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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 31st July, 2017

+ **W.P. (C) 8664/2016**

RAMDHARI DEVI

..... Petitioner

Through : Mr.Vivek Sharma, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondents

Through : Ms.Reema Khorana, Adv. for R-1.
Mr.Sidhartha Shankar Ray, Adv. for
R-2 along with SI Pawan Kumar, PS
Kalkaji, in person.
Mr.S.N.Choudhri, Adv. for R-3 & 4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. Present petition has been instituted under Article 226 of the Constitution of India seeking a writ of Mandamus against respondent no. 1 not to evict the petitioner from a site at Shop no. 6, A-Block, Arya Samaj Mandir, Kalkaji, New Delhi. A direction is also sought against respondent no.2/SHO, PS Kalkaji not to harass the petitioner. A direction is also sought against respondents no. 3 and 4, i.e. the Secretary and Cashier, Arya Samaj Mandir Trust, restraining them from evicting the petitioner from the site in question.
2. The petitioner claims that her husband had been squatting inside the Arya Samaj Mandir. He was allotted the site in question, i.e. Shop No.6 way-back in the year 1970. Thereafter, her husband met with an accident leaving him crippled. The petitioner claims that she has been regularly squatting initially from inside the Arya Samaj Mandir

and later on, outside the Mandir. She claims that copies of challans have been placed on record to show that the petitioner is a regular squatter.

3. Notice was issued in the matter. Learned counsel for the SDMC has filed a short affidavit/status report dated 25.02.2017, which reads as under:

“1. That I Raghunath Yadav aged about 35 years, working as Administrative officer, Central Zone, South Delhi Municipal Corporation and presently posted in Central Zone, Lajpat Nagar, New Delhi, as such am competent and authorized to sign affidavit/status report.

2. That in compliance of the order dt. 25.01.2017 of this Hon'ble Court, the site claimed by the petitioner at Arya Samaj Mandir, Kalkaji, New Delhi was inspected by the officials of the respondent no. 1 on 04.02.2017. It was found that the petitioner is running a paan bidi shop in porta cabin which is more than 6'x4' and a tea stall which is measuring 6'x4' and a food stall on rehri near the Arya Samaj Mandir wall at Kalkaji, New Delhi. The photographs of the porta cabin, tea stall and the rehri/food stall run by the petitioner annexed as Annexure R-1(Colly).”

4. Mr.Choudhri, learned counsel for respondents no. 3 and 4, submits that the present writ petition is a gross abuse of the process of the Court and the same is liable to be dismissed on account of the fact that the petitioner has made every endeavour to mislead this Court. Learned counsel contends that the petitioner or her husband were never allotted a shop in question in Arya Samaj Mandir and in case, any shop was allotted as claimed in the writ petition and they were removed, no action has ever been taken, which is also evident from the fact that till date, not a single grievance has been made.
5. Counsel submits that to mislead this Court, since five regular shops have been allotted inside the Arya Samaj Mandir bearing Nos. 1 to 5,

the *khokha* of the petitioner has been shown as Shop no. 6. He further submits that although it is claimed in the petition that the challans are being placed on record, but those challans filed at page Nos. 46, 49, 50, 54, 61, 62, 63, 65 and 66 do not pertain to the petitioner or her deceased husband. No explanation has been rendered in the writ petition as to why the challans of different persons have been annexed. Mr.Choudhri submits that this is yet another attempt to mislead the Court. He submits that the petitioner had also approached the Zonal Vending Committee where the request of the petitioner was turned down on the ground that supporting documents were not placed on record.

6. Mr.Choudhri further contends that in the petition, the petitioner claims that she is running a tea stall, but the photographs annexed at page 166 of the paper-book would show that she is running a tea stall and is also selling cigarettes in a porta cabin. Her photograph behind both the counters would show that not one but two stalls are being run by her.
7. At this point, Ms.Khorana, learned counsel for SDMC, adds on instructions that it is found that the petitioner is not running one but three stalls. She further submits that despite opportunities granted by this Court to remove the porta cabin and since the *tehbazari* site is only 4 x 6 ft. and open to sky, despite the orders so passed, the petitioner refused to do so. Resultantly, the SDMC had removed the unauthorized porta cabin on 14.07.2017.
8. Mr.Choudhri also submits that the *challan* at page 39, in fact, depicts true and correct picture that the *challan* pertains to the use a cycle-cart and that too, across the road of the Mandir.

9. Learned counsel for the petitioner explains that the petitioner and her husband have been running a tea stall outside the Arya Samaj Mandir and their possession is being disturbed by the respondents.
10. We have heard the learned counsels for the parties and examined the pleadings and documents placed on record.
11. Article 226 of the Constitution of India pertains to the extraordinary jurisdiction restored on High Courts. The jurisdiction is discretionary in nature and is to be exercised not in cases where the petitioner approaches the Court with unclean hands or suppresses or withholds material documents. It is often said that a person who seeks equity, must also do equity. In this regard, we may notice a recent judgment of a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in ***Sripal v. South Delhi Municipal Corporation and Anr.***, 2017 SCC OnLine Del 7522, wherein it was observed as under:

“6. Original record has been produced and even otherwise, the transfer of the site is not disputed by the petitioner. We are of the view that the petitioner has not approached the Court with clean hands. The petitioner has suppressed and withheld material facts which are directly connected with the relief which is being sought in the matter.

7. In S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1, the Supreme Court, while dealing with a case where a release deed was suppressed, came down heavily upon the such tactics of litigants. It observed that the non-mentioning and non-production of the release deed amounted to “playing fraud upon the court” and concluded that:

“6. ...A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be

guilty of playing fraud on the court as well as on the opposite party.”

8. In the case of *Arunima Baruah v. Union of India*, (2007) 6 SCC 120, it has been held that mere suppression of facts alone cannot be a ground for dismissal of a writ petition but the facts which may have been concealed should be direct in nature. Relevant paragraphs read as under:

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. 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)

It is contended that the fact that Moody has given those bribes prevents him from getting any relief in a court of equity. The first consequence of his having offered the bribes is that the vendors could have rescinded the contract. But they were not bound to do so. They had the right to say “no, we are well satisfied with the contract; it is a very good one for us; we affirm it”. The proposition put forward by counsel for the defendants is: “It does not matter that the contract has been affirmed; you still can claim no relief of any equitable character

in regard to that contract because you gave a bribe in respect of it. If there is a mistake in the contract, you cannot rectify it, if you desire to rescind the contract, you cannot rescind it, for that is equitable relief." With some doubt they said: "We do not think you can get an injunction to have the contract performed, though the other side have affirmed it, because an injunction may be an equitable remedy." 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. In this case the bribe has no immediate relation to rectification, if rectification were asked, or to rescission in connection with a matter not in any way connected with the bribe. Therefore that point, which was argued with great strenuousness by counsel for the defendant, Hatt, appears to me to fail, and we have to consider the merits of the case.

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." (See also Snell's Equity, 13th Edn., pp. 30-32 and Jai Narain Parasrampur v. Pushpa Devi Saraf [(2006) 7 SCC 756]).

15. In *Spry on Equitable Remedies*, 4th Edn., p. 5, referring to *Moody v. Cox* [(1917) 2 Ch 71: (1916-17) All ER Rep 548 (CA)] and *Meyers v. Casey* [(1913) 17 CLR 90] it is stated:

"... that the absence of clean hands is of no account 'unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for'. When such exceptions or qualifications are examined it becomes clear that the maxim that predicates a requirement of clean hands cannot properly be regarded as setting out a rule that is either precise or capable of satisfactory operation."

Although the aforementioned statement of law was made in connection with a suit for specific performance of contract, the same may have a bearing in determining a case of this nature also.

16. In the said treatise, it was also stated at pp. 170-71:

"In these cases, however, it is necessary that the failure to disclose the matters in question, and the consequent error or misapprehension of the defendant, should be such that performance of his obligations would bring about substantial hardship or unfairness that outweighs matters tending in favour of specific performance. Thus, the failure of the plaintiff to explain a matter of fact, or even, in some circumstances, to correct a misunderstanding of law, may incline the court to take a somewhat altered view of considerations of hardship, and this will be the case, especially where it appears that at the relevant times the plaintiff knew of the ignorance or misapprehension

of the defendant but nonetheless did not take steps to provide information or to correct the material error, or a fortiori, where he put the defendant off his guard or hurried him into making a decision without proper enquiry.””

(Emphasis Supplied)

9. We may note the following observations of the Supreme Court in *Prestige Lights Ltd. v. SBI*, (2007) 8 SCC 449:

“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 Commrs.* [(1917) 1 KB 486; 86 LJKB 257; 116 LT 136 (CA)], in the following words:

“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, not 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 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.”

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.”

(Emphasis Supplied)

10. The Apex Court in *Oswal Fats & Oils Ltd. v. Additional Commr. (Admn.), Bareilly Division, Bareilly*, (2010) 4 SCC 728 has held that the court is duty bound to deny relief to persons mischievously approaching it with unclean hands. The relevant portion reads as under:

“20. 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 fact 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.”

11. From the foregoing discussion, it is clear that whenever a person approaches this Court seeking invocation of its discretionary and extraordinary jurisdiction under Article 226 of the Constitution, he/she is duty-bound to disclose all facts candidly without any reservations. Any suppression is to be viewed seriously by the Court. At the same time, such suppression may be of a material fact or otherwise. All facts have a bearing upon the lis between the parties are material facts and must be disclosed. Failure to disclose material facts makes it incumbent upon the Court to deny relief to such person. On the other hand, if the concealed fact is not material, the Court may or may not refuse to exercise its extraordinary jurisdiction.”

12. Coming to the present writ, we find it to be premised in *suppressio veri* and *suggestio falsi*. Firstly, the husband of the petitioner was only allowed to hawk upon a cycle cart as shown in the *challan/receipt* issued by the DDA at page 39 of the paperbook, however, the petitioner has as per its own photos, put a tea stall as well as a porta cabin. Secondly, though the petition states that petitioner is running a “*small kiosk of tea and snacks*”, the picture on page 166 placed on record by the petitioner herself shows atleast one tea stall and one porta cabin for vending cigarettes; even further, the status report dated 25.02.2017 of SDMC states that on inspection, it was found that “*the petitioner is running a paan bidi shop in porta cabin which is more than 6’x4’ and a tea stall which is measuring 6’x4’ and a food stall on rehri.*” Photographs have also been placed on record by the SDMC/respondent no.1.
13. Thirdly, the petition states that the petitioner was *challaned* several times by the respondent no.1 and that “[c]opies of the *Fine Challan Receipts/Tehbazari Tickets from the year 1981 to 2016 as annexed herewith as Annexure-P/5 (Colly).*” A reasonable conclusion can be

drawn that the *challans* pertain to the petitioner, however, atleast 10 *challans* do not pertain to the petitioner. Just as a sample, we may mention that the *challans* at pages 46, 49, 50 and 64 refer to Deep Chand; the ones at pages 54, 61, 62, 63, 68, 71, 75 and 77 pertain to Amar Singh; pages 65, 67, 69, 70, 72, 73 to one Ram Adhari/Dhani; while the one at page 66 refers to Darlu Singh. There is no explanation rendered in the body of the writ petition as to the persons, whose names are mentioned in the *challans*, are related to the petitioner.

14. *Finally*, we also find that although there is an averment that the petitioner was running a stall inside the Arya Samaj Mandir, which was removed constaining the petitioner to shift outside the Mandir. This would, in fact, have a flavour of a private dispute between the petitioner and the Arya Samaj Mandir, but nothing has been placed on record that the petitioner was either dispossessed or the petitioner ever made a grievance in this regard, leaving this Court to believe that the averment is blatantly false. We also find that the petitioner has given a number to the shop while no numbers have been allotted by the SDMC as stated by Ms.Khorana on instructions and it is based on this false number that the petitioner has been able to get a telephone connection.
15. Resultantly, we find no ground to entertain this petition. Accordingly, the same is dismissed. However, we make it clear that it will be open to the petitioner to approach the Town Vending Committee ('TVC'), as and when it is functional, with supporting documents. We also direct the TVC to consider the case of the petitioner in accordance with law based on the documents which may be placed before it.

C.M. 35655/2016 and C.M. 21927/2017 (Directions)

16. Both these applications have been filed by the petitioner herein primarily seeking protection from eviction during the pendency of the present writ petition.
17. In view of the order passed in the writ petition, no further orders are required to be passed and accordingly, the applications are disposed of.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

JULY 31, 2017

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