

(2024) 06 TEL CK 1557
In the Telangana High Court
Case No : Writ Petition No.15394 Of 2024

Dakuri Maheshwar Reddy

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 28-06-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120(B), 395
Arms Act, 1959 — Section 25(1B)(A)
Code of Criminal Procedure, 1973 — Section 372

Citation : (2024) 06 TEL CK 1557

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Advocate : Dammalapati Srinivas, Assistant Public Prosecutor

Final Decision : Disposed Of

Judgement

N.V.Shravan Kumar, J

1. This writ petition is filed seeking the following prayer:

"to declare the action of the 3rd respondent i.e., The Sub Registrar, Quthbullapur, Medchal-Malkajgiri District, in refusing to receive and register the Sale Deed in respect of all that the House bearing No.2-67/U-49 (PTIN No.1152402468), on Plot No.U-49, of Mahadevapuram Residential Project, Phase- III, admeasuring 200 Sq.Yards, having plinth area of 100 Sq.Feet of A.C.C in Sy Nos. 329/4 and 329/5, situated at Gajularamaram Village, Quthbullapur Mandal, Under GHMC Circle, Medchal-Malkajgiri District, on the ground that the survey number where the Petitioners property is situated i.e., Sy No.329 is notified under as prohibited property under section 22-A of Registration Act, 1 Ranga Reddy District Gazette Notification R.R No.83 communicated by Joint Collector, Ranga Reddy vide File No. E5/4730/2013/Quthbullapur/Nizampet dated 25.09.2013, 2 Deputy Collector and Tahasildar, Quthbullapur Mandal, File No. B/583/2012 dated 17.02.2012 and 3 Gazette Notification No.134 dated 10.03.2005 and G.O.Ms.No.292, Revenue (Registration.I), 9th March 2005 communicated by Commissioner and Inspector

General (R and S), Hyderabad vide File No.G1/4661/2005 Dt 02.07.2005 is illegal, arbitrary, in violation of Articles 14, 21 and 300-A of Constitution of India and also in violation of Registration Act, 1908, besides in violation of Principles of Natural Justice and consequently direct the 3rd respondent herein to receive and register the Sale Deed in respect of all that the House bearing No.2-67/U-49 (PTIN No.1152402468), on Plot No.U-49, of Mahadevapuram Residential Project, Phase-III, admeasuring 200 Sq.Yards, having plinth area of 100 Sq.Feet of A.C.C in Sy Nos. 329/4 and 329/5, situated at Gajularamaram Village, Quthbullapur Mandal, Under GHMC Circle, Medchal-Malkajgiri District, on the ground that the survey number where the Petitioners property is situated i.e., Sy No.329 is notified under as prohibited property under section 22A of Registration Act, 1 Ranga Reddy District Gazette Notification R.R No.83 communicated by Joint Collector, Ranga Reddy vide File No. E5/4730/2013/Quthbullapur/Nizampet dated 25.09.2013, 2 Deputy Collector and Tahasildar, Quthbullapur Mandal, File No. B/583/2012 dated 17.02.2012 and 3 Gazette Notification No.134 dated 10.03.2005 and G.O.Ms.No.292, Revenue (Registration.I), 9th March 2005 communicated by Commissioner and Inspector General (R and S), Hyderabad vide File No.G1/4661/2005 Dt 02.07.2005."

2. Petitioner is the buyer and his case is that his vendor had purchased the House bearing No.2-67/U-49, (PTIN No.1152402468), on Plot No.U-49, of Mahadevapuram Residential Project, Phase-III, admeasuring 200 Sq.Yards, having plinth area of 100 Sq.Feet of A.C.C in Sy Nos. 329/4 and 329/5, situated at Gajularamaram Village, Quthbullapur Mandal, Under GHMC Circle, Medchal-Malkajgiri District, through registered sale deed dated 23.11.2007. Thereafter, the petitioner's vendor executed an Agreement of Sale-cum-General Power of Attorney in favour of one Smt.S.Sunanda, the same was registered

vide AGPA dated 29.07.2008. The further case is that the parties with an intention to sell the subject property to the petitioner executed the sale deed and approached the registering authority with the subject document. However, the registering authority orally refused to register the subject document. Aggrieved by the same present writ petition is filed.

3. Learned counsel for the petitioner submitted that the respondent No.3 is orally refusing to entertain the subject document on the ground that the subject property is prohibited vide District Gazette Notifications R.R.No.83 dated 25.09.2013. It is further submitted that this Court vide order dated 22.03.2024 in W.P.No.9645 of 2021 and Batch, has already set aside the aforesaid notification dated 25.09.2013.

4. Learned counsel for the petitioner further submitted that the respondent authorities are duty bound to receive, register and release the subject document and in case of not registering, they shall assign reasons for refusal and pass orders accordingly. As such, it is prayed to direct the registering authority to register and release the subject document.

5. When the matter was taken up for hearing, at admission stage, a question was posed by this Court to the learned Assistant Government Pleader for Stamps and Registration as to why the respondent No.3 had orally refused to entertain the subject document, learned AGP sought time to get instructions. In number of cases, petitioners are approaching this Court stating that the registering authorities are orally refusing to register the document and are insisting for a Court order for the purpose of registration. To clarify whether the subject document was presented by the petitioner or not, this Court vide order dated 21.06.2024, directed the respondent No.3 to be present before this Court on 28.06.2024.

6. Today when the matter has been taken up for hearing, respondent No.3 is present and the learned Assistant Government Pleader for Stamps and Registration had placed on record the instructions issued by the Sub-Registrar, Qutubullapur, Medchal-Malkajgiri District, which reads as under:-

"It is submitted that the writ petitioner Sri.Dakuri Maheswar Reddy have not appeared in this office with a duly executed document and presented it. He has not presented a sale deed or any other deed duly executed along with a duly paid challan. Had he presented such a document, I would have examined it and taken appropriate action thereon.

It is further submitted that I have not orally refused to accept any document. The party himself has not come up with a duly executed valid deed for presenting it before this office. The party may be advised to present a validly executed document along with challan for proper amount, so that appropriate actions can be taken by this office."

7. Learned Assistant Government Pleader further submitted that the procedure for seeking registration of a document is that the parties have to pay registration charges, stamp duty and other incidental charges by way of challan and the estimated amount for the same will be available in IGRS website, wherein Stamp duty and registration charges will be calculated, enabling the parties to pay the challan. Thereafter, the parties shall approach the registering authority, enclosing the challan along with the relevant documents, which proves that the parties have approached and made a proper presentation of document sought for registration. However, in the present case the petitioner had not enclosed the copy of challan, and no application was filed as a proof that the petitioner had approached the respondent No.3.

8. Strongly disputing the contentions of the petitioner learned Assistant Government Pleader submitted that the petitioner neither approached the respondent No.3 nor presented any document for registration and, as such, the question of refusal by the respondent does not arise, and therefore, a writ of mandamus cannot be issued directing the respondent to register the so called proposed sale deed.

9. Heard, learned counsel for the petitioner and Sri.H.Rakesh Kumar, learned

Assistant Government Pleader for Stamps and Registrations appearing for respondents and perused the material available on record.

10. It is not out of the place to observe that this Court on many occasions observed that the petitioners in their writ affidavits are stating that the Sub-Registrars are orally refusing to register the documents. It is brought to the notice of this Court that after paying the challans, if the documents are not registered for any reason, it would be difficult for them to claim refund of stamp duty, registration charges etc., and are praying this Court to pass orders under Sec 71 of the Registration Act. The parties in order to ensure that the document presented for registration shall not be rejected/refused for registration are resorting to these tactics and are filing writ petitions by misleading the Court for an order. Many of such instances have come to the notice of this Court.

11. Under those circumstances, it is relevant to refer the order dated 19.08.1999, passed in Deverneni Linga Rao Vs. Sub-Registrar, Peddapalli 1999 (6) ALD 144. The relevant paragraphs are extracted here under:-

"8. The well established Rule, subject to certain exceptions, is that the applicant for mandamus must show by evidence, that he made a demand calling upon the concerned authority to perform his public duty and that was met with refusal either by words or by conduct. Applying this salutary rule, the Apex Court in *Saraswati Industrial Syndicate Ltd Etc., v.- Union of India*, thus :

"..... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well -recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd edition, Vol.13, P. 106):

'As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal'.

From the aforementioned facts and circumstances it is clear that the petitioners could not and did not show that they made a demand to the respondent and that was met with refusal. Therefore, it is not possible to issue the declaration sought for or the consequential direction commanding the respondent herein to register the sale deeds proposed to be executed by the petitioners in favour of their purchasers. This view of mine gains full support from the decision of a Division Bench of this Court in *D. Ratnasundari Devi v. Commissioner of Urban Land*

Ceiling, .

9. For the aforementioned reasons, the writ petitions fail and are accordingly dismissed, but without costs. However, this order will not preclude the petitioners from presenting the sale deeds for registration before the respondent. In such an event, I am sure, the respondent will immediately discharge his statutory duties mentioned in Part XI of the Act and consider registerability of the sale deeds. I am also sure that in case the registration is refused, he will certainly record the reasons as enjoined by Section 71 of the Act and furnish a copy thereof, if the petitioners apply for the same."

12. It is also relevant to refer the order passed by the Hon'ble Supreme Court in K.Jayaram and others Vs. Bangalore Development Authority and other (2022) 12 Supreme Court Cases 815, the relevant paragraphs are extracted hereunder:-

"10.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.

11. 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."

12. In Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others², 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

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

13. 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.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioner* in the following words:

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

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 Commissioners*.(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."

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."

13. In the case on hand, the petitioner at paragraph No.4 of the writ affidavit, stated the following:-

"It is submitted that both the parties approached the 3rd respondent for registration of document presented by the petitioner, but the 3rd respondent herein has refused to receive, process and register the said document on the ground that the petitioner's property is located in Sy.No.329, which is under Prohibitory List as per the Section 22-A of Registration Act, basing on the following information:

1. The property is Government Land, notified as prohibited property u/s 22-A of Registration Act as per the Ranga Reddy District Gazette Notification R.R.No.83, communicated by

Joint Collector, Ranga Reddy vide File No.E5/4730/2013Qutghbullapur/Nizampet, dated 25-09-2013

2. Deputy Collector & Thasildar Quthbullapur Mandal, File No.B/583/2012, dated 17.02.2012.

3. Gazette Notification No.134, dated 10.03.2005 and G.O.Ms.No.292, Revenue (Registration. I), 9th March 2005 communicated by Commissioner and Inspector General (R&S), Hyderabad vide File No.G1/4661/2005, Dt.02.07.2005.”

14. It is striking to note that in the present case neither a refusal order has been passed nor any reason was assigned in writing by the respondent No.3 denying registration and the learned counsel for the petitioner, who verified the pleadings of writ affidavit, had misrepresented the facts and tried to secure an order in terms of the order passed in W.P.No.9645 of 2021 and batch dated 22.03.2024, wherein this Court had set aside the aforementioned proceedings as stated at Para No.4 of the affidavit. It is also noticed that the counsel for the petitioner in W.P.No.9645 of 2021 and in the present writ petition is one and the same and counsel being aware of the order dated 22.03.2024, which is aware of the facts is trying to obtain an order in the present writ petition by manoeuvring and misrepresenting the Court.

15. In this connection, it is significant to refer the judgment rendered by the Hon’ble Apex Court in the case of Rajasthan Pradesh Vaidya Samiti Sardarshahar and another Vs. Union of India and other AIR 2010 SUPREME COURT 2221 wherein at para 11 observed as under:

“11. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the court is under no obligation to entertain the pleas. In Bharat Singh v. State of Haryana [AIR 1988 SC 2181] this Court has observed as under :

“13. ... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading i.e. a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.”

16. In my considered view, the aforesaid submission of the learned Assistant Government Pleader is well founded. Admittedly, the petitioner did not produce any documentary proof in support of his averment that he has presented the sale

deed for registration before respondent No.3, and the same was refused for registration. The petitioner could not even mention the date on which he had approached the respondent. Therefore, it is difficult for this Court to accept the statement of the petitioner that he had approached the respondent authority for registration, more so, when that statement is specifically denied by the respondent.

17. At this stage, it is relevant to refer the order passed by the Hon'ble Supreme Court in *Vijay Syal V. State of Punjab* 2003 Supp(1) SCR 242 dated 22.05.2003, the relevant paragraph is extracted hereunder:-

"In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice."

18. In the aforesaid case, the Apex Court has held that any false statement in the petition is abuse of law and serious view is to be taken by Court. In the present case, the petitioner in order to suit their case and to secure an order has made misleading averments. Hence, this writ petition is liable to be dismissed with costs as the petitioner did not approach this Court with clean hands. Accordingly this writ petition is dismissed with costs.

19. The petitioner shall pay an amount of Rs.10,000/- towards costs to the Court Masters and Personal Secretaries to the Hon'ble Judges Association, High Court for the State of Telangana, Hyderabad, within a period of two (2) weeks from the date of receipt of copy of this order. Learned counsel for the petitioner has also misled the Court and in view of the apology tendered by him, this Court admonishes the learned counsel for the petitioner not to resort such submissions in future.

20. However, it is made clear that this order will not preclude the petitioner from presenting the sale deed for registration before the registering authority, by duly following the due procedure as contemplated under law.

21. With the above observations, this writ petition is dismissed with costs. Miscellaneous applications, if any pending, shall stand closed.