IN THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 151 OF 2023

IN THE MATTER OF:

HASSINA WAJID (SARPANCH) ....Applicant

Versus

STATE OF J&K & ORS. ....Respondents

WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 6-8.

FILED BY COUNSEL FOR RESPONDENT NO. 6-8: AJIT SHARMA

Filed On: 15.05.2024

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 6-8.

Submissions:

1. Proceeding before this Hon'ble Tribunal cannot proceed to adjudicate matter when the Hon'ble High Court is seisin of a Writ Petition filed by the very same Original Applicant prior in time and for the same cause of action.

a. The Hon'ble Supreme Court in Raghu Ramakrishna Raju Kanumuru (supra) had quashed the NGT proceedings on the ground that parallel proceedings were already pending before the High Court regarding the same issue.

b. As continuation of proceedings before two different forums on the same issue would lead to passing of conflicting orders and would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow.

2. Concealment of material fact by the Original Applicant that they had also preferred a Writ Petition before the High Court, which in itself is a ground for quashing of proceedings.

a. The Applicant herein filed a writ petition before the Hon'ble High Court in November, 2022, pending as on date. Since no interim orders were passed by the High Court, the Applicant as an afterthought, filed the present Original Application by concealing the pendency of the writ petition.

b. It is a settled law that a party is required to approach the Court with clean hands and after making full disclosure of all essential facts. As such, this concealment by the Applicant is in itself a ground for quashing the present Original Application.

3. Minor deficiencies pointed out by the Joint Committee no longer exist and have been complied with by the Respondent.

a. That the Respondent has taken the following steps to cure the deficiencies pointed out by the Joint Committee. The same has also been recorded by the latest report of the Pollution Control Committee dt. 05.03.2024**.**

b. The Respondent now fulfills all the conditions laid down in the CTO which includes:

- Installation of complete shed of CGI sheets shed and enclosed the unit in the shed, complete washing system as additional PCM's to mitigate the impact of unit of critical criteria.

- Land Title Certificate under SO 60 from the office of Deputy Commissioner, Poonch.
- About 15 feet wind breaking walls consisting of CGI sheets around the unit towards the habitation.
- Done three rows of plantation of Eucalyptus Saplings. e. Installation of complete washing system and crushing/screening points enclosed in CGI sheets shed.

4. **Respondent's plant is well within siting norms, and not near any Abadi area.**

   a. That the Respondent had started its operation in only after obtaining a distance certificate from the office of the District Commissioner, Poonch. **(Refer to distance certificate dt. 03.09.2016 annexed herewith as Annexure-1)**

   b. The latest reports of the J&K PCC dt. 22.01.2024 & 30.01.2024, also establish the fact that the Respondent's plant is situated at about 550 meters from the Government School, Narhad which is behind the hillock and the same is not visible from the plant.

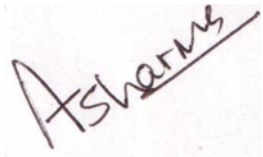
   c. The same J&K PCC report also records the fact there are about 25 houses including both commercial as well as residential area within 500 meters in scattered form at different elevations and intercepted by regular traffic on road in between the stone crusher and residential area. Therefore, the same cannot be called an Abadi area.

Judgments relied upon:

a. The State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru (M.P.), (2022) 8 SCC 156; for the proposition of quashing the NGT proceedings on the ground that parallel proceedings were already pending before the High Court. A true copy of the judgment passed by the Hon'ble Supreme Court in State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru (M.P.), (2022) 8 SCC 156, has been annexed herewith as **Annexure-2.**

b. Shri K. Jayaram v. Bangalore Development Authority, 2021 SCC Online SC 1194; for the proposition suppression of material facts. A true copy of the judgment passed by the Hon'ble Supreme Court in Shri K. Jayaram v. Bangalore Development Authority, 2021 SCC Online SC 1194, has been annexed herewith as **Annexure-3.**

Drawn & Filed By:



[AJIT SHARMA]

Counsel for Respondent No. 6-8

Dated: 15.05.2024

ANNEXURE A-1

Government of Jammu & Kashmir

OFFICE OF THE DEPUTY COMMISSIONER POOONCH

No. DMP/J/2383-86

Dated: 03.09.2016

DISTANCE CERTIFICATE

Sh. Shahzad Shabnam S/o. Abdul Rashid, R/o. Village Chaktroo, Tehsil Haveli, , District Poonch has applied for distance certificate for installation of Stone Crusher under name and style of M/s. Diwan Stone Crusher in the land bearing Khasra No.256 situated at Village Chaktroo, Tehsil Haveli, District Poonch.

As per the distance certificate submitted by Tehsildar haveli vide his No:OQ/806 dated: 03.09.2016, the proposed site of Diwan Stone Crusher at Chaktroo under Khasra No: 256 to various parameters as under:-

a) National Highway	Not applicant
b) State Highway/District Road	500 Mtr.
c) Jammu/Srinagar City Municipal Limits	Not applicant
d) Major Distt. Head Quarter	15 Km
e) Residence Area/Abadi	500 Mtr.
f) Forest Complex resort	Not applicant
g) Forest land	01 Km
h) Any Controlled area	Not applicant

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i)	Approve water supply 20 kilo liter	Not applicant
j)	Any Hospital/Nursing Home/Health Centre	Not applicant
k)	Notified Bird Sanctuaries/ National Park	Not applicant
l)	Agriculture Orchards except/ Dry Banjar Kadeem	Ghair Mumkin Road 01 Km
m)	Education Institution or other similar institute	01 Km

xxxxxxx S/d-

(Mohd Ashraf) KAS

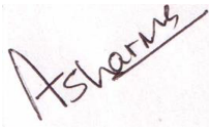
Asstt. Commissioner (Rev)

Poonch

Copy to:

1. General Manager, DIC Poonch for information.
2. District Officer, Pollution Control Board, Poonch for information.
3. Tehsildar, Haveli for information.
4. Sh. Shahzad Shabnam S/o. Abdul Rashid, R/o. Village Chaktroo, Tehsil Haveli, District Poonch for information.

-True Tyoed Copy-



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ANNEXURE A-2

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4522-4524 OF 2022
(@ DIARY NO. 16486/2022)

THE STATE OF ANDHRA PRADESH **APPELLANT(S)**

VERSUS

RAGHU RAMAKRISHNA RAJU KANUMURU (M.P.) **RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

Permission to file appeal without certified/plain copy of impugned order is granted.

Issue notice.

Shri Balaji Srinivasan, learned counsel accepts notice on behalf of the sole respondent, and as such, we have heard the matter finally.

1. The appellant challenges the order dated 6th May 2022 passed by the National Green Tribunal, Principal Bench, New

Delhi (hereinafter referred to as the "NGT") in O.A. No.361 of 2021, vide which it prohibited the appellant from undertaking any further construction. The appellant also challenges the order dated 20th May 2022 passed by the learned NGT in I.A. Nos. 117 and 118 of 2022 in O.A. No. 361 of 2022, vide which the application seeking vacation of stay imposed vide order dated 6th May 2022 was rejected.

2. The appellant was already running a resort at Rushikonda Hill, near Visakhapatnam. According to the appellant, after obtaining the necessary permission, it has demolished the existing resort and is re-constructing the resort at the same place with additional facilities.

3. A writ petition being W.P. (P.I.L.) No.241 of 2021, challenging the said construction, has already been filed before the High Court of Andhra Pradesh at Amaravati. In the said writ petition, the Division Bench of the High Court has passed the following order on 16th December 2021:

> "In the meanwhile, the construction activities and other allied activities in relation to the subject project, if any undertaken, shall be strictly in accordance with the permission accorded by the Ministry of Environment,

Forest and Climate Change, as well as the existing master plan."

4. It appears that the aforesaid writ petition before the High Court was filed on 8th December 2021. However, a letter addressed by the respondent was sent on 31st October 2021 to the learned NGT. The respondent is a sitting Member of Parliament from one of the constituencies in the State of Andhra Pradesh. The learned NGT, after taking cognizance of the said letter, initiated the proceedings in O.A. No.361 of 2021. It further appears from the record that the learned NGT had appointed an Experts Committee on 17th December 2021 which submitted its Report on 29th March 2022. A perusal of the said report would reveal that the said Experts Committee consisting of four experts did not find any violation in the construction that was carried out by the appellant.

5. However, the learned NGT again, vide its order dated 6th May 2022, appointed a 2nd Experts Committee. The report of the said 2nd Experts Committee is still awaited. However, without waiting for the said report, by the same order, the

learned NGT directed that no further construction to be undertaken.

6. It appears that after the order dated 6th May 2022 was passed by the learned NGT, the appellant filed an application for vacating stay on construction as directed in the said interim order dated 6th May 2022 passed by the learned NGT. However, the same was also rejected by the learned NGT vide its order dated 20th May 2022. Both these orders are impugned in the present appeals.

7. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant, submitted that when the High Court of competent jurisdiction was already in seisin of the matter, the learned NGT could not have entertained a lis with regard to the same cause of action. He submitted that though this fact was brought to the notice of the learned NGT, the learned NGT refused to vacate the interim order dated 6th May 2022, which was in conflict with the order of the High Court dated 16th December 2021.

8. Dr. Singhvi submitted that NGT is a Tribunal, which is subordinate to the High Court in so far as the territorial

jurisdiction of the High Court is concerned. He, therefore, submitted that the very continuation of the proceedings before the learned NGT is not sustainable in law.

9. Shri Balaji Srinivasan, learned counsel appearing on behalf of the respondent, on the contrary, submitted that the appellant has acted in gross breach of the order dated 16th December 2021 passed by the High Court of Andhra Pradesh at Amravati. He submitted that the construction is rampantly going on in blatant violation of the order of the High Court. Contempt petition has already been filed before the High Court, wherein the High Court after taking cognizance of the blatant violation, issued notice on 4th May 2022.

10. This Court, in the case of ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others***[1], has observed thus:

> "**12.** The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article

1 **(2013) 11 SCC 404**

> 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. [Ref. East India Commercial Companies Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand & Ors. [(2008) 10 SCC 1]"

11. In any case, no law is necessary to state that insofar as the Tribunals are concerned, they would be subordinate to the High Court insofar as the territorial jurisdiction of the High Court is concerned. A reference in this respect was also made to the judgment of the Constitution Bench of this

Court in the case of ***L. Chandra Kumar v. Union of India and Others***[2].

12. We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.

13. In that view of the matter, we are of the considered view that the continuation of the proceedings before the learned NGT for the same cause of action, which is seized with the High Court, would not be in the interest of justice.

14. We, therefore, quash and set aside the proceedings

2 **(1995) 1 SCC 400**

pending before the learned NGT in O.A. No.361 of 2021.

15. We further find that taking into consideration the serious allegations made by the respondent, it will be appropriate that all these facts are placed before the High Court and the High Court considers passing appropriate orders in accordance with law so as to strike a balance between the development and the environmental issues.

16. Needless to state that though development is necessary for economical progress of the nation, it is equally necessary to safeguard the environment so as to preserve pollution free environment and ecology for the future generations to come.

17. We, therefore, find that it will be appropriate that the parties move the High Court for appropriate orders. The respondent would be at liberty to file an application for impleadment before the High Court in the pending proceedings, which would be considered by the High Court in accordance with law.

18. Though, the High Court has permitted construction to proceed in accordance with law, we find that till the High Court takes a fresh call on the said issue, it will be necessary

to issue the following direction:

(a) Until the High Court considers the issue, the construction will be permitted only on the area where the construction existed earlier and which has been demolished and the flat area.

19. Dr. Singhvi, learned Senior Counsel appearing on behalf of the State, on instructions from Shri Mahfooz Ahsan Nazki, stated that the appellant would not claim any equities on account of the construction, which is permitted to be proceeded further.

20. We further clarify that we have not expressed any opinion on the merits of the matter and the parties would be at liberty to raise all the issues available to them before the High Court which shall be considered in accordance with law. Since the learned NGT has already constituted an Experts Committee, the High Court would be at liberty to take into consideration the report of the said Experts Committee or if it finds appropriate may appoint other Committee as it deems fit.

21. The appeals stand disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(HIMA KOHLI)

NEW DELHI;
June 01, 2022.

ITEM NO.3 COURT NO.5 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 16486/2022

(Arising out of impugned Interim order dated 06-05-2022 in OA No. 361/2021 20-05-2022 in IA No. 117/2022 20-05-2022 in IA No. 118/2022 passed by the National Green Tribunal)

THE STATE OF ANDHRA PRADESH Appellant(s)

VERSUS

RAGHU RAMAKRISHNA RAJU KANUMURU (M.P) Respondent(s)

(IA No.80661/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80659/2022-STAY APPLICATION and IA No.80658/2022-PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER and IA No.81808/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 01-06-2022 These appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MS. JUSTICE HIMA KOHLI
(VACATION BENCH)

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. S. Niranjan Reddy, Sr. Adv.
Mr. Mahfooz Ahsan Nazki, AOR
Mr. Polanki Gowtham, Advocate
Mr. Shaik Mohamad Haneef, Adv
Mr. T. Vijaya Bhaskar Reddy, Adv
Mr. K.V.Girish Chowdary, Adv
Ms. Rajeswari Mukherjee, Adv
Ms. Akhila Palem, Adv
Mr. Abhishek Sharma, Adv
Mr. Sahil Raveen, Adv

For Respondent(s) Mr. Balaji Srinivasan, AOR

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UPON hearing the counsel the Court made the following

O R D E R

Permission to file appeal without certified/plain copy of impugned order is granted.

Issue notice.

Shri Balaji Srinivasan, learned counsel accepts notice on behalf of the sole respondent.

The appeals stand disposed of in terms of the signed Reportable Judgment. Pending application(s), if any, shall also stand disposed of.

(Geeta Ahuja) **(Ranjana Shailey)**
Assistant Registrar-cum-PS **Court Master**
(Signed Reportable Judgment is placed on the file)

ANNEXURE A-3

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 7550-7553 of 2021
(Arising out of S.L.P.(C)No(s).26374-26377 of 2013)

SHRI K. JAYARAM & ORS. …APPELLANT(S)

VERSUS

BANGALORE DEVELOPMENT AUTHORITY & ORS. …RESPONDENT(S)

J U D G M E N T

S. ABDUL NAZEER, J.

1. Leave granted.

2. These appeals arise out of the judgment and order dated 11.01.2013 passed by the Division Bench of the High Court of Karnataka in Review Petition Nos.147/2012 and 1361/2012 which were filed by the appellants before the High Court pursuant to the liberty granted by this Court vide Order dated 27.02.2012

while allowing the appellants to withdraw their Special Leave Petition (C) Nos.6125-6126 of 2012. However, the High Court declined to review its earlier order dated 06.07.2011 passed in the Writ Appeal Nos.2592-93 of 2009.

3. Brief facts necessary for the disposal of these appeals are as under:

4. The appellants herein are the sons of one M. Krishna Reddy. They filed Writ Petition No.26920 of 2005 before the High Court of Karnataka at Bangalore for cancellation of allotment of Site Nos.1337 and 1336 allotted in favour of respondent nos.5 and 6 respectively in the layout known as Binnamangala 2nd Stage and for certain other reliefs. According to the appellants their father M. Krishna Reddy was the owner and in possession of land bearing Survey No.13, measuring 1 acre 26 guntas of Binnamangala Village, Kasaba Hobli, North Taluk, Bangalore District, having acquired the same by virtue of an order passed by the Deputy Commissioner for Abolition of Inams in proceedings bearing C.No.11/59-60 under Section 5 of the Mysore (Personal & Miscellaneous) Inam Abolition Act, 1954. It was further contented that the entries in the Index of Lands and Record of Rights were registered in the name of M. Krishna Reddy and he was paying land revenue to the State Government. The said land was notified for acquisition by the Bangalore Development Authority (for short 'BDA') for the formation of layout between Old Madras Road and Banaswadi Road (Binnamangala Layout). A

preliminary Notification came to be published in Mysore Gazette dated 21.07.1960 followed by a final Notification published in the said Gazette on 23.02.1967.

5. It was further contended that M. Krishna Reddy filed an application for enhancement of compensation pursuant to which Additional Land Acquisition Officer (Addl. LAO) referred the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894. The Civil Court, after conducting an inquiry, accepted the Reference in part and increased the award amount payable in respect of 1 acre 18 guntas in Survey Nos.13/2 & 13/4. M. Krishna Reddy was in possession of 1 acre 26 guntas of land in these two survey numbers. 8 guntas of land was left out from the acquisition. In the suit for partition filed by the third appellant, a portion of Survey No.13/2 measuring 8 guntas of land which was left out from acquisition, was divided amongst appellants by forming four sites and final decree for partition came to be passed on 30.07.1982. It was further contended that they were not aware of the formation of the sites in this 8 guntas of the land by the BDA and the allotment of said sites in favour of respondent Nos.5 & 6. Therefore, they filed the aforesaid writ petitions for cancellation of allotment of the said sites.

6. BDA filed statement of objections contending that Survey No.13 measuring 5 acres 9 guntas and certain other lands were acquired by the BDA in the year 1971 and thereafter sites were formed and allotted to the general public. Admittedly, the appellants received the award amount on 30.11.1971. After lapse of 34 years from

the completion of acquisition proceedings and receiving of award amount, the appellants have filed writ petitions before the High Court on false and frivolous grounds. It was further contended that Sy. No.13 of Binnamangala Village measuring 5 acres 9 guntas and certain other lands were acquired for public purpose for the formation of layout called 'Banaswadi Layout'. The notified Khatedars in respect of Survey No.13 were Channappa Reddy, Ramakrishna Reddy, N. Papaiah Reddy and M. Krishna Reddy. None of them have questioned the legality of the acquisition proceedings. The appellants have filed a suit i.e. O.S. No.3936/1999 for the permanent injunction against the BDA by contending that 8 guntas of land has not been acquired by the BDA. The Trial Court by its judgment dated 29.01.2003 dismissed the suit. Aggrieved by the same, the second appellant filed an appeal bearing RFA No.516/2003 which was dismissed by the High Court on 01.07.2003. The appellants have not disclosed the dismissal of the suit and the appeal in the writ petition.

7. Learned Single Judge, after considering the matter in detail, dismissed the writ petition on 01.04.2009. As noticed above, the Writ Appeal Nos.2592-2593/2009, challenging the order of the learned Single Judge, were dismissed by the Division Bench of the High Court and the review petitions were also dismissed by the High Court subsequently.

8. Prof. Ravivarma Kumar, learned senior counsel appearing for the appellants, would contend that Survey Nos.13/2 and 13/4 comprise of 1 acre 26 guntas of land out of which the State Government has acquired only 1 acre 18 guntas of land for the formation of the layout. Remaining 8 guntas of land has not been vested with the BDA, as it was not acquired. Since the remaining 8 guntas of land has not been acquired, the appellants have partitioned the said property amongst themselves and each of them is in possession of a site formed in this 8 guntas of land. It was argued that when the said 8 guntas of land itself has not been acquired, question of formation of the sites by the BDA in this land and its allotment to respondent nos.5 and 6 is illegal.

9. On the other hand, Mr. S.K. Kulkarni, learned counsel appearing for the respondent-BDA, has supported the impugned judgment and order of the High Court. It was argued that Survey No.13 comprised of lands totally measuring 5 acres 9 guntas and out of which 12 guntas was *kharab*-B land. This is evident from the final Notification published in the Mysore Gazette dated 23.02.1967. Out of the said 5 acres 9 guntas of land, the appellants' father was granted occupancy right of 1 acre 26 guntas. A common Award was passed in respect of the land belonging to Krishna Reddy and his brother. Compensation was awarded in

respect of 1 acre 18 guntas which is revenue paying land i.e. non-*kharab* land. Compensation cannot be granted in respect of *kharab-B* land, if acquired. *Kharab* land forms part and parcel of the acquired revenue yielding land and entire extent of 1 acre 26 guntas of land including *kharab* land was acquired. Therefore, the appellants have no right, title and interest whatsoever in respect of the so-called left out land. It is further contented that the appellants had filed O.S. No.3936 of 1999 before the Civil Court against the BDA for permanent injunction. In the said Suit, the very question involved in the writ petition was raised. The said Suit was dismissed by the Civil Court and the said judgment was confirmed in the appeal by the High Court. The appellants have not disclosed the dismissal of the aforesaid Suit and the appeal in the writ petition. Therefore, the High Court has rightly dismissed the appeal even on the question of suppression of material facts. He prays for dismissal of the appeal.

10. We have carefully considered the submissions made at the Bar by the learned counsel for the parties and perused the materials placed on record.

11. The documents produced by the BDA would clearly disclose that the entire extent of 5 acres 9 guntas of land including 12 guntas of *kharab*-B land was notified for acquisition. M. Krishna Reddy, the father of the appellants, claimed to be the owner of 1 acre 26 guntas of lands in the said survey number and it was further contended that 1 acre and 18 guntas have been acquired and 8 guntas was

left out from the acquisition. It was further contended that BDA had formed the sites in the said 8 guntas of land left out from acquisition and allotted them to respondent nos.5 & 6. Admittedly, the appellants had filed O.S. No.3936/1999 before the Additional City Civil Court against the BDA seeking permanent injunction while pleading identical facts and urging similar grounds. The said suit was dismissed by the trial court. The appeal filed against the said judgment of the trial court was also dismissed by the High Court. The appellants have not disclosed the filing of the suit, its dismissal by the Civil Court and the confirmation of the said judgment by the High Court in the writ petition. It is clear that the appellants have suppressed these material facts which are relevant for deciding the question involved in the writ petitions. Thus, the appellants have not come to the court with clean hands.

12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India 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 facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

13. This Court in **Prestige Lights Ltd. V. State Bank of India**[1] 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."

14. In **Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others**[2], this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also

1 (2007) 8 SCC 449
2 (2008) 1 SCC 560

should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

15. In **K.D. Sharma v. Steel Authority of India Limited and Others**[3]**,** 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.
>
> **35.** The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R.* v. *Kensington Income Tax Commrs.*- (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514)
>
> > "… it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an 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—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and 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 not been

3 (2008)12 SCC 481

fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "*We will not listen to your application because of what you have done*." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.(supra)*, Viscount Reading, C.J. observed: (KB pp. 495-96)

"… Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from*

the applicant in a proceeding which has only been set in motion by means of a misleading affidavit." (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.(supra)* 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."

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief.

18. Apart from the above, we have also examined the case on merits. As noticed above, Survey No.13 measures 5 acres 9 guntas, out of which 12 guntas were *kharab*-B land. Notification in respect of the entire 5 acres 9 guntas had been

issued and possession of the land had been been taken long back. The contention of the appellants is that their father, M. Krishna Reddy, was the owner of 1 acre 26 guntas of land in Survey Nos.13/2 and 13/4. According to them, 08 guntas of land has not been acquired and compensation has not been paid in respect of this land. Records produced by the BDA would disclose that 08 guntas of land is k*harab-B* land. Therefore, there is no question of payment of compensation in respect of this land, though, the same was included in the preliminary and final notification. The final notification was issued as early as in the year 1967. The appellants have claimed enhanced compensation also for 1 acre 18 guntas of land and they have raised this issue at a highly belated stage after lapse of about 34 years.

19. Identical contentions have been raised by the appellants in the aforesaid suit. The said suit was dismissed and the judgment of the civil court was confirmed by the High Court in RFA NO.516/2003 on 01.07.2003, by observing as under:

> "….. Accordingly in the instant case, the trial Court adjudicated upon issue No.3 as a preliminary issue which related to the maintainability of the suit and on the basis of the facts which could not be reasonably disputed and in respect of which there is presumption of correctness, it has found that the acquisition proceedings in respect of the entire extent of land in Sy.No.13 having become final and conclusive, the suit of the plaintiffs was impliedly barred under Section 9 of CPC and hence not maintainable. I find no perversity in the view taken by the trial court. It is no doubt true that a contention was sought to be advanced on behalf of the appellant that only an extent of 1 acre 18 guntas of land in Sy. Nos.13/2 and 13/4 had been acquired by the BDA and the remaining extent of 8 guntas of land is continued to be in possession of the plaintiff. But the materials placed on record clearly indicated that the entire extent of land in Sy. No.13 had been

> acquired by the BDA for public purposes and the compensation had been paid thereon. It is not in dispute that the plaintiff's father Shri Krishna Reddy had participated in the acquisition proceedings before the respondent/BDA and he was one of the notified khatedars. Under the circumstances, therefore, when the entire extent of land has been acquired, it is rather difficult to accept the claim of the appellant/plaintiff. Hence, I find no merit in this appeal filed by the appellant."

20. This finding of the High Court has attained finality and the writ court cannot sit in an appeal over the judgment passed by the High Court in the appeal. The conclusions reached by the court in the appeal are binding on the appellants.

21. In view of above, we do not find any merit in these appeals and the same are accordingly dismissed. Pending applications, if any, shall stand disposed of. There shall be no order as to costs.

….……J.
(S. ABDUL NAZEER)

….……J.
(KRISHNA MURARI)

New Delhi;
December 08, 2021