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FORM III A
IN THE HIGH COURT OF KARNATAKA, BENGALURU

WRIT PETITION NO 1332 / 2020 (GM-RES)

(NOTICE UNDER RULE 13 (a) PROVISO)

PETITIONER

1. BAITHKOL BANDHARU NIRASHRITHARA YANTRIKRUT
DHONI MEENUGARARA SAHAKARA SANGHA NIYAMITHA
BAITHKOL-581302, KARWAR TALUK, UTTARA KANNADA DISTRICT,
REP. BY ITS VICE PRESIDENT, SRI YESHYA RAMA HARIKANTRA.

BY SRI: MURTHY DAYANAND NAIK,
RAVEENDRANATH N & MAHESHA K N

VS

RESPONDENTS

1. THE CHIEF EXECUTIVE OFFICER,
KARNATAKA MARITIME BOARD
OFFICE OF THE DIRECTOR OF PORTS AND INLAND WATER TRANSPORT,
KARWAR PORT, BAITHKOL VILLAGE,-581302,
KARWAR TALUK, UTTARA KANNADA DISTRICT.
2. THE DIRECTOR OF PORTS AND INLAND WATER TRANSPORT
KARWAR PORT, BAITHKOL VILLAGE,-581302,
KARWAR TALUK, UTTARA KANNADA DISTRICT.
3. THE STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY-KARNATAKA
ROOM NO.706, 7TH FLOOR, 4TH GATE,
M.S.BUILDING, DR.AMBEDKAR VEEDHI, BANGALORE-560001.
REPRESENTED BY ITS PRINCIPAL SECRETARY.
4. THE DEPUTY COMMISSIONER
UTTARA KANNADA DISTRICT,
MINI VIDHANA SOUDAH, KARWAR-581301
5. THE ENVIRONMENTAL OFFICER
KARNATAKA STATE POLLUTION CONTROL BOARD,
REGIONAL OFFICE, PARISARA BHAVAN, LIG-II, B-217,
NEAR HARI OM TRUST, HABBUWADA, KARWAR-581303.
6. DVP INFRA PROJECTS PRIVATE LIMITED
BY ITS TECHNICAL DIRECTOR, UTTAM PATIL,
MARKET CHAMBERS, NARIMAN POINT, MUMBAI-400021.

Whereas, a Writ Petition filed by the above named petitioner under Article 226 of the Constitution of India, as in the copy annexed hereunto, has been registered by this court.

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Notice is hereby given to you to appear in this court in person or through an Advocate duly instructed or through some one authorised by law to act for you in this case, at 10.30 A.M. in the forenoon on the 26/02/2020 (Notice returnable on 26/02/2020) to show cause why rule nisi should not be issued.

Contd..2/-..

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the court, without any further notice, the petition will be dealt with, heard and decided on the merits in your absence.

INTERIM ORDER

Pending issue of Rule nisi in the aforesaid Writ Petition it is hereby ordered by this Court on

THURSDAY THE 23RD DAY OF JANUARY 2020
BEFORE
THE HON'BLE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

as follows :-

XEROX COPY OF THE ENTIRE ORDER DATED 23/01/2020 IS ENCLOSED HEREWITH SEPARATELY.

Contd..2/-..

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BANGALORE

CJ & HCJ:
23.01.2020

W.P. No.1332/2020

Heard the learned counsel appearing for the petitioner.

2. Issue notice to the respondents returnable on 26th February 2020.

3. The learned Additional Government Advocate waives service of notice for the first, second and fourth respondents.

4. Sri Gururaj Joshi, the learned counsel takes notice for the fifth respondent.

5. Sri Prakash H C, the learned counsel takes notice for the sixth respondent.

6. It appears that the second respondent has proposed the Second Stage Development of Commercial Karwar Port at Baithkol village, Karwar Taluka, Uttara Kannada District on a plot area of 17 Hectares (42.01 acres) in addition to the existing area

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of 3 Hectares. It appears that the third respondent (SLEIAA) in its meeting held on 26th December 2019 decided to grant Environmental Clearance in accordance with the provisions of the Environment Impact Assessment Notification of 2006 and Environmental Clearance was issued under the letter dated 23rd January 2019 (Annexure-B) subject to various conditions incorporated therein.

7. It appears that a representation made on behalf of the petitioner to the Secretary of Ministry of Environment, Forest and Climate Change of the Government of India, objecting to Environmental Clearance, was forwarded to the Member Secretary of the third respondent by the said Ministry of the Government of India with a request to examine the matter. Thereafter, on 20th December 2019, the 3rd respondent issued a notice to the Executive Engineer, Port Division, Karwar, working under the second respondent calling upon him to submit an explanation/clarification on the issues raised in the

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complaint and to show cause why the Environmental Clearance granted on 23rd January 2019 should not be cancelled.

8. On the same day that is 20th December 2019, the Karnataka Pollution Control Board through its Environmental Officer (fifth respondent) issued a notice to the Executive Engineer of the second respondent recording that the specific condition No.23 in part-A of the Environmental Clearance granted by the third respondent of obtaining the consent to establish from the State Pollution Control Board before commencing establishment activity of proposed Second Stage Development of Commercial Karawar Port has been violated. Therefore, the Executive Engineer was directed to stop establishment activity and was also directed to apply for grant of consent for establishment. The Executive Engineer was warned that the activities will attract penal action.

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9. By this petition, a writ of mandamus is sought to direct the second respondent not to continue with the expansion of the Second Stage Development of Commercial Karwar Port. The second prayer is for a writ of mandamus enjoining the third respondent to withdraw the Environmental Clearance dated 23rd January 2019. The third prayer is for a writ of mandamus enjoining the fifth respondent to initiate suitable action in accordance with law against the second respondent for commencing the work without obtaining consent under the Air (Prevent and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. Various other prayers are made in the writ petition.

10. Captain C Swamy, Director of Ports, Inland and Water Transport, Baithkol Village, Karwar Taluk, Uttara Kannada District (second respondent) has tendered an affidavit. It is stated therein that the second respondent has applied to fifth respondent on

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16th January 2020 for grant of consent. In paragraphs 6 and 10, he has stated as under:

> "6. I submit that the construction of actual break water work in alignment shall be commenced only after obtaining the consent for the establishment to be issued by the Karnataka State Pollution Control Board. I further submit that the construction of the said break water area shall be strictly in consonance with the conditions laid down in the said consent for establishment of Karnataka State Pollution Control Board.
>
> 10. I submit that to commence the actual work of break water, necessary preliminary work needs to be prepared which includes mobilization of equipments and collection of materials. The said machinery and material shall be stocked in the port area and this Hon'ble Court may be pleased to permit the Port Authority to continue with preliminary work that is being carried out as on today."

(underline supplied)

He has further stated that to the show cause notice dated 20th December 2019 issued by the third respondent, the second respondent has submitted a reply dated 1st January 2020, in which it is contended that the second respondent has not breached any Rules and Regulations.

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11. Our attention is invited to the photographs at Annexures-F to F8, which show that some leveling work is in progress, as can be seen at Annexures-F, behind the boats which ~~is~~ are very close to the beach. The learned counsel appearing for the first and second respondents on his instructions of an officer of the second respondent states that the said work of leveling is being done for necessary preliminary work including for mobilization of equipment and collecting material in the original port area for the purpose of carrying out work of the Second Stage Development. Annexures-F1, F2 and F3 appear to be photographs showing the said work. Annexures-F4 to F8 prima facie show that the work of construction of a road is being carried out right on the beach for approaching the sea. The learned counsel appearing for the first and second respondents on the basis of the instructions of an officer, who is present before Court states that this is being done in the original port ~~limited~~ area for facilitating the mobilization of equipment and collection

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of material for break water work of the Second Stage Development of Commercial Karwar Port.

12. The scenario which emerges that by notice dated 20th December 2019, the fifth respondent has directed the second respondent to stop establishment activity. Notwithstanding the said direction, which as of today binds the first and second respondents, they are high handedly continued the activities in the name of making preparation for commencing of actual work of break water. They have stated that they are doing the work of the mobilization of equipment of collection material. They are doing the activity of constructing a road right on beach without obtaining consent to establish which is a mandatory condition of the Environmental Clearance.

13. The second and third respondents are the officers of the State. Prima facie, it appears to us that notwithstanding the notice dated 20th December 2019, they are continuing with the work, which is preliminary

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to the actual work of break water for the purpose of Second Stage Development. They have gone to the extent of constructing a road on the beach itself. The learned counsel appearing for the petitioner states that even video taken sometime back today shows that the work is continued. Not only that there is a stop work notice issued by the fifth respondent, but the third respondent has issued a show cause notice as to why the environmental clearance should not be cancelled. Moreover, in the notice dated 20th December, 2019 the fifth respondent has contended that the second respondent has committed a breach of condition No.23 of part – A containing the Specific Conditions of the Environmental Clearance. Conditions No.23 reads thus:

> "Consent to Establish/Operate for the project shall be obtained from the State Pollution Control Board as required under the Air (Prevent and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974."

(underline supplied)

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14. Prima facie, the affidavit of Captain C Swamy discloses that even before applying for consent of the Karnataka State Pollution Control Board, the steps were taken for carrying out the preliminary work of the Second Stage Development of Commercial Karwar Port.

15. Therefore, prima facie, it can be said that the first and second respondents have not complied with the specific conditions in the Environmental Clearance. Prima facie, it can be said that they have committed a breach of the Condition No.23.

16. We expected the agencies and instrumentalities of the State to respect the order passed by the Karnataka State Pollution Control Board way back on 20th December 2019. Moreover, when the show cause notice was issued by the third respondent calling upon the second respondent why the Environmental Clearance should not be cancelled, a different approach was expected from the first and

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second respondents. Prima facie, they have high handedly proceeded with the work without the consent of the Pollution Control Board thereby endangering the environment and the eco-system.

17. Therefore, while granting the interim relief as prayed for, we propose to direct the third respondent to immediately decide the show cause notice dated 20th December 2019 after giving an opportunity of being heard to the second respondent and all concerned persons. Needless to add that unless the said show cause notice is decided, the fifth respondent – Karnataka State Pollution Control Board cannot finally decide the application dated 16th December 2019.

18. As the second respondent has already caused considerable damage by carrying out the filling work on the beach, though there is no consent of the Pollution Control Board, we propose to direct the second respondent to forthwith restore the beach to its original condition. The photographs which are not

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disputed show that the stones have been brought on the beach for filling work for making a road on the beach and activities are in progress close to a boat of fishermen, which is seen in the photographs. Annexure-F6 shows the considerable portion of beach has been re-filled. Hence, we pass the following interim relief:

i) There will be interim relief as prayed in the petition;

ii) We direct the third respondent to decide the show cause notice dated 20th December 2019 after giving an opportunity of being heard to the second respondent and all the affected parties;

iii) The final order shall be passed on the show cause notice before the returnable date and the order shall be produced before the Court;

iv) We are sure that the third respondent while considering the show cause notice will take into consideration the stop-work notice issued by the Karnataka State Pollution Control Board dated 20th December 2019;

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v) We direct the Pollution Control Board not to take final decision on the application dated 16th December 2019 till the returnable date;

vi) Before the returnable date, the second respondent shall take immediate steps to restore the beach to its original condition by removing all the filling work done on the beach for road and other work as can be seen from the photographs at Annexures-F onwards;

vii) The work of restoration shall be completed before the returnable date and a compliance report shall be filed before the Court on the returnable date;

viii) In the meanwhile, it will be open for all the respondents to file statement of objections;

ix) We direct the petitioner to implead the Union of India as a party respondent through the concerned Ministry and we permit consequential amendments to be carried out;

x) It will be open for the petitioner to serve notice on the learned Standing Counsel of the added

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respondent. We direct the petitioner to take hand summons for effecting service of notice to the third respondent. We direct the second respondent to supply the copy of this order to the third respondent;

Hand delivery of this order be permitted as and when the order is ready.

Sd/-
Chief Justice

Sd/-
JUDGE

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Assistant Registrar
High Court of Karnataka
Bangalore - 560 001

24/01/2020

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BANGALORE