(2008) 01 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16005 of 2006

Smt. G. Bharati Devi and Others APPELLANT

Vs

The Hyderabad Urban Development Authority RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19(1), 226, 300A
Land Acquisition Act, 1894 — Section 11A

Citation : (2008) 3 ALD 292 : (2008) 2 ALT 214

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K.R. Prabhakar, for the Appellant; A.G. and M. Dhananjay Reddy for R.1 and R.2, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—The petitioners, who are successful bidders in respect of seven plots situated in Nalagandla Residential

Complex, near BHEL Township, Hyderabad, in the auction held by the Hyderabad Urban Development Authority, respondent No. 1 herein, in

pursuance of auction notification dated 28-2-2006, filed this Writ Petition for a Writ of Mandamus to declare the inaction of the respondents in

handing over of possession of the plots to them by providing infrastructure facilities, as arbitrary, illegal, discriminatory and violative of fundamental

rights guaranteed under Articles 14, 19(1)(g) and 300-A of the Constitution of India. The petitioners also sought for a consequential direction to

the respondents to hand over possession of the auctioned property after providing all the infrastructural facilities.

2. Respondent No. 1 issued notification for sale of vacant plots situated in different areas, included in the Hyderabad Urban Agglomeration. In

respect of the plots relating to Nallagandla Residential Complex, tender-cum-auction was conducted on 28-2-2006. The petitioners emerged

highest bidders in respect of seven plots, the details of which are mentioned in the table given below:

Sl. Group Revised Extent Highest Bid Sale price Name of Highest

No. Housing (approx) in for Sq.yd. worked out bidder who

Block No. Sq.yds. Rs. (Column No. 3x4) knocked down

1 2 3 4 5 6

1. VII 1937.52 19300 37394136 G. Bharathi Devi

2. VI 1937.52 22600 43787952 G. Bhasker

3 IX 1937.52 20100 38944152 G. Bhasker

4. X 1937.52 22100 42819192 G. Bhasker

5 I 2125.05 19200 40800960 H. Venkateswara Rao

6 II 2870.4 19000 54537600 H. Venkateswara Rao

7 VIII 1937.52 19000 36812880 H. Venkateswara Rao

3. As per Clause 5(m) of the Terms and Conditions of the Tender Notification for Allotment of Plots (for short ""the Tender Conditions"") fixed by

respondent No. 1, Initial Deposit (I.D), which includes Earnest Money Deposit (EMD), shall be payable within seven working days from the date

of auction without any interest. The said Clause further provided that if the highest bidder fails to make such payment, the bid will not be confirmed

and the auction in respect of such plot is deemed to have been cancelled by forfeiting the EMD, and that the bidder will have no further right.

4. According to the petitioners, though they were ready to pay the bid amount, respondents were unable to deliver possession of the plots after

completing necessary works for providing infrastructure viz., demarcation of plots, water supply, drainage system etc. It is their further case that

they approached the respondents with a request to complete the above mentioned works, but without fulfilling the said requirements, the

respondents issued notices dated 20-6-2006 to the petitioners, calling upon them to remit the I.D amounts, excluding the EMD, on or before 30-

6-2006 and indicating therein that if they failed to do so, the bids will be cancelled and the EMD forfeited. The petitioners further pleaded that they gave replies on 30-6-2006 to the said notices of the respondents, wherein they have stated that the respondents failed to undertake and complete

the infrastructural facilities as promised by them in the tender conditions even after a lapse of four months from the date of auction and they have

also requested the respondents not to reduce the plot sizes and maintain the road width upto 60'' instead of 40'', and that till the completion of all

the infrastructural works, demand for payment of the I.D amount may not be made. In their affidavits, the petitioners further maintained that they

have personally inspected the auctioned plots on 29-6-2006 and 25-7-2006 and noticed that the respondents have not initiated any steps to

provide infrastructure and demarcate the land into plots. According to the petitioners, without discharging their obligation of demarcation of plots

and providing infrastructure, the respondents cannot demand the I.D amount and threaten them to cancel the bid and forfeit the EMD.

5. The Writ Petition was dismissed in limine by a learned single Judge of this Court, without going into the merits, on the ground that the issues

raised by the petitioners fall in the realm of a non-statutory contract, which are normally to be adjudicated by a civil court of competent jurisdiction

or by way of an arbitration, if the contract provides one. The said order, however, was set aside by a Division Bench of this Court, of which I am a

party, by order dated 31-1-2007 in Writ Appeal No. 90 of 2007 filed by the petitioners. The Division Bench has taken the view that in view of the

dicta laid down in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the issues raised by the petitioners require detailed

consideration, and that the learned single Judge committed an error by non-suiting the petitioners at the threshold. While admitting the Writ Petition,

the Division Bench remitted the case to the single Bench for disposal on merits.

6. After remand, respondent No. 2 filed a counter-affidavit on behalf of the respondents. It is, inter alia, averred therein that when group house

plots in Nallagandla Residential Complex were put to auction on 28-2-2006, the proposed auction purchasers pointed out that the proposed 30''

road width is not in conformity with the building regulations; that the respondents, therefore, agreed for increase in the minimum width of the road

to 40'' and, accordingly, reduced the sizes and extents of the plots. It is further averred that having been satisfied with the said assurance, the tenderers, including the petitioners, participated in the tender process and the petitioners became the highest bidders in respect of the above-

mentioned seven plots. It is also averred that as per the Tender Conditions, the petitioners will have to pay 1/4th of the sale price as the I.D

amount within seven working days from the date of auction, which had expired on 7-3-2006, that the petitioner through their separate letters dated

16-3-2006 (marked as Annexure-R1-A) requested for extension of time for payment of I.D amount by three weeks on the ground that the NRI

funds were not remitted to their accounts; and that through another set of letters dated 6-5-2006 (marked as Annexure-R1-B) the petitioners again

sought for further time of two months for payment of the I.D amount on the premise that in view of the demand for separate Telangana, there is a

delay in remittance of NRI funds into the petitioners'' accounts, besides strike of the employees of the State Bank of India for about two weeks.

As the petitioners failed to deposit the amount as per the tender conditions, the respondents issued notice dated 20- 6-2006 calling upon the

petitioners to pay the I.D amount on or before 30-6-2006 by specifically mentioning therein that if they failed to do so, the bids will be cancelled

and the EMDs will be forfeited. The respondents alleged that the petitioners suppressed in the Writ Petition the two letters alleged to have been

addressed by them to the respondents and, for the first time in their letter dated 30-6-2006 the petitioners have taken the plea that the respondents

have failed to provide infrastructure and demarcate the plots. The respondents denied receipt of letters dated 1-8-2006 and 7-8-2006 alleged to

have been written by the petitioners. While denying the plea of the petitioners that the respondents have not provided infrastructure facilities, they

have specifically pleaded that all the facilities like laying of the roads, water distribution system, drainage system and external electricity net work

were already provided in the layout in question except widening of the road from 30'' to 40''. The respondents referred to and relied upon Clause

No. 16 (m) of the Tender Conditions and averred that the plots were put to auction on ""as is where is condition"" and that payment of I.D amount

does not depend upon the facilities which are undertaken to be provided in Clause 16(m). While terming the plea of the petitioners about the

reduction of plot sizes and the alleged failure of the respondents to provide infrastructural facilities as lame excuses for their failure to pay the I.D amounts, the respondents pleaded that in view of the petitioners'' failure to make the payments as per the Tender Conditions, the tender is deemed

to have been cancelled and the EMD amounts have to be forfeited. On 11-9-2007 the petitioners filed WPMP No. 24953 of 2007 seeking stay

of all further proceedings in pursuance of a fresh notification issued by respondent No. 1, proposing to auction the aforesaid seven plots, which are

in dispute. In the affidavit filed in support of the said application, petitioner No. 2 averred in paragraph 4 of the affidavit that to prove his bona

fides, he paid the I.D amount by way of demand drafts obtained in favour of respondent No. 1 on 7-8-2006.

7. In the counter-affidavit filed by respondent No. 2 in the said WPMP., he denied the alleged payment of I.D amount and pointed out that though

the petitioners enclosed Xerox copies of pay orders issued by IDBI Bank, Banjara Hills Branch, they have neither remitted the said amounts in the

HUDA account at Indian Oversees Bank, Himayatnagar Branch, nor submitted the demand drafts in the office of the HUDA. It is further stated

that their enquiries revealed that out of the seven pay orders issued by the IDBI Bank in favour of the Vice- Chairman, four were cancelled and the

amounts were credited to the petitioners'' account on the same day and the other three pay orders were cancelled on 29-8- 2006. The

respondents alleged that the petitioners indulged in misleading this Court by coming out with false averments that the I.D amounts were paid by

them.

8. In their reply affidavit, the petitioners tried to explain their statement that they have paid the I.D amounts by stating that the petitioners

approached the Indian Oversees Bank counter situated at the office of respondent No. 1 along with the demand drafts on 7-8-2006 and that the

person available at the counter refused to receive the said demand drafts by saying that they have contacted Sri B.Yadagiri Rao, Divisional

Administrative Officer of HUDA and he instructed not to receive those demand drafts, and that, therefore, four out of the seven demand drafts

were cancelled on the same day and having kept the remaining three demand drafts with them for several days, the amounts there under were got

credited to their accounts.

9. At the hearing, Sri K.R.Prabhakar, learned Counsel for the petitioners,

submitted that unless the respondents discharge their part of the

obligation as envisaged in Clause No. 16(m) of the Tender Conditions by providing infrastructure - like roads, water distribution (network within

the layout) system, drainage system, external electricity net work - the petitioners'' obligation to pay I.D amount will not commence and that the

alleged deemed cancellation of the tender and forfeiture of E.M.Ds is illegal. He further submitted that the ""as is where is condition"" contained in

Clause 16(m) is referable to the plots and not to the infrastructure facilities and that, therefore, unless the infrastructure facilities are provided, the

respondents are not entitled to payment of I.D amounts. The learned Counsel submitted, alternatively, that even if I.D amounts were required to be

paid within seven days from the date of auction, as prescribed in Clause 5(m), by extending the time for payment upto 30-6-2006 the respondents

are deemed to have waived the said condition.

10. Opposing the contentions of the learned Counsel for the petitioners, the learned Advocate General contended that the Writ Petition is liable to

be dismissed for suppression of material facts by the petitioners. He further contended that the petitioners violated the mandatory tender conditions

by failing to pay the I.D amounts even within the extended time and that, therefore, they are not entitled to invoke the discretionary jurisdiction of

this Court. He has also contended that since the plots were auctioned on ""as is where is condition"", the petitioners cannot raise the bogie of alleged

non-provision of infrastructure as a reason for their failure to deposit the I.D amounts. He further contended that the issues raised by the petitioners

arise under a non-statutory and commercial contract pure and simple and they do not fall within the realm of public law field to be adjudicated by

this Court while exercising the jurisdiction under Article 226 of the Constitution of India.

11. Before going into the contentions on merits, let me first dispose of the objection raised by the learned Advocate General regarding the

maintainability of this Writ Petition.

12. As noted earlier, the learned Advocate General contended that since the issues raised by the petitioners arise under a commercial contract, the

Writ Petition is not the appropriate remedy. In support of his contention, the learned Advocate General relied upon the judgments of the Supreme

Court in State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., , and Binny Ltd. and Another Vs. V. Sadasivan and Others, .

13. There is virtual dichotomy of the views expressed by the Supreme Court on the maintainability of writ petitions in matters arising under

commercial contracts. While the Supreme Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, followed by the judgments in

Bridge &Roof Co. (India) Ltd (2 supra), Kerala State Electricity Board v. Kurien E.Kalathil (200) 6 SCC 293, State of Jammu and Kashmir Vs.

Ghulam Mohd. Dar and Another, , Binny Ltd., (3 supra) etc., has taken the view that Writ Petition under Article 226 is not an appropriate remedy

to adjudicate the disputes arising under and to enforce the terms of a non-statutory contract; in another line of judgments the Supreme Court has

taken almost a converse view in its judgments in Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , Mahabir Auto

Stores and others Vs. Indian Oil Corporation and others, , Shrilekha Vidyarthi (1 supra) and ABL International Ltd. and Another Vs. Export

Credit Guarantee Corporation of India Ltd. and Others, , to cite a few.

14. In the latter judgments, the Supreme Court held that even under a concluded contract, which is non-statutory, if the State or its instrumentalities

act arbitrarily and in violation of Article 14 of the Constitution, a Writ Petition under Article 226 can be entertained by the High Court and

adjudicate the issues raised therein on merits.

15. Having regard to these divergent views, the learned Advocate General, at the hearing, fairly conceded that this Court may decide the case on

merits without going into the issue on the maintainability of the Writ Petition. Accordingly, the Writ Petition is being disposed of on merits.

16. To appreciate the rival contentions advanced by the learned Counsel representing their respective parties, it is necessary to consider the

relevant Clauses in the Tender Conditions.

17. Clause 5(k) of the Tender Conditions prescribes that 1/4th of the sale price shall be payable towards I.D; Sub-clause (l) prescribes that Initial

Deposit includes EMD by way of adjustment; and under Sub-clause (m) after deducting the EMD paid, the balance amount of I.D shall be

payable by the highest bidder within seven working days from the date of auction without any interest, failing which the bid will not be confirmed and the auction of that particular plot will be deemed to have been cancelled by forfeiting the EMD. This clause also envisages that the bidder will

have no further right.

18. Under Clause 7 the bidder shall pay the balance sale price within two months from the date of auction and the bidder shall pay simple interest

at the rate of 12% per annum after seven working days from the date of auction.

19. Under Clause 11(a) all the payments shall be made within the stipulated time and for non-payment of the sale price within such time, the

allotment will be cancelled without any intimation of whatsoever nature; and under Sub-clause (c) it is provided that the allotment is also liable for

cancellation for violation of any other terms and conditions contained therein or as may be communicated from time to time. Under Sub-clause (d)

in case of cancellation of allotment, for whatsoever reason, the I.D in full will be forfeited. Under Clause 13(a) it is provided that the plot size is

Subject to variation. Sub-clause (c) provides that possession of the plot will be handed over on payment of the full sale price or any other dues.

Under Sub-clause (f), after delivery of possession and payment of sale price and any other dues, sale deed will be registered. Clause 16(m), which

is the bone of the contention of the parties, reads as under:

HUDA will provide infrastructure like roads, water distribution (Net work within the layout) system, drainage system, external electricity net work.

The plots put for auction are on as is where is condition. The applicants shall inspect the site and satisfy themselves of the condition and location of

the plot before participating in the auction. HUDA will not carry any development work in any individual plot such as removal of boulders, land

leveling etc.

20. A perusal of the material filed by the respondents, along with the counter-affidavits, shows that after the auction has taken place on 28-2-

2006, the petitioners wrote separate, but, similar letters to the Vice-Chairman of respondent No. 1, wherein it is mentioned that the NRI funds are

being remitted to their accounts and, therefore, they requested to extend the time for payment of I.D amounts by three weeks. Evidently, there was

no reply from the respondents, but no action was taken by them for nonpayment of the I.D amounts. Thereafter, the petitioners addressed

individual letters on 6-5-2006, wherein it is, inter alia, mentioned that time for payment of the I.D amounts was extended by the respondents upto

31-3-2006, that the petitioners offered very high rates, which were more than the rates prevailing in the market, that the issue of separate

Telangana State lead to a lot of confusion in the minds of general public affecting the real estate business, and that the NRI funds are being remitted

to the petitioners'' accounts and due to strike of SBI staff for almost two weeks the process of remittance got delayed, disabling them from making

payment as on 31-3-2006. While expressing their preparedness to pay interest on the delayed payment of I.D amounts, the petitioners requested

the respondents to grant extension of further time for payment of I.D amounts by two months.

21. While no specific replies to the above mentioned letters were sent by the respondents, they have, however, sent separate notices dated 20-6-

2006, wherein they called upon the petitioners to pay the balance I.D amounts on or before 30- 6-2006 to get the bids confirmed, failing which the

bids are liable for cancellation by forfeiting the EMD amounts. In response to the said notices, the petitioners sent separate replies, wherein they

have mentioned that under the new F.S.I. Rules, minimum 60'' front wide roads are necessary and the 40'' frontage wide roads are not sufficient

and that the sizes of the plots are varied. It was further pointed out that the infrastructure in the layout is not complete even after four months of

auction and that demanding payment of I.D amounts - without completion of infrastructure works, viz., laying of B.T. roads, drainage system,

water supply etc., and varying the plot sizes without notice to them - is highly unjustified. A month after sending the said letters, the petitioners filed

the present Writ Petition.

22. As could be noted from the Tender Conditions, the plots were put to auction on ""as is where is condition"" basis. Further, the tenderers were

required to inspect the site and satisfy themselves about the condition and location of the plots before participating in the auction. Therefore, before

filing their tenders, the petitioners were expected to inspect the proposed plots and satisfy themselves about the condition and location of the plots.

It is not the pleaded case of the petitioners that they have not inspected the plots before participating in the auction, nor is it their case that they

were prevented from inspecting the plots. It is, therefore, reasonable to presume that the petitioners were aware of the condition and location of

the plots when they have filed their bids and participated in the auction. It is not the case of the petitioners that either at the time of their

participating in the auction or thereafter, till they wrote letters dated 30-6-2006, they have ever raised objection regarding lack of infrastructure. If

the petitioners felt that without providing infrastructural facilities the respondents are not entitled to demand and collect the I.D. amounts, it would

have been open to them to raise the said issue either at the time of filing the tenders or at least in the letters addressed on 16-3-2006 and 6-5-

2006. None of the objections, which were raised in letters dated 30-6-2006, have been raised in either of the said two letters. Not only that, they

failed to raise those objections, but in letters dated 6-5-2006 they made an unequivocal promise that they are prepared to pay interest on the

delayed payment of I.D amounts. I have, therefore, no hesitation to conclude that the objections raised by the petitioners for the first time in letters

dated 30-6-2006 are intended only to avoid payment of the I.D amounts and were pure afterthought.

23. In the counter-affidavit filed by the respondents, they have categorically averred that all the infrastructural facilities such as laying of roads,

water distribution system, drainage system and external electricity network were already provided in the layout and that the only work, which

remained to be done is widening of the road from 30'' to 40''. Though the petitioners disputed this claim, for the purpose of disposal of this case

there is no need to dilate on this aspect, because, in my considered opinion, payment of 1/4th bid amount as I.D amounts has neither any nexus nor

bearing on the provision for infrastructural facilities, nor the petitioners are justified in withholding the payment by taking shelter thereunder. From

Clause 16(m) of the Tender Conditions, which is reproduced hereinabove, it is quite evident that the plots put to auction were on ""as is where is

condition"". The said Clause, in which the undertaking that the respondents will provide infrastructural facilities, and Clause 5(m), which stipulates

payment of I.D. amounts within seven working days from the date of auction, are absolutely independent of each other and there is no warrant to

link the obligation of the respondents to provide infrastructure facilities with the obligation of the petitioners to pay I.D. amounts as stipulated in

Clause 5(m). Even if the contention of the learned Counsel for the petitioners that the expression ""as is where is"" contained in Clause 16 (m) is

referable to the condition of the plots and not to the layout is accepted, the petitioners still cannot have any justification to withhold payment on the

ground that the infrastructure as held out in Clause 16(m) was not provided. If at all there is any failure on the part of the respondents in discharging

this part of their obligation, it is always open to the petitioners to enforce the same in an appropriate court of law, but in no case they can be

permitted to contend with any legitimacy that their obligation to pay the I.D. amounts under Clause 5(m) will not commence till the respondents

fulfill their obligation under Clause 16(m).

24. On a careful consideration of the facts and the material on record, I am of the firm view that having failed to pay the I.D. amounts even after

expiry of more than 2 1/2 months from the date of auction, the petitioners have invented grounds to lend justification to their failure to comply with

their part of obligation as envisaged in Clause 5(m) of the Tender Conditions.

25. I have considered the contention of the learned Counsel for the petitioners that having extended the time, the respondents waived Clause 5(m)

of the Tender Conditions, which provided for deemed cancellation of the tender and forfeiture of EMDs and I have not felt persuaded to accept

the same. As a fact, the respondents have not expressly extended time. Even if their action in calling upon the petitioners to pay the I.D. amounts

on or before 30-6-2006, vide their letter dated 20-6-2006, is construed as extension of time by implication, such an action by itself cannot be

treated as a waiver of the requirement of deposit of amount under Clause 5(m). At best it can be said that the stipulation of payment of I.D.

amounts within seven working days stood substituted by the stipulation of payment on or before 30-6-2006. If the petitioners deposited the I.D.

amounts before 30-6-2006, the respondents would not have invoked Clause 5(m) and pressed into service the deemed cancellation of the Tender

on the ground that the petitioners failed to pay the amount within seven working days as originally stipulated by the said Clause. That is not the case

here. The act of the respondents in allowing extension of time, therefore, cannot be construed as their waiving the right to cancel the allotments and

forfeit the EMDs if the petitioners failed to deposit the I.D. amounts even within the extended time. For the aforementioned reasons, the petitioners

failed to make out any case for grant of the relief claimed in the Writ Petition and the same is liable to be dismissed. This Writ Petition is liable to be

dismissed for another reason viz., that the petitioners have not approached this Court with clean hands. In their affidavit filed in the Writ Petition,

the petitioners have not disclosed the fact that they have requested the respondents to extend time twice by addressing letters on 16-3-2006 and

6-5-2006. No explanation, whatsoever, is put-forth by the petitioners for not disclosing the said facts, which, in my considered view, constitutes

deliberate suppression of material facts. Further, petitioner No. 2 in his affidavit filed in support of WPMP No. 24953 of 2007 made a statement

on Oath that he paid 1/4th of the bid amount (I.D. amount) by way of demand drafts drawn in favour of respondent No. 1 on 7-8-2006. When

the respondents, in their counter-affidavit, denied this statement, the petitioners sought to explain away by coming out with explanations which

seem incredulous and the petitioners'' deliberate attempt to mislead this Court by making false claim of payments is further evident from the fact

that they filed copies of seven demand drafts along with their affidavit filed on 11-9-2007. From the petitioners'' own averments contained in reply

affidavit dated 12-11-2007, it is clear that all the demand drafts were cancelled, even by the time the Photostat copies of those demand drafts

were filed along with the affidavit. Indeed, in their counter-affidavit the respondents categorically stated that their enquiries with the Indian

Oversees Bank revealed that four of the demand drafts were cancelled on 7-8-2006 itself i.e., the date on which they were obtained and money

was credited to the account of the petitioners on the same day and the balance three pay orders were cancelled on 29-8-2006. The petitioners

have not controverted these specific allegations in the reply affidavit. Thus, from these uncontroverted averments, I am fully convinced that the

petitioners deliberately tried to mislead this Court by claiming in their affidavit filed in WPMP No. 24953 of 2007 that they have paid the I.D.

amounts and also by filing copies of seven demand drafts long after they were got cancelled by them. The jurisdiction of the High Court under

Article 226 of the Constitution of India is discretionary one and the High Court declines to exercise such a jurisdiction in favour of the persons who have not approached it with clean hands. The Doctrine of Uberrima fides recognized by English Courts and applied by the Courts in our country is

squarely attracted to this Case. A Division Bench of this Court in Ibiza Industries Ltd. and Another Vs. Union of India and Others, applied this

Doctrine and it held as under:

Be it noted that a Prerogative Writ is not to be issued as a matter of course. The applicant must come in the manner prescribed and adopt a

method which is otherwise in accordance with law and must be perfectly frank and open with the Court. There is an obligation on the part of

applicant in an application under Article 226 to be candid and be otherwise fair to Court so as not to mislead the Court. The Doctrine of Uberrima

Fides has its fullest application in a petition under Article 226. The Court is not to use a discretion in the event of there being any attempt on the

part of the petitioner to mislead the Court.

26.The Bench further held:

The application of the Doctrine of Uberrima Fides in a writ petition praying, inter alia, for issuance of a high prerogative writ has been recognized

since the decision of the Court of Appeal is the King''s Bench Division (KBD) in the case of Rex v. Kensington Income Tax Commissioners,

Princess Edmond De Polignac, exparte 1917 (1) KB 486, the case of a Russian Princess.

As noted above, invocation of the power under Article 226 of the Constitution by the High Court is discretionary and the question invariably

before the Court is whether, in fact, it should exercise its discretion in favour of the party or not? And it is on this context that the conduct of the

party has a definite and an important bearing in the exercise of discretionary power and invoking the jurisdiction under Article 226 of the

Constitution. We do deem it fit to record that the High Court would always refuse to exercise its discretion in favour of an applicant if he (the

applicant) makes a statement which cannot be termed to be correct or suppressed facts or being desirous of gaining an undue and unfair advantage

or misleads the Court in any way. In this context reference may be made to a Full Bench decision of the Allahabad High Court in the case of

Asiatic Engineering Co. Vs. Achhru Ram and Others, as also the Full Bench decision of the Kerala High Court in the case of K. Ananthan Pillai

Vs. The State of Kerala and Another, and the Division Bench judgment of Calcutta High Court in the case of Jiban Krishna Karmakar v. State of

West Bengal 1992 CWN 226 (DB) and the observations made therein do lend concurrence to the views expressed above.

27. While dealing with the scope of Article 136 of the Constitution of India, the Supreme Court in Hari Narain Vs. Badri Das, held as under:

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of

the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special

leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray

the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is

satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is

entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as

misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special

leave granted to the appellant ought to be revoked.

28. In Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, , the Supreme Court held that a party which has misled the Court in

passing an order in its favour is not entitled to be heard on the merits of the case. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs.

Government of Karnataka and another, , the Supreme Court declined relief to the appellant who had concealed the fact that the award was not

made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order

passed in a writ petition. The observations made by the Supreme Court in that context are apt to be reproduced herein below:

It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief

must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed.

29. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the Supreme Court held that where a preliminary

decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such

party deserves to be thrown out at any stage of the litigation.

30. In the light of the above-mentioned facts and the settled legal position, the Writ Petition is dismissed. For suppression of material facts and

attempting to mislead this Court, the petitioners shall pay costs of Rs. 20,000/- (Rupees twenty thousand only) to A.P. State Legal Services

Authority within a period of four weeks from today. The Secretary, A.P. State Legal Services Authority shall report to this Court, on the expiry of

the time stipulated above, whether or not the petitioners paid the costs, so that appropriate orders in this regard could be passed.