
(2014) 02 AHC CK 0250

In the Allahabad High Court

Case No : C.M.W. (P.I.L.) Petition No. 8006 of 2014

Diwakar Tyagi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 ADJ 761 : (2014) 3 ALJ 798 : (2014) 103 ALR 472 : (2014) 4 AWC 3770 : (2014) 3 UPLBEC 1872

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : S. Pratap Singh, Advocate for the Appellant; Arun K. Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J. and Dilip Gupta, J.—In a petition, which has purportedly been filed in the public interest, the petitioners seek a mandamus to the State, the District Magistrate and the Moradabad Development Authority to demolish what are stated to be illegal encroachments made on the streets and roads passing through Dev Vihar Colony. The petitioners seek a mandamus for the exercise of statutory powers vested in the Authority under the Uttar Pradesh Urban Planning and Development Act, 1973. A mandamus is also sought for the removal of alleged illegal constructions and encroachments on the streets and roads so as to enable the persons residing in Naya Gaon to pass through Dev Vihar Colony, Moradabad. Before we can entertain a petition purportedly filed in the public interest, the Court must be abundantly clear that the jurisdiction is being invoked bona fide and not for extraneous purposes. This is in fact the reason why, following the judgment of the Supreme Court in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , sub-rule (3-A) was inserted by amendment in Rule 1 of Chapter XXII of the Allahabad High Court Rules. The object and purpose of requiring a petitioner, in a public interest

petition, to make an adequate disclosure of his or her credentials is to enable the Court to satisfy itself at the outset that the jurisdiction is being invoked for a legitimate purpose, otherwise the sanctity of the jurisdiction will be completely destroyed if the petitions filed for extraneous purposes are entertained in the garb of public interest petitions. The present case is in fact a case in point.

2. A writ petition had been filed before this Court by one Sanjeev Mehrotra being PIL-30520 of 2013. Sanjeev Mehrotra v. State of U.P. and 9 others) in the public interest seeking similar reliefs. That petition was dismissed by a Division Bench of this Court consisting of the then Chief Justice, Hon"ble Mr. Justice Shiva Kirti Singh (as His Lordship then was) and Hon"ble Mr. Justice Vikram Nath after hearing all the parties with an order which reads as follows:

Petitioner has preferred this writ petition as a public interest litigation claiming to be a social worker for the welfare of common people of Naya Gaon and its entire area. He has further claimed that he has no personal interest in the matter nor the family member of the petitioner nor any other person related with him has any interest in the matter.

From the submissions advanced on behalf of the petitioner it transpires that besides pointing out that some encroachments made by some persons in a colony situated near Naya Gaon village, the emphasis is that a right by way of road should be made available for the residents of village Naya Gaon through the Dev Vihar Colony road, otherwise residents of Naya Gaon will face large number of difficulties. This is evident from petitioner's representation contained as Annexure-11 to the writ petition dated 19th March, 2013. That representation addressed to the District Magistrate, Moradabad has been signed by the petitioner and other residents of Naya Gaon. No doubt there is a request in that representation to remove some encroachments existing in Dev Vihar Colony but the emphasis is clearly upon providing road for Naya Gaon residents through that Dev Vihar Colony.

Learned Counsels for the Moradabad Development Authority as well as for the Nagar Nigam, Moradabad have submitted that Dev Vihar Colony is a gated colony and the demand of the residents of Naya Gaon for a passage through that colony is being resisted by the residents of Dev Vihar Colony. Learned Counsel for the Nagar Nigam, Moradabad has produced before us a copy of inquiry report submitted jointly by the four officers dated 12.6.2012. According to that report Dev Vihar is a colony developed about 25 years earlier. Land of the petitioner falls outside the Dev Vihar Colony within the area of Naya Gaon village which is not a planned area. Lay out plan does not provide any road for connecting the plot of the petitioner with Dev Vihar Colony. The report further mentions that there is another road for residents of Naya Gaon and petitioner's plot which connects to the city. This approach road has been developed by the Nagar Nigam and is being utilised by the residents without any difficulty. The conclusion of the report is that the plot of the petitioner should not be connected with the Dev Vihar Colony through road because it would be improper on all counts technical,

legal and administrative. The aforesaid report be kept on record.

In the facts of the case, we are of the considered view that the issue of some encroachment in Dev Vihar Colony has been raised by the petitioner only with a view to invite interference of this Court. In reality the present public interest litigation bears personal interest of the petitioner to get connection between his plot with Dev Vihar Colony which is a developed colony secured by boundary wall and gates.

In such circumstances we are not persuaded to entertain this petition as public interest litigation. It is accordingly dismissed.

3. Annexure-4 to the present petition is a representation dated 18th May, 2012 of one Sanjeev Mehrotra to the Chief Minister of the State. Sanjeev Mehrotra is the very petitioner who had filed the earlier public interest writ proceedings. We enquired from the learned Counsel appearing on behalf of the petitioners as to how the petitioners of these proceedings could obtain a copy of the aforesaid representation. The Court was informed that the representation was available in the file and, therefore, on inspection was available to any member of the public seeking information on the matter. Equally, if that is so, the petitioners would be cognizant of the earlier order passed by the Division Bench dismissing the previous public interest petition under Article 226 of the Constitution.

4. Under sub-rule (3-A) of Rule 1 of Chapter XXII of the High Court Rules noted above, the petitioner in the public interest must disclose that there is no authoritative pronouncement either by the Supreme Court or by the High Court on the question raised. Paragraph-3 of the present petition does not contain the required disclosure.

5. Hence, on a considered view of the matter, we are satisfied that the jurisdiction in the present case has not been bona fide invoked and the petition filed in the public interest is an abuse of the process of the Court. In the circumstances, not merely are we inclined to dismiss the petition but it is a fit and proper case where costs must also be imposed on the petitioners because a time has now come to send a message that misuse of the jurisdiction in the public interest would not be countenanced. We, in the circumstances, dismiss the petition with costs of Rs. 15,000/- which shall be deposited within one month from today before the Registrar General of the Court for being withdrawn by the Authority.