

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

PUBLIC INTEREST LITIGATION NO. 19 OF 2017

Raju Hamirmal Shah.

.. Petitioner

Vs

The Tahsildar, Thane & ors.

.. Respondents

Mr.Sushil Shukla, for the Petitioner.

Mr.P.G.Sawant– AGP, for Respondent – State.

*CORAM : DR.MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.*

DATE : NOVEMBER 3, 2017.

P.C.:

Heard Mr.Sushil Shukla, learned counsel for the Petitioner and Mr.P.G.Sawant, learned AGP for Respondent-State.

2. Initially this Petition was filed raising several allegations in respect of the status and the user of the property bearing Survey No.478 Hissa Nos.1 and 2 in the village of Bhayander, District Thane (said property). The main allegations were that the said property was a government property and the Tahsildar, was not taking effective steps to maintain the said property and further, there was danger that the said property is misused by certain private parties.

3. The petition was converted into a Public Interest Litigation thereafter, since, it was represented that the grievance is not against any particular individual but the grievance is of a general nature. It is pertinent to note that the Petitioner then amended the Petition and made specific allegations against RNA Builders, who were impleaded as Respondent No.5 to the Petition.

4. The amendment containing serious allegations against RNA Builders is contained over a rider in the form of para 4(k)(i). After all this and surprisingly, the Petitioner, amended the Petition and deleted RNA Builders from the array of Respondents. However, the allegations against RNA Builders continued to remain a part of the record.

5. On 21 July 2017, since we were surprised at this development, we directed the Petitioner to clarify his position. Our order dated 21 July 2017, reads as follows -

'11. On going through the contents of the petition, cause title and averments, we notice that respondent no.5 – RNA Developers are deleted from the cause title by way of amending the petition, however, several averments are made against the very RNA builders. We are unable to understand the stand of the petitioner. Petitioner to clarify the same'.

6. From 21 July 2017 onwards till date, although matter came up on several occasions, the Petitioner has not chosen to file any affidavit to clarify his position instead, as noted by us by our order dated 2 November 2017, the Petitioner has applied for adjournment mainly on the ground that his Advocate was not available. We have noted that on several instances in the past, the Petitioner, applies for adjournment on this ground.

7. Today, the learned counsel for the Petitioner, without offering any explanation as to why no affidavit has been filed by the Petitioner since 21 July 2017, seeks to clarify the position by stating that the Petition, as originally filed, was not a Public Interest Litigation. Such clarification, hardly inspires any confidence. In fact, this is not a clarification at all.

8. If, the Respondent No.5 stands deleted from array of parties, the rest of the averments in the Petition are blissfully vague and on the basis of the same, it is not possible to even treat present Petition as any bonafide Public Interest Litigation. The learned counsel for the Petitioner submits that the Petitioner has not applied for any information under Right to Information Act. If indeed there are any apprehensions of misuse of government land, then, the Petitioner is also expected to do his homework and place cogent and proper material on record. The purpose of such Petition cannot be to embark upon some sort of fishing expedition. We are not at all satisfied that this is a bonafide Public Interest Litigation. The

Petitioner, has no history of any social service or taking up causes in public interest. The Petitioner himself is a builder, functioning under the name and style of 'Shraddha Developers'. The manner in which, the Petitioner has chosen to delete Respondent No.5 from the array of parties creates a severe dent in the credibility and the credentials of the Petitioner. We do not deem it safe or appropriate to entertain a Public Interest Litigation of this nature and at the behest of such a Petitioner. We note that despite our order dated 21 July 2017, the Petitioner has not offered any clarification, much less, any credible clarification as to the circumstances in which the deletion was applied for and secured.

9. In case, there is any public interest involved, it is always open to the parties to apply to the statutory authorities. It is open to the parties to secure information under the Right to Information Act. It is only when the statutory authorities fail to take any action, the parties can approach this Court requiring the statutory authorities to take action in accordance with law. In the facts and circumstances of the present case, the Petitioner whose bonafides are clearly in question, has done nothing of this sort. This is yet another reason as to why we do not propose to entertain this petition, which is purported to be masked as a Public Interest Litigation.

10. In this case we note that this Petition has come on the board atleast on twenty three occasions. On several occasions, Petitioner,

applied for time. Till date the Petitioner has not even filed any affidavit as required by our order dated 21 July 2017. We are therefore, satisfied that this is abuse of judicial process and therefore, whilst dismissing this Petition we impose costs of Rupees One Lakh upon the Petitioner.

11. The Petitioner to pay such costs in favour of the Legal Services Authority within a period of four weeks from today. In case such costs are not paid the Legal Services Authority is at liberty to seek execution of this order for payment of costs.

12. The Petition is therefore dismissed with costs as aforesaid.

M.S.SONAK, J.

CHIEF JUSTICE