

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.9522 of 2022

ORDER:

This writ petition is filed questioning the action of the 2nd respondent in cancelling the permission accorded to the petitioners, dated 22.12.2020, pertaining to the property of an extent of Ac.21.23 gts in Sy.Nos.708, 708/O, 708/P, 712, 712/A, 712/E, 712/F, 712/N, 715/A, 716/A, 735, 739, 739/A and 739/P of Upparapalli Village, Shameerpet Mandal, Medchal Malkajgiri District.

2. Sri C.Hanumantha Rao, learned counsel for the petitioners, submits that a building permission was accorded to the petitioners by proceedings, dated 22.12.2020. The 11th respondent has made representation to the authorities and thereafter, he filed W.P.No.15417/2021, wherein by order dated 08.07.2021, directed the respondent authorities to consider his representation, duly putting all the interested parties on notice and to pass necessary orders strictly in accordance with law. Later, the petitioners herein have filed a review application in W.P.No.15417 of 2021 and this Court has observed that all the grounds can be raised, which were raised before this Court, before the authorities. As such, the petitioners herein have filed written arguments

before the authorities. He submits that the 11th respondent and others have executed an agreement of sale in favour of the 1st petitioner in the year 2003 and they instituted a collusive suit in the year 2008 for partition, declaration of shares and to declare the registered sale deeds dated 11.01.2005 and 25.11.2005 executed by the defendant Nos.1 and 2 in favour of defendant Nos.3 and 4 as null and void. The Court below, by judgment dated 28.11.2019, decreed the suit by cancelling the sale deeds and allotted 1/5th share each to the plaintiffs and defendant Nos.1, 2 and 5 therein. Learned counsel for the petitioners submits that the 1st petitioner herein preferred an appeal in A.S.No.37 of 2020 and this Court on 17.02.2020 has stayed for passing of final decree only pursuant to the preliminary decree dated 28.11.2019 in O.S.No.754 of 2018 of the V Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar. It is submitted that the 1st petitioner is entitled to 1/5th share, as such, he has commenced the construction. There are about 300 people working every day and if the construction is stopped, the petitioner would sustain loss of Rs.30,00,000/- per day. It is submitted that there are fair chances to succeed in the appeal and if the impugned order is not suspended, it would cause lot of hardship and inconvenience to the parties. That the petitioners are ready to give any undertaking that any construction that is made is subject to the result of the first appeal.

3. Learned counsel relied on the following judgments:

27. In *S.P. Chengalvaraya Naidu v. Jagannath* this court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. B approached this court. (*A.V.Papayya Sastry and others v. Govt. of A.P. and others*¹)

A final decree proceeding may be initiated at any point of time. No limitation is provided therefor. However, what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree (*Hasham Abbas Sayyad v. Usman Abbas Sayyad and others*²).

A decree therefore may denote final adjudication between the parties and against which an appeal lies, but only when a suit is completely disposed of, thereby a final decree would into

¹ (2007) 4 SCC 221

² (2007) 2 SCC 355

being. (Bikoba Deora Gaikwad and others v. Hirabai Marutirao Ghorgare and others³)

4. Ordinarily, this Court does not interfere with discretionary orders, more so when they are of interim nature, passed by the High Court or subordinate Courts/Tribunals. However, this appeal raises an issue of frequent recurrence and, therefore, we have heard the learned counsel for the parties at length. Landlord-tenant litigation constitutes a large chunk of litigation pending in the Courts and Tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned senior counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not lose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well a lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he would have paid even otherwise by way of rent and a little amount of costs which is generally insignificant. (Atma Ram Properties (P) Ltd., v. M/s.Federal Motors (P) Ltd.⁴)

21. In the instant case, this court in Second Appeal No.108 of 2001, filed by the father of the petitioner, gave a categorical finding that the petitioner's father was in possession of the property and in the process the learned Judge found fault with the findings of the trial court that title deeds of the petitioner's father contained several defects. The learned Judge also observed that

³ (2008) 8 SCC 198

⁴ (2005) 1 SCC 705

the trial court, having recorded a finding that respondent No.4 failed to make out any case of its own, dismissed the suit. These observations in the judgment in the Second Appeal, prima facie, go to show that respondent No.4 failed to convince this Court that they have lawful title over the property. In any event, since Writ Petition No.27566 of 2005 is pending, the issue relating to the title could be decided therein. As the scope of objection raised by respondents 1 and 2 based on title to the property falls outside the purview of Bye-law No.6.2, respondent No.1 ought not to have given credence to the objections raised by respondents 3 and 4. (SSPDL Limited, rep. by its Managing Director Prakash Challa, Hyderabad v. Hyderabad Metropolitan Development Authority, rep. by its Metropolitan Commissioner, Hyderabad and others⁵)

4. Learned counsel for the petitioner further submits that the petitioner in whose favour a registered sale deed is executed by the 11th respondent is contesting the appeal, which is continuation of the suit. The respondent authorities-HMDA ought not to have passed an order cancelling the approval, which was already granted to the petitioners, and by virtue of it, petitioners have already spent substantial amount and also spending huge amounts day-to-day. He submits that there is no suppression of facts and a registered sale deed is executed in favour of the 1st petitioner. The petitioners placed the clear facts before the

⁵ 2017 SCC OnLine Hyd 567

authorities. Hence, the impugned order passed by the respondent authorities is illegal and arbitrary and the same is liable to be set aside.

5. Mr.V.Narsimha Goud, learned standing counsel for HMDA, submits that according to the petitioner, permission was granted on 22.12.2020, and now by virtue of the proceedings, the petitioners are carrying out the construction. He submits that in the proceedings, dated 22.12.2020, it is categorically stated that the application of petitioners is under process as per provisions of Section 19 of HMDA Act, 2008 rules and regulations. He further submits that for processing application, the petitioners have to furnish other charges that have to be paid on or before 22.01.2021 and submit challans for further necessary action. Further, the petitioners were also requested to submit an undertaking in terms of G.O.Ms.No.541 MA, dated 17.11.2000 as per the format enclosed. The details of the charges are also mentioned in the proceedings dated 22.12.2020. He submits that there is no permission granted to the petitioners for making construction. Hence, the question of commencement of construction work does not arise. It is submitted that when an application is made, petitioners have to state all the facts, but they have suppressed about the pendency of suit and the judgment and decree passed by the Court below. On that ground, the respondent

authorities have passed impugned order and the permission accorded by the authority in File No.037128/MEDR1/U6/HMDA/06072020, dated 22.12.2020 is cancelled as per Sec.22 of the HMDA Act. He submits that petitioners are not entitled for any relief from the Court, as there is suppression of fact. It is submitted that the impugned order is a well considered one taking in to consideration the written submissions of the petitioners as well as 11th respondent. Hence, interference of this Court is not warranted.

6. Mr.C.Hari Preeth, learned counsel for the 11th respondent, submits that in the year 2019 itself, the Court below has decreed the suit and whereby the sale deed relied on by the 1st petitioner is set aside and that preliminary decree is passed as far as the partition of the subject property concerned. This Court in the appeal has only granted stay of passing of final decree. He submits that as on the date of the application, the sale deed, which is registered in favour of the 1st petitioner, is set aside by a competent civil Court. Suppressing all these facts, the petitioners have approached the authorities and after considering the representation of the petitioners and in pursuance of the orders passed by this Court, the respondent authorities have passed the impugned order, which is

inconsonance with the provisions of the HMDA Act. As such, there is no illegality in the said order, which seeks interference by this Court.

7. In response to the same, learned counsel for the petitioner relying on the proceedings dated 27.01.2022 and submits that the contention of the learned Standing Counsel that there is no permission granted is not correct, for the reason that in the proceedings dated 27.01.2022 it has been categorically mentioned at para No.1 that ‘after clearance of ownership and technical aspects, the building permission was approved and issued on dated 22.12.2020’. Learned counsel for the petitioners submits that the respondents have already accorded permission, as such, the petitioners have been continuing with the construction activity. He also submits the impugned order should be a speaking order and counsel for the 11th respondent cannot substantiate or supplement to the order and it has to be read as it is. Learned counsel for the petitioners submits that it is clearly observed in the impugned order that the permission was accorded by this authority, dated 22.12.2020, is cancelled.

8. Yesterday this matter has come up in the motion list. When pass over was sought, this Court has adjourned the matter. Even a representation was made submitting that the petitioners are incurring loss of an amount of Rs.30 lakhs per day and there is urgency in the matter.

Then, on the request of the learned counsel for the petitioners, the matter is listed today. It is submitted before this Court that as per the plan approved by the respondents, dated 22.12.2020, the petitioner is going ahead with the construction process and the appeal is pending before the Court. At this stage, if the impugned order is not suspended, the petitioners would be put to irreparable loss and apart from that, learned counsel for the petitioners submits that the 11th respondent has no locus and he has played fraud, being a party to an agreement of sale, had again approached the authorities and basing on his representation, the authorities ought not to have cancelled the permission granted to the petitioners.

9. During the course of arguments, learned Standing Counsel has drawn the attention of the Court to the proceedings dated 22.12.2020 and submits that the building permission is under process and the respondent authorities have not accorded any permission. This Court has specifically asked learned counsel for the petitioners to show the permission that is accorded, in pursuance of which, the petitioners are going ahead with the construction. Then, learned counsel for the petitioners has drawn the attention of this Court to the proceedings dated 27.01.2022, i.e., the impugned proceedings, wherein at para 1, it is stated

that the building permission was issued on 22.12.2020 and he has also relied on the penultimate paragraph in the impugned order, where they have mentioned that “permission accorded by this authority in File No.037128/MEDR1/U6/HMDA/06072020 dated 22.12.2020 is hereby cancelled as per Section 22 of HMDA Act”. The learned Standing Counsel for the respondents submits that the word ‘approved’ mentioned in the order is incorrect and in the order dated 22.12.2020 it is clearly stated that the application is under process. The respondent authorities in a very casual manner, without application of mind, are passing order in whatever manner they feel like and without even going through the orders before signing them. Basing on these kind of orders, several writ petitions are filed before the Courts. Even this Court has also come across cases where GHMC/Municipal Authorities in the orders are mentioning permission is revoked/cancelled, when there is no permission accorded. The petitioners having fully aware of the fact that they have not been granted permission by letter dated 22.12.2020, proceeded with the construction and has come up before this Court with suppression of facts, sought suspension of the impugned order or else it would cause irreparable loss and to the extent of saying that any construction made is subject to the result of the appeal, for that they are ready to give undertaking. When there is no permission accorded and having aware of

the said fact the petitioners are going ahead with the construction and continuing the same they come up before this Court. This is nothing but a pure abuse of process of law and playing fraud on the Court. A person who has come before this court with unclean hands is not entitled for any relief under Article 226 of the Constitution of India, which is a discretionary relief.

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 Commrs⁶)

⁶ (1917) 1 KB 486 = 116 LT 136 (CA)

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 others⁷)

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 daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used

⁷ (2008) 12 SCC 481

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 others⁸)

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 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

⁸ (2010) 2 SCC 114

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 Das⁹)

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 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

⁹ AIR 1963 SC 1558

stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible. (Prestige Lights Ltd. V. SBI¹⁰)

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. SAIL¹¹)

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 does not disclose full facts or suppresses relevant materials or is

¹⁰ (2007) 8 SCC 449

¹¹ (2008) 12 SCC 481

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 others¹²)

17. Petitioner, who has come up before this Court with suppression of facts and twisted facts, is not entitled for any relief. The respondent authority miserably failed in discharging their duties in a prudent manner and gave scope for filing a frivolous petition.

18. Hence, the Writ Petition is partly allowed by setting aside the impugned order as far as observing that the permission granted to the petitioners dated 22.12.2020 is revoked. The writ petitioners shall pay an amount of Rs.25,000/- (Rupees twenty five thousand only) towards costs and the officer who has passed the order impugned shall also pay an amount of Rs.25,000/- (Rupees twenty five thousand only) towards costs payable to the High Court Legal Services Committee, Hyderabad.

Miscellaneous applications, pending if any, shall stand closed.

LALITHA KANNEGANTI, J

Date: 31.03.2022

L.R. copy to be marked
mar/ds

¹² 2021 SCC OnLine SC 1194