

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1862 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.M.P. No.48210 of 2017 in W.P. No.38845 of 2017 dated 21.11.2017. The 7th respondent in the writ petition has preferred this appeal against the order passed by the Learned Single Judge granting interim direction as prayed for. The interim direction sought for, in W.P.M.P. No.48210 of 2017 in W.P. No.38845 of 2017, was to direct the respondents therein not to take any coercive steps against the writ petitioners in enjoying the lands assigned to them in the respective sub-divisions of Survey Nos.45/1 to 54 and 46/1 to 22 of Kovvada Agraharam Village, Poosapatirega Mandal, while suspending the operation of G.O.Ms.No.58 dated 04.02.2016.

The ad-interim order of the Learned Single Judge has not only resulted in suspension of the operation of G.O.Ms.No.58 dated 04.02.2016, (an order issued by the State Government alienating the subject land in favour of the appellant more than one year nine months ago), but the respondents in the writ petition (which would include the appellant herein) are also disabled from taking steps to prevent the respondent-writ petitioners from enjoying the lands assigned to them earlier, even if they are no longer entitled thereto.

While we would, ordinarily, not have entertained an appeal against an *ad interim* order, as those aggrieved thereby can always seek its vacation, by filing a petition to vacate the said order, certain startling facts have been brought to our notice by Sri C.V. Mohan Reddy, Learned

Senior Counsel appearing on behalf of the appellant, in support of his submission that the ad-interim order was obtained by deceit, suppression of relevant and material facts, and false statements in the affidavit filed in support of the Writ Petition.

It is not in dispute that the subject lands were assigned in favour of the forefathers of the respondent-writ petitioners. The submission of Sri C.V. Mohan Reddy, learned Senior Counsel appearing on behalf of the appellant, however, is that an extent of Ac.17.67 cents of land was sold by the respondent-writ petitioners, or their forefathers, in March, 2007 by way of registered sale deeds; these sale deeds were executed suppressing the fact that the subject lands were assigned lands prohibited from alienation; the registered sale deeds falsely record these lands as either zaroithi or ryothwari lands though they are assigned lands; the sale deeds incorrectly describe the subject property as ancestral property, suppressing the fact that they are government lands; the sale deeds also record that possession of these lands was handed over to the purchasers; the pattadar pass books and title deeds issued in favour of the purchasers, on the basis of the sale deeds executed in their favour by the respondent-writ petitioners or their forefathers, were cancelled on 23.01.2008; announcement, of alienation of the subject lands in favour of the appellant, was made on 14.09.2014, by tom-tom and affixture, in accordance with the Board Standing Orders; the entire extent of Acs.17.67 of the subject land was alienated in favour of the appellant by G.O.Ms.No.58 dated 04.02.2016; after G.O.Ms.No.58 was issued, possession of the subject lands was handed over to the appellant on 27.07.2016; a registered sale deed was executed in their favour, by the Government of Andhra Pradesh, on 07.04.2017; O.S.No.368 of 2017 was filed by the appellant, before the Principal Junior Civil Judge, Vizianagaram, seeking injunction against the defendants therein, which

included respondent-writ petitioner Nos.1 and 8, the brother of respondent-writ petitioner No.14, and the son of respondent-writ petitioner No.16; an interim order of injunction was granted in I.A.No.1663 of 2017 dated 21.09.2017; the appellant's complaint, of trespass, mischief, rioting and criminal intimidation by the respondent-writ petitioners, was registered with the Poosapatirega Police Station as F.I.R.No.212 of 2017 dated 07.09.2017; a counter-affidavit has been filed, on behalf of all the respondent-writ petitioners, in the I.A on 02.11.2017; though all these events took place prior to 11.11.2017, when the writ petition was filed, none of these facts have been stated in the Writ affidavit; and, under the protection of the ad-interim order, the respondent-writ petitioners had trespassed into the appellant's lands, and had removed the barbed wire fencing, on 26.11.2017.

On the other hand Sri K.S. Murthy, learned counsel for the respondent-writ petitioners, would submit, placing reliance on paragraph 4 of the writ affidavit, that the fact regarding execution of sale deeds has been stated therein, and has not been suppressed. He would also refer to paragraph 8 of the writ affidavit to contend that reference has been made therein to the suit filed by the appellant. Learned counsel would submit that while the writ affidavit, no doubt, fails to refer to the interim order of injunction granted by the Principal Junior Civil Judge, Vizianagaram, that would, at best, necessitate respondent-writ petitioner No.1 being denied the relief; alienation of assigned lands is void under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977); and as the Government has not cancelled the assignment, much less on the ground that they were alienated, the Learned Single Judge was justified in passing the *ad-interim* order.

Prerogative Writs fall within the inherent superintending and reforming power of the Superior Court, the exercise of which is by its

very nature discretionary. (**Immeubles Port Louis Itee v. Lafontaine (Village)**¹). A writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. (**C.R. Reddy Law College Employees' Association, Eluru, W.G. District v. Bar Council of India, New Delhi**²). An applicant, for a prerogative Writ, is not in the position of a litigant who seeks to assert some right to which he claims he is entitled. He is rather a suppliant who seeks to invoke those remedial measures on the ground that the High Court would wish to correct some irregularity in the administration of justice, which has caused him to be aggrieved, so that justice may be done. Whether the order sought will be granted or refused is a matter wholly within the Court's discretion. Prerogative orders are not to be claimed as of right. (**Regina v. Herrod, Ex parte Leeds City District Council**³; **Immeubles Port Louis Itee**¹). The Judge may examine the behaviour of the parties and dismiss the action without even taking a decision on merits. (**Harekin v. University of Regina**⁴; **Homex Realty and Development Co. v. Corporation of the Village of Wyoming**⁵; and **Immeubles Port Louis Itee**¹). When once it is established that, in deciding whether or not a particular remedy shall be granted, the Court is entitled to inquire into the conduct of the applicant, and the circumstances of the case, in order to ascertain whether it is proper or not proper to grant the remedy sought, the case must be one of discretion. (**Rex v. Stafford Justices, Ex parte Stafford Corporation**⁶; **Regina**³; **Immeubles Port Louis Itee**¹).

¹ (1991) 1 SCR 326, 1991 CanLII 82 (SCC)

² 2004(5) ALD 180 (DB)

³ [1976] Q.B. 540

⁴ [1979] 2 S.C.R. 561

⁵ [1980] 2 S.C.R. 1011

⁶ [1940] 2 K.B. 33 (C.A)

A Prerogative Writ is not to be issued as a matter of course. The applicant must come in the manner prescribed, and adopt a method which is otherwise in accordance with law. There is an obligation on the part of the applicant, in an application under Article 226, to be candid and fair, and not to mislead the Court. The doctrine of Uberrima Fides has its fullest application in a petition filed under Article 226. The Court is not to use its discretion in the event of there being any attempt on the part of the petitioner to mislead the Court. (**Ibiza Industries Ltd. v. Union of India**⁷).

In exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity. A person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. (**Prestige Lights Ltd. v. State Bank of India**⁸; **Dalip Singh v. State of Uttar Pradesh**⁹). The jurisdiction of the High Court, under Article 226 of the Constitution, 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 the facts before the Court without concealing or suppressing anything. 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. (**G. Jayshree v. Bhagwandas S. Patel**¹⁰; **K.D. Sharma v. Steel Authority of India Ltd.**¹¹; **Dalip Singh**⁹). When a person invokes the extraordinary

⁷ 1998(5) ALT 259

⁸ (2007) 8 SCC 449

⁹ (2010) 2 SCC 114

¹⁰ (2009) 3 SCC 141

¹¹ (2008) 12 SCC 481

jurisdiction of the High Court, under Articles 226/227 of the Constitution, he should not only approach it with clean hands but also with clean mind, clean heart and clean objective. The judicial process should never become an instrument of oppression or abuse or a means, in the process of the Court, to subvert justice. (**Ramjas Foundation v. Union of India**¹²; **K.R. Srinivas v. R.M. Premchand**¹³; **Noorduddin v. Dr. K.L. Anand**¹⁴; and **Manoharlal v. Ugrasen**¹⁵). 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. (**Dalip Singh**⁹).

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief (**S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**¹⁶), since the very basis of the writ jurisdiction rests in the 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 be rendered impossible. (**Prestige Lights Ltd.**⁸).

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 material facts ie facts, not law. He must not mis-state 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 fully and fairly stated to it, it would then set aside

¹² AIR 1993 SC 852

¹³ (1994) 6 SCC 620

¹⁴ (1995) 1 SCC 242

¹⁵ (2010) 11 SCC 557

¹⁶ (2004) 7 SCC 166

any action which it has taken on the faith of the imperfect statement. (**R. v. Kensington Income Tax Commissioners**¹⁷; **K.D. Sharma**¹¹).

A person invoking the discretionary jurisdiction of the Court cannot be allowed to approach it with a pair of dirty hands. (**Arunima Baruah v. Union of India**¹⁸). In the event of a party making a misrepresentation on a point having a bearing on the question of the exercise of judicial discretion, and thereby trying to overreach the Court, the party forfeits the claim to the discretionary relief. The same is the case when the misrepresentation is discovered by the Court. But the misrepresentation must be deliberate and on a point having relevance to the question before the Court. (**Rosy Jacob v. Jacob A. Chakramakal**¹⁹). A court of equity refuses relief to the petitioner 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 petitioner's fraud or misrepresentation. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. 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. (**Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76; Arunima Baruah**¹⁸). Equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an

¹⁷ (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 (CA)

¹⁸ (2007) 6 SCC 120

¹⁹ (1973) 1 SCC 840

immediate and necessary relation to the equity sued for. (**Moody v. Cox**²⁰; **Arunima Baruah**¹⁸).

"Suppressio veri", i.e., the suppression of relevant and material facts is as bad as Suggestio falsi i.e., a false representation deliberately made. Both are intended to dilute- one by inaction and the other by action. "Suppressio veri Suggestio falsi"-suppression of the truth is equivalent to the suggestion of what is false. (**Black's Law Dictionary with pronouncements-Sixth edition**). Like a false statement willfully and deliberately made, suppression of a relevant and material fact also interferes with the due course of justice and obstruct the administration of justice. (**V. Satyanarayana Rao v. State of A.P**²¹). If a wrong or misleading statement is deliberately and willfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceeding. (**Naraindas v. The Government of Madhya Pradesh**²²; **Afzal v. State of Haryana**²³; **V. Satyanarayana Rao**²¹; **S.R. Ramaraj v. Special Court, Bombay**²⁴).

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*". (**Tilokchand Motichand v. H.B. Munshi**²⁵, **State of Haryana v. Karnal Distillery Co. Ltd.**²⁶; **Sabia Khan v. State of U.P.**²⁷; and **Manoharlal**¹⁵).

It is of utmost importance that, in making material statements, care

²⁰ (1917) 2 Ch 71 = (1916-17) All ER Rep. 548 (CA)

²¹ 2007 (6) ALT 294

²² (1975) 3 SCC 31

²³ (1996) 7 SCC 397 = 1996 (1) ALD (CrL.) 183 (SC)

²⁴ (2003) 7 SCC 175 = 2003 (2) ALD (CrL.) 780 (SC)

²⁵ AIR 1970 SC 898

²⁶ AIR 1977 SC 781

²⁷ AIR 1999 SC 2284

must be taken not to make any statements which are inaccurate, untrue and misleading. As the Court naturally takes statements of fact contained in the petitions at their face value, it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. If, at the hearing, the Court is satisfied that the material statements made are inaccurate and misleading, the Court may come to the conclusion that, in such a case, the relief granted to the applicant ought to be revoked. (**Dalip Singh⁹; Hari Narain v. Badri Das²⁸**). 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. (**Prestige Lights Ltd.⁸; Dalip Singh⁹; Kensington Income Tax Commissioners¹⁷**).

A petitioner, who approaches this Court for relief, must make a frank and full disclosure of facts. (**G. Narayanaswamy Reddy v. Governor of Karnataka²⁹; Dalip Singh⁹**). A party which has misled the Court, in passing an order in its favour, is not entitled to be heard on the merits of the case. (**Welcome Hotel and v. State of Andhra Pradesh³⁰; Dalip Singh⁹**). When it comes to the conclusion that its process is being abused, the Court would be justified in refusing to proceed further, and refuse relief to the party. **Abdul Rahman v. Prasony Bai³¹, S.J.S. Business Enterprises (P) Ltd.¹⁶; Oswal Fats & Oils Ltd. v. Commissioner (Admn)³²; and Manoharlal¹⁵**). If the petitioner has not come forward with clean hands, and has not candidly disclosed all the

²⁸ AIR 1963 SC 1558

²⁹ AIR 1991 SC 1726

³⁰ AIR 1983 SC 1015

³¹ AIR 2003 SC 718

³² (2010 (3) SC 510

facts that he is aware of, then the Court will non-suit him on the ground of contumacious conduct. (**Sunil Poddar v. Union Bank of India**³³; **Dalip Singh**⁹).

The fact that several of, if not all, the respondent-writ petitioners or their forefathers had executed sale deeds, alienations the subject lands, in favour of third parties in the year 2007 has not been disputed before us by Sri K.S.Murthy, Learned Counsel for the respondent-writ petitioners. All that is stated in paragraph 4 of the writ affidavit is that some of the respondent-writ petitioners were called to the offices of the local revenue authorities, and were asked to sign on papers; they were told that alternative arrangements can be made only if they agreed to sign the deeds; and, thereafter, no further action was taken on that by the officials. Reference to the word “deed” in paragraph 4 of the Writ affidavit is contended, by Sri K.S. Murthy, Learned Counsel, as the respondent-writ petitioners having disclosed all material and relevant facts relating to execution of sale deeds. We find it difficult to accept this submission. Mere mention of the word ‘deed’ can, by no stretch of imagination, be understood as the respondent-writ petitioners’ having candidly disclosed all relevant and material facts. By the mere use of the word ‘deed’, this Court would not be in a position to know that sale deeds were executed by the petitioners or their fore-fathers, alienating the subject lands, in favour of third parties in March, 2007, or the sale deeds falsely stated that the subject lands were Zirayati or ryotwari lands and were the vendors’ ancestral property when, in fact, they were assigned lands. The respondent-writ petitioners also appear to have suppressed the fact that they had stated, in those sale deeds, that possession had been delivered to third parties. If the recitals in the sale deeds, that possession had been handed over to third parties in March, 2007, is true

³³ (2008) 2 SCC 326

then the assertion, in the Writ affidavit, that the petitioners are still in possession of the subject lands is evidently false. 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 the petition filed under Article 226 of the Constitution. **(Prestige Lights Ltd.⁸; Dalip Singh⁹).**

Likewise, a vague reference that the appellant had filed an injunction suit before the local Civil Court, in paragraph 8 of the writ affidavit, is contended by Sri K.S.Murthy, Learned Counsel, as the petitioner having disclosed O.S.No.368 of 2017 having been filed before the Principal Junior Civil Judge, Vizianagaram. In any event, it is not disputed before us that the fact, of an order of injunction having been passed in I.A.No.1663 of 2017 dated 21.09.2017, was suppressed in the affidavit filed in support of the Writ Petition. Where an order has been obtained by withholding an important document from the Court, the party concerned deserves to be thrown out at any stage of the litigation. **(S.P. Chengalvaraya Naidu v. Jagannath³⁴; Dalip Singh⁹).**

This Court would not come to the aid of those who have suppressed material and relevant facts, and have surreptitiously obtained an ad-interim order. Even according to the respondent-writ petitioners, they came to know of G.O.Ms.No.58 dated 04.02.2016 in February, 2017. While we find considerable force in the submission of Sri C.V. Mohan Reddy, Learned Senior Counsel for the appellant, that the very fact that the respondent-writ petitioners did not invoke the jurisdiction of this Court for more than 8 months thereafter, and as G.O.Ms. No.58 dated 04.02.2016, alienating the subject lands in favour of the appellant, was issued more than one year nine months ago, the

³⁴ (1993) 6 SCC 331

Learned Single Judge should have issued notice and heard the respondents in the Writ Petition (including the appellant) before passing an interim order, it is wholly unnecessary for us to dwell on this aspect as we are satisfied that, prima-facie, the ad- interim order was obtained on suppression of material and relevant facts, and on this ground alone the order under appeal necessitates our interference in proceedings under Clause 15 of the Letters Patent. The order under appeal is, accordingly, set aside.

None of the facts, stated by the appellant before us, were stated in the affidavit, filed in support of the Writ Petition before the Learned Single Judge, by the respondent-writ petitioners which resulted in the order under appeal being passed. The observations made by us, in this order, is on the material placed before us by the appellant. As allegations of suppression of relevant and material facts, and false statements on oath, by the respondent-writ petitioners, if true, would not only warrant dismissal of the Writ Petition with exemplary costs, but may also necessitate initiation of proceedings for criminal contempt, it would be inappropriate for us to render conclusive findings on these allegations, as the respondent-writ-petitioners would be deprived thereby of the opportunity to rebut them by way of a reply affidavit. The interests of the appellant are, adequately, safeguarded by the order under appeal being set aside.

We consider it appropriate, therefore, to grant time to the appellant herein to file their counter-affidavit, in the writ petition pending before the Learned Single Judge, stating on oath the facts which have been urged before us in this appeal. After a counter-affidavit is filed by the appellant herein before the Learned Single Judge, it is open to the respondent-writ petitioners to file their reply thereto. Sri C.V. Mohan Reddy, learned Senior Counsel appearing on behalf of the appellant, would submit that

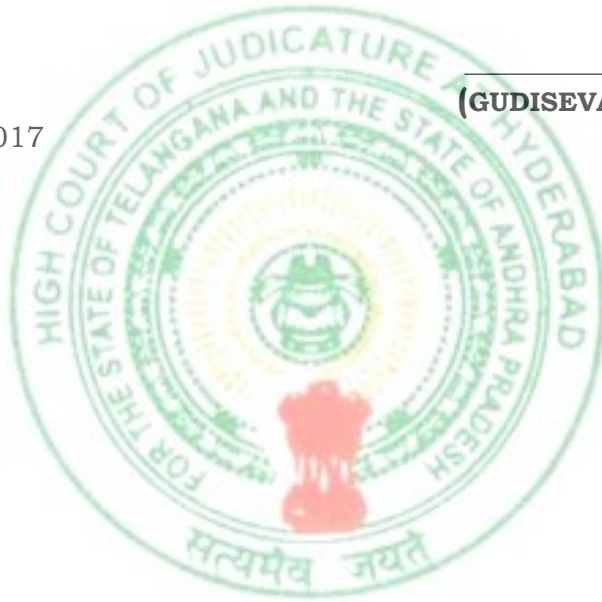
the appellant would file their counter-affidavit, in the Writ Petition, within four weeks from today. It is open to either parties to request the Learned Single Judge to hear and decide the WPMP, or the Writ Petition itself, any day after four weeks.

The Writ Appeal is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

08th December, 2017
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(GUDISEVA SHYAM PRASAD, J)



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**



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Date: 08.12.2017