

HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU.

WPIL No. 13/2006
CMP No. 47/2006

Date of Decision: **30.10.2007**

People's Welfare Society J&K

Vs.

State of J&K and Ors.

Coram:

Mr. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Petitioner :None.

Court Counsel : Mr. Z. A Qureshi, Advocate.

For Respondents : Mr. M.A.Beigh, Dy.A.G,
Mr. B.A.Khan, Advocate and
Mr. Z. A. Shah, Sr. Advocate
with Mr. Vipin Gandotra,
Advocate.

i)	Whether to be reported In Press/Journal/Media:	Yes
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ii)	Whether to be reported In Digest/Journal :	Yes
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1. People's Welfare Society Jammu and Kashmir – the petitioner, had approached this Court with a writ petition seeking initiation of – effective measures to save the Jammu and Kashmir State Co-operative Consumers Federation, a Co-operative Society,(CONFED, for short), from

being wound up and dispossessed from land measuring 9 kanals and 5 marlas and a building existing thereon, situated in Estate Narsingh Garh Magarmal Bagh, opposite Exhibition Ground, Srinagar, Kashmir, besides ensuring revival of the Society as recommended vide Registrar Co-operative Societies, J&K, Srinagar's letter No. SS/366-67 dated 26.9.2000 by the State Government. It had further sought consideration as to whether or not, expansion of College of Education was at all necessary, And could compensation of Rs. 64 lacs and land at Magarmal Bagh and Bemina be given to Mrs. Vijay Dhar in exchange of her land which had been acquired for expansion of the College.

2. This petition was treated as PIL on the orders of Lord Chief Justice. The petition remained pending for some time at both the wings of this Court whereafter it was permitted to be amended vide Court order dated 10.12.2004.

3. The newly added parties to the amended petition are:- (1) Mushtaq Ahmed Chai(Ganai) respondent No.6, (2) Tariq Ahmed Beigh respondent No.7, (3) Mehraj-ud-Din respondent

No.8, and (4) Building Operation Controlling Authority Srinagar, respondent No.9.

4. The amended writ petition had additionally sought quashing of Government Order No. Rev (LAK) 100 of 2001 dated 28.5.2001 and Building Operation Authority's permission no. 20-3-2002, 3-5-2002 and 8-12-2003, besides seeking demolition of the commercial building constructed by private respondent nos. 6 to 8.

5. The newly added respondent Nos. 6 to 8, had questioned the very maintainability of the Public Interest Litigation and petitioner society's locus standi to maintain the petition.

The plea regarding maintainability of the Public Interest Litigation was accordingly considered by a Division Bench. The Bench, however, did not deliver its judgment on the issue. Both the Hon'ble Judges constituting the Bench, rendered their separate opinions on the issue which had been debated before the Bench. It, however, was of the view that there was difference of opinion in the case and the matter be placed before Lord Chief Justice for appropriate orders. Pursuant to order dated 29th September,

2006 of Lord Chief Justice, the case was accordingly assigned to this Bench, in view of the provisions of Rule 36(2) of The Jammu and Kashmir High Court Rules, 1999.

6. As no point or points of difference had been indicated in the order of reference, the case was ordered to be placed before Lord Chief Justice for placing it before the Bench for appropriate orders.

7. Vide their separate judgments, the learned Judges constituting the Bench had desired the Designated Judge to decide the case by agreeing with the opinion of one or the other Judge constituting the Bench or to himself extract the point or points which were required to be framed for deciding the case.

8. Vide Lord Chief Justice's order dated 20th of November, 2006, the matter was thus again directed to be placed before this Bench.

9. This is how this writ petition has come up for consideration before the Bench.

10. The case was taken up for consideration at Srinagar Wing of the Court on number of occasions, where after, it was transferred to Jammu Wing.

11. I have heard Learned Court counsel as also other learned counsel appearing in the case.

12. Before dealing with the questions arising in the case, reference to few facts may be necessary.

13. Major General R. B. Dewan Bishen Das, ex-Prime Minister of Jammu and Kashmir had held Nazool land measuring 20 kanals and 19 marlas at Narsigh Garh, Srinagar, Kashmir. The leasehold rights of late Dewan Bishen Das were transferred to his successor-in-interest Vide Government order dated 26.10.1945, who leased out 9 kanals and 5 marlas of this land along with a building thereon to, Kashmir Co-operative Whole Sale Limited, which later came to be known as the State Co-operative Consumers Federation (hereafter, CONFED, for short). The State of Jammu and Kashmir, vide its Order No. LA-74 of 1957 dated 22.9.1957 and 380 of 1960 dated 3.10.1960, resumed 11 kanals 2 marlas and 3 Sq ft. out of this land for setting up of a Tonga and Lorry stand. This resumed land was subsequently transferred to the Roads and Buildings Department (PWD) vide Government order no. 281 of 1961 dated 22.6.1961. The State

of Jammu and Kashmir issued Government Order No. 305-NDK dated 31.8.1963, resuming 9 kanals, 5 marlas and 173 Sq.ft of land for public purposes i.e. for development of Srinagar City. In this way the Government resumed 20 kanals, 7 marlas and 176 sq. ft. of land, leaving only 11 marlas and 98 sq. ft. of land. The successors of late Dewan Bishen Das appear to have transferred their lease-hold rights in the land on 01.07.1967 and 08.12.1967 in favour of Haji Wali Dar and others. Eviction proceedings were initiated against the vendees by the Estate Officer and part of the building was demolished by the Srinagar Municipality.

A dispute appears to have arisen out of the eviction proceedings, which became subject matter of litigation in this Court and a Full Bench judgment came to be delivered in the matter in case Haji Wali Mohd. and ors vs. Administrator Municipality and ors, reported as AIR 1969 J&K 88. The Court had quashed the eviction proceedings restoring possession of the land to the vendees. The amount of compensation payable to the vendees before their eviction was later

determined and paid. It appears that the Chief Engineer Public Works Department (R&B), had returned the land to the Nazool Department on the ground that the possession of the land had not been given to it right from 1961. The CONFED later approached the Government for leasing out the land to it on concessional terms and conditions. The Financial Commissioner, Government of J&K, informed the Secretary to Government, Revenue Department, about the details of the case and suggested that land measuring 6 kanals and 187 sq. ft. be leased out to the CONFED and the amount of compensation paid by the CONFED be adjusted towards the premium and ground rent, as admissible under rules. The Secretary to Government Revenue Department, sought the report of the Chief Town Planner and the Chief Minister appears to have ordered the transfer of land measuring 6 kanals 187 sq. ft. to the CONFED. No formal orders were, however, issued by the government in this behalf. It was on 15th of July, 1999 that the State Cabinet took a decision to wind-up the CONFED

and to absorb its 149 employees in different departments of the State.

The petitioner says that although the Cabinet had no power to wind-up the CONFED, yet neither the Cabinet decision was implemented nor had any salary been paid to its employees, who had filed writ petition, SWP No. 1839/1999, in this Court.

The petitioner society's case, as set up in the writ petition, is that the land, which was in possession of the CONFED, had been decided to be leased out by the State Government to one Mrs. Vijay Dhar through Ashiq Shangroo and Tariq Beigh and an amount of Rs. 64 lacs too had been proposed to be given to them along with some more land at Bemina. Notification no. 548/A/LAC dated 15th September, 1998 for acquiring four kanals 16 marlas and 15 sq. ft. of land situate at Maisuma had been notified to be acquired for public purpose i.e. extension of the College of Education, Srinagar. Yet another Notification was issued by the State Government on 28th of May 2001 according sanction to the acquisition of land measuring 7 kanals 6 marla

and 15 sft. situate at Estate Maisuma subject to the condition that compensation for evacuee's land measuring 2 kanals 18 marlas would be paid to the Custodian Kashmir and the lessess's/allottees of the evacuee land would be allotted one kanal of land within Srinagar City and two kanals of land at Bemina bye pass road to run the diesel pump. The owners of the structure of the acquired land were to be given additional land at CONFED complex Magarmal Bagh Srinagar. It is stated that for land measuring 2 kanals and 18 marlas, three kanals of land had been given to the allottees by the Government and for remaining 4 kanals 8 marlas and 15 sft. of land they had been given land in lieu of compensation, in the ratio of 1:1.3 i.e. for one kanal of land, 1.3 kanals of land had been given to them at CONFED complex Magarmal Bagh Srinagar. Permission granted by respondent no.9 to respondent no's 6 to 8 to raise the construction has been stated to be in violation of the rules.

With these facts, the petitioner, had urged that the government had dealt with the public

property in a most arbitrary and capricious manner.

14. The counter affidavit filed by respondent no's 1 to 3 i.e. State-respondents, indicates that land measuring 20 kanals and 19 marlas, situated in Estate Narsingh Garh Sringar under survey no. 885, 890 and 937 min was held as rent free grant by Maj. General R. B. Dewan Bishan Das, the then Prime Minister of Kashmir, during the times of late His Highness for personal services for life and not in perpetuity. During his life time, late Dewan Bishen Das had gifted the leased land vide a registered Deed to his successors-in-interest on 05.06.1915. This had been done with the permission of the then Governor of Kashmir. The leased premises were thereafter transferred by the successors in interest of late Dewan Bishan Das illegally in favour of Haji Wali Ganai and others without permission of the government. The government resumed 20 kanals 7 marlas and 176 Sq ft. of land vide two Government orders. The eviction proceedings were initiated by Assistant Commissioner Nazool for land measuring 19 kanals 1 marla and 91 sq. ft. only

as remaining area of one kanal was already under the occupation of the Srinagar Municipality. Chief Education Officer Srinagar had sent a requisition for acquisition of 7 kanals 6 marlas and 15 sq. ft of land situate at Estate Maisuma on the main Moulana Azad Road, for extension of College. Four kanals eight marlas and fifteen Sft. of this land was reported to be the proprietary land whereas area measuring 2 kanals and 18 marlas was stated to be the evacuee property in control of the Custodian Department. The Government accordingly issued notification under section 4 of the State Land Acquisition Act for acquisition of land ***measuring 7 kanals 6 marlas and 15 Sft falling under Survey Nos. 224/176/151/113-min(one kanal and 15 Sft), 176, 151,113-min (18 marlas), 167,151,113 (two kanal and eighteen marlas) and 149,113-min (2 kanals and 10 marlas) situated at Estate Maisuma Srinagar*** for expansion of College of Education Srinagar.

15. Municipal Corporation had pleaded that the site plan had been approved according to the rules and that the private respondents had raised construction in violation of the approved site plan

for which a show cause notice had been issued which stood stayed by the Jammu and Kashmir Special Tribunal.

16. The private respondent Nos.6 to 8, had urged that the subject matter of the writ petition did not project any public interest cause for which a Public Interest Litigation may be contemplated, because the grievances projected in the writ petition, did not pertain to any such section of the society which was otherwise disabled or in a disadvantageous position to approach the Court. It was submitted that the employees of the CONFED had already filed SWP No.1893/1999, projecting all those grievances which had been raised in the Public Interest Litigation, in this Court, which was pending consideration. They had thus questioned the *locus standi* of the petitioner-Society to maintain the Public Interest Litigation. As regards the plea of the petitioner, questioning the transfer of land to the respondents by the government by negotiating the terms of the acquisition of their proprietary land, the respondents had submitted that the government had acted in terms of the provisions of the State

Land Acquisition Act, which did permit acquisition by negotiations providing alternate land to those whose property had been acquired. It was urged that the statutory power exercised by the government in entering into negotiations with the private respondents for acquisition of their land could not be questioned in Public Interest Litigation. It was stated by the respondents that the petitioner had abused the process of law by filing writ petition in public interest when none had suffered any injury because of the acquisition of the land, which could be made a subject matter of dispute in a Court of law. The bonafides of the petitioner-Society to file the writ petition too were questioned by the respondents. The respondents have given the details of the negotiations, which had been held between them and the State functionaries before finalization of the acquisition process of their proprietary land and structures by negotiation.

17. These are the background facts on which the issue regarding the maintainability of the Public

Interest Litigation had been heard by the Division Bench.

Brother Hakim Imtiyaz Hussain-J, while expressing his lordship's inability to agree with the conclusions reached at by Brother Nirmal Singh-J, had opined that in view of various orders passed by the Division Bench, holding that questions of public importance had been raised in the writ petition, the objection as to the maintainability of writ petition could not be considered by the Court as a preliminary issue, particularly when the Court had desired the Chief Secretary of the State to file his reply and the government had been directed to produce the relevant records, which though produced, did not give the grounds for allotment of land to private persons, when the land had already been reserved for Adda and development of Srinagar City.

18. The issues which may thus fall for consideration are these:-

1. Whether the question of maintainability of the Public Interest Litigation, raised by the private respondents, could not be taken up

as a preliminary issue for consideration and whether the whole case was required to be heard after getting requisite response from the State functionaries?

2. In case issue No.1 is answered in the negative, whether the writ petitioner possessed requisite *locus standi* to launch Public Interest Litigation when the employees of the CONFED had already approached this Court by SWP No.1839/1999 to seek redressal of their grievances?

3. In case writ petitioner was found to possess requisite *locus standi* to maintain Public Interest Litigation, does this litigation raise such questions which may be cognizable by the Court in Public Interest Litigation proceedings?

19. Law relating to opposite party's right to question the maintainability of a lis, initiated against it, which goes to the very root of the jurisdiction of the Court to entertain it, may be

raised at any stage of the proceedings by demanding Preliminary hearing or a Pre-determination hearing, as it is so called, on it, when a defendant first appears in the court, is a position well settled in law, insofar as the question pertains to Adversarial type of proceedings.

Would this principle apply to Public Interest Litigation proceedings as well – is thus the moot question, which may require consideration while answering issue No.1.

20. The issue as to the maintainability of public interest litigation and the defences available to the parties contesting it, came up for consideration before Hon'ble Supreme Court of India in **Narmada Bachao Andolan v. UOI and ors**, reported as **(2000)10 SSC 664** where their lordships observed as follows:-

“Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

Public interest litigation was an invocation essentially to safe guard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licenses, protecting environment and the like. **But the balloon should not**

be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to become publicity interest litigation or private inquisitiveness litigation.

While exercising jurisdiction in PIL cases the Court has not forsaken its duty and role as a Court of law dispensing justice in accordance with law.”

Delay in approaching the Court to initiate public interest litigation has been held to be a valid defence on which such litigation may be defeated, in **Chairman and MD BPL Limited vs. S. P. Gururaja and ors**, reported as (2003)8 SCC 567, And **Printers (Mysore Ltd) v. M. A. Rasheed & Ors**, reported as (2004)4 SCC 460, too.

While commenting on the maintainability of public interest litigation and on the *locus standi* of the party invoking it, it was observed by Hon’ble Supreme Court of India in **R.& M. Trust vs. Koramangla residents vigilance group and ors**, reported as (2005)3 SCC 91, as under:-

“ Public interest litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought a very bad name. Courts should be very very slow in entertaining petitions involving public interest; in very rare cases where the public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden. This sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour

of vigilant litigant and not for the person who invoked this jurisdiction of the sake of publicity or for the purpose of serving their private ends. It has no³ become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreck vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the services of innocent people or organizations in filing public interest litigation. The Courts are some time persuaded to issue certain directions without understanding the implications and giving a handle in the hands of the authorities to misuse it. Therefore, Courts should not exercise this jurisdiction lightly but should exercise in very rare and few cases involving public interest of a large number of people who cannot afford litigation and made to suffer in the hands of the authorities-----.

Delay is a very important factor while exercising extra ordinary jurisdiction under Article 226 of the Constitution. Supreme Court cannot disturb third party interest created on account of delay. Even otherwise also, why should the Supreme Court come to the rescue of a person who is not vigilant of his rights?"

21. In view of the law laid down in the above mentioned judgments, which position in law has been reiterated in various other judgments of Hon'ble Supreme Court of India and other High Courts of the country, refusing to hear the opposite party on the maintainability of the Public Interest Litigation, may not, in my opinion, be justified at all, for the plea of non-maintainability

of proceedings, and lack of jurisdiction of the Court to entertain such proceedings, pointed out, at any time, by the party against whom such proceedings had been launched, cannot simply be blinked at, and needs to be addressed to, because an illegality or a wrong cannot be permitted to be perpetuated, until the case comes up for final hearing. Objection(s) going to the very root of the jurisdiction of the Court to entertain a lis and to the maintainability of the proceedings in the Court, therefore, needs to be addressed to, at the earliest, lest the delay in deciding the objection(s), hampers the judicial process and takes toll of the justice itself.

22. Even though the Court had initially entertained People's Welfare Society's petition as Public Interest litigation, yet no rule or law would come in the way of the Court in hearing a party which, on its appearing in the Court to contest the public interest litigation and the relief sought for therein, had projected a plea to contend that the public interest litigation was not maintainable in the given facts and circumstances of the case.

23. The view taken by Hon'ble Supreme Court of India that ordinary principles applicable to a litigation are applicable to Public Interest Litigation as well and defences available to a party in ordinary litigation to question *inter alia* the maintainability of proceedings, would equally apply to Public Interest Litigation cases as well, is thus required to be applied in the present case too and the plea of the private respondents that Public Interest Litigation initiated at the instance of People's Welfare Society, for variety of reasons, was not maintainable, cannot thus be avoided and needs to be addressed to particularly when the private respondents had no opportunity of objecting the maintainability of the proceedings, in that, they came to be arrayed as party respondents to the petition only after the amendment of the writ petition.

24. That apart, depriving the private respondents of their right to question the maintainability of the Public Interest Litigation Proceedings, as a preliminary issue, when they had no such opportunity earlier to raise such an objection, and telling them to wait till the case

came up for final hearing, would amount to violation of the principles of Natural Justice and fair play.

25. I, therefore, have not been able to persuade myself to agree with the opinion of brother Hakim Imtiyaz Hussain-J, when his Lordship opines that the question of maintainability of the Public Interest Litigation cannot be raised at this stage when the writ petition stood admitted to hearing, for admission of a writ petition to hearing would not deprive a party to raise the question of the maintainability of proceedings when it had not been arrayed as party to the proceedings before the admission of the petition to hearing.

26. The first question is, therefore, answered by holding that the plea of non-maintainability of Public Interest Litigation proceedings could be raised by the private respondents as a Preliminary issue.

27. Having answered the first issue, I will now deal with the remaining issues.

28. Before considering the question as to whether a Public Interest Litigation could be launched by the petitioner Society, when the employees of the CONFED had on their own invoked this Court's extra ordinary civil writ jurisdiction for protection of their rights, regard needs to be had to what is contained in paragraph nos. 4(VIII), 4(XX), 4(XXII), 4(XXIV), 4(XXV) and 4(XXVI) as also in the Relief clause of the writ petition. Following paragraphs of the writ petition and the prayer clause, which provide an insight as to what is contained in the writ petition, are being reproduced hereunder for facility of reference.

“4(VIII): That though the Cabinet had no power of windup the CONFED and direct adjustment of its employees in other departments of the government, but despite that the Cabinet decision dated 15.7.1999 was not implemented and neither the salary was paid to the employees of the CONFED, numbering about 149 from 1998 nor were they adjusted in any department of the government. These employees have already filed a writ petition No. 1839/1999 before the Hon'ble Court which is pending disposal.

xxvi) That from the facts and circumstances indicated above, it is evident that the Government has dealt with public property in a most arbitrary and capricious manner. The land leased out to CONFED has been given to respondents 6 to 8. The CONFED is discharging public duties on Cooperative

Sector. It has made significant contribution for achieving the objects/goals set for leasing out the land to it in accordance with the rules and adjust the amount of compensation of Rs. Six lakhs paid by it to the purchasers towards the premium. It has also submitted a proposal for revival of the CONFED which is under consideration. Instead of approving the proposal submitted by the Registrar Cooperative Societies, for revival of the CONFED, the Government has given the land of the CONFED to Ms. Vijay Dhar through Ashiq Shangloo and Tariq Beigh and respondents 6 to 8 in total abuse of the power and authority vested in it. The Government is not competent to deal with the public property in the manner it has decided to do. If any land is vacant or is in possession of any person or authority, they can not be dispossessed there from illegally and improperly and the land cannot be given to any other person or authority without following the mandate of law. The rule of law can not be given as go-bye by the State and its functionaries. Since the very purpose behind the establishment of the society is to ensure prevalence of rule of law in all the spheres in the State, therefore, the petitioner is constrained to bring this matter to the notice of the Hon'ble Court by way of this public interest litigation for safeguarding the Government property and the CONFED."

Prayer Clause:

"In the premises, it is therefore, prayed that after treating the writ petition as a Public Interest Litigation, the Government order no. Rev(LAK) 100 of 2001 dated 28.5.2001 as also the permission granted by Building Operations Controlling Authority on 20.3.2002, 3.5.2002 and 8.12.2003 for raising multi-storeyed commercial complex on the land be quashed; and

By issuance of an appropriate writ, order or direction, the commercial buildings raised on the land be demolished and the State be directed to take effective measures to save the Jammu and Kashmir State Cooperative Consumers Federation from being wound up and also to see that the proposal submitted by the Registrar Cooperative Societies, J&K, Srinagar vide his letter no.SS/366-67 dated 26-9-2000 is

approved by the Government and the CONFED is revived in the manner indicated in the said report/letter.

The Hon'ble Court may also see as to whether expansion of College of Education is necessary and as to whether by way of compensation of Rs. 64 Lacs, and land at Bemina can be given to Mrs. Vijay Dhar and others as compensation for the land which has been taken from her for the said expansion."

29. Perusal of the petitioner-Society's writ petition therefore, indicates that the case set up by it in the writ petition, in nut shell, was regarding the grievances of the employees of the CONFED regarding their service conditions, besides the possession of the Society over land measuring 9 kanals and 5 marlas along with a building in Estate Narsingh Garh Srinagar, for which CONFED had paid Rs. 6 lacs as the cost of building to late Haji Wali Dar and others, And as to the justifiability of Government Order No. Rev (LAK) 100 of 2001 dated 28.5.2001 and permission granted by Building Operations Controlling Authority on 20th March, 2002, 3rd May, 2002 and 8th of December, 2003, for raising multi-storied commercial complex, which reliefs, it so appears, had been sought as consequential relief for protecting the possession of the Co-operative Society over the CONFED premises.

30. The undisputed facts which thus emerge from the aforementioned paragraphs of the writ petition, may be stated thus :-

1. The employees of the CONFED had already invoked this Court's writ jurisdiction to seek redressal of their grievances, by filing SWP no. 1839/1999.
2. The People's Welfare Society was aware about the filing of this petition by the employees of the CONFED (Refer paragraph 4(VIII) supra).
3. The Public Interest Litigation had been initiated to protect the interests of the employees of the CONFED and its possession over the land and building which the State Government had, vide Order No. Rev (LAK) 100 of 2001 dated 28.05.2001, transferred to the private respondents and the allottees of Evacuee property, which had been termed as illegal and an arbitrary exercise of power by the State Government, thereby depriving the CONFED of its possession over the land in question.

31. Before dealing with the questions arising for consideration in this case on the above mentioned admitted facts, reference needs to be had to the law laid down by Hon'ble Supreme Court of India on the subject.

32. Their Lordships of Hon'ble Supreme Court of India, in **BALCO Employees Union vs. Union of India**, reported as (2002)2 SCC 333 observed as follows:-

“77. Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be expoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. ‘litigation in the interest of the public’.

78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S. B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words:

‘PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).
- Where the affected persons belong to the disadvantaged sections of

society (women, children, bonded labour, unorganized labour etc.)

- Where judicial law-making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievance redressal forums).
- Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water'.

79. There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

80. **PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person, files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same."**

33. While considering what is public interest, Hon'ble Supreme Court of India in **Janata Dal's case reported as (1992) 4 SCC 305**, observed as under:-

“The expression “litigation” means a legal action including all proceedings therein, initiated in a Court of law with the purpose of enforcing a right or seeking a remedy. Therefore, laxically the expression “PIL” means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

Be that as it may, it is needless to emphasize that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of a party to any litigation, whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.”

Commenting on the maintainability of Public Interest Litigations and the *locus standi* of a litigant to maintain a Public Interest Litigation, it was observed in **R & M Trust versus Koramangla Residents Vigilance Group, reported as (2005) 3 SCC 91**, as follows:-

“23. Next question is whether such public interest litigation should at all be entertained and laches thereon. This sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public interest litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought a very bad name. Courts should be very very slow in entertaining petitions involving public interest; in very rare cases where the public at large stand to

suffer. This jurisdiction is meant for the purpose of coming to the rescue of the downtrodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreck vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The courts are sometimes persuaded to issue certain directions without understanding the implications and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in very rare and few cases involving public interest of a large number of people who cannot afford litigation and are made to suffer at the hands of the authorities. The parameters have already been laid down in a decision of this Court in the case of *Balco Employees' Union (Regd) v. Union of India* wherein this Court has issued guidelines as to what kind of public interest litigation should be entertained and all the previous cases were reviewed by this Court."

37. It was also contended by the learned counsel for the appellant that the appellant had no locus standi to file this petition as the present association is neither a representative association nor a registered body. Therefore, the Court should not have entertained the PIL on behalf of such unregistered and unrecognized body. It is true that locus in such public interest litigation is a very relevant factor and the Court should always inquire into the locus of person before entertaining such petition. We have already observed above that public interest litigation should be entertained in very rare cases."

Similar view was reiterated in *Dataraj*

Nathuji Thaware vs. State of Maharashtra and

ors, reported as (2005)1 SCC 590 and in *Kushum Lata vs. Union of India and ors, reported as (2006)6 SCC 180*, where their Lordships held as follows:-

Dataraj Nathuji Thaware vs. State of Maharashtra and ors. reported as (2005)1 SCC 590

“ 4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. The high Court has found that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in

Janata Dal v. H. S. Chowdhary and Kazi Lhendup Dorji v. CBP. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court in acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14. The court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two

conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with impostors and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They presented to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (*See State of Maharashtra v. Prabhu and A.P/State Financial Corpn. v. GAR Re-Rolling Mills*). No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (*See Buddhi Kota Subbarao (Dr.) v. K.Parasaran.*) Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public

interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhar Sahu (Dr.) v. Jatindra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was laying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, it any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”

Kushum Lata vs. Union of India and ors, reported as (2006)6 SCC 180

“12.It is depressing to note that on account of such trumpety 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 spare no efforts

in fostering and developing the laudable 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 undue delay in service matters-government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in long 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 of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing 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 courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

13. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of

public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, the court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public interest law is the name that has recently been given to efforts providing legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

15. The court has to be satisfied about (a) the credentials of the applicant; (b)

the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The court has to strike a balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of two bono publico, though they have no interest of the public or even of their own to protect.

16. The courts must do justice by promotion of good faith and prevent law from crafty invasions. The courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (*See State of Maharashtra v. Prabhu and A.P.State Financial Corpn. v. GAR Re-Rolling Mills.*) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (*See Buddhi Kota Subbarao (Dr.) v. K.Parasaran.*) Today people rush to the courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in the courts and among the public.

17.As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are

in essence something else. It is shocking to note that the courts are flooded with a large number of so-called public interest litigations where only a minuscule percentage can legitimately be called as public interest litigation. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, the courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jatindra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters by competitors continue unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for

verifying the correctness of statements made and information given in the petition. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”

34. The above position of law has been reiterated by Hon’ble Supreme Court of India in its various other judgments as well.

35. Keeping in view the caution sounded by Hon’ble Supreme Court of India regarding entertaining and continuance of Public Interest Litigations and applying the law laid down in this behalf to the admitted facts emerging out of the present litigation, I am of the considered view that the Public Interest Litigation launched by People’s Welfare Society was not a bonafide move of the Society to project the grievances of any such section of the society which was in any way disabled to project its own grievances, or was in any disadvantageous position, to project its grievance in a Court of law. There was thus no occasion for the Society to have come to the Court for allegedly safeguarding the interests of the Co-operative Society and its employees, who had

already approached this Court by SWP no. 1839 of 1999. Although the writ petition talks of the filing of SWP no. 1839 of 1999 in this Court, yet there is not even a whisper in the petition as to what had happened in the writ petition, and why despite employees' having approached this Court for redressal of their grievances, the Public Interest Litigation had been resorted to. In the absence of any explanation of any type whatsoever coming out from the pleadings of the petitioner, all that may be said is that filing of the writ petition by the People's Welfare Society was not bonafide. This litigation does not appear to have been filed in any Public Interest. It, on the other hand, appears more to be **Private Interest Litigation and Publicity Interest Litigation.**

36. Going by the ordinary Rules of litigation and the doctrine of Res-sub-judice embodied in Section 10 of the Code of Civil Procedure, which have been held to be applicable to Public Interest Litigations as well by Hon'ble Supreme Court of India in Narmada Bachao Andolan's case, People's Welfare Society's alleged Public Interest

Litigation, during the currency of SWP no. 1839/1999, would not thus be maintainable.

37. Even otherwise, in the absence of any case having been set up by the Society in its writ petition as to what had compelled it to file the Public Interest Litigation for the protection of the Co-operative Society and its employees' interests, when the employees of the Co-operative Society had already moved this Court to seek redressal of their grievances, the petitioner-society cannot be said to have requisite *locus standi* to maintain the writ petition in Public Interest.

38. During the course of hearing of this petition, learned counsel for respondent Nos. 6 to 8 had informed that SWP no. 1839/1999 filed by the employees of the CONFED had been decided by a learned Single Bench of this Court by issuing certain directions to the State Government for the absorption of the employees of the CONFED. A copy of the judgment delivered by the Single Bench as also by the Division Bench in the case was had from Srinagar Wing of the Court.

39. The employees of the CONFED appear to have been satisfied with the judgment of learned

Single Judge on their writ petition, SWP 1839/1999.

40. Letters Patent Appeal no. 294/2005 preferred by the State and others against the judgment of learned Single Judge, had been disposed of by a Division Bench of this Court on 8th of May, 2005, observing as follows:-

“All these respondents numbering 134 were working in the State Cooperative Consumer Federation (CONFED), a society registered under the Cooperative Societies Act. It appears that the society started incurring losses from 1987 onwards, resulting in stoppage of salary to respondents. The issue was taken up and considered by the government and Cabinet decision No.109/12 dated 15.7.1999 was taken, which reads thus:-

“The Cabinet decided that CONFED should be wound up and the employees suitably adjusted. The department may submit a detailed proposal at the earliest.”

It appears that yet another memorandum was submitted to the Cabinet in April, 2002 suggesting Golden Handshake Scheme for the respondents, which was reflected in Cabinet decision dated 24.4.2002. This was followed by yet another Cabinet decision dated 4.8.2003.

Respondents felt aggrieved of the delay in resolving their problem and filed writ petition in this Court, seeking implementation of Cabinet decision dated 15.7.1999, which had directed their suitable adjustment requiring detailed proposal in this respect. The writ petition was contested by appellants on the plea that Cabinet had taken subsequent decisions and that most of the private respondents had accepted the Golden Handshake scheme.

The writ Court considered the rival contentions of the parties and disposed of the writ petition by providing as under:-

“1)The Government shall implement the Cabinet Decision No.109/12 dated 15.7.1999 and for that purpose should constitute a committee of officers within a

period of one month from the date copy of the order is served on the respondents.

2) The committee so constituted shall look into the suitability of the petitioners for their permanent adjustment in the Govt. Department. The committee shall find out as to whether the petitioners were suitable for their adjustment in the Govt. department i.e. whether they fulfill the other conditions such as qualification, health conditions, and permanent residence etc. for Govt. employment. Those who are found suitable, should be offered posts commensurate with their qualification and the pay scale which they were holding in the CONFED. Those not found suitable for government job due to lack of qualification or any other reasonable cause shall be offered the Golden Handshake and for that purpose scheme be formulated within a period of three months from the date the order is served on the respondents.

3) Those employees of the CONFED who have at any stage accepted the offer or asked for the Golden Handshake Scheme shall be given the benefit of the same and modalities thereof shall be formulated within three months from the date this order is served on the respondents. With these observations the writ petition is disposed of."

Appellants are aggrieved of the Writ Court judgment and their whole case seems to be that the Writ Court ought not to have directed implementation of Cabinet decision No.109/12 dated 15.7.1999 as this decision was superseded by later decisions of the Cabinet providing Golden Handshake scheme for the respondents.

While this matter was being considered, we were informed that appellants had already implemented the Writ Court judgment by constituting a Committee which Committee had submitted its report to the government. Needless to point out that this Committee was ordered to be set up in terms of the impugned writ Court judgment. Now that this Committee had submitted its report, as directed by the Writ Court, this appeal loses its efficacy because it is now for the government and its Cabinet to take an appropriate decision on the report of the Committee set up under the orders of the Writ Court.

We, accordingly, dispose of this appeal by providing that the report submitted by

the Committee constituted by appellants in compliance to the impugned Writ Court judgment shall be placed before the Cabinet within two months from the date of receipt of this order. The State Government shall take a decision on the report of the Committee and pass appropriate orders on this report within two weeks from the date of Cabinet decision. All concerned functionaries of the appellants are directed to adhere to the prescribed time schedule in view of the delay that had occasioned in dealing with the case of the respondents, who have been clamoring since 1987.”

41. In view of the directions issued by the Division Bench of this Court on the litigation of the employees of the CONFED, this litigation should not have even otherwise survived because the doctrine of conclusiveness of judgments, And principle of *Res Judicata* would not permit trial of issues and passing of any further orders in the Public Interest Litigation in view of the concluded judgment of this Court on the writ petition of the employees of the CONFED in SWP no. 1839/1999.

42. Be that as it may, one thing is, however, clear that the People’s Welfare Society, in the given facts and circumstances of the case, did neither have any *locus standi* to launch the Public Interest Litigation for protecting the interests of Co-operative Society and its employees, who had already approached this Court for the redressal of their grievances nor was there any public interest

as such in the litigation launched by the Society because the dispute pertaining to the employees of a Co-operative Society and regarding protection of the possession of the Society over the land in question, can not be said to be a dispute of public interest, for such a dispute is only a private dispute between the employees, their Society, and the State government, which was required to be adjudicated upon in adversarial litigation and not in Public Interest Litigation.

43. I would accordingly hold that the Public Interest Litigation launched by People's Welfare Society was not maintainable as the issues raised in the petition had been pending consideration before this Court in SWP 1839 of 1999, when this Public Interest Litigation had been filed and which issues now stand concluded with the final judgment of this Court in SWP no. 1839/1999, which judgment stands affirmed by the Letters Patent Bench.

44. For all what has been said above, my answers to the questions formulated in the case should have been sufficient to conclude this judgment, but some other issues, which had been

debated by learned counsel for the parties at the time of hearing of this petition, too need to be dealt with.

45. During the pendency of this Public Interest Litigation, the Division Bench, seized of the matter, had observed that transfer of land in favour of the private respondents appeared to be contrary to law.

46. Mr. Z. A. Qureshi, learned Court counsel, submitted in this behalf that transfer of the property in possession of the CONFED to the private respondents and the allottees of the Evacuee property, besides payment of compensation, in lieu of the acquired property of theirs, was illegal and an arbitrary exercise of power by the State Government. Learned Court counsel vehemently argued that with the acquisition of the Evacuee's property by the State Government, the rights of the allottees in the acquired land would extinguish and they would not be entitled either to any compensation or to any land in exchange therefor.

47. Learned Court Counsel further submitted that after having resorted to proceedings for

compulsory acquisition of respondents' property, resort to determination of compensation by private negotiations was impermissible. Learned Counsel referred to the provisions of the State Land Acquisition Act and Rules framed thereunder to support his submissions.

48. Mr. Z. A. Shah, learned senior counsel, appearing for private respondent nos. 6 to 8, meeting the plea raised by learned Court counsel, submitted that transfer of land and payment of compensation to private respondents could not be questioned on any count whatsoever because specific provisions exist in the State Land Acquisition Act and Land Acquisition Rules for Public Purposes, which provide for such transfer. Learned counsel referred to Section 32 of the State Land Acquisition Act and Rule 55 of the Land Acquisition Rules for Public Purposes to justify State respondent's action of entering into negotiations with the private respondents. Learned counsel further submitted that even otherwise when the action of the State respondents was covered by the statutory provisions, justifiability of the quantum of

compensation awarded by the State Government to the private respondents could not be made a subject matter of the Public Interest Litigation.

49. In order to examine as to whether or not the State Government was competent to convey land to private respondent nos. 6 to 8 in exchange of their property, which had been acquired and had not misused its authority, regard needs to be had to the provisions of Section 32 of the State Land Acquisition Act and Rule 55 of the State Land Acquisition Rules for Public Purposes. Provisions of the aforementioned Section and the Rule are reproduced hereunder for facility of reference:-

“32. Payment of compensation or deposit of same in Court

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested-entitled thereto, according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive, it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference under section 18 would be submitted;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(3)Notwithstanding anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned.

(4)Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

Rule 55 of State Land Acquisition Rules For Public Purposes:

“55. Collector’s power to award land in lieu of cash

Under the provisions of sub-section (4) of Section 31 of the Act the Collector may come to any agreement with the parties as to the method of payment but except in the cases provided for by sub-section (3) of that section, the Collector cannot force a party to take land in lieu of cash. Where, however, the interest of a party is so limited, as in the case of trustee of waqf property, or a Hindu widow, as to take it extremely difficult, it is not impossible, to arrive at an adequate cash estimate of its value or where, from the circumstances of the case, it is impossible to place the parties concerned, by a cash compensation in the same or nearly the same position as before acquisition, sub-section (3) enables the Collector to arrange to award land (subject to the same limitation of interest) in lieu of cash.”

50. Perusal of the above quoted provisions of Section 32 and Rule 55 makes it clear that the Collector and the State Government had the

requisite authority and power to enter into negotiations despite issuance of notifications for compulsory acquisition of the property of the respondents.

51. Perusal of the provisions of these rules and the correspondence resting on the subject between the State functionaries and the private respondents, demonstrates that the State cannot be accused of giving land and compensation for structures to the private respondents, in exchange of the acquired property, contrary to the provisions of the State Land Acquisition Act and Rules framed thereunder. The State has, in exercise of its statutory power, entered into negotiations with respondent nos. 6 to 8 for determination of the amount of just compensation. The question as to whether or not the compensation allowed, after having negotiations with the private respondent nos. 6 to 8, was just and proper, cannot, in my opinion, be made a subject matter of Public Interest Litigation because all such questions regarding the justifiability of the compensation accepted after entering into negotiations, are bilateral

issues, concluding nature whereof regarding the payment of compensation and land in lieu of the acquired property, can not be questioned by parties other than those who were parties to the negotiation and settlement, which negotiations and settlement was covered by the statutory provisions of the State Land Acquisition Act and Rules framed thereunder, and that too by way of Public Interest Litigation.

52. I therefore, do not find any error or illegality in State Governments' entering into negotiations and settlement with the private respondents for finalization of compensation and conveying land in exchange to their property, which had been acquired by the State Government for public purpose.

53. I, thus do not find any merit in the submissions of learned Court Counsel that State Government's act of entering into negotiations with private respondent nos. 6 to 8 was not covered by any provision of law and was illegal and an arbitrary exercise of power.

54. There may have been some weight in the submission of learned Court Counsel that with

the acquisition of the property in possession of the Custodian, which had been allotted to private persons by the State Government, the right of the allottees of the land may extinguish and they may neither be entitled to any compensation nor any land in lieu therefor; But this question cannot be gone into in the absence of the allottees of the Evacuee property, who, for the reasons best known to the petitioner-society, have not been made parties to this petition/litigation. This question is, therefore, kept open.

55. The People's Welfare Society had known about the conveyance of land in possession of CONFED to the private respondents at the time when it had filed the original writ petition. It, however, did not implead them as party respondents, who came to be impleaded as such after a period of about four years during which period, they had been raising construction on the land which had been conveyed to them by the State Government in exchange of their land. Delay in their impleadment as party respondents to the amended petition has not at all been explained. The private respondents, in the

meanwhile, had raised huge construction and, as argued at the Bar by Mr. Shah, the third party interests too had intervened because the property had been mortgaged with the Bank(s) which had invested huge amount in the construction. Delay in impleading the private respondents to the public interest litigation and intervention of third party interests, are the additional factors, which in view of the law laid down by Hon'ble Supreme Court of India on the subject, would render the Public Interest Litigation unsustainable.

56. Another aspect, which was noticed by the Division Bench seized of the Public Interest Litigation was regarding the raising of huge construction by the respondents and that too contrary to the plan sanctioned by Municipal Corporation in this behalf.

57. Learned Counsel appearing for the parties were not at variance that the Jammu and Kashmir Special Tribunal, Srinagar, the appellate authority, was seized of the litigation which had been commenced by the private respondents against the Municipal Corporation Srinagar for their having proceeded against them for

committing violation of raising construction contrary to the sanctioned plan and in violation of the law.

58. In view of the admitted position that the statutory authorities were already seized of the issue of respondent No. 6 to 8's raising construction in violation of the Municipal Laws, entertaining Public Interest Litigation in this behalf may be premature because such a course would amount to depriving the statutory authorities of their powers to dwell on the issues raised before them and decide as to whether or not the respondents had committed violation justifying demolition of the building.

59. For all what has been said above, while respectfully disagreeing with the opinion of brother Imtiyaz Hussain-J that the issue of maintainability of Public Interest Litigation could not be raised by the respondents till the case was finally heard, I would concur with the opinion and conclusions reached at by brother Nirmal Singh-J.

60. This writ petition, treated as Public Interest Litigation, thus fails and is accordingly dismissed

with costs with the observation that the Jammu & Kashmir Special Tribunal shall decide the appeal filed by the private respondents expeditiously and preferably within a period of two months.

61. In accordance with the majority view, this writ petition, treated as Public Interest Litigation, is accordingly dismissed with costs quantified at Rs. 25,000/-. A direction shall, however, issue to the Jammu and Kashmir Special Tribunal, Srinagar, to decide the appeal(s) of private respondent nos. 6 to 8 expeditiously and preferably within a period of two months from the date a copy of this judgment is made available to the Tribunal.

(J. P. Singh)
Judge

JAMMU:
30.10.2007
Anil Raina, PS