(2009) 1 ILR (P&H) 270

High Court Of Punjab And Haryana At Chandigarh

Case No: CM. No. 5394 of 2008 in CWP No. 10771 of 2007

Satish Gupta and Another		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: July 25, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 136, 226, 227
- Land Acquisition Act, 1894 - Section 11A

Citation: (2009) 1 ILR (P&H) 270

Hon'ble Judges: Vijender Jain, C.J; Mahesh Grover, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Vijender Jain, C.J.
This is an application u/s 151 of the CPC preferred by Respondent No. 2 Haryana State Industrial Development Corporation Limited (for short. "HSIDC") for recall of our order dated 20th July, 2007,--vide which C.W.P. No. 10771 of 2007 was disposed of.

2. While disposing of the writ petition, a direction was issued to the HSIDC to dispose of the application as well as the appeal of the Petitioners (non-applicants herein) within a period of four weeks from the date of the receipt of the aforesaid order.

3. The main reason which has been given for recall of the order in question is that on the date when the same was passed, the appeal of the Petitioners as referred therein already stood disposed of after due hearing on 24th January, 2007,--vide order dated 13th February, 2007 which was duly communicated to them,--vide letter dated 20th February, 2007.

4. Alongwith this application, the letter dated 14th February, 2007 written by the Petitioners to the Chairman, Appellate Committee, Government of Flaryana has been placed on record as Annexure R2/ 1 in which that had admitted the receipt of order dated 13th February, 2007 on 20th February, 2007.

5. The relevant extract of the aforesaid letter dated 14th February. 2007 is reproduced below:

1, Satish Gupta, along with Shri Babu Lal Bansal, appeared before Appellate Committee, on 14th February, 2008 in the evening, in pursuance of letter No. FISIDC. Estate 2008/ 19567-68, dated 7th February, 2008. Last time, on 24th January, 2007, I appeared alone before the Committee in reference to my appeal. After hearing me, the Committee passed an order dated 13th February, 2007, which was received by me,--vide letter dated 20th February, 2007, my appeal was not accepted and the same was rejected.

6. A perusal of the record shows that the writ petition was filed by the Petitioners/non-applicants on 19th July, 2007 duly supported by an affidavit in which an averment was made that the appeal was still pending and the entire sequence of events regarding hearing and disposal thereof was withheld from the Court which led to the passing of order dated 20th July, 2007.

7. Dr. Surya Parkash, learned Counsel for the Petitioners/non-applicants could not give any plausible explanation except to say that it was a bona fide mistake.

8. We are not entirely convinced with the stand of the Petitioners/ non-applicants. A person, who approaches the Court invoking the extraordinary jurisdiction under Articles 226/227 of the Constitution of India, has to come with clear hands.

9. Unfortunately, the bona fides of the Petitioners/non-applicants have seriously been clouded by the facts which have been detailed above.

10. The jurisdiction of the High Courts to issue directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari for the enforcement of any of the rights conferred by Part-Ill of the Constitution and for any other purpose is essentially an equitable jurisdiction. Therefore, the Court will decline hearing to those, who do not come with clean hands. Likewise, the jurisdiction of the Supreme Court to grant leave is discretionary and relief would be declined to the one, who tried to pollute the system of administration of justice.

11. In Hari Narain Vs. Badri Das, the Supreme Court upheld the objection raised on behalf of the Respondents that the Appellant was guilty of misstating the facts and revoked the leave by making the following observations:

It is of utmost importance that in making material statements and setting forth grounds in applicantions 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 characterises 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.

12. 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 favour is not entitled to be heard by the Court.

13. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, the Supreme Court declined relief to the appllant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the Special leave petition, the Court observed:

Curiously enough, there is no reference in the Special Leave petitions to any of the stay orders and we came to know about these orders only when the Respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. 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. We accordingly dismiss the Special Leave Petitions.

14. 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.

15. In Nand Lal and Ors. v. State of Jammu and Kashmir and Anr. AIR 1960 J&K 19 a learned Judge of Jammu & Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

Where the Petitioners under Article 226 have not stated the relevant facts petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the Petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the Petitioners has been such as to mislead the Court.

16. This Court has also consistently taken a serious view of the contumacious conduct of the parties and has declined relief in a large number of cases.

17. In Smt. Bhupinderpal Kaur v. The Financial Commissioner (Revenue), Punjab 1968 P.L.R. 169 a learned Single Judge held that if the High Court comes to the conclusion that affidavit in support of the application for grant of a writ was not candid and did not fully state the facts but either suppressed the material facts the Court ought, for its own protection and to prevent an abuse of its process, refuse to proceed any further with the examination of the merits and where there is such conduct which is calculated to deceive the Court into granting the order of rule nisi, the petition should be dismissed on that short ground.

18. In Chiranji Lal and Ors. v. Financial Commissioner, Haryana and Ors. 1978 P.L.R. 582 the Full Bench approved the observations made in Bhupinderpal Kaur"s case (supra) and held that where there has been a mala fide and calculated suppression of material facts which, if disclosed would have disentitled the Petitioners to the extrordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed, the writ petition should not be entertained.

19. In Harbhajan Kaur v. State of Punjab and Ors. 1994 P.L.J. 287 a Division Bench held as under:

The writ Petitioners have tried to overreach the Court. They did not bring the correct facts to the notice of the Court and obtained on order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Wakf Board since, 1986 as is passed in Petition No. 363 of 1986 (Sham Singh and Anr. v. Punjab Wakf Board). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner, that the Punjab Wakf Bard had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that injudicial proceedings Smt. Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land.

20. In C.W.P. No. 15448 of 1993-Jai Bhagwan Jain v. Haryana State Electricity Board, Panchkula District Ambala), decided on 21st September, 1994, a Divisic Bench of this

Court lamented on the growing tendency among the litigants to pollute the course of justice and observed as under:

Satya (truth) and Ahinsa (non-violence) are the two basic values of life, which have been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life. However, post-independence era and particularly the last two decades have witnessess sharp decline in these two basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the "truth". Proceedings in the Courts, which were at one time considered to be pious and the people considered it their duty to tell the truth in the Court, now stand vitiated by the attempts made by the parties to pollute the ends of justice.

21. Similar view was expressed by this Court in Pawan Kumar v. State of Haryana and Anr. 1994(5) S.L.R. 73; Kaka Ram Pars Ram and Ors. v. State of Punjab and Ors. 1996 (l) P.L.R. 691; C.W.P. No. 11686 of 1996 ; Shri Kant and Ors. v. State of Punjab and Ors. decided on 20th January, 1997 ; C.W.P. No. 4381 of 1998 Arihant Super Rice Land and Ors. v. State of Haryana and Ors., decided on 6th August, 1998 ; C.W.P. No. 18304 of 1998-Smt. Krishna Gupta v. State of Haryana and Ors., decided on 1st December, 1998 and C.W.P. No. 2585 of 1999-Santa Singh v. Union of India and Ors., decided on 24th February, 1999 ; C.W.P. No. 11538 of 1999-Meenu Seth v. State of Punjab and Ors., decided on 2nd March, 2000, C.W.P. No. 3520 of 2000-Rajinder Parshad and Ors. v. Union of India and Ors., decided on 31st May, 2000 and C.W.P. No. 8239 of 2004-Parveen Kumar v. State of Haryana and Ors., decided on 3rd July, 2004, (22) Reference may also be made to some of the English decisions on the subject. In Rex v. Kensington 1917(1)K.B.486 Cozens Hardy M.R. made the following observations on the conduct of a party in an ex-parte application in the following words:

On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done.

Lord Scrutton L.J. said:

It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any 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, facts not law...

... 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 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.

23. In R.V. Churchwardens of All Saints Wigan (1876) 1 A.C. 611 Lord Haterlay observed:

Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it-matters connected with dealy or possibly with the conduct of the parties.

24. In Rex v. Garland (1870) 39 L.R. Q.B. 269 it was held:

Where a process is ex debito justitiae the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides.''

25. Consequently, we accept this application, recall our order dated 20th July, 2007 and dismiss the writ petition on the ground of concealment of facts.