

(2017) 03 PAT CK 0036

In the Patna High Court

Case No : 18759 of 2015

RAJEEV PRASAD

APPELLANT

Vs

STATE OF BIHAR & ORS

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Constitution of India, Article 300A -
Persons not to be deprived of property save by authority of law
Registration Act, 1908, Section 17 -
Documents of which registrati

Citation : (2017) 03 PAT CK 0036

Hon'ble Judges : Rajendra Menon, Sudhir Singh

Bench : DIVISION BENCH

Advocate : Dronacharya, D K Sinha

Final Decision : Dismissed

Judgement

1.] Heard learned counsel for the petitioner and the respondents.
2.] This writ application has been filed, on behalf of the petitioner, in guise of "Public Interest Litigation" seeking quashing of the directions/instructions contained in letter dated 20.09.2012, issued by the Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna, wherein District Magistrates of all the Districts of the State of Bihar have been directed to stop manual checking of the documents presented for registration and to check up the documents through "SCORE" Software, and also to quash letter bearing no. 980 dated 18.07.2014, issued by the District Magistrate, Khagaria, by which there has been a direction to all the Sub-Registrars of the District of Khagaria as to take precaution while registering a document pertaining to Government land/ Gairmajarua Aam and Gairmajarua Khas land.
3.] The brief facts of the matter, leading to the present writ petition, are that the Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, issued an instruction vide letter IV/Biscose-14/2012-103 dated

20.09.2012, to all the Collectors of the Districts to check up the documents presented for registration through the "SCORE" Software in place of manual checking and further to feed the data of land pertaining to, Land Ceiling, Khas Mahal, Gairmajarua Aam and Gairmajarua Khas land. The above referred letter of the Secretary, (Annexure-1) has been made to challenge in this writ petition. The another challenge which has been made to this writ petition is the letter having No.980/Confidential dated 18.07.2014, issued from the office of the District Magistrate, Khagaria, directing all the Sub-Registrars of the Districts not to make the document registered relating to Sale of Government Land/ Gairmajarua Aam and Gairmajarua Khas land, on the only basis of the report of the concerned Circle Officer. It has further been directed that if a competent court might have declared the "Raiyati interest" over such property, or the Additional Collector may have confirmed the "Raiyati interest" of the individual over such Gairmajarua Aam and Khas land in that case only registration of such document be made. As it appears from paragraph 8 of the writ petition that an individual, namely, Rama Nand Singh, wanted to sell a piece of land and for that an executed Sale Deed was been presented on 07.01.2015 but the said Sale Deed was not registered by the Registering Authority. Being aggrieved by the act and action of the Registering Authority, the purchaser namely, Kishore Das, filed a writ petition bearing CWJC No. 12383 of 2015 on 05.08.2015 before this court, which is pending for adjudication. The petitioner has also mentioned another illustration that one Shyamdeo Prasad wanted to sell a piece of land, which is recorded as "Gairmajarua Aam" land in the records of right, prepared after Cadastral Survey. It has been contended that the land was originally settled in favour of one Khalaluddin by virtue of a Hukumnama dated 25.05.1938 and lastly purchased by the said Shyamdeo Prasad vide a registered Sale Deed dated 16.08.1977 executed in his favour but the land under sale transaction being recorded as "Gairmajarua Aam" land in the records of right, is the only reason behind non-registration of the Sale Deed, for which a writ petition bearing CWJC No. 9011 of 2015 has been filed and is pending before this Court.

4.] The petitioner professes himself to be a public spirited person and claims about the present lis being a pro bono publico. In the present writ petition, the petitioner has challenged the authority of the respondents, to issue such instructions/directions, of the effect that sale of Gairmajarua Aam and Gairmajarua Khas land, must not be allowed to be registered unless there be a declaration of "raiyaati interest" by a competent court, or confirmation made by the concerned Additional Collector regarding the "raiyaati interest" over such land.

5.] The counsel for the petitioner submits that there is no such provision either in the Indian Registration Act, 1908, or in Bihar Land Reforms Act, 1950, which may prohibit the registration of Deed relating to Sale of Gairmajarua Aam, or Khas land. It is further pointed out that Section 17 of the Indian Registration Act talks about compulsory registration of instrument of value of one hundred rupees and upwards. It is also submitted that Section 3 of the Bihar Land Reforms Act, 1950, provides that the State Government may from time to time, by notification

declared that the estate and tenures of a proprietor or tenure holder, specified in the notification, have passed to and become vested in the State. It is further contended that the impugned letters of the concerned Secretary, Government of Bihar, and the District Magistrate, Khagaria, is a clog on the right of property as enshrined under Article 300-A of the Constitution of India.

6.] A Counter Affidavit has been filed on behalf of the respondents. It is contended that the letter dated 20.09.2012 contained in Annexure-1, is addressed to the Collector of all the Districts in the State of Bihar as to make checking of the instruments/deeds through SCORE Software, not manually. It is also contended that so far the order dated 18.07.2014 of the District Magistrate, Khagaria is concerned, it is addressed to all the District Sub-Registrars to take precautionary measure in registration of Gairmajarua Aam and Khas land. The learned counsel for the State submits that the State Government has taken a decision to modernize its functioning by aid of information technology and for that a "Software" in the style of SCORE has been developed by the Registration Department. It is also submitted that the petitioner has neither set out a case of being aggrieved himself by the aforesaid letters impugned hereunder and contained in Annexures-1 and 2, nor a case that public at large are going to be adversely affected. Regarding the locus standi of the petitioner there has been a serious objection. The learned counsel for the State further submits that the impugned decisions of the respondents neither infringe the fundamental right of the citizen nor violate any constitutional or legal right. The petitioner has approached this court as to ventilate the grievance of such individual, who have already approached this court by filing writ petitions separately, therefore, no element of public interest is involved in this writ petition.

7.] Prior to adjudge the validity of such instructions/directions under challenge, we would firstly like to examine the locus standi of the petitioner of the present case.

8.] As per Wharton" Law Lexicon, 15th addition, page 1019, the word "locus standi" means the right of a party to appear and be heard on the question before any Tribunal, frequently disputed in private bill legislation.

9.] In the case of People s Union for Democratic Right vs. The Union of India, 1982 AIR(SC) 1473, the Hon"ble Supreme Court while considering the question of locus standi, had taken into consideration the poverty, illiteracy and the ignorance obstructive and impeding accessibility of the judicial process and on that ground the writ petition can be filed. Normally a person who brings a petition before this Court under Article 226 of the Constitution of India, must have some direct or indirect interest in the "matter in issue", or the outcome of the petition. But there are cases where a public spirited person brings such petition, not for his individual interest either direct or indirect but for the benefit of public at large.

10.] Now the law is not in dispute that one should not be ordinarily allowed to

ventilate the grievances of another or others individuals.

11.] In the case of B.P. Singhal Vs The Union of India, 2010 AIR(SC) 330; a writ under Article 32 of the Constitution was filed in the form of Public Interest Litigation, challenging the removal of the Governors of Uttar Pradesh, Gujrat, Haryana and Goa. The Hon''ble Supreme Court held that the petitioner had no locus standi to maintain the petition with regard to the prayers claiming relief for the benefit of the individual Governors.

12.] For invoking the jurisdiction of the Court, the petitioner has to establish locus standi. A person had to have a personal or individual right which was violated or threatened to be violated and he should have been a "person aggrieved" in the sense that he had suffered or was likely to suffer some prejudiced, pecuniary or otherwise.

13.] In the case of Janta Dal vs- H.S. Choudhary, 1992 4 SCC 305; the Hon''ble Supreme Court held that a person acting bona fide and having sufficient interest in the proceeding of Public Interest Litigation alone has 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.

14.] In the case of S.P. Anand Vs. H.D. Devegowda, 1997 AIR(SC) 272 the Hon''ble Supreme Court was of the view that no one has right to the waiver of the locus standi rules and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person, who is genuinely concerned in public interest and is not moved by other extraneous consideration. The Hon''ble Supreme Court observed about precaution, which should be taken by the people who move the court for public interest that : (1) Those who invoked the court''s jurisdiction seeking a waiver of the locus standi rules must exercise restraint in moving the court by not plugging in areas wherein they are not well- versed;

(2) As a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without, under taking a research, even if he is qualified or competent to raise the issue. A good cause can be lost if a petition filed on half-backed information without proper research or by a person, who are not qualified and competent to raise such issue as the rejection of such a petition may affect third party rights.

15.] We are also of the view that only a person who comes to the court with bona fides and public interest, can have locus standi. In the matter of Public Interest Litigation, there has been evolvement of principle of "Litigational Competence" for invocation of justice delivery system. The concepts of "Litigational Competence" is not total substitute of concepts of "Standing" and "Aggrieved Person" rather it has to go by the test of bona fides and interest of public at large.

16.] Before, coming to the issue; whether any "public interest" is involved in this matter. We would like to observe that since all power belongs to the people, the instrumentalities of governance to which such power is delegated have to exercise it in the interest of the people, not in the interest of ruling group, not in the interest of opposition, not in the interest of legislatures, not in the interest of executive authorities, not in the interest of those holding the other constitutional instrumentalities.

17.] Be it a law passed by the Legislature; be it a rule framed by the Executive under any law, or any order passed by the Executive or any decision taken by it. Everything has not only to be done in public interest, has also to be seen to be done in "public interest". That is essential because everything that is done or not done, should be so done and so not done that the people do not lose faith in the rule of Law and the constitutional scheme of governance and management of affairs of the state which are placed in the hands of the elected and non-elected functionaries as a matter of trust by the people.

18.] The expression "Public Interest" has not been defined either in the Constitution of India or in any statute. It means an act beneficial to the general public and action necessarily taken for public purpose. However, requirements or "Public Interest" may vary from case to case.

19.] In Strouds' Judicial Dictionary, "Public Interest" is defined as :- " A matter of public or general "Public Interest" does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of community have a pecuniary interest or some interest by which there legal right or liabilities are affected.

20.] The Hon'ble Supreme Court in the State of Bihar Vs. Kameshwar Singh, 1952 AIR(SC) 252 held that "Public Interest" is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from statutes and what is public interest today may not be a decade later. "Public Interest" is thus a dynamic concept. Its amplitude is wide. Anything which affects directly or indirectly or is likely to affect the rights and interest of the general public or any section of it would be "Public Interest".

21.] The definition of "Public Interest litigation" has been quoted by the Hon'ble Supreme Court in the case of Holicow pictures Pvt. Ltd. vs. Prem Chandra Mishra, 2008 AIR(SC) 913 as follows :- " Public Interest Law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalist, consumers, racial and ethnic minorities and others."

22.] The Hon'ble Supreme Court also defined the concept of PIL in people s union for Democratic Rights Vs. Union of India, 1982 AIR(SC) 1473 "Public interest litigation, as we conceive it, is essentially a Co-operative and

Collaborative effort on the part of the petitioner, the state or public authority and the Court to secure observance of the constitutional or legal rights, benefit and privileges conferred upon the vulnerable sections of the community and to make social justice reach them".

23.] In order to preserve the purity and sanctity of the PIL the Hon"ble Supreme Court, in the case of State of Uttranchal Vs. Balwant Singh Chaufal, 2010 AIR(SC) 2550 laid down the following guidelines : 1. The Courts must encourage genuine and bona fide PIL and effectively discourage and crush the PIL filed for extraneous considerations.

2. Instead of every individual Judge devising his own procedure for dealing with the PIL, it would be appropriate for each High Court to properly formulate rules for encouraging and discouraging the PIL filed with oblique motives.

Consequently the Supreme Court requests the High Courts which have not framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of Rules prepared by the High Court is sent to the secretary General of the Supreme Court immediately thereafter.

3. The Courts should Prima Facie verify the credentials of the petitions before entertaining a PIL.

4. The Courts should be Prima Facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

5. The courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

6. The courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

7. The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The courts should also ensure that there is no personal gain, private motive or oblique motive behind filing the PIL.

8. The courts should also ensure that the petitions filed by busy bodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

24.] We must not be unmindful of the facts that these days petitions based on speculative foundations and premises, or for oblique motive with publicity purpose, are filed without any "Public Interest" in the garb of PIL. Noticing the alarming situation the Hon"ble Supreme Court in the Case of Sachidanand Pandey Vs. State of West Bengal, 1987 AIR(SC) 1109, had sounded a word of Caution that : (i) If courts do not restrict the free flow of cases in the name of PIL, "the traditional litigation would suffer and the courts of law, instead of

dispensing justice will have to take upon themselves administrative and executive functions;

(ii) (a) It is only when the Courts are apprised for gross violation of fundamental rights by a group or a class action; or .

(b) When there are complaints of such acts as shock the judicial conscience that the Court, especially the apex courts, 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.

25.] We find & hold that the pleadings of the petitioner in the present case is vague and indefinite. The petitioner has been unable to lay factual foundation for his averments, on which basis the reliefs have been sought for. Though the strict rules of pleading is not applied in PIL, but there must be sufficient material in the petition, on which basis, the court may proceed. Information furnished by the litigant should be specific and definite. Proper pleadings are necessary to meet the requirements of the principle of Nature Justice. One should not be allowed to approach the Court to have a fishing or roving enquiry and the litigant must not be allowed to have a chance to establish his claim.

26.] We sometimes notice that persons having no public interest except for personnel gain or private profits either of themselves or as a proxy of others or for any other extraneous motivation or for the purpose of publicity file vexatious and frivolous petitions, thereby wasting the precious time of the Courts, which creates frustration in the minds of genuine litigants, who are in queue and resultantly they lose faith in the administration of Judicial System. Often, such frivolous petition are actuated by a desire to win notoriety or cheap popularity. In that case, the petition of such busy bodies should be thrown out of rejection at the threshold and in appropriate cases with exemplary costs.

27.] From perusal of the impugned Letters contained in annexure 1, it appears that the Secretary of Department of Registration, Excise and Prohibition, has directed the collectors of all the districts to feed data in the software and to check up the documents/instruments through the same software developed for the said purpose, instead of manual checking.

28.] We are of the view that such directions by the secretary do not adversely affect any right title or interest of such person, who are intended to sale or purchase any government land including Gairmajarua Aam and Gairmajarua Khas land through a registered sale deed, therefore there is no question of being aggrieved by the direction contained in Annexure 1 to the Writ Petition, to anyone.

29.] The second challenge made to the letter of District Magistrate Khagaria, addressed to all the Sub-Registrars, contained in Annexure 2 of the Writ Petition, appears to be frivolous and vexatious. It talks about verification report made by

the Additional Collector, relating to the Raiyati interest of the vendor over the Gairmajarua Aam and Gairmajarua Khas land/Govt. Land, Whereafter only, registration of the sale is to be made. We find no infirmity in the said letter of the District Magistrate Khagaria because it is only a precautionary measure taken by the Registration Department in respect of sale of Gairmajarua Aam and Gairmajarua Khas land.

30.] The Registering Authority has power under Part XII of Registration Act, 1908, to make refusal as to register a document. The only requirement of law is that he shall record reasons for doing so with endorsement "registration refused". The law provides statutory recourse to the aggrieved person against such refusal of registration of the documents by the registering authority. In some of the cases the Registration Act 1908, provides statutory appeal and in other cases suit before the civil Court, having competent Jurisdictions.

31.] Though, there is no such specific case set out by the petitioner as to challenge the impugned letters referred above, still assuming a situation that a Registering Authority if refuses to register a document, in that case also, the aggrieved person is not remediless.

32.] In view of foregoing discussions & observations, we are of the opinion that the petitioner has no locus standi, as also, there being no substantial and larger public interest involve in this matter. The present writ petition has been filed for extraneous consideration and ulterior motive. This writ application is, therefore, accordingly dismissed.