

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.9754 of 2016
Date of Decision: December 20, 2017

Bachan Lal

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Baldev Singh, Advocate,
for the petitioner.

Mr.Sandeep Moudgil, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J.

1. The petitioner, claiming himself to be a public spirited person aged 76 years and having retired from Indian Navy, has filed the present writ petition claiming the following relief:-

“Civil Writ Petition under Article 226/227 of the Constitution of India, 1950 praying for issuance of a writ in the nature of certiorari/Mandamus and praying for direction to the respondents to put complete ban, indefinitely, on the mining operations in Village Sangrani, District Ambala as area of Village Sangrani as mentioned in Annexure P-12.

Or/and

praying for issuance of a writ in the nature of mandamus directing the respondents to stop the mining operation going by day and night and causing danger to the residents of Village Sangrani and violation of provisions of the Punjab land Preservation Act, 1900 and Environmental (Protection)

Act, 1986 and article 21, 48, 51 (A) (G) of Constitution of India, percolating into violation on the fundamental and constitutional rights of the general public of the area and of the petitioners.

Or/And

to close the illegal screening plants running in the vicinity of village Sangrani causing danger to the health of the villagers.

And

it also prayed to direct the respondents no.1 and 3 to take appropriate action against the persons who are doing illegal mining, and also to take action as per the allegation made by the petitioner and other villagers in their representations Annexure P 13 and P 14 in the interest of justice.

And/Or

any other relief, which this Hon'ble Court may deem appropriate under the peculiar facts and circumstances of the present case, may also be granted in favour of the petitioner.”

2. Mr.Baldev Singh, learned counsel appearing on behalf of the petitioner submitted that the present petition pertains to the ecology, economy and the well-being of the residents of Village Sangrani, Ambala and region, which is going to be severely effected on account of the non-implementation/non-enforcement of the provisions of the Punjab Land Preservation Act, 1900 (for short “PLPA”) and other related laws. Village Sangrani is situated at the bank of `Roon' River and adjoining thereto is the Shamlat land measuring 1500/1600 kanals of the village, which has been notified as “Forest Land” under Section 4 of the PLPA. In this land, there are number of khair trees having width of 1½ ft. Due to the mining in the river as well as in the forest land, the villagers are facing problems to approach their agricultural land.

3. It was next argued that the Lower Shivalik Hills falling in the

Districts of Panchkula, Ambala and Yamuna Nagar are mainly drained by number of perennial streams. River System exhibits dendrite to sub-dendrite pattern and at some place sub-parallel and radial also. The Gram Panchayat of Village Sangrani by passing resolution dated 18.8.2010 had taken a decision that the mining operations in Village Sangrani and adjacent river be prohibited owing to the danger to the inhabitants. There is no passage to approach the agricultural land, which is situated across the river and due to this reason, the land had become barren. The resolution submitted to the BDPO, Naraingarh was forwarded to the Mining Officer-respondent No.6 on 31.8.2011. Many representations against the illegal mining and illegal screening plants have been submitted, but no action had been taken thereon.

4. Learned counsel for the petitioner further contended that the Gram Panchayat and others of Village Sangrani wrote a letter to the Deputy Commissioner, Ambala stating that the respectables of the Village met him on 18.3.2011 and 27.5.2011, but their request was not acceded to. It was forwarded to the City Magistrate for necessary action, but yielded no result. Left with no remedy, villagers sent a letter dated 27.7.2013 (Annexure P-5) to the Minister of Finance and Irrigation, Haryana. The correspondence between the Executive Engineer, Water Services Division, Ambala and the Deputy Commissioner, Ambala continued, but nothing was done and after having lost hope of any action on their part, the petitioner has approached this Court for vindication of the grievance. The information sought under the Right to Information Act clearly indicated that illegal mining had not been permitted. Vide letter dated 17.12.2015 (Annexure P-12), the Range Forest Officer, Forest Department, Naraingarh wrote a letter to the Sub

Divisional Officer, Naraingarh stating that the mining operation had started from 19.12.2015 near jungle in the Markanda and Roon Rivers, but M/s Ethia Properties Pvt.Ltd. after demarcation had not taken this operation. The mining operation in the area is going on, day and night in connivance with local administration, police and elected representative, prayer was made to this Court for granting the relief, *ibid*.

5. In response to the notice of motion, written statement by Sandeep Kumar, Executive Engineer, Water Services Division Ambala on behalf of respondent Nos.2, 11 and 12 has been filed. Reliance has been placed upon resolution dated 9.8.2016 passed by the Gram Panchayat, Sangrani to the effect that the mining at the land in question had been approved by the Government through open auction in favour of M/s Antheia Properties Pvt.Ltd., Naraingarh and the villagers had no objection in mining as there was no danger of floods due to the said mining. River Roon has changed its direction of flow of water and the place of mining is at sufficient distance from Village Sangrani. On merits, it was stated that it is not a public interest litigation, but on account of personal interest, for, the land in question had been used by the sons of the petitioner for mining purposes, who had been creating unnecessary hindrance in the mining work assigned by the Government to settle his personal score. Reference had been made to the lease deed (Annexure R-1) executed by Madan Lal and Om Parkash Kumar sons of Bachan Lal as well as receipt dated 24.9.2008 testifying that a sum of ₹2,10,000/- was taken for the mining purpose by giving the land to Balbir Singh and Baljit Singh.

6. Even the written statement filed by respondent No.7 on behalf of respondent Nos.3, 7 and 8 revealed that a joint inspection was conducted

on 16.3.2016 by Mr.A.K.Chauhan (Mining Inspector), Joginder Singh R.F.O. Naraingarh, Sunil, Junior Engineer, PWD (B&R), Naraingarh, Manoj Walia APRO, Naraingarh in Villages Toka, Sangrani, Dera, Hamidpur, Miyanpur, Rao Majra, Shahpur, Taprian who found at the spot that around 34 screening plants were in operational condition and were within the prohibited limit of 200 meters from the forest. Reference has also been made to Annexure R-II notification, whereby around 14 screening plants were seized and prayed for dismissal of the writ petition.

7. We have heard the learned counsel for the parties and appraised the paper book.

8. In order to appreciate the contentions of the learned counsel for the parties, it would be apt to reproduce the lease deed (Annexure R-1) and the receipt executed by the children of the petitioner giving their land measuring 16 kanals situated in Village Sangrani for mining purposes to Balbir Singh and Baljit Singh against total amount of ₹2,10,000:-

“Annexure R-1

We, Madan Lal, Om Parkash Kumar son of Sh.Bachan Lal son of Sh.Santa Ram, are residents of village Sangrani, Tehsil Naraingarh, District Ambala. That, today, we in our full senses and sound disposing mind and consent, have given our land measuring 16 kanals situated in the area of village Sangrani, Hadbast No.85, Tehsil Naraingarh, District Ambala, Khewat no.145 Min Khatoni no.217, Khasra no.12//23 (8-0), 24 (8-0), Kitte 2 measuring 16 kanals kind Gair Marusi Choe, according to Jamabandi for the year 2002-03, on Chakota/Lease at the rate of Rs.1,05,000/- (Rs.One lac five thousand only) per acre for the period from dated 24.9.2008 to 15.6.2009 to Mr.Balbir Singh, Baljit Singh sons of Puran Singh, resident of Miyanpur, Tehsil Naraingarh, District Ambala for lifting the sand, Bajri and Gatka from the

abovesaid land. We have also received the total amount of Rs.2,10,000/- (Two lacs ten thousand only) in cash for the abovesaid period from Lessees Balbir Singh and Baljit Singh. There is no lease amount for the abovesaid period is due towards vendee. Now if the lessee will lift the sand, Bajri and Gatka from the abovesaid land for the abovesaid period till 15.6.2009, then we have no objection for the same in any manner nor shall we raise any objection till the abovesaid period. The abovesaid lesser shall neither have any concern or relation with the abovesaid land till abovesaid period nor it shall be in future nor any other person has any concern or relation with the abovesaid land. Now the executant/less in agreement are absolute owners in possession of the land. Hence, this agreement for lifting the sand, Bajri and Gatka from the land has been executed so as to be treated as testimony and serve the purpose in need.

Sd/-Madan Lal

Sd/- Om Parkash

Sd/- Raj Kumar, Executant, owner of land/Lessor

Witness:-

Sd/-Sh.Fakiria Ram son of Paras Ram, resident of Hamidpur, Tehsil Naraingarh.

Lessor Balbir Singh Baljit Singh

Witness:- Sh.

Receipt

After receiving an amount of Rs.2,10,000/- (Rs.Two lacs ten thousands only) from Sh.Baljit Singh, Balbir Singh son of Puran Singh in respect of lease of land measuring 16 kanals for the period of 24.9.2008 to 15.6.2009, the receipt has been executed so as to be treated as testimony and serve the purpose in need.

Dated: 24.9.2008.

Sd/- Madan Lal

Sd/- Om Parkash

Sd/-Raj Kumar, Executant, owner of land/Lessor

Witness:- ”

9. Paragraph 21 of the written statement filed by respondent No.7 on behalf of respondent Nos.3, 7 and 8 which is also relevant reads thus:-

“21. That in reply to the contents of Para no.21 it is submitted that a joint inspection was conducted on 16-03-2016 around 11:30 AM by Shri A.K.Chauhan Mining Inspector Ambala, Shri Joginder Singh, R.F.O. Naraingarh, Shri Sunil, Junior Engineer, PWD (B&R), Naraingarh, Shri Manoj Walia, APRO, Naraingarh in villages Toka, Sangrani, Dera, Hamidpur, Miyanpur, Rao Majra, Shahpur, Taprian. Around 34 screening plants are in operational condition and following plants are found in working condition on the spot and are within the prohibited limit of 200 meters from Forest. It is pertinent to mention here that as per the notification S.O.5/C.A.29/1986/S.7/2016 screening plant will work/operate exceeds 200 mtr so for from the Forest land in village Sangrani to screening plant was working within 200 mtr so for from the Forest land and no.14 of screening plants were seized on this report Annexure R-II.”

10. These averments had not been controverted by the petitioner in any manner. He has also not denied the fact that the land had been given by his sons for mining purposes. Once the inspection was conducted by the officers, as indicated above, who had found that all the mining premises are within the parameters of the PLPA and other statutory provisions of law without any violation, in our opinion, the present petition would not fall within the domain of Maintainability of Public Interest Litigation Rules, 2010 framed in view of the judgment of the Apex Court, which read as under:-

“1.(i) These Rules shall be called as MAINTAINBILITY OF PUBLIC INTEREST LITIGATION RULES, 2010.

(ii) These Rules shall come into force with effect from the date of approval by the Full Court.

2. No Public Interest Litigation shall be entertained by the Registry unless the petitioner(s) 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.

3. Every Public Interest Litigation shall be separately numbered and categorized.

4. All the Public Interest Litigations shall be listed before a Division Bench by the orders of the Chief Justice of the High Court.

5. The Bench, wherever it appears so desirable, may ask the petitioner to deposit an appropriate amount with the Registry to be paid as compensation/costs to the person/institution who may be forced to contest the litigation, which is ultimately found to be vexatious, frivolous or mala fide.

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

(a) Bonded Labour matters.

(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.

7. The Registry shall be entitled to verify the antecedents of a person, society or an association who invokes the jurisdiction of the High Court on the cause of public interest. Where the Registry has any doubt on such antecedents, an office note to this effect shall be put up, except on the petitions which are received by post.

8. The Public Interest Petitions received through post shall not be entertained except in the following cases:-

(i) Petitions sent by prisoners and detenues;

(ii) Petitions complaining violation of human rights;
(iii) Petitions seeking a writ in the nature of habeas corpus;
(iv) Petitions with a cause of such nature that it may require suo-motu proceedings by this Court in ‘Public interest’;
(v) Petitions by financially or physically disabled persons, minors and/or oppressed sections of Society. The petitions falling in this category may be sent to the Member Secretary of the State Legal Services Authority concerned, who, on satisfaction regarding genuineness of the petitioner, may provide adequate legal aid including a counsel to the victim.

9. All the suo-motu petitions initiated by the High Court shall be put up before the Chief Justice for enlisting the same before an appropriate Bench as per roster within three days.”

11. As an upshot of our findings, the irresistible conclusion on the basis of the pleadings and the documents brought on record, it cannot be said that any illegal mining is being carried out as alleged. The petition is based on apprehensions without any supporting material, so as to bring it within the realm of “judicial review” as Public Interest Litigation in exercise of writ jurisdiction. Resultantly, the same stands dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

December 20, 2017
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No