from Astha Sakhi Kunds comprising Plot Nos. 30 and 41. Further, since last 500 years, there is a channel connecting Astha Sakhi Kunds with Shri Shyam Kund and there is a bridge over the channel and in front of this bridge, there is desalting pocket, where the water is stored, purified and let into Shri Shyam Kund through the channel. Further, since time Immemorial, there has been close inter-connections between Astha Sakhi Kund, Shyam Kund and Radha Kund. And in case such encroachments of filling up these tanks with mounds of earth for converting it into house sites is not checked, the Astha Sakhi Kund will become extinct from the landscape making the Shyam Kund and Radha Kund 'high and dry,' as its perennial source of feeding with fresh water would be stopped.

18. That an inspection of the area was done on 14-5-2000 and 17-5-2000 by Sh. R. D. Paliwal, Additional District Collector, Mathura. in his letter/report to the District Collector, it has been stated that-

"..... .The Astha Sakhi Kund which is situated towards Konai Mahal, situated in Radha Kund Town area and is in Khewat No. 1/2, Khata No. Gata Nos. 20-A, 30 and 41. From the abovementioned kund, the Lalita Kund which in reality is desalting chamber, the rain water is being poured to Radha Kund and Krishna Kund. In the revenue records the abovementioned pond is registered in Gata Nos. 20A, 30 and 41 which has a total area of 9.81 acre. Because of insufficient rain during previous year, the pond is dried up and towards East-North and South of the pond, the process of filling up of the pond is going on at faster rate and after levelling of the land the plotting works are going on at faster scale. In the abovementioned pond, the part of land have already been sold to different persons and three houses and boundary wall with doors have already been installed.The report further says-- "..... .The ponds are unauthorisedly being filled and plotted is being done. The ponds are being filled and plotted claiming to be a personal property, however, under the U.P. Tenancy Act, the ponds can neither be sold nor purchased. If the land had been taken beyond the purview of zamindar, the same would have devolved to the Gaon Sabha. The aforementioned constructions are going on without authorization of Town Area Committee, which is an irregularity.'

5. The report further suggested that;--

1. "The FIR is to be registered against Raja Surya Pal Singh and the subsequent purchaser of the ponds for illegally claiming the ponds to be personal property and thus for selling and purchasing of public property illegally, criminal actions are called for.

2. For violating the conditions of U.P. Tenancy Act by the Zamindars as the ponds have been sold, the lands in question should be taken beyond the purview of Khewat.

3. Because of unauthorised construction, the persons concerned be directed to pay compensation which may be recovered immediately.

4. The Superintendent of Police be given immediate Instruction to restrain any illegal construction going on the spot after taking appropriate opinion from the District Government Standing Counsel and prosecution and should direct the S.D.M. and the Tehsildar for appropriate actions."

From the above it is clearly evident that the authorities are in know of the illegal activity being carried out by the anti-social elements. The encroachment and illegal construction has not stopped so far resulting into serious damage to the ecology and cultural heritage of the place. Photocopy of the letter to the District Collector of Mathura and other papers forms Annexure II collectively.

19. The Archaeological Survey of India in its report dated 2-1-1999 has stated as under :

"During the course of inspection and survey, it was revealed that this area is a holy place since ancient period for the followers and believes of Vaishnav Radha Krishna Sect. The holy place was re-established by Vaishnavi Saints, Shri Chaitanya Mahaprabhu and other saints and worshippers of that Sampardaya of medieval period and as a result of the persistent customary worshipping attached with the area for last 300 years, this area has evolved as a main Vaishnav Tirath and customary cultural religious place of Northern India. It was found during the course of survey that Shri Radha Kund and its co-attached Astha Sakhi Kunda are approx. 300 years old whose construction were made of mixtures of Lakhori bricks, chuna and surkhi along with other building material of other medieval period. There is a water accumulated area spread over 10 acres, attached with these Kunds. There is a well which is constructed of lakhori bricks situated between the water accumulated areas and the Kunds. There is an ancient desalting chamber for desalting stored water out of the Kunds. There is a provision of sliding gate in between the Kunds and desalting pocket for filling and holding the water in the Kunds.

This monument is the only example of the then architectural construction of water-tanks and which in its originality is necessarily required to be primarily preserved and safeguarded in future.

It is, therefore, proposed that these monuments and co-attached areas be declared protected, so as to maintain its ancient structure and immediate orders be passed by the competent authority for restraining the extensive encroachments by constructions in the areas, so as to preserve and safeguard the monuments."

The Superintending Archaeologist in his letter dated 11-4-2001 to the Director, Archeological Survey of India stated that "Astha Sakhi Kund which is situated in Mauja Radha Kund, Distt. Mathura, historically it is very relevant and important site. It is situated in Khasra Nos. 20, 30 and 41 and is fit to be protected. At present there are possibilities of unauthorised encroachments on the site at the hands of anti-social elements. It is thus requested that immediate preliminary Notification be issued of the above mentioned Khasra Nos. so as to protect the important cultural heritage."

The Archeological Survey of India is feeling helpless despite knowing fully that an Important place of cultural heritage is being destroyed systematically and its ecology is seriously being damaged. A copy of the letter from K. P. Poonacha, Director (Monuments) to Shri S. N. Sahal, Deputy Secretary, Prime Minister's Office, a report of inspection from Sh. Dharam Veer Sharma, Superintendent, Archaeology, Agra and letters to the Director General and Director Monuments forms Annexure III (collectively)."

6. Considering the facts stated above we direct the Commissioner of Agra Division, District Collector of Mathura and Superintendent of Police, Mathura to take appropriate and immediate action for removal of any encroachment in the area mentioned above. Till further orders State Government is directed not to convert Shamshabad-Fatehabad Marg measuring 89.87 hectares which has been earmarked as Zonal Park Into a light industries area. For this purpose, Secretary of the Housing Department, State of U.P. is directed to file necessary affidavit within two weeks from today.

AGRA HERIGATE FUND MATTER

7. Learned counsel appearing on behalf of the ASI states that with regard to the contents of paragraph 5, necessary affidavit would be filed by the Concerned authorities within two weeks from today.

AGRA SLAUGHTER HOUSE

8. In pursuance of the affidavit filed by the Executive Engineer, Agra Nagar Nigam, Mahajan Committee is requested to revisit the Agra Slaughter House and submit its report within fifteen days from today.