

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**908 REVIEW APPLICATION (CIVIL) NO.64 OF 2021  
IN WP/2028/2020 WITH CA/9063/2021 IN RA/64/2021**

NARENDRA CHUDAMAN BENDALE DIED THR ITS LRS SEEMA  
NARENDRA BENDALE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...  
Advocate for Applicants : Mr. V.D. Salunke  
AGP for Respondent Nos.1 & 2 : Mr. P.S. Patil  
Advocate for Respondent Nos.3 & 4 : Mr. A.D. Shinde  
Advocate for Respondent Nos.5 to 7 : Mr. V.D. Hon, Senior Counsel h/f  
Mr. A.V. Hon  
...

**CORAM : RAVINDRA V. GHUGE &  
S.G. MEHARE, J.J.**

**DATED : 01<sup>st</sup> OCTOBER, 2021**

**PER COURT:-**

1. The order sought to be reviewed was passed by us on  
03.08.2021 in the writ petition, which reads as under:

“1. We have heard the learned counsel for the respective  
sides.

2. The only grievance raised by the petitioners is that though  
they have paid the entire amount towards the auction sale  
and which has been finalized about 24 months ago, the  
petitioners - auction purchasers have not received the sale  
certificate.

3. The learned AGP relies upon the affidavit-in-reply filed by  
respondent Nos.1 and 2. He points out that the learned Single  
Judge of this Court has passed an order on 18.04.2019 in  
Writ Petition No.4756 of 2019 filed by Narendra Chudaman  
Bendale Vs. The State of Maharashtra and others, wherein,  
this Court has ordered as under :

*"The process of auction though shall proceed further in accordance with law, the final sale certificate shall be subject to outcome of the present writ petition."*

4. In view of the above and as the petitioners are willing to proceed on the basis of the sale certificate keeping in view the condition imposed by the learned Single Judge reproduced above, this petition is partly allowed. Respondent No.2 is directed to issue the sale certificate to the petitioners pursuant to the auction dated 06.05.2019, on or before 31.08.2021, which shall be subject to the result in Writ Petition No.4756 of 2019. “

2. The review application is filed by those persons who had preferred Writ Petition No.4756 of 2019 before the learned Single Judge. Their grievance is that on the one hand, they were not arrayed as respondents in the writ petition by the petitioner and on the other hand, it was suppressed that after the auction sale, proceedings under Rule 107 of the The Maharashtra Co-operative Societies Rules, 1961, had started.

3. After briefly hearing the learned counsel for the respective sides on 02.09.2021, we were convinced that notice was required to be issued to the original petitioners and, therefore, we passed the following order:

“1. We have heard the learned Advocate for the review applicants on 01/09/2021 and today, along with the learned AGP representing respondent Nos. 1 and 2 and Mr. Shinde, the learned Advocate representing respondent No.4/Society. Affidavit in reply is filed by respondent No.4.

2. The grievance of the review applicants is that the order

passed by us on 03/08/2021 in WP No.2028/2020, has been obtained by suppressing the identity of the review applicants, who are petitioners in WP No.4756/2019 in which the learned Single Judge has passed an order dated 18/04/2019, which reads as under :-

*"ii. The process of auction though shall proceed further in accordance with law, the final sale certificate shall be subject to outcome of the present writ petition."*

3. The contention of the review applicants is that when the learned Single Judge had permitted the auction process to proceed in accordance with Law and the final sale certificate would be subject to the outcome of the pending writ petition before the learned Single Judge, the petitioners in the petition before this Court should have approached the learned Single Judge for seeking further directions as their grievance was that the District Deputy Registrar, Co-operative Societies, was not issuing the sale certificate. Nevertheless, if they approached this Court in the Writ Petition, they should have arrayed the petitioners before the learned Single Judge in the petition before this Court as respondents.

4. We find from the pleadings of the petitioners before us that they have mentioned in paragraph Nos. 6 and 7 that the learned Single Judge had passed the above reproduced order in WP No.4756/2019 and the LR's of the Chief Executive Officer involved in the service dispute, had preferred the said petition. However, these parties were not arrayed as respondents in the writ petition.

5. On 03/08/2021, the learned Advocate for the petitioners before us pointed out that the final sale certificate is permitted to be issued by the learned Single Judge and yet the District Deputy Registrar is not issuing the said certificate. We referred to the operative part of the order of the learned Single Judge and directed issuance of said sale certificate since it was subject to the result of the petition.

6. The grievance of the review petitioners is that as they were

not arrayed as respondents in the writ petition before this Court, intentionally and deliberately, that they were unable to point out to this Court that the proceedings as to whether the sale certificate should be formalized, was pending before the same District Deputy Registrar. As this fact was not brought to the notice of the Court by the petitioners, by playing mischief, this Court issued an innocuous order directing the District Deputy Registrar to issue the final sale certificate on or before 31/08/2021. Due to this order, the District Deputy Registrar wrapped up the proceeding on 18/08/2021 by closing the matter for orders and though he was informed that this review petition is circulated and the time granted to him by this Court was upto 31/08/2021, yet the District Deputy Registrar delivered an order and issued the final sale certificate on 24/08/2021.

7. We are aware that the review petitioners will now have to challenge the order of the District Deputy Registrar dated 24/08/2021. The Law is that if an order is obtained from the Court, either by fraud or by playing mischief, it is for this Court to consider the review petition. It is a altogether different aspect as to what could have been the order that we would have passed, had the review petitioners been arrayed as respondents, after hearing them in the writ petition. However, the fact remains that an opportunity of hearing, which was legally available to them, has been taken away on account of the mischief, prima facie, committed by the petitioners.

8. In view of the above, issue notice to the respondents in this writ petition, returnable on 01/10/2021. The learned AGP waives service of notice on behalf of respondent Nos. 1 and 2. Mr.Shinde, the learned Advocate waives service of notice on respondent Nos. 3 and 4.

9. Until further orders, the order dated 24/08/2021 passed by the District Deputy Registrar and the sale certificate of the even date, shall be kept in abeyance and none of the parties would act in pursuance thereof and will not create third party interest or encumbrance on the property at issue. This order

is restricted only to the controversy emerging from this writ petition.”

4. We have extensively heard the learned senior advocate along with Shri A.V. Hon on behalf of the original petitioners, the learned advocate for the review applicants, the learned AGP on behalf of the statutory authorities and the learned advocate representing respondent nos.3 and 4.

5. There is no dispute that the auction sale was subject to the proceedings under Rule 107 which commenced in May-2019. The proceedings were pending before the DDR, who was respondent no.2 in the writ petition. On various dates, the hearings in the said proceedings were conducted. The writ petition was filed by auction purchasers on 27.01.2020 through learned advocate Shri Hemantkumar F. Pawar.

6. With the assistance of the learned senior advocate and the instructing advocate, we have once again gone through the writ petition memo and we do not find any statement made by the auction purchasers that such proceedings were initiated pursuant to the auction sale and that the said proceedings were pending. It is also an admitted position that the original property owners, were not arrayed as respondents in the writ petition before us.

7. With the assistance of the learned AGP, we have perused the affidavit in reply filed by Sanjay Fakhirrao Gaikwad, Assistant

Registrar, Co-operative Societies, Taluka Raver, District Jalgaon dated 30.07.2020. Even in the said affidavit in reply, no statement is made on behalf of the District Deputy Registrar that the proceedings under Rule 107 were being conducted and were pending. In fact, in the said affidavit, the DDR has reproduced the operative part of the order dated 01.04.2019 passed by the learned Single Judge and did not inform the Court that a proceeding with regard to the attachment and sale of the property was in progress.

8. Considering the serious grievance raised by the review applicants and upon perusing the pleadings of the auction purchasers in the petition papers and the affidavit in reply filed on behalf of the DDR, we find that the following factors are glaring :

- (a) The petitioners have suppressed the proceeding under Rule 107.
- (b) The DDR did not state in the affidavit in reply that he is dealing with the aspect of issuance of an auction sale certificate and after the completion of proceedings, he would be passing an order in accordance with law.
- (c) The auction purchasers did not array the original property owners, who were petitioners before the learned Single Judge in Writ Petition No.4756 of 2019, in the petition before us.

9. Considering the allegations made against the auction purchasers, who are petitioners before us, we had issued notice. The learned advocate Shri Hemantkumar F. Pawar has kept himself away

from the review proceeding and the said auction purchasers have engaged a new advocate Shri A.V. Hon, who is being represented by the learned senior advocate.

10. It is apparent to us that material facts were suppressed from us, in as much as the original property owner, who were petitioners before the learned Single Judge in Writ Petition No.4756 of 2019, were conveniently kept away from the proceedings before us. What was projected before us, when we passed the order sought to be reviewed was, that the learned Single Judge has given a green signal to issue the final sale certificate which would be subject to the result of the writ petition. We were not informed about the proceedings that have been initiated before the DDR under Rule 107 which were pending. In those proceedings, the DDR could have concluded in law whether the final sale certificate should be issued or not. As this was suppressed from us, we were made to believe that because of the pendency of the petition before the learned Single Judge, that the DDR is not issuing the final sale certificate. It is in this backdrop that we reproduced the order of the learned Single Judge in paragraph no.3 of our order dated 03.08.2021 and then issued directions in paragraph no.4 which has been reproduced herein-above.

11. The above conduct of the auction purchasers is further aggravated by filing an affidavit defending their action. The conduct of the DDR also cannot be countenanced who has suppressed from us the proceedings which he was conducting and in which he could have

decided that the final auction sale certificate should be issued or not. In fact, after we passed the order on 03.08.2021, he has passed an order on 24.08.2021 and hastily concluded the proceedings before him under the pretext that the High Court has directed him to issue the final sale certificate and accordingly issued the said certificate to the auction purchasers. As such, the conduct of the auction purchasers and the DDR are squarely covered by the law laid down by the Hon'ble Apex Court in ***Kishore Samrite Vs. State of Uttar Pradesh and Ors, (2013), 2 SCC 398*** and in the matter of ***Bhaskar Laxman Jadhav Vs. Karamveer Kakasaheb Wagh Education Society and Ors, (2013), 11 SCC 531***.

12. In Kishore Samrite (supra), the Hon'ble Apex Court has observed as under:

“Abuse of the process of Court :

31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.
32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state

some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

- 32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.
- 32.2 The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.
- 32.3 The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.
- 32.4 Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.
- 32.5 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.
- 32.6 The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.
- 32.7 Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.
- 32.8 The Court, especially the Supreme Court, has to maintain

strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis welljustifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:

“15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic ‘humanright’ of a system which purports to guarantee legal rights.”

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.”

34. It has been consistently stated by this Court that the entire

journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.
36. The party not approaching the Court with clean hands would be liable to be nonsuited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of

the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]).

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.
- 38 No litigant can play ‘hide and seek’ with the courts or adopt ‘pick and choose’. True facts ought to be disclosed as the Court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12

SCC 481].

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).
40. In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court.”

13. In view of the above, we recall our order dated 03.08.2021. We, therefore, restore Writ Petition No.2028 of 2020.

14. The final sale certificate is issued pursuant to our order dated 03.08.2021, which now we have recalled, under order dated 24.08.2021 passed by the District Deputy Registrar and the sale certificate of the same date, shall not be operable and shall not be acted upon until the decision in the writ petition. In short, all actions pursuant to the order of the DDR dated 24.08.2021, shall be kept in abeyance until the decision in the writ petition.

15. The learned senior advocate submits, on instructions, that the review applicants would be arrayed as respondents. The addition is permitted and to be carried out forthwith.

**(S.G. MEHARE. J.)**

**(RAVINDRA V. GHUGE, J.)**

*Mujaheed//*