

AFR

Neutral Citation No. - 2024:AHC:168876

Reserved on 18.10.2024

Delivered on 23.10.2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 49

PUBLIC INTEREST LITIGATION (PIL) No. - 1050 of 2024

Ambika Yadav ----- Petitioner

Vs.

State of U.P. and others ----- Respondents

Connected with Public Interest Litigations No. 1238 of 2024; 1438 of 2024; 1573 of 2024; 1576 of 2024; 2250 of 2023; 1924 of 2024; and, 1977 of 2024

Appearance for Petitioners:

S/Sri Hirdesh Kumar Yadav, Madan Mohan Srivastava, Ram Bahadur Singh, Suneel Kumar Mishra, Vijay Kumar, Kunwar Bahadur Srivastava, Janardan Shukla, Udai Shankar Chauhan, Advocates

Appearance for Respondents:

S/Sri Manish Goyal, Additional Advocate General assisted by J.N. Maurya, Chief Standing Counsel and Ravi Anand Agarwal, Rajesh Kumar Tripathi, Standing Counsels; and, Bhupendra Kumar Tripathi, Hari Narayan Singh, Rameshwar Prasad Shukla, A.K. Pandey, Pankaj Kumar Gupta, Arun Kumar Pandey, Sudhir Bharti and Bhupendra Kumar Tripathi, Advocates

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. This bunch of public interest litigations are filed by few villagers of concerned village mainly opposing construction of water tank and in one case construction of RCC Centre, on the land reserved in concerned village for Charagaah, Gadahi, Naveen Parti, Khalihaan or other public purposes.
2. Learned counsel for petitioners mainly argued that if a land is reserved for a particular purpose (such as Charagaah, Khalihaan etc.), nature of same cannot be changed except in exceptional circumstances by due prescribed process, however, due process has not been followed in the present cases and

only on basis of resolution of Gram Sabha concerned, permission for construction was granted.

3. In Public Interest Litigation No. 1576 of 2024 (Radhey Shyam Gupta) it has been brought on record that nature of land has been changed vide order dated 03.09.2024 passed under Section 101 of U.P. Revenue Code, 2006, therefore, counsel for said petitioner has instruction not to press the public interest litigation.

4. During hearing, a question was raised by this Court that, whether there is any dispute that construction of water tank or RCC Centre is a work of public interest, i.e., for the interest of villagers at large, to which counsel for petitioners have specifically stated that it is a work in larger public interest.

5. Another query was raised by this Court, whether due to construction of water tank or RCC Centre, nature of land reserved for a particular purpose would entirely change, i.e., whether the area used for said purpose is large or small, i.e., due to construction land would become useless for said purpose, but no specific answer was given by learned counsel for petitioners. However, Sri Manish Goyal, learned Additional Advocate General, on basis of instructions, submitted that construction is on a very small part of land which cannot change nature of land, i.e., the purpose for which it is reserved and land can be used still for said purpose.

6. Another query was raised by this Court, whether there is any material on record that land was earlier used only for the purpose for which it was reserved and whether there is any material before this Court that atleast during last five years or so, it was used for said purpose only, since no material has been brought on record. In one of the case it has been mentioned that land reserved for a particular public purpose is also used for marriage and other functions organized by villagers. In another public interest litigation, part of land is used as a playground, as reflected from photographs annexed to said PIL.

7. Learned counsel for petitioners have vehemently referred Section 77 of U.P. Land Revenue Code that Bhumidhari right cannot be accrued in

certain land which includes, Khalihaan, Manure pits and other land described therein. However, said reliance is vehemently opposed by learned Additional Advocate General referring other provisions such as Sections 59 and 63(2)(a) of U.P. Revenue Code that it is not a case where Bhumidhari right has been created in favour of any person or party. The land always vests in the State Government and by an order it is reserved for specific purpose in Gaon Sabha. Section 77 of U.P. Revenue Code, bars that on a land reserved for public purpose, no bhumidhari rights can be created but sub-section (2) of Section 77 of U.P. Revenue Code provides that class of public utility land may be changed under due procedure, whereas in present cases nature of land may not be changed since only a very small part is proposed to be used for other public purposes. The land is being used for a public purpose which does not create any Bhumidhari right, therefore, the bar of Section 77 of U.P. Revenue Code cannot come in way for construction of water tank or RCC Centre.

8. It is the case of State that for the purpose of construction of water tank and boring, an exercise was undertaken to find out a fit place for it and only thereafter on basis of resolution of Gaon Sabha, suitable land was earmarked and construction was started and in some of the villages it has already been concluded after spending money of tax payers.

9. It is the categorical stand of State that in PIL No 1238 of 2024 on the land reserved as Khalihaan, some villagers have encroached a part of it, against whom proceedings were initiated under Section 67(1) of U.P. Revenue Code, however, the same has not been disclosed in said PIL as well as petitioner has not raised any voice for their removal, therefore, said PIL is nothing but is filed on basis of pick and choose, only to make an objection to a public cause. Learned counsel for petitioner in said PIL has not been able to deny above allegations. Since a small part of land was used, therefore, there was no mandatory requirement to pass such orders.

10. In PIL No. 1576 of 2024 (Radhey Shyam Gupta), a complete process has been undertaken and order has been passed under Section 101 of U.P.

Revenue Code for exchange, therefore, there is a request to withdraw the public interest litigation.

11. In PIL No. 1238 of 2024 (Yogendra Pandey and another), learned Additional Advocate General, on instruction, has specifically stated that the work on Gata No. 1411 under the scheme of Jal Jeevan Yojna is stopped since there was no resolution for construction on that land, therefore, grievance of petitioners in said PIL is satisfied. The construction is carried out on the other earmarked land on basis of resolution of Gaon Sabha.

12. In PIL No. 1438 of 2024 (Ravindra Nath Rai), the allegation of petitioner is that land which is shown as Naveen Parti was a Charagaah and correction has not been made despite an order was passed many years ago as well as that construction of water tank is in the middle of Gata and work is at a very initial stage.

13. So far as correction in revenue record is concerned, no proceedings were undertaken either by Gaon Sabha concerned or petitioner, therefore, at this stage Court cannot enter into said dispute. However, in case construction has not been commenced and it is in the middle of said land, the project can be relooked so that it may be shifted to a corner, if other requirements are satisfied otherwise it may be made sure that construction of water tank may not render the land, if used as a Charagaah, later on unuseful.

14. In PIL No. 1573 of 2024 (Zafar Ali), it is the case of State that out of land measuring about 4550 sq. meter reserved for Khalihaan, only 42 sq. meter land is being used for construction of RCC Centre and rest of land is available for the purpose of Khalihaan as well as construction has already been concluded and village has been identified as a model village. This fact has not been disputed by learned counsel for petitioner.

15. In PIL No. 1924 of 2024 (Dilip and another), the land is reserved as a Naveen Parti, which is spread in number of Gatas and out of which only part of 0.0610 of Gata No. 2039Ga is utilized, which would not disturb the use of remaining area as Naveen Parti.

16. In PIL No. 1977 of 2024 (Ramesh Singh) the land is used for Garahi and Naveen Parti. Initially petitioner made objection for cutting of trees, however a report is placed on record that since the trees belong to Forest Department and for the purpose of construction some trees were required to be cut and where it was found that some villagers have illegally cut the trees, proceedings were initiated.

17. PIL No. 2250 of 2023 (Sunil Kumar) was filed on two grounds. First is to stop the construction of water tank and second to remove encroachment over the land by private Respondent-5, the present Pradhan. In this regard it is directed that present PIL shall be considered as an information to Lekhpal to initiate inquiry as required in accordance with provisions of Section 67 of U.P. Revenue Code.

18. During hearing learned counsel for respective Gaon Sabhas have raised a problem that Pradhans of concerned Gaon Sabhas are not responding to their letters seeking instruction and for that this Court has passed an order for personal appearance of respective Pradhans of concerned Gaon Sabhas.

19. All Pradhans of respective Gaon Sabhas have appeared in person, except of Gaon Sabha Jagannathpur, Tehsil Nagina, District Bijnor (PIL No. 2250 of 2023). Court has interacted with Pradhans which includes two women also but surprisingly none of the Pradhan knew about their functions, as mentioned in Section 15 of U.P. Panchayat Raj Act, 1947.

20. Learned Additional Advocate General has submitted that he will take this matter before concerned department to initiate some training programme either on basis of Cluster or Commissionarate to make aware Pradhans, specifically women, about their rights and functions and to discourage the concept of Pradhanpati. In this regard reference may be taken of a judgment passed by this Court in **Gaon Sabha vs. State of U.P. and others, Neutral Citation No. 2023:AHC:224233**.

21. The outcome of above discussion is that since there is no change of Bhumidhari rights, therefore, on basis of resolution of Gaon Sabha if State

has taken a decision to use a very small part of land for the purpose of construction of water tank or RCC Centre, out of the land marked for the purpose of Charagaah, Naveen Parti, Khalihaan etc. the bar of Section 77 of U.P. Revenue Code would not come in the way, except if it is shown that there is mala fide, which is not the case in present PILs.

22. As referred above, in PIL No. 1573 of 2024, construction of RCC Centre has already been concluded and village has come in the category of model village. In PIL No. 1576 of 2024, an order has already been passed under Section 101 of U.P. Revenue Code for exchange, which is not challenged, therefore, nothing survives in objection.

23. Petitioners have not come up with very specific case that land which is reserved for the purpose of Charagaah, Khalihaan etc. was earlier used for said purpose only since in some of the case it is used for marriage functions or playground also, therefore, objection on construction of water tank is nothing but an objection for the sake of it only.

24. In PIL No. 1238 of 2024 petitioner has objected only construction of water tank but has not even referred about the encroachment on said land and for such type of PIL the Court is of the view that piousness of public interest litigation is rendered unpious and the same cannot be considered to be a genuine public interest litigation.

25. Learned counsel for petitioners have placed reliance on some judgments but no judgment is applicable in present set of facts since in present case a very small part of land is used for other public purpose. The notification placed on record are mainly for required steps if such land is being used for company or other purpose i.e. Bhumidhari rights were created, which is not a case in hand. Reliance placed on **Basdev vs. State of U.P. and others, 2023(161) RD 467** by petitioners will also not be useful since it was with regard to Section 19A of U.P. Consolidation of Holdings Act, 1953, where land reserved for public purpose was allotted to villages for construction of residence on valuation whereas in present case no private interest was created.

26. Per Contra learned Additional Advocate General has rightly placed reliance on **Saddam Hussain vs. State of U.P. and others, 2024 SCC OnLine All 596** and **V. Deevana, Nizamabad and others vs. Prl Secy, Municipal Admn. and others, (Writ Petition No. 35251 of 2017)** decided by Telangana High Court, where construction of water tanks was considered to be a public work and challenge to it was rejected.

27. In aforesaid circumstances, I do not find that there is any merit to challenge the construction of water tank and RCC Centre which are also for interest of villagers and since land earmarked for it is undisputedly a very small part of respective land, which does not render said land unuseful for the said purpose as well as that since no Bhumidhari right is created, therefore, bar under Section 77 of U.P. Revenue Code does not exist.

28. In view of above, all the public interest litigations are **disposed of** with direction to concerned department to initiate some training programme for Pradhans within a period of three months from today, either on basis of Cluster or Commissionarate to make aware Pradhans, specifically women, about their rights and functions and to discourage concept of Pradhanpati.

29. With regard to PIL No. 1438 of 2024 (Ravindra Nath Rai), it is directed that if construction of water tank is not commenced, authorities concerned may take steps to shift the same in corner of said Gata, if possible.

30. In PIL No. 2250 of 2023 (Sunil Kumar), it is directed that any person from family of Pradhan or Pradhan himself, if has encroached on land belongs to Gaon Sabha, shall release the same within one month from today and in case it is not released within said period, a resolution be passed to initiate proceeding under Section 67 of U.P. Revenue Code, 2006.

31. In PIL No. 1238 of 2024, petitioner is directed to file any subsequent PIL on correct material to espouse larger public cause only.

32. Before parting, it is necessary to observe that whenever even a very small part an area, reserved for a public purpose, is used for other public

purpose, the Gaon Sabha concerned and officials of State will take endeavour to make out a larger consensus amongst the villagers so that they may not approach this Court to oppose the public cause.

33. A copy of this order be sent to Principal Secretary, Panchayat Raj Department, Government of U.P. Lucknow for compliance.

34. Registrar (Compliance) to take steps.

Order Date :- 23.10.2024

AK