

(2025) 12 CAL CK 1741
In the Calcutta High Court, Appellate Side
Case No : WPA Of 20390 Of 2018

Anjana Roychowdhury

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 10-12-2025

Acts Referred:

Citation : (2025) 12 CAL CK 1741

Hon'ble Judges : Sujoy Paul, Acj; Partha Sarathi Sen, J

Bench : Division Bench

Advocate : Sagar Bandyopadhyay, Soumyen Datta, Somnath Roy, Abhinaba Roy, Sumanta Biswas, Bikash Shaw, Sk. S. Islam, Piush Chaturvedi, Seeman Basu, Debapriya Ghosh, Jaydip Kar, Arindam Banerjee, Amitava Mitra, Sakabda Roy, Urmi Sengupta, Viraj Gupta, Naman Agarwal, Kishore Datta, Supratim Dhar, Soumitra Bandyopadhyay, Aniruddha Sen

Final Decision : Disposed Of

Judgement

Sujoy Paul, Acj

1. These matters were analogously heard on the question of maintainability of the PILs. Shri Kar, Learned Senior Counsel for the respondent no. 10 urged that the main prayer of the PIL reads thus:

(b) Declare that the construction so made by the private respondent no. 10 on Dag/Plot No. 89 (previously Dag/Plot No. 73) in Mouza-Chandernagore, J.L No.1, Sheet No. 21, District-Hooghly is a government property and the private respondent no. 10 had no right over the same as the same was constructed by then on vested land knowingly.

(c) Issue a Writ of/in the nature of Mandamus commanding the Respondents and each of them to take necessary steps against the private respondent no. 10 so that there is no further sell out of any unit of the constructed buildings made by the private respondent no. 10 on Dag/Plot No. 89 (previously Dag/Plot No. 73) in Mouza-Chandernagore, J.L. No. 1, Sheet No. 21, District- Hooghly to any third

party.

2. The land in LR Plot No. 89 (corresponding to RS Plot No. 73) in Mouza Chandannagore is a huge piece of land. Out of this entire land, some part became subject matter of litigation under the Urban Land Ceiling Act. The original owners filed the proceeding before the first authority and became unsuccessful. Thereafter they preferred an appeal which was also dismissed. In view of above orders, the said land became vested. The state issued a long term lease dated 09.07.2020 in favour of the respondent no. 10. In turn, respondent no. 10 raised the construction over it and constructed apartments. 146 occupants have already occupied the flats/accommodation in the apartment/s.

3. The bone of contention of Shri Kar, Learned Senior Counsel for Respondent no. 10 is that by filing CAN 1 of 2020, the petitioner has prayed for cancellation of the long term lease. However, no corresponding relief was prayed in the relevant prayer clause by amending the PIL. By way of interim application (I.A CAN 2 of 2020) cancellation of long term lease is not permissible. In the main prayer of PIL, since no relief is claimed against the long term lease, the construction so raised pursuant to the said lease cannot be interfered with. In absence of appropriate relief claimed in the PIL, PIL has rendered infructuous and meaningless. Rule 56 and 57 of the High Court of Calcutta, Appellate Side Rules were relied upon to submit that there must be a physical filing of public interest litigation with appropriate amendments assailing the long term lease. In case a subsequent event takes place or petitioner wants a relief different than the relief originally claimed in the PIL, an amendment is necessary. In absence thereof, PIL has lost its force and is not maintainable.

4. Learned Counsel for the Municipality, (respondent no. 6 and 8) informed the date of mutation, grant of permission to grant plan etc. Learned Counsel for the State supported the objection of maintainability and urged that the procedure adopted by the State is in accordance with law.

5. Faced with this, Learned Senior Counsel for the petitioner submits that the first PIL W.P.No. 5105(W) of 2016 was entered way back in 2016. On 18.03.2016 by passing an interim order, the Division Bench made it clear that "it is needless to say that the construction alleged would be subject to the outcome of the present writ petition".

6. For this reason and because of principle of lis pendence, the petition cannot be said to have rendered infructuous. By placing reliance on 2012 3 SCC 619, Manohar Joshi Versus State of Maharashtra, it is urged that the public interest litigation is not an adversarial litigation. The public interest at large must be looked into. In this case, the character and purpose of land was earmarked for "tourism". The communication dated 11.06.1997 is heavily relied upon. Thereafter in 'Khatian' No. I, it is still mentioned as 'vested' in the name of State/Collector and the same was the position in the municipal record. The SDO's written letter to the jurisdictional BL & LRO on 15.12.2015 is relied upon where

he has described the nature and character of the land and mentioned that the said land by no stretch of imagination can be used by a private party and any such use and construction would be 'void' in nature. From the said letter dated 05.12.2025 as written by the SDO Chandannagore to the jurisdictional BL & LRO, the SDO directed the said BL & LRO to take appropriate steps to maintain the order of status quo as passed by this Court in SA No. 210 of 2003. Thus it is strenuously contended that in the totality of the matter, the PIL is maintainable and it is filed in larger public interest. A huge chunk of the Government land is being siphoned off in favour of the private parties, contrary to the laid down procedure and law. This Court in the light of the judgment of Supreme Court in Manohar Joshi (supra) can mould the relief and examine the nature of illegality.

7. No other point is pressed by the parties. We have heard the parties at length and perused the record.

8. Rule 56 and 57 of said rules are of no assistance to the petitioner for the simple reason that typed petition has been filed and further construction remained subject to final decision. The Court can also mould the relief within the permissible parameters. Thus, this rule cannot be the reason to throw the PILs to winds.

9. It is evident from the above interim order dated 18.03.2016, that any construction made herein after shall remain subject to the final outcome of the matter. Thus, the construction based on long term lease became subject to final outcome of these matters. Even otherwise, the same is covered under the doctrine of lis pendence. Prima facie, we find substance in the argument of Learned Senior Counsel for the petitioner based on the judgment of Supreme Court in Manohar Joshi (supra). The Apex Court opined as under:

185:-

Public interest litigation is not in the nature of adversarial litigation, but is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful as observed by this Court in para 9 of *Bandhua Mukti Morcha Versus Union of India* (1984) 3 SCC 161. By its very nature PIL is inquisitorial in character. Access to justice being a fundamental right and citizen's participatory role in the democratic process itself being a constitutional value, accessing the court will not be readily discouraged. Consequently, when the cause or issue, relates to matters of good governance in the constitutional sense, and there are no particular individuals or class of persons who can be said to be injured persons, groups of persons who may be drawn from different walks of life, may be granted standing for canvassing the PIL. A civil court acts only when the dispute is of a civil nature, and the action is adversarial. The civil court is bound by its rules of procedure. As against that the position of a writ court when called upon to act in protection of the rights of the citizens can be stated to be distinct.

(Emphasis Supplied)

10. The principle of law laid down in Manohar Joshi (supra) is consistently followed by the Supreme Court till date. Thus, we find no difficulty in holding that the PIL cannot be tested on the anvil of an adversarial litigation. Since the interim order aforesaid of this Court and principle of lis pendence covers the entire issue in totality, we are not inclined to non suit the petitioner on hyper technical grounds. This Court has ample power to examine the larger public interest involved and if necessary mould the relief for the said purpose. No case is made out for dismissing the PILs on the question of maintainability. Thus objection of maintainability in both the cases are overruled.