

Gurbax Singh
2017-10-26 10:23

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP (PIL) No. 6966 of 2015 (O&M)
Date of decision: 05.9.2017**

**Varinder Kataria, son of Shri Chanan Lal Kataria, resident of Ashiana,
College Road, Abohar, District Fazilka.**

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. H.C. Arora, Advocate, for the petitioner
Mr. P.P.S. Thethi, Additional, AG, Punjab
Mr. Sandeep Khunger, Advocate for the respondent No.4.

Ajay Kumar Mittal,J.

1. This petition has been filed by the petitioner namely-Varinder Kataria in the nature of a Public Interest Litigation (PIL) seeking direction to respondent Nos. 1 to 3 to restrain respondent No.4 from giving effect to resolution No.67 dated 12.09.2014 qua the demolition of the existing Community Hall at Fazilka (opposite District Administrative Complex) for paving the way for construction of New Bus-stand at that site, inter alia, on the grounds that the said community hall caters to the needs of poor and common persons for performance of ceremonies like marriages, last rites, seminars, workshop, blood donation camp etc; the Punjab Urban Development Mission has after holding a meeting with President, Municipal Council, Fazlika on 27.03.2015 recommended that the proposed Bus-stand be shifted towards Guru Nanak Sikh Pathshala, so that the functional

community centre is not demolished, the conduct of respondent No.4 in starting demolition work of the community centre in pursuance to resolution, dated 12.09.2014, was being done in a hot haste and the said resolution dated 12.09.2014, was not in public interest. Further prayer is for a direction to the respondents to consider the recommendation, made by the Punjab Urban Development Mission in para 7(d) of its report dated 27.03.2015 that the site of the proposed bus-stand be shifted towards Guru Nanak Sikh Pathshala and respondent No.4 be restrained from carrying on the work of demolishing the building of Community Hall.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner states that he is a public spirited person. He remained a Member of Rajya Sabha. He was also Governor of Pondicherry during the period from 01.07.2013 to 11.07.2014. The petitioner had given a grant of about ₹ 60 lakhs during the year 1997 out of his MPLAD fund for construction of a community hall at Fazlika. The said Community Hall "Ram Place" was constructed and completed by Punjab Water Supply and Sewerage Board, costing around ₹ 60 lakhs. At present, the market price of the land and building of the community hall is around ₹ 5 crores. It serves the needs of poor people, for the purpose of solemnizing marriages as well as last rites at nominal rent. It also serves as a place for conducting seminars, workshops, blood donation camps and other social and religious functions. In the said resolution, it has been stated that the existing bus-stand, which is within the city, is quite narrow and less spacious. The buses experience problem in coming to the bus-stand, which results into traffic jams. Therefore, the Municipal Council, Fazlika resolved to construct the bus-stand at a cost of around ₹ 529.51 lakhs. It has been further stated in the resolution that the proposed bus stand is to be constructed outside the city

of Fazlika, where the existing community hall is located, and the land belongs to Municipal Council, Fazlika. According to the petitioner, the said resolution has not so far been approved by the Director Local Government, Punjab-respondent No. 2. However, in a hot haste manner, the Municipal Council, Fazlika initiated dismantling work of community hall on 03.04.2015. The petitioner asserts that the conduct of respondent No.4 in initiating dismantling work of the community hall is not legal despite being fully aware that the High Power Committee of Punjab Urban Development Mission, vide its report dated 27.03.2015, categorically recommended that the functional community centre be not demolished and instead, the Municipal Council, Fazlika may get one acre land under encroachment of Guru Nanak Sikh Pathshala, reclaimed, and the site of the proposed bus-stand be shifted towards the said school. According to the petitioner, under Section 232 of the Punjab Municipal Act, 1911 (in short, “the Act”), the Deputy Commissioner has the power to suspend any resolution or order of the committee, if it is not in public interest and would cause wastage of Municipal funds or property. In the instant case, the decision of the municipal Council, Fazlika being not in public interest deserves to be suspended by the Deputy Commissioner, Fazlika. Further, under Section 236 of the Act, the State Government is bound to require that the proceedings of the Committee are in conformity with law and the rules under any enactment for the time being. Hence, the instant petition before this Court by the petitioner.

3. A written statement has been filed by Executive Officer, Municipal Council Fazlika-respondent No.4, wherein it has been inter alia stated that the present writ petition is not a Public Interest Litigation because personal interest of the petitioner is involved therein. The foundation stone of the community hall was laid by the petitioner. Since the said community hall

is being demolished for the purpose of constructing New bus-stand, the said foundation stone shall also be removed. The existing bus-stand is situated in thickly populated area which is a source of minor and major accidents every day. Therefore, keeping in view the public road safety a decision was taken to construct a new bus-stand on Fazlika-Abohar road. With regard to averment of the petitioner that the community hall is being used for the poor and common people for the purpose of different ceremonies at nominal charges of ₹ 500/- to ₹ 5000/- per function, it has been stated that up to the year 1999, the Community Hall was being looked after by the Municipal Council, Fazlika and thereafter vide resolution dated 21.09.1999, the said community hall was given on lease for two years. Thereafter, the same was given on lease to different firms, the details of which are given in para '3' of the written statement. As the community hall is in dilapidated condition, therefore, no bid was given by any contractor after 31.10.2014. In these circumstances, a decision was taken to construct a new bus-stand at this place and after the expiry of the extended period of lease, the demolition work was started at the spot.

4. In the short reply by way of affidavit of Director Local Government Punjab-respondent Nos. 1& 2, it has been stated that the decision on the resolution is pending with the Local Government because the petitioner has filed the instant writ petition in this Court. Therefore, the decision on the resolution shall be taken by Local Government after the decision by this Court.

5. In the reply by way of counter affidavit of Deputy Commissioner Fazlika-respondent No.3, it has been inter alia stated that the planning department vide its letter dated 05.02.2013 had approved the construction of six community halls at the cost of ₹ 70 lakhs under the Border

Area Development plan for the year 2012-13. All halls have been constructed, which provide for the facility to hold small function of every community. One such community hall has been constructed at a distance barely 300 meters from Ram Palace building which is named as Guru Ravi Dass Bhawan to cater to the social requirements of poor people. On these premises, prayer for dismissal of the writ petition has been made.

6. We have heard learned counsel for the parties.

7. With regard to maintainability of public interest litigation, rules are there in Punjab and Haryana Rules and Orders, Volume-V Chapter I-A(c). These rules are called “Maintainability of Public Interest Litigation Rules, 2010” (in short, “the 2010 Rules”). In Rule 2 of the Rules, it has been provided that no public interest litigation shall be entertained by the registry unless the petitioner has specifically disclosed his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. Further, Rule 6 of the Rules provides as under:-

“Ordinarily, the PIL may be entertained on any subject of vital public importance, such as:-

- (a) Bonded Labour matter.
- (b) Neglected Children
- (c) Petitions from riot victims
- (d) Petitions complaining of harassment or torture of persons belonging Scheduled Castes, Scheduled Tribes and other Backward Classes by the others or by the police.
- (e) Petitioner pertaining to environmental pollution, disturbance of ecological balance, forest and wild life.
- (f) Petitioners complaining violation of human rights.”

8. Rule 7 of the Rules provides that the registry of the High Court is entitled to verify the antecedents of the persons, societies or associations who invoke jurisdiction of this Court on the cause of public interest. Besides,

where the registry has any doubt on such antecedents, an office note to the said effect is to be made and the registry is not to accept the petitions except the petitions which are received by post.

9. In *Ajaib Singh and another Vs. State of Punjab and others*, 2013(4) PLR 367, a Division Bench of this Court emphasized that the petitioner invoking the PIL jurisdiction of this Court has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression “specifically disclose his credentials”, it was said, must, naturally, imply that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court has passed orders, etc. It cannot imply merely writing a sentence that a person is residing in the State, is public-spirited and is, thus, filing a PIL.

10. We have also perused the 2010 Rules which have laid down the guidelines for entertaining a public interest petition. The nature of grievance set out in the present petition does not fall within the defined clauses of para ‘6’ where a PIL may be ordinarily entertained.

11. In *State of Uttaranchal Vs. Balwant Singh Chauhal and others*, (2010) 3 SCC 402, it was held by the Apex Court as under:-

“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 consideration.
- (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 Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
- (5) The Court should be fully satisfied that substantial public interest is involved before entertaining the petition.
- (6) The Court 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 shall also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
- (8) The Court should also ensure that the petitions filed by busy bodies 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.”

12. The guidelines for entertaining a public interest litigation by the Court have also been discussed by this Court in ***Lawyers’ Initiative through R.S. Bains and another Vs. State of Punjab through its Chief Secretary and others*** 1995(2) RSJ 553, wherein it was recorded that public interest litigation cannot be permitted to be invoked by a person or a body of persons to satisfy his or its personal grudge and enmity. Public Interest Litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to

enforce through fundamental rights on account of their incapacity, poverty or ignorance of law. The following guidelines have been laid down by the Court by allowing litigation to be as public interest litigation if it is found:-

- “(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement;
- (ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;
- (iii) That the person or group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the constitutional law;
- (iv) That the person or group of persons is not a busy body of meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;
- (v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justiciable in public in such litigation;
- (vi) That the litigation initiative in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;
- (vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;
- (viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;
- (ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

- (x) That before taking any action in public interest the Court must be satisfied that its forum was not being mis-used by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.”

13. Admittedly in the present case, the existing community hall opposite District Administrative Complex at Fazlika was constructed at a cost of ₹ 60 lakhs by utilizing the funds donated by the petitioner as a Member of Rajya Sabha from his MPLAD funds. The foundation stone of the Community Hall was laid by the petitioner. Since the said community hall is being demolished for the purpose of construction of new bus-stand, the said foundation stone shall also be removed. Under the circumstances, the writ petition does not satisfy the test and parameters of being Public Interest Litigation but has been filed to preserve individual name only which otherwise defeats larger Public Interest. As per the stand taken by the Municipal Council, Fazlika, Fazlika was created a District Headquarter. The District Administrative Complex has been set up on Fazlika Abohar Road and a new judicial complex is also being set up in the said area. The open area and community hall is in existence opposite the District Administrative Complex and therefore, keeping in view the location, it was decided to construct a modern bus-stand on this land which is owned by Municipal Council, Fazlika. The existing bus-stand is situated in thickly populated area which is a source of minor and major accidents every day. In these circumstances, decision was taken to construct a new bus-stand on this site. Further, the said community hall is being given to different contractors on lease as is evident from the written statement. Moreover, no bid was given by any contractor after 31.10.2014. Even in the short affidavit filed by Deputy

Commissioner Fazlika, it has been categorically stated that the planning department vide its letter dated 05.02.2013 has already approved the construction of six community halls at the cost of ₹ 70 lakhs under the Border Area Development plan for the year 2012-13. The said halls have been constructed and one such hall has been constructed at a distance of barely 300 meters from the existing community hall to cater to the needs of the poor people.

14. In view of the above, the case of the petitioner does not fall in any of the guidelines as laid down by this Court in *Lawyers' Initiative case's* (supra). Further, the case of the petitioner is not even covered by the Public Interest Litigation rules as reproduced above. It has not been even shown by the learned counsel for the petitioner that the Public Interest is being jeopardized as six community centres are already in existence as per stand taken by the respondents. Consequently, the present petition not being a Public Interest Litigation cannot be entertained and the same is hereby dismissed.

15. This order shall also dispose of Civil Miscellaneous Application Nos. 5086 & 5100 of 2015.

(Ajay Kumar Mittal)
Judge

September 5, 2017
'gs'

(Amit Rawal)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes