CASE NO.:
Appeal (civil) 5089 of 2006

PETITIONER:
Kansing Kalusing Thakore and Ors

RESPONDENT:
Rabari Maganbhai Vashrambhai and Ors

DATE OF JUDGMENT: 20/11/2006

BENCH:
Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) Nos. 124-125/2006)

Dr. AR. Lakshmanan, J.

Leave granted.

This is a Public Interest Litigation (in short 'PIL') by the villagers of Rasana Nana in Gujarat. The appellants 1-6, who are the respondents in the public interest litigations before the High Court, are the appellants in these appeals who also belong to the same village.

In this PIL, the following question of law of great public importance arise for consideration of this Court which is, "whether the High Court failed to appreciate that the process for rehabilitation was under a policy decision of the Government of Gujarat and the lands being allotted to the appellants as an administrative act, which allotments was in lieu of the lands of the appellants acquired by the Government decades earlier, the judicial interference in the decision making process and policy of the Government not warranted in the facts of the case."

The appellants' lands were acquired by the State Government in the year 1954. This was in terms of Section 8 of the Bombay Merged Territory and Areas (Jagir Abolition Act) of 1953. The reason for the acquirement of the lands of the appellants by the State Government was for the establishment of the Dantiwada Agricultural University. As per the Government Policy, lands of such persons affected by the take over, allotment and/or reservation of separate land had been made by the competent authority in the adjacent villages, including village Rasana Nana.

The appellants herein are challenging only that part of the impugned order which affects their absolute right over the land given to them in lieu of their land which was surrendered by them for the purpose of establishment of the Agricultural University.

Land in survey Nos. 125 and 126 in village Rasna Nana though earmarked for rehabilitation was however not handed over to the persons affected by the take over of the lands for the purpose of establishment of the University. Several correspondences were made to the competent authority but for one reason or another, the land in the said survey nos. could not be handed over. In the year 2003, some of the appellants approached the High Court through 3 separate applications contending that although most of the persons affected had been given lands as per Government allotment policy dated

18.07.1973 and 11.02.1997 the appellants had been subjected to inequitable treatment. Three orders on different dates, i.e. on 20.09.2003, 14.10.2003 and 26.04.2004 were passed in the aforesaid 3 applications by the High Court. Directions were given to the competent authorities to consider and examine the case of each appellant and to take appropriate decision thereafter in terms of the policy framed by the State Government.

On 09.08.2004, the Deputy Collector passed 3 separate orders. He verified individual cases and took a final decision after consultation with the Collector whereby the reserved lands at survey Nos. 125 and 126 of village Rasana Nana were directed to be granted over to the appellants who also paid the occupancy price subsequently. It is stated that the order of the Deputy Collector was in furtherance of the policy decision of the State and was part of an Administrative Act. The appellants' claims were based upon the principles of legitimate expectation and the reliefs claimed by them were equitable in nature.

In October, 2004, five persons of the said village filed a petition before the High Court purportedly under public interest. They claimed themselves to be "public spirited individuals". In this petition, the challenge was to the 3 orders passed by the Deputy Collector allotting land from survey Nos. 125 and 126 of Village Rasana Nana and no challenge was made to the other allotments of the said village. It was contended that the lands allocated by this order was reserved for grazing of cattle i.e. Gauchar lands the allotment/settlement of which would affect the breeding of cattle in the village, such lands also serve as the water needs of the village.

The appellants were deliberately not made parties in the writ petitions filed allegedly in public interest. According to the appellants, the petitioners in the alleged PIL are people holding clout in the village Rasana Nana and who were all along enjoying illegal possession of the lands contained in survey Nos. 125 and 126.

In December, 2004, an application was filed by the present appellants before the High Court and impleaded as respondents in the alleged PIL. This application was allowed by the High Court. The Sarpanch of the village filed an affidavit-in-reply opposing the relief prayed for in the writ petition. It was stated that the lands in survey Nos. 125 and 126 were deemed to be Government lands w.e.f. 01.08.1954 and were never Gauchar lands or vested in the Panchayat body.

The appellants herein also filed an affidavit in reply contending that:

a) There had been no violation of legal rights so as to maintain a petition under Article 226 of the Constitution of India.

b) The petitioners in the alleged PIL had made false statements in as much as they were headstrong persons of the village having political clout.

c) The petitioners in the PIL had suppressed material facts including resolutions taken by Panchayat Authority.

d) The petitioners in the PIL had acted with malafide intentions by not making necessary and appropriate parties.

By virtue of the impugned order dated 04.08.2005, the High Court arrived at a conclusion that there was hardly any material to indicate that the land in question was pasture land and that such land was in fact reserved for the rehabilitation of persons who were adversely affected by the acquisition of

their lands for the establishment of the agricultural university and that the appellants herein had an existing right in terms of the Government policy and hence entitled to equitable relief. The High Court did not find any infirmity in the order of the Deputy Collector dated 09.08.2004. However, an argument was advanced on behalf of the public interest litigants contending that the grantees i.e. the appellants herein would not use the land for agricultural purposes and would sell it away. The High Court imposed the following conditions:-

I. The respondent Nos. 4 to 53 will not convert the land into N.A. But they will use the land only for agricultural purpose.

II. The respondent Nos.4 to 53 shall not transfer the land either by sale or in any other manner directly or indirectly by executing power of attorney, to any other party and even if such power of attorney is already given in favour of the third party, the concerned respondents shall revoke the same before receiving the possession.

The aforesaid conditions imposed by the High Court will remain in force for a period of 15 years from the date of possession of the land.

The Deputy Collector, Palanpur was directed to see that these respondents give undertaking in writing to comply with the aforesaid conditions imposed by the High Court. Unless such undertaking is given, the possession shall not be granted to such respondents. The Deputy Collector was further directed to ensure before giving possession of land that no need of Power of Attorney to be executed by any of the respondents in favour of any other party. If it is found to be so, he shall forthwith call upon the said respondent to revoke it and render it ineffective. He is further directed that unless there is strict compliance of the aforesaid terms and conditions by the said respondents, he shall not put them into possession of the land in question.

The High Court, thereafter, directed the Deputy Collector to give possession to the appellants only after taking written undertakings of compliance of the aforesaid conditions. It is this portion of the order which the appellants have challenged. The appellants preferred a revision petition before the High Court which, on 11.10.2005, was also dismissed. Aggrieved by the orders passed by the High Court, the appellants have preferred the above civil appeals.

We heard Mr. U.U. Lalit, learned senior counsel for the appellants and Ms. Hemantika Wahi, Mr. Rajiv Mehta and Mr. Gaurav Agarwal assisted by Mr. Siddhartha Chowdhury, learned counsel for the respective respondents.

We have perused the resolution passed by the Government of Gujarat dated 18.07.1973, 11.02.1997 and the PIL filed by the respondents herein and the counter affidavit and reply filed by the respective parties and also the various orders passed by the High Court of Gujarat including the judgment in appeal.

Mr. U.U. Lalit, learned senior counsel took us through the relevant pleadings and also the judgments and other records. He contended that the High Court was not correct in its approach of imposing further conditions once it was evident that the lands to be allotted to the appellants was not pasture lands and reserved for allotment in terms of the Government policy. He further contended that the conditions imposed by the High Court was not within the ambit and scope of the PIL more particularly when the maintainability of the PIL was in

issue and not decided. It was further urged that the appellants who were being allotted lands after about 30 years suffered inequity by imposition of such conditions by the High Court inasmuch as many persons (whose lands had also been taken and who were given/allotted lands decades earlier) were also subjected to such restrictions and conditions. He also submitted that the High Court was not correct in imposing a 15 year ban/restriction upon the appellants without any rationale, reason and without any material on record.

According to Mr. Lalit, the stringent conditions imposed by the High Court are not sustainable in law inasmuch as the same amounts to judicial interference in purely administrative acts where there is no involvement of any malafide and allocations sought to be made are only in lieu of lands acquired earlier by the Government, in furtherance of a policy decision aiming for rehabilitation. Arguing further, Mr. Lalit submitted that the High Court was also not correct in appreciating the fact that the only restriction in transferring the land was provided for in Section 43 of the Bombay Tenancy and Agricultural Land Act and such restricted tenure land can also be transferred after obtaining permission from the Collector under the Bombay Land Revenue Code. In the instant case, by adding these two conditions, entire transfer to the appellants was given a discriminatory treatment. Concluding his argument, Mr. Lalit submitted that the High Court was not right in presuming without any material that the appellants/allottees will sell their land to the builders for constructing commercial complex.

Learned counsel appearing for the State and for the Sarpanch invited our attention to the counter affidavit filed in the writ petition. The Deputy Collector stated that the petitioners in the PIL had personal interest involved and they were actually encroachers and had been removed therefrom and that the process of rehabilitation was a policy decision and that the public interest litigants does not deserve any relief in the writ petitions.

The Sarpanch of Village Rasana Nana filed an affidavit in reply opposing the relief prayed for in the writ petition. It was stated that the lands in survey Nos. 125 and 126 were deemed to be Government lands w.e.f 01.08.1954 and were never gauchar lands and are vested in the Panchayat body. It was further submitted that after receipt of the notice from the High Court, the same was placed before the Panchayat in its meeting dated 16.02.2005 and the Panchayat after detailed deliberation and careful consideration taken the decision by resolving that the Panchayat had no objection in the land being granted to the ousted persons on account of setting up of Agricultural University.

Two panchnamas were made in furtherance of orders made by the Circle Officer and Surveyor of the Survey Department. It is recorded that all encroachments in the lands sought to be granted were unauthorized and possession was recovered. Mr. Gaurav Agarwal, learned counsel for the contesting respondent, after reiterating the contentions raised in the writ petition, submitted that a) the lands allocated by order dated 09.08.2004 was not available for any purpose other than to fulfill the water needs for the population of the village b) lands so allotted were reserved for grazing i.e. gauchar land (pasture) and c) land allocated vide order dated 09.08.2004 would affect cattle breeding.

We have given our careful consideration for the rival submissions made by the respective counsel appearing for the respective parties. The writ petition filed by the respondents herein is an abuse of the process of the Court. By this PIL, the respondents sought to ventilate/redress their personal

grievances inasmuch as they are able to holding clout in Village Rasana Nana and were enjoying illegal possession in several lands contained under said survey Nos. 125 and 126. The appellants herein were deliberately not made parties to the writ petition allegedly filed in public interest. It is a matter of record that the writ petitioners are the people who encroached upon the land sought to be granted to the appellants herein and hence having no legal right to continue their illegal occupancy, devised means to approach the High Court in alleged public interest. This would be evident from the affidavit of the Deputy Collector filed on 24.03. 2005. The maintainability of the writ petition at the instance of the respondents was specifically raised before the High Court. The maintainability of the PIL which was in issue was unfortunately not decided by the High Court. The High Court, in our opinion, ought to have decided the maintainability of the PIL maintained at the instance of the encroachers and land grabbers and rejected the writ petitions at the threshold. This Court in a catena of decisions held that only a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have locus standi and can approach the Court to wipe out the tears of the poor and needy suffering from violation of their fundamental rights but not a person for personal gain or private profit or political or any oblique consideration. The High Court ought to have rejected the writ petition at the threshold as observed by this court in (1992) 4 SCC 305 Janta Dal vs. H.S. Chaudhary & Ors. In our opinion, the writ petition filed by the respondents was not aimed at redressal of genuine public wrong or public injury but founded on personal vendetta. It is the duty of the High Court not to allow such process to be abused for oblique considerations and the petitions filed by such busy bodies deserves to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs.

Even on merits, the respondents have absolutely no case. The records filed in this case clearly go to show that there had been no violation of legal rights so as to maintain a petition under Article 226 of the Constitution of India. The petitioners in the PIL had suppressed material facts including resolutions taken by bona fide authority and acted with malafide intentions by not making necessary and appropriate parties. We have already reproduced the conditions/restrictions imposed by the High Court against the appellants herein. In the instant case, the appellants lands were acquired by the State Government in the year 1954 and as per the government policy, lands of such persons affected by the take over allotment and/or reservation of separate land had been made by the competent authority in the adjacent villages. It is also evident that the lands to be allotted to the appellants was not pasture land and reserved for allotment in terms of government policy and that the appellants were allotted lands after about 30 years. Under such circumstances, the appellants are the ones who have suffered inequity for 30 years. The Court is not justified by the imposition of such stringent conditions and, in particular, imposing a 15 year ban upon the appellants without any rationale, reason and without any material on record. The stringent conditions imposed by the High Court are not sustainable in law and inasmuch as the same amounts to judicial interference in purely administrative acts when the allegation sought to be made are only in lieu of lands acquired earlier by the Government in furtherance of a policy decision aiming for rehabilitation. By imposing such conditions, the High Court has jeopardized the rights of the appellants who have been displaced and suffering for more than 3 decades. The High

Court also failed to appreciate the legal provision of Section 6 of the T.P. Act when the transfer of the property can be prohibited only by provision of the law and not by the judgment or direction referred in the writ petition under Article 226 of the Constitution of India. The only restriction in transferring the land is contained in Section 43 of the Bombay Tenancy and Agricultural Land Act and such restricted tenure land can also be transferred after obtaining permission from the collector under the Bombay Land Revenue Code. In the instant case, by adding these two conditions the entire transfer of the appellants are given discriminatory treatment. The Government of Gujarat, by its resolution dated 18.07.1973, considered the question of granting the land to the affected account holders of these villagers in lieu of the land at the place possible was under consideration of the government and after consideration the government has resolved to adopt the policy to the affected account holders. It is resolved to grant the land to the account holders, whose lands shall be acquired for establishing the Head Quarter of the Agricultural University, including the Main Campus, as per the following norms in cases where the land shall be granted to them without the irrigation facility.

	LAND TO BE ACQUIRED/ ACQUIRED LAND.	LAND TOBE GRANTED IN EXCHANGE.
1.	Upto 4 Acres	Entire land.
2.	4 Acres upto 12 Acres	4 Acres.
3.	12 Acres to 15 Acres	1/3rd portion of the acquired land.
4.	Exceeding 15 Acres.	5 Acres.

If the land, which is likely to get the benefit of irrigation in near future, will be granted to the affected account holders, it is resolved to grant the land to them as per the following norms :

	LAND TO BE ACQUIRED/ ACQUIRED LAND.	LAND TO BE GRANTED IN EXCHANGE.
1.	Upto 3 Acres	Entire land.
2.	Above 3 Acres and Upto 9 Acres.	3 Acres.
3.	Above 9 Acres and upto 12 Acres.	1/3rd portion of Acquired land.
4.	Above 12 Acres.	4 Acres.

In our opinion, none of the appellants have violated any of the rights guaranteed to the petitioners in the writ petition either under the Constitution or under any other law and hence the PIL filed by the respondents herein is not at all maintainable and is liable to be dismissed. Now that the civil appeals are allowed, we direct the respondent-authorities to grant possession of the land immediately to the appellants without insisting for any undertaking from the appellants as directed by the High Court in its impugned judgment. Since the patience of the appellants have been tested for so long by the State Government and other authorities and also the public interest litigant, it is not proper for the government and other appropriate authorities to ask the appellants to wait for any longer.

We direct the government and the other appropriate

authorities to immediately handover possession of the land allotted to them by way of rehabilitation.

Accordingly, we dismiss the writ petitions filed by the respondents and allow the above civil appeals and set aside the order impugned in these civil appeals passed by the High Court of Gujarat. However, we order no costs.