

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

**PUBLIC INTEREST LITIGATION No. 322 OF 2015
AND
WRIT PETITION (PIL) No.36 OF 2016**

Date: 04.07.2016

PIL No. 322 of 2015:

Between:

Sri Chandra Kishore Jaiswal S/o late Ramnath Jaiswal,
Aged about 61 years, Occu: Advocate, R/o 1-7-902/C/A/2,
Ramnagar, Hyderabad.

..... Petitioner

and

The State of Telangana, rep. by its Chief Secretary,
Telangana Secretariat, Hyderabad and others.

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

**PUBLIC INTEREST LITIGATION No. 322 OF 2015
AND
WRIT PETITION (PIL) No.36 OF 2016**

PC: (*Per the Hon'ble the Acting Chief Justice Dilip B.Bhosale*)

Heard Sri Vedula Srinivas and Sri Bhajrang Singh Thakur, learned counsels for the petitioners, learned Additional Advocate General (TG) for the respondents 1 and 2 and Sri C.V. Mohan Reddy, learned senior counsel for 3rd respondent, Sri S.S. Prasad, learned counsel for

2. These writ petitions are filed praying to grant following reliefs:

2.1. Prayer sought in PIL No. 322 of 2015 is as under:

"to pass an QA-order or writ Particularly writ in the nature of Mandamus declaring the actions of the respondent no.2 in entering in to the Agreement dt: 27-03-2014 with the consortium of respondent no. 3, even though the respondent no.3's earlier Lease Agreement and Development & Management Agreement for development and operation of Urban Entertainment Centre Project dt: 06-11-2006 with the respondent no.2 is terminated and the land was resumed through proceedings of the respondent no.2 in Notice No: 111981/PMU/EO/2005, dt: 01-03-2012 and through Demand Notice C.No: 16213/PMU/EO/2007, dt: 03-03-2012 Respondent no.2 demanded the respondent no.3 to pay Rs:2554.88 Lakhs and continuing the respondentno.3 to construct commercial complex over the Project site, even without payment of future rental amounts till this day as illegal and arbitrary by calling for the entire file from the respondent no.2 , resume back the project site of 05Ac.61 Cents., less 1000 Sq. Mtrs., situated at T.S.Nos: 1 & 2, in Ward No: 54, Block D of Gaganmahal, Old Gandhi Medical College, situated at Basheerbagh, Hyderabad forthwith from the consortium of the respondent no.3 and allot the same to any genuine persons by calling fresh notification for tenders under the supervision of this Hon'ble Court, by further directing the respondent no.2. to initiate Revenue Recovery Proceedings against the consortium of the respondent no.3 for non paying the due rental amounts of Rs:2554.88 Lakhs as on 03-03-2012 and further due rental amounts from 27-03-2014 till the date of resuming possession from the consortium of respondent no.3, by initiating the criminal proceedings against the respondents no. 3, 4 & the concerned officials who 2" time handed over the project site t the consortium of the respondent no.3 and to pass any other suitable for which the Public Property will be safeguarded for the original purpose for which it is meant in the circumstances of the case, to meet the ends of justice."

2.2. Prayer sought in WP (PIL) No. 36 of 2016 is as under:

...to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondent Nos. 1 and 2 in not taking any steps to terminate lease agreement Dt.27.03.2014 with the consortium of respondent No.3 to construct Commercial Complex over the project site of Ac.5-61 cents of vacant land (Less 1000 Sq. Mtrs. For APCPDCL) situated at T.S.No.1 & 2, Ward No.54, Block-D, Gaganmahal, Old Gandhi Medical College, Basheerbagh, Hyderabad as illegal and arbitrary and consequently direct the respondents 1 and 2 to take immediate steps to terminate the lease agreement Dt.27.03.2014 against the consortium of respondent No.3 and take necessary steps as per law in future allotment as per the procedure and setting out clear policy for the use of the land for education in the best interest of the public at large of Hyderabad and pass such other order or orders as this Honble Court may deem fit and proper in the interest of Justice.

3. In Basheerbagh, a prime location of city of Hyderabad, Government established Medical College named after 'father of nation'. The medical college turned out to be one of the premier institutions that produced eminent professionals in the field of Medicine. Over a period of time, to accommodate growing needs of the institute, more buildings were required but there was space constraint on the existing premises. The Government relocated the college to a more sprawling complex. As a consequence to relocation of the college, Government thought it fit to utilize the Basheerbagh property to establish Modern Urban Entertainment Centre (for short Centre) which would comprise shopping malls and entertainment halls at one place. The job of establishing such entertainment centre was entrusted to Tourism Department.

4. In the year 2006, Tourism Department floated tenders calling for willingness of qualified persons to partner with the Government for establishment of Centre. By following the due procedure M/S. GSG Constructions Private Limited—third respondent was identified as the Special Purpose Vehicle to take up the project on Public Private Participation (PPP) mode. The scheme of the entire exercise is to lease out the premises to the

prospective company for a period of 33 years. The company in turn should establish full-fledged centre and operate effectively during the period of lease on payment of annual rent. The agreements were entered into between the third respondent and the State. Possession of the property was handed over to third respondent.

5. Alleging that the third respondent failed to comply with the terms of agreement and failed to pay the annual lease payable, notice of termination of lease was issued on 1.3.2012. Consequently notice of demand of payment of dues was also issued directing the third respondent to pay an amount of Rs.2554.88 lakhs. Possession of the property was also taken by the State. This order of termination of lease and taking possession was challenged by the third respondent in W.P. No. 8806 of 2012. This Court granted stay in favour of third respondent on condition of payment of Rs.10 crore within six weeks and stay was also restricted and was not made applicable to restoration of contract and redelivery of possession. During the pendency of writ petition, third respondent submitted representations for continuation of the contract and delivery of possession. It appears, considering the representation of the third respondent, orders are passed on 24.2.2014 to redeliver the possession of the property to the third respondent. On 27.3.2014 orders of termination of lease dated 1.3.2012 were rescinded and directions were issued to third respondent to enter into fresh agreement. The third respondent was also directed to withdraw the pending writ petition. Third respondent accordingly withdrew Writ Petition No.8806 of 2012 on 11.4.2014. Fresh lease agreement was entered on 27.4.2014 and possession was handed over. Fresh lease agreement envisages contract for a further period of 33 years from that date. It also waives the lease amount payable from 2006 to 2012 and decides to adjust the amount already paid towards future lease commencing from the date of fresh agreement. These decisions of the Government provoke next round of litigation.

6. A person by name Mr Kaushik Banerjee complained to the Lok Ayuktha alleging illegalities in awarding the contract to third respondent. The complaint was dismissed. Challenging the order of the Lok Ayuktha

W.P.No.7585 of 2015 was instituted. The said writ petition was dismissed as withdrawn by order dated 24.03.2015.

7. In PIL 322 of 2015, petitioner a practicing Advocate and a senior citizen, alleges that construction of the Centre by third respondent is not in public interest. Third respondent is not qualified, do not have financial resources to undertake such a prestigious project and since he does not have the financial resources, he did not commence the project as scheduled and also defaulted in payment of annual rents and, therefore, Government was justified in annulling the contract. Thus, there is no justification to renew such contract with more favourable terms to the third respondent even though he was at fault in not fulfilling the terms of the contract. Force majeure clause was invoked only to cover up illegal conferment of contract on third respondent. There is no justification to enter into fresh contract after period of two years from the date of cancellation and more so when Writ Petition No.8806 of 2012 was pending. When the writ petition was pending and interim order was operating, without leave of the Court, the Government ought not to have annulled the cancellation of contract and granted further benefits to the defaulting contractor. Petitioner also dwells into criminal background of the third respondent and strained relationship with other prominent builders.

8. In PIL 36 of 2016, petitioner is a society which came into existence in the year, 2014. The petitioner society claims that it has membership of more than 2000 persons who belong to muslim community. The petitioner society is established with a vowed object of establishing educational institutions, body building centres, games club, orphanage, street children home, employment homes with religious teachings. Petitioner society seeks to connect to the subject property by contending that family or forefathers of the members of the society donated the land for the purpose of development of education and therefore the Government has no right to utilize the land for any purpose other than for development of education. As a consequence to the re-location of the medical college, other educational institutions ought to have been established instead of developing the property for commercial

activities. In addition to the contention that the land was donated and therefore has to be utilized only for educational purposes, extensive averments are made on the manner in which the third respondent was awarded the contract in the year 2006; how third respondent failed to comply with the terms of contract; involvement of third respondent in litigation and criminal cases; and the manner in which contract was renewed in the year 2014.

9. Both petitioners primarily attack the decision of the Government to renew the contract by annulling the cancellation of the lease and by extending it with more favourable terms just before demitting of office by the then Chief Minister and after the enactment of A.P. State Reorganization Act, 2014.

10. Learned senior counsel Sri C.V.Mohan Reddy, for third respondent raised preliminary objection on maintainability of the PILs. In view of said objection, counsels for petitioners were asked to address the Court on maintainability of PILs.

11. Sri C.V.Mohan Reddy, learned senior counsel appearing for third respondent, contended that petitioner in PIL No.322 of 2015 is not prosecuting the writ petition *bona fide*. Since, he was unsuccessful in his attempt to scuttle the renewal of contract, Sri Kaushik Banerjee sets up this petitioner. The fact that pleadings urged in this writ petition are almost similar to the pleadings in W.P.No.7585 of 2015 filed by Sri Kaushik Banerjee and many of the documents relied upon by the petitioner are the documents which were in possession of Sri Kaushik Banerjee, strengthen the said fact. The complaint filed by Mr. Kaushik Banerjee was considered by Lok Ayuktha in detail and rejected the complaint. Though Mr. Banerjee challenged the said decision of Lok Ayuktha in W.P.No.7585 of 2015, but chose to withdraw and was dismissed as withdrawn. Petitioner is not prosecuting the writ petition in *bona fide* public interest and is set up by Sri Kaushik Banerjee who was unsuccessful in his efforts to harass the 3rd respondent. By referring to the averments made in paras 5, 8 and 10 of the affidavit filed in support of PIL

322 of 2015, Sri C.V.Mohan Reddy, contends that false statements are made by the petitioner with oblique motive. He further emphasizes that the very fact that petitioner did not chose to challenge the Government decision when such decision was made, but filed this PIL after disposal of WP No.7585 of 2015 shows lack of *bona fides* in instituting the PIL. Thus, petitioner has not come to this Court with clean hands and does not have standing to prosecute PIL.

11.1. Mr. Mohan Reddy further submits that petitioner in PIL No.36 of 2015 has no locus standi to challenge the Government decision to rescind earlier cancellation of lease and to grant fresh lease. The grounds urged do not answer the parameters to prosecute PIL. Petitioner society is no way concerned with the subject property. The land does not belong to society and it did not donate land to establish medical college. Even assuming petitioner society is entitled to maintain PIL, it was not diligent to invoke the jurisdiction when contract was entered in the year 2006. If at all petitioner society has a grievance, it relates back to the date when notification was issued calling for expression of interest to establish urban entertainment centre. Thus, this writ petition is liable to be dismissed on the ground of delay and laches also.

11.2. He further submits that on the same issue a person by name Mr Rajeshwar Reddy filed PIL No. 324 of 2014 and PIL No. 97 of 2015 and both the PILs were dismissed. He forcibly submits that these two Public Interest Litigations are not maintainable and are filed only to harass and humiliate 3rd respondent.

11.3. In support of his contentions, he placed reliance on the following decisions.

AIR INDIA LIMITED Vs COCHIN INTERNATIONAL AIRPORTS LIMITED^[1], BALCO EMPLOYEES' UNION Vs. UNION OF INDIA AND OTHERS^[2] and DIVINE RETREAT CENTRE Vs STATE OF KERALA AND OTHERS^[3].

12. Confronted by serious objection raised by Mr. Mohan Reddy on standing of petitioner to maintain PIL No.322 of 2015 on the subject property, Mr. Bhajrang Singh Thakur fairly submits that petitioner would be satisfied if time limit is fixed to complete the project.

13. Sri Vedula Srinivas, learned counsel appearing for petitioner in PIL NO.36 of 2016 submits that the subject land was donated by family or ancestors of members of the society to establish medical college and was functioning for long period of time. As a consequence to shifting of the medical college, the said premises ought to have been utilized for other educational purposes or for any other public purpose instead of converting the property into commercial establishment.

13.1. By placing reliance on the decision of the Supreme Court in CENTRE FOR THE PUBLIC INTEREST LITIGATION AND OTHERS Vs. UNION OF INDIA AND OTHERS^[4] submits that the writ petition is maintainable. According to Mr Vedula Srinivas, even though in contractual matters, the scope of judicial review is limited, however, the writ Court is entitled to go into the manner in which public property is bartered. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public, rather than to permit their use for private ownership or commercial purposes. If such transfer affects public interest, it is permissible for the public spirited persons to challenge the same. He, therefore, submits that PIL is maintainable.

14. Though it is contended that subject property was donated by family /ancestors of members of the petitioner society in PIL NO.36 of 2016 to establish medical college, the pleadings are vague. No details are furnished as to the name of the donor. No material is brought on record to show such donation was made for utilization of property only for educational purposes. How petitioner society is concerned with the subject property is also not explained.

15. If the contention of the petitioner society is true that the subject land

was donated by family of a member or ancestors of members, the petitioner is no way concerned with subject property. If subject property was donated by a person, it would be a personal grievance of such person and it is for him to contest Government decision. Society cannot seek to espouse cause of an individual donor and more so, in a public interest litigation. Furthermore, even assuming society is competent to espouse the cause of individual member in a Public Interest Litigation, the cause of action to institute PIL arose in the year 2006 when Government for the first time took decision to establish urban entertainment centre. Thus, petitioner does not satisfy the locus standi to institute PIL and at the instance of such person, this court is not inclined to go into the legality and validity of contract entered by Government and 3rd respondent.

16.1 At this stage, it is useful to consider the observations of Supreme Court in **BALCO** and **DEVINE DIVINE RETREAT CENTRE**.

16.2. In **BALCO EMPLOYEES' UNION** (supra), Supreme Court held as under:

“88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an ***element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We, may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power.*** No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court. ”

16.3 In **DIVINE RETREZT CENTRE** (supra), Supreme Court held as under:

“59. We do not propose to burden this judgment with various authorities pronouncements of this Court laying down the parameters of public interest litigation. suffice it to recapitulate that

this Court uniformly and consistently held that the individual who moves the Court for judicial redress in cases of public interest litigation must be acting bona fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular petition filed in Court.

17. Petitioner society has not explained why it kept quiet when Government took decision to establish Urban Entertainment Centre in the year 2006. Even the present PIL is filed long time after the fresh agreement was made. The purported objection relates to the credibility of third respondent in undertaking such a project. Petitioner has not explained why these issues were not projected when contract was awarded in the year 2006. There is no serious challenge to Government resorting to develop the property as Centre. Thus, the challenge is more on granting fresh lease to third respondent with terms more favourable to him as offending the public interest.

18. It is not in dispute that the land vests in the State. The Medical College was relocated in a sprawling complex, in a site belonging to the State. Once property vests in the State, as a repository of State property, how and in what manner property should be utilized should be best left to the Government. It is not uncommon that on State properties commercial establishments are constructed and operated. The decision to utilize public property as Urban Entertainment Centre is a policy decision of the Government guided by commercial interests. It is settled principle of law, by long line of precedent decision of Supreme Court and this Court that in decisions having commercial dealings, scope of judicial review is limited. State is granted more elbow room to identify, negotiate and determine terms of contract. It is not in dispute that State has entered into contract in the year 2006 with third respondent to grant 33 years lease of subject property where under the third respondent is entitled to develop the Centre. The decision of the State to develop the property as Centre is not under challenge. The consequential

steps in furtherance of said decisions are now assailed. As a corollary to establishment of relationship, it is permissible to negotiate, redraw and revise the terms of contract. If there is failure to adhere to the time lines or any terms of contract, or there is any other issue which determines the contract it is for the contracting parties to determine the contract. Though learned Additional Advocate General made forcible submissions contending that there were grave illegalities in renewing/awarding fresh contract in the year 2014 by superseding earlier cancellation of lease agreement, we refrain from going into these issues as we are in agreement with the objection on maintainability raised by Mr. Mohan Reddy and these PILs are disposed of only on that issue. It is for the contracting parties to determine their relationship. It is made clear that there is no expression of opinion on merits and all issues are left to be adjudicated in appropriate proceedings.

20. Accordingly, PIL No.36 of 2016 is dismissed. Insofar as PIL No.322 of 2015 is concerned, no further orders are required in view of statement of learned counsel for petitioner that he would be satisfied if time line is fixed to complete the project. No direction as sought for can be issued. It is needless to observe that the development of Urban Entertainment Centre is governed by the terms of contract between State and 3rd respondent and as long as the contract subsists, the 3rd respondent shall adhere to the time line stipulated in the contract.

Miscellaneous petitions if any pending shall stand disposed of. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:04.07.2016
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PUBLIC INTEREST LITIGATION No. 322 OF 2015
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[\[1\]](#) (2000) 2 SCC 617
[\[2\]](#) (2002) 2 SCC 333
[\[3\]](#) (2008) 3 SCC 542
[\[4\]](#) 2012 (3) SCC 1