IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

A N D

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

W.P.(PIL) No.64 of 2020

Bhusekharana Land Pooling Raithu
Kooli Nirvasithula Sankshema Sangam
and 2 others

.. Petitioners

Versus

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Municipal Administration and Urban
Development (M) Department,
Secretariat Buildings,
Velagapudi, Thullur Mandal,
Amaravathi, Guntur District and 14 others.

.. Respondents

Counsel for the Petitioners : Sri K.S.Murthy

Counsel for the respondents : Additional Advocate General.

JUDGMENT

Dt.11.03.2022

(Per M.Satyanarayana Murthy, J)

Petitioner No.1 is an Association known as Bhusekharana Land Pooling Raithu Kooli Nirvasithula Sankshema Sangam with registered number 112 of 2020. Petitioner No.2 – G.Sriram is the president of petitioner No.1 association, whereas, petitioner No.3 is an individual. They filed this writ petition by way of public interest litigation, challenging the action of the respondents – authority in issuing G.O.Ms.No.72 Municipal Administration and Urban Development (M) Department dated 25.01.2020 and proceeded to take away the assigned land for urbanisation i.e. house sites in such a manner depriving the benefits to be given to artisans and other landless poor

in the 54 villages of Visakhapatnam District, in gross violation of Andhra Pradesh Metropolitan Region and Urban Development Authorities Act, 2016 (for short "APMRUDA Act"), provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act No.30 of 2013"), land allotment policy issued Vide G.O.Ms.No.571 and declare the impugned G.O.Ms.No.72 dated 25.01.2020 as discriminatory, arbitrary, destroying the rural economy of the 54 villages brining in catastrophe to helpless people.

The specific contention of the petitioners is three fold.

The first contention is that Act 30 of 2013, Second Schedule has given elements of R and R entitlement to land owners and families whose livelihood is primarily dependent on land acquired. Clause III specifically states that when land is taken for urbanization purpose, 20% of the developed land must be given to the persons who lost the land. However, here only 18% is offered to the D-Form Patta holders. As per the definition of land owner under Section 3(r) of Act 30 of 2013, persons who are entitled to be granted Patta under any law are also eligible to all the benefits if he is the land owner. When land pooling was taken up in Amaravathi area, the agricultural labourers were identified and offered various benefits. The impugned land pooling has not taken care about this element. In the present case, nearly 6,000 Acres of cultivable land is being taken by the authorities. Nearly 20,000 families of agricultural labourers, artisans depending upon these 6,000 Acres for livelihood are being deprived of the benefits provided under the Act No.30 of 2013. Thus, the State denied the benefits of Act No.30 of 2013 and passed the impugned Government Order, exercising powers under the APMRUDA Act, 2016.

It amounts to violation of their livelihood, right to life guaranteed under Article 21 of the Constitution of India.

It is further contended that the respondents issued the impugned Government Order not only in transgression of provisions of the Act 30 of 2013 but also contrary to the land allotment policy. When the State is intending to provide house sites to various persons, the agricultural land cannot be taken away. Thus, instead of taking dry land, other Porumboku land which are available and without exploring various other options, the Government has resorted to taking assigned and unassigned agricultural land belonging to the most marginalized sections, which provide livelihood not only to small farmers but also to agricultural labourers. This is against the policy of government.

It is further contended that the impugned G.O.Ms.No.72 dated 25.01.2020 was issued in violation of the APMRUDA Act, 2016 and Visakhapatnam Urban Development Authority Land Pooling Scheme (Formulation and Implementation) Rules, 2016 (for short "the Rules, 2016). It is specifically contended that 30 days time is required to be issued for submitting objections, but instead of 30 days time, in the present case only 15 days time was given, it is in violation of the Rules, 2016. Therefore, the Government Order impugned in the writ petition is contrary to the provisions of the APMRUDA Act, 2016 and the Rules, 2016, requested to grant relief as claimed in the petition.

Respondent No.1 filed counter denying all the material allegations while admitting the pooling of land as stated above while refuting the various contentions of the petitioners.

It is contended that the State in compliance with its constitutional mandate, *inter alia*, under Article 37 of the Constitution of India, initiated a scheme titled “Pedalandarki illu” aiming to provide

housing to 25 lakh poor people, economically backward homeless persons in the State of Andhra Pradesh.

Pursuant to the same, door to door verification has been conducted by the Village/ward volunteers and applications were received from the beneficiaries considering village/town as a unit. After door to door verification and social audit, 2,53,173 families have been identified as houseless poor families in Vishakhapatnam District, out of which, 1,84,521 families are in Urban area and 68,652 families are in Rural area, out of which 1,79,808 houseless poor families are from Greater Visakhapatnam Municipal Corporation (GVMC). 38 teams have been constituted and these 38 teams conducted survey and identified Ac.6116.50 cts in 10 Mandals and reported to Government. The State issued orders vide G.O.Ms.No.72 MA & UD (M) Department, Dt.25.01.2020, appointing 9 Deputy Collector cadre Officers as Competent Authorities and has formulated guidelines for implementation of Land Pooling Scheme by arranging developed land to the individuals and allotment of house sites to poor people.

Based on G.O.Ms.No.72 MA & UD (M) Department Dt.25.01.2020, issued by the State, all the 9 Competent Authorities have issued notifications. Among the proposed 6,116.50 Acres of land 772.26 Acres of land comprise vacant Government land. Further, 1797 number of assignees and 2490 number of encroachers have consented for pooling of land. A total extent of Ac.4687.89 cts of land has been handed over to the Competent Authority duly accepting the proposal of Government vide G.O.Ms.No.72 (MA&UD) Department dt.25.01.2020. The pooled land is already handed over to VMRDA for implementation of Land Pooling Scheme by arranging developed land to the individuals and allotment of house sites to poor people and

weaker sections. Subsequently, the VMRDA initiated land development in these land and the works are at a very advanced stage.

While things stood thus, the Writ Petitioners who are neither the land owners nor the persons interested in the land have instituted the present public interest litigation without having any locus to initiate the same.

It is contended that all the persons interested have surrendered their land voluntarily. Respondents denied the assertion that the cultivable land was forcibly taken from the farmers by depriving them of their livelihood.

It is further contended that the timeline prescribed in Section 29 (4) of APMRUDA Act, 2016 is only directory in nature and not mandatory. In this regard, it may be mentioned that it is settled law that a question as to whether a particular provision is Mandatory or Directory depends on the ascertainment of the legislature's intention. Was it the legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what it done invalid in law? To ascertain the intention, the Court has to examine carefully the object of the statute the consequence that may follow from insisting on a strict observance of the particular provision and above all general scheme of the other provisions of which it forms a part. In support of the same, respondent No.1 relied on the judgment of the Apex Court "***K. Narasimhiah v. H.C. Singri Gowda***[1]"

In the present case, clearly the intention of the legislature was not to make the provision mandatory. The intention is only that sufficient time is granted to the concerned to put forth their views.

[1] AIR 1966 SC 330

The rationale behind the provision is to provide a reasonable time. 15 days, by no means, is an unreasonable time. Indeed, no objection whatsoever has been raised by the persons who have voluntarily surrendered their land. In the present case, it is clearly demonstrated that sufficient time was, indeed granted to the concerned. It is further contended that once the persons voluntarily surrendered their land without any objections, adherence with the timeline stipulated becomes an empty formality. It is further submitted that no person who is interested in the land so pooled has raised any objections with regard to the same till date and the land where any objections were raised by the persons interested have not been taken possession of by the State.

It is further contended that the land was pooled under APMRUDA Act, 2016 and the Rules, 2016. The provisions of the Act No.30 of 2013 have no application and the petitioners are not entitled to claim any relief being the agricultural labourers allegedly attending to the work in the lands pooled.

Finally, it is contended that the patta holders voluntarily agreed to surrender their land and in consideration they agreed to receive 900 sq.yards for Ac.1.00, encroacher for more than 10 years agreed to receive 450 sq.yards, encroacher for 5 to 10 years agreed to receive 250 sq.yards for their residential purpose. Letters giving consent in land pooling were obtained from the farmers. Finally, requested to dismiss the writ petition.

Petitioners filed reply affidavit reiterating the contentions urged in the petition.

Sri K.S.Murthy, learned counsel for the petitioners, mainly contended that the petitioners are agricultural labourers, whose services are being engaged in the lands during agricultural season.

On account of pooling of the land, they lost their livelihood i.e. agriculture work and it is in violation of fundamental right guaranteed under Article 21 of the Constitution of India. He further submitted that notice was not issued granting 30 days, but granted 15 days time is in violation of Section 29 (4) of the APMRUDA Act, 2016. On this ground alone, the petitioners are entitled to claim relief. He also drawn the attention of this Court to the land allotment policy to contend that for residential house purpose, urban land or land in urban agglomeration is to be acquired or pooled, but not agriculture land, which deprives many persons of their livelihood, requested to issue appropriate direction.

Whereas, Sri Ponnavolu Sudhakar Reddy, learned Additional Advocate General, would contend that when major part of the ryots surrendered their land by executing consent letters and did not raise any objection on receipt of notice as mandated under Section 29 (4) of the AMRUDA Act, the petitioners being agricultural labourers are not entitled to invoke the provisions of the Act No.30 of 2013 and if the land was acquired following the procedure prescribed under the Act No.30 of 2013, they are entitled to claim such relief. He further contended that in the present case, the land is acquired for providing house sites under the scheme “Navaratnalu – Pedalandariki Illu”, requested to dismiss the present petition.

The petitioner No.1 is a registered association registered under the Societies Registration Act, 1908 vide Registration No.112 of 2020 and the members of the association are only agricultural labourers working in 54 villages, where the land pooling is proposed, to provide house site to houseless poor under the scheme “Navaratnalu – Pedalandariki Illu”. According to their case, petitioner No.1 – association consists of agricultural labourers, petitioner No.2 is its

president and petitioner No.3 is an individual, may be agricultural labourer. It is not their case that they are the owners of DKT patta land or private patta land. Their assertion from the beginning is that they are only agricultural labourers, but under the APMRUDA Act, 2016 and the Rules, 2016 the agricultural labourers or any other persons evicted on account of pooling are not entitled to claim any compensation, at best, the petitioners are entitled for compensation under the Act No.30 of 2013, if land is acquired under the Act No.30 of 2013. Even according to the petitioners, the petitioners are entitled to claim compensation under the provisions of the Act No.30 of 2013 and not under the APMRUDA Act, 2016 and the Rules, 2016. Therefore, petitioner No.1 and its members are not entitled to claim any amount as compensation under the APMRUDA Act, 2016 and the Rules, 2016.

Before deciding the real controversy between the parties, it is appropriate to advert to the law relating to *locus standi* of the petitioners to maintain the public interest litigation.

A person will have a standing if he or she is harmed by a legal wrong caused by administrative or State action or is adversely affected or aggrieved by such actions within the meaning of the relevant statute. (vide: ***Director of Endowments, Hyderabad v. Akram Ali***[2] *and* ***D. Nagaraj v. State of Karnataka***[3]). *Locus standi* in the context of statutory remedy is not to be determined by analogy of *locus standi* to file petitions under Articles 32 or 226 of the Constitution of India. But, when a dispute or a controversy, productive of an injury in fact or that the party has been wronged or adversely affected by the action which impaired that concern and the

[2] AIR 1956 SC 60
[3] (1977) 2 SCC 148

said right or interest is arguably within "the zone of interest" protected by a statute or other instruments of law, can also give standing to the person. There is fine distinction between litigational competency in ordinary litigation i.e. adversarial and public interest litigation as non- adversarial, which varies from one to the other. If, the Act of the State or administrative authority of the State causes public injury or affects the right of public at large, such act need not be questioned by a person having *locus standi* or litigational competency and such act can be questioned by invoking *pro bono publico*.

The tests that may be applied for determining standing in private or individual interest pursuits may not be strictly applied in all cases of litigation in public interest. However, the commonality of some factors for determination of standing in both cases may be restated. Thus, a real grievance or injury must exist; the impact of State action must be demonstrated, access to justice in substantive or procedural terms must be shown to be involved, the demand to do justice and the failure to rectify the wrong is a relevant factor, the inappropriateness, futility, inadequacy, onerous or burdensome nature of alternative administrative processes, may have to be established to redress a claim by an individual by filing an application under Article 226 of the Constitution of India. But the action of the State infringes either fundamental right or statutory right of general public and apprehending injury to the public at large, to any person having no interest in the said matter may question or challenge the State act.

As discussed above, only when the act of the State infringes or likely to infringe the fundamental right of the public at large, a public interest litigation can be maintained.

In the instant case, petitioner No.1 is an association consisting of alleged agricultural labourers. Petitioner No.1 association cannot be treated as 'public at large'. In fact, they have no fundamental right and the apprehension or infringement of their fundamental right guaranteed under Article 21 of the Constitution of India is misplaced. Even otherwise, the members of the petitioner No.1 association, individually, were deprived of to engage themselves in the agricultural labour work in the land proposed to be pooled. The members of the petitioner No.1 association were not totally denied to attend agricultural work in the other lands available as agricultural labourers. Therefore, the petitioner No.1 – association has no fundamental right, guaranteed under Article 21 of the Constitution of India since it is a body corporate and the members of petitioner No.1 may, at best, are entitled to claim fundamental right under Article 226 of the Constitution of India in the event of its infringement either individually or collectively, but cannot approach this Court by invoking *pro bono publico* i.e. public interest litigation as if the fundamental rights of the members of the association were infringed. There is, absolutely, no allegation in the entire affidavit filed along with the writ petition that the fundamental right or statutory right of any members of the association or they are apprehending injury to the public at large. In the absence of such plea and material in support of it, the writ petition as public interest litigation cannot be entertained. Hence, we find that the public interest litigation is not maintainable under Article 226 of the Constitution of India.

Litigational competency is not waived in private litigation. But in public interest litigation only the litigational competency is waived to some extent but not absolutely. Therefore, one must have locus to get redressal of the claim approaching the Court in a private litigation and they must have a right or interest in the property and infringement of it or invasion or infringement of such is *sine qua non* to obtain any relief from the competent court.

In "***Union of India v. W.N. Chadha***[4]**"**, the Apex Court held as follows:

> "179. In Union Carbide Corporation, it has been said that any member of the society must have locus to initiate a prosecution as well as to resist withdrawal of such prosecution if initiated.
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> 180. That proposition is also, in our opinion, cannot be availed of as the prosecution was initiated by the appellants herein and they are persecuting and pursing the matter upto this Court, The proposition that any one can initiate a criminal proceeding is not in dispute.
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> 181. We have already considered the *locus standi* of a third party in a criminal case and rendered a considered finding in ***Janata Dal v. H.S. Chowdary*** **[AIR 1993 SC 892**] when this matter came before us in the first round of its litigation.
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> 182. Before the Supreme Court of United States, a similar question arose in ***Whitmore v. Arkansas*** **([1990] 495 US 149)**, , whether a next friend can invoke the jurisdiction of the Court when a real party was not able to litigate his or her own cause. The Supreme Court dismissed the writ of certiorari for want of jurisdiction on the ground that Whitmore, an independent person lacked standing to proceed in the case. In said case of Whitmore, reliance has been placed on a decision, namely, ***Gusman v. Marrero*** **180 US 81, 87, 45 L. Ed. 436, 21, S.Ct. 293 (1901)**, in which it has been held thus:
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> However friendly he may be to the doomed man and sympathetic for his situation; however concerned he may be lest unconstitutional laws be enforced, and however laudable such sentiments are, the grievance they suffer and feel is not special enough to furnish a cause of action in a case like this.
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> 183. In fact when this case on hand came up before this Court arising out of the public interest litigation of Shri H.S. Chowdhary, some other political parties approached this Court as public interest litigants to challenge the impugned judgment in that case, but this Court rejected all those appeals on the ground of *locus standi*."

Similarly, in "***Bangalore Medical Trust v. B.S. Muddappa And others***[5]**"**, the Apex Court discussed the scope of litigational

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[4] AIR 1993 SC 1082

competence i.e. *locus standi* and its relaxation in public interest litigation based on "***Janata Dal v. H.S. Chowdary***[6]**"**. The law declared by the Apex Court in the above judgments is that, only in public interest litigation the litigational competence is waived though not absolutely, but in private litigation, such litigational competence cannot be waived.

At the same time, Writ of Mandamus is discretionary in nature and such power of judicial review under Article 226 of the Constitution of India can be exercised only in certain circumstances. At best, this Court cannot decide the legality of the order. Yet issuance of Writ of Mandamus is purely discretionary and the same cannot be issued as a matter of course.

The petitioners though claiming that their right to livelihood is infringed on account of G.O.Ms.No.72 dated 25.01.2020, when the Statute did not protect their rights and in the absence of proof that they deprived livelihood by producing any material, it is difficult to accept their contention to issue a writ of Mandamus. On the other hand, the members of the petitioner No.1 – association, if really, aggrieved by the impugned G.O.Ms.No.72 dated 25.01.2020, may redress their individual grievance separately or collectively. Hence, we find no *locus standi* to the petitioners to maintain the Public Interest Litigation.

One of the contentions of the petitioners is that while pooling land in Amaravati, special benefits were conferred on the agricultural labourers, who lost their livelihood. It is not known whether such benefit is conferred on agricultural labourers whose livelihood is effected while pooling the land in Amaravati under the Andhra

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[5] 1991 SCR (3) 102
[6] AIR 1993 SC 892

Pradesh Capital Region Development Authority Act under the land pooling scheme. Even assuming for a moment, that any benefit is conferred on them, same rules cannot be applied to the land being pooled in Visakhapatnam within the purview of respondent No.1. Therefore, it is not a ground to declare the impugned Government Order as illegal and arbitrary.

One of the major contentions of the petitioners is that notice was not issued invoking Section 29 (4) of the APMRUDA Act, 2016, and granting 15 days time is contrary to the provisions of the APMRUDA Act, 2016. Undoubtedly, notice is required to be issued calling for objections granting 30 days time in terms of Section 29 (4) of the APMRUDA Act, 2016. But none of the land holders raised any objection for pooling their land, on the other hand, they gave consent for pooling and surrendered their land. Hence, the rights of the petitioners are no way infringed or violated by the respondents. Hence, the petitioners are incompetent to challenge the notification on the ground that the notice issued under Section 29 (4) of the APMRUDA Act, 2016 is contrary to the provisions of the APMRUDA Act, 2016. At best, land holders, whose rights are infringed seriously, can raise such objection, but not the petitioners. Therefore, on this ground, the impugned G.O.Ms.No.72 dated 25.01.2020 cannot be set aside.

The other contention raised by the petitioners is that the land pooling is in violation of land allotment policy. But these petitioners are no way concerned with the land pooled except the alleged engagement of their services as agricultural labourers during season, which is not supported by any material. Hence, we find that the rights of the petitioners are not violated and they were not deprived of their right to livelihood. On the other hand, the petitioners filed this public

interest litigation based on the provisions of the Act No.30 of 2013 though pooling is undertaken under the APMRUDA Act, 2016 and the Rules, 2016. The provisions of the Act No.30 of 2013 cannot be clubbed with the APMRUDA Act, 2016 and the Rules, 2016. They are totally different enactments not overlapping the other. Therefore, the respondents are entitled to pool the land strictly adhering to the provisions of the APMRUDA Act, 2016 and the Rules, 2016. If there is any violation, the person aggrieved may approach the Court independently or collectively not by invoking the jurisdiction of this Court under the Public Interest Litigation. Hence, we find that the Public Interest Litigation is not maintainable on any of the grounds referred above. However, it is left open to the aggrieved person to challenge the proceedings independently.

In view of our foregoing discussion, we find no ground to issue Writ of Mandamus invoking jurisdiction under Article 226 of the Constitution of India. Consequently, the petition is liable to be dismissed.

In the result, the writ petition (Public Interest Litigation) is dismissed while making it clear that the respondent No.3 – Visakhapatnam Metropolitan Region Development Authority is entitled to pool the land from the landholders, who voluntarily came forward to surrender their land accepting developed plots as mentioned above, not from the landholders who did not agree to surrender their land voluntarily. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

PRASHANT KUMAR MISHRA, CJ **M. SATYANARAYANA MURTHY,J**

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