

2022 LiveLaw (SC) 226

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
N.V. RAMANA, CJI; A.S. BOPANNA, J; HIMA KOHLI, J.
FEBRUARY 28, 2022

CIVIL APPEAL No. 10425 OF 2010 & CIVIL APPEAL No. 10764 OF 2010

ESTEEM PROPERTIES PVT. LTD. *VERSUS* CHETAN KAMBLE & ORS.

WITH

CORAL GONSALVES & ORS. *VERSUS* CHETAN KAMBLE & ORS.

Constitution of India, 1950 - Article 32, 226 - Public Interest Litigation - *Locus Standi* - One of the measures to ensure that frivolous or private interests are not masqueraded as genuine claims, is to be cautious when examining *locus standi*. Generally, PIL, being a summary jurisdiction, has limited powers to examine the *bonafides* of parties. It is usually on the pleadings that the Court should take a prima facie view on the *bonafides* of the party. If the Court concludes that the litigation was initiated under the shadow of reasonable suspicion, then the Court may decline to entertain the claims on merits. In these cases, Courts have multiple options – such as dismissing the PIL or appointing an amicus curiae, if the cause espoused in the case requires the immediate attention of the Court. (Para 22)

Constitution of India, 1950 - Article 32, 226 - Public Interest Litigation - PIL litigation has had a beneficial effect on the Indian jurisprudence and has alleviated the conditions of the citizens in general - Thousands of frivolous petitions are filed, burdening the docket of both this Court and the High Courts - Many claims filed in the Courts are sometimes immature. Noble intentions behind expanding the Court's jurisdiction to accommodate socially relevant issues, in recent decades, have been critically analyzed. (Para 21)

Administrative Law - Natural Justice - Importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative or quasi-judicial proceedings. (Para 28)

Summary: Appeal against High Court Judgment allowing PIL in the matter of a title claim between a private party and the State - Allowed - The State clearly indicated that they do not have any interest in pursuing the ownership of the land in question and have admitted to the title of the appellants - Institution of the public interest litigation was nothing more than an abuse of the process.

For Appellant(s) Mr. Mahesh Agarwal, Adv. Mr. Mohammed Himayatullah, Adv. Ms. Rutuja Patil, Adv. Mr. Nishant Rao, Adv. Mr. E. C. Agrawala, AOR Mr. Anshuman Srivastava, AOR Mr. Shubham Agarwal, Adv. Mr. Arpit Rawat, Adv.

For Respondent(s) Mr. Tapes Kumar Singh, AOR Mr. Rudreshwar Singh, Adv. Mr. Aditya Pratap Singh, Adv. Mr. Aditya Narayan Das, Adv. Mr. Anshuman Srivastava, AOR Mr. Sachin Patil, AOR Mr. Mahesh Agarwal, Adv. Mr. Mohammed Himayatullah, Adv. Ms. Rutuja Patil, Adv. Mr. Nishant Rao, Adv. Mr. E. C. Agrawala, AOR

J U D G M E N T

N. V. RAMANA, CJI

1. The present appeals have been preferred against the judgment dated 07.05.2010 passed by the Bombay High Court in a Public Interest Litigation, being PIL No. 47 of 2008.

2. The matter pertains to rights and ownership over the subject land admeasuring 5 acres and 20 gunthas in CTS No. 229 (in short 'subject land'). The dispute regarding title was originally between one Gonsalves family (appellants in C.A. No.10764 of 2010) and the State of Maharashtra (respondent no.3). Esteem Properties Pvt. Ltd. (appellant in C.A. No.10425 of 2010) is the successorininterest to the Gonsalves family.

3. Before we analyze the case, the facts necessary for the disposal of the case are as follows: From 1819 onwards, the land belonged to the Khot of Kurla, as per a grant made to them by the East India Company under a Deed. The appellants' purported predecessorininterest became the absolute owners of the subject land by way of a Deed of Exchange dated 12.03.1894, wherein the title of the land vested in the ancestors of the Gonsalves family.

4. On 25.11.1953, in an enquiry under the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 for all the land belonging to the Khot, the land in question was declared as Government land. The successors of the Khot (viz. A.H. Wadia Trust) preferred Civil Suit No. 921 of 1954 against such finding, which was subsequently settled by a Consent Decree dated 02.05.1963. The Consent Decree affirmed the findings in favour of the State under the Salsette Estates Act. It must be noted that the Gonsalves family were not a party to the decree or the proceedings.

5. In 1962, another enquiry ('City Survey enquiry') was conducted under Section 126 of the Maharashtra Land Revenue Code ('MLR Code') for the entire Mumbai Suburban District. *Vide* order dated 27.02.1969, the Enquiry Officer held that the land vests in the State Government. The order was confirmed in appeal by the SubDivisional Officer on 30.04.1970.

6. The Gonsalves family preferred Civil Suit No. 698 of 1971, stating that the orders passed in the City Survey enquiry were void and illegal, and that the Consent Decree

dated 02.05.1963 was not binding on them. Subsequently, proceedings under Section 20(2) of the MLR Code were initiated by the SubDivisional Officer and a fresh enquiry was conducted. In light of the aforesaid enquiry under Section 20(2) of the MLR Code, Civil Suit No. 698 of 1971 became redundant.

7. The SubDivisional Officer, *vide* order dated 07.11.1988, declared the subject land as State land. This was confirmed in appeal by both, the Additional Collector on 19.12.1989 and the Additional Commissioner, Konkan Division on 30.08.1991.

8. Against the said order of the Additional Commissioner, Konkan Division, the Gonsalves Family preferred a Revision Application before the Revenue Minister. *Vide* order dated 11.10.1995, the Revenue Minister allowed the Gonsalves family's revision application and held that they were the absolute owners of the subject land on the basis of the 1894 Deed of Exchange. The Revenue Minister concluded that occasion to hold the 1951 enquiry under the Salsette Estates Act did not arise as the land in question had become private land. It was also observed that the land which vested in the State was some other land, not the subject land. It may be relevant to note certain observations made in the aforesaid order, which read as under:

"22. On going through the evidence and documentary record in particular I am convinced that Shri Gonsalves & Others have proved their possession on this land. Though Shri Gonsalves has not produced a copy of Deed of Exchange signed between him and Shri Wadia in 1894, the same deed was accepted by the representative of Shri Wadia before the Lower Court. The Statement recorded before the lower courts clearly indicate the existence of deed of exchange of 1894.

23. The appellant have also proved that they are in correspondence with the Revenue Authority since 1943 requesting them to show their name in Record of Right. However, till now they are treated as encroacher on this land.

24. The possession of the appellant on this land is proved beyond doubt. Whether the appellants' possession is authorized or he is an encroacher is to be decided on the basis of evidence. One fact of the case is that this land is not Government land before 1951, as it was owned by Shri Wadia. The land was declared as Government land in the year 1954. However, the possession of the appellant on this land is much before 1951, hence the appellant cannot be treated as encroacher on the Government land.

25. The question to be decided now is whether the land in possession of Shri Gonsalves & Others is the same land which is declared as Government land in the consent terms. The consent terms are silent on this issue. Only part of the land of Survey No. 90 is declared as vested in Government. Shri Gonsalves has proved his possession and hence the land in the possession of Shri Gonsalves before the consent terms could not be declared as Government land. As per the provisions of Salsette Inam Abolition Act 1951. The Act clearly lays down that the lands which are [not] appropriated to any individual or Khot vest in Government. However, here the possession of Shri Gonsalves is proved and hence this land cannot be treated and has not appropriated and vested in Government. Shri Gonsalves has proved their possession to Shri Wadia, exowner of the whole village. Thus the land which are declared as Government land as to which different land than which is in possession of Shri Gonsalves.

26. In view of the above discussions I have no hesitation in coming to the conclusion that the land comprised in C.T.S. 229 has been in possession of Shri Gonsalves & Others. Since year 1894 when the deed was exchanged and signed. Thus this land become a private land and the question of making enquiry under section 4 of Salsette Estate Act, 1951 in respect of this land does not arise.

27. I have also come to the conclusion the land who vested in Government are the land other than C.T.S. No. 229. The consent terms of 1954, does not identify and locate the land. I, therefore, hold that all authorities before they have erred in treating C.T.S. No. 229 as Government land.

28. I have no hesitation in holding that the petitioner are in possession of land before C.T.S. No. 229 and it is their private property.”

29.....

ORDER

The revision petition is allowed, Order of all authorities below are set aside, I hold and declare that petitioners are owners of the land admeasuring 5 Acres and 20 gunthas comprised in CTS 229, at Village Sahar, Taluka Andheri, Bombay Suburban District.”

9. Subsequently, by an *exparte* order dated 17.03.1998, the Revenue Minister set aside the aforesaid order and restored the order of the Additional Commissioner, Konkan Division dated 30.08.1991 vesting the land in the State. It may be relevant to note that no notice was issued to the Gonsalves family in the aforesaid review proceedings under Section 258(1) of the MLR Code. We may also note that notice was issued to one Mr. S. Kapoor, who was not the Power of Attorney holder at the relevant time. His Power of Attorney was cancelled by the Gonsalves family on 05.12.1996. To this extent, the order itself notes as under:

“..In all these matters, as nobody remained present for the hearing on behalf of Smt. Koleti, an *exparte* decision had been [*taken*] in this matter.”

10. Esteem Properties Pvt. Ltd. (appellant in C.A. No. 10425 of 2010), successorininterest of the Gonsalves family, filed a Writ Petition before the Bombay High Court seeking review of the *exparte* order dated 17.03.1998 wherein the Gonsalves family was also joined as a party. *Vide* order dated 22.09.2006, the High Court directed to maintain status quo and to inform the Court if there was any change in the circumstances.

11. On 12.06.2007, Esteem Properties succeeded the Gonsalves family with respect to the land in question. An Agreement to Sell dated 22.02.1996 was executed between the two appellants, when Esteem Properties made an initial payment of Rs. 1 crore. Subsequently, Esteem Properties filed a suit for specific performance in respect of the said Agreement, which was finally settled in accordance with the Consent Terms recorded by the Bombay High Court in the order dated 12.06.2007. Through the aforesaid decree, Esteem Properties is said to have become absolute owners of the land in question. In these changed circumstances, i.e., transfer of ownership or the appellants coming together, Esteem Properties moved a Notice of Motion in the writ petition, wherein the Bombay High Court *vide* order dated 17.08.2007, while

dismissing the Notice of Motion granted Esteem Properties liberty to make a representation before the appropriate authority.

12. Thereafter on 10.12.2007, on a Revision Application moved by Esteem Properties, the Revenue Minister recalled the *ex parte* order dated 17.03.1998 and restored the order dated 11.10.1995. It was held that the *ex parte* order was *void ab initio*, as it was against the principles of natural justice since the Gonsalves family were not given an opportunity of hearing. It was also observed that Section 258 of the MLR Code requires notice to be served upon the affected party, which was not so done.

13. In February 2008, respondent nos. 1 and 2 filed a Public Interest Litigation challenging the Revenue Minister's order of 10.12.2007. It must be noted that the State did not initiate any proceedings against such an order. It is matter of record that the State had itself filed a counteraffidavit dated 12.06.2008 stating that the Revenue Minister's order dated 17.03.1998 needed to be recalled as it was passed in the absence of the affected party, i.e. the Gonsalves family. The relevant portions of the counteraffidavit read as under:

"6. In so far as the averments in para 6 of the memo of Petition are concerned, I say that the petitioners seem to have overlooked the fundamental difference between a power of review and power of recall. I say that in view of the fact that the earlier order dated 17th March 1998, was an order passed in the absence of original land owners and without hearing them and was thus an *ex parte* order, the said order has merely been recalled by the order dated 10th December 2007. I say that that the earlier order dated 17.3.1998, was recalled as the same was an *ex parte* order. I say that it is a settled position of law that there is a fundamental difference in exercising a power of review on merits and in exercising the power of review on account of procedural infirmity. I say that the procedural review belongs to a different category. In such a review, the court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits, a procedural illegality which goes to the root of the matter and invalidates the proceeding itself and consequently, the order passed therein also becomes invalidated. I say that when it is revealed that a decision is given by a quasi judicial authority without notice to the opposite party or under mistaken impression that the notice has been served upon the opposite party a power of procedural review is required to be invoked.I say that once it is found that the order was passed in the absence of an affected party, the order has to be recalled. I say that the order dated 10.12.2007, passed by the Quasi Judicial Authority clearly records that at the time of passing of the earlier order dated 17.3.1998, the fact that the original land owners or their new constituted attorney had not been given any notice but the notice had been served on the earlier constituted attorney Shri Kapoor is specifically recorded. I say that in fact, the earlier order dated 17.3.1998 passed by the State Government itself records that since nobody remained present for the hearing on behalf of Smt. Colette, an *ex parte* decision had been taken in the said matter. The order further records that as no representative remained present at the time of hearing on behalf of M/s Anjali Real Estate Pvt. Ltd. The Government took an *ex parte* decision. The order further records that no clarification whatsoever from them in that regard was received. I say that when it was brought to the notice of the State Government, that the original land owners had not been given notice but the notice was served only on their previously constituted attorney, it was apparent that the earlier order suffered from a procedural lapse, viz.,

breach of Rules of Natural Justice and hence, by exercising the aforesaid power of procedural review, the earlier order dated 17th March 1998 has been recalled.

.....

8. In so far as the averments in paragraph 9 of the memo of writ petition are concerned, I say that according to the available records, it is seen that an area of 5 acres 20 guntha from Survey No. 98 of Village Sahar was the subject matter of a Deed of Exchange.

.....

11. I say that the available record further indicates that though the land admeasuring 5 acres 20 gunthas was given to the members of Gonsalves Family, apparently by a Deed of Exchange in the year 1894, the said Gonsalves Family was not a party to Civil Suit No. 921 of 1954 and the consent decree passed in the said suit was thus passed behind their back.

12. In so far as averments in para 12 to 15 of the memo of Writ Petition are concerned, I say that in the City Survey Inquiry which was conducted in the year 1965 or thereabout, the members of the Gonsalves family who are seen to be in actual possession of the said land admeasuring 5 Acres 20 gunthas produced substantial documentary evidence showing their cultivation and possession and also showed that a portion of land was being used by them for brick kiln activity.

.....

14. ... I say that the then Hon'ble Revenue Minister on the basis of available evidence on record has reached a conclusion that the members of Gonsalves family were in possession of the said land much prior to 1951 when the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 came into force and hence, their possession of 5 Acres 20 gunthas in respect of land bearing C.T.S. No. 229 cannot be termed as encroachment as the land was a private land.

.....

16. In so far as the averments in paras 23 and 24 of the memo of Writ Petition are concerned, I deny that the order passed by the State Government is contrary to the provisions of the Maharashtra Land Revenue Code as alleged. I say that the order dated 10.12.2007 is not an order of review on merits but the same is really an order passed by exercising the power of recall in quasi judicial capacity on account of procedural infirmity as indicated herein above and not a review on merits as is being wrongly contended and is being wrongly misconstrued by the Petitioners. I say that the allegation of suspicious situation are factually incorrect and in fact the order dated 10.12.2007 is a speaking order which is passed after taking into consideration the fact that the earlier order dated 17th March 1998 was an exparte order and after taking into consideration the written opinion which was produced on behalf of the Applicants before the State Government which clearly distinguishes about the powers of Review and Recall.

(emphasis supplied)"

14. In any case, the Bombay High Court allowed the Writ Petition preferred by the respondent nos. 1 and 2 by order dated 07.05.2010, which is impugned herein. The Bombay High Court restored the *exparte* order of 17.03.1998, i.e., the land vests with the State Government, subject to the outcome of Civil Suit 698 of 1971 preferred by the Gonsalves family. While coming to the aforesaid conclusion, the impugned order notes as under:

“10. Subsequent to the withdrawal of the Motion an application was moved by Esteem Properties Private Limited before the Minister for Revenue. Gonsalves family were not the applicants in the said application. Except for the agreement to sell with the Gonsalves family, Esteem Properties Private Limited had no other right to the property. The learned Minister proceeded to hold that the Power of Attorney given to Shri Kapoor has been cancelled by the Gonsalves family and a suit had been filed before this Court and this Court (Writ Petition) had granted status quo and this had not been taken into consideration by the Minister. The order, therefore, it was submitted, is against the principles of natural justice. It was noted that under Section 258 it was necessary to give a hearing. It is not necessary to go into this aspect as the earlier order of the Minister shows that notices were sent. It was noted that Shri Gonsalves or the Power of Attorney of Gonsalves had agreed that the land was of the Government and had required to be given on lease. The Minister then proceeded to hold that the High Court had sent the matter to the Government for decision and as opportunity had not been given to the original Revenue Applicants, reviewed the earlier order. Whilst reviewing the order set aside the earlier order. P.I.L. has been filed against the said order.”

The High Court framed three questions, which were:

“1. Whether the petitioners have locus standi to maintain this petition?

2. Whether a person who was not a party to the revision proceedings without succeeding to the property from the original applicant merely based on an agreement to sell could have maintained the second Review Application (Procedural Review)?

3. Whether it was open to the Minister in exercise of review (substantial review) moved at the instance of the State Government when there was a consent decree holding that the land have vested in the Government and further as the title to the land, being the subject matter of a civil suit by persons claiming to be the owners (Gonsalves family) other than on the Deed of Exchange could have passed an order, decreeing the land to be entered in the revenue records in favour of such owners and against the Government without the consent decree of 1953 being set aside in the suit which was pending?

Regarding the first question on locus standi, the High Court observed as under:

“13. (...) In our opinion, merely because against the petitioner No. 1 there were and/or are some criminal cases by itself can be no reason for this Court not to entertain the petition if in law otherwise the petition raises questions which can be considered in a P.I.L. The challenge no doubt is to a quasi judicial order, but the larger question is, when a quasi judicial authority, holds land which has vested in the State Government as not public land and the State Authorities take no steps to challenge an order which would result in affecting the public revenue, can locus be denied to public spirited citizens who bring these facts to the notice of this Court. Can such an order be allowed to stand, if it otherwise be illegal and can not this Court in the exercise of its extra ordinary jurisdiction of superintendence interfere with the same.”

The High Court answered the second question in the following terms:

“18. Was the Review Application maintainable at the instance of Esteem Properties Private Limited and another? Review under Section 258 lies at the instance of a party interested. The substantive review was not preferred by Esteem Properties. What they preferred is the procedural review. The order states that notices were served on the Gonsalves family. Whether in fact they were served, the material before us does not show whether the observations in the order are correct. The only persons who can complain of no notice are the persons who were parties to the proceedings.

Gonsalves family did not move the authority for procedural review. More importantly the order was the subject matter of a pending Writ Petition. Order dated 17th March, 1998 was the subject matter of a petition filed not by the Gonsalves family, but by Esteem Properties Private Limited and another in the year 2006. The Motion taken out being Notice of Motion No. 333 of 2007 which was withdrawn to make representation before the Competent Authority was allowed by order of this Court dated 17th August, 2007. That would not mean that if otherwise there was no locus an order of the Court would give locus to such a party to maintain a review petition. The Review Application was made thereafter again by Esteem Properties Private Limited and not by Gonsalves family. The matter was pending and status quo had been ordered. Even the power of procedural review has to be exercised within reasonable time. When the petitioner filed the petition before this Court if they were entitled they could have moved the application for review. That was not done. Instead they challenged the order by petition before this Court by invoking its extra ordinary jurisdiction. An application was thereafter moved only on 17th August, 2007. The petition itself was filed on 22nd June, 2006. Ordinary time of filing Review is within 90 days from the date of the order. In instant case the petitioners cannot contend that they had no knowledge. The issue of petitioners having knowledge would not arise as they were not parties and question of giving notice to them consequently would not arise. Procedural review has to be by parties to the original proceedings. Esteem Properties were not parties to the proceedings. They would have no locus standi to file the procedural review. In our opinion, therefore, this was not a case where the Minister could have exercised his review jurisdiction on two counts (i) that there was a delay and (ii) that the Esteem Properties Ltd., had no title to the land on the date the application for review was made and they were not parties to the proceedings. There were proceedings between them and the Gonsalves family for enforcement of the agreement. They, therefore, could not have complained that no notice was given to them. They therefore, had no locus to maintain the review. Further this Court was seized of the matter and had admitted the petition. In our opinion, on this ground itself the impugned order is liable to be set aside and the original order passed in the review restored.”

In response to the third question, the High Court observed as under:

“19. The issue also raises a larger question as to whether the Authorities under the Maharashtra Land Revenue Code when the issue of title is in issue before the Civil Court could have bypassed those proceedings and proceeded to pass an order in favour of the Gonsalves family. The first order of the Minister was passed on 11th October, 1995 allowing the Revision Application preferred by the Gonsalves family. That order was totally perverse on two counts. The Gonsalves family had filed a suit bearing L.C. Suit No. 698 of 1971 which was pending before this Court wherein they have claimed a prayer to declare them as owners. This was because the Revenue Authorities had held that they had no title to the land and they were encroachers upon the land. In the suit the claim to the land was that they were in open possession, for more than 60 years, and had acquired absolute title by adverse possession. They did not claim right to the land based on the Deed of Exchange which as rightly pointed out by the Revenue Authorities was never produced. The mere statement on the part of the Wadia Trust that there was a deed of exchange in the absence of documents produced, could not have been accepted when the Gonsalves family themselves had not relied upon the said Deed of Exchange in their suit. The land was earlier of the Khot. The Gonsalves family, therefore, had to establish their title by adverse possession. Secondly, the Wadias in the consent terms filed in the suit filed by them had admitted the right of the State to that land under the Salsette Abolition Act. This was only application of the authority under Salsette Act. Once an order had been passed under the Salsette Act, the Revenue Authority examining jurisdiction under the Land Revenue Code could not hold that order could not have been passed.

Material has come by way of affidavit in the companion petition that the land is in occupation of slum dwellers. In our opinion considering these aspects the original order dated 17th March, 1998 passed in the review preferred by the State against the order passed in Revision was correctly passed. The question, therefore, of recalling the order and upholding the earlier order in revision was really arbitrary and per se illegal. In our opinion, the issue being in issue before the Competent Civil Court at the instance of the Gonsalves family, the Revisional Authority ought to have declined to exercise jurisdiction.”

15. Aggrieved by the aforesaid order, the appellants have approached this Court.

16. Mr. Mukul Rohatgi, learned Senior Counsel appearing for the appellants in C.A. No. 10425 of 2010, has submitted as under:

- Respondent No. 1 herein (PIL petitioner in impugned order) has an indecorous history with criminal antecedents. Thus, the Hon’ble High Court grossly erred in entertaining the PIL.
- Allowing such a person to file PILs should be rejected at the threshold, in line with the judgment of this Court in **State of Uttaranchal v. Balwant Singh Chauhan**, (2010) 3 SCC 402.
- The present dispute is only a dispute of ownership of land between a private party and State Government, wherein the High Court could not exercise PIL jurisdiction – especially against a quasijudicial order.
- No suit was filed against the order dated 11.10.1995 as provided under Section 20(4) of the MLR Code, and therefore, such an order has attained finality. Despite attaining finality, the Additional Collector filed a delayed Review Petition, i.e. beyond the limitation period of 90 days.
- No notice was issued to the Gonsalves family in the review proceedings, as is mandatory under Section 258(1)(ii) of the MLR Code. The review proceedings, resulting in order dated 17.03.1998, were a result of noncompliance of the provisions of the MLR Code.
- The Hon’ble High Court erred in not appreciating that the State Government itself filed an affidavit dated 12.06.2008 stating that the order dated 11.10.1995 was correct.
- The State Government has also filed an affidavit dated 18.11.2010 before this Court stating that the appellants were not given an opportunity of hearing before the order dated 17.03.1998 came to be passed.

17. Mr. Rahul Chitnis, learned counsel appearing for the State of Maharashtra, submitted as under:

· The order passed by a quasijudicial authority cannot be permitted to be challenged by a stranger and/or third party to the proceeding in the guise of a Public Interest Litigation.

· On merits, he states that the effect of the order dated 10.12.2007 is that the earlier order dated 11.10.1995 stood restored.

18. Mr. Tapesh Kumar Singh, learned counsel appearing for the respondent nos. 1 and 2 (PIL petitioners in the impugned order), contended as under:

· The respondent nos. 1 and 2 do not have any interest in the private property. They moved the writ petition as public property belonging to the State Government was being transferred to private individuals and would lead to loss of public revenue.

· It was only the contrary orders passed by various authorities that prompted the respondent nos. 1 and 2 to file such a petition.

19. Having heard the parties at length and on perusing the records, the following questions arise for our consideration:

I. Do the respondent nos. 1 and 2 have sufficient locus to maintain the aforesaid Public Interest Litigation?

II. Is the order dated 10.12.2007 passed by the Revenue Minister valid in law?

QUESTION No. I

20. The appellants have primarily contended that the contesting respondents do not have sufficient locus to maintain a writ petition. They have alluded to the following cases filed against the respondent no. 1:

(i) P.S. Chhawni C.R. No. 22/05 Sec 143, 147, 149, 427 of IPC, 135 Maharashtra Police Act (MPA)

(ii) P.S. Chhawni C.R. No. 55/05 Sec 337, 323, 341, 504 of IPC

(iii) P.S. Chhawni C.R. No. 56/05 Sec 395, 452, 147, 149, 427 of IPC

(iv) P.S. Chhawni C.R. No. 57/05 Sec 337, 143, 148, 149, 427 of IPC

(v) P.S. Chhawni C.R. No. 58/05 Sec 353, 332, 341, 224, 147, 148, 149 of IPC

(vi) P.S. Chhawni C.R. No. 59/05 Sec 143, 147, 148, 149, 338, 342, 504, 506 of IPC

(vii) P.S. Chhawni N.C. No. 670/04 Sec 504, 506 of IPC

(viii) P.S. Chhawni N.C. No. 417/05 Sec 323, 504, 506 23 of IPC

(ix) P.S. City Chowk C.R. No. 3016/2005 Sec 135 MPA (x) P.S. Jincy C.R. No. 4/2005 Sec 353, 448, 504, 506, 34 of IPC

(xi) P.S. Cidco N.C. 5/2002 Sec 186 IPC (A.B are recorded)

(xii) PS. M. Cidco C.R. No. 59/2002 Sec 341, 143 IPC 135 MPA

(xiii) P.S. Chhawani C.R. No. 36/1994 Sec 420, 34 of IPC In this regard, it is contended that the PIL filed before the High Court was not maintainable, more so against a quasijudicial order concerning title of a property.

21. Public Interest Litigation is not a new concept in this Court. Although the jurisprudence in this regard has matured, many claims filed in the Courts are sometimes immature. Thousands of frivolous petitions are filed, burdening the docket of both this Court and the High Courts. Noble intentions behind expanding the Court's jurisdiction to accommodate socially relevant issues, in recent decades, have been critically analyzed. In our view, PIL litigation has had a beneficial effect on the Indian jurisprudence and has alleviated the conditions of the citizens in general. For those at the receiving end of the Court's directions, we can only advise "*C'est la vie*".

22. One of the measures this Court can adopt to ensure that frivolous or private interests are not masqueraded as genuine claims, is to be cautious when examining *locus standi*. Generally, PIL, being a summary jurisdiction, has limited powers to examine the *bonafides* of parties. It is usually on the pleadings that the Court should take a *prima facie* view on the *bonafides* of the party. If the Court concludes that the litigation was initiated under the shadow of reasonable suspicion, then the Court may decline to entertain the claims on merits. In these cases, Courts have multiple options – such as dismissing the PIL or appointing an amicus curiae, if the cause espoused in the case requires the immediate attention of the Court. [refer ***T. N. Godavarman Thirumulpad v. Union of India***. (2006) 5 SCC 28]

23. In the case of ***Balwant Singh Chaufal*** (supra), this Court held as under:

"181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should *prima facie* verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be *prima facie* satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

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

(6) The Courts 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.”

24. In *Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan*, (2014) 5 SCC 530, this Court reiterated the same, specifying that the concept of public interest litigation has evolved to bring justice to people who are “handicapped by ignorance, indigence, illiteracy” and observed that Courts are required to be cautious while entertaining such litigation.

25. From the above it is clear that the *bonafides* of the respondent nos. 1 and 2 were not considered in a proper perspective by the High Court. Even otherwise, it is this Court’s opinion that the PIL petitioners had no reason to file a public interest litigation when the subject matter was evidently a title claim between a private party and the State.

26. Interestingly, the State Government itself concedes the title to the appellants herein and has filed affidavits to such effect, both before this Court and the High Court. In this scenario, we are not dealing with an ignorant or illiterate respondent; the State Government has accepted the title vesting in the Gonsalves family and subsequently in Esteem Properties.

27. We may also note that the title dispute is not a recent issue; it has been agitated for the past six decades. The present round of litigation concerning the subject land had its genesis in the inquiry initiated by the Revenue and Forest Department, Government of Maharashtra under Section 20 of MLR Code. It is clear that these proceedings were conducted after giving due notice to the State as well as the Gonsalves family. These proceedings were eventually brought before the Revenue Minister, which resulted in the order of 11.10.1995 vesting the property in the Gonsalves family (predecessor interest of Esteem Properties).

28. Order dated 17.03.1998 against the aforesaid order was passed without following the principles of natural justice and without providing adequate hearing to the Gonsalves family. This Court has clearly advocated the importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative or quasijudicial proceedings umpteen number of times. The aforesaid principle also finds its place in Section 258 of the MLR Code, which reads as under:

“**258.** (1) The State Government and every revenue or survey office may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or

any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit:

Provided that,

(i)

(ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order”

29. From the above, it is clear that the Gonsalves family had not been provided adequate hearing before the order was passed in review.

30. It may be relevant to note that Esteem Properties filed a Writ Petition, being W.P. No. 1657 of 2006, before the High Court of Bombay challenging the order dated 17.03.1998. During pendency of the said Writ Petition, the suit between Esteem Properties and the Gonsalves family (appellants in C.A. Nos.10425 of 2010 and 10764 of 2010 respectively) was decreed through a consent order dated 12.06.2007 wherein the aforesaid subject land was conveyed in favour of Esteem Properties.

31. In this context, Esteem Properties filed a Notice of Motion No. 333 of 2007 in Writ Petition No. 1657 of 2006 before the High Court. The High Court while dismissing the Notice of Motion granted appellants liberty to make a representation before the appropriate authority.

32. It is in this backdrop that the representation of the appellants was taken up as second review proceedings on procedural grounds before the Revenue Minister. After hearing the appellants as well as the State Government, the Revenue Minister passed the order dated 10.12.2007 (impugned in High Court proceedings), which observed as under:

“1. 10 acre 36 gunthas of land out of Old Survey No. 98 was given by East India Company to the then Khot Shri Wadia. By doing partition of the said land, the said land bifurcated into two hissas (parts), i.e., CS No. 229 and CS No. 145. Basically, the land in question was of ownership of Khot and the said Khot out of the said land, 5 acre 20 gunthas was given to the family of Shri Gonsalves in the year 1894 and accordingly their legal heirs are enjoying possession and using the said land. In the meanwhile, in connection with settlement arrived in the Hon'ble High Court between the said Khot and State Government the land shown in Appendix – 1 is of the Khot and the land shown in Appendix 2 is of Government Land. **However, at that time families of Shri Gonsalves having their vested interest in the land in question were not made party and they were not able to get opportunity for stating their say, as it is seen from the papers.**

2..... Therefore, review orders passed in the year 1998 are not found to be reasonable and justifiable on the point of principle of natural justice.....

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.....

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ORDER

1. In this matter, as per the direction given by the Hon'ble High Court the Order dated 17.03.1998 by the then Hon'ble Minister, Revenue is hereby reviewed and the said order is hereby made cancelled.

2.....

3. Order dated 11.10.1995 passed by the then Hon'ble Minister, Revenue Shri Sudhir Joshi is hereby reestablished."

(Emphasis supplied)

33. Given the above facts and circumstances, we do not find it appropriate for the High Court to have allowed respondent nos. 1 and 2 to have agitated issues concerning title and ownership in a public interest litigation. The conduct and history of the respondent nos. 1 and 2 is also not inspiring for continuing this unnecessary litigation.

34. Our conclusion is further bolstered by the fact that the State has clearly indicated that they do not have any interest in pursuing the ownership of the land in question and have admitted to the title of the appellants herein. In this light, we hold that institution of the public interest litigation was nothing more than an abuse of the process which cannot be allowed in the facts and circumstance so narrated. Question No. 1 framed above, is answered accordingly.

35. In the light of such a conclusion and the context in which it has been arrived at, we do not consider it necessary to delve into a detailed discussion with respect to the validity of the order dated 10.12.2007. It has been clearly observed in the said order that the Gonsalves family was not afforded an adequate hearing. Accordingly, Question No. 2 is also answered in terms of our discussion above while answering Question No. 1.

36. Therefore, we allow these Civil Appeals with costs. Pending applications, if any, are also disposed of accordingly.

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