

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

PIL NO. 8 OF 2023

Md. Jiaulhaque

... Petitioner/s

-Versus-

State of Manipur and 2 others

... Respondent/s

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

14.02.2023

(M.V.Muralidaran,J)

Calling into question the impugned eviction order dated 30.1.2023 passed in Eviction Case No.4 of 2023 by the respondent, the petitioner has filed the present public interest litigation.

[2] Heard Mr. Osbert Khaling, learned counsel for the petitioner; and Mr. M. Devananda, learned Addl. AG, Manipur for the state respondents.

[3] Assailing the impugned order, the learned counsel for the petitioner submitted that the impugned eviction order is in gross violation of fundamental rights enshrined in the Constitution of India. Since the Masjid Mantripukhri is the property of the Wakf Board, Manipur, the second respondent ought not to have issued the impugned order. In fact, in the letter of the Sub-Divisional Officer,

Porompat addressed to the second respondent qua details of wakf properties under Porompat Sub-Division, the Mantripukhri Masjid has been listed and classified as Homestead having Dag No.272 measuring 0.08 acres.

[4] The learned counsel for the petitioner further submitted that in Mantripukhri Masjid more than 3000 people offer their prayers regularly as it is one of the most prominent and oldest Masjid in Manipur existing since 1918. The said Masjid being a religious place of great significance in the history of the State and as the same has been in its original place since 1918 it is of heritage nature and is, thus, a cultural monument for the tenets of Islam.

[5] The learned counsel for the petitioner added that conceding or not conceding to the fact where the show cause notice claims the land in question as Sarkar Khas land, then by the automatic operation of law of adverse possession, it allows the transfer of ownership to any person who has been in peaceful and continuous possession and the said possession with regard to Mantripukhri Masjid is "*nec vi, nec clam, nec precario*" and "*animus possidendi*".

[6] The learned counsel for the petitioner urged that there is visible discrimination on the basis of religion and there is gross

violation of Articles 14, 15, 21, 25 and 26 of the Constitution of India where it is evident that there is no equal application of law. He would submit that subsequent to the passing of the impugned order dated 30.1.2023, the petitioner submitted a representation on 2.2.2023 to the second respondent requesting to revoke the eviction order within two days in the interest of public and for maintenance of public tranquility as around 3000 worshippers offer their prayers in the said Masjid. Arguing so, the learned counsel for the petitioner prayed for setting aside the impugned order of eviction dated 30.1.2023.

[7] Questioning the very locus of the petitioner in filing the writ petition, the learned Additional Advocate General appearing for the respondents contended that the petitioner has no locus standi to file the instant public interest litigation. He would submit that the impugned order of eviction has been passed against the Masjid in question after hearing its Committee Secretary. Since the petitioner is a third party to the proceedings and he is no way connected with the claim made by Mantripukhri Masjid in their representation, he cannot question the eviction order under the guise of a public interest litigation.

[8] Qua the claim of the petitioner that the land covered in C.S. Dag No.272 belongs to Mantripukhri Masjid, the learned

Additional Advocate General submitted that the revenue records reveal that the land in question, namely C.S. Dag No.272 is Sarkari Khas land and the Masjid in question has encroached upon the same and put up superstructure on it. Since the Masjid is in unauthorized occupation of public premise, the same needs to be vacated. Therefore, the second respondent has passed the impugned order of eviction and the same does not warrant any interference.

[9] We have considered the rival submissions and also perused the materials available on record.

[10] The petitioner has filed the instant petition as a public interest litigation. It is a fact that the petitioner is a practising lawyer. Time and again, the Hon'ble Supreme Court held that public interest litigation in the hands of a practising advocate is not maintainable.

[11] In ***Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590***, the Hon'ble Supreme Court has not endorsed the public interest litigation in the hands of a practising advocate. Paragraph 20 of the said decision is relevant and the same is extracted hereunder:

"20. It is a disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar

Associations to see that the process of law is not abused and polluted by its members. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "public interest litigation". That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession. We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed costs of Rs 25,000, we do not propose to impose any further cost."

[underlining added]

[12] In paragraph 4 of the affidavit filed in support of the petition, the petitioner stated that he is a social worker and an advocate and also respected member of the society and has taken up various social issues in numerous capacities. He has worked in lot of cases with regard to minority, women and labour issues and the muslim community to uplift and protect the lower rungs of the society by providing legal aid service. Nothing has been produced by the petitioner to show that he worked a lot for the upliftment of the muslim community in the State of Manipur. There is no averment set

out in the petition that the petitioner is a worshiper in Mantripukhri Masjid.

[13] In ***State of Uttaranchal v. Balwant Singh Chaufal***, (2010) 3 SCC 402, the Hon'ble Supreme Court held:

"181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. 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 PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts 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 Courts 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] It is clear that the concept of public interest litigation has evolved to bring justice to people who are “handicapped by ignorance, indigence, illiteracy” and observed that Courts are required to be cautious while entertaining such litigation. We are of the view that the petitioner had no reason to file the instant public interest litigation when the subject matter was evidently a title claim between Mantripukhri Masjid and the respondent State, as the respondent State claims that the land in question is Sarkari Khas land and Mantripukhri Masjid is an encroacher.

[15] In ***Esteem Properties Private Limited v. Chetan Kamble and others, (2022) 11 SCC 661*** a Larger Bench of the Hon’ble Supreme Court held that although the jurisprudence in this regard has matured, many claims filed in the Courts are sometimes immature. Thousands of frivolous petitions are filed, burdening the docket of both the Supreme Court and the High Courts. Noble intentions behind expanding the Court’s jurisdiction to accommodate socially relevant issues, in recent decades, have been critically

analyzed. Observing so, the Larger Bench held that in our view, PIL litigation has had a beneficial effect on the Indian jurisprudence and has alleviated the conditions of the citizens in general.

In ***Chetan Kamble***, supra, the Hon'ble Supreme Court further held as under:

"28. One of the measures this Court can adopt to ensure that frivolous or private interests are not masqueraded as genuine claims, is to be cautious when examining locus standi. Generally, PIL, being a summary jurisdiction, has limited powers to examine the bonafides of parties. It is usually on the pleadings that the Court should take a prima facie view on the bonafides of the party. If the Court concludes that the litigation was initiated under the shadow of reasonable suspicion, then the Court may decline to entertain the claims on merits. In these cases, Courts have multiple options – such as dismissing the PIL or appointing an amicus curiae, if the cause espoused in the case requires the immediate attention of the Court. [refer T. N. Godavarman Thirumulpad v. Union of India. (2006) 5 SCC 28]."

[16] It is settled law that 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 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 be publicity-oriented or founded on personal vendetta. Court must be careful to see that a body of persons or member of the public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

[18] In the light of the decisions of the Hon'ble Supreme Court referred above, we are of the view that the present litigation has been initiated under the shadow of reasonable suspicion.

[19] The present public interest litigation has been filed by a practising advocate, who is not even an office-bearer of Mantripukhri Masjid. That apart, the petitioner is not a worshipper of Mantripukhri Masjid and no averment in this regard has been set out in the affidavit. In the light of the decision of the Hon'ble Supreme Court referred above, we are of the view that public interest litigation in the hands of a practising lawyer is not maintainable.

[20] Admittedly, the Chairman or the Secretary of Mantripukhri Masjid Committee has not challenged the impugned eviction order. Before issuing the impugned order, on 10.1.2023, the Additional Deputy Commissioner-II, Imphal East issued notice to all the encroachers/unauthorized occupants of the public premises mentioned therein to show-cause why they shall not vacate from the public premise(s) and called for written representation/objection from them to be submitted to the second respondent.

[21] On a perusal of the notice dated 10.1.2023, it is seen that the said notice indicates that pucca buildings have been put up

by the Masjid in Dag No.272 measuring an extent of 0.08 acre and Dag No.377 measuring an extent of 0.02 acre belonging to the Government which have been classified as Sarkari Khas. Pursuant to the said notice, the Secretary, Committee Mantripukhri Masjid has submitted a written representation on 13.1.2023 praying to stop all the proceedings including the notice dated 10.1.2023 and the proposed eviction. Upon receipt of the said representation, the Additional Deputy Commissioner, Imphal East issued summon calling the Secretary, Committee Mantripukhri Masjid to appear before the second respondent for enquiry on 24.1.2023 at 2.00 p.m. along with all relevant documents including allotment orders, jamabandi etc. in support of their claim.

[22] It is beyond any cavil that that hearing on the representation of Mantripukhri Masjid was conducted on 24.1.2023 by the second respondent. During the hearing, one Habib Shah, Secretary, Committee Mantripukhri Masjid appeared in person along with his counsel and claimed that the land covered by C.S. Dag No.272 is a wakf property and he requested for exemption from eviction on compassionate ground. Upon considering the claim put forth by the representative of Mantripukhri Masjid and finding that the Masjid has failed to produce any documents such as allotment order, jamabandi

etc., the second respondent held that the land in question is a Government land where the Masjid had unauthorisedly put up construction land and the same needs to be vacated.

[23] At this juncture, the learned counsel for the petitioner submitted that the Masjid in question is a wakf property and is in existence since 1918 and Mantripukhri Masjid is registered with the Wakf Board and therefore, the Masjid cannot be evicted. Merely because the Masjid is very old and listed in the wakf properties, the respondent authorities have no power to take action against the said Masjid.

[24] On a perusal of the survey report on the wakf properties of Imphal East, Manipur produced by the learned counsel for the petitioner, it is seen that names of 8 wakfs and its creation have been mentioned in the said report and Mantripukhri Masjid found place at Serial No.7. Further perusal of the said report reveals that in remarks column the right derived by the wakfs has been stated. Except Serial No.7, the remarks of the all other wakfs have been stated and remarks of Serial No.7 kept blank. Thus, the aforesaid indication clearly shows that without having right or the origin of acquiring right over the land in question, Mantripukhri Masjid has been constructed in Dag No.272. Anyhow, the right and title of Mantripukhri Masjid over the land in

question cannot be decided in this public interest litigation exercising jurisdiction under Article 226 of the Constitution of India.

[25] As rightly argued by learned Additional Advocate General the aggrieved person would be Mantripukhri Masjid and the said Masjid has not challenged the impugned eviction order. Since the impugned eviction order speaks about the opportunity given to Mantripukhri Masjid, it cannot be contended that without hearing the Masjid, the eviction order came to be passed by the second respondent. For proper appreciation, the impugned order is quoted hereunder:

"Whereas, consequent upon serving of notice of even No. dated 10th January, 2023 to 09 (nine) encroachers/unauthorized occupants of public premises at Revenue Village No.8-Mantripukhri falling within Right of way (ROW) of NH-02 (Sangakphamto Koirengel) for show cause as to why he/she shall not vacate the public premises and for submission of a written representation/objection, if any, to the Office of the undersigned on or before 11:30 am on 17th January, 2023.

2. Whereas, Habib Shah, Secretary, Committee Mantripukhri Masjid, had submitted a written representation/objection within the timeline given:

C.S. Dag No.	Name of the encroacher/encroachment in the Notice dated 10.01.2023	Sl. No. in Notice dated 10.01.2023
272, 377	Masjid	8

3. Whereas, as reasonable opportunity to be heard is to be given, Summons/Hearing Notice of even no. dated 19th January, 2023 for appearance in person or by a representative or pleader duly authorized to appear on his behalf along with all relevant documents including allotment orders, jamabandi etc. to support his objection/representation at the hearing on 24th January (Tuesday) at 2.00 PM presided by the undersigned was served to the objector/aggrieved party/encroacher;

4. Whereas, in the hearing, Habib Shah, Secretary, Committee Mantripukhri Masjid, appeared in person along with his counsel and stated as submitted earlier in their written representation that the land covered by C.S. Dag No.272 is now a Wakf Property and requested for exemption/relaxation from eviction on compassionate ground. They also submitted some old photos of the construction of the Masjid along with documents supporting the claim that the land in question is a Wakf property. However, the parties failed to produce any documents such as allotment order, jamabandi, etc. and hence, it is a fact that the

land in question is a government land. It was regrettably informed that the said structure was constructed on Government land and therefore, the objector is an encroacher/unauthorized occupant of public premise and needs to be vacated as this process has been taken up for providing Right of Way (ROW) of NH-02 (Sangakpham to Koirengel) for public purpose. They also submitted that encroachment done on land covered by C.S. Dag No.377 has been voluntarily removed. It is stated that due verification of the area of public premise covered by C.S. Dag No.272 of Revenue Village No.8-Mantripukhri under unauthorized occupation has been done by Directorate of Settlement & Land Records, (DSLRL) Manipur;

5. Whereas, after hearing the parites and considering his representation/objection and all related documents, the undersigned, it satisfied that the public premise, namely Government land covered by C.S. Dag No.272 and 377 of Revenue Village No.8-Mantripukhri, Imphal East District is under unauthorized occupation of Habib Shah, Secretary, Committee Mantripukhri Masjid. Therefore, his representation/objection is hereby rejected.

Now, therefore, I Khumanthem Diana Devi, Deputy Commissioner, Imphal East in exercise of the powers conferred upon me under Section 3 of The Manipur

Public Premises (Eviction of Unauthorised Occupants) Act, 1978, do hereby direct Habib Shah, Secretary, Committee Mantripukhri Masjid to remove the illegal structures constructed upon the land covered by C.S. Dag No.272 and 377 of Revenue Village No.8-Mantripukhri, Imphal East District and deliver vacant position within 10 (ten) days from the date of issue of this order."

[26] A reading of the impugned eviction order, it is clear that not only Mantripukhri Masjid, but also other 8 encroachers/unauthorized occupants of public premises at Revenue Village No.8-Mantripukhri were identified by the respondent officials and they were served show cause notices and upon hearing them, the second respondent passed the eviction order.

[27] As could be seen from the records, the process for eviction has been initiated by the respondent officials for the purpose of providing Right of Way of NH-02 Sangakpham to Koirengel for public purpose. Thus, for public purpose only, the eviction process has been initiated by the respondent authorities and, therefore, the same cannot be questioned by the unauthorised occupants/encroachers. Since after giving reasonable opportunity of hearing to the unauthorized occupants/encroachers, including the

Masjid in question, the impugned eviction order has been passed, the same cannot be questioned by the petitioner who is a practicing advocate under the aid of public interest litigation to stall the public purpose of providing Right of Way.

[28] The growing trend across the country is construction of temples, churches and mosques on public roads by causing inconvenience to vehicular traffic as well as pedestrian movement. Temples, churches and mosques are also constructed by encroaching upon public lands on roadsides and public premises and without obtaining proper permission. A secular Government cannot encourage such attitude of the people in respect of illegal construction of religious institutions. Even a deity cannot commit an act of encroachment. Therefore, the concerned officials of the State Government should ensure demolition of all unauthorized structures constructed on Government lands and waterbodies.

[29] For all the reasons state above, we are of the view that the present public interest litigation is not maintainable mainly on the ground that the petitioner has no locus standi to file the same. Further, the petitioner is not an aggrieved person and the aggrieved Masjid has not challenged the impugned eviction order. The silence

made by Mantripukhri Masjid clearly shows that they have no legal right over the land in question.

[30] Finding no merit in the instant public interest litigation, the same is dismissed. There will be no order as to costs.

JUDGE

ACTING CHIEF JUSTICE

Bidya

FR/NON-FR