

Malik Brothers

Vs

Narendra Dadhich

Civil Appeal No. 4739 of 1999

(S. Saghir Ahmad, G. B. Pattanaik JJ)

25.08.1999

JUDGMENT

G.B. Pattanaik, J. –

1. Leave granted.

2. This appeal by grant of special leave is directed against the Judgment of the Division Bench of Madhya Pradesh High Court, Indore Bench. On a petition being filed under Article 226 of the Constitution of India by a tax payer of the Indore Municipality, the High Court entertained the same as a public interest litigation and by the impugned order, quashed an auction held by the Indore Development Authority as well as the highest bid of the appellant in the said action which had been accepted by the Indore Development Authority and also an award of a competent arbitrator in respect of the dispute between the Indore Development Authority and the appellant. Before embarking upon an inquiry into the legality of the impugned judgment of the High Court, it is necessary to bear in mind that a public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights. The directions and commands issued by the courts of law in a public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be the bounded duty of the court or to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated. It is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of down-trodden mass for the redressal of their grievance. In the case of *Sachindanand Pandey and another v. State of West Bengal and others*, 1987(2) SCC 295, when the State of West Bengal had allowed the construction of a five star hotel in the vicinity of a zoological garden and a part of the land belonging to the zoo had been leased out to the said company, a petition had been filed in the Calcutta High Court and the High Court having dismissed the same, the matter had been carried to this Court and this court also had upheld the decision of the High Court, after coming to the conclusion that it is possible to hold that the Government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straightaway of arm's length with the Taj Group of Hotels. In the said judgment Justice Khalid has added a few paragraphs indicating as to how a public interest litigation pose a threat to courts and public alike. The learned judge had sounded a word of caution that if courts do not restrict the free flow of case in the name of public interest litigation, "the traditional litigation will suffer and the courts of law, instead of dispensing justice will have to take upon themselves administrative and executive functions." It was

also stated by the learned Judge - "it is only when the courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underprivileged and the neglected." In the case of *Ramsharan Autyanuprasi and another v. Union of India and others, 1989 Supp. (1) SCC 251*, a writ petition had been filed in this court under Article 32 alleging mismanagement of a period trust and this court ultimately held that the petition does not seek to advance any public right and innovation of the jurisdiction of this court as a public interest litigation, in the back-ground of the allegations made in the petition and in the context of the case was wholly unjustified. This court has further indicated that the public interest litigation does not mean settling disputes between individual parties and when there is no breach of fundamental rights and the matter is amenable to proceedings under Sections 37 and 38 of the Rajasthan Public Trust Act to entertain a petition styling into which a public interest litigation is the abuse of the process of court. The object of noting the aforesaid causation indicated in two judgments of this court is to emphasize how in the case in hand this has proved to be true and how the respondent in the name of a tax payer of the municipality has protracted a public interest litigation which ultimately has resulted gross injustice to the Indore Development Authority and also the appellant and in fact really, interest of public is not at all involved and it is further to be noticed that the High Court has been swayed away to entertain a petition and only has set aside a public auction held at large but also quashed an award of a competent arbitrator in respect of the dispute referred to him between the parties and application concerning the said award is pending before a competent civil court, thereby frustrating the provisions of the Arbitration Act fully.

3. The brief facts leading to the judgment under appeal are that the Indore Development Authority issued a notice of holding of a public auction in respect of a plot of land in Indira Complex at Naulakha Road, Indore. the auction was scheduled to be held on 15.4.81. The appellant was the highest bidder in the auction and the bid amount was Rs. 25,10,000/-. The said bid was accepted and the appropriate authority called upon the appellant to deposit the amount and to procure a relevant stamp paper for execution of the lease deed. The appellant however defaulted in making the deposit within the period stipulated in the notice. On account of such default the initial premium which had been deposited to the extent of Rs. 6,27,500/- was forfeited. The appellant however challenged the order of forfeiture and requested the Indore Development Authority, to whom Indira Complex scheme has been transferred in the meantime by the State Government, for making a reference to the arbitrator. Initially this request had been rejected but by letter dated 8.6.90, Shri K.S. Bhatnagar, a retired I.A.S. Officer was appointed as arbitrator. The arbitrator ultimately passed an award. The respondent No. 1 herein, considering the award to be a serious public injury, approached the High Court by way of a public interest litigation and by an interim order, the High Court restrained the Development Authority from delivering the possession of the land to the appellant but prior to the aforesaid interim order, the possession had been delivered on 8.1.91. It was contended in the aforesaid public interest litigation petition that the value of the land would be much more than for which the same is going to be handed over pursuant to the award of the arbitrator and parting with a valuable piece of land for the small price would be grossly prejudicial to the public interest. The present appellant as well as the Development Authority filed their counter affidavits before the High Court, indicating therein that there has been no illegality in referring the dispute to the arbitrator and the said arbitrator considered the matter in several sittings and passed the award which is the subject matter of an application filed under Section 14 of the Arbitration Act. It was also indicated by the Indore Development Authority that the board considered the dispute between the appellant and the

board in several meetings and finally thought it appropriate to refer the matter to the arbitrator and such reference is a bona fide decision of the board on the facts and circumstances of the case and it cannot be said that such reference has caused public injury. The High Court by the impugned judgment after considering the provisions of Section 21 of the Arbitration Act and the law on the subject, came to the conclusion that there has been a gross violation of the aforesaid provision of the Arbitration Act and it is not known why respondent No. 1 (Indore Development Authority) elected to appoint the arbitrator. The High Court also came to the further conclusion that the land would not have been disposed of even on lease basis through arbitration and the Indore Development Authority committed an error of law and consequent public injury by revival of a close issue by appointment of an arbitration and by its attempt benefited the present appellant at the cost of public revenue. With the aforesaid conclusion, the High Court quashed the resolution of the Indore Development Authority, referring the dispute to the arbitrator as well as the award of the arbitrator and passed certain consequential directions. The question that arises for consideration therefore, it whether in the facts and circumstances of the case, the High Court was justified in entertaining a writ petition in the garb of a public interest litigation and was justified even in setting aside the award of a competent arbitrator which was not assailed under the provisions of the Arbitration Act but by filing a petition under Article 226 on the ground that the very decision of the Improvement Trust, referring the matter to the arbitrator was illegal and has caused public injury.

4. At the outset it may be stated that the land in question was admittedly put to public auction and the appellant was the highest bidder and this fact has not been disputed at any stage. The further admitted position is that the appellant had deposited some amount but could not deposit the balance amount even though the bid of the appellant was accepted by the competent authority and for non-deposit of the balance amount, the earlier amount deposited stood forfeited which however was challenged by the appellant. It is at that stage the Indore Development Authority took into consideration all the relevant factors and thought it appropriate to refer all disputes pertaining to the land, which was subject matter of the auction for arbitration. Not an iota of material has been placed before us to indicate that the said decision of the Improvement Trust was either for extraneous consideration or had not been taken bona fide. In course of hearing of this appeal, not an iota of material was produced before us by respondent No. 1 at whose instance the High Court had entertained the public interest litigation petition to indicate that there was any infirmity in the auction that was held on 15.4.81 and that the highest bid obtained was not genuine and the price obtained thereon is grossly low. Though a bald ascertain had been made by respondent No. 1 that the normal price of the land would be much higher than the highest auction price which the appellant had offered but no substantive material had been produced in the High Court and nothing has been brought to the notice of this court also. In this view of the matter we fail to understand as to how the High Court could come to the conclusion that there has been gross public injury by referring the matter to the arbitrator and the Improvement Trust has acted beyond its jurisdiction by referring the dispute pertaining to the land in question to the arbitrator. In our considered opinion the very act of entertaining the application as a public interest litigation of the behest of respondent No. 1, who has absolutely no interest in the transaction was improper and the High Court had in fact not adverted to the parameters for entertaining a petition as a public interest litigation. It may not be out of place to mention at this stage that two other auctions, similarly held were not assailed but it is the auction where the appellant was the highest bidder was only assailed for the reasons known to respondent No. 1. When the appellant had challenged the legality of the action of the competent authority in the matter of forfeiture of the deposit made, the competent authority thought it appropriate to refer the entire dispute pertaining to the land in question for arbitration and we see no infirmity with that decision nor that decision can be said to have been taken on some extraneous

consideration. We also fail to appreciate the conclusion of the High Court on Section 21 of the Arbitration Act inasmuch as there is no bar for parties to a dispute to refer the dispute for arbitration instead of litigating in common law courts. In our view, Section 21 of the Arbitration Act does not debar the parties to refer a dispute between them to an arbitrator, particularly when the litigation in normal course has become not only expensive but also continues for years together. If any informal forum is chosen by the parties for expeditious decision of their disputes, it would not be safe for a court of law to come to a conclusion that such decision has been taken for any extraneous consideration without any supporting material in that regard. In the case in hand, the High Court of Madhya Pradesh committed serious error of law by invoking its discretionary jurisdiction under Article 226 of the Constitution of India at the behest of a person who has no interest in the litigation in question and in quashing the decision of the Indore Development Authority of referring the dispute to the arbitrator as well as the award of the competent arbitrator, by entering into an arena of conjecture and by assuming that the price of land must have gone up without having before them any materials in that respect. We have no hesitation, therefore to set aside the impugned judgment of the High Court and we accordingly do so. Necessarily, therefore, the award of the competent arbitrator remains operative and the rights of the parties flowing therefrom have to be worked out in accordance with law. The present appeal is allowed. The impugned judgment of the Madhya Pradesh High Court in Indore Bench dated 11.10.96 passed in Miscellaneous Petition No. 113 of 1991 is set aside and the said miscellaneous petition stands dismissed. The respondent No. 1 shall bear the cost of this appeal and the hearing fee is assessed as Rs. 20,000/-.