

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
(MANDAMUS APPEAL)**

Present :-

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

M.A.T. No. 66 of 2021

Chandmoni Uttorayan Welfare Society

Vs.

The State of West Bengal & Ors.

For the Appellant/Petitioner:

Mr. Jayjit Chaudhury, Adv.
Mr. Milindo Paul, Adv.
Mr. Nabankur Paul, Adv.
Ms. Bedashruti Bose, Adv.
Mr. Ajay Singhal, Adv.

For the Respondent Nos. 4 & 5 (SJDA):

Mr. Raja Saha, Adv.
Mr. Sanjay Mukherjee, Adv.
Ms. Madhushri Datta, Adv.

For the Respondent No. 7:

Mr. Rantnanko Banerjee, Sr. Adv.
Mr. Deepan Sarkar, Adv.
Ms. Ananya Sinha, Adv.
Mr. Ayush Jain, Adv.
Mr. Deborshi Dhar, Adv.

For the Respondent Nos. 8 to 10 & 18 :

Ms. Sulagna Chowdhury, Adv.
Mr. Ajoy Kumar Singhanian, Adv.
Mr. Shivam Bhimsaria, Adv.

For the Respondent Nos. 11 to 17:

Mr. Surya Prasad Chatterjee, Adv.
Mr. Subham Ghosh, Adv.
Mr. Arjun Samanta, Adv.

For the State

:

Mr. Subir Kumar Saha, Ld. A.G.P.
Mr. Bikramaditya Ghosh, Adv.

Judgment on

:

11.03.2022.

Harish Tandon, J.:

The writ petition filed by the appellant was dismissed solely on the ground of the locus without adverting to the merit of the case. The said order dated 24.09.2021 passed in WPA 988 of 2019 is challenged in the instant mandamus appeal.

Although the appearing counsels intended to make submissions on merit of the writ petitions but in view of the nature of the order impugned in the instant appeal the said argument is restricted to a locus standi of the appellant to maintain the writ petition for the reliefs claimed therein.

The Single Bench relied upon the aim and object of the appellant society and various clauses contained in the agreement subsequently executed with the respondent no.7 and held that the said society was constituted by the owners of several plots of land comprised in Uttorayan Township for the maintenance and upkeeping of the facilities in the society and not for any other purposes.

Only for the purpose of deciding the issue relating to the locus standi of the appellant to maintain a writ petition the salient facts are adumbrated hereinafter.

The appellant is a registered society of several plot owners who have acquired the respective plots by way of an assignment. A prelude to the establishment of the township is traced on a deed of lease dated 21.11.2003 executed by the Government of West Bengal in favour of the respondent no. 7 for the purpose of establishing of modern satellite township namely, Uttorayan Township. The entire plots comprised in the said township were within the development area of Siliguri Jalpaiguri Development Authority, the respondent

no.4. After obtaining the lease, the said respondent no.7 applied for necessary approval of the project from the said Siliguri Jalpaiguri development Authority under the West Bengal Town and Country (Planning & Development) Act, 1979 and prepared a project/master plan for establishment/development of the said satellite township indicating the open spaces, space for shopping centers, parks and other amenities. The said master plan was approved by the respondent no.4 i.e. Siliguri Jalpaiguri Development Authority. The establishment of the township came up in the year 2004 and the respondent no.7 assigned the lease-hold right in favour of several plot holders of the respective plots earmarked in the master plan. The dispute pertains to the conversion of the spaces on the side of the central park which were originally earmarked for establishment of the shopping centers, but which is sought to be converted into other purposes by the respondent no.7. It further appears from the pleading of the writ petition that the respondent no.7 applied for amendment of the master plan, more particularly, to change the purpose for which two adjacent plots of the central park from the shopping center to commercial. It is pertinent to record that an agreement was entered into between the society i.e. the appellant and the respondent no.7 on 20th June, 2017 pertaining to the various aspects of the said township and some of the clauses contained therein are relied upon by the respective parties on the issue of locus standi.

The petitioner, in the above backdrop, prayed for an issuance of a writ of mandamus to cancel or quash the modified site plan and cancel the permission letter issued in favour of the respondent no.7 and also the sub-leases created by the respondent no.7 in favour of the respondent no. 8 to 18.

The Single Bench noticed some of the clauses of aims and objects of this society and the terms of an agreement and held that the appellant lacks locus standi to challenge the action of the respondent no.7 in getting the master plan modified. It was further held that the said agreement was restricted to the maintenance of the amenities and the facilities of the respective plot holders and therefore, the appellant cannot maintain writ petition with the above reliefs.

It is beyond cavil of doubt that the said agreement dated 20th June, 2017 between the respondent no.7 and the appellant is primarily restricted to the maintenance of the township and the services to be rendered in this regard. Clause 4.1 of the said agreement as quoted in the impugned order manifests such intension. However, Clause 4.4 of the said agreement provides ***“It shall be the obligation and responsibility of the Second Party/society to ensure that all plot owners and/or occupiers as well as the gated community members and the commercials are able to enjoy the benefits of the township as would be available to any owners for common facilities as would be applicable to them as per terms of their general terms and conditions and upon payment of such reasonable maintenance charges from time to time. Reference would be made to the existing payment arrangements. The fees should be based on equitable basis so that they are made to defray all applicable costs of the maintenance services to be provided by such users”***. Even the said Clause as relied upon by the appellant does not throw light that apart from the maintenance the other rights have been created. The said Clause is restricted to the maintenance of the common facilities in terms of the general terms and

conditions and the payment of the reasonable maintenance charges from the respective plot owners. Clause 5.11 is also relied upon by the appellant in support of his contention is that all the assets in the common area less the land that included but is not limited to public spaces, roads, common green areas, cluster parks, utility area, common drains, pumping rooms, sewerage treatment Plant shall be the property of the township. Any deviation from the existing norms and usage will require requisite approval from the respondent no.7 and the appellant. Referring the said clause it is contended that any modification in the master plan which changes the very purpose of the land so earmarked in the original approved master plan tantamount to deviation from the existing norms for usage. It is, thus, contended that the said clause makes it imperative to seek the approval from the appellant and admittedly the same has not been done and as such the appellant society can maintain a writ petition. Clause 7 of the said agreement pertains to the right reserved by the respondent no.7 wherein it is indicated that apart from the maintenance area the other parts in the portion of the township shall be treated as an excluded area and therefore, it would not form the integral part of the said agreement.

The respondent no.7 relied upon the third schedule appended to the said agreement defining the excluded area and it is contended that the spaces adjacent to the central park is within the ambit of such excluded area and therefore, the appellant cannot lay any claim over the same.

There is no ambiguity in our mind that the said agreement is restricted to maintenance of the amenities and facilities in the township and the area which has been shown in third Schedule is outside the four corners thereof.

The emphasis is much put on the several clauses of the maintenance agreement but the question which in our opinion emerged in the instant case is whether the society can maintain a writ petition challenging the action of the respondent no.7 in getting the original master plan modified without adhering to the applicable norms. The concept of locus standi is one of the important factors in a judicial proceeding evolved through judicial decision as a changing concept and the court does not encourage the litigation initiated by a meddlesome interloper or a busy body or a warfarer or a social entrepreneur without any interest or concern. The question of locus may be projected affront and the doors of the court will not be ajar for litigant. The writ petition is maintainable for enforcement of any legal right or infringement thereof or violation of the statutory provisions and in such cases it is held that the person has a locus to maintain proceeding.

The current processual jurisprudence is not of individualistic Anglo Indian mould but is broad based and people oriented. The concept of locus standi is a changing concept and by passage of time is liberalized to meet the challenges of the time. However, there has been certain restriction imposed upon a person approaching the Court under a concept of locus standi if he is busy body or an interloper.

Such being the broad concept of the locus standi, we have to consider whether the judgment of the Single Bench needs interference having rejected solely on the ground of locus standi. The agreement for maintenance can be segregated with the aims and object for which the association was formed and registered under the Societies Registration Act. The aims and object leave no ambiguity that protecting the interest of the members of the association is one

of the foremost duties of the society apart from the other obligations reserved therein. The appellant is challenging the modified master plan being violative of the statutory provisions which cannot be conferred with the agreement of maintenance which operates in a separate field. Even if, certain areas have been shown as excluded area in the said agreement it does not take away the right of the individual plot holders to challenge any action of the respondent no. 6 being violative of the statutory provisions. The collective interest of the members of the association can be ventilated through the appellant which we do not find any grounds to thrash at the threshold. We, thus, find that the nature of the dispute raised in the writ petition cannot be construed as a dispute pertaining to an agreement but based upon the violation of the statutory provisions and, therefore, there is no impediment on the part of the appellant to maintain the writ petition.

The order impugned is, thus, set aside.

Since the writ petition was dismissed solely on the ground of locus standi and not on the merits and we, thus, remit the matter to the Single Bench to decide the writ petition on merit.

The appeal is disposed of.

No order as to costs.

Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Harish Tandon, J.)

I agree,

(Rabindranath Samanta, J.)