

(2013) 05 MP CK 0047
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3083 of 2013

Gopal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 MP CK 0047

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : D.K. Dixit and Mr. Dharmendra Soni, for the Appellant; Sanjay Dwivedi, Learned Government Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—They are heard on the application for vacating stay I.A. No. 5698/2013 filed by the State Government. Arguments on the aforesaid application for vacating stay was heard by this Court on 8.5.2013, but taking note of certain facts that have come on record it was directed to be listed today along with records of W.P. No. 22140/2012. The arguments were heard again today and on going through the records it is seen that with regard to acquisition that had taken place, the petitioners herein have filed this writ petition through Shri Dharmendra Soni, Advocate. This writ petition was filed before the court on 25.2.2013 by Shri Dharmendra Soni, Advocate and when matter came up for hearing on 1.3.2013, notices were issued and status-quo with regard to possession was directed to be maintained.

2. Now in the return filed and in the objections raised Shri Sanjay Dwivedi, learned counsel, points out that the same counsel Shri Dharmendra Soni, with regard to same acquisition proceedings, on 28.12.2012 had filed another writ petition bearing W.P. No. 22140/2012 (Durga Das @ Duregesh & Anr. Vs. State of M.P. & Ors.). He points out that in both the petitions exactly similar averments were made, infact this writ petition is nothing but verbatim reproduction of the

earlier writ petition. In the earlier writ petition W.P. No. 22140/2012, even though an interim stay was granted on 31.12.2012, but after considering an application for vacating stay filed by the State Government I.A. No. 1239/2013, stay was vacated on 20.2.2013. He points out that in the said case Shri Dharmendra Soni, the present counsel, had appeared and by suppressing all these facts he obtained stay again in the present case. He further submit that it is a fit case of suppression of facts, stay should be vacated for the simple reason that in both the cases the counsel is same and possibility of the counsel not aware of the earlier vacation of stay is not possible. Accordingly, he submits that this writ petition be dismissed.

3. I have heard learned counsel for the parties at length and on going through the records whatever has been stated by Shri Sanjay Dwivedi in the matter of granting stay and its vacation in the earlier writ petition W.P. No. 22140/2012 and suppression of facts with regard to stay being vacated in the earlier writ petition is seen to be correct.

4. If the petitions in both the cases are considered, pleadings, documents and other materials are taken note of, it would be seen that except that the names of petitioners everything is identical in nature. There is no change in the pleadings and it is surprising that the same counsel, who had appeared in W.P. No. 22140/2012, has filed the second writ petition and for the reasons which remained unexplained has not even cared to bring to the notice of this Court the fact with regard to pendency of the earlier writ petition, nowhere in the writ petition is it mentioned that for the same subject an earlier writ petition is pending before this Court. It is not at all possible that the counsel who has appeared in both the cases was not aware of the pendency of earlier writ petition W.P. No. 22140/2012. That apart, when the stay was vacated in the earlier writ petition on 20.2.2013, Shri Dharmendra Soni had appeared and it was after hearing his arguments, the stay was vacated. Thereafter within a period of 5 days of vacation of stay in the earlier writ petition, this writ petition was again filed by Shri Dharmendra Soni on 22.5.2013 and inspite of the fact that an earlier writ petition was pending and stay in the same was rejected and further that the facts, reasons, questions and all other matters in both the petitions are identical, Shri Dharmendra Soni has chosen to keep quiet in the matter and has tried to mislead this Court.

5. This Court cannot appreciate the aforesaid attitude of the counsel, this itself is a good ground to hold that the attitude of the counsel in dealing with the matter does not entitle either the petitioner or the counsel to seek any discretionary relief from this Court. Conduct of the counsel and the party does not entitle them for any stay in the matter.

6. Even though Shri D.K. Dixit, learned counsel, by inviting my attention to certain judgments of the Supreme Court tried to emphasize that acquisition is unsustainable, but the fact remains that when a litigant or counsel comes to this Court by suppressing facts and do not come with clean hands, they are not

entitled for any discretionary relief under Article 226 of the Constitution, the parties and the counsel are required to maintain a very high standard of judicial discipline and ethics. If these factors are missing, it is good enough reason to refuse or deny exercise of discretionary powers. In this case learned counsel for the petitioner knowing fully well that a petition identical in nature was pending in which stay was rejected only 5 days back prior to filing of this writ petition, chose to maintain a complete silence in this regard and when queries in this regard was made to him on the last date of hearing on 8.5.2013 and when this case was directed to be listed today along with records of W.P. No. 22140/2012, the learned counsel instead of making any explanations or apology for his conduct chose to appear as junior with a senior counsel to take advantage of his own wrong. This Court cannot appreciate all these factors and, therefore, it is a fit case where action should have been taken against the counsel. The counsel being a very junior counsel and considering a long carrier available to him, this Court restrains itself and does not take any action against the counsel, but warns the counsel to be careful in future. I am not at all inclined to interfere into the matter, as petitioner and counsel have tried to misuse the process of law and have mislead this Court in the matter of obtaining stay from this court.

In view of aforesaid, the petition is dismissed.