

(2018) 06 MP CK 0138

In the Madhya Pradesh High Court

Case No : Review Petition No. 638 Of 2017

Surendra Pratap Singh

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 28-06-2018

Acts Referred:

Constitution Of India, 1950 — Article 21, 226, 300(A) Land Acquisition Act, 1894 — Section 11

National Highways Act, 1956 — Section 3(A)

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(1)(a), 24(2)

Wild Life (protection) Act, 1972 — Section 18(1), 21, 25(A)

Citation : AIR 2018 MP 186 : (2018) 4 CGLJ 1 : (2018) 3 JLJ 257 : (2019) 1 MPLJ 75

Hon'ble Judges : HEMANT GUPTA, CJ;VIJAY KUMAR SHUKLA, J

Bench : Division Bench

Advocate : Adarsh Muni Trivedi, Ashish Kumar Tiwari, Namrata Agarwal

Final Decision : Dismissed

Judgement

Hemant Gupta, CJ.

The petitioner has filed an application for review of an order dated 31.07.2017 passed by this Court in Writ Petition No.11468/2015 (PIL) (Surendra

Pratap Singh and others vs. State of M.P. and others) whereby the writ petition was dismissed for the reason that such writ petition is not

maintainable in public interest as the aggrieved persons are the land owners and not the social workers. The Court has passed the following order:

â??The challenge in the present petition is to the notification dated 4.6.1983 of the Wild Life (Protection) Act, 1972 and the proclamation issued by

the Collector under section 21 of the Wild Life (Protection) Act, 1972 on 4.6.1983 whereby, the village Gogital, Sezwahi, Kusmaha, Kothia, Keseru,

Bamera, Badwahi and Bagaiha were declared to be 'Panpatha sanctuary'.

The petitioners are not the land owners of the aforesaid villages, but, said to be social workers. The aggrieved persons are the land owners and not the social workers who can be permitted to espouse the cause vested with the land owners.

Consequently, the present writ petition is not maintainable at the instance of the social workers and is dismissed.â??

2. The State has issued a Notification on 04.06.1983 (Annexure P-1) under Section 18(1) of the Wild Life (Protection) Act, 1972 (for short â??the 1972 Actâ?), which was published in Madhya Pradesh Gazette dated 24.06.1983. Vide the said Notification, an area of 245.842 Square Kilometer

was declared as Panpatha Sanctuary. The Collector, Shahdol issued a proclamation under Section 21 of the 1972 Act on 08.11.1996 (Annexure P-2)

in respect of eight villages, namely, Gogital, Sezwhi, Kusmaha, Kothia, Keseru, Bamera, Badwahi and Bagaiha, which were going to be affected

under Panpatha Sanctuary, whereby objections were invited from the interested persons.

3. The petitioners assert that a survey was conducted for rehabilitation of local inhabitants and that National Tiger Conservation Authority issued

revised guidelines for rehabilitation of displaced persons whose land has since fallen within the Project Tiger. The grievance is that the package has

not been revised though it was issued in the year 2008.

4. The petitioners have filed a writ petition claiming that the affected persons are marginal farmers and they have no means to approach this Court

and therefore, as public spirited persons, the petitioners have invoked the writ jurisdiction of this Court. Learned counsel for the petitioner has relied

upon Article 300A of the Constitution of India and also Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (for short â??the 2013 Actâ?) to contend that no Award under Section 11 of the Land Acquisition Act,

1994 has been announced. Therefore, the provisions of the 2013 Act shall apply. It is also pointed out that since the possession has not been taken, the

land owners would be entitled to compensation under Section 24(1)(a) of the 2013 Act or in the alternative the vesting of the land stands abated in

terms of Section 24(2) of the 2013 Act.

5. In the return filed by the respondents-State, it is inter alia asserted that the petitioners have not given their complete antecedents and have also not disclosed as to what public interest work they have performed in the society. It is also pointed out that Notification, Annexure P-1 was issued on 04.06.1983 and Annexure P-2 was issued on 08.11.1996. However, it has not been explained that why the aforesaid Notifications have not been challenged for long period. It is also pointed out that if any person is aggrieved by the said Notifications, the same can be challenged only by the affected person(s). Reference is made to Section 25A of the 1972 Act, which contemplates that Notification for acquisition will not lapse if the proceedings are not completed within a period of two years. It is also pointed out that in respect of four villages like Magedi, Milli, Mehanwah and Kallwah, compensation to the tune of Rs.2069.99 Lac has been determined and deposited in the account of the concerned Collector and has been paid to the concerned persons and now relocation process is over. In respect of village Sezwahi, the Authorities are in the process to determine the compensation and proposal has been forwarded to National Tiger Reserve Authority.

6. Learned counsel for the petitioners has sought to seek review of the order that the writ petition in public interest is maintainable as the affected persons are large number of people belonging to marginalized section of the society i.e. Baiga, which is a scheduled tribe in terms of Presidential Order published in Gazette of India (Extraordinary) dated 20.02.2003 (Annexure P-3). Therefore, the order passed by this Court is not tenable.

Learned counsel for the petitioners has placed reliance upon a decision of the Supreme Court reported as (2003) 7 SC 546 (Guruvayoor Devaswom Managing Committee and Another vs. C.K. Rajan and others). The relevant paragraph of the said decision reads as under:-

“65. Where access to justice poses a fundamental problem facing the third world today, its importance in India has increased. Laws are

designed to improve the socio-economic conditions of the poor but making the law is not enough, it must be implemented. The core issues which have

been highlighted by the learned counsel by the parties must be considered from that angle. Administration of a temple by entertaining complaints does

not lead to a happy state of affairs. Roving enquiry is not contemplated. Principles of natural justice and fair play ought to be followed even in the pro

bono public proceedings. The courts, undoubtedly, would be *parens patriae* in relation to idols, but when the statute governs the field and the State

takes over the management, ordinarily the courts would not step in.â??

7. We have heard learned counsel for the parties on the question as to whether in the matter of acquisition of land; public interest litigation would be

maintainable at the instance of the strangers on the pretext that they are social workers.

8. Except the averment in the petition that the petitioners are social workers, there is no assertion of their activity undertaken by them in the villages in

question. Simple self-serving statement that the petitioners are social workers is not sufficient to invoke the public interest writ jurisdiction of this Court

unless the petitioners are able to produce on record to the satisfaction of the Court such social work in last couple of years is in the area in respect of

which the public interest writ petition is involved. A practice in the cases before this Court is to make a statement that the petitioners are social workers

and they are spending the money including the lawyerâ??s fee from their own pocket. That by itself does not satisfy the test of a *locus standi* to file

public interest litigation. The public interest writ jurisdiction was intended to vindicate public interest where fundamental and other rights of the people

who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused.

9. Further, the Notifications under challenge were issued on 04.06.1983 and 08.11.1996 almost 32 years and 20 years respectively of the said

Notifications. The land owners who have been dislocated on account of declaration of a Sanctuary have not felt aggrieved by their dislocation. As per

the averment in the return filed in the year 2016, the land owners of four villages have been disbursed compensation as well. In respect of the fifth

village, the compensation is said to be under determination of disbursement. Therefore, the public interest litigation in respect of declaration of land for

sanctuary would not be maintainable as the legal right in respect of land is that of the land owner. Such land owner has a right to assert violation of

such right conferred under Article 300A of the Constitution of India before the competent Court of Law soon after the alleged infringement. Even if

the owners are of Baiga community, the petitioners could motivate some of the owners to invoke the jurisdiction of this Court but the strangers to the

land cannot be permitted to dispute the settled position.

10. Still further, some of the judgments relating to invocation of jurisdiction in public interest may be required to be noticed. In a judgment reported as

(2002) 2 SCC 333 (Balco Employeesâ?? Union (Regd.) vs. Union of India and others), the Supreme Court held as under:-

â??77. Public Interest Litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that

it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public

interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were

unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and

collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a

position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz., â??litigation

in the interest of the publicâ??.

78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where

there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe

has summarised the extent of the jurisdiction which has now been exercised in following words :-

PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).
- Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).
- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of

grievances redressal forums).

- Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water".

79. 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 and has a tendency to be counter-productive.

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the 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 instances of

abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the

court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.â??

11. In another judgment reported as (2004) 3 SCC 349 (Ashok Kumar Pandey vs. State of W.B.) a public interest litigation was filed in respect of

death sentence imposed upon Dhananjay Chatterjee. The Supreme Court held as under:-

â??4. 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 "pauper 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 nose 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-(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, (1993 Supp (2) SCC 20) and K.R. Srinivas vs. R.M. Premchand, (1994) 6 SCC 620.

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11. It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest

except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly, they lose faith in the administration of our judicial system.

12. 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 consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.â??

12. In a judgment reported as (2010) 3 SCC 402 (State of Uttaranchal vs. Balwant Singh Chaufal and others), the Supreme Court held that while exercising jurisdiction of judicial review under the public interest litigation, it realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact, they have no access to the justice. The Court inter alia observed as under:-

â??32. This Court while exercising its jurisdiction of judicial review realized that a

very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice. Pre-dominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, this court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of this court's deep and intense urge to fulfill its bounden duty and constitutional obligation.

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43. In this judgment, we would like to deal with the origin and development of public interest litigation. We deem it appropriate to broadly divide the public interest litigation in three phases:

Phase-I. - It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this court or the High Courts.

Phase-II.- It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc.

Phase-III - It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.

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74. All these abovementioned cases demonstrate that the courts, in order to protect and preserve the fundamental rights of citizens, while relaxing the rule of locus standi, passed a number of directions to the authorities concerned.

75. We would not like to overburden the judgment by multiplying these cases, but a brief resume of these cases demonstrate that in order to preserve and protect the fundamental rights of marginalized, deprived and poor sections of the society, the courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and orders. We would like to term cases of this period where the court relaxed the rule of locus standi as the first phase of the public interest litigation. The Supreme Court and the High Courts earned great respect and acquired great

credibility in the eyes of public because of their innovative efforts to protect and preserve the fundamental rights of people belonging to the poor and marginalized sections of the society. â??

13. The phase-II and III of public interest litigation as mentioned in Balwant Singh Chaufal (supra) does not arise for consideration in the present case.

However, the relevant extract of the decision reads as under:-

â??143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

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147. Thus, the Supreme Court has attempted to create a body of jurisprudence that accords broad enough standing to admit genuine PIL petitions, but nonetheless limits standing to thwart frivolous and vexatious petitions. The Supreme Court broadly tried to curtail the frivolous public interest litigation petitions by two methods - one monetary and second, non-monetary.

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181. 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 court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

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

(6) The court 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 court 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.â??

14. Apart from the decisions referred to above, a Full Bench of this Court in a judgment reported as 1999 (2) MPLJ 259 (Sudha Gupta and others vs.

State of M.P. and others) examined as to when the public interest litigation can be invoked. The Court held as under:

â??50. It may be further noticed in the aforesaid connection that the reliefs indicated hereinabove were based solely on the assertions made by the

petitioners in paragraph 6(xii) of the Writ Petition relying upon certain news items published in daily news papers. The news items published in daily

news papers cannot ex facie be taken to be of such authenticity which may warrant initiation of an action in the proceedings under Article 226 of the

Constitution of India. As pointed out by the Apex Court in its decision in the case of Ramsharan Autyanprasi vs. Union of India, reported in 1989

Supp.(I) SCC 251, it is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights

are invaded or when there are complaints of such acts as shock the judicial conscience that the 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. It was further pointed out by the Apex Court that the public interest litigation is an instrument for the administration of justice to be used properly in proper cases and a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice which is the signature tune of our Constitution. It was also emphasised that all communications and petitions involving the jurisdiction of the Court, must be addressed to the entire Court, that is to say, the Chief Justice and his companion judges.

51. In the aforesaid view of the matter it was incumbent on the petitioners, in case they intended this part of the Writ Petition to be a public interest litigation to come up and plead the material facts with supportive evidence which could prima facie justify taking of an action in the proceedings under Article 226 of the Constitution of India. The pleadings relating to the material facts in this regard are totally lacking in the writ petition and the assertions made are based on mere inferences. It would not have been wise exercise of discretion to entertain this type of public interest litigation, with such vague allegations based on unauthentic news paper reports without any reliable supportive evidence.....â??

15. Still further, a Division Bench of this Court in an order passed on 25.07.2016 in W.P. No.7983/2016 (M.P. Lok Kalyaan Sansthaan Samiti through its President Shri Jagat Maravi (Gond) & another vs. Union of India and others) has dismissed the writ petition filed in public interest challenging the Notification under Section 3-A of the National Highways Act, 1956. It was held that it is for the aggrieved person to raise objections before the Sub Divisional Officer/Competent Land Acquisition Officer in accordance with the National Highways Act but the public interest litigation would not be maintainable.

16. In an another order dated 21.02.2017 passed in Writ Appeal No.4/2017 (Janni Jan Samadhan Samiti vs. State of M.P. and others), again a Division Bench of this Court held that claim for compensation for acquisition of land is an individual right available to an individual and a society in a representative capacity cannot claim rights of individual persons.

17. In view of the aforesaid judgments, we do not find any error in the order of this Court under review. Though detail reasoning was not mentioned in

the order in question but the ultimate conclusion is supported by the discussion hereinbefore. The review petition is accordingly dismissed.