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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

PUBLIC INTEREST LITIGATION (L) NO.22 OF 2018

Prakash Agarwal ... Petitioner
V/s.
M/s. Nahar Builders Limited and Ors. ... Respondents

Mr. Prakash Agrawal, Petitioner in person.

Dr. Milind Sathe, Senior Advocate with Mr. Parimal K. Shroff, Mr. D.V. Deokar, Mr. Pinkin Modi, Mr. D. Parikh i/b. Parimal K. Shroff and Co. for the Respondent Nos.1 and 2 in PIL No.22 of 2018.

Mr. A.Y. Sakhare, Senior Advocate with Ms. Pallavi Thakar for the Respondent – MMC.

Mr. Shubham Mittal i/b. FF & Associates for Respondent No.4 in PIL No.22 of 2018.

Mr. L.T. Satelkar, AGP for the Respondent – State in PIL No.22 of 2018.

(Mr. S.D. Kulkarni, Member Secretary, MSLSA & Mr. D.R. Shetty, Court Receiver & Mr. Shashank Mehendale, Expert Structural Engineer is present.)

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 10th, 13th and 14th AUGUST 2018.

P.C.:

1 The submissions of the petitioner appearing in person and the learned senior counsel appearing for the Respondent No.1 were heard on the limited aspect of *locus standi* of the petitioner appearing in person who filed this PIL. The objection raised by the learned senior counsel

appearing for the Respondent No.1 was basically that the petitioner has not complied with the requirements of the Bombay High Court Public Interest Litigation Rules, 2010. The submission is that the petitioner has personal interest in the subject matter of this PIL. The third ground is based on the chart annexed to the affidavit of Respondent No.1 and a chart tendered across the bar showing the number of litigations/complaints filed by the petitioner against the Respondent No.1 as well as by the petitioner's wife.

2 The petitioner appearing in person invited our attention to the amended petition and in particular paragraphs 24A and 24B. He also invited our attention to a decision of the Apex Court in the case of *State of Uttaranchal Vs. Balwant Singh Chaufal and others* in Civil Appeal Nos.1134-1135 of 2002 and in particular what is observed in paragraphs 47 and 80 of the said decision. He submitted that even the order dated 2nd March 2007 passed by this Court in PIL No.125 of 2014 will show that the locus of the petitioner to file the present PIL was accepted. He submitted that he is not holding any flat in the project of the contesting respondents and his wife is holding a flat. Inviting our attention to the prayers made in the PIL, he would urge that even assuming that the petitioner is staying in the same complex which is constructed by the contesting respondents, it cannot be said that the petitioner has no locus.

3 The learned senior counsel appearing for the contesting respondents relied upon the decision of the Apex Court in the case of *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Ors.*¹. He invited

1 AIR 2005 SC 540

our attention to the observations made in the said decision. He also invited our attention to the prayers made in various proceedings filed by the petitioner and/or his wife and submitted that the petitioner has no locus.

4 We have considered the submissions on the aspect of locus of the petitioner to maintain PIL. Our attention is invited to the Bombay High Court Public Interest Litigation Rules 2010 (Public Interest Litigation Rules). Rule 7 of the said Rules provides that the petitioner while filing the PIL shall annex to the petition an affidavit stating that there is no personal gain, private motive or oblique reason in filing the Public Interest Litigation. In the petition, as originally filed there was no such specific statement. The said statement has been incorporated by way of amendment by incorporating paragraph 24A stating that the petitioner has no personal interest in filing this PIL. Paragraph 24B is also material which discloses that the petitioner has filed Writ Petition No.902 of 2018 before this Court relating to some project challenging the order of the Grievance Redressal Committee. It is pointed out that the petitioner has filed Application No.104 of 2016 before the National Green Tribunal (Western Zone). It is contended in paragraph 24B that the writ petition and the application before the National Green Tribunal concern the same project, but the subject matter of this PIL is different. It is disclosed in paragraph 24B that the petitioner's wife has filed Application No.1002 of 2015 before the National Consumer Forum at New Delhi and there is an application filed by her in the Court of Metropolitan Magistrate at Andheri concerning the same project.

5 This PIL concerns an integrated Township project of the first to fourth respondents known as Amrit Shakti Project on lands admeasuring 7,37,197 sq. meters of village Chandivali Mumbai Suburban District. It is necessary to make a reference to the prayers made in this PIL. The first prayer - prayer (A) is for restraining the respondents from creating any third party interests in respect of the project located on the City Survey numbers mentioned in the said prayer. The second prayer - prayer B is for issuing necessary directions for the safety and protection of the interests of the apartment owners who are holding the apartments without environment clearance and other permissions. The third prayer (C) is for issuing a writ of mandamus directing the respondents to immediately provide Recreation Ground, Amenity spaces, DP Roads, Solid Waste Management and Sewerage Treatment Plants and other amenities. There is a prayer incorporated by way of prayer clause (F) directing the first to fourth respondents to provide amenities to all the slums located in the project of first to third respondents. There is a prayer (G) directing the first to fourth respondents to carry out a carbon sequestration study in the project. There is a prayer (H) for directing that the entire R1 Sector be declared as no development zone. There is a prayer (I) for taking action against the polluters viz. first to fourth respondents. Prayer (J) makes a grievance about the poor quality of workmanship in the project. Prayer (L) raises the issue of parking. Further prayer relates to amenities including refuse collection, school, etc.

6 Prayer (B) proceeds on the footing that the work of the project is carried out without environment clearance. Prayer (C) proceeds

on the footing that relevant permissions under the Municipal Laws as well as under the Environment Protection Act, 1986 have not been granted. Prayer (D) proceeds on the footing that recreation ground, amenity spaces, DP roads, solid waste treatment, sewerage treatment plants and other amenities have not been provided to the township. There is a prayer which proceeds on the basis of allegation that hillock has been destroyed and, therefore, the Respondent No.11 be directed to restore the hillock. There is a prayer regarding poor quality of workmanship in the project. There is a prayer regarding excess parking and a prayer for seeking direction to provide various amenities. Initially, in the petition, the petitioner did not disclose filing of Application No.104 of 2016 before the National Green Tribunal (Western Zone). Only by way of amendment that paragraph 24B has been added in which the petitioner claims that though Writ Petition No.902 of 2018 filed before this Court and Application No.104 of 2016 filed before the National Green Tribunal pertain to the same project, the subject matter is different. He has stated that his wife has filed Application No.1002 of 2015 before the National Consumer Forum at New Delhi and Application No.410/SW of 2016 before the Metropolitan Magistrate, Andheri.

7 Now, we turn to the prayers and averments made in Application No.104 of 2016 filed by the present petitioner before the National Green Tribunal. In paragraph 3 of the application, the petitioner has stated that he is a resident of the said township which is developed by the Respondent Nos.1 to 3. The grievance made in the application is that certain work has been commenced by the first respondent in the PIL (first respondent in the said application) without obtaining environment

clearance and without obtaining IOD. In paragraph 37 of the said application, the present petitioner has stated thus:

“37. The Applicant states that the applicants have put in their retirement benefits and most of their life's earning in this project. However, they are suffering due to ill health, odour and other problems which the Respondent No.1 refuses to address amicably.”

8 In paragraph 40, the petitioner has set out how he is personally affected. The averments made in paragraphs 37 and 40 of the application filed before the National Green Tribunal will show that the petitioner has a personal interest in the subject matter of the present PIL. Perusal of the prayers made show that there is a prayer based on failure of obtaining environment clearance and consent of parties. There is an allegation that there are violations of Environmental Clearance Notification. There is a relief claimed regarding STP. Certain prayers were sought to be added by way of amendment to the said application including the prayer regarding destruction of hillock having an area of 75,000 sq.meters. The said application for amendment was rejected by National Green Tribunal for the reasons recorded in the order dated 5th July 2017 and as of today, the said order has become final. Reliance placed by the petitioner on paragraph 47 of the decision in the case of *State of Uttarakhand Vs. Balwant Singh* (supra) is misplaced. Paragraph 47 reads thus :-

“47. The court while interpreting the words “person aggrieved” in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Others* (1976) 1 SCC 671 observed that “the traditional rule is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or

omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule”.

The Apex Court has referred to “substantial and genuine interest” which is different from personal interest. In the case of *Dattaraj Nathuji Thaware* (supra), in paragraphs 4 to 10 the Apex Court observed thus :-

- “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 “paise income litigation”. The High Court has found that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. 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 v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and *Kazi Lhendup Dorji v. CBI* [1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873] . 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 v. Union of India* [1993 Supp (2) SCC 20 : AIR 1993 SC 852] and *K.R. Srinivas v. R.M. Premchand* [(1994) 6 SCC 620] .)

5. It is necessary to take note of the meaning of the expression “public interest litigation”. In *Stroud's Judicial Dictionary*, Vol. 4 (4th Edn.), “public interest” is defined thus:

“*Public interest*.—(1) A matter of public or general interest ‘does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected’....”

6. In *Black's Law Dictionary* (6th Edn.), “public interest” is defined as follows:

“*Public interest*.—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.”

7. In *Janata Dal case* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, has laid down as follows: (SCC p. 331)

“53. The expression ‘litigation’ means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression ‘PIL’ means a legal action initiated in

a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)
“62. Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.”
9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)
“98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.”
10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)
“109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.”

The petitioner has pleaded in the Application before NGT that he has a personal interest in the subject matter. The sufficient interest

referred in paragraph 10 is different from personal interest. Paragraph 6 of the order dated 3rd March 2017 does not refer to the averments made in the application before NGT in which the petitioner has stated about his personal interest. The First Court in the said order was not dealing with the issue of the petitioner maintaining a PIL. In the said PIL, the petitioner was an intervenor and it is in that context that observations have been made. Hence, we are of the view that the petitioner is disentitled to maintain this PIL.

9 In our view, the petitioner ought to have disclosed filing of the proceedings which are mentioned in paragraph 24B of the petition which is added by way of amendment. Moreover, he should have annexed the copy of the Application No.104 of 2016 filed by him before the National Green Tribunal. The petitioner has failed to disclose the said relevant and material facts in the petition as filed and failed to annex copies thereof. The averments made regarding the said proceedings were incorporated only after an objection was raised by the contesting respondents. In fact, the order passed by this Court on 18th April 2018 shows that leave to amend was granted to the petitioner. Averments made in the application filed before the National Green Tribunal clearly shows that the petitioner is personally interested in the subject matter of this PIL. The statement that the petitioner has no personal interest comes by way of amendment of this PIL as pointed out earlier.

10 In the affidavit in reply filed by the first and second respondents, a contention is raised that the PIL should not be entertained in view of the orders passed by the National Green Tribunal in Application

No.104 of 2016. We have also perused the prayers made in PIL No.125 of 2014. The first two prayers relate to destruction of hillock and trees. Even third prayer relates to the same issue. The fourth prayer deals with destruction of hillock and trees. There are orders passed in the said PIL regarding development of recreation ground of 15,000 sq.meters. Though the issue of absence of environmental clearance is agitated before the NGT, still this Court can consider the said issue which goes to the root of the matter. Moreover, this issue is not dealt with while deciding PIL No.125 of 2014. We, therefore, do not agree with the submission made on behalf of the respondents that the present PIL should not be entertained and principle of *res judicata* is applicable. In fact, after having perused the averments and prayers made in this PIL, we find that several issues are required to be gone into in case of such a huge project. The issue of absence of environment clearance will also have to be gone into. We are of the view that though the petitioner may not have locus, this PIL will have to be considered on merits. Considering the huge nature of the project for development by the first and second respondents, in fact, several issues concerning environment will have to be gone into. Therefore, while upholding the objection regarding locus of the petition, we treat this PIL as Suo Motu PIL. We propose to appoint a member of Bar as an Amicus Curiae to assist the Court.

11 Place petition on 31st August 2018 under the caption of directions to enable the Court to make appointment of an Amicus Curiae.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)