
(2016) 07 SHI CK 0126
In the High Court Of Himachal Pradesh
Case No : CWP No. 4159 of 2010

Ajnesh Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Himachal Pradesh High Court Public Interest Litigation Rules, 2010 — Rule 3, Rule 4

Citation : (2016) 4 HimLR 1984

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General, for the Respondent Nos. 1 to 3 and 6; Ms. Vandana Misra Panta, Advocate, for the Petitioner; Mr. Hamender

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J. - The petitioner claims to have filed this petition as probono publico wherein it is averred that a large portion of the area in and around the "Kamna Devi" temple at Shimla is a forest area which is under the ownership and possession of respondents No.2 and 3, but of late certain influential persons including respondents No.5, who is the Executive Engineer in the Municipal Corporation, Shimla had purchased land around and adjacent the said forest cover and he i.e. respondent No.5 was very keen to get a road constructed upto his plot. It is averred that respondent No.5 in order to obtain permission for construction of building had submitted false, fabricated and forged documents and managed to get the same approved in collusion with the officials of respondent No.4. It is also averred that the revenue officials in order to please and provide illegal help to respondent No.5 had inserted a note at the left and right of the tatima (spot map) regarding existence of certain stairs adjoining the plot of land belonging to respondent No.5. It is further averred that respondent No.4 without prior sanction or approval from the Forest Department had

constructed stairs from "Chakkar till Kamna Devi" temple and recently the construction of a new motorable road had started in the forest adjoining "Kamna Devi" and this road was being built right upto the plot of respondent No.5 and for this purpose men, material and vehicles belonging to respondent No.4 were blatantly being used by him without any restraint. The petitioner also placed reliance upon certain news items which appeared in the Hindi Daily "Dainik Bhaskar" on 8th and 9th March, 2010 wherein it was reported that a stretch of 80 metres of road was being constructed over forest area to the plot of respondent No.5 and there were a large number of trees that have been marked and would eventually be cut down.

On such pleas, the petitioner has sought the following substantive reliefs:-

"1. That appropriate writ/direction/order may kindly be issued to Respondents neither to construct, nor permit any construction of road/path over FOREST/CPWD land around Kamna Devi Temple area.

2. That Respondent No.6 may kindly be directed to carry out proper demarcation of Forest Land around Kamna Devi temple by competent Revenue Official not below the rank of Tehsildar (AC Ist Grade) strictly in accordance with the H.P. Settlement Manual, in the presence of all other respondents as well as land owners if any and thereafter give proper fencing for protection of Forest Land by removing and demolishing encroachment if any.

3. That appropriate directions may kindly be issued to change the description of the nature of the forest land under the occupation of CPWD (Respondent No.3) from "Gair Mumkin Ahata" to that of protected Forest Land with further direction to CPWD not to cut a single tree in their occupation without prior permission of this Hon'ble Court.

4. That appropriate action may kindly initiated against the erring officials of respondent No.4 and 6 including against respondent No.5 for issuance, use and approval of fabricated Tatima (Annex P.2) on the basis of which building construction plan of Respondent No.5 was approved and sanctioned.

5. That appropriate directions may kindly be issued to Respondent No.4 to initiate Departmental action against Respondent No.5 for gross misuse of official position by which he got his own building plan sanctioned on the basis of fabricated Tatima (Annex P-2) while himself working as the Architect Planner of Respondent No.4 with further direction to cancel and withdraw the said building plan permission of Respondent No.5.

6. That appropriate action may kindly be initiated against Respondent No.5 for gross and blatant misuse of official powers as the Executive Engineer of Municipal Corporation, Shimla for deliberately carrying out road construction over Forest Land and construction of his own building near Kamna Devi Temple by unauthorisedly and illegally employing the men and material of Respondent No.4."

2. Respondents No.1 and 2 i.e. Principal Secretary (Forests) and Principal Chief Conservator of Forests have filed a common reply wherein it is averred that most of the area near "Kamna Devi" temple either belongs to CPWD or to private owners but they have not received any complaint regarding any tree being uprooted or cut in the forest land and have also not received any complaint regarding debris being thrown thereupon. It is further averred that though one proposal for diversion of forest land for construction of ambulance road through DPF-Sandal was received by the Commissioner, Municipal Corporation, Shimla and sent to Divisional Forest Officer (DFO), Shimla, and subsequently received in the Office of respondent No.2 but the same was returned for attending to some observations which were duly conveyed by DFO, Shimla to respondent No.4.

3. Insofar as the construction being raised by respondent No.5 is concerned, it is specifically averred that the prescribed distance for construction from the forest land is five metres, whereas, the construction being undertaken by respondent No.5 could only be measured after completion of demarcation.

4. The Superintending Engineer of CPWD, has been arrayed as respondent No.3 and in its separate reply has raised preliminary objections regarding locus-standi and maintainability of the petition. On merits, it has been averred that the area under the possession of CPWD is not forest land but is classified as "Gair Mumkin Ahata", in the revenue records and similarly the area where the staff quarters have been constructed is again not the forest land but is "Ghasni Sarkar" (pasture land belonging to the Government). It is then averred that the CPWD as and when required is taking adequate steps to protect its land and no road has been constructed over the land under its possession.

5. Respondent No.4 i.e. the Municipal Corporation, Shimla, in its reply has raised preliminary objections questioning the locus of the petitioner and maintainability of the petition on the ground that respondent No.5 while carrying out of his building work has not violated any provision of the building regulations. On merits, it has specifically been averred that the petitioner has given a concocted story to make out a case of building violation. The building plan submitted by respondent No.5 after proper verification and ensuring the compliance of the mandatory provisions governing the construction was sanctioned on 06.03.2003. Insofar as the existence of stairs is concerned, the same had been pointed out in many building maps submitted by the private individuals and such path is otherwise being repaired from time to time by the Corporation and there was no objection raised by anyone at any given time. It also stands clarified that the construction raised by respondent No.5 is being undertaken strictly as per the sanctioned map and he has left set back of 5.55 metres beyond the stairs and boundary of his house and has also surrendered three metres wide strip of his land for path. Insofar as the path from "Chakkar to Kamna Devi" is concerned, it has been averred that the same is in existence since long and is being maintained by the replying respondent. The allegation regarding construction of motorable road has been specifically denied and it has been averred that the

matter regarding construction of ambulance road in the area was under the active consideration of the Corporation since long as there were lot many demands received not only from the residents of the locality but also from Municipal Councillor of the area.

6. As regards the news items published in "Dainik Bhaskar", it is specifically averred that after enquiring into the facts, a detailed contradiction was issued to the Bureau Chief of the said newspaper on 12.03.2010 which clearly shows that the contents of the news item were not only false and baseless but had been published with the sole aim of tarnishing the image of "hard working and sincere Officers in the eyes of public and also to damage the reputation of the authorities of the respondent-Corporation".

7. Respondent No.5 has filed a separate reply wherein preliminary objections regarding locus-standi, competence, maintainability and suppression of true and material facts etc. etc. have been raised. It is specifically averred that though the petition claims to have been filed in public interest, whereas, it is not so as it has been filed at the instance of one Vinod Kumar son of late Shri S.P. Sharma and Smt. Vijay Sharma, wife of Shri Ashok Sharma, both residents of Prospect Hill, Boileauganj, who are none other than the neighbours of respondent No.5 and are residing in the building above the plot of land owned by respondent No.5. These persons had earlier filed a complaint against respondent No.5 with regard to construction being raised by him, which was enquired into and ultimately the proceedings were dropped by respondent No.4 vide its order dated 14.06.2006. This order was assailed by the aforesaid persons in appeal before the learned Additional District Judge, Fast Track Courts, Shimla, who too was dismissed on 05.06.2007. Thereafter, both these orders were assailed before this Court in CMPMO No.155 of 2007. On 21.11.2007 the petition came up for consideration and this Court directed respondent No.4 to personally carry out inspection of the spot or depute a technical expert to find out as to whether the retaining wall constructed by the respondent had caused any damage to the structure of the petitioners therein or had got any potential to cause any damage in future. The Executive Engineer after visiting the spot in presence of the parties had reported that there was no defect in the retaining wall constructed by the replying respondent and it was also reported that no damage on account of construction of the retaining wall had been caused to the structures of the petitioners therein. But, despite this report, both Shri Vinod Kumar and Smt. Vijay Sharma were bent upon to harass the replying respondent and had got instituted this petition through a person, who was not even a resident of the area by claiming that it had been filed in public interest. It is specifically pleaded that filing of the petition was nothing but an abuse of the process of law and had only been filed in order to settle scores. It is also averred that Smt. Vijay Sharma had herself encroached upon forest land comprised in Khasra No.547 by raising construction of a part of her building and had thereafter got the land measuring 37.68 square metres of this Khasra Number transferred in her name from the Settlement Officer in violation of the provisions of the Forest Conservation Act, 1980 and this fact was

duly brought to the notice of all concerned, but to no avail.

8. On merits, it is averred that this petition has been filed out of vindictiveness as the replying respondent had cancelled the work and thereafter forfeited the earnest money of one of the brothers of petitioner, Shri Dinesh Sood, who was working as a Government Contractor with the Municipal Corporation, Shimla. Respondent No.5 has specifically denied that he had obtained permission by submitting a false and fabricated tatima and further denied to have obtained permission by exercising influence.

9. Insofar as the path on the left side of the tatima is concerned, it is specifically averred that path starts from "Chakkar Chowk to Kamna Devi" temple and is in fact the only approach to the temple. The path is stated to be around 450 metres in length and is in the shape of ascending staircase and has been in existence for the last many years. Respondent No.4 itself has paved the land of this path by laying red stones on its entire length and breadth for which permission was granted on 29.06.2006. That apart, along the path the forest land has been duly fenced for past many years and in any case before the maps submitted by the replying respondent had been approved by respondent No.4.

10. The Principal Secretary (Revenue) has been arrayed as respondent No.6 and in its reply has averred that respondent No.5 is the owner of land situate in Mauza Kereru comprising Khata Khatauni No.278/401, Khasra No.1626/548, measuring 442-00 square metres and the plot is under construction. It has further been averred that path/stairs adjoining to Khasra No.1626/548 is being used by general public.

11. During the pendency of the petition, three persons namely Pawan Kumar, Bhim Singh and Padam Chand got themselves impleaded as respondents No.7 to 9 and filed their separate replies opposing the claim of the petitioner. It has been averred that all these persons are having their residential buildings at the place where the construction work of the building of respondent No.5 is being undertaken since 2006. It is also averred that the construction being carried out by respondent No.5 is strictly in accordance with the sanctioned plan. It is then averred that inhabitants of the locality have for the long time been demanding an ambulance road by submitting various representations and on receipt of the same the department had moved the case for seeking approval from the competent authority under the provisions of the Forest Conservation Act. It is also pointed out that the petitioner in fact has tried his level best to get the construction work of the ambulance road stayed, though he has not come forward against installation of three big telecommunication towers which have been installed in the same locality and were a source of health hazard which proves that the petitioner by instituting the instant petition really has no genuine public interest.

12. In rejoinder to the reply filed by respondents No.1 and 2, the petitioner has averred that respondent No.5 under the garb of the ambulance road had already

dug the forest land and constructed a road upto his plot and by exercising his official power has prevailed upon respondent No.4 to somehow lobby "with the Forest Department of Himachal Pradesh for permission to build a road for upcoming residential building through the forest land on the pretext of ambulance road". It is further contended that the forest land has been encroached by respondent No.5 by submitting false and fabricated tatimas and the extent of such encroachment can only be known after the land is actually demarcated by the revenue officials.

13. In rejoinder to the reply filed by respondent No.3, the petitioner has admitted that he is not a resident of the area, but claims to have no personal interest in the litigation, save and except, that he is sincerely interested in protecting the beautiful forest cover around "Kamna Devi" temple. It is also averred that the area in possession of CPWD is full of thick forests with huge "Deodar", "Pine" and "Oak" trees and as such is a part of the forest land. The revenue records to the contrary, therefore, deserve to be corrected. It has further been averred that the ambulance road has been constructed by respondent No.5 over the land belonging to CPWD.

14. In rejoinder to the reply filed by respondent No.4, the petitioner has sought to justify his locus-standi and has also averred that a demarcation ought to have been conducted so as to ascertain the extent of encroachments made by the private builders over the forest land. It is also averred that some private builders have even thrown their debris in the forest land and official respondents have simply acted as mute spectators as one of its very sincere Officer is carrying out construction of his house adjoining forest land. The petitioner has once again impeached the veracity of the tatimas by claiming that the same are false and fabricated inasmuch as the tatima issued in 2002 Annexure P-2 appears an entry by a different hand and by a different person wherein mention regarding three metres wide stairs on the left side of the plot has been made, whereas, nothing of this sort has been mentioned in the latest tatima of the same plot issued on 17.03.2010 (Annexure P-3). In support of such contention the petitioner has now annexed a copy of revenue map as Annexure P-8. It is thereafter averred that in absence of proper demarcation, the actual extent of encroachment cannot be ascertained. But, despite this the official respondents are more than willing to give a clean chit to respondent No.5 notwithstanding the allegations made by the petitioner and also appearing in the print media.

15. In rejoinder to the reply filed by respondent No.5, it has been averred that the said respondent is deliberately raising issue regarding some previous litigation with one of his neighbours which in fact has nothing to do with the subject matter of the present petition. It is averred that this petition is essentially against the illegal and unauthorized construction of road/path over the forest land around "Kamna Devi" temple. It is further claimed that the instant petition has in fact been filed against the encroachments made by the private land owners/builders over the forest land adjoining "Kamna Devi" temple. The

allegation that the petitioner is being used by one Shri Vinod Kumar and Smt. Vijay Sharma to vent their grudge against respondent No.5 has been denied. The petitioner has stated that he has nothing to do with his brother Shri Dinesh Sood with whom he otherwise does not even enjoy a very cordial relationship. It is also averred that the petitioner has separate and independent business and is no way concerned with the business activities of his brother. The petitioner has thereafter reiterated the averments regarding the veracity of the tatima, the reports appearing in the media and the so-called influence being exercised by respondent No.5.

16. In rejoinder to the reply filed by respondent No.6, it has been averred that unless and until there is a proper demarcation, the extent of encroachment cannot be ascertained. We have heard the learned counsel for the parties and gone through the records of the case.

17. We have deliberately referred to the pleadings of the parties in extenso so as to enable us to come to a conclusion as to whether the petitioner is indeed a probono publico and has in fact filed the instant petition in larger public interest.

18. At the outset, we may observe that save and except for a bald statement that the petition has been filed in public interest, there is no material whatsoever placed on record by the petitioner whereby it can be inferred that he is a probono publico or that the petition has in fact been filed in public interest. Rather, if one would go through the entire petition, it would be evident that the element of public interest is conspicuously absent. The credibility of the petitioner becomes further doubtful when he chooses to target only respondent No.5 and does not question the construction admittedly being made by the other so-called influential persons including Shri Vinod Kumar and Smt. Vijay Sharma (*supra*). The petitioner's credentials become all the more doubtful when he even does not deny that the aforesaid persons are known to him. He further does not deny that one of his brothers Shri Dinesh Sood is working as a Government Contractor with the Municipal Corporation, Shimla and in the year 2010 the work allotted to him by the Corporation had been cancelled at the instance of respondent No.5 and even his earnest money had been forfeited.

19. What we can, therefore, *prima facie*, infer is that the petitioner has been set up as a dummy and has, therefore, indulged in public mischief for oblique motive and in such circumstances the Court has to act ruthlessly while dealing with such imposters, busybody and meddlesome interlopers impersonating as public spirited holy men. The petitioner cannot masquerade as crusader of justice and is only pretending to act in the name of probono publico, though he has no interest in the public to protect. The instant petition has been filed under ploy for achieving oblique motives.

20. It is more than settled that merely because a petition is styled as a Public Interest Litigation but in fact is nothing more than a camouflage to foster personal disputes or vendetta and the petitioner in fact is a proxy litigant the

same cannot be regarded as a Public Interest Litigation. There has to be a real and genuine public interest involved in a litigation and there must be concrete and credible basis for maintaining a cause before the Court and not merely an adventure of knight errant borne out of wishful thinking. Only a person acting bona fide and having sufficient interest in the proceedings of PIL will alone have a locus-standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person(s) for personal gain or private profit or any other oblique consideration.

21. Public Interest Litigation is a weapon which has to be used with great care and circumspection and the Judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or public interest seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens.

22. The attractive brand name of Public Interest Litigation cannot be allowed to be used for suspicious products of mischief. This has so been held by the Hon''ble Supreme Court in its various pronouncements and the same have been repeatedly reiterated and followed by this Court in a batch of writ petitions, CWP No.7249/2010 titled "Devinder Chauhan Jaita v. State of Himachal Pradesh and others", being lead case, decided on 03.12.2014, another batch of writ petitions, CWP No.9480/2014 titled "Vijay Kumar Gupta v. State of Himachal Pradesh and others", being the lead case, decided on 09.01.2015, CWP No.2775/2015 titled "Anurag Sharma and another v. State of Himachal Pradesh and others", decided on 07.07.2015, CWP No.328 of 2016 titled "Lala Ram and others v. State of H.P. and others, decided on 01.03.2016, CWP No.4838 of 2015 titled "Ali Mohammed v. State of H.P. and others, decided on 16.03.2016, CWP No.4240 of 2015 titled "Om Prakash Sharma v. State of H.P. and others, decided on 19.04.2016 and CWP No.3131 of 2014, titled "Dr. J.S. Chauhan v. State of H.P. and others, decided on 06.05.2016.

23. The issue regarding public interest litigation has elaborately been dealt with by this Bench in CWP No.9480 of 2014, titled "Vijay Kumar Gupta v. State of H.P. and others, decided on 09.01.2015 (supra) and after taking into consideration the entire law on this subject this Court laid down the following parameters for permitting litigation in public interest:-

"29. From the aforesaid exposition of law, it can safely be concluded that the Court would allow litigation in public interest only if it is found:-

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest or on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judicial and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons of groups with mala fide objective or either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest."

24. It would thus be clear that public interest litigation can only be entertained at the instance of a bona fide litigant and cannot be used by unscrupulous litigants to disguise personal or individual grievance as a public interest litigation. The instant petition fails to qualify the above parameters.

25. Here we may also note that in compliance to the directions issued by the Hon'ble Supreme Court in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402, this Court vide notification dated 08.04.2010, with a view to preserve the purity and sanctity of Public Interest Litigation and also to keep a check on frivolous letters/petitions has framed Rules known as The Himachal Pradesh High Court Public Interest Litigation Rules, 2010.

Rules 3 and 4 thereof read as under:-

"3. The petitions/complaints/letters and new paper clippings falling under the following categories can be treated under Public Interest Litigation.

(i) Bonded labour matters.

(ii) Neglected children.

(iii) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).

Provided that in respect of clauses (i), (ii) and (iii) above, if any of these matters forming the subject matter of the communication relates to one person (as opposed to a group of persons) this cannot be termed as a PIL and can be at best be treated as an individual writ petition.

(iv) Petitions against atrocities on women; in particular harassment of bride, bride burning, rape, murder, kidnapping etc;

(v) Petitions complaining of harassment or torture of villagers by co-villagers or by police in respect of persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes;

Provided that in respect of clauses (iv) and (v) above if any of these matters of the communication relates to one person (as opposed to a group of persons) this cannot be called as a PIL.

(vi) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture antiques, forest and wild life, encroachment of public property and other matters of public importance;

(vii) Petitions from riot-victims; and (viii) Family pension.

Explanation: The test to treat a communication as PIL is whether any particular communication relates to an individual, if it does, it will be an individual, if it does, it will be an individual's C.W.P. and not a PIL irrespective of the fact whether the individual is complaining of any harassment or any violation of rights, which may also be akin to a group. If, however, the communication relates to a group and it is felt that group cannot defend itself or is not in a position to come to the Court, that would be a PIL warranting interference of the High Court in that PIL.

4. However, no petition involving individual/personal matter shall be entertained as Public Interest Litigation including the matters pertaining to landlord tenant disputes, service matters except concerning pension and gratuity; the petitions for early hearing of cases as well as the petitions concerning maintenance of wives, children and parents."

26. As per Rule 9, the Court before entertaining a Public Interest Litigation shall keep in view the following factors:-

"(i) to verify the credentials of the petitioner;

(ii) satisfaction regarding the correctness of the contents of the petition;

(iii) substantial public interest is involved;

(iv) the petition which involved larger public interest, gravity and urgency must be given priority over other petitions;

(v) to ensure that the PIL is aimed at redressal of genuine public harm or public injury. It shall also be ensured that there is no personal gain, private or oblique motive behind filing the public interest litigation.

(vi) to ensure that the petition filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous consideration."

The petition does not even fulfil the criteria as prescribed in the aforesaid Rules and even though the petition is claimed to have been filed in Public Interest Litigation, it does not even qualify to be registered as such and is therefore, not maintainable for the reasons all stated above and for reasons recorded hereinafter also.

27. Adverting to the facts once again it would be noticed that the petitioner as per his own showing is a resident of Jatog which is at least five kilometres from "Kamna Devi" temple and, therefore, we wonder what special interest the petitioner has in this litigation, especially, when it has come in the reply of the official respondents that a beautiful path of red sand stone has been constructed by respondent No.4 from "Chakkar Chowk to Kamna Devi" temple which in fact is the only approach to the temple and this is so reflected in the spot map.

28. The material placed on record further reveals that no trees have been illegally felled or uprooted. No debris has been dumped over any portion of the so-called forest land and even the construction being raised by respondent No.5 is strictly in accordance with the law as he while raising construction of his house has left mandatory set backs. Even the so-called forest land in possession of the CPWD i.e. respondent No.3 is not so classified or recorded in the revenue records and further there is no road that has been constructed through the alleged forest land. Likewise, the petitioner has also failed to substantiate his allegations regarding encroachment(s) over the so-called forest land and except for naming respondent No.5 that too for obvious reasons, the petitioner has further failed to name the so-called private builders, who have either thrown debris or have encroached over the alleged forest land. That apart, the petitioner before approaching this Court has never called upon the authorities concerned by making a representation inviting their attention to what has now been stated in this petition. Ordinarily, any petitioner, who applies for a writ or order in the nature of mandamus should in compliance with a well known rule of practise, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry out the same within a reasonable time before applying to a Court for such an order.

29. This case is a classical example where the petitioner has indulged in a proxy war and the instant petition has been filed with oblique motive by making

frivolous and vexatious allegations that too at the instance of Shri Vinod Kumar and Smt. Vijay Sharma, who are none other than the neighbours of respondent No.5. The petitioner has used the attractive brand name of public interest litigation for suspicious products of mischief. This petition in no manner seeks redressal of genuine public wrong or public injury but is founded on personal vendetta and to say the least is a proxy litigation.

30. It would also be noticed that what the petitioner in fact seeks is fishing and roving inquiry without having placed on record any contemporaneous official records to substantiate the allegations levelled by him, more particularly, against respondents No.3 to 5. It has to be remembered that the Court proceedings are sacrosanct and cannot, therefore, be permitted to be polluted. Judicial system cannot be allowed to be abused and brought to its knees by unscrupulous litigants. If the petitioner was really keen in preserving and protection of the natural endowed and dense forests in and around Shimla and had special interest in the heritage monuments/temples situate in Shimla, then he would have at least placed on record some material in support of such contentions. Not only this, if the petitioner was genuinely interested in preserving all that he claims, then why the details of at least one of such similar work undertaken by him is not forthcoming?

31. It would thus be evident from the aforesaid discussion that the petitioner has not approached this Court with clean hands. This Court in exercise of its extraordinary jurisdiction is a Court of equity and any person approaching is expected not only to act with clean hands but also with clean mind, clean heart and with clean objective. He who seeks equity must do equity. The judicial process cannot become an instrument of oppression or abuse or a means in the process of Court to subvert justice for the reasons that the Courts exercise jurisdiction only in furtherance of justice. The interest of justice and public interest coalesce and therefore, they are very often one and the same.

32. In view of the aforesaid discussion not only is there no merit in this petition, but the same is also mischievous and has only resulted in wastage of precious Court's time. Even the respondents have unnecessarily been dragged into an otherwise avoidable litigation.

33. Accordingly, this petition is dismissed with costs of Rs. 50,000/- to be paid by the petitioner to respondent No.5 within a period of three months, failing which respondent No.5 shall be at liberty to recover the costs by seeking execution of this order. The petition is disposed of in the aforesaid terms, so also the pending application, if any.