2021 INSC 842

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 7550-7553 of 2021
(Arising out of S.L.P.(C)No(s).26374-26377 of 2013)

SHRI K. JAYARAM & ORS. …APPELLANT(S)

VERSUS

BANGALORE DEVELOPMENT AUTHORITY & ORS. …RESPONDENT(S)

J U D G M E N T

S. ABDUL NAZEER, J.

1. Leave granted.

2. These appeals arise out of the judgment and order dated 11.01.2013 passed by the Division Bench of the High Court of Karnataka in Review Petition Nos.147/2012 and 1361/2012 which were filed by the appellants before the High Court pursuant to the liberty granted by this Court vide Order dated 27.02.2012

while allowing the appellants to withdraw their Special Leave Petition (C) Nos.6125-6126 of 2012. However, the High Court declined to review its earlier order dated 06.07.2011 passed in the Writ Appeal Nos.2592-93 of 2009.

3. Brief facts necessary for the disposal of these appeals are as under:

4. The appellants herein are the sons of one M. Krishna Reddy. They filed Writ Petition No.26920 of 2005 before the High Court of Karnataka at Bangalore for cancellation of allotment of Site Nos.1337 and 1336 allotted in favour of respondent nos.5 and 6 respectively in the layout known as Binnamangala 2nd Stage and for certain other reliefs. According to the appellants their father M. Krishna Reddy was the owner and in possession of land bearing Survey No.13, measuring 1 acre 26 guntas of Binnamangala Village, Kasaba Hobli, North Taluk, Bangalore District, having acquired the same by virtue of an order passed by the Deputy Commissioner for Abolition of Inams in proceedings bearing C.No.11/59-60 under Section 5 of the Mysore (Personal & Miscellaneous) Inam Abolition Act, 1954. It was further contented that the entries in the Index of Lands and Record of Rights were registered in the name of M. Krishna Reddy and he was paying land revenue to the State Government. The said land was notified for acquisition by the Bangalore Development Authority (for short 'BDA') for the formation of layout between Old Madras Road and Banaswadi Road (Binnamangala Layout). A

preliminary Notification came to be published in Mysore Gazette dated 21.07.1960 followed by a final Notification published in the said Gazette on 23.02.1967.

5. It was further contended that M. Krishna Reddy filed an application for enhancement of compensation pursuant to which Additional Land Acquisition Officer (Addl. LAO) referred the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894. The Civil Court, after conducting an inquiry, accepted the Reference in part and increased the award amount payable in respect of 1 acre 18 guntas in Survey Nos.13/2 & 13/4. M. Krishna Reddy was in possession of 1 acre 26 guntas of land in these two survey numbers. 8 guntas of land was left out from the acquisition. In the suit for partition filed by the third appellant, a portion of Survey No.13/2 measuring 8 guntas of land which was left out from acquisition, was divided amongst appellants by forming four sites and final decree for partition came to be passed on 30.07.1982. It was further contended that they were not aware of the formation of the sites in this 8 guntas of the land by the BDA and the allotment of said sites in favour of respondent Nos.5 & 6. Therefore, they filed the aforesaid writ petitions for cancellation of allotment of the said sites.

6. BDA filed statement of objections contending that Survey No.13 measuring 5 acres 9 guntas and certain other lands were acquired by the BDA in the year 1971 and thereafter sites were formed and allotted to the general public. Admittedly, the appellants received the award amount on 30.11.1971. After lapse of 34 years from

the completion of acquisition proceedings and receiving of award amount, the appellants have filed writ petitions before the High Court on false and frivolous grounds. It was further contended that Sy. No.13 of Binnamangala Village measuring 5 acres 9 guntas and certain other lands were acquired for public purpose for the formation of layout called 'Banaswadi Layout'. The notified Khatedars in respect of Survey No.13 were Channappa Reddy, Ramakrishna Reddy, N. Papaiah Reddy and M. Krishna Reddy. None of them have questioned the legality of the acquisition proceedings. The appellants have filed a suit i.e. O.S. No.3936/1999 for the permanent injunction against the BDA by contending that 8 guntas of land has not been acquired by the BDA. The Trial Court by its judgment dated 29.01.2003 dismissed the suit. Aggrieved by the same, the second appellant filed an appeal bearing RFA No.516/2003 which was dismissed by the High Court on 01.07.2003. The appellants have not disclosed the dismissal of the suit and the appeal in the writ petition.

7. Learned Single Judge, after considering the matter in detail, dismissed the writ petition on 01.04.2009. As noticed above, the Writ Appeal Nos.2592-2593/2009, challenging the order of the learned Single Judge, were dismissed by the Division Bench of the High Court and the review petitions were also dismissed by the High Court subsequently.

8. Prof. Ravivarma Kumar, learned senior counsel appearing for the appellants, would contend that Survey Nos.13/2 and 13/4 comprise of 1 acre 26 guntas of land out of which the State Government has acquired only 1 acre 18 guntas of land for the formation of the layout. Remaining 8 guntas of land has not been vested with the BDA, as it was not acquired. Since the remaining 8 guntas of land has not been acquired, the appellants have partitioned the said property amongst themselves and each of them is in possession of a site formed in this 8 guntas of land. It was argued that when the said 8 guntas of land itself has not been acquired, question of formation of the sites by the BDA in this land and its allotment to respondent nos.5 and 6 is illegal.

9. On the other hand, Mr. S.K. Kulkarni, learned counsel appearing for the respondent-BDA, has supported the impugned judgment and order of the High Court. It was argued that Survey No.13 comprised of lands totally measuring 5 acres 9 guntas and out of which 12 guntas was *kharab*-B land. This is evident from the final Notification published in the Mysore Gazette dated 23.02.1967. Out of the said 5 acres 9 guntas of land, the appellants' father was granted occupancy right of 1 acre 26 guntas. A common Award was passed in respect of the land belonging to Krishna Reddy and his brother. Compensation was awarded in

respect of 1 acre 18 guntas which is revenue paying land i.e. non-*kharab* land. Compensation cannot be granted in respect of *kharab-B* land, if acquired. *Kharab* land forms part and parcel of the acquired revenue yielding land and entire extent of 1 acre 26 guntas of land including *kharab* land was acquired. Therefore, the appellants have no right, title and interest whatsoever in respect of the so-called left out land. It is further contented that the appellants had filed O.S. No.3936 of 1999 before the Civil Court against the BDA for permanent injunction. In the said Suit, the very question involved in the writ petition was raised. The said Suit was dismissed by the Civil Court and the said judgment was confirmed in the appeal by the High Court. The appellants have not disclosed the dismissal of the aforesaid Suit and the appeal in the writ petition. Therefore, the High Court has rightly dismissed the appeal even on the question of suppression of material facts. He prays for dismissal of the appeal.

10. We have carefully considered the submissions made at the Bar by the learned counsel for the parties and perused the materials placed on record.

11. The documents produced by the BDA would clearly disclose that the entire extent of 5 acres 9 guntas of land including 12 guntas of *kharab*-B land was notified for acquisition. M. Krishna Reddy, the father of the appellants, claimed to be the owner of 1 acre 26 guntas of lands in the said survey number and it was further contended that 1 acre and 18 guntas have been acquired and 8 guntas was

left out from the acquisition. It was further contended that BDA had formed the sites in the said 8 guntas of land left out from acquisition and allotted them to respondent nos.5 & 6. Admittedly, the appellants had filed O.S. No.3936/1999 before the Additional City Civil Court against the BDA seeking permanent injunction while pleading identical facts and urging similar grounds. The said suit was dismissed by the trial court. The appeal filed against the said judgment of the trial court was also dismissed by the High Court. The appellants have not disclosed the filing of the suit, its dismissal by the Civil Court and the confirmation of the said judgment by the High Court in the writ petition. It is clear that the appellants have suppressed these material facts which are relevant for deciding the question involved in the writ petitions. Thus, the appellants have not come to the court with clean hands.

12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India 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 facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

13. This Court in **Prestige Lights Ltd. V. State Bank of India**[1] has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

> **"33.** It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

14. In **Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others**[2], this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also

1 (2007) 8 SCC 449
2 (2008) 1 SCC 560

should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

15. In **K.D. Sharma v. Steel Authority of India Limited and Others**[3]**,** it was held 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.
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> **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 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514)
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> > "… 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

3 (2008)12 SCC 481

fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

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.(supra)*, 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." (emphasis supplied)

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.(supra)* 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."

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief.

18. Apart from the above, we have also examined the case on merits. As noticed above, Survey No.13 measures 5 acres 9 guntas, out of which 12 guntas were *kharab*-B land. Notification in respect of the entire 5 acres 9 guntas had been

issued and possession of the land had been been taken long back. The contention of the appellants is that their father, M. Krishna Reddy, was the owner of 1 acre 26 guntas of land in Survey Nos.13/2 and 13/4. According to them, 08 guntas of land has not been acquired and compensation has not been paid in respect of this land. Records produced by the BDA would disclose that 08 guntas of land is k*harab-B* land. Therefore, there is no question of payment of compensation in respect of this land, though, the same was included in the preliminary and final notification. The final notification was issued as early as in the year 1967. The appellants have claimed enhanced compensation also for 1 acre 18 guntas of land and they have raised this issue at a highly belated stage after lapse of about 34 years.

19. Identical contentions have been raised by the appellants in the aforesaid suit. The said suit was dismissed and the judgment of the civil court was confirmed by the High Court in RFA NO.516/2003 on 01.07.2003, by observing as under:

> "….. Accordingly in the instant case, the trial Court adjudicated upon issue No.3 as a preliminary issue which related to the maintainability of the suit and on the basis of the facts which could not be reasonably disputed and in respect of which there is presumption of correctness, it has found that the acquisition proceedings in respect of the entire extent of land in Sy.No.13 having become final and conclusive, the suit of the plaintiffs was impliedly barred under Section 9 of CPC and hence not maintainable. I find no perversity in the view taken by the trial court. It is no doubt true that a contention was sought to be advanced on behalf of the appellant that only an extent of 1 acre 18 guntas of land in Sy. Nos.13/2 and 13/4 had been acquired by the BDA and the remaining extent of 8 guntas of land is continued to be in possession of the plaintiff. But the materials placed on record clearly indicated that the entire extent of land in Sy. No.13 had been

> acquired by the BDA for public purposes and the compensation had been paid thereon. It is not in dispute that the plaintiff's father Shri Krishna Reddy had participated in the acquisition proceedings before the respondent/BDA and he was one of the notified khatedars. Under the circumstances, therefore, when the entire extent of land has been acquired, it is rather difficult to accept the claim of the appellant/plaintiff. Hence, I find no merit in this appeal filed by the appellant."

20. This finding of the High Court has attained finality and the writ court cannot sit in an appeal over the judgment passed by the High Court in the appeal. The conclusions reached by the court in the appeal are binding on the appellants.

21. In view of above, we do not find any merit in these appeals and the same are accordingly dismissed. Pending applications, if any, shall stand disposed of. There shall be no order as to costs.

….……J.
(S. ABDUL NAZEER)

….……J.
(KRISHNA MURARI)

New Delhi;
December 08, 2021