IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION STAMP NO.45 OF 2016

Mr. Pravin P. Wategaonkar ..Petitioner
Versus
The Chief Secretary,
The State of Maharashtra
Mantralaya, Mumbai-400 032 and others ..Respondents

Mr. Pravin P. Wategaonkar – Petitioner-in-person.
Mr. A. A. Kumbhakoni, Advocate General a/w J. P. Yagnik, APP for State.
Mr. V. P. Sangvikar a/w Ms. Madhavi Ayyappan i/by Talekar & Associates for the Respondent No.3.
Mr. V. A. Thorat, Senior Advocate i/by Mr. V. A. Sugdare for the Respondent No.4.
Mr. Hitesh B. Sangle & Ranjit V. Sangle, Abhinav Tiwari for the Respondent No.5.

CORAM : B. R. GAVAI &
SANDEEP K. SHINDE, JJ.
DATE : 3rd OCTOBER, 2017

P.C.

1] The Petitioner has approached this Court praying for a direction to the Chief Secretary for producing the record and proceedings in respect of the "stay till hearing" granted to the notice issued by MMRDA dated 26th May, 2016 to one M/s. Spice and Grain Oversea Pvt. Ltd. in respect of unauthorized construction. The Petitioner has also prayed for a direction to Anti Corruption Bureau to register a case in respect of stay granted to the notice issued by MMRDA. The Petitioner has also prayed for a relief praying for directing State of Maharashtra to relieve the Respondent No.5 from handling Home Department and Urban Development Dept., as Principal Secretary to the Hon'ble Chief Minister.

2] The Petitioner claims to be a public spirited citizen. The Petitioner has given details regarding his qualification in the opening paragraphs of the Petition. The Petitioner claims that on account of his efforts in a case known as “Aadarsh Society Scam Case”, the investigations were taken to logical end. It is the case of the Petitioner in the present Petition that a notice was issued by the Respondent No.3 – MMRDA to one M/s. Spice and Grains Oversea Pvt. Ltd. (for short “the said Company”) on 26th May, 2016 in respect of unauthorized construction. It is the case of the Petitioner that one Mr. Piyush Bongirwar is a director of the said Company and is brother-in-law of the Respondent No.5 who happens to be the Principal Secretary to the Hon'ble Chief Minister. It is the contention of the Petitioner that after the notice was issued to the Respondent No.6, the Respondent No.4 who is the minister of State granted stay to the said order on 9th August, 2016. It is his case that though the officers of the department had brought to the notice of the Respondent No.4 that he had no jurisdiction to pass the said order, he for the reasons best known to him did not set aside the said order, as a result of which the said Company continued with its unauthorized construction. It is the case of the Petitioner that only after the present PIL was filed, the said unauthorized construction has been removed by the MMRDA.

3] It is the contention of the Petitioner that the Respondent No.4 who is the Hon'ble Minister knowing very well that Mr. Piyush Bongirwar is a close relative of the Respondent No.5, who happens to be the Principal Secretary in the Chief Minister's office, passed the illegal order so as to perpetuate the illegality committed by the said Company of which Mr. Piyush Bongirwar is the director.

4] Various other allegations have been made in the Petition with respect to cartel of the various State Government officers being created, who have purchased 700 acres of land alongside the proposed expressway. The Petitioner while making an argument has also sought to raise another issue with respect to corruption in the matter of holograms on liquor bottles. It is sought to be contended by the Petitioner that the Respondent No.5 is also involved in the said scam.

5] Mr. A. A. Kumbhakoni, Advocate General and Mr. V. A. Thorat appearing on behalf of the Respondent No.4 as well as Mr. Sangle, learned counsel appearing on behalf of the Respondent No.5 have vehemently opposed the Petition.

6] Mr. Thorat, the learned senior counsel has submitted that the allegations made by the Petitioner are bald and that there is no substance therein. The learned counsel specifically submits that the Petitioner is in the habit of publishing newspaper items even before the cognizance of the Petition is taken by the Court and also publication contents of affidavits even prior to the said affidavits being considered by the Court. It is submitted that the Petitioner has used the present proceedings only in order to gain cheap publicity. The learned senior counsel submits that the Respondent No.4 though has passed an order, when it was brought to his notice by the department that he had no jurisdiction to pass the said order, did not proceed with the said matter. It is submitted that as a matter of fact that the order of the stay, which was erroneously passed by him was never communicated by the department to the Respondent No.3 – MMRDA. He submits that though the meetings were fixed, on account of the reasons given in the affidavit, the meetings could not be held due to unavoidable circumstances and thereafter when the matter became subjudice, the Respondent No.1 stayed his hands away.

7] In so far as the Respondent No.5 is concerned, it is sought to be urged on behalf of the said Respondent, that there is not even a whisper with regard to the role played by the said Respondent in the order passed by the Respondent No.4. It is submitted that the Respondent No.5 is sought to be involved in the matter only on the basis of conjunctures and surmises, which according to the Respondent No.5 are borne out of wild imagination of the Petitioner. It is therefore submitted on behalf of the Respondent No.5, that the Petition should be dismissed with exemplary cost for making wild and baseless allegations against the Respondent No.5.

8] The learned Advocate General also submits that recently tendency of filing frivolous Petitions against the politicians and bureaucrats is on the increase. He submits that even prior to the Petitions being filed, the newspaper reports are published so as to malign the image of politicians and bureaucrats. It is submitted that the present case is a classic example of the same, inasmuch as even prior to the Court taking cognizance of the matter, the reports appeared in the newspapers with regard to the allegations against the Respondent Nos.4 and 5. It is further submitted that even though the affidavits of the Respondent Nos.4 and 5 are not yet considered by the Court, the newspapers have already published the concocted version of the affidavits filed by the said Respondents.

9] At the outset, we may state that we do not want to doubt the bonafides of the Petitioner. The Petitioner has given his biodata in the Petition. Apart from that the Petitioner appears to be well versed in law as he is ready with upto date judgments of the Apex Court as well as this Court. The Petitioner has stated in the Petition that it is on account of his intervention a matter pertaining to huge scam has come to the limelight. No doubt, the Petitioner may have done laudable work in certain aspects, however, in so far as the present Petition is concerned, we find that the Petition as is framed for the reliefs claimed, would be totally untenable. No doubt, that the Petitioner has also relied on the order passed by a Division Bench of this Court of which one of us is party in the case of PIL No.3 of 2017 dated 4th September, 2017.

10] A perusal of the material on record would reveal that Respondent No.4 had passed an order after the director of the Respondent No.6 had approached him with the memo of Appeal. He has stated in the affidavit that after the Director of Respondent No.6 urged before him, that the Respondent No.3 had passed an order of removal of unauthorized construction without giving him an opportunity of being heard, he had passed an order of stay. He has further stated that after the department pointed out to him, that he had no jurisdiction to pass such an order, the department had not forwarded the stay order to the Respondent No.3 – MMRDA. It could thus be seen that at the most what can be considered to have been admitted, is that the order passed by the Respondent No.4 was an order passed without jurisdiction i.e. an order not sustainable in law. We will have to consider as to whether an order which has been passed bonafide by a quasi-judicial authority, on the basis of the representation made before it by a party, could itself be sufficient to attach criminal intent to it and direct an FIR to be registered for the offences under the Prevention of Corruption Act.

11] It is the contention of the Petitioner, that from the affidavit of Respondent No.4 itself, it would be clear that the director of the said Company was acquainted to him and therefore he has passed an order to favour the said Company. The Petitioner desires of us, to come to a conclusion that since said Mr. Piyush Bongirwar is close relative of the Respondent No.5, who happens to be Principal Secretary of the Hon'ble Chief Minister and since the Respondent No.4 was aware about this fact, the Respondent No.4 has passed such an illegal order. We find that if we come to such a conclusion, the same will be only the basis of conjunctures and surmises, without there being material placed on record. We may state that there is not even a whisper in the Petition that the Respondent No.4 has done so with an intent to unjustly enrich himself, at the cost of public exchequer. If we were to entertain such wild and baseless allegations and on the basis of such allegations direct registration of an FIR, then we will be opening floodgate and every person who feels that an order not in accordance with law is passed may approach this Court seeking direction for registration of an FIR either against the politicians or bureaucrats.

12] In so far as the Respondent No.5 is concerned, in the Petition there is not even a whisper of the role, he is alleged to have played in the entire episode. Merely because the Respondent No.5 happens to be related to one of the directors of the Respondent No.6 Company, can that be a ground to direct a registration of an FIR under the Prevention of Corruption Act. We find that if we resort to such things, it will be nothing but taking recourse to judicial terrorism.

13] Mr. Pravin P. Wategaonkar would require us to infer that since the director of Respondent No.6 was acquainted with the Respondent No.4, we will have to come to a conclusion that the order was passed by him illegally to benefit him. As already discussed hereinabove, the Respondent No.4 has stated in his affidavit, that he had passed an order, after the director of Respondent No.6 met and impressed upon him that the impugned order which was impugned before him, was passed without opportunity of being heard. Day in and day out the lawyers are appearing before this Court. On account of regular appearances of lawyers, they are also acquainted to the judges. If a judge on the basis of a mis-representation of a lawyer passes an ex-parte order, could it be said that merely because the judge was acquainted with a lawyer, he has passed an illegal order with ulterior motive. At the cost of repetition, we may state that the Petition does not travel much, except bald averments, conjunctures and surmises.

14] We may gainfully refer to the following observations made in ***Kunga Nima Lepcha and others Vs. State of Sikkim***[1]***.*** Similar relief which is sought in the present Petition was also sought in the said Petition against the Chief Minister of the State of Sikkim. It will be relevant to refer to the following observations of Their Lordships :-

> "16. While it is true that in the past, the Supreme Court of India as well as the various High Courts have indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on the part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the

1 (2010) 4 SCC 513

writ court can only pay a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is up to the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation.

17. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for the writ courts to interfere with criminal investigations in the absence of specific standards for the same.

18. Hence it is our conclusion that the petitioners' prayer cannot be granted. This Court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a constitutional court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court may have far-reaching persuasive effect on the court which may ultimately try the accused. It is always open to the petitioners to approach the investigative agencies directly with incriminating materials and it is for the investigative agencies to decide on the further course of action. While we can appreciate the general claim that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It is only on the exhaustion of ordinary remedies that perhaps a proceeding can be brought before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present Petition."

15] We are therefore of the considered view that the present

Petition on the basis of wild allegations of the Petitioner would not be tenable.

16] Mr. Pravin P. Wategaonkar relies on the order passed by a Division Bench of this Court, of which one of us (B. R. Gavai, J) is a party, wherein this Court had distinguished the judgment in the case of *Kunga Nima Lepcha*. However, it is to be noted that in the said case, the serious allegations were made against the Respondent No.11 therein and his relatives of amassing huge wealth at the cost of the public exchequer. We had noticed that the Petitioners therein have made responsible statement on affidavit that that Respondent No.11 and his relatives have amassed huge wealth by misusing his office. Leave aside the allegations of such nature, there is not even a whisper to that effect in the present Petition with regard to the unjust enrichment by the Respondent No.4 or the Respondent No.5. We are therefore of the considered view that the facts in the present case are totally different and the order in the said matter would not be applicable to the facts of the present case.

17] Though in the beginning itself we have stated that we do not wish to doubt the bonafides of the Petitioner, at the same time, we may put a word of caution that the parties in person however intelligent they be, should put restraint on them while advancing arguments. No doubt, this would equally be applicable even to the lawyers. The Petitioner has gone to the effect of making an argument that the Respondent No.5 is a defacto Chief Minister. We find that such an argument not only casts aspersion on Respondent No.5, but is also in the nature of belittling the high constitutional office of the Chief Minister. We do expect that the Petitioner would be more cautious in addressing the Court hereinafter.

18] We may also put a note of caution to the forth estate while reporting the news about the proceedings in the Court. As has been submitted in the present case, that even prior to the filing of the Petition the reports appeared in the newspaper. Similarly even prior to this Court taking cognizance of affidavit in reply filed by the Respondent Nos.4 and 5, the concocted version has already appeared in the newspapers. It would be more appropriate that the forth estate reports as to what are orders or judgments passed by this Court, rather than reporting the news regarding filing of the Petition or the pleadings, inasmuch as they may seriously prejudice the images of the Respondents before this Court, even prior to this Court passing any adverse orders against the said Respondents. With these observations, PIL stands dismissed. However, in the facts and circumstances of the case, no order as to costs.

[SANDEEP K. SHINDE, J] **[B. R. GAVAI, J]**