

(2009) 03 OHC CK 0036
In the Orissa High Court
Case No : Writ Petition (C) No. 11307 of 2006

Sudarsan Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 23

Citation : (2009) CLT 80 Supp : (2009) 1 ILR (Ori) 637 : (2009) 1 OLR 1019 Supp

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed for seeking direction to the opposite party No. 2 to consider the application of the Petitioner under Annexures -1 and 2 to settle the land bearing Plot No. 324 (Part), Khata No. 619 of Mouza-Bhubaneswar measuring an area of Ac. 0.40 dec. in favour of the Petitioner accepting the premium and cost of the land and to restrain Opposite party Nos. 3 & 4 dispossessing the Petitioner from the said plot.

2. The facts and circumstances giving rise to this case are that Petitioner though had no right, title or interest in the property in issue, encroached upon it prior to 1990 for running the restaurant in the name and style of "Dildar Hotel". In the year 1990 he made an application to opposite party No. 2 to settle the said land in his favour. As the application was not processed, he submitted another reminder on 5.2.1994, which has also not yet been disposed of. Hence this writ petition.

3. Learned Counsel for the Petitioner Shri S.K. Sanganerla has submitted that Petitioner has got the registration of accommodation by the Municipality and he has obtained electricity and water connection. It is stated that the opposite parties-authorities have framed a scheme to settle the land in favour of persons

who are found in its possession and in large number cases such settlement had already been made. Therefore, the opposite party-authorities should be directed to settle the said land in favour of the Petitioner.

4. On the other hand Shri A.K. Mishra, learned Counsel appearing for opposite party Nos. 3 & 4 and Shri P. Panda, learned Add. Standing Counsel for the State have vehemently opposed the petition contending that the copy of any such scheme floated by the State or any other authorities is not placed on record. Petitioner is a rank-trespasser. He ought to have prosecuted for such illegal activity. The writ petition seeking the relief of settlement of the land which has been encroached upon forcibly cannot be entertained as he has no legal right to do so. It has further been pointed out that Petitioner has also filed a Civil Suit No. 263 of 2006 before the learned Civil Judge (J.D.), Bhubaneswar which is still pending consideration and wherein no interim relief has been granted to the Petitioner. Petitioner has approached this Court by suppressing material fact. The petition is liable to be dismissed only on this ground. It has further been submitted that the said land belongs to the General Administration Department of the Government of Orissa which has been given to Railways and the Railway is being the licence holder and is paying licence fees amounting to Rs. 3,72,501/- per month to the State Government and taking all responsibilities of maintaining the same. Therefore, the petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. Admittedly the Petitioner has not disclosed the fact that he has already approached the Civil Court for the same relief. When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. (Vide *The Ramjas Foundation and Others Vs. Union of India and Others*, ; *K.R. Srinivas Vs. R.M. Premchand and Others*, . Thus, who seeks equity must do equity. The legal maxim "*Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiores*", means that it is a law of nature that one should not be enriched by the loss or injury to another.

7. In *Noorduddin Vs. Dr K.L. Anand*, , the Supreme Court observed as under:

... Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice.

8. Similarly, in *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, , the Apex Court observed as under:

The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point the interest of justice and public interest coalesce. They are very often one and the same The Courts have to weight the public interest vis-a-vis the private

interest while exercising the power under Article 226 indeed any of their discretionary powers.

9. In *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, ; *State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another*, ; and *Sabia Khan and Others Vs. State of U.P. and Others*, , the Apex Court held that filing 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 petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court.

10. In *Agricultural and Processed Food Products Vs. Oswal Agro Furane Ltd. and others*, , the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a Petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts". While deciding the said case, the Supreme Court had placed reliance upon the judgment in *King v. General Commissioner* (1917) 1 KB 486, wherein it has been observed as under:

Where an ex parte application has been made to the Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....

11. In *Abdul Rahman Vs. Prasony Bai and Another*, ; and *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, , the Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the suppressed fact must be material one in the sense that had it not been suppressed, it would have led any fact on the on the merit of the case.

12. More so it is well settled legal proposition that writ Court should not interfere in the matter where suit is pending. (Vide *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, ; *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, ; *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, ; *Jai Singh Vs. Union of India and Others*, ; and *Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. and Others*,).

13. Even otherwise, no policy/guidelines/circular which has been issued by the State or any competent authority has been placed on record to show that the policy decision has been taken to settle the land in favour of the encroachers. It would be very unfortunate for any State to adopt this kind of policy decision to

settle the land in favour of the encroachers. Law does not permit the confer title upon the person who has audacity to breach the law rather become the law unto himself. Even if such a policy decision is taken, it becomes the solemn duty of the Court to struck it down being totally illegal and void. (vide Ram Ganesh Tripathi and others Vs. State of U.P. and others,).

14. In Mohammed Yunus Vs. Urban Improvement Trust, Jodhpur and Others, , the Rajasthan High Court placing reliance upon its earlier judgment in Shri Paresar Vs. Municipal Board, , observed that the expression "public policy" connotes some matter which concern the public good and the public interest. Hence, policy decision taken by the State Government can also be said to be synonymous to public policy, provided such policy decisions taken by the State are legal and valid and in case the property is alienated by any means for any purpose in violation of the public policy, such alienation would be "ab initio void" and would not confer any right, title or interest in favour of the transferee and any violation or obstruction of a policy decision would be void ab initio and is liable to be ignored.

15. "Public Policy" though not defined in Indian Contract Act or any other Statute and remains a vague and unsatisfactory term, but in the ordinary sense, it means "political expedience" or that "which is best for the common good of the community". (Vide Egerton v. Borownlow 10 ER 359, considered and relied upon by the Hon''ble Supreme Court in Gherulal Parakh Vs. Mahadeodas Maiya and Others,).

16. The Common Law Doctrine of public policy can be invoked wherever an action affects/offends the public interests or where harmful result of permitting the contract in terms of injury to the public at large, is evident and undisputable as such a contract is hit by Section 23 of the Contract Act and is void, (vide Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, ; and Firm of Pratapchand Nopaji Vs. Firm of Kotrike Venkata Setty and Sons and Others,).

17. In Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others, , the Hon''ble Supreme Court has observed that any provision of law which is based on public policy, has to be given a strict adherence for the reason that the same has been enacted to protect the interest of the community as a whole. The Court further observed as under:

Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time

18. We find no force in the submissions made by Shri Sanganerla that opposite parties have to referred to the legal proceedings for removing the encroachment for the simple reason that a rank-trespasser cannot be permitted to choose the course which should be adopted by the competent authority for his eviction. In absence of any bona fide about his right to remain in occupation over the land, i.e. title/right/interest in land is in dispute, he cannot be heard raising such a

grievance. (vide Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, ; and State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others,).

19. Be that as it may, we fail to understand as what is the right of the Petitioner to choose a particular procedure for his eviction.

20. In Noorduiddin Vs. Dr K.L. Anand, , the Hon"ble Supreme Court observed as under:

The object of law is to meet-out justice. Right to the right, title or interest of a party in the immovable property is a substantial right. But the right of an adjudication of the dispute in that behalf if the procedural right to which no one has a vested right. The faith of the people in the efficacy on law is the saviour and succour for the subsistence of the Rules of law. In awakening like in the judicial process would rip apart the edifice of justice or create a feeling of disillusionment in the mind of the people of from law and Court. The rule of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almatater for the mankind. It is the foundation for the orderly human relations. Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice

(Emphasis added)

21. Similarly, in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , the Apex Court observed as under:

The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point the interest of justice and public interest coalesce. They are very often one and the same The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226.

(Emphasis added)

22. In such fact-situation, we are of the considered opinion that admittedly Petitioner has no legal right, title or interest over the suit property and he is merely a rank-trespasser. He failed to get any interim order from the Civil Court. He has suppressed the material fact of pendency of the civil suit in the writ petition. Thus the Petitioner is not entitled for any equity relief before the writ court.

23. In view of the above, petition lacks merit and is accordingly dismissed. Opposite parties-authorities are directed to remove the encroachment and proceed with the matter.