
(2014) 08 DEL CK 0298
In the Delhi High Court
Case No : W.P. (C) 4802/2014

Rane Ventures Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2)

Citation : (2014) 08 DEL CK 0298

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Makarand D. Adkar, S.D. Singh, Vijay Kumar and Rahul Kr. Singh, Advocate for the Appellant; Jasmeet Singh, CGSC, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.—The petitioner has filed the present writ petition calling into question an aerial survey report dated 07.05.2012 issued by the Survey of India (respondent no.5) and a letter dated 11.03.2014 issued by the Directorate of Sugar, Ministry of Consumer Affairs, Food and Public Distribution to Vijay Sawant Sugar & Agro Products Pvt. Ltd. (i.e. respondent no. 6), permitting it to continue with setting up a new sugar factory. The said aerial survey report dated 07.05.2012 and the letter dated 11.03.2014 are hereinafter referred to as the "impugned aerial survey report" and the "impugned letter", respectively.

2. The controversy in the present petition relates to the permissions being accorded to respondent no.6 (hereinafter referred to as "VSSAP") for setting up a sugar factory at village Shidvane, Taluka Kankawali, District Sindhudurg, Maharashtra. The petitioner is also desirous of setting up a new sugar factory at village Nag Sawantwadi, which is also situated in Taluka Kankawali, District Sindhudurg, Maharashtra.

3. The Sugar (Control) Order, 1966 (hereinafter referred to as the "Control Order") restricts setting up sugar factories in close proximity and, in terms of

paragraph 6A of the Control Order, no sugar factory is permitted to be set up within a radius of 15 kms of any existing sugar factory. The State Government is also empowered to notify such minimum distance which is greater than 15 kms. In terms of the Control Order, the State of Maharashtra has notified a minimum distance of 25 kms between two sugar factories.

4. Paragraph 6B of the Control Order is also relevant inasmuch as it mandates that before filing the "Industrial Entrepreneur Memorandum"(IEM) with the Central Government, the concerned person shall obtain a certificate from the Cane Commissioner or Director (Sugar) or specified authority of the concerned State Government. In terms of paragraph 6B of the Control Order, after filing of the IEM, the concerned entrepreneur has to furnish a performance guarantee for implementation of the IEM within the time as may be stipulated.

5. VSSAP obtained the impugned aerial survey report on 07.05.2012 which indicated that its proposed factory site was at a distance greater than 25 kms from the nearest existing factory. On the basis of this aerial survey report, Commissioner of Sugar, State of Maharashtra (respondent no.4) issued an aerial distance certificate dated 24.01.2013 (hereinafter referred to as the "aerial certificate") regarding the aerial distance, as required under paragraph 6B of the Control Order.

6. Since, the petitioner also proposes to set up a sugar factory in Taluka Kankawali, District Sindhudurg, Maharashtra, any permission for setting up a sugar factory in favour of VSSAP would adversely affect the prospects of the petitioner. The petitioner has thus, been raising objections before various authorities including Commissioner of Sugar, State of Maharashtra (respondent no.4) against the permissions being accorded to VSSAP. In spite of the objections raised by the petitioner, respondent no.4 issued the aerial certificate dated 24.01.2013 in favour of VSSAP on the basis of the impugned aerial survey report. The said aerial certificate was challenged by the petitioner in the Bombay High Court by way of a writ petition (being Writ petition no. 2408 of 2013). It was, inter alia, alleged by the petitioner that the aerial certificate dated 24.01.2013 granted in favour of VSSAP was contrary to provisions of law and had been issued without following due procedure. One of the principal ground urged by the petitioner before the Bombay High Court was that the aerial certificate dated 24.01.2013 had been issued without duly ascertaining the ownership of the property on which the sugar factory was proposed to be built by VSSAP. The petitioner also prayed for an interim order for stay on the implementation and operation of the aerial certificate dated 24.01.2013. By an order dated 12.03.2013, the Bombay High Court issued notice to VSSAP and further directed that any steps that may be taken by VSSAP pursuant to the aerial certificate dated 24.01.2013, would be subject to further orders in the writ petition. The said order reads as under:

1. Issue notice to respondent no.7 before admission, returnable on 18.4.2013. Respondent nos.1 to 6 waives service.

2. The steps that may be taken by respondent no.7 pursuant to the Aerial Certificate shall be subject to further orders in this writ petition. The respondent no.7 shall not be entitled to claim any equities on the basis of any steps that it may take pursuant to the said certificate.

7. Having failed to obtain an interim order from the Bombay High Court interdicting VSSAP and other State Authorities from proceeding in furtherance of the aerial certificate dated 24.01.2013 issued by respondent no.4, the petitioner proceeded to also address its grievance to respondent nos. 1 and 2. It was now alleged that the impugned aerial survey report (on the basis of which the aerial certificate dated 24.01.2013 was issued) had been obtained fraudulently. The petitioner alleged that the ownership of the property on which the sugar factory was proposed to be set up by VSSAP had not been verified. It was alleged that VSSAP had shown the pillar from which the aerial distance was calculated as situated on Gut no. 1731 while in fact, the pillar was situated on Gut no. 1788. And whereas Gut no. 1731 was owned by VSSAP, Gut No. 1788 was not owned by VSSAP. This objection was also reported by respondent no. 4 to respondent no.2, who has apparently considered the same and taken a view that the controversy has been resolved as now both Gut No. 1788 and 1731 are owned by VSSAP and the factory would be set up at the same geographical coordinates (Latitude and Longitude) from where the aerial distance had been calculated.

8. The petitioner has now filed the present petition, inter alia, challenging the impugned aerial survey report on the basis of which the aerial certificate dated 24.01.2013 had been issued to VSSAP. It is pleaded by the petitioner that the impugned aerial survey report and other permissions obtained by VSSAP from respondents no.1 to 5 (which would include the aerial certificate dated 24.01.2013) have been obtained by fraud and by misrepresentation. Although, a specific prayer for setting aside the aerial certificate dated 24.01.2013 has not been made, the subject matter of the petition is inextricably linked with the disputes raised by the petitioner before the Bombay High Court.

9. In the given circumstances, the petitioner was called upon to explain as to why the petitioner had not approached the Bombay High Court since its writ petition (W.P. No. 2408/2013) was still pending before that court and in terms of the interim order dated 12.03.2013, all steps taken by VSSAP pursuant to the aerial certificate dated 24.01.2013 were subject to further orders that may be passed in the said petition.

10. The learned counsel for the petitioner contended that since the impugned letter in the present petition had been issued by Central Government, the Bombay High Court would have no jurisdiction over subject matter and this Court alone had the exclusive jurisdiction in the matter. The learned counsel for the petitioner further contended that no part of the cause of action had arisen in the State of Maharashtra and in support of its contentions, relied upon the decision of Supreme Court in the State of Rajasthan and Others Vs. Swaika Properties and Another, and Alchemist Limited and Another Vs. State Bank of Sikkim and

Others, .

11. In my view, the said contentions are wholly without merit and are liable to be rejected. In the present case, the factories (both by VSSAP and the petitioner) are proposed to be set up in the State of Maharashtra. The petitioner as well as VSSAP have their registered office in the State of Maharashtra. The impugned aerial survey report dated 07.05.2012 has also been issued by the office of Director, Maharashtra & Goa Geo-spatial Data Centre, Survey of India located at Pune in Maharashtra. Substantial part of the cause of action has also arisen in the State of Maharashtra and thus Bombay High Court would certainly have jurisdiction to entertain the present petition.

12. The decisions of the Supreme Court cited by the learned counsel for the petitioner also do not support the contentions canvassed by him. In the case of Swaika Properties (supra), the Supreme Court had set aside the orders passed by the learned Single Judge of Calcutta High Court entertaining the writ petition impugning the validity of a notification issued by the State Government of Rajasthan under the Rajasthan Urban Improvement, Act, 1959. The Supreme Court held that merely because the notice under the said Act had been received by the petitioner (therein) in Calcutta, the same would not confer jurisdiction on the Calcutta High Court to interdict authorities at Jaipur from giving effect to the impugned notification. In that case, the Supreme Court had held that, in the given facts, the receipt of a notice would not give rise to a cause of action within the State of West Bengal. The said judgment has no application in the facts of the present case. In the present case, substantial cause of action has arisen in the State of Maharashtra and merely because the impugned letter has been issued by the Central Government, the same would not exclude the jurisdiction of the Bombay High Court. The Constitution (15th Amendment) Act, 1963 had inserted Clause (1A) in Article 226 of the Constitution of India, which read as under:

226. (1A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

13. The said Clause was renumbered as Clause 2 by virtue of the Constitution (42nd Amendment) Act, 1976. The contentions urged by the learned counsel for the petitioner completely overlook the provisions of Article 226(2) of the Constitution of India, which were introduced only for the purposes of ensuring that High Courts within whose jurisdiction the cause of action arises are also vested with the jurisdiction to issue appropriate writs/directions.

14. The contentions that no part of the cause of action has arisen in the State of Maharashtra is also misplaced. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P.

Agencies, Salem, , the Supreme Court had explained the meaning of the expression "cause of action" as under:

12. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

15. After referring to its earlier decision, the Supreme Court in *Alchemist Ltd. and Anr.* (supra) held as under:

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

16. Following the aforesaid decisions, it is apparent that substantial cause of action has arisen in the State of Maharashtra as most of the material and essential facts, pleaded in the present petition have a nexus with the State of Maharashtra. Thus, plainly, the Bombay High Court would have the jurisdiction over the subject matter of the present petition.

17. In my view, filing of this petition in this court is a case of blatant forum shopping and is an abuse of process of Court. The petitioner had assailed the permission granted by Commissioner (Sugar) - the aerial certificate, in the Bombay High Court and having failed to obtain any interim order which would interdict VSSAP from continuing to implement its project, the petitioner resorted to filing objections before the concerned officers of the Central and the State Government to obstruct VSSAP from implementing its IEM. And the petitioner, having failed in its endeavour, has preferred the present petition even though its earlier petition challenging the aerial certificate on the basis of which the IEM was filed by VASSAP is pending in the Bombay High Court. It is relevant to note that even though the impugned aerial survey report is mentioned in the writ petition filed by the petitioner in the Bombay High Court and the aerial certificate

issued on the basis of the impugned aerial survey report is impugned by way of the said petition, the petitioner had chosen not to challenge the same in that petition. The Bombay High Court had directed that any steps taken by VSSAP pursuant to the aerial certificate would be subject to further orders in that writ petition, yet the petitioner has preferred the present petition, essentially to challenge the permissions that would inevitably follow the issuance of the aerial certificate. The petition is, thus, liable to be dismissed with costs.

18. For the reasons stated above, the writ petition is dismissed with costs of Rs. 25,000/- which shall be deposited by the petitioner with the Legal Aid Society within two weeks from today. It is clarified that this order shall not preclude the petitioner from either approaching the Bombay High Court by way of a writ petition or by initiating any other appropriate proceeding, in accordance with law.