

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: December 23, 2011

1. LPA No. 197 of 2009 (O&M)

Prem Sagar

...Appellant

Versus

State of Punjab and others

...Respondents

2. CWP No. 4399 of 2010 (O&M)

M/s Vinayak Ji's Industries

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE GURDEV SINGH

Present: Mr. Balram Gupta, Senior Advocate, with
Mr. A.P.S. Shergill, Advocate,
for the appellant,
in LPA No. 197 of 2009.

Mr. Sukhdip Singh Brar, Advocate,
for the petitioner,
in CWP No. 4399 of 2010.

Mr. Piyush Kant Jain, Addl. AG, Punjab, and
Mr. Suvir Sehgal, Addl. AG, Punjab.

Mr. Sanjiv Sharma, Advocate,
for the applicant,
in CM No. 3365 of 2011 in LPA No. 197 of 2009.

Mr. Anil Bansal, Advocate,
for respondent Nos. 8, 9, 11 and 13.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. This order shall dispose of LPA No. 197 of 2009 and CWP No. 4399 of 2010 as the issue involved in both the cases is similar. However, the facts are being referred from LPA No. 197 of 2009.

2. LPA No. 197 of 2009 has been filed under Clause 10 of the Letters Patent against the order dated 13.2.2009 rendered by the learned Single Judge in CWP No. 18596 of 2008, dismissing the writ petition. In the writ petition relatable to the aforementioned appeal the petitioner-appellant has challenged orders dated 11.4.2008 and 15.10.2008 whereby the consent/No Objection Certificate earlier granted to him for installation of a Rice Mill was withdrawn. The principal ground of withdrawal was that the site where the rice mill was to be installed, was merely 7.5 meters away from the area of the notified Bir Bhadson, Wild Life Sanctuary. Learned Single Judge dismissed the petition holding that Bir Bhadson is a notified Wild Life Sanctuary and no industrial activities could be permitted within the prohibited siting parameters even if there is negligence on the part of the State. Learned Single Judge also brought forward the environmental issues and called for atmospheric balance and due protection of such Wild Life Sanctuary. In the concluding para of the order dated 13.2.2009, the following observations have been made:-

“However, keeping in view the gravity of the issue and importance of sustenance of the Wild Life Sanctuary and the larger public interest involved, there shall be a direction to the official respondents to conduct a survey and find out as to whether there exist any other industrial unit in the vicinity of the Wild Life Sanctuary in violation of the siting parameters laid down by the State Government and in case there is any such industrial unit or activity which is prohibited by the State Government, appropriate action against them shall also be taken in a

time bound manner and a compliance report shall be submitted to this Court.”

2. It is pertinent to mention that the petitioner-appellant has purchased the land in question in January 2007 and the ‘No Objection Certificate’ for establishing a Rice Sheller was given on 29.3.2007 by respondent No. 4. The basic reason for issuance of ‘No Objection Certificate’ was based on a report submitted by the Naib Tehsildar, Bhadson-respondent No. 6, certifying that the land of the petitioner-appellant was not within the prohibited parameters of 500 meters of a Wild Life Sanctuary apart from other things (P-1). However, the ‘No Objection Certificate’ was withdrawn later on in 2008 because the revenue record underwent change at the instance of the Divisional Forest Officer, Wild Life, Patiala, on a complaint made by Shri Ashwani Kumar Sood son of Shri Sat Parkash Sood-respondent No. 7. The earlier entry in the revenue record showing the land to be agricultural *Banjar Qadim* was changed to Wild Life Sanctuary by referring to notification dated 28.2.1952 (P-13).

3. On the one hand the petitioner-appellant with a bona fide belief has purchased the land and then he was given ‘No Objection Certificate’. It was thereafter that he proceeded to establish his Rice Sheller along with machinery. Thus, the revenue entry was changed after establishing the industry. It resulted into cancellation of ‘No Objection Certificate’, which was earlier issued by the department.

4. On 22.7.2009, it was pointed out by the learned counsel for the petitioner-appellant before the Letters Patent Bench that the

ground reality is that there is no Wild Life Sanctuary available in the area, which is highlighted by the communication dated 20.3.2008 (R-1) sent by the Divisional Forest Officer, Patiala to the Deputy Commissioner, Patiala. The communication shows that the Wild Life Sanctuary under Bir Bhadson, Patiala is unfenced. Similar is the position with regard to all other Sanctuaries. It does not require much imagination to conclude that there cannot be any Wild Life Sanctuary without fencing.

5. The seriousness of the respondent State to treat the aforesaid area as a Wild Life Sanctuary is also evident from the fact that no revenue entry was made since the issuance of notification on 28.2.1952 (P-13). Therefore, the Letters Patent Bench presumed that there was no wild life activity what to talk of Sanctuary. Had there been any wild life activity, the area could not have been left as unfenced. Accordingly, respondent No. 1 was directed to place on record any material right from 1952 showing the steps taken to treat the aforesaid area as a Wild Life Sanctuary. They were also required to show the budgetary allocation, the number of wild animals kept in the Sanctuary, number of officers deputed and so on and so forth. The Letters Patent Bench was also tentatively of the view that if there is Wild Life Sanctuary and the Government is serious to continue with such a Sanctuary then the larger public interest must overtake the private interest and if the Government is not serious then the private interest would prevail.

6. In pursuance of order dated 22.7.2009, an affidavit dated 4.8.2009 along with eight annexures was filed by the Financial Commissioner, Forest and Wild Life Preservation on behalf

of the Chief Secretary, Punjab-respondent No. 1. To substantiate the claim that the area in respect of which 'No Objection Certificate' was issued on 29.3.2007, is a second class forest and is used for Wild Life Sanctuary, the details of the expenditure, birds, animals, population and the manpower employed therein has been disclosed in various annexures appended with the said affidavit. However, it remains a sheer mystery as to how the revenue record did not depict true position of the area to be a Wild Life Sanctuary till 2008.

7. It is also relevant to highlight here the stand taken by the Pollution Control Board-respondent Nos. 3 and 4. It has been pointed out that despite the intimation sent to the revenue officers that there may be a Wild Life Sanctuary in the area, a report was sent by the revenue authorities to the Board before the issuance of 'No Objection Certificate' with categorical assertion that there was no Wild Life Sanctuary existing near to the then proposed industry belonging to the petitioner-appellant. Accordingly, a 'No Objection Certificate' was issued on 29.3.2007. However, later on when the revenue entries were got correct in the year 2008, the 'No Objection Certificate' was withdrawn on 15.10.2008. It has also come on record that by that time the petitioner-appellant had constructed the building and established the industrial unit. However, the commercial production was yet to commence. The record pertaining to this case was produced which shows that on the one hand the petitioner-appellant as well as other industries have been permitted to be established in the vicinity of the Wild Life Sanctuary/Class-II Forest, which do not fulfil the siting parameters as disclosed in the instructions dated 11.9.2006 (P-12) and on the other hand the Wild Life Sanctuary, which is essential in

the larger public interest, is in the close vicinity and requires maintenance and protection. Nevertheless, the petitioner-appellant and others have been allowed to raise construction of their building in violation of the siting parameters on the basis of 'No Objection Certificate' issued by respondent Nos. 3 and 4 i.e. Pollution Control Board.

8. The Parliament enacted 42nd Amendment of the Constitution and added two important provisions to the Directive Principles of State Policy and fundamental duties. By adding Article 48A to the list of directive principles the constitutional recognition has been accorded to comply with the principles aiming at safeguarding our forests and wild life. Article 51A(g) imposes a fundamental duty on every citizen to protect and improve the forests lakes, rivers and wild life; and to have compassion for living creatures. The aforesaid principles must guide policy of the State and our society must be taken in that direction. Keeping in view the mandates of the aforesaid provision and after evaluating the entire gamut of the controversy for balancing equity, the Letters Patent Bench in its order dated 9.9.2009 made the following observations:

“Once the authorities of the State have issued No Objection Certificate certifying that the area (under?) proposed to be constructed is not within the prohibited siting parameters, then acting on that basis if they have raised construction, a further obligation of the State would come in play. It has been suggested that siting parameters are relaxable and even the border line of the Wild Life Sanctuary can be adjusted. Therefore, we

leave it to the respondent-State to come up either with a rehabilitation plan of all the Industrial Units or to devise any other method, which may be just and fair by keeping in view the larger public interest of maintaining Wild Life Sanctuary as well as interest of the petitioner-appellant and other industrial units.

We deem it appropriate to direct the Chief Secretary to constitute a Committee of Officers not below the rank of Secretary/Head of the Department representing various authorities concerned to find a just and fair solution so as to maintain Wild Life Sanctuary as well as protect the interest of the petitioner-appellant and other industrial units. The Committee be constituted within one week from today. It shall prepare a report and place before this Court within a period of eight weeks thereafter.”

9. In pursuance of the aforesaid direction, the Chief Secretary, Punjab, vide order dated 18.9.2009 constituted a Committee consisting of Financial Commissioner, Forests as Chairman; Secretary, Science and Technology, Chairman, Punjab Pollution Control Board, Chief Wildlife Warden, Director Industries and Secretary, Revenue, all as Members (R-1). A series of meetings of the said Committee were held on 5.10.2009, 12.10.2009, 19.10.2009 and 3.11.2009 and it went into various siting parameters in respect of various kinds of industries, which have been categorised as Exempted, Green and Red. Eventually, the report of the Committee was filed along with affidavit of the Chief Secretary, Punjab, dated 17.12.2009. In the findings, the

Committee has given the details of 13 Wild Life Sanctuaries, the total number of industrial units under Red Category, Green Category, Exempt Category and the total number of industrial units located within 300 meters or 500 meters radius of such Wild Life Sanctuaries. Against the Bir Bhadson Sanctuary it has been shown that there are 6, 5, 1 and 12 industrial units respectively. As per the report in all there are 51 industrial units/other activities which are located within a radius of either 300 meters or 500 meters from the boundary of eight wildlife sanctuaries of the State of Punjab. Besides these industrial units, there are 7 brick kilns within Abohar Wildlife Sanctuary. The Committee has minutely examined the information relating to various types of industrial units. The unit of the petitioner-appellant, namely, M/s Vicky Rice Mills, was not found operational because of withdrawal of the 'No Objection Certificate' by the Pollution Control Board. It has also been observed that the unit belonging to the petitioner-appellant is situated at a distance of 7.5 meters from the boundary of the wildlife sanctuary. A perusal of the report would reveal that the Committee has in so many words recommended for rehabilitation and re-location of the unit belonging to the petitioner-appellant as is evident from the following recommendations made by the Committee:

- “(i) No new industrial unit shall be allowed to establish within 500 Meter radius of Wildlife Sanctuary/Zoo w.e.f. 1.1.2010 unless and until a Committee comprising of Department of Forests and Wildlife Preservation, Department of Industries and Department of Science & Technology specifically recommends its establishment. Till then the PPCB

shall not process any NOC/Consent/Clearance to those applicants who have already applied for the establishment of units within 500 Meter radius of wildlife sanctuary/zoo.

- (ii) The Committee recommends that atleast a clear zone of 30m from the boundary of the sanctuaries should be maintained and existing industrial units of all kinds i.e. green, exempted or red category should plan for shifting within six months. A Committee comprising of PPCB, Department of Industries and Forests and Wildlife Preservation shall monitor the shifting process.
- (iii) Notwithstanding (ii) above, in case of all other existing industrial units under Red or Green or Exempted category falling within 500m or 300m from the wildlife sanctuaries, which were established before the notification of siting guidelines or where there are still no siting guidelines with respect to wildlife sanctuaries, status quo should be maintained but these units should be monitored biannually by a Committee having representatives from PPCB and Deptt. of Forests and Wildlife and Deptt. of Industries so as to ensure that these units do not cause any harm to the wildlife.
- (iv) None of the industrial units within 500m of the periphery of the sanctuaries identified by the

Committee as per Annexure-VIII shall henceforth be allowed to expand.

- (v) The Entertainment Park already existing within 500 Meter radius of Bir Motibagh Wildlife Sanctuary (Sr. No. 30) shall be brought within the eco-tourism policy of the State Government duly approved by the Department of Tourism. This park shall be given a time frame of six months to follow the guidelines of Department of Tourism as laid out in the ecotourism policy. The Department of Forests and Wildlife Preservation alongwith representative of Department of Tourism shall monitor the park after every six months to see that the guidelines of Department of Tourism are followed strictly.
- (vi) Any person who wants to establish entertainment park/eco-tourism activity within 500 meter radius of wildlife sanctuary shall be allowed only after obtaining NOC from the Department of Forests and Wildlife Preservation and Department of Tourism.
- (vii) Keeping in view the provisions contained in Section 32 of the Wildlife (Protection) act, 1972, Indian Oil Corporation Depot mentioned at Sr. No. 46 may become a serious hazard at the time of fire incident like that of IOC depot at Jaipur and hence it would be appropriate to ask them to chalk out and submit plan for shifting their unit beyond 500 meters radius of the Wildlife Sanctuary within a period of six months. A Committee comprising of

representative of Department of Science & Technology, Department of Industries and Department of Forests and Wildlife Preservation shall review the action taken by this unit for their shifting.

- (viii) The media paper/card board industry mentioned at Sr. No. 18 shall submit its plan to PPCB for proper housekeeping of its industrial unit. A Committee comprising of representative of Department of Science & Technology, Department of Industries and Department of Forests and Wildlife Preservation shall monitor their activities after every six months in order to see whether the stringent norms of PPCB have been complied or not.
- (ix) The PPCB shall also ensure to close the hot mix plant mentioned at Sr. No. 6 within a period of one month as the same has been established without the consent/clearance from PPCB.
- (x) M/s Mahadev Gram Udyog Samiti, Amloh Road, Bhadson, Distt. Patiala may be allowed to continue its operations, but with a stringent emission standard of 500mg/Nm³ which the unit shall achieve within 6 months.
- (xi) The Committee recommends that since M/s Vicky Rice Mills (Petitioner in the present LPA and the industrial units mentioned at Sr. No. 11) will be a potential threat to the wildlife due to its close

proximity to the wildlife sanctuary, it shall not be allowed to operate at the present premises. The industrial unit should be given a notice of three months for shifting from the present premises and submit a plan for shifting to the Department of Industries, which will go through the plan for recommending to the Government for reimbursement of claim for rehabilitation of unit at another site.”

10. Having considered the said report and the recommendations, the Letters Patent Bench found it appropriate that the unit of the petitioner-appellant needs to be rehabilitated at a suitable area which may meet all the parameters for setting up that category of industry. Accordingly, vide order dated 28.9.2010, the petitioner-appellant was directed to move appropriate application to the Department of Industry suggesting the area where he could be rehabilitated. He was further asked to put-forward the claim for any compensation in lieu of the amount spent on construction. The department was required to consider the same in accordance with law keeping in view the recommendations made by the Committee.

11. Thereafter, the petitioner-appellant filed two applications dated 12.10.2010 and 25.10.2010 suggesting some sites for establishment of a rice shelling unit. A Committee was constituted to consider those applications, as is evident from the affidavit dated 15.11.2010 filed by the Principal Secretary to Government of Punjab, Department of Industries and Commerce. Along with the affidavit, proceedings of the meeting of the said Committee held on

11.11.2010 have been placed on record (R-II). A perusal of the said proceedings shows that the Committee has considered the matter in the light of guidelines dated 13.9.2006 (R-I) for setting up rice shelling units and after obtaining reports regarding suitability of the sites from the District Town Planner and Revenue Authorities and suggested that the two sites may be acquired by the petitioner-appellant at his own costs and expenses from the land owners. With regard to the compensation, it is stated that the same would be considered at the appropriate time by the Chief Engineer, PWD (Buildings) after assessing the value of the building and construction raised by the petitioner-appellant.

12. The matter was subsequently considered at length by the Letters Patent Bench on several dates. Eventually on 2.6.2011, the learned State counsel placed on record a communication sent by the Punjab State Small Scale Industries and Export Corporation, dated 1.6.2011 (Mark 'A') which is to the effect that at Mandi Gobindgarh four plots of each category measuring 2500 square yards and 5000 square yards were lying un-allotted. The petitioner-appellant has been deprived of carrying on his business on his plot measuring 8 bighas (approximately 8000 square yards) at Nabha. It was also stated that there is possibility of passing an order after due consideration for allotment of a plot measuring 5000 square yards in compensation of dispossession of his plot measuring 8 bighas situated at Nabha. Accordingly we direct the added respondent-PSIEC to pass an order for allotment of plots of the size of 5000 square yards to each of the petitioners in these cases within a period of one month from the date of receipt of a copy of this order. The added respondent-PSIEC shall not charge more than

the reserve price prevailing and fixed in October 2008. The appellant-petitioner(s) shall be at liberty to file any application in that regard before this Court if such a necessity arises.

We would like to place on record our appreciation for excellent report submitted on 17.12.2009 by the Committee constituted by the Chief Secretary, Punjab. The respondent State shall in compliance with directive principle of State Policy given in Article 48A of the Constitution frame a policy guidelines keeping in view the recommendations made by the Committee, which have been placed on record on 17.12.2009. The same be notified to all concerned within a period of two months from the date of receipt of a copy of this order. A copy of the same be also placed on record of this case.

13. The appeal and the writ petition stands disposed of in the above terms. A photocopy of this order be placed on the file of connected case.

(M.M. KUMAR)
JUDGE

(GURDEV SINGH)
JUDGE

December 23, 2011
PKapoor