

Neutral Citation No. - 2024:AHC:31999-DB

**A.F.R.**

**Court No. - 21**

**Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 163 of 2024**

**Petitioner :- Akbar Abbass Zaidi**

**Respondent :- State Of U.P And 8 Others**

**Counsel for Petitioner :- Priyavrat Tripathi,Ram Adhar Yadav**

**Counsel for Respondent :- C.S.C.,Irfan Chaudhary**

**Hon'ble Manoj Kumar Gupta,J.**

**Hon'ble Kshitij Shailendra,J.**

**(Per Hon'ble Kshitij Shailendra, J.)**

1. Short counter affidavit filed by Shri Gaurav Tripathi on behalf of respondent Nos.7 and 8 is taken on record.
2. Heard learned counsel for the petitioner, Shri Rajiv Gupta, learned Additional Chief Standing Counsel for the State-respondent Nos.1 to 4 and Shri Gaurav Tripathi for the contesting-respondent Nos.7 and 8. Shri Irfan Chaudhary has accepted notice on behalf of respondent No.5-Nagar Palika Parishad.
3. This petition has been filed purportedly in public interest by the petitioner-Akbar Abbass Zaidi against nine respondents, out of whom, respondent Nos.7, 8 and 9 are private respondents. The prayer made in this petition is that respondent No.2-District Magistrate, Shamli be directed to remove illegal constructions and unauthorized occupation from the land covered by Khata

No.24, area 2.2940 hectare, situated at Village Kairana Under Hadud, Tehsil Kairana, District Shamli, in view of the report submitted by the respondent-Authorities dated 16.09.2023, terming the property as 'enemy property'. The petitioner further seeks a direction to the respondent-Authorities to decide the petitioner's representation dated 02.11.2023 within stipulated period of time.

4. Although, it has not been mentioned in the first relief as to who is in unauthorized occupation of the said property, from the pleadings contained in the writ petition as well as from the representation dated 02.11.2023 and other identical representations annexed to the petition, it is apparently clear that the petitioner has termed the respondent Nos.7, 8 and 9 as land mafias in unauthorized possession over the aforesaid property.

5. When the matter was taken up, learned counsel for the respondent Nos.7 and 8, by referring to the short counter affidavit, contended that the present petition is a gross misuse and abuse of the process of law as the same has been filed by concealing various proceedings held between the petitioners and the private respondents. This Court, accordingly, proceeded to consider the record of petition and the short counter affidavit.

6. As per the pleadings contained in the petition, the petitioner claims to be a permanent resident in House No.24, Mohalla Kalalan, Tehsil Kairana, District Shamli and states his aim to eradicate the evils persistent in the society and irregularities committed by the Authorities. He claims to be a social worker stating that he has no vested interest in the property. It is further stated that the property covered by Khata No.24 was declared as 'enemy property' under the order passed

by the Collector, Muzaffarnagar on 27.03.1974 under the provisions of Enemy Property Act,1968 and is recorded as such in the revenue records. Details of various Khasras covered by Khata No.24 have been mentioned in paragraph No.7 of the petition and in paragraph Nos.7A, 7B, 7C and 7D of the petition, meaning of the words “Public Interest” with reference to certain Authorities and dictionaries has been sought to be explained.

7. The case of the petitioner is that father of respondent Nos.7, 8 and 9 claimed ownership over the land in dispute but his claim was rejected by the Assistant Collector, First Class, Muzaffarnagar on 09.11.1981, against which, an appeal was filed before the Additional Commissioner, Meerut, Division, Meerut which was allowed on 15.04.1982 accepting the claim of respondent Nos. 7 to 9 over 1/5th property of land in dispute. It is stated that against order dated 15.04.1982, the father of the said respondents filed Second Appeal No.201 of 1982 before the Board of Revenue, U.P., Allahabad which remanded the matter to the Competent Authority on 20.04.1999, against which order, Writ B No.21897 of 1997 has been filed before this Court which is pending and, despite that, Bhumafias of the Mohalla concerned have started plotting work over the land and several houses and shops have been constructed thereon, as a result whereof, public at large is suffering but the authorities, despite submission of various representations by the petitioner, are sitting tight over the matter. Specific allegations of making encroachments have been levelled against respondent Nos.7 to 9 and, in pith and substance, the reliefs claimed in the writ petition are to the effect that the persons in possession over the aforesaid property, i.e. respondent Nos.7 to 9, be removed therefrom.

8. On the other hand, Shri Gaurav Tripathi, learned counsel for respondent Nos.7 and 8, by referring to the record of short counter affidavit, submits that the petitioner has deliberately concealed various proceedings held in between the petitioner and private respondents and has not approached this Court with clean hands. He further submits that there is gross violation of provisions of Chapter XXII, Rule 1 (3-A) of the Allahabad High Court Rules, 1952 (hereinafter referred to as 'the Rules') as the petitioner has not disclosed his credentials in the petition.

9. Having heard learned counsel for the parties, before referring to the amended Rule incorporated in the High Court Rules pursuant to the judgment of Hon'ble Apex Court in the case of **State of Uttranchal vs. Balwant Singh Chauhal and others, 2010 AIR SCW 1029**, it is necessary to refer to the litigation in between the petitioner and the private respondents, as stands reflected from the documents annexed to the short counter affidavit.

10. A partnership deed was executed on 16.08.2015 (registered on 19.12.2015), in which, the petitioner-Akbar Abbass Zaidi was shown as one of the partners in relation to business of Egg, Layer Farming etc. in the name and style of M/S ROSY LAYERS FARM, at Ramda Road, Kairana, Shamli. Respondent No.7 (Shamsuddin) was one of the witnesses to execution of the deed. Another partnership deed was executed on 07.01.2019 (registered on 10.01.2019) which shows that one of the partners namely Mohd. Aashif retired from the partnership w.e.f. 07.01.2019 and Shamsuddin (respondent No.5) was inducted as a partner to act alongwith the remaining two partners. Third partnership deed dated 07.01.2019 (registered on 10.01.2019) is

also on record which discloses names of five partners including the petitioner and respondent No.7 alongwith other persons.

11. A plaint of Original Suit No.73 of 2019 (M/S Amirbano and others vs. Akbar Abbas Zaidi and another) is on record whereby the plaintiffs have claimed a decree for declaring them as owners of property covered by Khata No.647 and also a decree for permanent prohibitory injunction based upon stipulations contained in the aforesaid partnership deeds. Apparently, the petitioner herein is defendant No.1 in the said suit and has filed his written statement therein. The record further reveals that the Civil Judge, Senior Division, Kairana, Shamli passed an order dated 04.12.2021 restraining the defendants from interfering in the business being carried out by the plaintiffs of the suit as well as their possession over the property while allowing injunction application (paper No.6-C). The defendants, including the petitioner, filed Misc. Appeal No.10 of 2021 against the injunction order and the same was dismissed by the District Judge, Shamli by order dated 11.12.2023 confirming injunction order. Another order dated 19.04.2023 passed by the Additional District Judge, Kairana, Shamli in the same suit is on record which shows that the petitioner alongwith co-defendant in the same suit had challenged order dated 16.11.2021 passed by the Trial Court on an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, by means of Civil Revision No.2 of 2022, however, the same was also dismissed. It appears that two petitions being Matter Under Article 227 Nos. 648 of 2024 (Akbar Abbas Zaidi and another vs. M/S Ameer Bano and 5 others) and 7848 of 2023 (Akbar Abbas Zaidi and another vs.

M/S Ameer Bano and 5 others) at the instance of the petitioner are pending before this Court arising out of the aforesaid orders. Certain First Information Reports lodged in between the parties raising a dispute regarding partnership business are also annexed to the short counter affidavit.

12. From perusal of the aforesaid documents, it is apparently clear that the petitioner is in continuous litigation with the private respondents, especially respondent No.7 and, as of now, there are judicial orders passed against him and in favour of respondent No.7 who is plaintiff No.5 in Original Suit No.73 of 2019 and was inducted as a partner in the partnership business alongwith the petitioner. There is absolutely no disclosure of any of the aforesaid proceedings in the entire petition. Apparently, the present petition in the nature of Public Interest Litigation has been prepared on 20.12.2023 and filed on 25.01.2024 i.e. immediately after the Misc. Appeal filed by the petitioner against the injunction order was dismissed by the District Judge and even before the Matter Under Article 227 No.648 of 2024, arising out of the order of District Judge was filed before this Court. Hence, it is clear that the petitioner is guilty of suppressing material facts and proceedings from this Court and deserves to be dealt with as per law settled in this regard.

13. As regards the public interest litigation, the Apex Court in **State of Uttaranchal vs. Balwant Singh Chaufal (supra)** placing reliance on various previous judicial pronouncements, in order to ensure that Writ Jurisdiction may not be misused and abused by the unscrupulous litigants, issued various directions. It is necessary to refer to the directions contained in paragraph 198 of the judgment as under:-

**“198.** In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(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 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. “

14. Our High Court, in furtherance of the directions issued by the Apex Court, incorporated amendment in Rule 1 of Chapter XXII of the Rules and added sub-rule (3-A) in Rule 1, which reads as follows:-

“(3-A) In addition to satisfying the requirements of the other rules in this chapter, the petitioner seeking to file a Public Interest Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his credentials, the public cause he is seeking to espouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State.”

15. The newly incorporated Rule clearly mandates that the petitioner seeking to file Public Interest Litigation petition should precisely and specifically disclose his credentials and the public cause he is seeking to espouse with clear mention that he has no personal or private interest in the matter. Significantly, requirements incorporated under sub-rule (3-A) are “in addition to specifying the requirements of other Rules in the Chapter.”



Therefore, this Court feels it appropriate to refer to sub-rule 3(ii) of Rule 1 of Chapter XXII which reads as follows:-

“3(ii). If there is any related proceedings pending elsewhere, the full details thereof shall be mentioned.”

(emphasis supplied by Court).

16. A conjoint reading of the aforesaid Rules/sub-rules makes it apparently clear that, in case, the said requirements are not fulfilled by the petitioner filing a petition in the nature of a Public Interest Litigation, the High Court would be obliged to deal with such non-compliance as per the judicial pronouncements made by the Apex Court from time to time with regard to abuse and misuse of process of law by filing Public Interest Litigation petitions.

17. In **Janata Dal vs. H.S. Chowdhary, (1992) 4 SCC 305**, the Supreme Court, apart from making various observations, observed in paragraph No.109 that only a person acting *bonafide* and having sufficient interest in the proceedings of Public Interest Litigation will alone 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. It further observed that vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievances, deserves rejection at the threshold. (emphasis supplied by Court)

18. In **Dr. B. Singh vs. Union of India and others, (2004) 3 SCC 363**, the Supreme Court placed reliance on various previous judgments on the issue as to how genuine and ingenuine PIL petitions should be dealt with by the Courts. It

clearly laid down that it would be desirable for the courts to filter out the frivolous petitions and dismiss them with cost so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts. It also observed that when there is material to show that a petition styled as a Public Interest Litigation is nothing but a camouflage to foster personal disputes or vendatta to bring to terms a person, not of ones liking, or gain publicity or a facade for blackmail, said petition has to be thrown out. (emphasis supplied by Court).

19. In **Chandra Shashi Vs. Anil Kumar Verma, (1995) 1 SCC 21**, the Apex Court has observed that to enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that "truth alone triumphs" is an achievable aim there.

20. In **Buddhi Kota Subbarai (Dr.) Vs. K. Parasaran, (1996) 5 SCC 530**, the Supreme Court has held that no litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions.

21. In **Arunima Baruah Vs. Union of India (2007) 6 SCC 120**, Supreme Court held that it is trite law that to enable the Court to refuse to exercise its discretionary jurisdiction when material

facts are suppressed. It was further held that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands.

22. In **Prestige Lights Limited Vs. State Bank of India, (2007) 8 SCC 449**, the Supreme Court observed that it is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible. (emphasis supplied by Court)

23. In **K.D Sharma Vs. Steel Authority of India Limited and others, (2008) 12 SCC 481**, Supreme Court held that no litigant can play "hide and seek" with the courts or adopt "pick and choose" and one should come with candid facts and clean breast. Suppression or concealment of material facts is forbidden to a litigant or even as a technique of advocacy. In such cases the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of Court for abusing the process of the court. (emphasis supplied by Court)

24. Supreme Court in **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114** came down heavily on unscrupulous litigants and after noticing the progressive decline in the values of life, it observed as follows:

"For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings."

.....

"In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

25. In **Amar Singh Vs. Union of India (2011)7 SCC 69**, Supreme Court held that Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts.

Courts held that such litigants who come with "unclean hands", are not entitled to be heard on the merits of their case.

26. In **Kishore Samrite Vs. State of U.P. and others, 2012 (10) SCALE 330**, The Supreme Court held that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.....With the passage of time, it has been realized that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Apex Court further observed that the Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth..... It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

27. In **ABCD Vs. Union of India and others, (2020) 2 SCC 52**, Hon'ble Supreme Court in the matter where material facts had been concealed, while issuing notice to the petitioner therein and while exercising its *suo-motu* contempt power, observed that

making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said Section.

28. In **Dhananjay Sharma Vs. State of Haryana and others (1995) 3 SCC 757**, it has been observed that filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the concerned persons were punished.

29. In view of the aforesaid judicial pronouncements, now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim supressio veri, expression falsi, i.e. suppression of truth is equivalent to the expression of falsehood, gets attracted in such cases including the present one.

(emphasis supplied by Court)

30. In view of the above discussion, we are fully convinced that the instant petition is a gross misuse and abuse of process of law and deserves dismissal with heavy cost so that it may set a deterrent example to discard unscrupulous persons from invoking Writ Jurisdiction for their vested interest under the camouflage of PIL.

31. The instant PIL petition is **dismissed with cost of Rs.50,000/-**.

32. We may note that “Tara Sansthan”, a Government registered charity organisation, conducts various charitable activities throughout India which include running of eye hospitals for free check-ups and treatment, old age homes, widow monthly pension scheme, food donation scheme etc. etc. One of such old age homes is named as Rabindra Nath Gaur Anand Old Age Home, located at 25/39, LIC Colony, Tagore Town, Prayagraj (U.P.), where many old people, either having no family members or, though have family members, but have been thrown out from their homes, are passing last stages of their lives in distress. Such organizations including the Old Age Home, Prayagraj is mainly dependant upon the donations made by the general public or some organizations. Since the Public Interest Litigation petitions are meant to wipe out the tears of poor and needy, suffering from violation of their fundamental rights, the Court feels it appropriate that the cost imposed upon the petitioner should also be utilized for those who are in need of money, i.e. to say that it must go for the welfare of the society, particularly, those who are under-privileged or downtrodden for any reason.

33. Therefore, the petitioner is directed to deposit the cost before the Registrar General of this Court within **three weeks** from the date of this judgment, failing which, the Registrar General shall send a copy of this order alongwith letter to the District Magistrate, Shamli (respondent No.2) to issue a recovery citation against the petitioner for recovering the said sum as arrears of land revenue within **one month** from the date of receipt of copy of the instant order from the Registrar General.

34. On receipt of aforesaid amount, Registrar General of this Court shall credit the same to the account of Tara Sansthan, SBI Account No. 31840870750, IFSC Code SBIN0011406, after due verification of the particulars of the said account in consultation with the Head/ Incharge of the said Sansthan. The amount, so remitted, shall be used exclusively for the welfare of the old-age people staying in Rabindra Nath Gaur Anand Old Age Home, located at 25/39, LIC Colony Tagore Town, Prayagraj (U.P.). A copy of this order shall also be served upon the Head/Incharge of the said old age home for necessary compliance of this order.

35. The Head/Incharge of said Sansthan shall submit statement(s) of account before Registrar General of this Court disclosing the manner of utilization of cost till the amount is spent for the above welfare purpose, failing which, the Head/Incharge of the said old age home shall be answerable.

**Order Date:-23.2.2024**

Jyotsana

**(Kshitij Shailendra, J.) (Manoj Kumar Gupta, J.)**