

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.30929 OF 2017

DATE: 10.04.2018

Between:

Ramanna @ Radhaswamy s/o. Dodda Thimmappa,
Aged 50 years, r/o. D.Golla Hatti, h/o. Gundumala,
Madakasira Tq., Ananthapur District and others.

.... Petitioners

and

The State of Andhra Pradesh, rep.by its Principal
Secretary, Revenue Department, Secretariat Buildings,
Velagapudi, Guntur district, A.P., and another.

.... Respondents

The Court made the following :



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ORAL ORDER:

This writ petition is filed by 41 persons claiming to be residents of hamlets of Gundumala, D.Golla Hatti, P.Gundumala, Cheepuleti, K.Gundumala, Agrampalli, and Karaganipalli of Anantapur district. Affidavit on their behalf was deposed by Sri.Ramanna Alias Radhaswamy/first petitioner. Writ petition is filed alleging that Mandal Revenue Officer, Madakasira mandal-second respondent is interfering with the spiritual activities conducted for the last so many years in the ashram land consisting Ac.1.50 cents in Survey No. 44 in 503/2 of D.Golla Hatti, Madakasira mandal and trying to dispossess petitioners by putting a threat of demolition. Petitioners sought for issuing a declaration against such actions and direction to authorities not to interfere with spiritual activities of the petitioners in the ashram.

2. In the affidavit, first petitioner avers that land to an extent of Ac.1.50 cents in Survey No. 44 in 503/2 of D.Golla Hatti of Madakasira mandal belongs to Thimmanna S/o Tyavarappa. The first petitioner constructed hall and running ashram, the neighbouring villagers are attending and conducting several spiritual programmes such as pravachanam, satsang, bhajana and monthly once provided food to members of ashram who attend spiritual programmes. In the open land abutting the ashram, vegetables are grown and said vegetables are used for preparing food. Villagers of D.Golla Hatti and neighbouring villages voluntarily contribute food items like rice, dall, tamarind etc to the ashram and with the contributions of the villagers, RCC building

was constructed. It is claimed that this property does not belong to an individual and no individual petitioner has any interest in the property but in the larger interest the ashram shall not be demolished.

3. Petitioners also filed I.A. No. 4 of 2017 praying a direction to second respondent not to dispossess the petitioners from the land in survey numbers 503/1, 503/2, 503/3, 503/4 , 503/5, Melivoy village, D.Golla Hatti gram panchayat, Anantapur district. In the affidavit filed in support of this application it is stated that D.Golla Hatti village consist of 77 residential houses. 10 families of the village came forward in the year 2010 for conducting spiritual activities and later other villagers started showing interest, but there was no building for meeting, while so, it is noticed that in the year 1987 Government granted patta in the above survey numbers to Hanumanthappa and others but those persons have violated the patta guidelines, accordingly, Mandal Revenue Officer cancelled the pattas in the year 2010 and patta was not granted to any other person. This piece of land is full of rocks and thus not cultivable and not useful for residential purposes. The then Sarpanch of Melivoy Gram Panchayat decided to construct hall in survey number 503/1 to conduct spiritual activities. The other land in the above mentioned survey numbers was developed to grow vegetables and fruit bearing plants of all varieties and members cultivate land to an extent of Ac.1.75 cents. It is alleged that this land is proposed to be taken over to construct BC Hostel by cutting trees and there is threat to dispossess them from this land.

4. As petitioners contended that there was threat of dispossession, the Court by order dated 26.12.2017 granted stay of dispossession from land in Sy.Nos.503/1, 503/2, 503/3, 503/4, 503/5, Melivoy village, D.Golla Hatti gram panchayat, Anantapur district and destruction of trees. As the learned Government Pleader informed the Court that land was earmarked for BC Welfare Department, Court directed the petitioners to implead BC Welfare Department as party respondent. The interim order earlier granted for limited period was extended from time to time.

5. The incumbent sarpanch of the Gundumala village filed I.A.No.2 of 2018 praying to implead him as respondent. He has also filed I.A.No.3 of 2017 to vacate the interim order dated 26.12.2017. Though, the implead petition was filed long ago, when matter was taken up on 29.3.2018, time was sought for filing counter to the implead petition. The Court granted time to file counter making it clear that no further time would be granted. No counter affidavit is filed opposing implead petition. By separate order, implead petition is allowed.

6. Heard Sri Vedula Srinivas for learned counsel for petitioners Ms.Akella Padma, learned senior counsel Sri Ganta Rama Rao for impleaded respondent and learned Government Pleader for official respondents.

7.1. According to learned counsel for petitioners, the subject land was assigned to Thimmanna S/o Tyavarappa and that assignment was not cancelled and on the said assignment land, community hall and other structures were made to carry on spiritual activities; the respondent Mandal Revenue Officer cannot seek to dispossess

petitioners from subject property without following due process; demolishing the building and dispossessing them from adjacent land would amount to depriving large section of people from pursuing their spiritual activities.

7.2. Learned counsel would contend that even assuming that petitioners are in illegal occupation of Government land, petitioners cannot be thrown out without following due procedure. He placed reliance on the decision of the Supreme Court in **MEGHAMALA AND OTHERS Vs G.NARASIMHA REDDY AND OTHERS**¹.

7.3. He would further submit that adjacent open land was developed and fruit bearing and other trees were grown and regular cultivation is going on, therefore there is no justification to dispossess the petitioners and undertake construction of residential college and hostel for backward classes students. There is enough land available in the surrounding area and there is no reason to identify this particular piece of land.

7.4. Learned counsel further submits that the sarpanch/ proposed respondent is neither necessary nor proper party, as the dispute is between the petitioners and respondent revenue authorities since the revenue authorities are seeking to dispossess the petitioners and sarpanch of the village has no role in such matters.

8.1. Learned senior counsel Sri Ganta Rama Rao would submit that writ petition itself is liable to be dismissed on the ground of

¹ (2010) 8 SCC 383

suppression of facts and misleading the Court. According to learned senior counsel, even according to petitioners, assignment of land to Thimmanna S/o Tyavarappa was validly granted, the said assignment was only a house plot with measurements of 10 X 20 in survey number 503/2, which is clear from Ex.P-1 relied upon by petitioners. Whereas, according to the counter affidavit of Mandal Revenue Officer, building was constructed in Ac.0.10 cents of land and illegally in occupation of larger extent of land.

8.2. He further submitted that by the time writ petition was instituted, two of the petitioners already died. Along with I.A.No. 3 of 2017 death certificates of Chandrappa and Marekka are enclosed (page nos.72 and 73). He would therefore submit that no writ petition could be filed on behalf of dead persons. He would further submit that other petitioners have never consented for filing the writ petition and they were misled and obtained their signatures on blank papers by giving an impression that a representation would be submitted to the District Collector and without their knowledge or consent writ petition is filed. Along with I.A.No.3 of 2018 affidavits of petitioners 4, 6, 7, 15, 18, 19, 22, 23, 24, 26, 27, 28, 29, 31, 33, 38 are enclosed where under they deposed that they did not consent to file writ petition and prayed to dismiss the writ petition. He would therefore submit that writ petition is liable to be thrown out on the ground of misrepresentation and false deposition.

8.3. He would submit that illegal construction is made occupying the Government land. This land is identified for construction of residential college and hostel for backward classes people. The

backward classes students of neighbouring villages are suffering because of lack of proper hostel and junior college and construction of junior college is delayed on account of institution of this writ petition. As sarpanch of the village, implead respondent is concerned about development activity and construction of residential junior college for backward classes people which would immensely help the students living in his village and neighbouring villages in prosecuting their higher education. As public representative, this respondent has been pursuing the issue and but for the institution of the writ petition and interim order obtained by misrepresentation of facts, the construction activity could have been taken up long ago. He would submit that though counter affidavit is filed by Mandal Revenue Officer, he has not projected the true and correct facts and his impleadment would only be assisting the Court in coming to correct conclusion on the issues involved. He would further submit that the allegation of the petitioners that they are being dispossessed from the existing building and building is sought to be removed is misplaced.

9. Based on the averments in the counter affidavit deposed by Mandal Revenue Officer, learned Assistant Government Pleader would submit that land to an extent of Ac.1.75 in survey no.503/2 was assigned to one Kariappa. The assignee did not cultivate the land. He would submit that MPTC, Sarpanch and others of Gundumala gram panchayat represented for allotment of suitable site for construction of junior college and hostel for backward classes students. The Mandal Revenue Inspector conducted detailed enquiry and identified this piece of land as ideally suited for construction of BC hostel and junior college. According to

Mandal Revenue Inspector, in an open enquiry, Kariappa has agreed for resumption of land. It is further averred that in Ac.0.10 cents of land building was constructed. While identifying the land for construction of residential junior college this Ac.0.10 cents of land was not taken into consideration and only on apprehension this writ petition is filed.

10. The allegation of suppression of fact and misrepresentation is a serious issue and goes to the root of standing of petitioners to maintain writ petition.

11. As pointed out by learned senior counsel Sri Ganta Rama Rao, two of the petitioners i.e., petitioners 13 and 17 died much prior to filing of the writ petition. No writ petition could have been filed in the name of dead persons. The notarised affidavits of some of the petitioners filed along with I A No. 3 of 2017 would disclose that those persons did not consent for filing of writ petition and by misleading them their signatures were obtained on blank papers. They prayed to dismiss the writ petition. These assertions are not denied. The averments made in the said affidavits enclosed to I A No. 3 of 2017 as well as death certificates of petitioners 13 and 17 would disclose that what is deposed in the affidavit by the first petitioner is utter falsehood. The further statement of Sarpanch in his counter affidavit filed along with I A No. 3 of 2017 would disclose that claim of petitioners that land was assigned to Timmappa also appears to be wrong. Firstly, the document at Ex.P-1 is only an assignment of small house site plot of 10 X 20 dimension whereas claim by referring to the said document was, as if a larger extent of agricultural land was assigned, which is clearly

a misleading statement. Further reliance is placed on a certificate stated to have been issued by Tahsildar on 9.3.2012. No authentication document is filed to show that even this small piece of land was assigned to Timmappa. It is not the case of petitioners that Thimmappa constructed the building. Even assuming assignment was made to Thimmappa, it is not stated how petitioners came into possession of the land. According to the averments in the affidavit of Mandal Revenue Officer land to an extent of Ac.1.75 cents in survey no. 503/2 was assigned to person by name Kariappa on 10.6.1977 and Kariappa has not put the land for cultivation and has now agreed for resumption of the said land. There is no reply affidavit filed to explain the stand of petitioners that there was an assignment to Timmappa and that assignment is different from the assignment given to Kariappa.

12. In the affidavit filed in support of writ petition, in paragraph-3 deponent stated that he constructed the building; whereas in paragraph-4, he has stated that villagers contributed and constructed the building. In the affidavit filed in support of I.A.No.4 of 2017, he deposed that Sarpanch of Melivoy Gram Panchayat constructed building for the benefit of members of satsang. Thus, inconsistent misleading statements are made and in the facts of this case, apparently deliberately made to secure an order from the Court.

13. Further in the affidavit filed in support of I.A.No. 4 of 2017 the deponent now expanded the scope of writ petition by including land in survey nos.503/1,503/2, 503/3, 503/4, 503/5, Melivoy village, D.Golla Hatti Gram Panchayat contending that the said

land was assigned to Hanumantappa and others; they did not put the land to use; and this land is now developed by members of satsang. Again no material is placed on record in support of the contention that land was assigned to Hanumantappa and others. They are not parties to the writ petition. No material to show that they allowed access to land alleged to have been assigned to them.

14. As briefly noted above, the deponent has given false statements regarding status of land, construction of building and the interest of petitioners. It appears without the consent of some of the persons they are arrayed as petitioners only to show as if large number of villagers are involved and in the interest of larger public, the building constructed illegally on occupied Government land should not be demolished and they should not be dispossessed from adjacent land.

15. Facts as noted above and the averments of respective parties would disclose that though persons are no way concerned with land in survey number 503/2 and without obtaining building permission from the competent authority and without obtaining permission from the District Collector to carry on spiritual activities a building was constructed and being used for various spiritual activities. However, this construction area covers less than Ac.0.10 cents. In the guise of alleging that the petitioners are sought to be illegally dispossessed, they sought for continuation of possession on not only area covered by building but to larger extent. However, Court is not going into the genuineness of the claim and whether petitioners are entitled to retention of their

possession on Ac.0.10 cents of land on which building is constructed.

16. Remedy under Article 226 of the Constitution of India is an extraordinary remedy available to every aggrieved person. In exercise of this power, writ Court stretches its hand to reach out wherever injustice is caused and in whatever manner injustice is meted out. Remedy under Article 226 is equitable and discretionary. The writ Court has no bounds in issuing prerogative writs except self-imposed restraint. To exercise such extraordinary remedy, the Court expects persons coming before it to be fair and frank in stating all facts which constitute cause of action to ventilate their grievance, leaving it to Court to decide whether relief can be granted and if so, what relief. Thus, minimum that is expected from petitioners, knocking the doors of the High Court under Article 226 of the Constitution, is to state true and correct facts and project the grievance.

17. Court would be disinclined to lean in favor of petitioners to grant equitable relief if they do not disclose true facts, try to mislead the Court or suppress true facts deliberately in order to gain undue advantage while invoking the writ Court to exercise extraordinary jurisdiction under Article 226 of the Constitution.

18. In **K.D.SHARMA vs SAIL**², Supreme Court observed that the party invoking extraordinary jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “**hide and seek**” or to “**pick and choose**” the facts

² (2008) 12 SCC 481

he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts” (paragraph 38).

18.1. It would be relevant to reproduce paragraphs 34 to 39

K.D.Sharma (supra), which read thus:

34. 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. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, 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.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs. (1917) 1 KB 486* in the following words: (KB p. 514)

“... 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—it says 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.**”

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.”** The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* Viscount Reading, C.J. observed: (KB pp. 495-96)

“... 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 application was not candid and did not fairly state the facts, but stated them**

in such a way as to mislead the Court as to the true 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 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 the 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.***"

38. The above principles have been accepted in our legal system also. As per settled law, **the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible.** The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* is kept in mind, **an applicant 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 not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.** If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

(emphasis supplied)

18.2. In **PRESTIGE LIGHTS LIMITED V. SBI**³, the Supreme Court observed that "*in exercising power under Article 226 of the Constitution of India the High Court is not just a 'Court of Appeal',*

³(2007) 8 SCC 449

but it is also a ‘Court of Equity’ and 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. The High Court would be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution if there is suppression of material facts or if the facts are twisted.”

18.3. In **ALL INDIA STATE BANK OFFICERS FEDERATION V. UNION OF INDIA**⁴, the facts are similar. Federation filed WP in this Court, before High Court at Bangalore and in the Supreme Court under Article 32 of the Constitution on the issue of promotion policy and granting promotions to some officers. In the petition filed under Article 32 of the Constitution, declaration was filed stating that no other writ petition was filed in the Supreme Court or in any High Court on the same issue. Supreme Court frowned at such conduct of Federation. Supreme Court observed,

“11. Apart from misstatements in the affidavits filed before this Court, the petitioner federation has clearly resorted to tactics which can only be described as abuse of the process of court. **The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged.**”
(emphasis supplied)

18.4. In **DALIP SINGH V. STATE OF U.P.**,⁵ Supreme Court observed,

“1. For many centuries Indian society cherished two basic values of life i.e. “satya’ (truth_ and “ahimsa” (non-violence), Mahavir, Gautam Buddha 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

⁴ 1990 Supp SCC 336

⁵ (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324

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.

2. 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. (emphasis supplied)

18.5. It is apt to consider the further observations made in the decision of the King's Bench Division in **THE KING v. THE GENERAL COMMISSIONERS FOR THE PURPOSES OF THE INCOME TAX ACTS FOR THE DISTRICT OF KENSINGTON. Ex parte PRINCESS EDMONDDE POLIGNAC**⁶, which decision is treated in India as an authority for the proposition on good faith required by a person applying for a writ.

“55.2. WARRINGTON L.J., observed,

“It is perfectly well settled that a person who makes an *ex parte* application to the Court — that is to say, in the 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.**”

(emphasis supplied)

19. The Writ Court is concerned with the fairness, honesty and sincerity of litigant coming before the court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. The averments made in the affidavit filed in support of the

⁶ (1917) 1 K.B. 486

writ petition and the prayers sought, are looked into as they were made when the writ petition was instituted. Record would disclose that true and correct facts were not stated. There is clear suppression of crucial facts which have a bearing on maintainability of the writ petition.

20. In the recent past, it is observed that persons invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution, shamelessly resort to falsehood, unethical and illegal means to achieve their goals/for seeking orders from Courts. They resort to suppression of facts and occasionally even misleading the Courts. In such cases, the Supreme Court time and again observed that if false statements are made, suppress material facts or attempt to mislead the Courts, their petitions must be dismissed at the threshold, refusing to enter into merits of the case. It is well settled that the party who invokes the extraordinary jurisdiction of the High Court under Article 226 of the Constitution, is supposed to be truthful, frank and open. Must disclose all material facts without any reservation even if they are against petitioners. The petitioners cannot be allowed to play “hide and seek” or to “pick and choose” the facts they like to disclose and to suppress or not to disclose other material facts. The litigants, who pollute stream of justice or who touches the pure fountain of justice with tainted hands, as observed in **Dalip Singh** (supra), is not entitled to any relief, interim or final.

21. In the present case, as noticed and observed earlier, the petitioners have not only invoked the extraordinary jurisdiction under Article 226 of the Constitution by filing false affidavit, not

only suppressed material facts but made false and misleading statements in the body of affidavit filed in support of the writ petition and in WPMP No 38547 of 2017 & in IA No 4 of 2018. Further, from the facts it is clear petitioners tried to somehow snatch/obtain interim order from this Court and to stall construction of residential junior college to benefit students from backward class.

22. Though learned counsel for petitioners sought to justify the maintainability of the instant writ petition contending that it is filed against illegal dispossession from the subject property the very averments in the affidavit filed in support of the writ petition and I.A.No.4 of 2017, in addition to misleading statements, would disclose that none of the petitioners have any personal interest in the property. No material is brought on record to show in whose name property stands, whether satsang is registered and whether any register of followers of satsang is maintained. Further as per averments of deponent in the affidavits the building was constructed by sarpanch of a village. If that is so, the building is a public building and the Gram Panchayat should be the custodian of the property. Thus, none of the petitioners are entitled to maintain the writ petition.

23. Guided by the principles enunciated by the Supreme Court in the decisions referred to above and the observations of the KINGS Bench Division in **“THE KING”** (supra) and on analysis of facts on record, I am of the considered opinion that when the instant writ petition was instituted, the hands of the petitioners were tainted. There was not only clear suppression of facts but

clear attempt to mislead the Court. Petitioners were not entitled to file writ petition in the name of dead persons and on behalf of persons who never intend to prosecute the litigation and without their consent and make misleading statements.

24. The writ petition is dismissed with costs quantified at Rs.20,000/- (Rupees twenty thousand only). In view of disposal of writ petition, no further orders are required in I.A.Nos.1 of 2017 (WPMP No.38547 of 2017), 3 and 4 of 2018 and they are accordingly closed.

DATE: 10-04-2018
TVK

P NAVEEN RAO,J



HONOURABLE SRI JUSTICE P. NAVEEN RAO



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