

(2014) 04 DEL CK 0156

In the Delhi High Court

Case No : W.P. (C) 8274/2010 and CM Appl. 21289/2010

Puneet Sikand and Another

APPELLANT

Vs

GNCTD and Another

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Evidence Act, 1872 — Section 44

Citation : (2014) 04 DEL CK 0156

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Abhimanyu Mahajan and Mr. Milan Deep Singh, Advocate for the Appellant; Ajay Arora, Advocate for MCD and Mr. Sri Satyakam, Advocate for R-3, Advocate for the Respondent

Judgement

Manmohan, J.—Present writ petition has been filed with the following prayers:-

(i) To issue a writ in the nature of prohibition restraining the respondents, its agents, employees or servants from demolishing the toe wall and green areas in front of flat no. B-142, Mount Kailash, DDA (SFS) Colony, New Delhi pursuant to order dt. 21-10-10;

(ii) To restrain the respondents from uprooting the existing plants as planted in green area as per the development plan;

(iii) to award cost of the present petition in favour of the petitioner and against the respondent; and

(iv) to pass any other or further order(s), which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the petitioner and against the respondent.

2. Along with the writ petition, a copy of the order dated 14th March, 2001 passed by learned Single Judge in W.P. (C) 1088/1997 was annexed.

3. Today, learned counsel for respondents have raised a preliminary objection to

the maintainability of the present writ petition on the ground that petitioners have suppressed material and relevant facts. They submit that present petition amounts to re-litigation and has been filed in a bid to circumvent binding orders passed inter se between the parties by a Division Bench of this Court. In this connection, they have drawn this Court's attention to various orders of the Division Bench, in particular, the order dated 31st January, 2007, which reads as under:-

WP(C) 1088/1997 & CMs 15529-30/2006

In terms of our last order, Mr. Sidharth Mridul, Court Commissioner, has inspected the concerned area from where the writ petitioner was to remove side walls and cross walls. On inspection, he found that the said walls have been removed but a skirting wall of 6" height still exists in the said area. According to the counsel appearing for the MCD, the said skirting wall cannot be retained as it was a flat path earlier. We direct the petitioner to remove the said skirting wall also so as to bring the area to the same condition as it was existing earlier.

Renotify on 28th February, 2007.

4. Learned counsel for petitioners, however, states that there has been no suppression of any material fact. He points out that petitioner had filed an application for clarification before the Division Bench and had even sought direction to MCD not to demolish the toe-walls, green patches and protective areas. He states that upon filing of such an application, the Division Bench had ultimately disposed of petitioner's writ petition vide order dated 12th October, 2007, which is reproduced hereinbelow:-

WP(C) 1088/1997 & CMs 15529-30/2006

The grievances raised in the accompanying applications already stand redressed, except the exclusion of the front wall. If the residents are facing certain problems because of the Delhi Public School in their area, it would be open for them to make a representation to the Municipal Corporation of Delhi and we are hopeful that the Municipal Corporation of Delhi and we are hopeful that the Municipal Corporation shall try to find out an amicable solution to this problem. In case the grievance of the residents will persists, it would be open for them to approach the Court again.

With these observations, the writ petition as well as the applications stand disposed of.

5. Learned counsel for petitioners also relies upon a judgment of Supreme Court in S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, . The relevant portion of the said judgment reads as under:-

13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it.

But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)].....

6. Having heard learned counsel for parties, this Court is of the view that it is essential to clearly outline what the concept of suppression means and whether every non-disclosure of a document constitutes suppression.

7. The Supreme Court in its various judgments has dealt with the aforesaid concept at some length. In Hamza Haji Vs. State of Kerala and Another, the Supreme Court has held as under:-

10. It is true, as observed by De Grey, C.J., in R. v. Duchess of Kingston that:

Fraud" is an extrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice. Lord Coke says it avoids all judicial acts ecclesiastical and temporal.

11. In Kerr on Fraud and Mistake, it is stated that:

In applying this rule, it matters not whether the judgment impugned has been pronounced by an inferior or by the highest court of judicature in the realm, but in all cases alike it is competent for every court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud".

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15. The law in India is not different. Section 44 of the Evidence Act enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision therefore gives jurisdiction and authority to a court to consider and decide the question whether a prior adjudication is vitiated by fraud. In Paranjpe v. Kanade it was held that: (ILR p. 148)

"It is always competent to any court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud;"

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21. In Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education this Court after quoting the relevant passage from Lazarus Estates Ltd. v. Beasley and after referring to S.P. Chengalvaraya Naidu v. Jagannath reiterated that fraud avoids all judicial acts. In State of A.P. v. T. Suryachandra Rao this Court after referring to the earlier decisions held that suppression of a material document could also amount to a fraud on the Court. It also quoted (at SCC p. 155, para 16) the observations of Lord Denning in Lazarus Estates Ltd. v.

Beasley that: (All ER p. 345 C)

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

22. According to Story's Equity Jurisprudence, 14th Edn., Vol. 1, para 263:

"Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another."

23. In Patch v. Ward Sir John Rolt, L.J. held that:

"Fraud must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the court in ignorance of the real facts of the case, and obtaining that decree by that contrivance."

24. This Court in Bhaurao Dagdu Paralkar v. State of Maharashtra held that: (SCC p. 607)

"Suppression of a material document would also amount to a fraud on the court. Although, negligence is not fraud but it can be evidence on fraud.

(emphasis supplied)

8. The Supreme Court in Meghmala and Others Vs. G. Narasimha Reddy and Others, has also held as under:-

20. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law.

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23. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

24. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud.....

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26. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be

perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court.

28.....Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

(emphasis supplied)

9. In the present case, none of the orders of the Division Bench were placed on record along with the writ petition. The importance of the Division Bench's orders cannot be underscored. In fact, both the parties during the hearing relied upon different orders of the Division Bench in support of their own contentions. Consequently, this Court is of the opinion that the orders of Division Bench are not only relevant to the controversy at hand but also material for consideration of the Court.

10. This Court is of the view that non-filing of the Division Bench's orders and non-disclosure of proceedings before the Division Bench amounts to suppression of material facts. Accordingly, present writ petition and application are dismissed on account of suppression. The interim orders stand vacated.