

HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.41853 OF 2018

ORDER

(Per Sanjay Kumar, J)

1. The petitioner is the second applicant in LGC.No.20 of 1992 on the file of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (*for brevity*, 'the Act of 1982'). He was brought on record therein as the legal representative of his deceased father, the first applicant. By common judgment dated 04.10.2013, the Special Court dismissed the said case along with three other cases. Aggrieved thereby, the petitioner filed this writ petition on 06.11.2018. He seeks a writ of certiorari to set aside the judgment dated 04.10.2013.

2. Notice before admission was ordered in the case on 28.11.2018. Sri A.Abhishek Reddy, learned counsel, entered appearance for respondents 7 to 12 and filed a counter affidavit. He would contend that the writ petition is hit by delay and laches and that this Court ought not to extend any indulgence to the petitioner at this belated stage. He would also assert that the petitioner is utterly lacking in *bonafides* and should be non-suited on the ground that he has come to Court with unclean hands.

3. In the affidavit filed in support of the writ petition, the petitioner stated that his father purchased an extent of 2500 square yards, being portion No.3A, out of the extent of land admeasuring Ac.2.21 guntas in Sy.No.129/31 of Shaikpet Village, presently falling on Road No.12, Banjara Hills, Hyderabad. According to him, this larger extent of Ac.2.21 guntas in Sy.No.129/31 of Shaikpet Village belonged to one Captain Ahmed Moinuddin, who acquired rights over the said land from the Surfekhas Mubarak. He sold the entire extent to one Krishna Bai under registered

Sale Deed dated 30th Raahmaan 1334 Fasli. In turn, Krishna Bai acquired some more land during her lifetime and relinquished her rights over the extent admeasuring 9940 square yards in favour of her son, A.Dinakar Rao, under registered Release Deed dated 29.06.1966. A.Dinakar Rao then sold this land to various parties by plotting it. In that process, the petitioner's father was stated to have purchased the extent of 2500 square yards under registered Sale Deed dated 11.05.1968. The petitioner claimed that he sold an extent of 1200 square yards out of this land under registered Sale Deed dated 22.08.1985 to Placid Faria and three others and retained the balance extent of 1300 square yards.

4. The petitioner's father is stated to have approached the Special Court alleging that the respondents 2 to 6 tried to interfere with his possession over the said land. According to the petitioner, he filed OS.No.3166 of 1990 before the learned VIII Assistant Judge, City Civil Court, Hyderabad for a perpetual injunction restraining respondents 2 to 6 from interfering with his possession and a *status quo* order held the field during the pendency of the suit. Ultimately, the suit was decreed *vide* judgment dated 31.12.1991. Even during the pendency of the said suit, the municipal authorities tried to lay a road in the land at the behest of respondents 2 to 6, constraining him to file O.S.No.3698 of 1990 before the learned III Assistant Judge, City Civil Court, Hyderabad, for an injunction restraining them from doing so. A *status quo* order was passed in the said suit and the suit is stated to be pending.

5. According to the petitioner, respondents 2 to 6 made a layout and sold the plots to respondents 7 to 12. It is in these circumstances that the petitioner claims that he prayed before the Special Court for demolition of the unauthorised constructions in the extent admeasuring 1300 square

yards belonging to him and also to evict the respondents, who were land grabbers, so as to restore possession to him.

6. Insofar as the delay in the filing of this writ petition is concerned, the petitioner stated that he was not informed by his counsel about the dismissal of the case. According to him, his counsel did not inform him about the case at all since 2012. He further claimed that whenever he consulted the clerk of the counsel, he was informed that the case was pending and it was only in September, 2018 that he enquired with the Court and came to know on 16.10.2018 that his case was dismissed on 04.10.2013. These were the reasons cited to explain the long delay.

7. Respondent 11 in the writ petition filed a counter on behalf of respondents 7 to 12. Therein, he asserted that the writ petition was liable to be dismissed for laches, suppression of material facts and for filing of a false affidavit. He asserted that the petitioner followed the proceedings before the Special Court whenever the matter was listed and he was physically present when it was finally heard and when the judgment was pronounced. He contended that the petitioner could not claim ignorance of the passing of the judgment. He asserted that such a statement was being made only to mislead this Court. He asserted that the petitioner was very much present on the date of pronouncement of the judgment by the Special Court. He pointed out that respondents 9 to 12 had filed a caveat before the High Court on 31.10.2013, apprehending that the petitioner would challenge the said judgment and the caveat copy was sent to the petitioner by registered post and was also served upon him. He asserted that it was an utter falsehood on the part of the petitioner to claim that he was not aware of the passing of the judgment.

8. Sri R.Mangulal, learned counsel for the petitioner, would fairly concede that the petitioner never initiated any action against his counsel for having kept him in the dark as to the passing of the judgment, as claimed by him. He would also admit that no complaint was made by the petitioner to the Bar Council or to any other authority about the alleged lapses committed by the said counsel. He would state that he has no instructions as to receipt of the caveat by the petitioner in 2013 itself.

9. We may note that the counter affidavit was filed by Respondent 11 as long back as on 14.02.2019. A copy thereof was served upon Sri R.Mangulal, learned counsel, on the very same date. Despite the same, the petitioner did not choose to file a reply affidavit. The only inference that can be drawn from his failure to do so is that he has nothing to state in relation to the averments made in the said counter affidavit. The specific assertion of Respondent 11 that the petitioner was physically present not only on the dates of hearing but also on the date of pronouncement of the judgment therefore stands un rebutted. Similarly, his assertion that a caveat was lodged by some of the respondents, and a copy thereof was also served upon the petitioner in the year 2013 itself, also remains unquestioned.

10. In the light of these two unrivalled factual assertions, the lack of *bonafides* on the part of the petitioner in trying to maintain this writ petition after five years, on the strength of averments which have no foundation or basis, cannot be countenanced. It is well settled that a party who approaches the Writ Court and seeks discretionary relief must do so without suppression of facts and by disclosing all material particulars. It is not open such a party to concoct a fictitious version to suit his own interest so as to explain the apparent delay on his part in seeking relief.

On facts, we find that the petitioner utterly failed this test. We therefore hold that the petitioner approached this Court with unclean hands.

The writ petition is therefore dismissed on this short ground. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

20th AUGUST, 2019

PGS

JUSTICE P.KESHAVA RAO

