
(2015) 11 AHC CK 0134
In the Allahabad High Court
Case No : Misc. Bench No. 10841 of 2015

Swami Prasad Maurya and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Citation : (2015) 11 ADJ 333 : (2016) 1 AWC 370

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Sunil Kumar Chaudhary and Kapil Misra, for the Appellant; Gaurav Mehrotra and Shishir Jain, for the Respondent

Final Decision : Dismissed

Judgement

1. This miscellaneous writ petition, not presented or reported as a Public Interest Litigation, pleads to espouse a cause of preventing demolition of a wall which according to the respondents is removal of an obstruction to open a closed road, namely Lower Bandha Road in Lucknow to facilitate the commutation to the localities beyond and connecting the Janeshwar Misra Park through a proposed railway underpass.

2. The prayer is for issuance of a mandamus restraining the respondent - State, the Lucknow Development Authority and the U.P. State Bridge Corporation from changing the status-quo of the structure which includes the outer wall stated to be an extension of Dr. Ambedkar Smarak Sthal adjacent to Bhagidari Bhavan, which is spread over about 50 - 60 fts. in length about 15 fts. in height and 2 fts. in breadth and further to maintain the status-quo anti as existed before 18th November, 2015.

3. The petition was got reported on 20.11.2015 and was moved where after it has been taken up as a fresh matter today.

4. The petitioner No. 1, who is the leader of the opposition in the State Legislative Assembly, has come forward along with petitioner No. 2 contending

that the petitioners are looking after the interest and welfare of the Schedule Caste/Schedule Tribes and Backward classes and they are aggrieved by the action of the respondents, who are now proceeding to demolish the wall and construct the road that would disturb the entire area where the Bhagidari Bhavan and Srijan Vihar Colony is situated. They are apprehensive that such an act would spoil the environment of the area and shall also disturb the students, who live in Bhagidari Bhavan making preparations for appearing in the Civil Services Examination and other administrative services. They also allege that this would amount to loss of public money and hence appropriate directions deserve to be issued.

5. To substantiate and advance his submissions on the legal footing, Sri Mishra, learned Senior Counsel for the petitioners, has invited the attention of the Court to the order of the Apex Court dated 9.2.2010, copy whereof has been filed as Annexure No. 1 to the writ petition, to urge that the impugned action of the respondent - State and Development Authority as well as the constructing agency is in teeth of orders of the Apex Court aforesaid and on account of the existence of such orders, no such activity could have been undertaken by the respondents.

6. He has then invited the attention to the orders passed in the second set of proceedings before the Apex Court arising out of three writ petitions filed before the Lucknow Bench in which orders were passed on 6.4.2010 and copy whereof is Annexure No. 8 to the writ petition, where the Apex Court interfered with the said interim order of the High Court by issuing an interim direction of status-quo on 4.5.2010, and ultimately disposed of the Special leave to Appeal on 15.7.2010 maintaining the status-quo interim order dated 4.5.2010. Sri Mishra submits that in view of the aforesaid orders of the Apex Court, the respondents had no authority to either proceed to demolish the wall or undertake any such proceedings to disturb the status-quo.

7. He has then passed on a copy of the order of the Apex Court dated 2.7.2015 passed on interim application No. 16-18 of 2015 in Special Leave to Appeal No. 13486 - 13488 of 2010 whereby a 3 Judges Bench, comprising of Hon"ble the Chief Justice of India and 2 other Hon"ble Judges, passed orders dissolving and vacating the aforesaid status-quo order dated 4.5.2010 as continued on 15.7.2010 and referred to herein above. Sri Mishra submits that vacation and annulment of the interim protection of status-quo dated 4.5.2010 and 15.7.2010 in the said proceedings does not amount to giving a handle to the respondents to demolish a standing structure.

8. He, therefore, submits that in view of the orders passed by the Apex Court in the first set of proceeding dated 9.2.2010, a clear contempt has been committed by the opposite parties and on account of the orders passed in the second set of proceedings resulting in the order dated 2.7.2015, the respondents have taken law into their own hands without any direction of the Court to attempt such demolition and construction of an under-pass on the disputed site in question. Sri

Mishra, therefore, submits that cumulatively in view of all the submissions raised on factual basis as well as on the legal foundation aforesaid, the petitioners have a fresh cause of action to maintain this petition in the larger public interest and in the interest of the other affected individuals as referred to herein above. He, therefore, submits that this misc. writ petition is maintainable for the reliefs as prayed for and deserves to be granted.

9. This petition has been opposed by the State and we have heard Sri Vijay Bahadur Singh, learned Advocate General, who submits that this petition even otherwise could not be entertained, apart from the petitioners having no locus, because of the fact that if there is any complaint in relation to the subject matter of proceedings referred to herein above by the petitioners, then the remedy of an aggrieved party would be to approach the Apex Court itself for complaining any violation of the order dated 9.2.2010, if at all permissible in law, or to seek a clarification from the Apex Court itself about the order dated 2.7.2015 whereby the status-quo order has been dissolved. He further submits that even otherwise if the petitioners contend that they want relief in relation to the same subject matter, then the aggrieved persons can approach the High Court by moving an application in the writ petitions pending before the High Court which have been directed to be decided by the Apex Court under the orders dated 9.2.2010.

10. Thus, in view of all the aforesaid remedies available to an aggrieved person, the present writ petition is clearly a misuse and abuse of process of Court by individuals, who were not even parties to the previous proceedings and who have no personal cause of action to maintain any misc. writ petition. He submits that the writ petition as framed, therefore, is not maintainable or entertainable at the behest of the petitioners, as such, the same deserves to be dismissed.

11. Sri Gaurav Mehrotra for the Lucknow Development Authority submits that firstly the petitioners have no locus to maintain the petition as they are not aggrieved persons and for this, he has placed reliance on two judgments of the Apex Court in the case of *Ayaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, , and the decision in the case of *Vinoy Kumar Vs. State of U.P. and Others*, . He contends that these petitioners were not even parties to the proceedings that have been referred to by the learned Counsel for the petitioner and, therefore, they cannot take any advantage thereof to maintain this petition. The petitioners do not have any personal cause to maintain this petition nor they in fact are representing the cause of any other individuals. He submits that the petition does not disclose that the petitioners have been authorised to move a writ petition for the protection of any class of people or individuals for that matter.

12. He further submits that this change of stand, which is being alleged by the petitioners to have been undertaken by the government, is also legally protected in view of the ratio of the decisions of the Apex Court in the case of *M.P. Mathur and Others Vs. D.T.C and Others*, , and *Rishi Kiran Logistics Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust and Others*, .

13. He then submits that the order passed by the Apex Court on 9.2.2010 did not relate to the present dispute at all in respect of any obstruction of road and was subject matter of the subsequent set of proceedings where the Supreme Court has vacated the interim orders on 2.7.2015. He submits that the subject matter being entirely different, there was no such restraint and the exercise undertaken for removing the obstruction was to connect a road which had been obstructed by the construction of a wall for which directions to open the road had been issued on 6.4.2010 by the High Court. He has invited the attention of the Court to the said order, which is Annexure No. 8 to the writ petition, to contend that it is the said order that was subject matter of stay before the Supreme Court, which was vacated on 2.7.2015. This was specifically in relation to the obstruction by the wall that had been raised over the passage and related to the blockage of the said road at the Lower Bandha that is proposed to be connected by way of a proposed railway underpass to the Janeshwar Mishra Park.

14. He, therefore, submits that neither is there any contempt of the order of the Supreme Court nor is there any impediment in proceeding to implement the direction of the High Court dated 6.4.2010. Thus, the contention of the petitioners that there was no direction or permission to demolish any construction is absolutely misplaced and against the record. He has explained the sequence of events leading to passing of such orders and he prays that this petition is misconceived and not maintainable. He has also adopted the arguments advanced by the learned Advocate General on behalf of the State.

15. The third contestant in this proceeding opposing the writ petition is Gomti Nagar Jan Kalyan Maha Samiti through its Secretary Mr. Veer Pratap Singh, who has filed an Impleadment Application through Sri B.K. Singh, Advocate. Sri Singh, learned Counsel, submits that it is the applicant, who had been contesting this issue relating to the blockage of road and prevention of any further encroachment which was clearly subject matter of the writ petitions in which orders were passed on 6.4.2010 by the High Court. He, therefore, submits that the proposed intervenor namely the aforesaid Samiti is a proper and necessary party and, therefore, his impleadment deserves to be accepted. He has further invited the attention of the Court to the facts stated in the accompanying Affidavit to the said application to contend that the present writ petition has been filed by two individuals purely for their political achievements to merely oppose genuine Public Interest activities that are being now carried out by the present Government and the Lucknow Development Authority and, therefore, they have no locus or any public interest to seek such relief as has been prayed for in the writ petition.

16. He further submits that the orders passed by the Apex Court on 9.2.2010 were in respect of the matters relating to violation of existing Master Plan, protection of Green Belt Area and other open areas like Parks and Playgrounds and the present dispute of blockage of the road and raising of the wall were not the specific subject matter at all in the proceedings where the Apex Court has

passed orders on 9.2.2010. He submits that the issue of roads and it's blockage was a specific subject matter of writ petition No. 6681 of 2008 in which orders were passed by the High Court on 6.4.2010 that became subject matter of consideration before the Apex Court in Special Leave to Appeal No. 13486-13488 of 2010. He submits that the said order has been placed before the Court by Sri Mishra, learned Counsel for the petitioners himself. Thus, the dispute presently involved was subject matter of those proceedings and not in the Special leave petitions that were decided on 9.2.2010. He, therefore, contends that the present writ petition is neither maintainable nor entertainable and the remedy of an aggrieved party if at all permissible in law is to approach the Apex Court for any clarification or complaint of violation of the orders passed by it or even otherwise to move an application in such writ petitions that are stated to be pending before this Court for decision as per the directions of the Apex Court. He submits that this petition is entirely an additional burden without any separate or severable cause from that espoused earlier.

17. Refuting the aforesaid submissions, Sri Mishra, learned Counsel for the petitioners in rejoinder, submits that the orders passed by the Apex Court on 11.9.2009, 6.10.2009 and 9.2.2010 that are also reported in 2010 (13) SCC Pgs. 244, 356 and 361 are all relating to the entire subject matter of dispute including the present dispute as they relate to all Project sites that were being contested before the Apex Court and in such circumstances, the contention of the respondents that the present action about which a complaint has been made in the present writ petition is outside the scope of those proceedings is incorrect. He has reiterated his submissions advanced earlier and he contends that the respondents should be called upon to show any justification for having taken the action as complained of in the present writ petition.

18. Sri Gaurav Mehrotra, learned Counsel for the Lucknow Development Authority, has informed on instructions that the present writ petition even otherwise is infructuous as the execution of the demolition as complained of has already been carried out through the respondent No. 4 - Agency.

19. Having heard learned Counsel for the parties at length and having perused the records, at the very outset we may point out that there is no justification for having impleaded the Chief Minister of the State by name as respondent No. 5. If the petitioners had approached the Chief Minister with any request being made in relation to the impugned action of the respondents, the State was duly represented through respondent Nos. 1 to 4 and the impleadment of the Chief Minister by name was absolutely unnecessary and unwarranted. The executive of the State is already represented by the respondent No. 1. The Chief Minister does not appear to be neither a proper or necessary party without whom the matter can still be effectively disposed off. Needless to say that even though a Chief Minister may be a Public Servant, yet the government that a Chief Minister heads is legally represented through the State and its executive authorities. The report dated 20.11.2015 of the Stamp Reporter also refers to the orders dated

24.8.2006 in Writ Petition No. 67219 of 2006 to that effect.

20. The second issue is in relation to the locus of the petitioners to maintain this petition. In our considered opinion the petitioners do not appear to have any authorization on behalf of any class or category of Schedule Caste/Schedule Tribes or other Backward category persons or organization to maintain this petition on their behalf. Neither Bhagidari Bhawan inmates nor any other interested person of the locality has come forward to assert any grievance or allege inconvenience to the locality. The petitioners have neither any personal grievance nor they are personally affected by the action being taken. At the most, the petitioners could claim themselves to be a form of public representatives. They could, therefore, have, if at all permissible, maintained a public interest application in any pending proceedings inasmuch as the petitioners do not appear to be party to the proceedings in which orders have been passed from time to time by the High Court and by the Apex Court referred to herein above. They, therefore, cannot be said to be really aggrieved persons in their personal capacities to maintain a fresh petition. Merely because the petitioner No. 1 is now the leader of the opposition and was at the time of the dispute having arisen a Minister in the Government, does not enable him to defend any action of the erstwhile government as its representative. The petitioner No. 2 has failed to show his legal connection with those students, who are residing in Bhagidari Bhavan or those persons of Srijan Vihar Colony so as to maintain any such cause on their behalf.

21. The towering and exalted status of the leader of the opposition cannot reduce the legal requirements of locus and aggrieved person more so when the present petition has neither been dwarf, pleaded, presented or reported as a PIL. On the other hand even the commonest man, the poor little Indian cannot be denied any access to justice for a great public cause on mere technicalities. The judicial test is the genuineness and sanctity of the purpose behind knocking the doors of this court in any extra ordinary or grave situation to secure justice and prevent its miscarriage or failure in a given fact situation. It is for this reason that the distinction between a interest, which may be private or ideological, has to be deciphered from real public interest. This scrutiny further is to be focused on the purpose of the litigation more particularly when individuals approach the court and what is kept to be in mind is the ethical test as observed by Thomas Fuller "A good archer is not known by his arrows but his aim." It is important to find out whether the purpose is real or veiled. If it is a purpose for an individual's grievance then how the individual is affected has to be examined. In the present case, the petitioners in their individual capacity have not been able to show as to how their rights are being violated. Sri Mishra, learned Senior Counsel for the petitioners, contends that fundamental rights are being violated by the impugned actions of the respondents. We may observe the violation as alleged in a public cause is already under scrutiny in the pending petitions. The petitioners, therefore, could have sought remedies if available in such proceedings but we find no justifiable ground to allow the petitioners to maintain

this petition.

22. The petitioners allege oblique motives and violation of court orders with no justification of purpose as road connectivity has nowhere been snapped or obstructed to undertake demolition that would result in greater damage to a green belt area and to plantations apart from other inconvenience to the inmates of Bhagidari Bhawan and residents of the nearby locality protected by the surrounding Dr. Ambedkar Smarak Sthal. The petitioners, therefore, seek protection of an existing structure of an institution raised on public funds and its impact on surrounding human habitation and environment, whereas the respondents claim to have executed a larger public purpose that was obstructed by the raising of the wall completely blocking a public passage and road meant to extend commutation facilities. The petitioners Counsel responds to the stand of State and the Development Authority that there is no corresponding gain as there are already connecting roads and this is being done for pure political vendetta. A change of government with elected representatives of opposed political platforms cannot be a reason for altering decisions taken by a validly installed predecessor government.

23. We may point out that on the submissions raised by the respondents and the stand of the learned Counsel for the intervenor, the road is sought to be constructed for substantially reducing the distance to approach Srijan Vihar Colony in Gomti Nagar and establish a direct connectivity to Janeshwar Misra Park, Gomti Nagar extension and Shaheed Path for which a railway underpass is also proposed.

24. Both the contending parties, therefore, profess to be acting bonafidely, one to protect and preserve a wall raised for public benefit and the other to fulfill a public purpose. One contends to shield and the other to remove obstacles causing public inconvenience. We may observe that "However brilliant an action may be, it should not be accounted great, when it is not the result of a great purpose - La Rouchefoucauld". The purpose should be "Purpose, Clean as light from every taint - J.R. Lowell in Under the old Elm". A public purpose may be protected under a political theology or agenda of a political or social entity, but the protection of a public purpose has to be in public interest and not on mere political considerations. A legal battle for a public purpose cannot be utilised for settling political scores, more so in the present case where the same subject matter has already undergone legal scrutiny precipitated by the orders passed from time to time. A public purpose cannot be a game dice on the choice of politicians in a legal arena. The wrestling theatre for achieving political mileage is elsewhere and not a court of law. Thus, a genuine public purpose being pursued in a court of law has to be guided by the rule of law and the due process doctrine.

25. The public at large in this democracy has still supreme faith in the judiciary. The rival contenders should, therefore, come in aid of restoration of such public faith in litigations of public purpose by disclosing their intentions honestly and fairly. It is here that we find that all development is being carried out of public

funds and spent for professed public purposes, but when it comes to assessment of its resulting in real public benefit, it is a public spirited person who approaches the court to resolve his bewildered status that has up till now been expressed in the sketches and caricatures of a common man by the Late R.K. Laxman. The situation is no better and almost remains the same with changing governments as the common man still wonders as to why public money is unmindfully squandered over monuments and celebrations when the economy of the State is in deficit and basic needs of poverty, food, drinking water, primary education, health and other public infrastructures, still require to be attended to and assured to the citizens of this populous State.

26. The public purpose under litigation should, therefore, be presented and contested with laudable objects in mind and not on mere political considerations and allegations. An act of public purpose should infuse confidence in the public bereft of any motivated adverse intentions. It should also not be ultra vires the law as breach of law by the State itself in execution shakes the confidence of its citizens.

27. The petitioner's Counsel vehemently urged the absence of any justification for the impugned action. The other side of the coin is justification of any continued obstruction or of any questionable construction. These counter claims are to be weighed on the scales of public purpose and public interest. Raising constructions or execution of such work has a direct impact on public expenditure. It is hard earned revenue through earnings of the citizens of the State that is spent. The same should not be utilized for personal glorifications without serving any public purpose. History is witness of any folly attempted, as it should not be forgotten that such attempts by monarchs, dictators and rulers in the name of people, has seen the pulling down of palaces and statutes resulting ultimately in destruction of wealth of the State. Such wealth and natural resources should not be converted into unworthy and unproductive expenditure. The executive and its bureaucracy should not be a mute expectator and act subservient particularly in fiscal matters where austerity should not be lost sight of to protect public purpose and public interest.

28. We find that the search for an answer to such competing claims on the issue raised is yet to be decided on merits in the writ petitions where interim arrangements were provided for and were modified by the Apex Court as per the sequence of orders brought before us.

29. Coming to the issue relating to the impact of the various orders of this Court and the Apex Court mentioned herein above, we are also clearly of the opinion that the aggrieved persons can approach the Apex Court for any such clarification if orders of the Apex Court are being violated or otherwise file a Contempt Petition or in the alternative seek a clarification about the order passed by the Apex Court on 2.7.2015. This, in our opinion, would be necessary in view of the fact that the subject matter of the constructions, that have been demolished now as per the information, given by the respondents, was

specifically the subject of dispute in Writ Petition No. 6681 of 2008 in relation where to a specific order had been passed on 6.4.2010 against which interim orders were passed by the Apex Court on 4.5.2010 and confirmed on 15.7.2010. It is these orders of the Apex Court that have been specifically vacated on 2.7.2015.

30. There is yet another aspect which deserves to be noticed. The order dated 15.7.2010, which had confirmed the interim order of status-quo dated 4.5.2010 disposes of all the Special Leave petitions in relation thereto. If the Special Leave petitions were already disposed of, then the Supreme Court having been apprised of the same has vide order dated 2.7.2015 chosen to dissolve the interim orders dated 4.5.2010 as confirmed on 15.7.2010. It is for the petitioners or the aggrieved persons to seek any clarification if they have any doubt about the bona fides of the respondent - Lucknow Development Authority in moving the interim applications resulting in passing of the order dated 2.7.2015 by the Apex Court. We are not in a position to deal with any such pleas that have been advanced by the learned Counsel for the petitioners complaining that the order dated 2.7.2015 has been obtained by the Lucknow Development Authority by misstating facts before the Apex Court. The aggrieved party will have to approach the Apex Court in case any such clarification is required in this regard.

31. Apart from this, if the petitioners allege that the orders passed earlier by the Supreme Court on 9.2.2010 govern the dispute presently raised, then it is for the aggrieved persons again to seek any such clarification if there is any conflict between the orders passed by the Apex Court on 2.7.2015 and the directions contained in the order dated 9.2.2010. Whether the Apex Court had also in mind the issue of closure or opening of roads including the present dispute while passing orders on 9.2.2010 so as to be covered by all "Project Sites" as urged by Sri Mishra for the petitioners cannot be a matter of clarification by us. This is also necessary inasmuch as the order dated 9.2.2010 has been passed by a Bench of two Hon"ble Judges of the Apex Court whereas the order dated 2.7.2015 has been passed by a three Judges Bench. It is, therefore, not for us to hold that the subject matter of the present dispute would be governed by the orders resulting in the final order dated 9.2.2010, when it has been brought to our notice that writ petition No. 6681 of 2008 or the relief prayed therein was not the subject matter of consideration when the order dated 9.2.2010 was passed by the Apex Court.

32. It may also be noted that the order of the High Court dated 4.4.2008, which was subject matter of the Special leave petitions where orders were passed on 9.2.2010, was in respect of the subject matter of notices for alteration in Master Plan and declaration of Green Belt Areas that was brought to the notice of the High Court through an Affidavit dated 20/21.2.2008. A perusal of the said order dated 4.4.2008, therefore, does not indicate that the present subject matter of obstruction of road was the issue involved therein. This dispute was clearly a

dispute that was raised in writ petition No. 6681 of 2008, which, in our opinion, would be governed by the consequences of the order passed by the Apex Court on 2.7.2015 by a Bench of three Hon'ble Judges.

33. Thus, on a total consideration of the aforesaid facts and the orders passed from time to time, we are clearly of the opinion that the present writ petition cannot be entertained as the order dated 6.4.2010 clearly directed the opening of the lower Bandha road. We may further emphasize that this issue of closure of road was also considered by the High Court in its order dated 6.4.2010 clearly observing that the learned Counsel Sri R.N. Trivedi, learned Senior Counsel and Sri S.C. Mishra, learned Senior Counsel, could not dispute the fact, that because of the blockage of the lower Bandha road the access to the visitors and residents of Bhagidari Bhavan and Srijan Vihar Colony has been impeded.

34. In view of what has been stated herein above and keeping in view the chronological events and orders passed by the Apex Court from time to time, we do not find this writ petition to be maintainable for the reasons aforesaid and we, accordingly, dismiss the writ petition without prejudice to the rights of any aggrieved person to approach the appropriate Court in any pending matter or seek clarification from the Apex Court on the ground of violation of any order or directions given by it.

35. No orders as to costs.