THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.33403 of 2022

JUDGMENT:-

1. Sri P.Ranga Rao, the petitioner, is present in person. He is represented through his counsel, Sri Srinivas Ambati.

2. Heard Sri Srinivas Ambati, learned counsel for the petitioner and learned Government Pleader for Municipal Administration for the respondent No.1, Sri S.Lakshminarayana Reddy, learned Standing Counsel for the respondent Nos. 2 and 3 and Sri V.Surya Kiran Kumar, learned counsel for the respondent Nos.4 and 5.

3. This writ petition under Article 226 of the Constitution of India has been filed for the following relief:-

> *"I, therefore, humbly pray that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the inaction on the part of the respondents 2 to 5 on my representations dt. 09.05.2022, 13.06.2022, 20.06.2022 and 23.06.2022 submitted to remove the unauthorized construction of commercial shops by the respondents 6 and 7 by encroaching the undivided common area of 75.70 square yards in Ground Floor in VUDA Approved and Formed Layout in Survey No.128 of Yendada village, Gudlavanipalem, Sagar Nagar, GVMC limits, Visakhapatnam City, Visakhapatnam District, as illegal, irregular, arbitrary, violative of provisions of A.P.*

Municipal Corporation Act, Andhra Pradesh Urban Areas Development Act, 1975 and offends Articles 14 and 21 of Constitution of India and consequently direct the respondents 2 to 5 to remove the unauthorized construction of commercial shops raised by the respondents 6 and 7 by encroaching the undivided common area of 75.70 square yards in Ground Floor in VUDA Approved and Formed Layout in Survey No.128 of Yendada village, Gudlavanipalem, Sagar Nagar, GVMC limits, Visakhapatnam City, Visakhapatnam District and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

4. The petitioner with respect to the same cause of action and for the same reliefs against the same respondents, earlier filed W.P.No.32260 of 2022, through different counsel namely Sri K.V.Aditya Chowdary.

5. W.P.No.32260 of 2022, which is pending, was filed on 23.09.2022 and on 29.09.2022, this Court passed the following order:-

"On a specific query made to the learned counsel for the petitioner regarding maintainability of the writ petition against the unofficial respondent Nos.4 and 5 with respect to their alleged encroachment of common area and raising illegal construction on the common area between the MIG houses, learned counsel for the petitioner submits that as per the layout plan if any encroachment is made in the common area either by the unofficial respondents or by some other persons, the Municipal Corporation is the

competent authority to take action. He prays that the matter may be listed after Dussehra Vacation to enable him to file relevant documents in support of his contention.

List on 20.10.2022."

6. It is evident from reading of the order dated 29.09.2022 in W.P.No.32260 of 2022, that on a specific query made to the learned counsel for the petitioner therein, regarding maintainability of the writ petition, it was submitted that the Municipal Corporation is the competent authority to take action, but time was sought to enable him to file relevant documents in support of his contention, upon which time was granted, posting the matter for 20.10.2022.

7. In view of the pendency of the earlier W.P.No.32260 of 2022, the second writ petition cannot be maintained. The petitioner not only filed the present second writ petition but also did not disclose filing and pendency of the W.P.No.32260 of 2022 and the order dated 29.09.2022 passed therein.

8. On the contrary in Para No.9 of the affidavit filed in support of the writ petition, the petitioner stated as follows:-

"9. I have no other alternative remedy except to approach this Hon'ble Court invoking the jurisdiction in its extra ordinary jurisdiction under Article 226 of the Constitution of India. I have not filed any suit or Writ or any proceedings before any court or Tribunal nor any Writ

or suit is pending before any court or Tribunal seeking the relief sought for in this writ petition."

9. When the above fact was brought to the notice of this Court by the learned Standing Counsels appearing for the official respondents, on 13.10.2022, noting down the same, the order was passed for the appearance of the petitioner, pursuant to which he is present in person today.

10. Sri Srinivas Ambati, learned counsel for the petitioner submits that the petitioner was not aware of filing of the earlier W.P.No.32260 of 2022, as he has handed over the relevant papers to the local counsel namely L.Satyanarayana and the filing of the earlier writ petition was not his knowledge.

11. Sri Srinivas Ambati further submits that the petitioner approached him directly to file the present writ petition and did not disclose him neither about filing of the earlier petition nor even the fact that he earlier approached some local counsel for filing writ petition.

12. Sri Ch.Madhava Rao, learned counsel, representing Sri K.V.Aditya Chowdary, learned counsel for the same petitioner in the W.P.No.32260 of 2022, is present in Court submits that the W.P.No.32260 of 2022 was filed by the petitioner.

13. In view of the aforesaid, the explanation offered by the petitioner that he was not aware of the filing of the W.P.No.32260 of 2022 is only an after thought.

14. Filing of the second petition without making disclosure of the 1st petition on the same subject by the same petitioner is an abuse of the process of the Court. It is an effort to get an order, which might have been in his favor, contrary to the earlier order passed in W.P.No.32260 of 2022. The petitioner might have succeeded if the aforesaid fact had not been brought to the notice of this Court by the learned Standing counsels for the Corporation.

15. In ***Oswal Fats & Oils Ltd. Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others***[1], the Hon'ble Apex Court held that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the Court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is

[1] (2010) 4 SCC 728

found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.

16. In ***Kishore Samrite vs. State of Uttar Pradesh and others***[2], the Hon'ble Apex Court observed and held as under in Paras 34 to 39:-

> *"**34**. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice-delivery System.*
>
> ***35**. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth.* ***To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual***

[2] (2013) 2 SCC 398

details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. *The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of*

Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287)].

***37**. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

***38**. No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the Court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi **and such applicant is required to be dealt with for contempt of court for abusing the process of the court**. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].*

***39**. Another settled canon of administration of justice is that no litigant should be permitted to misuse the*

> *judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).”*

17. In ***Kishore Samrite (supra)***, the Hon’ble Apex Court has clearly held that it is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curved and the Court must ensure that there is no wrongful unauthorized or unjust gain to any one as a result of abuse of the process of the Court and one way to curve this tendency is to impose realistic or punitive costs.

18. In ***Kishore Samrite (supra)***, the Hon’ble Supreme Court held that no litigant can play “hide and seek” with the courts or adopt “pick and choose”. True facts ought to be disclosed as the court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court.

19. The fact of filing and pendency of the earlier W.P.No.32260 of 2022 is a material fact and suppression or concealment of such fact is impermissible to the litigant and even as technique of advocacy. Filing of the false affidavit by the petitioner is an evil and deserves to be curved with strong hand to preserve the purity of the judicial administration.

20. In ***Sciemed Overseas Inc. vs. Boc India Limited and others***[3], the Hon'ble Apex Court, referring to the judgment in the case Muthu Karuppan vs. Parithi Ilamvazhuthi {(2011) 5 SCC 496 : (2011) 2 SCC (Cri) 709}, in which it was held that the filing of a false affidavit should effectively be curbed with a strong hand, held that though the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of the judicial proceedings.

21. The petitioner has not approached the Court with clean hands, clean mind or clean heart. He has made an unsuccessful attempt by concealment of the material fact of the earlier petition filed by him on the same subject; which might have resulted in an order different from the order passed in the earlier petition and may be to the advantage of the petitioner.

22. In the result, the Court passes the following order:-

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[3] (2016) 3 SCC 70

(i) The writ petition is dismissed imposing cost of Rs.1,00,000/- (Rupees One Lakh only) on the petitioner for abusing the process of the Court.

(ii) Let the costs be deposited within one month from the date of receipt of copy of this order, with the Andhra Pradesh State High Court Legal Services Authority in the High Court premises, Amaravati, failing which, immediately on expiry of one month, the Registrar General of this Court shall proceed to initiate the proceedings to recover the said amount, as arrears of land revenue, in accordance with law.

23. Report to the above effect shall also be placed on the record of this petition by the concerned Registrar.

24. Separate order is being passed initiating criminal contempt proceedings against the petitioner.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

25. Let a copy of this order be also placed on the record of W.P.No.32260 of 2022.

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RAVI NATH TILHARI,J

Date: 14.10.2022
Note:-
L.R.Copy to be marked
Issue C.C in one week
B/o
SCS

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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WRIT PETITION No.33403 of 2022

Date: 14.10.2022

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