

ORDER PASSED BELOW EXH.5
IN R.C.S.NO.288/2004

1) The plaintiffs have made this application as per the provisions of Order 39 Rule 1,2 of Code of Civil Procedure.

2) The case of plaintiffs in short as under :

The plaintiffs have filed suit in representative capacity. The plaintiffs are the resident of village Sawali. All of them have sought injunction restraining the defendants from establishing the Effluent Treatment Plant (*Hereinafter referred as "ETP"*) besides their village. The plaintiffs have further contended that the water in the wells of village Sawali being polluted due to the waste water discharged from 600 factories. Therefore the present application for restraining the defendants from establishing the ETP discharging the waste water solutions or any solid waste in the properties mentioned in the plaint para 4(a) and 4(b). At the same time the plaintiffs have sought injunction against defendant no.3 asking it not to give consent to defendant no.1 and 2 for throwing the waste water from the purification plant into the properties mentioned in para 4(c) of plaint.

3. All the defendants appeared and resisted the application by filing their say vide Exh.45, 47 and 40 respectively. The defendant no.1 has challenged the jurisdiction of the court. The defendant no.1 has further

contended that the intended plant is for treating the waste water being discharged out from the various factories and making it re-useable. Due to which there would be no adverse effect on the environment. He has further contended that the said erection of said plant is planned after fulfilling entire legal formalities required for it. He has further stated that there are approximately 800 factories running in the Sangli-Miraj M.I.D.C. area. And from among them the said plant is for treating the waste water thrown from 17 factories, as per the high rate transportation developed by NEERI Nagpur. He has further contended that the no objection certificate from the Pollution Control Board and if any of the condition is breached then the production of the factory can be stopped by the Board. Accordingly after verifying the preliminary requirements the permission for the plant was given. The treated waste water would be utilised for developing garden in 42 acres of land of M.I.D.C. Kupwad. From the said 42 acres of land 10 acres of land is adjacent to village Sawali. And in the said place the Effluent Treatment Plant is going to be established for plantations and conservation of plants on the basis of, NEERI Nagpur. He further contended that the plant is supposed to be established as per the permission granted from the Maharashtra Pollution Control Board after imposing certain conditions. And further contended that the plant is going to be established for the benefit of the public at large for controlling the pollution in the environment. It has further contended that the huge investment have been made in the said plant and the defendant no.1 would suffer irreparable loss and claimed rejection of application with cost.

4. The defendant no.2 has contended that the water discharged from the plant would be treated waste water. The permission for the erection of the said plant was given after taking into consideration of the technical aspects by the Maharashtra Pollution Control Board. It further contended that the project is for the benefit of the public at large and is useful for controlling the environmental pollution. It further contended that the water discharged from ETP would contain chemical pigments essential for the crops and denied the contentions of the plaintiffs regarding soil being transferred to barren land. The Defendant no.2 has further contended that the plaintiff has filed present application based on their imagination, vague and opposite to the prevalent condition. The defendant no.2 has further contended that the operational permission to the project would be given after the certification by the experts recording purity of water discharged from the ETP established by the defendants. And it is yet to be decided whether water discharged from the plant is polluted water, or not. The defendant no.2 has denied the rest of the contentions of the plaintiffs and claimed rejection of application with cost as it would suffer irreparable loss if the application is granted.

5. The defendant no.3 has resisted the application by filing say vide Exh.40. The defendant no.3 has also challenged the jurisdiction of this court. The defendant no. 3 has denied the contentions of the plaintiffs and contended that the project is sought to be established for treating 15

lakh litres of waste water in 42 acres of land possessed by the Sangli Miraj M.I.D.C. But considering the area the said project was restricted to treatment of 6.5 lakh litres of waste water in 42 acres of land. It has further contended that each industrial unit is possessing the technique for treating the waste water discharged by it and directions have been given to use the said water for "*Bagayat*". It has further contended that the plant is to be established on the land owned by M.I.D.C. the permission from Grampanchayat Sawali has not been obtained. And after considering all the aspects permission has been granted by imposing certain conditions. The defendant has denied the soil and portable water would be affected by the establishment of the said plant.

6. From the rival pleadings of the both parties following points arise for determination and I have recorded its findings with reasons.

<u>POINTS</u>	<u>FINDINGS</u>
(1) Have the plaintiffs made out the prima-facie case for grant of temporary injunction ?	<u>In the negative</u>
(2) Does the balance of convenience lie in favour of the plaintiffs ?	<u>In the negative</u>
(3) Whether the plaintiffs would suffer irreparable loss if temporary injunction is refused ?	<u>In the negative</u>
(4) What order ?	<u>Application is rejected.</u>

REASONS**AS TO POINT NO.1 :-**

7. The plaintiffs have relied upon the 7/12 extracts of land Gat nos.127, 128, 117/1, 117, 129, 146, 130, 131, 126 vide Exhs. 8, 9, 10, 11, 12, 13, 14, 15 and 16 respectively. The plaintiffs have also furnished the photographs of the suit premises alongwith the letters issued by the Grampanchayat Sawali to the Collector asking to stop establishment of plant for treating waste water, alongwith the certificate issued by Grampanchayat Sawali regarding the wells being the only natural source of drinking water available to village Sawali. The defendant no.1 has furnished the letter issued by Grampanchayat Sawali for stopping the water supply dt. 31/08/2005 and the letter issued for resuming water supply to village Sawali vide letter dt. 23/07/2008 along with the sketch map of village Sawali.

8. The learned advocate for the plaintiffs argued that the suit properties described in plaint para 4(a), (b) & (c) are located at a lower level. And the wells from which water is used for drinking and agricultural purpose are situated in the suit premises described in plaint para 4(b). The plaintiffs have further contended that the a Efluent Treatment Plant which would be established by the defendants would cause pollution in the waters of the suit premises described in 4(b) of the plaint. The plaintiffs have themselves contended that the ETP is going to be established in the open place of 10 acres towards the western side of Gat No.126 and 127. The perusal of the map

produced by the plaintiffs along with the plaint shows that the suit premises described in plaint para 4(b) are interior while the suit premises described in plaint para 4(c) are adjacent to the 10 acres land in which the defendant no.1 intends to establish the ETP.

9. As per the contentions of the defendants the defendant no.3 has given permission to the defendant no.1 for establishing the ETP after scrutinising the technical aspects essential for establishing an ETP. Similarly it is admitted to the plaintiffs also that the defendant no.3 has given the permission to establish the ETP and it has powers to stop the functioning of the unit if it notices any polluted water being discharged from the plant.

10. The defendant no.2 has contended that the plant is being established for treating the waste water thrown away from the industrial units and making it usable for the conservation of plants. The defendant no.1 and 2 have raised objection regarding the jurisdiction of this court and the same is pending in the Hon'ble Mumbai High Court.

11. The plaintiffs have filed the present application for restraining the defendants from establishing the ETP in the area adjacent to the village Sawali. The said ETP is yet to be established and start functioning. As per the contentions of the defendants the said ETP would be treating the waste water from the 17 industrial units and using the water for conservation of plants in 42 acres of land adjacent to village

Sawali. At this juncture it can not be decided what type of water would be discharged from the ETP after being established. Similarly it can not be decided whether the water discharged from the ETP would reach the water table of land gat numbers described in plaint para 4(b). The defendant no.1 and 2 have planned to start the project after seeking permission from defendant no.3. From the documents on record it seems that the defendant no.3 has given the permission after scrutinising the technical aspects of the application for the establishment of the ETP.

12. The plaintiff has raised objection regarding the non implementation of Section 52 of Bombay Village Panchyats Act, 1958. Section 52 of the Act deals with the control on erection of buildings in the limits of a village. From the contentions of the plaintiffs as well as the defendants it is apparent that the defendants are intending to establish the ETP in the area adjacent to village Sawali. Therefore the objection regarding the compliance of Section 52 of the Bombay Village Panchayat Act, 1958 at this juncture seem non applicable to the present set of circumstances. And moreover the ETP has not yet been established. The application has been made on hypothecated future loss may or may not which take place. Therefore at this juncture I think the plaintiffs failed to show that the defendants are doing any act in the violation of their right and there exists a substantial question to be decided between the parties. The plaintiffs failed to made out prima-facie case. Therefore I answer Point No.1 in the negative.

AS TO POINT NO.2:-

13. The present suit for injunction is based on the theory of alleged contamination of water and transformation of fertile soil into barren land due to the percolation of water released from the ETP plant in future. As per the contentions of the plaintiffs the polluted water would percolate in to the waters of the wells in the suit premises described in plaint para 4(b). As per the contention of the defendant no.3 the permission for the ETP plant has been given after scrutinising the technical aspects and the same can be cancelled later if it is observed that the ETP plant is releasing contaminated/polluted water. Therefore at this juncture it can not be said that the balance of convenience lies in favour of the plaintiffs. As there is nothing in existence as apprehended by the plaintiffs at this juncture. Therefore I answer Point No.2 in the negative.

AS TO POINT NO.3:-

14. The plaintiffs have filed suit in view of the apprehended danger which would be resulting after the ETP plant is established and contaminated waste water is released from it. Whereas the defendants have contended that they have made huge investments for the establishing for the said ETP which would be helpful for the public health at large. And also which would be helpful keeping a check on the environmental pollution. Similarly the defendant no.3 has already admitted that the functioning of the ETP would be stopped if in future it appears that any polluted water is released from the ETP. Therefore at this

prima-facie stage I think greater irreparable loss would be sustained to the defendants rather than the plaintiffs. From the perusal of the documents produced by the plaintiffs as well as defendant no.1 it is clear that there is scarcity of drinking water in village Sawali and the Grampanchayat of village Sawali had asked defendant no.1 to supply water to village Sawali. Therefore at this juncture it can not be ascertained as to what extent the plaintiffs would suffer loss in future if the alleged ETP is established adjacent to the suit premises mentioned in plaint para 4(c) due to the alleged discharge of contaminated/polluted waste water from the ETP which would be established in future.

15. The learned Advocate for plaintiff has relied on-

(i) **(2001)2 Supreme Court Cases 62, A.P.Pollution Control Board II Vs. Prof. M.V.Nayudu (Retd.) And others** in which Hon'ble Supreme Court has held that,

B. Constitution of India--Art 21--Ecology -- Right to healthy environment-- Need to prevent environmental damage--Granting exemptions to particular polluting industries, held, is violative of Art, 21--Exercising a power, such as that under S.19 of Water Act, to show favour to a particular industry and granting it exemption from the provisions of a prohibitory order under S.3(2)(v) of Environment (Protection) Act against establishment of polluting industries in an area, held, would be a violation of the right to clean water under Art.21 besides being arbitrary and contrary to public interest."

"C. Environment Protection and Pollution Control--Water (Prevention and Control of Pollution) Act, 1974--Ss.19, 2(e) and 2(k) r/w Ss.17 and 18--Fundamental objective of the act, held, is to ensure

provision of clean drinking water to the citizens of India--Therefore, held, S.19 cannot be used by the state to grant exemption to an industry or particular company from the provisions of a prohibitory order against establishment of polluting industries."

E. Environment Protection and Pollution Control--Generally--New principle of burden of proof in ecology jurisdiction--Where prohibitory order against establishment of polluting industries is in force, held, it is for the party claiming exemption to prove that its existence would not result in polluting the specified area-- A bare assurance that care would be taken in the storage of hazardous materials and that there would be no spillage held, could not be relied upon-- Appellant Board rightly rejected their application for NOC under Section 25 of Water Act."

"F. Environment Protection and Pollution Control-- There would exist a very great risk that extremely hazardous materials like nickel, sulphuric acid and HCA could seep into the earth and reach the tanks after passing through the dolerite dykes under the ground--Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, Sch.I, Pt.II--Evidence Act, 1872, S.3--"Proved"--Reasonable person test--Applied to environmental pollution matter."

"G. Environment Protection and Pollution Control--Without taking permission of State Pollution Board no industry can be established nor can any steps be taken to establish it --Therefore held, seventh respondent Company should not have obtained approval of Gram Panchayat for its plans nor the Collector's approval for conversion of land use-- It also should not have gone ahead with its construction work and installation of machinery--As all these actions were contrary to the provisions of the Act, no equitable relief could be claimed."

"H. Constitution of India--Art 21--'Life' --Right of access to clean drinking water is fundamental to life--Duty lies on State to provide clean drinking water to its citizens."

The above observations are with respect to the effluents discharged from an oil processing unit which were glycerine, spent bleaching earth and carbon and spent nickel catalysts. The process unit was to be established within 10 km. radius of two major water reservoirs in Andhra Pradesh. Therefore, I think the observations of Hon'ble Supreme Court are not helpful to the plaintiffs as the present suit is with respect to the E.T.P. which is to be established is for the treatment of waste water discharged from industrial units.

(ii) **(2005)10 Supreme Court Cases 510, Research Foundation For Science Technology National Resource Policy Vs. Union of Indian and Another** in which Hon'ble Supreme Court has held that,

"A. Constitution of India--Arts. 21, 47, 48-A & 51-A(g)--Ecology -- Precautionary principle and polluter-pays principle, part of concept of sustainable development--Applicability--Legal position regarding, restated."

"B. Constitution of India--Art 21--Ecology -- Right to information and community participation for protection of environment and human health falls under Art.21--Basel Convention effectuates Art. 21."

The observations of Hon'ble Supreme Court are with respect to the disposal of waste discharged from the industrial units. The case with respect to Hazardous Waste Rules, Environment Protection & Pollution Control Hazardous Wastes (Management and Handling) Rules 1989, Recycled Plastics, Plastics, Manufacture & Usage Rules 1999, Batteries (Management & Handling) Rules 2001, Hazardous Wastes (Management & Handling) Amendment Rules, 2003.

In the present case the defendants no.1 and 2 want to establish an ETP after seeking permission from defendant no.3 which has admitted that the production of unit would be stopped if it is seen that any polluted water is discharged. Therefore I think the observations of the case are not helpful to the plaintiffs.

(iii) 2004(4) Mh.L.J., Ajay Mittal Industrial Premises Co-Operative Society Vs. Raj Publicity in which Hon'ble Bombay High Court has held that,

"(a) Civil Procedure Code, O.39 RR 1 and 2- Temporary injunction--Granting or refusing to grant--Principles.

It is now well settled that granting or refusing to grant interim injunction is covered by three well established principles, viz. (1) Whether the petitioner has made out a prima facie case; (2) Whether balance of convenience is in his favour and (3) whether petitioner will suffer irreparable loss and/or injury if temporary injunction is refused. Interim reliefs are granted on the basis of the case made out in the pleadings finding that in the interest of justice interim order is necessary in order to prevent the abuse of process of law or to prevent wastage or to maintain the situation as on date or from recurrence of certain incident which were existing as on the date of presenting such application."

"(b) Civil Procedure Code, O.39 RR.1 and 2-- Temporary injunction--when can be prayed for--Duty of court.

The party who seeks the aid of the Court for injunction must show that the act complained of is in violation of his right and whether there is a fair and substantial question to be decided between the parties, and that there is a bonafide dispute between the parties."

The observations of Hon'ble Bombay High Court are not helpful to the plaintiffs.

Therefore I think at this prima-facie stage from the documents on record and negative findings to points no. 1 and 2 greater hardship would be caused to defendants who alleged to have made investments for the establishment of the plant. Hence I record my finding to Point No.3 in the negative.

AS TO POINT NO.4 :-

16. In view of negative findings of Point Nos. 1 to 3 and above discussion I pass the following order :

ORDER

- (1) Application (Exh.5) for temporary injunction filed by plaintiffs is rejected.
- (2) Cost of the application shall be the cost in main cause.

Sangli.
Date:- 22/03/2011.

sd/--
(S.A.Kanshide)
5th Jt.Civil Judge Jr.Dn., Sangli.