

(1996) 08 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 21589 of 1991

Grama Seva Pratishthana and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Karnataka Land Grant Rules, 1969 — Rule 7 (3) (iv)

Citation : (1998) ILR (Kar) 116

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Ashok B. Patil, for the Appellant; Padubidri Raghavendra Rao, for Respondent - 5 and Ashok Nayak, H.C.G.P for Respondents 1-2, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—In this petition, the first petitioner claims to be a Charitable Trust registered under the provisions of the Indian Trust Act and is represented by its Trustee-Shri T. Ashok Pai. and the second petitioner claims to be a rate payer and resident of No. 51, Anantha Nagar, Manipal: According to them, they have filed this petition for espousing the public cause.

2. The petitioners have prayed for quashing the order dated 3rd March 1989, the copy of which has been produced as Annexure-A, passed by the second respondent granting 48 cents of land in Survey No. 411/1 (which has been re-numbered as 411/1A2) in favour of the 5th respondent-Rajapura Saraswatha Bramhana Sangha (hereinafter referred to as "the Sangha") and also the building licence bearing No. 64/1990-91 dated 4th October 1990, the copy of which has been produced as Annexure-F, and sanctioned Plan, the copy of which has been produced as Annexure-F1, issued by the 4th respondent-Mandal Panchayat permitting the 5th respondent to put up certain construction on the land referred to above.

3. Sri Ashok B. Patil, Learned Counsel for the petitioners, submitted that the petitioners have filed this petition for espousing a public cause and in the interest of general public. He submitted that the order Annexure-A Passed by the Second respondent granting the land in question in favour of the 5th respondent-Sangha is liable to be quashed on three grounds. Firstly, he contended that the grant has been made by the second respondent without obtaining the previous approval of the first respondent as contemplated under Rule 7(3) and Clause "(iv) of Sub-rules(2) and (3) of Rules 10 of the Karnataka Land Grant Rules, 1969 (hereinafter referred to as "the Rules"). According to Sri Patil, the land granted to the Sangha is situated within a radius of 3 K.Ms., from the Municipal limits of Udupi Municipal Council and therefore the second respondent could not have made the grant without the previous approval of the State Government. Secondly, he contended that the land in question is situated within the limits of Udupi Malpe Local Planning Area and the Planning Authority had prepared a Scheme for widening the road leading to Manipal from Udupi via Udupi-Alevoor and Alevoor-Manipal road. In view of the said Scheme envisaged by the Planning Authority, it was not permissible for the second respondent to have granted the land in question to the Sangha for the purpose of putting up a students hostel and a Bhavan on the land in question and if the 5th respondent puts up the same, it would come in the way of expansion of Alevoor-Manipal road. In support of this submission, he drew my attention to the averments made in Paragraphs 8 and 9 of the Writ Petition. He further submitted that when the Planning Authority has proposed a Scheme for widening the Alevoor-Manipal road, if the 5th respondent-Sangha is allowed to put up construction on the land in question as per the terms of the grant, it would result in traffic congestion resulting in lot of inconvenience to the general public. Elaborating his argument, he submitted that the road presently leading from Udupi to Manipal is a narrow road and there is a ferry near a place known as Kalsanka and during rainy season, on account of over-flowing of water from the ferry, the road will be completely blocked and as a consequence thereof, the traffic will come to a standstill and therefore the public, to reach Manipal and places located beyond manipal, would go via Udupi-Alevoor and Alevoor-Manipal road. In this connection, he also drew my attention to the rough sketch produced as Annexure-E to the Writ Petition. According to him while the State granted land measuring 3 acres 62 cents in CTS No. 51 of Shivalli village by means of order dated 22.7.1956, the copy of which has been produced as Annexure-B, to the Academy of General Education, a condition was imposed that the grantee should leave a minimum distance of 75 ft., from the road margin, but such condition has not been imposed while granting the land in question to the 5th respondent-Sangha. Thirdly, he contended that the land granted to the 5th respondent-Sungha is situated within the residential zone of Udupi-Malpe Planning area and hence the grant of the land in question for the purpose of auditorium as per Annexure-A is illegal. He submitted that since the land has been granted to the 5th respondent Sangha ignoring these three important aspects and if the said grant is not annulled by this Court, it would result in serious public injury. According to Sri Patil, a statutory Authority, which

is conferred with the power of assigning Government land, must strictly follow the procedure prescribed and since the grant of land in question has been made in utter disregard to the Rules, the same requires to be nullified by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He also submitted that since the licence has been sanctioned as a consequence of the grant of land made in favour of the Sangha, the licence and the sanctioned Plan are also liable to be quashed. Sri patil relied upon the decision of the Hon''ble Supreme Court in KASTURI LAL LAKSHMI REDDY vs. STATE OF JAMMU AND KASHMIR AIR 1987 SC 1992 and SHANTA vs. COMMISSIONER, CORPORATION OF THE CITY OF BANGALORE ILR 1987 Kar. 1037 in support of his contention.

4. Though respondents 1 to 4 have not filed Statement of Objections, the 5th respondent has filed detailed Statement of Objections denying the averments made in the Writ Petition and setting out the cause and the motive which prompted the petitioners to file this petition.

5. Sri Ashok Nayak, learned High Court Government Pleader appearing for respondents 1 and 2, has supported the grant of land made in favour of the 5th respondent-Sungha by the secondary respondent and submitted that there is absolute no justification to set aside the grant made in favour of the 5th respondent.

6. Sri Padubidri Raghavendra Rao, Learned Counsel appearing for the 5th Respondent, firstly submitted that this petition is liable to be dismissed as not maintainable on the ground that the petitioners have no locus standi to file this petition in as much as this petition has not been filed either in public interest or to protect the interest of the general public, but has been filed solely on account of personal reasons and with a view to prevent anybody from getting the Government land situated in Manipal allotted to them. According to Shri Rao, the first petitioner and its associate Institutions are keen in getting all the Government lands in Manipal only for their Institutions and therefore, without any justification, the first petitioner has filed this petition and the second petitioner, who is only an employee working in Udayavani Press, which is established by the associates of the first petitioner-Trust, has joined the first petitioner in filing the petition. In this connection, Sri Rao drew my attention to the Memorandum of Trust of the first petitioner, which has been produced as Annexure-P, wherein on Sri T. Satish Pai is shown as the Trustee of the first petitioner-Trust, and also the letter dated 27.11.1995, the copy of which has been produced as Annexure-R6, written by the said Satish Pai as Editor of Udayavani Press, and submitted that Udayavani Press is closely associated with the first petitioner-Trust. According to Sri Rao, the second petitioner is only a name lender, who has been set up by the first petitioner to file the Writ Petition. He also drew my attention to the averments made in the Statement of Objections wherein the 5th respondent Sangha has set out in detail the cause and the motive behind the filing of this petition.

7. In the back-ground of the assertions made by the petitioners that they have

filed the petition to espouse the cause of the public, it is useful to extract the relevant portion of Paragraph-1 of the Statement of Objections of the 5th respondent, which reads thus:

"...The 1st petitioner-though styled as a Charitable Trust and represented by its alleged Trustee Sri T Ashok Pai S/o the late Dr. T.M.A. Pai of revered memory, who has pioneered and founded several educational institutions in Mampal, has no locus standi to maintain the petition. It is obvious that the Trustee Sri T. Ashok Pai - who has been actively associated with various institutions in Manipal, has - with a jealous eye on the property in question and with the ulterior motive of having all the Government lands in Manipal, including the site in question for the various institutions of his own, with intolerance against any other party to own or possess the same in Manipal, unfortunately thought it fit to oppose the grant of the site in question to this respondent-Society belonging to a Backward Class, and for the purpose of establishing a poor students' Hostel. The 2nd petitioner is an employee of Mr. Sathish Pai and his brother - Mr. Ashok Pai, of Manipal. They have personal interest in the various Institutions founded by their late father Dr. T.M.A. Pai, and also the Kannada Daily "Udayavani" of which Mr. Sathish Pai is the Editor, The 2nd petitioner has been working in the "Udayavani" belonging to the well-known "Pai Group" of Manipal. He is a stooge in their hands and he has been taken as the 2nd petitioner at their instance. The grant Of the site in question made to the 5th respondent-Society, as per Annexure-A, as long ago as 9.3.1989, for the purpose of establishing a poor Students' Hostel, cannot be legitimately challenged with any sense of fairness. The 5th respondent-Society was formed for upliftment of a Backward Community. They do not have Hostel for their students studying in Udupi and Manipal, and therefore they applied for the grant of site in question for the said purpose and after following the procedure prescribed by law and after considering the reports of the Assistant Commissioner and the Tahsildar, the Deputy.Commissioner-granted, the site in question to the 5th respondent at the market price which this respondent paid. For the purpose of putting up a Hostel and a Hall for the benefit of the poor students of its Backward Community, this respondent applied to the local body for the grant of building licence with the sanctioned plan, and it also submitted the plan to the 3rd respondent-Planning Authority. This respondent obtained the building licence and the sanctioned plan, as per Annexure-F1, for the purpose of putting up a store-room and office-room, as can be seen from the competition report, as per Annexure-R1. As this respondent has been in occupation of the same and in anticipation of a building licence from the Manipal Mandal Panchayat, and the commencement certificate from the Planning Authority, it has been collecting the building materials to put up the Hostel building."

7A. In Paragraph 3 of the Statement of Objections, the 5th respondent has denied that there was any Scheme proposed or envisaged for widening of Alevoor-Manipal road. It is further stated that the said incorrect statement has been made deliberately in the Writ Petition maliciously and with a view to paint a

wrong picture with an ulterior motive of diverting the course of justice. Sri Rao submitted that there was no irregularity or illegality committed by the Authorities while granting the land in question to the Sangha and the land in question has been granted after conducting necessary enquiry and after considering the recommendations made by the Tahsildar and the Assistant Commissioner and also after complying with the procedure prescribed under law; and the petitioners having failed to submit any objections at the stage of enquiry held by, the Authorities, cannot, now be permitted to challenge the grant in the guise of public interest litigation. He further submitted that even assuming that the previous approval of the Government was not obtained by the second respondent as required, the petitioners cannot be permitted to challenge the grant unless a case of serious public injury; resulting from the said grant, is made out. According to him it is not the case of the petitioners that the Authority, while granting the land in question, has shown any favour to the 5th respondent, but on the other hand, the land in question has been granted after receiving full market price and that too, the grant is made in favour of the Trust created and run by persons belonging to Backward Classes and for the purpose of a students' Hostel. He further submitted that the petitioners have totally failed to make out a case of public injury or harm on account of the grant made in favour of the 5th respondent. Therefore, he submitted that the purpose of the grant of land being in public interest, the petitioners, who have a private motive in filing the Writ Petition, cannot be permitted to challenge the grant in question. He also submitted that there are absolutely no bonafides" in the claim made by the petitioners in the Writ Petition. According to Sri Rao, the lack of bonafides on the part of the petitioners-can be inferred from, the following circumstances:

- (a) There is inordinate, delay on the part of the petitioners In filing the Writ Petition;
- (b) Failure to avail the alternative remedy both in challenging the order Annexure-A and also the licence granted;
- (c) The first petitioner itself is a beneficiary of a large extent of land granted by the Government;
- (d) The inaccurate statement made in Paragraph-4 of the petition asserting that there was a Scheme proposed to widen the Alevoor-Manipal road by the Planning Authority, but, as a matter of fact, there was no such proposal on the date of the grant of land;
- (e) Failure on the part of the first petitioner to produce the resolution of the Trust authorising Sri Ashok Pai, who is one of, the Trustees, to file this petition and the circumstances -that the Chairman of the Trust, Sri Ramesh U. Pai participating in the foundation laying ceremony, organised by the 5th respondent for the purpose of students Hostel;
- (f) the publication made, in Udayavani, the copy of which has been produced, as Annexure-J, just a few days before filing the Writ Petition raising serious

objections for the grant of land in question and in spite of the said publication, no other member of the public coming forward challenging the grant made in favour of the 5th respondent;

(g) The letter dated 27.11.1995 (Annexure-R6) written by one other Trustee of the first respondent-Trust requesting His Holiness Sri Sri Sir Sachidananda Saraswathi Swamiji Maharaj not to participate in the foundation laying ceremony for the students Hostel of the 5th respondent and marking a copy of that letter to the Chairman of the Trust Sri Ramesh U. Pai with a request not to participate in the foundation laying ceremony as he is the President of the Trust.

(h) The indication in the letter Annexure-R6 that the first petitioner owns a site next to the land granted to the 5th respondent;

(i) The voters list Annexure-R7 at item No. 981 clearly showing that the second petitioner is a resident of Badagabettu, Udupi and making a false statement in the petition that he is a resident of Manipal and thereby an attempt is made to mislead this Court;

(j) No previous history of the petitioners at any time espousing the cause of public earlier;

(k) The Trust Deed (Annexure-P) not authorising the Trust to institute any public interest litigation;

(l) The object of the grant of the land to the 5th respondent being to establish a students hostel and a Hall (Sabha Bhavan), which is a charitable purpose, acting contrary to the interest of the students who require facilities for education; and

(m) The petitioners having failed to secure an interim order before this Court, an attempt was made to prevent construction by making use of the Office of the Member-Secretary to Town Planning Authority during the pendency of this petition (Annexure-M).

Therefore, Sri Rao submitted that from the circumstances stated above, the only irresistible conclusion this Court can draw is that there are absolutely no bonafides on the part of the petitioners in filing the petition and in view of the law laid down by the Supreme Court and also by this Court, the petition is liable to be dismissed without examining the merits of the contentions advanced by the Learned Counsel for the petitioners. In support of his submission that the petitioners have no locus standi to file the Writ Petition, Sri Rao relied upon the decisions of the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, ; *Ramsharan Autyanuprasi and another Vs. Union of India and others*, ; AIR 1991 420 (SC) and *Janata Dal Vs. H.S. Chowdhary and Others*, and that of this Court in *Lalithamma Vs. State of Karnataka*, .

8. Secondly, he contended that even if it is held that the petitioners have locus standi to file the petition, the Writ Petition is liable to be dismissed solely, on the

ground that the petitioners have failed to avail of the alternative remedy u/s 49 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act"). He submitted that though the petitioners were fully aware that alternative remedy was available to them as provided u/s 49 of the Act, an inaccurate statement has been made by the petitioners in Paragraph-16 of the Writ Petition that they have no more alternate and efficacious remedy. According to Sri Rao, an appeal was required to be filed -before the Karnataka Appellate Tribunal u/s 49 of the Act against the order at Annexure- A within 60 days from, the date of the order and against the licence granted (Annexure-F and F1), as provided u/s 273 of the Karnataka Zilla Panchayat, Taluk Panchayat and Mandal Panchayat Act before the Zilla Panchayat. The petitioners having failed to avail of the remedy within the time prescribed, cannot be permitted to maintain the Writ Petition filed after expiry of nearly two years from the date of the orders impugned.

9. Thirdly, he submitted that the Writ Petition is liable to be dismissed also on the ground of delay and laches on the part of the petitioners. Lastly, he contended that even on merits, the petitioners have not made out a case to grant the relief sought for by them. He submitted that the assertion made by the petitioners that the land in question is situated within 3 K.Ms., from the Manipal limits of Udupi is factually incorrect and at any event of the matter, even assuming that the previous approval of the Government is not taken, the order of grant is not vitiated as the said irregularity is only a curable one; and the State, which is represented before this Court, having supported the grant made by the second respondent in favour of the 5th respondent, it must be deemed that the State has approved the grant made by the second respondent and at any event of the matter, the said stand taken by the State should be treated as sufficient for this Court to refuse to interfere with the grant made in favour of the 5th respondent. He also submitted that the 5th respondent-Trust having been established for the purpose of promoting education and various other purposes, is a Charitable Institution and in that situation, Rule 21 of the Rules confers power on the Deputy Commissioner to grant land for non-agricultural purpose even without the previous approval of the Government. He further submitted that though the petitioners have asserted in the petition that there was a Scheme proposed to widen the road between Alevoor and Manipal, in the course of the hearing of this petition, the petitioners have failed to make out the said case with reference to any Scheme envisaged by the Planning Authority before the grant of the land in question or with reference to the Comprehensive Development Plan or Outline Development Plan. He submitted that even the communication Annexure-O dated 26th July 1996 only indicates that in the year 1996, there is a proposal to widen the Manipal Alevoor road to the extent of 18 Mtrs., and though the petitioners have, in the course of the hearing of the petition, filed the said document, they have not been able to produce any material to show that there was a proposal to widen the Alevoor-Manipal road on the date of the grant of the land in question made in favour of the 5th respondent. Therefore, according to Sri Rao, the petitioners, without any regard for truth, made totally a false

statement in the petition stating that on the date of the grant of the land, there was a proposals to widen Alevoor-Manipal road. He further submitted that Annexure-R10 dated 21.5.1988 issued by the 4th respondent-Mandal Panchayat would clearly show that the Mandal Panchayat wherein the land in question is situated, had no objection for grant of the land in question to the 5th respondent and the Junior Engineer, Public Works Department, to whom the matter was referred, in Annexure-R11 dated 13.8.1987 also has stated that on inspection of the land in question, he had no objections for grant of the land in question to the 5th respondent. According to Sri Rao, when all the Authorities of the State, like, the Engineer of the Public Works Department, the Tahsildar, the Assistant Commissioner, the Planning Authority and Mandal Panchayat had no objection for grant of land in question to the 5th respondent and after considering all these matters, if the Deputy Commissioner has granted the land in question, to the 5th respondent, there is absolutely no justification to accept the submission made on behalf of the petitioners that the land in question has been granted over looking the fact that it would be in violation of Rule 7(3) and Clause (iv) of Sub-rules(2) and (3) of Rule 10 of the rules in view of the fact that the land in question is situated within 3 K.Ms., from the Manipal limits and that there was a proposal to widen the alevoor-Malpe road. He further submitted that the Mandal Panchayat, after considering the application for grant of licence to put up the Office and Store Room and also Hostel, granted the licence and approved the building plan; the Planning Authority also had granted permission for change of user of land as provided u/s 15 of the Act; and while granting the building licence, it must be assumed that the Authorities concerned had taken into account the relevant building regulations and granted the licence sought for; and the petitioners having failed to challenge the validity of the licence and the sanctioned plan by filing an appeal, cannot be permitted to challenge the same before this Court by invoking its jurisdiction under Article 226 or 227 of the Constitution of India. He further submitted that the case of the petitioners that Udupi-Alevoor and Alevoor-Manipal road is the only road available to the public to reach Manipal and places located beyond Manipal during rainy season, is far from truth; the rough sketch and the Plan produced by the petitioners show that there is another road which leads to Manipal from Ambagilu; and in addition to Udupi-Manipal road, which is a State High-way, there are two other roads to reach Manipal. He submitted that the claim made by the petitioners that there is a ferry running near the place known as Kalsanka, is incorrect and it is only a sewerage channel where water from the upper region flows to the lower region; and the contention advanced on behalf of the petitioners that there will be traffic congestion at the place known at Kalsanka is totally incorrect.

10. Having given my anxious consideration to the rival contentions advanced by the Learned Counsel for the parties, I am of the view that this petition has to fail on all the four grounds urged by the Learned Counsel for the 5th respondent, Sri Rao.

11. Now, let me first examine whether the petitioners have locus standi to

maintain this petition. The answer to this question depends upon the answer to the question whether the petitioners have made out a case that if the grant of land made in favour of the 5th respondent is not set aside, it would result in serious public injury and whether this petition has been filed in public interest or on account of personal motives and the petitioners' claim lacks in bonafides. It is well settled that this Court will not generally interfere in a matter like this where a grant made in favour of an Institution or individual is sought to be challenged, unless the person, who makes the grievance before this Court, is a person aggrieved on account of the grant made by the Authorities of the State, which is under challenge. However, over the years, in a larger interest of the public, the Hon'ble Supreme Court has laid down that this Court may even interfere and grant appropriate relief at the instance of persons or parties who have no personal grievance, but who have approached this court to espouse the cause of the public, who are not in a position to protect their right or in cases where, on account of the State's action unless it is immediately rectified, it is likely to result in serious injury or harm either to the public revenue or to the life and property of larger sections of the public. In all these matters, the Courts have consistently taken the view that this Court should cautiously exercise its power and with a greater restraint keeping in mind that large, number of litigants are waiting in queue to get their rights adjudicated upon by the Court and also taking into account the injury sought, to be remedied by this Court by granting the relief sought for by the persons who invoke the extraordinary jurisdiction of this Court.

12. In Sachidananda Pandey's case (supra), at Paragraphs 45, 58 and 60, His Lordship Justice Khalid (as he then was), while concurring with the views expressed by His Lordship chinnappa Reddy, observed thus;

"45....This case goes by the name "Public Interest Litigation". I wish to delineate the parameters of public interest litigation concisely against the background of the facts of this case, so that this salutary type of litigation does not lose its credibility. Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspite confidence in Courts and among the public, They must be above suspicions."

"58. My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move Courts, Public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional, litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions."

"60. It is only when Courts are apprised of gross violation of fundamental rights

by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on public interest litigants."

13. In RAMSHARAN AUTYANUPRASI v. UNION OF INDIA relied upon by Sri Rao, the Hon"ble Supreme Court has stated that the public interest litigation is an instrument for the administration of justice to be used properly in proper cases.

14. In the case of Subhash Kumar (supra) relied upon by Sri Rao, the Hon"ble Supreme Court has laid down that the public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity, and if such petitions under Article 32 are entertained, it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from the apex Court. It is further observed by the Supreme Court in the said case that the public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. The Supreme Court has also observed that it is the duty of the Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra-ordinary jurisdiction of the Supreme Court for personal matters under the garb of the public interest litigation. What has been stated by the Supreme Court with regard to the scope of interference of the Supreme Court in exercise of its power under Article 32 of the Constitution of India, in my opinion, must guide this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

15. In the case of Janatha Dal (supra), at Paragraph 62, the Hon"ble Supreme Court has observed thus:

"62. In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper...."

(i) Further, in the said decision, at Paragraphs 96 and 97, the Hon"ble Supreme Court has observed thus:

"96. 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.

97. In *S.P. Gupta Vs. President of India and Others*, , Bhagwati, J., emphatically pointed out that the relaxation of the rule of locus standi in the filed of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution:

"But we must be careful to use that the member of the public, who approaches the Court in case of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective..."

(ii) Further, at Paragraphs 107 and 108 of the said decision, the Hon"ble Supreme Court, has observed:

"107. It is thus clear that only a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have 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 vexations petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold. .

108. It is depressing to note that on account of such trooper 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 criminal 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 the undue delay in service matters, Government or private 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 interlopers, 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 vexations 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."

16. In Lalithamma's case (Supra), my brother Justice Thakur, after elaborately reviewing the decisions of the Hon'ble Supreme Court, has succinctly observed thus at Paragraph 13 of the Judgment:

"13: In the chain of Judicial Pronouncements on the new found Doctrine of PIL, there is one common thread that runs through all these judgments namely the necessity of circumspection on the part of the Courts in the matter of entertaining litigation in the name of "public interest". The key word in all such cases is the bonafides of the person setting the legal process in motion who should have sufficient interest in the matter in order that he may be entitled to maintain such proceedings. The judgments delivered by the Apex Court have cautioned the Court against opening their doors wide at the instance of busy bodies, officious interveners, or those who have political or personal axes to grind. The process of the Courts cannot in the name of Public Interest Litigation be allowed to be abused for vindication of private rights or for wreaking vengeance. What is important is that the person who moves the Court does so as a bonafide act aimed at serving public interest or the interest of the socially or economically disadvantaged class of the Society. An effort has therefore to be made at the very threshold to see whether bonafides of the person at whose instance the legal process is being set in motion does or does not in spite confidence, arid whether he has a reasonable interest in the mater. It is only in case the bonafides of the individual moving the Court in the name of public interest is beyond suspicion and the person concerned demonstrates the existence of a reasonable nexus with the subject chosen by him that the Court's intervention would be warranted. In S.P. Gupta's case, the Supreme Court cautioned that the relaxation of the Rule of Locus Standi in Public Interest Litigation did not give any right to meddlesome interlopers or officious interveners to approach the Court in the guise of "Public Interest" litigation."

17. From the review of the decisions cited at the Bar, referred to above, what follows it that this Court must be careful to see that the member of the public, who approaches the Court in case of this kind, is acting bonafide and not for personal gain or other oblique considerations and this Court should not allow its process to be abused by the parties, who have not moved the Court to prevent any serious public injury being caused on account of the action of the State or other Authorities.

18. Keeping in view the principles enunciated by the Hon'ble Supreme Court in

the decisions, referred to above, and by this Court in Lalithamma's case (supra), I am of the view that there is absolutely no justification to entertain this petition and grant the relief sought for by the petitioners.

19. Admittedly, the land has been granted to the 5th respondent-Trust for the purpose of running a student's Hostel and a hall for the purpose of the benefit of the Students at large. The 5th respondent is a Trust registered under the Societies Registration Act. It is asserted in the Statement of Objections, which has not been denied by filing any rejoinder, that the 5th respondent-Trust is founded by a section of members of the society who belong to Backward Classes and the object of the Trust was to give all facilities to students who belong to Backward Classes for the purpose of their education by providing accommodation to attend educational institutions at Manipal and Udupi. The object of the Sangha, it cannot be disputed, is laudable and is intended to help unfortunate sections of the society who, on account of their cultural, sociological and financial background, are not in a position to have access to educational institutions unless they are given sufficient support by the 5th respondent-Sangha by providing facilities. In this background, if the second respondent has granted land to the 5th respondent, that too, a small piece of less than half an acre for the purpose of the students' Hostel, I do not find that there can be any justification for this Court to nullify the grant at the instance of the petitioners. The grant of the land in the facts and circumstances of this case must be held to be one made in public interest i.e., for the purpose of promoting education to the students and facilities for the said purpose. I am of the view that if the contention of the petitioner is accepted and grant is set aside, it would cause greater public injury than serving the public cause. All irregularities, illegalities or statutory violations in the matter of grant of land will not automatically result in public injury. The petitioners, who seek redressal from this Court, should make out a case of public injury. As rightly pointed out by the Learned Counsel for the 5th respondent, though the petitioners have asserted that there was a Scheme proposed/envisaged to widen Alevoor-Manipal road, as a matter of fact the Learned Counsel for the petitioners, though had elaborately argued the matter, had failed to show that there was a proposal to widen the Alevoor-Manipal road on the date of the grant. On the other hand, the letter Annexure-O relied upon by the Learned Counsel for the petitioners only shows that in July 1996, there was a proposal made to widen the road. If there was such a proposal, the petitioners, who have taken all the care and trouble to produce the letter, like, Annexure-O, would have certainly produced the necessary material before this Court to show that there was a proposal to widen the road on the date of the grant of land in question. Therefore, I am fully satisfied that there is absolutely no truth in the statement made by the petitioners that on the date of the grant, there was a proposal made for widening Alevoor-Manipal road. It is unfortunate that the petitioners, who invoked the extra-ordinary jurisdiction of this Court in the guise of public interest petition, to nullify the grant made to a Sangha for the purpose of a students' Hostel, did not take the minimum care that was required

of them to ascertain the correct and true position and filed this petition by making an inaccurate statement. Further, even assuming that there was such proposal, it cannot be a ground to refuse to grant the land. It may be a case where the statutory Authorities may have to take into consideration while granting the licence for the student's Hostel and the Hall and approving the Plan for the said purpose, if there are necessary regulations providing for leaving the set back while putting up construction either from the middle or from the margin of the road. Though the petitioners have asserted that the land in question is situated adjacent to Alevoor-Manipal road, the sketch produced would show that there is sufficient margin in between Manipal-Alevoor road and the land granted to the 5th respondent. If the said sketch is considered along with the assertion made by the 5th respondent that the land is situated more than 18 Mtrs., from the Alevoor-Manipal road, I have no doubt in my mind that there is no justification either to set aside the grant of land made in favour of the Sangha or to set aside the licence granted to it. Therefore, I am of the view that the petitioners have failed to make out a case that if the grant of land in question is not set aside, it would result in public injury. In view of the said finding, this petitioner is liable to be dismissed on the ground that the petitioners have no locus standi to file this petition.

20. However, with regard to the contention raised by the Learned Counsel for the 5th respondent that in the absence of any resolution being placed before this Court to show that Sri Ashok Pai had been authorised to file Writ Petition on behalf of the first petitioner-Trust and also in the absence of even a statement by the said Sri Ashok Pai by means of an affidavit before this Court that the first petitioner-Trust, by means of a resolution, had authorised him to file this petition, the first petitioner is not entitled to file this petition, it is suffice to observe that it is doubtful whether the Trust has authorised Sri Ashok Pai to file this petition. In this connection, it is relevant to point out that the Chairman of the Trust, Sri Ramesh Pai, had admittedly participated in foundation laying ceremony of the students' hostel, which fact is asserted in the Statement of Objections filed by the 5th respondent and is also supported by the letter Annexure-R6 written by one of the Trustees of the first petitioner-Trust to Sri Ramesh Pai. Though Sri Rao vehemently contended that this petition has been filed on account of extraneous reasons and private motives and totally lacks in bonafides for the reasons set out by him, referred to by me in earlier part of this order (i.e. Paras 12 to 15) in view of my conclusion that this petition is liable to be dismissed solely on the ground that the petitioners have failed to make out a case that the grant of the land in favour of the 5th respondent-Sangha would result in any public injury, I am of the opinion that it is not necessary to record a finding with regard to the bonafides or lack of bonafides on the part of the petitioners in filing this petition.

21. I find considerable force in the contention of Sri, Rao that this petition is also liable to be dismissed on the ground that the petitioners have failed to avail of the alternative remedy of appeal available to them against the orders of grant of

land made in favour of the 5th respondent, u/s 49 of the Act, However, the Learned Counsel for the petitioners submitted that since the petitioners have invoked the jurisdiction of this Court to espouse the cause of general public, this Court will not be justified in rejecting the reliefs sought for by the petitioners on the ground that the petitioners have failed to exhaust the alternative remedy. It may be true that in a case where serious public injury is likely to be caused by refusing to interfere with the State's action, this Court may not refuse to give relief in a public interest petition on the ground that alternative remedy was not availed of, but this is not one such case. The grievance in this petition is with regard to a small piece of land granted to an Institution for the purpose of building a students' Hostel. The argument advanced to set aside the grant, is that the land in question is situated within 3 K.Ms., from the municipal limits. This is purely a question of fact, which cannot be gone into in this petition. It is also well settled that if a person has a right of appeal and fails to avail of the right, he cannot be permitted to invoke the jurisdiction of this Court under Article 226 or 227 of the Constitution of India long after the expiry of the period of limitation. Admittedly, the grant was made on 3.3.1989. The averment made in Paragraph-15 of the Writ Petition discloses that even according to the petitioners, though they had come to know about the grant made during the end of 1990, the Writ Petition was filed before this Court only on 1.10.1991. The licence as per Annexure-F was granted and the Plan as per Annexure-F1 was sanctioned on 4.10.1990. Section 273 of the Act provides for an appeal against the grant of licence. Therefore, I am of the view that this petition is liable to be rejected also on the ground that the petitioners have failed to avail of the alternative remedy available to them.

22. Further, this petition must fail also on the ground that the conduct of the petitioners disentitles them for any equitable relief at the hands of this Court. As stated earlier, even according to the petitioners, they have come to know about the order of grant of the land made in favour of the 5th respondent and also the licence granted to it by the end of 1990. The Writ Petition was filed only on 1.10.1991. It is difficult to believe that the petitioners had not come to know about the order of the grant and the licence immediately after the order of grant of land and the grant of licence. Admittedly, in the additional Statement of Objections filed by the 5th respondent has stated that so far, the 5th respondent has spent Rs. 6,84,901-85 towards the cost of the land and for other developmental activities carried on, in the land in question. Therefore, if, at this stage, the order of the grant of land is to be cancelled at the instance of the petitioners, who have filed to approach this Court for a period of two years from the date of the grant, it would result in irreparable injury and hardship to the 5th, respondent-Sangha. Therefore, this petition should be dismissed also on the ground of delay and laches on the part of the petitioners.

23. Lastly, even on merits, I do not find any substance in the submissions made by the Learned Counsel for the petitioners. The assertion made by the petitioners that the land in question is situated within 3 K.Ms., from the Municipal limits has

been seriously disputed. This is purely a question of fact. I do not think it is appropriate for me, having regard to the facts of this case, too investigate into the said fact in exercise of my power under Article 226 of the Constitution of India. However, Sri Patil submitted that it is a matter of verification of distance by getting a report. I am not impressed by this submission of Sri Patil. The Statement of Objections was filed in the year 1992 disputing the claim of the petitioners that the land in question is situated within 3 K.Ms., from the Municipal limits. If the petitioners seriously dispute the same, it was for them to take steps to seek leave of this Court to get a Commissioner appointed. That has not been done. Further, when all the Authorities concerned, after conducting necessary enquiry as prescribed under law, proceeded to grant the land in question to the 5th respondent, I will not be justified in relying upon the statement of the petitioners to come to the conclusion that the land in question was granted in violation of the Rules as the land in question is situated within 3 K.Ms., from the Municipal limits. Even accepting the statement of the petitioners that the land in question is situated within 3 K.Ms., from the Municipal limits and that there was no previous approval of the State Government, is correct, the State Government, which is a party to this petition, has supported the grant made by the second respondent in favour, of the 5th respondent. Pursuant to the grant made, the 5th respondent has made substantial progress in the matter of construction of the Office and Student's Hostel by investing huge money and for the said purpose, raising donations from the public. Further, Rule 21 of the Rules also empowers the Deputy Commissioner to grant the land to a Charitable Institution even without the previous approval of the State Government. Therefore, I am of the opinion that even if there is any infirmity in the order of the grant of land made in favour of the 5th respondent, this is not a fit case to exercise my power under Article 226 of the Constitution of India at the instance of the petitioners to nullify the said grant or the licence granted to put up the students' Hostel.

24. Further, it is submitted by Sri Rao that most of the monies spent by the Sangha has been raised by the 5th respondent by way of donations from the general public and many philanthropists have donated money to the 5th respondent for the construction of the students' Hostel in view of the grant of land made by the second respondent to the 5th respondent-Sangha and, therefore, if the grant made, by the second respondent is set aside at this stage, it would result in irreparable injury to the Sangha. Therefore, looked at from any point of view, I do not find any justification either to interfere with the order of the grant of land made in favour of the 5th respondent or to set aside the licence granted to the 5th respondent.

25. In the result, the Writ Petition fails and is accordingly dismissed.

26. Having regard to the fact that the first petitioner also is a Trust, I direct the parties to bear their own costs.

27. Sri Ashok Nayak, Learned High Court Government Pleader, is permitted to file his memo of appearance within four weeks from to-day.