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Equivalent Citation: AIR1992Bom471, 1994(1)MhLj21

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 170 of 1992

Decided On: 29.04.1992

Appellants: The Goa Foundation and another

Vs.

Respondent: The Konkan Railway Corporation and others

Hon'ble Judges:

M.L. Pendse and G.D. Kamat, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Mr. A Grover and Mrs. Norma Alvares, Adv.

For Respondents/Defendant: Mr. S.K. Kakodkar, Sr. Adv., Mr. E. Afonso, Adv., Mr. J. Dias, Adv. General, Mrs. S. Albuquerque, Addl. Government Adv. and R.M.S. Khandeparkar, Standing Counsel

Subject: Property

Subject: Environment

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Articles 21 and 226; Environment (Protection) Act, 1986 - Section 3; Railways Act, 1890 - Section 11; Forests (Conservation) Act, 1980 - Section 2; Land Acquisition Act, 1894 - Section 17

Case Note:

a) The case dealt with a public interest litigation filed for the protection of the environment – A project for laying of new broad gauge railway line passing through three states was undertaken for public benefit after the approval from renowned experts from that area – It was alleged that the project would damage the ecology and the environment of the churches and temples – The High Court declined to interfere with the project of such magnitude

b) The case discussed the writ petition filed against the laying of new broad gauge railway line – It was contended that due to the project, the small lake would be filled up, thus preventing the migratory birds from reaching the State of Goa – The High Court declined to interfere on basis of such imaginary apprehension

c) In view of Section 11 of the Railways Act, 1890, it was held that clearance for laying

down new broad gauge railway line, under the Environment Act, is not required even though the line passes over rivers creeks etc.

d) The case discussed the applicability of the notification issued under Section 3(2) of the Environment (Protection) Act, 1986, against the laying of new broad gauge railway line – It was contented that providing a rail line is not an industry within the meaning of Section 3(2) – The work of bunding for that purpose was not a prohibited activity- It was held that as the notice prescribed restrictions on setting up and expansion of industries and further dealt with operations and processing in costal regulation zones, it had no application to laying of new railway line

e) The case discussed the necessity of the prior approval of the Central Government under Section 2 of the Forests (Conservation) Act, 1980, for laying of new broad gauge railway line The project was approved by the Central Government – It was contented that the use of forest land for the proposed railway alignment did not affect the existence of the forest – It was held that the prior approval of the Government under Section 2 was not necessary

JUDGMENT

1. Rule returnable forthwith. Mr. Kakodkar Waives service on behalf of respondent No. 11 Mr. Dias, Advocate General, on behalf of respondents Nos. 2 and 4 and Mr. Khandeparkar on behalf of respondent No. 3. Heard counsel.

Very few people are fortunate to see their dreams fulfilled and people residing on the west coast saw fulfillment of their dream when the Central Government decided to provide a broad gauge railway line from Bombay to Mangalore and thereafter to extend to the State of Kerala. It was a longstanding demand of the people in the region for a cheap and fast transport to improve the economic conditions and to make accessible the hinterlands in the State of Maharashtra, State of Goa and State of Karnataka. The Central Government was considering providing a railway line for a considerable length of time but the project was postponed from time to time due to lack of requisite funds. Ultimately the Central Government took a decision to provide the line and to achieve that purpose. The Konkan Railway Corporation Ltd., a public limited Company, was set up. The length of the line from Bombay to Mangalore along the west coast is to be 760 Kilometres and out of that 106 Kilometres line runs through the State of Goa. The cost of the project was envisaged at Rs. 1391 crores in the year 1991-92. The Central Government set up a Corporation as the total allocation of the Planning Commission was only to the order of Rs. 300 crores and, therefore, it was incumbent for the Corporation to raise the funds for seeking equity contribution from the Ministry of Railways and the beneficiary States of Maharashtra, Goa, Karnataka and Kerala. The Corporation was also conferred with powers to raise money with issuance of 9% tax-free bonds from financial institutions and public borrowings. The Konkan Railway alignment passes through different terrain in different States and the Corporation is required to construct large number of tunnels and projects over rivers. The Railway line will have 136 major bridges and 1670 minor bridges and there will be 71 tunnels with a total length of 75 Kms. The Konkan Railway is the biggest railway project undertaken in the Indian sub-continent in the present century. The project was approved after detailed and long-drawn survey of various aspects of the matter and the Corporation was constituted in July, 1990 to undertake the exercise which is of an extensive magnitude. The project commenced on October 15, 1990 and the Government of Goa approved the alignment passing through the State of Goa on December 17, 1990.

2. The petitioner No. 1 is a Society registered under the Societies Registration Act and claims to protect and improve the natural environment including forests, lakes, river and wild life and to have compassion for living creatures. The petitioners approached this Court by filing the present petition under Article 226 of the Constitution with the prayer that the Corporation should be compelled to procure environment clearance for the alignment passing through the State of Goa from

the Ministry of Environment and Forests, Government of India, and until such clearance is secured all the work in respect of providing railway line should be withheld. The grievance of the petitioners is that the proposed alignment has been planned and undertaken without an adequate Environment Impact Assessment (E.I.A.) and an Environment Management Plan (R.M.P.). The petitioners claim that the proposed alignment is wholly destructive of the environment and the eco-system and violates the citizens' rights under Article 21 of the Constitution. The petitioners also claim that even though the ecological damage will not be felt immediately, such damage will be gradual and will lead to the deterioration of the land quality and will affect large number of people. The petitioners further claim that as the proposed alignment passes across the rivers, creeks, basins and backwaters, the Corporation cannot proceed to carry out the work without obtaining the statutory clearance required under the provisions of the Environment (Protection) Act, 1986. The petitioners claim that under the provisions of Section 3(2)(v) the Ministry of Environment has issued Notification dated February 19, 1991 and restrictions on the setting up or extension of industries, operations or processes in the coastal regulation zone (C.R.Z.) are prescribed, the petitioners claim that the Corporation cannot ignore the activities prohibited or regulated under the Notification and in the absence of clear sanction or approval from the Ministry of Environment it is not permissible to proceed with the project undertaken within the State of Goa. The petitioners further claim that certain correspondence which has transpired between Inter-Ministerial Departments reflects that the Environment Ministry is not inclined to permit the Corporation to undertake the project without examining the objections raised by various Organizations to the proposed alignment.

3. The Corporation has filed Return sworn by Mr. B. Rajaram, Chief Engineer of Konkan Railway Corporation for Goa Sector and it is pointed out that after the Corporation was constituted the entire route was surveyed and the line required for the project had been demarcated and the land acquisition process has already commenced. The Corporation has already secured possession of 80% of the required land by applying urgency clause under Section 17 of the Land Acquisition Act. The Corporation has also awarded "several contracts for construction of bridges, tunnels and work has commenced all along the line. Several engineers have been posted on the field and the physical progress achieved is about 20% of the total length of line. The Corporation had chalked out the programme to complete the line by October, 1994. The Corporation points out that an amount of Rs. 330 crores has been invested and the projected investment for the current year is Rs. 400 crores. The Corporation points out that the maximum length from north to south of State of Goa is 105 Kms. and the terrain is intersected by hilly spurs running down from the Western ghats and a number of streams which together form an important network of waterways for inland navigation. The Corporation further points out that the alignment for Goa Sector was finalised in December 1990 and when a few goons raised objection to the proposed alignment, the Railway Ministry appointed Mr. M. Menezes, an eminent Goan Engineer and retired Chairman of the Railway Board to consider the objections and submit an investigation report. The report was submitted on November 16, 1991 and Mr. Menezes recommended a few alterations with a view to avoid the alignment passing through the crowded villages, the recommendations made by Mr. Menezes were accepted by the Railway Ministry and the Corporation has accordingly altered the initial alignment, the Corporation further points out that to ascertain whether there would be an adverse effect on the environment and ecology and, if so, to suggest mitigative steps, the Corporation commissioned services of a Government Enterprise known as Rail India Technical and Economical Services (RITES). The services commissioned by the Corporation are of an internationally recognised Consultancy Organization and is manned by eminent persons expert in the field of ecology, environment and allied subjects. The Project Team reported that there will be no air pollution, no significant noise produced by the Railways and not even the green forest will be disturbed or the marine/fish life would be affected. The Project Team considered alternative alignments suggested and came to the conclusion that the proposed alignment by the Corporation and which is approved by the Government of Goa and Central Government is preferable to all other suggestions. The Corporation then points out that an area of 216 hectares of land have already been taken possession of by the Corporation in the State of Goa and contracts for construction of major and minor bridges to the tune of Rs. 137 crores over rivers Zuari and Mandovi have already been awarded and work has commenced at ten locations. The total expenditure incurred in Goa

Sector is to the order of Rs. 22 crores and that is about 10% of the entire project cost in Goa. The Corporation then points out that the claim of the petitioners that the alignment would adversely affect the environment and ecology of the State of Goa is nothing but a figment of imagination and objections are raised with ulterior motives. The Corporation points out that the provisions of the Environment Act and Notifications issued thereunder are not binding upon the Railway Administration and Corporation, apart from the fact that all requisite steps for ensuring that the environment will not be adversely affected are already undertaken. The Corporation further points out that the alleged breach or violation of the provisions of Forests (Conservation) Act and the Regulation about cutting of trees under the Trees Act is without any merit.

The Government of Goa and the Conservator of Forests supported the claim of the Corporation while the Ministry of Environment through their counsel made it clear that the Ministry is fully conscious of the mitigative steps taken by the Corporation and necessary precaution will be taken to ensure that the ecology and the environment of the places from where the alignment passes is not disturbed.

4. Mr. Grover, learned counsel appearing on behalf of the petitioners, submitted that though the petitioners are not opposing the project undertaken by the Corporation, their challenge is only to the proposed Railway alignment as it violates the provisions of the Environment (Protection) Act and Regulations and Notifications thereunder. Mr. Grover submitted that the proposed alignment would destroy the natural environment in many areas and undermine the ingenious centuries old man made environment of the Khazan lands. The learned counsel urged that the geology of Goa consists essentially of reddish iron and manganese bearing rocky strata which gets softened in the process of monsoon lateritization. It is contended that the softer rocks of Goa have been eroded over the ages to a base level of erosion much below the sea level and due to this geological reason, Zuari, Mandovi and Chapora are the three rivers on the west coast in which the ocean tides sweep inland for several kilometres. Mr. Grover submitted that the agriculturists in this region have erected timber sluice gates which operate under tidal power to control the inflow of tides. The low-lying khazan paddy fields which lie below the sea level in the estuaries of the three rivers have created a unique natural biological eco-system of mangrove and fish life. The khazan lands, claims the counsel, have richest and most fertile nurseries of fish life and fish breeding grounds and any embankment which the Corporation is bound to construct through the khazan land will destabilise the drainage of the tidal basin which will cause devastating and irreversible damage to the area. We inquired from the learned counsel as to what is the extent of the khazan land existing in Goa and the answer was the approximate area is about 227 hectares and the proposed alignment would affect the land measuring only 30 hectares.

5. Mr. Kakodkar, learned counsel for the Corporation, submitted that the assumption that the khazan lands would be adversely affected is without any basis. The learned counsel pointed out that the Corporation has taken adequate precaution to ensure that the biological eco-system is not disturbed. Mr. Kakodkar pointed out that there will not be any interference with the natural tides and adequate drainage works are provided to avoid any stagnation of tidal flow. The entire water management through the utilisation of sluice gates and bunch system remains unaffected.

6. In our judgment, the claim of the petitioners that the alignment would have devastating and irreversible impact upon the khazan lands is without any foundation, and even otherwise, the extent of damage is extremely negligible and a public project of such a magnitude which is undertaken for meeting the aspirations of the people on the west coast cannot be defeated on such considerations. It is not open to frustrate the project of public importance to safeguard the interest of few persons. It cannot be overlooked that while examining the grievance about adverse impact upon a small area of 30 hectares of Khazan lands, the benefit which will be derived by large number of people by construction of rail line cannot be brushed aside. The Courts are bound to take into consideration the comparative hardship which the people in the region will suffer by stalling the project of great public utility. The cost of the project escalates from day to day and, as pointed out by the Corporation, the extent of the interest and cost which will be suffered by the

Corporation every day is to the tune of Rs. 45 lakhs. No development is possible without some adverse effect on the ecology and environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left to the persons who are familiar and specialized in the field. The Corporation has set up not only a specialized Committee but has also engaged the service of a renowned engineer from Goa and who is practical not only in experience of the surroundings in Goa and when both of them have given green signal to the project, we decline to exercise our writ jurisdiction to frustrate the project of such magnitude on the alleged damage to the ecology and environment of khazan lands.

7. Mr. Grover then submitted that under Section 2 of the Forests (Conservation) Act, no authority can use forest land or any portion thereof for any non-forest purpose except with the prior approval of the Central Government. The grievance is that the alignment passes through the forest land and the Corporation has not secured prior approval for the use of the land for non-forest purpose. There is no merit in the submission because the project has been approved by the Central Government and the Railway Ministry which is carrying out the exercise is a part of the Central Government. The use of the forest land for providing railway line is not going to affect or damage the existence of forests and the complaint of the petitioners on this count is devoid of any merit. Mr. Grover also submitted that the alignment required cutting of several trees inside as well as outside the forests and such destruction of existing trees is not permissible in view of the provisions of the Trees Act. The submission is misconceived because the trees are cut for a public purpose to provide a rail line. Apart from this consideration, the Corporation points out that a project has been undertaken to plant double the number of trees which will be required to cut down for providing the rail line. Again, the project of such magnitude of providing the rail line passing through more than three States cannot be held back by catering to the alleged grievance of the petitioners that the trees are indiscriminately cut. It would not be out of place to mention that the averment on this count made in the petition is extremely vague. Mr. Dias, Advocate General appearing on behalf of the Conservator of Forests, Government of Goa, pointed out that there is no breach whatsoever of any of the provisions of the Forests Act of the Goa Preservation of Trees Act, 1984. Mr. Grover also submitted that the alignment will extinguish ecologically sensitive areas like Carambolim wetlands where the migratory birds visit during the course of year. Mr. Grover sounded an apprehension that a small lake at Carambolim will be filled up by the Corporation and that would prevent the migratory birds from reaching the State of Goa. Mr. Kakodkar submitted that the apprehension sounded is entirely imaginary and that the alignment is not going to affect the wetlands. We are unable to find any merit in the objections raised to the proposed alignment in the State of Goa by the Corporation. The challenge to the continuation of the project on the ground that the alignment is likely to affect the environment and disturb the ecological balance is without any substance and is, therefore, required to be turned down.

8. Mr. Grover then submitted that whatever may be the apprehensions of the petitioners and even if the Court comes to the conclusion that the apprehensions sounded by the petitioners are without any substance, still it is not permissible for the Corporation to continue with the exercise undertaken without prior clearance from the Environment Ministry of the Central Government. The learned counsel submitted that the work cannot proceed in view of the provisions of the Environment (Protection) Act, 1986. It was also submitted that the Corporation is guilty of statutory violation in ignoring the specific directions given by the Ministry in exercise of powers under the Act and, therefore, the Corporation should be restrained from carrying out any work until the clearance is secured from the Ministry. The Environment Act was enacted to provide for the protection and improvement of the environment and for the matters connected therewith. Section 3 of the Act, inter alia, confers power on the Central Government to take all measures for the purpose of protecting and improving the quality of the environment and preventing environmental pollution. Sub-section (2) prescribes that such measures may include steps for restriction of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In exercise of powers under Section 3(2)(v) of the Act the Ministry of

Environment issued Notification dated February 19, 1991. The Notification declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action up to 500 metres from the High Tide Line and the land between the Low Tide Line and the High Tide Line as Coastal Regulation Zone. The Notification prescribes that there will be restrictions on the setting up and expansion of industries, operations or processes in the said Coastal Regulation Zone. The Notification then provides that land reclamation, bunding or disturbing the natural course of water will be prohibited activities. The Notification further provides that it may be permissible to carry out the operations beyond 100 metres and up to 500 metres provided clearance for such activities is obtained. Relying on the Notification it was contended on behalf of the petitioners that the activity of bunding undertaken by the Corporation for the alignment is a prohibited activity. In the alternative, it was contended that even if the activity is permissible such permission has not been sought. In our judgment, both the submissions are misconceived and are required to be turned down for more than one reason. In the first instance, the assumption of the petitioners that the exercise undertaken by the Corporation for providing a rail line is an industry is entirely unjustified. The expression "industries, operations or processes etc." cannot bring within its sweep the activities of providing a rail line. The contention that the activities of bunding undertaken by the Corporation are prohibited activities is fallacious. The reference to the bunding in the Notification must be read in the context of setting up industries or any operations or processes in respect of such industries. Once it is found that providing rail line is not an industry, then it is not possible to jump to the conclusion that the work of bunding is a prohibited activity and, therefore, the Corporation should be prevented from proceeding with the work. The alternate submission that even if the activity is permitted within the stipulated limit beyond 100 metres from the High Tide Line but within the distance of 500 metres, the clearance is required from the Ministry, is without any substance. Apart from the fact that the Notification has no application to the work undertaken by the Corporation, the activities in respect of which clearance is required are those where permanent buildings or workshops or harbours or thermal power plants are erected and not for the purpose of providing a rail line. The rail line or a public road is provided for access to the public to the seas, bays, estuaries, creeks and backwaters and either a public road or a rail line is not a construction which demands clearance. It is beyond our comprehension appreciate as to how a rail line can be or a road can be constructed without travelling over the bridges constructed over the rivers, creeks or seas. The Notification on which reliance is placed has no application whatsoever to the work undertaken by the Corporation.

The Corporation is also right in the contention that the provisions of the Environment Act have no application in respect of work undertaken in exercise of powers conferred under Section 11 of the Railways Act, 1989. Section 11, inter alia, provides that notwithstanding anything contained in any other law, the Railway Administration may, for the purposes of constructing or maintaining a railway, make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, streams, or other waters, rivers as it thinks proper. The wide ambit of the provisions of Section 11 and the non-obstante Clause makes it extremely clear that the provisions of the Environment Act do not bind the construction or maintenance of a railway line. The Railways Act is a legislation enacted subsequent to the Environment Act and the Corporation is right in claiming that for the purpose of providing railway line, clearance is not required even though the line passes over the railways, rivers, creeks, etc. in view of the specific provisions of Section 11 of the Railways Act.

A faint attempt was made by Mr. Grover to suggest that the Ministry of Environment has issued a draft Notification inviting objections and the draft Notification intends to prescribe that environment clearance from the Central Government is required for providing railway lines. It is not possible to take any notice of such draft Notification because it has no legal existence till the objections are examined and final Notification is issued. Mr. Kakodkar pointed out that the Railways have raised serious objections to the proposed Notification apart from the fact that even the draft Notification requires clearance from the Central Government and which has already been given long before.

9. Though Mr. Grover did not advance submission during arguments, it is necessary to make

reference to one of the complaints made in the petition. The petitioners claim that the alignment is going to adversely affect the Churches and Temples in the State of Goa and which were in existence over centuries and are of great religious interest to the citizens, We are afraid that the complaint made in the petition is only with a view to appeal to the religious sentiments of the people and create misplaced sympathy for the obstruction raised to the proposed project. We hope and trust that the projects undertaken for the benefit of a large number of people are not defeated or stalled by appealing to the religious sentiments of a few or by indulging in street agitations. Such attempts may temporarily help a particular group but would permanently cause damage to the interest of the common citizen. In this context reference must be made to the inter-Ministerial correspondence to which our attention was invited by Mr. Grover. It appears that persons holding high offices in Central Government are addressing letters and making representations to the Ministry of Environment suggesting that the grievances of a group or an organization should be accepted and the proposed alignment should be given up or shifted eastwards. It seems that representations are forwarded to appease the feelings of a section of people who desired to raise obstruction to the proposed alignment of rail line through the State of Goa. As expected the correspondence passed between the two Ministries, Railway and Environment, indicates that without taking any decision, efforts are made not to displease anyone and by recommending that a small group or committee should be constituted to examine the representation. In our judgment, such exercise should not have been undertaken because it results into postponing the much-needed and long-awaited railway line and would lead to escalation of cost and put pressure on the public exchequer. We hope and trust that everyone will realise that providing a rail line is neither a political nor a religious issue but is undertaken for providing basic necessity of cheap and quick mode of transport. It hardly requires to be stated that the cheap and fast mode of transport would lead to speedy development of backward areas in four States and which has immense potential in terms of human and material resources. The rail line running through the four States would confer immense benefit upon the citizens in carrying passengers and goods from the backward areas. The State of Goa has abundant natural resources and the railway line would assist in setting up mangrove and mineral base and sea food leading to the prosperity of the common man. The existing transport facilities by road are entirely inadequate to cater to the needs of the people in transporting their goods to the large towns. We hope and trust that unnecessary obstructions are not raised to the project of such huge public utility and which will herald the prosperity for the poor people on the western coast. It should be remembered that the project of such gigantic magnitude has become available after the people fought for over a century and the petty interest of a local area should not defeat the project in respect of which the Central Government has already spent a huge amount.

We decline to exercise our writ jurisdiction in such cases because the writ jurisdiction is meant to advance the cause of justice and not to defeat exercises undertaken by the Government for the public benefit. The machinery of the Court should not be used for subserving the private interest or the interest of a local area to the detriment of the public at large. For these reasons we refuse to grant any relief to the petitioners.

10. Accordingly, the petition fails and Rule is discharged with costs.

11. Petition dismissed.

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