

Reg. Civil Suit No. 288 of 2004.

// Judgment below Exh 64. //

(Delivered on 11th April, 2007.)

1. Plaintiffs have filed this suit in representative capacity for perpetual injunction and declaration against defendant no. 1 Maharashtra Industrial Development Corporation, defendant No.2 Krishna Valley Envirotech Pvt. Ltd., and defendant no. 3 Maharashtra Pollution Control Board. Plaintiffs have challenged the permission given by defendant no. 3 to defendant nos. 1 and 2 to leave water of Effluent Treatment Plant. Plaintiffs have also sought relief about cancellation of said order and for perpetual injunction restraining defendants from leaving water of Effluent Treatment Plant. If defendants no. 1 and 2 are erected said plant, damage will be caused to the lands situated at village Sawali and also affected on the fertility of the said lands and cause nuisance to the health of villagers. They averred that the cause of action arose to the suit when defendants no. 1 and 2 started to leave the polluted water near to the common well used by villagers as per order of defendant no. 3.

2. Defendants no.1 to 3 have filed an application Exh 64 under Order 9-A of the Code of Civil Procedure stating therein that plaintiffs have filed suit for injunction and raised

objection about permission of ETP given by defendant no. 3 to defendants no. 1 and 2. Defendant no. 3 has given permission under the provisions of Water (Prevention and Control of Pollution), Act, 1974 and Air (Prevention and Control of Pollution), Act, 1981. Defendant no. 3 Sanstha has been established under the said Act. As per sections 58 and 59 of Water (Prevention and Control of Pollution), Act, 1974 and section 46 of the Air (Prevention and Control of Pollution), Act, 1981 and Section 22 of the Environment (Protection) Act, 1986, Civil Court has no jurisdiction to try and entertain any suit or proceedings come under above Acts. Hence, this Court has no jurisdiction.

3. Plaintiffs have filed their say below Exh 65 and resisted the application filed by defendants. According to them, the objection raised by defendants in respect of jurisdiction of this Court, it is the concerned only in respect of defendant no. 3. So, the issue of jurisdiction is only tenable against defendant no. 3. Lastly, they prayed for rejection of the application.

4. On hearing both parties, my learned predecessor has framed preliminary in respect of jurisdiction as follows.

	<u>Preliminary Issue.</u>	<u>Finding</u>
1.	Whether this Court has jurisdiction to try and decide the suit ?	No.

// Reasons //

5. In order to support their respective contentions, plaintiffs or defendants have not adduced any oral evidence. I have heard learned counsels Shri. M.B. Kulkarni for the plaintiffs and Shri. Mali, for defendants no. 1 and 2 and Shri. Kudalkar for defendant no. 3. Perused plaint, written statement and contents of Exhs. 64 and 65. Defendants have adduced on record the consent letter dated 22.12.2003 given by defendant no. 3 to defendant no. 2 by which defendant no. 2 is permitted for ETP. It reads as under.

“ Consent is hereby granted to M/s. Krishna Velley Envirotech Pvt. Ltd., Plot No. J open space, MIDC Kupwad block, Sangli-Miraj Industrial Area, District Sangli, (here in after referred to as the said society) to Establish Common Effluent Treatment Plant for the treatment of effluent from participant industrial units in the Water Pollution Prevention and Prevention Control area of Krishna River Basin subject to provisions of the Acts and the Rules and the orders that

may be made thereunder and further subject to the following terms and conditions. “

6. It is clear that ETP permission is granted by defendant no. 3 as per provisions of Section 25 of the Water (Prevention and Control of Pollution), Act, 1974 and under section 21 of Air (Prevention and Control of Pollution), Act, 1981 and Authorization / Renewal of Authensation under Rule 5 of the Hazardous, Wastes (Management and Handling) Rules, 1951 and amendment Rules 2000.

7. Section 22 of the Environment (Protection) Act, 1986 reads as under.

Bar of Jurisdiction.

“ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act. “

8. Section 46 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 58 of Water (Prevention

and Control of Pollution) Act, 1974 read as under :

Bar of jurisdiction.

“ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. “

9. Section 59 of the Water (Prevention and Control of Pollution) Act, 1974 reads as under.

Protection of action taken in good faith .

“ No suit or other legal proceedings shall lie against the Government or any officer of Government or any member or officer of a Board in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder. “

10. I have gone through all above provisions. It is clear that though plaintiffs sought declaration and injunction, in view of the above provisions, this Court has no jurisdiction try and decide present suit. I, therefore, answer preliminary issue in the negative.

In the result, I pass the following order. :

// Order //

1. Plaint be returned to the plaintiffs to file it in proper Court within two (2) months from the date of this order.
2. No order as to costs.

Sangli.

(S. S. Todkar.)

*Date : 11.04.2007. 3rd Joint Civil Judge, Junior Division,
Sangli.*

जा. क. सन २००६,
दिवाणी न्यायालय, वरिष्ठ स्तर, सांगली.
दिनांक : २५.०६.२००६.

प्रेषक,

सौ. एस.एस. तोंडकर,
तिसरे सहदिवाणी न्यायाधिश व न्यायदंडाधिकारी. प्रथम वर्ग.
सांगली.

प्रति,

मा मुख्य जिल्हा न्यायाधिशसाहेब,
सांगली

विषय : स्वासथ्य प्रमाणपत्रा बाबत.

आदरनीय महोदय,

वरील विषयास अनुसरन सविनय सादर करते की, दिनांक
२०.६.२००६ ते २२.६.२००६ अखेर मी परावर्तीत रजा भोगली आहे. दिनांक
२३.६.२००६ पासूनचे माझे स्वासथ्य प्रमाणपत्र या सोबत सादर करीत आहे.

आपली विश्वासू,

एस.एस.तोडकर.
तिसरे सहदिवाणी न्यायाधिश,क स्तर व न्यायादंडाधिकारी, प्रथम वर्ग
सांगली.

सोबत : स्वासथ्य प्रमाणपत्र