

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th MAY, 2023

IN THE MATTER OF:

+ **W.P.(C) 5617/2023 & CM APPL. 22013/2023**

JUSTICE FOR ALL

..... Petitioner

Through: Mr. Khagesh B Jha, Ms. Shikha
Sharma Bagga, Advocates

versus

LAXMI EDUCATIONAL SOCIETY AND ORS Respondents

Through: Mr. Pramod Gupta, Ms. Pranjal,
Advocates for R-1 to R-3
Mr. Sanjay Katyal, Standing Counsel
for DDA with Mr. Nihal Singh,
Advocate
Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Ms. Manisha,
Advocates for R-3 & R-4
Mr. Santosh Kumar Rout, Standing
Counsel for PNB/R-5
Mr. Santosh Kumar Tripathi,
Standing Counsel for GNCTD with
Mr. Arun Panwar, Ms. Mahak
Rankawat, Mr. Pradyumn Rao, Ms.
Aakriti Mishra, Mr. Kartik Sharma,
Advocates for R-6 to R-8
Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan Siddhant, Mr. Rohit
Kumar, Advocates for R-10

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Writ Petition has been filed as a Public Interest Litigation highlighting the alleged misuse of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) to mortgage public land allotted to charitable societies under the Government Grants Act, 1895(**GG Act**) read with rules thereunder. The prayer made by the Petitioner is reproduced as under:-

“(a) To declare the SARFESI Act not applicable for the land allotted to the charitable institutions under Government Grant Act, 1882 by virtue of Section 2 and 3 of the Act and direct the Respondent Reserve Bank of India to restrain the Financial Institutions from creating any security interest and its enforcement against the land allotted to Charitable Institutions for running the school under provisions of Delhi Development Act, 1957 read with Nazul Land Rules 1981.

Alternatively in the Case SARFESI ACT has any applicability to the land allotted to the schools pass an appropriate writ order or direction to the respondent Reserve Bank of India to frame the appropriate regulation and mechanism to ensure the protection of students already studying in the school from any disturbance in their education during the recovery process and transfer/sale of mortgaged school land/ school infrastructure to any other organization.

(b) To direct the respondents to ascertain the financial stability of the societies seeking public land for charitable/Institutional purpose (aided/unaided) by misrepresenting them to be financially sound and then risking the valuable fundamental right guaranteed to the Children under Articles 19(1)(a), 21 and 21A of Constitution of India by creating the security interest in

favor of bank and financial institutions under the stringent provisions of SARFESI ACT, 2002 which may result in discontinuance of the education of thousands of Children who has been guaranteed to continue and complete his elementary Education as a fundamental right and additionally protected under various provisions of Right of Children to free and Compulsory Education Act, 2009 and Juvenile Justice Care and Protection Act.

(c) to direct the respondent Reserve bank of India to ensure the Strict Compliance of Rule 20 of Nazul Land Rules and ensure the strict protection of Right Guaranteed to the Children under Article 21A of constitution of India in the case any financial institution enforces the Provisions of SARFASI Act, 2002 against any of the School Property including land and playground.

(d) to direct respondent Economic Offence wing to initiate investigation, for the misappropriation/syphoning of public fund by the respondent society, with the collusion of officers of respondent DDA/DOE/Bank, and to recover the amount from the members of society.

(e) To direct the respondent Reserve Bank of India, to frame policy for reconstruction of Social Infrastructure in general and School land in Particular without any change in the nature of infrastructure from charitable to the commercial until then restrict the mortgage of lease hold Nazul land, where the institution has been running.

(f) To pass any other or further orders this Hon'ble court deems fit based on above-mentioned facts and circumstances of the case."

2. The facts in brief, leading to the filing of the present writ petition are that the Petitioner that had come across a report dated 17.04.2023 published in the Times of India titled “Bank takes over school property for loan default” wherein it was stated that the Punjab National Bank (**Respondent No. 5**) had taken over the property of the Respondent No. 3, i.e., Laxmi Public School (which has been established and managed by Respondent Nos. 1 & 2) on account of default on repayment of a loan. The Petitioner, being concerned about the plight of the students, teachers and staff of the school has filed the present writ petition. He has stated that the use of provisions of SARFAESI Act against schools has become a device used by private institutions to convert the social infrastructure created for education for commercial purposes and this comes in the way of children’s fundamental right to education.

3. Mr. Khagesh B Jha, learned Counsel for the Petitioner, submits that public land is allotted to private unaided schools under the provisions of the GG Act and the GG Act provides that the provisions of the Transfer of Property Act, 1882 (**TP Act**) do not apply to government grants. It is his submission that by virtue of Section 2 of the GG Act, the provisions of the SARFAESI Act pertaining to mortgage of property for reconstruction of assets would be inapplicable on such land which has been allotted under the GG Act. He states that the public land where the Respondent No. 3 school is situated is neither a residential plot nor a commercial one and the function of the school is not one in the nature of a business and the taking over of the property is governed by Section 24 of the Delhi School Education Act, 1973 (**DSE Act**). He submits that Section 3 of the GG Act is wide in its scope and

therefore the tenor of the grant will have an overriding effect on the provisions of the SARFAESI Act and TP Act.

4. Mr. Jha submits that the Central Government has framed Rules for the utilization, disposal, control and supervision of Nazul land under the Delhi Development Act, 1957 (**DDA Act**). He states that under Rule 20(d) of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (**DDA Nazul Rules**), Nazul land for a public institution is only to be allotted to those who have sufficient funds to meet the cost of land and for the construction of building. He states that the provision also provides that the land allotted for running an aided institution shall be allotted to charitable societies/trust which is to bear 5% expense of the salary of the staff. He has alleged that many individuals, institutions and societies, in connivance with officials of DDA are exploiting this Rule to obtain government land and then use the same to get loans from financial institutions and then mortgage the public land. He states that the Delhi Development Authority (**DDA**) is only a custodian of Nazul land and not the owner, and the DDA cannot issue an NOC for mortgage of such land to financial institutions.

5. Mr. Jha, has referred to an order dated 18.05.2022 of this court passed in W.P. (C) 468/2022 titled Justice for All through Secretary Shikha Sharma Bagga v. Reserve Bank of India & Ors., wherein a similar situation had arisen that the land allotted to the Society-therein for the establishment of a school had been mortgaged under the SARFAESI Act on default of a loan by the Society-therein. He states that in the said case, the Government of NCT of Delhi had decided to take over the school and had undertaken to make lumpsum payment of dues owed by the Society-therein.

6. It is submitted by Mr. Jha that the issue of allotment of land to societies/trusts by land owning agencies without verification of fact whether the society or trust have sufficient funds or have some regular source of income is a serious in nature.

7. Heard the counsels appearing for the parties and perused the material on record.

8. It is the case of the Petitioners that the action of banks to mortgage the property of Respondent No. 3 School under the SARFAESI Act is unlawful as the said land, being public land has been allotted under the GG Act and therefore the provisions of the TP Act or the SARFAESI Act would not be applicable to the said land. Section 2 and 3 of the GG Act are reproduced as under:

“2. Transfer of Property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property Act, 1882 (4 of 1882), contained shall apply or be deemed ever to have applied to any grants or other transfer of land or of any interest therein heretofore made or hereafter to be made [by or on behalf of the [Government] to, or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding”

9. He has further stated that under Rule 20(d) of the DDA Nazul Rules, Nazul land for a public institution is only to be allotted to those who have sufficient funds to meet the cost of land and for the construction of building. He has alleged that many individuals, institutions and societies, in connivance with officials of DDA are exploiting this Rule to obtain government land and then use the same to get loans from financial institutions and then mortgage the public land. Rule 20(d) of the DDA Nazul Rules reads as under:-

“20. (d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use;”

10. At the outset, it is pertinent to note that during the course of the hearing, it has been brought to our attention that the Respondent No. 1 Society, which manages Respondent No. 3 School has approached this Court by way of writ petition bearing WP(C) No. 4907/2023. The Ld. Single Judge, by way of an order dated 19.04.2023, noting that the students of the Respondent No. 3 School are on the streets due to the school being sealed off, directed the Respondent No. 5 Bank to remove the lock which had been put on the school. Therefore, the issue pertaining to the effect of the Bank's action under SARFAESI Act upon the right of education of the school children is already pending before this Court. It would thus be inappropriate for this Court to take cognizance of this issue in a PIL when another bench of this Court is already seized of the matter.

11. It is well settled that the borrower, which in the present case is the Respondent No. 1 Society, has an efficacious and effective remedy under the SARFAESI Act to approach the Debt Recovery Tribunal (**DRT**) and can

challenge the validity of the actions of the Bank under the SARFAESI Act before the DRT [Refer to: Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311 and United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110]. The question of whether the action taken by the Bank against the Respondent No. 1 and Respondent No. 3 School under the SARFAESI Act is contrary to the aforesaid provisions of the GG Act and the TP Act is an issue that can be raised by the Respondent No. 1 before the DRT. It is not an issue that ought to be raised by a third party by way of a PIL and certainly not an issue that ought to be decided by this Court in exercise of its powers under Section 226 of the Constitution of India.

12. The order dated 18.05.2022 passed by this Court in WP(C) 468/2022 does not aid the case of the Petitioner as in that case the Government of NCT of Delhi had taken over the school to ensure the running of the school is not hampered. In the present case no such action has been taken although this Court in WP(C) No. 4907/2023 has directed the Bank to remove the lock put on the school to ensure the children do not suffer.

13. The Petitioner has also made allegations that individuals, institutions and societies are exploiting the DDA Nazul Rules to obtain public land and then use the said land to obtain large amount of loans from public institutions and upon failure to repay the said loans, they mortgage the said public land. In the opinion of this Court, these are bald allegations as the Petitioner has failed to establish the veracity of these allegations through documents or his averments. It would thus not be apposite for this Court to look into this issue in exercise of its writ jurisdiction.

14. At this juncture, we deem it appropriate to reproduce the following extracts from the decision of the Hon'ble Supreme Court in Janata Dal v.

H.S. Chowdhary, (1992) 4 SCC 305 pertaining to the law concerning the issue of locus in a public interest litigation:-

“64. In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like actiopopularis of Roman Law whereby any citizen could bring such an action in respect of a public delict.

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98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

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110. It is depressing to note that on account of such trumped up proceedings initiated before the courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. — are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they

lose faith in the administration of our judicial system.”

15. In the present case, the concerned society and school have already approached this Court to ensure that the school is not shut off for the students to ensure that the fundamental right of children is not affected. Further, the issues pertaining to the non-applicability of the SARFAESI Act to land granted under the GG Act is an issue which can be addressed by the concerned society. Considering the society has appropriate legal remedies available to it and has exercised its right to avail such remedies, it would not be appropriate for this court to entertain a public interest litigation, preferred by a third party.

16. The Petitioner, knowing fully well that the Respondent No. 1 society, has approached this Court and has other appropriate remedies available before it, has chosen to come before this Court on the basis of a news report published in the Times of India. The Petitioner has taken this report and attempted to paint a picture wherein the Banks are abusing the provisions of the SARFAESI Act and that the officials of the DDA are allotting Nazul land contrary to the provisions of the DDA Nazul Rules. The Petitioner has attempted to show that this is a systemic issue and not a single instance but has failed to establish the same through the documents presented before us. While this Court is cognizant of the liberal rules pertaining to locus vis-à-vis public interest litigation, it must also ensure that busybodies, meddlesome interlopers, wayfarers or officious interveners having oblique interests are not allowed to waste precious judicial time of this court. In the opinion of this Court, the present public interest litigation is motivated through extraneous and oblique interests and is frivolous in nature. The present case

is not a fit case for this Court to exercise its extraordinary jurisdiction under Article 226 and the prayers sought for by the Petitioner cannot be granted by this Court.

17. With these observations, the petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

MAY 18, 2023

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