

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 2nd OF JULY, 2024

WRIT PETITION No. 14735 of 2024

(MOHAMMAD RAFIQ

Vs

UNION GOVERNMENT AND OTHERS)

Appearance:

(SHRI ABDUL MAZEED DARBARI, ADVOCATE)

(SHRI HIMANSHU JOSHI, DY. SOLICITOR GENERAL)

(SHRI BHUWAN GAUTAM, GOVT. ADVOCATE)

Reserved on : 28.05.2024

Pronounced on : 02.07.2024

ORDER

Per: SUSHRUT ARVIND DHARMADHIKARI, J.

Heard on the question of admission.

2. Instant petition has been filed by the petitioner under Article 226 of the Constitution of India in the shape of Public Interest Litigation praying

for the following relief:

"1. It is to be declared that there is no any B-4 Land in Mhow Cantonment.

2. State Government of M.P. respondent No. 5 may please be directed to take over the charge and administration of so called B-4 Land of Mhow Cantonment in accordance of Chapter 8th of M.P. Land Revenue Code, 1959.

3. M.P. Government respondent No. 5 may please be directed to allot the land of affected persons by the gauge conversion from the Ambedkar Nagar to Patal Pani Project specially to affected person of Survey No. 662/134 of Banda Basti of Mhow Cantonment.

4. That respondent No. 2 be directed to allot the compensation to affected person from the Gauge conversion project of Ambedkar Nagar to Patal Pani specially to resident of Survey No. 662/134 Banda Basti of Mhow Cantonment in following Ann/14 and section 35 of Easment Act.

5. That respondent No. 3 and 4 may please be restricted from demolition of house of Survey No. 662/134 till the date affected persons of gauge conversion would have not been allotted alternative side for residence and until they have not been compensated at the rate of market value of their houses by respondent No. 2

6. It may please be directed that provisions of public premises (Eviction of Unauthorized occupants) Act 1971 are not applicable to so called B-4 land of Mhow Cantonment."

2. Learned counsel for the petitioner contended that as per clause (f) of Section 122 of Cantonment Act, 2006 the land which is transferred by Central or State Government for local public purpose is vested with the Cantonment Board. After the declaration of Mhow as Contonment vide S.R.O. 88 dated 8th July, 1950 no land is transferred by the State Government to the Cantonment Board, Mhow and after restoration of Mhow Cantonment to Maharaja Holkar, the land at Mhow did not belong to Central Government in any manner, therefore, Central Government was not empowered to transfer the land to Mhow Cantonment Board. B-4 land is not available at Mhow Cantonment.

3. He further contended that the petitioner and other residents of Survey No. 662/134 of Banda Basti Mhow have acquired the right of easement on account of long possession of 60-70 years without disturbance, without any obstruction and without any hindrance from anyone including Respondent No. 4 which has been admitted in cross-examination by Cantonment Engineer and Sub-engineer. The disputed question of ownership cannot be decided by the Estate Officer under the summary proceeding of Public Premises Act, 1971. The Respondent No. 4 has erred in holding that the land of Mhow Cantonment is a property which belongs to the Central Government. He further stated that the respondent No. 4 have wrongly relied upon the judgment of W.P. No. 3826/2008 (AIR 2010 MP 40) which does not confer any right to Central Government over the land of Mhow Cantonment. The order of respondent No. 4 dated 12.02.2024 is misconceived and not in accordance with law.

4. On the other hand, learned counsel for the respondents/State opposed the prayer and submitted that the petitioner has not given his complete antecedents and have also not disclosed as to what public interest work he has performed for the Society. Learned counsel for the respondents has brought to the notice of this Court the judgment of the Coordinate Bench of this Court in the case of **Surendra Pratap Singh Vs. State of M.P. and Others**[2019 (1) M.P.L.J. 75] to contend that the petitioner has failed to produce on record to satisfaction of the Court such social work in last couple of years in the area in respect of which Public Interest Litigation is involved. Merely spending money like lawyer's fees from their own pocket does not satisfy test of locus standi. Therefore, this writ petition is not maintainable.

5. The Division Bench of this Court in **Surendra Pratap Singh(supra)**, has referred to the judgment of the Apex Court involving Public Interest Litigation in the case of **State of Uttaranchal Vs. Balwant Singh Chauhal and others[(2010) 3 SCC 402]** wherein the Apex Court has laid down certain guidelines to be followed before exercising jurisdiction of Public Interest Litigation. The guidelines are as under :-

"(1) The courts must encourage genuine and bonafide 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 RP 638/2017 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 court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

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

(6) The court 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 court 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."

6. Learned counsel for the respondents submitted that in the present petition as well none of the aforesaid guidelines are satisfied as laid down in the case of **State of Uttaranchal Vs. Balwant Singh Chaufal and others(supra)**. Therefore, this writ petition is not maintainable. Accordingly, the same is liable to be dismissed.

7. Heard, learned counsel for both the parties and perused the record.

8. This Court is in consonance with the submission of State counsel that in the light of the judgment passed in the case of **State of Uttaranchal Vs. Balwant Singh Chaufal and others (supra)**, this public interest litigation is not maintainable.

9. Further, in the case of **Ashok Kumar Pandey vs. State of W.B.** reported in **(2004) 3 SCC 349**, the Apex Court has held as under:

"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.

The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. 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."

10. Normally, the duty of the Court is to confine itself to the question of legality such as: (i) *whether the decision making authority exceeded its power ?* (ii) *committed any error of law;* (iii) *committed a breach of rules of natural justice;* (iv) *reached a decision which no reasonable tribunal would have reached or* (v) *abused its power.*

11. This Court being a guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, *malafides* and bias. However, the Apex Court in the aforesaid cases has cautioned time and again that *the courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. The Court can only interfere in contractual matters where clear-cut case of arbitrariness or malafides or bias or irrationality is made out.* As laid down in the aforesaid judgments stated above, the *Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder.* Hence, no case for interference is made out.

12. In the present petition, the petitioner himself is an inhabitant as well as resident of the land situated at survey number 662/134 of Mhow Cantt. He has also received the notice dated 18.06.2023 as well as the notice dated 28.07.2023 issued under the Public Premises Eviction Act, 1971 to vacate the land. That upon perusal of the record, it clearly reveals that the petitioner himself is having interest in the present case, which frustrates the cause of filing public interest litigation. Furthermore, from perusal of the requirements made in the petition as well as the arguments advanced by the learned counsel for the petitioner, this court could not find any element of public interest involved in the present petition. In view of the aforesaid, this Court does not find any merit to entertain the present writ petition.

13. Accordingly, the same is hereby dismissed at admission stage itself.

**(S.A. DHARMADHIKARI)
JUDGE**

**(GAJENDRA SINGH)
JUDGE**

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