

(2006) 12 MP CK 0010
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2502 of 2003

Laxman Singh Gurjar and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Nagar Palika Adhiniyam, 1961 — Section 187

Citation : (2007) 2 MPLJ 167

Hon'ble Judges : P.K. Jaiswal, J; Abhay Gohil, J

Bench : Division Bench

Advocate : Arvind Dudawat, for the Appellant; C.S. Dixit, Govt. Advocate for Respondent Nos. 1 to 3 and 10/State, Rahul Dandotia for Respondent Nos. 4 and 9 None for Respondent No. 5, Tapan Trivedi for Respondent No. 6, Pawan Dwivedi for Respondent No. 7 and V.K. Sharma, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Petitioner has filed this pro bono publico petition under Articles 226 and 227 of the Constitution of India. Petitioners have claimed to be the residents of Narwar Nagar Panchayat and a social worker. They have filed this petition alleging therein that the Nagar Panchayat Narwar and Collector including the S.D.O. Karera and the Chief Municipal Officer Nagar Panchayat Narwar have illegally granted No Objection Certificate to the Respondents No. 6 and 7 for installation of Petrol Pump, as the land is recorded as "trench", which is being used for collecting the water as a reservoir and that water is being supplied to the city of Narwar. It is also the case that the aforesaid trench is recorded in the name of one Gajua son of Kashia who was also having possession over the same and admittedly the said land has been purchased by Respondent No. 7 from aforesaid Gajua son of Kashia. It is further stated that the aforesaid trench is situated below the outer boundary of the Narwar Fort, therefore, the same is also the part of the Fort. It is further stated that the place where the petrol pump is being

installed is very close to the protected monument and therefore, as per the provisions of the M.P. Ancient Monuments and Archaeological Sites and Remains Act, 1964 (in short the "Act of 1964"), no permission can be granted to the Respondents to install the aforesaid petrol pump. It is further submitted that the Nagar Panchayat at has not granted any permission as required u/s 187 of the M.P. Nagar Adhiniyam, 1961. There is a dispute about the grant of permission by the Nagar Panchayat Narwar prior to the construction therefore, there is no legal and valid permission on record. Petitioners submitted that a resolution has been passed not to grant permission and therefore, prayed for the relief that the Respondents be restrained not to raise any construction and if any construction has been raised for installation of the petrol pump, the same be directed to be removed and the aforesaid land be reserved to be used as reservoir so that the villagers may not be deprived from getting water and if any "No Objection Certificate" has been issued, the same be also cancelled.

Return has been filed on behalf of the Respondent No. 1 to 3/State. The State has denied the allegations mentioned in the petition. On the contrary, it is submitted that the supply of petrol, diesel is necessary in the rural area for proper development of the area and cultivation of the fields by tractors. State has submitted that the land bearing Survey No. 1960 belongs to one Jugal Kishore Maheshwari. There is no pit nearby this survey number, the land is plain and the pit where water is being stored is too far from the place where petrol pump has been installed. Only in rainy season, there is water storage in the pit and after rainy season, pit used to get dry. Since the land has already been sold by Gajua, therefore, now they have no concern with the land in dispute. In fact, the land has been purchased by Smt. Raghu wife of Shibboo Dheemar in the year January, 1992. Copy of the sale deed has also been filed by the State on record. State has further submitted that the resolution Annexure-P/4 and P/5 have no concern with the present controversy. The Chief Executive Officer of Janpad Panchayat Narwar has given No Objection Certificate dated 26-6-2003 for establishing petrol pump which is Annexure-R/3. The State has also filed the document according to which the District Magistrate has also granted N.O.C on 1-7-2003. The Superintendent of Police has also granted N.O.V. on 28-10-2003. The Executive Engineer P.W.D. has also granted N.O.C. on 26-6-2003 to the District Magistrate who had also recommended to the S.D.O. for grant of permission on 26-6-2003 and it was the contention on behalf of the State that the petrol pump is necessary in the area. State has denied this fact that there is no well, tank canal or water supply source on the disputed land. They have further denied that this land has nothing to do with the water problem of the town of Narwar. Establishment of petrol pump is beneficial to the town of Narwar and cultivators and within the radius of 45 kmtr. there is no other petrol pump and in nut-shell has supported the case of the Respondent No. 6 and 7.

Respondent No. 7 owner of the petrol pump has also filed return. His contention is that the Public Interest Petition has been filed due to personal rivalry of the Petitioners and answering Respondent. The land in question has been purchased

by him from Raghu wife of Shibboo and Gajua son of Kashia. Both the sale deeds have been filed on record. The petrol pump has been installed after obtaining various permissions and No Objection Certificates from the various authorities and at present the same is in a running condition. Respondent No. 6 has also filed return. His preliminary objection is regarding the maintainability of the petition. It is submitted that there are other various statutory provisions in which the Petitioners can seek redressal of their grievance. An advertisement was published by the Respondent-company in a daily newspaper "Dainik Bhaskar" on 13-11-2002 and application was filed by Respondent No. 7 fulfilling the conditions of the advertisement. Prior to the establishment of petrol pump the area was surveyed and after considering the need and interest of the general public, the advertisement for installation of petrol pump was issued and after taking various permissions, the Respondent No. 7 was selected and petrol pump has been allotted to him on lease to the Respondent No. 7 for a period of 29 years as per the terms and conditions of the Respondent company. They have submitted that before granting lease, they have fully complied with the conditions and lease has rightly been granted in favour of the Respondent No. 7.

Respondent No. 5-Executive Engineer, M.P. Electricity Board has also filed return. His contention is that the Respondent No. 7 has established petrol pump near 11 KV High Tension Electric Line. The existing 11 KV High Tension Electric Line is just 2 feet away from the parameter of the petrol pump. This distance is not permissible as prescribed under the Indian Electricity Rules, 1956 and looking to the distance, the electricity connection was not provided to the petrol pump. Thereafter the company deposited a sum of Rs. 10,178/- towards the shifting of the aforesaid line from the earlier place and now the same has been shifted to a place which is permissible under the rules.

Respondent No. 4-Chief Municipal Officer Nagar Panchayat. Narwar has also filed return, in the return his contention is that no trench is available around the Narwar Fort but the entire land is uneven. This fact is also denied that the aforesaid trench was being used as reservoir since old days for collecting the water. This fact is also denied that in the aforesaid trench the water is being reserved for its supply to the citizens of Narwar City. The tube-wells are available in Narwar City. In para-5(19), it has been denied that the 11 KV High Tension Electric Line is also passing near the petrol pump. He further stated that the Respondent No. 4 has issued No Objection Certificate in favour of the Respondent No. 7 for installation of the petrol pump and because of the installation of the petrol pump the citizens are happy and they are benefited by the same. Further, it has been stated that since the petrol pump has already been installed, therefore, this petition has rendered infructuous and there is no case either for closing of the petrol pump or for its removal and if any such action is taken it will create problems to the villagers as well as to the people of that area. Dy. Director, Archeology Archaeives and Museum Department has also filed return on behalf of Respondent No. 10. They have also denied that the construction of petrol pump is illegal. In nutshell they have stated that disputed

petrol pump is about 200-300 metres away from Narwar Fort, therefore, there is no requirement of permission or N.O.C. by the department under the M.P. Ancient Monuments and Archaeological Sites and Remains Rules, 1976. He has also produced a copy of the notification, according to which, upto 100 metres, and further beyond upto 200 metres from the protected limits near or adjoining to all the protected monuments of the State as prohibited area, no construction can be carried out and. therefore, according to them, the existing petrol pump is away from the notified area.

During the course of hearing of this petition by order dated 13-1-2004. this Court had appointed Shri R.D. Jain, Senior Advocate as Court Commissioner to inspect the spot and to submit the report whether the land in dispute is in trench and it is being used for the storage of water and distance of the said petrol pump from the Narwar Fort. Shri Jain thereafter inspected the site in presence of the counsel for the parties and the Petitioners and he has submitted his report on 21-1-2004. According to his report the disputed land is situated on the flank of the boundary wall of the Narwar Fort. This boundary is completely in dilapidated condition. The photographs were taken. Narwar Fort situated on a hillock is surrounded by a wall which is now in a dilapidated condition. The disputed land is situated in a shape of the trench. There is no storage of water in the trench and possibility of storage of water in this trench is also ruled out as the culvert has been constructed on point "A" of photograph No. 2 and, therefore, any water, which is collected in this trench in the rainy season passes through this culvert and it cannot be stored in this trench. Hence, the trench was dried. He has stated that the culvert has been constructed and marked on point "A" but it has not been mentioned who has completed this culvert. Another trench situated beyond 175 metres from the disputed land is used for storage of water. The distance of the petrol pump from the Narwar Fort standing on the hillock is about 700 to 800 metres. The distance cannot be measured due to the existence of large number of houses in this area, There are private properties within the boundary wall. Besides the petrol pump, the foundation is also filled on this land for constructing shops. Near the disputed property "Three Pucca Rooms" have been constructed in which there exists Tube-wells for supplying the water to the city. One handwritten spot inspection report has also been submitted along with the typed Commissioner's report. The same points have been mentioned in the handwritten report. In para-3 of this report, it has been mentioned that towards the face of the petrol pump, one Top Burz (Watch Tower) is also situated in dilapidated condition which is 10 metres away from the petrol pump.

We have heard the learned Counsel for the parties and perused the documents on record.

Shri Arvind Dudawat. learned Counsel for the Petitioners vehemently argued and submitted that the land on which petrol pump has been installed has been recorded as a trench in the revenue record and the aforesaid trench is being used for the purposes of collecting rainy water and that rainy water is being used

by the citizens of the Narwar Town, therefore, it is a source of supply of water to the Narwar Town. His next contention was that as stated in the Commissioner's report, the land is disputed land. Petrol pump is situated just 10 metres away from the Top Burz (Watch Tower) and Top Burz is a part of the periphery of the boundary of the Narwar Fort and this Top Burz (Watch Tower) is a notified monument and, therefore, no construction can be made near the aforesaid monument or within 100-200 metres limits as has been prescribed under the rules and he again submitted that the provisions of Section 187 of the Municipalities Act has not been followed. No objection or permission has been granted by Nagar Panchayat for raising the construction. He submitted that he has filed a copy of the resolution (Ex.P/4) by which the permission which was granted earlier was cancelled and also kept suspended. In reply learned Counsel for the State submitted that the petrol pump has been established to fulfil the need of the people of the area and the same has been established after taking permission from the various departments of the Government including the Nagar Panchayat of Narwar. There is no violation of the provisions of Section 187 of M.P. Municipalities Act 1961 (hereinafter referred to as the "Act of 1961") the same is the argument on behalf of the Respondent Nos. 6 and 7. They have submitted that no ancient trench was situated at the place. It was a private land and the land was being used for the purpose of cultivation as has been mentioned in the document (Annexure-P/1). The trench was not being used for the purposes of collecting water and it is also not the source of water to the Town of Narwar. They have also submitted in the return filed by the Respondent No. 10/the Department of Archeology that the land in dispute is not situated within the periphery of 100-200 metres of any protected monument and, therefore, there is no violation of the provisions of ancient monuments and Archaeological Sites Remains Act, 1964 and Rules of 1976. In the reply Respondent No. 7 submitted that petition has been filed with ulterior motive. His other submission is that the petrol pump has already been established according to the need of the people of Narwar. The petition has rendered infructuous and the 11 KV High Tension Line which was passing through near the petrol pump has already been shifted.

After hearing the learned Counsel for the parties, we have considered these submissions raised by the learned Counsel for the parties.

So far as the first submission of Shri Dudawat about the existence of trench is concerned, Commissioner has submitted that though there was a trench but the same is not being used for collecting water nor rainy water can be collected because of existing culvert. Nothing has been mentioned by the Petitioner that the culvert has also been constructed by the Respondent No. 7 or the culvert is an ancient culvert and the water of the same was being used in the town of the Narwar City. In Annexure-P/1 which is a copy of the Khasra. the land bearing Survey No. 1961 has been recorded in the name of Gajua son of Kashi and in Ex.P/3 the half land bearing Survey No. 1960, has been recorded in the name of Smt. Raghu widow of Shibboo. Therefore, from this Khasra entries, it is clear that the land is a private land. This fact is also not denied by the Petitioner as well as

by the others that this is not a private land. The Respondent No. 7 has purchased the aforesaid land from the private persons. Though in Khasra Number (Annexure-P/1) it has been mentioned as a trench but in other columns (Column Nos. 12 to 16) the name of the crops have also been mentioned, according to which the said crops are being taken from the aforesaid date. In the aforesaid Khasra entries nothing has been mentioned that the land is being used as a reservoir or as a tank. Even if it has mentioned that the land is in the shape of a trench that does not provide any right to the Petitioner to argue that the land is reserved for reservoir or the water is being taken from the said trench for the use of the city of Narwar. No such proof has been placed on record that the aforesaid trench either is an ancient trench or the water is being used for the people of Narwar Town. There may be a trench in the private land and the landowner may use it as a trench to fill the water and may take the water for his private purposes but it cannot be held that the water of the same was for the use of the public of the Narwar Town or the land use recorded for public purpose.

Commissioner has specifically mentioned about the condition of the trench on the Spot and in para-4 of his report he has mentioned that there is no storage of water in the trench and possibility of storage of water in this trench is also ruled out as the culvert has been constructed on point "A" of photograph No. 2. In the handwritten spot map inspection report, he has mentioned that another trench situated beyond 175 metres from the disputed land is used for storage of water which has been shown in photograph No. 4. Therefore, that may be the another trench where water is being collected and that trench is used for storage of water, but certainly this trench is not being used for storage of water.

So far as the second contention of the learned Counsel for the Petitioners is concerned, there is no dispute that in Narwar Town one Fort is situated on the Hillock. The Fort is surrounded by boundary wall. The boundary wall is in dilapidated condition. In the report it has been mentioned that the boundary wall is situated is 700-800 metres away from the petrol pump, Respondent No. 10 has also filed return and the document, according to which the Fort with its boundary wall has been declared as an ancient monument by the State of Madhya Pradesh but admittedly the land of the petrol pump is situated far away from the aforesaid boundary wall of the Fort. In spot inspection report it has been mentioned that one Top Burz (Watch Tower) is situated just 10 metres away from the petrol pump but on this the contention of Shri Arvind Dudawaft learned Counsel for the Appellant is that this Top Burz (Watch Tower) is a part of the boundary wall of the Fort: Therefore, that wall come within the distance of 100 metres. We have perused the notification dated 14-12-1984. According to this notification, the Fort and its boundary walls have been declared as the part of the monument but nothing has been mentioned, in this notification about the Top Burz (Watch Tower) which is also far away from the boundary wall of the Fort. It has been mentioned that on the Hillock between the boundary walls of the Fort and the petrol pump, lot of houses have been constructed by the citizens and private properties are also situated. The Respondent No. 10 has filed his

return and he has clearly mentioned that the disputed petrol pump is 200-300 metres away from Narwar Fort. Therefore, there is no requirement of No Objection Certificate by the department under the M.P. Ancient Monuments and Archaeological Sites and Remains Rules, 1976, Copy of the notification have also been produced to show the distance which has been prescribed for the purposes of raising construction near the monument. Therefore, there is no document on record to show that the aforesaid Top Burz is a part of boundary wall or is a separate ancient monument which has been declared as monument under the Act. Thus, we find that the second contention of the learned Counsel for the Petitioner also does not carry any weight and the petition cannot be accepted only on the ground that the petrol pump has been installed near the Top Burz (Watch Tower).

We would like to analyse as to what "public interest" means and this implies as a concept beneficial to the service of mankind. In a Public Interest Litigation the Court is required to consider whether a class of community for a pecuniary interest or some interest by which their legal rights or liabilities are affected. Interest shared by citizen generally in affairs of local; State or National Government can be considered within the parametres of public interest. Where any fundamental right of a citizen as guaranteed in part III of the Constitution of India has been infringed by any public body or authority. State or Central Government as the case may be, which has failed to provide adequate relief to the aggrieved citizen or citizens in a case beneficial to the society at large and the aggrieved citizen or an Association espousing the cause of residents of a particular locality has failed to get adequate relief for enforcement of any of the rights concerning a subject which is of vital interest to the public at large, such an aggrieved citizen is within his rights to move to the Court for vindication of the right. In public interest petition primarily the public interest should be upper most in mind and it should not be personality oriented, self oriented, private or publicity oriented litigation. The Courts should also be vigilant and cautious to foresee that all essential safeguards have been duly complied with by a citizen before coming to his Aid by way of PIL. In the case of S.P. Gupta Vs. President of India and Others, . the Supreme Court has held that 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. Locus Standi Rule is also the another pillar to be observed by the Courts strictly. In case of Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, the Supreme Court has observed that in a Public Interest Litigation the Petitioner and the State are not supposed to be pitted against each other, there is no question of one party claiming or asking for relief against the other and the Court deciding between them. Public Interest Litigation is cooperative litigation in which the petitions, the State or public authority and the Court are to be co-operative with one another in ensuring that the constitutional obligation towards

those who cannot resort to the Courts to protect their constitutional or legal rights is fulfilled. In such a background private law and adversary procedure is out of place. In various other cases the Supreme Court has further cautioned that public interest litigation should be used very sparingly in specially deserving cases and should be strictly confined to promotion public interest which mandates that any violation of legal or constitutional rights of involving large number of persons, poor, downtrodden ignorant, socially or economically disadvantaged citizen should not go unredressed. The Court should not hesitate in taking cognizance in PIL matters when there are complaints from any segment of the society which is shocking to the judicial conscience. The citizens those who are approaching the Court should act bona fide and not in personal garb of private profit of political motivation and its process should not be misused. The rule of law requires to observe certain safeguards which are very vital in the context of PIL with a view to ensure that genuine grievance do not go unredressed while no individual should be permitted to make it as a private tool to vindicate his own vested interest.

In the case in hand the petrol pump has already been installed and the same is in running condition. The same is being run by Respondent Nos. 6 and 7 as mentioned in their reply. There is no breach of law. There is also no violation of any public rule, for a private land or property. Public Interest Litigation is also not maintainable and Petitioner cannot be allowed to encroach upon the rights of the private parties.

Therefore, we do not find any ground to allow this petition. This petition being devoid of any merit and substance is hereby dismissed. Under the facts and circumstances of the case, we are not inclined to refund the amount of security deposit. The same be deposited for the purpose of High Court Bar Library.

Petition dismissed