

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.O. NO.579 of 2018

Tilak Ratan Realtors Pvt. Ltd. & Anr.

-vs-

The Kolkata Municipal Corporation & Ors.

For the petitioners : Mr. Arindam Banerjee,
Mr. Tanay Agarwal,
Ms. Pallabi Ghosh,
Mr. Ishaan Saha

For the Kolkata Municipal Corporation : Mr. Achintya Banerjee,
Ms. Era Ghose

For the State : Mrs. Chama Mookherjee,
Mr. Amit Kr. Ghosh

Heard on : 03.02.2021, 10.03.2021, 24.03.2021

Judgment on : 21.04.2021

Ravi Krishan Kapur, J.:

1. The grievance of the petitioners is directed against the refusal and inaction of the Kolkata Municipal Corporation (KMC) to mutate the name of the petitioner company as owner of premises no.15A, Armenian Street ("the premises"). The petitioners also pray that the KMC treat the premises as a non-thika premises in their records.

2. The facts culminating in the filing of the petition are that the petitioner by an indenture dated 14 June, 2008 purchased the premises. The premises is approximately 5 cottahs 8 chittaks and there is land and building situated on the premises. It is alleged that notwithstanding there being no material in the records of the KMC, the KMC has unlawfully sought for a clearance from The Controller, Kolkata Thika Tenancy, the respondent no.5 herein. It is also alleged that by an order dated 30 December, 2016 passed by the respondent no.5, the petitioners had come to learn that the premises is not within the purview of the Thika Controller. The petitioners complain that though they have filed a copy of the order dated 30 December, 2016 with the KMC, the KMC have failed and refused to mutate the name of the petitioner company in their records and have also refused to treat the premises as a non-thika premises.
3. It is contended on behalf of the KMC that the petitioner has suppressed an earlier order dated 28 January, 2011 passed in Misc. Case No.26/2009 under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 ("the Act"). It is further alleged that the writ petitioner and the vendor to the aforesaid conveyance were represented throughout in the proceedings before the Thika Controller. Insofar as the order dated 30 December, 2016 is concerned, it is alleged that the same is an unsigned order and is contrary to the earlier order dated 28 January, 2011 passed in Misc. Case No.26/2009. The KMC also challenges the authenticity and

veracity of the order dated 30 December, 2016 served on them by the petitioners. It is further contended by the KMC that notwithstanding enquiries, the respondent no.5 was unable to verify the authenticity of the order dated 30 December, 2016 on the ground that the file pertaining to the premises was untraceable. It is also contended that the premises has vested in the State in terms of the order dated 28 January, 2011 passed by the respondent no.5.

4. The respondent no.5 has also filed an affidavit and reiterated the fact that there has been suppression on the part of the petitioners inasmuch as the order dated 28 January, 2011 passed in Misc. Case No.26/2009 had been deliberately suppressed in the petition.
5. In reply, it is submitted by the petitioners that the order dated 28 January, 2011 has been passed without jurisdiction and no reliance ought to be placed on the same. It is further alleged that the registered conveyance in favour of the petitioner company has not been set aside by any Competent Court. Accordingly, the KMC is bound to give effect to the conveyance and mutate the name of the petitioner company in their records. It is further alleged that the order passed by the respondent no.5 dated 28 January, 2011 is in excess of jurisdiction and the Thika Controller has no power or jurisdiction to decide whether there is a "*khatal*" on the premises or not. It is also submitted that the premises does not vest in the State and the KMC be directed to mutate the premises in the name of the petitioner company and treat the premises to be a non-thika premises.

6. I have heard the parties. I have also considered the Notes of Submissions filed on their behalf.
7. At the outset, I deal with the point of suppression which has been raised both by the KMC and the respondent no.5. It is alleged on behalf of the respondents that the petitioners are guilty of suppression and have deliberately and intentionally chosen not to disclose the order dated 28 January, 2011 passed by the Thika Controller in Misc. Case No.26/2009.
8. Premises no.15A, Armenian Street and Premises no.15B, Armenian Street was carved out of the original Premises no.15, Armenian Street. By a deed of conveyance dated 14 June, 2008 executed by and between one Bijan Bihari Malik and the petitioner company, the petitioner company purchased the premises.
9. It appears that in the year 2009 a proceeding was initiated under Section 5(3) of the Act being Misc. Case No.26/2009 before the Thika Controller. Such proceeding culminated in an order dated 28 January, 2011 being passed by the Controller. It appears from the said order that both the petitioners and the vendors to the conveyance were represented by Advocates. Both were *eo-nomine* parties to the aforesaid proceeding and their names appear as opposite parties nos.1 and 2 respectively in the order sheet. In deciding the use of the property, the Controller has held that the property has visages of proof of use as a '*khatal*'. It is also recorded in the order dated 28 January, 2011 that upon physical inspection of the premises being made by the

Enquiring Officer, the presence of concrete tubs for use of cattle were found at the premises. The contention of the petitioners that the premises was used for residential purposes and not khatal has been considered and rejected by the Controller. Thus, the Controller concluded that the premises has been used and occupied as a khatal and vests in the State in terms of Section 4(b) of the Act. There is a specific direction in the order to inform the KMC of the order dated 28 January, 2011.

10. Indisputably, there has been no challenge either by way of a statutory appeal or otherwise against the order dated 28 January, 2011. The order dated 28 January, 2011 has attained finality and is binding on all the parties. I am of the view that in the facts of the instant case, where the petitioners have sought for a direction on the respondent KMC to mutate the premises in the name of the petitioner company and treat the same as a non-thika premises, the order dated 28 January, 2011 passed in Misc. Case No.26/2009 is a germane, relevant and material fact. The petitioners were parties to the proceedings before the respondent no.5. They participated at the hearing of the said proceedings and were also duly represented by an Advocate. Accordingly, the petitioners are deemed to have actual knowledge of Misc. Case No.26/2009 and the order dated 10 December, 2011 and have deliberately chosen not to disclose this fact in the petition. The petition proceeds on the basis that the petitioners purchased the premises in 2008 and thereafter came to learn of an

order dated 30 December, 2016 passed by the respondent no.5. There is no reference nor even a whisper of Misc. Case No.26/2009 nor of the order dated 28 January, 2011 in the petition. The contention of the petitioners in the reply filed by them that they were not aware of the order dated 28 January, 2011 is also liable to be rejected. I find this to be a plea in desperation and devoid of any substance or bonafides. I do not find any merit in the excuse that the Manager of the petitioner company had left the employment of the petitioner company and there was a communication gap between the Advocate and the then Manager of the petitioner company. Significantly, there is no denial of the order dated 28 January, 2011 nor of the proceedings being Misc. Case No.26/2009 by the petitioners.

11. The usage of the premises was also gone into by the Controller and it has been conclusively found that the premises was being used as a “khatal”. Under Section 4 (b) of the Act once the property is hit by the provisions of the Act, the premises automatically vests in the State. In these circumstances, I am of the view that the petitioners were obliged and it was their bounden duty to disclose the order dated 28 January, 2011 and the facts of Misc. Case No.26/2009. I also find that the order dated 28 January, 2011 has a direct bearing on the issues raised in these proceedings and non-disclosure of the same by the petitioner certainly amounts to suppression of material facts.
12. The most sagacious judgments of our Courts define “fraud” as an act of deliberate deception with the design of securing something by

taking unfair advantage of another. It is a sort of cheating intended to gain an advantage. Any litigant who approaches Court is bound to produce all the documents relevant, material and germane to the litigation. Non-production or non-mentioning or withholding a vital document in order to gain an advantage on the other side tantamounts to playing fraud on the Court as well as the opposite party [*S.P. Chengalvaraya Naidu vs. Jagannath & Ors* (1994) 1 SCC 1 (paras-1,5 & 6), *A.V. Papayya Sastry & Ors. vs. Govt. of A.P. & Ors.* (2007) 4 SCC 221 (paras 21-33), *K.D. Sharma vs. Steel Authority of India & Ors.* (2008) 12 SCC 481 (paras-26-28 & 34-52) and *Dalip Singh vs. State of Uttar Pradesh & Ors.* (2010) 2 SCC 114 (paras 1- 9)].

13. This fact of suppression assumes more significance in a writ proceeding which has been instituted under Article 226 of the Constitution. The very basis of 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. The jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. It is well settled that a prerogative remedy is not a matter of course and it is thus of utmost importance that a petitioner approaching the Writ Court must come with clean hands and put forward all the material facts without concealment or suppression. If there is no frank and candid disclosure of the relevant and material facts or that the petitioner is guilty of misleading the Court and the

petition is liable to be dismissed. In fact, the Courts have gone to the extent of saying that in such circumstances, a Court may refuse to enter into the merits of the case. A party whose hands are soiled cannot hold the writ of the Court. In such situations, the aid of the Court is denied in order to maintain respect for the law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination (Miscellany-at-Law by R.E. Megarry, 2nd Indian Reprint 2004 at page-144). The rule has evolved in public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. In the facts and circumstances aforesaid and in the light of the prayers in the petition, I am of the view that the petitioners are guilty of misleading the Court and have deliberately, intentionally and mischievously suppressed the order dated 28 January, 2011 passed in Misc. Case No.26/2009.

14. The main thrust of the petitioners case rests on an order which the petitioners allege is dated 30 December, 2016. It is alleged by the petitioners that the order dated 30 December, 2016 ("the purported order") was passed by the respondent no.5. It records that there is no existence of a 'khatal' at the premises and that the premises does not come within the purview of the Act. It is alleged by the petitioners that the petitioners were handed over a copy of this order and had come to learn that the premises was not within the purview of the Thika Controller. I find that the purported order relied on by the petitioners is undated and unsigned. Moreover, the purported order is in direct

conflict and contradiction with the earlier order dated 28 January, 2011. The pleading of the petitioners is that they were handed over a copy of this order on 9 January, 2017. It does not appear whether the petitioner company was a party to the proceeding in which the purported order appears to have been passed. There are no other details provided in the petition or the affidavit-in-reply. In paragraph 10 of the affidavit-in-reply, the petitioners allege that the purported order came to be passed in matters which appears to have engaged the attention of the respondent no.5. There are no particulars whatsoever as to how and in which proceeding the purported order came to be passed. The efforts which the petitioners have undertaken to obtain the purported order are also suspicious. It is alleged in the petition that the petitioners had filed an application under the Right to Information Act before the State Public Information Officer in the office of the respondent no.5 and have also annexed a copy of the Register alongwith the signature of the representative of the petitioner company to add credence to the authenticity of the entire exercise undertaken by them. There is no mention in the purported order of the proceedings being Misc. Case No.26/2009 nor of the order dated 28 January, 2011. The purported order proceeds as if Misc. Case No.26/2009 and the order dated 28 January, 2011 never existed. I find substance in the contention of the respondent no.5 that there are serious issues regarding the veracity and the authenticity of the purported order. In view of the aforesaid, I am unable to grant any

relief to the petitioners on the basis of the purported order. I am also of the view that the petitioners have been unable to satisfy this Court as to the genuineness and veracity of the purported order. Significantly, neither of the respondents have accepted the existence of the purported order far less its binding force. In fact, even the respondent no.5 in its affidavit-in-opposition does not admit to the purported order being passed.

15. In response to the queries of the petitioners and the KMC, the respondent no.5 had by letters dated 27 February, 2018 and 10 January, 2018 replied that the original case records of the premises were not presently available with the office of the respondent no.5. It is a matter of some concern that this plea of the records not being available or cannot be traced is often cited in matters which come to Court. Section 114 (e) of the Evidence Act, 1872 provides that a Court may presume that *official acts* have been *regularly performed*. This is a rebuttable presumption. In the facts of the instant case, this plea inspires more than a lurking doubt in my mind. In fact, it becomes clear that in the absence of official records there is something wholly irregular and unofficial in what is being relied on by the petitioners. Importantly, who does the purported order benefit? Indisputably, only the petitioners. Relying on the purported order, the petitioners are able to circumvent the order dated 28 January, 2011 and also by pass the proceedings being Misc. Case No.26/2009. The title of the premises insofar as the petitioners are concerned becomes good, valid

and perfect. The vesting order in favour of the State is also given a go-bye. In any event, the burden of proving that the purported order exists and is valid and binding is squarely on the petitioners. I am of the view that the petitioners have failed to overcome this hurdle. Moreover, in view of the fact that the respondent no.5 in its affidavit does not admit to the existence of the purported order, I am unable to place any reliance on the same.

16. The other contentions of the petitioners are also liable to be rejected.

I find no merit in the contention that on the facts of this case the KMC were statutorily obliged to automatically mutate the premises in the name of the petitioner company. On the contrary, I am of the view that in the light of the order dated 28 January, 2011 the KMC was fully justified in seeking a clarification from the respondent no.5 before taking any steps to mutate the premises in favour of the petitioner company. I also reject the challenge made by the petitioners to the order dated 28 January, 2011. Admittedly, the petitioners chose not to avail of the statutory remedy available to them under Section 12 of the Act. I find no force in the submission that the order dated 28 January, 2011 is void or *non est* in the eye of law. I also find no jurisdictional error committed by the respondent no.5 in passing the order dated 28 January, 2011. I am also of the view that not having challenged the order dated 28 January, 2011 in the petition, the petitioners ought not to be heard on the basis of a new case pleaded in the affidavit-in-reply and not in the petition. In any event, I find

that any challenge to the order dated 28 January, 2011 is *ex facie* barred by limitation. I also find the authorities cited by the petitioners to be distinguishable and inapposite to the facts of this case. Accordingly, I do not find a shred of merit in the case of the petitioners.

17. Courts of law are meant for imparting justice between the parties.

One who comes to court must come with clean hands. Unfortunately, there is a section of society whether property grabbers, tax evaders, bank dodgers or other unscrupulous litigants from all walks of life who have little respect for the law. Such persons find the process of law as a convenient tool to pursue their ill designs. They have little or practically no interest in the truth. They shamelessly resort to falsehood and unethical means for achieving their goals. They are neither interested in ecclesiastical or temporal acts (Chief Justice Edward Coke) nor are they interested in “satya (truth) or “ahimsa” (non-violence) [*Dalip Singh vs. State of Uttar Pradesh & Ors. (2010) 2 SCC 114*]. They only seek personal gain and self aggrandizement at any cost. Such is their quest for their private gain that they do not hesitate to resort to falsehood, misrepresentation, deceit, deception and suppression in Court proceedings. No litigant is entitled to obtain the aid of the law to protect him in carrying out a fraudulent act. Fraud, of course invalidates all. As was said by Lord Mansfield C.J. “Nothing is so silly as cunning”.

18. In *Sesa International Limited vs. Avani Projects and Infrastructure Limited & Others* (2017) 4 Cal.LT 524 a Division Bench of this Court had held as follows:

40. It is with considerable regret and diffidence that it needs to be observed that the filter that was traditionally in place before a matter reached the court may have been considerably eroded in value and diluted in its moral content. The judiciary is not a system of a judges alone; the object of the exercise in a court is not to obtain an unworthy order or defeat a worthy cause - the pursuit is of justice. Even disregarding the utopian concept of justice, the fairness in the approach or procedure or outcome cannot be compromised or seen to be compromised so that the institution does not lose its relevance or pride of place in a constitutional democracy governed by the rule of law. Even though justice cannot be pursued in the adversarial system by ensuring the removal of injustice, the shared responsibility to prevent unjust causes being espoused in court cannot be shrugged off at the Bar. The judiciary cannot stand, far less remain upright, if either pillar of the Bench or the Bar falters.

42. There comes a time when a system must assert itself, if only to survive against the vicious onslaught of such unscrupulous litigants and their advisors as the present plaintiff. If dockets are not to be clogged with unworthy claims and false defences, litigants who carry vexatious causes must be appropriately dealt with in the award of costs.

19. In any event, it results in destruction of the Rule of Law if punishment is not actually meted out where punishment is due. The conduct of the petitioners is abhorrent, detestable and offensive. A message must be sent to such litigants and their advisors. As Bowen L.J. had observed “I have found in my experience that there is one panacea which heals every sore litigation, and that is costs” (*Cooper vs. Smith* (1884) 26 Ch.D 700 at 711, in a dissenting judgment). In view of the deliberate act of suppression and non-disclosure of the

order dated 28 January, 2011 and the fraud practiced on this Court costs are imposed at Rs.25 lacs (Twenty five lacs) to be paid by the petitioners to the West Bengal State Legal Services Authority, Kolkata within a month from the date of passing this order to be utilized for juvenile justice victims only. In default of payment within a month, the aforesaid amount of Rs.25 lacs would carry interest at 6% per annum till the date of payment.

20. Let a copy of this order be also served on the Registrar General, High Court, Calcutta who is forthwith directed to initiate appropriate proceedings under Section 340 of the Code of Criminal Procedure, 1973 against the petitioners insofar as the purported order being Annexure P2 to the petition (at page 44 of the petition) is concerned.
21. Let a copy of this order be also served by the State respondents on the Member Secretary, State Legal Services Authority, Kolkata to ensure compliance with the aforesaid directions of costs.
22. With the aforesaid directions, WPO 579 of 2018 stands dismissed.
23. Urgent certified Photostat copies of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)