

(1994) 05 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 794 of 1988

Binod Kumar Jain

APPELLANT

Vs

Gauhati Municipal Corporation and Others

RESPONDENT

Date of Decision : 06-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 81

Citation : AIR 1994 Guw 96

Hon'ble Judges : J.N. Sharma, J;B.N. Singh "Neelam", J

Bench : Division Bench

Advocate : O.P. Bhati and R.K. Jain, for the Appellant; P.C. Deka, A.K. Bhattacharjee, U. Barua and A.B. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

H. Sarma, J.—This application under Article 226 of the Constitution of India has been filed by one Shri Binod Kumar Jain. It is stated in para 1 of the petition that he is an Advocate by profession and is practising at Gauhati Bar in the district of Kamrup. This application has been filed claiming it to be a public interest litigation claiming the following reliefs.

(a) a writ in the nature of mandamus or certiorari or any other appropriate writ should be issued for declaration of Sections 322 to 342 of the Gauhati Municipal Corporation Act 1969 as ultra vires the provisions of the Assam Town and Country Planning Act 1959, the Land Acquisition Act 1894, and the Assam Land and Regulation Act and the Constitution of India;

(b) issuance of a writ of mandamus, certiorari or any other appropriate writ or direction forbidding the respondents from demolishing any type of construction within the City of Guwahati and from issuing any notice under the provision of Section 337 of the Gauhati Municipal Corporation Act for demolition and from acting upon such notices, if any, issued for the time being;

(c) issuance of an appropriate writ, direction or order on the respondents to show cause as to why an inquiry Commission or any other judicial inquiry should not be ordered to assess the loss done by respondents by demolition and the excesses committed by them in effecting such demolition and after enquiry the land and buildings be restored to actual owners/occupiers by with suitable compensation.

(d) issuance of appropriate writ, direction or order for rehabilitation of the occupiers if the land or buildings or houses are not restored to them.

AND

Pending disposal of this Rule, an interim stay/injunction order prohibiting or restraining the respondents, their employees, workmen, servants or agents from demolishing any type of construction in Gauhati City either in pursuant of any notice or otherwise is also prayed.

2. The first question to be determined in this case is whether this petition claiming to be a public interest litigation is at all maintainable. If this question is answered holding that it is not maintainable there is no necessity to go to the other aspects of the matter.

3. We have heard Mr. O.P. Bhati, learned counsel for the petitioner and Mr. A. B. Choudhary, learned counsel for the respondents Nos. 3, 4, 5 and 6. No affidavit-in-opposition has been filed on behalf of any of the respondents, nor any record has been produced.

4. Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, (Olgatellis v. Bombay Municipal Corporation) and strenuously contends that this application must be held to be for the interest of the general public and as such it is maintainable. What happened in the case of Olgatellis was that there were three groups of petitions. The first group of petitions relates to pavement dwellers, and the second group relates to both basti or slum dwellers. There were some other petitions filed by the journalist. In the facts and circumstances of that case the Supreme Court considered it to be a public interest litigation.

5. In Janata Dal Vs. H.S. Chowdhary and Others, (Janata Dal v. H.S. Chowdhury) the Supreme Court considered the scope of public interest litigation.

In para 51 of the judgment the Supreme Court after considering what is public interest has laid down as follows:--

The expression "litigation" means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

6. In paras 60, 61 and 62 of the judgment, the Supreme Court pointed out as

follows :--

"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

7. In para 96, the Supreme Court has pointed out as follows:--

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert, and a note of severe warning that Courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration." .

8. In paras 107, 108 and 109 the Supreme Court pointed out as follows :--

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding 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 for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and (triminal cases in which persons sentenced to death . facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters, Gov ernment or priate persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. -- are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome inter lopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either, for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of

public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system. "

In the words of Bhagwati, J. (as he, then was) "the Courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself and as Krishna Iyer, J. has pointed out. "the doors of the Courts should not be ajar for such vexatious litigants".

9. In para 113 two tests were laid down by Mr. Jethmalani, counsel and that was accepted by the Supreme Court as the correct test. These two tests are (1) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporating the directive principles of State Policy for amelioration of their condition, and (2) preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest.

10. This being the position of law, now let us look at the present petition whether the petitioner is really competent to file this application in the garb of public interest litigation. It is stated that this application has been filed for the benefit of unprivileged public at large. This is absolutely an incorrect statement inasmuch as a shop keeper or a house owner in the City of Guwahati cannot be said to be unprivileged public. This term has been wrongly used with an attempt to bring it within the garb of public interest litigation. In the application statements have been made that employees of the authority misbehaved and mishandled the public. In the statements made in the affidavit, it has been stated that paragraphs 3, 6, 7, 8, 9, 10, 11 and 21 are true being matters of record and those made in paragraphs 1, 2, 4, 5, 12 to 38 and 48 are true to his knowledge. The statements made in paragraphs 12 to 38 are regarding the different provisions of the Act and the reign of terror said to be let loose by the Municipal Authority. It is not understood how the petitioner can have the personal knowledge of these facts.

11. The petitioner along with this application has filed translated copies of some news items published in the newspapers of 15th April" 1988 and 27th April" 1988. According to Section 81 of the Evidence Act when a news published therein, for that purpose, the news paper as a whole must be filed before the Court. The translated copy of the news item cannot be considered by the Court as a document in the absence of the newspaper i.e. Section 81 of the Evidence Act. So, we cannot consider these Annexures -- A, B and C being only translated copies.

12. In view of the matter, we find that this application cannot be deemed to be a public interest litigation and the petitioner has no right to file this application for

the reliefs as indicated above. As we hold that this application is not maintainable in the form of PIL.

13. There is no need for us to consider the other aspects of the matter and accordingly this application is dismissed.