

(2009) 01 GAU CK 0047
In the Gauhati High Court
Case No : P.I.L.No.63 of 2007

Mrinal Kanti Dutta Biswas & Ors.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 01-01-2009

Acts Referred:

Citation : (2009) 2 GLT 615

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

Bench : Division Bench

Advocate : B.Goyal, N.Dhar, Advocates appearing for Parties

Judgement

A. C. Upadhyay, J.—This Public Interest Litigation has been filed by the petitioners seeking direction against the respondent authorities to stop conversion of "Gol dighi" water tank situated at Silchar town into a market complex and also for a direction to take all necessary steps for protection, preservation and improvement of the said tank, in terms of the resolution adopted in the public meeting held on 22.4.97 at Silchar.

2. We have heard Mr. N. Dhar, learned Advocate appearing for the petitioners, Mrs. B. Goyal, learned G A. Assam, for the State respondent and also Mr. S. Chakraborty, learned counsel appearing on behalf of the respondent, Municipal Board, Silchar.

3. Facts leading to the filing of this PIL may be narrated in brief as follows:

A parcel of land measuring 5 bighas, 3 Kathas, 15 Chattak at Silchar town, covered by Dag R.S. No. 7675, originally belonged to a private owner, Ram Manikya Endow of Silchar. On 20.7.1903 the Deputy Commissioner, Cachar, issued a declaration stating therein that the above land is required to be taken over by the Government for public purpose, namely for excavating a tank for supply of drinking water and for sanitary improvement in Silchar town. Accordingly, after following due process of law, the land in question was acquired and it was made Government's land. Thereafter, a water tank was excavated in

the said land by the Government. The said tank was commonly known as "Goldighi". It has been stated by the writ petitioner that the said tank, which is situated in the heart of the Silchar town, is in existence for past many years and is being utilized by the local residents and public as a water reservoir, for supply of drinking water to the residents. The water in the tank was used during emergency, such as fire incident and draught etc. in the locality. However, it has been alleged that due to indifferent attitude of the respondent authorities, the aforesaid tank has been degraded and has now virtually become a tank of waste water containing hazardous substances.

4. The petitioner stated that on 22.4.97, in a public meeting of the citizens of Silchar with the representatives of the local administration and Silchar Municipal Board, adopted a resolution for renovation of the aforesaid tank, namely, "Goldighi" and a subcommittee was also formed for guidance, to carry out all round development of the water tank. It is alleged by the petitioner that on 9.11.06, an advertisement was issued in the local daily of Silchar by the Vice Chairman of Silchar Municipal Board, for construction of a market complex over the land of "Goldighi" and contiguous land. Subsequently, on 30.5.07 the local people, being aggrieved by the destruction of the aforesaid tank, submitted a representation before the Deputy Commissioner, Silchar praying for prohibiting conversion of the said tank into a market complex and to take steps for preservation and development of the said tank. However, having failed to get response from the authority concerned filed this P.I.L.

5. Mr. Dhar, learned counsel for the petitioner submits that protection and preservation of the natural environment and material resources such as lakes, water bodies, rivers etc. are essential for maintenance of delicate ecological balance and healthy environment, which enables the people to enjoy a quality life, which is the essence of the right guaranteed under Art. 21 of the Constitution of India.

6. In support of his contention, learned counsel referred to a decision of the Hon'ble Supreme Court reported in the case of Hinch Lal Tiwari Vs. Kamala Devi & Ors. (2001) 6 SCC 496, wherein their lordships elucidated the scope and ambit of the Article 21 of the Constitution of India, visavis protection of environment and issued direction to pull down the construction and to vacate the land for development and maintenance of a recreational spot in the best interest of the villagers. In the aforesaid case decided by the Hon'ble Supreme Court, dispute arose when the Sub Divisional Officer of the local Sub Division decided to allot 250 sq. yards from the public pond to each of the 10 respondents, who belonged to the same family. The order of allotment was cancelled by the Addl. Collector. However, when the matter came up before the High Court, by the impugned order, the High Court partly allowed the writ petition confirming the allotment in respect of 10 bighas of land and canceling in respect of 5 bighas, which led to the filing of the appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court, laying importance of protection of material resources of the community to

maintain delicate ecological balance, held as follows:

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in nonabadi sites."

7. Learned counsel for the petitioner, referring to another decision of the Hon'ble Supreme Court in the case of Intellectuals Forum, Tirupathi Vs. State of A.P. & Ors. reported in AIR 2006 SC 1350, submitted that the responsibility is bestowed with the Government as a trustee to protect and preserve natural resources which are important component of the environment of the area. In the Intellectuals Forum, Tirupathi (supra), the Hon'ble Supreme Court laid emphasis on preservation and restoration of natural resources and accordingly ordered to maintain status quo ante of two historical tanks, which were in existence since 1500 A.D. and also expounded principles of Public Trust Doctrine, which reads as follows:

"Public Trust Doctrine

Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in Illinois Central Railroad Company Vs. People of the State of Illinois, [146 US 537 (1892)] where the Court held:

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.

[...] the state holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible.

What this doctrine says therefore is that natural resources, which includes lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

66. The doctrine, in its present form, was incorporated as a part of Indian law by this Court in the case of M.C. Mehta Vs. Kamal Nath, (supra) and also in M.I. Builders Vs. Radhey Shyam Sahu, (1999) 6 SCC 464. In M.C. Mehta, Kuldeep

Singh J., writing for the majority held:

[our legal system] includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. [...] The State as a trustee is under the legal duty to protect the natural resources. [Para 22].

The Supreme Court of California, in the case of National Audubon Society Vs. Superior Court of Alpine Country, 33 Cal. 419 also known as the Mono Lake case summed up the substance of the doctrine. The Court said :

Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, [Joseph L. Sax "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol. 68 No. 3 (Jan, 1970) PP 47].

56. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are of ten thought to be imposed by the public trust doctrine [ibid]:

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. the property may not be sold, even for fair cash equivalent.
3. the property must be maintained for particular types of use. (i) either traditional uses, or (ii) some uses particular to that form of resources.

In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.

67. Therefore, our order should try to rectify these defects along with following the principle of sustainable development as discussed above."

8. It is required to be examined whether the ratio of the decision laid by the Hon'ble Supreme Court in *Intellectuals Forum, Tirupathi Vs. State of A.P. & Ors.* (supra), can be applied in the facts and circumstances of the present case to protect and preserve Goldighi. The basis of the claim for protection of the tank by the petitioner is the resolution, which was adopted in a public meeting organized on 22.4.97. Admittedly, the water tank in question has fallen in disuse and has become a dumping ground of filth and garbage and in the adjoining areas, market in shanties grew.

9. To begin with, the land was acquired by the Government in the year, 1903, for Silchar Municipal Board with a purpose of improving the sanitary system and to excavate a water tank. The Deputy Commissioner, Silchar, in his affidavit, stated that during seventies a scheme for providing door to door water connection to the people of "Goldighi" area was undertaken and accordingly on completion of the project, the tank lost its importance as a source of water and people left using it, as a result of which the water tank became virtually a dumping site for garbage, giving rise to large scale pollution affecting the health and sanitation of the residents of the locality. As a matter of fact, as reflected in the affidavit, it will not be safe today to allow the local people to use water from an open water tank, like in the past, which may cause more harm than good for the Municipal administration. As stated by the respondents, in the fire incident, which occurred on 11.4.1997, all Municipal stalls, except three situated in the portion of the Municipal land, were gutted by fire. The Dy. Commissioner, Silchar in his affidavit further, reveals that in the meeting dated 22.4.97, a project for construction of RCC market complex was also mooted and it was appreciated by the Members present in the meeting. It has been submitted on behalf of the Dy. Commissioner that by taking up developmental works, the area has been made hygienic and pollution free and neighbouring people have been saved from living in unhealthy and unhygienic condition in as much as kutcha latrine and urinals were also demolished and removed.

10. Mr. Chakraborty, learned counsel appearing on behalf of the Silchar Municipal Board, referring to the affidavit of Silchar Municipal Board submitted that the water tank in question has turned out to be a major source of pollution and further pointed out that after the Municipal stalls situated in the Municipal area were gutted by fire on 11.4.97, a meeting was organized by the Executive Officer of Silchar Municipal Board, for the purpose of preservation of the "Goldighi" in public interest and in the same meeting it was accordingly resolved to issue notice upon the encroachers to vacate the encroachment and proposal was also mooted for construction of permanent structures in the market complex in the "Goldighi" area.

11. As it appears from the affidavit submitted by the Dy. Commissioner, Silchar, a sum of Rs. 137.2 lakhs has already been spent for construction of market complex in "Goldighi" area of Silchar town, wherein 160 number of shops in the ground floor of the multi storied RCC market building; 140 number of shops in

the 1st floor; 140 shops in the second floor and 20 more stalls along with 16 number of Big Blocks in the 3rd floor by keeping parking facilities for 115 cars and 40 number of two wheelers in the basement with provision for underground water reservoir, has already been constructed. Maintenance of proper ecological balance, protection of environment and natural resources, for nurturing a healthy environment, is essential to enable the people to enjoy a quality life. However, in doing so we cannot lose sight of the development that is necessary for the people in particular and the society at large. It is again the responsibility of elected bodies of the local municipalities and authorities concerned to remain ever vigilant for nurturing a healthy environment for it's people and the posterity as well.

12. The land in question in this case, was acquired by the Municipal Board from private owner, for providing drinking water and improvement of sanitation. It may not be forgotten that Goldighi was proposed to be acquired not for maintenance and protection, but for public convenience. Admittedly with the passage of time requirement of civic amenities in the civil society has experienced a sea change compelling the authorities to rise to the occasion to modify and revise their own schemes and projects to balance economic and social needs on the one hand, with past commitments on the other. In consequence, every development and progress which requires exploitation of the existing resources by man and machine is a threat to environment and ecosystem. However, in the process a stalemate between progress on the one side and the available surroundings on the other should not be created.

13. The guidelines enumerated by the Hon''ble Supreme Court in Intellectuals Forum, Tirupathi (supra), emphasizes need to protect the natural resources, which are held by the States as trustees. In identifying and segregating natural resources of a locality, such areas and locations which are manmade and are of recent origin, specifically earmarked for infrastructural and other development to meet the civic amenities for the people in the society, may not be understood to be natural resources or local ecological resources. The responsibility of the State is to look after and preserve available natural and material resources, in terms of the ratio laid by the Hon''ble Supreme Court in Intellectuals Forum, Tirupathi (supra), Municipal authority should be watchful so that economic progress is not permitted to take place at the price of ecosystem by causing widespread damage to natural resources; at the same time, the requirement to conserve natural resources should not be allowed to hinder developments of trade and industry in the society.

14. The learned counsel for the State respondents and for the Municipal Board, Silchar, by referring to paragraph 4(m) of the affidavit of respondent No. 4 submitted that the petitioner's bonafide in filing this case is absolutely doubtful because of the reasons that the petitioner happened to be the ViceChairman of the Municipal Board, Silchar sometime in the past and used to be in the helm of affairs and there is no indication, whatsoever, that during such time the

petitioner ever took any step, for preservation and development of the water tank, which was in the same position as before. Rather, it was alleged by the respondent No. 4, in Para 4(m), as follows:

"(m) That the respondent No. 4 begs to state that the petitioner No. 1 was instrumental in allotting a number of stalls in the Goldighi area. Those stall holders are defaulters in terms of payment of rent to the Silchar Municipal Board. The petitioner No. 1 is interested to protect those defaulter stall holders by opposing construction of market complex in Goldighi area. The petitioners No. 2 and 3 never demanded the Silchar Municipal Board to renovate Goldighi for supply of drinking water. The respondent No. 4 has reason to believe that the petitioners have unholy nexus with those defaulter stall holders in filing the instant P.I.L. in order to make illegal gain by frustrating developmental project of Silchar Municipal Board."

15. Hon'ble Supreme Court in a landmark judgment of *S.P. Gupta Vs. Union of India* reported in AIR 1982 SC 149 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 bonafide 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 PIL.

16. In *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra & Ors.* : AIR 2008 SC 913, 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 writ 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 *The Janta Dal Vs. H.S. Chowdhary* (1992) 4 SCC 305 and *Kazi Lhendup Dorji Vs. Central Bureau of Investigation*, (1994 Supp (2) SCC 116). 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 *Ramjas Foundation Vs. Union of India*. (AIR 1993 SC 852) and *K.R. Srinivas Vs. R.M. Premchand*, (1994) 6 SCC 620."

17. On careful examination of the prayer of the petitioner, it is noticeable that except making general statement expressing worry on protection of environment and emphasizing implementation of the resolution dated 22.04.97 which only postulated constitution of an advisory committee to suggest development did not demonstrate and substantiate any real reason for such apprehension of degradation of natural resources. Neither the petitioner could *prima facie* expose legal infirmity in such proposed action of the Government to invite the jurisdiction of this Writ Court. There cannot be any reason whatsoever to bring up a question of curtailment of constitutional rights of people, regardless of the decision of the respondent Municipal Board to construct a Municipal Market, in an area belonging to it, acquired from private owners on payment and reserved for such supplementary purposes. All the above facts reflect that the petitioners did not approach this Court with a clean heart, clean mind and clean objective.

18. The learned counsel for the respondents submitted that a parcel of land acquired by the Municipality from private owners" use and occupation against payment of compensation, can not be equated as a natural resource or water body, warranting its preservation for the posterity and further submitted that the decision of the Municipal Board Silchar, to have municipal markets instead of allowing shanties to expand as markets at Goldighi, cannot be said to be irrational, to infer such action of the Municipal Board to be against the people and contrary to the guidelines of the Hon"ble Supreme Court. Over and above, there is no confirmation of "Goldighi" water tank having some historical background and/or sentimental or emotional attachment with the people of the locality necessitating its preservation for such special reason, for the posterity. Upon evaluation of the status of the land in question i.e. "Goldighi", in our view, suitability in preservation do not outweigh it's utility for civic expediency and by no stretch of imagination it can be rechristened as natural resource or material resource of the community, requiring it's restoration at the cost of demolition of the existing huge structures already put up by the Municipal Board.

19. Having regard to the facts and circumstances stated above and after hearing learned counsel for both the parties, we are of the view that there is no merit in this P.I.L. filed by the petitioner and it is liable to be dismissed. Accordingly the P.I.L. is dismissed. No order as to costs.