

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 4136 of 2015 (N)

PETITIONER:-

K G SOUDAMINI, AGED 62 YEARS,
D/O. LATE GANGADHARAN, KUZHIPARAMBIL HOUSE,
KOZHIKKUNNU DESOM, MULANGUNNATHUKAVU P.O.
THRISSUR - 680 581.

BY ADV. SRI.R.V.SUJIT KUMAR

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
OFFICE OF THE DISTRICT COLLECTOR, AYYANTHOLE,
THRISSUR DISTRICT - 680 003.
2. THE KILANOOR PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KILANOOR,
THRISSUR - 680 581.
3. THE VILLAGE OFFICER,
KILANOOR VILLAGE, THRISSUR - 680 003.

R2 BY ADV. SRI.SHEEJO CHACKO
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT-P1-TRUE COPY OF THE STATEMENT DATED 06/06/2014 ISSUED BY THE 2ND RESPONDENT REGARDING DENIAL OF ISSUANCE OF ANY BUILDING PERMIT IN SY.NO. 784/1-1 OF KILANOOR VILLAGE.

EXHIBIT-P1(a)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P1.

EXHIBIT-P2-TRUE COPY OF THE STATEMENT ISSUED BY THE 3RD RESPONDENT CLASSIFYING THE PROPOERTY IN SY. NO. 748/1-1 OF KILANOOR VILLAGE AS NILAM AND HAVING BEEN INCLUDED IN THE LAND BANK.

EXHIBIT-P2(a)-TRUE COPY OF THE TRANSLATION OF EXHIBIT-P2.

EXHIBIT-P3-TRUE COPY OF THE REPRESENTATION DATED 11/11/2014 SUBMITTED BEFORE THE DISTRICT COLLECTOR, THRISSUR SEEKING DEMOLITION OF ILLEGALLY CONSTRUCTED FOUNDATION STRUCTURE IN A LAND CLASSIFIED AS NILAM AND TO RESTORE THE PADDY FIELD.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 4136 of 2015

Dated this the 26th day of March, 2015.

JUDGMENT

The petitioner has approached this Court with the following prayers: A direction to the 1st respondent to demolish the illegal building construction, restore the status ante-quo with respect to the paddy filed in Sy. No. 784/1-1 of Kilanoor Village, and 'impose severe punishment as the case may be'. She has also prayed in the alternative that a direction be given to the 1st respondent to consider and dispose of her Ext.P3 representation within a time limit to be fixed by this Court.

2. The grievance voiced by the petitioner is that some unknown persons have been making efforts to raise construction on her land, which is a paddy field, and the officials have not been taking any action.

3. The learned counsel for the petitioner has submitted that the petitioner has never applied for any building permit,

nor has the Grama Panchayath issued a building permit to any other person. He has, however, stated that there are civil disputes pending among the members of the petitioner's family. The learned counsel contends that the nature of the land being paddy field, the Grama Panchayath cannot give any building permit to any person.

4. The learned counsel for the respondent Grama Panchayath, apart from affirming that the Grama Panchayath has not issued any building permit, has further submitted that the Grama Panchayath cannot be dragged into any private disputes.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, apart from perusing the record.

6. As can be seen from the record, Ext.P1 is the information supplied to the petitioner by the respondent Grama Panchayath under Right to Information Act. It essentially communicates to the petitioner that no building permit has been granted. Ext.P2 is the certificate issued by the Village Officer

indicating that the land in question is 'nilam'.

7. Ext.P3 is the representation issued by the petitioner to the first respondent to take appropriate action against those who have been constructing.

8. The pleadings are more in the nature of allusions, rather than averments or at least allegations. It is mentioned in the writ petition that certain civil litigation is pending involving the property, and the same is not ripe for hearing. It has further been alluded that certain persons, taking advantage of the pendency of the litigation, 'have initiated construction of building foundation and building structure in gross violation of the Building Rules and the Land Conservancy Act'. In that context, the learned counsel, without spelling out further details, has reiterated the contention that certain property disputes are pending before the civil court involving the members of the family.

9. In the first place, this Court under Article 226 of the Constitution of India, exercises equity jurisdiction, which is

essentially discretionary. Under certain circumstances, even when the claim of the person who approaches the court, though meritorious, can be disregarded on certain counts, to wit: suppression of material facts, non-impleadment of necessary party, or having an efficacious alternative remedy.

10. In the present instance, the petitioner did place on record that the civil litigation is pending and is not ripe for hearing. It is also stated that certain persons, taking advantage of the pendency of the litigation, have initiated construction of the building. The question of taking advantage of pending litigation arises only concerning the parties thereto. A rank outsider may not have anything to do with the pending litigation, for he asserts himself with an independent claim. It does not call for any wild conjuncture to hold that when the rival claimants in the petitioner's family started asserting themselves, the petitioner obliquely approached this Court to have the redressal of the civil dispute, which has already been seized of by a competent civil court.

11. Going by the pleadings, it is highly unlikely that the petitioner does not know who actually has started constructing on the property. Even this feigned ignorance is falsified by the petitioner's own representation—Ext.P3, which will be referred to later.

12. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear 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, the court may dismiss the action without adjudicating the matter. 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 stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible. (vide *Prestige Lights Ltd. v.*

SBI, (2007) 8 SCC 449)

13. Having culled out the legal principle from its earlier pronouncements in *Champalal Binani v. CIT*,¹ *Chimajirao Kanhojirao Shrike v. Oriental Fire and General Insurance Co. Ltd.*², *LIC v. Asha Goel*³, *Haryana Financial Corpn. v. Jagdamba Oil Mills*⁴, *Chandra Singh v. State of Rajasthan*⁵, and *Punjab Roadways v. Punja Sahib Bus and Transport Co.*, the Hon'ble Supreme Court in *Ritesh Tewari v. State of U.P.*⁶, has held thus:

"26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner.

(emphasis added)

¹ AIR 1970 SC 645

² AIR 2000 SC 2532

³ AIR 2001 SC 549

⁴ AIR 2002 SC 834

⁵ AIR 2003 SC 2889

⁶ (2010) 10 SCC 677

14. It is instructive to bear in mind the precedential peroration in *A.P. State Financial Corporation. v. Gar Re-Rolling Mills*⁷ that Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. Indeed, in *M.P. Mittal v. State of Haryana*⁸ the Apex Court has further held that it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner, if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.

15. A cause may have many shades, one giving the colour of public law controversy, another that of pure personal dispute, and still another, of a mixed lattice. We cannot rush to a civil court complaining of one hue, and to the writ court complaining of another. A cause is, more often than not, is heterogeneous,

⁷ AIR 1994 SC 2151

⁸ AIR 1984 SC 1888

calling for compendious and comprehensive judicial treatment. Every cause, in some measure, is bound to have an element of public law character. Ipso facto, it does not give licence to the suitor to split the cause and seek parallel remedies, leading to decisional chaos and conflict. In a writ petition what is to be complained of is the infringement of an established right by the state, an instrumentality of state, or any of its officials. In other words, it is to protect an established right, but not to establish a right.

16. In the writ petition the petitioner admits that she has a cloud caste on her title, which is thus yet to be established. Though proceedings are pending before civil court, she remains reticent and refuses to reveal the nature of dispute and the parties thereto. The petitioner complains of passive inaction of officials, who, according to her, have to pry into the activities of unknown, nay undisclosed, persons and prevent them from committing some breach of law on a piece of property, regarding which the petitioner's right has already been called in

question. It is not uncommon that suitors take recourse to writ jurisdiction to obtain a seemingly innocuous order or observation, inconsequential as it may appear, and flaunt the order before another forum, say a civil court, in an entirely different context, as if it were a judicial imprimatur of that person's claim.

17. It is further pertinent to examine the alternative relief the petitioner has prayed for: a direction to the first respondent, the district collector, to dispose of the petitioner's Ext.P3 complaint. Harmless. Is it really so?

18. Let us examine Ext.P3, the gravamen of which is that the petitioner, being the legal heir of her mother, is in possession of certain land, part of which has been classified as 'nilam'. Ext.P3 complaint, made for the ostensible purpose of restoration of paddy field, reads further thus:

"[A] civil dispute pertaining to title is also pending before the Hon'ble High Court of Kerala. I humbly submit that taking advantage of the pendency of litigation, my Aunt (Maternal Uncle's wife) Chandrika and her children Jayan, Sasi & Geetha forcefully filled a portion of the Nilam and constructed basement for construction of a building.

. . .

Hence I request you to demolish the illegally constructed foundation

structure (basement), restore the paddy fields to its original form and prosecute Smt.Chandrika and her children for the willful violation respectively.”

(emphasis added)

19. Juxtaposed with the above averments, the pleadings in the writ petition read, in an excerptible form, thus:

“The petitioner submits that certain neighbours and relatives lay claim of title to the said property and by passage of time the said property is embroiled in litigation...The petitioner was dumbstruck when she noticed that some persons had unloaded granite, reclaimed a portion of the paddy field for construction of building and thereafter constructed the foundation structure of a building structure in the said property... However the petitioner apprehends that due to local, political and financial influences exerted by certain persons, the 1st respondent is acting in a lethargic manner to take action and dispose of the representation submitted by the petitioner.”

(emphasis added)

20. In the synopsis filed along with the writ petition, the plea of the petitioner is as follows:

“[H]owever as a civil litigation is pending in the matter and the same is not ripe for hearing, certain persons taking advantage of the pendency of litigation have initiated construction of building foundation and building structure in gross violation of the Building rules and Land Conservancy Act.”

(emphasis added)

21. Firstly, in Ext.P3 the plea is that litigation is pending before this Court, but no whisper about it in the writ petition; on the contrary, in the writ pleadings it has been alleged that

certain litigation concerning title dispute is pending and it is not ripe for hearing—presumptively before a Civil Court. In Ext.P3 the names of the persons have been spelt out; in the writ petition they have been referred to, almost allusively, as if those persons were incognito.

22. This Court, while exercising its discretionary jurisdiction, with justice, equity and good conscience as its guiding principles, has been called upon to adjudicate an issue in summary proceedings; nevertheless, the issue presented here is half-baked, replete with half-truths, or worse still, patent prevarications.

23. There can be no manner of doubt that those persons who have been named in Ext.P3 are the necessary parties, without whom no proceedings are maintainable in the first place. Further, in the said complaint the petitioner has stated that ‘title dispute’ is pending before this Court, only with a view, as I feel, to sounding the alarm bells and galvanising the first petitioner into action in the name of High Court, for there does not seem

to be any matter pending before this Court by the time Ext.P3 was sent.

24. On a comprehensive analysis, I am of the opinion that the writ petition suffers from the following vices: Suppression of material facts; Splitting up of cause of action; maintaining parallel proceedings; non-impleadment of necessary parties; abuse of process—if we could stop at that.

25. In these circumstances, I do not see any bona fides on the part of the petitioner in approaching this Court. I am of the considered opinion that any decision or direction in the present writ petition may have an adverse impact on the pending civil litigation, none of the parties to which have been arrayed before this Court.

In the facts and circumstances, this Court, resisting the urge to impose costs, dismisses the writ petition. No costs.

Sd/- DAMA SESHADRI NAIDU, JUDGE.

