

Case No : CIVIL APPEAL No.2619 of 2002

Judges: THE HONOURABLE MR. JUSTICE DALVEER BHANDARI
& THE HONOURABLE MR. JUSTICE DEEPAK VERMA

Parties : Pragati Mahila Mandal, Nanded Versus Municipal Council,
Nanded & Others

Appearing Advocates : For the Appellant : ----- For the Respondents:

Date of Judgment : 18-02-2011

Head Note :-

SUBJECT

Judgment :-

Deepak Verma, J.

1. How far whip of Public Interest Litigation can be stretched and used is the moot and foremost question to be answered in this Appeal, arising out of judgment and order dated 16/17th July, 2001 passed by Division Bench of the High Court of Judicature of Bombay, Bench at Aurangabad in W.P. No. 925 of 1988 titled as Anil Tryambakarao Kokil (since dead) Vs. Municipal Council, Nanded and others.

2. Appellant herein - Pragati Mahila Mandal, Nanded is before us challenging the said judgment and order passed by Division Bench, whereby and whereunder allotment of a piece of plot bearing Survey No. 42 of Village Assadullabad (Maganpura), admeasuring 75'x 350' in its favour has been set aside and quashed as being illegal and void ab initio, with further direction to Respondent No. 1, Municipal

Council, Nanded to take possession of the said plot together with building appurtenant thereto, within a period of eight weeks from the date of impugned judgment.

Thumb nail sketch of the facts of the case is as under:

3. Appellant is a Charitable Trust duly registered under the provisions of Bombay Public Trust Act, 1950. On 14.10.1983, it made a request to Respondent No. 1 Municipal Council, Nanded (now Nanded Waghela City Municipal Corporation) for allotment of a plot, out of the lands belonging to it, for starting a school to provide education, especially for girls. Accordingly, in the year 1984, the Administrator, who was then holding the charge of the Municipal Council, vide Resolution dated 22.10.1984 allotted a plot admeasuring 75' x 350' bearing Survey No. 42 to the Appellant on a 60 years' lease.

4. It further contemplated that the applicable rental compensation shall be fixed on the basis of the rate to be worked out by the Assistant Town Planner, subject to compliance of the provisions of Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short 'The Act'). The Assistant Town Planner was also required to undertake the measurements and after fixing boundaries, the said piece of plot came to be handed over to the Appellant on 25.10.1984, after drawing a possession Panchanama. However, at that time, the nominal rental compensation could not be fixed as the State Government was yet to grant sanction for transfer of the land in favour of the Appellant, as contemplated under Section 92 of the Act.

5. Respondent No.1, the Municipal Council then in turn submitted a proposal to the Collector, seeking sanction of the State Government regarding allotment of the aforesaid plot in favour of the Appellant. The Assistant Town Planner by his communication dated 5.6.1986 informed Respondent No.1 that rental compensation for the subject

plot for giving it on long lease of 60 years, would work out at Rs. 6,816/- per annum. A representation was made by the Appellant for reduction of the rental to a reasonable sum, owing to it being a Charitable Trust, working mainly for the benefit of girls and women and it had no source of income to pay such rental compensation. On reconsideration of the matter, the rental was fixed at Rs. 11 per annum by the Divisional Commissioner, vide his order dated 12.11.1986, wherein sanction was granted under Section 92 of the Act, for allotment of the subject plot to the Appellant on a lease for 60 years. Thus, it was an ex-post facto sanction granted in favour of the Appellant, after the possession of the plot was already handed over to the Appellant. It was this allotment of land in favour of the Appellant and also other allotments made by Respondent No.1 in favour of other allottees together with certain donations made by Respondent No.1, Municipal Council that were the subject matter of challenge in a consolidated writ petition filed by Anil Tryambakarao Kokil (since dead) in the nature of pro bono publico.

6. However, it appears that during pendency of this Writ Petition, the sole petitioner Anil Tryambakarao Kokil expired. It is to be noted here that, following his demise, no application to bring the Legal Representatives of the deceased Petitioner on record was preferred, before the hearing of the writ petition could commence. Thereafter, instead of directing the petition to have abated or to have made some alternative arrangements (since his legal representatives were not brought on record) to ensure that some other public spirited person to be brought in as petitioner to prosecute the petition, in place of deceased Anil Tryambakarao Kokil, the counsel Mr. S.C. Bora, who probably was already appearing for deceased Writ Petitioner, was appointed as Amicus Curiae and was directed to continue to prosecute the said petition in that capacity of Amicus Curiae. Thus for all practical purposes, the petition continued to be prosecuted and heard even when admittedly the sole Petitioner Anil Tryambakarao Kokil had expired long time back.

7. Thus, apart from examining the correctness, legality and propriety of the impugned order passed by Division Bench, it is also necessary to examine the effect of death of the sole petitioner in a Public Interest Litigation, viz., whether the same would stand abated or can be allowed to be continued without bringing anyone else in place of the deceased petitioner.

8. The Division Bench had, vide its interim order dated 16.1.2001, considered the question of the effect of the death of the sole petitioner Anil Tryambakrao Kokil on the Writ Petition, and whether anyone else is required to be brought in his place. After due deliberation, the Division Bench then appointed counsel for the petitioner who was already appearing as Amicus Curiae, with further direction to allow him to continue the petition. Thus, there was change of status of the counsel for deceased petitioner. The said Order dated 16.1.2001 reads as under:

"This is a public interest litigation pertaining to the allotment of plots and shops in the Nanded City; by the Municipal Council, Nanded. However, the petitioner has expired long back. Nobody has come forward to agitate the cause of this petition further. After having gone through the petition, this Court would like to hear the parties to find out whether there is any substance in the petition.

Shri S.C. Bora, learned Advocate, who has made the statement that the petitioner has expired, has stated that this Vakilpatra ceases to be effective. However, in our opinion, it is necessary to appoint Amicus Curiae so as to assist this Court to understand the facts of the case and to find out if any decision is required to be given in the matter. Shri Bora is, therefore, appointed as Amicus Curiae in the matter.

Shri M.V. Deshpande, learned Advocate for the Municipal Council, states that he was under the impression that since the petitioner has expired, the matter will not be heard today. The learned Advocates

for other respondents also state that they require more time for getting themselves prepared in the matter.

S.O. to 6.2.2001."

9. Perusal thereof does not, in fact, reflect or show as to for what reasons and under what circumstances the Amicus Curiae was allowed to be relegated to the position of the petitioner, who had admittedly died long time back. It is too well settled that no matter can be allowed to be prosecuted for and on behalf of a dead person or against a dead party but it is also no doubt true that a Public Interest Litigation, which generally raises an issue of general public importance, should not be allowed to be withdrawn or dismissed on technical grounds, if cognizance thereof has already been taken by the Court. But an important issue would still arise whether in case of death of a sole petitioner in a Public Interest Litigation, without bringing anyone else in his place, if the petition could still be allowed to be prosecuted or continued?

10. The concept of Public Interest Litigation was introduced in Indian Legal System to help a person or a class of persons whose legal and Constitutional Rights are violated and where such person or class of persons as the case may be, owing to their disadvantaged position such as poverty, exploitation, socially and economic backwardness and other forms of disablement etc. is unable to approach the courts. Under the aforesaid circumstances, a person or the society could espouse a common grievance by filing a petition under Article 226 of the Constitution of India in the High Court or under Article 32 of the Constitution of India in the Supreme Court.

11. According to Black's Law Dictionary - "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

12. It is also well settled that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose an adjudication on merits of substantial rights of citizens under personal, property or other laws.

13. Though, the courts entertaining PIL enjoy a degree of flexibility unknown to the trial of traditional court litigation but the procedure to be adopted by it should be known to the judicial tenets and adhere to established principles of a judicial procedure employed in every judicial proceedings which constitute the basic infrastructure along whose channels flows the power of the court in the process of adjudication. It would thus clearly mean that the courts have to, in the normal course of business, follow traditional procedural law. However, minor deviations are permissible here and there in order to do complete justice between the parties.

14. Even though, we made fervent search to find out a suitable answer to the questions posed hereinabove, from earlier precedents of this Court but it appears to be a unique case. Therefore, in our wisdom, we thought it appropriate to provide answer to the said question.

15. Before proceeding to decide the said issue, it is necessary to take into consideration some of the provisions of the Code of Civil Procedure, 1908 (hereinafter shall be referred to as Code for short). Section 141 of the Code, which creates a bar of applicability of the provisions of the Code to petitions filed under Article 226 of the Constitution reads as under:

"141. Miscellaneous proceedings- The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

[Explanation - In this section, the expression "proceedings" includes

proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.]"

Explanation which has been added in the Code with effect from 1.2.1977 makes it clear that the provisions of the Code do not specifically apply to the proceedings under Article 226 of the Constitution of India.

The necessary corollary thereof shall be that it shall be open to the Courts to apply the procedure provided in the Code to any proceeding in any Court of civil jurisdiction except to the proceedings under Article 226 of the Constitution of India.

16. Order XXII, Rule 4A of the Code prescribes the procedure where there is no legal representative, reads thus:

"Order XXII Rule 4A. Procedure where there is no legal representative-

If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person has been a party to the suit.

2) Before making an order under this Rule, the Court -

a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the

deceased person as it thinks fit; and

b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person."

17. Thus, even if it is held that Order 22 of the Code, which relates to the subject of 'abatement of suits', is not applicable to writ proceedings, it does not mean that death of the petitioner can be totally ignored. Looking to the nature of the writ proceedings, as initiated by the deceased petitioner, the question is whether the right to pursue the remedy would have survived despite the absence of any person on record representing the deceased.

18. Under these circumstances, what would have been the best option open to the court, is to be seen. In our considered opinion, the following options could have been exercised by the Court.

19. As soon as the information is received that a sole petitioner to the writ petition in the nature of a PIL filed pro bono publico, is dead, the Court can issue a notice through newspapers or electronic media inviting public spirited bodies or persons to file applications to take up the position of the petitioner. If such an application is filed, the court can examine the antecedents of the person so applying and find out if allowing him to be impleaded as petitioner could meet the ends of justice.

20. If the matter is already pending and the court is of the opinion that the relief sought could be granted in the PIL, without having to take recourse to adversarial- style of proceedings, then it can proceed further as if it had taken suo moto cognizance of the matter.

21. The court can still examine and explore the possibility, if any of the non-contesting Respondents of the Writ Petition could be

transposed as petitioner as ultimately the relief would be granted to the said party only. The court in a suitable case can ask any lawyer or any other individual or an organisation to assist the court in place of the person who had earlier filed the petition.

22. However, the fact situation of this case would show that after the death of the original petitioner Anil Tryambakarao Kokil, Respondent No.1 Municipal Council could have stepped into the shoes of the petitioner, albeit on a limited scale. This is because, while the Writ Petitioner had challenged the initial allotment of land in favour of the Appellant charitable organization on the ground that it was made in contravention of the purpose envisaged in the Master Plan, Respondent No.1 Nanded Municipal Council had emphasized on the subsequent unauthorized change in user of land by the Appellant. If we were to cast our net wider, Sitaram Maganlal Shukla, (who was Respondent No. 12 in the Writ Petition), could also have been transposed as a Petitioner because he too, had a similar grievance against the Respondent Municipal Council as that of the original deceased petitioner. It has been brought to our notice that the said Sitaram Maganlal Shukla also had passed away during the pendency of the Writ Proceedings - however, in his own Second Appeal No. 30 of 2000, he had been represented through his Legal Representative. So, the impleadment of that Legal Representative as the Petitioner in this PIL would have been sufficient for continuance of proceedings. Since the petition before the High Court was in the nature of a PIL, it is immaterial that the respective causes of action urged by the Writ Petitioner and Respondent No. 12 have their foundations in different sets of legal argument, as the main relief sought is the same, i.e. quashing of the allotment order in favour of the Appellant.

23. At any rate, in cases like the above, where the main Writ Petitioner has passed away and any other person (not being a representative of the deceased) is brought on record, either from the opposite side or from a third party, the court may, after having

received an application requesting for permission for the same, grant opportunity to the newly added petitioners to amend the petition, if they so desire.

24. In these circumstances, Court could have taken a suo moto cognizance of the averments made in the petition, despite death of original petitioner, by assigning reasons and could have continued to bring it to a logical end, so as to meet the ends of justice.

25. In this view of the matter, reasoning of the Court in this regard cannot be legally upheld nor we can put a seal of approval to such a procedure as the same would lead to an anomalous situation not akin to law.

26. Now, coming to the merits of the matter, few facts material for deciding have already been mentioned hereinabove but we have to decide whether the Division Bench in the impugned judgment was justified in quashing the allotment made in favour of the Appellant or not.

27. It is pertinent to point out here that the aforementioned Sitaram Maganlal Shukla had filed a civil suit for cancellation of the lease granted in favour of the Appellant. Ultimately, matter was carried up to this Court. The said suit was dismissed. An SLP (c) No.16517/2007 against the judgment and order dated 15.6.2007 passed in Second Appeal No. 30 of 2000 of the High Court of Bombay, Bench at Aurangabad was filed before this Court. However, on 21.9.2007 the said SLP was dismissed as withdrawn. Thus, in any case, the question of legality of the allotment of the subject piece of land in favour of the Appellant, had attained finality at the High Court stage, even though at the instance of some other person.

28. In the aforesaid suit filed by Sitaram Maganlal Shukla, who was the plaintiff therein, the Municipal Council was arrayed as defendant No.2 in which it had filed its written statement giving reasons for

allotment of piece of plot in favour of the Appellant. It was categorically mentioned in the same that Divisional Commissioner had accorded sanction to the said transfer of plot by its letter dated 12.11.1986. Accordingly, the Appellant had started the construction of its building to be used for the hostel for girls and working women. Similarly, all other Respondents had fully supported the allotment of plot in favour of the Appellant.

29. In the Writ Petition No. 925 of 1988, Respondent No. 1 has submitted that the reservations of the land in survey No. 42 and Survey No. 29 for the establishment of a primary school near the open space in the revised layout was not under the master plan. It was development plan submitted by the owner of these two lands under Section 44 of the Maharashtra Regional and Town Planning Act of 1966 and those two reservations are as per the tentative development plan formulated by the Municipal Council as a planning authority. This plan was sanctioned before 1972. The owner of the land was not in a position to finance the construction of a primary school. In this background, Appellant - Trust came forward with the offer to establish primary school as per the revised development plan with the consent of the owner.

30. It is pertinent to point out the affidavit of Collector, Nanded in the Writ Petition. He has categorically averred that the said plot was reserved to be allotted on the lease basis for 60 years and the main object of the Appellant, Pragati Mahila Mandal, Nanded is to conduct educational activities for girls. Assistant Director of Town Planning had also issued no objection certificate for the allotment of plot to the above institution. He has also referred to Rule 21 of the Maharashtra Municipalities (Transfer of Immovable property) Rules, 1983 under which the Municipal Council is bestowed with the powers of sanction of government grant of the land on the basis of lease for promotion of educational, medical, religious, social and charitable purposes to the registered institutions on payment of such concessional premium as the council may, in its discretion, determine.

31. The Chief Officer of Nanded Municipal Council, Nanded had also submitted his affidavit in reply to the Writ Petition and assigned various valid and cogent reasons for allotment of plot to the Appellant.

32. In the reply affidavit of Kiran Kurundkar dated 30.6.2001, the then Commissioner of the Nanded - Waghela Municipal Corporation, it has categorically been stated that on 3.1.1978, the first development plan of Nanded city was sanctioned by the Government in which the said plot was shown and included in the Development plan for public and semi public purposes and was not shown or included as land reserved exclusively for primary school. Thus, only after land user was changed, admittedly the Appellant is using it for the said purposes i.e. Public and semi public use, which fact has not been denied by Respondents.

33. However, as has been mentioned earlier, for want of money and financial crunch, the school for which the land was initially acquired by the Appellant could not be started. So, it constructed a hostel for working women and girls taking higher education. There is one auditorium also which is being used as family counselling centre.

34. It has neither been disputed before us nor anything could be brought on record to show that Appellant is running the said hostel for any gains or profit. In fact, it is run on no profit-no loss basis. This is manifest from the details of the list of students who have been pursuing various courses for higher education since the year 1991 to the year 2000. It largely discloses the names of the students, the courses for which they had opted and the colleges of enrolment. It also shows that initially room rent was only Rs. 150/- which was enhanced to Rs. 400/- in the year 2000. Most of the inmates were students and only handful of them were working women. We have been given to understand that as of today, it is charging only Rs. 750/- per month from each of the students occupying the room. The

accounts of the Appellant are duly audited and reflect absolute transparency. There is no reason to doubt the correctness thereof.

35. It is a matter of common knowledge that girls and women face lot of problems and difficulties in finding a suitable and safe accommodation when they go out of their own cities, to their respective schools or colleges or work-place. If a hostel has been constructed for girls and working women, then it would definitely be for public or semi public purpose and it cannot be said that there has been any deviation from the purposes for which the said plot was earmarked and allotted to the Appellant. It is commendable that the Appellant has taken the initiative of introducing progressive elements (through the establishment of counselling centres), in its efforts to alleviate some primary concerns of most working women. It would be nothing short of a cruel twist of justice, if they are prevented from continuing to do so by a PIL, which is motivated by ulterior motives.

36. In this regard, it is further necessary to mention that the provisions of Memorandum of Association of the Appellant clearly state that one of the objectives of the Appellant is to provide Hostel facilities for girls and working women. This further fortifies the stand of the Appellant that it is public or at least semi-public purpose.

37. Thus, looking to the matter from all angles, we are of the considered opinion that impugned judgment and order passed by the Division Bench cannot be sustained in law. It deserves to be set aside and quashed. We accordingly do so. The appeal is accordingly hereby allowed.

Parties are directed to bear their own respective costs.