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Court : Allahabad

Decided On : Nov-01-2010

Judge : Arun Tandon, J.

Appeal No. : WRIT - C No. - 3742 of 1985

Appellant : Yashpal

Respondent : State of U.P.

Advocate for Def. : S.C.,A.K. Srivastava; S.K. Srivastava, Adv

Advocate for Pet/Ap. : V.S. Singh, Adv

Judgement :

1. Heard Sri V.S. Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The facts of the present writ petition disclose grossest misuse of the process of the Court and therefore, this Court has to take stern action in the matter.

3. The facts in short as disclosed in the writ petition are as follows:

4. Ceiling proceedings were initiated against the father of the petitioner, namely, Shiv Nanadan Singh under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the 'Act, 1960') culminating in an order passed by the Prescribed Authority dated 31st May, 1976 declaring that he had 16.33 acres

of irrigated land as surplus. Shiv Nandan Singh being Ceiling Appeal No. 71 of 1976, which was decided under the order of the appellate authority dated 21st February, 1977 and it was held that the land transferred by the wife of Shiv Nandan Singh cannot be clubbed with that of Shiv Nandan Singh and it was held that Shiv Nandan Singh had 13.25 acres of irrigated land. What has happened to the proceedings thereafter is not disclosed.

5. The present writ petition was filed by Yashpal, son of Shiv Nandan in the year 1985challenging the entries made in the revenue records in terms of the order enclosed as Annexure-2 to the writ petition as well as the order passed by the Prescribed Authority dated 31st May, 1976. In paragraph-7 of the present writ petition, reference has been made to the fact that Shiv Nandan had filed an appeal against the order of the Prescribed Authority dated 31st May, 1976 under Section 13 of the Act, 1960, which was dismissed by the appellate court on 21st February, 1977. In paragraph-15 of the present writ petition, it has been stated that the petitioner has not served with any notice by the Prescribed Authority while determining the surplus land of opposite party no.4 i.e. the father of the petitioner and it wrongly included the land of the petitioner in the holding of his father, respondent no.4. In paragraph-18 of the present writ petition it has been stated that the land of the petitioner cannot be included for determining the ceiling limits of his father. In paragraph-21 of the present writ petition, it has been stated that the petitioner could come to know of the order passed by the opposite party no. 2 i.e. the Additional District Judge, Hamirpur only when he obtained the copy of the Khatauni on 23rd December, 1984. In paragraph-28 of the present writ petition it has been stated that the order passed by the Prescribed Authority and the correction made in the relevant revenue records is without notice to the petitioner and therefore bad.

6. On the basis of said allegations, the petitioner was granted an interim order by this Court on 20th March, 1985 to the following effect:

> **"Petitioner may not be dispossessed from the land belonging to him and declared as surplus land meanwhile."**

7. Thereafter another interim order was granted by this Court on 30th April, 1985, which reads as follows:

> **"The petitioner shall not be dispossessed meanwhile from the plots specified in paragraph no.1 of the writ petition and their corresponding plots allotted in Chakbandi."**

8. It is, thus, clear that on the basis of the averments made in the present writ petition, he has been permitted to continue in possession over the plots in question by this Court, which order, he has enjoyed for the last 25 years.

9. A supplementary affidavit was filed before this Court by the petitioner sworn on 22nd August, 2010 and for the first time in paragraph-2 of the supplementary affidavit, it was stated that against the notice issued to the father, Shiv Nandan Singh under Section 10 (2) of Act, three sets of objections were filed, one by Shiv Nandan Singh, second by present petitioner and his brother Vijay Pal jointly and third by their mother Smt. Prema. All these objections were decided under the order dated 31st May, 1976. In paragraph-3 of the supplementary affidavit reference has been made to the appeal filed by Shiv Nandan Singh, against the order of the Prescribed Authority dated 31st May, 1976 being Ceiling Appeal No. 71 of 1976. In paragraph-4 reference has been made to the appeal filed by the present petitioner along with his brother Vijaypal being Ceiling Appeal No. 300 of 1976. Copy of the judgment and order passed by the appellate authority in Ceiling Appeal No. 300 of 1976 dated 23rd April, 1977 has also been brought on record as Annexure-SAIII to the supplementary affidavit.

10. The order passed by the appellate authority in appeal filed by the petitioner has not been challenged in the present writ petition. Today, certified copy of the memo of appeal no. 300 of 1976 and the judgment passed thereon have been brought on record by way of second supplementary affidavit.

11. It is now an admitted position that the petitioner had filed objections to the notice issued under Section 10 (2) in the name of his father Shiv Nandan Singh, whereby the land claimed by the petitioner was also included in the holding of Shiv

Nandan Singh. This objection was rejected on 31st May, 1976 by the Prescribed Authority. Against the said order petitioner filed an appeal being Ceiling Appeal No. 300 of 1976, which was dismissed on 23rd April, 1977. This Court, therefore, has no hesitation to record that there has been deliberate suppression of following material facts in the writ petition to the full knowledge of the petitioner:

(a) petitioner had filed objections before the Prescribed Authority against the notice issued under Section 10 (2) against his father and in the objections filed by him, it was specifically stated that certain land was owned by him in his individual capacity and the same may not be clubbed with that of his father,

(b) said objections were rejected under the order of the Prescribed Authority dated 31st May, 1976,

(c) against the said order of the Prescribed Authority, petitioner filed an appeal in his individual capacity under Section 13 of Act, 1960 along with his brother being Ceiling Appeal No. 300 of 1976,

(d) the appeal was dismissed under the order dated 23rd April, 1977 by the Additional District Judge, Hamirpur.

(e) The order dated 23rd April, 1977 has been permitted to become final and has not been challenged.

12. There is absolutely no avements of the aforesaid relevant facts in the writ petition. It has taken 25 years for the petitioner to file a supplementary affidavit disclosing true and complete facts and even then there is no challenge to the order of the appellate authority dated 23rd April, 1977.

13. I am of the considered opinion that since the appellate order dated 23rd April, 1977 has become final between the parties, the present writ petition has to be dismissed at the very outset. It is ordered accordingly.

14. The issue, which now requires consideration by this Court is as to what action is to be taken against a litigant like the petitioner.

15. In K.D. Sharma vs. SAIL, reported in (2008) 12 SCC 481, the Apex Court has 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 law was reiterated in G. Jayashree vs. Bhagwandas S. Patel reported in 10 (2009) 3 SCC 141.

16. The Hon'ble Supreme Court of India has repeatedly held that filing of false affidavit and conceament of material facts amounts to interference in the administration of justice and as such is criminal contempt of Court. In Dhananjay Sharma versus State of Haryana & ors., reported in AIR 1995 SC 1795, wherein in paragraphs 39 and 40, the Apex Court has held as follows:

> **"39. The question, therefore, which now requires our consideration is as to what action, is required to be taken against the respondents.**
>
> **40. Section 2 (c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to candalise or lower or tend to lower the authority of any Court: (2) prejudice or interfere or tend to interfere.....Thus, any conduct, which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. ....."**

17. The Apex Court in the case of Sunkara Lakshminarasamma & Anr. Versus Sagi Subba Raju & Ors. reported in (2009) 7 SCC 460 held that filing of false

affidavit knowingly is a contempt and exemplary cost be imposed.

18. In Afzal & Anr. Versus State of Haryana & Ors., reported in JT 1996 (1) SC 328, the Apex Court in paragraph-32 has held as follows:

> **"32. The question then is: whether he committed contempt in the proceedings of this Court? Section 2 (b) defines "Contempt of Court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. ....."**

19. In Dhananjay Sharma vs. State of Haryana & others reported AIR 1995 SC 1795, in paragraph-40 the Supreme Court has held as follows:

> **"40. .....Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. ....."**

20. In Sabia Khan & Ors. v. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

21. It is also a settled legal proposition that no party can suffer by the action of the Court. When the High Court in exercise of its powers under Article 226 of the Constitution of India grants interim relief; the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. The institution of litigation by a party should not be permitted to confer an unfair advantage on the party responsible for it. (Vide Grindlays Bank Ltd. v. Income-tax Officer, Calcutta & ors., AIR 1980 SC 656; Ram Krishna Verma etc. etc. v. State of Uttar Pradesh & ors., AIR 1992 SC 1888; State of Madhya Pradesh & ors. v. M/s. M.V. Vyavsaya & Co., AIR 1997 SC 993; and

Smt. Rampati Jaiswal & etc. etc. v. State of U.P. & ors., AIR 1997 All 170).

22. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Dr. A.R. Sircar v. State of Uttar Pradesh & ors., 1993 Suppl. (2) SCC 734; Shiv Shankar & ors. v. Board of Directors, U.P.S.R.T.C. & anr., 1995 Suppl (2) SCC 726; Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur & anr. v. Sree Kumar Tiwary & anr. , AIR 1997 SC 3071; and GTC Industries Ltd. v. Union of India & ors., (1998) 3 SCC 376).

23. Therefore, this Court directs as follows:

(a) the petitioner is prima facie guilty of criminal contempt because of deliberate concealment of material facts in this writ petition. Appropriate proceedings be taken against the petitioner under the Contempt of Courts' Act for such criminal contempt. Let the records of the present writ petition along with this order be placed before the Division Bench hearing Criminal Contempt petitions on 16th November, 2010 for appropriate action being taken in the matter against the petitioner. The Division Bench may examine all aspect of the matter. Petitioner is represented by his counsel, he may appear before the Court concerned on the next date fixed along with his explanation, if any.

(b) petitioner has availed the benefits of the interim order obtained on patent false allegations and concealment of material facts, which have already been noticed above. He must, therefore, compensate for the unfair advantage obtained. The

compensation should be such that it may be an exemplar for other litigants to be aware that such practice will not work before the Court.

24. The Hon'ble Supreme Court of India in the case of K.D. Sharma (Supra), in paragraphs 11, 24 and 25, in a matter arising out of ceiling proceedings itself has been held as follows:

11. This appeal, which is directed against the 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 the 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 CLH Form 4. For sake of convenient reference, the notice is reproduced below:

24. 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.

25. In the result, the appeal is dismissed. We would have saddled the appellant 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."

25The petitioner must pay Rs. 5,00,000/- (five lacs rupees only), as exemplary costs and compensation to the State Government for the use and occupation of 13.25 acres of irrigated surplus land, for 25 years under the interim order obtained in the writ petition.

26. Let sum of Rs. 5,00,000/- be deposited by the petitioner with the District Magistrate, Hamirpur in 50 monthly installments of 10,000/- each commencing from 1st January, 2011. In case of default, the same shall be recovered by the District Magistrate, Hamirpur from the petitioner as arrears of land revenue. The aforesaid money shall be utilized for the benefit of the poor farmers of the region concerned.

27. The present writ petition is dismissed. Interim order is discharged.

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