

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.No.367 of 2017
and CMP No.5644 of 2017

M.Lilly .. Appellant/Petitioner

versus

The District Collector,
Tiruvallur District,
Tiruvallur. ... Respondent/Respondent

Writ Appeal filed against the order dated 23.06.2016 in
W.P.No.15723 of 2016.

This Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus Directing the respondent to permit the petitioner to remove savadu by quarrying it for the balance period of 50 days (or balance left over in unquarried in 4732 loads permitted) from unquarried period as per the proceedings of the Respondent in Na.Ka.No.492/2011/M2/dated 29.09.2015 in respect of S.No.593 of Perungavur Village P.W.D.Tank Ponneri Taluk Tiruvallure District.

For Appellant : Mr.B.N.Subbarayan

For Respondent : Mr.M.Elumalai
Government Advocate.

JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

Material on record discloses that vide order dated 29.09.2015, appellant was permitted to quarry 4732 lorry loads of savadu from Survey No.593, PWD Tank, Perungavur Village, Ponneri Taluk, Tiruvallur District, for a period of 55 days from 30.09.2015 to 23.11.2015.

2. Contending inter alia that due to rain, pathway to the quarry was slushy and that the petitioner could not continue quarrying, a representation dated 19.11.2015, has been made to

the District Collector, Thiruvallur District, Thiruvallur, the respondent herein, requesting to permit the petitioner to quarry for 50 days, inclusive of the days lost, due to intermittent rains in the last week of September and 1st week of October, 2015. In the said representation petitioner has stated that she could quarry only for five days.

3. As there was no reply, writ petition No.15723 of 2016 has been filed for a writ of mandamus, directing the respondent to permit the petitioner to remove savudu by quarrying it for the balance of period of 50 days (or balance of 4732 loads left over unquarried is permitted) for unquarried period granted as per the proceedings of the Respondent in Na.Ka.No.492/2011/M2 dated 29.09.2015 in respect of S.No.593 of Perungavur Village P.W.D. Tank, Ponneri Taluk, Tiruvallore District.

4. Taking note of the written instructions of the District Collector, Thiruvallur District dated 14.06.2016, to the learned Special Government Pleader, that in the light of the amended rule 12(2-A)(g) of the Tamil Nadu Minor Mineral Concession Rules, 1959, request of the petitioner is not feasible, writ Court vide order dated 23.06.2016, dismissed the writ petition. Being aggrieved, instant writ appeal has been filed reiterating that due to rain, quarrying could not be carried on beyond five days, as stated in the representation. Further contentions have been made that Rule 12(2-A)(g) cannot be made applicable to the facts of this case, as permission sought for, would not amount to either extension or renewal.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. As per the terms and conditions of the order of permission dated 29.09.2015, petitioner has agreed to quarry 4732 lorry loads for a period of 55 days from 30.09.2015 to 23.11.2015. In the representation dated 19.11.2015, addressed to the District Collector, Tiruvallur District, petitioner has stated that due to intermittent rains during the last week of September and 1st week of October 2015, pathway to the quarry was slushy and therefore, she could quarry only for five days. That is the only reason assigned in the representation dated 19.11.2015. Quite contrary to the same, in the supporting affidavit, filed to writ petition No.15723 of 2016, writ petitioner has alleged that all of a sudden the Assistant Director of Mines, came to the quarry site on 18.10.2015 and stopped quarrying operations, without any order in writing. The petitioner has also alleged that one Mr.Saranraj and Mr.Gopi, of Perungavur Village has given a complaint to the District Collector on 19.10.2015, stating that if Savudu is quarried, agricultural operations would be affected.

representation, stated to have been given. Even taking for granted that the petitioner was prevented by an authority, the same are not substantiated. Needless to state that mere averments do not stand the test of proof.

8. From the above, it could be deduced that the petitioner has introduced distorted facts in the supporting affidavit for the prayer sought for. Petitioner has not approached this Court with clean hands and this Court deems it fit to consider few cases.

(a) In *Arunima Baruah v. Union of India* reported in 2007 (6) SCC 120, the Hon'ble Apex Court, held as follows:

"12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71; (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D)

"When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318; 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

14. In *Halsbury's Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. He who seeks equity must do equity.—In granting relief peculiar to its own jurisdiction a

court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

* * *

1305. He who comes into equity must come with clean hands.—A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct

complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(b). In *Udayami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*, reported in 2008 (1) SCC 560, the Hon'ble Apex Court held as follows:

"15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In *Advocate General, State of Bihar v. M/s. Madhya Deh Khair Industries and Anr.* [1980 (3) SC 311, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

(c). In *Amar Singh vs. Union of India & Others* reported in 2011(7) SCC 69, on the aspect of a litigant approaching the court, with unclean hands, at paragraphs 53 to 57, and at paragraph 59, considered several judgments. Finally at paragraph No.60, extracted a paragraph from *Dalip Singh's case* [*Dalip Singh v. State of U.P. and others*, reported in JT 2009 (15) SC 201: (2010) 2 SCC 114]:

"53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In *Dalglish v. Jarvie* {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the

importance of any fact which he has omitted to bring forward."

55. In *Castelli v. Cook* {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go."

56. In the case of *Republic of Peru v. Dreyfus Brothers & Company* {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in *R. v. Kensington Income Tax Commissioner* {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

"and 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—facts, now 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 been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

59. The aforesaid requirement of coming to

<https://hcservices.ecourts.gov.in/hcservices/> with clean hands has been repeatedly

reiterated by this Court in a large number of cases. Some of which may be noted, they are: Hari Narain v. Badri Das - AIR 1963 SC 1558, Welcome Hotel and others v. State of A.P. and others - (1983) 4 SCC 575, G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnataka and another - JT 1991(3) SC 12: (1991) 3 SCC 261, S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others - JT 1993 (6) SC 331: (1994) 1 SCC 1, A.V.

Papayya Sastry and others v. Government of A.P. and others - JT 2007 (4) SC 186: (2007) 4 SCC 221, Prestige Lights Limited v. SBI - JT 2007(10) SC 218: (2007) 8 SCC 449, Sunil Poddar and others v. Union Bank of India - JT 2008(1) SC 308: (2008) 2 SCC 326, K.D.Sharma v. SAIL and others - JT 2008 (8) SC 57: (2008) 12 SCC 481, G. Jayashree and others v. Bhagwandas S. Patel and others - JT 2009(2) SC 71 : (2009) 3 SCC 141, Dalip Singh v. State of U.P. and others - JT 2009 (15) SC 201: (2010) 2 SCC 114.

60. In the last noted case of Dalip Singh (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

"For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha 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.

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."

(d). In *Kishore Samrite vs. State of U.P. & Others* reported in 2013(2) SCC 398, at paragraphs 32 to 36, the Hon'ble Supreme Court held as follows:

"32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some

information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]).

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530)."

(e) On the aspect of alternate remedy, in Prestige Lights Ltd. v. State Bank of India reported in 2007 (8) SCC 449, at paragraph Nos.33 to 35, the Hon'ble Apex Court, held as follows:

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. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t 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 made a full and fair disclosure of all the material facts facts, not law. He must not misstate the law if he can help itthe 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 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)

35. 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.

36. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent- Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

9. Rule 12 of the Tamilnadu Minor Mineral Concession Rules, 1959, has undergone an amendment on 23.09.2015 by introduction of Rule 12(2-A). As per Rule 12(2-A)(g) of the Tamilnadu Minor Mineral Concession Rules, 1959, permission granted under this sub-rule shall not be renewed or extended for any reason including that the person permitted could not mine or remove the mineral for whatever reason. He will not be entitled for refund of any cost or money incurred in the process. If the

permitted quantity is not removed within the stipulated period, the applicant will not be entitled for removal of unutilised quantity of mineral.

10. Rule 12(2-A)(g) of the Tamilnadu Minor Mineral Concession Rules, 1959, has come into effect from 23.09.2015. Permission of the District Collector, Tiruvallur, is from 29.09.2015 for a period of 55 days from 30.09.2015 to 23.11.2015. Therefore, by introduction of Rule 12(2-A)(g), from 23.09.2015 onwards, permission granted to quarry savudu/mineral will be governed by the abovesaid amended rule, in which event, permission cannot be either renewed or extended, for whatever reason, assigned by the quarry operator.

11. Though, Mr.B.N.Subbarayan, learned counsel for the appellant submitted that Rule 12(2-A)(g) of the Tamilnadu Minor Mineral Concession Rules, 1959, would not fall within the ambit of renewal or extension, for the reasons stated supra, said submission is untenable. If the petitioner has to be granted, a fresh permission, then it would certainly fall within Rule 12(2-A)(g) of the Rules.

12. For the reasons stated supra, we are not inclined to interfere with the order impugned. Hence, writ appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ars

To

The District Collector,
Tiruvallur District,
Tiruvallur.

+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No.73541
+1cc to the Government Pleader, S.R.No.73385

W.A.No.367 of 2017

RV(CO)
GN(10/11/2017)