

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WRIT PETITION (PIL) NO. 63 of 2013****With****CIVIL APPLICATION NO. 210 of 2014****In****WRIT PETITION (PIL) NO. 63 of 2013**

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IBRAHIM AMAD GADH & 4....Applicant(s)

Versus

UNION OF INDIA & 7....Opponent(s)

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Appearance:

MR HASHIM QURESHI, ADVOCATE for the Applicant(s) No. 1 - 5

MR. EKRAMA H QURESHI, ADVOCATE for the Applicant(s) No. 1 - 5

DS AFF.NOT FILED (N) for the Opponent(s) No. 2 - 3

MR. VANDAN BAXI, AGP, for the Opponent(s) No. 2 , 6

MR. S.N. SOPARKAR, SR. ADVOCATE FOR M/S TRIVEDI & GUPTA,
ADVOCATE for the Opponent(s) No. 5 & 8

MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 1

MR DHAVAL D VYAS, ADVOCATE for the Opponent(s) No. 4

MR SHAKEEL A QURESHI, ADVOCATE for the Opponent(s) No. 7

NOTICE SERVED BY DS for the Opponent(s) No. 6

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CORAM: **HONOURABLE THE ACTING CHIEF JUSTICE MR.
VIJAY MANOHAR SAHAI**

and

HONOURABLE MR.JUSTICE R.P.DHOLARIA**Date : 17/11/2014****ORAL ORDER****(PER : HONOURABLE MR.JUSTICE R.P.DHOLARIA)**

By way of the writ petition in the nature of public interest, the petitioners prayed for the following relief:

“(A) issue a writ of mandamus, writ in the nature of

mandamus or any other writ, order or direction by holding the act of the respondents, particularly, the act on the part of respondent Nos. 4 and 5, violative of Articles 14, 19(1)(g), 21, 51A(g) and 48 of the Constitution of India and in gross violation of Environment Impact Assessment Notification, 2006 and in gross defiance of Coastal Regulation Zone Notification, 2011;

- (B) direct the Environment Impact Assessment Committee functioning under the Ministry of Environment and Forest, respondent No. 1, to carry out the inspection of the site and to submit the report before this Hon'ble Court or this Hon'ble Court may appoint Monitoring Committee or any Commission to check or inspect the ground situation of the area and to verify the damages caused to the Environment and particularly to the site and to submit the report before this Hon'ble Court;
- (C) to issue writ of mandamus or writ in the nature of mandamus directing the respondents to take suitable steps to rehabilitate the displaced villagers and to provide them suitable site as alternative arrangement and compensate them for the losses caused to them by illegal and unconstitutional act on the part of respondent No. 4 and 5;
- (D) During the pendency and final disposal of this petition, the respondents may be directed not to carry out further activities without obtaining the Environment Clearance Certificate from the competent authority."

2. The facts of the case are that respondent No. 4 is

constructing a barge jetty at Tuna, Off Tekra, Taluka Anjar, District Kutch. The said jetty is for increasing dry cargo excluding liquid/container cargo, handling capacity of Kandla Port. The construction of Barge Jetty is done on Build, Operate and Transfer basis under Public Private Partnership Mode. Respondent No. 5 is selected for the said purpose as Operator and Developer ignoring the needs of local people by respondent No. 4. The respondents are going with the construction of the project in the area at the cost of environment and ecology of the said area. They are destroying the mangroves, filling wet lands and creeks with sands and rocks. This act of the respondents is without environmental clearance. Such act is in gross violation of Environmental Laws. Not only that, it is harming the coastal environment and disturbing/blocking the natural flow of sea water. Therefore, the petitioner has filed this writ petition.

3. The grievance of the petitioners in this writ petition is with regard to construction of jetty with connected infrastructure which is undertaken by Kandla Port Trust with participation from Adani Kandla Bulk Terminal Private Limited – respondent No. 8. It is the allegation of the petitioners that such construction causes grave and serious environmental damage to fragile coastal ecosystem. Learned counsel for the petitioners has stated that selection of respondent No. 5 as concessionaire/developer to construct barge jetty is done without inviting tender from the public at large. He further stated that the respondents started to fill up the creeks and other wetlands/water bodies without any environmental clearance. Thus the act of the respondents amounts to gross violation of environmental laws. Further thousands of inhabitants are going to lose their livelihood and shelter.

4. We have heard learned advocate Mr. Ekrama Qureshi and Mr. Hashim Qureshi for the petitioners, learned senior advocate Mr. S.N. Soparkar for M/s. Trivedi & Gupta Advocate for respondent Nos. 5 and 8, learned AGP Mr. Vandan Baxi for respondent No. 2 and 6. We have considered the material on record. This Court by order dated 21.8.2014 asked the respondents to produce concessionaire agreement between Kandla Port Trust and respondent No. 8 Adani Kandla Bulk Terminal Private Limited. In pursuance of the aforesaid order, concessionaire agreement is produced before this Court and a copy of the same is supplied to learned advocate for the petitioners. On another point, the Court found that the Officers of Ministry of Environment and Forests have filed an affidavit but from which it was not borne out that Kandla Port Trust has fulfilled the conditions contained in communication dated 12.2.2014 as the Ministry's independent opinion on such response was not on the record. Therefore, the Court directed the Ministry of Environment and Forests to file a further affidavit, if need be, after carrying out spot inspection through a responsible officer and to disclose as to what extent the above conditions have been fulfilled. It was specifically asked whether the third condition of submitting an expert's opinion and the measures to be implemented to ensure free flow of water to mangroves before commencement of further work has been completed or not.

5. In pursuance of the aforesaid directions as narrated above, concessionaire agreement is already produced on record. Now the question remains so far as the affidavit as well as independent report of the Ministry of Environment and Forests. In that regard one E. Thirunavukkarasu, Joint Director, Ministry of Environment, Forests and Climate Change has filed

affidavit-in-reply dated 3.11.2014 and in paragraph No. 4 of the said affidavit, it has been stated as under:

“I submit as regards taking an expert's opinion and the measures to be implemented to ensure free flow of water to mangroves, it was observed that presently conditions of free flow of tidal water was maintained at either sides of bridges and culverts of railway line and road which have to be maintained in future by KPT as the facilities have been built for common use. This respondent satisfied with the compliance and both KPT as well as AKBTPL have been addressed to maintain the present conditions of free flow of tidal water at either sides of bridges & culverts of railway line & road.”

6. The report of site inspection with reference to the aforesaid order is also produced on record at pages 702 to 707. It is stated in the report that the site was visited on 17.9.2014 along with officers of M/s. Kandla Port Trust and M/s. Adani Kandla Bulk Terminal Pvt. Ltd. The compliance report in respect to third condition was reviewed with site situation and discussed with the project proponent.

7. During the course of hearing learned advocate Mr. Hashim Qureshi for the petitioners has argued that respondent No. 8 – M/s. Adani Kandla Bulk Terminal Pvt. Ltd. has not obtained necessary Environment Clearance Certificate from the competent authority. In reply to the same, learned senior advocate Mr. S.N. Soparkar has produced a copy of an order dated 10.11.2014 transferring the Environment Clearance Certificate which was issued by the competent authority on 1.11.2011 in favour of Kandla Port Trust, to M/s. Adani Kandla Bulk Terminal Pvt. Ltd., which is taken on record. In that view of the matter, this grievance of the petitioners stands

redressed.

8. Precisely, in view of the affidavit submitted by the Officers of Ministry of Environment and Forests and its expert's opinion report, certain conditions are required to be observed by respondent No. 8. In light of the aforesaid factual as well as legal position, this matter now no longer survives for consideration as public interest litigation. Therefore, we dispose of the writ petition with a direction that the report of the Committee of Experts appointed by the Ministry of Environment and Forests be complied with by the respondents. There shall be no order as to costs.

9. In view of disposal of the main writ petition, the Civil Application also does not survive. It also stands disposed of accordingly.

(V.M.SAHAI, ACJ.)

(R.P.DHOLARIA,J.)

(pkn)

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THE HIGH COURT
OF GUJARAT

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