MANU/SC/1886/2009

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IN THE SUPREME COURT OF INDIA

Civil Appeal No. 5239 of 2002

Decided On: 03.12.2009

Appellants: **Dalip Singh**
Vs.
Respondent: **State of U.P. and Ors.**

Hon'ble Judges/Coram:
G.S. Singhvi and A.K. Ganguly, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Shambhu Prasad Singh, Prashante Jha and Manjula Gupta, Advs

For Respondents/Defendant: Pramod Swarup, Sr. Adv., L.K. Pandey, S. K. Dwivedi, Amit Singh, Sushma Verma, Chandra Prakash Pandey, Krishan Singh Chauhan, K.C. Lamba, Chand Kiran and Kartar Singh, Advs.

ORDER

1. 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 Dart 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 no 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.

2. In **Hari Narain v. Badri Das** MANU/SC/0226/1963 : AIR 1963 SC 1558, this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

> 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.

3. In **Welcome Hotel and Ors. v. State of Andhra Pradesh and Ors. etc.** MANU/SC/0029/1983 : AIR 1983 SC 1015, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

4. In **G. Narayanaswamy Reddy and Ors. v. Governor of Karnataka and Anr.** MANU/SC/0386/1991 : AIR 1991 SC 1726, the Court denied relief to the appellant 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 because of the stay order passed by the High Court. 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.

5. In **S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors.** MANU/SC/0192/1994 : JT 1993 (6) SC 331, the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

6. In **Prestige Lights Ltd. v. State Bank of India** MANU/SC/3355/2007 : (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, LJ. in **R v. Kensington Income Tax Commissioners** (1917) 1 K.B. 486, and observed:

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.

7. In **A.V. Papayya Sastry and Ors. v. Government of A.P. and Ors.** MANU/SC/1214/2007 : AIR 2007 SC 1546, the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

8. In **Sunil Poddar and Ors. v. Union Bank of India** MANU/SC/0322/2008 : (2008) 2 SCC 326, the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court, will non-suit him on the ground of contumacious conduct.

9. In **K.D. Sharma v. Steel Authority of India Ltd. and Ors.** MANU/SC/3371/2008 : (2008) 12 SCC 481, the court held that 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 Ors. v. Bhagwandas S. Patel and Ors.**MANU/SC/8451/2008 : (2009) 3 SCC 141.

10. This appeal, which is directed against order dated 21.5.2001 passed by the Allahabad High Court is illustrative of how unscrupulous litigants can mislead the authorities entrusted with the task of implementing the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short, "the Act") and the courts for retaining possession of the surplus land. The tenure-holder - Praveen Singh did not file statement in terms of Section 9(2-A) of the Act in respect of his holding as on 24.1.1971. After about four years, the Prescribed Authority issued notice dated 29.11.1975 under Section 10(2) of the Act and called upon Shri Praveen Singh to show cause as to why the statement prepared under Section 10(1) of the Act may not be taken as correct and his land may not be declared surplus accordingly. A copy of the statement was sent to Shri Praveen Singh along with the notice in C.L.H. Form No. 4. For the sake of convenient reference, the notice is reproduced below:

C.LH. FORM No. 4

(See Rule 8)

(Form of Notice under Section 10(2) of the imposition of Ceiling on Land Holdings Act, 1961)

To,

Name of tenure-holder Sri Praveen Singh
With parentage s/o. Shri Raghubir Singh and

Address

r/o Village Tisotara, P.O. Khas, Pargana Kirat Pur, Tehsil Najibabad, District Bijnor.

Whereas you have failed to submit a statement/have furnished incomplete/incorrect statement in respect of all your holdings in the State of Uttar Pradesh including holdings of your family members with all the required particulars within the time mentioned in the notice in C.L.H. Form 1, published under Section 9;

And whereas the statement of all holdings held by you in the State on 8th June, 1973, statement showing proposed ceiling area applicable to you and the proposed surplus land have been prepared under Sub-section (1) of Section 10, they are sent to you herewith and you are hereby called upon to show cause within a period of 15 days from the date of service of this notice, why the said statement be not taken as correct.

On your failure to dispute the correctness of the statements in any court, within the time allowed, the aforesaid statement shall be treated as final and ceiling area applicable to you and the surplus land shall be determined accordingly.

Given under my hand and seal of the Court this day of 29-11-1975.

S/d-
Signature of the Prescribed Authority of the Sub-Division Prescribed Authority
Tehsil Najibabad.

11. The notice was delivered to Shri Praveen Singh on 3.12,1975, but he neither filed any objection to the proposed determination of his surplus land nor sought extension of time for the said purpose. After service of notice, the Prescribed Authority adjourned the case on 10.12.1975 and again on 19.12.1975 apparently with the hope that the tenure-holder may file objection to the statement prepared under Section 10(1). This is evident from the proceeding sheets of the two dates, which are reproduced below:

Proceedings dated 10.12.1975

10.12.1965	File received after service of notice on the tenure-holder on 3.12.1975. It is ordered that the file be put up on 19.12.1975 after receipt of objections. Sd/- Prescribed Authority

Proceedings dated 19.12.1975

19.12.1975	File put up. The tenure-holder has not filed any objection despite service. It is ordered that the file be put up for ex-parte orders on 27.12.1975. Sd/- Prescribed Authority

12. On 27.12.1975, the Prescribed Authority noted that Shri Praveen Singh has not filed any objection and declared that 18.22 acres of irrigated land was surplus in the hands of the tenure-holder. After six months and twelve days, Shri Praveen Singh

submitted an application dated 8.7.1976 along with what was termed as an affidavit before the Prescribed Authority and prayed that ex parte order dated 27.12.1975 may be set aside and he may be given opportunity to file objections and tender evidence. The Prescribed Authority rejected the application on the same day i.e. 8.7.1976 by observing that no valid ground has been made out for reconsidering the matter after six months. The appeal preferred by Shri Praveen Singh against the order of the Prescribed Authority was dismissed by Additional Commissioner (Judicial), Allahabad (Appellate Authority) in default because no one appeared on the date of hearing. The restoration application filed by Shri Praveen Singh was dismissed on 27.8.1980. He then challenged the orders of the Prescribed Authority and Appellate Authority in Writ Petition No. 8342/1980, which was allowed by the High Court and the matter was remitted to the Appellate Authority with a direction to decide the application of Shri Praveen Singh afresh in accordance with law.

13. In compliance of the direction given by the High Court, the Appellate Authority reconsidered the appeal of Shri Praveen Singh but dismissed the same on the ground that the tenure-holder had not filed an application under Section 5 of the Limitation Act for condonation of the delay and even in the application filed for setting aside the ex parte order, no cause was shown for the delay. The Appellate Authority also observed that the tenure-holder had not denied receipt of notice dated 29.11.1975 issued under Section 10(2) of the Act, but did not file any objection till the passing of ex parte order on 27.12.1975 and that his assertion of having come to know of the ex parte order from Lekhpal Halqa on 7.7.1976 is not believable. It appears that after remand of the matter by the High Court, Shri Praveen Singh died and, therefore, his legal representatives (including the appellant herein) were substituted in his place.

14. The legal representatives of Shri Praveen Singh jointly filed Civil Miscellaneous Writ Petition No. 22790/1990 and prayed for quashing of orders dated 27.12.1975, 8.7.1976, 7.8.1990 passed by the Prescribed Authority and the Appellate Authority respectively. They also prayed for issue of a direction to the Appellate Authority to remand the case to the Prescribed Authority for entertaining their objections. In paragraph 3 of the writ petition, the following statement was made:

> That the petitioner's late father, against whom the proceedings had been initiated under Section 10(2) of the Ceiling Act, filed application on 8.7.1976 supported by an affidavit stating therein clearly that he was seriously ill for about ten months as such he was not in a position to file objection, and as a matter of fact he did not have any knowledge of the date of the proceedings that were being conducted before the prescribed authority. True copy of the application dated 8.7.1976 of petitioners' late father is annexed herewith as Annexure 2. True copy of the affidavit filed in support of the application dated 8.7.1976 of the petitioners' father is annexed herewith as annexure 3.
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> (Emphasis added)

15. By an order dated 7.9.1990, the learned Single Judge of the Allahabad High Court stayed the operation of the orders passed by the Prescribed Authority and the Appellate Authority. The interim order remained operative till 21.5.2001 that is the date on which the writ petition was finally dismissed and during the interregnum the appellant continued to enjoy the property.

16. In the special leave petition filed against the order of the High Court, notice was issued on 12.10.2001, but the appellants prayer for stay was declined. Thereafter, the surplus land of the tenure-holder was distributed among the landless persons who were joined as parties pursuant to order dated 273.2006 passed in I.A. No. 9/2004.

17. After service of notice, respondent Nos. 1 to 3 filed counter in the form of an affidavit of Shri Pradip Kumar Singh, Additional Tehsildar, District Bijnor, U.P. In his affidavit, Shri Pradip Kumar gave details of the steps taken by the Prescribed Authority in terms of Section 10(1) and 10(2) of the Act and made a categorical assertion that notice issued on 29.11.1975 was duly served upon Shri Praveen Singh on 3.12.1975. This is evident from paragraphs 4(iv) and (v) of the counter affidavit read as under:

> (iv) That the averments of facts made in the list of dates against date 7.7.1976 are not admitted being incorrect. The notice in CLH Form No. 4 having been served on the tenure-holder on 3.12.1975, it was for him to have filed his objection. It was for the tenure-holder to have managed his affairs. It is not for a Court or an Authority to communicate to the tenure-holder each and every order passed by it once service of the notice is complete, the Act does not require that each and every date of proceedings and the copy or information about the final order ex parte or otherwise be served on him. The tenure-holder avoided to file his objections since he had none. The statement of surplus land is prepared by the revenue authorities in accordance with the provisions of the Act which is prepared on the basis of revenue records of land held by a tenure-holder in his name and there is Presumption of correctness of the revenue record.
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> (v) That the averments of fact in list of date against date 8.7.1976 are not admitted as stated. It is submitted that an application dated 8.7.1976 filed by the tenure-holder did not dispute service of notice in CLH Form No. 4 dated 29.11.1975. The application was of a general nature. If a tenure-holder having been asked to file objections within 15 days of the date of service of him chooses not to do so', would proceed to a presumption that he has nothing to say. Section 11 o the Act provides that where a tenure-holder chooses not to dispute and not to file any objection to the statement prepared by the Prescribed Authority under Section 10 of the Act within the stipulated period, the Prescribed Authority shall' accordingly determine the surplus land of the tenure-holder. Sub-section (2) of Section 11 of the Act further provides that where an application is made by a tenure-holder within thirty days of the date of an order under Sub-section (11) of the Act, that being a statutory duly cast on the Prescribed Authority. In the present case the Prescribed Authority after passing order dated 27.12.1975 fixed the next date as 27.1.1976 i.e. after 30 days and it is only on 27.1.1976 that the Prescribed Authority sent notification regarding publication of surplus land in official Gazette which was so published on 5.6.1976.

18. Shri Sunil Kumar Singh, son of the appellant Dalip Singh and grandson of late Shri Praveen Singh filed rejoinder affidavit dated 18th February, 2002. In paragraph 3 of the rejoinder affidavit Shri Sunil Kumar Singh made the following statement:

> That it is denied categorically that the father of the petitioner had ever received the notice dated 29.11.1975. along with the statement of surplus land, prepared under Section 10(1) of the Act. It is humbly stated that father of the petitioner could not file any show cause without going through the above referred statement prepared under Section 10(1) of the Act.

19. We have heard learned Counsel for the parties and scrutinized the record. In our opinion, the appeal is liable to be dismissed only on the ground that the tenure-holder Shri Praveen Singh did not state correct facts in the application filed by him on 8.7.1976 before the Prescribed Authority for setting aside the ex parte order and

the appellant did not approach the High Court with clean hands inasmuch as, by making a misleading statement in paragraph 3 of the writ petition, an impression was created that the tenure-holder did not know of the proceedings initiated by the Prescribed Authority. By making the said statement, the appellant succeeded in persuading the High Court to pass an interim order which resulted in frustrating the efforts made by the concerned authority to distribute the surplus land among landless persons. Even before this Court, a patently false statement has been made in the rejoinder affidavit on the issue of receipt of notice dated 29.11.1975 by Shri Praveen Singh.

20. A perusal of application dated 8.7.1976 submitted by Shri Praveen Singh for setting aside ex parte order dated 27.12.1975 passed by the Prescribed Authority makes it clear that he had pleaded his continuous illness for ten months as the cause for his inability to file objection. In paragraph 2 of the application, Shri Praveen Singh made a suggestive assertion that he had No. knowledge of the proceedings initiated by the Prescribed Authority and he came to know about the case having been decided ex parte only on 7.7.1976 when he went to Lekhpal to procure memo. There was not even a whisper in the application that notice dated 29.11.1975 issued by the Prescribed Authority under Section 10(2) of the Act had not been served upon him and on that account he could not file objections within 15 days. The application filed by Shri Praveen Singh was not supported by any medical certificate or other evidence which could prima facie establish that he was really sick for ten months. This is the reason why the Prescribed Authority refused to reconsider order dated 27.11.1975 and the Appellate Authority declined to entertain his prayer for remand of the case to the Prescribed Authority for the purpose of fresh determination of surplus area case. Notwithstanding this, in the writ petition filed before the High Court a misleading statement was made that due to serious illness, Shri Praveen Singh could not file objection and, as a matter of fact, he did not have any knowledge of the dates of proceedings which were conducted by the Prescribed Authority. In view of that statement, the learned Single Judge of the High Court felt persuaded to stay the orders passed by the Prescribed Authority and Appellate Authority which, as mentioned above, resulted in frustration of the action to be taken by the concerned authority for distribution of the surplus land to landless persons for a good period of more than eleven years and enabled the heirs of Shri Praveen Singh to retain possession of the surplus land and enjoy the same. Before the High Court also, no evidence was produced in support of the assertion regarding serious illness of Shri Praveen Singh. Insofar as this Court is concerned, Shri Sunil Kumar Singh, grandson of Shri Praveen Singh and son of the appellant, boldly made a false statement that his grandfather did* not receive notice dated 29.11.1975 along with the statement of surplus land prepared under Section 10(1) and he could not file any show cause without going through the statement. We are amazed at the degree of audacity with which Shri Sunil Kumar Singh could make a patently false statement on oath.

21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority.

22. In the result, the appeal is dismissed. We would have saddled the appellants with exemplary costs but, keeping in view the fact that possession of the surplus land was taken in 2002 and the same has been distributed among landless poor persons,

we refrain from doing so.