Manohar Lal Sharma Advocate Vs Central Bureau of Investigation

Court: Delhi High Court

Date of Decision: Sept. 16, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 1, Order 23 Rule 23, 20, 20(c)
Constitution of India, 1950 â€" Article 226, 226(2), 227
Evidence Act, 1872 â€" Section 78(2), 81

Hon'ble Judges: G. Rohini, C.J; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Suman and Vipin K. Saxena, Advocate for the Appellant; K. Raghavacharyulu, Advocate for the Respondent

Final Decision: Dismissed

Judgement

G. Rohini, C.J.
This writ petition, by way of public interest litigation, is filed seeking a direction to the respondent No.1- Central Bureau of

Investigation (CBI) to register a criminal case against the respondents 3 to 5 under the provisions of Indian Penal Code, 1860 read with Prevention

of Corruption Act, 1988 and investigate into the colony licenses issued by the Department of Town and Country Planning (DTCP), Haryana

during 2005 to 2012 allegedly in contravention of the provisions of the Haryana Development and Regulations of Urban Areas Act, 1975 as well

as the alleged illegal land deals in the State of Rajasthan creating huge loss to the public exchequer.

2. The petitioner who is an Advocate by profession has filed the petition in person. It is pleaded that the petitioner had made a representation

dated12.12.2013 to the Director of CBI seeking the aforesaid relief, but no action till date has been taken by the appropriate authorities. It is also

pleaded that he had filed a writ petition with similar prayer before the Supreme Court and that the same was dismissed as withdrawn by order

dated 28.10.2013.

3. We have heard the petitioner who appeared in person and perused the material available on record.

4. The representation dated 12.12.2013 stated to have been made by the petitioner to the Director, CBI, New Delhi is placed on record as

Annexure- P3. A perusal of the same shows that it was made on the basis of the newspaper reports stating that the respondent No.4 through some

companies had bought several hundred acres of land in Rajasthan much above the permissible limit of 175 acres in 2009 itself; that in September,

2010 the State Government amended the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 scrapping the ceiling on land with

retrospective effect and making legal all previous acquisitions of land; that the respondent No.4 had subsequently sold the land purchased by him in

the year 2009 for over six times the price for the purpose of solar power projects in Rajasthan and that the State Government in bringing an

amendment to the Land Ceiling Act and proposing to build solar power projects had acted in collusion with the respondent No.4.

5. The allegation relating to grant of colony licenses in Haryana was also made on the basis of newspaper report dated 10.08.2013 wherein it was

mentioned that one IAS Officer of Haryana by name Ashok Khemka submitted 100 pages report to the Government stating that the respondent

No.4 had falsified the documents and executed a series of sham transactions for 3.53 acres of land in Gurgaon thereby pocketing a hefty premium

on a commercial colony license and that he was favoured in the said transactions by the Department of Town and Planning, Haryana. The

allegation is that the colony licenses issued by DTCP thereby permitting the Developers/Builders, including respondent No.3, thereby permitting

conversion of about 21,366 acres of land is contrary to the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 and

that the same has resulted in serious financial loss of about Rs.3.9 lakh crores to the public exchequer. The further allegation is that the respondent

No.3 - Company belongs to respondent No.4 and that DTCP issued a letter of intent for a colony license to the respondent No.3 - company in

March, 2008 without even verifying the genuineness of the sale transactions and that the respondent No.3 sold the land as well as the colony

license to M/s. DLF Retail Developers Ltd. for Rs.58 crores without permission of DTCP.

6. As noticed above, the allegations are primarily two-fold. Firstly, the colony licenses issued by the DTCP in Haryana in the name of respondent

No.3 - company was not only in contravention of the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 but also

on account of political and official favour. The licenses so issued are based upon fake transactions in favour of the respondent No.4 who had no

financial capacity to comply with the terms of the Haryana Development Act. The next allegation is that the Ministry of Rajasthan had provided

secret advance information to the respondent No.4 about the solar panel zone area and based upon the said information the respondent No.4 had

purchased more than 10,000 acres of land at a throw away price and that subsequently, the solar zone area was declared and the prices of the

very same lands had been risen 3 times. The petitioner alleges that the action of the Ministry of Rajasthan in revealing the secret information to the

respondent No.4 for his own benefit amounts to corruption apart from playing fraud upon the farmers. It is also alleged that respondent No.4 is

guilty of land grabbing.

7. We may at the outset point out that the writ petition has been filed purely on the basis of the newspaper reports without producing any material

to substantiate the authenticity of the contents of the said reports.

8. In Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, the Supreme Court while examining the issue of admissibility of newspaper report

observed as follows:

.We cannot take judicial notice of the facts stated in a news item being in the nature of hearing secondary evidence, unless proved by evidence

aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of, the documents referred to in Section 78(2) of the Evidence

Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section. 81 of the Evidence Act to a

newspaper report cannot be treated as proof of the facts reported therein.

9. Also in State of Madhya Pradesh Vs. Narmada Bachao Andolan and Another, , the issue of observance of procedural law in PIL was

discussed in detail and it was observed:

13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which Court may

proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information

furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice.

Even in PIL, the litigant cannot approach the Court to have fishing or roving enquiry. He cannot claim to have a chance to establish his claim.

However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed

generously as he lacks standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide: A. Hamsaveni

and Others, A. Soosai and Others, J. Devid Baskar and Others, S. Rameshbabu and Others and K. Parthasarathy and Others Vs. State of T.N.

and Another, ; Ashok Kumar Pandey Vs. The State of West Bengal and Others, ; Prabir Kumar Das v. State of Orissa and Ors. (2005) 13 SCC

452; and A. Abdul Farook Vs. Municipal Council, Perambalur and Others,).

10. It is clear from the above noticed settled legal position that the petitioner is bound to plead his case and produce sufficient evidence to

substantiate the averments made in the petition. Admittedly, no such effort has been made by the petitioner herein.

11. Moreover, the alleged illegal transactions into which the petitioner seeks investigation by CBI have taken place in the State of Haryana and

State of Rajasthan beyond the territorial jurisdiction of this Court. It is no doubt true that the situs of office of the respondents 1 to 3 and 5 is

situated in Delhi and the respondent No.4 is also a resident of Delhi. However, as per Clause (2) of Article 226 of the Constitution of India the

power conferred by Clause (1) of Article 226 to issue directions, orders or writs may be exercised by the High Courts exercising jurisdiction in

relation to the territories within which the cause of action wholly or in part arises for the exercise of such power. As held in Kusum Ingots and

Alloys Ltd. Vs. Union of India (UOI) and Another, although the provisions of CPC would not apply to writ proceedings, the phraseology used in

Clause (c) of Section 20 of CPC and Clause 2 of Article 226 being in pari materia, cause of action for the purpose of Article 226(2) of the

Constitution of India must be assigned the same meaning as envisaged u/s 20(c) of CPC

12. Therefore, the mere fact that the respondents are residents or their registered office is situated within the local limits of Delhi does not entitle the

petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India unless it is established that the cause of action wholly

or in part has arisen within the local limits of Delhi.

13. In identical circumstances, the Supreme Court in Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, held that only because the head

office of the company was situated in the State of West Bengal, the same by itself would not confer any jurisdiction upon the Calcutta High Court,

particularly when the head office had nothing to do with the order of punishment passed against the employee.

14. As held by a larger Bench of Five Judges of this Court in Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others, , the concept of

forum conveniens fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it. The

convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to lis, verification of

certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. It is also held that while exercising

jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. It

was made clear in Kusum Ingots Case (supra) that even if a small part of cause of action arises within the territorial jurisdiction of the High Court,

the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits and in appropriate

cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

15. Having given our thoughtful consideration to the facts and circumstances of the case, it appears to us that no part of cause of action has arisen

within the territorial jurisdiction of this Court. Therefore, we decline to exercise the discretionary jurisdiction by invoking the doctrine of forum

conveniens.

16. Another aspect which cannot be lost sight is that Writ Petition (Criminal) No.183 of 2013 filed by the petitioner with similar prayer before the

Supreme Court was dismissed as withdrawn and the petitioner was not granted any liberty to invoke the jurisdiction of this Court under Article

226 of the Constitution of India.

17. In Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, while observing that Rule 1 of Order XXIII

of the CPC stipulates that in order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause

of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of

the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII, the Supreme Court further held that the principle underlying in the above Rule

should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the grounds of res judicata but on

the ground of public policy as it would discourage the litigant from indulging in bench-hunting tactics.

18. In the light of the legal position noticed above we are of the view that the petitioner who had withdrawn a writ petition filed by him in the

Supreme Court without the permission to institute a writ petition before this Court cannot invoke the jurisdiction of this Court in respect of the

same cause of action.

19. For the aforesaid reasons, we decline to entertain the writ petition and the same is accordingly dismissed.

No costs.