

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

P.I.L.No.142 OF 2015

PC:

The petitioners filed the instant PIL with the following prayer:

“....to pass an order, or orders, direction or directions, or issue a writ, more particularly in the nature of Writ of Mandamus (I) to declare the action of respondent No.1 to 4 in granting permission to cut the trees (i) in favour of respondent no.7 in private patta land to the extent of 17 acres 11 guntas in Sy.No.8/A and 12 acres 31 guntas in Sy.No.48/A of Ghanpur village, Mandal Boath, District Adilabad through proceedings of respondent No.4 vide No.97/2014/FRO-B, dated 21-05-2015, (ii) in favour of respondent No.8 in private patta land to the extent of 17 acres 11 guntas situated in Sy.No.8/A and 12 acres 32 guntas in Sy.No.48/AA of Ghanpur village, Mandal Boath, District Adilabad, through proceeding of respondent No.4 vide No. 97/2014/FRO-B, dated 21-5-2015, and (iii) in favour of respondent No.9 in private patta land to the extent of 5 acres 36 guntas situated in Sy.No.60/E and 6 acres 4 guntas in Sy.No.61/E of Ghanpur village, Mandal Boath, District Adilabad, through proceedings of respondent No.4 vide No.130/2013/FRO-B, dated 21-5-2015, is illegal, and arbitrary and violative of Article 14, 21 of the Constitution and against Section 28 (B) (2) of the A.P. Forest Act 1967 and against the National Policy for Protecting forest land, (II) Direct the respondent No.1 to 4 that not to give permission to the respondent No.7 to 9 for transferring the above said cut down timber for value exceeding Rs.5,000/- each (III) Direct the respondent No.1 to 4 that not to give permission to the respondent No.7 to 9 in transferring the cut down timber to the non tribal persons in contrary to the provisions of A.P. Scheduled Area Land Transfer Regulation (IV) Further direct the respondent No.1 to 4 that take steps for regenerate the forest in the private forest land of the respondent No. 7 to 9 where the trees were cut down, and to pass any such other order orders as this Honorable Court may deemed fit and proper in the circumstances of the case.”

The PIL was taken up for admission on 29.06.2015 and adjourned at the request of learned Special Government Pleader representing

respondents 1 to 6 to file counter affidavit. The counter affidavit of respondents 1 to 6 is filed and on hearing the learned counsel for the petitioners and the learned Special Government Pleader, having *prima facie* noticed that the public interest litigation appears to be a camouflage and the petitioners are personally interested in subject matter of the writ petition, we passed the following order:

“Heard learned counsel for the parties.

We have perused the prayer in the PIL and the counter-affidavit filed by respondent No.3, in particular paragraph ‘4’ thereof.

Learned counsel appearing for the petitioners does not deny the factum of taking General Power of Attorney, as stated in paragraph ‘4’ of the counter affidavit, by respondent No.1.

Keeping that in view, we direct the petitioners to deposit Rs.50,000/- (Rupees fifty thousand only) each with the Registrar (Judicial) to show their *bona fides*, within a period of two weeks from today.

Stand over to 24.08.2015.

From the record, it is evident that the petitioners have complied with the condition imposed by this Court.

The petitioners claim to be belonging to scheduled tribe community, doing social work and the 2nd petitioner is also the President of Adivasi Hakkula Porati Samithi, Tudumdebba, Adilabad District. Respondent No.7 is pattadar of Acs.17.11 gts in Sy.No.8 and another extent of Acs.12.32 gts in Sy.No.48 of Ghanpur Village, Boath Mandal, Adilabad District. Respondent No.8 is the pattadar of Accs.17.11 gts in Sy.No.8/AA and another extent of Acs.12.32 gts in Sy.No.48/AA. The 9th respondent is the pattadar of Ac.5.36 gts in Sy.No.60/E and another extent of Ac.6.04 gts in Sy.No.61/E of Ghanpur Village, Boath Mandal, Adilabad District.

The admitted case of petitioners is that respondents 7 to 9 have

raised the teakwood trees in the extents stated above.

The teakwood trees, so grown, have become private forest land. The subject matter of the writ petition is situated in schedule area. The private forest covered by the survey numbers referred to above is abutting the forest land. Respondents 7 to 9 obtained permission for cutting the teakwood trees and other trees available in the private forest land and are now trying to alienate the timber to non-tribal wealthy persons. By the time the PIL is filed, admittedly the trees are cut and the timber is in the possession of respondents 7 to 9. The petitioners complain that the permission granted by respondents 1 to 4 is vitiated with illegalities and irregularities. According to the petitioners, while granting permission under Section 28-A of the Forest Act, 1967, the 1st respondent is required to record reasons for permitting respondents 7 to 9 to cut and carry away the trees worth rupees more than Rs.5,000/-. No reasons, much less special reasons, are recorded by the 1st respondent. It is also the case of petitioners that procedural rules are violated. Hence, the present writ petition.

Respondents 1 to 6 filed counter affidavit and respondents 7 to 9 have also filed counter affidavit objecting to the maintainability of public interest litigation and have set out in detail the steps followed by the 1st respondent before issuing proceedings dated 25.04.2015 to cut the trees covered by the subject matter of the writ petition. The merits of PIL, it was contended, could be taken up if only the petitioners satisfy that the PIL does not have private interest of petitioners. The 3rd respondent through counter-affidavit dated 17.07.2015 on the maintainability of PIL has taken the following objection:

“In reply to paras 1 to 4 of the affidavit, it is respectfully submitted that, as per the records of the Forest Department, the 1st petitioner namely, Smt.Jadhav Heera Bai, w/o Venkata Rao, R/o Khanapur Town & Mandal, Adilabad District, is directly interested in the subject matter and she filed the present Public Interest Litigation to achieve her personal goals.

The documents to show that she has direct interest in the subject matter are enclosed herewith for kind perusal of this Hon'ble Court. The 1st petitioner herself got General Power of Attorney dated 13.08.2007 from the pattadars i.e., Respondents 7, 8, 9 and two others for effectively managing all the trees present in the patta lands, to appear and act in all Courts and Government Offices, to cut and transport the trees legally after obtaining felling permission from the concerned authorities, to receive the sale amount from the purchasers of trees, etc. The Revenue Divisional Officer, Adilabad through letter dated 7.7.2009 submitted proposals to the Collector, Adilabad along with copies of pahanies from the year 1961-62 to 2006-07, Location Sketch, Copy of GPA and Questionnaire duly filled in by the Tahsildar, Boath recommending for grant of permission for felling of teak trees in Survey No.8/A (Ac.17.11 guntas) and Survey No.48/A (Ac.12.31 guntas) situated at Ghanpur Village, Boath Mandal to the General Power of Attorney Holder Smt.Heera Bai. The Joint Collector, Adilabad (FAC) forwarded the same to the Divisional Forest Officer, Adilabad requesting to conduct enquiry and submit detailed comprehensive report with specific remarks along with Pahani copies and Location Maps. It is submitted that, as per the Circular instructions issued by the Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad in Circular No.1-A/2003 dated 22.04.2006, and the prescribed format of Annexure-I, any GPA executed in respect of lands situated in Scheduled Areas, is null and void. As the patta lands of the respondents 7, 8 and 9 are situated in Scheduled Area, the request of the 1st petitioner was not considered at any stage and as per the provisions of Section 28 (b) of the A.P.Forest Act, 1967 and A.P. Preservation of Private Forest Rules, 1978 only, permission to fell the trees have been granted in favour of the pattedars i.e., Respondents No.7, 8 and 9 by the District Collector, Adilabad. It appears, aggrieved by the said orders, the 1st petitioner with mala fide intention has approached this Hon'ble Court whereas the matter is personally related to the 1st petitioner."

Respondents 7 to 9 have also taken objection on the *bona fides* of the petitioners in the public interest litigation, which reads thus:

“I submit that present PIL filed by the petitioners is false, baseless and the same has been filed with vested interest by suppressing and misrepresenting the facts with mala fide intention and amounts to abuse of process of law. I submit that 1st petitioner is directly related to the subject matter in the present PIL having obtained GPA dated 13.08.2007 bearing document No.4 of 2007 from me and Respondent Nos.8 & 9 and two others to deal with the teak trees standing in the subject lands and other lands. I submit that under the GPA the 1st petitioner was authorized certain powers including obtaining clearances from concerned authorities, to sell the teak trees and also to receive sale amount from purchasers of trees. I submit that 1st petitioner had failed to obtain permissions from Forest Department authorities and therefore, she could not deal with the subject trees. I submit that having failed to deal with the subject trees, the 1st petitioner has now come up with present PIL with vested interest to prevent us from disposing the teak trees though we have obtained permission from Forest Authorities by duly following procedure.”

The writ petitioner filed reply and the relevant portion reads thus:

“I submit that, I want to proceed for obtaining such permission according to the provisions of A.P. Forest Act and as well as A.P. Scheduled Area Land Transfer Regulation. But after moving some representations on behalf of respondent No.7 to 9 before the Forest officials in the year 2009 I came to know that there is no permission to GPA holder to act on behalf of original owners for obtaining the permission to fell down of the trees from private forest land. Therefore, in the year 2009 itself I informed the same to respondent No.7 to 9 and expressed my inability to get such permission. Thereafter the respondent No.7 to 9 and other two persons did not approach me in regarding to above said matter.”

Sri B.Chandrasekhar, learned counsel appearing for the petitioners, submits that the execution of power of attorney in favour of petitioners, no doubt, is not stated at the first instance in the writ affidavit. According to him, the reply as noted above clearly demonstrates that the non-mentioning of execution of GPA in favour of petitioners is neither relevant nor would go to the root of maintainability of PIL. He tries to

persuade this Court by further contending that no reasons are stated for permitting cutting of trees worth more than Rs.5,000/-.

On the other hand, the learned Special Government Pleader submits that through the instant PIL, the petitioners challenge the permission granted for cutting the trees located in the private patta land of respondents 7 to 9. The public interest, according to the learned counsel, remains static whether in the year 2007 or today. According to him, if cutting of trees in the schedule land is prohibited, there is no necessity for the petitioners themselves to take GPA from respondents 7 to 9 for the very same purpose of cutting the trees from patta land and when petitioners are unsuccessful in getting permission, the cutting of trees does not become against public interest. According to the learned Special Government Pleader, the present writ petition is filed more to have unauthorized gain from respondents 7 to 9, who are successful in getting permission from the competent authority in accordance with law. The other objections are equally unsustainable and the PIL is liable to be dismissed *in limini*.

Now, the short point for consideration is - whether the PIL filed purportedly canvassing the rights of people in scheduled areas satisfies the norms laid down by the Apex Court in this behalf

in **KUSHUM LATA V. UNION OF INDIA**^[1] and the relevant portion reads thus:

“When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as

well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also 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 of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *The Janta Dal v. H.S.Chowdhary* (1992 (4) SCC 305) and *Kazi Lhendup Dorji vs. Central Bureau of Investigation*, (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation vs. Union of India*, (AIR 1993 SC 852) and *K.R. Srinivas v. R.M. Premchand*, (1994 (6) SCC 620)".

The GPA obtained by petitioners is required to be considered at the outset. The power of attorney reads as follows:

GENERAL POWER OF ATTORNEY

2007 Know all men by these presents that We, 13th August,

- 1) G.NOORSINGH s/o SAKARAM, Age (50) years, Occu: Teacher
- 2) G.PARASHURAM, s/o SAKARAM, Age (45) years, Occu: Teacher
- 3) RAMCHANDER, s/o DATTU, Age (60) years, Occu: Agriculturist
- 4) S.NARAYANA, s/o MOHANSINGH, Age (60) years, Occu: Agriculturist.
- 5) KABEER, S/O KAN, Age (55) years, Occu: Agriculturist both are R/o Vg, Pardi (B), Mandal Boath, Dist.Adilabad, do hereby appoint nominee and constitute my our well wisher J.HEERA BAI w/o VENKAT RAO, Age (35) years, Occu: Agriculturist, R/o Vg & Mandal Khanapur, Dist.Adilabad. As our GPA a lawfull power of attorney agent for us and on behalf to do execute and perform all or cause to be done or anything of the following acts, deed and things herein aftermentioned.

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That we are the owners and possessors of the property and teak trees covered in the land and whereas we being persons of poor education and having no experience to solve legal problems in getting clearance from the Government officials to transport the teak through valid permits as such we appoint and constitute our well wisher GPA agent J.HEERA BAI w/o VENKAT RAO, as our lawfull power of attorney agent to do the following things on our behalf which are equally binding as us.

- 1) To effectively manage all the trees present in the above said land.
- 2) To appear and Act in all Courts and Govt.Offices.
- 3) To cut the trees and transport the trees legally after felling permission from the concerned authorities.
- 4) To receive the sale amount from the purchasers of trees.
- 5) The value of the timber in the said lands is Rs.99,000/-.

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From a reading of GPA executed in favour of petitioners, it is evident that the 1st petitioner has taken registered power of attorney from respondents 7 to 9 for the purpose which is complained as illegal and unconstitutional. The *bona fides* in the matter can be tested from the disclosure of these details at the earliest point of time. It is admitted by the learned counsel for the petitioners that the writ affidavit does not disclose the execution of GPA in favour of 1st petitioner and the efforts made by the

1st petitioner for long time for getting permissions from the authorities. It was argued that the GPA does not include permission to cut the trees situated in petition land. When the attention of the learned counsel for the petitioners is drawn to one of the clauses in the GPA, ignorance now pleaded or for that matter the reply cannot be accepted with any

seriousness. In public interest litigation, the parties should come to Court with clean hands and the PIL should not be used by the petitioners, where the petitioners have or had personal interest in the subject matter of PIL. The case on hand is tested from various guidelines laid by the Apex Court from time to time. The admitted position is that the petitioners have suppressed the details of their having interest in respect of the same subject matter under a GPA. The public interest does not emerge to a private purpose, merely because respondents 7 to 9 are successful in getting permission as noted above. When the requirements of law are satisfied, the 1st respondent under applicable laws is required to consider and dispose of the request of an owner for cutting the trees. In the case on hand, from the other material available on record, *prima facie*, it appears that the District Collector/1st respondent has duly and judiciously exercised his discretion and granted the impugned permission. No exception to the permission impugned in the writ petition can be taken and there is no material in the writ petition on the alternate submission for consideration by this Court.

In our considered view, the PIL is filed for personal interest after being unsuccessful in getting permission, as agreed in a GPA between the petitioners and respondents 7 to 9. The writ petition does not disclose these vital circumstances which have bearing in deciding whether the petitioners are pursuing a genuine PIL or private interest. The material on record clearly shows that the petitioners having been unsuccessful in their efforts under GPA have taken recourse to the instant PIL. We have no hesitation except to dismiss the PIL by directing the Registrar (Judicial) to forfeit the costs deposited by the petitioner and with a further direction to deposit the costs so forfeited to the credit of the Telangana State Legal Services Authority, Hyderabad. The said exercise shall be carried out within four weeks from the date of receipt of a copy of this order.

PIL is dismissed with costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J

Date: 24.08.2015
Lrkm

[\[1\]](#) AIR 2006 sc 2643