

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.11225 of 2006

ORDER:

Heard and perused the records.

2. The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the order dated 13.07.2005, passed in Case No.D1/ 37/ 97 by the first respondent, as illegal and arbitrary.

3. The averments in the affidavit filed in support of the writ petition would show that the father of the first petitioner is the owner and pattadar of land in Survey Nos.332/ 1 and 332/ 2 along with some other lands situated in Chowdur Village of Nawabpet Mandal. It is stated that the first petitioner and his brother acquired the said property on the demise of their father. It is stated that respondent Nos.3 to 5 have no right over the said property and have never claimed any right over the same. While so, respondent Nos.4 and 5 in collusion with VAO and other revenue officials, got deleted the name of his father from the revenue records in the year 1993 without any prior notice to the first petitioner. When the petitioner came to know about the same in December, 1996, he immediately filed an application for issuance of certified copy of mutation proceedings so as to enable the petitioner and his brother to prefer any appeal or revision. But the Mandal Revenue Officer gave an endorsement dated 27.12.1996 stating that no such proceedings are available in the office. Aggrieved thereby, the first petitioner along with his brother filed a revision before the first respondent. It is stated that the first respondent dismissed the revision, without giving reasonable opportunity to the first petitioner or to his brother. Hence, the present writ petition came to be filed.

4. Learned counsel for the respondents contends that the legal heirs of the first petitioner have not come to this Court with clean hands and as such their request has to be rejected. He submits that prior to filing of the present writ petition, the petitioners herein filed W.P.No.9530 of 2005 seeking issuance of writ of certiorari, for quashing the order dated 13.07.2004, which is subject matter of challenge even in the present writ petition. The said writ petition is pending and this Court issued notices in the said writ petition. Suppressing the said fact, the present writ petition came to be filed in the month of June, 2006.

5. Learned counsel for the petitioners, who are legal representatives, admitted that W.P.No.9503 of 2005 was filed by the first petitioner challenging the impugned order. But the same was dismissed on the ground that it got abetted due to demise of the first petitioner.

6. This Court, vide order dated 14.07.2006, granted interim direction, as prayed for. From the above, it is clear that no stay was granted in W.P.No.9503 of 2005 which was filed by the petitioners. Suppressing the same, the present writ petition came to be filed, wherein an interim direction was granted by this Court. It is stated by the respondents that the present writ is liable to be dismissed on the ground that the petitioner suppressed the above said fact of filing another writ petition, challenging the very same order.

7. Identical issue came up for consideration before the Madras High Court in *R.Kumar Vs. The Commissioner, Nagercoil Municipality and others*¹ wherein the Court after considering various judgments, held that a person coming to the Court by suppressing material facts must be dealt with

¹ 2015 0 SUPREME (MAD) 3351= (2010) 4 MLJ 567 (SC)

severely apart from showing him the door immediately. A person approaching the Court with unclean hands and taking recourse to legal proceedings successively for the very same cause of action with the very same relief, cannot be shown any indulgence, as such an action is an abuse of the process of the Court and Law.

The said issue also came up for consideration in *Udyami Evam Khadi Gramodyog Welfare Sanstha and another VS State of Uttar Pradesh and others*², wherein the Apex Court held as under:

“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 against which amounts to abuse of the process of law. In *Advocate General, State of Bihar Vs. M.P.Khair Industries*³, the Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt”.

In *Dalip Singh Vs. State of Uttar Pradesh and others*⁴, the Apex Court in paragraph No.7, observed as follows:

“7. In *Prestige Lights Limited Vs. State Bank of India* (2007) 8 SCC 449 wherein it was held that in exercising power under Article 226 of Constitution of India, the High Court is not just a Court of law, but is also a court of equity and a person who invokes the High Court's should jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v. Kensington, Income Tax Commissioners* (1971) 1 K.B. 486 (C.A.) and observed:

“In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct

² (2008) 1 SCC 560

³ (1980) 3 SCC 311 : 1980 SCC (Cri) 688

⁴ (2012) 2 SCC 114

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, then the Court may dismiss the action without adjudicating the matter on merits. 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”.

In *Oswal Fats Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others*⁵, the Apex Court in paragraph Nos.15 to 17 observed as follows:

“15. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the Court to bring out all the facts and refrain from concealing/suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person. In one of the earliest decisions on the subject i.e., *R. Vs. Kensington Income Tax Commissioner*⁶, Viscount Reading, Chief Justice of the Divisional Court observed:

“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 applicant was not candid and did not fairly state the 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

⁵ (2010) 4 MLJ 567 (SC)

⁶ (1917) 1 KB 486

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 this 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."

The above observations were approved by the Court of Appeal stating that "the Court, for its own protection, is entitled to say: We refuse this writ without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us".

Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed:

"It is perfectly well settled that a person who makes an ex parte application to the Court – that is to say, in absence of the person who will be affected by that which the Court is asked to do – is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him."

17. This Court and different High Courts have repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance...."

From the judgments referred to above, it is clear that a person suppressing the material facts must be dealt with severely apart from showing him the door immediately. It is also held that a person approaching the Court with unclean hands and taking recourse to legal proceedings successively for the very same cause of action with the very same relief, cannot be shown any indulgence as it amounts to abuse of the process of the Court.

8. Having regard to the above, this Court is of the opinion that the petitioner is not entitled to any relief solely on the ground of suppression of

the material facts and filing of the successive writ petition through different counsels on different dates for the same relief.

9. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

13.03.2017
vnb

