

---

**(1977) 08 RAJ CK 0013**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 156 of 1977**

Om Prakash and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

---

**Date of Decision :** 30-08-1977

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1978 Raj 52 : (1977) WLN 604

**Hon'ble Judges :** M.L. Joshi, J

**Bench :** Single Bench

**Advocate :** M. Mridul, for the Appellant; R.N. Munshi, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

M.L. Joshi, J.—This is a petition under Art. 226 of the Constitution of India seeking to quash the notifications dated 5th November, 1976 (Annexure 4), dated 16th February, 1977 (Annexure 5), and notice dated 25th March, 1977, (Annexure 6) and further for restoration of the possession of the disputed land, if the petitioners are dispossessed during the pendency of the writ petition.

2. A joint writ petition was filed, by Om Prakash, Rajendra Kumar, Suresh Kumar, Smt Sushila, Smt. Pushpa Devi and Suchitra Devi in respect of Khasras Nos. 419, 420, 421, 422 and 423 (old) corresponding to new Khasras Nos. 516, 517, 518, 519 and 520 respectively, admeasuring 3 Bighas 4 Biswas, 5 Biswas, 1 Bigha 7 Biswas, 5 Brwas, and 2 Bighas 8 Biswas respectively. This writ petition when came up for hearing an objection was taken on behalf of the non-petitioners that the joint writ petition was not competent as the petitioners have no common and joint interest in all the Khasras mentioned above. Learned counsel for the petitioners, thereupon, accepting the objection prayed to permit him to confine the writ petition to Khasras 516/419, 517/420 on behalf of all the petitioners "excepting Rajendra Kumar and prayed that Rajendra Kumar's name be deleted from the array of the petitioners. This court by its order dated 1st August, 1977, accepted the prayer and directed that the writ petition shall be taken to have

been filed in respect of Khasras Nos. 516/419 and 517/420 by Om Prakash, Suresh Kumar, Smt. Sushila Devi, Smt. Pushpa Devi and Smt. Suchitra Devi only.

3. According to the petitioners the aforesaid Khasras of land were purchased by them from Sarva Shri Pritam Kumar, Vinay Kumar, Tota Lal, Sunder Lal, Hiralal, Parma Lal, Ganeshilal and Jai Kumar and the above mentioned lands have since been mutated in their names. The petitioners aver in the petition that a notification u/s 4(1) of the Rajasthan Land Acquisition Act, 1953, (hereinafter referred to as "the Land Acquisition Act") was issued by the State Government declaring its intention that the aforesaid lands are needed for a public purpose vide Government notification dated 30-10-1976. Thereafter a further notification dated 7th January, 1977, purporting to have been made u/s 4 (5) (ii) of the Land Acquisition Act came to be issued by the Land Acquisition Officer (Sub-Divisional Officer), Beawer. This notification was accompanied by the notification A/2 u/s 4 (5) (i) of the Land Acquisition Act wherein description of lands in question was shown. By another notification dated 7-1-1977 the petitioners were required to submit the objections against the acquisition of land, if they have any, within a period of 30 days.

Yet another notification was issued u/s 6 of the Land Acquisition Act which was published in the Rajasthan Rajpatra under the signature of the Collector, Ajmer. Under this notification the Collector has declared that the lands in question were required for the purpose of Rajasthan State Road Transport Corporation (hereinafter referred to as "the Corporation") and that he is of the opinion that the acquisition of the aforesaid lands is urgently required and so the provisions of Section 5 of the Land Acquisition Act are dispensed with. The copy of this notification is Annexure 6.

Further a notice u/s 9 of the Land Acquisition Act was issued which was served on the petitioners on various dates. According to the petitioners the objections were preferred by them but the same came to be rejected by the Land Acquisition Officer, Beawer, by his order dated 12th April, 1977. A certified copy of this order has been placed on record and is marked Annexure 7. In this order it has been categorically stated that the possession of the lands in question have been taken by the Land Acquisition Officer by beat of drum. The petitioner, however, in face of this categorical order asserted that he has not been dispossessed and he still retains the physical possession of the land. The petitioner amongst others challenged the above notifications broadly on the ground that the Collector could not have issued notification u/s 6, or u/s 17 (4) of the Land Acquisition Act and, therefore, all the acquisition proceedings stand vitiated as they are illegal, ultra vires of the powers of the Collector. Other grounds relating to the dispensing with the provisions of Section 5 (a) of the Land Acquisition Act and connected matters have been raised but they need not be stated in elaborate manner as will be shown later on.

4. The Corporation has filed a reply and has strenuously opposed the writ petition. It has justified the validity of the notifications on the ground that the

Collector was authorised by the State Government under a notification No. F.1 (21)(Rev.)GA./IV/75 S. O. 236 dated December 26, 1975, and therefore, it is futile on the part of the petitioner to impeach the notification as invalid. It has been further pleaded by the Corporation, the respondent No. 4 that the petitioners have obtained ex parte stay order by not making true and candid disclosure of material facts and have given facts in a manner which misled the court to grant an ex parte stay order in favour of the petitioner and has, therefore, prayed that on this ground alone the writ petition should be dismissed. The petitioners have filed a rejoinder wherein they have reiterated their stand that they were never dispossessed and they are still in possession.

5. It has been contended on behalf of the petitioners that the Collector had no jurisdiction to issue notification u/s 6 under the powers alleged to have been conferred upon him u/s 260 of the Land Revenue Act as such powers cannot be given under that section. According to him Section 260 (1) (b) does not empower the State Government to delegate its powers to the Collector by a notification issued on the executive side because that will be tantamount to amend the provisions of Section 6. It has been urged that notification can be issued only by the State Government and unless there is a legislative sanction to delegate the powers either u/s 6 or under Sections 17 (2), 17 (4), no powers can be delegated by the State Government under the purported exercise of powers u/s 260 of the Land Revenue Act. Likewise it was not competent for the State Government to delegate its powers u/s 17 by issuing a notification without any legislative sanction behind it.

6. Before dealing with the case on merits it will be proper first of all to deal with the preliminary objections of Mr. Raj Narain. His contention is that the possession of the lands in question was taken over by the Land Acquisition Officer by beat of drum as is clear from Annexure 7 and the names of the petitioners in whose names the aforesaid Khasras stood, were struck off in the land records and the land was entered in the revenue records as "Sivay Chak" (X Sarkari Land). It has been further submitted by Mr. Raj Narain that in the revenue records thereafter the land in question was shown as Sivay Chak on 12th April, 1977, by Patwari of the village Naya Nagar. The Land Acquisition Officer, ordered the Tehsildar Beawar to hand over the possession of the land to the respondent No. 4 by his order dated 13th April, 1977. Thereafter, the Tehsildar Beawar by his order dated 14th April, 1977, directed Shri Pyare Lal Land Records Inspector to hand over the possession of the land in question to the Depot Manager, of the Corporation at Beawar. It has been further submitted by Mr. Munshi that Shri Pyare Lal then in compliance of the aforesaid order of the Tehsildar handed over the possession of the land in question on 14th April, 1977, in the presence of the Patwari Naya Nagar, vide Annexure R/6. It has been pointed out by Mr. Munshi that thereafter the Depot Manager of the Corporation informed the Regional Manager of the Corporation by his letter dated 16th April, 1977, that the possession of the land in question has been taken over and further requested that a boundary covering the land may immediately be got constructed and an arrangement of a

chowkidar be made. After taking over the possession of the land in question it is submitted that a notice board was placed on the land in question showing the land as belonging to the corporation and stone Dattis were also placed on the land in question with a writing that the land in question is under the ownership of the Corporation.

It is further averred that thereafter laying of the approach road for the diesel pump etc. was also taken in hand from 24th April, 1977 and the Corporation also started the construction of a boundary adjacent to the Nala lying in the East of the land in question. The foundation of the aforesaid boundary wall, according to the Corporation, has been filled in by the Corporation and the approach road in part has also been laid down upto the side of the diesel pump on the land in question. These allegations have not been controverted on behalf of the petitioners in their rejoinder and there is no averment of these material facts in the petition. All that has been said is that the petitioners were out of station and they were not aware of the fact that the actual possession of the land was taken over from them. The petitioners persisted in saying that they were in physical possession of the land although on the site the facts were in accord with the categorical recital in the order Annexure 7 that the possession was taken over by the Land Acquisition Officer. The petitioner without disclosing the true position of the site and suppressed the fact that they have actually been dispossessed and construction commenced by the Corporation and obtained rule nisi.

7. The law is well settled that the petitioner is not entitled as a matter of course to a writ of certiorari, and mandamus and he must be perfectly frank and open to the court. He is under obligation to the court to make full and correct disclosure of all the material facts in a candid manner and if he does not do so and suppresses any material fact and thereby obtains a rule nisi or stay order the court will not grant any relief to him on merits vide *Ram Narain v. Municipal Board Pali*, 1971 WLN 452. In *Asiatic Engineering Co. Vs. Achhru Ram and Others*, the Full Bench of the Allahabad High Court, while dealing with the obtaining of an ad interim ex parte stay order by suppressing the facts, has held that a person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant fact from the court, must refrain from making misleading statements and from giving incorrect information to the court. Court should insist that persons invoking the extraordinary jurisdiction of the High Court should not attempt in any manner to misuse a valuable right by obtaining ex parte orders by suppression, misrepresentation, or misstatement of facts. It has been further said in this case that if the facts are stated in such a way as to mislead and deceive the court, there is a power inherent in the court, in order to protect itself and to prevent an abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits of the application.

In *K. Ananthan Pillai Vs. The State of Kerala and Another*, it has been

categorically laid down that a petitioner resorting to suppressio veri and suggestio falsi obtains ex parte stay order should not be given any relief in a writ jurisdiction. It has been said in this case that the petitioner's conduct is a relevant factor in the matter of invoking an extraordinary jurisdiction. It has been further observed that whatever sympathy one might feel on the merits, where the petitioner is guilty of suppressio veri and suggestio falsi, he disentitled himself to invoke extraordinary jurisdiction of this court. In *Nand Lal v. State of Jammu and Kashmir* AIR 1960 J & K 19, it has been held that where the petitioners under Article 226 have not stated the relevant facts correctly and candidly either in their petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. It has further been held in this case that even if the petitioners have a good case on merits the court will be entitled to decline to go into the merits and dismiss their petition because the conduct of the petitioners has been such as to mislead the court in ex parte interim order. In this case the leading authority of *Rex v. Kensington*, 1917 (1) KB 486 has been referred and the relevant excerpts from the observations of Cozens Hardy M. R. are quoted as follows:

"On an ex parte application uberrima fides is required, and unless that can be established if there is anything like deception practised 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."

In that very case Lord Scrutton L. J. put the matter very clearly by saying as under:

"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 facts, facts not law ... .. 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 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."

In *Kensington Commissioner's* case although the Court had found that the Commissioner had no jurisdiction to make the assessment yet it said :

"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."

This authority has also been followed by the Full Bench of the Allahabad High Court in *Asiatic Engineering Company's* case (supra).

8. In *R. v. Churchwardens of All Saints Wigan* (1876) 1 AC 611 at p. 622 Lord Hatoriay has stated:

"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."

9. In *Reg v. Garland* (1870) 39 LJ QB 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*."

10. To the same effect is the dictum laid down in *M. Haji Mohammed Ismail Sahib and Co., Tanners, Pernambut, North Arcot District Vs. The Deputy Commercial Tax Officer, Gudiyatham, North Arcot District, Abdul Gafoor v. State of M. P.*, AIR 1968 Madh Pra 29 and *G. Appukkuttan Pillai Vs. Government of India and Others*, From the survey of the above authorities the position of law is well established that the party who seeks to invoke extraordinary jurisdiction must come with all *bona fides*, must make true, full and candid disclosure of all the relevant facts and further should not be wanting in *bona fides* in its conduct. BY "*bona fides*" I mean that the party is to collect all material facts with due care and attention and it will be not sufficient on the part of the party seeking to invoke extraordinary jurisdiction to say that the facts were not within its knowledge although the same could have come to its knowledge after taking due care and efforts to find them out.

11. In the light of the law enunciated above I have now to see whether the petitioners have come to this Court with upright and *bona fide* conduct and have given full and correct disclosure of material facts. As stated earlier, the petitioners knew that the possession has been taken by beat of drum. Despite that without making further inquiries they persisted in sticking to the stand that they are still in physical possession. It is further clear from Annexure R/2 that the land in question was ordered to be entered in the revenue records as "*Sivay Chak*" and it has been actually recorded which fact is evident from the record placed on the Court file. It is also clear from Annexure R/4 that the Land Acquisition Officer after taking over the possession asked the Tahsildar Beawer to hand over the possession of the land to the Corporation by his order dated 13th April, 1977 vide Annexure R/4. It is further evident from Annexure R/5 that the Tehsildar Beawer by his order dated 17th April, 1977, directed Pyare Lal, Land Records Inspector, to hand over the possession of the land to the Depot Manager of the Corporation and submit a compliance report. It is also clear from R/6 that Pyarelal in compliance of the aforesaid order of the Collector handed over the possession of the land in question to the Depot Manager, Beawer of the Corporation in the presence of the Patwari Naya Nagar under a document of handing over and taking over the possession of the land in question. A photostat copy of Annexure R/6 has been placed on record. From Annexure R/7 it is proved that the Depot Manager had informed the Regional Manager by his letter dated 16th April, 1977, intimating therein that the possession of land in question has been taken over and further requested that a boundary covering the land may be immediately got constructed.

It also transpires from the reply supported by an affidavit that laying of the approach road for the diesel pump was taken in hand from 24th April, 1977. Besides the Corporation also started construction of the boundary wall adjacent to the Nala lying to the East of the land in question and the construction was in progress. The writ petition was filed subsequent to this i.e. on 12th May, 1977. It cannot be lost sight of that these broad facts must have come within the knowledge of the petitioner because the construction work could not have escaped their notice. These facts have not been controverted by the petitioner. They, however, took a plea of alibi that they were out of station and were not aware of all these facts. In the circumstances, narrated above it is difficult to believe the version of the petitioner.

Be that as it may, it was the bounden duty of the petitioners before initiating proceedings under Art. 226 to have made due efforts before making allegations which were *ex facie* incorrect. In order to establish the *bona fides* on the part of the petitioners it was incumbent upon them to establish their *bona fides* by showing that they had made all their efforts to find out true and full facts. The petitioners have either not made any efforts in this regard or have suppressed material facts. They did not make full and candid disclosure of facts and obtained an *ex parte* rule nisi from the vacation judge on 16th May, 1977, to the effect that the status quo shall be maintained resulting in stopping of the construction by the Corporation without bringing all material facts on the record, although the operations of construction were going on. Such an act on the part of the petitioners lacks *bona fides* and it cannot be said in the facts and circumstances of the case that the petitioners have candidly made full and correct disclosure of facts. This conduct of the petitioners shows want of *bona fides* and further in the facts and circumstances of the case, the petitioners cannot be said to have made full and correct disclosure of facts in a candid manner. The petitioners are, therefore, disentitled to any relief on merits although there may be some merits in their petition. On this ground alone the writ petition deserves to be dismissed.

12. Mr. Mridul learned counsel for the petitioner contended that he having placed Annexure 7 on the record, the petitioner cannot be held guilty of lack of *bona fides* or suppression or concealment of material facts. In this regard he has relied on *Dholpur Co-operative Transport and Multipurposes Union Ltd. Vs. The Appellate Authority (Transport), Rajasthan, Jaipur and Others*, and *Jasraj Vs. State of Rajasthan and Others*, I have perused both these cases carefully. I am of the opinion that they are clearly distinguishable. In *Dholpur Co-operative Transport Union's case (Supra)* the objection was raised that the petitioners in that case did not say in their writ petition or their application for stay that they had consented to the order of rotation fixed by the Appellate Authority while allowing the appeal of Khajan Singh and Satya Narain Singh. The petitioner, however, had filed the order of the Appellate Authority. In that order it was mentioned that some sort of order of rotation was fixed and that petitioner had no objection to it. The order, therefore, clearly brought out all the facts and on that account it was held that even if the fact relating to consent to rotation was

not mentioned that was clear from the order filed by the petitioner. It was in this context that it was held that it cannot be said that the petitioner in that case deliberately kept anything back which would disclose to the court that he did not object to the order of rotation fixed by the Appellate Authority and so it cannot be said that the petitioners deliberately concealed this fact from the court. The order in that case embodied all the facts and therefore, in that context it was said that the petitioner did not keep anything back from the Court.

This is not the case here. In the present case Annexure 7 did not contain all the facts which were material for the decision of the petition as have been pointed out by me earlier. Annexure 7 only contains a recital that the possession had been given by beat of drum. There was no mention of construction having been commenced by the Corporation and further that the approach road has been laid down in the land in dispute. Dholpur Co-operative Transport Union case (supra) is, therefore, of no avail to the petitioners. Likewise Jasraj v. State of Rajasthan (supra) is of no assistance to the petitioners. In that case the court came to hold that the petitioners were not aware of notification dated 21st November, 1973, when the petition was filed. But the court held in that case on facts and circumstances that the petitioner did not deliberately conceal the facts and there was no lack of bona fides on their part. But such is not the case before me, as I have pointed out earlier that looking to the facts and circumstances of the case it cannot be said that the petitioners could have not come to know of the constructions raised and approach road laid down on the land in dispute if due care and attention would have been shown on their side. The plea of alibi that the petitioners were out of station does not carry conviction with me. I feel that the petitioners were aware of all the facts and have deliberately kept them back from the court. The petitioners, therefore, cannot avail of the authority reported in Jasraj v. State of Rajasthan (supra).

13. In view of my finding on the preliminary objection I need not go into the merits of the writ petition. The writ petition is dismissed. There shall be no order as to costs.