

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.34363 of 2018 and

W.M.P.No.39933 of 2018

Vasanth Kumar @ Veer Vasanthakumar

... Petitioner

Vs.

- 1.The Director,
Directorate of Town and Country Planning,
4th Floor, Chengalvaraya Building,
807, Anna Salai, Opp LIC., Chennai - 600 002.
- 2.The Deputy Director,
Town and Country Planning,
Chengalpet Region,
13, Varadharajar Street,
Vedachalam Nagar, Chengalpattu - 603 001.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 600 008.
- 4.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Road,
Thousand Lights West, Nungambakkam,
Chennai - 600 034.
- 5.The Block Development Officer,
St Thomas Mount Panchayat Union,
No.20, Chitlapakkam Main Road,
Kamaraj Colony, Nehru Nagar,
Chitlapakkam, Chennai - 600 064.
- 6.The Executive Officer,
Kovilambakkam Panchayat,

No.2, S.Kolathur Main Road,
Kovilambakkam, Chennai - 600 129.

7.The Tahsildar,
Sholinganallur Taluk,
No.3, 1st Street, Kumaran Nagar,
RajivGandhi Salai,
Sholinganallur, Chennai - 600 119.

8.The District Collector,
First Floor, Collectorate,
Kancheepuram - 631 501.

9.The Sub Registrar,
Sub Registrar Office,
2nd Main Road, Pallavapuram,
New Colony, Chrompet, Chennai - 600 044.

10.M/s.Maxworth Home Limited,
having Registered Office at
First Floor 610, Anna Salai,
Chennai - 600 006.

11.M/s.T.J.Real Estates,
No.35/14, Vaidiyaraman Street,
T.Nagar, Chennai - 600 017.

12.R.Sunil Kumar

13.Petchimuthu Murugan

14.The Manager,
Ponnamman Temple,
No.44, S.Kolathur,
Kovilambakkam,
Chennai - 129.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of declaration to declare the approval of the layout bearing DTCP No.351/73 granted by the 2nd respondent in favour of 10th respondent and declaring the DTCP No.351/73 layout as null and void and direct the respondents 1 to 8 to demolish the existing structure raised by the respondents 10 to 13 illegally based upon the above said unlawful approval granted to him, which construction situated in Survey No.392/12 measuring and extent of Ac 0.20 cents and another property measuring an extent of Ac 0.66 cents comprised in Survey No.392/11 and Survey No.392/12 situated at S.Kolathur, Madipakkam, Sholinganallur Taluk.

For Petitioner : Mr.L.Sasi Kumar

For Respondents : Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c) (R1, R2, R5 to R8)

Mr.S.Thiruvengadam (R3)

Mr.M.Maharaja,
Special Government Pleader (HR & CE) (R4)

Mr.T.M.Pappiah,
Special Government Pleader (R9)

Mr.K.Govi Ganesan (R10)

Mr.G.Sundaram (R11 to R13)

O R D E R

(Order of the Court made by M.DURAISWAMY, J.)

The petitioner has filed the above Writ Petition as a Public Interest Litigation to issue a Writ of declaration to declare the approval of the layout bearing DTCP No.351/73 granted by the 2nd respondent in favour of 10th respondent and declaring the DTCP No.351/73 layout as null and void and direct the respondents 1 to 8 to demolish the existing structure raised by the respondents 10 to 13 illegally based upon the above said unlawful approval granted to him, which construction situated in Survey No.392/12 measuring and extent of Ac 0.20 cents and another property measuring an extent of Ac 0.66 cents comprised in Survey No.392/11 and Survey No.392/12 situated at S.Kolathur, Madipakkam, Sholinganallur Taluk.

2.It is the case of the petitioner that the above mentioned property belongs to Ponniamman Temple, which is under the control of the 4th respondent. Further, the petitioner contended that the respondents 10 to 13 had encroached the Temple land and are putting up construction.

3.The learned counsel appearing for the respondents 10 to 13 submitted that the petitioner has already filed a Civil Suit in O.S.No.534 of 2017 on the file of the Additional District Munsif Court, Alandur for permanent injunction restraining the defendants from claiming any right in respect of the suit property and from ever evicting the petitioner from the suit property without following due process of law.

4.On a perusal of the Plaint Schedule, it is clear that the petitioner has filed the suit in respect of an extent of Ac 0.20

cents comprised in Survey No.392/12 and an extent of Ac 0.66 cents comprised in Survey No.392/11 situated in Kolathur, Madipakkam, Alandur Taluk. The learned counsel appearing for the 11th respondent also enclosed a copy of the plaint in O.S.No.534 of 2017 in the typed set of papers.

5.The suit is posted for further hearing on 07.01.2019. Therefore, from the submission made by the learned counsel for the respondents, it is clear that the schedule of property in the suit as well as in the Writ Petition are one and the same and the petitioner has filed the above Writ Petition during the pendency of the Civil Suit in O.S.No.534 of 2017.

6.It is also brought to the notice of this Court by the learned counsel for the respondents that since the petitioner has not obtained any interim order before the trial Court, he has filed the present Writ Petition suppressing the filing of the suit in O.S.No.534 of 2017.

7.Mr.M.Maharaja, learned Special Government Pleader appearing for the 4th respondent - the Commissioner, the HR & CE Department submitted that the land does not belong to the Temple and it is a private land.

8.When the 4th respondent himself submits that the land does not belong to the Temple, the contention of the petitioner cannot be accepted. That apart, on a perusal of the averments stated in the affidavit filed in support of the Writ Petition, it is clear that the petitioner has willfully suppressed the filing of the Civil Suit in O.S.No.534 of 2017. When this Court specifically asked the learned counsel for the petitioner whether any Civil Suit has been filed by the petitioner, initially, the learned counsel replied that no Civil Suit has been filed. Subsequently, on seeing the plaint in the typed set of papers filed by the 11th respondent, the learned counsel for the petitioner submitted that the petitioner had withdrawn the suit. However, the 11th respondent had also enclosed the "A" Diary extract at Page-31 of the typed set of papers wherein it has been clearly stated that the suit is posted for hearing on 07.01.2019. From the averments stated in the affidavit filed in support of the petition and also the submissions made by the learned counsel for the petitioner, it is clear that the petitioner has willfully suppressed the pendency of the suit in O.S.No.534 of 2017.

9.One who comes to the Court, must come with clean hands. A petitioner, 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. 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.

10. 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.

11. In the judgment reported in (1983) 4 SCC 575 : AIR 1983 SC 1015 [Welcome Hotel and others v. State of Andhra Pradesh and others], 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.

12. In the judgment reported in (1991) 3 SCC 261 : AIR 1991 SC 1726 [G. Narayanaswamy Reddy and others v. Governor of Karnataka and another], 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."

13. In the judgment reported in (1994) 1 SCC 1 : JT 1993(6) SC 331 [S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others], 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.

14. In the judgment reported in (2007) 8 SCC 449 [Prestige Lights Ltd. V. State Bank of India], 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."

15. In the judgment reported in (2008) 12 SCC 481 [K.D. Sharma v. Steel Authority of India Ltd. and others], 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.

16. In the judgment reported in (2008) 1 SCC 560 [Udyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of Uttar Pradesh and another], 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.

17.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.

18.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.

19.A person approaching a superior Court must come with clean hands. He should state all relevant facts and not suppress any material fact. In the present case, the petitioner has not disclosed that he had filed a Civil Suit in O.S.No.534 of 2017 in respect of the very same land. In these circumstances, we are of the considered view 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.

20.When the petitioner has resorted to alternative remedy by filing a Civil Suit, the present Writ Petition cannot be entertained. The Writ Petition has been filed with ulterior motive, which, we are not inclined to entertain. Since the petitioner has suppressed the material fact in the Writ Petition, the Writ Petition is liable to be dismissed with costs. Accordingly, the Writ Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand only). The petitioner is directed to pay the costs of Rs.5,000/-, equally, to the respondents 10 to 13 within two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Director, Directorate of Town and Country Planning,
4th Floor, Chengalvaraya Building,
807, Anna Salai, Opp LIC., Chennai - 600 002.

- 2.The Deputy Director,
Town and Country Planning,
Chengalpet Region, 13, Varadharajar Street,
Vedachalam Nagar, Chengalpattu - 603 001.
- 3.The Member Secretary,
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- 9.The Sub Registrar,
Sub Registrar Office,
2nd Main Road, Pallavapuram,
New Colony, Chrompet, Chennai - 600 044.

+2 cc to Mr.G.Sundaram, Advocate SR.No.377
+1 cc to Mr.S.Thiruvengadam, Advocate SR.No.428
+1 cc to The Government Pleader, Sr.No.694

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CSL/04.01.2019