

(2020) 07 SHI CK 0137

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2451, 2452 Of 2020

Salma And Others

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

Date of Decision : 17-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 136

Citation : (2020) 07 SHI CK 0137

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Tara Singh Chauhan, Ashok Sharma, Vinod Thakur, Vikas Rathore, Desh Raj Thakur, Naresh K. Gupta

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts are involved in both these petitions, therefore, they are taken up together for hearing and are being disposed of by common judgment.

2 It is averred that one Smt. Khaliza Bano, who was mother of Smt. Hanifa Begum, was allotted land comprised in Khasra Nos.1100 and 1101 in Mohal Dhalli, District Shimla under landless Scheme, over which she constructed her house. Hanifa Begum, who is mother-in-law of the petitioners, herein, died in the year 2017 leaving behind Khurshid Ahmad, Arshid Ahmad, Smt. Praveen, Rifakat Ahmad, Rubina as also the petitioners as her legal heirs.

3. The land belonging to the predecessor-in-interest of the petitioners was acquired for construction of four-lane road and the compensation thereof was paid to the owner, in which shares of the husbands of the petitioners worked out to be Rs. 3,45,000/- each and the compensation amount was accordingly disbursed to them.

4. As regards petitioner (Salma), she claimed that she has got two minor school going children and owing to some matrimonial dispute, her husband (Rifakat Ahmad) is now living at Chandigarh, where he has contracted second marriage, whereas petitioner (Taranum Begum) contended that she has got two school going children, who are studying in 12th Standard and her husband (Arshid Ahmad) also does not live with her.

5. According to the petitioners, both of them are hand to mouth and their income is limited to meet their daily needs. They further averred that there were about 92 flats constructed by the State Government for the houseless and landless people, out of which 62 have been allotted, whereas 32 are still lying vacant.

6. It is pleaded that due to flood, house and the land belonging to the predecessor-in-interest of the petitioners were washed away and in lieu of that, the petitioners were allotted two room sets in Ashiana-2, Block No. 19, Set Nos. 3 and 4, respectively near Police Station, Dhalli. In the year 2017, the field agency recommended that the houses constructed by the government would be allotted to the petitioners' family and accordingly they were shifted there temporarily, but permanent allotment was not made.

7 It is lastly averred that the petitioners have now received communications dated 25.10.2019 and 22.6.2020 for vacating the houses in question and the same be quashed and set aside.

8. We have heard the learned counsel for the parties and have also gone through the material placed on record.

9. At the outset, we may observe that as per the case set up by the petitioners, they were permitted to occupy the premises in question temporarily with clear understanding that the same would be vacated by them on 30.5.2019. This is so borne out from the letter dated 25.10.2019 (Annexure P-6).

10. Unfortunately, despite the respondent-Corporation having shown compassion towards the petitioners, they misused the same by retaining the possession of the premises in question and even despite letter dated 22.6.2020 did not vacate the premises and have now chosen to file the instant petitions. The possession of the petitioners on and w.e.f. 30.5.2019 is clearly unauthorized and illegal and, therefore, they are liable to be evicted forthwith.

11. Undoubtedly, problem of homeless people is globally recognized and global strategies have been framed for the purpose. Absence of sufficient housing facilities to meet the ever- growing demand of the population is leading to slums, but then public property cannot be allowed to be encroached or usurped and concerned authorities have to ensure constant vigilance on encroachment. No right can be claimed to encroach upon public property, especially when the same was granted only as a stop- gap arrangement. It is further not necessary, as a condition for ejectment of an unauthorized occupant that he must be provided with an alternative accommodation that too at the instance of the State.

12. In Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan, AIR 1997 SC 152, the Hon'ble Supreme Court observed as under:-

"29. It is true that in all cases it may not be necessary, as a condition for ejectment of the encroacher, that he should be provided with an alternative accommodation at the expense of the State which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in this behalf. Each case is required to be examined on the given set of facts and appropriate to the facts of the case. Normally, the Court suitable to the facts of the case. Normally, the Court may not, as a rule, directs that the encroacher should be provided with an alternative accommodation before ejectment when they encroached public properties, but, as stated earlier, each case required examination and suitable direction appropriate to the facts requires modulation. Considered from this perspective, the apprehensions of the appellant is without force."

13. As noticed above, a sum of Rs.3,45,000/- each, has already been released in favour of the husbands of the petitioners, as per their respective shares, which amount, by no stretch of the imagination, can be said to be a meagre amount.

14. Normally, the court may not, as a rule, direct that the encroacher should be provided with alternative accommodation before ejectment when they encroached public properties or permitted to stay there continuously. A person who seeks equity, as observed above, must act in a fair and equitable manner; and no sympathy and equitable consideration can come to his/her rescue. Compassion cannot be allowed to bend the arms of justice in a case where an individual himself has not done or shown equity. The sole purpose of the petitioners in filing these petitions appears to grab the public property, which cannot be permitted.

15. Further more, the Court cannot and should not assume or presume that the persons(s) approaching the Court alone are extremely poor, miserable, deprived etc. vis-a-vis those persons who are not before the Court. The Ashiana-2 is a housing project for the urban poor constructed under the JNNURM. The allotment thereof is made under specific Rules, procedure and guidelines. The petitioners cannot jump the queue and pre-empt an allotment in their favour only because they have approached the Court. The process of the Court cannot be permitted to be used for an oblique or ulterior purpose. Every effort has to be made by the court to see that unscrupulous litigations be prevented from taking undue advantage by invoking jurisdiction of the Court. A person in wrongful possession should not only be removed from the place as early as possible, but should be compelled to pay for wrongful use of that property by imposing fine, penalty and cost. Any leniency would seriously affect the credibility of the judicial system.

16. It is more than settled that a writ of mandamus does not lie to create or establish a legal right but to enforce the legal right that is already established. Writ being equitable in nature, its issuance is governed by equitable principle.

The writ cannot be granted unless it is established that there is an existing legal right of the petitioners or an existing duty of the respondents.

17. The case in hand shows that frivolous litigation is sought to be prolonged by the petitioners and the same is a calculated venture involving no risk situation. After all, one has only to engage professionals to prolong litigation so as to deprive the rights of the parties and enjoy the fruits of illegalities. It is on account of such frivolous litigation that the court dockets are over-flowing. Here it is apt to reproduce the observations made by the Hon'ble Supreme Court in paras 174, 175 and 197 of the judgment in *Indian Council for Enviro-Legal Action vs. Union of India and others*, 2011 8 SCC 161, which are as under:

"174. In *Padmawati vs Harijan Sewak Sangh*, 2008 154 DLT 411 decided by the Delhi High Court on 6.11.2008, the court held as under: (DLT p.413, para 6)

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

We approve the findings of the High Court of Delhi in the aforementioned case.

175. The Court also stated: (*Padmawati case*, DLT pp. 414- 15, para 9)

"Before parting with this case, we consider it necessary to observe that one of the main reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of

all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

197. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not only be removed from that place as early as possible but be

compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts."

18 It is because of such false and incoherent pleas by the parties due to which the judicial system in the country is choked and such litigants consuming courts time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. This clearly is the abuse of the process of the Court as the intent of the petitioners is to deceive and mislead the Court that too by taking shelter of falsehood, misrepresentation and suppression facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains. This Court is required to maintain strictness, vigilance over the abuse of the process of the Court and curb such tendencies with iron hands.

19 In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, (2012) 5

SCC 370, the Hon'ble Supreme Court held that false claims and defences are serious problems with the litigation. The Hon'ble Supreme Court held as under:-

"False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."

20 In Dalip Singh v. State of U.P., (2010) 2 SCC 114, the Hon'ble Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre- Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that 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."

21 In Satyender Singh Vs. Gulab Singh, 2012 (129) DRJ, 128, the Division Bench of Delhi High Court following Dalip Singh v. State of U.P. (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause."

The observations of Court are as under:-

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation

with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."

22. Similarly, the Hon'ble Supreme Court in *Kishore Samrite vs. State of Uttar Pradesh* and others, reported in (2013) 2 SCC 398, has dealt in detail with "abuse of process of Court" in the following terms:-

Abuse of the process of Court :

"31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.

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 over-shadowed 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.

32.7. Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it. [Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R.Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:

"15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights."

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Pari palanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1, 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]). 37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play 'hide and seek with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. [K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530)."

12. Now, it is to be seen as to whether the conduct of the respondents was in fact in abuse of the process of the Court. What is "abuse of process of Court" of course has not been defined or given any meaning in the Code of Civil Procedure. However, a party to a litigation can be said to be guilty of abuse of process of the Court in any of the following cases as held by the Hon'ble Madras High Court in Ranipet Municipality Rep. by its.... Vs. M. Shamsheerkhan, reported in 1998 (1) CTC 66 at paragraph 9. To quote:

" 9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.
- (2) Contempt of the authority of the Court by a party or stranger.
- (3) Fraud or collusion in Court proceedings as between parties.
- (4) Retention of a benefit wrongly received.
- (5) Resorting to and encouraging multiplicity of proceedings.
- (6) Circumventing of the law by indirect means.
- (7) Presence of witness during examination of previous witness.
- (8) Institution vexatious, obstructive or dilatory actions.
- (9) Introduction of Scandalous or objectionable matter in proceedings.
- (10) Executing a decree manifestly at variance with its purpose and intent.
- (11) Institution of a suit by a puppet plaintiff.

(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc." The above are only some of the instances where a party may be said to be guilty of committing of "abuse of process of the Court".

23. The judicial system has been abused and virtually brought to its knees by unscrupulous litigants like the petitioners in this case. It has to be remembered that Court's proceedings are sacrosanct and should not be polluted by unscrupulous litigants. The petitioners have abused the process of the Court.

20 In view of aforesaid discussion, we find no merit in these petitions and the same are accordingly dismissed, leaving the parties to bear their own costs.