

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.23480 of 2018

and

WMP No.27392 of 2018

K.B.Senthilnath

... Petitioner

-vs-

- 1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 600 009.
- 3.The District Collector,
Kanchipuram District,
Kancheepuram.
- 4.The Tahsildhar,
Chengalpet Taluk,
Chengalpet,
Kancheepuram District.
- 5.The District Forest Officer,
Chengalpet Forest Division,
Vandavasi Road,
Kancheepuram - 603 501,
Kancheepuram District.

6.The Commissioner/Block Development Officer,
Kattankulathur Panchayat Union,
Kattankulathur,
Kancheepuram District.

7.The Special Officer,
Kolathur Village Panchayat,
Kattankulathur Panchayat Union,
Kancheepuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, forbearing the respondents from interfering in any manner by way of putting up any garbage dumping yard in S.No.377A/1 of Kolathur Village, Kattankulathur Panchayat Union, Kancheepuram District, consequently, direct the respondents to preserve the land as it is.

For Petitioner : Mr.T.Mohan
for M/s.K.Balu

For Respondent : Mr.V.Jayaprakash Narayanan
Government Pleader (i/c)
for respondents 1 to 4, 6
and 7

Mr.Bala Ramesh
for 5th respondent

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner has filed the above writ petition by way of public interest litigation to issue a writ of mandamus forbearing the respondents from interfering in any manner by way of putting up any garbage dumping yard in S.No.377A/1 of Kolathur Village, Kattankulathur Panchayat Union, Kancheepuram District and consequently, direct the respondents herein to preserve the land as it is.

2. It is the case of the petitioner that S.No.377A/1 of Kolathur Village is classified as meikal poramboke land (grazing land) and is being used for public purpose as cattle field/farms. Adjoining the said land, there are reserve forest,

water bodies and also bird sanctuary. The petitioner has stated that on 20.08.2018, the officials of the respondents 3 to 7 came to Kolathur village and made an inspection for putting up the garbage dumping yard in the said village under Solid Waste Management. Thereafter, the sixth respondent started the work and by encroaching meikal poramboke land put up the garbage dumping yard in the said land without following any procedure as contemplated under the Policy. Further, the petitioner has stated that every day several lorries are bringing garbage from neighbouring villages and putting the garbage in the dump yard.

3. For maintaining the writ petition as public interest litigation, the petitioner has stated that he is a resident of Kolathur Village and there are more than 15000 people residing in Kolathur Village and that this writ petition has been filed to protect the rights of the villagers in Kolathur village. Further, the petitioner has stated in the affidavit filed in support of the writ petition that he has no personal interest in this case and he will not be personally benefited in any manner.

4. Respondent Nos.3, 6 and 7 have filed their counter, wherein, it is specifically denied that there are water bodies or any bird sanctuary situated in the land in question and there is no habitation adjoining to the land upto an approximate radius of 5 Kms. It is further stated that the land is being used as purely temporary stock yard to carry out bio-mining process and the said site/place will not be permanent dump yard. More so, waste will be processed by bio-mining in which no material or waste will be left in the stock yard or in the site.

5. What is most important to note is that in paragraph 6 of the counter, it is stated that the petitioner himself is an encroacher of part of the Government land in S.No.377A/1 which is earmarked as a stock yard for bio-mining process. It is further stated in the counter that the revenue authorities found that nearly 22 acres of land has been encroached by the petitioner, including a portion of the land which comes in the field earmarked as a stock yard for the process of bio-mining. It is further stated that the petitioner is running an unauthorised Ready-mix Concrete Unit in the encroached Government lands and notice has been served by the Tahsildar/Revenue Divisional Officer, Chengalpattu for eviction and the process has started and is in progress.

6. The respondents 3, 6 and 7 further contended that since the petitioner has vested interest in this matter and he himself is an encroacher, he has no locus standi to file the writ petition as public interest litigation. Thus, it is seen that though the petitioner claims that this public interest litigation has been filed to protect the rights of the villagers, it is seen that in fact the petitioner himself is

interested in S.No.377A/1. Hence, the writ petition cannot be termed as public interest litigation.

7. The petitioner has not made any reference in the writ petition about the encroachment made by him in S.No.377A/1 or eviction proceedings initiated by the authorities against him. Though the respondents 3, 6 and 7 in their counter specifically stated that the petitioner himself is an encroacher of the Government land in S.No.377A/1 and eviction proceedings have been initiated against him, the petitioner, in his rejoinder to the counter, has not specifically stated about the eviction proceedings initiated by the authorities for removing the encroachment made by him in S.No.377A/1. It is to be noted that the petitioner has not denied that eviction proceedings have been initiated against him.

8. A litigant, who approaches the Court, is bound to state all the relevant facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as the opposite party, which cannot be countenanced.

9. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Land-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

10. The truth should be the guiding star in the entire judicial process. Every trial is a voyage of discovery in which truth is the quest. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction, only in furtherance of justice. A petition or an affidavit containing a misleading and/or an inaccurate statement or in which material facts are suppressed, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.

11. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor would the Court be justified to exercise jurisdiction

in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in a case based on false claims or when relief is sought to be obtained by practicing fraud. No sympathy and equitable consideration can come to the rescue of such petitioner.

12. In *Welcome Hotel and others v. State of Andhra Pradesh and others*, reported in (1983) 4 SCC 575 : AIR 1983 SC 1015, the Supreme Court held that 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.

13. In *G.Narayanaswamy Reddy and others v. Governor of Karnataka and another*, reported in (1991) 3 SCC 261 : AIR 1991 SC 1726, the Supreme Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed:

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected."

14. In *S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others*, reported in (1994) 1 SCC 1 : JT 1993(6) SC 331, the Supreme Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

15. In *Prestige Lights Ltd. V. State Bank of India*, reported in (2007) 8 SCC 449, the Supreme Court held that 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 and a person who invokes the High Courts 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 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 (1917)1 K.B. 486, and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep 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, 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."

16. In K.D. Sharma v. Steel Authority of India Ltd. and others, reported in (2008) 12 SCC 481, the Supreme Court held that the jurisdiction of the Supreme Court under Article 32 and 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 and seek an appropriate relief. 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. The same rule was reiterated in G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141.

17. In Udyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of Uttar Pradesh and another, reported in (2008) 1 SCC 560, the Supreme Court held that a writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It should not suppress any material fact.

18. In Dalip Singh v. State of U.P. and others, reported in (2010) 2 SCC 114, the Supreme Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those

involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of Court proceedings. 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.

19. The decision in the case of Dalip Singh v. State of U.P. and others, supra, has been relied upon by the Supreme Court in the case of V.Chandrasekaran and another v. The Administrative Officer and others, reported in (2012) 12 SCC 133. In V.Chandrasekaran and another v. The Administrative Officer and others, supra, the Supreme Court observed that the appellants did neither approach the statutory authority nor the Court with clean hands and therefore, they do not warrant any relief.

20. Similar view has been taken by the Supreme Court in the decision in Kishore Samrite v. State of U.P. and others, reported in (2013) 2 SCC 398, in which, it was held that no relief can be granted to a litigant, who has not come with clean hands before the Court and in fact, an unfair litigant needs to be deprived of any relief.

21. A writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It should state all relevant facts and not suppress any material fact. In the present case, the petitioner has not disclosed that he had encroached on the Government land in S.No.377A/1 and he is facing eviction proceedings in relation to the said encroachment. In fact in the affidavit filed by the petitioner in support of his writ petition, he has specifically stated that he has no personal interest in the case and he will not be personally benefitted in any manner. This is a totally false statement to the knowledge of the petitioner. Even in his rejoinder to the counter filed by the respondents 3, 6 and 7, the petitioner has not denied that he is facing eviction proceedings but has deliberately kept silent on the aspect of eviction proceedings. When a person approaches a Court of equity in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean objective.

22. In view of the above, we are of the considered opinion that the petitioner did not approach the Court with disclosure of true facts. Thus, the petitioner has not approached the Court with clean hands. Hence, he is not entitled to the relief

sought for. Hence, the writ petition is dismissed. No costs. Consequently, W.M.P.No.27392 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai-600 009.
- 2.The Principal Secretary to Government,
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Kancheepuram District.

+1 cc to Mr.K.Balu, Advocate Sr.No.80633
+1 cc to the Special Government Pleader(Forest), Sr.No.80596
+1 cc to The Government Pleader, Sr.No.80896

W.P.No.23480 of 2018

NMI (CO)
CSL/19.12.2018