

Gujarat High Court

Gujarat High Court

Vikram Trivedi & vs Union Of India - on 14 October, 2013

Bench: Mr. Bhaskar J.B.Pardiwala, J.B.Pardiwala

VIKRAM TRIVEDI/SUNION OF INDIA - THROUGH PROJECT DIRECTOR <!--

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C/SCA/8173/2013

CAV JUDGEMNT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL

APPLICATION NO. 8173 of 2013

FOR

APPROVAL AND SIGNATURE:

HONOURABLE

THE CHIEF JUSTICE MR. BHASKAR Sd/- BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA Sd/-

=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

Yes

2

To

be referred to the Reporter or not ?

Yes

3

Whether

their Lordships wish to see the fair copy of the judgment ?

No

4

Whether

this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

No

5

Whether

it is to be circulated to the civil judge ?

No

=====

VIKRAM TRIVEDI &

1....Petitioner(s)

Versus

UNION OF INDIA -

THROUGH PROJECT DIRECTOR & 4....Respondent(s)

=====

Appearance:

MR

SN SHELAT, Senior Advocate with MR YH VYAS, ADVOCATE for the Petitioner(s) No. 1 - 2

MR

MAULIK G NANAVATI, ADVOCATE for the Respondent(s) No. 1

MS

VACHA DESAI, AGP for the Respondent(s) No. 2

=====

CORAM:

HONOURABLE

THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

Date :

14/10/2013

CAV JUDGEMNT

(PER :

HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this

writ application under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

36. ....

(A) Direct the

respondent no.1 & their servants and agents to specify the area to be covered by blacktop and covered by R.O.W. and further direct them not to cut any trees from the lands of the petitioners in the interest of justice; and

(AA) That Your

Lordships be pleased to issue writ of mandamus or in the nature of mandamus directing the respondent Nos.1, 2 and their agents and servants to transplant 170 trees falling between the white-line and black-top as indicated at page-28 of the petitioner and paragraph-16 of the petition whose width is less than 65 centimeters.

(AAA) Your

Lordships be pleased to direct the respondents to seek permission of the competent authority under the Wild Life (Protection) Act, 1972 before undertaking cutting of 170 trees not falling on proposed black-top.

(B) Direct the

respondent no.1 & their servants and agents to pay cost of translocation of trees which are existing on the proposed blacktop urgently so that petitioners can carry out the translocation of all the trees which may need to be removed to make way for blacktop and until translocation of trees is not completed, restrain the respondent no.1 & their servants and agents from cutting any trees from the lands in the interest of justice;

(C) Direct the

respondent no.3 to disclose method and manner to determine valuations for living tree and then to give personal hearing to the petitioners for calculation of the amount of compensation payable to the petitioner for the loss of living trees on the acquired lands and pay the same to the petitioners as soon as possible in the interest of justice;

(D) Direct the

respondent no.2 to frame policy and guidelines to evaluate the value of a living tree as early as possible preferably within 30 days from the date of order in the interest of justice;

(E) Direct the

respondent no.4 to pass prohibitory order against the respondent no.1, at once, to prevent cutting of the trees and destroying the nests and habitat of the birds from the petitioners lands and further direct the respondent no.1 to obey and implement provisions of The Wildlife (Protection) Act 1972 in the interest of justice;

(F) Restrain

the respondent no.5 and his servants and agents from passing any order or orders under SAURASHTRA FELLING OF TREES (INFLECTION OF PUNISHMENT) ACT, 1951 in favour of respondent no.1 or their servants and agents and not to permit them to cut any tree from the lands of the petitioners in the interest of justice;

(G) Pending

admission, hearing and final disposal of this petition, by way of interim relief or ad-interim relief, restrain the respondent no.1 and their servants and agents from cutting any trees from the petitioners' lands and also grant reliefs claimed in above paras (C), (D), (E) and (F) in the interest of justice;

(H) Such other

relief or reliefs which your Lordships deems fit may kindly be granted in the interest of justice;

(I) Cost of

this petition may kindly be awarded;

2. CASE

OF THE PETITIONERS:-

2.1 The

petitioners are the owners of land bearing Survey/Block Nos.138, 137, 136 and 134 situated at Kajipura Village, Taluka and District-Kheda, a part of which has been acquired by the respondent no.1-the National

Highways Authority of India (for short NHAI) for expansion of National Highway no.8 under the provisions of the National Highways Act, 1956.

## 2.2 The

petitioners had purchased around 50,000 sq.mtrs. of land in the year 1989-90. According to the petitioners, thousands of trees were planted in the year 1990 and have been well nourished by taking services of the horticulturists. Over a period of time, the trees have grown fully, attracting varied species of birds like Forest spotted owl (*Athene blewitti*-2B), Vultures (*Gyps Indicus*-24), Babblers (*Timaliinae*-3), Barn Owls (*Tytonknae*-5), Bulbuls (*Pycnonotidae*-8), Cuckoos (*Cuculidae*-17), Egrets (*Ardeidae*-22), Flowerpeckers (*Dicaeidae*-27), Kingfishers (*Alcedinidae*-37), Larks (*Alaudidae*-38), Munias (*Estrildinae*-44), Mynas (*Sturnidae*-45), Owls (*Strigidae*-48), Parakits (*Psittacidae*-50), Partridges (*Phasianidae*-51), Pheasants (*Phasianidae*-53), Pigeons (*Columbidae*-54), Tree pies (*Corvidae*-73), Vultures (*Accipitridae*-75), Weaver birds (*Plocedae*-77), Woodpeckers (*Picidae*-79), etc.

## 2.3 According

to the petitioners, the birds and their nests are protected under The Wildlife (Protection) Act, 1972 and destroying nests or habitat by cutting trees for any purpose would constitute hunting as defined under Section 2, Clause (16) of the Wildlife (Protection) Act, 1972 (for short the Act 1972). It is also the case of the petitioners that hunting of animals which includes birds is an offence under the provisions of the Act 1972 punishable with imprisonment which may extend to three years.

## 2.4 It is

also the case of the petitioners that they had addressed a letter dated 12.11.2011 to the respondent no.1 drawing its attention to the aforementioned aspects and had requested not to cut the trees and to ensure translocation / transplantation of trees at a nearby place. The petitioners had also addressed an application to the Chief Wildlife Warden i.e. the respondent no.4 dated 3.11.2011 requesting him to pass the necessary orders to prevent violation of the provisions of the Act 1972. According to the petitioners, considering the nature of the trees which are habitat of the birds, no permission could be granted for cutting of the same even for the purpose of expansion of the highway as the same is prohibited under the provisions of the Saurashtra Felling of Trees (Infliction of Punishment) Act, 1951.

## 2.5 According

to the petitioners, neither the Central Government nor the authority under the National Highways Act, 1956 has any right or power to violate any mandatory provisions of the Act 1972 or to claim any immunity from prosecution for the offence committed by such authority. The Act 1972 does not exempt any authority including the authority under the National Highways Act, 1956 from its application.

## 2.6 It is

also the case of the petitioners that the National Highways Authority should have considered the deviation of the road-line to a certain extent so as to avoid massive destruction of hundreds of trees rather than insisting on having a straight road-line.

## 2.7 In such

circumstances, as referred above, the petitioners have prayed for the reliefs afore-noted.

## 3. CASE

## OF THE RESPONDENT NO.1-NHAI

### 3.1 According

to the respondent no.1, the petition is misconceived in law and deserves to be dismissed.

### 3.2 To the

extent the petition prays for determination of compensation and awarding cost of the trees to the petitioners, the same is premature as the stage for fixation of compensation has not yet reached.

### 3.3 The

Government of India through the Ministry of Roads and Highways has launched major initiatives to upgrade and strengthen the national highways throughout the country. One of such programme is the National Highway Development Project (NHDP). It involves widening, upgrading and rehabilitation of about 54,000 kms. of highways across the country. The National Highways Authority of India is mandated to implement the National Highway Development Project. The road development programme is being implemented in a phased manner. Phase-V of the programme consists of six laning of 6500 kms. of national highways comprising 5700 kms. of the Golden Quadrilateral and 800 kms. of other national highways. The Ahmedabad-Vadodara Road section of the national highway no.8 in the State of Gujarat has been proposed to be taken up for six laning under the NHDP Phase-V and has to be implemented under the public private partnership mode and to be executed as designed, built and financed and operate contract.

### 3.4 According

to the respondent no.1, the design and construction of all highways identified in Phase V of NHDP is to be performed in two steps, namely, preparation of feasibility cum preliminary design by a technical consultant followed by the detailed design and construction by a private concessionaire as Design, Build, Finance and Operate project for each highway in the programme. Accordingly, the Authority appointed M/s Intercontinental Consultants and Technocrats Private Limited as consultants for the Preparation of Feasibility-cum-Preliminary Design for the stretch of highway starting from Ahmedabad (Km 6.4) and ending at the junction of the Ahmedabad-Vadodara Expressway and NH-8 (Km 108), and passing through the districts of Ahmedabad, Kheda, Anand and Vadodara. The technical consultant undertook a comprehensive study with focus on engineering investigations, traffic analysis and forecasts, design standards, environment and social impact assessment, resettlement plan and project cost to determine the technical, economical and financial viability of the project. The primary focus of the study was to ensure safety of the traffic, road users and people living close to the highway while adhering to the standards and specifications stipulated by the Indian Road Congress and the Ministry of Road Transport & Highways, Government of India, and also to achieve enhanced operational efficiency of the highway, fulfill the access needs of the local population, minimize the adverse impact on the environment due to construction and determine feasible and constructible options for the project with least cost. After an exhaustive study, the consultant opined that the project designed as a partially access controlled facility would enhance the development of the region and improve the infrastructure facilities. Being technically feasible and economically advantageous, it recommended its implementation in the larger public interest. The consultant also prepared detailed designs for the project corridor along with a social and environmental action plan. The Authority accepted the recommendations of the technical consultant and submitted a proposal to the Public Private Partnership Approval Committee (PPPAC) working under the Planning Commission of India to accord its approval for undertaking the project. The Committee, after considering the application of the Authority and examining the importance of the project road accorded its approval to proceed with the work of widening the present stretch of the National Highway.

### 3.5 It is

the case of the respondent no.1 that the project road is more than 30 kilometers in length and involves an additional Right of Way greater than 20 meters and it requires prior Environmental Clearance under the Environmental Impact Assessment (EIA) Notification dated 14.09.2006 from the Central Government. Accordingly, the Authority made an application for obtaining such clearance on 25.03.2011. All documents required under the notification for grant of such clearance were submitted by the Authority. The Expert Appraisal Committee considered the application of the Authority together with the documents submitted by it, and held a public hearing on 2.02.2011 at Ahmedabad, on 4.02.2011 at Kheda, on 9.02.2011 at Anand and on 11.02.2011 at Vadodara. After taking into consideration the relevant documents submitted by the Authority, the Committee recommended for grant of Environmental Clearance for the project. The Ministry of Environment and Forests, after considering the recommendation of the Committee conveyed its decision granting Environmental Clearance for the project to the Authority vide its letter dated 16.10.2012.

### 3.6 According

to the respondent no.1 as the widening of the road requires removal of some roadside trees, the Authority made a request to the appropriate authorities seeking sanction to remove the trees falling on the proposed alignment. It is also the case of the respondent no.1 that such proposal of the Authority has been thoroughly and independently examined at all levels by the various regulatory and statutory authorities. After considered evaluation of the relevant aspects concerning the project and the feasible design options, such authorities have been satisfied with the efforts put in by the Authority to minimize the impact of project on biological environment and the necessity to remove some roadside trees covering both forest land and non-forest land.

### 3.7 On

publication of the final notification, the land of the petitioners, to the extent it is covered under the said final notification, has vested absolutely in the Central Government free from all encumbrances. The petitioners are no longer the legal owners of the said land and anything standing on the said land. The only right with respect to the said land which remains with the petitioners is to get compensation that may be determined by the competent authority and the competent authority is in the process of determining the amount payable as compensation for acquisition of the land.

### 3.8 It is

the case of the respondent no.1 that cutting of the trees by no stretch of imagination would amount to an offence punishable under the provisions of the Act 1972 as the activity of cutting trees standing on the land which has been lawfully acquired and for which compensation will be paid could not be termed as hunting as defined under Section 2, Clause (16) of the Act 1972.

### 3.9 All

necessary efforts have been made by the respondent no.1 to ensure that as many road side trees are saved from being removed. The technical consultant, keeping in mind the safety of the road users and other factors like road geometry, availability of land on either side of the existing road for widening median, impact of acquisition of additional land from private land owners, displacement of persons and effect on their survival and sustenance because of re-alignment of road etc. has demarcated the alignment of the road. Any change in the alignment of the road so as to save few more trees standing on the land of the petitioner would seriously affect the traffic safety and consequently the safe flow of traffic on the road.

### 3.10 According

to the policy, the respondent no.1 would plant the minimum of three times the number of trees to be cut as a part of afforestation and as one of the terms and conditions imposed in the environmental clearance accorded by the Ministry of Environment and Forests, New Delhi, dated 16.10.2012.

### 3.11 In

such circumstances, referred to above, the respondent no.1 has prayed for dismissal of the petition.

## 4. SUBMISSIONS

### ON BEHALF OF THE PETITIONERS:-

#### 4.1 Mr.S.N.Shelat,

the learned Senior Advocate appearing for the petitioners vehemently submitted that cutting of trees for the purpose of expansion of highway will definitely disturb the birds and their eggs or nests. This will amount to hunting as defined under Section 2, Clause (16) of the Act 1972 and hunting is an offence under the provisions of the Act 1972 punishable with imprisonment upto three years.

#### 4.2 Mr.Shelat

submitted that even if a project is in public interest, if the same involves cutting of the trees then the provisions of the Act 1972 should not be permitted to be violated in the name of public interest. According to Mr.Shelat, Article 48-A of the Constitution of India casts an obligation on the State to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A (g) enjoins upon the State to protect and improve the natural environment including the forests, lakes, rivers, wildlife and to have compassion for the living creatures.

#### 4.3 Mr.Shelat

also submitted that there is an alternative to save the trees and thereby the wildlife. According to Mr.Shelat, a strip of land which is sought to be acquired is on the right side of the existing road while travelling from Ahmedabad to Kheda, whereas if the same strip of land is acquired on the eastern side of the road or the left side of the road it would not make any major change in the road alignment since on that strip of the land there are no trees.

#### 4.4 Mr.Shelat,

lastly submitted that the authorities should definitely consider the possibility of translocation of the trees instead of cutting the trees. According to Mr.Shelat most of the trees standing on the land of his client are having a girth less than 650 centimeters. in diameter. In such circumstances, the trees can be translocated or transplanted at any other nearby place.

## 5. SUBMISSIONS

### ON BEHALF OF THE RESPONDENT NO.1-NHAI:-

#### 5.1 Mr.Maulik

Nanavati, the learned counsel appearing for the respondent no.1 has opposed this application and submitted that there is no merit worth the name in this petition and the same deserves to be rejected. According to Mr.Nanavati, this petition is nothing but a last ditch effort on the part of the petitioners to save their land from

being acquired for the purpose of expansion of highway taking shelter of the provisions of the Act 1972.

## 5.2 According

to Mr.Nanavati, the petition is lacking in bona fide and the same has been filed only with a view to thwart the process of acquisition on one pretext or the other.

## 5.3 Mr.Nanavati

submitted that the provisions of the Act 1972 have no application in the facts of the present case. Mr.Nanavati has also drawn our attention to the fact that the Ministry of Environment and Forests, Government of India, has accorded the necessary environmental clearance dated 16.10.2012 and it is only after the grant of such environmental clearance that the work of the project was undertaken. The environmental clearance takes care of the issues relating to environment.

## 5.4 Mr.Nanavati

also submitted that the land has already been vested with the Central Government and with the vesting of the land the petitioners have ceased to be the legal owners.

## 5.5 In such

circumstances, referred to above, Mr.Nanavati prays that there being no merit in this application, the same may be rejected.

## 6. Having

heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this writ application is whether cutting of the trees for the purpose of expansion of highway which may result in damaging eggs of the birds or reptiles or disturbing the eggs or nests of such birds or reptiles would amount to hunting as defined under Section 2, Clause (16) of the Act 1972.

## 7. For the

purpose of answering the aforementioned question framed by us, it is necessary for us to consider the objects and reasons of the Wildlife (Protection) Act 1972.

"THE WILD

LIFE (PROTECTION) ACT, 1972

INTRODUCTION

The rapid

decline of wild animals and birds in India has been a cause of grave concern. Some wild animals and birds have already become extinct in the country and others are in the danger of being so. Areas, which were once teeming with wild life, have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needed to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912) had become completely outmoded. The existing State laws were not only outdated but provided punishments which were not commensurate with the offence and the financial benefits which accrued from poaching and

trade in wild life produce. An urgent need for introducing a comprehensive legislation, which would provide protection to wild animals and birds, was felt by the Government. But the Central Government had no power to make a law in this regard as the subject-matter related to entry 20 of the State list in the Seventh Schedule. Different State Legislatures also found that the State laws were not adequate to deal with the matter effectively. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal passed resolutions empowering Parliament to pass the necessary legislation on the subject. Accordingly the Wild Life (Protection) bill was introduced in the Parliament.

## STATEMENT OF

## OBJECTS AND REASONS

The rapid

decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas, which were once teeming with wild life, have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further such laws mainly relate to control of hunting and do not emphasise the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.

### 2. Having

considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto.

### 3. Legislation

in respect of the aforesaid subject-matters relatable to entry 20 of the State list in the Seventh Schedule to the Constitution, namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of articles 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of Article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.

### 4. The Bill

seeks to -

(a) constitute

a Wild Life Advisory Board for each state;

(b) regulate

hunting of wild animals and birds;

(c) lay down

the procedure for declaring areas as Sanctuaries, National Parks, etc.;

(d) regulate

possession, acquisition or transfer of, or trade in wild animals, animal articles and trophies and taxidermy thereof;

(e) provide

penalties for contravention of the Act."

(The aforesaid

quotation has been extracted from page 1 and 2 of the Wild Life (Protection) Act, 1972 published by Universal Law Publishing Company)

8. Apart

from the aforesaid objects and reasons, the Apex Court in the decision of Pradeep Krishen (AIR 1996 SC 2040) in paragraph No. 15 has ruled as under :-

"15 Now as

pointed out earlier, since Parliament had no power to make laws for the States except as provided by Articles 249 and 250 of the Constitution, the States were required to pass resolutions under Article 252 (1) to enable parliament to enact the law. After as many as 11 States passed resolution to that effect, the Act came to be enacted to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or inserted in the Constitution by the 42nd amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife of the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message, which we must constantly keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. The objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the expression or the context conveys otherwise, sub serve and advance the aforementioned constitutional objectives. With this approach in mind we may now proceed to deal with the contentions urged by parties."

9. We shall

now look into the few relevant provisions of the Act 1972. Some of the definitions, relevant for our purpose, as defined by Section 2 reads as under:

2.

.....

animal

includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs;

(15) habitat

includes land, water or vegetation which is the natural home of any wild animal;

(16) hunting,

with its grammatical variations and cognate expressions, includes, -

(a) killing or

poisoning of any wild animal or captive animal and every attempt to do so;

(b) capturing,

coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;

(c) injuring or

destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

9.1 Section

9 of the Act 1972 reads as under:

9.Prohibition

of hunting. - No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.

10. Having

considered the objects and reasons of the Act 1972 and some of the relevant provisions of the Act 1972, we proceed to consider what meaning should be attached to the term hunting as defined under Section 2, Clause (16), referred to above, or how we should interpret hunting in the backdrop of the facts of the present case.

11. In

Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu (1979 (2) SCC 34), the Supreme Court observed as under:

"The

primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms

and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

12. In

*Kehar Singh v. State (Delhi Admn.)* (AIR 1988 SC 1883), the Apex Court held thus:

"....But,

if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

13. In

*District Mining Officer v. Tata Iron and Steel Co.* (JT 2001 (6) SC 183), the Apex Court stated as under:

"The

legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of thing, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for the words chosen to communicate such indefinite referents are bound to be in many cases, lacking in charity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed".

In

*Reserve Bank of India etc. etc. v. Peerless General Finance and Investment Co. Ltd. and others etc. etc.* (1987 (1) SCC 424) while dealing with the question of interpretation of a statute, the Apex Court observed as under:

"Interpretation

must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statue is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, Clause by Clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, Clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each

section, each Clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

15. In

Seaford Court Estates Ltd. v. Asher reported in (1949) 2 All ER 155 (CA), Lord Denning, advised a purposive approach to the interpretation of a word used in a statute and observed as under:-

"The

English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature..... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in this texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

16. In our

opinion, Section 2, Clause (16) of the Act 1972 which defines hunting must be construed bearing in mind the aforementioned principles including the following aspects:

A part of the

land of the ownership of the petitioners has been acquired by the respondent no.1 for the purpose of expansion of the national highway which is a public project.

The acquisition

proceedings are practically over and the land has vested with the Government and with such vesting of the land in the Government, the petitioners no longer remain owners of the land which has been acquired.

The

trees which are standing on the acquired land are to be cut for a public purpose i.e. for expansion of the national highway.

Before

commencement of the project, the respondent no.1 prayed for the necessary environmental clearance from the Ministry of Environment and Forests, Government of India, and such environmental clearance came to be accorded vide order dated 16.10.2012. In the environmental clearance, it has been stated that the proposal was examined by the Environment Impact Appraisal Committee in its meeting held on 28-29th June 2010 and had finalized the additional terms of reference for further study. The public hearing was conducted at Ahmedabad

on 2.2.2011, Kheda on 4.2.2011, Anand on 11.2.2011 and Vadodara on 9.2.2011.

The stage one

forestry clearance for diversion of 329.46 hectare protected forest land for widening of the road has also been issued on 20.9.2012 by the Ministry of Environment and Forests (FC division).

Few important

conditions imposed in the environmental clearance, which the authority is expected to comply, reads as under:

(a) The project

indicates cutting of 36000 trees for the widening of the road. Necessary prior permission shall be obtained for cutting of trees from the competent authority. Compensatory afforestation shall be carried out as per stipulated conditions of MoEF and State Forest Division.

(b) Minimum of

three times the number of trees to be cut shall be planted. It shall be ensured that the trees planted as a part of the afforestation shall be looked after by NHAI. Tree plantation shall be of the same species/local species and survival shall be monitored. Transplantation of trees shall be carried out wherever possible. The tree plantation shall be taken up on the extreme end of the road.

(c) Necessary

permission for tree felling from the concerned department shall be obtained before commencement of the project work and copies of the same shall be submitted to this Ministry.

17. Thus,

from the aforesaid it is clear that all the necessary permissions for felling of trees are to be obtained by the authority and such permissions have been obtained, according to Mr.Nanavati, the learned counsel appearing for the respondent no.1. We have also taken note of the fact that minimum of three times the number of trees to be cut will be planted as a part of the afforestation and will be taken care of by the respondent no.1. Not only that but the tree plantation will be of the same species/local species and survival will also be monitored. Transplantation of the trees will also be carried out wherever it is possible.

18. We are

not impressed by the submission canvassed on behalf of the petitioners that the act of cutting the trees for the purpose of expansion of highway will amount to hunting the birds or reptiles as defined under Section 2, Clause (16) of the Act 1972. The term hunting as defined should be read in the context of the object and reasons for enactment of the Act 1972.

19. No

development is possible without some adverse effect on the ecology and the environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left best to the persons who are familiar and who have specialized in the field.

## 20. The

expansion of highway is a project of wide public importance. It is not open to frustrate the project of such public importance only with a view to safeguard few trees standing on the land of the petitioners which has vested with the Government. While examining the grievance about adverse impact of cutting the trees and thereby disturbing the birds, the benefit which will be derived by the large number of people by expansion of the highway should also not be brushed aside. The Courts are bound to take into consideration the comparative hardship which the people at large would suffer by stalling the project of great public utility. Trees are to be cut for a public purpose to facilitate expansion of the national highway. Once the Government has taken all precautions to ensure that the impact on the environment is transient and minimal, the Court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. The Courts should not be asked to assess the environmental impact of expansion of highway but at the most could ensure that the recommendations of the experts have been abided by the government or the authority concerned.

## 21. The

importance of maintaining balance between economic development on one hand and environment protection on the other has been well emphasized in principle-11 of the Stockholm Declaration in 1972 which says, the environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all. The Stockholm Declaration 1972 was considered by the Supreme Court in Essar Oil Limited v. Halar Utkarsh Samiti and Others reported in AIR

2004 SC 1834.

In that case, Essar Oil Limited wanted to lay pipelines to pump the crude oil from a single buoy mooring in the gulf across a portion of the Marine National Park and Marine Sanctuary to their oil refineries in Jamnagar District. The same was opposed by way of a public interest litigation on the ground of damage to the environment, more particularly, the Marine National Park and Sanctuary. The question before the Supreme Court was Can pipelines carrying crude oil be permitted to go through the Marine National Park and Sanctuary and if so, has Essar Oil Limited in fact been so permitted. While answering the said question, the Supreme Court considered Section 29 of the Act 1972 which speaks of destruction etc. in a sanctuary prohibited area without permit.

### 21.1 The

Supreme Court in the aforesaid background made the following observations which, in our opinion, are important for deciding the case in hand.

## 26. Certain

principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the 4th principle says "man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive importance in planning for economic developments". These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8

where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life". The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasised in Principle 11 which says "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;"

This,

therefore, is the aim - namely to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281, 296 where it was said :

"while

economic development should not be allowed to take place at the cost of ecology or by causing wide spread environment destruction and violation, at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa but there should be development while taking due care and ensuring the protection of environment".

22. At this

stage, it may not be out of place to state that the endeavor on the part of the petitioners is to save the trees, which are standing on their land, now acquired by the authority for the purpose of expansion of the highway. Indisputably, it is a private land which has been acquired. It is not a protected area as defined under Section 2, Clause (24A) or a sanctuary as defined under Section 2, Clause (26) or a forest as defined under the Forest Act.

23. In such

circumstances, it is very difficult for us to accept the principal argument canvassed on behalf of the petitioners that the act on the part of the respondent no.1 in cutting the trees, the effect of the same may be snaring, trapping, driving of birds or damaging eggs of such birds or disturbing the eggs of such birds would amount to hunting within the meaning of Section 2, Clause (16) of the Act 1972.

24. Thus,

we reject the principal argument outright.

25. It has

also been argued before us that the trees could have been saved if there would have been a slight deviation in the alignment of the road fixed by the authority. We do not find any substance in this suggestion also because we are not experts in the field of construction. We are not at all equipped to decide the viability and feasibility of a particular alignment. It is for the experts to look into the same.

26. In the

aforesaid context, we may quote with profit a recent pronouncement of the Supreme Court in the case of Union of India v. Dr.Kushala Shetty and Others

reported in AIR

2011 SC 3210,

wherein the Supreme Court observed as under in paragraph 24:

24. Here, it

will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.

27. This

very Bench had an occasion to consider a similar issue while deciding Writ Petition (PIL) No.99 of 2012 (Rajubhai Shah v. State of Gujarat). In the said case also, the same issue as regards cutting of the trees was raised. It was also argued before us that instead of cutting the trees they should be re-transplanted at some nearby place. After taking into consideration the relevant materials which was on record of that case, we made the following observations:

There

cannot be any debate in so far as the preservation of environment and maintenance of ecological balance is concerned. The Constitution of India mandates under Article 48-A that, the State Government shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A(g) enjoins to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. However, in the present case, a peculiar situation has cropped up. If the trees are not permitted to be felled, then under such circumstances a very big project of expansion of highway which is also in public interest would get jeopardize. We tried our best to examine the matter with a view to see as to whether the trees could be saved in any manner or not.

We cannot

overlook the fact that this Court is not an expert in the field of infrastructure. From the facts which we have been able to gather, it is not possible to re-transplant a tree which is uprooted. It is just not feasible to re-transplant 10,000 trees, more particularly, when the cost of such retransplantation is approximately

Rs.10,000=00 per tree. We have also been told that re-transplantation is possible only of such trees whose width is not more than 65 cms. In the present case, the trees which have been marked for being felled are mostly of the width of more than 90 cms. and some of them are of more than 250 cms. Apart from this, there are few species of trees which, if uprooted and then re-transplanted, would die. Under such circumstances, even if the cost is incurred for such re-transplantation, the same would be wasted.

In any view of

the matter, we are of the opinion that expansion of National Highway No.8B and 8D is also a very important project in public interest which could not be stopped or put to a standstill only because there are trees standing on such a road. We have been informed by learned counsel appearing for the respondents that three times the number of trees which are going to be felled will be planted in a different area to maintain the ecological balance. This is suggestive of the fact that more than 30,000 trees will be planted at a place where water and land is available with good soil so that they may not die and grow easily.

We have also

been told that as per the initial proposal, a total number of 18,056 trees were within the proposed alignment, out of which 10,951 trees have been saved by balancing the alignment. We are quite convinced by the fact that the respondents have taken all due care to see that as many trees as possible are saved and three times the number of trees which are going to be felled would be planted at a different place.

28. For the

foregoing reasons, we do not find any merit in this petition and consequently the same is rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

(BHASKAR

BHATTACHARYA, CJ.)

Sd/-

(J.B.PARDIWALA,

J.)

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Page

26

of 26