

A.F.R.

Court No. - 29

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 97 of 2019

Petitioner :- Shailesh Kumar Mishra

Respondent :- State Of U P And Another

Counsel for Petitioner :- Jai Shanker Misra, Vijai Shanker Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, J.

Hon'ble Ashutosh Srivastava, J.

(Delivered by Hon'ble Ashutosh Srivastava, J.)

This writ petition styled as a PIL has been filed for declaring the U.P. Land Record Manual as ultra-vires the U.P. Revenue Code, 2006, and the Revenue Code Rules, 2016. Although the prayer made in the writ (PIL) is not so specific but from the tenor of the petition it is borne out that the petitioner seeks the aforesaid relief. We however quote the reliefs claimed in the petition which are as under:-

“1. Issue a writ order or direction in the nature of Certiorari declaring U.P. Land Record Manual as ultra-virus (deliberately misspelt to reproduce as it appears in the petition)

2. Issue a writ order or direction in the nature of Mandamus commanding the respondents to make new U.P. Land Record Manual as per provisions of the U.P. Revenue Code 2006 or amend Para ka-124 of U.P. Land Record Manual in accordance with the class of the tenure as defined in U.P. Revenue Code 2006.

3. Issue any other writ order or direction which the Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

It is contended on behalf of the petitioner that he is a social worker and farmer and takes active part in the social work and espouses the cause

of poor villagers and farmers and has no personal interest in filing the present PIL petition which is being filed for the benefit of the villagers and public at large. It is contended that the instant petition raises the issue for the general interest of the public as U.P. Land Record Manual is an old Manual and is not according to U.P. Revenue Code, 2006.

Before dealing with the plea as raised in the writ PIL, it would be apposite to briefly state about the U.P. Land Record Manual and the U.P. Revenue Code, 2006 as also the Revenue Code Rules, 2016 framed thereunder.

The U.P. Land Record Manual is a collection of Rules framed under Section 234 of the Land Revenue Act, 1901 as well as instructions issued by the State Government in relation to various matters. Chapter -V of Part-I of the Manual relates to the map and *Khasra*, Chapter VIII deals with the *Khatauni*. The preface to the Manual shows that Chapters III to XI of Part-I of the Manual have been framed under Clause (d) of Section 234 of the Land Revenue Act, 1901. Thus the rules contained in Chapter V and VIII of the Manual are statutory Rules made under Section 234. Chapter-V dealing, inter alia, with *Khasra* consists of paras 55 to 102. Chapter VIII relates to *Khatauni* and consists of paras 121 to 160. Para 60 provides that *Khasra* shall be prepared in Form No. P-3. Form No. P-3 consists of 21 columns. Column- 5 is meant for the name of the cultivator. In Column No.6 are to be entered the names of sub-tenants or tenants of sir, or tenants of permanent tenure-holders, or rent free grantees, or grantees at a favourable rate of rent or occupier of land without the consent of the persons entitled to admit such sub-tenants. Column No.21 is the remark column. Para 71 provides for the entry in Column No.5. It is not only the name of the cultivator but also the “nature of his rights’ i.e. the class of his tenure and where necessary, the term of cultivation, have to be entered. These entries are to be made in accordance with paras 72 to 86, 124 and 124-A and 126 to 129 as the case may be. Paras 124 to 129 are in Chapter VIII dealing with *Khatauni*. In substance the U.P. Land

Record Manual provides the rules and procedures for preparation and maintenance of Land Records.

The U.P. Revenue Code, 2006 (U.P. Act No.8 of 2012) has been promulgated to consolidate and amend the law relating to land tenures and land revenue in the State of Uttar Pradesh and to provide for matters connected therewith and incidental thereto. There were as many as 39 Acts relating to revenue law enforced in the State of U.P. Out of these Acts, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and the U.P. Land Revenue Act, 1901, are the most prominent. The aforesaid Acts have been amalgamated in the U.P. Revenue Code after repealing them. In the First Schedule 32 Acts have been mentioned which have been repealed. Other repealed Acts are such which have either lost their efficacy or were operating in small areas of the State. Most of the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and U.P. Land Revenue Act, 1901 have been re-enacted in the Code. Section 234(3) of the U.P. Revenue Code, 2006, provides that the Revenue Court Manual and the Land Record Manual in force on the date of commencement of the Code shall continue to remain in force until amended, rescinded or repealed by any regulations made under the section.

Now comes the question as to whether the constitutional validity of the provisions of the U.P Land Record Manual can be questioned in a writ petition styled as a Public Interest Litigation.

The counsel for the respondents in opposition to the petition contends that the vires of the U.P. Land Record Manual cannot be challenged/questioned in a writ petition styled as Public Interest Litigation. A counter affidavit has been filed on behalf of respondents No. 1 & 2 sworn by Sri Vishram s/o Raja Ram posted as OSD, Board of Revenue, U.P., Allahabad wherein a categorical stand has been taken that the provisions of an enactment can be struck down as ultra-vires only on two grounds (i) due to lack of legislative competence; or (ii) violation of

any of the fundamental rights of any other constitutional provision. The petitioner has failed to establish that the relevant provisions which the petitioner is alleging to be ultra-vires are actually violative to any fundamental rights as envisaged under Article-14 of the Constitution of India or there is lack of legislative competence. Reliance is also placed upon Article 372 of the Constitution of India.

It is for the petitioner to satisfy the Court about the maintainability of the petition which is styled as a PIL. The petitioner in the instant case is not espousing his own cause, but is seeking a relief for declaring U.P. Land Record Manual as ultra-vires the U.P. Revenue Code, 2006. In the entire petition we do not find a single word which could convey that the petitioner is a person who is directly aggrieved. The maintainability of the petition requires close examination though it is styled as a Public Interest Litigation.

We are of the opinion that only a person who has suffered from some legal injury can challenge the Act/orders/Rules etc. in a Court of law. Writ petition under Article 226 of the Constitution of India is maintainable for the purpose of enforcing a statutory or legal right, where there is a complaint of breach of statutory duty on the part of the Authorities. The rule of locus standi in PIL requires no rigid litmus test but Courts are empowered to examine the case on settled parameters. The dominant object of PIL is to ensure the observance of the provisions of the Constitution or the Law, which can be best achieved to advance the cause of a community or disadvantaged groups.

In Stroud's Judicial Dictionary (fifth Edition) 'Public Interest' is defined as "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...."

In Black's Law Dictionary (6th Edition) "Public Interest" is defined as "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."

The concept of PIL initially surfaced in the year 1976 in our Country. After germination of the seeds of concept of PIL in the soil of our judicial system this Rule of PIL was nourished, nurtured and developed by the Apex Court in series of decisions. The traditional syntax of law in regard to locus standi for a specific judicial redress, has been relaxed to achieve the avowed purpose. The recognition for departing with the strict rule of locus standi was to echo the voice of downtrodden or poor who are unable to approach the Court for one reason or the other. Gradually, the Courts have perceived, misuse of Public Interest Litigation, hence, examination of the bonafides of petitioner has become an order of the day.

The Supreme Court in the case of **Janata Dal vs. H.S. Chowdhary and others**, reported in (1992) 4 SCC 305 observed as under:-

"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."

Undisputedly, PIL is a weapon which has to be used with great care and circumspection and Courts have to be extremely careful to see that behind a beautiful veil of Public Interest, whether any private malice, vested interest or publicity stunt is lurking. Basically, PIL should be aimed at redressal of public wrong or public injury. The approach of court is to

make differentia in between bonafide cause raised for the benefit of public or it is nothing but for oblique consideration. The Court must not allow its process to be abused for oblique consequences. In such proceedings voluminous time of the Court is consumed which time otherwise could have been spent for the disposal of cases in genuine litigation.

It would not be out of place to quote the observation of the Supreme Court in the case of **Ashok Kumar Pandey Vs. State of West Bengal**, reported in **2004 (3) SCC 349** which is as under:-

“12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14.....In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.”

Further, the Hon'ble Supreme Court in case of **BALCO Employees Union (Regd) Vs. Union of India and others**, reported in **(2002) 2 SCC 333**, observed as under:-

“78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in following words :-

"PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).

Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).

Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).

Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).

Where administrative decisions related to development are harmful to the environment and jeopardize people's to natural resources such as air or water".

79. There is, in recent years, a feeling which is not without any foundation that Public Interest Litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counter-productive.

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a Petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.”

Again in the case of **Janata Dal (supra)** the Hon'ble Supreme Court opined as under:-

“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 Hon'ble Supreme Court, in the case of **Guruvayoor Devaswom Managing Committee and another Vs. C.K. Rajan and others** reported in (2003) 7 SCC 546, took survey of various decisions in the filed and summarized the position in Para 50 of the judgment. One of the principles which the Hon'ble Supreme Court noted, is reproduced here in below:-

“ 50(i). The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. (See S.P. Gupta Vs. Union of India [1981 (supp) SCC 87], People's Union for Democratic Rights and Others Vs. Union of India (1982) 2 SCC 494, Bandhua Mukti Morcha Vs. Union of India and Others (1984) 3 SCC 161 and Janata Dal Vs. H.S. Chowdhary and Others (1992) 4 SCC 305)

(ii) Issues of public importance, enforcement of fundamental rights of large number of public vis-À-vis the constitutional duties and functions of the State, if raised, the Court treat a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi (1978) 4 SCC 104 and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar (1980) 1 SCC 81).

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(xi) ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a Statutory Rule.”

In the case at hand, we find that the U.P. Land Record Manual merely provides the manner and procedure to maintain the land records. Section 234(3) of the U.P. Revenue Code, 2006 provides that the Land Record Manual in force on the date of commencement of the Revenue Code, 2006, shall continue to remain in force, to the extent they are not inconsistent with the provisions of the Revenue Code, 2006 until amended rescinded or repealed by any regulations made under this Section.

In the wake of the above, we are not inclined to entertain the petition styled as PIL particularly in view of the fact that Section 234(3) of the U.P. Revenue Code, 2006, itself takes care of the inconsistency of the Land Record Manual and upholds it only to the extent it is not inconsistent with the provisions of the Revenue Code, 2006. We are of the opinion that this is not a fit case where PIL jurisdiction should be invoked or exercised.

Accordingly, we **dismiss** the petition on account of non maintainability by imposing cost assessed at Rs. 10,000/- to be deposited with the High Court Legal Services Committee, High Court, Allahabad, within 45 days from today, failing which the same shall be recovered from the petitioner as arrears of land revenue.

Order Date :- 21.3.2022

Vandana

(Ashutosh Srivastava,J.)

(Pritinker Diwaker,J.)