

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.109 OF 2013
[FOR MODIFICATION OF THE ORDER]
IN
PUBLIC INTEREST LITIGATION NO.39 OF 2003**

Table Land Vyapari
Association, Panchgani,
through its Treasurer,
Mr. Anil Sakaram Vane

..... Applicant.
(Original Respondent No.13)

IN THE MATTER BETWEEN

Bombay Environment Action
Group & Anr.

..... Petitioners.

V/s

State of Maharashtra & Ors.

..... Respondents.

Mr. Uday Warunjikar for Applicant/original Respondent No.13

Mr. Shiraz Rustomjee, Senior Counsel, Mr. Riyaz Chagla, Mr.
Rohan Kelkar, Ms. Pooja Kothari i/b Federal & Rashmikant,
Advocates for Petitioners in PIL No. 39 of 2003.

Mr. Sameer Patil, AGP for Respondent Nos. 1 and 4.

Mr. Ganesh Gole for Respondent No.2.

Mr. Y.M. Chaudhari for Respondent No.3.

Ms. Chandana Salgaonkar for Respondent No.9.

Mr. Hemant Telkar for Respondent No.11.

**CORAM: V. M. KANADE &
K. R. SHRIRAM, JJ.**

Order reserved on : 09/07/2013

Order pronounced on : 08/10/2013

P.C.:- (PER V.M. KANADE, J.)

1. This application has been filed by original Respondent No.13 - Table Land Vyapari Association, Panchgani, seeking modification of part of the order passed by Division Bench of this Court dated 19/10/2006 in PIL No.39 of 2003.
2. Brief background and relevant facts which are necessary for the purpose of deciding this application are as under:-
3. Respondent No.1 - Society herein is a Petitioner in the main Petition which is registered under the Societies Registration Act and is carrying on yeomen services for the purpose of protecting environment in various parts of the country, particularly in the State of Maharashtra. In the past, this Society had filed several Petitions in this Court, bringing to the notice of the Court the acts which have been committed by various private parties at various places which were in violation of the provisions of the Environment Protection Act, CRZ Act etc.
4. PIL No.39 of 2003 was filed concerning the protection of environment in Mahabaleshwar and Panchgani which is a

prime Hill Station in State of Maharashtra. In the said Petition, various parties were joined as party-respondents, apart from joining the State of Maharashtra, Mahabaleshwar Municipal Council, Panchgani Municipal Council, Collector, Satara, Union of India etc. These private parties were owners of plots of land in Mahabaleshwar and some of them were hotel owners and Respondent No.9A was a representative body of hoteliers. Respondent No.13 which is an association of Traders, i.e., the Applicant herein were also added as Respondent. Several applications were filed by several parties, both Petitioner and Respondents.

5. Respondent No.1/original Petitioner had filed Writ Petition No.2754 of 1997 which was disposed of by judgment and order dated 18/11/1998 passed by Division Bench (Coram: M.B. Shah, C.J. & S.R. RADHAKRISHNAN, J.). Various directions for protection of environment in Mahabaleshwar & Pune were issued while disposing of that Petition. The grievance of the Petitioner in this Petition was that large scale illegal construction and deforestation in Mahabaleshwar and Panchgani area, was resulting in widespread environmental and ecological problems. Petition therefore was filed raising various issues and one of the issues was concerning protection of table land. In the said Writ Petition No.2754 of 1997, this Court by order dated 13/04/1998 gave a direction that till the Committee appointed pursuant to the

orders passed in the said Writ Petition submits its report, no further construction was to take place at Wilson Point in Mahabaleshwar and Sydney Point and Table Land in Panchgani respectively. Thereafter, by order dated 18/11/1998, Monitoring Committee was constituted and various directions were given to the Monitoring Committee.

6. In the meantime, Central Government issued a Notification through the Ministry of Environment and Forests on 17/01/2001 and notified the Mahabaleshwar-Panchgani region as an eco-sensitive zone under the provisions of the said Act. Direction was given to the Panchgani Municipal Council to prevent commercial exploitation of the Table Land. On 16/02/2004, Monitoring Committee submitted its Report making various recommendations pertaining to the Table Land. Following recommendations were made by the Monitoring Committee:-

“(a) To stop all commercial activity on the Table Land plateau surface. This can only be done by a total ban on movement of horses, carts and other vehicles on the major part of the Table Land (to the North of the entry point);

(b) Cars and other vehicles should only be allowed up to the Car Park to the South of the present entry point as shown on the enclosed map;

(c) Stalls (only those 33 stalls that are part of

the Court Order) should be relocated and confined to the topographic depression at the present entry point to the Table Land (from the South) and strictly not allowed beyond this point. They should lie below the surface level of the main plateau and be designed in an eco friendly manner. The ownership should vest with the Panchgani Municipal Council, which should let out the stalls to stall-holders selling food and refreshment items only. Stalls of giant-wheels, trains, etc. should not be allowed.

(d) Apart from the above, no construction to be permitted on the Table Land except from an Environmental Interpretation Centre near to the entry point at a location shown in the attached plan. This centre would give vital information and education to visitors about the Table Land and its unique environmental features;

(e) To prevent any exception/ misuse of the vehicle-free area on the main portion of the Table Land, even by VIPs, properly designed steps and barriers should be constructed to make it impossible for vehicles to enter the prohibited area;

(f) Apart from people walking on foot, no activity of any kind should be permitted on the main part of the plateau to the North of the present entry point and the small water body near the entrance route. The only exception to this could be near the entry to the plateau where an area should be demarcated for a play ground to be given out to schools for sports such as football. This should be clearly demarcated to avoid future misuse. The control of this area should vest with the

Panchgani Municipal Council, which will be responsible for ensuring that this facility is not misused;

(g) Vehicles should be allowed only upto the car/vehicle park as shown on the map. Horses and horse-carts should not be allowed on the main plateau but be confined to the portion of the Table Land located to the South and South-East of the present entry point. Suitable barriers should be erected to prevent horse-carts and any other vehicles from entering the larger protected portion of the plateau;

(h) All slopes should be made as green as the slope on the MRA side;

(i) Details of permitted activity and restrictions as set out schedule I and II attached to this report;

(j) It is suggested that powers to enforce the above condition be delegated to the Panchgani Hill Municipal Council by the Collector, Satara under Bombay Police Act, as the Council itself does not have the direct powers to do so."

7. Thereafter, PMC passed a Resolution dated 18/6/2004 and requested the Monitoring Committee to discuss the plan for preservation of Table Land. Members of the Monitoring Committee, however, declined to accept this request and PMC finally sanctioned the plan by its Resolution No.539 dated 05/02/2005.

8. On 08/04/2005, PMC filed an affidavit in which they had expressed their intention to implement the plan suggested by HCMC. It appears that in 2006, PMC filed an affidavit admitting non-compliance of the order dated 19/09/2005 by which this Court had directed in para 10 as under:-

“10. Respondent No.3, is directed to implement the recommendations and plans submitted in the Monitoring Committee's report dated 16th February, 2004 or any amended plan to be submitted within two weeks in respect of the Panchgani Table Land and to file an affidavit within one month from the date of this order reporting compliance.”

Petitioners, therefore, filed Contempt Petition No.100 of 2006 for wilful breach/disobedience of the order dated 19/09/2005. Various orders were passed by this Court in the said Contempt Petition including the orders dated 1/3/2006 and 04/05/2006 and, thereafter, Contempt Petition was withdrawn in view of the affidavit dated 11/07/2006 filed by the Contemnor No.1. Petition, thereafter, was disposed of on 19/10/2006.

9. In 2008, again, second Contempt Petition was fled by the Petitioners being Contempt Petition No.190 of 2008, seeking a direction regarding protection of Table Land on account of non-implementation of the orders passed by this

Court and it was alleged that the directions regarding protection of the Table Land had not been implemented and that horses, horse-carts and other vehicles were being allowed to ply thereon unabated.

10. In the meantime, during pendency of the Contempt Petition, PMC removed the unauthorized stalls and they were reconstructed in another area. As per the directions given by this Court, a separate parking space was provided for parking vehicles, a barricade was put on main entrance of the Table Land so that horses, horse-carts and other vehicles do not enter the main Table Land and permission was granted by this Court to use 20 acres of land and directions given by this Court to that extent were complied with by PMC.

11. Present Civil Application has been filed by Table Land Vyapari Association in which following prayer has been made:-

“[a] Be pleased to modify the order passed by this Hon'ble High Court (Coram: Gokhale & Devadhar, JJ.) dated 19.10.2006 in Public Interest Litigation No.39 of 2003, by permitting the Pachgani Municipal Council and the other respondents to allow the

applicant herein through their Members to use the horses and horse-carts on the main table land on a strip of the land through the track as suggested in the memo of this application as well as as discussed and finalized in the minutes of the High Level Monitoring Committee held on 3.3.2012 at Rajbhawan, Mahabaleshwar."

12. The learned Counsel appearing on behalf of the Applicant has contended that the area of 20 acres which was earmarked by the High Court in its earlier orders is not convenient or suitable for plying horses and horse-carts since the area of attraction by the tourist is the main Table Land. It is submitted that a Review Petition was filed by the present Applicant seeking review of the order passed by this Court for reconsideration of the use of part of the main Table Land for the purpose of plying horses and horse-carts on the said area which would be earmarked by the experts. It is submitted that two experts were appointed who have submitted their reports and in the said Reports both the experts have given their opinion. One expert viz Dr. Aparna Watve of Biome Conservation Foundation has given an opinion that, at the highest, horses may be permitted on a particular route but horse-carts should not be permitted, whereas the other expert viz. Dr. Chandrakant Salunkhe has

given an opinion that after imposing suitable conditions horse-carts also may be permitted.

13. We have heard the learned Counsel appearing on behalf of the Applicant and the learned Counsel appearing on behalf of the Respondents.

14. It will be necessary to take into consideration two reports which have been submitted; one by Dr. Aparna Watve of Biome Conservation Foundation and the other by Dr. Chandrakant B. Salunkhe. Dr. Aparna Watve has in her report observed as under:-

"i. As an ecologist, my TOR is only to evaluate ecology and therefore, even when I respect the social considerations, my opinion regarding damage caused by horsecarts is based on ecology and biodiversity impact evaluation.

ii. As demanded by the Association, Horses can be allowed to ply on the main Tableland. This is again purely based on scientific study and for this purpose there is no necessity to construct any permanent track and that the routes can be earmarked based on conservation plan which will be reviewed every year.

iii. There is no scientific cause for reversing my opinion stated in all previous reports that plying of horse-carts is the most damaging activity and should not be

allowed if tableland biodiversity has to be conserved and ecological recovery of the area has to take place. It is to be understood that total destruction of tableland will cause permanent loss of livelihood of all stakeholders which would include the stalls owners.

iv. The layout of the track as shown in the plan disturbs existing patches of characteristic plateau vegetation. The parts of the area which are currently disturbed heavily have potential of recovering the typical biodiversity of the rocky plateau and have been amply proved by the data and photodocumentation.

v. Social issues like livelihood problems of the horse cart owners, though important, cannot feature in the ecological evaluation. If required a separate socio-economic assessment of horsecart owners affected by the denial of horse carts should be undertaken by competent social scientists."

Dr. Chandrakant Salunkhe, on the other hand, has given a report in which he has given an opinion that it is possible to earmark certain area of land for the purpose of same being used either for plying horses or horse carts for the tourist. He has stated that 30 feet wide horse cart track area earmarked by the Municipal Council should be used for this purpose and he has further observed that earmarked area is suitable for the said purpose.

15. Perusal of the said two reports indicates that so far as Dr. Aparna Watve is concerned, she has in terms stated that lot of damage would be caused to the eco-system on the table land, if plying of horse carts is permitted. However, Dr Chandrakant Salunkhe has given an opinion that it is possible to earmark certain area of land for the purpose of the same being used for plying of horse carts for the tourists. However, both, Dr. Aparna Watve and Dr. Chandrakant Salunkhe have given an opinion that it is possible that certain area can be earmarked for the purpose of plying of horses which is evident from the following observations made in the report of Dr. Aparna Watve:-

“(ii) As demanded by the Association, Horses can be allowed to ply on the main Tableland. This is again purely based on scientific study and for this purpose there is no necessity to construct any permanent track and that the routes can be earmarked based on conservation plan which will be reviewed every year.”

So far as permission to use horse carts is concerned, High Level Monitoring Committee set up in 2004 has in terms held that plying of horse carts cannot be allowed on the main table land and the same could be restricted to the portion of

20 acres specially demarcated for the purpose. Secondly, by orders dated 19/9/2005, 1/3/2006, 4/5/2006 and 15/6/2006 in the main Writ Petition and Civil Application, the Respondents have been directed to implement the recommendations of the Monitoring Committee. This Court in its order dated 4/5/2006 was pleased to direct that "no horse carts or motor vehicles can go across" on to the table land. The said Writ Petition was disposed of by final judgment and order dated 19/10/2006 in which, again, this Court was pleased to emphasize the point that the horse carts and other vehicles would be absolutely barred from the main table land.

16. Taking into consideration various orders passed by this Court from time to time, it is not possible to modify the said order and permit the Applicant - Association to ply horse carts on the main table land. The relief of modification, therefore, is not granted and the Civil Application is dismissed to that extent.

17. So far as plying of horses is concerned, both the experts have submitted their reports and have given an opinion that plying of horses is permissible, however, that should be subject to earmarking of routes by the experts.

18. We, therefore, direct Dr. Aparna Watve and

Dr. Chandrakant Salunkhe and High Level Monitoring Committee to visit the site and earmark the track of land which could be used for plying horses. The said exercise should be completed within two weeks from today, if possible. Civil Application is allowed to the aforesaid extent.

19. Civil Application is disposed of in the aforesaid terms.

(K.R. SHRIRAM, J.)

(V.M. KANADE, J.)