

CASE NO.:
Writ Petition (civil) 633 of 2005

PETITIONER:
Vishwanath Chaturvedi

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 01/03/2007

BENCH:
Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

The above writ petition under Article 32 of the Constitution of India styled as Public Interest Litigation has been preferred for seeking enforcement of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. According to the petitioner, he is an advocate by profession and not connected or related to any political party or parties. According to him, he has filed this petition with an intention to highlight the root of corruption in U.P. Administration. According to him, he has no relation or connection with Congress Party as on date and that the documents which have been enclosed along with the additional affidavit filed by respondent No.3 would go to prove that respondent No.3 is having more access in the office of Congress party, more than even the members of AICC/UPCC and that respondent No.3 with the help of some employees of AICC/UPCC succeeded in forging documents to project the petitioner as a sponsored person of Congress. It is also further stated that he is not connected with any alleged PIL Cell of concerned party. The name of the petitioner does not appear in the list which is approved by the office of the Congress party and that the list annexed by respondent No.3 along with his affidavit is a frivolous list. It is also further stated that the petitioner never attended 82nd Plenary Session of AICC at Hyderabad and Annexure A-3 is a frivolous document which is prepared by respondent No.3 with the help of some employees of U.P.C.C. and that the petitioner also paid some money to an employee of UPCC and got some identity cards prepared in the name of Shri Mulayam Singh Yadav, Shri Shivpal Singh Yadav, Shri Akhilesh Yadav and Shri Ram Gopal Yadav. Copies of the said identity cards have also been enclosed as Annexure K-6 to the rejoinder to the counter affidavit. We have perused the identity cards namely, Annexures A-3 and K-6. In our opinion, both the identity cards which are zerox copies cannot at all be considered as authenticated documents. In the absence of concrete proof that the petitioner belongs to the Congress party, his writ petition cannot be thrown out on the question of maintainability and on the ground that the petitioner is an active member of the Indian National Congress and the office In-charge of Humanitarian Aid and Redressal Public Grievance Cell. We do not, therefore, propose to deal with this issue any further and proceed to consider the case of both the parties.

The petitioner has filed the above petition with the following prayers:

"(a) issue an appropriate writ in the nature of mandamus directing respondent No.1 to take appropriate action to prosecute respondent Nos. 2 to 5 under the provisions of Prevention of Corruption Act, 1988 for acquiring amassed assets more than the known source of their income by misusing their power and authority;

(b) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

According to the petitioner, the contesting respondents have misused their power and authority and have acquired assets more than the known source of their income. Apart from the Union of India, the petitioner has arrayed Shri Mulayam Singh Yadav, the sitting Chief Minister, UP, and his two sons and one daughter-in-law as party respondents. In paragraph 10 of the writ petition, the petitioner alleges to have made a representation dated 6.11.2005 being annexure P-3, to the Hon'ble Home Minister, Government of India, giving all the details and requested the Home Minister to take appropriate action against the respondents. It is alleged that the Home Minister has failed to take action against the aforesaid respondents under the provisions of the Prevention of Corruption Act, 1988.

The petitioner also made a representation dated 02.07.2005 to the Hon'ble Governor of the State of U.P. requesting the Governor to take immediate action against the 2nd respondent, his sons and one daughter-in-law under the provisions of the Prevention of Corruption Act, 1988. However, the Governor has failed to take any action on the representation made by the petitioner. The petitioner in the representation has given the details in regard to the properties owned by all the contesting respondents. The petitioner has also filed all the sale deeds and other documents. According to the petitioner, though some of the properties mentioned by Shri Akhilesh Yadav and Shri Mulayam Singh Yadav, in the affidavits submitted by them before the Election Commissioner, however, source of acquiring such properties have not been mentioned in the said affidavits. From the year 1977, both Shri Mulayam Singh Yadav and Shri Akhilesh Yadav were completely involved in full time political activities. According to the petitioner, the contesting respondents owned properties worth several crores which have been acquired by them and that these properties have been undervalued by these persons and the market value of aforesaid properties is ten times more than the value mentioned by them in their affidavits and in the sale deeds. It is further submitted that the respondent Nos. 2-5 have acquired wealth by misusing their power and authority and they do not have any source of income and that all the properties acquired by them are at prime locations.

The petitioner has also filed additional affidavit dated 16.12.2005. According to the petitioner, he had no intention to wreck vengeance against any political leader and that the respondents are afraid of justifying their conduct of acquiring amassed wealth, disproportionate to their known sources of income.

When the matter was listed before a Bench comprising of Hon'ble Mr. Justice Arijit Pasayat & Hon'ble Mr. Justice C.K. Thakker on 7.6.2006, the learned Judges, after hearing learned counsel appearing for the respective parties, passed the following order: "Heard learned counsel for the parties.

Though Mr. Mukul Rohtagi, learned Senior Adv. For respondent Nos. 2 to 5 raised objection as to maintainability of the petition stating that bona fides of the petitioner are not established, at this juncture, we do not consider it necessary to go into the details on that aspect. The basic issue involved is alleged investments and sources for such investments. Let respondent Nos. 2 to 5 file copies of the Income-tax and Wealth-tax returns, if any, filed before the authorities of the said respondents along with details which accompanied the returns, if they were filed and copies of orders, if any, passed by the statutory authorities, within four week. Such details shall be filed for the Income-tax/Wealth-tax assessment years 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006 and 2006-2007. The statement of Wealth shall be filed for the aforesaid assessment years i.e. the Statement of Wealth as on 31.3.2001, 31.3.2002, 31.3.2003, 31.3.2004, 31.3.2005, 31.3.2006. We are informed by learned counsel for respondent nos. 2 to 5 that notices have been issued by the Income-tax authorities for some of the aforesaid period calling for informations in terms of Section 133(6) of the Income-Tax Act, 1961 (in short "the Act"). The proceedings pursuant to those notices may continue untrammelled by the fact that the present writ petition is pending and we have asked for certain details to be filed.

Call this matter on 17th July, 2006."

Pursuant to the said direction, respondent Nos. 2,3,4 & 5 have submitted their Income-tax Return and Income Tax Assessment Order, Wealth Tax Return and Wealth Tax Assessment Orders for the assessment years 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006 in sealed covers. Respondent Nos. 2-5 also filed separate affidavits along with income-tax returns etc. The second respondent has also explained in his affidavit dated 7.7.2006 that all the returns of the deponent/respondent No.2 and the return of Samajwadi Party for the assessment year 2005-2006 as well as the assessment orders passed with respect to the deponent/respondent No.2, are being submitted in a sealed cover for the perusal of this Court and that it also includes material submitted along with the returns. It is also mentioned in the affidavit that the reason for submitting the material in sealed cover is that the said documents are not public documents and are otherwise liable to be misused. Similar affidavits have also been filed by the other respondents 3-5. A detailed counter affidavit was filed on behalf of respondent Nos. 2-5 denying all the allegations and the statements made in the writ petition. It is stated in paragraph 2 of the counter affidavit that the reliefs sought for in the instant petition are not maintainable inasmuch as the State of U.P. has not been impleaded as a party respondent and furthermore a bare perusal of Section 17 of the Prevention of Corruption Act, 1988

would reveal that the investigation could possibly be made only by an officer of the rank of Deputy Superintendent of Police of the State Government. A detailed parawise reply has also been furnished with reference to each respondent, the properties acquired and the sources of purchase and other details. According to the respondents, the petitioner has attempted to mislead this Court and in the guise of PIL, he is seeking to tarnish the name and reputation of respondent Nos. 2-5. It was further submitted that the instant petition may be dismissed.

A detailed rejoinder affidavit to the counter affidavit was filed by the petitioner denying all the allegations contained in the counter affidavit. In paragraph 7 of the rejoinder, it is stated as follows:

"7. In reply to para 1.2 and 6 it is stated that respondent No.2 Shri Mulayam Singh Yadav and his kith and kins are not only having properties mentioned in the writ petition, they are also having various other properties worth rupees several hundred crores. Details of some of the properties which could not be mentioned in writ petition are given below:

(a) Respondent have recently constructed a very big medical college and post-graduate college in the name of Choudary Charan Singh Degree College, Hewra, District Etawa by spending about Rs.100 crores. Out of the said amount, Rs.80 crores (Eighty Crores) has been spent from contingency fund of government of U.P. for the year 2003-2004 and 2004-2005. Photos of said medical college and post-graduate colleges are enclosed herewith as Annexure K-8 to this affidavit.

(b) Respondent No.2 has also constructed a very big college under the name and style "U.P. Rural Institute of Medical Science and Research Institute", Saifai (Etawa) by spending huge amount of Rs.100 crores. Photos of said institute are enclosed herewith as Annexure K-9 to this affidavit.

(c) Respondent No. 2 to 5 are also having a very big house at village Saifai near Etawa. The said house is hundred times better than 5 Star Hotel in Delhi. In order to develop said house about Rs.2 crores have been spent from contingency fund of Government of U.P. Photo of said house is enclosed herewith as Annexure K-10 to this affidavit.

(d) Respondents jointly have also constructed several huge buildings at Vikramaditya Marg, Lucknow near Raj Bhawan and Vidhan Sabha. Photos of said buildings are enclosed herewith as Annexure K-11 to this affidavit.

(e) Respondents have recently given one of the buildings situated at 31/93 Mahatma Gandhi Marg, Lucknow to ABN Amro Bank. Petitioner has reasons to believe that said building has been given on a monthly rent of Rs. 20 lacs. A photo of said building given on rent to ABN Amro Bank is enclosed herewith as Annexure K-12 to this affidavit.

(f) Respondents were having a very big farm house near Gomti Nagar, Lucknow measuring about 5 acres, which was sold recently for a sum of Rs. 5 crores by respondents Shri Akhilesh Yadav and Shri Pratik Yadav. Photo of said farm house is enclosed herewith as annexure K-13 to this affidavit.

(g) Respondent Shri Mulayam Singh Yadav is having a very big house at Friends Colony, Etawa. Photo of same is enclosed herewith as Annexure K-14 to this affidavit.

(h) Respondent Shri Mulayam Singh Yadav is also having a bungalow at Civil Lines, Etawa. Photo of same is enclosed herewith as annexure K-15 to this affidavit.

(i) Respondent Shri Akhilesh Yadav is also having a very big bungalow at Civil Lines, Etawa. Photo of same is enclosed herewith as Annexure K-16 to this affidavit.

(j) Besides this, respondent Nos. 2-5 are also having several benami properties in the name of Shri Rajpal Yadav, brother of Shri Mulayam Singh Yadav who had been working in U.P. Warehouse Corporation as a Clerk. Details of said properties are given below:

(i) Petrol pump at Saifai (Photo enclosed herewith as Annexure K-17 to this affidavit).

(ii) House at Friends Colony, Etawa (Photo enclosed herewith as Annexure K-18 to this affidavit).

(k) Huge building at Etawa under the name of Lohiya Trust at Friends Colony, Etawa. All respondent Nos. 2 to 5 are members of said Trust (Photos of building of said Trust enclosed herewith as annexure K-19 to this affidavit).

(l) Besides the aforesaid, there is another property in the name of Smt. Malti Devi, deceased wife of Shri Mulayam Singh Yadav, adjacent to 31/93, Mahatma Gandhi Marg, Lucknow. It is also a property worth Rs.19 crores.

(m) It is submitted that so far as property belonging to Shri Ranbir Singh Yadav is concerned, Shri Ranbir Yadav was the nephew (brother's son) of Shri Mulayam Singh Yadav, s/o Shri Ratan Singh Yadav. All these properties in the name of Shri Ranbir Yadav are benami properties of Shri Mulayam Singh Yadav. Neither Shri Ranbir Yadav s/o Shri Ratan Singh Yadav nor his father Shri Ratan Singh Yadav have any source of income."

Several photographs marked as "K series" have also been filed by the Petitioner.

At the time of hearing, a chart was filed by the petitioner furnishing the details in regard to the name, description of property, consideration alleged to be paid, market value on the date of purchase and the market value in 2007 which is marked as 'A'.

Learned senior counsel appearing for respondent No.2, at the time of hearing, has placed four documents collectively marked as 'B'. These are as follows:

(1) Zerox Copy of the letter dated 5.5.2006 from the Government of India, Office of the Assistant Director of Income-Tax, Ashok Marg, Lucknow addressed to Shri Mulayam Singh Yadav, respondent No.2 requesting him to furnish such an information to the sender.

(2) Zerox copy of the letter dated 5.5.2006 from the Government of India, Office of the Assistant Director of Income-Tax, Ashok Marg, Lucknow addressed to Shri Mulayam Singh Yadav, respondent No.2 to personally attend his office on 26.5.2006 to give evidence and to produce through an authorized representative the books of account and or other documents specified in the notice etc.

(3) Zerox copy of the letter dated 24.5.2006 from Shri Mulayam Singh Yadav, respondent No.2 to The Additional Director of Income Tax, Lucknow informing about furnishing of the documents, as required, through an authorized representative and Counsel.

(4) Zerox copy of the letter dated 15.6.2006 from the Authorised representative and counsel to the Additional Director of Income-Tax, Lucknow furnishing certain information with reference to the notice.

Mr. D.K. Garg, learned counsel appearing for the petitioner, on 20.2.2007 furnished a corrected chart running into six pages in regard to the name, description of property, consideration alleged to be paid, market value on the date of purchase and the market value in 2007 and also a zerox copy of the Constitutional Law, Fourth Edition by John E. Nowak. It is marked as 'C'. Mr. P.H. Parekh, learned counsel appearing for the contesting respondents, along with his letter dated 23.2.2007 submitted reply to the Chart which was filed during the course of the arguments in this matter on

13.2.2007 by the counsel for the petitioner. It was stated in the letter that a completely new chart including properties which were expressly given up during the arguments and in regard to which no arguments were advanced have been included in the new chart filed on 20.2.2007, therefore, the said chart dated 20.2.2007 may not be taken into consideration. Along with his letter dated 23.2.2007, Mr. P.H. Parekh, submitted the response of respondent Nos. 2-5 to the chart of properties tendered to this Court by the petitioner on 13.2.2007 in the course of hearing. The said response is marked as 'D' which runs into 8 pages. Pursuant to the directions issued by the Bench comprising of Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice C.K. Thakker, respondent Nos. 2-5 filed zerox copies of their Income-tax Returns. Shri Mulayam Singh Yadav, respondent No.2, filed zerox copies of his Income-tax Return which is marked as 'E' runs from page 5 to 134. Likewise, Shri Akhilesh Yadav, respondent No.3, filed zerox copies of his Income-Tax Returns which is marked as 'F' runs from page 3 to 98. Mrs. Dimpal Yadav, respondent No.4, also filed zerox copies of her Income-Tax Returns which is marked as 'G' runs from page 3 to 88. Shri Prateek Kumar Yadav, respondent No.5, filed zerox copy of his Income-tax Return which is marked as 'H' runs from page 3 to 12. Several sale deeds in Hindi and English have also been filed along with the writ petition. On the above pleadings, documents and records placed before this Court, we heard the arguments of Mr. K.T.S. Tulsi, Mr. Rajiv Dutta, learned senior counsel and Mr. D.K. Garg, learned counsel, appearing for the petitioner and Mr. P. Vishwanatha Shetty, learned senior counsel for the Union of India, Mr. Harish Salve, learned senior counsel, for respondent No.2, Mr. Ashok H. Desai, learned senior counsel, for respondent No.3, Mr. Rakesh Dwivedi, learned senior counsel, for respondent No.4 and Mr. R.F. Nariman, learned senior counsel, for respondent No.5. According to Mr. K.T.S. Tulsi and as already stated above, the net assets of the family are of Rs.9,22,72,000/- as per the calculation made by the official valuer and the present value of the net assets comes to Rs. 24 crores. He invited our attention to the pleadings and the charts filed by the petitioner before this Court. In support of his submissions, he relied on the judgment of this Court in K.L. Dorji vs. C.B.I. , (1994) 3 SCR 201 and in Prakash Singh Badal vs. State of Punjab , (2007) 1 SCC 1. He also relied on a judgment of this Court in Vineet Narain & Ors. vs. Union of India & Anr. , (1998) 1 SCC 226 (3 Judge Bench). In paragraphs 55 and 56 this Court observed as under:

"55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain power to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of the them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts an offence, it must be promptly investigated and the offender against whom a prima facie, case is made out should be prosecuted

expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries : R v. Secretary of State for Foreign and Commonwealth Affairs, (1955) 1 WLR 386."

Concluding his arguments, Mr. K.T.S. Tulsi, submitted that all that is required at this stage is to direct the competent investigating agency to enquire into the matter and submit a preliminary report and to take further action on the basis of the said report. Mr. Harish Salve, learned senior counsel appearing for respondent No.2 took us through the pleadings and the documents, in particular, the common counter affidavit filed by respondent Nos. 2-5 and submitted that the respondents have shown their assets etc. acquired by them and the same have been duly assessed by the Income-tax authorities and that the FDRs have been shown in the income-tax Returns with regard to the synopsis at page 'J'. Learned senior counsel further submitted that the property in question is in the name of Samajwadi Party and was purchased by the Samajwadi Party directly and an amount of Rs.1,10,00,000/- and stamp duty of Rs.11,10,000/- was paid on 8.6.2005 for the said property and upon conversion into free-hold property on 26.2.2005, an amount of Rs.40,41,621/- along with stamp duty and miscellaneous expenses of Rs.4,15,000/- have been paid by the Samajwadi Party and that respondent No.2 had executed the deed in his capacity as the President of the Samajwadi Party. He invited our attention to the Deed of Freehold Leasehold Nazool Land and the schedule at page 380 of the writ petition paper book. He also invited our attention to the paragraphs (b), (f) and (g) of the common counter affidavit of reply in regard to respondent No.2 and submitted that the information already furnished are available with the Income-tax Department and are not public records. Mr. Harish Salve further invited our attention to the prayer made in the writ petition, additional affidavit filed by the petitioner (page 276 of the paper book) and the reply filed thereon. According to him, the facts mentioned and details furnished in the writ petition are highly disputed facts and Income-tax authorities are already working on it and that the writ petition has been filed by a political opponent, the same cannot be countenanced and is liable to be dismissed.

He invited our attention to paragraphs 171 and 173 of the judgment of this Court in Common Cause, A Registered Society vs. Union of India & Ors., (1999) 6 SCC 667 and submitted that having regard to the facts of the case and the ingredients of the offence alleged to have

been committed by the respondents, no case was made out against the respondents for any case being registered against them on the basis of the allegations made in the writ petition nor was there any occasion to direct an enquiry by the CBI in this regard.

Mr. Ashok Desai, learned senior counsel, appearing for respondent No.3 submitted that in matters like this question of balancing factor must be taken into account and that no action can be ordered or initiated merely on suspicion and that this type of vague petitions should be discouraged. He submitted that Income-tax Returns have already been submitted and the matters are pending before the concerned authorities and all the payments were made by cheques is an indication to show that the allegation made by the petitioner is not true. He further submitted that the respondents have given all the explanations in their counter affidavits and, therefore, no action at the request of the public interest litigant can be ordered. He invited our attention to the judgment of this Court in *Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. Vs. Union of India & Ors.*, (2006) 6 SCC 613. The said decision, in our opinion, has no application to the facts of this case. The above case relates to a pending criminal matter before the special Court and while dealing with the liberty of an accused in that case, this Court was of the opinion that the liberty of an accused cannot be taken away except in accordance with the established procedure of law, under the Constitution and that criminal procedure and other cognate statutes and that the PIL is totally foreign to pending criminal proceedings. The case on hand does not relate to any pending criminal proceedings. The records placed before us and the allegations made by the petitioner encountered by the respective respondents are related to the properties purchased by the contesting respondents and that the properties acquired are disproportionate to their known source of income.

Mr. Rakesh Dwivedi, learned senior counsel, appearing for respondent No.4 who is the wife of respondent No.3 reiterated the same arguments advanced by other learned senior counsel appearing for the respondents. He also submitted that separate Income-tax Returns were filed on behalf of respondent No.4 and that respondent Nos. 2-5 have their own agricultural income from trading in agricultural produce and the same can be verified from the Income-tax Returns. He also denied that respondent No.3 has no source of income and that he had returned to India in 1997 and not in the year 2002 as alleged and that he has a substantial income from wholesale trading in agricultural produce.

Mr. R.F. Nariman, learned senior counsel appearing for respondent No.5 who is a student and son of respondent No.2. He simply submitted that the mother of respondent No.5 purchased a plot in his name.

He further submitted that the writ petition should be dismissed at the threshold as it is politically motivated. He invited our attention to pages 388 and 431 of the writ petition and submitted that the property was purchased on 24.12.1999 by Smt. Sadhana, the mother of respondent No.5 herein from one Shri Ranveer Singh and Shri Rajesh Bhojwani vide two cheques drawn on Allahabad Bank, Etawah. Vide agreement dated 7.10.2006, the said property has been sold to M/s Liza Builders Pvt. Ltd. for an amount of Rs.2.50 crores and

advance of Rs.1 crore has been received for the same. With regard to the property mentioned at paragraph (b) at page 9, it is submitted that an amount of Rs.1,89,30,000/- (cost of Rs.1,72,00,000/- and stamp duty and miscellaneous charges of Rs.17,30,000/- was paid for the same) and for the said purchase, a loan of Rs.1,10,000,00/- had been taken from respondent No.3 and for the remaining amount the aforementioned advance received from M/s Liza Builders Pvt. Ltd. was utilized.

He also invited our attention to the affidavit filed by Shri Prateek Yadav, respondent No.5 and statement made thereunder in paragraph 2. It was stated that in accordance with the directions of this Court contained in the order dated 7.6.2006, respondent No.5 has furnished the Income-tax Returns for the assessment year 2006-2007. The assessment proceedings are still pending, therefore, the assessment order cannot be filed. It is, therefore, submitted that the Income-tax Return filed by respondent No.5 is the first Income-tax Return as he became major in the financial year 2005-2006. No wealth tax return has been submitted for the assessment year 2006-2007 as one residential building (8/2 Vikramaditya Marg, Lucknow) and agricultural land at Village Nagla Sohan District Etawah are exempt from the wealth tax in view of the provisions of the Wealth Tax Act, 1958. He also furnished the Income-tax Return for the assessment year 2006-07 in a sealed cover as the same is not a public document and is otherwise liable to be misused.

Mr. Viswanatha Shetty, learned senior counsel, appearing for the Union of India, invited our attention to the counter affidavit filed by the Union of India and submitted that the Union of India will abide by any direction that may be issued by this Court. In reply to the arguments advanced by the learned senior counsel appearing for the contesting respondents, Mr. K.T.S. Tulsi, invited our attention to the rejoinder to the counter affidavit filed by respondent Nos. 2-5 at pages 462, 463 and 498 of the writ petition paper book. According to him, a prima facie case is made out for initiating enquiry and there is every minute ground to suspect and, therefore, the prayer asked for should be granted.

As already noticed, voluminous documents by way of several sale deeds, Income-tax Returns, Income-tax Assessment Order, Wealth Tax Returns and several photographs have been filed. This apart, several charts in regard to the properties purchased by various respondents have also been filed. The contesting respondents have also filed a separate chart and all these documents have been marked as 'A' to 'H'.

In our opinion, the minuteness of the details furnished by all the parties and the Income-tax Returns and Assessment Orders, Sale deeds etc. have to be carefully looked into and analysed only by an independent agency with the assistance of the Chartered Accountant and other accredited Engineers and valuers of the property. As stated by the petitioner, very valuable properties in the heart of the City have been purchased for lower sale consideration and lesser than the market value on the date of purchase and, therefore, it requires a detailed enquiry which is time consuming. This Court will not be in a position to verify each and every entry, the sale deed, the extent of the property, the location and

description of the property, the name of the purchaser, the name of the vendee, consideration alleged to be paid and the market value on the date of the purchase etc.etc. We have already referred to the prayer made at page 17 of the writ petition paper book which is to issue a writ in the nature of mandamus directing the Union of India to take appropriate action to prosecute respondent Nos. 2-5 under the provisions of Prevention of Corruption Act, 1988 for acquiring assets more than the known source of their income. The said prayer, in our opinion, cannot at all be countenanced straightaway. The Income-tax Department is concerned only with the source of income and whether the tax was paid or not, therefore, only an independent agency or the CBI could, on Court direction, determine the question of disproportionate assets. We, therefore, direct the CBI to conduct a preliminary enquiry into the assets of all the respondents and after scrutinizing if a case is made out then to take further action in the matter.

According to Mr. Harish Salve, the property mentioned in the petition was accounted for in the Income-tax Returns and as the Income-Tax Department was already seized of the matter, no further enquiry was called for and that the Court should not entertain a petition which was full of disputed facts. It is true that the facts stated by the petitioner is disputed by the respondents in their counter affidavits and the facts and figures stated by the respondents in their counter affidavits are again disputed by the petitioner in his rejoinder affidavit. The petitioner has also filed an additional affidavit. In addition to the above, respondent Nos. 2-5 have filed their Income-tax Returns and Wealth Tax Returns as directed by another Bench of this Court. Therefore, voluminous documents have to be meticulously scrutinized and carefully perused and statements have also to be recorded from the persons concerned which require expertise in the field of accounting and in the valuation. Since disputed facts are involved, it requires an investigation by an independent agency that is by the CBI. Respondent No.2, Shri Mulayam Singh Yadav, is a senior politician and holding a very high public post of Chief Minister in a very big State in India and the allegations made by the petitioner against him have cast a cloud on his integrity. Therefore, in his own interest, it is of utmost importance that the truth of these allegations is determined by a competent forum. Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a cloud and that it would also be in the interest of respondent No.2 and the members of his family to have their honour vindicated by establishing that the allegations are not true. In our view, these directions would subserve public interest.

The ultimate test, in our view, therefore, is whether the allegations have any substance. An enquiry should not be shut out at the threshold because a political opponent of a person with political difference raises an allegation of commission of offence. Therefore, we mould the prayer in the writ petition and direct the CBI to enquire into alleged acquisition of wealth by respondent Nos. 2-5 and find out as to whether the allegations made by the petitioner in regard to disproportionate assets to the known source of income of respondent Nos. 2-5 is correct or not and submit a report to the Union of India

and on receipt of such report, the Union of India may take further steps depending upon the outcome of the preliminary enquiry into the assets of respondent Nos. 2-5.

In the instant case, it needs to be noted that we are concerned in this case not with the merits of the allegations. The present petition is filed on acquisition of alleged wealth.

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. In our view, it is wrong in law for the Court to judge the petitioner's interest without looking into the subject matter of his complaint and if the petitioner shows failure of public duty, the Court would be in error in dismissing the PIL.

It is also equally true that PIL is not maintainable to probe or enquire into the returns or another taxpayer except in special circumstances. It is the ratio of the decision of House of Lords in the case of *Inland Revenue Commissioners vs. National Federation of Self-employed and Small Business Ltd.*, 1982 Appeal Cases 617. However, when scams take place, allegation of disproportionate assets are required to be looked into. In the case of *M.C. Mehta vs. Union of India & Ors.* (Taj Trapezium Matter), (2003) 8 SCC 696, the Division Bench of this Court not only directed CBI to investigate the cases against the bureaucrats but also to enquire the outflow of Rs. 17 crores released by the State of U.P. in respect of project undertaken by NPCC. In that matter, the income tax returns of the former Chief Minister and other officials were ordered to be collected by this Court. They were directed to be collected from various income tax authorities. The point to be noted is that the source of the funds plays a crucial role in investigations by CBI in matters involving misappropriation of public funds.

We make it clear that we are not expressing any opinion on the rival claims made by the respective parties under the documents, annexures and other papers filed in these proceedings.

The Registry is directed to send in sealed cover the documents marked as 'A' to 'H' and all the copies of the sale deeds and other statements etc. filed by the parties to the CBI. The CBI may take the assistance of Chartered Accountants, Engineers and certified valuers for evaluation of the properties and proceed with the investigation and enquiry in the matter with an open mind.

In the case of *Union of India & Ors. Vs. Sushil Kumar Modi & Ors.*, (1996) 6 SCC 500, this Court in paragraph 11 has observed as under:

"We deem it proper to emphasize that every officer of the CBI associated with the investigation has to function as a member of a cohesive team which is engaged in the common pursuit of a fair, honest and complete investigation into the crimes alleged. It is needless to further emphasize that the exercise has to be performed objectively and fairly, mindful of the fact that the majesty of law has to be upheld and the rule of law preserved, which does not discriminate between individuals on the basis of their status, position or power. The law treats everyone as equal before it and this has to be kept in view constantly in every State action to avoid violation of the 'right to equality' guaranteed in Article 14 of the Constitution."

In view of the foregoing discussion, the writ petition is ordered. No costs.

JUDIS