

(2016) 11 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ (Cw) No. 1038 of 2014.

M/s Ambuja Cements Limited, having its Registered Office at : P.O. Ambuja Nagar, Taluka Kodinar, District Junagarh, Gujarat-362715 and its Unit at Marwar Mundwa, Tehsil and District Nagaur (Rajasthan)-341026 through its Joint President Rajesh Singhi S/o S

Date of Decision : 02-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 DNJ 1641 : (2017) RRD 1

Hon'ble Judges : Ms. Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Mr. M.S. Singhvi, Sr. Advocate assisted by Mr. Hemant Dutt and Mr. Arvind Shrimali, Advocates, for the Petitioner; Dr. Pushpendra Singh Bhati, AAG assisted by Mr. Sajjan Singh, Asstt. Counsel, for the Respondents

Final Decision : Disposed Off

Judgement

Ms. Nirmaljit Kaur, J. - The prayer in the present petition is to quash the orders dated 04.10.2013 (Annx.33) and 17.10.2013 (Annx.34) passed by the respondents No. 1, 2 and 4 respectively whereby the allotment of 132 bigha of land situated in Khasra No. 486 in Mauja Khen, District Nagaur, Rajasthan in favour of the petitioner/its predecessor vide order dated 06.01.1986 was cancelled.

2. While praying for setting aside the impugned orders, learned counsel for the petitioner inter alia contended that a PIL petition was filed by the villagers of Khen claiming 132 bigha of land out of alleged 1001 bighas comprised in Khasra No. 486 to be catchment area of the pond but the same was dismissed vide order and judgment dated 06.04.2009 and the respondents No. 1 to 3 in their reply to the PIL petition had categorically denied the use of said 132 bigha of land as pond or catchment area by the villagers. It is further contended that even, as on date, the respondents are not sure that the same is a catchment area as no report is available to verify the fact. The respondents have passed the impugned orders without obtaining the report in spite of the directions issued by

the coordinate Bench of this Court at Jaipur Bench vide order dated 29.05.2012 in S.B.Civil Writ Petition No. 11153/2011 (Suo Motu v. State of Rajasthan).

3. However, Mr. Pushpendra Singh Bhati, learned Additional Advocate General while disputing the same submitted that the order and judgment dated 06.4.2009 passed in the PIL will not come in the way of the respondent-State in passing the order of cancellation as there was no such finding recorded nor such plea was taken by the State that the same was not a catchment area. Further, the order of cancellation is passed on the technical report submitted by the State Officer, which is placed on record as Annexure-R5/1.

4. Be that as it may, the coordinate Bench at Jaipur vide its order dated 29.05.2012 had issued the following directions :-

"1. The State Government should plan for a drive to remove encroachments in catchment areas of water bodies in the State of Rajasthan. For the aforesaid purpose, they may get survey by remote sensing or through any other appropriate mechanism so that a proper picture may come for its follow up action. If the encroachments in catchment areas are not stopped, other reservoirs would face same situation as of Ramgarh dam. The above direction should be given priority looking to water scarcity in the State of Rajasthan.

2. Instructions be issued restraining allotment of land falling in catchment areas of water reservoirs like Johar, Nala, Tank, river, pond etc. Infringement of instructions should be viewed seriously with follow-up action against the defaulting officers and the beneficiaries so that tendency of illegal allotment of land may be stopped at all levels.

3. Action may be taken for cancellation of allotments made in violation of section 16 of the Act of 1955 and other Rules and Regulations. Presently, details of the references sent to the Board of Revenue in regard to Ramgarh dam catchment area have been furnished to this court which are more than 400 by now. Similar drive for making reference to the Board of Revenue in regard to catchment areas of other water reservoirs in the State of Rajasthan should be taken up so that with the cancellation of illegal allotments followed by removal of encroachments, water may flow to reservoirs like river, dam, nala, pond, Johar etc. without obstruction.

4. The Water Resource Department of the State has already issued directions not to allow construction of anicuts more than 2 meters height. The directions have not been properly executed by other departments. The order issued by the Water Resources Department may be conveyed to all the departments so that in future anicuts may not be constructed with a height of more than 2 meters other than in exceptional cases but in those cases also it should be with the permission of the Water Resources Department.

5. Construction of anicuts should not be permitted unless a proper survey is made to assess rainfall in the area indicating sufficiency of water for the anicuts

and overflow thereupon to the catchment area of a dam, pond, Johar, nana, river etc. A survey be conducted to find out duration for which water may remain in the anicut/s. To summarise the aforesaid direction, construction of anicut/s should be only after planned development and proper survey. Presently, majority of anicuts are lying dry resulting in wastage of public money. The accumulation of water in rainy season does not justify construction of anicuts. The State Government is expected to take proper decision for construction of anicuts in future and, till then, they are restrained to construct anicut/s obstructing flow of water to a reservoir.

6. The Forest Department should frame scheme for development of forest, more specifically, nearby catchment areas of water reservoirs if their notified land exist therein. This will attract rain and save environment already damaged to a great extent. The efforts of the department should be to stop cutting of trees in the forest area affecting top soil of the hills resulting in deterioration of environment. The Environment Department should meaningfully cooperate with the Forest Department for proper plantation to take all measures to save environment.

7. The State Government had agreed to constitute district level committees to monitor compliance of the directions issued in the judgment with a centralised body at the State level for taking policy decision on the issue or for any action for implementation of the directions given. The centralised body should consist of senior officers of concerned departments apart from legal experts, which may be Mr. RP Singh, Additional Advocate General, members of the Monitoring Committee etc. to see proper implementation of the directions herein.

8. Measures should be taken to demarcate catchment area of a water reservoir so as to stop encroachments thereon. The demarcation may be done by an appropriate manner for which State Government may take a proper decision. It is not necessary to construct wall or pillar but it may be by any other method but should indicate boundaries. It may be with plantation in a row.

9. Appropriate directions may be issued to stop construction in catchment areas of water reservoirs, more specifically under NREGA scheme as it has been seen that even roads were constructed dividing the river in two parts and obstructing flow of water. The State Government has removed those roads from catchment area of Ramgarh dam, however, such unplanned constructions result in wastage of public money. Thus, necessary orders may be issued to avoid such construction in future, rather, proper directions may be issued not to raise construction obstructing flow of water in catchment areas.

10. The State Government shall issue directions to all the local bodies namely; Municipal Corporations, Municipal Councils, Municipalities, Panchayat Samities, Gram Panchayats etc. not to allow development of residential colonies in the catchment area of any water reservoirs in the State. This will not only save catchment areas of water reservoirs but also save those colonies from damage in case of natural calamity. It may occur due to chocking of water flow. It will also

save lives of persons who developed colonies in catchment area unknowingly that some day nature may take its own course to restore the position resulting in serious damage to life and property.

11. The Revenue Department should maintain the position of the land belonging to water reservoirs nala, pond, river, Johar, dam etc. and other tributaries as was obtaining in the year 1955 with the commencement of the Rajasthan Tenancy Act, 1955. The excuse regarding non-availability of revenue record was taken by the Government but it is found to be without substance as they themselves have taken action for cancellation of allotments in Ramgarh dam based on old revenue record, hence, excuse above would be viewed seriously, more so when Government is under an obligation to maintain revenue record since inception.

12. The Water Resources Department is directed to work as a Nodal Agency for taking action for removal of encroachments and for stoppage of illegal construction and other related areas in the catchment areas of water reservoirs in the State."

5. After hearing the learned counsel for the parties, it appears that a contrary stand was taken by the State Government in their written statement filed in PIL petition vis-a-vis the stand taken in the present writ petition and also the basis on which the allotment has been cancelled, which shows that as on date, the respondent-State itself is not sure whether the said area is a catchment area or not.

6. In view of the above, without prejudice to the interest of either of the parties, the impugned orders 04.10.2013 and 17.10.2013 are quashed and the writ petition is disposed of with liberty to the respondents to undergo the exercise in view of the order dated 29.05.2012 passed in S.B.Civil Writ Petition No. 11153/2011 and thereafter pass a fresh order with respect to the land in question measuring 132 bigha. The said order shall be passed after considering the objections raised by the petitioner as also after giving reasonable opportunity as well as personal hearing. While passing the said order, the respondents shall also take into consideration as to whether the railway line as proposed to be constructed by the petitioner-Company will in any way affect the flow of the water, if at all it is found to be a catchment area. The said needful be done within two months from today. Till the passing of the order, the status quo shall be maintained with respect to the land in question.