**(2013) 10 GUJ CK 0135**

**In the Gujarat High Court**

**Case No :** Civil Application No. 11171 of 2013 in Writ Petition (PIL) No. 210 of 2013

Tushar J. Patel and Another APPELLANT

Vs

State of Gujarat and Others RESPONDENT

**Date of Decision :** 24-10-2013

**Acts Referred:**

**Citation :** (2013) 10 GUJ CK 0135

**Hon'ble Judges :** Bhaskar Bhattacharya, C.J;J.B. Pardiwala, J

**Bench :** Division Bench

**Advocate :** Shalin Mehta and Mr. P.K. Pancholi, s No. 1 - 2, for the Appellant; Parth Bhatt, AGP for the Opponent(s) No. 1 - 2, Mr. S.N. Soparkar, Mr. Amar Bhatt, M.I. Merchant, Advocates for the Opponent(s) No. 3, Mr. S.P. Majmudar, Advocate for the Opponent(s) No. 4 and Mr. Vimal A. Purohit, Advocate for the Opponent(s) No. 4, for the Respondent

# Judgement

J.B. Pardiwala, J.—By this writ-application in the nature of a public interest litigation, the petitioners, who claim themselves to be the public spirited citizens, have prayed for the following reliefs:-

(A) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent Authorities, more particularly, respondent No. 2 to cancel the NA permission granted vide order dated 7.3.2012 as having been obtained by misrepresentation and being illegal and against public interest;

(B) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents Authorities to not enter into any sale transaction pursuant to order dated 9.7.2013 passed by the learned Charity Commissioner;

(C) Pending admission, hearing and final disposal of the petition, this Hon''ble Court may be pleased to direct the respondents to maintain status-quo and not permit any additional construction or alienation of the land bearing F.P. No. 269

of village Vastrapur, Dist. Ahmedabad;

(D) Grant ex parte ad interim relief in terms of para (A), (B) and (C) above;

(E) Pass such other and further orders as may be deemed just and fit.

The case made out by the petitioners in this petition may be summarized as under:-

According to the petitioners, the respondent No. 3, namely the Ahmedabad Education Society, is a public Trust registered under the provisions of the Bombay Public Trusts Act, 1950. The said Trust was established for promotion of educational activities. According to the petitioners, with the aid of contributions from the public at large, the Trust has been in a position to run and manage around 22 educational institutes in the city of Ahmedabad. The Trust, i.e. the respondent No. 3 herein, had purchased few parcels of land bearing survey Nos. 157 and 159 respectively sometime in the year 1956. Since the land was agricultural in nature, necessary permission was prayed for by the original owners from the Collector, Ahmedabad, and pursuant to such application filed by the original owners of the land, the Collector, vide order dated 19th October, 1956, had accorded permission u/s 63 of the Bombay Tenancy and Agricultural Lands Act, read with Rule 25 of the Bombay Tenancy and Agricultural Lands Rules, in favour of the original owners, permitting them to sell their agricultural lands situated in village Vastrapur to the trustees of the Ahmedabad Education Society for educational purpose, on condition that the land shall be used for the purpose for which the permission was granted, within a period of three years from the date on which the possession would be taken by the trustees.

2. According to the petitioners, the land which was bought in the year 1956 was not used for educational purpose within a period of three years as directed by the Collector, Ahmedabad, and the land remained vacant. Thereafter, on 8th January 1974, the Revenue Department of the State Government issued a Notification in exercise of the powers conferred by Clause (b) of sub-section (1) of Section 88 of the Bombay Tenancy and Agricultural Lands Act of 1948 (for short, "the Act of 1948"), specifying few parcels of land as being reserved for non-agricultural development. The said notification was issued by the State Government since the Government was of the opinion that it would be desirable to do so for educational purpose.

3. The parcels of land which the Trust purchased in the year 1956 were also included in the Notification dated 8th January 1974 issued by the State Government u/s 88(1)(b) of the Act of 1948. It is the case of the petitioners that from the year 2004-2005, the Trustees started functioning in a very high-handed and irresponsible manner quite detrimental to the interest of the Trust.

4. Inspite of the same, the Trust decided to sell the Final Plot No. 269 admeasuring 19769 sq. meters and open land situated at Mouje Bodakdev bearing Town Planning Scheme No. 1A having Final Plot No. 719 admeasuring

 

3438 sq. metrs and open land situated at Mouje Thaltej bearing Town Planning Scheme No. 2 Final Plot No. 120 admeasuring 4858 sq. meters, and accordingly filed an application with the Charity Commissioner, Ahmedabad, u/s 36 of the Bombay Public Trusts Act, 1950 (for short, "the Act of 1950"), seeking the necessary permission. The Charity Commissioner vide order dated 9th July 2013 accorded the necessary permission to sell the subject land, subject to certain terms and conditions.

5. It is the case of the petitioners that after the filing of the application u/s 36 of the Act of 1950 before the Charity Commissioner the Trust prayed for N.A. permission with the authority u/s 65 of the Bombay Land Revenue Code, vide application dated 19th May 2011, representing that the Trust wanted to construct quarters for the staff and the students.

6. It is also the case of the petitioners that while praying for the N.A. permission, it was not brought to the notice of the authority concerned that the Trust had already filed an application with the Charity Commissioner u/s 36 of the Act of 1950, seeking permission to sell the land in favour of the respondent No. 4.

7. According to the petitioners, the respondent No. 2, without verifying the revenue records and without seeking any further clarification, passed an order dated 7th March 2012 granting N.A. permission for residential use despite the fact that the land was to be used only for educational purpose.

8. It is also the case of the petitioners that manifold objections were raised before the Charity Commissioner by number of persons including the petitioners. A communication was also addressed by the respondent No. 2 Collector to the Charity Commissioner requesting him to look into the application filed by the Trust u/s 36 of the Act of 1950 very closely. However, the Charity Commissioner, vide order dated 5th June 2012, granted a preliminary permission to initiate the auction proceedings of the land in question. The hearing of the objections was undertaken by the Charity Commissioner on 23rd July 2012.

9. It is the case of the petitioners that the Charity Commissioner received two offers; one, from M/s. Sumedha Links Private Limited for Rs. 137 crore (respondent No. 4) and the other, from Shri J.M. Duggar for Rs. 138 crore.

10. It is the case of the petitioners that the Charity Commissioner finally granted permission to the Trust to sell the land in favour of the respondent No. 4 M/s. Sumedha Links Private limited vide order dated 22nd May 2013.

11. It is alleged by the petitioners that even prior to the order being passed by the Charity Commissioner and execution of the registered sale-deed, one M/s. Ajmera Private Limited, acting in collusion with the respondent No. 4, had already put up an advertisement of launching of a complex of residential flats on the land in question.

12. It is also the case of the petitioners that on 15th July 2013, they invited the attention of the respondent No. 2 Collector about the action of the Trust, but no

 

heed was paid by the Collector and, therefore, they were left with no other option but to file this Public Interest Litigation.

13. In essence, the sum and substance of the case of the petitioners is that the Collector, in the year 1956, had permitted the original owners of the land to sell the same in favour of the Trust, on condition that the same shall be used only for the purpose of education. The lands, being agricultural in nature, could not have been otherwise bought by the Society, but since they were to be used only for the purpose of education, the Collector, in exercise of power u/s 63, had accorded the necessary permission. In the year 1974, the land was reserved for non-agricultural purpose vide Notification issued u/s 88 of the Act of 1948. According to the petitioners, the Society has no right to sell the land to a third party, viz. the respondent No. 4, who has put up a commercial complex on the said land. Thus, according to the petitioners, the Trustees of the Society have acted contrary to the provisions of law and have failed to protect the interest of the Trust.

Stance of the Respondent No. 3 - The Ahmedabad Education Society:

14. The Ahmedabad Education Society was established in the year 1935 under the Societies Registration Act, and thereafter, was also registered as a Trust in the year 1953 under the provisions of the Bombay Public Charitable Trusts Act, 1950. The Society''s main objective is to promote education, and for that purpose, over a period of time it has been able to develop 22 educational institutes, which include very reputed institutes such as H.L. College of Commerce, L.M. College of Pharmacy, M.G. Science College, L.D. Arts College, A.G. Teachers School, Amrut Modi School of Management etc. According to the respondent No. 3, it is one of the most prominent education trust in Ahmedabad and lacs of students have been imparting education from the institutes past almost 75 years. The Society was established under the inspiration provided by late Sardar Vallabhbhai Patel. Late Sardar Vallabhbhai Patel was actively supported by visionaries like G.V. Mavalankar and other industrialists viz. Sheth Kasturbhai Lalbhai, Amrutlal Hargovindas etc. According to the respondent No. 3, they purchased land admeasuring hundreds of acres in the Navrangpura area, which ultimately proved to be a boon for the future expansion of the education.

15. According to the respondent No. 3, recently they have promoted, formed and established its own university, namely, Ahmedabad University, with the sole objective to provide quality and specialized world class education in the country. The Ahmedabad University was established under the Special Act enacted by the State Legislature. The University aims to make the city of Ahmedabad a credible, global education and research destination. According to the respondent No. 3, for the purpose of setting up the University, a corpus fund of Rs. 600 to 700 crore is required and, therefore, with the sole objective of setting up such University, a resolution was passed by the Trustees of the Society to sell few scattered parcels of land.

 

16. According to the respondent No. 3, the petitioner No. 1 is a court-bug and a habitual litigant. He is in the habit of filing false, frivolous and vexatious litigations against the Society and the petition has not been preferred bonafidely, but only with a view to extort personal benefits. It is the case of the respondent No. 3 that after obtaining the necessary permissions as required in law, the transaction with the respondent No. 4 was finalised and they have not acted in any manner which could be termed as detrimental to the interest of the Trust.

17. It is the case of the respondent No. 3 that the petition deserves to be rejected with heavy costs, as it is nothing but an abuse of process of law.

Stance of the respondent No. 4:

18. According to the respondent No. 4, the petition although filed in the nature of a public interest litigation, the same is nothing but an outcome of the personal grudge, which the petitioners have against the respondent No. 3.

19. According to the respondent No. 4, they have already deposited an amount of Rs. 40 crore, out of which Rs. 20 crore were deposited last year and the balance amount of Rs. 20 crore has been deposited after the order was passed by the Charity Commissioner granting permission to purchase the property in question.

20. According to the respondent No. 4, it has to arrange for Rs. 147 crore as Rs. 137 crore is the purchase price offered by them and around Rs. 10 crore towards the expenses of registration fees, stamp duty and other expenses for execution of the sale deed.

21. According to the respondent No. 4, since this Court has passed an order of status quo as regards the alienation, they are suffering a loss of around more than Rs. 1 crore per month towards the interest since a corpus of around Rs. 147 crore has got blocked.

22. According to the respondent No. 4, the petitioners have not challenged the order dated 9th July 2013 passed by the Charity Commissioner, Ahmedabad, and, therefore, in the absence of such a challenge they cannot pray for an order from this Court to cancel the N.A. permission granted vide order dated 7th March 2012.

23. According to the respondent No. 4, there being no merit in this Public Interest Litigation, the same deserves to be rejected with heavy costs.

Submissions on behalf of the petitioners:

24. Mr. Shalin Mehta, the learned senior advocate, assisted by Mr. P.K. Pancholi, the learned advocate appearing for the petitioners, vehement submitted that it was not permissible in law for the Society to sell the subject land, as the transaction is hit by the provisions of Section 63 of the Act of 1948.

25. Mr. Mehta submitted that in the year 1956, the Society was permitted to buy

 

few parcels of agricultural land only on the condition that the same are to be used for educational purpose. If the purpose would have been other than education, then probably the Collector would not have granted permission to buy the agricultural land in view of the provisions of Section 63 of the Act of 1948. Mr. Mehta submitted that even according to the permission of the year 1956, the Society was obliged to put the lands for agricultural use within a period of three years. However, the Society was unable to use the land for agricultural purpose, and on the expiry of the period of three years, the Society was already in breach of the conditions imposed by the Collector.

26. According to Mr. Mehta, at that relevant point of time itself, the Collector could have initiated the necessary proceedings for breach of the conditions imposed in the order of the year 1956. However, at that relevant point of time, such breach was not taken into consideration.

27. Mr. Mehta submitted that on 8th January 1974, the State Government, in its Revenue Department, issued a Notification in exercise of the powers u/s 88B(1) of the Act of 1948, thereby reserving few parcels of land, which includes the subject land for non-agricultural development. The object of issuing such Notification exempting the parcels of land from the provisions of the Act of 1948 was that the lands could be used for educational purpose. According to Mr. Mehta, even taking into consideration the Notification dated 8th January 1974, the Society could not have sold the land in favour of the respondent No. 4.

28. Mr. Mehta led much stress on the fact that the land was purchased by the Society for educational purpose and now, by selling the same in favour of the respondent No. 4, it is going to be used for commercial purpose. Mr. Mehta submitted that the respondent No. 3 has completely ignored and undermined the importance of the Notification, which was issued in the year 1974 u/s 88B(1) of the Act of 1948. Mr. Mehta submitted that for the alleged breach of such a Notification, it is always open for the State Government to even withdraw the Notification of the year 1974, in exercise of powers under the provisions of Section 88D of the Act of 1948.

29. Mr. Mehta very strenuously tried to convince us that the bonafide of the Trust is very doubtful because while applying for the N.A. permission, all the material facts were withheld from the authority, more particularly, the order of the Collector passed in the year 1956 and the Notification of the year 1974 issued u/s 88 of the Act of 1948.

30. Mr. Mehta submitted that while applying for N.A. permission, it was stated in the application that the permission was prayed for because the Society wanted to construct hostel and staff quarters for the employees of the Society, whereas the intention was otherwise. According to Mr. Mehta, if the correct facts would have been brought to the notice of the authority, then probably the N.A. permission would not have been granted. Mr. Mehta also submitted that the first N.A. permission was for residential purpose but, thereafter, surreptitiously, by

 

concealing material facts, the respondent No. 4 succeeded in getting even the purpose changed from residential to commercial.

31. Mr. Mehta also submitted that the respondent No. 4 could not be said to be a bonafide purchaser of the property for value without notice and, therefore, the equities which are now sought to be created in favour of the respondent No. 4 should be ignored. Mr. Mehta also submitted that even the Collector had lodged his objections with the Charity Commissioner, but the Charity Commissioner omitted to take into consideration such objections and proceeded to grant the permission in favour of the respondent No. 3 to sell the land in favour of the respondent No. 4.

32. Mr. Mehta, placing reliance on the decision of the Supreme Court in the case of United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others, , submitted that although an action is brought by the private individuals before the Court, but if the cause espoused in the writ-petition has wider ramifications and would affect others also over and above the private individuals, then such cases may not be dealt with as individual cases and such a litigation may be regarded as a public interest litigation. According to Mr. Mehta, even if it is not so regarded, the Court may consider the same to be ''Public Law Litigation''.

33. Mr. Mehta also placed reliance on the decision of the Supreme Court in the case of Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, and submitted that with the passage of time, the law has given a new dimension to the power of the Courts to make investigation into the issues of public importance although the petitioner of a particular case may have moved the Court for vindication of a private interest.

34. In such circumstances referred to above, Mr. Mehta submitted that the petition merits consideration in public interest and the reliefs prayed for deserve to be granted in the interest of the public at large.

Submissions on behalf of the respondent No. 3-Society:

35. Mr. S.N. Soparkar, the learned senior advocate, assisted by Mr. Amar Bhatt and Mr. M.I. Merchant, the learned advocates for the Society, submitted that this petition deserves to be rejected only on the ground that it is at the behest of persons whose bonafides and credentials are beyond any doubt.

36. Mr. Soparkar submitted that a true public interest litigation is the one in which a selfless citizen, having no personal motive of any kind except either compassion for the weak and disabled or deep concern of stopping serious public injury, approaches the Court for either of the following purpose:-

(i) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system, or statutory provision incorporating the directive principles of the State policy for amelioration of their condition; and

 

(ii) Preventing or annulling executive acts and omissions violative of the Constitution or law resulting in substantial injury to the public injury.

37. Mr. Soparkar vehemently submitted that the petitioner No. 1 has left no stone unturned to harass the Society in all possible manner. Mr. Soparkar submitted that the petitioner No. 1 has set his eye on the Society with an oblique motive and such oblique motive is evident from the number of litigations which he has instituted against the Society. Mr. Soparkar submitted that the petitioner No. 1, perhaps at a point of time apprehending that his credentials would come under a severe attack, very craftily joined one another person as petitioner No. 2, who has nothing to do in with the Society.

38. According to Mr. Soparkar, the purpose for asking the petitioner No. 2 to join in the petition could only be to save the petition from being rejected on the ground of oblique motive on the part of the petitioner No. 1.

39. Mr. Soparkar submitted that howsoever genuine a cause brought before the Court by public interest litigants may be, the Court should decline its examination at the behest of persons like the present petitioners, who, in fact, are not public interest litigants and whose bonafides and credentials are in doubt.

40. Mr. Soparkar submitted that there is no merit worth the name in any of the submissions canvassed on behalf of the petitioners so far as the position of law is concerned. According to Mr. Soparkar, there is no breach of any of the provisions of the Act of 1948, or the Bombay Public Trusts Act, or the Bombay Land Revenue Code.

41. Mr. Soparkar submitted that there is no dispute about the fact that the lands are the property of the respondent No. 3 Society. According to Mr. Soparkar, his client is one of the most well reputed educational Society in the State of Gujarat. It has affiliations with Universities of Oxford, Cambridge etc. The Society is running and managing almost more than 22 premier educational institutes in the city of Ahmedabad. Mr. Soparkar also submitted that his client is desirous of setting up a university known as ''Ahmedabad University'', for which his client is in need of finance to the tune of more than Rs. 350 crore.

42. Mr. Soparkar submitted that the Government of Gujarat has also enacted an Act, called "The Gujarat Private Universities Act, 2009" and the Society has entered into a Memorandum of Understanding dated 13th January, 2009, with the State Government for planning to set up a private (State University).

43. In the Memorandum of Understanding, which is on record, it is specifically stated that the Ahmedabad Education Society proposes to set up a private university in the State of Gujarat, involving an investment of approximately Rs. 350 crore. According to Mr. Soparkar, if few scattered parcels of land of the ownership of the Trust itself are sold for the purpose of generating necessary funds to set up Ahmedabad University, then the use of the funds could definitely be said to be used for educational purpose only and, therefore, the hue and cry

 

raised by the petitioners that the land is being sold to a third party to make profit out of the same is without any basis.

44. Mr. Soparkar submitted that over a span of almost six decades, the Society has been able to acquire and purchase huge parcels of land, and it was only due to such foresightedness of the Trustees that today premier institutes have come up all over the city imparting education to lacs of students every year.

45. Mr. Soparkar submitted that the petitioners are in no way concerned with the internal management and functions of the Trust and the only reason why they have raised frivolous and vexatious objections is to extort money from the Trust. Mr. Soparkar submitted that, by now, the petitioner No. 1 has instituted not less than twenty litigations against the Trust on one or the other ground, and has failed miserably in all such litigations.

46. Mr. Soparkar submitted that the allegation of fraud levelled on his client in obtaining the N.A. permission is also baseless. Mr. Soparkar submitted that the whole idea in first getting N.A. permission was to see that the best of the price is being fetched when the plot is sold to any third party because the value of a non-agricultural land would obviously be much higher than an agricultural land.

47. Mr. Soparkar submitted that his client first approached the Charity Commissioner with an application u/s 36 of the Bombay Public Trusts Act, seeking permission to sell the land. The Charity Commissioner, pursuant to such application being filed, invited objections, and after receiving the objections, the same were considered objectively. The Charity Commissioner, after over-ruling the objections, accorded the necessary permission, taking into consideration the interest of the Trust.

48. In such circumstances referred to above, Mr. Soparkar submitted that there being no merit in the petition, the same deserves to be rejected with heavy costs.

Submissions on behalf of the respondent No. 4:

49. Mr. S.P. Majmudar, the learned advocate appearing for the respondent No. 4, submitted that the petition, although filed in the nature of a public interest litigation, is nothing but an outcome of the personal grudge which the petitioners have against the respondent 3.

50. Mr. Majmudar submitted that his client has already deposited an amount of Rs. 40 crore, out of which Rs. 20 crore were deposited last year and the balance amount of Rs. 20 crore has been deposited after the order was passed by the Charity Commissioner granting permission to purchase the property in question.

51. Mr. Majmudar submitted that his client has to arrange for Rs. 147 crore as Rs. 137 crore is the purchase price offered by them and around Rs. 10 crore towards the expenses of registration fees, stamp duty and other expenses for execution of the sale deed.

52. Mr. Majmudar also submitted that since this Court has passed an order of

 

status quo as regards the alienation, his client is suffering a loss of around more than Rs. 1 crore per month towards the interest since a corpus of around Rs. 147 crore has got blocked.

53. Mr. Majmudar further submitted that the petitioners have not challenged the order dated 9th July 2013 passed by the Charity Commissioner, Ahmedabad and, therefore, in the absence of such a challenge, they cannot pray for an order from this Court to cancel the N.A. permission granted vide order dated 7th March 2012.

54. Mr. Majmudar lastly submitted that there being no merit in this Public Interest Litigation, the same deserves to be rejected with heavy costs.

55. Having heard the learned counsel appearing for the parties and having gone through the materials on record, in our opinion, the following questions arise for our consideration in this Public Interest Litigation.

(a) Whether this litigation is a bonafide and genuine public interest litigation, or is at the behest of two meddlesome interlopers with a malafide intention of vindicating their personal vengeance or grievance?

(b) Whether the Society committed any illegality in selling the subject land in favour of the respondent No. 4 for the purpose of raising the necessary finance to set up Ahmedabad University in terms of the Memorandum of Understanding dated 13th January 2009, with the Government of Gujarat?

(c) Whether this petition deserves to be rejected on the ground of delay and laches?

56. Ordinarily, the Court would allow a litigation in public interest if it is found:

(i) that the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right, and the relief is sought for its enforcement;

(ii) that the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) that the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) that such person or group of persons is not a busybody or a meddlesome interloper and have not approached with malafide intention of vindicating their personal vengeance or grievance;

(v) that the process of public interest litigation was not being abused by politicians or other busybodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

 

(vi) that the litigation initiated in public interest was such that if not remedied or prevented, would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) that the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received, but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) that the person approaching the Court has come with clean hands, clean heart and clean objectives;

57. That before taking any action in public interest, the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politician, busybody or persons or groups with malafide objective of either for vindication of their personal grievance or by resorting to blackmailing or considerations extraneous to public interest.

58. In the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, the Supreme Court observed as follows:-

Today public spirited litigants rush to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion. Public Interest Litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is therefore necessary to lay down, clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves Administrative and executive functions. This does not mean that traditional litigation should stay out. They have to be tackled by other effective methods, like decentralizing the judicial system and entrusting majority of traditional litigation to Village Courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases....

It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basis human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially the Supreme court, 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 is necessary to have some self-imposed restraint on Public Interest Litigants.

 

59. In a recent pronouncement of the Hon''ble Supreme Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, the Supreme Court laid down the following guidelines relating to Public Interest Litigation:-

178. We must abundantly make it clear that we are not discouraging the Public Interest Litigation in any manner, what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by the Courts for improving ecology and environment, and the directions helped in preservation of forests, wildlife, marine life etc. It is the bounden duty and obligation of the Courts to encourage genuine bonafide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the laws.

179. The Public Interest Litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger pubic interest in consonance with the inherent spirits of the Constitution. The conditions of marginalized and vulnerable section of society have significantly improved on account of Court''s directions in PIL.

180. 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 Court must encourage genuine and bonafide PIL and effectively discourage and curb the PIL filed for extraneous consideration.

(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 formulates 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 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 petition.

(5) The Courts 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 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.

60. In a much recent pronouncement of the Hon''ble Supreme Court in the case of P. Seshadri Vs. S. Mangati Gopal Reddy and Others, the Supreme Court has observed that:-

Public Interest Litigation can only be entertained at the instance of bona fide litigants. It cannot be permitted to be used by unscrupulous litigants to disguise personal or individual grievances as Public Interest Litigations. The Supreme Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies, having little or not interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at threshold.

61. Having bestowed our thoughtful consideration to all the relevant aspects of the matter, we have no hesitation in reaching to the conclusion that the present petition is not a genuine bonafide public interest litigation, but has been filed with an oblique motive.

62. Our attention has been drawn to a list of litigations instituted by the petitioner No. 1 against the Society, which is suggestive of the fact that the petitioner No. 1 has left no stone unturned to harass the trustees of the Society with an oblique motive in all possible manner.

63. The list of the litigations instituted by the petitioner No. 1 against the Trust so far, is as under:-

64. At this stage, it may not be out of place to state that over and above the present petition, two more petitions have been filed by the petitioners against the Society, being Writ Petition (PIL) No. 217 of 2013 and Writ Petition (PIL) No. 275 of 2012 respectively, levelling the same frivolous and vexatious allegations with respect to two other parcels of land. Those two were heard analogously and we are going to dispose of the same by a separate judgment along with the present one.

65. It appears that for no fault on the part of the Society, the petitioners have dragged the Society into an unnecessary litigation, thereby trying to tarnish the image of an educational Trust who is running and managing around 22 educational institutes in the city of Ahmedabad.

66. The Supreme Court in the case of T.N. Godavarman Vs. Union of India,

 

reported in : (2002) 10 SCC 606, observed that howsoever genuine a cause brought before the Court by a public interested litigant may be, the Court must decline its examination at the behest of a person, who, in fact, is not a public interested litigant and whose bonafides and credentials are in doubt. At the same time, the Supreme Court also observed that in a given exception case where bonafides of a public interested litigant are in doubt, the Court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing amicus curiae to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant.

67. In the present case, not only the bonafides and the credentials of the petitioners are in doubt, but there is no such public cause brought to our notice, which, if not looked into, would result into public injury. In the words of the Supreme Court, 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,

68. In the present case, we do not find anything clean, not to speak of clean hands or clean heart or clean mind or clean objective. The only objective seems to be to harass the Society and the list of litigations instituted by the petitioner No. 1 speaks for itself.

69. We find substance in the submission of Mr. Soparkar, the learned senior advocate appearing for the Society, that perhaps the petitioner No. 1, apprehending that his credentials would be under a severe attack, very thoughtfully joined one another person while filing the petition, who is in no way concerned in any manner with the Society. However, that would hardly save the situation for the petition to be branded as lacking in bonafides. We, therefore, answer the first question accordingly.

70. Having answered the first question against the petitioners, we could have stopped here saying no more, but since we have heard the matter at length, we have thought fit to even answer the other two questions.

Second Question:

71. So far as the second question is concerned, we have answered the same exhaustively while deciding the Writ Petition (PIL) No. 217 of 2013 between the same parties. We have considered the various provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, including the Bombay Tenancy and Agricultural Lands Rules, 1956. We have also considered at length Sections 88, 88B and 88D of the Act of 1948 and Section 36 of the Bombay Public Trusts Act, 1950.

72. After taking into consideration the relevant provisions at length, we have recorded a finding that no breach could be said to have been committed by the Trust of any of the provisions of law in selling the land owned by it.

73. We adopt the same line of reasoning to answer the second question and we,

 

accordingly, answer the same.

Third Question:

74. It is well settled that this sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of a vigilant litigant. The power of the High Court to be exercised under Article 226 of the Constitution of India being discretionary, its exercise must be judicious and reasonable. The persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief, obtainable thereunder, unless they fully satisfy the Court that the facts and circumstances of the case clearly justify the laches or undue delay on their part in approaching the Court for grant of such discretionary relief.

75. Where the High Court grants relief to a citizen or any other person under Article 226 of the Constitution of India against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief, so granted, becomes unsustainable, even if, the relief was granted in support of the alleged deprivation of his legitimate right by the State. Delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution, and the third party interest created on account of delay, should not be disturbed.

76. Reference could also be made to the observations passed by the Supreme Court in the case of D.D.A. Vs. Rajendra Singh and Others, which are as under:-

52. In Narmada Bachao Andolan v. Union of India, SCC para 229, this Court has held that PIL should be thrown out at the threshold if it is challenged after the commencement of execution of the project. It was also held that no relief should be given to persons who approach the Court without reasonable explanation under Articles 226 and 32 after inordinate delay.

53. We reiterate that the delay rules apply to PILs also and if there is no proper explanation for the delay, PILs are liable to be summarily dismissed on account of delay. In the case on hand, it is not in dispute that both the petitioners though claiming that they are very much conversant with environment and ecology, approached the High Court only in the middle of 2007, hence on the ground of delay and laches, the writ petitions were liable to be dismissed.

77. In State of M.P. and Others Vs. Nandlal Jaiswal and Others, the Supreme Court in paragraph 23 observed as under:-

23. Now, it is well settled that the power of the High Court to issue an appropriate writ under article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay

 

is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions or this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.

78. Bearing the aforesaid principles in mind, we are of the considered opinion that this petition deserves to be rejected even on the ground of delay. We have taken note of the developments, which have taken place so far. The following aspects need to be considered:-

(a) The order of N.A. passed by the respondent No. 2, which is the subject matter of challenge, is dated 7th March 2012;

(b) The order passed by the Charity Commissioner granting permission to the Trust to sell the land is dated 9th July 2013;

(c) The respondent No. 4 has already deposited an amount of Rs. 40 crore with the office of the Charity Commissioner. An amount of Rs. 20 crore was deposited last year, whereas the balance amount of Rs. 20 crore has been deposited after the order was passed by the Charity Commissioner in the month of July 2013;

(d) The respondent No. 4 has already raised a corpus of Rs. 107 crore, which is to be deposited immediately for the purpose of execution of the sale deed;

(e) Due to interim order passed by this Court in the month of September 2013 directing the respondents to maintain status quo as regards the nature and the character of the property, the sale deed could not be executed, as a result of which, the respondent No. 4 is suffering a loss of Rs. 1 crore every month towards the interest.

79. For the foregoing reasons, we hold that there is no merit worth the name in this petition and the same deserves to be rejected with costs.

80. In the words of the Supreme Court, the Court must not allow its process to be abused for oblique consideration by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the past time of meddling with judicial process either by force of habit, or from improper motives and try to bargain for a good deal as well as to enrich themselves. Often they are

 

actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs. [See Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others,

81. This is an appropriate case which deserves to be rejected with exemplary costs. The petition is accordingly rejected with costs, quantified at Rs. 25,000/- (Rupees twenty five thousand only).

82. The order of status-quo as regards the nature and the character of the property, as also alienation, passed by us, is ordered to be vacated forthwith.

83. The petitioners are directed to deposit the amount of Rs. 25,000/- (Rupees twenty five thousand only) with the High Court Legal Services Authority, within a period of one week from today. If the amount of costs is not deposited as directed, then in such circumstances, the Legal Services Authority shall proceed to recover the same from the petitioners, in accordance with law.

84. In view of the disposal of the main petition, the connected Civil Application has become infructuous and the same is accordingly disposed of.

Bhaskar Bhattacharya, C.J.

J.B. Pardiwala, J.

85. After this order is passed, Mr. Pancholi, the learned advocate appearing on behalf of the petitioners, prays for stay of operation of our order. In view of what has been stated above, we find no reason to stay our order. Prayer is refused. Let a certified copy of the order be given to the petitioners by tomorrow, if applied.

 