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W.P(C)No. 13381 OF 1984
ITEM No.302

Court No. 4

SECTION PIL
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Part-heard:

I.A.No. 391 in Writ Petition (Civil) No.13381/1984

M.C. MEHTA

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(for directions on behalf of Amba Brick Field)

WITH

I.A.No.394 in W.P.(c) 13381/1984 MC. MEHTA VS. UOI & ORS.
(for directions on behalf of M/s Santosh Ent.Udyog)

WITH I.A.NO.306-310 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(for directions on behalf of Durgesh Brick Kiln)

I.A.NO. 371 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(On behalf of Pooja Brick Field)

I.A. 377-378 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(for directions on behalf of M/s S.U. Glass Works and impleadment)

I.A.NO.379-381 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(for directions on behalf of Glass Works and exemption from
filing OT and impleadment)

I.A.NO. 382-383 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(for directions on behalf Gopi Nath Glass Works and impleadment)

I.A.NOS. 385-386 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(for directions on behalf of Opasil Pigment & Chemicals (P)Ltd.

I.A.NO.413 IN WP(C) 13381/1984 MC. MEHTA VS. UOI & ORS.
(On behalf of Gehlot Brick field)

Con.P.No.341/2004 IN WP(C) 13381/1984 M/s Goel Engg.Co.vs.
M/s Tata Korf Engg.Services Ltd. & Ors.)

Date : 26/07/2004 These Petitions were called on for hearing today.

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CORAM :

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner (s)
In Person

For the Applicant(s):
in IAs 391,394,306-10,
371 Mr.Sushil Kumar Jain,Adv.,
Mr.A.P.Dhamija, Mr.Ram Niwas,Advs.

in IAs 377-378,379-381,
382-383,385-386 Mr.K.C. Dua,Adv.

in IA 413 Mr.Sudhir Kulshreshtha,Adv.

in CP(c) 341/04 Mr. Jaydeep Gupta, Adv.
Mr.E.C. Agrawala,Adv.,
Mr.Mahesh Agarwal,Mr.Rishi Agrawal,Advs.

For Respondent (s)

for UOI,CBI Mr.Goolam V. Vahanvati,Solicitor General
Mr.A. Mariarputham,Mrs.Aruna Mathur,
Mr.D.S. Mahra, Mr.P.Parmeswaran,
Mr.ADN Rao,Advs.

Mr. Krishan Mahajan (A.C.)

for UOI,Ministry of Mr.P.P. Malhotra,ASG
Environment Mr.Hemant Sharma,Mr.T.A.Khan,
Mrs.AnilKatiyar,Advs.

For UOI: Mr.T.S. Doabia,Sr.Adv.,
Mr.CV Subba Rao,Mr.B.V. Balramdas,Advs.

for State of U.P. Mr.Ashok H. Desai,Sr.Adv.,
Mr.P.P. Rao,Sr.Adv.,
Mr.Virendra K. Bhatia,Advocate General
Mr.Kamlendra Mishra,Mr.Rajeev Kumar Dubey,
Ms.Rashmi Singh,Mr.R.K. Singh,Advs.

for CPCB: Mr.Vijay Panjwani,Adv.

for UPSPCB: Mr.Pradeep Mishra,Adv.

for GAIL in Ias377-378, Mr.Ravikesh Sinha,Adv.,
379-381,382-383,385-386 Mrs.Suchitra A. Chitale,Adv.

For Agra Nagar Nigam: Dr.Sumant Bharwaj,Adv.,
in IAs 391,394, Mrs.Mridula R. Bhardwaj,Adv.

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For Agra Dev.Authority
in IAs 91, 394 Mr.Ashok K.Srivastava, Adv.

Mr. Mukul Rohtagi, Sr. Adv.
Mr. Sanjib Sen, Adv.
Mr. R.N. Karanjawala, Adv.
Ms. Nandini Gore, Adv.
Ms. Pragya Singh Baghel, Adv.
Ms. Manik Karanjawala, Adv.

UPON hearing counsel the Court made the following
O R D E R

By an order dated 11th September, 2003, this Court had directed the Central Pollution Control Board to constitute a Committee consisting of :

1. Scientist of Director/Additional Director level;
2. A representative of the Archaeological Survey of India;
3. A representative of the Ministry of Environment and Forest;
4. One member of the U.P. Pollution Control Board;
5. One member of the Central Pollution Board.

This committee was constituted for the purpose of considering all applications regarding restarting of brick kilns. The order also made it clear: that the meeting of the Committee will be held at Agra; the Committee can seek any information and expert opinion from the officers; the orders passed by the Committee shall be final and that the brick kiln owners were to apply immediately to the Committee for electricity connection for restarting their manufacture. The District Magistrate was directed to file status report before the

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Special Committee, so constituted within 60 days from the date of the order.

The applications which are at present being disposed of by this order are dismissed as withdrawn with liberty to file them before the Special Committee set up by this Court's order dated 11th September, 2003. The applicants will file all documents in support of their applications before the Committee. The Committee will dispose of all the applications within four weeks from the date of their filing.

We make it clear that we do not intend to alter or amend the order dated 11th September, 2003 in any fashion whatsoever.

I.A. 306-310 in WP(C)13381/1984

These applications have been filed by a brick kiln owner in which clarification has been asked for the word 'significant monuments' used by this Court in its order dated 10th May, 1996. By order dated 10th May, 1996, this Court had directed (since been reported in 2001 (Vol.IX) S CC 235, inter-alia,

"All licensed brick kilns within 20 km radial distance of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary shall be closed and stop operating w.e.f. 15.8.1996. We direct the State of U.P. to render all possible assistance to the licensed brick kiln-owners in the process of relocation beyond Taj Trapezium, if the owners so desire. The closure order is, however, unconditional."

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Since the phrase 'significant monuments' was not defined, on 4th September, 1996 this Court directed the Archaeological Survey of India to give a list of significant monuments within the Taj trapezium. The relevant extract of the order dated 4th September, 1996 reads :-

"Since all the Brick Kilns within 20km parameter of significant monuments have been directed to be closed, it is necessary to know which are the significant monuments in the Taj trapezium. A list shall be filed by the ASI within two weeks from receipt of this order. The UP Pollution Control Board has filed a list of significant monuments and it is stated that the Board is executing the orders of this Court on the basis of the list placed on record. A copy of this list be also sent to ASI to verify as to whether it gives all the significant monuments in the Taj Trapezium."

Pursuant to this direction the ASI submitted a report on 1st of October, 1996. An affidavit was also filed by the Deputy Superintending Archaeologist, Archaeological Survey of India, Agra Circle Agra. in which it was said :

"That almost whole of Agra District and parts of Mathura, Aligarh, Etah, Ferozabad districts of U.P. and a part of Bharatpur district of Rajasthan fall within Taj Trapezium Zone. A list of centrally protected monuments located within Taj Trapezium Zone is submitted herewith as Annexure No. 1. Among these monuments namely Taj Mahal, Agra Fort and Fatehpur Sikri are also designated as World Heritage Monuments. It is pertinent to mention here that ASI protects monuments of National importance and not significant monuments."

On the basis of this, this Court by its order dated 3rd October, 1996 directed as follows:

"Annexure '1' to the affidavit is a list of the centrally protected monuments located within Taj Trapezium. This Court's order dated May 10, 1996 shall operate in respect of the monuments which are listed in Annexure '1'. Registry to give a copy of annexure '1' to the learned counsel for the brick kiln owners for their information and necessary records."

The order dated 10th May, 1996 therefore has been sufficiently clarified and particularised the order dated 3rd October, 1996 with regard to 'significant monuments' and no further clarification is necessary. The submissions of the learned counsel that this Court had left the issue open by its subsequent order passed on 18th September, 2003 is without any force whatsoever.

All that Court had done was to do note the substance of the prayer in the applications which were filed by the present applicants and on the request of the Additional Solicitor General for an adjournment in order to enable him to obtain instructions directed the applications to be listed late. There was no reference to this Court's order dated 3rd October, 1996 nor was any opinion formed in respect thereto. The order dated 3rd October, 1996, therefore, stands. The applications are rejected.

IA 413/2004 in WP(C) 13381/1984

As far as this application is concerned, it inter alia raises the issue that a notification had been issued by the Central Government, Ministry of Environment and Forest to listing important Archaeological monuments in Annexure IV. Budhiya ka Taal had not been included. It is therefore submitted that Budhiya ka Taal could not be considered to be a significant monument for the purpose of order dated 4th September 1996. We are unable to accept this submission. Since Budhiya Ka Taal had been included in ASI list I affirmed by this Court on 3.10.1996. As far as the other issues raised by the petitioner are concerned relating to its right to restart its brick kiln, the same order is passed in this IA as passed in other I.As today. The Applicants are at liberty to move an application before the Special Committee in terms of that order.

IA No. 377-378, IA 379-381, IA No. 382-383 and IA 385-386 and Cont. Petition(C) 341/2004 in WP 13381/1984

List these I.As on Monday, i.e. 2nd August, 2004.

Sushma (Madhu Saxena)
Court Master