(i) of sub-rule (2) of rule 5 being admittedly seniority-cum-merit the petitioners have a right to be considered for promotion to the posts of District Attorneys before the names of any of respondents Nos. 3 to 49 are considered for that purpose.

(8) It is admitted at the Bar on behalf of the respondents that out of them respondents Nos. 3 to 8 have been given promotion to the posts of District Attorneys during the pendency of the petition without the names of any of the petitioners having been considered in that behalf. Such promotion, being illegal is, therefore, struck down and respondents Nos. 1 and 2 are directed to consider the claims of the petitioners for appointment as District Attorneys on the basis of seniority-cum-merit before promoting any one of respondents Nos. 3 to 49 to those posts. For the rest the petition is dismissed, the parties being left to bear their own costs.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, B. S. Dhillon and Harbans Lal, JJ.

CHARANJI LAL AND OTHERS—*Petitioners.*

versus

FINANCIAL COMMISSIONER, HARYANA, ETC.—*Respondents.*

Civil Misc. No. 664 of 1978
and
Civil Writ Petition No. 5435 of 1975

April 27, 1978.

Constitution of India 1950—*Article* 226—*Calculated and deliberate suppression of material facts—Whether disentitles the petitioner to claim relief under the extra-ordinary writ jurisdiction.*

Held that a *mala fide* and calculated suppression of material facts would disentitle the petitioners to any relief which they claimed under the extra-ordinary remedy available under the writ jurisdiction under Article 226 of the Constitution of India. In such a situation the conduct of the petitioners would disentitle them to the relief

which they claimed and as such the writ would be liable to be dismissed without going into the merits.

(Paras 10 and 14)

Petition Under Articles 226/227 *of the Constitution of India praying that* :—

(*i*) *the records of the case may kindly be summoned for the disposal of his writ petition* ;

(*ii*) *a writ of Certiorari quashing the impugned order of respondents No.* 1 *to* 3, *dated* 13*th August*, 1975, 14*th August*, 1972 *and* 17*th April*, 1972, (*Annexures P-5, P-4 and P-3*) *respectively be issued with a further direction that no piece of land from the area so obtained by way of decree be declared as surplus* ;

(*iii*) *any other writ, direction or order as this Hon'ble Court may deem just and proper be issued* ;

(*iv*) *filtng of certified copies of Annexures P-19 P-2, P-4 be dispensed with ;*

(*v*) *in the peculiar circumstances of the case the requisite notice of motion may kindly be dispensed with ; and*

(*vi*) *it is further prayed that dispossession of the petitioners from the land in dispute and operation of the impugned orders may kindly be stayed till the final disposal of the writ petition.*

C. Misc. No. 664/1978.

Application Under Section 151*C.P.C. praying that the writ petition may kindly be dismissed and the respondents* 4 *to* 10 (*present applicants*) *be awarded the costs of the Writ Petition.*

It is further prayed that special costs should be awarded to the respondents as they have been kept out of the possession of the land for the last about three years wihout any justification and on the other hand may obtained the stay order from this Hon'ble Court by concealing very material facts in their writ petition.

J. S. Wasu, Advocate with N. C. Jain, Advocate, *for the Petitioner.*

Ishwari Prashad, Advocate, *for the respondents.*

Charanji Lal and others *v.* Financial Commissioner, Haryana, etc.
(S. S. Sandhawalia, J.)

JUDGMENT

S. S. Sandhawalia, J.

(1) The bane of the writ jurisdiction — a calculated and designed suppression of material facts in order to secure admission and interim relief has come up for pointed attention and adjudication in this case.

(2) The facts are now not in serious dispute. The six writ-petitioners are all grand sons of one Moman. They had jointly brought this writ petition to primarily challenge the order of the Collector (Agrarian), Kaithal, district Kurukshetra, dated 17th of April, 1972 (and the appellate and revisional order upholding the same) whereby he rejected their application, seeking that the area declared surplus in the hands of their predecessor-in-interest Moman deceased be exempted from allotment to the ejected tenants. This relief was sought on the ground that the said land had been subsequently purchased by the petitioners from the vendees of Moman deceased through a pre-emption suit which was later on decreed in their favour. The Collector,—*vide* annexure P3 took the view that the area in dispute having been sold after July 30, 1958 by Moman could not be deemed to be a *bona fide* sale by its original owner. He further held that the decree obtained by the petitioners much later on the 4th of April, 1972 was also collusive in nature. An appeal filed by all the six writ-petitioners against the order aforesaid was dismissed by the Commissioner, Ambala Division on the 14th of August, 1972,—*vide* annexure P4 to the writ petition. A revision against the said order met a similar fate later.

(3) It is no longer in doubt that long before the filing of the present writ petition, all the petitioners had instituted suit No. 744/1972 on the 2nd of May, 1972 in the Court of the Subordinate Judge II Class, Kaithal, seeking a declaration that the aforesaid order of the Collector (Agrarian), Kaithal, dated April 17, 1972, annexure P3, and all other proceedings regarding the suit land and pertaining to the allotment of surplus area etc. were void and a nullity and consequently not binding upon them. A permanent injunction restraining the defendants from interfering with their possession over the suit land was also sought. The suit was dismissed with costs by the learned Subordinate Judge II Class on December 24, 1974. Against this dismissal, the writ petitioners then filed an appeal in the Court of

the District Judge which was again dismissed by Shri V. K. Jain, Additional District Judge on the 17th of August, 1976. No further appeal or revision was carried against the aforesaid order of the learned Additional District Judge.

(4) The present writ petition was preferred on the 16th of September, 1975 and came up for motion hearings on the following day when the dispossession of the petitioners was stayed and notice of motion was issued for October 8, 1975, From the subsequent orders of the Motion Bench it is plain that the appearance was put in on behalf of the official respondents only and the private respondents 4 to 11 were either not served or in any case they did not put in appearance and the case was subsequently admitted for hearing to a Full Bench in view of the conflict of authorities, whilst the stay in favour of the petitioner was allowed to continue.

(5) The present civil miscellaneous has been moved on behalf of respondents 4 to 10 in the writ petition, praying *inter alia* that the same be dismissed at the threshold on the short ground that there has been a *mala fide* and calculated suppression of material facts by the writ-petitioners in order to over-reach the Court and thereby to procure the admission of the writ petition and secure interim relief which consequently has been granted to them. As this ground found favour with us entirely, we deem it unnecessary to advert to the other ground of *res judicata* upon which a similar relief of dismissal was also sought. It is for this reason that the facts aforesaid have been recounted with regard to the former ground alone.

(6) Now it is significant to mention that in the reply filed on behalf of the writ petitioners to this civil miscellaneous application, the factual stand on behalf of the applicants (respondents 4 to 10 in the writ petition) is not denied. It has been admitted that the civil suit aforesaid was, in fact, filed by the writ petitioners and on its dismissal, the appeal against the same had also met a similar fate. However, it is speciously pleaded that the writ petitioners failed to mention having filed the civil suit and the subsequent appeal under a *bona fide* mistake and had thought that reference to the same was not necessary at all. It is sought to be averred that there has been no deliberate concealment.

(7) From the stand it is manifest and in fact is not even denied that in the writ petition far from there being any express mention,

there does not appear even the remotest hint about the writ petitioners having earlier resorted to their ordinary and regular remedy under the civil law. Thereby they had sought an identical relief and challenged the legality and validity of the surplus area proceedings arising from the order of the Collector (Agrarian), Kaithal,—*vide* Ex. P3. That identical issues of law and fact had arisen between the parties, is evident from the following 4 out of the 7 issues struck on the pleadings therein:—

(1) Whether the order of allotment in favour of defendants is valid and binding upon the plaintiffs? O.P.D.

(2) Whether the order of declaring the land in suit as surplus is void on the grounds mentioned in para 6 of the plaint? O.P.P.

(3) Whether the suit is barred by *res judicata* and on the principles of estoppel? O.P.D.

(4) Whether the present suit does not lie on facts and in law as alleged in preliminary objection No. 1 of the written statement? O.P.D.

(8) Equally it is to be recalled that during the pendency of the suit aforesaid, the appeal filed by the writ petitioners against the order of the Collector had also been dismissed on August 14, 1972. Out of the aforesaid issues, the material issues No. 3, 4 and 6 were decided against the writ petitioners. Indeed the learnel trial Judge came to a categoric finding at the close of his judgment that the suit for permanent injunction did not lie as the plaintiffs (writ petitioners) had not come to the Court with clean hands and they had played hide and seek policy with the Court.

(9) It is, thus, plain that even at the stage the writ petition was filed, the petitioners therein were more than well aware that the identical issues of law and fact regarding which they claimed relief in this Court had already been conclusively decided against them in a civil Court to which they had themselves resorted. Nevertheless, they deliberately and calculatedly suppresed this fact entirely from the writ Court. There can hardly be any doubt that if all these facts were candidly disclosed at that stage as the writ petitioners were

bound to do, then the Court would have stayed its hands altogether or in any case would have been very reluctant and chary to grant any interim relief. This is not all. In the writ petition it was further averred that no other remedy was available to the petitioners. This has to be viewed in the context of the fact that meanwhile the writ petitioners had then filed an appeal against the order of the learned Subordinate Judge which to their knowledge was pending decision and in which also they were seeking the identical relief. There can be, thus, no manner of doubt that the averments in this context were deliberately and calculatedly designed to keep the writ Court in the dark with regard to these material facts and to procure an interim or ultimate relief by keeping these facts out of the way. It is perhaps equally significant that during this interval the writ petitioners continued to prosecture their remedy by way of appeal before the Additional District Judge, Karnal and ultimately be dismissed the same on merits after considering all the arguments raised on behalf of the appellants (writ petitioners) on August 17, 1976. Nevertheless, this fact was also not remotely sought to be brought to the notice of this Court at any stage on behalf of the writ petitioners.

(10) In the aforesaid context, we cannot but hold that there has been a mala fide and calculated suppression of material facts which, if disclosed, would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed. We categorically reject the plea of the writ petitioners that the failure to mention all these material facts clearly within their knowledge was either inadvertent or was occasioned by any *bona fide* omission.

(11) Once the aforesaid finding is arrived at, the position of law does not remain in any doubt. In the context of a writ of prohibition, Viscount Reading C.J., in *The King* v. *The General Commissioner for the purpose of the Income Tax Acts for the District of Kensington*, (1) observed as follows:—

> "Before I proceed to deal with the facts I desire to say this: 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

(1) 1917 (1) King's Bench Division 486.

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—".

On appeal, Lord Cozens-Hardy M. R. in this very judgment, whilst affirming the aforesaid view, concluded as follows :—

"For these reasons I think that the view taken by the Divisional Court was perfectly right. The Court, for its own protection is entitled to say "We refuse this writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

(12) As in England, so in India, the Courts have taken a unanimously consistent stand in accord with the aforesaid principle from the time of the promulgation of the Constitution. Malik C.J., speaking for the Full Bench, in *Asiatic Engineering Co.* v. *Achhru Ram,* (2) after an exhaustive discussion, observed as follows:—

"—A person obtaining an *ex parte* order or a rule nisi by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse "this valuable right by obtaining *ex parte* orders by suppression, misrepresentation or misstatement of facts. Applying this principle to the present case, we feel that, in this case, the petitioner Company has disentitled itself to ask for a writ of prohibition by material suppression, misrepresentations and misleading statements which have been found by us above.——"

(13) Within this jurisdiction, a Division Bench in *Mr U. C. Rekhi* v. *The Income Tax Officer* (3), has held that if there is any suppression of the material facts on the basis of which the writ is sought

(2) AIR (38) 1951 All. 746.
(3) 1950 P.L.R. 267.

to be claimed, the Court would refuse to grant the same without going into the merits. This judgment was then followed by another Division Bench in *Narain Das and another* v. *The State of Punjab and others*, (4). Tek Chand, J. in *Shrimati Bhupinderpal Kaur* v. *The Financial Commissioner (Revenue) Punjab and others* (5), took even a stricter view in holding that there was no distinction between an averment in a petition which is a positive statement of fact and an affidavit which is sworn or an affirmed statement reduced to writing. He dismissed the writ petition on the short ground that a wrong averment in the writ petition was made to the effect that a notice of motion was served on the respondents; whilst, in fact, it had not been so done.

(14) Agreeing with the long line of precedent and affirming a rule which appears to us hoary by usage, we hold that the writ petitioners, in the present case, have by their own conduct disentitled themselves to the relief which they sought to claim. We dismiss the writ petition with costs on this ground alone without adverting to merits.

Bhopinder Singh Dhillon, J.—I agree.

Harbans Lal, J.—I agree.

N. K. S.

(4) 1952 P.L.R. 366.

(5) 1968 P.L.R. 169.

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