

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 28TH DAY OF MAY 2021 / 7TH JYAISHTA, 1943

WA NO. 1513 OF 2020

(AGAINST THE JUDGEMENT DATED 17-02-2020 IN RP NO.1220/2019 OF HIGH COURT OF KERALA)

APPELLANT/RESPONDENT:-

POTTAKALATHIL RAMAKRISHNAN, AGED 55 YEARS,
S/O. LATE PANANGATTU VASUDEVAS MENON,
LAKSHMI NILAYAM, CHERPLASSERY P.O.,
OTTAPALAM TALUK, PALAKKAD.

BY ADV. V. B. RAMANUNNI MENON

RESPONDENTS/REVIEW PETITIONERS:-

1. THAHSILDAR, TIRUR-676 101.
2. ADDITIONAL THAHSILDAR,
TALUK LAND BOARD, TIRUR-676 101.
3. VILLAGE OFFICER, IRUMBIYAM,
MALAPPURAM DISTRICT-676 505.

BY SRI. V. TEK CHAND, SENIOR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28.05.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT**S. Manikumar, CJ**

Instant writ appeal is filed by the respondent in R.P. No.1220 of 2019 against the judgment dated 17.02.2020, by which, a learned single Judge of this Court allowed the review petition filed by the respondents herein, observing thus:

"7. When this court rendered the judgment in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India, it is not necessary for the High Court which is court of record under Article 215 of the Constitution of India to go in search of another provision to recall its judgment, as contended by the learned Counsel for the petitioner. When a similar contention was raised before the Supreme Court that the High Court has no power to review its own order under Article 226, the Apex Court in ***Shivdev Singh's case*** (*supra*) held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The very same proposition was held in ***M.M. Thomas v. State of Kerala***: (2000)1 SCC 666.

8. It is also relevant to note that in the judgment in ***Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd.***: (2019) 3 SCC 203, the Apex Court held as follows:

"10. Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:

“215. High Courts to be courts of record.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments.”

9. The petitioner filed the Writ Petition under Article 226 of the Constitution of India. From the materials produced by the review petitioner, I am of the view that the writ petitioner, has not approached this Court with clean hands. It is seen that material facts were suppressed in the Writ Petition. Therefore, I deem it appropriate to review and recall the judgment. Therefore the judgment dated 12.10.2018 in W.P.(C) No. 32652/2014 is recalled and Review Petition is accordingly allowed and writ petition is restored on file.”

2. Facts leading to the filing of instant appeal are that, appellant is the respondent in R.P. No.1220 of 2019 and the respondents are the review petitioners. Appellant has claimed that he along with his mother and sisters got 13.51 Acres of land comprised in Sy. No.1 of Irumbiliyam Village in Tirur Taluk, Malappuram district, as per Partition Deed No.1325/1969 of SRO, Kuttippuram (Exhibit-P1). It was also stated that except for an extent of 2 acres of land out of the said property covered by Exhibit-P1 partition deed, 11.51 acres of land was in continued possession of the appellant and his mother.

3. Appellant has further stated that on verification of the records, he came to know that the basic tax in respect of the property was paid only upto 1971. Thereafter, he could not pay the land tax regularly. Though the appellant/writ petitioner has approached the Village Officer, Irimbilyam with Exhibit-P3 representation in 1997 and thereafter with Exhibit-P4 on 24.01.2014, tax was not accepted. Hence, he filed W.P.(C) No.32652 of 2014 seeking for a direction to the Tahsildar, Tirur, respondent No.1 herein to accept the tax in respect of the property in question.

4. After considering the rival submissions, writ court vide judgment dated 12.10.2018 disposed of the writ petition by observing that since the request of the appellant/writ petitioner is only to accept land tax and as it is seen that there is a partition deed (Exhibit-P1), by which writ petitioner's mother, as well as the petitioner claimed to have got property, it is only appropriate that respondents shall accept the land tax from the petitioner subject to the civil proceedings, if any, pending. In the said judgment, the writ court has made it clear that acceptance of basic tax would not provide any right to the petitioner, to claim title over the property, and the respondents are free to accept tax from him, accordingly. Since the respondents did not receive tax as directed by the learned single Judge in W.P.(C) No.32562/2014, appellant filed Cont. Case No.1422/2019. During the pendency of the contempt case, respondents

filed R.P. No.1220/2019, along with Annexures-A to I.

5. Appellant has further stated that in the writ petition, the respondents filed a counter affidavit, in which, they have admitted that appellant is the registered holder of the subject property, but they have contended that the entire extent of land was not in the actual possession of the appellant. The respondents have further contended that as per the provisions of the Land Tax Act, 1961, the registered holders are not entitled to pay tax unless their name is changed as per the Transfer of Registry Rules, 1966. It was also contended that the land tax can be collected only on the basis of sufficient documents.

6. Appellant has further stated that in the affidavit filed along with the review petition, the respondents have stated the reason for review, that major portion of land claimed by the appellant was with outsiders and the respondents are receiving tax from them. This fact is already argued in the writ petition. Apart from that, no new grounds are stated. The point raised in the review petition is, whether land tax can be accepted from the appellant, who has no title or possession.

7. On the above pleadings, the appellant has filed this appeal raising the following grounds:

- A. Learned single Judge has failed to understand what are the parameters under Article 215 of the Constitution of India, for entertaining a review of its order in the writ petition.

- B. The basic things to entertain a review petition have been disregarded by the learned single Judge.
- C. Learned single Judge has also failed to understand who is entitled to file a review petition.
- D. Learned single Judge ought to have found the *mala fides* of the review petitioners in filing a review petition, during the pendency of the contempt petition.
- E. Learned single Judge ought to have dismissed the review petition as it is delayed, failed to raise any legal grounds and in not considering the law of Land Tax Act and Transfer of Registry Rules regarding payment of land tax and Constitutional provisions.

8. Based on the above, learned counsel for the appellant has made submissions.

9. Heard the learned counsel for the appellant and perused the material on record.

10. Referring to Section 141 of the Code of Civil Procedure, 1908, learned counsel for the appellant submitted that the procedure provided in the Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction, excluding any proceedings under Article 226 of the Constitution of India, and therefore, review petition filed by the respondents is not maintainable.

11. Relying on the decision of a Hon'ble Division Bench of this Court in **Balan v. Shyamala** reported in [2008 (1) KLT 112], learned counsel

for the appellant submitted that power of review is conferred by the statute and court has no inherent power of review.

12. Further, placing reliance on a Full Bench judgment of the Patna High Court in **Ram Kinkar Das v. State of Bihar and Ors.** reported in AIR 2017 Pat 35, learned counsel for the appellant submitted that provisions of the Code of Civil Procedure, 1908 are not *per se* applicable to the writ proceedings. On the said point, reliance is placed on the decision of a Hon'ble Division Bench of this Court in **George v. State of Kerala** reported in 2019 (3) KLT 319.

13. The tax receipts and the documents produced along with the review petition by the respondents would be worthwhile to be extracted.

14. Annexure-A receipt No.KL10040503227/2018 dated 14.09.2018 issued by the Village Officer, Irumbiliyam, is extracted hereunder:

“GOVERNMENT OF KERALA

RECEIPT

District : Malappuram

KL10040503227/2018

Taluk : Tirur

Village: Irumbiliyam

Tax Receipt as per Thandaper No.4689

Item	Sub-Item	Amount	Duration	Details
1) Basic Land Tax	Same Year	Rs.305	2018-2019	Block-4, Thandaper No.4689 1) Saithalavi, Ahammadkutty Father, Panathodi, Kalamangalam, Valancherry Survey No. Area, type 2) 1/8, 60 Ares, 30 Sq. mtr Unstable Total Area: 60 Ares. 30 Sq. Mtr.
2) Agricultural	Same	Rs.15	2018-	

Workers Welfare Fund	year		2019	
	Total Amount	Rs. 320		

As described above, Rs.320/-(Rupees Three Hundred and Twenty only) received on 14th September, 2018 and accounted for in the village.

Payer : Saithalavi, Panathodi

Place : Irumbiliyam

Date : 14/09/2018

Naseer A.
Village Officer

This receipt is prepared and made available through the e-payment system of the Revenue Department and does not require the signature and seal of the Village Officer. The authenticity of the receipt is available on the Revenue Department Portal www.revenue.kerala.gov.in.

Sd/-
Village Officer,
Irumbiliyam

Sd/-
Tahsildar, Tirur"

15. Annexure-B receipt No.KL10040501867/2018 dated 10.07.2018 issued by the Special Village Officer, Irumbiliyam is extracted hereunder:

"GOVERNMENT OF KERALA

RECEIPT

District : Malappuram
Taluk : Tirur

KL10040501867/2018
Village: Irumbiliyam

Tax Receipt as per Thandaper No.4089

Item	Sub-Item	Amount	Duration	Details
1) Basic Land Tax	Same Year	Rs.80	2018-2019	Block-4, Thandaper No.4089 1) Ali, Kunjumoiheen Father, Neettukattil, Valancherry. Survey No. Area. 1) 1/4, Ares, 62 Sq.

				Mtr. 2) 1/3, 13 Ares, 24 Sq. Mtr. Total Area: 14 Ares. 86 Sq. Mtr.
	Total Amount	Rs. 80		

As described above, Rs.80/- (Rupees Eighty only) received on 10th July, 2018 and accounted for in the village.

Payer : Ali, Neettukattil

Place : Irumbiliyam

Date : 10/07/2018

Chandrababu K
Special Village Officer/
Village Assistant

This receipt is prepared and made available through the e-payment system of the Revenue Department and does not require the signature and seal of the Village Officer. The authenticity of the receipt is available on the Revenue Department Portal www.revenue.kerala.gov.in.

Sd/-
Village Officer,
Irumbiliyam

Sd/-
Tahsildar, Tirur"

16. Annexure-C receipt No.KL10040501045/2018 dated 30.05.2018

issued by the Village Officer, Irumbiliyam is extracted hereunder:

"GOVERNMENT OF KERALA
RECEIPT

District : Malappuram
Taluk : Tirur

KL10040501045/2018
Village: Irumbiliyam

Tax Receipt as per Thandaper No. 1116

Item	Sub-Item	Amount	Duration	Details
1) Basic Land Tax	Same Year	Rs.300	2018-2019	Block-4, Thandaper No.1116 1) Aboobaker, Moitheenkutty, Father, Paingiri, Kolathoor,

				Koalthoor Survey No. Area. Type. 1) 2/1-6, 17.24 ares 2) 1/6. 41.23 Ares
2) Agricultural Workers Welfare Fund	Same year	Rs.15	2018- 2019	
	Total Amount	Rs. 315		

As described above, Rs.315/- (Rupees Three Hundred and Fifteen only) received on 30th May, 2018 and accounted for in the village.

Payer : Aboobaker, Paingiri

Place : Irumbiliyam

Date : 30/05/2018

Asha A.
Village Officer

This receipt is prepared and made available through the e-payment system of the Revenue Department and does not require the signature and seal of the Village Officer. The authenticity of the receipt is available on the Revenue Department Portal www.revenue.kerala.gov.in.

Sd/-
Village Officer,
Irumbiliyam

Sd/-
Tahsildar,

Tirur"

17. Annexure-D receipt No.KL10040501055/2018 dated 30.05.2018

issued by the Village Officer, Irumbiliyam is extracted hereunder:

"GOVERNMENT OF KERALA
RECEIPT

District : Malappuram
Taluk : Tirur

KL10040501055/2018
Village: Irumbiliyam

Tax Receipt as per Thandaper No. 1116

Item	Sub-Item	Amount	Duration	Details
1) Basic Land Tax	Same Year	Rs.950	2018- 2019	Block-4, Thandaper No.1116 1) Aboobaker, Moitheenkutty, Father,

				Paingiri, Kolathoor, Koalthoor Survey No. Area. Type. 1) 1/7, 100 Ares 2) 2/1-16, 90 Ares
2) Agricultural Workers Welfare Fund	Same year	Rs.48	2018- 2019	
	Total Amount	Rs. 998		

As described above, Rs.998/- (Rupees Nine Hundred and Ninety Eight only) received on 30th May, 2018 and accounted for in the village.

Payer : Aboobaker, Paingiri

Place : Irumbiliyam

Date : 30/05/2018

Bindu P.K.
Village Officer

This receipt is prepared and made available through the e-payment system of the Revenue Department and does not require the signature and seal of the Village Officer. The authenticity of the receipt is available on the Revenue Department Portal www.revenue.kerala.gov.in.

Sd/-
Village Officer,
Irumbiliyam

Sd/-
Tahsildar, Tirur"

18. Annexure-E Sale Deed No.2569/2004 executed by the mother of the appellant herself in favour of the previous owner reads thus:

"In the Malayalam Era 1179 Karkkidakam 9th as per English Calender July 24th 2004 from Tirur Taluk, Kattipparuthi amsom, Vaikkathoor desom, Thorakkat Alavi son agriculturist 74 years Mohammed 1st numbers and his son agriculturist 49 years. 2) Thorakkat Abu, both these persons together executed janman Sale Deed in favor of Perinthalmanna Taluk, Kolathoor amsom desom Post Moorkkanad, Pin-679 338 Paingerri Moitheenkutty's son working in the foreign country, aged 46 years Aboobacker.

In the below mentioned schedule of properties Vallat Pottekkalathil Anandavalliyamma and others, Kuttippuram Registered office as per No.1972/744 document Padathodiyil Saithamu, janmam Sale Deed, and as per janmam right being in the absolute possession, and the above mentioned Saithamu, TA First Book 109 Volume 381. 382 pages in 1975 as per No. 1413 we got janmam Theer and hence, the schedule property after remitting the Government dues and in complete authority for all transactions and without anybody's influence being enjoyed as a janmam right and is in our joint possession.

As mentioned above, one numbered plot as per the mediators Sale Price is fixed at Rs. 50,000/-, and hence it is given to you as janmam sale and is given in your possession.

And accordingly, the reward of Rs. 50,000/- (Fifty Thousand only) is received by us from you and it is recorded and all our rights and interest in the schedule property is given to you. Thus, schedule property as janmam sale deed you can keep and enjoy in the possession and remit the Government dues and accordingly, will all rights of transaction for which, from today onwards, you are the only person who have got absolute right and possession and we have got no possession and enjoyment. And nobody can question you.

In the schedule property, there is no encumbrance, or others possession and there is no defect in the right and possession hence also, there is no court attachment and there is no such liability. Property is in Irimbiliyam Panchayat and there is no construction. Jamathiri hargi submitted and for that evident it is given to you. Plain schedule property is not a government land or puramboke, this is informed you under bona fide and good faith.

No.	District	Sub-Dist	Taluk	Panchayat	Amsam	Desom	Item	Right	Re-Survey	Sub-Division	Hectare	Cents	Details of Property	Boundaries				
														East	North	West	South	
	Malappuram	Kuttippuram	Tirur	Irimbiliyam	Valiyakunnu		Paramb	Janmam	T		13	0	Madatharukunnu Plain property 26 x 41 Myr. 47.55 x 75 53 cent	Share Property				
											51	88 3/4		Lane & Koramangazhazhi Property				
														Share Property				
														Shre Property				

Witnessess:-

1. Ambadi Sadanandan Sd/-
Vezhu Nair Sd/-
2. Ushassil Kunjan Sd/-
Achuthan son Vadarum rudram

Prepared by Ad. T. Tamgopal K727/93 Valancherry
Written by E. Sreeja Sd/- L. No. MSA. 670
2nd Page blocked the 12th line by 2 letters.

Muhammed Sd/-
Abu Sd/-

Sd/-
Tahsildar, Tirur"

19. Annexure-F is the tax receipt No.M8307177 dated 25.06.2015
issued by the Tahsildar, Irimbiliyam, and it reads thus:

"ORIGINAL
RECEIPT

8307177

Book No. M 83072

As per theth number, Thandapper/Order Tax/Amount paid receipt.

Survey & Sub Division No. & Letter	Area		Pattadaran/Pattadaran's Name	Nature of Payment	Name of the person who made the payment	For which period/which installment	Amount	
	Hectare	Ares					Rs.	Rs.
1290/07 1/-	1	21.4	20	B/T	For Yogini Properties Pvt. Ltd. Co., Vasudevan	2015/16	124 3115 778	6
						BT	5139	

As described above Rs.5,139/- (Rupees Five Thousand One Hundred Thirty Nine only) on 25th June, 2015 received and kept in the village account.

Place : Irimbliam
Date : 25/6/15

Sd/-
Village Officers/
Village Assistant's Name

Sd/-
Tahsildar"

20. Annexure-G is the Purchase Certificate No.459/1993 dated 30.12.1993 issued by the Land Tribunal, Tirur and it reads thus:

"PURCHASE CERTIFICATE

.....Tirur.....Land Tribunal

Date: 30-12-93

1993rd 459th number Certificate by which Property is assigned

- (1) Your application
- (2) 1992 No.457 *suo motu* proceedings

As per 72 of the Kerala Land Reforms Act, Property is vested in the Government and below scheduled property and

its owner and the mediators their rights, ownership and all other related rights assigned to the cultivating tenant in this property Kalappalan Eni Hari, S/o. Veerankutty, Post Valancherry has been assigned and that is being witnessed and verified herein.

1993 December 30, as per my handwriting and seal it is being issued.

Official Seal.

Sd/-
Land Tribunal"

21. Annexure-H is the Purchase Certificate No.467/1993 dated 31.12.1993 issued by the Land Tribunal, Tirur and it reads thus:

"PURCHASE CERTIFICATE

(As per Rule 14 of Kerala Land Reforms Rules)

.....Tirur.....Land Tribunal Tirur

Date: 31-12-93

1993rd with No.467 Assignment Certificate

1. Application

2. 1992 No.465 *suo motu* proceedings

As per 72 of the Kerala Land Reforms Act, Property vested in the government and to be mentioned in the below schedule, owners of the property and intermediates and their rights both ownership and possession is issued to Smt. Thattarathoduvil Alu, S/o. Enikutty, Post Valanchery and this property is assigned and it is verified and witnessed accordingly.

1993 December 31, as per signature and seal is issued.

Official Seal.

Sd/-
Tahsildar

Sd/-
Land Tribunal"

22. Annexure-I is the communication dated 19.07.2019 of the Tahsildar (LR), Tirur to the Village Officer, Irumbiliyam dated 19.07.2019 and it reads thus:

"B6-6869/19

Taluk Officer, Tirur
Date: 19-07-2019

Tahsildar (LR)
Tirur.

Village Officer, Irimbiliyam

Sir,

Sub:- Regarding the implementation of Order of the Hon'ble High Court of Kerala in W.P.(C) No.32652/14 dated 12-10-2018.

Ref:- 1. Sri. Ramakrishnan's application before the Tirur Tahsildar dated 8-5-2019.

2. Your reports dated 11-7-19 and 16-7-19.

.....
Please be careful about the reference. As per the order of the Hon'ble High Court of Kerala in W.P.(C) No.32652/14 dated 12-10-2018, Sri. Pottakkulathil Ramakrishnan's case, it is ordered to accept the tax.

But, as per reference 2nd cited re-survey mentioned property 4.6611 hectare and at present there are a number of persons in possession and property tax is accepted from them. This is reported by you.

In the above circumstances in Irimbiliyam village, Valiyakunnu desom, Survey 1/5.4.674 hectare land at present tax is being accepted, deducting 4.6611 hectare land and the balance comes to 0.8063 hectare, as per the order in W.P(C) No.32652/14 petitioner Sri. Pottakkulathil Ramakrishnan's mother Anandavally Amma's legal heirs, in their name tax can be accepted. This is informed accordingly.

Sincerely yours,
Tahsildar (L.R), Tirur.”

23. Material on record shows that as per Annexures-E to G documents, the appellant's mother had already entered into various transactions alienating several parcels of properties covered by Exhibit-P1 partition deed. By Annexure-E document executed in 1972, an extent of 883/4 cents is alienated. The said document also shows that she was a party to Document Nos.1290/2007 and 1291/2007, having an extent of 01.2141 hectares and 1.2780 hectares, for which, tax was paid by third parties as per Annexure-F. Material on record further shows that Annexures-G and H purchase certificates were issued to third parties in respect of 3 acres of property and another extent of 3.1 acres, after notice to the appellant's mother. These facts were suppressed by the appellant in the writ petition, despite the fact that all the transactions have been done by the appellant's mother. Therefore, it is clear that the material facts required for adjudication of the issues raised by the appellant were not placed by him in the writ petition, and if the above extracted documents were produced in the writ petition, he would not have secured a direction to receive the revenue tax since already the properties were transferred and tax was being received from other persons, which thus means, there was suppression of material facts, deliberately done to mislead the learned Single judge to get an unmerited advantage to the appellant, no doubt had to be dealt with properly.

24. On the aspect of suppression, equity and clean hands, we deem it fit to consider the following decisions:

(i) In **Arunima Baruah v. Union of India** [(2007) 6 SCC 120], the Hon'ble Supreme Court, at paragraphs 11 to 14, held as follows:

"11. The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would dis-entitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D) It is

contended that the fact that Moody has given those bribes prevents him from getting any relief in a court of equity. The first consequence of his having offered the bribes is that the vendors could have rescinded the contract. But they were not bound to do so. They had the right to say "no, we are well satisfied with the contract; it is a very good one for us; we affirm it". The proposition put forward by counsel for the defendants is: "It does not matter that the contract has been affirmed; you still can claim no relief of any equitable character in regard to that contract because you gave a bribe in respect of it. If there is a mistake in the contract, you cannot rectify it, if you desire to rescind the contract, you cannot rescind it, for that is equitable relief." With some doubt they said: "We do not think you can get an injunction to have the contract performed, though the other side have affirmed it, because an injunction may be an equitable remedy." When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not

apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for. In this case the bribe has no immediate relation to rectification, if rectification were asked, or to rescission in connection with a matter not in any way connected with the bribe. Therefore that point, which was argued with great strenuousness by counsel for the defendant, Hatt, appears to me to fail, and we have to consider the merits of the case.

14. In *Halsbury's Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

“1303. He who seeks equity must do equity. “In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

* * * 1305. He who comes into equity must come with clean hands. “A court of equity refuses relief to a plaintiff whose conduct in regard to the subject- matter of the litigation has been improper. This was formerly expressed by the maxim “he who has committed iniquity shall not have equity”, and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands.

In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(ii) In **Prestige Lights Ltd., v. State Bank of India** [(2007) 8 SCC 449], at paragraphs 33, 34 and 35, the Hon'ble Supreme Court held as follows:

"33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington*

Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, 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". (emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear 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, the Court may dismiss the action without adjudicating the matter. 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."

(iii) In **Udyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of Uttar Pradesh** [(2008) 1 SCC 560], at paragraphs 16 and 17, the Hon'ble Apex Court, held as follows:

"16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In *Advocate General, State of Bihar v. M.P. Khair Industries*[(1980) 3 SCC 311], this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.

17. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly with costs. Counsel's fee quantified at Rs.50,000."

(iv) In **Amar Singh v. Union of India & Others** reported in (2011) 7 SCC 69, on the aspect of a litigant approaching the court, with unclean hands, at, paragraphs 53 to 57, and paragraphs 59 , considered several judgments. Finally, at paragraph No.60, extracted a paragraph from ***Dalip Singh v. State of U.P. and others***, [(2010) 2 SCC 114]:

"53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In ***Dalglish v. Jarvie*** [2 Mac. & G. 231, 238], the Court, speaking through Lord Langdale and Rolfe B., laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the

importance of any fact which he has omitted to bring forward."

55. In ***Castelli v. Cook*** [1849 (7) Hare, 89, 94], Vice Chancellor Wigram, formulated the same principles as follows:

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the injunction must go."

56. In ***Republic of Peru v. Dreyfus Brothers & Company*** [55 L.T. 802,803], Justice Kay reminded us of the same position by holding thus:

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in *R. v. Kensington Income Tax Commissioner* [1917 (1) K.B. 486] Lord Justice Scrutton formulated as under:

".....and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have 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."

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: *Hari Narain v. Badri Das - AIR 1963 SC 1558*, *Welcome Hotel and others v. State of A.P. and others - (1983) 4 SCC 575*, *G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnataka and another - (1991) 3 SCC 261*, *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others (1994) 1 SCC 1*, *A.V. Papayya Sastry and others v. Government of A.P. and others - (2007) 4 SCC 221*, *Prestige Lights Limited v. SBI - (2007) 8 SCC 449*, *Sunil Poddar and others v. Union Bank of India - (2008) 2 SCC 326*, *K.D.Sharma v. SAIL and others - (2008) 12 SCC 481*, *G. Jayashree and others v. Bhagwandas S. Patel and others - (2009) 3 SCC 141*, *Dalip Singh v. State of U.P. and others - (2010) 2 SCC 114*.

60. In the last noted case of ***Dalip Singh*** (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

"For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre- independence era and the people used to feel proud to tell the truth in the courts irrespective of the consequences. 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, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established 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."

(v) In **Kishore Samrite v. State of U.P. & Others** [(2013) 2 SCC 398], at paragraphs 32 to 36, the Hon'ble Apex Court held as follows:

"32. 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 the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statements of facts are based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer: *Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.* [(1969) 1 SCC 110]; *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.* [(2012) 6 SCC 430]; *Chandra Shashi v. Anil Kumar Verma* [(1995) SCC 1 421]; *Abhyudya Sanstha v. Union of India & Ors.* [(2011) 6 SCC 145]; *State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.* [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India & Anr.* [(2011) 3 SCC 287]).

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and

clean objective that are the *equi-fundamentals of judicious litigation*. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the Court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481]}.

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file

misconceived and frivolous petitions. [*Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530*]."

25. Discussion of facts made above would make it clear that while rendering the impugned judgment, learned single Judge was under the impression that the entire facts and circumstances were placed by the appellant before the writ court, which only persuaded the learned single Judge to direct the respondent to accept the basic tax from the appellant. However, when a review petition was filed by the respondents in W.P.(C) No.32652 of 2014, the learned single Judge realised that there was material suppression on the part of the appellant while filing the writ petition. It was accordingly, the learned single Judge reviewed the judgment dated 12.10.2018 in W.P.(C) No.32652/2014, holding that the learned single Judge had the power to review the judgment resorting to Article 226 of the Constitution of India apart from other powers since the High Court is a court of record as is adumbrated in Article 215 of the Constitution of India which is an all inclusive power including the power to review a Judgment of its own, if circumstances so warrant.

26. The honesty, fairness, purity of mind, and approaching the writ court with clean hands should be of the highest order and is a *sine qua non* to maintain a writ petition and secure orders, failing which the litigant should be shown the exit door at the earliest point of time. Moreover, suppression is a factor quite strange and alien, and an antithesis to rule of

law and fundamental governance of the country, and the tendency of the litigant to suppress material aspects if not eradicated, the resultant quotient would be lack of faith of the citizens in the legal system and the courts of law, and if that is allowed to happen, it would ruin the basic tenets of the democratic system and the rule of law prevailing in this country.

27. Though various contentions were raised by the appellant to substantiate that there is no power to review the judgment passed in a writ petition, we are unable to accept the same, for the reason that it is well settled proposition in law that being a Court of record, the High Court is vested with powers to proceed under Article 226 of the Constitution of India itself and review a judgment, if it is found that there was material suppression, and the Court was not right in granting a verdict in favour of the writ petitioner due to suppression of material facts. The learned single Judge has elaborately considered the issues raised by the appellant, by relying upon the propositions of law laid down by the Hon'ble Supreme Court in its various judgments and had arrived at the right conclusion to review the Judgment.

28. Taking into account the contentions put forth by the appellant, the submissions made by the respondents in the appeal, and the settled legal position, we have no reason to think that the learned single Judge had committed any jurisdictional error or illegality in exercising the

discretion, to interfere with the impugned judgment, in this *intra court* appeal filed under Section 5 of the Kerala High Court Act.

In the result, the writ appeal fails and accordingly, it is dismissed.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

Krj

//TRUE COPY//

P.A. TO C.J.