

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL Writ Petition No.904 of 2005

Ehsanul Haque A Nadvi

vs

Union of India and ors.

Respondents

..Petitioner

..

Mr Akhilesh Upadhya for the petitioner

Mr B.A. Desai, Additional Solicitor General, with

Ms Naveena Kumai i/b Mr. Pankaj Kapoor

for respondent Nos.1 and 7

Mr.Pradeep Jadhav, AGP, for respondent Nos 2, 4, and 5

Mr. Z.A. Jariwala i/b M/s Thakore Jariwala and Associates
for respondent No.9

Mrs P.A.Purandhare for respondent No.6

Mr. G.D. Utangale i/b M/s Utangale & Co.for respondent No.3.

with

Writ Petition No. 123 of 2006

Gavdevi Durga Devasthan Trust.

.. Petitioners

vs

The Union of India and Ors.

..Respondents

Mr. C.U. Singh, Senior Advocate with Mr. Rajan Jayakar
i/b M/s Jayakars for the petitioners.

Mr. Pradeep Jadhav AGP for the respondent Nos 2 and 5.

Ms B.L Mahant i/b Mr. Pankaj Kapoor

for respondent Nos.1 and 3

Mr. Sanjay Jain with Mr. A.A. Joshi i/b M/s A.V. Jain
and Associates for respondent No.8

Mrs P.A.Purandhare for respondent No.4

Mr. Z.A. Jariwala i/b M/s Thakore Jariwala and Associates
for respondent No.7

**CORAM: J.N. PATEL,Acg C.J. ,&
V.C. DAGA, J.**

DATE: March 14, 2007.

P.C.:-

Heard the learned counsel for the parties.

The learned counsel appearing for the parties submit that though the report of the Committee appointed by this court has been submitted, they are yet to receive copies of the same so as to assist the court in the matter.

It is urged by the learned counsel for the petitioners that in the meantime, this Court should pass interim order staying all developmental activities of all nature and kind within the radius of 100 meters from the foot hills and in the periphery of the Gilbert Hill. The learned counsel appearing for the builders, whose projects are underway in the periphery of the Gilbert Hill submits that they have a valid permission granted by the planning authority and this would cause substantial loss to them, if such order is passed. This aspect of the matter requires hearing.

We would like to know from the State as well as the Municipal Corporation, which is the local planning authority as to whether at any point of time the Urban Development Department of the State of Maharashtra or for that reason the

Municipal Corporation have carried out any scientific study in respect of the subject matter of the petition i.e. Gilbert Hill to fix its boundaries so that this geological marvel is not damaged in any manner and is preserved. The learned AGP and the learned counsel for the Corporation submits that they will have to seek instructions in the matter.

We would highly appreciate if the Union of India and particularly through the Ministry of Environment and Forest depute a team of experts to examine the site in the light of the report submitted by the panel of experts to this Court and assist this court in dealing with the matter.

We are inclined to grant time but we make it clear that any developmental activities carried out within the zone which is required to be maintained in order to preserve the Gilbert Hill, would be at the risk and costs of such developers though they may have sanctioned plans from the local authorities. We would like to remind the State and local planning authority i.e. Municipal Corporation as also the developers that this Court would not hesitate to invoke the principle of restitution for restoring the damage which has been done due to the developmental activities being carried out

within and around the Guilbert Hill i.e. within the prohibited area, which the Court would finally decide after we hear the parties at length in detail including the MOEF which shall submit its report on or before the next date.

We, therefore, grant two weeks time for the parties to undertake the exercise with regard to the observations and directions of this Court and submit their response and if any one so desires to file exceptions to the report received by this Court. Office is directed to make available the interim and final report to all concerned at the cost of the parties.

ACTING CHIEF JUSTICE

V.C. DAGA, J.