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VEERU DEVGAN

v.

STATE OF TAMIL NADU & ANR.
(Civil Appeal No.4448 of 2005)

SEPTEMBER 11, 2008

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**[C.K. THAKKER AND LOKESHWAR SINGH PANTA,
JJ.]**

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Constitution of India, 1950 – Art. 226 – Plenary jurisdiction – Exercise of – Scope – Licence granted to Appellant to shoot film in reserve forest area – Cancelled by State on allegation that he violated terms and conditions of agreement between the parties and caused damage to grasslands in the area – Appellant filed writ petition – High Court came to a finding that Appellant had not caused damage to environment or grasslands and the action of cancellation of licence was illegal – However, in purported exercise of its plenary powers, High Court directed Appellant to deposit Rs.50 lakhs for protection of environment – On appeal, held: Plenary powers must be exercised judicially and judiciously on basis of facts before Court and on well-settled principles – Since findings recorded by High Court were in favour of Appellant, grievance voiced by him that High Court erred in directing deposit of Rs.50 lakhs is well-founded and Appellant is entitled to refund of said amount – Forest (Conservation) Act, 1980 – Forest (Conservation) Rules, 1981 – Tamil Nadu Forest Department Code, 1984.

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Appellant is engaged in the production and direction of films. He sought permission to shoot a part of his film “Raju Chacha” in the reserve forest area in Nilgiri District, Ooty. A formal agreement in this regard was entered into between Appellant and the District Forest Officer whereby permission was granted to Appellant to shoot the film and to erect temporary sets therefor. Permission/Licence

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granted to Appellant was however subsequently cancelled by the State on the ground that he violated the terms and conditions of the agreement entered into between the parties and caused damage to grasslands in the forest area. A

Appellant filed a writ petition under Art. 226 of the Constitution challenging the cancellation of licence. The High Court held that it was not proved that the appellant-licensee had violated terms and conditions of the licence. It also recorded a finding on the basis of reports submitted by the Forest Authorities that the Appellant had not caused damage to environment or grassland and the action of cancellation of licence and termination of the agreement was, therefore, illegal and contrary to law. The High Court, however, in purported exercise of its plenary jurisdiction, directed the Appellant to deposit Rs. 50 lakhs for protection of environment. The said direction is challenged in the present appeal. B C D

Allowing the appeal, the Court

HELD:1.1. According to the High Court, the appellant had not caused damage to the grassland nor had committed any action which warranted cancellation of licence and yet it imposed an enormous condition to deposit Rs. 50 lakhs *inter alia* on the grounds, namely, (i) fixation of nominal fee by the State for the use of the site; and (ii) heavy budget of the film (Rs.10 crores). If after following proper procedure and complying with all terms and conditions, the appellant-writ petitioner was granted permission to shoot the film and all payments had been made as per the terms and conditions of the agreement and there was no finding as to damage to environment, to grassland or to wildlife as alleged in the newspaper report and once the High Court was satisfied on the basis of the reports submitted by the authorities and it set aside the order of cancellation of licence and termination of E F G H

A agreement, the High Court could not have directed the appellant to deposit Rs.50 lakhs to be used towards creating greater awareness for environmental protection and for preservation of forests. [Paras 18, 20] [351-C,G,H 352-A-B]

B 1.2. No doubt the High Court was exercising plenary jurisdiction under Article 226 of the Constitution. However, even plenary powers must be exercised judicially and judiciously on the basis of facts before the Court and on well-settled principles. Since the findings recorded by
C the High Court were in favour of the appellant-writ petitioner, the grievance voiced by the appellant that the High Court was in error in directing deposit of Rs. 50 lakhs is well-founded and the appellant is entitled to refund of the said amount. [Para 21] [352 C-D]

D 1.3. As stated by the appellant, he had to deposit the said amount in view of the fact that on deposit of the said amount, the appellant was allowed to proceed with the shooting of the film. He was thus constrained to make such deposit. It would, therefore, be appropriate if this
E Court directs refund of the said amount with accrued interest thereon to the appellant. [Para 22] [352 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4448 of 2005

F From the final Judgment and Order dated 23.12.1999 of the High Court of Judicature at Madras in W.P. No. 19842 of 1999

Indu Malhotra, Shashi M. Kapila, Manisha Handa and Vikas Mehta for the Appellant.

G R. Venkataramani, Vallinayagam and V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. The present appeal is preferred
H by the appellant against some of the directions issued in the

judgment delivered by the High Court of Judicature at Madras on December 23, 1999 in Civil Writ Petition No. 19842 of 1999. By the said judgment, the High Court held that though the appellant herein-writ petitioner in the High Court-had not violated the terms and conditions of the permission granted to him to shoot a film and had not caused damage to the grassland or adversely affected environment, he would deposit Rs. fifty lakhs which will be utilized for protection and improvement of environment and the forest in and around Udhamandalam. A B

2. To appreciate the grievance raised by the appellant in the present appeal, few relevant facts may be noted. C

3. The appellant is the sole proprietor of M/s Devgan Films which *inter alia* is engaged in the production and direction of films since 1996. The appellant conceived an idea of producing a musical film for children titled "Raju Chacha". The appellant initially started shooting of the said film in the Gulmarg area in Kashmir but due to Kargil war, the shooting was postponed. Then, a decision was taken to change the venue to Schoolmund (Wenlock Downs Reserve Forest), Ooty in the State of Tamil Nadu. For the said purpose, the appellant made an application to the Principal Chief Conservator of Forests of the State of Tamil Nadu on August 31, 1999 for issuance of 'no objection certificate' to shoot a part of the film in the Nilgiri South and North Division. On the same day, the Principal Chief Conservator of Forests granted such permission for a period of 120 days from October 01, 1999 to March 30, 2000. The appellant deposited an amount of Rs. 60,000/- @ Rs. 500/- per day for 120 days with the Information and Tourism Department towards fee for using the area in question. He also deposited an amount of Rs.5,000/- under the head "Miscellaneous and Photograph expenses". On September 06, 1999, the Director of Information and Public Relations granted necessary permission for shooting in Nilgiri District, Ooty. On October 5, 1999, the appellant furnished a refundable security deposit of Rs. two lakhs in savings account towards permission for shooting the film and erection of pre-fabricated sets in the D E F G H

A designated area. Immediately thereafter on October 07, 1999, the permission sought by the appellant was granted to erect sets of a particular size. The appellant stated that similar permissions had been granted for more than 100 films during previous years for shooting in the Nilgiri under the Tamil Nadu Forests Department Code, 1984. A formal agreement was executed between the sole proprietor of M/s Devgan Films on the one hand and the District Forest Officer ('DFO' for short), Nilgiri South Division-respondent No.2, on the other hand, whereby permission was granted for shooting the film and erection of temporary sets of the size of 60mm x 60mm subject to the conditions specified therein. The appellant was directed to deposit an amount of Rs.10,800/- as ground rent for erection of temporary sets. A copy of the said agreement has been produced by the appellant in the present proceedings.

D 4. It appears that an article was published on December 03, 1999 in a newspaper 'Dinamalar' (Tamil Daily) alleging therein that grasslands were being damaged and wildlife was disturbed by the actions of the appellant. A notice was, therefore, issued by DFO on December 06, 1999 to the appellant to show cause why permission granted to the appellant should not be cancelled as the appellant had violated conditions of the agreement. The appellant was also directed to suspend further erection of the sets for shooting the film. On December 9, 1999, the appellant made a representation to the Chief Secretary of the State stating that he had taken full care of the environment and grasslands had not been damaged. A prayer was also made to drop the proceedings against the appellant and to allow the Company to complete the shooting. The grievance of the appellant is that in spite of the fact that there was no damage to the environment and the appellant had not committed breach of any condition of agreement, the DFO, without affording an opportunity of hearing to the appellant, passed an order on December 10, 1999 cancelling the permission on the purported ground that the appellant had violated conditions of the agreement entered into between the parties and had caused damage to grasslands.

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5. Being aggrieved by the order cancelling permission, the appellant approached the High Court by filing a writ petition under Article 226 of the Constitution challenging the cancellation of licence. A Non-Governmental Organization (NGO), namely, Tamil Nadu Green Movement, on the other hand, challenged the order dated October 07, 1999 by which permission was granted to the appellant to shoot the film "Raju Chacha".

6. Both the petitions were heard together. The High Court by the impugned judgment, dated December 23, 1999, held that it was not proved that the appellant-licensee had violated terms and conditions of the licence. It also recorded a finding on the basis of the reports submitted by the Forest Authorities that the appellant had not caused damage to environment or grassland. The action of cancellation of licence and termination of agreement was, therefore, illegal and contrary to law. The High Court, however, directed the appellant to deposit Rs. 50 lakhs for protection of environment.

7. Being aggrieved by that part of the order, the appellant has approached this Court. The judgment of the High Court was delivered on December 23, 1999. Immediately thereafter, there was Christmas vacation. According to the appellant, under the circumstances, he was constrained to comply with the order passed and direction issued by the Court.

8. After getting certified copy of the judgment, the appellant approached this Court by filing Special Leave Petition on April 03, 2000. On April 24, 2000, notice was issued by this Court and the matter was ordered to be tagged with Writ Petition (Civil) No. 202 of 1995 [*T.N. Godavarman Thirumulpad v. Union of India & Ors.*]. It may be stated that in *T.N. Godavarman*, this Court is considering the larger issue of protection of forests. On April 23, 2001, this Court ordered that any amount deposited by the writ-petitioner in the High Court of Madras should be invested in a fixed deposit in a nationalized Bank. The Special Leave Petition remained pending for a long period. On April 01, 2005, however, when the matter was placed before the

- A Court, it was noticed that the instant case did not relate to larger issue raised in *T.N. Godavarma* but was an individual one. The Court, hence, ordered to place the matter before a regular Bench. On July 22, 2005, leave was granted. On February 25, 2008, a Bench presided over by Hon'ble the Chief Justice of India directed the Registry to place the appeal for final hearing during summer vacation. That is how the matter has been placed before us.

9. We have heard the learned counsel for the parties.

- C 10. The learned counsel for the appellant strenuously contended that the direction issued by the High Court to pay Rs. 50 lakhs was wholly illegal, unlawful and arbitrary. Once a finding is recorded by the High Court that the appellant had not violated conditions of licence or committed breach of the agreement entered into between the parties and no damage had been caused to grassland, nor environment had been adversely affected, the Court had no power, authority or jurisdiction to direct the appellant to pay/deposit any amount. The counsel submitted that affidavits were filed by the parties, records were called for and parties were heard. On the basis of the findings recorded in the reports submitted before the Court, it concluded that the appellant had acted in consonance with terms and conditions of the agreement. Whatever amount required to be paid towards damage was actually paid by the appellant. Compounding of offences under the relevant laws had also been done and the requisite amount was paid. Precisely because of that the Court allowed the petition filed by the appellant-writ petitioner and set aside the order dated December 10, 1999. The Court also, only for that reason, did not grant relief sought by NGO in the other petition seeking setting aside permission granted and agreement entered into between the appellant and the State of Tamil Nadu. The counsel further submitted that over and above regular payments which were required to be made, certain additional amounts were also paid by the appellant including refundable deposit of Rs. 2 lakhs. The State was duty bound to refund even the said
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amount. On all these grounds, it was submitted that the appeal deserves to be allowed by setting aside the direction of the High Court to deposit Rs. 50 lakhs by the appellant-writ petitioner to the respondent State Authorities. The State is also bound to repay refundable deposit of Rs.2 lakhs. A

11. The learned counsel appearing for the State fairly stated before the Court that the High Court, no doubt recorded a finding in favour of the appellant. He, however, submitted that the High Court was exercising plenary jurisdiction under Article 226 of the Constitution. The Court, in exercise of that jurisdiction, thought it proper to direct the appellant to deposit Rs. 50 lakhs for protection of environment. The said amount can be utilized in general public interest and in making citizens aware of the environmental protection. B C

12. Having heard the learned counsel for the parties, in our opinion, the direction issued by the High Court cannot be said to be in accordance with law or based on the materials before the Court or conclusions recorded by the Court on that basis. We have been taken to the relevant part of the judgment of the High Court. The High Court considered in detail the complaint made against the appellant as also the reports submitted by the Forest Authorities. On the basis of the reports, the Court recorded a finding that there was no violation on the part of the appellant of terms and conditions of the agreement entered into between the appellant and the State and hence State was not justified in cancelling licence and terminating the agreement. The High Court, therefore, set aside the order passed by the State cancelling licence and terminating agreement by allowing the petition. D E F

13. Referring to the relevant statutes, such as, Forest (Conservation) Act, 1980, Forest (Conservation) Rules, 1981 and Tamil Nadu Forest Department Code, 1984, the High Court stated; G

"The real question here, however, is as to whether the words 'breaking up or clearing of any forest land or portion thereof' are applicable to the activity undertaken by H

- A Producer in the Schoolmund area. The activity that has been permitted is the erection of a temporary set for and shooting a film, which set is to remain on the land for a period of about 120 days. The technology used in erecting the set does not involve digging the earth for support. The set rests on the base of the G.I. pipes. The base of the G.I. pipe merely rests on the ground and is not embedded therein. The set is to be removed within a matter of few months. On such removal, the grass will admittedly regenerate after the winter. The forest land is to be restored to its original condition. No part of the forest land is lost as would be the case if a structure involving digging of foundations were to be constructed. For the duration of about 120 days the land cannot be used for other purposes. The land is free of tree growth. Admittedly, no trees existed or exist on this land, and no tree has been cut. The land is grassland, the land is located very close to a main Highway, the plantations which exist at a distance of about 450 meters are man made plantations. There is a settlement with a School also at a distance of about 450 meters. Close to the location is a forest road, through which equipment has been apparently brought to the site by the Producer.

- F According to the Producer, the State Government has consistently been permitting the shooting of films in this area. In the counter-affidavit filed by one Kumar Mangat, who holds a Power of Attorney from the Producer, it is stated that several films have been shot in this area. He has mentioned the names of certain films, Betabi in 1997, Deewana in 1992, Allan in 1995, Sadak in 1995, Khubsoorat in 1999, Hum in 1980s, Jigar in 1992, Tridev, Ravanraj etc. He has also stated that he had reliably learnt that permission had been granted by the Department earlier to one Padmalaya Films, Madras to erect sets of a dimension of 300 ft x 300 ft in adjoining area of Paimund on Old Mysore Road at Udugai, South Range in the year

1995. The State Governemnt has not disputed the fact that this area has been made available in the past to Producers as a location for their films. In fact, the Tamil Nadu Forest Department Code specifically contemplates the grant of such permission and also sets out the authority competent to grant the permission and the power of that authority to impose such conditions and restrictions as may be considered appropriate by the Chief Conservator of Forests".

14. Proceeding further, the Court observed;

"Breaking up' referred to in the Explanation involves activity such as extensive digging over a substantial area, or to considerable depth, or for a purpose which is of long duration. Digging wells, or foundation for houses or tillig the land for purposes of cultivation in a forest may amount to breaking up the forest land. The breaking up should be such as to have some degree of permanence. All activity on the forest land does not amount to breaking up the forest land. Resting the support for a temporary set for a few months on the forest land does not amount to breaking up the forest land. So also the laying of a water pipe of relatively small diameter, or of electric wires covered with plastic, a little below the surface, for a short period cannot be regarded as amounting to breaking up the forest land, especially when at the end of that period of few months the pipes and wires are to be removed and the grass will regenerate over that area.

... ..

The shooting of a film, per se, in a reserve forest cannot be regarded as a non-forest purpose as defined in Section 2 of Forest (Conservation) Act. Nature is meant to be enjoyed at the least visually, and not merely kept in a frozen state, unless there are very special reasons for preventing entry of people into special areas, which are sensitive and delicate, and whose preservation in their current state is for good reasons regarded as essential. The Apex Court

A has had occasion to consider the provisions of the Act
largely in the context of claims that mining activity should
be allowed to continue, or that trees should be allowed to
be cut, or that forest land be allowed to be leased, or that
buildings be allowed therein. In all such cases, where
B deforestation was the evident consequence, approval of
the Central Government was held to be mandatory. There
is no danger of deforestation by the erection of a temporary
set rested on the base of G.I. pipes which merely rest on
and are not rooted in the earth".

C 15. Dealing with the reports submitted by the Authorities,
the Court said;

D "In this case, we have reports of the Collector and the
District Forest Officer. According to the Collector, in the
winter months grass automatically withers away, and that
only in May, they will naturally regenerate. According to the
District Forest Officer, the winter ends in February.
Permission given to the Producer here is only upto the
period which expires long before the month of May begins,
E and grass will begin to regenerate naturally. Moreover, the
minimal damage caused to the grass is undertaken to be
repaired by the Producer, who even according to the
State's Officers, has been maintaining the grass.

F Having regard to the facts of this case, which we have set
out in considerable details in the earlier part of our Order,
we are not persuaded to hold that the prior approval of the
Central Government in the circumstances was essential
before the Producer could have proceeded to put up the
temporary set at the Schoolmund area, or that such
G permission is necessary for shooting the film in the forest.

H We do not belittle in anyway, the genuine concern of the
environmentalists for the preservation of the forest land in
the area. The granting of permission to erect sets is not
a part of the standard conditions subject to which
permission is to be granted for filming in the area. The

details regarding the extent of the area to be occupied by a temporary set, its weight etc., were not made known by the Producer to the Principal Chief Conservator or to the Director of Information, when he first applied. That application as we have seen is a bad one. It is only when he approached the District Forest Officer that details were made known. The District Forest Officer in turn had only secured permission and concurrence of the Principal Chief Conservator over telephone for incorporating permission to put up the set in the agreement. We cannot say that the Producer has been fair to the State in the manner in which he secured permission for putting up a set of this magnitude. It is also not in dispute that the Petitioner had compounded alleged offences regarding the drawing of water from a water source at some distance for the purpose of watering the grass in and around the structure. He had also compounded an offence for damaging the grass in some parts, the extent of the damage is not known. Having regard to the amount of fine that has been levied and collected, it could not have been substantial.

Having regard to this conduct of the Producer and also having due regard to the need for ensuring that no damage is done to the forest land, we consider it appropriate to appoint a Commissioner at the cost of the Producer to supervise all further activity of the Producer in Schoolmund. The Commission may at his discretion associate such other persons as he may regard as being possessed of special knowledge and experience of the area or of ecology and administration in his work".

16. The High Court, however, in para 47, directed;

"47. The producer has obtained the right to use of this land, though for a limited period, for a nominal fee, which does not in the lease represent the proper value of what he has been allowed to use. The budget for the film is said to be Rs.10 crores. It has been stated by him in

- A *correspondence that he has incurred an expenditure of about Rs.4 crores for the erection of the set. Keeping in view this, and other relevant considerations, we direct the Producer of the film to deposit a sum of Rs.50 lakhs (Rupees Fifty Lakhs) in this Court within a period of one*
- B *week from today. That amount shall be utilised for the activities concerning the protection and improvement of the environment and the forest in and around Udhagamandalam and also for programme for creating a greater awareness of the need to preserve the*
- C *environment and of the methods to be employed in that regard. The disbursal of that amount shall be subject to further directions to be made by this Court after receiving the reports from the Commissioner appointed by this Court, who shall consult all such experts as he may consider to*
- D *be capable of giving well informed expert view on the forests and ecology in and around Ooty".*

(emphasis supplied)

17. In para 51, the Court stated;

- E "51. In view of the order now made, and subject to compliance by the petitioner with the directions given by us in this order, and the directions which the Commissioner may give during the period between now and the completion of the shooting and the restoration of the area
- F to it's original condition, we set aside the order of the District Forest Officer dated 10.12.1999 cancelling the agreement dated 7.10.1999. We find that the extreme step of cancellation of the agreement on the grounds stated therein was not in the circumstances justified. The
- G employment of about 125 persons for erecting the set was only to be expected having regard to it's size. The District Forest Officer had not objected to the employment of that number till 95% of the set at a cost of over Rs. 2 crores had been completed, though he was aware of the
- H size of the set and the number of persons employed.

Moreover the relevant clause in the agreement advisedly used to the term 'about' and did not prohibit the employment of persons in excess of a specified number. The persons employed were, according to Collector, paid Rs.150/- per day, and there was no complaint from anyone. The use of water for sprinkling the grass and marginal 'damage' to grass had been computed and were not such serious breaches of the agreement as to warrant its cancellation".

18. From the above observations, it is clear that according to the High Court, the appellant had not caused damage to the grassland nor had committed any action which warranted cancellation of licence and yet it imposed an enormous condition to deposit Rs. 50 lakhs *inter alia* on the grounds, namely, (i) fixation of nominal fee by the State for the use of the site; and (ii) heavy budget of the film (Rs.10 crores).

19. The counsel submitted that both the grounds weighed with the High Court were wholly irrelevant and totally extraneous to the issue in question and could not have been taken into account by the Court while adjudicating *lis* between the parties. To satisfy the conscience of the Court, however, the counsel submitted that almost on the same terms and conditions, permission was granted to several film producers having more budgets and the case in hand was not of showing any concession in favour of the appellant in fixation of fee. Hence, even on factual ground, the High Court was not right. The counsel also submitted that even the film was not commercially successful and according to the appellant, the producer had incurred loss.

20. Be that as it may, in our opinion, legal submission of the learned counsel for the appellant is well-founded and must be upheld. If after following proper procedure and complying with all terms and conditions, the appellant-writ petitioner was granted permission to shoot the film and all payments had been made as per the terms and conditions of the agreement and there was no finding as to damage to environment, to grassland

- A or to wildlife as alleged in the newspaper report and once the High Court was satisfied on the basis of the reports submitted by the authorities and it set aside the order of cancellation of licence and termination of agreement, in our judgment, the High Court could not have directed the appellant to deposit Rs. 50 lakhs to be used towards creating greater awareness for environmental protection and for preservation of forests.

21. No doubt the High Court was exercising plenary jurisdiction under Article 226 of the Constitution. To us, however, even plenary powers must be exercised judicially and judiciously on the basis of facts before the Court and on well-settled principles. Since the findings recorded by the High Court were in favour of the appellant-writ petitioner, the grievance voiced by the appellant that the High Court was in error in directing deposit of Rs. 50 lakhs is well-founded and the appellant is entitled to refund of the said amount.

22. As stated by the learned counsel for the appellant, he had to deposit the said amount in view of the fact that on deposit of the said amount, the appellant was allowed to proceed with the shooting of the film. He was thus constrained to make such deposit. It would, therefore, be appropriate if we direct refund of the said amount with accrued interest thereon to the appellant. The State will also refund Rs.2 lakhs paid by the appellant to the State towards refundable deposit, however, without interest. Let such payment be made within a period of four months from today.

23. For the foregoing reasons, the appeal is allowed, the order passed by the High Court to the extent of directing the appellant to deposit Rs. 50 lakhs by him is set aside and the said amount with accrued interest is ordered to be paid to the appellant-writ petitioner of Civil Writ Petition No. 19842 of 1999. The State will also refund Rs.2 lakhs to the appellant. On the facts and in the circumstances of the case, however, there shall be no order as to costs.