

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (M/S) No. 93 of 2014**

Yukti Constructions Pvt. Ltd. .....Petitioner  
Versus  
State of Uttarakhand and others ....Respondents

Present :

Mr. Deepak Dhingra and Mr. Siddhartha Sah, Advocates for the petitioner.

Mr. J.P. Joshi, Addl. Advocate General with Mr. Narain Dutt, Brief Holder for the State.

**Hon'ble Lok Pal Singh, J.**

Misc. applications (IA 1022 of 2020, IA 10224 of 2020, IA 10504 of 2020 & IA 10509 of 2020) are allowed. Counter affidavits as well as supplementary affidavits are taken on record.

By means of present petition, petitioner has sought following reliefs:

- (i) Issue a writ, order direction in the nature of certiorari quashing the notifications under Sections 4 & 6 of the Land Acquisition Act, issued on 12.09.1987 and 30.01.1988.
- (ii) Issue a suitable writ, order or direction in the nature of certiorari quashing the orders of the Collector/District Magistrate, Dehradun dated 11.03.2013 and 22.04.2013.
- (iii) Issue a suitable writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioner from plots bearing khewat no.1 and khasras included in it situated in village Rikholi, Pargana Pachwadun, Tehsil and District Dehradun having total area of 187.4890 hectares equivalent to 491 acres.

2. Earlier the petitioner filed interim relief application being IA No. 3553 of 2014 with the prayer to restrain the respondent from taking any further steps with respect to the land in question. The Coordinate Bench of this Court vide order dated 24.09.2017 while rejecting the interim relief application of the petitioner observed that since the State Government is in actual physical possession of over 172.91 acres of the land. Feeling aggrieved, the petitioner preferred special appeal no. 571 of 2014 titled as "Yukti Construction Pvt. Ltd. Vs. State of Uttarakhand and others". The Division Bench of this

Court vide its judgment and order dated 10.03.2015 disposed of the special appeal. The said order is extracted below:

This appeal is filed against an interim order passed in the writ petition.

2. We have heard the learned counsel appearing on behalf of the appellant. We have also heard the learned counsel for the State of Uttarakhand/ respondents. We are informed that the writ petition itself is coming up for hearing in short time. We are not persuaded to interfere with the interim order as we are of the view that the appellant can place all its contentions before the learned Single Judge when the matter is taken up for final hearing. Without prejudice to its rights to raise all contentions before the learned Single Judge at the time of final hearing of the writ petition, the appeal is disposed of. We request the learned Single Judge to give an expeditious hearing of the matter.”

3. After passing the aforesaid judgment, the petitioner/applicant filed a misc. application bearing no. 4363 of 2015 before the learned Single Judge for appointment of Advocate Commissioner as to enable him to visit the site, conduct appraisal of all the documents as produced by the parties and to ascertain the exact location of the piece of land in question. It is apt to note here that the petitioner has filed an application for appointment of Advocate Commissioner and suggested the names of three Hon’ble retired judges, namely, Mr. Justice K.D. Shahi (Retd.), Mr. Justice Ram Avtar Singh (Rtd.) and Mr. Bharose Lal (Retd.). The coordinate bench of this Court after hearing all the parties appointed an Advocate Commissioner vide order dated 28.03.2016. Relevant portion of the said order is extracted below:

“Considering the facts of the case, there is substance in the argument of learned counsel for the petitioner that it is necessary to appoint an Advocate Commissioner in this case. Accordingly, this Court appoints Mr. Bharose Lal R/o 489, Satya Vihar, Mandir Marg, Vijay Park, Dehradun as an Advocate Commissioner.”

4. Thereafter, this Court granted several opportunities to the Advocate Commissioner for submitting his report. Thereafter, the case was listed on 05.12.2018. On that day, this Court observed that on the submissions of Mr. Deepak Dhingra, learned counsel for the petitioner, it has been projected that Mr. Bharose Lal is a retired justice of the High Court. Mr. Bharose Lal is not a Judge of High Court whereas he is a retired Addl. District Judge, but learned counsel for the petitioner has never apprised this Court about the fact

that Mr. Bharose Lal is not a retired Judge of High Court. This Court passed the following order on 05.12.2018:

“10. Mr. S.S. Yadav and Mr. Deepak Dhingra, Advocate shall remain present in person before this Court on 06.12.2018. Mr. S.S. Yadav shall explain why he has filed such an applications, supported by affidavits, projecting that all the three retired judges of the High Court gave the consent to be the Advocate Commissioners in the matter. Similarly Mr. Deepak Dhingra, learned counsel for the petitioner, who has sent letters to the aforesaid four persons, shall explain why he has not disclosed before this Court that he being Advocate for the petitioner and also a partner in the Law Linker’s and Co., has made such request on behalf of the petitioner.

11. Mr. S.S. Yadav shall also explain why he has filed such false affidavits and Mr. Deepak Dhingra, Advocate shall explain why he has clandestinely drafted the applications and projected Mr. Bharose Lal as retired Judge of the High Court.”

5. Thereafter, the writ petition was listed on 06.12.2018. On that day, Mr. Deepak Dhingra, Advocate appearing for the petitioner submitted that under the impression that Mr. Bharose Lal is also a retired Judge of High Court, he projected him as retired Judge of High Court before the Court. He also submitted that he subsequently came to know that Mr. Bharose Lal is not a retired Judge of High Court. He also submitted that what had been done the same was done in bona fide belief and there was no mala fide intention in addressing the Court that Mr. Bharose Lal is a retired Judge of the High Court. Relevant portion of the order dated 06.12.2018 is extracted below:

“The explanation and apology given Mr. Deek Dhingra, Advocate is accepted.

Similarly, Brig. S.S. Yadav (retired.), who had filed separate affidavits in support of civil misc. applications no. 4636 of 2015 and Civil Misc. Application no. 4301 of 2015 had filed the same under bona fide belief as the applications and affidavits were drafted by the Lawyer. Brig. S.S. Yadav (retd.) has fairly submitted that he has not acted in mala fide way for obtaining favour to the petitioner company. The affidavits were filed by him as drafted by the lawyer in a bonafide way and submitted that what had been done by him had been done bonafidely and not malafidely. He also tendered his apology.

Explanation and apology given by Brig. S.S. Yadav (retd.) is also accepted.

The personal appearance of both of them is hereby exempted. They need not appear in person before the Court unless their presence is otherwise secured by this Court.

The report submitted by Mr. Bharose Lal, Advocate Commissioner, who had been appointed at the instance of the petitioner, cannot be considered as an independent Advocate Commissioner. Learned counsel for the petitioner company would submit he is not willing to place reliance on the report of Mr. Bharose

Lal, Advocate Commissioner and the same may be rejected. With the consent of the parties, the report dated 19.08.2017 of Mr. Bharose Lal, Advocate Commissioner, is hereby rejected.

The order passed yesterday i.e. 05.12.2018 will not come in the way of Mr. Deepak Dhingra, Advocate and Brig. S.S. Yadav (retd.) in any manner.”

6. Thereafter, learned counsel for the petitioner moved an application (CLMA No. 19659 of 2018) under Order 26 Rule 9 of C.P.C., whereby following prayer has been made:

“Pass necessary orders appointing any person as this Hon’ble Court may find suitable as Advocate Commissioner for the purpose of submitting with this Hon’ble Court a report concerning the issues as detailed in paragraph no.9 above or such other issues which the Hon’ble Court may deem fit and proper”

7. This Court vide order dated 28.02.2020 disposed of said misc. application. The relevant portion of the order is extracted hereunder:

“This Court requested the learned counsel for the parties to suggest names of any two senior lawyers of this Court who can be appointed Advocate Commissioners. Mr. J.P. Joshi, Addl. Advocate General suggested the name of Mr. M.S. Tyagi, Senior Advocate. Besides Mr. M.S. Tyagi, Senior Advocate, this Court also thinks fit to appoint Mr. M.C. Kandpal, Senior Counsel as Advocate Commissioner. Learned counsel for both the parties has no objection to it. Mr. M.C. Kandpal and Mr. M.S. Tyagi, Senior Advocates are present and they have also agreed for the above proposal.

Advocate Commissioners shall visit the site and conduct inspection to ascertain the exact location of the pieces of land in dispute as also whether the property in dispute is situated in village Rakholi or is within the municipal limits of Mussoorie. In this regard, prior intimation shall be given by the learned Advocate Commissioners to the respective parties so that the parties can depute their officials to remain present on the date and time of inspection.

District Administration shall appoint any competent revenue official to assist the Advocate Commissioner. “

Remuneration of Rs. 1,00,000/- each (in total Rs. 2,00,000/-) is fixed which will be paid by the petitioner to the Advocate Commissioners.

Advocate Commissioners will submit the report within two weeks with advance copy to learned counsel for the parties.”

8. Subsequently, the case was listed several times but the Advocate Commissioner did not submit any survey report. Thereafter, this Court vide order dated 27.10.2020, directed the Advocate Commissioner to visit the spot and submit the report as early as possible.

9. Mr. M.S. Tyagi and Mr. M.C. Kandpal, Advocate Commissioners would submit that the land in dispute is a big chunk of land measuring 491 acre, therefore, they are not in a position to conduct the survey of aforesaid land.

10. To this, Mr. Deepak Dhingra, Advocate for the petitioner would submit that the dispute is not in regard to 491 acres land.

11. Mr. J.P. Joshi, learned Addl. A.G. drew attention of this Court towards the second relief sought in the writ petition, which is extracted hereunder:

(ii) Issue a suitable writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioner from plots bearing Khewat No.1 and Khasras included in it situated in village Rikholi, Pargana Pachwadun, Tehsil and District Dehradun, having total area of 187.4890 hectares equivalent to 491 acres.

12. Heard learned counsel for the parties and perused the material available on record.

13. As Mr. M.S. Tyagi, Advocate has made statement before this Court that it is not feasible to conduct the survey of the chunk of land, thus, this Court cannot compel him to conduct the survey of the land.

14. Since, it has been projected before this Court that Mr. Bharose Lal is retired justice of the High Court and the coordinate bench of this Court vide order dated 8.03.2016, on the submission of Mr. Deepak Dhingra, Advocate for the petitioner appointed Mr.

Bharose Lal as an Advocate Commissioner. It is an admitted case that Mr. Deepak Dhingra has committed fraud to this Court. This Court in its order dated 05.12.2018 also observed that Mr. Deepak Dhingra, Advocate and Brig. S.S. Yadav (retd.) have clandestinely projected Mr. Bharose Lal as retired Judge of the High Court, however, Mr. Deepak Dhingra, Advocate and Brig. S.S. Yadav (retd.) have tendered their apology before this Court and this Court vide order dated 06.12.2018 accepted their apology by observing that the order dated 05.12.2018 will not come in the way of Mr. Deepak Dhingra, Advocate and Brig. S.S. Yadav (retd.) in any manner but the fact remains that it was well within the knowledge of Mr. Deepak Dhingra, Advocate who is appearing from very beginning in the present petition that the special appeal was disposed of vide judgment and order dated 10.03.2015 on the statement made by learned counsel for the petitioner that the matter is ripe for final hearing, but the petitioner did not apprise about this material fact to this Court and subsequent thereto the petitioner filed application no. CLMA 19659 of 2018 under Order 26 Rule 9 of C.P.C. with the prayer to appoint an Advocate Commissioner for the purpose of submitting report but did not disclose before the Court that in the special appeal the parties made statement that the appeal is ripe for final hearing. Paragraph-9 of the said application is extracted below:

“9. That the petitioner submit that no prejudice shall be caused if a Commission is appointed of any person as this Hon’ble Court may find suitable as Advocate Commissioner with directions inter-alia to;

- A. visit the site, conduct joint inspection of the site alongwith officials of the parties.
- B. Conduct appraisal of all the documents as produced by the parties.
- C. Ascertain the exact location of the pieces of land subject matter of the writ petitioner; and/or
- D. Such further directions which this Hon’ble Court may deem fit and proper”

15. Thereafter, a misc. application no. 4636 of 2015 has been filed by the petitioner with a prayer to appoint an Advocate Commissioner, however, again this fact was not brought to the notice of the Court that parties have made statement before Division Bench of this Court that the matter is ripe for final hearing and the appeal was disposed of vide judgment and order dated 10.03.2015. The said

application was allowed by the coordinate bench of this Court vide order dated 28.03.2016. It is evident that the petitioner has suppressed the material fact that the parties themselves made statement before the Division Bench that the matter is ripe for final hearing. The petitioner did not disclose the fact that the Division Bench passed the order dated 10.03.2015 holding that the matter is ripe for final hearing and the same be decided expeditiously, on the statement made by the learned counsel for the parties and thereafter subsequently get the order of appointment of Advocate Commissioner by the coordinate bench dated 28.03.2016 as well as by this Court on 28.02.2020 by suppressing said fact.

16. The Hon'ble Apex Court **in Oswal Fats & Oils Ltd. Vs. Additional Commr. (Admn.), Bareilly & others** has held that the Court is duty bound to deny relief to person mischievously approaching it with unclean hands.

“20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligations to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.”

17. In **Kishore Samrite Vs. State of Uttar Pradesh and others** reported in **(2013) 2 SCC 398** has held as under:

“31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.

32. The cases of abuse of the 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 the process of court. We many 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 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 over-shadowed 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 the process the 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."

18. It is apt to note here that order dated 10.03.2015 was not in the knowledge of this Court as none of the parties to the litigation apprised this Court in regard to the order passed by Division Bench of this Court. The interim relief application CLMA No. 8891 of 2020 has been filed by the petitioner with the prayer that respondents be restrained not to raise any construction over the suit property.

19. Mr. J.P. Joshi, learned Addl. Advocate General has argued that the petitioner, earlier also filed an interim relief application for the same relief, which was dismissed by the coordinate bench of this Court vide order dated 24.09.2017, which order has also been affirmed by the Division Bench of this Court in special appeal no. 571 of 2014. He further argued that the subsequent application for the same relief is not maintainable.

20. This Court came to know about the order dated 10.03.2015. Prior to that none of the parties apprised this Court about the order dated 10.03.2015, thus, without having knowledge of the said order, this Court has passed the order dated 28.02.2020, whereby the panel of Advocate Commissioners were appointed. Having considered the fact that the petitioner has suppressed the material

fact from this Court and the respondents are in physical possession of the property in dispute, this Court does not find any good ground to grant interim relief to the petitioner, thus, the interim relief application is dismissed.

21. Since, learned Advocate Commissioners have made a statement before this Court that it is not feasible to conduct survey of the chunk of land, this Court cannot compel Mr. M.S. Tyagi and Mr. M.C. Kandpal Advocate Commissioners to conduct the survey of the land.

22. In view of the fact that Advocate Commissioners have shown their inability to conduct the survey of the land and that that they cannot be appointed to collect the evidence for party and also for the reason that the petitioner has suppressed the material fact from this Court on the statement made by the counsel of the parties before the Division Bench of this Court, the order dated 10.03.2015 was passed.

23. In view of the above facts and circumstances of the case, this Court is of the view that the order dated 28.02.2020 has been obtained by playing fraud and concealing the material fact from the Court, therefore, the order dated 28.02.2020 is liable to be recalled suo moto. Consequently, the order dated 28.02.2020 is recalled. The misc. application (CLMA 19659 of 2018) is dismissed, accordingly.

24. Insofar as modification application (CLMA No. 19660 of 2018) is concerned, same has wrongly been shown in the cause list as it has already been disposed of vide order dated 13.11.2019.

25. List this matter on 20.11.2020 for final hearing.

**(Lok Pal Singh, J.)**  
**02.11.2020**