

(2016) 08 BOM CK 0172

In the Bombay High Court

Case No : Public Interest Litigation (L) No. 60 of 2016

Smt. Ujwala J. Patil

APPELLANT

Vs

Slum Rehabilitation Authority

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALLMR 644 : (2017) 1 BCR 147

Hon'ble Judges : V.M. Kanade and M.S. Sonak, JJ.

Bench : Division Bench

Advocate : Uday Warunjikar and Balasaheb R. Deshmukh, Advocates, for the Petitioner; Ujwala J. Patil, Advocate, for the Petitioner present in person at 3 p.m.; J.G. Reddy (Aradwad), Advocate, for the Respondent No. 1; Milind Sathe, Senior Advocate with Ms. R. Lodha

Final Decision : Dismissed

Judgement

1. This petition is purported to have been instituted as a "public interest litigation" by the petitioner who claims to be the President of Mumbai Division of Maharashtra Machhimar Kruti Samiti.

2. As we were prima facie not satisfied that this is any genuine public interest litigation, we have heard Mr. Warunjikar and Mr. Balasaheb Deshmukh, learned counsel for the petitioner on the said issue. At the hearing on 3 August 2016, Mr. Warunjikar made submissions in great details. He submitted that the petitioner undertakes social work and has raised several issues for protecting rights of fishermen. He submitted that the petitioner has obtained information under the Right to Information Act and on basis of the same, has instituted the present petition. He further submitted that from the information made available to the petitioner, it is clear that the SRA Scheme, which the petitioner impugns in public interest, has been approved without there being consent of 70% of the slum dwellers. He submits that since this is contrary to the provisions of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment Act),

1971 (Slum Act), Development Control Regulations (DCR) there is public interest involved in quashing the SRA Scheme which is being implemented by respondent nos. 4 and 5 upon the suit plot. Mr. Warunjikar submitted that this is also a fit case to direct the Commissioner of Police to register FIR against the officers of the respondents for granting approvals to the SRA Scheme, since, according to the petitioner, such approvals are contrary to law.

3. On 3 August 2016, we made the following order :

"1. We have heard Shri Warunjikar appearing on behalf of the Petitioner and Shri Samdhani, learned Senior Counsel appearing on behalf of Respondent No. 4.

2. After having heard both the learned counsel at length, we are of the view that prima facie there is no public interest involved in this PIL and the PIL has not been filed with a bona fide intention. Obviously, the present PIL has been filed by the persons who are disgruntled and could not succeed in the earlier round of litigation filed by them. It appears that after the extension was granted to vacate the premises till 31st May, 2016 was over, the present PIL has been filed.

3. Shri Warunjikar, the learned counsel appearing on behalf of the Petitioner insisted that he would like to point out various documents. Accordingly, we have heard him at length. We have heard Shri Samdhani, learned Senior Counsel appearing on behalf of Respondent No.4. He has pointed out that 12 writ petitions were filed by the slum dwellers and they were all dismissed by this Court and, thereafter, the present PIL has been filed by the very soon advocate, who had appeared in the earlier petitions. He has also pointed out number of discrepancies in the documents annexed to the petition. We have noticed that there is a growing tendency of filing false and frivolous PILs in this Court. We, therefore, direct the Respondents to file their short reply bringing these facts on record. Stand over to 9th August, 2016 on the Supplementary Board."

4. On 9 August 2016, Mr. Balasaheb Deshmukh appeared for the petitioner stating that Mr. Warunjikar is held up in some other court. Mr. Deshmukh reiterated that the petition has been instituted in public interest. He submitted that the circumstance that he or for that matter Mr. Warunjikar had appeared in several previous petitions concerning this very SRA Scheme, is by no means a sufficient circumstance to suggest that the present petition has not been instituted by the petitioner in public interest, but rather, the petitioner has been put up by certain disgruntled slum dwellers, who were not successful in obtaining the desired relief in the petitions previously instituted by them. Learned counsel for the petitioner seriously suggested that there was no obligation upon them as Advocates to disclose to this court the circumstance that several previous petitions had been instituted questioning this very SRA Scheme or matters related therewith and that no relief had been granted by this court in the said petitions. In the context of the several exhibits annexed to the present petition, possibly being the very same annexures in the previous petitions, Mr. Deshmukh, really had no answer, except, to seek some time to obtain instructions in the

matter.

5. On 3 August 2016 itself, Mr. Samdani, learned Senior Advocate appearing for respondent no. 4 had raised objections to the entertainment of the present petition as a public interest litigation. Specific contentions were raised in the context of the exhibits annexed to the present petition, which also, formed a part of the exhibits annexed to the previous petitions. There was more than ample time available to the learned counsel for the petitioner to obtain instructions on this aspect. Besides, the bona fides of the petitioner have not been questioned solely on the basis of commonality of the exhibits. There is further intrinsic material on record, which also suggests that the petitioner has merely been put up by some disgruntled slum dwellers, who were unsuccessful in obtaining reliefs in the previous rounds of litigations.

6. Mr. Samdani, learned counsel for respondent no. 4 has taken us through the affidavit filed on behalf of the respondent no. 4 and on the said basis, submitted that the very institution of the present petition by the petitioner as a public interest litigation, is nothing but an abuse of the process of the public interest litigations. Mr. Samdani has submitted that in several previous writ petitions instituted by some disgruntled slum dwellers, questioning inter alia the SRA Scheme and their eviction in pursuance of the SRA Scheme, very same Advocates, who now appear for the present petitioner have appeared. There is a commonality between some of the exhibits in the said petitions and the present petition. Some of the exhibits in the present petition, appear to be the zerox copies of the exhibits in the said petitions. This court, declined interim reliefs to certain disgruntled slum dwellers, in the matter of their eviction from the slums. Thereafter, applications for extension of time to vacate were made. No sooner extended time has expired, the present petition has been instituted, seeking substantially the same reliefs, though, couched slightly differently, so as to project some public interest. Mr. Samdani has submitted that the slum dwellers, who claim that there is no consent from 70% of the slum dwellers, are very much competent to protect their own alleged interest and this is clearly not a fit case to relax rule of locus standi or to permit the petitioner to masquerade as a public interest litigant. In the previous petitions instituted by the disgruntled slum dwellers also, one of the main contentions was that there was no consent from the 70% of the slum dwellers. Mr. Samdani submitted that the SRA Scheme has been approved by various authorities after satisfying themselves that such consent had indeed been obtained and further, there were other legal compliances. Mr. Samdani submitted that the SRA Project is at an advanced stage and the petition is completely lacking in bona fides. Mr. Samdani also submitted that since, the Advocates, who now appear for the petitioner, were also the Advocates for the petitioners/disgruntled slum dwellers, who had instituted the previous petitions, it was their duty to make disclosures with regard to the previous litigations. Mr. Samdani submitted that the Advocates, as Officers of the court, owe a duty to this court, which according to him, the Advocates appearing for the petitioner in the present petition, have failed to

discharge.

7. On 9 August 2016, after the conclusion of the arguments, we directed the petitioner to remain present in the afternoon session. The petitioner was present in the afternoon session. We specifically enquired with the petitioner as to whether she was aware of the contents of the affidavit which she has filed in support of the present petition, including, in particular, the statement made in the undertaking accompanying the petition, that the petitioner will pay costs as ordered by the court, if it is ultimately held that the petition is frivolous or has been filed for extraneous consideration or that it lacks bona fides. The petitioner stated that she is aware of the contents of the affidavit as well as the undertaking tendered by her at the time of institution of this petition. Mr. Warunjikar also appeared in the afternoon session, but stated that he has already conveyed to the petitioner, his inability to appear in the matter.

8. Upon due consideration of the submissions made by learned counsel for the parties and the perusal of the record, we are satisfied that the very institution of the present petition constitutes an abuse of the process of public interest litigations. There is no public interest whatsoever involved in the issue raised by the present petitioner. In several previous petitions instituted in the year 2010, 2011, 2013, 2015 and 2016, the issue that the scheme was not backed by consent from 70% of the slum dwellers was raised, either directly or indirectly. In some of the earlier petitions, the very same objection was raised in the context of land at Shiv Koliwada, with which the present petitioner, claims that she has no interest. However, the material on record makes it clear that the schemes pertaining to Shiv Koliwada and the Akar land, have ultimately been amalgamated and therefore, now constitute one composite slum redevelopment scheme.

9. In any case, in 2016 itself, about 11 writ petitions being writ petition nos. 2632 of 2016 and connected petitions came to be instituted by certain affected slum dwellers, who were resisting evictions, despite being assured alternate premises or compensation in lieu of alternate premises. The respondent no. 4 in his affidavit, has transcribed certain averments and grounds in the said writ petitions to demonstrate that the very same contentions/grounds find place in the present petition filed in purported public interest. Affidavit also points out that some of the exhibits in the present petition are nothing but zerox copies of the exhibits in the previous petitions, which is evident from the paging of the exhibits.

10. In our judgment, these as well as other circumstances, establish that the present petition is not some genuine public interest litigation and the possibility that the petitioner has been put up by disgruntled slum dwellers who failed to obtain favourable orders in the several petitions instituted by them, cannot be ruled out. In any case, considering that several slum dwellers have themselves instituted petitions questioning the scheme, it can certainly not be said that the petitioner, who claims to espouse public interest, is representing the cause of any

poor, downtrodden or marginalized members of the society, who are unable to themselves approach this court for redressal of their alleged grievance. We are therefore satisfied there is no public interest involved in the institution of the present petition.

11. The petitioner has also not been candid in the matter of disclosures as to the source of her information. An impression was attempted to be created by the petitioner that all the documents were obtained by the petitioner after she came across some report in the Daily Loksatta and that such information was obtained under the Right to Information Act. The report in Loksatta does not even make any reference to the survey numbers. The documents furnished by the petitioner along with the petition, do not entirely, appear to be documents obtained by the petitioner under the Right to Information Act. Some of the documents appear to be copies of exhibits used in previous petitions instituted by some of the slum dwellers pursuing their private cause.

12. There is gross and unexplained delay in questioning the validity of the scheme. In the affidavit filed by respondent no. 4 it is stated that 462 occupants have vacated the subject land and handed over the possession of their structures to the concerned authorities for redevelopment purposes. It is also stated that respondent no. 4 has completed construction of one rehabilitation building and 159 occupants have already been rehabilitated. Another rehabilitation building is also completed but occupation certificate is awaited. All this, in our judgment, is sufficient to dismiss the present petition which is purported to have been instituted in public interest.

13. Although, we do not propose to say anything with regard to the actions of the learned counsel appearing for the petitioner, we must reject the submissions of the learned counsel that it was not their duty to disclose the history and the fate of previous litigations upon the substantially same issue and that they are bound only by the instructions of the petitioner, who has engaged their services. In our opinion, the observation made by Lord Denning in *Rondel v. Worsley*, (1966) 3 All E.R. 657 (CA) affords a complete answer to such contention. The Supreme Court in the case of *Himachal Pradesh Scheduled Tribes Employees Federation & Anr. v. Himachal Pradesh Samanaya Varg Karamchari Kalayan Mahasangh & Ors.*, (2013) 10 SCC 308, has expressly approved the exposition of very high standard of moral, ethical and professional conduct expected to be maintained by members of the legal profession by quoting the observation in *Rondel v. Worsley*. In paragraphs 31 and 32, the Hon"ble Supreme Court has observed thus :

"31. When a statement is made before this Court it is, as a matter of course, assumed that it is made sincerely and is not an effort to overreach the Court. Numerous matters even involving momentous questions of law are very often disposed of by this Court on the basis of the statement made by the learned counsel for the parties. The statement is accepted as it is assumed without doubt, to be honest, sincere, truthful, solemn and in the interest of justice. The

statement by the counsel is not expected to be flippant, mischievous, misleading and certainly not false. This confidence in the statements made by the learned counsel is founded on the assumption that the counsel is aware that he is an officer of the Court.

32. Here, we would like to allude to the words of Lord Denning, in *Rondel v. Worsley* about the conduct expected of an advocate:

"? As an advocate he is a minister of justice equally with the Judge.

? I say "all he honourably can" because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is the code of honour." (QB p. 502)

In our opinion, the aforesaid dicta of Lord Denning is an apt exposition of the very high standard of moral, ethical and professional conduct expected to be maintained by the members of legal profession. We expect no less of an advocate/counsel in this country."

[Emphasis supplied]

14. In *Balco Employees' Union v. Union of India*, (2002) 2 SCC 333, the Supreme Court, after taking cognizance of increasing instances of abuse of public interest litigation, the Court has devised number of strategies to ensure that the attractive brand name of public interest litigation is not allowed to be used for suspicious products of mischief. One of the devise was restricting locus standi in PILS to individuals "acting bona fide". The second was the imposition of "exemplary costs" as a deterrent against false and frivolous public interest litigations. Finally, the Supreme Court directed the High Courts to be more selective in entertaining public interest litigations.

15. In *S.P. Gupta v. Union of India*, 1981 Supp. SCC 87, again, locus standi was conceded to individuals "acting bona fide" but not to "meddlesome interlopers" or to individuals bringing public interest litigation for personal gain. In *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449, standing was denied upon hint of malice and oblique motives, on account of enmity between the parties. In *Neetu v. State of Punjab*, (2007) 10 SCC 614, frivolous public interest litigations were dismissed with compensatory costs to ensure that the message goes in the right direction that petitions filed with oblique motive

have no approval of the courts.

16. In *S.P. Anand v. H.D. Deve Gowda*, (1996) 6 SCC 734, the Supreme Court warned that it is of utmost importance that those who invoke the jurisdiction of "seeking a waiver of the locus standi rules" must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. In *Sanjeev Bhatnagar v. Union of India*, (2005) 5 SCC 330, the Supreme Court imposed monetary penalty against the advocate for filing a frivolous and vexatious PIL, after it found that the petition was devoid of public interest but was in reality, "publicity interest litigation". In *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590, the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL upon finding that the petition was nothing but a camouflage to foster personal dispute. The Supreme Court expressed anguish on the misuse of the forum of the court under the garb of public interest litigation by observing thus :

"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 the citizens. ? The court must not allow its process to be abused for oblique considerations?."

17. In *State of Uttaranchal v. Balwant Singh Chaufal & Ors.*, (2010) 3 SCC 402, with a view to curb abuse of the process of the public interest litigation has directed that the courts should prima facie verify the credentials of the petitioner before entertaining a PIL; the courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL; the courts should be fully satisfied that substantial public interest is involved before entertaining the petition; and that the PIL is aimed at redressal of genuine public harm or public injury; the Courts should also ensure that petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting novel methods to curb frivolous petitions and petitions filed for extraneous considerations.

18. In *Ashok Kumar Pandey v. State of W.B.*, (2004) 3 SCC 349, the Supreme Court, again, by reference to several earlier decisions held that the courts must do justice by promotion of good faith and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against social interest and public good. No litigant has right to unlimited drought of a court time and public money in order to get his affair settled in the matter as he wishes. Easy access to justice should not be misuse as a licence to file misconceived and frivolous petitions. People must not rush to courts to file cases in profusion under the attractive name of public interest. They must inspire confidence in courts and amongst the public. Time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to

note that the courts are flooded with large number of so-called public interest litigations where in a minuscule percentage can legitimately be called as public interest litigation. The parameters of public interest litigation have been indicated in large number of cases, yet, unmindful to the real intentions, objectives, courts are entertaining such petitions and wasting valuable judicial time, which could be otherwise utilised for disposal of genuine cases. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs so that the message goes in the right direction that petitions filed with oblique motive do not have an approval of the courts.

19. Applying the aforesaid principles, to the facts and circumstances of the present case, we dismiss this petition with costs quantified at Rs. 25,000/- (Rupees Twenty Five Thousand). The petitioner, consistent with the undertaking filed by her in this court, shall deposit such costs in the Registry within a period of four weeks from today. In case the costs are not deposited, liberty is granted to recover such costs as arrears of land revenue. The costs once deposited shall be paid by the Registry to the Tata Cancer Research Centre.

20. All concerned to act on basis of authenticated copy of this order.