

(2010) 08 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9443 of 2009 (PIL)

Abhimanyu Singh and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 295

Citation : (2010) ILR (MP) 2518 : (2010) 4 MPLJ 566

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : R.K. Samaiya and Shailendra Samaiya, for the Appellant; Kumares Pathak, D.A.G. for respondent No. 1 and Smt. Shobha Menon, with Rahul Choubey, for the Respondent

Judgement

Alok Aradhe, J.

This writ petition has been filed as Public Interest Litigation by the petitioner No. 1 along with two others, inter alia, on the allegations that sometime between 1988 to 1990 the Municipal Corporation, Singrauli constructed approximately 62 residential flats in Nav Jeevan Vihar in Singrauli District. Similarly, in order to provide housing accommodation to needy and weaker sections of the society, during the aforesaid period 120 Lower Income Group (LIG) quarters having an area approximately 540 sq.ft. each were constructed by Special Area Development Authority (SADA). It is alleged in the writ petition that Municipal Corporation, Singrauli incurred cost of approximately Rs. 85,000/- on account of construction of flats whereas Special Area Development Authority incurred the cost of Rs. 40,000/- on account of construction of said Lower Income Group quarters. It is alleged that the construction work of residential flats and Lower Income Group quarters was of very poor quality and, therefore, nobody was prepared to purchase the aforesaid flats and Lower Income Group quarters.

Sometime in the year 1994-95 the Lower Income Group quarters were sold to persons belonging to economically weaker sections of the society. In the year

1999 the residential flats constructed by the Municipal Corporation, Singrauli were let out on monthly rent of Rs. 550/- to 51 members of Vindhya Nagar Shivaji Complex Residents Society, a society registered under the provisions of M.P. Society Registrickaran Adhiniyam, 1973. However, members of the said association learnt that Municipal Corporation, Singrauli has passed a resolution on 18-6-2009 to sell the residential flats in question in an open auction and upset price of the flat was - fixed at Rs. 1,69,500/- . The petitioners thereupon submitted a representation in which it was stated that residential flats in their occupation, as tenants, be sold to them by granting them the facility of payment of sale consideration in instalments, as was done in the case of Lower Income Group quarters. However, without considering the representations submitted by the petitioners, a notice dated 28-8-2009 was issued by which the date of auction of the flats was fixed on 17-9-2009 and upset price of the flat was fixed at Rs. 2.34 lacs. In the aforesaid factual backdrop the petitioner No. 1, who claims to be the President of the Vindhya Nagar Shivaji Complex Residents Society, along with two others who are members of the society in the instant writ petition has sought the relief of quashing of resolution dated 18-6-2009 (Annexure-P-4) as well as notice (Annexure-P-7) dated 28-9-2009, by which auction of flats in question was scheduled to be held on 17-9-2009.

Respondents No. 2 and 3 have filed return in which, inter alia, it is contended that the instant writ petition cannot be treated as Public Interest Litigation as individual grievances have been set forth in the writ petition. It has further been averred that flats in question and the Lower Income Group quarters were constructed under different schemes and, therefore, the plea of the petitioners that they are entitled to allotment of residential flats on the same rate is devoid of any merit.

this Court vide order dated 16-9-2009 while hearing the writ petition on the question of admission directed issuance of notice to the respondents. However, this Court declined to stay the auction which was scheduled to be held on 17-9-2009. It was further directed that the auction shall be held subject to the result of the writ petition and it was further directed that members of Shivaji Complex society whose members have been mentioned in Annexure-P-2 will not be dispossessed from the flats in their possession. The Municipal Corporation, Singrauli was directed to file an affidavit communicating the prices fetched at the auction.

In compliance of order passed by this Court on 16-9-2009, an affidavit was filed on behalf of the respondents No. 2 and 3 in which, inter alia, it is stated that since the petitioners had spread rumours that stay has been granted, therefore, no auction could take place on 17-9-2009 and only two bidders participated in the auction as a result of which the auction had to be deferred and the same has been kept in abeyance. It was further stated in the affidavit that next date of auction is yet to be decided by the Corporation subject to further direction from this Court.

Thereafter, on 23-4-2010 when the matter came up for hearing, this Court found that there is possibility of amicable settlement of the controversy involved in the writ petition. Accordingly, the hearing of the writ petition was deferred and the petitioners were granted liberty to appear before respondent No. 3, Commissioner, Municipal Corporation, Singrauli within a week. The Commissioner was directed to hold a meeting with the petitioners and it was further observed that in case any settlement is reached, the terms and conditions of the settlement shall be recorded and shall be produced before next date of hearing. It was made clear that if the parties fail to arrive at a consensus the matter would be heard on merits.

In compliance of the aforesaid order the petitioner No. 1 appeared before the respondent No. 3 on 10-5-2010. The minutes of the meeting dated 10-5-2010 were filed along with the reply to application for taking additional facts and documents on record. From perusal of the minutes of the meeting it was found that the Municipal Corporation, Singrauli is ready and willing to allot the flats, which are not yet auctioned to the members of the society on the upset price fixed for auction i.e. Rs 2.34 lacs.

On 21-5-2010 when the matter was taken up for hearing the Learned Counsel for the petitioners submitted that members of the society are ready and willing to purchase the flats at the upset price fixed at the time of holding of the auction on 3-3-2010. However, respondents No. 2 and 3 submitted that in the auction which was held on 3-3-2010, 45 members participated and their bids have been accepted. Only 17 flats are lying vacant and the aforesaid 17 flats can be allotted to the members of the society if they are ready and willing to pay the upset price fixed at Rs. 2.34 lacs. Accordingly, the member of the society were directed to file an affidavit before the Commissioner, Municipal Corporation, Singrauli within a period of two weeks stating that they are ready and willing to purchase the flats in question for consideration of Rs. 2.34 lacs. The respondent No. 3 was also directed to file an affidavit indicating its willingness to allot the flats to the members of the society, in case, they are willing and ready to purchase the flats at the upset price.

On 2-7-2010 when the matter was taken up, the Learned Counsel for the respondents No. 2 and 3 submitted that in compliance of this Court's order dated 21-5-2010 only petitioner No. 1 along with three others appeared before the Commissioner. It was further submitted that petitioner No. 1 filed affidavits of several persons, but on verification it was found that many of deponents who had sworn in the affidavit were not occupants of the flats in question.

The respondents No. 2 and 3 have filed an application for bringing subsequent facts and affidavit on record, namely, I. A No. 7365/2010 in which, inter alia, it is stated that petitioner No. 1 along with Rajesh Agrawal, Satyendra Kumar and Anurag Kumar appeared before the Commissioner, Municipal Corporation, Singrauli on 4-6-2010 and filed 31 affidavits. On submissions of aforesaid affidavits the same were examined and it was found that 13 deponents who had

disclosed themselves to be occupying flats No. 32, 59, 57, 09, 23, 24, 29, 04, 17, 14, 50, 61 and 31 are actually not residing in said flats and, therefore, affidavits sworn by them are incorrect. It has further been stated that deponents who have disclosed to be residing in flats No. 13, 19, 21, 22, 49 and 53 participated in the bid held on 3-3-2010. The remaining 12 deponents did not participate in the auction which was held on 3-3-2010.

The petitioners have filed reply to the aforesaid application and have disputed the correctness of the contents mentioned therein. However, it has not been disputed that six members of the society participated in the auction which was held on 3-3-2010. It has further been stated that two members of the society, who are in occupation of flats No. 21 and 53 have preferred to purchase other flats as per their own convenience.

Shri. R. K. Samaiya, Learned Counsel for the petitioners submitted that initially a resolution was passed by the Municipal Corporation, Singrauli and upset price was fixed at Rs. 1.65 lacs in respect of each flat. The aforesaid resolution was approved by the Mayor-in-Council, the Commissioner, therefore, had absolutely no authority in law to modify the resolution which was passed by the Corporation and approved by the Mayor-in-Council and to revise the upset price in respect of the flats in question to Rs. 2.34 lacs. It was further contended that the Commissioner without considering the representation submitted by the petitioners fixed the auction on 17-9-2009. It was also submitted that the petitioners are also entitled to purchase the flats in question by making payment of sale consideration in instalments as was done in case of Lower Income Group quarters. It was further submitted that Municipal Corporation, Singrauli did not obtain prior permission of the State Government as required under sub-section (5) of section 80 of the Municipal Corporation Act, 1956 before disposal of the property. He has also relied on Rule 7 of Transfer of Immovable Property Rules. It was further argued that respondents are bound by the doctrine of promissory estoppel. It was further contended the without seeking permission of this Court, the respondents No. 2 and 3 had fixed the date of auction on 3-3-2010. In support of his submission, Learned Counsel has placed reliance on decisions of Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , M.P. Mathur and Others Vs. D.T.C and Others, and of this Court in Association of the Residents of Mhow vs. Union of India and others, 2010 (1) MPU 486.

On the other hand Mrs. Menon, learned senior counsel appearing for respondents No. 2 and 3 while opposing the submissions made on behalf of the petitioners submitted that the instant writ petition cannot be entertained as a Public Interest Litigation at the instance of the petitioners as the petitioners have set forth their individual grievance in the writ petition. Learned senior counsel in support of her submissions has placed reliance on the decision of Supreme Court reported in Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, . It was further contended that at no point of time any assurance was given on behalf of the

Municipal Corporation to the petitioners that flats in question will be allotted by granting them the facility of installments in payment. It was further contended that the State Government vide letter dated 28-3-2003 informed that Municipal Corporation is competent to fix the ground rent in respect of the immovable property. Accordingly, by resolution the upset price was fixed.

We have considered the submissions made by Learned Counsel for the parties. At this stage, we deem it appropriate to deal with the preliminary objection raised by Learned Counsel for the respondents No. 2 and 3 with regard to maintainability of the instant petition as Public Interest Litigation.

In *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, the supreme Court while dealing with the scope and ambit of Public Interest Litigation has held as follows :-

Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed." Similar view was taken by the Supreme Court in *Sheela Barse Vs. Union of India (UOI) and Others*, .

In *Krishna Swami Vs. Union of India and another*, the Supreme Court while dealing with the Public Interest Litigation in which challenge was made to proceedings of removal of a Supreme Court Judge held that ordinarily it is person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf.

While summarising the principles evolved by the Supreme Court with regard to maintainability of the Public Interest Litigations, in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, the Supreme Court held that a writ petition can be entertained as Public Interest Litigation by any interested person in the welfare of the people who is in disadvantageous position and not in a position to knock the doors of the Court.

In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, the Supreme Court held that where there is material to show that Public Interest Litigation is nothing but a private interest litigation, such petition deserves to be thrown out at the threshold and in appropriate case with exemplary costs.

The expression "Public Interest Litigation" has been defined in *Stroud's Judicial Dictionary*, Vol. 4, 4th Edition in the following terms :-

Public interest.- (1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.

In Black's Law Dictionary, 6th Edition "public interest" is defined as follows :-

Public interest.- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of Local, State or National Government.

Similarly, in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, the Supreme Court once again emphasized the need to preserve the purity and sanctity of PIL and held that the Court should be fully satisfied that substantial public interest is involved before entertaining the petition. The Court should also ensure that Public Interest Litigation is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the Public Interest Litigation.

On the touchstone of well settled legal proposition with regard to Public Interest Litigation, the facts of the case may be adverted to. In the instant writ petition the petitioner No. 1 claims to be the President of the Society. The petitioners No. 2 and 3 are the members of the society. At this stage we deem it appropriate to quote the relief which has been prayed for by the petitioners in the instant writ petition :-

(i) The Hon "ble Court may kindly call for the record for the kind perusal of this Hon"ble Court.

(ii) That a writ of certiorari be issued and the impugned resolution Annexure P/4 dated 18-6-2009 and impugned notice Annexure P/7 dated 28-8-2009 may kindly be quashed.

(iii) That, a writ of mandamus be issued restraining the respondent not to auction the quarters of the petitioners in their possession during the pendency of this petition.

(iv) The Hon"ble Court may kindly issue any other writ /directions which it deems fit and proper in the facts and circumstances of the case.

From perusal of the averments made in the writ petition and the reliefs claimed by the petitioners it is apparent that petitioners have setforth their individual grievances and claimed reliefs for themselves. From the pleadings made by the petitioners and the reliefs sought by them, by no stretch of imagination, it can be said that public or the community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected. It is also noteworthy to state that when two members of the petitioner-association can approach this Court by filing the writ petition, there is no good reason why the other members of the petitioner-association cannot approach this Court for redressal of their grievances, as they cannot be said to be suffering from any disability to seek relief for themselves. Furthermore, petitioner No 1 has filed the instant writ

petition in individual capacity describing himself to be President of the society. The society has not filed the writ petition. It is not the case of the petitioners that members of society suffer from any disability which prevents them approaching this Court. There is no element of public interest involved in the writ petition, for the reason that members of public in general would not be benefited if the flats are allotted to members of Association.

The reliance placed by Learned Counsel for the petitioners on a Division Bench decision of this Court reported in *Association of the Residents of Mhow* (supra) is of no assistance to the petitioners. In the aforesaid case, the petitioner, which was an association of residents of Mhow cantonment, was registered under the provisions of M.P. Societies Registrikaran Adhiniyam, had filed a writ petition on behalf of the civilian residents of Mhow for declaration that lands and bungalows in Mhow Cantonment do not belong to the Central Government and that the Cantonment Land Administrative Rules, 1937 do not apply to Mhow Cantonment. The petitioner in the said petition had also sought a direction to respondents No. 1 and 3 to exclude civilian occupied areas from Mhow Cantonment and direct the Union of India to excise the civilian areas from Mhow Cantonment in favour of the State Government. The petitioners had also sought declaration that the Order No. 179 of the Governor General of India in Council is void. Thus, in aforesaid factual backdrop the Division Bench of this Court had expressed an opinion that when substantial question of law relating to Interpretation of Article 295 of the Constitution and the provisions of the Cantonments Act, 1924 have been raised on behalf of civilian residents of Mhow by the petitioner-association contending that it is the State of Madhya Pradesh and not the Union of India which was the owner of the land under occupation of civilian residents for Mhow, then such a writ petition can be entertained as a Public Interest Litigation. In the case referred to supra, the association of residents of Mhow had not sought the relief which was confined to members alone, whereas in the instant case, the instant writ petition is filed only for the benefit of the members of the association of which the petitioner No. 1 claims to be the President. The instant writ petition has not been filed for the benefit of the public in general. Therefore, at the best it can be said to be a representative petition. Thus, for the aforementioned reasons the decision of the Division Bench of this Court is of no assistance to the petitioners.

However, we are informed by learned senior counsel for the Municipal Corporation, Singrauli that 17 flats are yet to be auctioned. In case, the occupants of the aforesaid flats approach the respondent-Corporation for allotment of flats and if the occupants are ready to pay upset price, it would be open to the respondent-Corporation to sell the flats to the persons who are in occupation of the flats at the first instance, or to the persons who may be interested in the allotment of the aforesaid 17 flats which are yet to be auctioned.

For the aforementioned reasons, in our opinion, the instant writ petition cannot be entertained as Public Interest Litigation. Accordingly, the same is hereby

dismissed.