

(2009) 02 GAU CK 0080
In the Gauhati High Court

Md. Sahidur Rahman

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Citation : (2009) 4 GLR 728 : (2009) 2 GLT 305

Hon'ble Judges : Jasti Chelameswar, C.J;A.C. Upadhyay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—Heard Mr. G.U. Ahmed, Learned Counsel for the petitioner and Mrs. B. Goyal, Learned Counsel for State respondents. Also heard Mr. K. Das, learned Standing Counsel, B.T.C.

2. This Public Interest Litigation has been filed by the petitioner praying for a direction to retain Khoraghat Sand cum Gravel Mahal and Soulmari Sand cum Gravel Mahal, located outside the jurisdiction of Bodoland Territorial Council (B.T.C), under the jurisdiction of Dhubri Forest Division of the Govt. of Assam. The petitioner has stated in the writ petition that Khoraghat Sand and Gravel Mahal and Soulmari Sand cum Gravel Mahal, both located on the riverbed of Sonkosh/Tipkai rivers, are Situated within the administrative jurisdiction of Dhubri Forest Division of Government of Assam. It has been alleged by the petitioner that Bodoland Territorial Council has been illegally claiming administrative control of Khoraghat Sand and Gravel Mahal. The petitioner submits that the aforesaid unjustified claim of the Bodoland Territorial Council has caused public resentment.

It will be pertinent to quote the prayer of the writ petitioner, which is as follows:

In the premises aforesaid your humble petitioner prays to your Lordship " to be graciously pleased to admit this PIL Petition, call for the record, issue rule calling upon the respondents to show cause as to why a writ of Certiorari and/or any other appropriate writ, direction or order of like nature should not be issued to

the effect that the Khoraghat Sand cum " Gravel Mahal and Soulamari Sand cum Gravel Mahal being located out side the jurisdiction of Boro territorial council and inside the jurisdiction of the Dhubri Forest Division, shall be retained under the jurisdiction of the Dhubri Forest Division under Government of Assam.

3. Facts leading to filing of this P.I.L. are as follows:

That, Khoraghat Sand and Gravel Mahal and Soulmari Sand cum Gravel Mahal are operating under the administrative control of the Dhubri Forest Division, as they are situated outside the Bodoland Territorial Council area and the issue relating to transfer of the aforesaid two Sand-and-Gravel Mahals occurred only when the Conservator of Forest, Council Head of Department of Forest, Bodoland Territorial Council, Kokrajhar, the respondent No. 8 in the writ petition, wrote Annexure-A/2 letter No. F.24/Dhubri/Khoraghar/SGM/2006-08 dated 9.8.2006, to the Chief Conservator of Forest (T), Assam claiming to operate Khoraghat Sand and Gravel Mahal by them. However, upon plain reading of the said letter at Annexure-A/2, it transpires that intact a request was made by respondent No. 8, on behalf of the Bodoland Territorial Council, in order to ensure proper management and operation of Khoraghat Sand cum Gravel Mahal to enable the Officer in charge of the Range to control illegalities in the forest adjoining the river Mahal as the Range Office is strategically located for controlling the illegalities in the river Mahal and forests situated in the surrounding area.

4. The petitioner affirmed that though the Government of Assam has not yet announced its final decision regarding the allotment of these Mahals, nevertheless, Bodoland Territorial Council authorities, have been purportedly interfering with the normal functioning of the Dhubri Forest Division. The Learned Counsel for the petitioner deduced that if the said Mahals are transferred to Bodoland Territorial Council areas, it would jeopardize the rights and privileges of the non-Bodo people living near the said two Mahals.

5. As a matter of fact, Bodoland Territorial Council is an Autonomous District created within the State of Assam, in terms of the provisions of the Sixth Scheduler to the Constitution of India. In our opinion, there cannot be any rationale, whatsoever to broach a question of curtailment of constitutional rights of non-Bodo people, notwithstanding transfer of supervision and management of Sand cum Gravel Mahals from one wing to another wing of the Government. On the top of it, the writ petitioner could not decipher reasons, as to how public interest would be jeopardized, even if the Sand and Gravel Mahals in question are transferred by the Government to another autonomous body.

6. When this Court posed an explicit query to the Learned Counsel representing the petitioner to spell out infringement of the rights of either the petitioner or general public in particular, he only submitted that inconvenience would be caused to the general public of the locality in the event of transfer of the said two Mahals in question in favour of the BTC. Further, the Learned Counsel for the petitioner, except expressing his opinion on the issue raised by the petitioner, did

not come forward to point out any variety of infraction of rights of the petitioner in the matter. As a matter of fact, allotment of a parcel of land for administrative convenience and/or entrustment of administrative control of any property of the Government to another department of the Government, for the sake of convenience or otherwise, is exclusively within the realm of the State Government and there is no rationale to infer such proposal of the Government, if any, to be against the interest of the public. In the instant P.I.L., even upon careful examination of the subject-matter, we find no legal or factual context to hold any such action of the Government to be violative of public interest. Furthermore, the circumstances narrated above reflect that the writ petitioner did not come forward to question the legality of any proposed action of the State Government.

7. It will not be out of place to disclose here that respondent Nos. 8 and 12, in their affidavit-in-opposition, confirmed that for having tried to illegally collect Mahal materials, the Mahaldar (lessee) of Khoraghat Mahal, Mr. Tarun Kumar Brahma, filed Ejahars before the O/C, Bagribari P.S. on 16.3.2008 and 3.5.2008 and accordingly cases were also registered and investigation was launched against the miscreants by police. On perusal of the aforesaid Ejahars, appended as Annexures-IV and V to the affidavit in-opposition, it transpires that among the accused in the above cases, one was none other than the writ petitioner himself. Conversely, the writ petitioner in his counter affidavit, tried to say that FIRs alleged to have been lodged against him are in fact malicious attempt to victimize him only because he has filed this P.I.L. Regrettably the P.I.L. was filed only on 21.7.2008 and the FIRs alleging commission of offence by the writ petitioner were filed long before, that is on 16.3.2008 and 3.5.2008, respectively. Had the FIRs aforesaid been filed after filing of the P.I.L, there would have been some reasons to consider the accusations against the writ petitioners to be motivated action to victimize him. But, on the face of the available facts, the interpretation of the writ petitioner appears to be too shallow for us to digest. Rather accusations against the petitioner in criminal proceedings relating to theft of Mahal materials smacks of personal interest of the petitioners in the matter. However, if any statutory right of any individual violated by any overt action on the part of State machinery, such affected individual would obviously acquire a right to approach an appropriate forum to seek appropriate relief or remedy, in any case, any such individual rights, should not be camouflaged to look like a collective right of the populace.

8. The hon''ble Supreme Court in a landmark judgment in S.P. Gupta Vs. President of India and Others, comprehensively dealt with the question of locus standi and stated in paragraph 23 as under:

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.

Therefore, any person, acting for personal gain and/or private profit to promote

personal advantage, cannot be permitted to seek relief in the pretext of a P.I.L.

10. In *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, hon^{ble} Supreme Court emphasizing the need for scrutiny by the courts to ascertain a clean heart, clean mind and clean objective before the courts, of the petitioner, in public interest litigation, stated, thus:

10. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal Vs. H.S. Chowdhary and Others*, and *Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others*, A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. [See *The Ramjas Foundation and Others Vs. Union of India and Others*, and *K.R. Srinivas Vs. R.M. Premchand and Others*,

11. On careful examination of the prayer of the petitioner, vis-a-vis, the submissions made by the Learned Counsel, it is apparent that except making wide-ranging statements expressing apprehension of suffering of the people in general, the petitioner could not demonstrate or substantiate any genuine reason for such apprehension; neither the petitioner could prima facie expose legal infirmity in such action of the Government to provoke the jurisdiction of this Court.

12. A conjoint reading of the statements made in the writ petition as well as the counter filed by the writ petitioner in reply to the affidavit-in-opposition filed by respondents 8 and 12 together with Annexures appended thereto, it noticeably turns out to be known that the writ petitioner is not primarily concerned with any strained public interest in the matter in question. Petitioner could not authenticate as to why such action, is stated above, of the Government is to be

branded as an act against public interest, to attract the jurisdiction of this Court to interfere in such matters. Consequently, we have no hesitation to hold that this writ petition is filed without there being any public interest involved and the same is liable to be dismissed at the admission stage, which we accordingly do.

The writ petition stands dismissed. No order as to costs.