

(2016) 12 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 10911 of 2016

Vaghela Popatbhai Chhaganbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GCD 741

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Mr. An Patel, Advocate and Ms. Trupti A. Patel, Advocate, for the Petitioner No. 1; Mr. Km Antani, Asst. Government Pleader, for the Respondents Nos. 1 and 4; Mr. Tattvam K Patel, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition under Article 226 of the Constitution of India has been filed, inter alia, with the prayer to issue a suitable writ or directions to the statutory authorities to accept the purchase price fixed by respondent No.4, Mamlatdar and ALT, Nadiad, by granting the benefit of extension under the Notification dated 14.10.2014 and, further, to issue a Certificate to the petitioner as a tenant of land bearing Survey Nos.46 and 47 of village Dumral and Survey No.215 of village Tundel, District Nadiad.

2. It is the case of the petitioner that he is a protected tenant under the provisions of the Gujarat Tenancy and Agricultural Lands Act, 1939 ("the Tenancy Act", for short) as he has inherited tenancy rights from the original tenant Chhaganbhai Gagabhai Vaghela and Maganbhai Gagabhai Vaghela, from whom Shanabhai Gagabhai Vaghela inherited the tenancy. The petitioner claims the tenancy through the latter. According to the petitioner, he is tilling the land in question as a tenant, residing on the land for more than sixty years and paying rent to the landlord.

3. It is stated that there was some litigation between the landlord and tenant, which has been superficially referred to in the petition but the exact details and result of which have not been indicated. There is also a reference to Special Civil Application No.8793/2016 having been filed before this Court wherein, by an order dated 07.06.2016, the Court directed the authorities to consider the case of the petitioner for the payment of the purchase price. However, the said order has not been produced on record or supplied later on.

4. The petition has been strongly opposed by respondent No.5 by filing an affidavit-in-reply, in which a preliminary objection has been taken regarding the suppression of material facts by the petitioner. It is stated in the reply that Shanabhai Gagabhai Vaghela, through whom the petitioner is claiming his tenancy, had filed an application under Section 32(1) (b) of the Tenancy Act, wherein he lost upto the Gujarat Revenue Tribunal. Thereafter, he preferred Special Civil Application No.12865/2008 before this Court. By an order dated 22.06.2009, the petition came to be dismissed. A copy of this order has been produced as Annexure-RI to the reply by respondent No.5. By the above order, this Court has upheld the findings of the Deputy Collector that the land in question was orchard land and no tenancy can be claimed on such land. Shanabhai Gagabhai Vaghela, the predecessor-in-interest of the petitioner, challenged the above-mentioned order of this Court before the Division Bench by filing Letters Patent Appeal No.2215/2009. By an order dated 09.04.2010, the appeal was rejected.

5. It is further stated in the affidavit-in-reply filed by respondent No.5 that, in the year 2009, the present petitioner had filed Tenancy Case No.2/2009, under Section 70B of the Tenancy Act before the Mamlatdar and ALT, which was rejected by an order dated 28.12.2012 with a specific finding that the petitioner has failed to establish his tenancy rights over the land in question. Against this order the petitioner preferred Tenancy Appeal No.6/2013, before the Deputy Collector, which was rejected by an order dated 08.02.2016. The copies of both the above-mentioned orders have been annexed as Annexures-R3 and R4 to the reply filed by respondent No.5.

6. Respondent No.5 further states in the affidavit-in-reply that, in the year 2010, the present petitioner preferred an application, purportedly under Section 43(1) (d) of the Tenancy Act and Tenancy Case No.24/2010 came to be registered before the Mamlatdar and ALT. This application has also been rejected by an order dated 26.03.2013. A copy of this order has been produced as Annexure-R5. It is stated that all the above-mentioned proceedings and the orders passed by the Division Bench, this Court, the Tribunal and the revenue authorities, have been suppressed by the petitioner. As there is a suppression of material facts, the petition deserves to be rejected on this ground alone.

7. The petitioner has filed an affidavit-in-rejoinder, reiterating his stand that he is a protected tenant, having inherited the tenancy rights from the original tenant, and is in possession of the land. According to him, no action has been taken by

respondent No.5 (the landowner) to take back the legal possession of the land. There are vague allegations regarding non-grant of an opportunity of hearing but it is not clear in which proceedings. It is stated that respondent No.5 is colluding with the Police authorities in order to take forcible possession of the land in question, therefore, the tenant (petitioner) is entitled for the restoration of the possession under Sections 29, 43, 70, 81 and 32FF of the Tenancy Act. There is no denial in the affidavit-in-rejoinder, to the preliminary objection regarding suppression of material facts. On the contrary, it is stated (in paragraph 8) that the proceedings between the heirs of the original tenants and respondent No.5 have nothing to do with the termination of tenancy or dispossession of the petitioner, who is entitled to the purchase price.

8. In the above background, this Court has heard learned counsel for the respective parties at length.

9. Mr. Tattvam K. Patel, learned advocate for respondent No.5, has strongly pressed the preliminary objection regarding suppression of facts and submitted that the petition deserves to be rejected at the threshold, without entering into the merits as the petitioner has not come with clean hands.

10. It is submitted that the petitioner is claiming to be the heir of Shanabhai Gagabhai Vaghela, who had claimed to be the tenant of the land in question. This averment has been made by the petitioner in paragraph 3 of the petition. However, this Court (Coram: D.A. Mehta, J.), vide the order dated 22.06.2009, passed in Special Civil Application No.12865 of 2008, rejected the petition filed by the legal heir of Shanabhai Gagabhai Vaghela against the order of the Gujarat Revenue Tribunal, which found that the said Shanabhai Gagabhai Vaghela was not entitled to purchase the land in question on the appointed day. This order has been confirmed by the Division Bench by the judgment dated 09.04.2010, passed in Letters Patent Appeal No. 2215 of 2009 in Special Civil Application No.12865 of 2009. Further, the Division Bench has observed, in paragraph 7 of the said judgment that the petitioner, namely, the legal heir of Shanabhai Gagabhai Vaghela, could not be in possession of the land and seek benefit under Section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act" for short), which applies to a tenant who was in possession of the land on the appointed day and has been dispossessed of such land by the landlord illegally. It is observed that when the benefit of Section 32(1B) is pressed into service, it presupposes that the petitioner would have lost the possession. It is submitted that the averment of the petitioner in the present petition that he is in possession is, therefore, not correct.

11. Learned advocate for respondent No.5 has further submitted that independently of the proceedings preferred by the heirs and legal representatives of the predecessor-in-title of the petitioner, the petitioner has moved the Mamlatdar and ALT by filing Tenancy Case No.2/2009 under Section 70B of the Act, to be declared as a tenant. The Mamlatdar and ALT has rejected the application of the petitioner by his order dated 28.12.2012. The petitioner moved

the Deputy Collector against the order of the Mamlatdar and ALT who has also rejected the appeal, being Tenancy Appeal No.06/2013, on 08.02.2016.

12. Learned advocate for respondent No.5 further submits that yet another proceeding, being Tenancy Case No.24/2010, was initiated by the petitioner as the Power of Attorney holder of Sakarben and on his own behalf before the Mamlatdar and ALT, under Section 43(1) of the Act. This application has also been rejected by an order dated 26.03.2013.

13. It is contended that the orders of this Court, the Division Bench as well as the orders passed by the Mamlatdar and ALT and the Deputy Collector in the proceedings initiated by the predecessor-in-interest of the petitioner and also by himself, have been suppressed from this Court. In the petition, there is no mention regarding the proceedings initiated by the petitioner, himself, before the Mamlatdar and ALT and the Deputy Collector, which have been rejected.

14. On the above grounds, it is prayed that the petition be rejected without entering into the merits of the case.

15. Mr. K.M. Antani, learned Assistant Government Pleader, has supported the arguments made by learned advocate for respondent No.5 and has, in addition, submitted that on 07.06.2016, this Court had passed an order directing the Collector to look into the application made by the petitioner for the extended benefits of the provisions under Section 32M of the Act. The same prayers are made by the petitioner before this Court. Learned Assistant Government Pleader has brought to the notice of the Court the following judgments and has urged that the petition be rejected on the ground of suppression of material facts :

(i) Prestige Lights Ltd. v. State Bank of India, reported in (2007) 8 SCC 449.

(ii) K.D. Sharma v. Steel Authority of India Limited and others, reported in (2008) 12 SCC 481.

16. Mr. A.N. Patel, learned advocate for the petitioner, submits that it is only because the Collector has not taken any action on the application of the petitioner that the petitioner has approached this Court by filing the present petition.

17. Regarding the preliminary objection of suppression of material facts, Mr. Patel has submitted that though earlier tenancy proceedings had taken place they had not materialized for want of execution. The landlord had never taken out proceedings for taking possession under Sections 29 and 31 of the Tenancy Act.

18. It is further submitted by Mr. A.N. Patel, that though the proceedings have not been specifically mentioned in the petition, they have been generally referred to in paragraphs 3 and 5 of the petition. There was no requirement for any specific mention of the proceedings as they have no bearing on the prayers made in the present petition. The petitioner is in possession of the land, therefore, he can claim the benefits of a tenant. Hence, it cannot be said that there is a

suppression of material facts by the petitioner.

19. It is submitted that in the earlier petition, this Court had directed the authorities to consider the case of the petitioner by the order dated 07.06.2016, which is the reason why the petitioner has approached the Court again, through this petition.

20. In the above background, this Court has heard learned counsel for the respective parties on the question of suppression of material facts by the petitioner and has perused the material on record.

21. It is asserted by the petitioner in the petition that he is claiming tenancy rights over the land in question through one Shanabhai Gagabhai Vaghela. It is a matter of record that the said Shanabhai Gagabhai Vaghela had filed an application under Section 32(1B) of the Tenancy Act. Being unsuccessful, he approached the Gujarat Revenue Tribunal ("the Tribunal", for short) but his case was rejected. Aggrieved by the order of the Tribunal legal heir of the said Shanabhai Gagabhai Vaghela filed Special Civil Application No.12865/2008 before this Court. By an order dated 22.06.2009, this Court rejected the petition summarily, upholding the findings of the Deputy Collector that the predecessor of the petitioner of that petition (Shanabhai Gagabhai Vaghela) was not entitled to purchase the land in question on the appointed day and the petitioner cannot claim any right under the provisions of Section 32(1B) of the Act. The findings of the Deputy Collector that the land was leased out for the cultivation of fruit trees in terms of the provisions of Section 43A of the Tenancy Act and the predecessor of the petitioner was held not to be entitled to be treated as a tenant for the purpose of the proceedings under Section 32G of the Tenancy Act, were upheld by the Court. Thus, the petition came to be summarily rejected. This order was challenged by the legal heir of Shanabhai Gagabhai Vaghela in Letters Patent Appeal No.2215/2009 in Special Civil Application No.12865/2008. By an order dated 09.04.2010, the appeal was dismissed with the following observations:

"7. Learned counsel for the petitioner however, submitted that the petitioner is still in possession of the land. We do not see how the petitioner can still be in possession of the land and can still seek benefit of section 32(1B) of the Act. The said Section applies where a tenant who was in possession of the land on the appointed day has been dispossessed of such land by the landlord illegally. When benefit of Section 32(1B) is pressed in service, it presupposes that the petitioner would have lost possession.

8. Be that as it may. We see no error in the view of the learned Single Judge which in turn, confirmed the order of the Revenue Tribunal.

9. In the result, the Appeal fails and is dismissed."

22. From the above orders of this Court and the Division Bench, it is clear that the claim of the predecessor-in-interest of the present petitioner as a tenant of the land in question has been rejected. The order of the Division Bench, which

has put an end to the issue, has attained finality. Both the orders of this Court and the Division Bench have not been placed on record by the petitioner, or even mentioned in the petition. The said orders have a direct bearing on the prayers made in the petition, which are for the conferment of benefits that are only legally admissible to a legally declared tenant. When the predecessor-in-interest of the petitioner has been held not to be a tenant, the petitioner's claim, as such, falls flat on the ground. In order to deliberately conceal the factual and legal position emerging from the above orders, the petitioner has chosen not to make any specific reference to them and has not brought the said order to the notice of the Court, in order to mislead it. These orders have been placed on record along with the affidavit-in-reply filed by respondent No.5. As the petitioner has deliberately concealed the orders of this Court and the Division Bench, which have a direct bearing on the issue raised in the present petition, this Court is of the view that there is a suppression of material facts by the petitioner.

23. In paragraph 5 of the petition there is a vague, general and jumbled-up reference to some previous litigation without any specific details of the outcome thereof. Mere allusions and oblique references have been made, in order to confuse the Court, which do not present the real or a clear picture. Such clever drafting cannot be appreciated but is required to be deprecated, as it is designed to pull the wool over the Court's eyes so that half-truths are projected as the truth. Such conduct on the part of the petitioner confirms the view of this Court that there is a deliberate suppression of material facts by him.

24. There is more to say on the issue of suppression. In the year 2009, the petitioner had preferred Tenancy Case No.2/2009 under Section 70B of the Tenancy Act, which came to be rejected by an order dated 28.12.2012 of the Mamlatdar and ALT. This order has been annexed as Annexure-R3 with the affidavit-in-reply filed by respondent No.5. The ALT found that the petitioner had failed to establish his tenancy rights over the land in question. This order was challenged by the petitioner before the Deputy Collector by filing Tenancy Appeal No.6/2013, which was rejected by an order dated 08.02.2016. This order has been produced as Annexure-R4 to the affidavit-in-reply of respondent No.5. To add further to this list of litigation, the present petitioner preferred an application, purportedly under Section 43(1)(d) of the Tenancy Act, before the Mamlatdar and ALT, which was registered as Tenancy Case No.24/2010. By an order dated 26.03.2013, this application also came to be rejected. All the above-mentioned orders have been suppressed from this Court by the petitioner.

25. All the above orders of the Division Bench, this Court, the Tribunal and the authorities under the Tenancy Act, clearly demolish the claim of the petitioner as a tenant and his purported possession over the land in question. The submission advanced by Mr. A.N. Patel, learned advocate for the petitioner that the previous litigation has nothing to do with the prayers made in the present petition, deserves to, and is, rejected outright. In the rejoinder filed by the petitioner

there is no assertive denial to the allegation regarding suppression of material facts. Rather, an attempt is made to explain away the previous litigation in the same oblique fashion as has been done in the petition, solely with a view to giving the Court a wrong impression.

26. Reference has been made by the petitioner to an order dated 07.06.2016, passed by this Court (Coram: N.V. Anjaria, J.) in Special Civil Application No.8793/2016. This order has not been produced on record. However, a copy thereof has been supplied by learned counsel for respondent No.5. A perusal of the said order reveals that the petitioner had made similar assertions regarding his claim as a tenant in that petition as well. However, no notice was issued by this Court, therefore, the claim of the petitioner could not be contested. Without entering into the merits of the matter, this Court directed the Collector, Kheda, to examine the case of the petitioner and if found meritorious, to extend the benefits prayed for to him. This order does not confer any rights on the petitioner at all. What transpired thereafter is not clear, as no order is challenged in the present petition.

27. Having arrived at the conclusion that there is a suppression of material facts by the petitioner, as per the settled position of law, the Court is within its rights in rejecting the case of the petitioner on this ground alone.

28. In *K.D. Sharma v. Steel Authority of India Limited and others* (supra), the Supreme Court has held as under :

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words (KB p.514):

"...it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts; he says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

37. *****

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

29. In *Prestige Lights Ltd. v. State Bank of India* (supra), the Supreme Court has held as under:

"33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington Income Tax Commrs.*, in the following words:

"It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help it the Court is supposed to know the law. But it knows nothing about the facts, and

the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

36. *****

37. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant/Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court."

30. It is clear from the above well-settled principles of law that are now firmly entrenched in our jurisprudence that a litigant, such as the present petitioner, who has not come to the Court with clean hands and has suppressed material facts and attempted to place distorted facts on record, deserves no equitable relief under Article 226 of the Constitution of India.

31. Even on merits, the claim of the petitioner has been negated by the Mamlatdar and ALT, the Deputy Collector, the Tribunal, this Court and the Division Bench, all the above orders having been suppressed by the petitioner. The order of the Division Bench has attained finality and the claim of the petitioner as a tenant and even his possession over the land in question, has been negated. By suppressing these orders the petitioner has clearly intended to keep the Court in the dark, which intention can only be deprecated in the strongest of terms. Litigants such as the present petitioner tend to sully the purity of the administration of justice by attempting to abuse the process of the Court.

32. As a result of the above discussion and for the reasons stated here-in-above,

the petition is rejected.

33. The petitioner shall pay costs of Rs.10,000/(Rupees Ten Thousand only) to the Gujarat Legal Services Authority within 15 days from the date of the receipt of a copy of this judgment.

Smt. Abhilasha Kumari, J.

Mr. A.N. Patel, learned advocate for the petitioner has prayed that the implementation of the judgment be kept in abeyance for two weeks. Considering the reasons stated in the judgment, the request is declined.