

(2011) 09 MAD CK 0176
In the Madras High Court
Case No : W.A. No. 1557 of 2010

The State of Tamil Nadu

APPELLANT

Vs

S. Prabu

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 38(A)

Citation : (2011) 09 MAD CK 0176

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Ravichandran, Additional Government Pleader, for the Appellant;
A.L. Somayajee for M. Muthappan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—Whether a party, guilty of obtaining orders by making false representation, knowing it to be false and misleading the Court, can be permitted to avail the benefits that would flow from the order, in exercise of the equity jurisdiction under Article 226 of the Constitution of India, is the core issue that arises for consideration in this writ appeal.

2. The direction given by the learned single Judge to consider the case of the Respondent after setting aside the order passed by the Government, rejecting the request to permit him to conduct sand quarrying operations in the alternative site, without even challenging the very order of cancellation of lease dated 2 February 1998, on account of the failure to comply with the mandatory conditions of lease, made the State to file this writ appeal.

THE FACTS IN NUT SHELL:

3. The Respondent participated in the tender cum auction conducted by the District Collector, Salem, to grant the privilege of quarrying sand in S.F. No. 47, Block No. 2, Bommalapalayam Village, Paramathivelur Taluk, Namakkal District,

to an extent of 10.00.00 hectares for the period 1 January 1996 to 31 March 1999. The amount quoted by the Respondent was found to be the highest and as such, the District Collector as per his proceedings dated 22 November 1996 granted him the lease, subject to the fulfillment of mandatory conditions regarding payment of lease amount, besides security to be deposited, within fifteen days from the date of confirmation. Though the Respondent was bound to pay the lease amount within fifteen days along with security deposit, he failed to pay the amount. Subsequently, he paid the lease amount on 17 February 1997. However, the mandatory security deposit was not made.

4. The Respondent filed Writ Petition in W.P. No. 843 of 1998 praying for an order to execute lease in his favour for a period of three years. In the affidavit filed in support of the said Writ Petition, the Respondent contended that in spite of his tendering the lease amount and depositing the security amount, the lease deed was not executed. The Additional Government Pleader who took notice on behalf of the Government submitted that the delay in executing the lease deed was only on account of non-production of stamp papers by the Respondent. Accordingly, the learned single Judge as per order dated 23 January 1998 directed the Respondent to comply with all other requirements subject to which the bid as accepted and the District Collector was directed to execute the lease amount. Even then the security amount was not deposited.

5. Failure on the part of the Respondent to pay the security deposit within the time granted by the District Collector made the said authority to cancel the lease on 2 February 1998. The Respondent thereafter submitted a representation on 1 December 2001 to execute the lease agreement. While the said application was pending, the State introduced Rule 38(A) in and by which the right to exploit the quarry of sand got vested exclusively with the State. The Rule came into force with effect from 2 October 2003. The amended Rule was challenged before the Supreme Court in State of Tamil Nadu v. P. Krishnamurthy AIR 2006 SCW 1778. The Supreme Court while upholding the amended Rule directed the State to permit such of those writ Petitioners whose leases were subsisting as on 2 October 2003 to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease, whichever is less. The Supreme Court also extended the benefits to those who have orders of the Court for grant of mining leases but where mining leases were not executed for one reason or the other.

6. The Respondent challenged the vires of Rule 38(A) in W.P. No. 47626/2006. The Writ Petition was dismissed on 8 December 2006 with liberty to the Respondent to make a representation before the Government. The Respondent, on 2 January 2007, submitted a representation to the Government with a request to extend the benefits of the Supreme Court judgment as contained in paragraph 26 of P. Krishnamurthy.

7. Even during the pendency of the said representation, the Respondent filed another Writ Petition in W.P. No. 14809 of 2007 praying for issuance of a writ of

mandamus directing the Government to execute the lease deed for a period of six months. The said Writ Petition was disposed of with a direction to the Government to consider the issue on merits. The Respondent once again filed a Writ Petition in W.P. No. 27955/2007 for issuance of a writ of mandamus to grant permission to quarry sand indicating an alternate site. The said Writ Petition was disposed of on 21 September 2007 directing the authorities to consider the representation on merits.

8. The Government considered the representation submitted by the Respondent dated 2 January 2007 and 21 May 2007 and ultimately, rejected the representations. The said order dated 2 January 2008 was challenged by the Respondent in W.P. No. 2802 of 2008. The learned single Judge observed that the Respondent has complied with all the requirements, including the payment of security deposit. The learned Judge issued a direction to the Government to consider the request made by the Respondent in the light of paragraph 26 of the judgment of the Supreme Court in P. Krishnamurthy.

9. The issue was once again considered by the Government and the representation was rejected on 20 October 2008.

10. The order of rejection dated 20 October 2008 was challenged in W.P. No. 28114/2008.

11. The learned single Judge set aside the order dated 20 October 2008 and directed the Government to consider the matter afresh in the light of the observation as contained in the said order. The learned single Judge specifically directed the Government to consider the representation of the Respondent dated 10 January 2008 afresh in the light of the judgment of the Supreme Court in P. Krishnamurthy and taking into account the lease granted in favour of similarly placed applicants. The learned Judge further directed the Government not to insist on payment of lease amount in view of the earlier payment made by the Respondent. In short, even without challenging the order dated 2 February 1998, the learned single Judge granted the relief as prayed for by the Respondent. It is the said order which is impugned in this writ appeal.

SUBMISSIONS:

12. The learned Additional Government Pleader appearing on behalf of the Appellants contended that the lease granted to the Respondent was cancelled as early as on 2 February 1998 on account of his non-compliance of the mandatory conditions. The said order remain unchallenged. Ignoring the said order, the learned single Judge directed the Government to consider the matter afresh. According to the learned Additional Government Pleader, Respondent has no right to claim quarry lease in view of Rule 38(A) of the Tamil Nadu Minor Minerals Concession Rules. It was his further contention that the issue raised by the Respondent was considered by the Government threadbare and a detailed order was passed. In the said order, the Government very clearly stated that the lease granted to the Respondent as per proceedings dated 22 November 1996 was

cancelled on 2 February 1998 and as such, the question of considering his case once again for grant of lease would not arise. Even then, the learned single Judge quashed the order dated 20 October 2008 and directed the Government to consider the matter afresh. It was further contended that the question of adjusting the lease amount does not arise in view of the earlier order passed by the District Collector on 2 February 1998 forfeiting the lease amount. The learned Additional Government Pleader also contended that the Respondent has not come to the Court with clean hands and as such, he is not entitled to a discretionary relief from the Court.

13. The learned senior Counsel for the Respondent while supporting the order passed by the learned single Judge contended that as early as on 23 January 1998 the learned single Judge found that the execution of lease deed was delayed only on account of the non production of stamp papers. The alleged order of cancellation dated 2 February 1998 was not communicated to the Respondent and as such, he cannot be penalized for not challenging the said order. The learned senior counsel further contended that in spite of indicating the Respondent's right to get lease for a period of six months, in the order in W.P. No. 2802/2008, the Government have once again negatived the request. It was the further contention of the learned senior counsel that the order dated 2 February 1998 remained only in the notes paper and it was never communicated. Therefore, no reliance could be placed on the said document and it was rightly ignored by the learned single Judge.

DISCUSSION:

14. The Respondent was granted sand quarry lease as early as on 22 November 1996. The District Collector being the statutory authority, called upon the Respondent to deposit the lease rent and the security deposit within fifteen days from the date of receipt of the confirmation proceedings. The Respondent made a request to extend the time to deposit the lease/security amount on health ground.

15. The Respondent even without complying with the terms of grant, filed a Writ Petition in W.P. No. 843/1998 before this Court praying for a direction to the District Collector to execute the lease deed for a period of three years. In the affidavit filed in support of the said writ petition, the Respondent contended that he has deposited the lease amount and made the security deposit and in spite of such compliance, the District Collector has not executed the sale deed. The learned single Judge directed the Additional Government Pleader to take notice. The learned Additional Government Pleader made an incorrect statement before the Court that it was only on account of the failure on the part of the Respondent to produce the stamp papers, lease agreement was not executed. The Respondent was fully aware even at that time point of that he has not made the security deposit. However, he has sworn to a false affidavit claiming that he has paid the security amount.

16. The learned single Judge was pleased to dispose of the Writ Petition on 23 January 1998 directing the Respondent to produce the requisite stamp papers and to comply with all the requirements subject to which the bid was accepted. It is a matter of record that in spite of giving such direction, the Respondent has not deposited the security deposit. During the course of hearing, we directed the learned senior counsel to produce the receipt evidencing payment of security amount. The matter was adjourned thereafter for the purpose of producing the receipt. When the matter was taken up later, learned senior counsel very fairly submitted that the Respondent has not made the security deposit.

17. The failure on the part of the Respondent to pay the security deposit made the Government to cancel the lease as per order dated 2 February 1998. According to the Respondent, the said order was never communicated to him.

18. We have perused the file produced by the learned Additional Government Pleader. The file contains a copy of the letter dated 2 February 1998 and it indicates that the order was sent by Registered Post. Therefore, it cannot be said that the Respondent was not aware of the order of cancellation.

19. The Respondent made a claim on the basis of the observation of the Supreme Court in paragraph 26 of the judgment in P. Krishnamurthy. The question of extension of the benefits as per paragraph 26 would not arise in the case of the Respondent. There was no subsisting lease in favour of the Respondent as on 2 October 2003. It was also not a case of non-execution of mining lease in spite of the order passed by the Court. Since the lease was cancelled as early as on 2 February 1998, the case of the Respondent would not come within the meaning of either "the existing lease holder" or "grantee of lease without lease deed". Therefore, the Petitioner cannot take advantage of the direction given by the Supreme Court in P. Krishnamurthy.

20. The Respondent has been making representations after representations in spite of cancellation of his lease as early as on 2 February 1998. The Respondent was fully aware of the basic fact that he has not paid the statutory deposit and the consequences which would follow from the non-compliance of mandatory conditions.

21. The Government rejected the representation submitted by the Petitioner on 2 January 2008. Paragraph 8 of the said order contains a clear statement that the lease was cancelled on 2 February 1998. Even if we accept the case of the Respondent that he was not put on notice about the order of cancellation made on 2 February 1998, the fact remains that the order dated 2 January 2008 was served on him and as such, at least from the date of service of the said order he was aware of the order of cancellation. The Respondent neither deposited the security deposit nor challenged the order dated 2 February 1998 in spite of his knowledge about the cancellation of lease.

22. The Respondent challenged the order dated 2 January 2008 in W.P. No. 2802 of 2008. The learned single Judge on the basis of the submission made by the

Respondent observed that the Respondent had complied with other conditions including security deposit. Even though the Respondent has not made the required deposit, he made the Court to believe that he has complied with the conditions. It was only the false representation made by the Respondent, which made the learned single Judge to set aside the impugned order resulting in issuing a direction to the Appellants to consider the matter in the light of paragraph 26 of the judgment of Supreme Court in P. Krishnamurthy.

23. The Government while rejecting the representation dated 10 January 2008 in accordance with the direction issued by the learned single Judge in W.P. No. 2802 of 2008 reiterated the earlier statement that the lease agreement was cancelled as early as on 2 February 1998 and as such, the Respondent has not made out a case to modify the order dated 2 January 2008. The order dated 20 October 2008 was served on the Respondent during the last week of October 2008. Even then, the order dated 2 February 1998 was not challenged. The Petitioner filed another Writ Petition in W.P. No. 28114/2008 challenging the order dated 20 October 2008 and prayed for a consequential relief to grant permission to carry on quarrying operations in the alternative site situated in Pettapalayam village, Paramathivelur Taluk, Namakkal District.

24. The Respondent in his affidavit filed in support of the Writ Petition in W.P. No. 28114/2008 though stated that he has paid the lease amount on 17.02.1997, very conveniently suppressed the factum of non payment of security deposit. Therefore, it is crystal clear that the Respondent has been maintaining that he has complied with all the mandatory conditions as found in the proceedings dated 22 November 1996, issued by the District Collector, Namakkal.

25. The Deputy Secretary to the Government filed a counter affidavit in W.P. No. 28114/2008 explaining the true position. Even in the said counter affidavit, the Government have made the position very clear that the lease was cancelled as early as on 2 February 1998 and therefore, the question of permitting the Respondent to quarry from an alternate site does not arise for consideration. Still, the Respondent has not chosen to challenge the order of cancellation dated 2 February 1998.

26. The learned single Judge opined that the order dated 2 February 1998 merged with the subsequent order dated 2 January 2008 and as such, the Respondent was not bound to challenge the said order. The learned Judge appears to have not considered the fact that the lease amount deposited by the Respondent has already been forfeited to the Government. Therefore, unless and until the said order is set aside in the manner known to law, it cannot be said that there was a subsisting lease in the name of the Respondent at an earlier point of time.

27. The proceedings dated 23 January 1998 was a self-working order. The Respondent was directed to comply with the conditions within a period of fifteen days failing which it was indicated that the order would be cancelled. Therefore,

no further order was necessary to cancel the lease on account of the failure to comply with the conditions. The further orders are necessary only to forfeit the amount. The respondent is fully aware that he has not complied with the conditions under which the lease was granted. Therefore, without complying with the condition, the respondent cannot be heard to say that he should be given the lease on the strength of the order dated 23 January 1998 in W.P. No. 843/1998.

28. The file produced by the District Collector contains a copy of the affidavit sworn to by the Respondent on 31 March 1998 in W.P. No. 843/1998.

29. Paragraph 3 of the affidavit reads thus:

I submit that since I am the highest bidder, I have paid the lease amount of Rs. 4,10,000/- being the amount proportionate to the first financial year i.e. for 5 months (Total lease amount for the whole year amounting to Rs. 9,84,000/-) and the same has been accepted by the Government and the lease has been granted in respect of the above said area by proceedings dated 22.11.1996. I submit that I have also paid area assessment of Rs. 500/- and also the security deposit in addition to the lease amount of Rs. 4,10,000/-. I submit that the lease is for a period of 3 years from the date of execution of the lease deed.

30. The learned Additional Government Pleader who appeared on behalf of the State also made an incorrect statement, without reference to the records, that the execution of lease was delayed only on account of the failure to produce the stamp papers. The learned single Judge believed the statement of the Respondent as contained in paragraph 3 of the affidavit and taking into account the submission made by the learned Additional Government Pleader, directed the Government to execute the lease. Even while directing the Government to execute the lease, the learned single Judge directed the Respondent to comply with all other requirements subject to which the bid was executed. In spite of such a positive direction, security deposit was not made. Therefore, the order dated 23 January 1998 in W.P. No. 843/1998 would not come to the rescue of the Respondent. The said order was obtained by making false representation. Government is not bound by the incorrect statement made by the learned Additional Government Pleader, as the submission was not on the basis of records.

31. The earliest order in W.P. No. 843/1998 was obtained by misrepresenting the facts.

EQUITY JURISDICTION:

32. The jurisdiction under Article 226 of the Constitution of India is essentially a discretionary jurisdiction, other wise known as "equity jurisdiction". A party who approaches the Court invoking Article 226 of the Constitution of India must disclose correct facts. Writ Petitions are decided on the basis of affidavits. Therefore, attempt should be to divulge the real facts so as to enable the Court to take a decision on merits. Attempts made by the litigants to suppress the real

facts with the sole aim of getting orders by misleading the Court should be discouraged by denying them the equitable relief.

THE AUTHORITIES:

33. The Supreme Court in *Ritesh Tewari and Another Vs. State of U.P. and Others*, , considered the scope of equity jurisdiction and observed that in case the claim is not founded on valid grounds, the party cannot claim equity. Relevant observation reads thus:

26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner.

27. Where a party's claim is not founded on valid grounds, the party cannot claim equity. A party that claims equity must come before the court with clean hands as equities have to be properly worked out between parties to ensure that no one is allowed to have their pound of flesh vis-?-vis the others unjustly.

34. In *Ritesh Tewari*, Supreme Court followed earlier judgments in *M.P. Mittal Vs. State of Haryana and Others*, and *State of Maharashtra and Ors. v. Prabhu* 1992 (2) SCC 481:

29. In *M.P. Mittal Vs. State of Haryana and Others*, this Court held:

5. ... it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such Petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the Petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.

30. this Court in *State of Maharashtra v. Prabhu* 1992 (2) SCC 481 considered the scope of equity jurisdiction of the High Court under Article 226 of the Constitution and pointed out as follows:

5. ... It is the responsibility of the High Court as custodian of the Constitution to

maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

35. The Respondent approached this Court with a false claim in 1998 and succeeded in getting an order for execution of lease agreement. Even in the subsequent Writ Petitions, no attempt was made by the Respondent to divulge the correct facts. The Respondent, at all point of time, maintained that he has complied with the requirements as indicated in the proceedings dated 22 November 1996 on the file of the District Collector. In fact, he once again made the Court to believe that security deposit was made and that is reflected in the order dated 13 February 2008 in W.P. No. 2802/2008. Even in W.P. No. 28114/2008, the Respondent failed to disclose the non-payment of security amount.

36. The order of cancellation dated 2 February 1998 remain unchallenged till date. The learned senior counsel has now confirmed the fact that the mandatory condition regarding deposit of security amount has not been complied with till date. The facts are therefore very clear. The Respondent has failed to comply with the mandatory conditions subject to which the lease was granted. Therefore, his lease was rightly cancelled by the District Collector as per proceedings dated 2 February 1998. The said proceeding was not challenged in spite of knowledge at least from the date of receipt of Government Order in G.O. Rt. No. 307 Industries (MMC1) Department dated 20 October 2008. The Respondent cannot simply ignore the order of cancellation and make a claim for sand quarry lease, that too pointing out an alternative site.

37. When the lease itself was cancelled on 2 February 1998, the question of adjusting the lease amount also does not arise. The learned single Judge proceeded on the premise that the challenge made to the subsequent order, which was on the basis of the earlier order, would cure the initial defect. We are not inclined to accept the said view.

RESULT:-

38. Therefore, on a careful consideration of the entire factual matrix, we are of the view that the learned single Judge was not correct in setting aside the order impugned in the Writ Petition. The Respondent is guilty of suppression of material facts and as such, he is not entitled to get an equitable relief from this Court of equity. Therefore, we are constrained to set aside the order passed by the learned single Judge.

39. In the result, the order dated 19 March 2010 in W.P. No. 28114 of 2008 is set aside. The writ appeal is allowed and consequently, the Writ Petition is dismissed. No costs.