

(2016) 08 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 12265 of 2016 With Special Civil Application No. 12337 of 2016

Pavan Govindbhai Ambalal Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, Section 84C
Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) 1 GLR 316

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. Mihir Thakore, Ld. Sr. Counsel with Mr. C.P. Champaneri, Advocate, for the Petitioner Nos. 1 - 2

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J.(Oral) - "The Court knows law, but not facts". "suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction." These are the utterances of the Supreme Court. Though the Supreme Court has frowned upon the tactics of misusing and abusing the process of law and of suppressing the material facts from the Court or misleading the Courts by not stating true and correct facts, unfortunately, such unhealthy and unfair practices continue to rise in the cases before the Courts, more particularly in the land related cases.

2. The Supreme Court in the case of K.D. Sharma v. Steel Authority of India Limited and Ors., reported in (2008) 12 SCC 481, coming down very heavily on the persons adopting such practices in the petitions invoking extraordinary jurisdiction under Article 32 and Article 226 of the Constitution of India, has observed as under:-

"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 Commissioners*, 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".

(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 larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

37. In *Kensington Income Tax Commissioner*, Viscount Reading, C.J. observed:

"... 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 applicant was not candid and did not fairly state the 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 this 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 Commissioners* 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, maneuvering 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."

3. In the case of *Kishore Samrite v. State of Uttar Pradesh and Ors.*, reported in (2013) 2 SCC 398, it has been observed in paragraph 32 as under:-

"32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to

any relief.

32.2 The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3 The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4 Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5 A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6 The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs."

4. This is one of such cases, where the petitioners have tried to misuse the process of law and taken the Courts and the statutory authorities for a ride to suit their own purposes.

5. The Special Civil Application No. 12265 of 2016 has been filed by the petitioners, challenging the order dated 31.12.2012 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN/BA/194/12(3), and the order dated 21.3.2012 passed by the Deputy Collector in Remand Case No. 31/2011. Whereas the Special Civil Application No. 12337 of 2016 has been filed, challenging the order dated 29.3.2016 passed by the respondent Collector dismissing the application of the petitioners for converting the land in question i.e. land bearing Survey No. 78/1 situated at Village Govindpur, into the old tenure, which was of restricted tenure originally allotted to one Hussainbhai Sardarbai under the provisions contained in the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act").

6. The chequered history of the case may be narrated in the tabular form as under:-

Sr.

Date

Particulars

Annexure

1

22.2.1959

Names of the legal heirs of the original tenant Hussainbhai were mutated in the revenue records

A

2

04/12/87

The Mamlatdar passed the order under Section 84C of the Tenancy Act by holding that the legal heirs of Hussainbhai had transferred the land in question to their uncle in contravention of Section 43 of the Tenancy Act

B

3

18.2.1994

The land having vested in Government, the Mamlatdar granted the land to respondent Alibhai Hussainbhai, son of Hussainbhai under Section 84C(4) of the said Act

C

4

07/04/98

The said Alibhai having applied for the permission to convert the land from new tenure to old tenure, the same was granted by the Pranth Officer under Section 43 of the said Act

D

5

29.4.1998

The said Alibhai executed sale deed in favour of the petitioners

G

6

16.10.1998

The respondent Allarakhabhai having preferred Appeal No. 134/1995 against the order dated 4.12.1987 passed by the Mamlatdar, the Deputy Collector allowed the said appeal

E

7

17.10.1998

The respondent Allarakhabhai had also filed Appeal being No. 134/1995 against the order dated 18.2.1994 passed by the Mamlatdar, which came to be allowed by the Deputy Collector under Section 74 of the Tenancy Act.

F

8

19.1.2000

The Collector filed the Revision Application No. 88/2000 before the Gujarat Revenue Tribunal against the order dated 7.4.1998, passed by the Prant Officer.

H

The respondent Alibhai filed the Revision Application No. 504/1998 and the Revision Application No. 505/1998 against the orders passed by the Deputy Collector in Appeal Nos. 134/1995 and 135/1995.

9

29.6.2005

The GRT passed common order in three Revision Applications, whereby it partly allowed the Revision Application Nos. 504/1998 and 505/1998 by setting aside the orders passed by the Deputy Collector on 16.10.1998 and 17.10.1998, and remanded the matter to the Deputy Collector for deciding the same afresh. The Tribunal allowed the Revision Application No. 88/2000 filed by the Collector, by setting aside the order dated 7.4.1998 passed by the Pranth Officer.

I

10

28.4.2006

The respondent Alibhai filed the Review Application before the GRT, which came to be rejected

J

11

01/10/05

The Deputy Collector permitted the respondent Allarakhabhai to withdraw his Appeal Nos. 134/1995 and 135/1995.

K

12

19.4.2011

The aggrieved petitioners having filed the Revision Application No. 716/2010 before the GRT, the same came to be allowed by the GRT, and the matter was remanded to the Deputy Collector after setting aside the order dated 1.10.2005.

L

13

21.3.2001

The Deputy Collector in Remand Case No. 31/2011 set aside the order dated 4.12.1987 and 18.2.1994 passed by the Mamlatdar, and further remanded the case to the Mamlatdar for deciding the same afresh

M

14

31.12.2012

The petitioners having filed the Revision Application No. 194/2012, challenging the order dated 21.3.2012 passed by the Deputy Collector, the GRT dismissed the said Revision Application.

N

15

07/08/13

The petitioners filed Special Civil Application No. 12481/2013 on 7.8.2013, challenging the common order dated 29.6.2005 passed by the GRT to the extent of the order passed in Revision Application No. 88/2000 without disclosing the proceedings which had taken place between 2005 to 2013.

16

13.11.2014

The said SCA came to be dismissed on the ground of having been filed after an unexplained delay of eight years.

O

17

10/02/15

The LPA No. 17/2015 preferred by the petitioners came to be disposed of by the Division Bench at the admission stage without issuing notices to the respondents.

The Division Bench permitted the petitioners to withdraw the main SCA No. 12481/2013 and also permitted the petitioners to file application for conversion

of land from restricted tenure to unrestricted tenure, setting aside the observations made by the Single Bench in the SCA.

P

18

29.3.2016

The Collector rejected the application filed by the petitioners for conversion of the land in question from new tenure to old tenure.

Q

7. It is significant to note that the petitioners had filed the earlier petition being Special Civil Application No. 12481 of 2013, challenging the order dated 29.6.2005 passed by the GRT in Revision Application No. 88/2000, whereby the GRT had set aside the order dated 7.4.1998 passed by the Pranth Officer, granting permission to the respondent Alibhai to convert the land from new tenure to old tenure. The said petition was filed about eight years after the said order was passed by the Tribunal, suppressing the material facts with regard to the proceedings, which had taken place in between the period 2005 to 2013, in which the petitioners themselves had participated and during which period the proceedings had travelled twice up to the GRT at the instance of the petitioners. It is also pertinent to note that the impugned orders dated 21.3.2012 passed by the Deputy Collector in Remand Case No. 31/2011 and the order dated 31.12.2012 passed by the GRT in Revision Application No. 194/2012, which are now under challenge in the present SCA No. 12265/2016, were already in existence, however, the same were neither referred, nor challenged in the said petition. The Court to verify the actual position, had called for the original papers of the earlier SCA No. 12481 of 2013 and the LPA No. 17/2015, and had found that the petitioners had not only suppressed all the material facts of the events, which had taken place between the order passed by the Tribunal on 29.6.2005 till the date of filing of the petition on 7.8.2013, but had also made misleading statements in the petition. It is further pertinent to note that when the said earlier petition was filed by the petitioners, they had chosen not to challenge the said order dated 21.3.2012 passed by the Deputy Collector and the order dated 31.12.2012 passed by the GRT, knowing fully well that as a consequence of non-challenge of the said orders, the orders dated 4.12.1987 and 8.2.1994 passed by the Mamlatdar under Section 84C(2) of the Tenancy Act, and under Section 84C(4) respectively had already stood set aside. The order dated 7.4.1998 passed by the Pranth officer granting permission to the respondent Alibhai to convert the land in question from new tenure to old tenure under Section 43 of the Tenancy Act also had stood set aside and, therefore, the sale made by the said Alibhai in favour of the present petitioners had also become invalid. However, without disclosing all these proceedings and the orders passed by the concerned authorities, the petitioners in the earlier petition filed in 2013 simply challenged the order dated 29.6.2005 passed by the GRT in Revision Application

No. 88 of 2000.

8. At this juncture, it is also pertinent to note that since the said material facts, with regard to the proceedings which took place between the period from 2005 to 2013, having not been disclosed and rather suppressed, the Single Bench had passed an ex parte order on 8.8.2013 relying upon the submissions made by the learned Counsel for the petitioners, as under:-

"1. Mr. C.P. Champaneri, learned advocate for the petitioners submitted that pursuant to the order passed by the Deputy Collector permitting conversion of the land from "new tenure" to "old tenure", the petitioners had purchased the same. That in the revision challenging the order of the Deputy Collector, despite the fact that the petitioners had purchased the subject land and would be directly affected by any order passed in the said proceeding, they were not impleaded as parties and the Tribunal set aside the order passed by the Deputy Collector and restored the status of the land to new tenure.

2. Having regard to the submissions advanced by the learned counsel for the petitioners, Issue Notice returnable on 24th September, 2013. By way of ad interim relief, the impugned order dated 29.6.2005 passed by the Gujarat Revenue Tribunal in Revision Application No. 88 of 2000 is hereby stayed. Direct Service is permitted."

9. The said submissions made by the learned Counsel for the petitioners were totally false and misleading, inasmuch as by the time the said petition was filed, the petitioners had already participated in the proceedings before the Deputy Collector, the Collector and the GRT, and the orders passed under Section 43 and Section 84(c) (4) had already stood set aside, after hearing the petitioners. However, in order to obtain an ex parte order, such suppression of facts and misleading statements were made in the petition.

10. After the dismissal of the Special Civil Application by the learned Single Bench on the ground of gross delay, the LPA No. 17 of 2015 was preferred by the petitioners before the Division Bench. From the original record of the LPA, it appears that no notice was issued to the respondents and the following order dated 10.2.2015 was passed by the Division Bench, disposing of the LPA, relying upon the statement made by the learned Advocate for the petitioners:-

"1. Mr. C.P. Champaneri, learned Counsel for the appellants states that the appellants are now desirous to move an application for conversion of his land from new tenure to old tenure on payment of requisite fee. However, he submitted that on account of the impugned order passed by the competent forum dated 29.6.2005 read with the order dated 28.4.2006, his application may not be denied on the ground that since it was a restricted tenure and the transfer was impermissible. Therefore, he submitted that appropriate clarification may be made by this Court for pursuing the application for conversion of the restricted tenure to unrestricted tenure.

2. He also submitted that he would be desirous to withdraw the main petition and the order of the learned Single Judge may not operate as a bar.

3. In our view, in the intra Court appeal, if the petitioner is desirous to withdraw the main petition, such a course can be permitted. So far as the application to be made by the appellants ? original petitioners for conversion of the restricted tenure to unrestricted tenure, we find it proper to observe that if such an application is made, the same shall be considered in accordance with law and at that stage, all rights and contentions of the appellants ? original petitioners shall remain open.

4. It is needless to observe that when the main SCA itself is withdrawn, any observation made by the learned Single Judge would not operate as a bar.

5. Under these circumstances, the main SCA as well as the present LPA are disposed of accordingly."

11. It appears that the Division Bench, relying upon the apparently innocuous looking submissions made by the learned Counsel, Mr. C.P. Champaneri for the appellants, disposed of the said LPA, permitting the petitioners to make application for conversion of the land from restricted tenure to unrestricted tenure, setting aside the observations made by the Single Judge in Special Civil Application and also permitting the petitioners to withdraw the Special Civil Application and also keeping open all rights and contentions of the petitioners, directing the authority to decide such application, if made by the petitioners, in accordance with law. At this juncture, it is required to be noted that when all the orders dated 4.12.1987 and 18.2.1994 passed by the Mamlatdar and the order dated 7.4.1998 passed by the Pranth Officer had already stood set aside in the intervening proceedings, which were suppressed by the petitioners in the Special Civil Application No. 12481 of 2013, there was no question of the competent authority again considering the application of the petitioners for converting the land from new tenure to old tenure. If the learned Counsel for the petitioners had brought to the notice of the Court about the true facts of the proceedings, the Court would not have passed the said order.

12. The learned Sr. Counsel Mr. Mihir Thakore for the petitioners, though submitted that it would have been proper if the petitioners had stated all the correct facts, he submitted that the facts not disclosed could not be said to be material suppression of facts. He has relied upon the decision of the Supreme Court in the case of the S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors., reported in 2004 (7) SCC 166. Such a submission coming from Senior Counsel Mr. Thakore is indeed a matter of great surprise for the Court. In the opinion of the Court, obtaining afore-stated ex parte order in the SCA No. 12481 of 2013 in respect of the order dated 29.6.2005 passed by the GRT suppressing the proceedings which had taken place between 2005 and 2013 and in which the petitioners themselves had travelled up to the GRT twice, and again obtaining afore-stated ex parte order in the LPA No. 17/2015 suppressing the said facts

and making misleading statements, was nothing but suppression of material facts at the instance of the petitioners. The petitioners had not only misused the process of law but had taken the Courts and the Government authorities on a ride.

13. By way of the present petition being Special Civil Application No. 12265 of 2016, the petitioners have challenged the order dated 21.3.2012 passed by the Deputy Collector, remanding the case to the Mamlatdar for deciding it afresh, and the order dated 31.12.2012 passed by the GRT confirming the said order of the Deputy Collector. Both the orders under challenge, as stated herein above, were already in existence when the earlier petition was filed by the petitioners, however, they had deliberately suppressed the same and not chosen to challenge the same, and therefore, the present petition deserves to be dismissed on that ground alone. Even otherwise, by the said orders, the Deputy Collector had remanded the case to the Mamlatdar and the said order has been confirmed by the GRT, which do not suffer from any illegality or infirmity, which would call for any interference of this Court in exercise of the jurisdiction under Article 226 & 227 of the Constitution of India. The other petition being Special Civil Application No. 12337 of 2016 has been filed, challenging the order dated 29.3.2016 dismissing the application of the petitioners made pursuant to the order passed by the Division Bench in the LPA No. 17 of 2015, seeking permission to convert the land from new tenure to old tenure. The Collector has rightly rejected the said application on the ground that the proceedings under Section 84C in respect of the land in question were pending before the Mamlatdar and ALT and the title of the land being not clear, such permission could not be granted. The Court also does not find any illegality or infirmity in the said order passed by the Collector. Hence, both the petitions being devoid of merits deserve to be dismissed on merits also.

14. Before parting, the Court deems it proper to reproduce the observations made by the Supreme Court in the case of E.S. Reddi v. Chief Secretary, Government of A.P. and Anr., reported in 1987 (3) SCC 258, in which the Supreme Court has reiterated about the importance of the position and the role of the Counsels and the Senior Counsels as under:-

10. By virtue of the preeminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupied a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred on advocates of standing and experience by the Chief Justice and the Judges of this Court. They thus become leading counsel and take precedence on all counsel not having that rank. A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid

at his doors.

11. Lord Reid in *Rondel v. Worsley*, (1967) 3 All ER 993 has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows:

"Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him."

12. Again as Lord Denning, M.R. in *Rondel v. W* would say "he (the counsel) has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly... When a barrister or an advocate puts his first duty to the Court, he has nothing to fear".

In the words of Lord Denning:

"It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

15. Since the Court has found that the petitioners have misused the process of law and taken the Courts for a ride, both the petitions deserve to be dismissed with cost of Rs. 50,000/- each, to be deposited by the petitioners in this Court within two weeks from today. On such deposit being made, the same shall be transferred to the State Exchequer. If the petitioners fail to deposit, the respondents shall be at liberty to recover the same by way of arrears of land revenue.

16. The petition is dismissed. Interim relief, if any, stands vacated.

17. The copy of this order be forwarded to the Secretary, Revenue Department, Government of Gujarat.