

(2016) 03 TP CK 0010
In the Tripura High Court
Case No : WP(C) (PIL) Nos. 3 and 341 of 2015

Brindaban Das and Others	Vs	APPELLANT
Tripura State Pollution Control Board and Others		RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Citation : (2016) 03 TP CK 0010

Hon'ble Judges : Deepak Gupta, C.J. and S.C. Das, J.

Bench : Division Bench

Advocate : C.S. Sinha and D.C. Saha, for the Appellant; D.P. Kundu, Sr. Advocate, P. Roy Barman, S. Bhattacharjee, J. Majumder, R. Guha, A. Kar and K. Nath, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.

1. These two writ petitions are being disposed of by a common judgment since the issues involved are almost identical.
2. Writ Petition(C)(PIL) No. 3 of 2015 was filed by Sri Brindaban Das. In the petition it was alleged that he was filing this petition in the public interest and in this regard he had made reference to the representations Annexures P-1 and P-3 allegedly signed by a large number of villagers to the Sub-Divisional Magistrate(SDM), Gandacherra respondent No. 3 and to the Chairman of the Tripura State Pollution Control Board respondent No. 1.
3. The grievances of the petitioner are that the respondents 5 to 8 are running a brick kiln in the area in question and that this brick kiln is causing huge pollution in the area and has endangered the lives of the local citizens. It is alleged that the houses of the villagers are on higher level and the brick kiln is at a lower level and therefore, the smoke emitted from the brick kiln causes damage to the environment and ecology of the area. It is also alleged that the private respondents are removing the soil from land adjacent to the brick kiln area and

therefore, the use of the land which was meant for agricultural purposes is being diverted to manufacturing purposes which is prohibited under Section 20 of the Tripura Land Revenue and Land Reforms Act, 1960. It is also submitted that some lands which are state owned lands and acquired for purposes of the Dumbur Hydel Project(DHP) are being used for purposes of the brick kiln. In the petition it is specifically mentioned that the petitioner has filed the petition in the public interest and has no personal interest in the subject matter of the petition. It is specifically alleged that the petitioner is espousing the cause of the people of the area and the petition has not been filed for any personal gain.

4. On 25th February, 2015 when the petition came up before us for admission for the first time, accepting the averments made in the petition to be true we had directed that notice be issued to the respondents and we had also directed as follows :

"The State Pollution Control Board is directed to send its officials to the spot to measure the ambient air quality and submit a report to this Court by the next date as to whether the allegations submitted by the petitioner are correct or not."

Thereafter the Tripura State Pollution Control Board filed its report in compliance to the order of this Court and in the report it is mentioned that the members of the scientific team constituted by the Tripura State Pollution Control Board visited the spot i.e., M/s. Gandacharra Bricks Industry, Gandacherra on 20th March, 2015 and measured the ambient air quality. The brick kiln was found to be working at the relevant time and it was found that the air quality was within the prescribed limit.

5. However, in the report it is also mentioned that there is a Tribal Boys Hostel situated on the western side of the brick field and the residents of the surrounding areas complained that normally there is dust and ash problem around the brick kiln and it was stated by all the persons that the brick kiln activity was not in full swing on the date when the scientific team visited the spot. The scientific team elicited the views of 13 villagers including some students of the Tribal Boys Hostel and all of whom complained of dust and smoke. Some of the villagers also complained of noise pollution. Only one villager Biswajit Sarkar stated that there is no problem due to brick kiln activity. Since there was complaint of noise pollution the average noise level was also measured and found to be above the prescribed standard limit even though there was no dozer movement or movement of trucks at the time when the noise level was measured. In the last portion of the report it was stated that the activities of the brick kiln had not been in full swing for the last couple of days and that only for the last 15 days the persons running the brick field had been watering the adjacent approaches. We place on record our appreciation for the well researched and complete report submitted by the Tripura State Pollution Control Board.

6. In the reply filed by the State and its officials it was mentioned that the

private respondents 5 to 8 had set up the brick kiln and the validity of consent to operate the same was up to 30th September, 2014. It would also be pertinent to mention that in the reply filed by the State it was mentioned that on field inquiry it was revealed that 5.78 acres of the land which had been acquired for the Dumbur Hydel Project was being used by the brick kiln owners respondents 5 to 8 unauthorizedly. In addition thereto, the brick kiln owners were also utilizing 0.86 acre of Khas land and 0.75 acre of Allottee Jote land of other persons without any permission. It was mentioned that show cause notice had been issued to respondents 5 to 8 in this regard.

7. The private respondents had also taken a plea that the so called representation attached by the petitioner Annexure P-1 contained the signatures of 28 persons and out of them 21 persons submitted a letter to the Sub-Divisional Magistrate, Gandacherra that the petitioners Brindaban Das and Pandab Mandal had obtained their signatures on the representation by telling them that these signatures were being collected for purposes of building a road. It was further alleged that these persons had no knowledge about the representation being made against the industry of the private respondents. Similarly, with regard to the representation Annexure P-3 it was alleged that some of the representationists had sent a letter to the Chairman of the Tripura State Pollution Control Board alleging that the signatures were fraudulently obtained on the representation.

8. The respondents 5 to 8 filed a separate reply and stated that they had set up the factory for manufacturing the bricks in the year 2005 after obtaining all permissions. All the allegations were denied and in this reply it was stated that the petitioner had filed this so called public interest litigation on account of business rivalry. According to the respondents 5 to 8, the petitioner owns more than 6 acres of land, 3 Kms away from the factory of respondents 5 to 8 and in the aforesaid land of the petitioner there is a brick factory and the petitioner is earning money from the said brick factory. The respondents have admitted that the land of the Dumbur Hydel Project adjoins their brick kiln factory. They denied that they were using the land of the Dumbur Hydel Project for this purpose.

9. The private respondents also filed an additional affidavit and along with the additional affidavit, copy of an inquiry report conducted by Mr. CK Malsom, Deputy Collector of the SDM Office, Gandacherra was enclosed. This report deals with both the representations. The first being the representation made to the Chairman of the Tripura State Pollution Control Board. In the said representation there are as many as 80 signatories. 21 persons had submitted a representation to the Sub-Divisional Magistrate, Gandacherra alleging that they had not signed such representation. We fail to understand how the SDM could have ordered an inquiry with regard to a representation not made to him. However, 15 persons were examined by Mr. Malsom who stated that their signatures had been obtained by fraud and they had no objection to the brick industry being run. With regard to the second petition WP(C) No. 341 of 2015 only 3 persons appeared in

the field inquiry. They admitted their signatures but according to them, they had signed the document on the plea of construction of pucca road. They also stated that they had no objection in running a brick kiln. In this additional affidavit there is not a whisper as to how the respondents 5 to 8 came into possession of these documents, none of which were addressed to them. In the additional affidavit it has been stated that paragraphs 1 to 5 are true to the best of the knowledge of the deponent. We fail to understand how this affidavit is a true affidavit because none of these documents were addressed to respondents 5 to 8 and none had brought them to their notice.

10. Thereafter on 5th January, 2016 we had passed the following order :

"05.01.2016

One of the main issues involved is whether the petition has actually been filed in the public interest or not. According to the respondent Nos. 5, 6, 7 and 8 the petitioner has played a fraud on this Court by adding as parties certain persons as petitioners by subterfuge. According to the respondent Nos. 5, 6, 7 and 8 the main petitioner got some of the local villagers to sign the petition by saying that this is to be used for making a representation for construction of pucca road. This is a very serious allegation and if this is correct not only has the petition to be dismissed but action has to be taken against the petitioner.

On the other hand, we are also constrained to observe that a letter was addressed to the Sub-Divisional Magistrate, Gandacherra by certain persons in which it was stated that they are the permanent residents of Sarma ADC Village and that Sri Pandab Mandal and Sri Brindaban Das had obtained their signatures by telling them that their signatures were required to make a representation as referred to above. They also stated that they had come to know that a public interest application has been filed against M/s. GBI Brick Kilns and they have nothing to do with the same.

The SDM was aware that a writ petition is pending in this Court. The best course for him was to have referred the matter to this Court. We want to know whether the SDM got any enquiry conducted and on what basis the Deputy Collector submitted his report without orders of the Court when the main issue was whether the public interest litigation had been filed on behalf of the petitioner rightly or not. Such an issue can only be taken up after permission of this Court and not by the SDM himself.

We, therefore, direct the officer who was holding the charge of Sub-Divisional Magistrate, Gandacherra in April, 2015 as well as Sri C.K. Malsom, Deputy Collector to appear before this Court on 20.01.2016 along with the entire record of the case and shall explain how they entertained the application with regard to this matter without seeking permission of the Court.

The State may also file the inquiry report with regard to diversion of the Gomati Project Land.

Sri Shailesh Das shall also file an affidavit stating the name of the person who handed him the documents, copies of which have been annexed as Annexure-R/2, R/3 and R/4 by the next date.

It is made clear that the matter shall also be heard and disposed of on the next date.

Dasti copy be served to the State."

11. Thereafter on 20th January, 2016 Mr. Bhaskar Dasgupta, SDM and Mr. C K Malsom, Deputy Collector(DC) appeared before us and stated that they had received the representations and in good faith the SDM had directed Mr. Malsom to submit an inquiry report. We had discharged notices issued to the SDM and DC but we specifically inquired whether copy of the report of Mr. C K Malsom was supplied to any one of the petitioners who had made the representation to the SDM. In answer to our query, the officer stated that no copy had been supplied to any of the petitioners who had made the representation. They also stated that respondent No. 7 Sailesh Das had filed an application under Right to Information Act, 2005 for supply of the copy of the report submitted by Mr. Malsom and it was stated that on 10th July, 2015 the SDM had directed that copy of this report be supplied to Mr. Sailesh Das but it was not clear on which date it had actually been supplied. On 5th January, 2015 we had also directed Sri Sailesh Das to file an affidavit stating the name of the persons who had handed over the documents Annexure-R/2, R/3 and R/4.

12. Thereafter on 18th January, 2016 Sri Sailesh Das filed an affidavit. In this affidavit he stated that on 17th April, 2015 at about 4.30/5.00 p.m. 21 persons named in para A of the affidavit, came to his residence and informed him that they had made a representation to the SDM, Gandacherra on that very day. They also handed over a copy of the representation(Annexure R/2) to him. He further stated that on 17th April, 2015 23 other persons met him in his residence at 1.00 p.m. and informed him that they had made a representation to the Chairman of the Tripura State Pollution Control Board on the same day and handed over a copy of the representation to him. He further made a statement that on 8th November, 2015 Sri Haripada Sarkar and Sri Manik Choudhury visited his house and informed him that they had made a reminder application inquiring about their representation dated 17th April, 2015 and in pursuance of their reminder application the SDM handed over a report dated 8th July, 2015 of the Deputy Collector, Gandacherra to them. On 15th November, 2015 Sri Haripada Sarkar and Sri Manik Choudhury handed over a copy of the said report to him which was attached as Annexure R/4.

13. The State also filed an additional affidavit and a perusal of this additional affidavit shows that the respondents 5 to 8 have occupied 7.39 acres of land which does not belong to them and which has not been allotted for the brick industry. The description of the land is as follows :

14. At this stage it would be pertinent to mention that during the hearing of this

petition, the respondents 5 to 8 were represented by learned counsel Ms. Rumela Guha and right from August, 2015 Ms. Guha had been insisting that the matter be heard at an early date since the brick kiln industry of her client lying closed.

15. The second petition WP(C) No. 341 of 2015 has been filed by Sri Sailesh Das, Sri Abhilesh Sarkar and Sri Samaresh Das. Two of them are the respondents 7 and 5 in the earlier petition being WP(C)(PIL) No. 3 of 2015 and Sri Samaresh Das was not a party in the earlier petition. In this petition, it is stated that the petitioners have a registered partnership firm and they are running the brick industry. The main plea raised by the petitioners was that the Pollution Control Board be directed to issue a certificate of consent to operate the brick kiln in favour of the petitioners.

16. The case of the petitioners was that they had already obtained all permissions under the relevant provisions of the environmental laws and the consent to operate had been given to them. It was also alleged that on 17th November, 2014 Sri Sailesh Das had applied for renewal of consent order to operate and his case was that despite sending reminders the certificate for consent to operate had not been issued by the Tripura State Pollution Control Board. In Para 14 of the petition it is stated as follows :

"14. The petitioners most humbly beg to submit that, the entire brick operation of Kiln for the reason of 2015 has come into uncertainty as the petitioners were not provided "Certificate for Consent to Operate" by Respondent No. 2. The petitioners further beg to submit that, many families of the partners as well as labours depending upon the income of the brick kiln has also come under the shadow of uncertainty. The petitioners further beg to submit that, there are few brick kiln in that sub-division. A lot of government and private works depends upon the production of bricks of the petitioners. The petitioners therefore, take a vital role in the industrial as well as structural development of the entire sub-division."

17. It would be pertinent to mention that this second writ petition was filed on 12th August, 2015. By this time respondents 5 & 7 have already put in appearance as petitioners in WP(C)(PIL) No. 3 of 2015 for the first time on 7th April, 2015. They were aware of the order passed by this Court in WP(C)(PIL) No. 3 of 2015 on 25th February, 2015. They were also aware of the subsequent orders and they knew that the said case had been set down for hearing. Despite knowing these facts, the petitioners in WP(C) No. 341 of 2015 did not make even a whisper about the public interest litigation wherein a challenge had been made to the running of their industry on the ground that it was polluting the atmosphere. The petitioners may have been entitled to file a fresh petition but it was their duty to disclose all facts to the Court and it was their duty to inform the Court that certain orders had been passed by a Division Bench. The petitioners did not do so and in fact on 19th August, 2015 when the matter came up before a learned single Judge of this Court learned counsel for the petitioner in WP(C) No. 341 of 2015 who happens to be the same learned counsel

appearing for them in WP(C)(PIL) No. 3 of 2015, appeared before the learned single Judge and prayed for grant of interim relief. On the next date on 1st August, 2015 the petitioner placed on record the communication dated 28th July, 2015 that in view of the pendency of WP(C)(PIL) No. 3 of 2015 the Tripura State Pollution Control Board could not issue the consent order to operate. Thereafter on 18th November, 2015 Ms. Rumela Guha again appeared before the learned single Judge and urged that an interim order be passed because the unit of the petitioners was lying closed for the arbitrary action of the Tripura State Pollution Control Board in not issuing the renewal certificate. At this stage it was urged by the Tripura State Pollution Control Board that there are issues overlapping the public interest litigation as well as the writ petition and keeping in view these submissions, the learned single Judge ordered that the matter be listed before the Division Bench.

18. We have given these facts in detail which will show that both the parties have not been fair to the Court and have withheld various facts. We had heard the final arguments on 27th January, 2016 and on that date we had specifically questioned Sri Brindaban Das whether he had any pecuniary interest in a brick kiln. He stated that neither he nor his wife, brothers, sons, daughter-in-law or any other person has any brick kiln industry on any land owned by him or any of his family members. As far as Sri Sailesh Das is concerned, we repeatedly questioned him who had given him the copy of the report and he again replied that the same was given to him by Sri Haripada Sarkar and Sri Manik Choudhury. We asked him how he had come to know about the submission of the report and he stated that these very two persons had informed him about the report in the month of July, 2015. We, therefore, directed the respondent No. 3 to furnish a report to this Court both with regard to the lands held by Sri Brindaban Das, petitioner and whether there is any brick kiln or allied industry existing on the property of Brindaban Das or any of his relatives. We had also directed both Mr. Bhaskar Dasgupta, SDM and Mr. C K Malsom, Deputy Collector to submit a report as to whether copy of the report of Mr. Malsom was issued to any person other than Sri Sailesh Das and on which date the report was supplied to Sri Sailesh Das. The SDM has submitted his report in this regard. With regard to the lands held by Sri Brindaban Das, he has clearly stated that 4.76 acres of allottee land exists in the name of Sashi Mohan Das, late father of Sri Brindaban Das. Therefore, Sri Brindaban Das has a share in this property. According to the SDM, 2.35 acres of land out of this property is being used by Dumbur Nagar Brick Industries. The owners of this land are the father and cousins of the petitioner Sri Brindaban Das. He has also stated that on 10th November, 2015 a deed partnership was registered for running a firm namely M/s. Laxmi Brick Industries and Srikrishna Das is the son of Sri Brindaban Das and Smt. Swapna Das, wife of the said Srikrishna Das are partners of M/s. Laxmi Brick Industries. It is thus clear that son and daughter-in-law of the petitioner are involved in some brick kiln industry though this partnership was entered after the present petition has been filed.

19. In this case the following two very important issues relating to practice and procedure arise before us :

"(i) Whether public interest litigation should be entertained when it is found that the petitioner has not filed the petition in the public interest but on account of business rivalry?

(ii) Whether it is the duty of the petitioner and the counsel to make a complete disclosure of all relevant facts while filing a writ petition and what action should be taken if the Court comes to the conclusion that some material facts were purposely withheld?"

20. Public interest litigation by its very name means litigation which has been filed in the interest of the public, the community at large where the rights and the interest of the community are affected. Public interest litigation has also been defined to mean a legal action initiated in a Court for enforcement of public interest or general interest in which the public or a class or community has some legal right or interest. Public interest litigation is actually a product of initiatives taken by the Courts in India. The superior Courts i.e. the Supreme Court and High Courts in exercise of their writ jurisdiction have in the larger public interest given innumerable important decisions and passed important orders which have brought about many positive changes in the country. Many orders passed by the Courts in litigations known as Public Interest Litigation (PIL) have benefited marginalized sections of society, helped to protect and preserve the environment and ecology of the country, helped to preserve the forests and marine life, wildlife etc. In some cases the intervention of the Courts in public interest litigation has helped in maintaining probity and transparency in public life and at time the Courts have also ordered prosecution of the corrupt in exercise of its jurisdiction.

21. The concept of locus standi was virtually thrown to the winds and the Court entertained petitions by well-meaning public spirited citizens when they espoused the cause of large sections of society.

22. In *Sunil Batra v. Delhi Administration*, , (1978)4 SCC 494 the Apex Court entertained a writ petition from a prisoner who was not pleading for any benefit for himself but was protesting against torture of fellow petitioners.

23. In *Hussainara Khatoon v. State of Bihar*, , (1980) 1 SCC 98 the Apex Court gave landmark directions to provide legal aid to the poor and the downtrodden.

24. The benefit of public interest litigation can never be overemphasized. In *Akhil Bharatiya Soshit Karmachari Sangh (Railway) v. Union of India and others* , (1981) 1 SCC 246 the Apex Court observed as follows :

"62. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through "class actions", "public interest litigation", and "representative proceedings". Indeed, little Indians in large numbers seeking remedies in courts

through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concepts of "cause of action", "person aggrieved" and individual litigation are becoming obsolescent in some jurisdictions."

25. In *Bandhua Mukti Morccha v. Union of India*, , (1984) 3 SCC 161 the Apex Court entertained a petition espousing the cause of bonded labour. The Apex Court held that even a person who has no direct personal interest can file such public interest litigation for the benefit of the downtrodden.

26. In *M C Mehta v. Union of India*, , (1987)1 SCC 395 the Apex Court entertained a petition to protect the environment and ecology.

27. In a poor country like India a large section of society is unable to approach the Courts due to extreme poverty, ignorance and illiteracy. Many people are not even aware of their rights. In such a situation it is impossible to expect them to approach the Courts. It is in this context that the Courts have encouraged public interest litigation and as observed by the Apex Court in *State of Uttaranchal v. Balwant Singh Chaufal and others*, , (2010)3 SCC 402 public interest litigation is an upshot and product of the Court's deep and intense urge to fulfill its bounded duty and constitutional obligation.

28. However, later it was felt that in some cases there was abuse of the process of public interest litigation. The Apex Court then struck a note of caution that only genuine public interest litigation should be entertained and those litigations which are filed with oblique motives or with a view to abuse the process of the Court should be discouraged and thrown out. Though genuine and bona fide public interest litigation must be encouraged, the time has come to ensure that any personal interest litigation, publicity interest litigation or paisa income litigation filed in the garb of public interest litigation is not only thrown out but the persons filing these petitions are strictly dealt with.

29. In *Dattaraj Nathuji Thawre v. State of Maharashtra and Ors.*, , (2005)1 SCC 590 the Apex Court held as follows :

"16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.*, , (1998)7 SCC 273, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained.

The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

30. Thereafter, the Apex Court in *State of Uttaranchal v. Balwant Singh Chaufal and others*, (2010)3 SCC 402 after discussing the entire law on the subject laid down the following guidelines :

"178. We must abundantly make it clear that we are not discouraging the public interest litigation in any manner, what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by the courts for improving ecology and environment, and directions helped in preservation of forests, wildlife, marine life etc. etc. It is the bounden duty and obligation of the courts to encourage genuine bona fide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the Laws.

179. The Public Interest Litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger public interest in consonance with the inherent spirits of the Constitution. The conditions of marginalized and vulnerable section of society have significantly improved on account of courts directions in the P.I.L.

180. In our considered view, now it has become imperative to streamline the P.I.L.

181. We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:--

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to

properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL 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.

(8) The court should also ensure that the petitions 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 considerations."

31. Applying the aforesaid principles we proceed to decide the petitions. As far as the WP(C)(PIL) No. 3 of 2015 is concerned, we are of the considered view that the petitioner did not come to Court with clean hands. It is now established that in part of the land owned by his deceased father in which he has a share because this is ancestral property there is a brick industry being run. It has also come on record that the son and daughter-in-law of the petitioner have entered into a partnership for running a brick kiln industry though this agreement has been entered only in November, 2015 after the filing of the petition. However, these facts were never disclosed by the petitioner himself. Even when we questioned him in Court the petitioner denied that any portion of his land is being used for purposes of brick industry. We, therefore, have no hesitation in holding that the petition as filed by him has not been filed in the public interest but has been filed with a view to settle personal scores and business rivalry.

32. As far as the representations are concerned, we are of the view that we cannot say with certainty whether the allegations made by the private respondents are correct or not. From the facts which we have culled out above, it appears to us that the possibility of the second set of representations made to the SDM having been initiated at the instance of the private respondents 5 & 7 i.e. petitioners in WP(C) No. 341 of 2015 cannot be ruled out. We may note that

after we had directed the Tripura State Pollution Control Board to submit a report, the members of the scientific team had gone to the spot and had made inquiries from the local villagers and even before them at least 12 of the 13 villagers had raised objection to the brick kiln industry. Therefore, though we are of the opinion that the petition filed on behalf of the petitioner No. 1, is not maintainable, we clearly are of the view that the petition should not be thrown out by us because certain startling facts have come to the knowledge of this Court. The first is that even when there was no major activity in the brick kiln the villagers complained about dust and ash problem to them. They also complained that there was noise pollution and even though there were no dozers or trucks working on that day the average noise level was found to be much higher than the prescribed limit. We are also prima facie of the opinion that the private respondents 5 to 8 have encroached upon and diverted government land of the Dumbur Hydel Project in addition to lands of other persons for running their brick field and these matters need to be enquired into. Therefore, we cannot throw out the petition and put a seal of approval on the illegal activities of the private respondents.

33. We now come to the second petition being WP(C) No. 341 of 2015. The respondents 5 & 7 have a legal right to file the second petition. That legal right is not denied. However, in the writ petition to be filed by them they should have clearly and unequivocally disclosed that there is a public interest litigation pending with regard to this very brick field in which the Tripura State Pollution Control Board is also one of the parties. In fact instead of filing a separate petition the respondents 5 & 7 would have been better advised to have filed an application in the public interest litigation itself praying that the Board be directed to give them consent to operate. It is clear to us that the respondents 5 & 7 did not follow this method because they wanted to go forum hunting. We are also saddened to observe that the same counsel who was representing them in the public interest litigation filed the second petition but did not deem it fit to point out that the public interest litigation is pending.

34. We also find that before the learned single Judge the petitioners never pointed out at any stage that the public interest litigation is pending. An effort was made to obtain an interim order without making a whisper about the public interest litigation. In the report submitted by the Tripura State Pollution Control Board noise pollution was found and the petitioner and its counsel in WP(C) No. 341 of 2015 for reasons best known to them did not place on record the report of the Tripura State Pollution Control Board. On 1st October, 2015 letter dated 28th July, 2015 issued by the Tripura State Pollution Control Board was brought to the notice of the learned single Judge wherein the Pollution Control Board had clearly stated that it had not issued the consent order in view of the pendency of the public interest litigation. At this stage it would have been appropriate for the learned single Judge himself to have transferred the matter to the Division Bench for hearing the same with the public interest litigation.

35. We are also constrained to observe that before the learned single Judge the conduct of the petitioner is not at all proper. He tried to go forum hunting to obtain an order without disclosing complete facts. The copy of the report of the Tripura State Pollution Control Board was withheld in WP(C) No. 341 of 2015 from the learned single Judge. A false averment was made that the brick kiln is lying closed though it is now admitted before us that in December, 2015 the brick kiln operated. Therefore, even without consent to operate the petitioners in WP(C) No. 341 of 2015 operated the brick kiln.

36. As we have said earlier we cannot decide in these petitions without recording evidence whether the first set of representations attached by the petitioner Sri Brindaban Das with his petition were engineered by him or whether it is the second set of representations which have been engineered by Sri Sailesh Das. However, two things which are certain are that Sri Brindaban Das lied to this Court when he stated that he had no personal interest in the matter and Sri Sailesh Das has also withheld material facts from this Court while filing WP(C) No. 341 of 2015. We may also point out that both the SDM and Deputy Collector have clearly stated that they did not supply a copy of the report to any one of the original petitioners. Therefore, we fail to understand how Sri Haripada Das and Manik Choudhury could have supplied the copy to Sri Sailesh Das. It appears to us that Sri Sailesh Das had somehow illegally managed to obtain a copy and this by itself also disentitles him to obtain any relief.

37. We, therefore, dismiss both the writ petitions and impose costs of Rs. 1,00,000/- on each of the petitioners i.e. Sri Brindaban Das petitioner in WP(C) (PIL) No. 3 of 2015 and Sri Sailesh Das, Sri Abhilesh Sarkar as well as Sri Samaresh Das petitioners in WP(C) No. 341 of 2015. These costs be paid to the Tripura State Legal Services Authority within 6(six) weeks from today. In case costs are not deposited, the Member Secretary of the Tripura State Legal Services Authority can approach the Collector for recovery of these costs which shall be recovered as arrears of land revenue. In case the Tripura State Legal Services Authority does not require such funds, it may after taking approval of the Executive Chairman & Patron-in-Chief place these funds for use by the Foundling Home at Narsingarh.

We also issue the following directions :

"(i) That the State government shall ensure that the petitioners in WP(C) No. 341 of 2015 vacate the land which they have encroached upon before their application for consent to operate is considered by the Tripura State Pollution Control Board.

(ii) The Tripura State Pollution Control Board shall consider the application of the petitioners in WP(C) No. 341 of 2015 for grant of consent to operate the brick kiln only after the petitioners have vacated the encroached land and the SDM issues a certificate in this regard. Thereafter the application for consent to operate shall be dealt with in accordance with law. It is the duty of the State

Pollution Control Board to ensure that before consent to operate it must be ascertained that the brick kiln will not pollute the atmosphere in any manner and it may also lay down any guidelines or conditions to ensure that the pollution is brought down to the minimum level."