
(2008) 07 OHC CK 0008
In the Orissa High Court
Case No : OJC No. 5473 of 1999

Ramji Singh and eight Ors.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 07 OHC CK 0008

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Advocate : P.K. Patnaik and S.K. Nanda, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Public Interest Litigation has been filed raising a grievance that the Rourkela Development Authority (hereinafter referred to as the "Authority") had earlier earmarked certain area of land for hospital, post office and Sulav Sauchalaya. However, in the said land a Commercial Complex has been constructed and shops have been allotted to private persons. Therefore, prayer is made to demolish the shops and the land should be restored to its original position and hospital, post office and Sulav Sauchalaya should be constructed on the said land.

2. Learned Counsel for the Petitioners submits that the Petitioners before this Court are practicing Advocates of the local court and being public spirited persons they feel aggrieved that the shops have been allotted to private persons. Therefore, the petition deserves to be allowed.

3. The learned Standing Counsel has opposed the learned Counsel for the Petitioner vehemently contending that the Petitioner has not filed any document to substantiate the averment that the land had been earmarked for the aforesaid purposes and in the absence of proper pleadings and documents to substantiate the same the petition cannot be entertained. Secondly, if the authorities

competent to change the use of the land and has changed it for different purpose, Petitioners can not have any grievance thereof. None of such allottees is a party before this Court. Therefore, the petition suffers from non-joinder of necessary party. More so, in any case the Petitioners are not able to show any injury to them or to the public at large. The petition was filed in 1999 when the applications had been invited for allotment of shops. Had the Petitioners been diligent enough they could have approached the Court at the time when the construction of the commercial complex started. This petition is pending before this Court for last one decade. No order has yet been passed. The persons who had been allotted the shops are running their business. Thus no interference is called for at such a belated stage. This PIL has been filed to achieve an ulterior purpose. Therefore, it is liable to be dismissed with exorbitant costs.

4. We have considered the rival submissions made by the parties and perused the records. Admittedly not a single person who has been allotted the shops in that commercial complex, raised by the authorities, is a party before us. Petition suffers from non-joinder of necessary party and therefore relief, sought by the Petitioners, cannot be granted. The person who is likely to be adversely affected is a necessary party and no order can be passed behind his back. (Vide Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, ; Ishwar Singh v. Kuldeep Singh; Bhagwanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr., 1995 Supp (2) SCC 663; Central Bank of India Vs. S. Satyam and others, ; J. Jose Dhanapaul Vs. S. Thomas and Others, ; Arun Tewari and Ors. v. Zila Mansavi Shikshak Sangh and Ors. AIR 1998 SC 331; Azhar Hasan and Others Vs. Distt. Judge, Saharanpur and Others, ; Ram Swarup and Others Vs. S.N. Maira and Others, ; Shri L. Chandrakishore Singh Vs. State of Manipur and Others, ; Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, ; Nirmala Anand v. Advent Corporation (P) Ltd. and Ors. AIR 2002 SC 2090; M.P. Rajya Sahkari Bank Maryadi Vs. Indian Coffee Workers" Co-operative Society Ltd. and Others, ; and Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others,).

5. It is settled law that a person who suffers from legal injury only can challenge the act/action/order etc. Writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the Petitioner that there is a breach of the statutory duty on the part of the Respondents. Therefore, there must be judicially enforceable right for the enforcement on which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. (Vide The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; Mani Subrat Jain and Others Vs. State of Haryana and Others, ; State of Kerala Vs. Smt. A. Lakshmikutty and others, ; State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, ; Rajendra Singh Vs. State of Madhya Pradesh and

others, ; Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others, ; & Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others,).

6. In Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , the Apex Court has held that only a person who is aggrieved by an order, can maintain a writ petition. The expression "aggrieved person" has been explained by the Apex Court observing that such a person must show that he has more particular or peculiar interest on his own beyond that of general public in seeing that the law is properly administered.

7. In M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, , the Hon''ble Supreme Court considered the matter at length and placed reliance upon a large number of its earlier judgments including the Chairman, Railway Board v. Chandrimadas (2000) 7 SCC 465; and held that the Court must examine the issue of locus standi from all angles and the Petitioner should be asked to disclose as what is the legal injury suffered by him.

8. In Ghulam Qadir Vs. Special Tribunal and Others, , the Hon''ble Supreme Court considered the similar issue and observed as under:

There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the Petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

9. The party has to satisfy as what is the legal injury caused by that violation of law for the redressal of which the party has approached the Court.

10. However, need was felt to relax the rule of locus standi wherever person aggrieved could not have the resources to approach the Court. The Hon''ble Apex Court entertained the petition even of unregistered Association espousing the cause of over down-trodden or its members observing that the cause of "little Indians" can be espoused by any person having no interest in the matter. However, the said person should be bona fide, not a intermeddler or busy body. (Vide Bandhua Mukti Morcha Vs. Union of India (UOI) and Others,).

11. In Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI)

and Others, , the Hon"ble Supreme Court while dealing with the issue of locus standi observed as under:

Our current processual Jurisprudence is not an individualistic Anglo-Indian mould. It is broad based and people-oriented, and envisions access to justice through "class actions", "Public Interest Litigation", and representative proceedings". Indeed, little Indians in larger numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of "cause of action" and "person aggrieved" and individual litigation is becoming obsolescent in some jurisdictions.

12. In Fertilizer Corporation Kamagar Union (Regd.), Sindri and Ors. v. Union of India and Ors. AIR 1981 SC 344, the Hon"ble Supreme Court held as under:

Public Interest Litigation is part of the process of participate justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial doorsteps.

13. Public Interest Litigation is not in the nature of adversary litigation. The purpose of P.I.L. is to promote the public interest which mandates that violation of legal or constitutional rights of a large number of persons, poor, down-trodden, ignorant, socially or economically disadvantaged should not go un-redressed. The Court can take cognizance in P.I.L. when there are complaints which shocks the judicial conscience. P.I.L. is pro bono publico and should not smack of any ulterior motive and no person has a right to achieve any ulterior purpose through such litigations.

14. In S.P. Gupta Vs. President of India and Others, , the Hon"ble Apex Court has warned by saying that the Court must be careful that the members of the public who approach the court are acting bona fide and not in personal garb of private profit or political motivation or other oblique considerations. "The Court must not allow its process to be abused". Similar view has been taken in Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others, .

15. In Mrs. Veena Sethi Vs. State of Bihar and Others, the Apex Court has observed that the role of law requires to be played for the poor and ignorant who constitute a large bulk of humanity in this country and the Court must uphold the basic human rights of weaker sections of the society.

16. In the case of State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others, , the Hon"ble Supreme Court held as under:

Where the Court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligation under the Constitution or the law, so that the poor and the under-privileged continued to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social and economic entitlements or that social legislation enacted for their benefit is not

being implemented thus depriving of their rights and benefits conferred upon them, the Courts certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realise their social and economical rights.

17. In *Sachidanand Pandey (Supra)*, the Apex Court observed that the Court should not take cognizance in such matters merely because of its attractive name. the Petitioner must inspire the confidence of the Court and must be above suspicion.

18. In *Ram Saran Ayotian Parasi v. Union of India JT (1988) 4 SC 557*, the Hon"ble Supreme Court observed that the P.I.L. is for making basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice.

19. In *Giani Devender Singh Sant Sepoy Sikh Vs. Union of India and another*, , the Hon"ble Supreme Court has held that the High Court, while entertaining a P.I.L must indicate how the public interest was involved in the case.

20. In *R.K. Jain Vs. Union of India and Others*, , the Apex Court observed that it was for the aggrieved person to assail the illegality of the offending action and no third party has a locus standi to canvass the legality or correctness of the action. Similarly, in *Mohammed Anis Vs. Union of India (UOI) and Others*, the Apex Court has held that a case should not be entertained unless the Petitioner points out that his legal rights have been infringed.

21. In *Jasbhai Motibhai Desai (Supra)*, the Hon"ble Supreme Court observed as under:

If a person wants a relief in a Court independent of a statutory remedy, he must show that he is injured or subjected to or threatened with a legal wrong. The Courts can interfere only where legal rights are involved. In fact legal wrong requires judicially enforceable right and "the touchstone to justiciability is injury to a legally protected right". A nominal or a highly speculative adverse effect on the interest of a person or right of a person is sufficient to give him the "standing to sue". Again, the "adverse effect" and the requisite for "standing to sue" must be an illegal effect.. Such persons are merely busy body of middle some interloper..They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the.. judicial process from improper motives..The High Court should do well to reject the application of all such busybodies at the threshold.

22. In *S.P. Anand (supra)*, the Hon"ble Supreme Court has observed that, "no person has a right to waiver of the locus standi rule and 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 considerations, so also the Court must be careful to ensure that the process of the court is not sought to be abused..."

23. P.I.L. can also be filed by any person challenging the misuse or improper use of any public property, including the political party in power for the reason that interest of individuals cannot be placed above or preferred to a larger public interest. But such a petition can be entertained for the protection of the society. (Vide J. Jayalalitha Vs. Government of Tamil Nadu and Others, ; L. Muthukumar and Another Vs. The State of Tamil Nadu and Others, ; and M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, ; Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, ; 5 M and T Consultants, Secunderabad Vs. S.Y. Nawab and Another, .

24. In Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, the Apex Court observed as under:

The Public Interest Litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. The Court can examine the previous record of public service rendered by the organization bringing the Public Interest Litigation. Even when a Public Interest Litigation is entertained, the court must be careful to weigh conflicting public interests before intervening.

25. In BALCO Employees Union (Regd.) Vs. Union of India and Others, , the Hon"ble Supreme Court held that the jurisdiction is being abused by unscrupulous persons for their personal gain. Therefore, the Court must take care that the forum be not abused by any person for personal gain. The Court observed as under:

There is, in recent years, a feeling which is not without any foundation that Public Interest Litigation is now tending to become publicity interest litigation or private interest litigation as a tendency to be counter productive. PIL is not a pill or a panacea for all wrongs. It is essentially meant to protect basic human rights of the weak and disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who, on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There have been in recent times, increasingly abuse of PIL.

26. Similarly, in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, the Hon"ble Supreme Court expressed its anguish on misuse of the forum of the Court under the garb of PIL observing as under:

Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief.

It should be aimed at redressal of genuine public wrong or public injury and not be publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity.

27. In *R and M Trust Vs. Koramangala Residents Vigilance Group and Others*, , the Hon"ble Supreme Court cautioned the Courts that the Public Interest Litigation should be entertained in rare cases where it is satisfied that public at large stands to suffer. The jurisdiction cannot be allowed to be invoked for the purpose of serving private ends and professional rivalry. The Court observed that the Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought a very bad name. Courts should be very slow in entertaining petitions involving public interest: in very rare cases where the public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the downtrodden. This sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends. It has now become common for unscrupulous people to serve their private ends and jeopardise the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contract. In order to serve their professional rivalry they utilise the service of the innocent people or organisation in filing public interest litigation. The courts are, sometimes persuaded to issue certain directions without understanding the implications and giving a handle in the hands of the authorities to misuse it. Therefore, courts should not exercise this jurisdiction lightly but should exercise in very rare and few cases involving public interest of a large number of people who cannot afford litigation and are made to suffer at the hands of the authorities.

28. The Hon"ble Supreme Court has laid down parameters for entertaining public interest litigations. In *Seema Dhamdhare, Secretary, M.P.S.C. Vs. State of Maharashtra and Others*, , while touching upon the issue of Public Interest Litigations qua service matters relying on its earlier judgment in *Gurpal Singh Vs. State of Punjab and Others*, , the Hon"ble Court has strongly criticised the public interest litigations instituted to assail the justifiable executive actions.

29. In *T.N. Godavarman Thirumulpad v. Union of India and Ors.* (2006) 5 SCC

28, relying upon its earlier judgments in *S.P. Gupta (supra)*; and *Janata Dal Vs. H.S. Chowdhary and Others*, , after noticing that lakhs of rupees had been spent by the Petitioner to prosecute the case, held as under:

It has been repeatedly held by this Court that none has a right to -approach the court as a public interest litigant and that court must be careful to see that the member of the public who approaches the court in public interest, is acting bona fide and not for any personal gain or private profit or political motivation or other oblique considerations.

While this Court has laid down a chain of notable decision with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow their process to be abused by a mere busybody, or a meddlesome interloper or wayfarer of officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

30. Thus, in view of the above, the ratio of all these judgements is that there must be a public injury and public wrong caused by wrongful or ultra vires acts or omission of the state or a public authority. It is for the enforcement of basic human rights of weaker sections of the community who are poor, downtrodden, ignorant, illiterates and whose fundamental rights and statutory rights have been violated. In fact, it is for compelling the executive to carry out its constitutional and legal obligations. It must not be frivolous litigation by persons having vested interest.

31. In *Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra and Ors.* , the Hon"ble Supreme Court held that Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique consideration by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from, improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such buy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

32. In view of the above, the issues involved here and the averments made in the petition has not been substantiated and the Petitioners have miserably failed to show as to how they have suffered. There are no proper pleadings or documents to substantiate the averments contained therein.

33. It is settled proposition of law that a party has to plead the case and produce/ adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete; the Court is under no obligation to entertain the pleas. In *Bharat Singh and Others Vs. State of Haryana and Others*, , the Hon''ble Supreme Court has observed as under:

In our opinion, when a point, which is ostensibly a point of law is required'' to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the Respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of CPC and a writ petition or a counter affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

34. Similar view has been reiterated in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, ; *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, ; *Ram Narain Arora Vs. Asha Rani and Others*, ; *Smt. Chitra Kumari etc. Vs. Union of India and Others*, ; and *State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.*, .

35. In *M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh*, , the Hon''ble Apex Court observed as under:

The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law.

36. Similar view has been reiterated in *Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors.* (2003) 1 SCC 18; *Devasahayam (D) by LRs. Vs. P. Savithramma and Others*, ; and *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, .

37. No document has been filed by the Petitioners to show that the land in dispute had earlier been earmarked for hospital, post office and Sulav Sauchalaya. Rather there are documents on record to show that the land is in front of the hospital. The petition suffers from want of proper pleadings.

38. In view of the above, the issues raised by the Petitioners in this petition are not worth entertaining. The petition is devoid of any merit and is accordingly dismissed.

B.N. Mahapatra, J.

39. I agree.