

RESERVED

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 828 of 2022

Petitioner :- Dist. Bar Association Amethi, Thru. Its General Secretary

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Revenue Lko. And 6 Others

Counsel for Petitioner :- Amrendra Nath Tripathi

Counsel for Respondent :- C.S.C., Ajmal Khan, Prem Prakash Singh

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Saurabh Srivastava, J.

1. This Public Interest Litigation petition filed by the District Bar Association, Amethi presents facts which are not only disturbing but also raise grave concern. The allegations in the writ petition primarily relate to alleged excesses said to have been committed by the District Administration against the Members of the Bar for raising certain issues regarding functioning of the Presiding Officers of different Revenue Courts in District-Amethi and also regarding establishment of civil court at Amethi.

2. We have heard learned counsel for the petitioner, learned Chief Standing Counsel representing the State-authorities and Shri Ajmal Khan and Shri Prem Prakash Singh, learned counsel appearing on behalf of Nagar Palika Parishad, District-Amethi. The original records relating to Case No.4562 of 2022, under section 67 of U.P. Revenue Code, 2006 (hereinafter referred to as 'Code, 2006') and also relating to Case No. RST/03233/2017 under section 161 of U.P. Zamindari Abolition and Land

Reforms Act (hereinafter referred to as 'U.P.Z.A & L.R. Act') have been produced by the learned Chief Standing Counsel which have also been perused by the Court.

3. The petitioner, as observed above, is the District Bar Association, Amethi, which is a society registered under the Societies Registration Act and is duly recognized by Bar Council of Uttar Pradesh having Recognition No. 1/2015/R-05/2020.

4. The allegations in the writ petition are in respect of the alleged large scale crack-down on Members of the Bar by the District Administration for raising their voice for establishment of civil court for the reason that though the District Amethi was created about 12 long years ago on 01.07.2010, however, even though 12 long years have elapsed, civil court could not be established in the district, as a result of which the civil and criminal work of Tehsil-Gauriganj and Musarfirkhana are still assigned to Civil Court, Sultanpur, whereas the said work of tehsil-Tiloi is assigned to Civil Court-Raebareli. Assertion made in the writ petition further is that on account of non-establishment of Civil Court at Amethi and also on account of alleged large scale corruption in the revenue courts in district-Amethi, there has been discontent amongst the Members of the Bar and accordingly the petitioner-Bar Association has been raising their voice as a measure of expressing concern on account of these mal-practices.

5. It has been stated in the writ petition that the petitioner-Bar Association intended to submit a memorandum of demand to the State Government through the District Magistrate and for the said purpose, an attempt was made to organize a meeting with the District Magistrate on 03.11.2022, however, the attempt

failed allegedly on account of the fact that the District Magistrate did not give any time. Further submission in the writ petition is that the office bearers of the petitioner-Bar Association made certain other attempts to meet the District Magistrate with a view to apprise him of the large scale corruption allegedly prevailing in the revenue courts in the proceedings for correction of map, settlement of boundary disputes, mutation proceedings and proceedings relating to correction of revenue records etc. It is the allegations in the writ petition that these proceedings are not being carried out by the Presiding Officers of different revenue courts faithfully and honestly; rather in each such proceeding demands of illegal gratification are being raised.

6. The petitioner has also stated that in the background of these facts a meeting of the General Body of the petitioner-Bar Association was held on 10.11.2022 and a resolution was passed in the said meeting against the District Magistrate as he is said to have not attended to the request of the Members of the Bar to meet them and receive the Memorandum of Demands. As per the assertions made in the writ petition, other such resolutions were passed on 11.11.2022 and then again on 14.11.2022.

7. Along with the writ petition, two newspapers reports published in Dainik Jagran and Amar Jagran, both, dated 15.11.2022 have been annexed, wherein it has been reported that lawyers are staging Dharna against the District Magistrate for protesting against the alleged corruption and other malpractices in the revenue courts. There are other reports published in Amar Ujala dated 16.11.2022, 17.11.2022, 18.11.2022 and 19.11.2022. There is yet another newspaper report published in Amar Ujala on 20.11.2022 wherein it has been reported that constructions of

certain lawyers have been demolished. The newspaper report published in Dainik Amar Ujala dated 20.11.2022 reports that one such demolition was undertaken in respect of some construction raised by one Kewal Prasad Shukla, Ex-President of the Bar Association. The said report also makes a mention of some interference by the District Administration in the possession of some land allegedly owned by another lawyer, Kripa Shankar Tewari, where paddy crop is standing which is said to have been sown by the said lawyer, Kripa Shankar Tewari.

8. To demonstrate the allegations revealing the alleged excesses committed by the District Administration, it has been stated in the writ petition that by means of an order passed on 16.11.2022 by the Sub Divisional Officer, Tehsil-Gauriganj an earlier order of exchange under section 161 of U.P.Z.A & L.R. Act, dated 16.05.2015, which related to the exchange of land of the General Secretary of the petitioner-Bar Association with the Gaon Sabha, land has been cancelled without serving any notice, whatsoever, upon the General Secretary. Further assertion made in the writ petition is that the order of exchange dated 16.05.2015 was cancelled by the Sub Divisional Officer on 16.11.2022 and within three days of the said cancellation order an F.I.R bearing No.0432 of 2022 has been lodged at Police Station Gauriganj at night i.e. at 23.42 hours against the Secretary of the petitioner-Bar Association under section 2/3 of Prevention of Damage to Public Property Act, 1984. It is also the case set up by the petitioner-Bar Association that certain construction raised by the General Secretary of the petitioner-Bar Association was demolished without any notice. In support of this assertion, certain photographs have been enclosed with the writ petition wherein JCB machine can be seen in action

demolishing some construction which bears the name plate of the General Secretary of the petitioner-Bar Association.

9. The allegation further is that it is not only that the District Administration undertook the demolition raised by the General Secretary of the petitioner-Bar Association but also that certain movable and immovable properties including household items, electronic gadgets such as air-conditioner and fridge etc have also been damaged. To further assert the excesses allegedly committed by the District Administration, it has been stated in the writ petition that a First Information Report against Senior Vice President of the petitioner-Bar Association was also lodged on 19.11.2022 itself at Case Crime No.430 of 2022, Police Station-Gauriganj, District-Amethi at night i.e. at 22.57 hours, under section 2/3 of Prevention of Damage to Public Property Act, 1984.

10. With the writ petition yet another First Information Report at Case Crime No.0431 of 2022 lodged at Police Station-Gauriganj on 19.11.2022 itself under sections 353 & 504 of I.P.C. and under section 2/3 of Prevention of Damage to Public Property Act, 1984 against Ex-President of the petitioner-Bar Association, has been annexed.

11. Drawing the attention of the Court to the First Information Reports lodged in succession in the night of 19.11.2022 against the present and past office bearers of the petitioner-Bar Association, as is apparent from the First Information Report Numbers which are 430/2022, 431/2022 and 432/2022, it has been stated that such acts on the part of the District Administration are nothing but a clear manifestation of the vengeance with which the District Administration has been acting against the members of the petitioner-Bar Association.

The writ petition contains certain other allegations concerning demolition of the structures/buildings of the Members of the Bar Association said to have been undertaken by the District Administration in a short span of 2-3 days to assert that the District Administration has not been acting with *bona fide*; rather it has been acting against the Members of the petitioner-Bar Association with vengeance and in order to "teach a lesson" to the members of the petitioner-Bar Association.

12. In the aforesaid background facts, it has, thus, been prayed that appropriate direction may be issued to the respondents not to harass the Members of the petitioner-Bar Association and further not to indulge in any harassment and destruction of life and properties of its members. It has also been prayed that appropriate direction may be issued to the State Government to investigate the entire matter and take appropriate action against the person(s) responsible for the alleged illegal activities of the District Administration/Police Administration of District-Amethi after 14.11.2022 and further to lodge First Information Reports against the officials who are responsible for damaging the properties and illegal demolition of the properties of the members of the petitioner-Bar Association. The petitioner-Bar Association has also prayed that appropriate directions may be issued to the respondents to take action on the complaints in relation to alleged corruption in the office of Presiding Officers of the revenue courts in District-Amethi.

13. Learned Chief Standing Counsel representing the State authorities has vehemently opposed the writ petition and has submitted that since the order dated 16.05.2015 which related to exchange of land of the General Secretary of the petitioner-Bar Association with Gaon Sabha land was passed without hearing

the Nagar Palika Parishad which has sufficient interest in the matter, the order dated 16.05.2015 has been cancelled after due notice to the General Secretary of the petitioner-Bar Association in whose favour the order of exchange under section 161 of U.P.Z.A & L.R Act was passed.

14. Learned Chief Standing Counsel has further asserted that since the order under section 161 of U.P.Z.A & L.R. Act was passed on 16.05.2015 without hearing the Government Advocate/Nagar Palika Parishad, as such in view of the provisions contained in paragraph 396 of U.P. Revenue Court Manual and also in section 201 of the U.P. Land Revenue Act, the Sub Divisional Officer has got jurisdiction to hear the restoration application against an order passed without affording opportunity of hearing to the interested party. On behalf of the State-respondents further submission made by the learned Chief Standing Counsel is that the allegation relating to demolition of house of the General Secretary of the petitioner-Bar Association without affording any opportunity of hearing to him is also incorrect and as a matter of fact he had encroached upon certain land comprised in gata nos.318 and 293 situate in village-Katralalganj, which is recorded in revenue records as कच्ची सडक and हडवार (burial ground). It has also been stated further by the learned Chief Standing Counsel that the said land is a public utility land in respect of which an order was passed on 21.10.2022 by the Tehsildar, Tehsil-Gauriganj, under section 67 of the Code, 2006 whereby the illegal occupant has been ordered to be evicted and damages to the tune of Rs.3/- lakhs have been imposed. Submission further is that the General Secretary of the petitioner-Bar Association had raised certain illegal construction

on these plots and accordingly he was evicted on 19.11.2022 from the land in question.

15. It is to be noticed that the said submission by the learned Chief Standing Counsel has been made on the basis of certain instructions given to him by the District Magistrate, Amethi vide his letter dated 22.11.2022 which is addressed to the Chief Standing Counsel and is accompanied by another letter dated 22.11.222, addressed to the Chief Standing Counsel by the Sub Divisional Officer, Gauriganj, District-Amethi. The instructions contained with the said letters dated 22.11.2022 have been taken on record.

16. Submission on behalf of the State authorities further is that against the order dated 16.11.2022 passed under section 161 of U.P.Z.A & L.R. Act the General Secretary of the petitioner-Bar Association has instituted a case under section 331(3) of the said Act before the appellate court i.e. before the court of Commissioner/Additional Commissioner on 18.11.2022 which has been registered as Case No.C202204000002297. Certain allegations have also been mentioned in the instructions contained in the letter of the Sub Divisional Officer, Gauriganj against the General Secretary of the petitioner-bar Association to the effect that he is a person of criminal background who is involved in anti social activities in the garb of legal profession for which a letter has also been written on 22.11.2022 by the District Amethi to the Chairman/Secretary representing the Bar Council of Uttar Pradesh, Prayagraj.

17. In the light of the aforesaid submissions, learned Chief Standing counsel has submitted that the instant Public Interest Litigation does not raise any genuine grievance of the lawyers'

community in general of District-Amethi and hence it ought to be dismissed at its threshold.

18. We have given our thoughtful consideration to the competing submissions made by the learned counsel for the parties and have also perused the records available on this writ petition as also the original records relating to the cases decided under section 67 of the Code, 2006 as also under section 161 of U.P.Z.A. & L.R. Act

19. The facts of the case at hand presented before us are, as noticed above, not only disturbing but also arouse grave concern in the mind of the Court. However, to ascertain the alleged illegalities or wrongful acts on the part of the District Administration is a difficult task which this Court has been called upon to perform for the reason that in this case drawing correct inference is dependent upon the motive of the District Administration.

20. Motive in Black's Law Dictionary has been defined as under:

"Motive. Something, esp. willful desire, that leads one to act.-Also termed *ulterior intent*. Cf. INTENT."

21. Motive in general common parlance, means reason for doing something. It is rather a psychological feature that arouses some one to some action to achieve a desired goal. It is applied generally to urge that empells or prompts a person to some action to reach to some contemplated result. Thus, it is utmost difficult to infer or arrive at the correct motive of the authorities in respect of the allegations contained in the writ petition. However, as is well settled, though it is very difficult to establish

ulterior or bad motive or malicious act laced with vengeance, however, the same can be inferred from the attending circumstances such a chronology and proximity of events available before a court and undue haste in the action of the authorities complained of.

22. There are three First Information Reports which are on record, all lodged by the authorities against the present or formal office bearers or the members of the petitioner-bar Association. The First information Reports have been lodged in quick succession in the night of the same day i.e. 19.11.2022 and have been numbered as 0430, 0431 and 0432 of 2022 lodged at the same Police Station i.e. Police Station-Gauriganj, District-Amethi.

23. Lodging of FIRs and passing of the order dated 16.11.2022 whereby the order of exchange of land in favour of the General Secretary of the petitioner-Bar Association passed about 7 years ago on 16.05.2015 had preceded passing of resolutions and staging Dharna and protest by the members of the Petitioner-Bar Association against the District Administration and the Presiding Officers of the revenue courts of District-Amethi in relation to certain demands of the lawyers. We have perused the case file from where the order dated 16.11.2022 in the case under section 161 of U.P.Z.A. & L.R. Act has emanated whereby the order of exchange passed on 16.05.2015 was cancelled.

24. However, since the said order dated 16.11.2022 is under challenge before the Commissioner/Additional Commissioner in judicial proceedings, we refrain from making any observation or giving any finding in respect of the allegations made by the petitioner-Bar Association except that we *prima facie* notice that before passing the order dated 16.11.2022 the General Secretary

of the Petitioner-Bar Association was not put to proper and adequate notice. The service of notice in this case, as is available on the case file, also does not appear to be proper and as per law. These aspects, however, are to be examined and looked into by the Additional Commissioner/Commissioner where the order dated 16.11.2022 is under challenge.

25. We also *prima facie* notice such improper proceedings drawn in the case decided on 21.10.2022 against the General Secretary of the petitioner-Bar Association under section 67 of the Code, 2006 but we again refrain ourselves from giving any definite finding in respect of the allegations levelled in this regard in the writ petition as the said order dated 21.10.2022 is also appealable under section 67(5) of the Code, 2006 and the party/person aggrieved by the order dated 21.10.2022 may take recourse to a statutory judicial remedy available to it/him under the said provisions.

26. We refrain from giving any finding in respect of the judicial orders passed on 16.11.2022 and 21.10.2022 for the reason that the said orders are/may be subjected to judicial scrutiny by the higher courts/forum and we do not intend to prejudice the case of either of the parties.

27. However, having observed as above, we are constraint to note that the events and circumstances which have been mentioned in the writ petition if looked at chronologically by any person of common prudence, he will have a feeling that everything complained of against the District Administration does not appear to be proper.

28. We have already mentioned that all the three First Information Reports, which are available on record have been lodged in quick succession on the same day at night against the

members of the petitioner-Bar Association. Demolitions of certain structures said to be belonging to the Members of the petitioner-Bar Association have also been undertaken around the same period and such demolitions have preceded the protest mounted by the Members of the Bar Association.

29. Resolutions passed and protests lodged by the members of the petitioner-Bar Association may or may not be genuine and the same may or may not be justified, however, the attending circumstances of this case clearly go on to show and establish that action of the District Administration is also not proper and has strong traces of bad and malacious motive and bad faith.

30. Lodging of the FIRs, undertaking demolitions and even making the complaint to the Bar Council of U.P. against the President and formal office bearers and members of the petitioner-Bar Association and cancelling the order of exchange of land under section 161 of U.P.Z.A. & L.R. Act, in a span of less than a week shows not only undue haste on the part of the District Administration but such actions also demonstrate lack of good faith on the part of the authorities of District Administration.

31. The officers and authorities of the District Administration as also those of Nagar Palika Parishad concerned have been legally vested certain authority and power which are to be exercised, in all circumstances including a situation where they may be provoked, in good faith and with *bona fide* intentions. Any deviation from good faith in discharge of the duties and powers by such State authorities cannot, in our constitutional set up, be approved of. The authority and power vested by a democratic system in the hands of the officers and employees of the executive has to be always exercised by them being duty-

conscious; rather than such employees/officers being power-charged.

32. From the facts of the case what we gather is that the District Administration in this case does not appear to have conducted itself in a manner which is expected of it. When we observe so, we do not mean that if any individual, be he a member or an office bearer of the petitioner-Bar Association, conducts himself against the law or attempts to gain something by illegal means, the authorities should not act against him, however, such action should always be laced with law and the procedural and substantive rights available to every individual under law is to be always provided to him. Further, all legal precautions are also to be taken by the officers/authorities.

33. It is needless to say that any action taken in bad faith or for mala fide reasons vitiates such action even if it is taken to achieve the best and most solemn purpose. The minimum which is required of the Administrative officers/employees is that they, in all circumstances, will adhere to law and take action only in accordance with the legal procedure prescribed for the purpose.

34. When we consider the averments made in the writ petition as also the submissions made by the learned Chief Standing Counsel we find that the District Administration has been deficient and wanting so far as following the legal procedure is concerned.

35. For observing that certain acts of the District Administration which have been complained of in this writ petition do not appear to have been taken to achieve some bona fide purpose, we may refer to the First Information Report lodged at case crime No.0432 of 2022 on 19.11.2022 which accuses the General Secretary of the Bar Association of an

offence under section 2/3 of Prevention of Damage to Public Property Act, 1984. The order of exchange passed in favour of the General Secretary of the petitioner-Bar Association on 16.05.2015 was cancelled on 16.11.2022 and within three days, the said F.I.R. has been lodged. As to how within three days of the passing of the order on 16.11.2022 the accused in the said F.I.R. can be said to have committed the said offence for the reason that he has been in possession, on the basis of judicial order passed seven years ago on 16.05.2015, over the land in question, is something to be pondered about. The order of exchange passed on 16.05.2015 has been intact till it was cancelled on 16.11.2022. As to how use of such exchanged land from 16.05.2015 till 16.11.2022 can be said to have caused damage to public property is again an issue which raises question mark on the District Administration.

36. At the cost of repetition, we may observe that restraint and adherence to rule of law is the hallmark of efficient and judicious administration. Any deviation from such attributes by the District Administration is bound to raise concerns and thus this Court expects that any District Administration or the officers and employees associated with it will, in all circumstances, act in adherence to law so as to instill a sense of justice amongst one and all.

37. During the course of hearing the Court was also informed that the matter relating to the concerns and apprehensions of the members of the petitioner-Bar Association is being taken up by the Bar Council of U.P. and thus we hope and trust that with the good offices of the District Magistrate and the members of the Bar Council of U.P. an amicable solution will be found out.

38. In the facts and circumstances of the case, we also issue the following directions:

(a) The proceedings initiated against the order dated 16.11.2022 passed by the Sub Divisional Officer before the Commissioner/Additional Commissioner concerned shall be expedited and conducted appropriately and a just and proper order shall be passed. The record relating to the case decided under section 161 of U.P.Z.A. & L.R. Act shall be kept in a sealed cover by the Senior Registrar of this Court and shall be sent by him to the Commissioner, Ayodhya Division, Ayodhya, through a special messenger, which may be perused by the Presiding Officer of the court where proceedings against the order dated 16.11.2022 are pending.

(b) It will be open to the party concerned to take legal recourse, which may be available to it under law, to challenge the order dated 21.10.2022 passed in the proceedings under section 67 of the Code, 2006 in the case of Gaon Sabha vs. Uma Shankar Mishra and in case any legal recourse is taken by the party concerned to challenge the said order, the Court concerned shall conduct the proceedings in a fair and proper manner and conclude the same appropriately and strictly in accordance with law.

(c) The record relating to the case decided on 21.10.2022, under section 67 of the Code, 2006, Gaon Sabha vs. Uma Shankar Mishra, shall be kept in a sealed cover by the Senior Registrar of this Court and shall be furnished to the District Magistrate, Amethi through a special messenger, who shall keep it in his personal custody and shall remit the same to the court/authority concerned where the order dated 21.10.2022

passed by the Tehsildar/Assistant Collector, First Class, Tehsil Gauriganj, Amethi may be challenged .

(d) We also direct that till the decision of the proceedings where the order dated 16.11.2022 has been challenged, are concluded as also the proceedings which may be instituted against the order dated 21.10.2022 are concluded, status quo as it exists today in respect of the subject matter of the aforesaid two cases, shall be maintained by the parties including the District Administration and Nagar Palika Parishad concerned.

(e) The Court requests the District Magistrate, Amethi and the members/representatives of Bar Council of Uttar Pradesh to sit across the table and redress the genuine grievances of the members of the petitioner-Bar Association. We also hope and expect, in all solemnity, that the members of the petitioner-Bar Association shall not be unnecessarily harassed.

(f) We also express our hope that the members of the petitioner-Bar Association including its present and formal office bearers shall conduct themselves properly and in a manner which is expected of the lawyers' community.

39. Copy of this order shall be communicated to all concerned by the office of learned Chief Standing Counsel forthwith. Office is directed to furnish a copy of this order to the Bar Council of Uttar Pradesh at the earliest.

40. With the aforesaid observations and directions, the writ petition is finally **disposed of**.

Order Date :- 30.11.2022

akhilesh/