

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

*Reserved on : 05.09.2024
Pronounced on : 20.09.2024*

OWP No. 2015/2018

1. Satpal Sharma, Aged 65 years, ...Petitioner(s)/Appellant(s)
S/o Sh. Girdhari Lal,
R/o H. No. 122/3, Channi Himmat,
Jammu.
2. Hardev Singh, Aged 63 years,
S/o S. Mehtab Singh,
R/o Village Maralian, Tehsil R S Pura,
Jammu.
3. Ishan Sharma, Aged 30 years,
S/o Late Sh. Ashok Kumar Sharma,
R/o H. No. 69, Chand Nagar,
Jammu.

**Through: Mr. K S Johal, Sr. Advocate with
Mr. Supreet S Johal, Advocate
Ms. Radha Sharma, Advocate**

Vs

1. State of J & K through Respondent(s)
Commissioner/Secretary,
Housing and Urban Development Department,
Civil Secretariat, Srinagar.
2. Jammu Development Authority through
its Vice Chairman, Vikas Bhawan,
Rail Head Complex, Jammu.
3. Director Land Management,
Jammu Development Authority,
Vikas Bhawan, Rail Head Complex,
Jammu.
4. Chief Town Planner,
Jammu Development Authority,
Vikas Bhawan, Rail Head Complex,
Jammu.

5. Senior Superintendent of Police,
Jammu.

**Through: Ms. Monika Thakur, Assisting counsel to
Mr. S S Nanda, Sr. AAG for R-1.
Mr. Adarsh Sharma, Advocate with
Mr. Atul Verma, Advocate for R-2 to 4.**

CPOWP No. 293/2018

1. Satpal Sharma, Aged 65 years,Petitioner(s)/Appellant(s)
S/o Sh. Girdhari Lal,
R/o H. No. 122/3, Channi Himmat,
Jammu.
2. Ishan Sharma, Aged 31 years,
S/o Late Sh. Ashok Kumar Sharma,
R/o H. No. 69, Chand Nagar,
Jammu.
3. Hardev Singh, Aged 64 years,
S/o S. Mehtab Singh,
R/o Village Maralian, Tehsil R S Pura,
Jammu.

**Through: Mr. K S Johal, Sr. Advocate with
Mr. Supreet S Johal, Advocate
Ms. Radha Sharma, Advocate**

Vs

1. Pawan Singh Rathore, Respondent(s)
Vice Chancellor,
Jammu Development Authority,
Vikas Bhawan, Rail Head Complex,
Jammu.
2. D. S Katoch,
Director Land Management,
Jammu Development Authority,
Vikas Bhawan, Rail Head Complex,
Jammu.
3. Shruti Bhardwaj, Tehsildar, JDA
Vikas Bhawan, Rail Head Complex,
Jammu

**Through: Mr. Adarsh Sharma, Advocate with
Mr. Atul Verma, Advocate**

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

OWP No. 2015/2018

1. Through the medium of instant petition, the petitioners are invoking writ jurisdiction of this Court under Article 226 of the Constitution of India read with Section 103 of the Constitution of the State of J&K, seeking following reliefs:

Writ Petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of the State of Jammu and Kashmir for issuance of an appropriate writ, direction or order in the nature of writ of Certiorari, quashing the decision taken by the JDA to demolish the boundary walls, structures and take over the land of petitioners measuring 1 Kanals 16 Marlas comprising of Survey No. 20 (old), Khata No. 17 (old) and Khewat No. 1 (old) situated at Channi Rama, Tehsil and District Jammu.

AND

For issuance of further appropriate writ, direction or order in the nature of writ of Mandamus, commanding the respondents not to interfere with or trespass upon over the land afore stated and the structures raised therein by the petitioners in the form of either a construction raised in accordance with the Municipal Plan boundary walls and sheds existing.

AND

For issuance of further appropriate writ, direction or order in the nature of Writ of Prohibition, restraining the respondents not to disturb the possession of the petitioners over the respective lands and the structures raised in the land measuring 1 Kanal and 16 Marlas as stated hereinabove or otherwise use the force to trespass upon, forcefully occupy or disturb the structures and boundary walls raised therein.

2. Before proceeding further in the matter and to settle the controversy in question, it is necessary to notice the facts of the case, which, in nutshell, are summarized as under:

FACTUAL MATRIX OF THE CASE:-

3. The land measuring 1 Kanal 16 Marlas comprised of Survey No. 20 (old), Khata No. 17 (old) and Khewat No. 1 (old) situated at Channi Rama, Tehsil Jammu was the proprietorship land jointly owned and possessed by Jagdev Singh S/o Jai Singh, Ved Pal S/o Lakshmi Chand and Late Saba Ali S/o Nandu Bhatti, later it was divided amongst themselves as per the revenue record whereby 16 Marlas of land fell in the share of Jagdev Singh, 10 Marlas in the share of Ved Pal and 10 Marlas in the share of Saba Ali. The said land however was near the Railway Station, Jammu, as such, respondents wanted to forcefully occupy the land in question, which resulted into filing a civil suit in File No. 5/Civil on 05.04.1991.
4. The abovementioned persons are the predecessor-in-interest of the petitioners herein who contested the civil suit *supra* against the Northern Railways, wherein, a decree for permanent prohibitory injunction was sought for restraining the defendants/Northern Railways from interfering into their peaceful possession over the afore-stated land with further direction not to dismantle the boundary walls or sheds constructed thereon. The plaintiffs based their case on the basis of property in question, which was purchased by them vide sale deed dated 18.03.1991, which was demarcated from the patwari

concerned, wherein, they raised boundary wall and also constructed three sheds for storing material and housing their men. The suit was hotly contested by the defendants/railways.

5. The defendants/railways took a plea in the suit *supra* that the predecessor-in-interest of the petitioners herein were trespassers and had occupied a portion of land bearing Survey No. 20 measuring 38 Kanals and 15 Marlas, which was allegedly acquired by the railways way back in 1969-1970. After pleadings were complete, the following issues were framed:

- i. ***Whether the plaintiffs are owners in possession of the land measuring 1 Kanal 16 Marlas comprising in Khasra No. 20, Khata No. 17, Khewat No. 1 situated at Channi Rama, Tehsil Jammu? OPP***
- ii. ***In case Issue No. 1 is proved in affirmative whether the defendants are, without any right interfering into the possession of the plaintiffs and are bend upon to dispossess them forcibly? OPP***
- iii. ***Whether the suit is not maintainable, if so how? OPD***
- iv. ***Relief.***

6. The aforementioned issues were tried and evidence was led in this regard. The learned Sub-Judge Jammu vide its final judgment and decree dated 11.11.2008 on the basis of the positive evidence held that the plaintiffs are the owner in possession of the land in question.
7. The decree dated 11.11.2008 *supra* was challenged before the court of learned Additional District Judge by way of an appeal by the railways

wherein the petitioners herein filed an application for becoming the party respondents.

8. In the aforesaid appeal, the petitioner No. 1 claimed himself to be the owner in possession of the land measuring 10 marlas falling under Khasra No. 20 (old) new Khasra No. 17 min, Khewat No. 1, Khata No. 62/17 on the basis of a gift deed executed on 29.1.2009 by Ved Pal in his favour which was duly registered by the learned Sub Judge, Registrar, Jammu on 30.1.2009.
9. Similarly, the petitioner No. 2 claims himself to be the owner in possession of the land measuring 6 Marlas falling in Khasra No. 20 Khewat No. 1, Khata No. 17 vide sale deed executed by S. Jagdev Singh on 22.1.1997 which was duly registered with Sub Registrar Mufassil, Jammu. He got a site plan approved from the Municipal Corporation for raising a double storey structure issued by the Senior Town Planner, Municipal Corporation vide Order No.336/B/8109 dated 13.6.2009 and constructed the double storey building as per the site plan approved and is living in this building. After the construction of house, he had also got the electricity connection in his favour.
10. However, Petitioner No. 3 in the year 1997 also made an application for becoming a party in respect of 10 Marlas of land out of 1 Kanal 16 Marlas belonging to one Sabar Ali, who happened to be the plaintiff No. 3 in the suit and the petitioners have covered their plots with the boundary walls. They have raised the construction in the form of

sheds in the plots which are also covered by a pacca boundary wall along with iron gates for ingress and outgress of the plot.

11. The petitioner No. 1 sought NOC from respondent-JDA to raise construction in his share of property which was refused to him, which impelled the petitioner No. 1 to file a petition before this Court being OWP No. 1096/2010 wherein, this Court vide Order dated 11.06.2014 gave liberty to petitioner No. 1 herein to approach the respondent-JDA for allowing him the use of strip of land abutting his house as per norms at par with similarly situated persons. Thereafter, the petitioner No. 1 approached the Vice Chairman, JDA for issuance of NOC for use of the 4 ¼ ft. wide and 10 ft. long strip in front of his plot at Channi Rama near Railway Station, Jammu with necessary documents as required by the JMC. The Jammu Municipal Corporation forwarded his case to all the concerned departments for NOC as per the Rule vide letter No. 971-BS/09 dated 02.12.2009 including the JDA, as well. Accordingly, all the departments had given NOC to the JMC since long, except JDA. On the basis of Court order dated 11.06.2014, petitioner No. 1 filed an application for want of NOC before the JDA, which was entertained and nishandai and other formalities were done by the said department and the matter was taken to the contract committee of the JDA which held its meeting on 23.01.2015 wherein, the following decision was taken:

“Case of Shri Sat Pal Sharma, who has requested for path on JDA’s land.”

Director Land Manager discussed the aforesaid issue and pointed towards the recommendation made in this regard by Chief Town Planner that space could be provided to the applicant subject to certain conditions. It was decided that Director Land Management shall furnish proposal in this regard by mentioning the riders fixed by the Chief Town Planner in his reporting on the relevant file. Furthermore, applicant shall submit an affidavit, the detail shall be provided by the Director Land Management to the applicant. Committee agreed on the proposal in this regard and conditions fixed by the Chief Town Planner.”

12. It is the specific stand of the petitioners that the documents produced by the petitioners clearly proves that the petitioners are the owner in possession of the land measuring 1 Kanal 6 Marlas and other 10 Marlas are still belonging to one Jagdev Singh, which is not being disturbed. It has been specifically pleaded that the respondents started a demolition drive in respect of the land in question and the structures raised in violation of any law and in the land belonging to the JDA, however, from the documents as well as decree passed by the civil court, it is clear that the petitioners herein are the owner in possession of the land in question and if the respondents had any doubt about the decree, then the respondents are required to challenge the same. The further case of the petitioners is that the respondents are demolishing the structures of the petitioners on the land in question even during the night hours, however, before they could reach the property of the petitioners, the petitioners seek the indulgence of this Court for interference.

ARGUMENTS ON BEHALF OF THE PETITIONERS: -

13. Mr. K S Johal, learned Senior Counsel appearing on behalf of the petitioners submits that the petitioners being aggrieved of the demolition drive started in respect of the land in question and the structures raised thereon, they have challenged the same, precisely, on the following grounds: -

- (i) *That the right to property is a fundamental right in the State of J & K even today. No person can be deprived of his property except by following a due process of law. On the basis of the documents submitted hereinabove, the petitioners are the owner in possession of the land in question. Decree in the Civil suit has also been passed in favour of the petitioners. The petitioners have also approached the Municipal Corporation. It has given permission to petitioner no 2 to raise the structure. This is apparent from the sanctioned order of the Municipal Corporation in favour of petitioner no. 2.*

Insofar as the petitioner no. 1 is concerned, he has already applied for the sanction of Municipal Corporation for raising the structure in the 10 Marlas belonging to him. All departments have given the permission to the petitioner for the sanctioned plan but respondent-JDA did not do it. This impelled the petitioner no. 1 to file the writ petition before the Hon'ble Court. Under the orders passed by the Hon'ble High Court, the petitioner no. 1 has been given the liberty to approach the respondents for allowing him to the user of the strip of the land abutting his house as per norms at par with similarly situated persons. The matter regarding issuance of NOC is pending before the JDA. However, the petitioner no. 1 approached the respondents for the NOC. The matter was discussed in the contract committee of the JDA on 23.01.2015. Despite the decision taken, the respondents had not implemented. Any decision taken by the respondents to claim the ownership over the land in question by the JDA is bound to be legally unsustainable as the petitioners have been condemned unheard in the matter. The decision impugned therefore, cannot sustain and deserves to be quashed.

- (ii) *That even in the site plan prepared by the respondent-JDA, only 4 strips is belonging to the JDA. This strip is outside the boundary of the plots of the petitioners. This is a foot path. Under the garb of that, they cannot take over the plots of the petitioners, much less, demolish the structures raised without permission by the Municipal Corporation. The respondents' action is a hush hush action, which can be slatted only by quashing the decision taken by the respondents and passing a positive interim direction, restraining the respondents from interfering or trespassing upon or otherwise forcefully occupying the land and demolishing the structures raised by the petitioners.*
- (iii) *That the action of the respondents is abhorrent to the principle of law depriving the petitioners of the property. The approach of the respondents is antithesis to the principle of equity, fair play and justice. The respondents merely because of the reason that they have the jurisdiction does not ipso facto mean that the jurisdiction can be allowed to be used illegally for dispossession of the citizens out of their property unfairly. Bulldozing the rights and aspirations of the society of the society by the JDA is contrary to the principle of law and the statutes. Under the provisions of the Development Act and the Rules framed there under, the procedure is to be followed before any person is to be deprived of his property. In the present case, no notice whatsoever, much less, in writing was given to the petitioners where the JDA claims that the land belongs to them. In the absence of any such notice, much less show cause notice, the decision of the respondents and action thereafter cannot be justified. The decision impugned, therefore deserves to be quashed.*
- (iv) *That the petitioners approached the respondents for providing them a copy of any decision taken but they have not given any copy of any decision to the petitioners. At present, the situation is that the demolition drive is on. They have not touched the property of the petitioners as yet. The petitioners in the circumstances are forced to approach this Hon'ble Court by filing the present petition. The JCBs are humming in the area like knight errant and forcible demolishing the structures of the people. Lest the petitioners are met with the same fate, the petitioners approached this Hon'ble Court. The action of the respondents suffers from suppression very and suggestion falci. True facts are not being appreciated. Action is sought to be taken on the basis of an imagination without taking the petitioners into confidence. The principle of equity and fair play has been thrown into winds.*

14. The learned Senior counsel further submits that once, the petitioners have earned the judgment/decree from the competent court of law where there was an *inter se* dispute between the plaintiffs therein and the railways and the petitioner has earned the decree whereby, a finding has been recorded that the petitioners are the lawful owners of the land in question, then the decree was a *decree in rem* and was applicable to all. Even the order passed by the trial court where the petitioner has earned the decree has been upheld by the Appellate authority and the JDA without calling in question the said decree/judgment which has assumed finality by the Appellate court could not have gone for such demolition in absence of any specific challenge to the said decree.
15. He further submits that the JDA being well aware of the fact that a decree has been earned by the petitioners, they never participated in the aforesaid proceedings and without participating in the aforesaid proceedings or else challenging the said decree upheld by the Appellate Court, the action of the respondents in demolishing the said structure cannot sustain the test of law.
16. Mr. Johal has further drawn attention of this Court to the interim order passed by this Court dated 01.10.2018, perusal whereof reveals that this Court has been pleased to grant status quo, with regard to land measuring 1 Kanal 16 Marlas of land comprising of Survey No. 20 (old), Khata No. 17 (old) and Khewat No. 1 (old).

17. He has further drawn attention of this Court to various photographs which have been placed on record, perusal whereof, reveals that the status quo order has been violated and even the demolition was carried after the passing of the status quo order dated 01.10.2018 *supra*. The dates mentioned on the photographs reveals that the demolition was carried after passing of the status quo order by this Court.
18. The learned counsel has further drawn attention of this Court to various authoritative pronouncements passed by the Hon'ble Apex Court in *N. Umapathy vs. B. V. Muniyappa*; reported in *AIR 1997 Supreme Court 246, Rame Gowda (Dead) by Lrs. Vs. M. Varadappa Naidu (Dead) by Lrs. & Anr* reported in *(2004) 1 Supreme Court Cases 769* and *Amit Kumar Das, Joint Secretary, Baitanik vs. Shrimati Huthee Singh Tagore Charitable Trust* reported in *2024 SCC OnLine SC 83*, which provides that even if somebody has unlawfully occupied the land and the person has to be dispossessed then the same has to be done strictly in accordance with law and not otherwise.
19. Thus, according to him once, the petitioners have earned a decree in their favour which has been upheld by the Appellate Court, then the petitioner being the lawful owners cannot be dispossessed without following due process of law or else without providing any opportunity of being heard, as such action of the respondents to bulldoze the property in question is against the law laid down by the Hon'ble Apex Court in various authoritative judgments.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:-

20. Mr. Adarsh Sharma, learned counsel appearing on behalf of the respondents has vehemently argued that the petitioners have taken a contradictory stand and have not come to the court with clean hands and suppressed the material facts while filing the instant petition with the sole object to mislead this Court and to get an interim order. With a view to corroborate his assertions, he has drawn attention of this Court to the application which has been preferred by Petitioner No. 1 under Section 156 (3) Cr.P.C seeking direction to the Police Station Trikuta Nagar, Jammu to register an FIR against the officers of JDA under Sections 391/427/452/506/511 RPC read with Section 149 RPC and in the aforesaid application, he has drawn the attention of this Court to Para (13), a perusal whereof reveals that the petitioner No. 1 has specifically admitted that the demolition has already taken place on 30.09.2018.

21. Mr. Sharma further argued that three separate applications under Section 156 (3) of the Cr.P.C were preferred by the petitioners before the learned Chief Judicial Magistrate, Jammu, which were disposed of vide common order dated 15.03.2019, wherein, the learned Chief Judicial Magistrate, Jammu had observed that it is a fit case where the FIR is required to be registered against the accused persons as they have acted in excess of their official duties and have dismantled the structure of the applicants without any authority. In the aforesaid

backdrop, SHO Police Station, Bahu Fort, Jammu was directed to lodge the FIR against the accused persons under relevant provision of law and a direction was issued to conduct detailed investigation and the applications so filed by the complainants were forwarded to SHO P/S Bahu Fort, Jammu for compliance.

22. It is further submitted that the respondents JDA feeling aggrieved of the same have preferred a revision under Section 435 of the Cr.P.C before the court of learned Principal Sessions Judge, Jammu against the order dated 15.03.2019. The criminal revision petition was allowed by the learned Principal Sessions Judge, Jammu vide its order dated 01.05.2019 whereby, the learned Court had set aside the order dated 15.03.2019 passed by learned CJM Jammu.
23. Mr. Sharma has further submitted that feeling aggrieved of the same, the petitioners herein preferred a petition bearing CRM(M) No. 259/2019 before this Court under Section 561-A of the J&K Criminal Procedure Code for setting aside the order dated 01.05.2019 passed by the Court of learned Principal Sessions Judge, Jammu, whereby the order dated 15.03.2019 passed by the learned Chief Judicial Magistrate, was set aside.
24. Mr. Sharma has drawn the attention of this Court to the aforementioned petition filed under Section 561-A of the Jammu & Kashmir Criminal Procedure Code by the petitioners, whereby, the petitioners have taken a specific stand that

***“On 30.09.2018, the respondents herein without any rhyme or reason, issued any notice to the petitioners, came along with more than five persons and machinery, which included bulldozers and started forcibly and illegally demolishing the building raised over the said land by the petitioners.*”**

25. Learned counsel submits that the petitioners have specifically admitted that on 30.09.2018, the respondents have bulldozed the structure raised over the land of the petitioners by carrying out the said demolition and yet the petitioners have referred the interim order passed by this Court in OWP No. 2015/18 without mentioning the date with a view to project as if the demolition was carried by JDA in violation of this Court order, when in fact the demolition has already been carried by JDA prior to the passing of the aforesaid interim order. The petitioners with a view to mislead this Court and to project distorted facts have deliberately concealed the date on which the interim order was issued by this Court. Thus, according to the learned counsel, the petitioners have played fraud with this Court by way of suppression of material facts and placing reliance on interim order, which the petitioners had obtained by way of fraud and misrepresentation.

26. Mr. Sharma has vehemently argued that contradictory stand has been taken by the petitioners in subsequent petition registered as CRM(M) No. 259/2019, wherein, the petitioners stated that the demolition has already taken place on 30.09.2018. This fact was in active knowledge of the petitioners and feeling aggrieved of the same, the petitioners have filed three separate applications for initiating action under

Section 156 (3) of the Cr.P.C, wherein the petitioners have admitted that the demolition has already taken place on 30.09.2018.

27. However, as per the learned counsel, the petitioners in the instant petition have taken altogether a different and contradictory stand, wherein, the petitioners have tried to project that the respondents are contemplating to demolish the so called illegal construction and not highlighting that the demolition has already taken place on 30.09.2018, as already admitted by the petitioners in all other subsequent proceedings.
28. It has been argued that the petitioners have taken altogether a different stand in the instant petition which is in contradiction to stand taken in the complaints filed under Section 156 (3) of the Cr.P.C. Since, the petitioners have taken a false stand in the instant petition that the respondents are contemplating to demolish construction, this Court was swayed away by the said stand and order dated 01.10.2018 came to be passed by this Court wherein, it has been observed that the *“Status quo, as on date, with regard to 1 Kanal 16 Marlas of land comprising of Survey No. 20 (old), Khata No. 17 (old) and Khewat No. 1 (old) be maintained”*.
29. It is further argued that the petitioners while filing the petition under Section 561-A, challenging the judgment dated 01.05.2019 passed by the court of learned Principal Sessions Judge, Jammu have deliberately reproduced the order dated 01.10.2018 without mentioning the date, with a view to mislead this Court.

30. Thus, according to Mr. Sharma, the petitioners have taken two contradictory stands in two different proceedings by suppressing the material facts. The petitioners while filing the subsequent petition bearing No. CRM(M) 259/2019 have deliberately suppressed the date of the interim order with a view to project as if the status quo order passed by this Court was existing and the action of the respondents in demolishing the property in question was in flagrant violation of the order passed by this Court, when in fact the demolition has already taken place on 30.09.2018 and the same was already admitted by the petitioners while filing the aforesaid petition under Section 561-A CrPC.

REBUTTAL ON BEHALF OF THE PETITIONERS

31. Mr. Johal, learned Senior counsel appearing on behalf of the petitioners has rebutted the stand taken by the learned counsel appearing on behalf of the JDA/respondents that the aforesaid interim order dated 01.10.2018 was passed in presence of both the counsel for the parties.
32. He has drawn the attention of this Court to another order passed by this Court in OWP No. 1096/2010 whereby this Court vide order dated 11.06.2014 has given the liberty to petitioner no. 1 herein to approach the respondent-JDA for allowing him to use the strip of land abutting his house, as per norms at par with similarly situated persons.

33. He has further drawn attention of this Court to the meeting held on 23.01.2015, wherein a conscious decision was taken in pursuant to the request made by the petitioner No. 1 for the aforesaid path, the details of which are as under:

“Director Land Manager discussed the aforesaid issue and pointed towards the recommendation made in this regard by Chief Town Planner that space could be provided to the applicant subject to certain conditions. It was decided that Director Land Management shall furnish proposal in this regard by mentioning the riders fixed by the Chief Town Planner in his reporting on the relevant file. Furthermore, applicant shall submit an affidavit, the detail shall be provided by the Director Land Management to the applicant. Committee agreed on the proposal in this regard and conditions fixed by the Chief Town Planner.”

34. It is further argued that this Court had directed the respondents to produce the original record which led to the said demolition but the said record has not been produced before this Court and instead scanned copy was provided to this Court.

REBUTTAL ON BEHALF OF THE RESPONDENTS

35. Mr. Adarsh Sharma, learned counsel appearing on behalf of the JDA in rebuttal has pleaded that the scope of the instant petition is limited in the light of conduct of the petitioners with a view to mislead this Court. This Court first of all has to deal with the conduct of the petitioners which in the instant case is not bonafide as the petitioners have not come to this Court with clean hands filed false affidavits by projecting distorted facts and thus, it is a fit case where this Court can proceed against the petitioner for perjury and filing wrong affidavit.

36. It is further submitted that the since the instant petition involves disputed questions of fact which cannot be gone into while exercising writ jurisdiction under Article 226 of the Constitution of India and the same has been rendered infructuous in light of the fact that the demolition has since been carried and it is not the case, where the demolition has yet to be carried on.
37. Lastly, he has argued that this Court in light of the conduct of the petitioners and also filing false affidavit cannot go into the merits of the case as the petitioners have not come to this Court with clean hands and have mislead this Court by two contradictory stands according to their own convenience and in light of the law laid down by the Hon'ble Apex Court in various authoritative judgments that a person who comes to the Court must come with clean hands and anybody who tries to be clever by heart and plays fraud with the Court is not entitled for such discretionary relief.
38. With a view to substantiate his claim, Mr. Sharma has cited various judgments passed by the Hon'ble Apex Court as well as by this Court. With a view to clarify on the facts in pursuance to the specific query of this Court as to how and under what circumstances, the JDA has carried on demolition drive on 02.10.2018 when there was a status quo order by this Court, the learned counsel for JDA replied that since the demolition has already carried on 30.09.2018 and there was huge debris which was required to be removed and in the aforesaid backdrop, the bulldozer was removing that debris post demolition.

39. He further submits that the decision to demolish the said illegal construction was in furtherance of the direction passed by the Hon'ble Division Bench of this Court in PIL No. 19/2011 titled SK Bhalla vs State and others and PIL No. 19/2012 titled Ashish Sharma vs State and ors, whereby the direction was issued to submit a compliance report and the action to demolish the said illegal construction was in furtherance of the direction passed by this Court in the aforesaid PIL and thus, whatever action has been taken was in conformity with the direction passed by this Court in aforesaid PIL as such the instant petition is required to be dismissed.

LEGAL ANALYSIS

40. Heard learned counsel for both the parties at length and perused the record. The record reveals that the instant petition was admitted on 22.05.2019. The instant petition is taken up for disposal with the consent of both the parties.
41. Before commenting upon merits of the case it would be apt to firstly decide the maintainability of instant petition on the account of suppression of material facts and coming to the court with unclean hands.
42. It is no more *res integra* that the party invoking the writ jurisdiction of this Court under Article 226 of the Constitution must disclose all the material facts, since the very basis of writ jurisdiction depends upon disclosure of true, complete and correct facts. It is also well settled

that if a person does not disclose all the facts and is guilty of misleading the court, then the Court without adjudicating or touching upon the merits of the case can dismiss the petition.

43. In the aforesaid context the Hon'ble Apex Court in *K.D. Sharma Vs. Steel Authority of India Limited and others* reported in 2008 SCC OnLine SC 1025 has observed as follows:

"39. If the primary object as highlighted in Kensington Income Tax Commrs., (1917) 1 KB 486 : 86 LJKB 257: 116 LT 136 (CA) 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."

44. In *Prestige Lights Ltd. v. SBI* reported in (2007) 8 SCC 449 it was held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law but is also a court of equity and a person who invokes the jurisdiction of this Court under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any suppression of material fact which has a direct bearing on the merits of the case. If there is suppression of material facts or twisted facts have been placed before the High Court,

then this court will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution.

45. Reliance is also placed on the judgment of Hon'ble Apex Court in *Scrutton, L.J. in R. v. Kensington Income Tax Commissioners [(1917) 1 KB 486 (CA)]*, wherein it has been observed as under:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

46. Accordingly, before dwelling into the controversy in question and to adjudicate the case on merits, this court deems it proper to formulate two questions which will have direct bearing on the maintainability of the instant petition and also highlight the conduct of the petitioner in approaching this court. The two questions are as follows:

- A. *What is the exact date on which the demolition drive was carried by the respondents/JDA.*
- B. *And whether demolition on the alleged land of petitioner was in active knowledge of the petitioners while filing the instant writ petition and if that be so, whether petitioner has pleaded such demolition in the instant petition as it has been done while filing application under section 156(3) of CrPC before the learned magistrate.*

C. Whether the petitioner has taken two contradictory stands before two different forums with a view to mislead and get interim direction.

47. The specific case which has been projected by the petitioners in the instant petition is that the demolition on the land of the petitioners is yet to be carried out by the JDA, however, in order to find out whether the petitioners in reality have suppressed any material facts, this Court deems it proper to meticulously scrutinize the record in hand.
48. From the perusal of record, it transpires that after the demolition was carried out by the respondents, the petitioners filed three separate applications under Section 156(3) of Code of Criminal Procedure for registration of an FIR against the officials of JDA. Pursuant thereto, the learned Chief Judicial Magistrate, Jammu by way of a common order dated 15.03.2019, disposed of all three application and directed SHO Police Station, Bahu Fort to register an FIR against the accused persons under the provisions of law and conduct investigation.
49. On perusal of one of the applications, which came to be filed by Sat Pal Sharma (Petitioner No. 1, herein) under Section 156 (3) of Code of Criminal Procedure, it transpires that in para (13) of the aforesaid application, it has been categorically pleaded and admitted by the petitioners that on 30.09.2018 the demolition was carried out by the respondents with bulldozer and force. The relevant para of the aforesaid application is reproduced as under:

“13. That on 30.09.2018, the accused person without showing any reason or rhyme on the part of the complainant came on the land of the applicant alongwith more than 05

persons with bulldozer and forcibly and illegally started demolishing, the structure raised over the said land and when the complainant tried to desist them they threatened the complainant of dire consequences and not allowed the complainant to move here and there and during this the accused has taken all the belongings lying in the residential house with the help of bulldozer and demolish the whole of the structure based on the land of the complainant due to which the complainant suffered huge loss.....”

50. Further, perusal of other two applications filed under Section 156(3) by Ishan Sharma and Hardeep Singh (Petitioner Nos. 2 & 3) respectively, it transpires that in these two applications also, there is specific and categorical admission by the petitioners to the extent that the demolishing drive on the land of petitioners was performed on 30.09.2018. The relevant paras of both the applications are reproduced as under:

Para No. 10 of the application filed by Ishan Sharma

“10. That on 30.09.2018, the accused persons without showing any reason or rhyme on the part of complainant or issuing any notice to the complainant regarding any illegality or any kind of violation committed by the complainant, came there along with more than five persons and machineries, also which include bulldozer and started forcefully and illegally demotion the structure raise over the said land....”

Para No.10 of the application file by Hardev Singh

“10. That on 30.09.2018, the accused person without showing any reason or rhyme on part of complainant or issuing any prior notice to the complainant regarding any illegality or any kind of violation committed by the complainant, came there along with more than five persons and machinery, which include bulldozer and started forcefully and illegally demolition the structure raised over the said land....”

51. Subsequently, being aggrieved with the common order dated 15.03.2019, the JDA preferred a revision before the learned Principal

Session Judge Jammu and the Revisional Court vide its order dated 01.05.2019, set aside the order dated 15.03.2019, whereby directions were issued to SHO, Police Station Bahu for registration of FIR against the accused persons. Feeling aggrieved of Revisional Court order, the petitioners preferred petition bearing CRM (M) No. 259/2019 under Section 561-A of J&K Criminal Procedure Code before this Court.

52. From perusal of the petition bearing CRM(M) No. 259/2019 which was preferred by the petitioners for quashment of the order dated 01.05.2019 *supra* there is another clear and categoric admission in para (4) of the aforesaid petition that respondents have demolished the construction of the petitioners on 30.09.2018. However, to the contrary the instant petition has been filed by the petitioners on 01.10.2018 being aggrieved of the said demolishing drive which has been already carried by the respondents on 30.09.2018. The relevant para of aforesaid petition bearing No. CRM(M) 259/2019 is reproduced as under:

“4. That on 30th of September 2018, the respondents herein without any rhyme or reason, issued any notice to the petitioners, came along with more than five persons and machinery, which included bulldozers and started force illegally demolishing the building raised over the said land by the petitioners. The petitioner when tried to know about the reason behind the same, they were threatened by the accused person of dire consequences and they were also not allowed to move nearby them. The accused persons robbed the petitioners of the property movable and immovable, demolish the whole residential structure and all household goods were destroyed. The petitioners therefore approach the Hon’ble High Court by

filing a petition bearing OWP No. 2015/2018. The said petition is pending adjudication before the Hon'ble court.

The Hon'ble High Court in the said petition has passed the following orders:

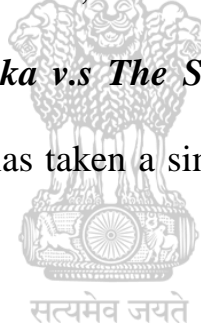
"... Meanwhile, subject to objections until next date before the bench, status, as on date, with regards to 1 Kanal 16 Marlas of land comprising of survey No. 29. (old) and Khewat No. 1 be maintained."

53. Thus, it is evident from the aforesaid stand taken by the petitioners that it was in active knowledge of the petitioners that the demolition has been carried out by the JDA on 30.09.2018 over their land and structure. Despite the admission of the said fact, the petitioners chose to file the instant petition on 01.10.2018, wherein it was projected that the demolition drive is yet to be carried out by the respondents and by sheer misrepresentation of the facts, this court was swayed away to pass interim protection in favour of the petitioners whereby, this court vide order dated 01.10.2018 has protected the status of the land in question.

54. The *malafide* on the part of the petitioners to mislead this court can further be corroborated from the bare perusal of the stand taken by the petitioners in CM(M) 259/2019, whereby, the petitioners have although reproduced the status quo order dated 01.10.2018 passed in the instant petition but without mentioning the date of the said order with a view to mislead this Court. This clearly proves beyond any shadow of doubt that the petitioners have deliberately withheld the date of passing of status quo order with a view to project, as if the status quo order was already operative, when the demolition was

carried out by the respondents on 30.09.2018. Thus, the whole game plan on part of petitioners was to mislead and portray that the demolition of the property in question is in flagrant violation of the order passed by this Court. Thus, it is amply clear that the petitioners have been suppressing material facts from time to time, according to their own convenience to mislead this Court in two separate petitions by taking contradictory stands and to get a favourable order which falls within the realm of playing fraud with this Court.

55. It is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. The Apex Court in the case of "*Kusha Duruka v.s The State of Odisha*" reported in 2024 SCC OnLine SC 56 has taken a similar view which is reproduced as under:



"7. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now a litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually

playing fraud with the court. The maxim suppressio veri, expressio falsi, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It's nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that `Lies are very sweet, while truth is bitter, that's why most people prefer telling lies.'"

56. The conduct of the petitioners in the instant petition can be gathered from the fact that they have portrayed an entirely different case by pleading that there is an anticipation of demolition by the respondents. However, these assertions in the instant petition are directly in contradiction with the pleadings of the three applications filed under Section 156 (3) of Code of Criminal Procedure and also in the petition filed under Section 561-A before this Court. Thus, it is manifestly clear that the petitioners have tried to mislead this Court by twisting and deliberately suppressing material facts with a view to get the interim order from this court, which comes under the realm of playing fraud. On the aspect of suppression, equity, clean hands and fraud, the law is well settled in the following decisions. The object underlying the above principle has been succinctly stated in *K.D. Sharma Versus Steel Authority of India Ltd. and Ors.* rendered in (2008) 12 SCC 481 wherein, following has been held:-

35. *"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 a ex-parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help 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 fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement''.

57. The Hon'ble Apex Court in the case of *K. Jayaram and others vs Bangalore Development Authority and ors* reported in 2022 (12) SCC 815, has held as under:

38...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".

58. This conduct of the petitioners can further be corroborated from the fact that the petitioners did not stop in filing the instant petition on false and flimsy grounds by suppressing the material facts, but they have also gone to the extent of filing a contempt petition before this Court, seeking implementation of the interim order dated 01.10.2018, which the petitioners got by way of suppressing material facts by projecting that the respondents are contemplating to demolish the illegal construction, when in fact, the demolition has already taken place prior to the filing of the instant petition.

59. Keeping in view the conduct of the petitioners who have proceeded with deliberately playing fraud with this Court by suppressing material facts, this Court place reliance on the judgment rendered by Hon'ble Apex Court in *Kishore Samritee V/s State of Uttar Pradesh and Ors.* rendered in (2013) 2 SCC 398 wherein, in paras 32 & 35, the Apex Court has been pleased to observe as under:-

“32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with “unclean hands”. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

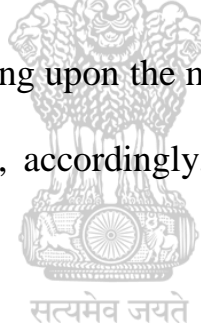
35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the courts, irrespective of the consequences but that practice no longer proves true, in all cases. The court does not sit simply as an umpire in a contest between two parties and declare at the end 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 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 process of court. One way to curb this tendency is to impose realistic or punitive costs.”

60. Since the petitioners have not come to this Court with clean hands and have suppressed material facts, this Court is not inclined to discuss the merits of the case, as has been projected by the petitioners. After analyzing all the material facts on record coupled with the stand of the rival parties and arguments advanced, this Court is of the considered view that the instant petition is misconceived, false and frivolous and liable to be dismissed.
61. The issue whether JDA was justified in carrying out the demolition drive over the land for which the petitioners have allegedly earned a decree which has been upheld by Appellate Court is left wide open.
62. Another legal question whether JDA was justified in carrying out the demolition drive over the land in question, in absence of any specific challenge to the said decree passed by the trial Court and upheld by Appellate Court in favour of the petitioners is also kept wide open. This Court is deliberately not going into these two questions, as the petitioners have not come to this court with clean hands and have suppressed material facts with a view to mislead this Court and that is

why this Court is not inclined to discuss the merits of the case or else give any finding over the conduct of the JDA to carry out such demolition in absence of any specific challenge to said decree.

63. This Court takes note of the judgments which have been relied upon by the learned counsel for the petitioners, which are *N. Umapathy vs. B. V. Muniyappa*; reported in *AIR 1997 Supreme Court 246*, *Rame Gowda (Dead) by Lrs. Vs. M. Varadappa Naidu (Dead) by Lrs. &Anr* reported in *(2004) 1 Supreme Court Cases 769* and *Amit Kumar Das, Joint Secretary, Baitanik vs. Shrimati Huthee Singh Tagore Charitable Trust* reported in *2024 SCC OnLine SC 83*, however these judgments are on merits of the instant case and this Court is not commenting upon the merits, keeping in view the conduct of the petitioners and, accordingly, the above mentioned judgments have no relevance.



CONCLUSION

64. Thus, from the aforementioned enunciations of law, it has been settled that suppression of any material fact amounts to abuse of the process of law and playing fraud, which would deprive an unscrupulous litigant from availing equitable or discretionary remedies under Article 226 of the Constitution of India. In the instant case, the petitioners, with a view to mislead this Court, have deliberately suppressed the fact that the demolition over the land of the petitioners was already carried out by the JDA before filing the instant case, which fact has been admitted by the petitioners in three separate

applications filed under Section 156(3) of Cr.P.C and also in the petition filed under Section 561-A of J&K Cr.P.C. by the petitioners. In these circumstances, the petitioners are not entitled to claim the discretionary remedy/relief available under Article 226 of the Constitution of India.

65. The petitioners have deliberately suppressed the fact that the demolition on their land had already been conducted on 30.09.2018 and the same was in their active knowledge, yet the petitioners with a view to mislead this Court twisted the facts and projected a contradictory stand in the instant petition which lead to the passing of status quo order in their favour. Thus, it is clear that the petitioners have abused the process of law and concealed material facts and accordingly, this Court is of the view that this is a fit case, where cost is required to be imposed on the petitioners for their conduct.

66. Accordingly, with a view to deprecate such practice of suppression of material facts, this Court imposes a cost of Rs.50,000/- on the petitioners, to be paid jointly by them, within a period of two weeks from the date of pronouncement of this order, which is to be deposited in the Advocates' Welfare Fund of this Court. It is made clear that in case the costs imposed by this Court is not deposited within the aforesaid period, the Registry will list this petition after two weeks, only for this limited purpose for compliance.

67. For the reasons stated hereinabove, *the instant petition* deserves dismissal and accordingly, the same *is dismissed* along with connected application(s), if any.
68. **Interim direction, if any, shall also stand vacated.**

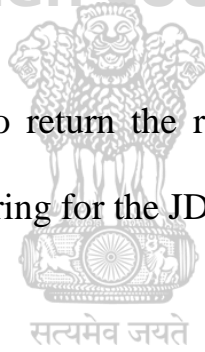
CPOWP No. 293/2018

69. The petitioners have preferred the instant contempt petition against the respondents for non-compliance of the order dated 01.10.2018 passed by this Court in the main writ petition bearing OWP No. 2015/2018, however, from the conduct of petitioners, as noticed in the main writ petition (supra), it is evident that, even after misleading this Court to pass interim protection in their favour vide the order dated 01.10.2018, they have even proceeded to initiate the instant contempt proceedings against the respondents.
70. This conduct of the petitioners can further be corroborated from the fact that the petitioners did not stop in filing the instant petition on false and flimsy grounds by suppressing the material facts, but they have also gone to the extent of filing the instant contempt petition before this Court, seeking implementation of the interim order dated 01.10.2018, which the petitioners got by way of suppressing material facts by projecting that the respondents are contemplating to demolish the alleged illegal construction, when in fact, the demolition has already taken place prior to the filing of the instant petition.

71. Thus, the order (supra) which has been obtained by the petitioners by way of fraud and misrepresentation cannot be implemented in the aforesaid backdrop and filing of the instant contempt petition was aggravation of the petitioners conduct to mislead this Court.

72. In view of the aforesaid backdrop, since the main petition filed by the petitioners is dismissed on account of suppression of material facts and playing fraud with the Court, this Court is of the view that nothing remains to be adjudicated in the instant contempt petition and, accordingly, *the proceedings in the instant contempt petition are closed. Rule, if any, framed against the respondents shall stand discharged.*

73. Registry is directed to return the record to the Mr. Adarsh Sharma learned counsel appearing for the JDA.



(Wasim Sadiq Nargal)
Judge

JAMMU
20.09.2024
Manan

Whether the order is speaking : Yes

Whether the order is reportable : Yes