

(2015) 09 AHC CK 0210

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9148 (M/B) of 2012

Sanjay Singh Rathaur

APPELLANT

Vs

Lucknow Development Authority, Lucknow and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Citation : (2015) 9 ADJ 241 : (2015) 113 ALR 352

Hon'ble Judges : D.Y. Chandrachud, C.J. and Narayan Shukla, J.

Bench : Division Bench

Advocate : B.K. Singh, for the Appellant; Shashi Prakash Singh, Gaurav Mehrotra, Ranjeet Singh, Shailendra Singh Chauhan and Shobhit Mohan Shukla, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. D.Y. Chandrachud, C.J.

1. The Lucknow Development Authority (LDA) has developed markets and local shopping centres in various Khands of the Gomti Nagar scheme. These include Vivek Khand-2 "Ujala Market", Vinay Khand-2 "Janta Market", Vinay Khand-3 "Adarsh Market", Vivek Khand-4 "LDA Market" and Vikas Khand "LDA Market". It has been averred that as part of the lay out provision was made for carving out public conveniences, including toilets for men and women and for the purpose of facilitating the parking of cars. The writ petition contains specific allegations against the third respondent (who came to be impleaded during pendency of these proceedings in pursuance of an order dated 25 October 2013). The petition alleges that the third respondent was initially allotted Shop No. 1. According to the petitioner, a toilet for women forms part of the initial and revised lay out adjacent to Shop No. 1A which was occupied by the shop keeper (the third respondent) without any lawful authority as a result of which the area of the toilet was included into the area covered by the shop. The petitioner sought information under the Right to Information Act, 2005 (Act) on 8 April 2010 in regard to the manner in which Shops 1 and 1A were allotted to the third

respondent. In the information which was disclosed to him under the Act, it is stated that a shop has previously been constructed in accordance with the approved lay out and that there appeared to be no encroachment thereon. The petitioner filed these proceedings. The reliefs which have been sought in these proceedings are in the following terms:

"I. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to restore/construct the toilets and parking in the markets.

II. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to remove the encroachment from the toilets and parking and realize damages from the encroachers."

2. These reliefs would indicate that though there is a specific grievance in regard to the third respondent, the prayers are broader than a mere claim of encroachment against the third respondent since the petitioner seeks a mandamus to LDA in particular to restore and construct toilets in the market areas and provide parking facilities, besides removing encroachments.

3. At the outset, it may be noted that the locus of the petitioner has been challenged by the third respondent. In the counter-affidavit which has been filed by the third respondent, it has been stated that on 9 October 2012, the petitioner, whose wife is an elected Corporator from Ward No. 36, Lucknow Nagar Nigam, made an attempt to illegally occupy land earmarked for parking in Ujala Market with an intention to construct his office over the land. The police are stated to have intervened in the matter when the work was stopped. The shop keepers in the market including the third respondent are stated to have made an application to the Police Station, Gomti Nagar on 10 October 2012 and thereafter to the first respondent to take action. A further affidavit has been filed by the third respondent in which, it has been stated that the petitioner who has claimed himself to be an advocate and a social worker in the writ petition is alleged to be actually carrying on a business and is a contractor registered with the Commercial tax department. Documentary material has been relied upon in regard to the registration with the Commercial tax authorities of a concern in which the petitioner has an interest. A report of the police authorities dated 11 October 2012 is annexed, indicating that an attempt was made by the petitioner to put up a board in the market place in the area reserved for parking.

4. The first respondent has stated that in Ujala Market of Vivek Khand separate lavatories for men and women were envisaged and that the plan was modified to a certain extent. It has been stated that toilets have been constructed in accordance with a modified lay out map. From the affidavit of the first respondent, it appears that Shop No. 1A was originally allotted to the third respondent whereas Shop No. 1 was purchased by the third respondent from a third party. LDA purports to have allotted extra land contiguous to Shop No. 1A to the third respondent on or about 19 March 2010.

5. At the outset, while considering the locus of the petitioner, it would be

necessary to note that there is material on the record which indicates that the spouse of the petitioner is, or at least at the material time was, an elected Corporator of the Nagar Nigam. A little before the petition was filed on 30 October 2012, there was a grievance of the shop keepers that the petitioner had attempted to encroach upon an area for parking in Ujala Market by pitching his own board. The matter upon inquiry by the police authorities was reported on 11 October 2012 when it was stated that the petitioner had attempted to place his own board in the market. This may indicate that there was some attempt on the part of the petitioner to encroach on public land in which he was foiled by local shop keepers. The petition was thereafter filed in close proximity to the aforesaid event which had taken place in the first fortnight of October. The petition was filed on 30 October 2012.

6. Hence, it would be necessary for the Court to deal with the petition with a considerable amount of circumspection. Where a petitioner has highlighted a public grievance before the Court, the issue which has to be dealt with by the Court is whether the petition is motivated by a real and genuine public grievance involving an issue of public interest. In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, , the Supreme Court observed as follows:

"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 also becomes 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 or poke one's into for a probe. 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*, ."

7. In a subsequent decision in Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, , the Supreme Court observed that it would be wrong in law for the Court to judge the interest of a petitioner without looking into the subject-matter of the complaint and if a failure of public duty is shown, the Court would be in error in dismissing the PIL.

8. These observations are now fortified by a later decision in the State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , where the principles were enunciated as follows:

"We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet 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 the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner 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 Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies 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."

9. We may note that when the petition was initially called out for final disposal,

the learned counsel appearing on behalf of the petitioner submitted before the Court that he wishes to withdraw the writ petition since the pleadings in the writ petition and the reliefs which have been sought may suffer from a want of focus on the essential aspects involved but liberty may be granted to the petitioner to file a writ petition afresh with necessary pleadings. This was opposed on behalf of the third respondent on the ground that pleadings have been completed in these proceedings and the third respondent has a serious objection to the locus of the petitioner. The learned counsel submitted that if permission is granted to withdraw the petition with liberty as sought, that would have the effect of "washing away" the material which has been placed on the record in the counter-affidavits having a bearing on the locus of the petitioner. In view of this objection, the petitioner has through his learned counsel decided to press the petition and not to apply for withdrawal with liberty as was initially sought.

10. In the petition as it was initially filed, the third respondent was not impleaded as a party. Yet, serious allegations in regard to the occupation of the third respondent were contained in paragraphs 12 and 17 of the writ petition as well as in grounds "e" and "f". In fact, the third respondent was specifically named in paragraph 17 and in ground "e" of the petition. The relief which was sought for the restoration/construction of toilets and parking in markets and the removal of encroachments was not confined to a specific area. However, there can be no manner of doubt that the grant of such relief would have directly affected the third respondent and it was in that view of the matter that in pursuance of an order dated 25 October 2013 passed on the application filed by the third respondent, that he came to be impleaded as a party. The third respondent has placed sufficient material before the Court to place the bona fides of the petitioner under a serious cloud.

11. In this view of the matter, we are of the view that it would not be appropriate to issue a specific direction in a matter of this nature where the process of the Court has been invoked by a person who had evidently attempted to encroach upon public property himself in an unlawful manner and who has an axe to grind against a person who now has been impleaded as the third respondent.

12. We however clarify that the order of this Court declining to entertain the petition at the behest of the petitioner would not come in the way of the Vice Chairperson of the LDA from ensuring that due and necessary steps are taken in accordance with law for the maintenance of toilets and for dealing with any encroachments made in the toilets and parking facilities in the markets at Gomti Nagar extension scheme in accordance with law. The purpose of providing public amenities is to ensure the convenience and welfare of the members of the public. The authority cannot be a mute spectator if such amenities which are extended to facilitate the convenience of users and visitors are encroached upon in violation of the lay out plan.

13. We expressly clarify that we have entered no finding of fact in regard to the specific allegations against the third respondent since the directions which have

been issued to the authority would be broad enough to entitle it to look into all aspects of the matter and to exercise its powers in accordance with law to fulfill the purpose of setting up amenities in the lay out. The petition is, accordingly, disposed of. There shall be no order as to costs.