

(2008) 05 SC CK 0159

In the Supreme Court Of India

Case No : Interlocutory Application No. 1901 in Interlocutory Application No. 1888 in Writ Petition (Civil) No. 4677 of 1985 and Interlocutory Application No. 1955 in Interlocutory Application No. 1988 in Writ Petition (C) No. 4677 of 1985

M.C. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Faridabad Complex (Regulation and Development) Act, 1971 — Section 27
Forest (Conservation) Act, 1980 — Section 2
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 23
Punjab Land Preservati

Citation : (2008) 6 JT 542 : (2008) 7 SCALE 476

Hon'ble Judges : Lokeshwar Singh Pant, J;C. K. Thakker, J;Arijit Pasayat, J

Bench : Full Bench

Advocate : Ranjit Kumar A.C., Arun Jaitley, P.S. Patwalia, K.K. Venugopal, Vijay Lakshmi Menon and C.A. Sundaram, Kamal Gupta A.C., Pijush Sharma, Dinesh C. Pandey, Gopal S. Narayan, Sharmila Upadhyay, Sanjay Hegde, Dhruv Mehta, Harshvardhan Jha and Yashraj Singh Deora, for K.L. Mehta and Co, for the Appellant; Manjit Singh, A.A.G., T.V. George, Vijay Panjwani, V.K. Verma, Sheil Sethi, Anil Katiyar, Sharmila Upadhyay, C.S. Ashri and Ajay Siwach, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—I.A. 1901 of 2005 relates to the land situated in Aravalli Range. Challenge basically is to the communication dated 31.1.2005 by the Divisional Forest officer, Faridabad requesting the Commissioner, Faridabad, the Administration Haryana, Urban Development Authority (in short the `HUDA') and the District Town Planner, Faridabad forwarding list of area closed under Sections 4 & 5 of the Punjab Land Preservation Act, 1900 (in short the `Act'). It was indicated that these areas have been declared by this Court to be "forest" and, therefore, penal action is required to be taken for any non forest activities under

the Forest Conservation Act, 1980 (in short the 'Conservation Act'). This communication was issued purportedly on the basis of this Court's order. Similar communication was made by the Senior Town Planner, Gurgaon Circle, Gurgaon intimating Dr. Mathan Singh Kanwar that he has to obtain "NOC" from the forest department and produce the same before the Senior Town Planner so that the next course of action with regard to granting occupation certificate can be carried out. Reference has also been made to a letter dated 19.9.1999 by the Commissioner and Secretary to Government, Haryana Forest and Wildlife Department addressed to the Principal Chief Conservator, Forest Conservation, Haryana on the subject of prohibition in the areas covered under the Notification issued under the Act. It has been indicated therein that the Forest Department will not declare areas notified, under Sections 4 & 5 of the Act as "forest".

2. The background facts show that the State Government decided to notify the area in question u/s 4 of the Act, prohibiting activities contained in the said notification dated 18th August, 1992 for a period of 30 years. The effect of the decision in M.C. Mehta Vs. Union of India (UOI) and Others, on the areas declared under Sections 4 and 5 of the Act, have to be noted.

3. Learned Counsel for the petitioner in the I.A. No. 1901 and I.A. No. 1999 filed by Kant Enclave Residents Welfare Association, I.A. 1955 filed on behalf of Karamyogi Shelters Pvt. Ltd. and certain other I.As. i.e. I.A. Nos. 1965-66 and 2024 in I.A. 1901-1904 for impleadment and directions are filed by PCL Industries. It is the stand that the decision of this Court in M.C. Mehta's case (supra) fully takes care of the situation. It is submitted that the decision was mining centric. In the instant case the development started in 1992. The earlier judgment clearly excluded constructions already undertaken. There cannot be any retrospective effect in the inter-fraction of forest and in the instant case the first and in most of the cases the first licence was granted prior to the Conservation Act. Reference is also made to Faridabad Complex Requisition and Development Act, 1971 (in short the '1971 Act') the National Capital Region Planning Board, 1985 and also to the object of 1971 Act. It is pointed out that the situation for pre 21.12.1992 period has been dealt with in paras 80 & 81 of the earlier judgment. Similar stand has been dealt with and rejected in para 82. It is pointed out that there is an overriding effect so far as Section 27 is concerned and the 1971 Act has to be kept out of consideration because of Section 27.

4. Learned Amicus curie on the other hand submitted that this Court nowhere has kept the cases of the applicant out of consideration. In fact the other questions like the effect of Section 4 were examined.

5. In the order dated 18th August, 1992 issued by the Forest Department of the Government, Serials 9 to 16 become relevant.

6. It is to be noted that Section 4 is subject to Section 3 Notification. Conservator of Forest in his letter to M/s R. Kant & Company dated 15.5.1996 noted as

follows:

M/s. R. Kant & Co. 407 Vishal Vhawan 95 Nehru Place, new Delhi 110019 is allowed to proceed ahead with their plan in Khasra No. 9 to 16 Vill. Anangpur, Faridabad in accordance with the agreement signed with Haryana Government. Through Commissioner and Secretary. Town and Country Planning Haryana dated 27 May 1992.

7. It is to be noted that earlier the focus was on areas and not on khasra numbers. The stand of the applicants regarding pre 21.12.1992 has been dealt with in paras 80 & 81 of the earlier judgment. The decision of this Court in M.C. Mehta's case (*supra*) dealt with the applicability of the Conservation Act to the areas teated as forest by the State Forest Department in Paragraphs 78 ,79, 80, 81 & 82. It was inter alia observed as follows:

78. The provisions of the Act provide for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. Any forest land or portion thereof cannot be used for any non-forest purposes or assigned by way of leases or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by the Government, except with the prior approval of the Central Government. Mining activity within forest area cannot be permitted in contravention of the provisions of the Act. The Act makes the contravention of any of the provisions of Section 2 as an offence punishable in the manner provided in the Act.

79. The controversy is in respect of certain leases where area under the lease is covered under notification issued under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is "forest" of any kind.

80. u/s 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly. u/s 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification u/s 3. u/s 5 (b) in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified u/s 3, the State Government may, by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification u/s 3. In respect of some mining areas notifications have been issued u/s 4 and in respect of some, notifications have been issued both under Sections 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve subsoil water and prevention of the area from erosion of land and is not to create any forest. It has been pointed out that in cases where the notifications have been issued, only felling of trees had been prohibited and not quarrying of stone.

81. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as "forest". The contention urged on behalf of the State Government is that it was on account of erroneous viewpoint of the Forest Department. In fact and law, such area is not "forest" and mining is not prohibited and, therefore the question of seeking permission u/s 2 of the FC Act does not arise.

82. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be "forest". In *T.N. Godavarman Thirumulkpad v. Union of India* 10 this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana in *Environmental Awareness Forum v. State of J&K* 11. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17- 9-2001 sent by the Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act.

8. In para 82 it has been noted that it is not necessary to decide the legal effect of the issue of the notifications under Sections 4&5 of the Act.

9. Conclusions in the said case were to the following effect:

96. 1. The order dated 6-5-2002(sic) as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.

2. The notification of environment assessment clearance dated 27-1-1994 is applicable also when renewal of mining lease is considered after issue of the notification.

3. On the facts of the case, the mining activity in areas covered under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900 cannot be undertaken

without approval under the Forest (Conservation) Act, 1980.

4. No mining activity can be carried out on area over which plantation has been undertaken under the Aravalli Project by utilisation of foreign funds.

5. The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.

6. The Aravalli hill range has to be protected at any cost. In case despite stringent conditions, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad district as well.

7. MOEF is directed to prepare a short-term and long-term action plan for the restoration of environmental quality of Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months.

8. Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions.

10. It is to be noted that in the counter affidavit filed by the State of Haryana on 10.9.2006 it has been inter alia stated as follows:

This notification covers Khasra Nos. 9 to 16 of the village Anangpur. Since then this land is being treated as forest and it was also included in the list of forests in the Government record. The affidavit filed by the forest department, Haryana in case of CWP No. 202 of 1995 in T.N. Godavarman Thirumulpad v. Union of India and Ors., this area was shown as a forest. Section 2 of the Forest Conservation Act, 1980 restricts the de- reservation of forest or use of forest land for non-forest purposes.

M/s. R.Kant & Co. present applicant applied for exemption from Haryana Development and Regulation of Urban Area Act, 1975 for establishment of Films Studio and Allied Complex at village Anangpur. The Government exercising the powers conferred by Section 23 of Haryana Development and Regulation of Urban Area Act, 1975 (hereinafter referred to as 'Act of 1975') vide letter dated 17.4.1984 granted the exemption subject to certain conditions. Prior to notification u/s 4 of Punjab Land Preservation Act, 1900, the said land was not shown as forest in Government records. The conditions were:

(a) The company gets the layout plan finally approved from DTCP within 60 days of the grant of the exemption letter.

(b) The company shall submit a bank guarantee equal to 10% of the total cost of all development works as certified by the Director within 60 days of the issue of this letter.

(c) That the exemption is conditional and subject to the production of title deeds

as proof of ownership of the land in question by M/s. R.Kant and Company.

17. That the applicant failed to comply with the terms and conditions of the agreement and undertaking of the exemption granted u/s 23 of the Act of 1975. Therefore a show cause notice dated 19.12.1986 was issued to the applicant for withdrawal of the exemption. The copy of the show cause notice dated 19.12.1986 is as Annexure R-5.

21. That Principal Chief Conservator of Forest vide letter dated 27.1.2006 informed the Director Town & Country Planning Department that Khasra Nos. 9 to 16 of Anangpur is notified u/s 4 of Punjab Land Preservation Act, 1900 vide notification dated 18.8.1992. Hence the above area was treated as Forest in view of the order dated 18.3.2004 passed by this Court in M.C. Mehta's case (supra). Since the applicant never submitted any proposal with the Forest Department for diversion of Forest land for non-forestry use under the Forest Conservation Act, 1980, therefore the Director Town & Country planning asked the applicant vide letter dated 27.6.2006 to seek the diversion of Forest land in Khasra Nos. 9 to 16 of village Anangpur for non-forestry use under the Forest Conservation Act, 1980.

11. Reference can be made to Sections 3, 4 and 5 of the Act. Section 3 inter-alia provides that whenever the State Government with a view to conserve - (a) sub-soil water; (b) erosion in any area; may make a notification for the said purpose and Section 4 thereof provides as to what activities can be prohibited. A perusal of Section 4 and 5 would show that what can be prohibited is-

- (a) The clearing or breaking up of any area/land which was not under cultivation;
- (b) The quarrying of stone or burning of lime which was not so being done earlier;
- (c) The cutting of trees or timber or collection or removal of any forest produce except for bonafide domestic use;
- (d) The setting on fire of trees, timber or forest produce;
- (e) The admission, herding, retention or pasturing of animals;
- (f) The examination of forest produce;
- (g) The grant of permits to the inhabitants of the towns and villages to take any tree or timber or forest produce for their own use or to pasture sheep or camel or to cultivate or to make building etc.

12. In view of the notification u/s 4 when the clearing or breaking up of the land is not permitted that itself is a bar from fresh construction because a construction only can take place if clearing and breaking of an area/land taking place. This prohibition is clearly contained in the notification of 1992. The reliance placed by the applicants on Clause (g) is clearly misconceived, inasmuch as the permissible activity allowed within Clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. The admitted case

is that the applicants herein have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside, and therefore Clause (g) in Section 4 has no application. The factum of developing a plot and then construct therein would amount to clearing or breaking up of an area or land.

13. The judgment in M.C. Mehta's case (supra) notes the argument, which is presently reiterated that the State Forest Department has been treating and showing the areas notified under Sections 3, 4 and 5 as forest. This Court noted this in para-82 of the judgment which has been extracted above.

14. This Court was not only examining the mining activity in the area upto 5 km on the Haryana side of the Ridge, but also in the Aravalli Hills causing environmental degradation as is apparent from para-1 of the judgment. Further in para-8, it has been noted that the application that was filed by Delhi Ridge Management Board not only sought for a direction to stop all mining activities but also of pumping of ground water in and from areas upto 5 km from Delhi Haryana border on the Haryana side of the Ridge, inter-alia stating that this was in the larger interest of maintaining ecological balance of the environment. As per learned Amicus Curie location of the applicant company's plots are in the Ridge and in the Aravalli chain.

15. Under the orders of this Court dated 22.7.2002, the Environmental Pollution Control Authority (EPCA for short) was directed to give a report with regard to the Environment in the area preferably after a personal visit. The objective of the visit by the EPCA members has been noted in para 12 of the judgment as under:

1. Assessment of the level of compliance with the conditions laid down in the regulatory procedures like the no- objection certificate (NOC) granted by authorities to the mine-owners.
2. Evidence of land and habitat degradation in and around the mining sites.
3. Evidence of misuse and shortage of ground water in the area.
4. Assessment of the implication of such activities for the local ecology and drinking water sources in the area.

16. During the visit, it appears EPCA found clear evidence of violation of some of the key conditions of order of this Court, dated 10.5.1996.

17. EPCA referred to the notification of August, 1992 which report is extracted at para-14 of the judgment. In fact the EPCA, in its report regarding compliance of environmental management plans recommended by NEERI as directed by this Court on 10.5.1996 at SI. No. 4 noticed as under:

S1. No. Directive Enforced or not 4 Green belt on either side We saw large-scale of the road between construction on this Surajkund and Badkal road from schools to (P.S. The applicant's management colleges near the Surajkund) and

housing colonies

18. The recommendation of EPCA are as under:

Not only must further degradation be halted but all efforts must be made to ensure that the local economy is rejuvenated, with the use of plantations and local water harvesting-based opportunities. It is indeed sad to note the plight of people living in these hills who are caught between losing their water-dependent livelihood and between losing their only desperate livelihood to break stones in the quarries. It is essential that the Government of Haryana seriously implements programmes to enhance the land based livelihood of people - agriculture, animal care and forestry. Local people must not be thrown into making false choices, which may secure their present but will destroy their future. Already, all the village visited by EPCA complained of dire and desperate shortages of drinking water. Women talked about long queues before taps to collect water. Clearly water resources of the region are critical inputs to development and cannot be wasted and destroyed like this. The State Government must come up with strategies to involve local communities in the future development of this region.

19. Central Ground Water Board's report referred to in para-16 shows that the area in question in Village Anangpur has been notified as a very precarious ground water situation. Any construction activity therein without adequate water reserves will also have a negative effect. In para-24 of M.C. Mehta's case it is noted that ground water table is already at critical stage in Faridabad.

20. Therefore it is not correct as contended by the applicant that the nature of lands of the applicant were considered by this Court in the earlier case and the restrictions did not operate so far as they are concerned.

21. I.A.s are accordingly dismissed.