Before Mukul Mudgal, C.J. & Ajay Tewari J.

RATTANA RAM (SINCE DECEASED) THROUGH HIS LEGAL HEIR,—*Appellant*

versus

CHANDIGARH HOUSING BOARD AND ANOTHER,—*Respondents*

LPA No. 556 of 1997 &
LPA No. 634 of 1997 in
CWP No. 1596 of 1984

26th July, 2010

Constitution of India, 1950—Art.226—Wife of petitioner allotted LIG house out of discretionary quota—Petitioner applying for MIG house—Allotment—Petitioner filing affidavit that neither he nor any dependent member of his family owned any property in Chandigarh—Complaint against appellant—Petitioner claiming separation from his wife on basis of decree of customary divorce granted by Civil Court—Petitioner and his wife nominating each other as their successors for allotted houses—Petitioner failing to change nomination even after decree of divorce—Cancellation of allotment and forfeiture of deposit amount—Single Judge disbelieving claim of petitioner regarding his divorce but allowing petition on ground that cancellation order was not passed by competent authority—Development Officer only communicating order of cancellation passed by competent authority—Article 226 of Constitution is meant to do substantial justice and not to provide succour to someone who does not come to Court with clean hands—Petition should have been dismissed due to petitioner's iniquitous conduct disentitling him from seeking discretionary remedy under Article 226.

Held, that the whole transaction was a device to somehow or the other retain the ill-gotten property. The suit for declaration of the dissolution of the marriage by the respondent was filed only on 23rd October, 1982

well after the receipt of a complaint dated 14th September, 1982 in the office of the respondent on 15th September, 1982. This itself shows the motivated nature of the suit which was merely a device to sustain a double allotment based on suppression of facts. It cannot be disputed that even when the appellant filed the affidavit, on his own showing a subsisting marriage existed which rendered him ineligible to even apply. The learned Single Judge has rightly held that in view of the Hindu Marriage Act only a competent Court can grant a valid divorce.

(Para 3)

Further held, that the Development Officer has only communicated the order of cancellation passed by the competent authority. Even otherwise Article 226 of the Constitution is meant to do substantial justice and does not and should not provide succour to someone who does not come to the Court with clean hands. Thus, the appellant's writ petition should have been dismissed by the learned Single Judge due to his iniquitous conduct disentitling him from seeking the discretionary remedy under Article 226 of the Constitution.

(Paras 4 & 5)

Sarwan Singh, Senior Advocate with N.S. Rapri, Advocate *for appellant* in LPA No. 556 of 1997 and respondent in LPA No. 634 of 1997.

MUKUL MUDGAL, CJ.

(1) These two appeals arise from the same order and hence are being decided jointly. The description of the parties is taken from LPA No. 556 of 1997.

(2) The appellant applied for a MIG house advertised by the respondent in the year 1977. In the year 1979 the wife of the appellant was allotted an LIG house out of the discretionary quota. By the letter dated 22nd August, 1980 the appellant was also allotted an MIG house. As per the said allotment letter the appellant had to file an affidavit that neither he nor any dependent member of his family owned any property in Chandigarh.

On the appellant having filed the said affidavit and on fulfilling the other terms and conditions the house was transferred in the name of the appellant.

(3) On 15th September, 1982 a complaint was received against the appellant regarding the fact that he had filed a false affidavit that none of his dependent family members owned any property in Chandigarh (since as already mentioned above his wife had already been allotted a house.) On 23rd October, 1982 the petitioner filed a suit in the court of Sub Judge 1st Class, Garhshankar claiming a declaration that his marriage had been dissolved by 'customary divorce' dated 6th January, 1980. His wife having come and admitted the claim the said suit was decreed. It further bears mention that both the petitioner and his wife had nominated each other as their successors for the house/s allotted to them and the nomination was not changed even after the alleged divorce. Ultimately notice was issued by the respondent on 12th August, 1982 asking the appellant to show cause why the allotment in his favour be not cancelled and his deposit forfeited. The appellant filed a reply but thereafter did not appear for personal hearing. The respondent-board disbelieving the version of the appellant, passed an order cancelling the allotment and forfeiting the entire amount deposited by him. That cancellation was challenged by way of a writ petition but the learned Single Judge even while disbelieving the claim of the appellant regarding his divorce still allowed the petition on the ground that the impugned order was not passed by the competent authority. As regards the argument of learned Senior Counsel for the appellant that the learned Single Judge erred in disbelieving the divorce, the same has to be noticed only to be rejected. Obviously the whole transaction was a device to somehow or the other retain the ill-gotten property. The suit for declaration of the dissolution of the marriage by the respondent was filed only on 23rd October, 1982 well after the receipt of a complaint dated 14th September, 1982 in the office of the respondent on 15th September, 1982. This itself shows the motivated nature of the suit which was merely a device to sustain a double allotment based on suppression of facts. It cannot be disputed that even when the appellant filed the affidavit, on his own showing a subsisting marriage existed which rendered him ineligible to even apply. The learned Single Judge has rightly held that in view of the Hindu Marriage Act only a competent Court can grant a valid divorce. Thus, LPA No. 556 of 1997 has to be dismissed.

(4) As regards the appeal filed by the Board learned counsel has argued that merely because the order was signed by the Development Officer yet since the draft order was approved by the competent authority it cannot be held that the order was invalid. Thus it has to be held that the Development Officer has only communicated the order of cancellation passed by the competent authority. Even otherwise Article 226 of the Constitution is meant to do substantial justice and does not and should not provide succour to someone who does not come to the court with clean hands. In **Shiv Shankar Dal Mils** *versus* **State of Haryana, (1)** the Hon'ble Supreme Court held as follows :—

> "Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects :
>
> Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon consideration as of public interest....."

(5) Thus the appellant's writ petition should have been dismissed by the learned Single Judge due to his inequitous conduct disentitling him from seeking the discretionary remedy under Article 226 of the Constitution.

(6) In the circumstances the appeal filed by the Board bearing LPA No. 634 of 1997 is allowed and the order of the learned Single Judge to the extent it allows the writ petition filed by the respondent is set aside and the order dated 21st March, 1984 passed by the respondents is restored.

R.N.R.

(1) (1980) 2 S.C.C. 437