

PETITIONER:
F.B. TARAPORAWALA AND OTHERS ETC.ETC.

Vs.

RESPONDENT:
BAYER INDIA LTD. AND OTHERS

DATE OF JUDGMENT: 09/09/1996

BENCH:
KULDIP SINGH, B.L HANSARIA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA. J.

Industrial growth, yes; but by exposing a large segment of society to the risk of losing lives, no. This apprehension is not imaginary. Bhopal disaster brought to the knowledge of all what a tragedy can be caused by chemical industries. In the wake of what happened there more than a decade ago, industrialists engaged in production of chemicals started thinking of taking precautionary and protective measures to see that if worst wore to befall, how could their financial liability be taken care of.

2. The aforesaid mental make-up led some leading chemical manufacturers in the country, like Bayer India Limited, one of the respondents herein, to approach the Bombay High Court in a pending writ petition filed by some builders seeking certain orders of the High Court. In one of the writ petitions taken by the High Court for hearing, which was numbered as 4497/90, the Court required the Municipal Corporation to re-examine the building plans and to pass appropriate orders keeping in view, inter alia, the provisions of section 46 of the Maharashtra Regional and Town Planning Act. The matter was brought to this Court by the respondents contending, inter alia, that in the sanctioned plan the area had been shown reserved for industrial user. This Court permitted the respondents to file a review petition before the High Court. On being so approached, the High Court dismissed the intervention application of the respondents and directed the Municipal Corporation to permit construction. This order led the respondents to approach this Court again by filing Interlocutory Application in the disposed of SLP. This Court, by an order passed on 24.2.1993, directed the High Court to dispose of the review application and further directed to maintain status quo, which prevented the appellants to carry on construction activity within one k.m. radius from the factory premises. The High Court disposed of the review application on 26.9.1994 by giving the following directions :-

"(i) No additions or modifications shall be permitted in respect of

buildings that have been completed or those were under construction as on the date of stay order passed by this Hon'ble Court on 8.1.1996.

(ii) In respect of schemes where permission may have been granted but no actual construction has been commenced as on the date of this Court's order dated 8.1.1991, prohibition in respect of a total ban on further construction within 1 km. radius from the chemical units shall apply.

(iii) Save and except in the aforesaid cases, the stay order passed by this Court on 8.1.1991 shall continue to the extent that there shall be a prohibition in respect of any further permissions or for that further permissions or for that matter construction within 1 k.m. radius from the chemical factories.

(iv) The stay order shall stand vacated only in those of the cases as indicated where construction has been commenced and was required to be stopped by virtue of the stay of this Hon'ble Court. "These appeals question the aforesaid directions of the High Court.

3. The appeals were heard on a number of occasions and being of the prima facie view that by giving aforesaid immunity to the industrialists injustice has been caused to the residents of the locality inasmuch as prohibition of constructions within 1 k.m. radius like- Thane did adversely affect the right to reside in the locality, leaving at the same time the large number of inhabitants already residing exposed to the risk mentioned above, it was thought by us that if the industrialists wanted to safeguard their interest in the event of some accident happening in their factories, it was for them either to shift their factories to such places where the residential area could be kept wide apart from the factory premises. But then, the response of the respondents to the first proposal being negative because of the huge financial involvement we applied our mind as to whether we could examine at our level the question of relocation.

4. Respondents were heard on this aspect on many occasions and in the written submissions filed on 2.9.1996 by Bayer India. which can be taken as a representative stand of the respondents, it has been stated relocation is not possible logistically, financially or otherwise. The written submission mentions about various aspects relating to relocation at pages 16 to 20. It has been felt by us that we have neither the expertise nor are in possession of various information, which shall be required. to decide one way or the so far as the question of relocation is concerned. In such a situation what has appealed to us is to leave this matter to be examined by an Authority which we would require the Central Government to constitute, as visualized by section 3(3) of the Environment Protection Act, 1986 (the Act). It is not necessary to deal at length as to what is visualized by this Act and why ? This has been explained in detail in a judgment delivered by one of us (Kuldip Singh,

J.) on August 28, 1996 in Writ Petition (C) No.914 of 1991, on behalf of a 3-Judge Bench. The concept of "sustainable development", whose salient points have been noted in the aforesaid Judgment, does call upon one and all to see to the maintenance of balance between development and its sustenance in future.

5. In the appeals at hand, we are confronted with a problem which has more serious consequences and which touches the core of Article 21 of the Constitution inasmuch as the very lives of the inhabitants living around the factories in question are in great jeopardy so much so that any probable accident in the factories may see annihilation of large number of inhabitants. May be the accident does not take place, as has been submitted by Shri Jaitley appearing for the respondents. There is, however, no ruling out of the same altogether as Bhopal has shown. No risk can, therefore, be taken. But then relocation does need a deeper probe because of the various factors which would be required to be gone into. Such an exercise can usefully be taken by an Authority of which mention has been made above.

6. We, therefore, direct the constitution of an Authority under section 3(3) of the Act by the Central Government, who shall confer all the necessary powers under the Act on the Authority, which shall be constituted within one month from the receipt of this order. The Authority shall submit its report to the Central Government within three months after examining and deciding all the relevant issues including those mentioned by us. This would be done by affording reasonable opportunity of hearing to the concerned parties. Follow up actions shall be taken by all concerned as per the recommendations of the Authority within reasonable time.

7. As the constitution and deliberation of the authority would take times, and its ultimate result cannot be foreseen at this stage, we have thought it fit to direct the Bombay Municipal Corporation to proceed further with the plans which had been submitted by the appellants, some of which also came to be sanctioned. But then, as sanctioning in some cases was about a decade back and as the scenario and thinking on the subject has since then changed a lot, so also the building bye-laws, we have thought it fit to direct the Corporation to re-examine the question of grant of sanction on the basis of the existing rules and bye laws. The Corporation may proceed with this exercise, but it would await the result of the report of the aforesaid Authority. We have desired the Corporation to undertake this work at this stage itself because the matter has been delayed already and Authority's deliberation would not be available for quite some time.

8. In the aforesaid view of the matter, the review petitions filed before the High Court by the respondents are not required to be kept alive and they would stand dismissed on withdrawal, to which effect prayer was made before us. The impugned directions of the High Court would automatically lapse.

9. The appeals are disposed of with these directions. No order as to costs.