Sharad Balkrushna Deotale and Another Vs Krishna Zitruji @ Bankimchandra and Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 21, 2002

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2002) 4 ALLMR 298 : (2002) 5 BomCR 200 : (2002) 4 BOMLR 214 : (2002) 3 MhLj 333

Hon'ble Judges: V.M. Kanade, J; V.G. Palshikar, J

Bench: Division Bench

Advocate: G.G. Modak, for the Appellant; V.R. Manohar, Senior Advocate, A.B. Chaudhari and S.R. Deshpande, A.C. Dharmadhikari, S. Thakare and Vinay Dahat for Respondent Nos. 1 to 10 and 12 to 15 and Bhushan Gavai, Government Pleader for respondent No. 11, for the Respondent

Final Decision: Dismissed

Judgement

V.G. Palshikar, J.
This petition, though of the year 2000, was given utmost precedence as it was allegedly filed in public interest, by the

public interest conscious citizens of India. The petitioners were honourably allowed to jump a long queue of litigating public waiting for their cases

to be heard by this Court on the averment of the petitioners that the petition involves public interest and should, therefore, be heard with priority.

2. The facts giving rise to this petition stated briefly are that survey number 289 was given to one Vithoba Pandurang Parchake, resident of Warud,

District Wardha by the Bhudan Board functioning under the Bhudan Yagna Act, 1953. Said Vithoba executed Exchange Deed of this land allotted

to him by the Bhudan Mandal, exchanging that land with survey number 126, area 2.45 hectare. Thus, the donees i.e. legal representatives of

Vithoba acquired by exchange 2.45 hectare of land and parted 1.88 hectare of land. The donees from Bhudan Mandal were thus obviously

gainers in the matter of acreage of land in their possession. This action of exchange took place on 17-8-1994. The petitioners admit that by virtue

of Sections 23 and 24 of the Bhudan Yagna Act, 1953, Vithoba and his legal representations have become owners of the land and it was as

owners of this land that they had exchanged it with the other respondents by Deed dated 17-8-1994. Factually and legally, therefore, after

allotment of land to Vithoba by Bhudan Yagna Mandal, the land ceased to be the land of Bhudan Mandal and became land of donee Vithoba and

it was Vithoba that in 1994 had exchanged it for more with the persons with whom he executed Exchange Deed. The provisions of Bhudan Yagna

Act, 1953 prohibits such exchange if it is not in the interest of objectives and or benefits of the donee.

3. Thereafter somewhere in 1996 the user of this land survey number 289, area 1.88 hectare was changed to non-agriculture by persons who got

it under the Exchange Deed and it was only in the year 2000 that it dawned upon the petitioners to start this litigation in public interest for quashing

the conversion of land to nonagricultural use on the ground that it violates the spirit of Bhudan Yagna Act, for commercialisation of Bhudan lands

under the said Act is not permissible as also under the Land Revenue Code and it is certainly against public interest. It is alleged that if such

conversions are allowed to take place, the very purpose of the Bhudan Yagna Act will be defeated and, therefore, extraordinary jurisdiction of this

Court was invoked for quashing the action of conversion, in public interest.

4. As aforesaid, out-of-turn hearing was given in this matter. We heard extensively Mr. G. G. Modak, learned Advocate for petitioners and Mr.

V. R. Manohar, learned Senior Advocate appearing on behalf of the persons getting in exchange the Bhudan land. Other respondents were duly

represented.

5. It was the contention on behalf of the petitioners that the petitioners are not guilty of latches or delay in approaching this Court after eight years

of the Exchange Deed, because they have approached the Court in public interest only when they came to know about the exchange. Reliance was

placed on the Supreme Court decision in M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, to point out that delay

cannot be a ground for dismissing Public Interest Litigation. He also relied on certain provisions of Bhudan Yagna Act, 1953 for contending that

the entire Act contemplates agricultural or collateral use of land and conversion of it for non-agricultural purpose, is impermissible in law.

According to him, even exchange is not possible except in cases covered by Section 33 of the Act, The pre-ponderous of that section being,

according to the learned counsel for petitioners, that exchange can be undertaken for community purpose. What is ""community purpose"", is not

defined in the Act. He, therefore, contends that non-agricultural use of this land being against the provisions of the Act, is illegal and is against the

public interest and is liable to be quashed.

6. Opposing this submission, it was contended by Mr. V. R. Manohar, learned Sr. Advocate that the petition is not in public interest and that the

proposition that delay is never fatal to the public interest litigation, is neither legal nor is popularly accepted. He took us through several decisions of

the Supreme Court of India and this Court and contended that this petition neither being in public interest nor raising any fundamental issues of vital

importance, should not be entertained at all. He heavily relied upon the decision of the Supreme Court in Shri Sachidanand Pandey and Another

Vs. The State of West Bengal and Others, and contended that this petition being not in public interest, it be dismissed at this stage only. He

brought to our notice the strong observations of the Supreme Court, made in this case which we would like to note in extenso, thus :--

Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and

among the public. They must be above suspicion. Public Interest Litigation has now come to stay. But one is led to think that it poses a threat to

Courts and public alike. Such cases are now filed without any rhyme or reason, it is, therefore, necessary to lay down clear guidelines and to

outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest

Litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative

and executive functions. This does not mean that traditional litigation should stay out. They have to be tackled by other effective methods like

decentralising the judicial system and entrusting majority of traditional litigation to village Courts and Lok Adalats without the usual populist stance

and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases"".

It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or

when there are complaints of such acts as shock the judicial conscience that the Courts, especially the Supreme 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 under-dog and the neglected. It is necessary to have some self-imposed restraint on public interest litigants.

7. From the above observations of the Supreme Court, it is clear that the parameters of Public Interest Litigation have been clearly defined by the

litigation styled in Public Interest.. What started as trickle in early 80s, has by efflux of time become flood of litigation styled in public interest. Mr.

Manohar pointed out the judgment of this Court in Sadanand S. Varde and Others Vs. State of Maharashtra and Others, where the Division

Bench of this Court took stock of entire situation and law on Public Interest Litigation, and observed that the Court should be circumspect in

exercise of its jurisdiction under Article 226 of the Constitution. Mr. Manohar pointed out to us several other decisions of the Supreme Court and

various High Courts, but we do not think it necessary now to go to the decisions of any other Court when we have a considered opinion of our

High Court on this issue. We would advert to the Sadanand''s case (supra) little later, but we would like to note the observations of the Delhi High

Court made by Hon''ble Mr. Justice Pasayat, C.J. (as he then was of the Delhi High Court) in the case of Delhi Municipal Workers Union (Regd.)

Vs. MCD and Another, . It was observed as under :--

Public Interest Litigation which has now come to occupy an important field in the administration of law should not be ""publicity interest litigation"".

There must be real and genuine public interest involved in the litigation and it cannot be invoked by a person or a body of persons to further his or

their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous

litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of Public Interest

Litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction for statutory

provisions, but not for personal gain or private profit or political motive or any oblique consideration. 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 armoury 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. The

Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness of 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; (1) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (2)

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. Thus Court has to act ruthlessly while dealing with

impostors and busy bodies or meddlesome interlopers impersonating as public spirited holymen. Courts must do justice by promotion of good

faith, and prevent law from crafty envasions. Courts must maintain the social balance by interfering where necessity for the sake of justice and

refuse to interfere where it is against the social interest and public good.

8. From the above observations of My Lord Justice Arijit Pasayat, it will be crystal clear that no one can be allowed to invoke the extraordinary

writ jurisdiction of the High Court under Article 226 of the Constitution in the name of Public Interest Litigation unless the purpose is real and

genuine and in our opinion, therefore, the ratio must be observed by each Bench of the High Court while exercising the said jurisdiction. Tendency

to seek exercise of this jurisdiction unworthy is on rise and unfortunately, it will have to be accepted that exercise of this jurisdiction to also

excessive. We sincerely hope and trust that at least in the High Court of Judicature at Bombay, we will be guided by the well considered judgment

delivered by the Division Bench of this Court headed by Honourable Mr. Justice B. N. Srikrishna (now Chief Justice of Kerala High Court) in the

case of Sadanand S. Varde and Ors. v. State of Maharashtra (supra). We in the Bombay High Court should scrupulously follow the law laid down

by the Delhi High Court in the aforesaid case as also the law laid down by our own High Court in Sadanand''s case.

9. As aforesaid, we need not again and again consider the several judgments of the Supreme Court and the other High Courts repeatedly

cautioning the Courts exercising this jurisdiction in public interest to be very seriously considerate in taking up judicial review or judicial

administration of actions which necessarily are either executive or administrative under the garb of safeguarding the interest of public. Without

saying anything further on the point, we would like in extenso to quote what has been held by the Division Bench of this Court in Sadanand''s case

(supra).

24. Before we take up the specific contentions urged by the petitioners, it is necessary to chalk out the compass within which this Court exercises

jurisdiction under Article 226 in such matters. Doubtless, judicial review has been held to be a basic feature of (he Indian Constitution and the

power of the Constitutional Court, whether they be High Court exercising jurisdiction under Article 226 of the Supreme Court under Article 32, is

virtually limitless except for self-imposed limitations in the interest of administration of justice and the dictates of prudence. A Public Interest

Litigation is not adversary in nature, but is intended to focus the public interest aspect before the Court, if the Court is apprised of substantial injury

to public interest, the Court is empowered and duty bound to interfere to do justice to the inarticulate public whose interest is projected as

affected. Despite the awesome powers available in writ jurisdiction, the Courts have constructively bridled this power and deferred to experts in

matters of public interest where, in view of the amplitude of complexity and technical nature involved, a judicial proceedings in the nature of a Writ

Petition would be wholly inappropriate for determination of the issues thrown up. Policy matters have also been rightly left for the public authorities

to decide and the final say in such matters should normally not come within the purview of judicial review.

25. In Dahanu Taluka Environment Protection Group and Another Vs. Bombay Suburban Electricity Supply Company Ltd. and Others, , the

Supreme Court observed with respect to judicial review as under:

The limitations, or more appropriately, the self-imposed restrictions of a court in considering such an issue as this have been set out by the Court

in Rural Litigation and Entitlement Kendra v. State of U.P., 1986 Supp. SCC 517 and Shri Sachidanand Pandey and Another Vs. The State of

West Bengal and Others, . The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the

Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand

and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and

Water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies

of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The court''s role is restricted to examine

whether Government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been

influenced by extraneous or immaterial considerations in arriving at its final decision.

26. In a recent judgment in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa

Ltd., , these principles were reiterated by the Supreme Court in the following words :

At this juncture, we think it fit to make a few observations about our general approach to the entire case. This is a case of the type where legal

issues are intertwined with those involving determination of policy and a plethora of technical issues. In such a situation, courts of law have to be

very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy-making, unless the policy is

inconsistent with the constitution and the law.....''''

10. We are in respectful agreement with everything that has been observed by the Division Bench and we, therefore, propose to exercise our

jurisdiction with great circumspection and in all humility expect similar restrain by the High Courts in cases of Public Interest Litigation.

11. Adverting to the facts of this case, therefore, we find that there is no public interest involved. There are no averments in the petition that

conversion of Bhudan land into non-agricultural use is rampant. A solitary piece of land bearing survey number 289 is taken up for conversion, it is

not the case of petitioners that hundreds or thousands acres of land, which was originally donated under the Bhudan Yagna Act, 1953 is sought to

be converted to non-agricultural use and exercise of jurisdiction by this Court under Article 226 of the Constitution is necessary to prevent

conversion. The action impugned hardly involves any public interest. Petitioners are a busy-body as is descriptive from the very title of the petition

and their motives are certainly not laudable and honest in approaching this Court after six years of the happening. In any event, what has happened

is the exchange of lesser area of land for a larger area of land which was initially donated by the Bhudan Mandal for cultivation to Vithoba

Taksande. This exchange is assailed on the ground that it is beyond the scope of the Bhudan Yagna Act as the same is not in the community

interest as provided u/s 33 of the said Act. Even this contention is unsustainable in fact. The exchanged land has been converted to non-agricultural

use is divided to the members of the respondent No. 7 Society. The name of the Society is worthy of note. It is ""Kapil Wastu Magas Vergiya

Gruha Nirman Sahakari Sanstha Limited"". It is a co-operative society for ""Magas Vargiya"" (backward class community people) and it is certainly

for a community purpose that the conversion is sought for. Therefore, it cannot be said by any stretch of imagination that the exchange and

consequent conversion is hurting the public interest.

11-A. We deem it our duty to note yet another judgment of the Supreme Court in the case of Ganpat Ladha v. Sashikant Vishnu Shinde, 1978

Mh.L.J. 550 The relevant observations are -

If the quest for certainty in law is often baffled, as it is according to Judge Jerome Frank in ""Law and the Modern Mind"", the reasons are mainly

two : firstly, the lack of precise formulation of even statutory law so as to leave lacunae and loopholes in it giving scope to much avoidable

disputation; and secondly, the unpredictability of the judicial rendering of the law after every conceivable as well as inconceivable aspect of it has

been explored and subjected to forensic debate. Even the staunchest exponents of legal realism, who are apt to treat the quest for certainty in the

administration of justice in accordance with law, in an uncertain world of imperfect human beings, to be practically always futile and doomed to

failure, will not deny the desirability and the beneficial effects of such certainty in law as may be possible. Unfortunately, there are not infrequent

instances where what should have been clear and certain, by applying well-established canons of statutory constitution becomes befogged by the

vagaries, if one may use a possibly strong word without disrespect, of judicial exposition divorced from these canons.

The Supreme Court has thus issued a serious caution to all the Courts to apply well established cannons of statutory construction and law of

precedence.

In this very judgment, in paragraph 13, the Supreme Courts points out thus :--

13. Even that certainly and predictability in the administration of justice in accordance with law which is possible only if lawyers and Courts care

to scrupulously apply the law clearly declared by this Court, would not be attainable if this elementary duty is overlooked.

In our opinion, therefore, it is the duty of the Court as also the duty of the Lawyer to bring to the notice of the Courts various decisions of this

Court and the Supreme Court having binding force as the precedence so that those binding precedence are not ignored due to inaction on the part

of either the Advocates or the Court to note earlier such decisions. If the above decisions are regularly brought to the notice of the Courts

exercising jurisdiction in public interest, it will always be circumspect, cautions and sparing in interfering in executive or administrative action under

the garb of public interest protection. The Division Bench judgment of this Court from which extensive quotations have been noted by us above,

thus, bind this Court as it nicely and correctly lays down what the law is in the matter of entertaining Public Interest Litigation and consequently, it is

our duty to follow that judgment as also it is the duty of the lawyers to bring to the notice of the Courts whenever the Courts are called upon to

exercise writ jurisdiction under the pretext of Public Interest Litigation.

12. The petitioners have taken valued time of the Court unnecessarily at a point of time when arrears pending before this Court are stupendous.

We find no public interest involved and the petition deserves to be dismissed with costs. Petition is accordingly dismissed with costs of Rs. 1000/-

each the petitioners which may be recovered as land revenue.