

(1997) 03 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule (PIL) No. 139 of 1997

Joint Action Committee, Protection on Agricultural Land	APPELLANT
Vs	
Planning and Development Authority, Imphal and Others	RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Guw 79

Hon'ble Judges : P.K. Sarkar, J;J.N. Sharma, J

Bench : Division Bench

Advocate : N. Kotishwar Singh, for the Appellant; Ashok Patsangbam, General and N. Promod Chandra Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This Writ Application has been filed by the Joint Action Committee, namely, Protection of Agricultural Land represented by General Secretary, Shri Oinam Raj Kumar Singh.;

2. In Annexure-A/13 there is a list of 48 persons stated to be interested in this litigation. But none of these persons have come up before this Court. Annexure-A/13 shows the name of the owner of the land and the tenant farmer stated to be interested in this litigation. In Paragraph- i 4 it is stated, inter alia, as follows :--

"14: That the petitioner states that the proposed Games village at the Meitei Langol area on the agricultural land is not in the public interest. The houses so constructed will be only for a rich few. As advertised by the PDA (in Annexure A/2), the prices of the houses are in the range of Rs. 3 lakhs which will go up much more when these are ready.

It is humbly submitted that these prices are beyond the means of more than 90% of the population. In other words, precious and dwindling prime agricultural lands will be permanently destroyed to build a few houses for the rich. While

these agricultural lands provide/can provide means of livelihood to innumerable persons, even if the real land owners keep changing, while the houses which will be built on these lands it will benefit only a few and can never be utilised for agricultural purposes in future. It will not only permanently affect the interest of some farmers, but will also seriously affect the long term economic interest of the entire State.

It would perhaps been, otherwise, and have might been in the public interest, had these housing programmes been under such projects like India Awas Yojna which are meant for the homeless and underprivileged section of the society.

On the other hand, hundreds who depend on the agriculture income from these lands will be permanently deprived of this means of livelihood. In the absence of other viable means of livelihood, such a course of action will have serious social, political fall out apart from the serious adverse economic effect.

It may be also mentioned here that many of the land owners whose lands will be effected are not themselves farmers but have other means of livelihood, e.g. many of them are Government servants, politicians, bureaucrats, teachers, doctors, engineers etc. and who own other agricultural lands elsewhere in Manipur. As such by acquiring these lands from them, they are not personally vitally affected. However, the tenants/farmers who till the lands will be left without any means of livelihood, it is submitted that being merely owners of agricultural lands do not invest them with the right to destroy the character of the land as productivity of the agricultural land is a collective heritage and property.

The petitioner is annexing a list of some of the owners of agricultural lands whose land will be affected/covered by the proposed housing complex along with the name of the tillers/tenants farmers as Annexure A-13.

The petitioner also states that though some of these land owners have sold their lands to the PDA, many are still refusing to sell these to the PDA."

3. This Writ Application has been filed for a direction to the Respondents not to destroy the area of agricultural land of 86 Acres in Revenue Village No. 91 of Meitei Langol at Imphal for the purpose of construction of dwelling houses and for a further direction to the Respondents to construct the same in some other non-cultivable land. The Action Committee as stated in Paragraph I has been formed jointly by the five registered local Clubs and supported by various organisations of other areas of Manipur. It is nowhere stated that these petitioners have any link and/or interest in the land which is the subject-matter of this litigation. The Indian Olympic Association allowed the Government of Manipur to hoist the Vth "National Games" in Manipur in the year 1997-98. In order to construct the "Game Village" the authority wanted to acquire lands at Songkpham, Imphal, but later on that was given up and thereafter on 9-7-96 a notice was issued by the Planning and Development Authority (hereinafter called PDA, Respondent No. 1) and the foundation Stone for the construction of the

"Game Village" was laid on 13-12-96. The PDA purchased 62 Acres and the rest are sought to be acquired by the PDA, if the owners do not voluntarily sell the land to PDA. Thereafter steps were taken for construction of houses. It is stated that large areas of fertile agricultural lands will be used for construction of dwelling houses, thus converting agricultural land to non-agricultural purposes. Reliance is also placed in a report under the Chairmanship of Shri C. S. Rao, the Deputy Secretary, Ministry of Urban Development, Government of India which submitted the report in the year 1985 and that is, annexed as Annexure A/6.

4. In Paragraph 16, it is stated, inter alia, as follows :--

" 16. That the petitioner states that as the said housing project is essentially a commercial venture for the ultimate benefit of a few rich people and not in the interest of the public in general, the PDA ought not be allowed to destroy precious agricultural land specially when other non-agricultural lands are available within greater Imphal area. In fact people belonging to some other areas have offered non-agricultural lands available for the construction of the "Games Village". There is a vast tract of land which is available near Yarl Chingol on the Tinsid Road which is only about 4 Kms. from the Khuman Lampak Main Stadium. Iril river, one of the biggest rivers of Manipur flows nearby thus ensuring adequate water supply for the area. Most importantly, the said lands are not cultivable, thus will not cause any adverse effect on the State's agriculture.

An organisation, namely, Union of Social Development representing 12 Organisation of Imphal East and appealed to the State Government for considering the construction of the Games Village at Yarl Chingol as far back as in October and December, 1995.

True copies of some of the representations submitted by the said Union of Social Upliftment dated 23-10-95 and 4-12-95 are annexed herewith as Annexures A/15 and A/16.

However, the Respondents Nos. 1 and 2 without proper application of mind and without considering the various options available before them and ignoring the genuine problems of the farmers/cultivators have chosen to construct the said "Games Village" at the present proposed site at Meitei Langol village near Irioshemba.

"That the petitioner association submits that the State Government and its agency/PDA have a legal and constitutional obligation to construct the said housing complex in some other non-cultivable land and preserve the precious agricultural lands."

5. Followings are the prayers made in the writ application :--

(i) Issue a Writ of Mahdamus and/or a writ in the nature of Mandamus or any other appropriate writ, direction or, order directing the respondent, more specifically the respondents Nos. 1 and 2 not to construct the Vth Games Village/

Housing Complex at the new proposed site as mentioned in Annexure A/2 at revenue Village No. 91, Meitei Langol Village at Imphal;

AND

(ii) Constitute an Expert Committee consisting of eminent economist/scientists/agriculturists/environmentalist and such other members who are proficient in these fields for the selection of another suitable non-agricultural land for the purpose of construction of the Vth Games Village;

(iii) Direct the Government of Manipur and the PDA to disclose before this Hon"ble Court the factors/considerations which were taken into account for choosing the present site at Meitei Langol area for the construction of the Housing Complex in the name of the Games Village and the various steps taken by the State Government and PDA for considering other alternative lands/ areas for construction of the Games Village and also the factors/considerations which were taken into account for not choosing other non-agricultural lands for this purpose.

6. An affidavit-in-opposition has been filed on behalf of the Respondent "No. 1.

7. We have heard Shri N. Koteswar Singh, learned Advocate for the petitioner, the learned Advocate General, Manipur, for Respondent No. i and Shri Promode Chandra Singruand Shri R. Sanagaoba Singh for the other Respondents.

7A. Before we proceed further let us have a look at the scope of Public Interest Litigation touching the question of locus standi of the petitioner to challenge the action of the authority. With regard to the scope of Public Interest Litigation what can be broadly stated is that the Court has to weigh whether Public Interest should be served by issuing writ or by refusing. The Court is to see whether the action of the authority results in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. If the Court finds that the decision of the authority is neither unreasonable nor caused public injury, the Court cannot interfere in such a matter.

8. The leading case on the locus standi of the petitioner on public interest is S.P. Gupta Vs. President of India and Others,

AND

R. Prasad Sinha v. Sh. K. B. N. Singh (Chief Justice) wherein in, Paragraphs 20 and 24 the Supreme Court pointed, out as follows:--

"23. But we must be careful to see that the member of the public who approaches .the Court in cases, of this kind is acting bona fide 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. Andre Rabia has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the , Courts to further their aims".

These are some of the dangers in public interest litigation which the Court has to be careful to avoid. It is also necessary for the Court to bear in mind that there is a vital distinction between locus standi and justifiability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the Court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born.

24. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

9. The Supreme Court in this case pointed out that if the persons primarily injured as a result of the act of the authority do not wish to claim any relief and accept such act or omissions willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action. As indicated above the persons mentioned in Annexure A/13 are primarily injured and they have not come forward to seek any relief and it appears that the petitioner who can be deemed to be a busy body has come forward with this application. But we do not want to throw out this petition on this ground alone. This Court appointed a Commission to have a look at the site and submit a report and the Commissioner has submitted the following report:--

"My Lords;

As per order dated 19-3-97, I have gone to the spot of Langol Lamphel area along with the parties where games village is proposed to be constructed. It is about 6 (six) K.M. far away from the Hon'ble Court. Following are the detail reports of the Commission of Enquiry: The said enquiry has been started at about 2 p.m. and same was completed at about 3 p.m.

1. That regarding quarry No. 1, I have carefully examined almost all the areas

and I found that there were no standing crops at present. Whereas in some, areas I have found that there were cultivation in the previous season as can be verified from photographs Nos. 1, 2 and 3. But I have also found that major portions of the land covered by the proposed site for construction of games village appeared to be not cultivated at all as can be varified from the photographs Nos. 3, 4 and 5.

2. That as regards to quarry No. 2, 1 have further examined various spots and found that almost all the areas are situated at foot hills of Langol hills which is sloppy. However, as shown at Photographs Nos. 1, 2 and 3 which are also part of the proposed site arc plain. In short, about 1/ 5th of the total areas of the proposed site of the games village are plain. Being a lay man, J am of the opinion that unless there is proper irrigation facilities in almost all the areas except about 1/ 5th portion of the whole areas shown at photographs Nos. 1, 2 and 3, cultivation may not be possible. On closure examination, I did not find any irrigation canal nearby the spots which had been acquired by the P.D. A. However, it appears that jhooming type of cultivation may be possible if there is good rainfall. I also found a few houses/building in the surrounding areas of the proposed site as evidenced by photographs Nos. 1, 2 and 3.

Further, I may say that small portion of plain areas included in the proposed site of the games village acquired by the P.D.A. no process for cultivation has been seen as reflected in photograph No. 9. Whereas, photograph marked as photograph No. A) Which is "said to be belonged to private individuals and situated very close to the areas acquired by the P.D.A. ploughing have been started for cultivation. The whole picture of photograph No. 9 and 9(A) is projected by the photograph No. 10 showing a divider line in the middle.

10. From a bare perusal of this report it will be seen that at present there is no cultivation in the land and the question of converting agricultural land to non-agricultural purposes does not arise. The whole thrust of the argument of the petitioner was for the protection of agricultural land and with a further thrust that the entire land is an agricultural land, but it will be converted to non- agricultural purposes.

11. From the Map submitted it appears that the classification of is as follows :--

"CLASSIFICATION OF LAND : 1. ANGAUPHOU 42.95 Acres 49.91% 2. GOVT. LAND 9.41 Acres 9.41% & HOMESTEAD LAND 9.32 Acres 10.84% 3. PHOUREL 25.64 Acres 29.18% _____ 86.00 Acres 100.00%"

12. The meaning of phourel, the land which is neither high nor low having good yielding, having sufficient water during cultivation period, seedling transplantation done in June/July and harvesting in November/December, (ii) Angongphou -- The high land having less yield, having no sufficient water during cultivation but suited to only some type of paddy. It will be seen from the classification of land that fertile land is only 29.81%. So the contention that the whole land is fertile is absolutely not tenable.

12-A. The learned counsel at the time of argument stated that this land was reserved for a Botanical Garden by the P.D.A. But with regard to that there is no pleading. Be that as it may, as because the land was reserved for a Botanical Garden that does not mean that it cannot be used for some other purpose. The Government is the best Judge who can decide whether for what purpose this land can be utilised. In the affidavit-in-opposition it has been stated that in order to hold the National Game, there is the requirement of residential accommodation for participants and officials. Earlier to it the National Game was offered to Manipur, but it could not hold the game as the required infrastructures were not completed and again for the second time a chance has been given to the State of Manipur and for this purpose there is the necessity to construct houses inasmuch as in paragraph 9 it is stated that approximately there will be about 6756 officials and competitors and hence there is the need of accommodation for about 6000 persons. It is further stated in the affidavit-in-opposition that in course of time there will be need for more houses in the State of Manipur and after the game is over these houses can be utilised for Housing Complex! The learned Advocate General in this connection draws my attention to census of India, 1991 (Housing and Amenities) wherein it is seen, that the percentage of housing shortage in the Urban areas of Manipur is 41.89% which is the highest in the Country. He strenuously urges that on construction of these houses at least some improvement can be made in this field. He also draws my attention to the National Urban Policy published by Town and Country Planning Organisation, Government of India, Ministry of Urban Development, wherein it is pointed out that physical extension of urban areas makes inroad into country's prime agricultural land. The Committee on Urban Land Policy observes that conversion of some land, from agricultural to non-agricultural uses cannot be helped. As will be evident from Annexure X/2 to the affidavit-in-opposition, the Sub-Committee on site selection for development of National Games Village, the Committee took into consideration all the things. That report is quoted below :-- Annexure X/2

"The members of the Sub-Committee on site selection constituted under Resolution No. 37(a) of 27-12-95 of the Authority visited 4 (four) sites A, B, C and D in the enclosed trace map on 3rd Jan. 1996. In addition to the above sites the Chief Town Planner. CIP. Govt. of Manipur apprised the Committee members that he had earlier inspected the Yaral Chingon area along with the officials of PDA and found that the area is beyond the jurisdiction of Master Plan (Imphal) area and the infrastructure (such as communication, water supply, electricity) available is inadequate.

The site marked A, B and C falls partly within the Village No. 91 (A) Lamphelpat and 91 -Meitei Lahgol. This one (A, B, C) is swampy and appears to be most suitable for cultivation but soil appears to be loose/vegetative and as such unsuitable for construction purposes like Building and Roads and more particularly for habitation and settlement. The Committee therefore do not recommend for siting the Games Village.

The site marked D falls within 91-Meitei Langol, located along and near the foothills of the Langol Hill Range. It has the following merits :--

(i) The slope is very gentle and soil is firm and will be more suitable for construction and will be more economic in overall cost.

(ii) Located near the State Highway with infrastructures like water supply/ Electricity already available nearby or can be developed easily to the extent need.

(iii) Located near the existing Langol Colony already established and connected with medical facilities well served by good roads through Lamphelpat -- where major Govt. offices and residential are existing.

(iv) From the information collected from the villages, the area is not suitable for agricultural purposes due to want of water. Their attempt to cultivate by teracing docs not help too.

(v) The land owners themselves were more or less agreeable to seal their lands on reasonable cost in view of the likely development which may come up after completion of the project.

The Committee have deliberated and overviewed on various possible sites but there are either too small or good agricultural lands.

In view of the above positive factors, the Committee recommends the location of the games village at site marked D."

12-B. This is a report prepared by five persons with exparties in the field and this Court should not interfere in the matter. The Committee was conscious of the fact that good agricultural lands should not be acquired, as will be evident from the report of the Commissioner as well as from Clause No. IV of the report quoted above. It will be seen that the land/in the present site is not suitable for agricultural purposes due to want of water. So the very thrust of the argument of the petitioner that the use of this land shall mean conversi9n of good agricultural land for non-agricultural purposes falls through. Accordingly this Writ Application is dismissed on two grounds :--

1. That the petitioner has no locus standi to file this public interest litigation.

2. On merit also the petitioner does not have a case which calls for judicial review of the policy decision taken by the Executive.

13. Before we part with the record we may also note certain apprehensions aired by the learned counsel for the petitioner. He urges that the authority has taken a decision to give the houses to the rich people after the completion of the game and he submits that this will make rich the more richer and shall not cause any benefit to weaker section of the society whose interest may be protected by the authority. We hope and trust that the authority shall not adopt a policy where the weaker section of the society just shall have a blank look at the new structures coming up without any benefit from them. The State Government must make a

Scheme and follow a guideline so that the first preference should and must go to the weaker section of the society, that is the mandate of our Constitution and that is also the goal of a welfare society. In order to reach the goal even the policy of depriving the poor to pay poor may be justified. This is a matter to be decided, worked out by the authority in future. But the authority is bound to adhere to this principle so that it bears the stamps of fairness, reasonableness and transparency.

14. The next argument advanced by the learned Advocate for the petitioner was that the land has been purchased by the authority at an exorbitant price and that is collusive in nature. In the absence of any materials we are not deciding this aspect of the matter but we leave it to the authority to find out if this contention of the learned Advocate is correct. After all it is public money which is being utilised for this project and the authority is accountable to the public and there should not be any whisper regarding the bona fide of the authority. Even at the cost of repealation we state the law regarding public interest litigation as crystalised by different decisions of the Apex Court as well as this Court as follows :--

(i) It is now established that a writ petition may be moved not only by an aggrieved individual but also by a public supported individual or an action group for the enforcement of the constitutional legal rights of some other persons provided such other person is unable to approach the Court for redress owing to :--

(a) such person being in custody;

(b) such person belongs to a class or group of persons who are in a disadvantageous position on account of poverty, disability or other social or economical impediment and/or unable to enforce their rights.

15. Even when no particular person has been legally injured, but a public injury has been caused by the violation of the constitutional principles, such as the independence of judiciary any person who is likely to be effected by such public injury, such as a lawyer would be allowed to complain of such violation. (See State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others, (Upendra v. State of U. P. 1981 (3) Scale 1137, AIR 1981 SC 344 , S.P. Gupta Vs. President of India and Others, , AIR 1991 420 (SC) Subhash v. State of Bihar.

(ii) The grievance in a public interest litigation is about the content and conduct of authority in relation to the constitutional or statutory rights of segments of society and in certain circumstances the content of the policy of the authority, the relief to be granted, looks to the future and is generally corrective. The Court has more dynamic and positive role.

(iii) Public interest litigation is an instrument for the administration of justice to be used properly in appropriate cases. Public interest litigation does not mean

settling disputes between individual parties. See AIR 1989 SC 594, Rural Litigation v. State of U. P. It is only when the Court shall apprise against 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 Court should leave aside the procedural shackles and hear such petition for remedying the hardships, measures of the needy the under dog and the neglected. Under the guise of redressing public grievance the Court cannot encroach upon the sphere reserved by the Constitution to the Executive and the Legislature or to meddle any matters which are entirely beyond the bounds of the Court. Things which cannot be monitored by the Court should not be taken up in a public interest litigation. Site selection is the prerogative of the Executive and if the selection is made by following the necessary procedure, the Court should refuse to entertain a public interest litigation.

(iv) The Courts should bear in mind that it does not have the expertise for certain things and in such a matter the Court should be slow. It must be demonstrated to the Court that the action of the authority will be violative of the basic tenets of law or rights of the citizen. Any one (and) every infractions cannot be the subject-matter of public interest litigation.

16. With this observation, the writ application is dismissed. We leave the parties to bear their own costs.

P. K. Sarkar, J.

17. I agree.