
(2003) 08 AHC CK 0110
In the Allahabad High Court
Case No : Writ Petition No.2548 of 2003 (M/B)

Birendra Prasad Singh	Vs	APPELLANT
State of U.P.and Others		RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 08 AHC CK 0110

Hon'ble Judges : Jagdish Bhalla, J and G.K.Gupta, J

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.

1. Petitioner, an Advocate by profession and is said to be involved in espousing the sufferings and cause of public at large, has filed this writ petition praying interalia that the Lucknow Development Authority be directed to remove the illegal construction raised by respondents No.6 and 7. According to the petitioner the construction raised by the respondents No.6 and 7 is not only damaging the ecological balance but it situates close to a protected monument, as such, the said construction is against the norms laid down by the Archeological Survey of India apart from falling in heritage zone.

2. Now, the petitioner has moved an application for dismissal of the writ petition (C.M. Appln. No.6219 of 2003) as having become infructuous on the ground that in view of the orders passed by the State Government the prayers made in writ petition has been granted more so under the provision of U.P. Urban Planning and Development Act a building cannot be compounded unless the construction of the said building is illegal.

3. An Application for dismissal of this writ petition has also been filed by the Lucknow Development Authority alongwith a short counter affidavit. In the affidavit filed on behalf of the Lucknow Development Authority and the ViceChairman of Lucknow Development Authority, it has categorically been

stated that the opposite parties No.6 & 7 were making construction in violation of permit dated 29.12.1993 and had constructed the basement area more than the area sanctioned, as such a report dated 7.8.1996 was submitted by the RBO Department of Lucknow Development Authority. Thereafter a notice was issued to the respondent No.6 to explain as to why the unauthorized construction be not demolished. In para 27 of the counter affidavit, it has been stated that in view of the order dated 10.10.1996 of the Chairman, Lucknow Development Authority and the order dated 4.11.2000 of the State Government passed in revision, the demolition order dated 25.9.1996 could not be implemented by the Lucknow Development Authority.

4. Sri Sudeep Seth, learned Counsel appearing for the Lucknow Development Authority, while pressing the application for dismissal of the writ petition has stated that the Lucknow Development Authority is now taking steps to demolish the unauthorized construction of the Hotel Gemini Continental Private Limited.

5. One Diwakar Singh, Advocate has now filed an application for transposition/intervention supported by an affidavit praying therein to permit him to be transposed as petitioner in the aforesaid writ petition or may be allowed to intervene in the matter.

6. According to learned Counsel appearing for Sri Diwakar Singh, the aforesaid writ petition has been filed by the petitioner as Public interest Litigation complaining construction of a Hotel within the area declared as a heritage zone and further despite the orders of demolition having been passed by the Lucknow Authority, the same is not being implemented on account of political and bureaucratic influence being wielded by the promoters of the Hotel.

7. Sri Rajesh Tewari, learned Counsel appearing for the applicant Diwakar Singh has also argued that the application for dismissal of the writ petition as infructuous filed by the petitioner appears to have been filed at the behest of owners of the hotel. According to him a Public Interest Litigation cannot be permitted to be withdrawn in the interest of the consideration of public interest involved in such matters.

8. Learned Counsel in relying upon *Sheela Barse v. Union of India*, 1988(4) SCC 266, *Sampat Singh v. State of Haryana*, 1993 (1) SCC 561 and *Punjab & Haryana High Court Bar Association, Chandigarh v. State of Punjab & others*, (1934)1 SCC 616, has submitted that by the pronouncement made in the aforesaid decisions, it has conclusively been settled by the Hon'ble Apex Court that once a PIL is filed by a petitioner, he may withdraw the writ petition itself. Further, that a person or body of persons to satisfy his or its personal grudge and enmity cannot invoke Public Interest Litigation. In other words, a person or body of persons cannot approach the Court with ulterior motive or design to wrench some personal benefit by putting another within the clutches of law and using the court for a device only to that end but not interested with the result of the petition.

9. In the case of Sheela Barse (supra) the petitioner sought leave to withdraw the petition on the grounds; that the Court has become dysfunctional in relation to, and in the context of, the gravity of the violations of the rights of children and the urgency of the requisite remedial steps; that in view of what transpired in the two immediately preceding dates of hearing of the case, the applicant is unable to prosecute the proceedings with "dignity" and thirdly; that the proceedings are brought as a "voluntary action" and that the applicant is entitled to sustain her right to be the "petitioner in person" in a public interest litigation and that the proceedings cannot be proceeded with after delinking her from the proceedings. The Apex Court held that when the court has already gone through and has initiated an elaborate exercise as indicated in the orders excerpted earlier as such the Court refused to grant leave to the applicant and held that the petition cannot be permitted to be abandoned at this stage. Only a private litigant can abandon his claims. The Court in paragraph 37 also observed that no litigant could be permitted to stipulate conditions with the court for the continuance of his or her participation.

10. In Sampat Singh and others v. State of Haryana and others (supra) the Hon'ble Supreme Court has observed as under:

"The court should not be indirectly used as an instrumentality by anyone to attain or obtain any beneficial achievement which one could not get through normal legal process and that if anyone approaches the Court with ulterior motive, designed to wrench some personal benefit by putting another within the clutches of law and using the Court as a device only for that end but not to get any legal remedy, then in such a situation the Court should heavily come upon such a person and see that the authority of the Court is not misused."

11. In S.P. Anand, Indore v H.D. Deve Gowda and other v. State of Haryana; 1996 (6) SCC 734, which has been relied upon by the learned Counsel for the petitioner, the Hon'ble Supreme Court refused to permit withdrawal of the petition and decided to settle the issue of law one way or the other because question involved in the petition was snowballing in the different High Courts leading to multiplicity of cases.

12. In Punjab & Haryana High Court Bar Association v. State of Punjab (supra) the High Court of Punjab & Haryana dismissed the writ petition as withdrawn. The Apex Court held that the High Court was wholly unjustified in closing its eyes and ears to the controversy, which had shocked the lawyer fraternity in the region.

13. In view of the principles laid down by the Hon'ble Supreme Court, it is amply clear that in PIL cases, the petitioner is not entitled to withdraw his petition at his sweet will unless the court sees reason to permit withdrawal and while granting such permission the court would be guided by considerations of public interest and would also ensure that it does not result in abuse of the process of law.

14. We have considered this matter in the backdrop of the principles laid down

by the Apex Court in the aforesaid cases and have arrived to the conclusion that in the instant case, the petitioner has clearly stated that in view of the orders passed by the State Government the prayers made in writ petition has been granted as such has filed an application for dismissal of the writ petition as having become infructuous. Not only this, the Lucknow Development Authority has also filed an application for dismissal of the writ petition on the ground that the LDA is taking steps to demolish the unauthorized construction and the order of demolition could not be implemented earlier on account of various proceedings in the process it is strengthening the reasonable expectation of the petitioner.

15. Considering the aforesaid facts and circumstances of the case, we are of the considered opinion that after rejection of the application for compounding made by the respondents No.6 & 7, the consequences will follow at the earliest. Further, there appears to be no impediment in the way of the Lucknow Development Authority in implementing its own orders.

16. In view of the above, no useful purpose would be served by keeping the writ petition pending any further. Accordingly, this writ petition is dismissed as infructuous. Needless to mention here that in case of any inaction or omission, it is always open for the petitioner or intervener to approach the appropriate forum.

17. The application for dismissal of the writ petition made by the petitioner and the application for dismissal of the writ petition made by the Lucknow Development Authority stands disposed of accordingly.

18. Since, for the reasons indicated above, we have dismissed the writ petition as having become infructuous, the application for transposition/ intervention made by Sri Diwakar singh is rejected.

(Petition dismissed)