
(1999) 04 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 329 of 1999

Balwinder Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Panchayat Samities and Zila Parishads (Sale, Lease and other Alienation of Property and Public Places) Rules, 1964 — Rule 3, 8

Citation : (2000) 124 PLR 352 : (1999) 3 RCR(Civil) 122

Hon'ble Judges : G.S. Singhvi, J; Amar Dutt, J

Bench : Division Bench

Advocate : K.S. Dadwal, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether the auction of shops in question in which the petitioners are carrying business is vitiated due to violation of the provisions of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter referred to as the 1961 Act) and the Punjab Panchayat Samitis and Zila Parishads (Sale, Lease and other alienation of Property and Public Places) Rules, 1964 (hereinafter referred to as the 1964 Rules) is the issue which requires adjudication in these petitions.

2. There is no dispute between the parties that the petitioners have been carrying on commercial activities in the shops belonging to Zila Parishad which were leased out to them between 1968-69 and 1988. They have challenged the auction notice issued by the Chief Executive Officer, Zila Parishad, Hoshiarpur on the ground that the proposed auction is violative of the provisions of the 1961 Act and 1964 Rules and also on the ground that it would deprive them of their fundamental rights to livelihood guaranteed under Article 21 of the Constitution of India. They have pleaded that in terms of Rule 3 read with Rule 8 of the 1964 Rules, the respondent - Zila Parishad is legally bound to renew their leases

because they have always shown their readiness and willingness to pay the enhanced lease money.

3. In the written statement filed on behalf of the respondent Nos. 2 and 3 it has been averred that 26 shops situated on Railway Road and 12 shops situated at Adda Mahilpur, Hoshiarpur were let out to different persons from time to time. In January and March, 1982 the shops were given to the petitioners on lease for a period of 11 months. After about three years, the same shops were given to them for a period of 11 months on negotiated licence fee and since then they are continuing as licensees. The respondents have contested the plea of the petitioners that the proposed auction is violative of the fundamental right to life guaranteed to them under Article 21 of the Constitution or that the impugned auction of the Zila Parishad is contrary to the provisions of the 1961 Act and the 1964 Rules. They have further averred that the decision to auction the shops in question has been taken to augment the revenue of the Zila Parishad to meet its legal obligation qua the employees and the public at large.

4. Shri K.S. Dadwal, argued that by virtue of the second proviso to Rule 3(1) of the 1964 Rules, the petitioners are entitled to retain the leases of the shops as of right because they have always been ready and willing to pay the enhanced amount. He submitted that for the last more than one decade they have been paying the enhanced lease amount to the Zila Parishad and, therefore, there is no reason to think that the petitioners will not fulfil their obligation in future. Shri Dadwal urged for invalidation of the auction notice on the ground that it is ultra vires to the 1964 Rules and violative of the fundamental right of the petitioners to earn their livelihood. Shri B.R. Mahajan, learned counsel for the respondents challenged the maintainability of the writ petitions by arguing that the petitioners are guilty of highly contumacious conduct of misleading the Court. He invited our attention to the averments made in the written statement and the annexed documents to show that the petitioners have succeeded in persuading the Court to grant interim relief to them by showing that they are lessees although as a matter of fact they were merely licensees. He then argued that the petitioners cannot avail the benefit of second proviso appearing below Rule 3(1) of the 1964 Rules because they took the shops on licences after the insertion of that proviso and as on the date of publication of the auction notice they were carrying on business as licensees. Shri Mahajan stoutly defended the auction of the shops by arguing that the impugned decision of Zila Parishad is not only consistent with the provisions of the 1961 Act and the 1964 Rules but is also in the interest of Zila Parishad. He pointed out that Shop Nos. 3, 7, 8 and 16 for which bids were given on 18th January, 1999 have been auctioned at monthly lease money of Rs. 1505/-, Rs. 1180/-, Rs. 1190/- and Rs. 1520/- respectively though the same shops were earlier given on licence at monthly fee of Rs. 367/-, Rs. 408/-, Rs. 439/- and Rs. 455/- respectively.

5. During the course of hearing, we had asked Shri K.S. Dadwal to clarify as to how, in the fact, after having executed separate agreements of licence, the

petitioners could claim that they are lessees. In reply, Shri Dadwal stated that the petitioners had not given copies of the licence agreement to him at the time of preparation of the petitions and, therefore, the same could not be produced along with the writ petitions.

6. After having given serious thought to the respective submissions, we are convinced that the petitioners deserve to be non-suited on account of their contumacious conduct of misleading the Court. A cursory reading of the contents of the petitions shows that the petitioners have made emphatic assertion about their status as lessees of the shops of Zila Parishad and on that premise they have claimed benefit of second proviso to Rule 3 of the 1964 Rules. At the stage of motion hearing, the Court had no option but to rely on the statement contained in the writ petitions i.e. precisely what we had done for the purpose of issuing notice of motion to the respondents. Along with the written statement filed in Civil Writ Petition No. 329 of 1999, the respondents have produced Annexures R1 and R2, perusal of which shows that the shops were initially given to the petitioners on lease but since 1995 they are carrying on business in those shops on the basis of separate agreements of licence executed in favour of the Zila Parishad. Annexures R1 and R2 are the copies of the lease deeds and licence deeds executed by one of the petitioners, namely, Shri Karam Chand. Similar deeds have been executed by the other petitioners.

7. It is, therefore, clear that with the intention of misleading the Court the petitioners not only made patently incorrect statement in the writ petitions but also withheld the most important documents from the Court. Thus, they will be presumed to have done with a view to make the Court in believing that the action of the Zila Parishad to auction the shops is actuated with male fide intention to oust them from business. They partly succeeded in achieving their goal when the Court issued notice of motion to the respondents and then granted stay on the confirmation of auction. If respondent Nos. 2 and 3 had not appeared in pursuance of the Court notices and they had not filed return along with the relevant documents, the Court would have accepted the plea set up by the petitioners that they are being thrown out of business with an oblique motive, although they are entitled to retain the same as lessees in view of second provision to Rule 3(1) of the 1964 Rules. However, as it has been proved that the petitioners were merely licensees on the date of institution of the petitions, we have no hesitation in recording a firm conclusion that the petitioners are guilty of not coming to the Court with clean hands and as such they are not entitled to be heard on the merit of the case.

8. It is a settled proposition of law that the person who invokes writ jurisdiction of the High Court, which is essentially an equitable jurisdiction, must come with clean hands and any attempt to mislead the Court must be dealt with firmly by the Court and such person should be denied hearing on merits of the case. This rule has been evolved by the Courts in order to protect themselves against unscrupulous litigants who try to pollute the system of administration of justice

by exhibiting contumacious conduct. In this respect, we may refer to the following judicial precedents :

Hari Narain Vs. Badri Das, ; Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, ; G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, ; S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ; The Ramjas Foundation and Others Vs. Union of India and Others, ; K.R. Srinivas Vs. R.M. Premchand and Others, ; Chint Ram Ram Chand and Others Vs. State of Punjab and Others, ; Smt. Bhupinder Kaur v. The Financial Commissioner, Revenue, Punjab and Ors. (1968)47 L.L.T. 44; Chiranji Lal and Ors. v. Financial Commissioner, Haryana and Ors. (1978)80 P.L.R. 582; Smt. Harbhajan Kaur v. State of Punjab 1994 P.L.J. 287; Pawan Kumar v. State of Haryana and Anr. 1994(5) S.L.R. 73; Jai Bhagwan Jain v. Haryana State Electricity Board, Panchkula, C.W.P. No. 15448 of 1993, decided on 21st September, 1994; Kaka Ram Pars Ram and Others Vs. State of Punjab and Others, , decided on 2nd March, 1998" M/s Arihant Sugar Rice Land, Safidon and Ors. v. State of Haryana and Ors. , C.W.P. No. 4381 of 1998, decided on 6th August, 1998; Kirpal Singh v. State of Haryana and Anr. C.W.P. No. 8602 of 1997 decided on 23rd September, 1998; Smt. Krishna Gupta v. State of Haryana and Ors., C.W.P. No. 18304 of 1998, decided on 1st December, 1998.

9. We may also refer to some important observations made by the Court on this issue. In Jai Bhagwan Jain v. Haryana State Electricity Board, Civil Writ Petition No. 15448 of 1993 decided on 21st September, 1994 a Division Bench Of this Court laid down the principle in the following words:

"It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it to the Court to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find out full facts of the case before filing the petition and he cannot be heard to say that he is not aware of the facts concerning him. The petitioner has to demonstrate his bona fides before seeking relief from the Court in exercise of its equitable jurisdiction. It is not for the petitioner to decide as to which of the facts are relevant and which are not relevant. The petitioner cannot become a Judge on the question of relevancy of facts. Non-disclosure of all the facts in a candid and straight forward manner will necessarily warrant dismissal of a petition....."

"We may further add that a petitioner will not be entitled to be heard on the merits of the case where he is found guilty of concealment of facts or of making mis-statement before the Court only on the ground that no stay order has been passed by the Court. It is to be remembered that the Court considers a petition with the assumption that the averments made in the petition are true and correct. In a given situation, the Court may finally decide a petition ex parte where the non-petitioner does not appear despite service of notice. If a party suppressed facts from the Court, such ex parte decision may be rendered on the basis of incorrect or incomplete facts. Therefore, it is no answer to the charge of

suppression of facts or mis-statement of facts before the Court to say that no interim relief has been given to the petitioner or that he has not derived any benefit. In our opinion, the very issuance of a notice a petition is a benefit derived by the petitioner, if subsequently it is found that the petitioner has misled the Court or persuaded it in issuing notice by concealment of true facts of the case there will be ample justification for dismissing the petition."

In *Rex. v. Kensington* 1917(1) K.B. 486, Cozens Hardy, MR. made the observations on the conduct of a party in an ex parte application in the following words:

"On an ex parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J. said :

"It has been for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any 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 factsThe applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that it finds out that the facts have been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement."

It is interesting to note that in *Kensington Commissioner's* case, the Court declined relief even though it had found that the Commissioner had no jurisdiction to make the assessment. This is clearly evident from the following observations:

"We refuse the writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

In *R. V. Churchwardens of All Saints Wigan* (1876) 1 A.C. 611, Lord Haterlay observed:

"Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it - matters connected with delay or possibly with the conduct of the parties."

In *Reg. v. Gerland*(1870)39 L.J.Q.B. 86, it was held:

"Where a process is ex debito justitiae the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

Hari Narain Vs. Badri Das, , is an interesting case in which Special Leave to Appeal granted by entertaining the objection of the respondents that the appellant had made mis-statement of facts. While accepting the prayer made by

the respondents for revocation of the leave, the Supreme Court observed:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of facts and grounds of facts contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the Supreme Court on the strength of what he characterises as misrepresentation of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In *Welcom Hotel and Others Vs. 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 any consideration at the hands of the Court.

In *Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others*, , a two Judge Bench of the Apex Court has held as under :

"Undoubtedly the order passed by the High Court under Article 226 was a judicial order exercising its constitutional powers but when its process is abused and obtained, an (sic) 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 and where there is such a conduct which is calculated to deceive the Court into granting the order of rule nisi, the petition should on that ground be dismissed."

In *Chiranji Lal and Ors. v. Financial Commissioner, Haryana and Ors.* (1978)80 P.L.R. 582 a Full Bench approved the observations made in *Bhupinder Kaur's* case (supra), and held that where there has been a mala fide and calculated suppression of material facts which, if disclosed, would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case, would have materially affected the merits on both the interim as well as ultimate relief claimed, the writ petition should not be entertained.

In *Harbhajan Kaur v. State of Punjab and Ors.* 1994 P.L.J. 287, the Division Bench held as under:

"The writ petitioners have tried to approach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Wakf Board since 1986 as is revealed from a perusal of the order passed in petition No. 363 of 1986 {*Sham Singh and Ors. v. Punjab Wakf Board*}. They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales)

and, on appeal, the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner; that the Punjab Wakf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings, Smt. Kuldeep Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land."

The Court further held that this conduct of the petitioners amounted to contempt of Court and, therefore, issued a notice of contempt of Court.

In Pawan Kumar v. State of Haryana and Anr.1994(5) S.L.R. 73, Anr. Division Bench held that a party who seeks relief from the High Court in exercise of its equitable jurisdiction under Article 226 of the Constitution, must come with all bona fides, must make true candid and full disclosure of all the relevant facts. Its conduct must be above board and there should not be any attempt by a party to mislead the Court.

10. The above quoted judicial precedents fully support our conclusion that the petitioners who have not come to the Court with clean hands, head and heart do not deserve any indulgence by the Court.

11. De hors our above stated conclusion, we are of the view that the submission of Shri K.S. Dadwal, that the petitioners are entitled to retain the shops as lessees is devoid of substance and the relief prayed for by the petitioners cannot be granted. Rules 3 and 8 of 1964 Rules on which reliance has been placed by the learned counsel read as under

"3. (a) A Panchayat Samiti or Zila Parishad may lease out any property or public place with the prior permission of the Deputy Commissioners;

(b) All leases shall be by auction after giving publicity as laid down in rule 5 and shall be for a period not exceeding five years:

Provided that the auction shall not be necessary for the grant of lease of property or public place, if,-

(i) such property or public place is proposed to be leased out to the Central Government, State Government, A Corporation or a Board owned or controlled by the Government or to a Mahila Mandal and in such case the amount of lease money shall be assessed by the Executive Engineer, Panchayati Raj working in the Department of Rural Development and Panchayats in accordance with the principles being followed by the Department of Public Works in assessing the rental value of the property;

(ii) the person to whom the property or public place is initially leased out by auction agrees, three months prior to the expiry of the lease period to enhance the lease money by ten percent of the amount of existing lease money per year.

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8. (1) If the person to whom the property or public place is leased out under the provisions of these rules neither delivers to the Panchayat Samiti or Zila Parishad, as the case may be, the vacant possession of the property or public place immediately after the expiry of the period of lease nor agree to enhance the lease money as provided in clause (ii) of the proviso to clause (b) of rule 3, within the period specified therein he shall, for the period he retains the property or public place in an unauthorised possession, be liable to pay to the Panchayat Samiti or Zila Parishad, as the case may be, an amount equivalent to twenty times the amount which would have been payable had the lease of such property or public place continued during that period.

The provisions contained in sub-rule (1) shall be deemed to be one of the terms of lease of property and public place granted by the Panchayat Samiti or Zila Parishad, after the commencement of the Punjab Panchayat Samitis and Zila Parishads (sale, lease and other alienation of property and public place) (First Amendment) Rules, 1984."

An analysis of the rules reproduced above shows that the benefit of renewal of lease can be availed only by a person who is holding a valid lease in his/her favour and not otherwise. The petitioners, as mentioned hereinabove, are occupying the shops as licensees and not as lessees. Therefore, they cannot invoke the provisions of Rule 3 for issuance of a mandamus directing the respondents to renew their leases.

12. We are also satisfied that the auction held by the Zila Parishad on 18th January, 1999 does not warrant interference by this Court. As state by Shri Mahajan, each of the four shops for which bids were given on 18th January, 1999 have fetched monthly rent three to four times more than what is being paid by the petitioners. Thus, there is no escape from the conclusion that the auction of the shops is in public interest as well as the interest of Zila Parishad.

13. For the reasons mentioned above, the writ petitions are dismissed. Each of the petitioners shall pay costs of Rs. 2,000/- for dragging respondent Nos. 2 and 3 in unnecessary litigation.