

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.11592 of 2022

ORDER:

This writ petition is filed seeking to declare the action of the respondent authorities in threatening to demolish the premises bearing Plot No.19, H.No.9-4-80/3, 9-4-80/4, 9-4-80/5, 9-4-80/6, 9-4-80/7 and 9-4-80/8 forming part of Survey Nos.284/3, 284/4/1, 284/4/2 admeasuring 150 sq. yards, situated at Berbun, Nanalnagar, Hyderabad, without issuing any notice during pendency of the regularization application, as illegal and arbitrary.

2. Ms. Vladimeer Khatoon, learned counsel for the petitioner, submits that the petitioner is absolute owner and possessor of the subject property, which he has purchased by way of a registered sale deed, dated 18.07.2017. The respondent authorities visited the petitioner's premises on 25.03.2021 and interfered with repair work and threatened to demolish the structures, without issuing any notice and without following the due procedure. The petitioner was constrained to approach the Court below by filing O.S.No.225 of 2021 before the VII Senior Civil Judge, City Civil Court, Hyderabad. The Court below has granted *ad interim* injunction on 04.06.2021 and the main suit is pending for adjudication. It is submitted

that the petitioner made a representation on 24.02.2022 to the GHMC as well as to the Principal Secretary, Municipal Administration and Urban Development, not to take any stringent action against the repair/construction work carried out by the petitioner. It is stated that the respondents failed to consider the said representation. When the suit is pending for adjudication before the civil Court, where ad interim injunction is granted, the respondents are trying to demolish the structures belonging to the petitioner. Hence, the petitioner approached this Court by filing the present writ petition.

3. Mr. N. Ashok Kumar, learned Standing counsel for GHMC for respondent Nos.2 to 4, filed counter and submits that the petitioner has come before this Court by suppressing several facts and with unclean hands and the writ petition has to be dismissed with exemplary costs. The respondent officials during their routine inspection have found that the petitioner herein has illegally and unauthorisedly laid footings and columns without prior permission. Immediately, they have stopped the construction work and issued notice under Section 452(1) and 461(1) of HMC Act, dated 03.04.2021. After receiving the notice, the petitioner has approached the Court below and have obtained ad-interim injunction against the Corporation by mis-representation of facts and suppressing the material

facts and constructed a building consisting of five floors. On a vacate petition was filed by the respondent Corporation, the Court below has vacated the said ad-interim injunction, by order dated 18.01.2022. Learned standing counsel has also filed the photographs of the building consisting of five floors, which are not denied by the learned counsel for petitioner.

4. It is submitted by the learned Standing Counsel that the petitioner is approaching different Forums, after obtaining ad-interim orders from the civil Court, he has carried on with the illegal construction. It is stated that the petitioner has approached this Court under Article 226 of the Constitution of India, with suppression of facts and unclean hands, which is nothing but pure abuse of process of law and the writ petition deserves to be dismissed.

5. A reply has been filed by the petitioner to the counter and stated that the petitioner has not taken permission for construction but intimated to respondent Corporation that he is reconstructing the building and the Corporation did not respond to the same. It is stated that he has not received any notice from the Corporation dated 03.04.2021. As per Section 455-A of the GHMC Act, 1955, the respondent Corporation has power to collect the penalty of 33%. It is also stated that the interim order granted by the Court below was not vacated and a false statement is made. There are

several properties in Hyderabad where unauthorized, illegal constructions are done without permission. The Division Bench of this Court in W.P. (PIL) No.63 of 2016 dated 18.10.2016, gave direction that application for regularization shall be examined and orders shall be passed by the Corporation. It is stated that batch of writ petitions are filed challenging the regularization of the illegal lay-out and building regularization. It is submitted that petitioner is entitled for regularization and till such time, his possession cannot be interfered with.

6. The learned Standing Counsel submitted that the scheme has no application to this case and even if there is a scheme in subsistence, the same cannot be availed by way of a representation but through online, he has to submit an application paying Rs.10,000/-.

7. Having heard the learned counsel on either side and perused the entire material on record. The petitioner has approached the civil Court by filing O.S.No.225 of 2021. In the plaint, it is stated that the plaintiff due to the age of the building had some crocks and wanted to make some internal repairs to the suit schedule property and with respect to the same, the plaintiff has approached the defendant Corporation and enquired whether any permission is required to make repairs over the suit schedule property and the defendant Corporation informed that no such permission is required

for repairs. The plaintiff further duly informed the defendant Corporation about the commencement of repairs. Immediately to proceed with the repairs he has raised huge loan from private financiers and the original documents are deposited with them and completed the repairs. From the date of commencement of the repairs by the plaintiff, one or the other subordinate of the defendant Corporation constantly visiting the suit schedule property and inspected the progress of the repairs from time to time. It is stated that on 25.03.2021 some persons posing as officials of the defendant Corporation came to the suit property and interfered with the repair works done by the plaintiff and threatened to demolish the suit property. They even failed to serve notices under Sections 461, 452 and 636 of the HMC Act before initiating any action of demolition. Hence, the plaintiff sought relief of perpetual injunction restraining the defendant Corporation, its employees, subordinates, workmen or any other person or persons claiming through or acting under it from interfering with the construction work of the plaintiff or demolishing of the suit schedule property or any part of the suit schedule property belong to the plaintiff. As per the sale deed, petitioner has purchased the property in the year 2017 and the property is a vacant land.

8. When it is submitted by the learned Standing Counsel that ad-interim injunction orders are vacated by the Court below, the same is also opposed by the learned counsel for the petitioner stating that no such copy is served on the petitioner. Then, a copy of the said order is passed on to the learned counsel for the petitioner by the learned Standing Counsel. The petitioner, who is contesting the case before the Court below, blatantly denies that the ad-interim order is subsisting.

9. The remedy available to the petitioner under Article 226 of the Constitution of India is a equitable remedy and the petitioner is expected to approach the Court with clean hands by disclosing all the facts. The petitioner has taken different stands before different Forums. It appears from the conduct that petitioner has no respect to the rule of law. The petitioner in the affidavit on oath states that petitioner is carrying out repairs to the building and in the very same writ proceedings it is stated that without permission he has constructed five floors. Petitioner having received the notice under Section 455-A, dated 03.04.2021, having acknowledged the receipt of the same denies it before this Court and the Court below. Petitioner has approached this Court after the interim order is vacated by the Court below on 18.01.2022 and absolutely there is no whisper in the affidavit or reply and in the reply in fact denied the same. It

is also stated that there are several unauthorized constructions done without permission and hence the respondents shall also regularize the unauthorised construction of the petitioner. Petitioner right from the beginning is showing scant respect to the rule of law and taking the process of law for a ride. A litigant who approached this Court under Article 226 of the Constitution of India is supposed to be truthful. He is supposed to disclose all the facts.

10. An applicant who does not come with candid facts and clean freest cannot hold a writ of the Court with 'soiled hands' suppression or concealment of material is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In

fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court. (Kensington Income Tax Commrs¹)

11. If the primary object as highlighted in Kensington Income Tax Commissioners 1977 2 SCC 431 is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court. (K.D. Sharma v. Steel Authority of India Limited and others²)

12. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their

¹ (1917) 1 KB 486 = 116 LT 136 (CA)

² (2008) 12 SCC 481

daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. (Dalip Singh v. State of Uttar Pradesh and others³)

13. It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements

³ (2010) 2 SCC 114

which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked. (Hari Narain v. Badri Das⁴)

14. In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter

⁴ AIR 1963 SC 1558

unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible. (Prestige Lights Ltd. V. SBI⁵)

15. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141. (K.D. Sharma v. SAIL⁶)

16. This Court in Prestige Lights Ltd. V. State Bank of India¹ has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant

⁵ (2007) 8 SCC 449

⁶ (2008) 12 SCC 481

does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

In K.D. Sharma v. Steel Authority of India Limited and Others, it was held thus:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing

anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim. (K.Jayaram and others v. Bangalore Development Authority and others⁷)

17. The discretion exercised by the Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. While exercising the extraordinary power, the Court shall necessarily bear in mind the conduct of the parties. A litigant is bound to disclose all relevant facts. If he holds some material facts to gain advantage, he is guilty of placing fraud on the Court as well as on the other side. The conduct of the petitioner in this case is nothing but playing fraud on the Court as well on the other side. If these kind of litigants are not eradicated, the result would be that the citizen will lose faith in the justice delivery system and also would ruin the rule of law.

18. Hence, in the considered opinion of this Court, the petitioner, who has approached this Court with unclean hands, by suppression all material

⁷ 2021 SCC OnLine SC 1194

facts and playing fraud on the Court, is not entitled for any relief from this Court.

19. Hence, this writ petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only) payable to the Telangana State Legal Services Authority.

Miscellaneous applications, pending if any, shall stand closed.

LALITHA KANNEGANTI, J

Date: 16.03.2022

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