

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 1665 of 2026****Date of Decision: October 8, 2026**

Smt. Veer Kali	Versus	Petitioner
The State of Himachal Pradesh and others		... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹ Yes.**For the Petitioner:** Mr. Suresh Kumar, Advocate.

For the Respondents: Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocate General with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for respondents Nos. 1 to 4.
Mr. Y.P. Sood and Mr. Praveen Chauhan, Advocates, for respondent No.5.

Sandeep Sharma, Judge(oral)

Being aggrieved and dissatisfied with order dated 12.6.2024 passed by Financial Commissioner (Appeals) (Annexure P-1), whereby revision petition No. 71/2023, having been filed by petitioner herein under S.17 of Himachal Pradesh Land Revenue Act (hereinafter, 'Act') laying therein challenge to order dated 3.11.2022 passed by Divisional Commissioner, Shimla in case No. 127/2020 came to be dismissed, petitioner has approached this court, in the instant proceedings filed under Art.226 of Constitution of India, praying therein for following relief:

“(i) Allow the present Writ Petition and set-aside the Impugned Order passed by the Learned Financial Commissioner (Appeals), Himachal Pradesh Dated 12.06.2024 (**Annexure P-1**), Order passed by Learned Divisional Commissioner, Shimla 03.11.2022 (**Annexure P-2**) and the Order passed by Learned Settlement Collector District Shimla, Dated 21.08.2019 (**Annexure P-3**).”

¹Whether the reporters of the local papers may be allowed to see the judgment?

2. Precisely, the facts of the case, as emerge from the material adduced on record by respective parties, are that respondent No.5 Banka Ram filed an application dated 12.8.2009 before Settlement Collector, Shimla Division, Shimla (hereinafter, 'Collector') for correction of revenue entries, stating that he is owner-in-possession of land denoted by *Khasra* Nos. 1844 and 1846, measuring 0-16-47 Hectares situate in Mohal Kulgaon, Tehsil Chirgaon, District Shimla and ownership of *Khasra* No. 1847 measuring 0-09-14 Hectares adjacent to *Khasra* No. 1844 has been shown in the ownership of the petitioner, which is in his possession from generations and there is an apple orchard of respondent on this land. It is averred by petitioner that petitioner had sown *Koda* on the said land but during settlement operations, classification of land has been wrongly shown as "Banjar Kadeem", which is contrary to factual possession on the spot. Collector referred the matter to Naib Tehsildar Correction Cell and subsequently on the basis of report of Naib Tehsildar, learned Collector vide order dated 9.9.2016, rejected the application filed by the respondent.

3. Being aggrieved with aforesaid order, respondent preferred an appeal bearing No. 23/16 before Divisional Commissioner, who vide order dated 28.12.2017 allowed the appeal and after hearing the parties, remanded the matter to Collector and pass a combined order. In compliance of aforesaid order, Collector again referred the matter to Naib Tehsildar Correction Cell, for enquiry and examination of old and new records. On the basis of report of field agency, Collector ordered for correction vide order dated 21.8.2019 in case No. 15/2018.

4. Being aggrieved by order dated 21.8.2019, petitioner herein preferred an appeal in the court of learned Commissioner. Since appeal was time barred, petitioner also filed an application under S.5 of Limitation Act, for condonation of delay in filing the appeal. Learned Commissioner condoned the delay on 21.10.2021, against which, private respondent filed revision petition No. 14/2022 in the court of Financial Commissioner (Appeals). Financial Commissioner (Appeals), vide order dated 28.3.2022 passed in revision petition No. 14/2022, remanded the case back to the Commissioner, with a direction to hear the parties again on condonation of delay and pass a detailed order on the same.

5. In compliance to afore order dated 28.3.2022 passed by Financial Commissioner (Appeals), learned Commissioner heard the application under S. 5 of Limitation Act and passed order dated 18.11.2022, thereby dismissing the application for condonation of delay. In the afore background, petitioner approached Financial Commissioner (Appeals), by way of revision petition No. 71/23 but same also came to be dismissed vide order dated 12.6.2024 (Annexure P-1).

6. Being aggrieved and dissatisfied with afore order, petitioner has approached this Court in the instant proceedings, praying therein to set aside the said order and direct afore authority to decide the revision petition on its own merit.

7. I have heard learned counsel for the parties and gone through the record of the case.

8. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Suresh Kumar, learned counsel for the petitioner, is that learned Courts below, while considering the applica-

tion for condonation of delay, having been filed by the petitioner, failed to take note of fact that the petitioner herein was never served in the application for correction, filed by private respondent before the Collector. While referring to order dated 21.8.2019 (Annexure P-3), learned counsel for the petitioner argued that it is apparent from the record that none had put in appearance on behalf of the petitioner in the afore proceedings and notice was issued to the counsel and not to the petitioner, as such, on account of fault, if any, committed by the counsel, in whose favour, Power of Attorney was executed, petitioner cannot be made to suffer. However, aforesaid submission made by the petitioner does not appear to be correct, for the reason that a bare perusal of order dated 21.8.2019 (Annexure P-3) itself suggests that the petitioner had engaged lawyer in the proceedings initiated at the behest of the respondent.

9. Leaving everything aside, this court finds that factum with regard to passing of order dated 21.8.2019, had come to the knowledge of the petitioner on 26.11.2019, when mutation was attested in favour of respondent in the presence of son of the petitioner. Moreover, this Court finds that certified copy of order dated 21.8.2019 was obtained by the petitioner on 6.12.2019, which fact otherwise came to be concealed before this Court.

10. During proceedings of the case, it came to be argued by the petitioner that order dated 21.8.2019, came to the knowledge of the petitioner in June, 2020, but such submission is totally contrary to record, because, bare perusal of certified copy of order dated 21.8.2019, which came to be annexed with the appeal filed before Divisional Commissioner itself suggests that the same was received by the petitioner on 6.12.2019 (Annexure P-2). Divisional Commissioner, while passing order dated 3.11.2022 (Annexure

P-2), whereby application filed under S.5 of Limitation Act, at the behest of petitioner, came to be dismissed, has dealt with aforesaid aspect of the matter.

11. Though, at one point of time, petitioner was proceeded against ex parte on account of absence of her counsel but record reveals that subsequently, petitioner joined the proceedings, as is evident from memo of appearance on behalf of learned counsel for the petitioner, available on record of lower court. Since, son of the petitioner was present on the date of attestation of mutation No. 508, by Assistant Collector 2nd Grade, petitioner cannot be permitted to contend that factum with regard to passing of order dated 21.8.2019, came to the knowledge of the petitioner in the month of June, 2020.

12. Once, it is evident from record that certified copy of order of Collector was obtained by the petitioner on 6.12.2019, coupled with the fact that no plausible explanation ever came to be rendered on record qua delay of seven months in filing the appeal, no illegality can be said to have been committed by learned Divisional Commissioner, while dismissing the application under S.5 of Limitation Act.

13. Having carefully perused the pleadings adduced on record by parties before learned Courts below as well as this Court, this Court is persuaded to agree with Mr. Y.P. Sood, learned counsel for the private respondent, that, at every step, an attempt has been made by the petitioner to misstate the fact. At first instance, petitioner attempted to set up a case before the Divisional Commissioner that certified copy of order dated 21.8.2019 was received on 1.7.2020, but such fact stands falsified from the fact that certified copy of order passed by Collector was obtained by the petitioner on

6.12.2019 and same was annexed with the appeal filed before Divisional Commissioner. Even if it is presumed that certified copy of order was not received by petitioner on 6.12.2019, no evidence worth credence, ever came to be led on record to show that factum with regard to passing of order dated 21.8.2019 had not come to the notice of the son of the petitioner on 26.11.2019, at the time of attestation of mutation pursuant to order dated 21.8.2019, coupled with the fact that no plausible explanation ever came to be rendered on record qua delay in filing the appeal, and as such, authority below rightly dismissed the application for condonation of delay.

14. Interestingly, after being pointed out by Divisional Commissioner, while passing order dated 3.11.2022, that certified copy of order dated 21.8.2019 was received on 6.12.2019, petitioner again attempted to set up a case before this Court that prior to June, 2020, petitioner had no knowledge with regard to passing of order dated 21.8.2019 by the Collector, which fact is totally contrary to record.

15. Since, the petitioner failed to approach this Court with clean hands coupled with the fact that no plausible explanation ever came to be rendered on record qua delay of seven months in filing the appeal before Divisional Commissioner, this Court is not persuaded to consider prayer made by the petitioner for condonation of delay.

16. Reliance in this regard is placed upon judgment rendered by Hon'ble Supreme Court of India in **K. Jayaram v. BDA**, (2022) 12 SCC 815, wherein, it has been 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.

11. This Court in *Prestige Lights Ltd. V. State Bank of India* 1 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:

“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.”

14. In *Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others* 2, this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also 1 (2007) 8 SCC 449 2 (2008) 1 SCC 560 should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

15. In *K.D. Sharma v. Steel Authority of India Limited and Others* 3, 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.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs.* (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514) "... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been 3 (2008)12 SCC 481 fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement." (emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* (supra), Viscount Reading, C.J. observed: (KB pp. 495-96)

"... Where an *ex parte* application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit." (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under

Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. If the primary object as highlighted in Kensington Income Tax Commrs.(supra) 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, manoeuvring 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.””

17. Recently, Hon'ble Supreme Court of India in Civil Appeal No. 13851 of 2024, titled **The Auroville Foundation v. Natasha Storey**, decided on 17.3.2025, has held as under:

“9. It is no more res integra that the Doctrine of “Clean hands and non-suppression of material facts” is applicable with full force to every proceedings before any judicial forum. The party invoking extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and disclose all correct and material facts in his Writ Petition. If it is brought to the notice of the Court that the petition has been guilty of suppression of material and relevant facts or has not come with clean hands, such conduct must be seriously viewed by the courts as the abuse of process of law and the petition must be dismissed on that ground alone without entering into the merits of the matter.

10. As held in S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors.¹, as a general rule, suppression of material fact by a li-

litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of court by deceiving it. Similar view has been taken in General Manager, Haryana Roadways Vs. Jai Bhagwan & Anr.2, in Prestige Lights Ltd. Vs. State Bank of India etc.”

18. Moreover, this court finds that after passing of order laid challenge in the instant proceedings, suit having been filed by private respondent for possession has been decreed and pursuant to such decree passed in the suit, private respondent has been put in possession of suit land.

19. Consequently, in view of discussion made herein above, this Court finds no illegality or infirmity in impugned order passed by Financial Commissioner (Appeals), which appears to be based on proper appreciation of facts. Accordingly, present petition fails and is dismissed.

All pending applications also stand disposed of. Interim directions, if any, also stand vacated.

No order as to costs.

**(Sandeep Sharma),
Judge**

October 8, 2026
(vikrant)