

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3159 of 2017 (O&M)
Date of Decision: 17.07.2017.

“Peoples Cause”, Non-Government Organization and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.K.S. Bedi, Advocate, petitioner No. 2 - in person and
convener of petitioner No. 1.

Mr. S.S. Pannu, DAG Haryana.

S.S. Saron, J.

Mr. S.S. Pannu, learned Deputy Advocate General, Haryana,
has submitted status report by way of an affidavit of Mr. Vivek Joshi, IAS,
Commissioner, Ambala Division, Ambala. The report is taken on record.

Heard learned counsel for the parties.

The present petition has been filed by the petitioners under
Articles 226/227 of the Constitution of India for directing the respondents to
remove the encroachments from the acquired land measuring 3 kanals 4
marlas (1935 sq. yards), as detailed in the head note of the petition.

According to the petitioners, the said land is in illegal
occupation of various persons, who are creating hindrances in the proper
flow of traffic at Manav Chowk, Ambala as well as on the highway from

Ambala to Hisar.

A further prayer has been made by the petitioners for directing a Court monitored investigation into the illegalities and irregularities in the management of the aforesaid land, as despite the payment of compensation vide award No.13 of 1988 to the land owners after acquisition of the said land by the Haryana Urban Development Authority ('HUDA' - for short), the illegal occupation continues. A still further direction has been sought for recovering the charges from the illegal occupants of the land in question, for the use and occupation of the encroached land.

The petitioner No.2 - Sh. S.K.S. Bedi, Advocate, it is stated, is the convener of 'Peoples Cause', (petitioner No. 1), which it is stated is a Non-Governmental Organization (NGO). Petitioner No.2 submits that he is aware of the topography of Ambala Cantt, Ambala City and the surrounding areas. He has filed the petition in the nature of public interest litigation for the benefit of public of Ambala Sadar and for the removal of the encroachments from the 'excised' (sic.) area, Ambala Cantt., Baldev Nagar Camp, Ambala City, besides, the illegal acts of the Sub-Registrar, Ambala Cantt. and the State of Haryana for not getting the sale deeds registered by Sub-Registrar, Ambala Cantt. Another petition, it is stated, was filed for removal of the encroachments from the Babyal Road, Ambala Cantt. The petitioners, it is stated, have no personal interest in the subject matter of the present writ petition.

It has been noticed that petitions are being filed in this Court by various NGOs claiming themselves to be acting in public interest. It is, however, not mentioned whether the NGO that is filing the petition has been authorized to file such a petition and if so, by whom; besides, who are its members and also whether it has the necessary funds to file such a petition.

Hon'ble the Supreme Court in Bhartiya Homeopathy College v. Students Council of Homeopathy, (1998) 2 SCC 449, considered the case where a petition had been filed by the Students' Council of Homeopathy, Medical College, Jaipur. The Rajasthan University pursuant to an application for affiliation made by the appellant college at Alwar in the said case for B.H.M.S. degree course by its letter dated 23.01.1994 granted provisional affiliation for B.H.M.S. degree course to the appellant college at Alwar for the session 1993-94 in preparation for its first B.H.M.S. examination 1994, second B.H.M.S. examination 1995, third B.H.M.S. examination 1996 and fourth B.H.M.S. examination 1997 subject to the fulfilment of the conditions laid down in that letter. The students of this college who were admitted in the first year B.H.M.S. Course in the year 1993-94, thus, became entitled to appear in the examinations of the Rajasthan University leading to the degree B.H.M.S. Subsequently, on 06.04.1995, the Rajasthan University granted provisional affiliation to the appellant college at Alwar for the academic session 1994-95 in similar terms and by a letter dated 02.04.1996, it again granted provisional affiliation to the said college for the academic session 1995-96 also. This affiliation, however, did not cover the students of the appellant college who had taken admission prior to 1993-94 in the said college and who were required to appear in different years of B.H.M.S. examination in 1993-94 and thereafter. However, in view of the provisional affiliation granted to the appellant colleges by the University of Rajasthan in January 1994, the State of Rajasthan issued an order dated 20.06.1994 directing the Rajasthan Board of Homeopathic Medicine not to conduct B.H.M.S. examinations.

Rajasthan. The Vice-Chancellor of the Rajasthan University keeping in view the unforeseen situation in which the students were placed on account of the Rajasthan Homeopathic Medicine Board not being in a position to conduct the B.H.M.S. degree examination passed an order dated 13.05.1995 which was subject matter of challenge in the said case. The order was to the effect that the examinations of II, III and final year B.H.M.S. students admitted in the Homeopathic College, Bharatpur and Homeopathic College, Alwar be conducted by the University, without granting affiliation for these examinations, as per the existing syllabus of the University prescribed for these examinations in order to avoid hardships to the students and also keeping in view the fact that the Rajasthan Homeopathy Board which was conducting the examinations for these two colleges had then been rendered ineligible for conducting the examinations and awarding degrees. The recommendations of the Board of Inspection and Vice-Chancellor order dated 13.05.1995 were ratified by the Syndicate in its meeting held on 20/21.05.1995.

The Students' Council of the Homeopathic College filed a public interest litigation challenging the order of the Vice-Chancellor permitting the students in II, III and final year B.H.M.S. classes of the appellant colleges to appear at the examinations being conducted by the University of Rajasthan. The petition was dismissed by a learned Single Judge of the Rajasthan High Court holding that the Students' Council of the Jaipur College had no *locus standi* to file a public interest litigation. In appeal, however, a Division Bench of the High Court set aside the order of the Vice-Chancellor and upheld the *locus* of the Students' Council of the

The Supreme Court on the basis of the affidavit filed by the Students' Council disclosing its status and its constitution said that it did not disclose whether the Council was authorized to file the said litigation, and if so, by whom; whether it had the funds to indulge in the said litigation and whether it had the backing of a majority of its members for the said litigation.

Therefore, an NGO filing a petition in the nature of public interest is liable to show (1) its status and its constitution; (2) it is liable to disclose whether it has been authorized to file such a litigation, and if so, by whom; (3) whether it has the funds to indulge in such a litigation and (4) whether it has the backing of a majority of its members for such a litigation.

A Division Bench of this Court in Ajaib Singh and another v. the State of Punjab and others, (2013 - 4) PLR 367, in the context of the Maintainability of Public Interest Litigation Rules, 2010 ('Rules' - for short), framed by this Court, in consequence of the decision of Hon'ble the Supreme Court in State of Uttaranchal v. Balwant Singh Chaufal and others, AIR 2010 SC 2550, said that the other aspect which needed to be emphasized was that the petitioner 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 had passed orders, etc. It could not imply merely writing a sentence that a person is residing in the State, is

public-spirited and was thus, filing a PIL.

The Registry of this Court was directed that it must ensure strict compliance with the said Rules and would return petitions filed as PIL with objection (s) unless the parameters as provided for in the Rules were specified (sic. - satisfied). In fact, it was said that there was a mandate on the Registry as per clause 7 of the said Rules to verify the antecedents of the persons, Societies or Associations who invoke the jurisdiction on the cause of public interest and, if they are not satisfied with the antecedents, to return the petition. These aspects were emphasized because it was found that the Court was inundated with PILs which truly were no PILs in the sense the concept was envisaged. They were either personal angst, someone reading a newspaper and annexing a copy of the newspaper and making it a cause by making general allegations without any research about the subject or person who really had no experience or exposure about the subject matter sought to be raised. These, it was said, were in fact publicity interest litigations rather than PILs and wasting the judicial time.

The present petition which has been filed in the nature of a public interest litigation by the petitioners 'Peoples Cause' and another is, therefore, liable to show its status and its Constitution; whether it has been authorized to file such a litigation, and if so, by whom; whether it has the funds to indulge in such a litigation and whether it has the backing of a majority of its members for such a litigation. Besides, the petitioners are also liable to show what public interest the 'People Cause' has been espousing, the work done by it in that behalf, the particulars of any matter preferred by it as PIL earlier on which the Court had passed orders, etc.

A petitioner, filing a PIL, is also liable to submit that it is not a

case of personal angst and that it had been filed by carrying out a research

about the subject or cause that was being espoused.

The petitioners have merely stated that they have no personal interest in the subject matter of the writ petition. Besides, petitioner No. 2 has sufficient income of more than Rs.1.5 lakh per month and is an income tax assessee and payee. Moreover, due to filing of the public interest litigation for removal of encroachment from the excised area of Ambala Cantt., the residents of the surrounding areas also approached petitioner No.2 for getting the encroachments removed from other areas. A direction, it is stated, had been issued in the case titled 'Ranjan Goyal v. State of Haryana', CWP No.17664 of 2005, decided on 11.12.2008, for removing the encroachments. This was followed by the decision in 'Court on its own motion v. State of Punjab and another', CWP No.4886 of 2003, decided on 04.10.2008, but the HUDA authorities, who were paramount title holders of the land mentioned in the title of the petition were not parties in the said writ petition, i.e. Court on its own motion v. State of Punjab and another CWP No. 4886 of 2003.

The petitioners, therefore, have evidently not specifically shown in the context of the Rules, the judgment of Hon'ble the Supreme Court and of this Court, as afore-referred, that they have the *locus standi* to file such a petition.

Be that as it may, the present petition relates to removal of the encroachments from the Ambala - Hissar highway. A copy of the petition was given to the learned Deputy Advocate General, Haryana, so as to enable him to seek instructions in the matter.

The encroachments relate to land measuring 3 kanals 4 marlas

In the order dated 16.03.2017, it was submitted by the learned Additional Advocate General, Haryana, that a meeting was held under the Chairmanship of Shri Surjit Singh, Administrator, HUDA on 13.9.2011. In the said meeting, it was decided that a joint proposal be prepared by the Estate Officer/Superintending Engineer (k)/Executive Engineer/District Town Planner, Ambala to be submitted to HUDA, Panchkula, for approval.

It was noticed that, according to the meeting, there were 32 shops/commercial establishments of different sites possessed by different persons. The details of the same were collected by taking measurements at the site by the officials of the office of District Town Planner, Ambala; Land Acquisition Officer, Panchkula; Executive Engineer, HUDA Division, Ambala; Estate Officer, HUDA, Ambala and the revenue officials. A sketch plan of the same was got prepared from the architect which gives the details of the properties with the names of owners/occupiers, khasra numbers, plot area and the Ambala Municipal Corporation (AMC) number. The land involved in the writ petition was mentioned as a strip of land 350 feet X 50 feet approximately in a zigzag manner as the width of each property varies. After the site inspection, it is mentioned as follows:-

- "1. The land in question is separated from the acquired boundary of HUDA land by existing road named as Rattangarh road and thus is not connected in any way with the HUDA land.
2. The said land is in the shape of zigzag strip upon Ambala-Hisar road next to Manav Chowk and is thickly constructed by the commercial establishments. Thus, the planning of the above said land is not feasible at all.

Moreover, the possession of the vacant land after making the demolition is not practically possible. Because, the Award of the construction at site has not been made yet. So, the possession of the land along with the constructions cannot be taken from the occupiers from this point of view.

It is, therefore, proposed that the site in question could be offered to the individual occupier (after verification of the record regarding occupation) at the rates fixed by the authorities.

In case the occupier does not give its consent to the rates, then the possession of the particular piece of land could be taken over.

Submissions already made by the Estate Officer, HUDA, Ambala are also enclosed.”

The above report was signed by the District Town Planner, Ambala; Executive Engineer, HUDA Division, Ambala and the Estate Officer, HUDA, Ambala.

A status report by way of affidavit of Shri Vivek Joshi, IAS, Commissioner, Ambala Division, Ambala, has been filed in Court today, which has been taken on record. As regards the free flow of traffic to and from Hisar, which is along the site in question, where the shops are stated to have been constructed, it is stated in para-10 as follows:-

“Free flow of traffic to and from Hisar, which is along the site in question, where the shops are stated to have been constructed.

10. That the Executive Engineer, PWD department vide his letter No.4325-28 dated 13.7.2017 and memo No. Spl. 1 dated 13.7.2017, has submitted that there is no proposal for utilization of land in question with this Division, as there is sufficient land of PWD available for widening of the road. Hence, no further land is required for widening of this stretch. At present there is no other project for utilization of this land. Moreover, the NH-65 (NH 152) has been transferred to NH construction Division, PWD B&R Br., Panchkula vide Government letter order No.4/21/2017-2B&R(E) dated 5.7.2017. Regarding this section of the road further correspondence if needed may please be made with Executive Engineer, Construction Division (National Highway), PWD, B&R Br. Panchkula. It has been further submitted by the Executive Engineer that a new bypass has been constructed to connect the National Highway No. 22 (Ambala Chandigarh) and National Highway No.1 (Delhi-Amritsar) with National Highway No. 65 near village Balana. The traffic coming from Kaithal side will be terminated through this bypass as well as traffic from Chandigarh and Punjab side towards Hissar side will also be passed through this bypass. The intensity of traffic will be lesser in the local stretch i.e. from Kalka Chowk to Manav Chowk. Moreover, there is a proposal of Ring road around Ambala City and Ambala Cantt., due to

which main traffic will also be diverted on the proposed Ring road.

Further the Executive Engineer, PWD B&R, Construction Division (NH) vide his letter dated 13.7.2017 has informed that the work of improvement for NH-65 (New NH-152) Ambala Hisar Road from Km 0.00 to 5.00 in Ambala District (Ambala City portion) by widening and strengthening by providing DBM (Dense Bitumenous Macadam) and BC (Bitumenous Concrete) is approved by MORTH vide letter No. RW/NH/2014/1201/2017/HR/NH-1 dated 31.1.2017. The stretch is recently transferred to this Division from Provincial Division No.1 PWD B&R, Ambala. For the work of Four laning, the available ROW at site is 23.4. Mtr., as per the estimate and the land width is sufficient, no extra land is required for the same as per approved estimate. Moreover, the construction of bypass of NH-65 is also in progress.

In view of the above reports of Executive Engineer, PWD, Provincial Division No1., Ambala and Construction Division (NH), Panchkula, there is no need to utilize the land in question for widening of the road.

Hence, it is submitted that as stated above by the Executive Engineer, PWD Provincial Division No. 1, Ambala and Construction Division (NH), Panchkula the free flow of traffic will not be obstructed in future,

because of the provision of bypass and ring road; and there is no requirement of PWD department to utilize the land in question for widening of the road.”

As regards the ambiguity area under construction, the status report in para 11 states as follows:-

“Ambiguity regarding the area under consideration:

11. That there was an ambiguity before this Hon'ble Court regarding the area of land in question i.e. whether this land is 1 kanal 18 marlas (as reported by LAO on 18.4.2017) or 2 kanals 14 marlas (as reported by LAO on 10.7.2017) or 3 kanals 4 marlas (as claimed by petitioner). The following table will clarify the above ambiguity regarding the land in question:-

Sr. No.	As claimed by the petitioner in CWP No.3159	As reported by LAO on 18.4.2017	As reported by LAO on 10.7.2017	Remarks
1	1//21/1/2 (1K-10M)	2//21/1/2 (1K-0M)	2//21/1/2(1k-0M)	Land claimed by petitioner is 1 K 10 M whereas, as per LAO record, it is 1 Kanal 0 marla.
2	13//5/1 (0K-03M)	13//5/1 (0K-03M)	13//5/1 (0K-03M)	
3	2//21/3 (0K/2M)	2//21/3 (0K/2M)	2//21/3 (0K/2M)	
4	2//32/2 (0K-09M)	2//32/2 (0K-09M)	2//32/2 (0K-09M)	
5	2//25/2 (1K-0M)	2//25/2 (0K-4M)	1//25 Min (1K-0M)	The difference is due to wrong khasra No. i.e. 1//25 instead of 2//25/2, claimed in the petition
	Total : 3 Kanal 4 Marla	Total : 1 Kanal 18 Marla	Total : 2 Kanal 14 Marla	

The above position shows that in respect of land comprised in

Rect. No. 2, Khasra No. 21/1/1, the land actually measures 1 kanal 0 marlas

while the petitioners state that it measures 1 kanal 10 marlas. Besides, wrong khasra number i.e. 1//25 instead of Khasra No. 2//25/2 had been claimed in the petition. The petitioners are liable to calculate the actual area that is involved and claim the relief accordingly.

The status report that has been filed also mentions the reasons why the Deputy Commissioner, Ambala, could not earlier submit the report which we have perused and we accept the same.

A perusal of the above status report shows that there is no proposal with the Executive Engineer, PWD, Department for utilization of the land, which is stated to be encroached upon. The department it is stated has sufficient land for widening the road. Moreover, there is no other project for utilization of the land. Even otherwise, the land has been transferred to NH Construction Division, PWD (B&R) Br. Panchkula vide Government letter order No.4/21/2017-2B&R (E) dated 5.7.2017. It is also mentioned that a ring road is proposed to be constructed around Ambala City and Ambala Cantt, due to which the main traffic would be diverted on the proposed ring road.

Another circumstance that has been submitted is that 34 persons, who according to the petitioners, were in illegal occupation of the land have filed civil suits in the Civil Court at Ambala, against State of Haryana restraining it and HUDA from demolishing/damaging the shops on the acquired land and the learned Civil Judge (Sr. Division), Ambala, vide order dated 9.6.2017, allowed the interim application and granted injunction and restrained the department from demolishing/damaging the shops of the applicants/plaintiffs, detailed in the head note of the plaint, except in due

process of law.

The 34 persons who have filed civil suits, according to the petitioners, are in illegal occupation of the land. However, they are not a party in the present petition. Even otherwise, the question whether the occupants of the land in question are liable to be evicted in due course of law and whether the civil suits are maintainable would require consideration by the Courts in which the civil suits are pending. This Court is not liable to go into the same in exercise of its supervisory writ jurisdiction and in the absence of those who are in illegal occupation of the land, as parties.

It may also be noticed that the petitioners have an alternative and an effective remedy as it is admitted position that the land has been acquired by HUDA and they were to use and occupy the land for which the compensation has been awarded. The Haryana Urban Development Authority Act, 1977 ('the 1977 Act' - for short) deals with "Power to evict persons from premises/land of the Authority or building constructed thereon."

Section 18 (1) (b) of the 1977 Act reads as under:

"18. Power to evict persons from premises/land of Authority or building constructed thereon.-

(1) If the Collector or any Officer authorized by him is satisfied-

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(b) that any person is in unauthorized occupation of any land of the Authority or building constructed thereon - the Collector or any officer authorized by him may, notwithstanding anything contained in any law, for the

time being in force, by notice served by post and if a person avoids service, or is not available for service of notice, or refuses to accept notice, then by affixing a copy of it on the outer door or some other conspicuous part of such premises/land or building or in such other manner as may be prescribed, call upon any person, who has committed a breach of the provisions of this Act or the rules framed thereunder, to vacate the said premises/land or building constructed thereon or demolish unauthorized construction and to appear and show cause why he should not be ordered to restore to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, and if such person fails to show cause to the satisfaction of the Collector or any officer authorized by him within a period of seven days, the Collector or any officer authorized by him shall pass an order requiring him to vacate such premises/land or building constructed thereon or demolish unauthorized construction and restore to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, within a further period of seven days.”

In the circumstances, the petitioners not having a clear *locus standi* and even otherwise, the land not being required for constructing the

alternative remedy of filing applications before the Collector under the 1977 Act for eviction of the alleged unauthorized occupants of the land in question after making them a party so as to enable them to represent their cause, no ground is made out for entertaining the petition by this Court in exercise of its supervisory writ jurisdiction.

Therefore, keeping in view the status report that has been filed and the civil suits that are pending, it would be just and proper at this stage, not to interfere in the matter and leave it for the concerned authority and/or the Court to deal with the issues of encroachments in accordance with law and the provisions of the 1977 Act, as the case may be. The petitioners may, if so advised, approach the competent authority by filing necessary application under Section 18 of the 1977 Act. However, no interference by this Court, in the writ petition that has been filed is warranted and the petition is disposed of accordingly.

(S.S. SARON)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17.07.2017
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Note:-	1. Whether speaking/reasoned	Yes
	2. Whether Reportable:	Yes