



IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
CHHATTISGARH

WRIT PETITION (C) No. 1911 / 2014

Mishra ✓

PETITIONER

Dev Prasad, S/o Shri Bhikam
Prasad Mishra, aged about
62 years, R/o Sirgitti, Tahsil
& District Bilaspur (C.G.)

Single Bench

Versus

RESPONDENTS

1. State of Chhattisgarh,
Through: Secretary,
Department of Revenue,
Mantralaya, Mahanadi
Bhawan, Naya Raipur (C.G.)
2. Collector,
District Bilaspur (C.G.)
3. Sub Divisional Officer
(Revenue) Bilaspur, District
Bilaspur (C.G.)
4. Tahsildar, Bilaspur, District
Bilaspur (C.G.)

P.H.No. 1911/14
Presented by Shri Anand Khetri
dated 22-01-14

WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA



HIGH COURT OF CHHATTISGARH : BILASPUR
WRIT PETITION (C) NO.1911 OF 2014

66

PETITIONER

Dev Prasad Mishra

Versus

RESPONDENTS

State of Chhattisgarh and others

Post for pronouncement of orders on the 10th day of February, 2015

Sd/-

Prashant Kumar Mishra
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (C) NO.1911 OF 2014

PETITIONER

Dev Prasad Mishra

Versus

RESPONDENTS

State of Chhattisgarh and others

Single Bench : Hon'ble Shri Justice Prashant Kumar Mishra

Present :- Ms. Renu Kochar, Advocate for the petitioner.
Shri S. Rathore, Dy. Government Advocate for the State.

ORDER

(Passed on this 10th day of February, 2015)

Heard learned counsel for the parties.

1. The petitioner is seeking quashment of the impugned warrant of arrest issued by the Sub Divisional Officer (Revenue), Bilaspur [for short 'the SDO (R)'] on 07.08.2014 in execution of the order passed against the petitioner under Section 248 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code') in respect of encroachment.
2. Ms. Kochar, learned counsel appearing for the petitioner, would submit that an application under Section 57 (2) of the Code claiming title over the land is pending consideration before the Tehsildar, Bilaspur, therefore, the SDO (R) should not have issued warrant of arrest against the petitioner.
3. It appears the petitioner is an encroacher of government grass land admeasuring 6930 sq. ft. bearing Khasra No.511/1 क at village Sirgitti, Bilaspur. Though the petitioner has not filed copy of the order directing removal of encroachment, however, the documents annexed

with the writ petition would indicate that an order under Section 248 of the Code has been passed against the petitioner and in execution thereof the order Annexure-P-1 has been passed for sending him to civil jail.

4. Petitioner has referred two writ petitions preferred by him. The first writ petition is WP No.2654 of 2005 and the second writ petition is WP 472 of 2006. This Court summoned the records of both the writ petitions while dictating this order. The first writ petition i.e. WP No.2654 of 2005 was, in fact, decided on merits by a detailed order dated 11.7.2005. Since the petitioner has not placed the detailed facts before this Court in this writ petition, it would be apt to refer the entire order passed by this Court while deciding WP No.2654 of 2005 :

"11.07.2005

Smt. Renu Kochar, counsel for the petitioner.

Shri Parag Kotecha, Panel Lawyer for the Respondents/State.

Heard on admission.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the order of Tehsildar, Bilaspur dated 03.12.2001, order of Sub Divisional Officer, Bilaspur dated 20.05.2003 and also order dated 21.01.2004 passed by the Board of Revenue, Chhattisgarh.

The case of the petitioner is that on 02.10.1948 elder brother of petitioner's father namely Ayodhya Prasad purchased a land area 0.07 acre situated in Khasra No.511/01, Mouja Sirgitti, Patwari Halka No.23, R.I. Circle, Bilaspur from the then Malgujar namely Ramlal on a sale consideration of Rs.85/- and the sale deed was executed on a stamp of Rs.1/-. However, the said land has been shown in the revenue record as grass land in the name of Devi Prasad, who was the then Malgujar. According to Khasra No.P-1 total area of Khasra No.511/01 was 2.18 acres and the then Malgujar Ramlal during his life time sold 54 dismil of land to various other persons including Ayodhya

Prasad as well as Sahasram who purchased 9 dismil land. The land could not be mutated in the name of said Ayodhya Prasad and he died in the year 1976. Even after the death of Ayodhya Prasad his legal heirs also could not be mutated in their names. Thereafter the petitioner herein purchased the said land in the year 1984 from the legal heirs of said Ayodhya Prasad in consideration of Rs.1,000/-, and he also could not be mutated in his name.

Respondent No.5 made a complaint to the Tehsildar against the petitioner that he has encroached upon the government grass land and constructed a house, upon which a Case No.2/A13/2000-2001 was registered between Onkar Prasad Vs. Dev Prasad. However, the said case has been dismissed for want of prosecution, therefore, the elder brother of respondent No.5 again made a complaint before the Tehsildar and in that complaint case the Tehsildar passed the order of dispossession of the petitioner and imposed fine of Rs.400/-. The petitioner in view of order of Tehsildar deposited the fine amount on 03.12.2001. The petitioner challenged the impugned order before the Sub Divisional Officer, Bilaspur by way of preferring an appeal, but the same was dismissed. Being aggrieved by the order of Sub Divisional Officer the petitioner filed an appeal before the Board of Revenue and Board of Revenue without appreciating the material facts available dismissed the appeal.

I have perused the order of Sub Divisional Officer, Bilaspur dated 20.05.2003.

Perusal of order shows that after hearing counsel for the petitioner herein the Sub Divisional Officer perused the record of court below and on the basis of special enquiry report reached to the conclusion that the petitioner and complainant i.e. respondent No.5 both have encroached upon the government land bearing Khasra No.511/1A and further observed that the court below passed the order against the petitioner after giving him sufficient opportunity of hearing as well as also to lead evidence. Against that order the petitioner approached the Board of Revenue, who has also affirmed the said order.

During the course of arguments learned counsel for the petitioner submitted that the petitioner has already filed a civil suit in the court of learned Civil Judge for grant of permanent injunction in which State Government is also a party.

In the first instance, the petitioner has already approached the civil court and secondly, there is

concurrent finding of the SDO (Revenue) & Board of Revenue that the petitioner has encroached upon the government land, whereas the petitioner is claiming the said land to be of his own. In view of the fact that disputed facts are involved in this case, which cannot be enquired into the writ jurisdiction, therefore, the petitioner is directed to avail appropriate remedy available to him under the law.

In view of the above, the petition stands dismissed.

Consequently, M. (W.) P. No.2184/05 & I.A. No.5283/05 also stand disposed of."

The second writ petition i.e. WP No.472 of 2006 was also dismissed as infructuous after briefly referring the facts of the case and the challenge made thereunder. The said order dated 18.11.2010 is also reproduced hereunder :

"Shri Sunil Sahu, counsel for the petitioner.

Shri R.R. Sinha, Panle Lawyer for the State/ respondents.

ORAL ORDER
(18.11.2010)

The petitioner claims to be in possession of 6930 sq. ft. of Government land bearing Khasra No.511/1 at village Sirgitti, District Bilaspur. An order of removal of encroachment was passed against him by the Tahsildar, Bilaspur on 03.12.2001, which was affirmed by the Sub Divisional Officer, Bilaspur on 20.05.2003 and by the Board of Revenue on 21.01.2004. Petitioner's writ petition bearing W.P. No.2654/05 questioning the validity of the orders passed by the Revenue Authorities was dismissed by this Court on 11.07.2005 (Annexure P/3), however liberty was reserved in favour of the petitioner to raise the matter in Civil Suit.

(2) The petitioner thereafter preferred Civil Suit in the Court of III Civil Judge Class-II, Bilaspur. Copy of the plaint is annexed with the writ petition as Annexure P/9. One of the reliefs claimed in the writ petition is for issuance of a decree to cancel the warrant of arrest against him issued by the Sub Divisional Officer in execution of the order of dispossession issued against him.

(3) It is informed at the bar that the suit has been dismissed during pendency of the writ petition and a Second Appeal is pending in this Court. In view of the above, this Court is of the opinion that the instant writ petition has become infructuous because the order passed by the Civil Court in exercise of powers under Order 39 Rule 1 & 2 of the C.P.C. has merged in the final order passed in the Civil Suit and the order directing for sending the petitioner to civil prison was also under challenge in the suit which too has been dismissed.

(4) Consequently, the instant writ petition is dismissed as infructuous. The petitioner, if he so desires, may seek appropriate interim order in the pending Second Appeal."

Second Appeal No.239 of 2009, which was withdrawn on 11.12.2013 with liberty to move before the Revenue Authority, was preferred by the petitioner to call in question the judgment and decree passed by the Courts below dismissing his suit claiming declaration of title on the plea of adverse possession. After withdrawing the second appeal, the petitioner has preferred an application under Section 57 (2) of the Code claiming title over the land.

5. Section 57 of the Code applies where a person claims title over the land, which is otherwise recorded as Government land, however, petitioner's civil suit having already been dismissed against which the petitioner having withdrew the second appeal, the decree of dismissal of his suit has become final and binding on him. A liberty to agitate the issue before the Revenue Authority would not nullify or evaporate the findings recorded by the Civil Court.
6. In the opinion of this Court, the petitioner has successfully deferred his eviction from the subject land initiating litigation one after another

even though he has no right, title in the subject land. The petitioner appears to be a seasoned and cantankerous litigant. Except for referring to one or the other proceeding, neither any pleading has been made nor any ground has been urged to assail the legality and validity of the order issuing warrant of arrest against him.

7. There is absolutely no whisper in the writ petition as to when the original order under Section 248 of the Code was passed and whether the said order was challenged by the petitioner before the superior Revenue authorities. As long as the original order under Section 248 of the Code stands, the SDO (R) has to execute the order and no writ can be issued restraining him to discharge his statutory function unless an illegality is pointed out in issuance of such warrant. Mere pendency of one or the other proceeding would not denude the Revenue authority of its power to execute an order passed by it at an earlier point of time.
8. The petitioner has concealed material facts before this Court. It is settled by the Supreme Court that the jurisdiction under Article 226 of the Constitution of India being discretionary and equitable jurisdiction, it should not be exercised in favour of a person who has withheld or failed to disclose material facts before this Court.
9. The Supreme Court in **K.D. Sharma v. Steel Authority of India Limited and Others**¹, 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

¹(2008) 12 SCC 481



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.

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".

10. As a sequel, the writ petition, *sans* merit, is liable to be and is hereby dismissed. No order as to costs.

Gowri

Sd/-
Prashant Kumar Mishra
Judge