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**(2022) 11 TEL CK 0096**

**High Court For The State Of Telangana:: At Hyderabad**

**Case No:** Writ Petition No. 9303 Of 2022

Mohammad Fareed  
Pasha

APPELLANT

Vs

State Of Telangana

RESPONDENT

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**Date of Decision:** Nov. 22, 2022

**Acts Referred:**

- Constitution Of India, 1950 - Article 32, 136, 226
- Telangana Municipalities Act, 2019 - Section 174(4), 174(7)

**Hon'ble Judges:** Lalitha Kanneganti, J

**Bench:** Single Bench

**Advocate:** B Arjun Rao

**Final Decision:** Dismissed

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### **Judgement**

1. This Writ Petition is filed seeking the following relief:

“to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the inaction of the 3rd respondent herein in

not stopping the illegal construction being carried out by the 5th respondent herein under the aid and assistance of 4th respondent herein as against to

the building permission granted to the petitioner herein by the 3rd respondent herein vide Application No. 136246/KOLL/00242022, dated 09.02.2022

as illegal, arbitrary and against to the principles of natural justice and contrary to the provisions of Telangana Municipalities Act, 2019 and

consequently, direct the 3rd respondent herein to demolish the illegal construction already carried out by the 5th respondent herein and further direct

the 4th respondent herein not to interfere in my building construction and pass such other order or orders as this Hon'ble Court may deem fit just

and proper in the circumstances of the case.

2. Sri B. Arjun Rao, learned counsel for petitioner submits that petitioner is the absolute owner and possessor of joint plot (A) in Survey Nos. 149, 150,

152, 153, 154, 155, 156 & 166 of Varidela Revenue Shivar, Kollapur Nagar Panchayat, Kollapur Mandal having purchased the same under a registered

sale deed dated 01.02.2022 and link document dated 01.03.2014. Originally, the owner of the property is Sri T.V. Krishna Rao and his sons owns an

extent of Acs.9.05 guntas and during the lifetime of the said Krishna Rao, he had partitioned the property by executing a registered partition deed

dated 01.03.2014 and converted the same into residential open plots and out of the total extent of Ac.9.05 guntas, only Ac.3.00 in the said survey

numbers were converted into 58 plots and also one joint plot (A) and one joint plot (B). It is submitted that after the death of Sri Krishna Rao, his sons

alienated the property in favour of the petitioner vide sale deed dated 01.02.2022 and a rectification deed dated 08.02.2022 was executed by rectifying

the extent of plot as 61.11 square yards instead of 69.44 square yards. It is submitted that the 5th respondent started claiming the property without

having any valid document and started construction in his plot illegally without obtaining any permission. The petitioner has applied for grant of building

permission to the 3rd respondent on 09.02.2022 by uploading all the necessary documents as mandated under Section 174(7) of the Telangana

Municipalities Act, 2019 (for short, 'the Act'). Basing on the same, instant building permission was granted to the petitioner on 09.02.2022, as

such, he has taken steps to construct the building. Learned counsel submits that the 5th respondent started interfering with the petitioner's

construction without having any valid title and right over the property. On 01.02.2022, the petitioner's vendors have also lodged a report with the

4th respondent stating that they have not sold the said property to the unofficial respondent who is creating hurdles to the petitioner. The vendors also

gave a representation to the 3rd respondent on 01.02.2022 stating that the property was sold to the petitioner and no rights were transferred to the

unofficial respondent. It is submitted that the petitioner also submitted a report on 14.02.2022 and 16.02.2022 about the illegal constructions being

carried out by the 5th respondent over the petitioner's plot but the official respondents failed to take any action. He submits that in respect of plot

in Survey No. 156, Writ Petition No. 14375 of 2021 was filed and the said Writ Petition was disposed of wherein it is observed that revocation order

dated 01.06.2021 as well as building permission dated 21.05.2021 issued in favour of the petitioner therein and building permission dated 30.05.2021

issued by the 2nd respondent in favour of the 3rd respondent therein are set aside, however, liberty is granted to the petitioner as well as the 3rd

respondent therein to approach the competent civil Court to decide the title dispute in respect of the subject plot No.20. He submits that the writ

schedule property is identical and similarly-situated and the vendors are also one and same. He further submits that the 3rd respondent has failed to

act in a manner known to law and the 3rd respondent is not stopping the illegal construction being carried out by the 5th respondent herein under the

aid and assistance of the 4th respondent.

3. A counter-affidavit is filed on behalf of the unofficial respondent. Learned counsel Sri Avinash Desai submits that the 5th respondent is the owner

and possessor of Plot Nos. 6 and 26 located in Survey No. 155 of Varidela Village of Kollaur Mandal. Plot No. 26 is bought by the 5th respondent

from one Sri T.V. Seshagiri Rao and Plot No.6 was bought from his sons in 1987. The unofficial respondent has constructed common compound wall

covering her property and obtained land regularisation permission for Plot No. 26 vide proceedings dated 28.02.2017. She had also taken permission

from the Municipality for construction in Plot No. 26 and obtained electricity connection. Learned counsel submits that the 5th respondent has been in

continuous possession and enjoyment of the property since the date of purchase in 1987 and 1993 respectively. The vendors of the writ petitioner i.e.

sons of Sri T.V. Krishna Rao, have tried to dismantle the compound wall built by the 5th respondent on 11.12.2021 and disputed the title over the 5th

respondent property. It is submitted that even a suit was filed for declaration of title and perpetual injunction vide O.S.No. 450 of 2021 on the file of

the Junior Civil Judge's Court at Kollapur with respect to Plot No. 6 against the vendors of the petitioner and I.A.No. 889 of 2021 for grant of

temporary injunction against the vendors of the petitioner restraining them from interfering with the possession over plot No.6. The said suit is pending

before the Junior Civil Judge at Kollapur and the same has been posted for hearing on 23.02.2022. It is submitted that joint plot (A) in Survey Nos.

149, 150, 152, 153, 154, 155, 156 and 166 of Varidela Village has been intentionally modified or corrected on multiple occasions in order to overcome

various legal regulations since 2014. Learned counsel submits that the petitioner has approached this Court with unclean hands by suppressing certain

material facts which are being brought on record by the 5th respondent. The petitioner has suppressed the fact that he had initially applied for building

permission and fraudulently obtained permission dated 09.12.2021 for an extent of 200 square yards misrepresenting the 5th respondent property as

their own property. He had applied for permission basing on the registered sale deed where they showed the boundaries to be that of plot No.6 of the

5th respondent property. It is submitted that the 5th respondent has also filed a complaint against the petitioner. Then the official respondents after

issuing notice and considering the submissions, did not find the Application satisfactory and revoked permission on 09.12.2021. In the said revocation

order, it is mentioned that as per the registered document and link documents provided the measurements of the plot being claimed by the petitioner did

not tally, the boundaries to the extent submitted under the application are not matching and the katcha plan of document was not matching with katcha

plan in the link documents. Additionally the 3rd respondent directed the petitioner not to carry out any construction activity and warned that if any

construction is commenced, the same would be demolished without issuance of notice under Section 174(4) of the Act and the said aspect has been

suppressed by the petitioner which has attained finality as the same was not challenged. The unofficial respondent has made multiple representations

to the District Registrar, Mahabubnagar, Commissioner and Inspector General of Registration and Stamps, Hyderabad dated 20.01.2022 after noticing

discrepancies in the extent of land and boundaries provided for petitioner property in the sale deed dated 20.11.2021. After the revocation order is

passed, another sale deed dated 01.02.2022 was registered at Kollapur Sub-Registrar Office for an extent of only 69.44 square yards by cancelling the

earlier sale deed registered with the Sub-Registrar Office at Kollapur. Then the 5th respondent once again brought this to the notice of the authorities.

Thereafter, the petitioner along with his vendors entered into another rectification deed dated 08.02.2022. It is submitted that basing on this

rectification deed, the petitioner applied for another instant TS-bPASS approval vide Application dated 09.02.2022 without disclosing the details of

cancellation of sale deed number and revocation of building permission made under it. He submits that the present Petition is filed only with an

intention to coerce the unofficial respondent.

4. Learned counsel for the petitioner has relied on the judgments in Hari Narain v. Badri Das (1964) 2 SCR 203 : AIR 1963 SC 1558, Welcom Hotel

v. State of A.P (1983) 4 SCC 575 : 1983 SCC (Cri) 872, G. Narayanaswamy Reddy v. Govt. of Karnataka (1991) 3 SCC 261, S.P. Chengalvaraya

Naidu v. Jagannath (1994) 1 SCC 1, MCD v. State of Delhi (2005) 4 SCC 605 : 2005 SCC (Cri) 1322 : 2005 SCC OnLine SC 900, A.V. Papayya

Sastry v. Govt. of A.P. (2007) 4 SCC 221 : 2007 SCC OnLine SC 317, Prestige Lights Ltd. v. SBI (2007) 8 SCC 449 : 2007 SCC OnLine SC 1026,

Sunil Poddar v. Union Bank of India (2008) 2 SCC 326 : (2008) 1 SCC (Civ) 558 : 2008 SCC OnLine SC 77, K.D. Sharma v. SAIL (2008) 12 SCC

481 : 2008 SCC OnLine SC 1025, Dalip Singh v. State of U.P. (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324 : 2009 SCC OnLine SC 1867, Oswal Fats

& Oils Ltd. v. Commr. (Admn.) (2010) 4 SCC 728 : (2010) 2 SCC (Civ) 237 : 2010 SCC OnLine SC 430, Ramjas Foundation v. Union of India (2010)

14 SCC 38 : (2011) 4 SCC (Civ) 889 : 2010 SCC OnLine SC 1254, Amar Singh v. Union of India (2011) 7 SCC 69 : (2011) 3 SCC (Civ) 560 : 2011

SCC OnLine SC 772, Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam (2012) 6 SCC 430 : (2012) 3

SCC (Civ) 735 : 2012 SCC OnLine SC 384, Kishore Samrite v. State of U.P. (2013) 2 SCC 398 : (2013) 2 SCC (Cri) 655 : 2012 SCC OnLine SC 884,

Thatipamula Naresh Kumar and Ors. Vs. The State of Telangana and Ors (2022) 3 ALD 710, Mohammed Saleem Vs. The State of Telangana

W.P.No.11592 of 2022 and submits that a person who has approached this Court with unclean hands is not entitled for any relief from this Court.

5. A counter-affidavit has been filed on behalf of the respondent municipality. It is stated that the petitioner has applied for building permission on

20.11.2021. Though initially, permission was granted thereafter, it was revoked. The 5th respondent gave an Application to the 3rd respondent for

permission to construct a house in Plot No.6 in Survey No. 155 of Waridela Shivar by producing simple stamped sale deed dated 19.07.1993. On

enquiry, no permission was granted however, the 5th respondent started construction in her plot without permission and she also covered the roof with

metal roofing sheets and without maintaining setbacks. In the meantime, petitioner again applied under the instant approval by producing the document

dated 01.02.2022 and rectification deed dated 08.02.2022 by rectifying the extent of plot 61.11 square yards instead of 69.45 square yards. It is stated

that the petitioner also gave a complaint to the 3rd respondent on 14.02.2022 and 16.02.2022 with a request to dismantle the construction made by the

5th respondent but the 3rd respondent has informed about the said construction of the 5th respondent to the higher authority as per the Act vide letter

dated 17.02.2022 and to take action through district task force team which is pending with the Additional Collector (ULB). It is submitted that while

granting permission, they are acting in accordance with the provisions of the Act.

6. A reply affidavit has been filed by the petitioner stating about the earlier purchases that were made by the petitioner and about the rectification deeds

and also about the revocation of permission. It is stated that petitioner approached his vendors who requested for mutual cancellation of sale deed for

which petitioner and his vendors got executed a cancellation deed dated 01.02.2022. According to the petitioner, this does not amount to suppression

of facts as the earlier sale deed has become redundant. Learned counsel submits that basing on the alleged simple sale deed dated 19.07.1993, the 5th

respondent has obtained building permission, then the petitioner had filed complaint with the municipality on 14.02.2022, 16.02.2022 and 17. 02.2022.

Basing on the complaint, the Town Planning Supervisor enquired and recommended to revoke the building permission of the 5th respondent which is

falsely obtained for the reason that the 5th respondent had not submitted registered sale deeds and not maintained setbacks.

7. The remedy available to the petitioners under Article 226 of the Constitution of India is an equitable remedy and the petitioners are expected to

approach the Court with clean hands by disclosing all the facts. It appears from the conduct that petitioners have no respect to the rule of law.

8. An applicant who does not come with candid facts and clean freest cannot hold a writ of the Court with "soiled hands" suppression or

concealment of material is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and

prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the

court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed

further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact,

such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court. (Kensington Income Tax Commrs (1917) 1 KB

9. If the primary object as highlighted in Kensington Income Tax Commissioners 1977 2 SCC 431 is kept in mind, an applicant who does not come

with candid facts and 'clean breast' cannot hold a writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an

advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant

does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in

order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case

on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt

with for contempt of Court for abusing the process of the Court. (K.D. Sharma v. Steel Authority of India Limited and others (2008) 12 SCC 481).

10. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha

and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which

was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-

independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain

has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the

court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They

shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the

courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who



touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. (Dalip Singh v. State of Uttar Pradesh and others

(2010) 2 SCC 114.

11. 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 and 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 (Hari Narain v. Badri Das AIR 1963 SC 1558).

12. In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep 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, then the

Court may dismiss the action without adjudicating the matter on merits. 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

(Prestige Lights Ltd. V. SBI (2007) 8 SCC 449).

13. 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 and it is imperative that the petitioner approaching the Writ Court must come with clean hands and 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. The same rule

was reiterated in *G. Jayshree and others v. Bhagwandas S. Patel and others* (2009) 3 SCC 141. (*K.D. Sharma v. SAIL* (2008) 12 SCC 481).

14. This Court in *Prestige Lights Ltd. V. State Bank of India* has held that a prerogative remedy is not available as a matter of course. In exercising

extraordinary power, a writ court would indeed bear in mind the conduct of the party which 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. It was held thus:

“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.”

15. In *K.D. Sharma v. Steel Authority of India Limited and Others*, it was held thus:

“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. (K.Jayaram and others v. Bangalore Development Authority and others 2021

SCC online SC 1194)

16. The discretion exercised by the Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. While exercising

the extraordinary power, the Court shall necessarily bear in mind the conduct of the parties. A litigant is bound to disclose all relevant facts. If he holds

some material facts to gain advantage, he is guilty of placing fraud on the Court as well as on the other side. The conduct of the petitioner in this case

is nothing but playing fraud on the Court as well on the other side. If these kind of litigants are not eradicated, the result would be that the citizen will

lose faith in the justice delivery system and also would ruin the rule of law.

17. The relief that is sought by the petitioner in this Writ Petition is that the unofficial respondent is making illegal construction and the 3rd respondent

is not stopping the said illegal construction being carried out by the unofficial respondent. Even as per the counter of the official and unofficial

respondent, when the unofficial respondent want to go ahead with the construction basing on a simple sale deed and also based on a complaint of the

petitioner, the official respondents are taking steps for demolition. When it comes to the case of the petitioner, the petitioner has not stated about any

of the facts with regard to the earlier permission granted, rectification deed, revocation of permission and cancellation of earlier sale deed etcetera.

According to the petitioner, as the earlier sale deed has become redundant, he has not mentioned the same. The contention of the learned counsel, this

Court is not able to appreciate. It is not about the sale transaction becoming redundant. Revocation of building permission is a very crucial factor. On

the face of it, the petitioner with an intention to obtain orders from this Court has suppressed the material facts. When the counter is filed on behalf of

the official and unofficial respondent, the petitioner has come up with all these facts. The issue of the 5th respondent is concerned, it is already stated

that the official respondents are taking steps to demolish the illegal structures made by her. As far as the petitioner is concerned, he has approached

this Court with unclean hands hence, he is not entitled for any relief from this Court.

18. The Writ Petition is accordingly, dismissed with costs of Rs.15,000/- (Rupees fifteen thousand only) to be payable to the High Court Legal

Services Authority within 6 weeks. No order as to costs.

19. Consequently, the miscellaneous Applications, if any shall stand closed.