

## **WP-7014-2015**

*(SACHIN GUPTA Vs THE MUNICIPAL CORPORATION THR)*

**18-07-2016**

Shri P.C.Chandil, learned counsel for the petitioner.

Shri N.K.Gupta, learned senior counsel with Shri Ravi Gupta, learned counsel for the respondent No. 1.

Shri Arvind Dudawat, learned Additional Advocate General, for the respondents No. 2 and 3/State.

Shri V.K.Bhardwaj, learned senior counsel with Shri Anand Bhardwaj, learned counsel for respondent No. 4.

With the consent of learned counsel for the parties, matter is heard finally.

**2.** In the public interest litigation petition, the petitioner who claims himself to be a public spirited individual inter alia seeks a direction to respondent No. 1 to invite bids for the Ropeway project with the lease rent payable at the prevailing rates and also seeks direction to respondent No. 1 not to proceed in furtherance of the agreement dated 5/6/2008 as the same has rendered commercially unviable for the respondent No. 1 and the public at large. The petitioner also seeks a direction to respondents to conduct an enquiry against the erring officers in the department of respondent No. 1, who are responsible for mismanaging the public properties on account of their vested interest.

**3.** Facts giving rise to this petition, briefly stated, are that a tender was invited by respondent No.1, Municipal Corporation, Gwalior, pursuant to which, respondent No. 4 submitted its bid. The bid submitted by respondent No. 4 was accepted. Thereupon an agreement was executed on 5/6/2008 for construction of Ropeway project from the base point Phoolbag Station to landing station Gwalior Fort and to operate and manage the same in pursuance to the aforesaid agreement. On 11/6/2008, possession of 4000

square meters of land was handed over to respondent No. 4 by respondent No. 1. However, as the statutory clearances were not accorded to the respondent No. 4 for project of Ropeway in question, therefore, delay has been caused in commissioning the project. Thereupon, the petitioner submitted a representation on 7/9/2015 to the Commissioner of Municipal Corporation, Gwalior citing reasons for recalling the agreement and for inviting fresh tenders for commissioning the Ropeway project but the same has failed to evoke any response. In the circumstances aforesaid, the petitioner has filed this petition pro bono publico.

**4.** Learned counsel for the petitioner submitted that petitioner is not aggrieved by the project for installation of Ropeway. It is further submitted that the petitioner is aggrieved with the procedural irregularities committed by respondent No. 1 and respondent No. 4 and the delay caused in completing the project for installation of Ropeway system. It is further submitted that though the State Government had agreed to handover 4,000 square meters of Nazul land to respondent No. 1 but in violation of order dated 26<sup>th</sup> April, 2007 has handed over 5,000 square meters of land. It is further submitted that under clause 7 of the agreement, the respondent No. 4 has not been granted the liberty to create the mortgage in respect of the land of which the possession has been handed over to him. It is also submitted that no time limit has been fixed for completion of the project and by execution of agreement, respondent No. 4 is being given undue benefit at the cost of public exchequer. It is also submitted that the rate of rent which is prevailing presently be taken into account and the agreement be cancelled on account of non-completion of the project. On the other hand, learned senior counsel appearing for respondent No. 1 has invited attention of this Court to various clauses of the agreement, namely, clause 2, 7(a), 11 and 13 and has submitted that the respondent-Corporation has

taken a categorical stand at page 7 of its return that possession of only 4,000 square meters of land has been given to respondent No. 4. It is further submitted that respondents were required to obtain statutory clearances from the State Environmental Impact Assessment Authority and M.P. Pollution Control Board and since the statutory permissions were not being granted, respondent No.1, namely, Municipal Corporation, Gwalior had filed a writ petition namely **W.P.No. 1914/2013**, in which a Bench of this Court passed interim order on 30/04/2015 directing the department of Archaeological Survey of India to decide the application submitted by the Corporation in accordance with law. In pursuance of the direction issued by this Court on 30/4/2015, the Archaeological Survey of India has granted permission on 22/7/2015 on the ground that the work shall be undertaken and completed in right earnest by respondent No. 4 within the time limit as prescribed in the schedule. It is further submitted that petitioner has no locus standi to file the writ petition and the writ petition filed by the petitioner is a sponsored litigation. In support of aforesaid submissions, learned senior counsel for the respondent No.1 has placed reliance on the decision of Supreme Court in the matter of **Gurpal Singh Vs. State of Punjab & Ors., (2005) 5 SCC 136**.

5. On the other hand, Shri Arvind Dudawat, learned Additional Advocate General for respondents No. 2 and 3/State has also invited attention of this Court to paragraph 4 of the return filed by the State Government and has submitted that only possession of 4,000 square meters of land has been given to respondent No. 4. It is further submitted that the project in fact is in public interest. It is also submitted that the project is made under BOT basis. In support of his submissions, learned Additional Advocate General has placed reliance on decision of the Supreme Court in the case of **Jal Mahal Resorts Private Limited Vs. K.P.Sharma & Ors., (2014) 8 SCC**

**804.**

6. Shri V.K.Bhardwaj, learned senior counsel for respondent No. 4 has invited attention of this Court to paragraph 5.1 of the reply and submitted that petitioner in fact is an employee of Dainik Bhaskar Group and is resident of Mumbai. It is further argued that aforesaid fact is not controverted by the petitioner by filing the counter affidavit. It is further submitted that the possession of only 4,000 square meters of land has been given to respondent No.4 by respondent No. 1. It is also submitted that the petitioner has failed to disclose the source of information as well as the fact as to where from he got the documents which have been annexed with the writ petition. In support of his aforesaid submissions, learned senior counsel placed reliance on decisions of the Supreme Court in the case of **Ashok Kumar Pandey Vs. State of W.B., (2004) 3 SCC 349** as well as **Jal Mahal Resorts Private Limited (supra)**. It is further submitted that respondent No. 4-Company has no right over the land in question, hence, it cannot create any mortgage in respect of the same. The respondent No. 1-Corporation has only permitted to create charge in support of Ropeway installation system.

7. We have considered the submissions made on both sides. The Supreme Court after taking note of the various decisions rendered previously, in the case of **Guruvayoor Devaswom Managing Committee and another vs. C.K.Rajan and others [(2003) 7 SCC 546]** has summarised the legal principles as follows :-

*(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 treats 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).*

*(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.*

*In Mankeja Sanjay Gandhi and Another Vs. Miss Rani Jethmalani, AIR 1979 SC 468, it was held:*

*"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant, environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."*

*(See also Dwarka Prasad Agarwal (D) By LRs. and Anr. Vs. B.D. Agarwal and Ors. 2003 (5) SCALE 138).*

*(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of*

*the poor, the deprived, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. (See Fertilizer Corporation Kamagar Union Vs. Union of India, AIR 1981 SC 344, S.P. Gupta (supra), People's Union for Democratic Rights (supra), Dr. D.C. Wadhwa Vs. State of Bihar (1987) 1 SCC 378 and Balco Employees' Union (Regd.) Vs. Union of India and Others [(2002) 2 SCC 333]).*

*(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha (supra)).*

*(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depend on the nature of the petition as also facts and circumstances of the case. (See Rural Litigation and Entitlement Kendra Vs. State of U.P. 1989 Supp (1) SCC 504 and Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and others (1986) 1 SCC 100).*

*(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi and Another Vs. Union of India and Others 1989 Supp (1) SCC 251).*

*(viii) However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for redressal of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil Vs. Dr. Mahesh Madhav Gosavi and Others (1987) 1 SCC 227).*

*(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such committee. (See Bandhua Mukti Morcha (supra), Rakesh Chandra Narayan Vs. State of Bihar 1989 Supp (1) SCC 644 and A.P. Pollution Control Board Vs. M.V. Nayudu (1999) 2 SCC 718). In Sachidanand Pandey and Another Vs. State of West*

*Bengal and Others [(1987) 2 SCC 295], this Court held: "61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such is required. But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."*

*In Janata Dal Vs. H.S. Chowdhary and Others (1992) 4 SCC 305, this Court opined :*

*"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will along 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 Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.*

*In Narmada Bachao Andolan Vs. Union of India & Others [(2000) 10 SCC 664], it was held:*

*"229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon*

*except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.*

*232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction."*

*(x) The Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.*

*(xi) Ordinarily the High Court should not entertain a writ petition by way of Public Interest Litigation questioning constitutionality or validity of a Statute or a Statutory Rule.*

**8. Similarly in the case of State of Uttaranchal vs. Balwant Singh Chauhal and others [(2010) 3 SCC 402], after examining the law declared by the Supreme Court, in para 181 it is observed as under:-**

*â(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 P.I.L.*

*(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.ââ*

**9.** In the case of **Jal Mahal Resorts Pvt. Ltd. (supra)**, the Supreme Court while dealing with the tourism project involving restoration of lake, nearby historical monument and development of tourism and recreational amenities on PPP model involving grant of lease to private party developer in lake precincts, has held that if the project has been undertaken after detailed assessment by the experts and grant is made in a transparent manner after detailed deliberation and due compliance with legal requirements including the obtaining of environmental clearance, in such a case the scope of judicial review is very limited and the decision can be questioned only on the ground of illegality or arbitrariness which is writ large on a particular venture.

**10.** In the backdrop of aforesaid well settled legal principles, the facts of the instant case may be seen. From the averments made in the return filed by the Municipal Corporation as well as paragraph 4 of the return filed by the State Government, it is evident that the possession of only land admeasuring 4000 square meters has been given to the respondent No.4. Therefore, the contention of the petitioner that the possession of the land admeasuring 5000 square meters has been given is misconceived. Clause 7(a) of the agreement reads as under:-

*7(a) The land admeasuring 5000 Square Meters Approx (Each at both the Terminals) is allotted free to DRCC by CMCG for installation of Ropeway/Amenities at ground in City for Lower Terminal and at Fort for Upper Terminal. The DRCC cannot claim any title or ownership on the land in question, but DRCC/SPV Company will be at liberty to create charge on the said Ropeway System with right of use over the land for the purpose of obtaining any financial assistance from any bank and/or financial institution or from any person or persons. Ropeway system including all installations shall always remain property of DRCC/SPV Company.*

*However, as per the condition of land allotment by Collector, Gwalior for the upper terminal, the use of the land has been restricted to public purpose only which includes Ropeway/Amenities. In case of any commercial use carried out on the said land by DRCC, than the premium and lease rent charged by the Collector will be paid by DRCC.*

**11.** From perusal of the aforesaid clause, it is evident that the company has not been given any title or ownership in respect of the land in question but only has been permitted to create a charge on the Ropeway system and not in respect of the land. Therefore, the contention of the petitioner that the petitioner under the agreement has been permitted to mortgage the land does not deserve acceptance. It is pertinent to mention here that on account of statutory clearances which have been granted as back as in the year 2015 by the Archaeological Survey as well as by other departments, there was a

delay in execution of the project. The respondent No.1 and respondent No.4 have stated that the project shall be completed expeditiously within the time limit as prescribed in clause 1(c) of the agreement as the statutory clearances have been granted.

**12.** The contract has been awarded to the respondent No.4 after inviting tenders in which he is found to be the highest bidder. Thus, contract has been awarded in the transparent manner after following the procedure prescribed in law. It is also pertinent to mention that the aforesaid agreement was executed on 5.6.2008 whereas the instant writ petition has been filed after an inordinate delay of seven years for which no explanation has been offered. The principle of delay and laches is applicable in the case of Public Interest Litigation as well. See, **Bombay Dyeing & Mfg.Co.Ltd. (3) vs. Bombay Environmental Action Group, (2006) 3 SCC 434.**

**13.** The project has been undertaken for development of tourism and recreational amenities. Therefore, there is no element of public interest involving in the instant writ petition. Apart from this, it is pertinent to mention that in paragraph 5.1 of the reply filed on behalf of the respondent No.4, a specific averment has been made that the petitioner is an employee of Dainik Bhaskar Group and is resident of Mumbai. The aforesaid fact has not been denied by the petitioner. Thus, the said fact is deemed to have been admitted. See, **Naseem Bano (Smt.) vs. State of U.P. & others, [(1993) Suppl. 4 SCC 46].**

**14.** In view of preceding analysis, we do not find any merit in the instant writ petition. However, the respondents No.1 and 4 are directed to ensure that the project undertaken by them is completed in the time schedule mentioned in clause 1(c) of the agreement.

With the aforesaid directions, the writ petition is disposed of.

**(ALOK ARADHE)**  
**JUDGE**

**(ANAND PATHAK)**  
**JUDGE**

