

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: WP(C) No.2814/2023

Mohd. Yousaf

..... Petitioner(s)

Through :- Mr. Mohinder Singh, Advocate with
Mr. Moti Sharma, Advocate

Vs

Union Territory of J&K and others

.....Respondent(s)

Through :- Ms. Priyanka Bhatt, Assisting Counsel to
Mrs. Monika Kohli, Sr. AAG for R-1 to 3.
Mr. Rajesh Khah, Advocate for R-4 to 12.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT(ORAL)

05.08.2025

01. Through the medium of present writ petition filed under Article 226 read with Article 227 of the Constitution of India, the petitioner seeks the following reliefs:-

- (i) Writ of Certiorari: thereby seeking quashment/setting aside of order dated 25.11.2021, passed by the Court of learned Additional Commissioner-I, (With Powers of Divisional Commissioner), Jammu in an application for condonation of delay filed along with an appeal titled Mohd. Younis & Ors vs Mohd Yousaf, whereby delay of more than 22 years 07 months and 30 days have been condoned in a mechanical manner with utter disregard to law, in filing the aforesaid appeal by the respondents herein against Mutation Order No. 742 dated 30.06.1996 passed by the Tehsildar, Ramban under Section 121 of Land Revenue Act, 1992, 22 years ago [as per actual date of mutation & more than 24 years as per date of mutation in memo of appeal] with respect to land underlying Khewat No. 64/29 min, Khata No. 296/192 min/193min, Bashara Khewat 01, land falling under Khasra No. 181 (old) now Khasra No. 1399 (new) measuring 05 kanals 06 marls, Khasra No. 179 (old) now Khasra No. 1399/1 (new) measuring 03 kanals 02 marlas and Khasra No. 181 min (old) now Khasra No. 1400 (new) measuring 04 kanals 17 marlas situated at Maitra Govindpura, Tehsil and District Ramban;
- (ii) Thereby seeking quashment/setting aside of order dated 10.08.2022, passed by the Court of learned Financial Commissioner (Revenue), J&K in the Revision Petition filed under Section 15 of the Land Revenue Act in File bearing No. 1116/FC-AP filed by the petitioner against the aforesaid impugned order dated 25.11.2021, whereby the Revision Petition preferred by the petitioner came to be dismissed in a mechanical manner in utter disregard to the settled position of law and without proper application of judicial mind, which has resulted in miscarriage of justice,

sheer abuse of process of law and will tend to unsettle the settled legal rights of the petitioner as well as will also lead to multiplicity of litigation, thereby resulting in perpetuating illegality against the petitioner, as such, the same being illegal, unjustified and having been passed by wrong exercise of jurisdiction deserves to be and is required to quashed and set aside to secure the ends of justice, equity and fair play.

(iii) Writ of Mandamus: *Commanding the official respondents, 1, 2 & 3 to ensure the safety, security and protection of the petitioner as well as his family members and also to ensure that the settled and peaceful possession of the petitioner over the aforesaid land subject matter of the instant petition is protected and is not forcibly taken away by the private respondents or their agents or representatives illegally and forcibly by endangering the life, limb and liberty of the petitioner and his family members as the respondents are hell bent to evict and throw away the petitioner along his family members.*

FACTUAL MATRIX OF THE CASE

02. The specific case of the petitioner in the instant petition is that vide order dated 25.11.2021, passed by the Court of learned Additional Commissioner-1, Jammu (hereinafter referred to as ‘*the Appellate Court*’ for short), whereby the delay of more than 24 years has been condoned without assigning any reasons or justifications for condoning such a long, unexplained and inordinate delay in filing the appeal against the mutation No. 742 dated 20.06.1996, passed by Tehsildar, Ramban, under Section 121 of the Land Revenue Act with respect to the land underlying Khewat No. 64/29 min Khata No. 296/192 min /193 min, Bashara Khewat 01, land falling under Khasra No. 181 (old) now Khasra No. 1399 (new) measuring 05 kanals 06 marlas, Khasra No. 179 (old) now Khasra No. 1399/1 (new) measuring 03 kanals 02 marlas and Khasra No. 181 min (old) now Khasra No. 1400 (new) measuring 04 kanals 17 marlas situated at Maitra Govindpura, Tehsil and District Ramban.
03. It is specific case of the petitioner that a Revision Petition bearing File No. 1116/FC-AP, filed by the petitioner under Section 15 of the Land Revenue Act against the impugned order dated 25.11.2021 came to be dismissed vide order dated 10.08.2022 by the Court of learned Financial

Commissioner (Rev), Jammu (hereinafter referred to as '*the Revisional Court*' for short) without proper application of mind, which has resulted in miscarriage of justice, sheer abuse of process of law and will tend to unsettle the settled legal rights of the petitioner as well as will also lead to multiplicity of litigation.

04. Before advertng to the grounds of challenge, it would be apt to give a brief background of the case leading to the filing of the instant petition as under:-

- i. That the Mutation No. 742 dated 20-06- 1996(sic in Memo of Appeal, which is 20-06-1998) stands attested in favour of the petitioner No.1 and respondents have challenged said Mutation before the Court of Learned Divisional Commissioner, Jammu and the said appeal against the aforesaid mutation is sub-judice before the Court of Learned Additional Commissioner-1 (with the powers of Divisional Commissioner), Jammu.
- ii. That during the pendency of the aforesaid appeal the respondents alongwith other unknown assailants tired to forcefully evict the petitioner and his family members from the subject land and attempted to take over the possession of the said land but failed to succeed in their sinister designs, however, the petitioner and his family were brutally assaulted and injured, as such, an FIR No. 0063/2021 dated, 14-04-2021 was got registered at Police Station Ramban u/ss 452, 454, 380, 427, 147, 323 IPC against the respondents/accused assailants wherein Challan/Chargesheet/Final Report has been filed against the accused which is sub-judice before the court of Learned Additional Special Mobile Magistrate, Ramban.

- iii. That thereafter upon this incident, the petitioner through his counsel moved an application before the Court of Learned Additional Commissioner-I (With Powers of Divisional Commissioner), Jammu seeking directions to the Tehsildar, Ramban to submit factual report as to the possession of the land on the spot and in compliance to the directions issued by the Additional Commissioner-1, Jammu to submit factual report about spot position the Tehsildar, Ramban submitted his detailed report vide No. TR/OQ/2021-22/Court/276 dated 09-06-2021 wherein it was clearly mentioned that Mohd. Yousaf (petitioner herein) is in peaceful possession of the land in question over the years.
- IV. That upon the submission of the report of the Tehsildar, Ramban the Counsel of the petitioner prayed before the Court of Learned Additional Commissioner-1, Jammu that directions be issued to the Tehsildar, Ramban to ensure that the possession of the petitioner shall not be disturbed and the Learned Additional Commissioner-I, Jammu vide order bearing No. AS/ADCOM/2021/137-40 dated 16-07-2021 directed the Tehsildar, Ramban to ensure that the party in possession as per his report shall be not disturbed.
- V. That even though there were categoric directions to the Tehsildar, Ramban to ensure that the possession of the petitioner is not disturbed but despite that the respondents continued to interfere into the peaceful possession of the petitioner and did not allow the petitioner to cultivate his land, as such, the petitioner again sought directions from the Court of learned Additional Commissioner-1, Jammu to protect his right to cultivation of his land which has been admittedly in possession of the petitioner and the Court of learned Additional commissioner, Jammu was pleased to pass another speaking order bearing

No.AS/ADCOM/2021/170-173 dated 05.08.2021 whereby it was ordered that possession of the parties over the land shall not be disturbed and party in possession is free to cultivate the land. It was further ordered that parties shall not raise construction or alienate the suit land till next date of hearing.

- VI. That thereafter on 02.02.2022, the Court of Additional Divisional Commissioner-1, Jammu passed and announced the impugned order dated 25.11.2021 thereby allowing the application of the respondents in a mechanical manner condoning the delay of more than 22 years (24 years as per impugned dated of Mutation in memo of appeal), against which the petitioner preferred a Revision Petition before the Court of learned Financial Commissioner (Revenue) J&K which came to be dismissed by way of impugned order dated 10.08.2022, hence the instant writ petition.
- VII. That after the dismissal of the Revision Petition, the respondents again forcefully tried to evict the petitioner and take over the possession of the subject land but again failed leaving the petitioner and his family members injured, as such, FIR No.0384/2022 dated 13.11.2022 u/s 447, 323, 336, 504, 506 and 147 IPC was registered at Police Station, Ramban and the Challan/Charge-sheet in the said FIR also stands filed against the accused which is sub-judice before the Court of learned Additional Special Mobile Magistrate, Ramban. It is submitted that the respondents/accused also managed to get a false/frivolous FIR registered against the petitioner bearing FIR No.0385/2022 dated 13.11.2022 u/s 447,323,504,506,147 IPC which finally came to be closed as "Not Admitted" as is evident the order bearing No.CB/Order/2022/21302-05 dated 27.12.2022 issued by the Superintendent of Police, Ramban.
- VIII. That as counter blast to the aforesaid FIR, the respondents though one of their female relatives, lodged

FIR No. 0113 dated 02.04.2023 registered at Police Station Ramban u/ss 307, 354, 341, 323, 336, 147, 148, 506 IPC and Section 3 of the SC & ST (Prevention of Atrocities) Act, 1989 (Amendment 2015) against the petitioner and his entire family members as well as relatives, in which the investigation is going on, however, the filing of challan has been stayed by this Hon'ble Court.

ARGUMENTS ON BEHALF OF THE PETITIONER

- 05.** Learned counsel for the petitioner submits that the impugned order dated 25.11.2021 has been passed back dated and has been announced actually on 02.02.2022, as is evident from the interim order dated 21.11.2021 annexed with the appeal file of the court below, which reads as:-

“25.11.2021-Case called. Ld. Counsels of both the sides present. The order for the condonation of delay could not be passed due to busy schedule. The same shall be passed and placed in the case file. Put up on 23.12.2021”.

- 06.** It is further submitted that on 23.12.2021, the Presiding Officer did not hold the Court as he was deputed for training programme in Chandigarh, which fact can be substantiated from an office order issued by the Divisional Commissioner, Jammu in this regard. Moreover, the interim orders passed in the above titled appeal by the Court below are contradictory and reflect non-application of mind and casual approach of the Court below, which clearly depicts that the impugned orders have also been passed arbitrarily and mechanically to confer unjust and undue benefits upon the respondents herein. It is further submitted that the impugned orders suffer from perversity and arbitrariness as both the orders are devoid of any plausible reasons or justifications for condoning such inordinate and unexplained delay.

07. It is argued that the Courts below have given no justification as to what grounds prevailed upon the Court or what convinced the Court below to condone such a long, inordinate and unexplained delay, as such, the impugned order is required to be set aside to secure the ends of justice.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

08. *Per contra*, Reply on behalf of respondents Nos. 4 to 12 has been filed wherein they have pleaded that the present petition is not maintainable on the ground of delay and laches. It is further argued that order passed by the learned Additional Commissioner, Jammu with powers of Divisional Commissioner, Jammu which is under challenge before this Court has been passed on 25.11.2021 and the Revision petition filed by the petitioner against that order has been decided on 10.08.2022 by the learned Financial Commissioner, Jammu and the same is also under challenge before this Court.
09. The petitioner thereafter not only kept on waiting but was contesting the appeal before the appellate Court, in fact, was wholeheartedly trying to derail the proceedings there on one pretext or the other and has filed the present petition only in the month of April, 2023 i.e., almost after eight months of order passed by the Revisional Court.
10. Not even a single reason or justification has been given by the petitioner, muchless the cogent one, explaining what has made him not to challenge the impugned orders within a reasonable time. It is further argued that the petitioner has been contesting the appeal before the Appellate Court in pursuant to the order dated 10.08.2022, passed by the Revisional Court which is subject matter of the instant petition till 04.11.2023 i.e., 08 months from the date of passing of order by the Revisional Court.

11. A specific objection has been taken by the private respondents that the petitioner availed two remedies simultaneously. On one hand, the petitioner has called in question the order passed by the Revisional Court and on the other hand, he (petitioner) has taken a calculated chance appearing before the Appellate Court in pursuance to the order passed by the Revisional Court and this aspect of the matter has been deliberately concealed by the petitioner while filing the instant petition.
12. It has also been urged by learned counsel for the private respondents that the petitioner has not come to this Court with clean hands and has suppressed material fact of contesting the said appeal before the Appellate Court and there is no whisper in this regard in the entire writ petition.
13. Thus, after having taken a calculated chance before the Appellate Court in pursuance to the order passed by the Revisional Court, the petitioner has filed the instant petition on false and flimsy grounds with a view to mislead this Court by suppressing the material facts and to get a favourable order.
14. It has also been pleaded that since the matter was remanded back to the appellate Court by the Revisional Court, the petitioner has chosen to appear before appellate Court voluntarily and simultaneously, has filed the instant petition before this Court which tantamount to abuse of process of Court.
15. The record reveals that even on 05.04.2023, an ex-parte proceeding was initiated against the petitioner by the appellate Court and the counsel representing the petitioner in the instant petition sought sometime to file fresh power of attorney on behalf of the respondent before the Appellate Court.

16. Additionally, the counsel sought last and final opportunity to file an application to set aside the *ex-parte* proceeding and to present arguments before the Appellate Court.
17. In view of these submissions, the Appellate Court granted last and final opportunity and fixed the case for arguments.
18. This aspect of the matter has been deliberately concealed by the petitioner while filing the instant petition. Even on 18.05.2023, the counsel for the petitioner filed an application to set aside the *ex-parte* proceedings, which, with the consent of the respondents' counsel, was allowed on the same day. The petitioner was, therefore, granted last and final opportunity to argue the matter. However, the petitioner has chosen to remain absent on three consecutive dates thereafter and was again proceeded *ex-parte* on 06.09.2023.
19. The private respondents, in support of the averments pleaded in their reply, have placed on record various orders passed by the Appellate Court, a perusal whereof, reveals that on 04.11.2023, the counsel for the petitioner again caused his appearance before the Court, who instead of arguing the matter, requested the Court to call reports from the Deputy Commissioner, Ramban, and the Tehsildar Ramban regarding his application filed under Section 151 CPC and submitted that the *ex-parte* proceedings initiated against him be set aside.
20. Another set of response has been filed by the learned counsel for the respondent No. 3, who has contended that a case FIR No. 63/2021 under Section 452/454/308/427/147/323 IPC has been registered at Police Station Ramban on 14.04.2024 on a written complaint lodged by the applicant, stating therein that the accused Mohd. Younis S/o Abdul Gani

R/o Majri Kathua A/P Maitra along with other 15 persons entered in his house with common criminal intention, attacked his family, tried to drag them out of house, beat them and took away of their 01 buffalo and 01 bull, also stole some gold ornaments etc. After investigation, the instant case has been closed and challan was presented against accused persons namely 1. Mohd. Younis 2, Abdul Gani both sons of Chattu Gujjar 3. Mohd. Farid 4. Lal Hussain 5. Mohd. Sadiq all sons of Ghulam Ali 6. Shakeel Ahmed @ Kalu Gujjar 7 Asha Begum w /o Ghulam Ali 8. Abdul Gani s/o Musa 9. Mukhtiyara Begum w/o Farid Ahmed all residents of Govindpura Maitra Ramban and produced the same before the Hon'ble Court of law for its judicial determination and now is on prosecution evidences.

- 21.** It is argued that a case FIR No. 384/2022 u /s 447 /323/336/ 504/506/147 IPC has been registered at Police Station, Ramban on 13.11.2022 on the written complaint lodged by the applicant, wherein he stated that he along with other family members were working in the field, suddenly accused. (1) Mohd Fareed (2) Lal Hussain (3) Sadiq all sons of Ghulam Ali (4) Abdul Gani s/o chattu (5) Billa s/o Mohd Farees (6) Ashia w/o Ghulam Ali (7) Mukhtiyara Begum w/o Farid (8) Rubi w/o Lal Hussain, appeared with criminal intention started stone pelting and abusing them, due to which his daughter got injured. The challan of the instant case has been produced against (1) Mohd Fareed (2) Sadiq both sons of Ghulam Ali (3) Ashia w/o Ghulam Ali (4) Mukhtiyara Begum w/o Mohd Farid (5) Rubina w/o Lal Hussain (6) Lal Hussain S/o Ghulam Ali (7) Abul Gani S/o Chattu (8) Rubi W/o Lal Hussain, before the Honble court for its judicial determination in which the next date of hearing was fixed on

28.10.2024, for prosecution evidence. It is further submitted that on the same day i.e on 13.11.2022, a case FIR No. 385/2022 u/s 447/323/504/506/147 IPC has been registered at Police Station, Ramban on the written application of the applicant, wherein he alleged that he along with his family members were working in the field on the same day, suddenly accused namely Mohd Yousaf Naik s/o Samdu Naik R/o Govindpura Maitra, Ramban along with other accused persons entered in his land, attacked his family, pelted stone and abused them. After the investigation, the case has been closed as “Not Admitted” vide Final Report number 30/2022 dated 29.12.2022.

22. It is further submitted that a case FIR No. 91/2023 under section 452/307/323/447/427/147/506 IPC has been registered at Police Station Ramban on the written complaint lodged by the applicant, against accused persons namely (1). Mohd. Hafiz s/o Mohd. Rafiq, @ Hafrzu, (2). Abdul Qayoom s/o Fareed Ahmed. @Billa, (3). shakeel Ahmed S/o Mohd. Kallu @Kallu Gujar, (4). Fareed Ahmed s/o Late. Ghulam Ali, (5). Mohd. sadiq S/o Late Ghulam Ali, (6). Lal Hussain s/o Late Ghulam Ali, (7) Rubina Begum w/o Lal Hussain, all resident of Govindpura, Maitra, Ramban (8) Abdul Latief S/o Late Mohd. Raliq R/o Saroda, Billawat (9) Mohd Younis (10) Abdul Gani S/o Chattu (11) Ayasha Begum W/o Lt. Ghulam Ali (12) Mukhtyira Begum W/o Mohd. Fareed and were arrested in the instant case and later released on bail from the Hon’ble Court. The investigation of the case is going on as other accused persons in the instant case are still evading their arrest and efforts are going on to trace the accused persons.

23. Heard the learned counsel for the parties at length and perused the record.

24. This is a classic case where the petitioner after choosing to appear before the Appellate Court, pursuant to the order passed by the Revisional Court, has taken a calculated chance before this Court after having participated voluntarily and willingly in the proceedings as is evident from the perusal of the order sheet of the Court below. Since the petitioner gladly and voluntarily participated in the proceedings before the Appellate Court from 18.08.2022 till 04.11.2023 and once, the petitioner anticipated that he will not get any favourable order, has now taken a U-turn by filing the instant petition on 08.11.2023 without disclosing the fact of such participation during the intervening period. After having taken a chance before the Appellate Court, the petitioner has filed the instant petition on false and flimsy grounds, suppressing this material fact which has direct bearing on the instant case.
25. The writ petition preferred by the petitioner suppressing their appearance before the Appellate Court from 18.08.2022 to 04.11.2023 and in absence of specific pleading on this crucial fact, it can safely be concluded that the petitioner has not come to this Court with clean hands. The petitioner has suppressed material facts with intent to mislead this Court and to get a favourable order. On one hand, the petitioner is contesting the order passed by the Revisional Court, while on the other hand, has voluntarily availed parallel proceedings by appearing before the Appellate Court and taking a calculated chance before that Court.
26. Thus, the petition cannot be allowed to blow hot and cold contesting the order on one hand, while simultaneously accepting it by appearing before the Appellate Court in compliance with the Revisional Court's direction. The petitioner's act of filing the present petition by suppressing material

facts, after having taken a chance before the Appellate Court, cannot be condoned.

27. When the learned counsel for the petitioner was confronted with the maintainability of the instant petition, on the ground of suppression of this material fact, the learned counsel for the petitioner could not give any satisfactory reply, however he sought some time to have instructions from his client.
28. The record further reveals that it was in the knowledge of the petitioner about the factum of filing of the said appeal, which fact has been deliberately concealed, while filing the instant petition. Thus, a duty was cast upon the petitioner to have come up before this court with clean hands but the petitioner has deliberately misled this court.

LEGAL ANALYSIS

29. It is settled preposition of law that a person invoking the writ jurisdiction under Article 226 must approach the Court with clean hands. A petitioner who suppresses material facts disentitles himself from any equitable or discretionary relief.
30. In the instant case, petitioner has deliberately suppressed the prior proceedings before the appellate Court on the same cause of action and seeking identical reliefs and failed to bring this important fact which has direct bearing in the instant case to the notice of this Court. Such concealment, especially by a litigant represented by the same counsel in both proceedings, cannot be brushed aside as inadvertent. The concealment is found to be willful and calculated, with the intent of misleading this Court and re-agitating a matter already adjudicated.

31. Instead of challenging the subsequent order passed by the Appellate Court on 04.11.2023, which was within the petitioner's knowledge, the petitioner has chosen to challenge the order dated 25.11.2021 and the subsequent order passed by the Revisional Court on 10.08.2022. Notably, the order passed by the learned Revisional Court was gladly and voluntarily accepted by the petitioner and the petitioner did not raise any grievance. Moreover, the petitioner participated in the proceedings before the Appellate Court out of his own volition in which various orders were passed, which have been placed on record by the private respondents in their reply. The petitioner, through the instant petition, has suppressed all these subsequent orders passed by the Appellate Court, despite voluntarily accepting them, and has instead chosen to challenge the earlier order passed by the Revisional Court.

32. The Hon'ble Supreme Court in the case titled as ***"K. Jayaram and ors v. Bangalore Development Authority and others"***, reported as (2022) 12 SCC 815, has held as under:

"10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India 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 facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced."

33. Additionally, the Hon'ble Supreme Court in the case titled as ***"Prestige Lights Ltd v SBI reported in (2007) 8 SCC 449"*** 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 otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus: (SCC p. 461, para 33).

"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."

34. In the present case, the petitioner availed two remedies simultaneously.

On one hand, the petitioner has called in question the order passed by the Revisional Court and, on the other hand, has taken a calculated chance to appear before the Appellate Court in pursuance to the order passed by the Revisional Court, as such, the suppression of the this fact seems to be deliberate and conscious. It is, therefore, evident that the concealment was not inadvertent, but intentional, aimed at securing an undue advantage from this Court after failing to obtain relief from the appellate court.

35. This Court also draws strength from the unequivocal position adopted by the Hon'ble Supreme Court in the case titled as ***"Subrata Roy Sahara v union of India and Ors"*** reported as (2014) 8 SCC 470, wherein the Court has categorically deprecated abuse of judicial process by unscrupulous litigants and held that:

"191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing

counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault? The suggestion to the legislature is that a litigant who has succeeded must be compensated by the one who has lost. The suggestion to the legislature is to formulate a mechanism that anyone who initiates and continues a litigation senselessly pays for the same. It is suggested that the legislature should consider the introduction of a "Code of Compulsory Costs."

36. This Court is further fortified by the observation of the Hon'ble Supreme Court laid down in the case titled as ***"Dalip Singh v. State of Uttar Pradesh and Ors"***, reported in (2010) 2 SCC 114, wherein the following has been held:

"1. 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 the justice-delivery system which was in vogue in the 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 overshadowed 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.

2. In the 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."

30. Thus, the law laid down by the Hon'ble Apex Court is squarely applicable to the facts of the instant case. Here also, the petitioner has deliberately suppressed the fact with regard to availing of two remedies simultaneously on the same cause of action. Therefore, the concealment was neither innocent nor incidental it was a conscious attempt to secure relief by misusing the process of law.

31. Additionally, this Court in the case titled as ***"Satpal Sharma vs. State of J & K Through Commissioner/Secretary, Housing and Urban Dev***

Department” reported as 2024 SCC online J&K 775 lamented the rising trend of dishonest litigants abusing the system and observed as under:

“64. Thus, from the aforementioned enunciations of law, it has been settled that suppression of any material fact amounts to abuse of the process of law and playing fraud, which would deprive an unscrupulous litigant from availing equitable or discretionary remedies under Article 226 of the Constitution of India. In the instant case, the petitioners, with a view to mislead this Court, have deliberately suppressed the fact that the demolition over the land of the petitioners was already carried out by the JDA before filing the instant case, which fact has been admitted by the petitioners in three separate applications filed under Section 156(3) of Cr.P.C and also in the petition filed under Section 561-A of J&K Cr.P.C. by the petitioners. In these circumstances, the petitioners are not entitled to claim the discretionary remedy/relief available under Article 226 of the Constitution of India.”

32. Furthermore, this court in the case titled as **“Madan Lal v. State Bank of India”, reported as 2025 Live Law (JKL) 56** reaffirmed the same principle and clearly held as under:

“49. Thus, the law is well settled that the discretionary relief under Article 226 of the Constitution will only be granted to the person, who comes to the Court with clean hands, which means that a party seeking judicial intervention must come to the Court in good faith without any form of deception, misrepresentation or fraud. The Court has to exercise its discretion in favour of justice, fairness and equity and will deny relief to a party, whose conduct does not fall within these principles. Hence, a person, who is found guilty of such fraudulent conduct, is not entitled to get a relief under Article 226 of Constitution of India.”

CONCLUSION

3. In light of the aforementioned settled legal annunciations/preposition and having regard to the conduct of the Petitioner and also keeping in view the principles laid down by Hon’ble Apex Court including this Court, the Court finds sufficient reasons not only to dismiss the instant writ petition due to misconduct and concealment of material facts but also to levy exemplary costs as a way to express its disapproval and to discourage the improper use of constitutional remedies.
34. Further, with a view to curb such abuse of the judicial process, to deter litigants from engaging in unscrupulous and dishonest pleadings, and to

prevent recurrence of such malpractice, this Court deems it appropriate to impose exemplary costs of ₹20,000/- on the Petitioner, to be deposited in the Advocate's Welfare Fund.

35. For the reasons stated hereinabove, the instant petition deserves dismissal and, accordingly, the same is ***dismissed*** along with connected application(s). if any.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU

05.08.2025

Vijay

Whether the order is reportable: Yes/No

Whether the order is speaking: Yes/No

