

A

MALIK BROTHERS

v

NARENDRA DADHICH AND ORS.

AUGUST 25, 1999

B

[S. SAGHIR AHMAD AND G.B. PATTANAİK, JJ.]

C

*Constitution of India, Article 226—Public Interest Litigation—Public Auction—Highest bid accepted—Dispute between parties referred to arbitration—Award of arbitrator challenged by third party under writ jurisdiction in. PIL—Award not challenged under provisions of Arbitration Act—Whether PIL maintainable—Held, under the facts and circumstances, interest of public is not at all involved and PIL not maintainable—Provisions of the Arbitration Act cannot be frustrated by recourse to writ jurisdiction—Arbitration Act, 1940.*

D

*Arbitration Act, 1940,—Section 21—Scope of—Parties referring dispute to an arbitrator—Reference to arbitrator challenged in PIL by third party—Extraneous consideration alleged—Allegations not supported by material evidence—Held, Section 21 of Arbitration Act does not debar parties to refer dispute between them for arbitration.*

E

**Appellant was the highest bidder in a public auction held by the Indore Development Authority. The bid of appellant was accepted but when the appellant failed to deposit the balance amount within the stipulated period, the Development Authority forfeited the initial premium deposited by the appellant which was challenged by the appellant and the dispute was referred to an arbitrator. The arbitrator passed an award in favour of the appellant.**

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G

**Respondent No.1, a tax payer of the Indore Municipality, filed a public interest litigation petition under Article 226 of the Constitution of India challenging the reference of the dispute to the arbitrator by the Authority and the award of the arbitrator on the ground that valuable piece of Government land was being sold for a small price which would be grossly prejudicial to public interest. High Court allowed the PIL petition and quashed the auction, the reference of dispute to arbitrator and the award of the arbitrator on the ground that there was violation of Section 21 of the Arbitration Act in referring the dispute to the arbitrator, and that appellant was being benefitted**

H

at the cost of public revenue by sale of land at a low price. Aggrieved by the order of the High Court, appellant has filed the present appeal. A

Allowing the appeal, the Court

**HELD:** 1.1. 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 benefitting 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 bounding duty of the court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation would be frustrated. It is in fact a litigation in which a person is not aggrieved personally but bring an action on behalf of down-trodden mass for the redressal of their grievance. [734-G-H; 735-A-B] B C D

1.2. The respondent in the name of a tax payer of the municipality has protracted a public interest litigation in which in fact really, interest of the public is not at all involved and the High Court has entertained the petition and has not only set aside a public auction held at large but also quashed an award of a competent arbitrator thereby frustrating the provisions of the Arbitration Act fully. The very act of entertaining the application as a public interest litigation at the behest of respondent No.1, who had absolutely no interest in the transaction was improper. [736-A, B, C; 738-C, D] E F

*Sachidanand Pandey and Anr. v. State of West Bengal and Ors.*, [1987] 2 SCC 295 and *Ramshwaran Atyanuprasi and Anr. v. Union of India and Ors.*, [1989] Suppl. 1 SCC 251, relied on.

2. There is not an iota of material to indicate that the decision of the Improvement Trust in referring the dispute to the arbitrator was either for extraneous consideration or had not been taken *bona fide*. [738-A] G

3. No material was produced by respondent No.1 to indicate that there was any infirmity in the auction and that the highest bid obtained was not genuine and the price obtained thereon is grossly low. [738-A, B] H

A 4. There is no bar for parties to a dispute to refer the dispute for arbitration instead of litigating in common law courts. 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 materials in that regard. [738-F, G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4739 of 1999.

C From the Judgment and Order dated 11.10.96 of the Madhya Pradesh High Court in M.P.No.113 of 1991.

S. Muralidhar for the Appellant.

D Shrish Kumar Misra, (S.K. Gambhir) for Vivek Gambhir (Ms. Madhur Dadlani) for S.K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

PATTANAİK, J. Leave granted.

E 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 auction 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 benefitting any individual. A  
 But if the Court finds that in the garb of a public interest litigation actually  
 an individuals interest is sought to be carried out or protected, it would be  
 the bounding duty of the court not 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 B  
 brings an action on behalf of downtrodden mass for the redressal of their  
 grievance. In the case of *Sachidanand Pandey and Anr. v. State of West  
 Bengal and Ors.*, [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 C  
 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 impossible 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 straightway at arms length with the D  
 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 E  
 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 F  
 the hardships and miseries of the needy, the underdog and the neglected."  
 In the case of *Ramsharan Autyanuprasi and Anr. v. Union of India and Ors.*,  
 [1989] Suppl. 1 SCC 251 , a writ petition had been filed in this Court under  
 Article 32 alleging mismanagement of a public trust and this court ultimately  
 held that the petition does not seek to advance any public right and innovation G  
 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 H

A 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 caution  
indicated in two judgments of this court is to emphasise how in the case in  
hand this has proved to be true and how the respondent in the name of a  
B 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 not 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  
C is pending before a competent civil court, thereby frustrating the provisions  
of the Arbitration Act fully.

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  
D 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 produce a relevant stamp paper for execution of the lease  
deed. The appellant however defaulted in making the deposit within the  
E 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,  
F 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  
G 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  
H 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 arbitrator and by its attempt benefitted 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, is 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.

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

A 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 assertion 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 at 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 materials 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 costs of this appeal and the hearing fee is assessed as Rs. 20,000.

A.K.T.

Appeal allowed.