

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2018

Delivered on : 03.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

O.S.A.No.24 of 2017
and
C.M.P.Nos.14618, 14619 & 14620 of 2017

The Commissioner,
Corporation of Chennai,
Chennai-600 003. Appellant

Vs.

1. The Collector of Chennai,
Singaravelan Maligai,
Rajaji Salai,
Chennai-600 001.
 2. N.Devarajan
 3. D.G.Lakshmi
 4. D.Kavitha
 5. D.Aishwarya
- ... Respondents

For Appellants : M/s.Karthika Ashok
For R1 : Mr.M.Venkatesh Kumar,
Government Advocate

For R2 to R5 : Mr.P.Wilson Senior Counsel for
Mr.Richardson Wilson

Prayer: Original Side Appeal filed under Order 36 Rule 11 r/w 15
Letters Patent Appeal, against the Decree and Judgment passed by
the learned Judge in C.S.No.418 of 2001, dated 24.07.2009.

JUDGMENT

M.M.SUNDRESH, J.
and
N.ANAND VENKATESH, J.

This Original side Appeal has been filed by the Commissioner, Corporation of Chennai, who was the 2nd defendant in the suit, aggrieved by the judgment and decree passed by the learned Single Judge in C.S.No.418 of 2001, dated 24.07.2009.

2. For the sake of convenience, the parties will be addressed in the same nomenclature as in the suit.

3. The case of the plaintiffs in brief:-

3.1. The plaintiffs claim to be the owners of the suit property by virtue of the sale deeds executed in their favour in the year 1995 by M/s.United Breweries Limited, which was the original owner of the property. The vendor of the plaintiffs was owning large extent of lands. After several acquisition proceedings, the vendor company was owning and possessing an extent of 4189 square metre of land together with an old dilapidated building. Under the Tamil Nadu Urban Land Ceiling Act a further extent of 309 square metre was acquired.

3.2. Whatever balance property was left out, was ultimately sold to the Plaintiffs in the year 1995. After the purchase of the property, the plaintiffs applied for change of patta in their name and the Tahsildar issued a patta in favour of the plaintiffs on 26.11.1996.

3.3. The plaintiffs made a request on 24.12.1996 to the Revenue Department for allotment of 309 square metre of land which was acquired under the Tamil Nadu Urban Land Ceiling Act. The request was denied by the Government by letter dated 17.09.1998.

3.4. One P.Vetrivel, who belongs to the opposition party, started making wild allegations against the first plaintiff and due to the political compulsion, the first defendant issued a show cause notice, dated 28.05.2001, calling upon the plaintiffs to show cause as to why the patta issued in their favour should not be cancelled.

3.5. The effect of the show cause notice issued by the first defendant was such that it challenged the title of the plaintiffs in the suit property. The first defendant contended by virtue of the said show cause notice that by Award No.2/53, dated 31.03.1953, the suit property was acquired in favour of the Corporation of Madras and the plaintiffs do not have any right or title over the property. The plaintiffs also

apprehended threat to their possession of the suit property. Therefore left with no other alternative, the plaintiffs file the suit for declaration to declare their title, to declare the show cause notice issued by the first defendant as null and void and for a permanent injunction restraining the defendants not to interfere with the possession and the enjoyment of the suit property.

4. The case of the defendants in brief:-

4.1. The Suit property is a valuable property measuring more than 20 grounds in the heart of Chennai. This Property is covered under the Land Acquisition Proceedings initiated in the year 1950. After the completion of the acquisition proceedings, the land was handed over to the Corporation of Madras on 09.04.1953. The original owners of the property did not challenge the land acquisition proceedings.

4.2. As per the quit rent permanent register available in the concerned Taluk Office, T.S.No.5/15 and 5/18, Block No.14 in Periyakoodal Village, Egmore-Nungambakkam Taluk, an extent of 5.44 acres covering S.Nos.40/3, 40/4 and 40/5, was acquired for Shenoy Nagar Town Planning Scheme on behalf of the Corporation of Madras in the year 1953 and it is covered by Award No.2/53, dated 31.03.1953.

4.3. During the town survey operation that took place in the year 1965, the land in survey No.40/5 was wrongly included in T.S.No.5 of Block No.14 of Periyakudal Village and an extent of 4189 square metre (1.04 acres) was sub-divided as T.S.No.5/15. This wrongly included land was the one that was purchased by the plaintiffs from M/s.United Breweries Limited.

4.4. The vendor of the plaintiffs, in collusion with the Urban Land Ceiling authorities, secured an order as if they were owners of the property and only 309 square metre was in excess of their holding in survey No.40/5. The Tahsildar without proper verification of records and also without verifying the earlier land acquisition proceedings, erroneously issued patta in favour of M/s.United Breweries Limited in the year 1987-1988. Subsequently, the plaintiffs purchased the suit lands measuring an extent of 3880 square feet from M/s.United Breweries Limited in the year 1995 and the Tahsildar erroneously issued patta in their favour also in 1996-1997.

4.5. In as much as all the lands in old survey No.40 were acquired in Award No.2/53, dated 31.03.1953 in favour of Madras Corporation, no vacant private land was available in the said survey number after the acquisition M/s.United Breweries Limited has managed to create certain false records in collusion with some Officials of Urban Land Ceiling Department and the Company had no title to sell the property to the plaintiffs.

4.6. After the issuance of the show cause notice, the first defendant has passed an order dated 07.08.2001, wherein the patta issued by the Tahsildar in favour of M/s.United Breweries Limited and the plaintiffs herein were cancelled and the Tahsildar was directed to carry out necessary changes in all the relevant revenue records. This order was challenged by the plaintiffs in W.P.No.14658 of 2001 and this court by an order dated 16.08.2001 was pleased to dismiss the writ petition and uphold the order of the 1st defendant. This order has become final and binding on the plaintiffs.

4.7. The 2nd defendant filed an independent written statement adopting the written statement of the 1st defendant. The 2nd defendant has further stated in the written statement that a property which has vested absolutely in favour of the Government, cannot be dealt with and M/s.United Breweries Limited had no title to sell the property in favour of the plaintiffs. Just because patta was granted in favour of the plaintiffs, that does not confer any title in favour of the plaintiffs. The plaintiffs are encroachers in the property belonging to the Corporation of Madras and action was taken to evict them, at which point of time the suit came to be filed by the plaintiffs.

5. The learned Single Judge based on the pleadings, framed the following issues:-

- 1) Whether the plaintiffs are entitled to declaration and injunction as prayed for.
- 2) Whether the award said to have been passed bearing No.2/1953 dated 31.-3.1953 is true, valid and binding upon the plaintiffs.
- 3) Are not the defendants governed by the plea or promissory estoppel in relation to the action finally concluded by the Urban Land Ceiling authorities.
- 4) Whether the order of cancellation of patta or order by the first defendant is sustainable.
- 5) Having issued licence by the local body for the construction of the building, are not the defendants acquiesced of the said fact and not entitled to challenge the title to the suit property.
- 6) Whether the right claimed by the defendants is barred by time in the light of Section 30 of the Limitation Act, 1963.
- 7) To what relief the parties are entitled?"

5.1. On the side of plaintiffs, the first plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.42 was marked. On the side of the defendants, two Tahsildars were examined as D.W.1 and D.W.2 and Ex.D.1 and Ex.D.13 was marked on the side of the

defendants.

5.2. The learned Single Judge on appreciation the oral and documentary evidence and after taking into consideration the facts and circumstances of the case was pleased to decree the suit as prayed for. It is this judgment and decree of the learned Single Judge, which is under challenge in this Original Side Appeal.

6. M/s.Karthika Ashok, learned counsel appearing for the appellant Corporation made the following submissions:-

* The suit land was handed over to the Corporation in the year 1953 itself and thereafter, the vendor of the plaintiff did not have any title to sell the property to the plaintiffs and consequently plaintiffs also do not have any title over the suit property.

* The subject matter of the suit is the show cause notice issued by the first defendant. Subsequently, the first defendant has passed an order cancelling the patta given in favour of the plaintiffs and directed changes to be made in the revenue records. This order was challenged by the plaintiffs before this court in W.P.No.14658 of 2001 and the writ petition was dismissed by an order dated 16.08.2001 and the order has become final. That apart the vendor of the plaintiffs also filed a writ petition challenging the very same order of the 1st defendant which was allowed and in an appeal filed by the Collector of Chennai, a Division Bench of this court allowed the writ appeal and upheld the order of the collector dated 07.08.2001. In view of the same, the plaintiffs are left with no more cause of action to pursue the present suit which challenged the show cause notice.

* The learned counsel further contended that due to political reasons, originally no appeal was filed against the judgment and decree of the learned Single Judge. Ultimately, an appeal came to be filed with a delay of 1808 days. While considering the condone delay petition, the Division Bench has taken into account about the subsequent orders passed in the writ petition and writ appeal and held that the interest of the Government and the local body should be safe guarded in order to assert their right on a public property.

* The learned counsel further contended that applications have been filed by the appellant for raising additional grounds in the appeal, to file additional written statement in the suit and to receive additional documents in the appeal. The learned counsel wanted this court to allow these applications since all the documents that are relied upon as additional documents are public records and orders passed by this court and additional

pleading and additional grounds pertains to these additional documents. Therefore, the plaintiffs, who are aware about the order passed by this court and other public records, will not be put to any prejudice by allowing the applications.

* The learned counsel ultimately contended that a prime property belonging to the Corporation of Chennai will have to be safe-guarded by this court and the plaintiffs who do not have any title over the property, should not be allowed to knock off a valuable property belonging to the Corporation of Chennai.

7. Mr.P.Wilson, learned senior counsel appearing for Mr.Richardson Wilson, learned counsel for the respondents made the following submissions :

* The fact that the appellant is not able to produce the original Award No. 2 of 1953 till today shows that the claim made by the appellant is unsustainable. This added to the fact that Award No.2 of 1953 pertains to Saidapet Village and the same is clear from Ex.P.42.

* The order in the writ petition and the writ appeal will not act as res-judicata for the plaintiffs to independently establish their title over the property and therefore those orders will be of no consequence in the civil proceedings.

* The entire action was as a result of political considerations and there is no genuineness in the claim made by the Corporation of Chennai.

* The vendor of the plaintiffs have traced the title from 1915 onwards and the sale deed marked as Ex.P.1 clearly proves this fact. The patta was granted only based on this title and therefore the plaintiffs are entitled for the decree of declaration of title.

* There are no justifiable reasons for the appellant to file applications for raising additional grounds and for receiving additional documents and those applications are liable to be dismissed by this court.

* The learned senior counsel further contended that the learned Single Judge has properly analyzed the oral and documentary evidence available on record and there are no grounds to interfere with the findings of the learned Single Judge and this Original Side Appeal should be dismissed.

8. The points for consideration that arises in this appeal are:

1. Whether the plaintiffs have established

their title over the suit property?

2. Whether subsequent to the order passed by the first defendant after the issuance of show cause notice and which was upheld by this court in W.P.No.14658 of 2001 and W.A.No.2122 of 2005, the plaintiffs can be permitted to pursue the relief of declaration to declare the show cause notice as null and void?
3. Whether the proceedings of the Urban Land Ceiling authorities and the patta issued by the Tahsildar will confer any title on the plaintiffs and their vendor?
4. Whether the application filed by the appellant in C.M.P.No.14620 of 2017 to receive additional documents has to be entertained to enable this Court to pronounce the judgment satisfactorily and for a substantial cause?
5. Whether any ground has been made out by the appellant to interfere with the judgment and decree of the learned single judge?

9. Discussion:-

9.1. We will take up for consideration the 1st, 3rd and 4th points for determination. The plaintiffs have traced the title from M/s.United Breweries Limited by virtue of the sale deed executed in their favour in the year 1995. We have to therefore, see whether the vendor of the plaintiffs namely M/s.United Breweries Limited had title to the suit property at the time when they sold the property to the plaintiffs. For this purpose the plaintiffs rely upon Ex.P.1 which is the sale deed 18.09.1915 through which M/s.United Breweries Limited purchased a large extent of property. From the description of the property in the said sale deed, it is clear that they have purchased various survey numbers at Periyakoodal Village and Naduvakkarai Village in the Sembium Sub-District and Chengalpattu District. It is also the admitted case of the plaintiffs that after the acquisition proceeding that took place, major partitions of the lands were acquired and ultimately, the vendor was left with owning and possessing an extent of 4189 sq.metres of land together with an old dilapidated building. The plaintiff has not provided with any information in the plaint as to the details of the land taken in acquisition and the balance land left out after the acquisition. The only information provided both in the plaint as well as in the sale deeds executed in favour of the plaintiffs (Ex.P.2 to Ex.P.17) is that a total of 3880 sq.metres of land was available with the vendor and the same was conveyed to the plaintiffs.

Therefore, it becomes necessary for this Court to see if the vendor to the plaintiffs was left with 3,880 sq.metre after the acquisition and they had title over the said extent of property.

9.2. In the absence any details provided by the plaintiffs, this Court has to necessarily look out for details provided by the defendants regarding the acquisition proceeding. It is the case of the defendants that the entire property belonging to M/s.United Breweries Limited, including the present suit property was a subject matter of land acquisition proceeding initiated in the year 1950. After the entire lands were acquired, along with other survey numbers, the same was handed over to the Corporation of Madras on 09.04.1953. In order to substantiate the said contention reliance is placed on Ex.D.11. For an easy reference, Ex.D.11 is extracted here under:-

"CORPORATION OF MADRAS

The COLLECTORATE OF MADRAS

The undersigned officer of the Special Deputy Collectors office, land acquisition (T.P. Scheme) Madras hereby certify that I have personally handed over and I, the undersigned Officer of the Corporation of Madras, certify that I have taken over, on this day of 9th April 1953, the piece of land described as follows:

Sketch Municipal Division:Periakudal
Street:
Re-Survey No. Particulars given overleaf.
Area:
Number of Demarcation stones.
Reference to Correspondence - Award on : 2/53 dt.
31.03.53
Letter L.A.S.No. 111 dt. 31.3.53 from S.D.C
Handed over
Signed, name in full: K.R.B Srinivasan, 09.04.53
Spl

R1 for L.A
Official designation in full T.P, Schemes, Madras.
Taken over
Signed name in full K Krishna Kutty Menan
Official designation in full Surveyor, T.P. Section,
Corporation of Madras

To be made out in duplicate and copies to be retained by both the officers for submission to the Heads of their departments.

Bounded on

R.S. No	Extent A.C	North	East	South	West	Remarks
38	1.72	39/1&2	16	37,36/2 &3	40/5	2Palmyrah
39/1	1.32	40/6	5&16	38	39/2	2Palmyrah
39/2	2.08	40/6	39/1	38	40/5&9	6Palmyrah
40/5	1.00	40/9	38,39/2	36/1&35	35	2 Palmyrah 1 date tree
40/8	1.58	40/3	40/9	35	34	-
Total		7.70				

K.R.B.Srinivasan
09.04.53
Spl. R.I. For L.A.
T.P.Schemes,
Madras.

K. Krishnan Kutty,
Surveyor, T.P.Schemes,
09.04.53.

True Copy

District Revenue officer
Land and Estate Department
Corporation of Chennai."

9.3. Admittedly, the old survey number of the present suit property is 40/5. The entire Survey No.40 has been acquired in the Shenoy Nagar Town Planing Scheme on behalf of the Corporation of Madras. Ex.D.12 is the letter dated 04.12.2000 written by the 2nd defendant to the 1st defendant. In the said letter the Commissioner of Corporation has informed the District Collector that lands that were acquired for the Corporation of Madras under Award No.2/53, dated 31.03.1953 and was handed over to the Corporation, during the town survey operation that took place during the year 1965-1968, has been wrongly recorded in the land records by including it in T.S.No.5/Block No.14 of Periyakoodal Village, in the name of the Tamil Nadu Housing Board. Therefore, request was made to rectify the mistake and cancel the patta granted in favour of some private individuals and restore the records in the name of Corporation of Madras.

9.4. For the said letter, the Collector of Chennai wrote a reply letter dated 17.05.2001, marked as Ex.D.13, wherein it has been specifically stated that a Committee was constituted to

inspect and give a report and based on the report of the Committee, it has come to light that Corporation of Madras is the absolute owner of the land in T.S.No.5/15 and 5/18 of Periyakoodal Village, Egmore, Nungambakkam Taluk. A copy of the report was also enclosed along with this reply letter. In the said report, the patta that was wrongfully given to M/s.United Breweries Limited and the plaintiffs for the suit property, is also dealt with.

9.5. A close reading of the report that was marked Ex.D.13, reveals that the vendor of the plaintiffs was in possession of the property even after the acquisition proceeding. During the town survey operation in the year 1965, the land in old survey No.40/5 was wrongly included in T.S.No.5/Block No.14 of Periyakoodal Villge. An extent of 4189 sq.metres (1.04 acres) was sub-divided as T.S.No.5/15. The vendor of the plaintiffs took advantage of its possession and the wrong entry made in the land records and filed returns under Section 7(1) of the Tamil Nadu Urban Land Ceiling Act in the year 1988. This ultimately ended in the proceedings of the competent authority under the Urban land Ceiling Act, dated 20.02.1989 (Ex.P.30) wherein the said authority has passed an order to the effect that out of 4189 sq.metres, 309 sq.metres, is acquired under the Urban Land Ceiling Act and M/s.United Breweries Limited is permitted to retain 3880 is.metre. This proceeding under the Urban Land Ceiling Act and the various tax receipts and sanctioned plan granted by the Corporation of Madras, is relied upon by the plaintiffs in order to prove their title over the suit property.

9.6. The vendor of the plaintiffs was not made a party in the suit and therefore there was no occasion to get the version of the vendor regarding the title to the suit property. The plaintiffs could have atleast examined some one on the side of the vendor and filed all necessary documents from them explaining as to how 4189 sq.metre of land was left out during the acquisition proceedings that took place in the year 1950-1953. Admittedly, the acquisition proceedings was never challenged by the vendor of the plaintiffs. The sale deed of the vendor of the year 1950 covered a large extent of land out of which the plaintiffs claim that an extent of 4189 sq.metre still remained with the vendor. It is therefore the duty of the plaintiffs to explain as to how the vendor continued to have title over 4189 sq.metre of land, when it is the specific case of the defendants that the entire property belonging to M/s.United Breweries Limited was acquired and handed over to the Corporation of Madras. The plaintiffs have failed to establish this crucial factor.

9.7. The appellant has filed C.M.P.No.14620 of 2017 for receiving additional documents. The additional evidence sought to be brought in this appeal are all public records pertaining

to the acquisition proceedings, orders passed by this Court and the Draft Scheme for the Shenoy Nagar Town Planning Scheme. In this Case, this Court apart from examining the title of the plaintiffs, must also ensure that a prime property in the heart of the City is not knocked away against public interest. Therefore, even in the absence of any application for additional evidence, this court in exercise of its power under Order 41 Rule 27 (i) (b) of CPC can call for additional evidence in order to safe-guard a public property, which is a substantial cause for which the Appellate Court has been given an inherent jurisdiction.

9.8. Useful reference can be made to the judgment of the Hon'ble Supreme Court in Arjan Singh @ Puran V. Kartar Singh, reported in AIR 1951 SC 193. The relevant paragraphs in the judgment are as follows:-

"10. Section 107 of the code of Civil Procedure empowers the Appellate Court "to take additional evidence or to require such evidence to be taken," "subject to such conditions and limitations as may be prescribed." Rule 27 of Order 41 of the code of Civil Procedure prescribes the conditions and limitations in the matter. The rule first lays down that the parties to an Appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. It then proceeds to lay down two classes of cases where the Appellate Court may allow additional evidence to be produced. One class is where the Court appealed from has refused to admit evidence which ought to have been admitted. The other class is where the Appellate Court requires such additional evidence for itself-either to enable it to pronounce judgment or for any other substantial cause. The second clause of the rule requires that when additional evidence is allowed to be produced by an Appellate Court the Court shall record the reason for its admission."

In Paragraph 13 of the Judgment the Hon'ble Supreme Court has concluded as follows:

"13. It is very much to be desired that the Courts of appeal should not overlook the provisions of Clause(2) of the rule and should record their reasons for admitting additional evidence. We are not prepared, however, to accept the contention of the Appellant that the omission to record the reason vitiates the admission of the evidence. Clearly, the object of the provisions is to keep a clear record of what weighed with the Appellate Court in allowing the additional evidence to be produced-whether this was done on the ground (i) that the Court Appealed from

had refused to admit evidence which ought to have been admitted, or (ii) it allowed it because it required it to enable it to pronounce judgment in the Appeal or (iii) it allowed this for any other substantial cause. Where a further Appeal lies from the decision of the Appellate Court such recording of the reasons is necessary and useful also to the Court of further Appeal for deciding whether the discretion under the (1) 1866 (11) M.1.A.28; (2) 1931 (35) C.W.N, 925, Rule has been judicially exercised by the Court below. The omission to record the reason must, therefore, be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory. For, it does not seem reasonable to think that the legislature intended that even though in the circumstances of a particular case it could be definitely ascertained from the record why the Appellate Court allowed additional evidence and it is clear that the power was properly exercised within the limitation imposed by the first clause of the rule all that should be set at naught merely because the provision in the second clause was not complied with. It may be mentioned that as early as 1885 when considering a similar provision in the corresponding section of the Code of 1882, viz., Section 586, the High Court of Calcutta held that this provision for recording reasons is merely directory and not imperative vide Gopal Singh V. Jhakri Rai (1). We are aware of no case in which the correctness of this view has been doubted. It is worth noticing that when the 1908 Code was framed and Order 41, Rule 27 took the place of the old section 586, the legislature was content to leave the provision as it was and did not think it necessary to say anything to make the requirement of recording reasons imperative. It is true that the word "shall" is used in Rule 27(2); but that by itself does not make it mandatory. We are therefore of opinion that the omission of the High Court to record reasons for allowing additional evidence does not vitiate such admission."

In paragraph 16 of the judgment the Constitution Bench has laid down the law in the following words:

"16. Apart from this, It is well to remember that the Appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause." There may well be cases where even though the Court finds that it is

able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under Rule 27(1)(b) of the Code."

9.9. This Court had an occasion to consider the law on the subject in detail in N.Natarajan Vs. The Executive Officer, Chitlapakkam Town Panchayat, reported in [2015 (2) CTC 681]. The relevant paragraphs are as follows:-

"34. Very recently in SURJIT SINGH V. GURWANT KAUR, 2015 (1) SCC 665, a Division Bench of the Hon'ble Supreme Court again considered the scope of Order 41, Rule 27(1)(b). After having made a complete survey of all the judgments more particularly the judgment referred to above the Hon'ble Supreme Court in Paragraph No.21 has held as follows:

"21. At this juncture, it is necessary to clarify that sub-rule (1)(a) of Order 41, Rule 27 is not attracted to the case at hand inasmuch as the documents were not taken on record by the trial Court and error, if any, in the said Order does not taken on record by the trial Court and error, if any, in the said Order does not survive for reconsideration after the High Court has given the stamp of approval to the same in Civil Revision. Similarly, sub-rule (1)(aa) would not be applicable as the party seeking to produce an additional evidence on the foundation that despite exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed does not arise, for the documents were sought to be produced before the trial Court. Cases may arise under sub-rule (1)(b) where the Appellate Court may require any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. However, exercise of the said power is circumscribed by the come to a definite conclusion that it is really

necessary to accept the documents as additional evidence to enable it to pronounce the judgment. The true test is, as has been held in *Parsotim v.Lal Mohar*, where the Appellate Court was able to pronounce the judgment from the materials before it without taking into consideration the additional evidence sought to be adduced. The same principle has been accepted by a Three-Judge Bench in *Arjan Singh v.Kartar Singh and others*."

35. A deep reading of all the above judgments and the relevant provisions of the Code of Civil Procedure would leave no doubt that additional evidence, whether oral or documentary, can be received by the Appellate Court either at the instance of the parties as provided in sub-rules (1)(a) & (1)(aa) or suo motu by the Court as provided in sub-rule (1)(b) provided any one of the contingencies enumerated in sub-rule (1)(b) exists impelling the Appellate Court to receive such additional evidence both oral and documentary. To exercise the power to receive additional evidence under sub-rule (1)(b) it is not at all necessary that a party to the Appeal should make an Application. What all that is required is the satisfaction of the Appellate Court that the additional evidence is required either for pronouncing the judgment satisfactorily or for any other substantial cause.

36. The learned counsel Mr.V.Ragavachari is not able to bring to my notice any judgment, either of the Hon'ble Supreme Court or of any other High Court, taking the view that power under Order 41, Rule 27(1)(b) cannot be exercised suo motu by this Court at the Second Appeal stage.

37. Now, we may refer to the judgment of the Delhi High Court in *Surjit v.Kishori Lal*, RSA No.277/2007 dated 08.05.2014, wherein, in Paragraph 8 the Delhi High Court has held as follows:

"38. However, in my opinion, there ought not to arise a position that no one is an owner of the Suit plot. Consequently, the facts of the present case persuade me to

exercise my suo moto powers under Order 41, Rule 27, CPC read with Section 165 of the Evidence Act, 1872. Both these provisions, de hors the Section 165 of the Evidence Act, 1872. Both these provisions, de hors the aspect of any default committed by the parties of leading sufficient evidence, allows a Court to bring evidence on record so as to do complete justice. In this case, complete justice is required to be done because once the defendant failed to prove the adverse possession, there has to be some definite ownership of the Suit plot and if ownership of the Suit plot was of M/s. Leela Ram and Sons and thereafter of plaintiff No.2, a suit for possession must reach its logical conclusion.

(emphasis added)

38. It is seen from the above judgment, that it was not argued before the Delhi High Court as to whether the Court has got suo motu power or not and thus it had no occasion to examine the said issue deeply. The Delhi High Court has, however, exercised its suo motu power to receive additional evidence at the appellate stage. This view is akin to the view which I have taken herein before. After having gone through the legal history commencing from 1931 Privy Council to 2015 judgment of the Hon'ble Appellate Court has got suo motu power to receive additional evidence, either oral or documentary, provided any one or more of the contingencies enumerated in the said Rule exists."

9.10. This Court therefore deems it necessary to allow C.M.P.No.14620 of 2017 and receive the following documents as additional evidence:-

1. 10.10.1950 - Gazette Publication
2. 05.01.1953 - G.O.M.S.No.61
3. 11.02.2011 - Order made in W.A.No.2122 of 2005
4. - Draft Scheme

The said documents are marked as Ex.D.14, Ex.D.15, Ex.D.16 and Ex.D.17 respectively. To be noted, no counter affidavit has been filed questioning the averments. The additional documents are also not seriously disputed.

9.11. Ex.D.14 which is a Gazette Publication made on 10.10.1950, covers the sanction for Shenoy Nagar Town Planning Scheme and acquisition of land required for the purpose of the

said scheme. In schedule IV to the Gazette, Survey No.40/5 of Periyakoodal Village is included.

9.12. Ex.D.15 is G.O.M.S.No.61 dated 05.01.1953. It is an errata which rectified the mistake in the earlier notification. In the said G.O schedule V specifically covers the Survey numbers acquired in Periyakoodal Village in which the entire lands belonging to M/s.United Breweries Limited is covered.

9.13. Ex.D.17 is the draft scheme of Shenoy Nagar Town Planning Scheme which gives the entire details of the lands proposed to be acquired for Shenoy Nagar. Under schedule IV, the entire land in Survey No.40/5 was proposed to be taken over towards road, reserved and plots.

9.14. The above said documents along with the handing over letter which has already been marked as Ex.D.11, makes it clear that what ever has acquired for the Corporation of madras was handed over to the Corporation including Survey No.40/5.

9.15. Surprisingly, in this case, the original Award No.2/1953 is not able to be produced by the defendants. No proper explanation is forthcoming as to how the original Award No.2/53, dated 31.03.1953 is missing. This case does have certain political over tones and the authorities have acted as per the dictates of who ever was in the power and documents are being produced in a peacemeal manner and vital documents are not being shown to the Court. This Court is not concerned with the political over tones and what is important for this Court is to find out who is the true owner of the property. For the said purpose, this Court is duty bound to collect all the materials and ensure that a public property is not knocked away by some private parties with the connivance of some gullible officers.

9.16. The plaintiffs are heavily relying upon the proceedings under the Urban Land Ceiling Act and also the patta issued in favour M/s.United Breweries Limited and the plaintiffs by the Tahsildar. It is unfortunate that some officers under the Urban Land Ceiling Act proceeded to recognize M/s.United Breweries Limited as the owner of 4189 sq.metres of land, without even referring to the land acquisition proceedings and the title of Corporation of Madras over the lands. Obviously M/s.United Breweries Limited have taken advantage of their possession of a dilapidated building to portray as if they are owners of the lands and with the connivance of the authority under the Urban Land Ceiling Act, Managed to bring out some proceedings as if 3880 sq.metres belongs to M/s.United Breweries Limited and 309 sq.metres is in excess. These proceedings will not in any manner confer title on M/s.United Breweries Limited and these proceedings have happened behind the back of the Corporation of

Madras and therefore will not bind the corporation in any manner.

9.17. The learned senior counsel for the plaintiffs was repeatedly harping upon the non production of Award No.2/53, dated 31.03.1953 by the defendants. In a suit for declaration of title, it is plaintiffs who have to prove their case by adducing evidence and weakness of the defendants case will not confer title to the plaintiffs. In other words the plaintiffs will be non suited if they do not prove their title even if a defendant fails to prove his title. In this case the plaintiff has come before this Court seeking for declaration of title and it is for them to prove their title by adducing sufficient evidence that they are the owner of the property.

9.18. The plaintiffs in order to prove their title, will have to show that their vendor had title to the suit property. The overwhelming evidence on the side of the defendants shows that there was no land that was left for the M/s.United Breweries Limited after the acquisition proceedings and the entire lands have been handed over to the Corporation of Madras. A mistake that was committed during the town survey proceedings in the year 1965, cannot bring back the title of M/s.United Breweries Limited. The latin maxim "Nemo dat quod non habet" will squarely apply in the present case. The literal meaning of the maxim is that - No one can give what he does not have, this is a fundamental rule which states that purchasing a property from some one who doesn't have a title denies the purchaser of the property of any ownership or title over the same. In this case the vendor of the plaintiffs lost its title after the suit property was acquired and handed over to the Corporation of Madras. Therefore, the vendor could not have conveyed any title to the plaintiffs in the suit property. The plaintiffs cannot have a better title than their vendor.

9.19. We are therefore of the considered view that the plaintiffs have miserably failed to prove their title over the suit property.

9.20. We will now venture to decide the 2nd point for determination. Ex.D.5 is the proceeding of the Collector dated 07.08.2001 by virtue of these proceedings, the patta issued in favour of M/s.United Breweries Limited and in favour of plaintiffs were directed to be cancelled and the Tahsildar was directed to restore the name of Corporation of Madras in the revenue records. The orders in these proceedings were passed after giving notice and sufficient opportunities to both the plaintiffs and their vendor. In the said order, the Collector of Chennai had considered in detail right from the acquisition of lands and has also dealt with the assessment order passed by

the Urban Lands Ceiling Authority. In the said order it was categorically held that no lands were available for any private party after the acquisition in favour of Chennai Corporation and M/s.United Breweries Limited have created false records through Urban Land Ceiling proceedings. This order was passed after the show cause notice which is under challenge in the present suit.

9.21.This order came to be challenged by the plaintiffs by filing W.P.No.14658/2001. This Court passed an order dated 16.08.2001, which was marked as Ex.D.1. In the said order, this Court has upheld the order of the Collector of Chennai. The plaintiff filed an appeal in W.A.No.1495/2001 against the said order. The said appeal was withdrawn and the same was recorded by this court in its order dated 14.10.2003, which was marked as Ex.D.2. Therefore, the order of the 1st defendant has become final and binding on the plaintiffs. The order passed by this Court and marked as Ex.D-1 and Ex.D-2 are extracted hereunder for better appreciation.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

Thursday, the Sixteenth day of August Two thousand and one

PRESENT:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION No.14658 of 2001

and

W.M.P.No.21767 of 2001

M.Devarajan

...Petitioner

.Vs.

1.The State of Tamilnadu
rep.by the Commissioner and
Secretary,
Revenue Department, Fort.St.George,
Chennai.

2.The Collector of Chennai,
Singaravelan Maligai, Rajaji Salai,
Chennai-1.

3.The Commissioner,
Corporation of Madras,
Rippon Buildings,
Chennai-3.

4.The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai-31.

5.The Commissioner and Director of ULC & ULT,

Chepauk, Chennai-5.

6.The Assistant Commissioner (ULT),
Tondiarpet, Chennai-29.

..Respondents

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the respective affidavits filed therewith the High Court will be pleased to issue a Writ of Certiorari calling for the records with J3/74603/2000 from the second respondent and quash the same, concerning the property No.A-89 Brevry Road, Periyakudai Village, Anna Nagar, Chennai 600 102 more fully distributed in the Schedule to the petition had pass such further order.

WMP No.21767/2001:

Petition presented to the Court to front an order and stay of further proceedings in pursuance of the order dated 7.08.2001 passed in J3/74603/2000 by the Second Respondent concerning the property No.89 Bravery Road, Periyakudai Village, Anna nagar, Chennai 600 102 more fully described in the schedule pending disposal of the above petition.

ORDER: This writ petition & WMP coming on for orders as to admission on this day upon perusing the petitions and the affidavits filed in support and upon hearing the arguments of Mr.A.V.Arumugam Advocate for the petitioner, and for Mrs.P.Bagyalakshmi, Advocate for the 3rd respondent and Mr.M.S.Palanisamy for R 1 & 2 and 4 to 6, the Court made the following order:-

The petitioner seeks for the issuance of a Writ of Certiorari to call for the records in J3/74603/2000 from the second respondent and to quash the same, concerning the property No.A-89, Bravery Road, Periyakudai Village, Anna Nagar, Chennai 600 102.

2.According to the petitioner, the property in question is not covered by the award in Award No.2/953 in LC.No.22/1953, and in the circumstances, the impugned order seeking to cancel the patta standing in the name of the petitioner without giving proper opportunity to the petitioner is liable to be set aside. A perusal of the award as well as the other proceedings culminating in the passing of the impugned order discloses that the petitioner and whoever else was concerned with the award No.2/953 as well as the Award No.5/964 dated 20.07.1964 were issued with show cause notices before passing of the impugned order. The respondent by the impugned order after giving due notice to the petitioner as well as the other parties concerned

has held that in spite of the awards referred to therein, by mistake patta came to be granted in favour of certain other parties and in those circumstances the same needed correction which had been made by the impugned order dated 08.08.2001. By the impugned order, the second respondent has only corrected the mistake that had crept in, in the revenue records in which names of wrong persons have been registered which resulted in the grant of patta in favour of the petitioner and three other persons. Therefore, in such circumstances, when by the impugned order the mistake in the issuance of patta had been corrected, that too after giving due notice to the parties concerned, there is no scope for finding fault with the order of the second respondent in correcting such a mistake that had been made while issuing the patta in favour of certain parties concerned. Therefore, there is no scope for interfering with the order impugned in the Writ Petition. I do not find any illegality or irregularity in the impugned order. The writ petition fails and the same is dismissed. No costs. Consequently, connected W.M.P. Is closed.

SD/- V.Chandra Mohan
Special Officer (Grouping)

/True Copy/Forwarded by order/

Sd/-xx (R.Lalitha)
For SUB ASSISTANT REGISTRAR (C.S.)

To

- 1.The Commissioner and Secretary,
Revenue Department, Fort.St.George,
Chennai.
- 2.The Collector of Chennai,
Singaravelan Maligai, Rajaji Salai,
Chennai-1.
- 3.The Commissioner,
Corporation of Madras,
Rippon Buildings,
Chennai-3.
- 4.The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai-31.
- 5.The Commissioner and Director of ULC & ULT,
Chepauk, Chennai-5.

6.The Assistant Commissioner (ULT),
Tondiarpet, Chennai-29.

+1 cc to Mrs.Bagyalakshmi, Advocate on payment of charge on
63639.

+1 cc to the Government Pleader on payment of charges SR 64262.

VKap

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14-10-2003

Coram:

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
and

THE HONOURABLE MR.JUSTICE M.THANIKACHALAM
W.A.No.1495 of 2001

N.Devarajan

.Vs.

...Appellant

1.The State of Tamilnadu
rep.by the Commissioner and
Secretary,
Revenue Department, Fort.St.George,
Chennai.

2.The Collector of Chennai,
Singaravelan Maligai, Rajaji Salai,
Chennai-1.

3.The Commissioner,
Corporation of Chennai,
Chennai-3.

4.The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai-31.

5.The Commissioner and Director of ULC & ULT,
Chepauk, Chennai-5.

6.The Assistant Commissioner (ULT),
Tondiarpet, Chennai-29.

..Respondents

Appeal under Cl.15 of the Letters Patent against the order
dated 16.08.2001 made in W.P.No.14658 of 2001.

For Appellant : Mr.K.Ezhilmalai

For Respondents : Mr.S.T.S.Murthy, Spl.GP

Mrs.P.Baghyalakshmi

JUDGMENT

(Delivered by V.S.SIRPURKAR, J.)

Learned counsel Shri.K.Ezhilmani, appearing on behalf of Ms.R.Maheswari, counsel for the petitioner, makes a statement that he may be permitted to withdraw the writ appeal itself. The other side has no objection. In that view, the writ appeal as well as the connected CMP No.13368 of 2001 are disposed of.

Sd/-

Assis

tant Registrar

/True copy/

Sd/-

xx 7.11.03.

for

Sub.Asst.Registrar.

Jai: 14.10.2003

To

- 1.The Commissioner and Secretary,
Revenue Department,
Chennai-9.
- 2.The Collector of Chennai,
Singaravelan Maligai, Rajaji Salai,
Chennai-600 001.
- 3.The Commissioner,
Corporation of Chennai,
Chennai-600 003.
- 4.The Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai-600 031.
- 5.The Commissioner and Director of ULC & ULT,
Chepauk, Chennai-600 005.
- 6.The Assistant Commissioner (ULT),
Tondiarpet, Chennai-600 029.

•1 cc to the Govt. Pleader, Sr.59145.

BS

W.A.No.1495 of 2001

9.22. It is also seen that the vendor of the plaintiffs had also challenged the order passed by the 1st defendant in W.P.No.17483/2001 and this writ petition was allowed by an order dated 17.02.2002. Subsequently, the 1st defendant filed an appeal in W.A.No.2122/2005. The Division Bench of this Court after elaborately dealing with the matter dismissed the writ appeal by order dated 11.02.2011 (Ex.D.16). It will be appropriate to extract the following:-

"7. Therefore, we are of the considered view that, the order impugned passed by the appellant making certain remarks against the first respondent cannot be sustained. It is a settled proposition of law that, an adverse remark cannot be made against a party without affording an opportunity. Admittedly, in the present case on hand, the remarks have been made against the first respondent without affording an opportunity. Therefore, such remarks made against the first respondent cannot be sustained. At the same time, we have perused the order of the learned single judge passed in W.P.No. 14658/2001, which was also confirmed by the Hon'ble Division Bench in W.A.No. 1495/2001. It is not in dispute that the properties have been subjected to acquisition and award has been passed as early as in the year 1953 and thereafter in the year 1964. In pursuance of the awards passed, the said properties got vested with the Government. Thereafter, they got vested in the hands of the second respondent. The first respondent has also sold the property in favour of the petitioner in W.P.No. 14658/2001 by name Devarajan. Therefore, the appellants cannot maintain writ petition on merits in view of the fact that the subsequent purchaser had filed an independent writ petition and lost his case.

8. Considering the above said facts. We are of the considered view that, the order impugned, passed by the appellant will have to be sustained."

9.23. it is therefore clear that the attempt made by the vendor to question the order passed by the 1st defendant also failed.

9.24. The above mentioned orders took note of the acquisition proceedings and the apparent mistakes in the records that was attempted to be taken advantage of by the vendor of the plaintiffs. These orders will also have a significant bearing on the right, title and interest of the plaintiffs and their vendor over the suit property. The orders virtually confirmed the title of Corporation of Madras. These orders have become final and binding on the plaintiffs.

9.25. The second relief claimed by the plaintiffs challenging the show cause notice has virtually become stale due to the subsequent events. Therefore, this relief also cannot be granted in favour of the plaintiffs. The second issue in the point for consideration is answered accordingly.

9.26. The relief claimed by the plaintiffs for permanent injunction is a consequential relief upon declaration of title. This Court has found that the Corporation of Madras is the owners of the suit property. It is a settled principle of law that an injunction cannot be granted as against the true owner of the property. In this case particularly, the plaintiffs and their vendor have misused the system and have attempted to grab the property belonging to the Corporation of Madras. The property in question is a large extent of land measuring nearly 3880 sq.metres (Approx.41,764 sq.ft.) in the heart of the city. Under the given circumstances, the plaintiffs at the best can be termed only as tress-passers and they are not entitled for the relief of permanent injunction. There is no cause of action available on a show cause notice when the final order itself was upheld by the Court. Thus even the relief for declaration also is not maintainable.

9.27. The learned Single Judge has taken note of the patta granted in favour of the plaintiffs and has given weightage to the possession of the plaintiffs and their vendor. In our considered view, these factors are wholly irrelevant for the purpose of deciding the title. The learned Single Judge has given a lot of validity to the proceeding under the Urban Land Ceiling Act and has virtually relied upon the same for conferring title upon the plaintiffs. The learned Single Judge found fault with the Corporation of Madras for not proving their title. Unfortunately, the learned Single Judge has completely lost sight of the acquisition proceedings and the subsequent orders passed by the Collector of Chennai which was approved by this Court. We are of the considered view that the learned Single Judge has relied upon irrelevant materials for the purpose of deciding the title of the plaintiffs over the suit property.

9.28.We are not in agreement with the findings of the learned Single Judge while granting the reliefs in favour of the plaintiffs in the above suit. Accordingly we set aside the judgment and decree passed by the learned Single Judge in C.S.No.418/2001, dated 24.07.2009 and consequently we dismiss the suit.

10.The Original Side Appeal is allowed with cost through out payable by the plaintiffs to the defendants. Consequently, connected Miscellaneous Petitions are closed.

After pronouncing judgment, learned senior counsel appearing for respondents 2 to 5 would submit that inasmuch as possession is with respondents 2 to 5, there is likelihood of the same being taken over, status quo as on today may be ordered to be maintained for a period of six weeks.

2.Considering the submissions made and taking note of the fact that we have reversed the order of the learned single Judge, we deem it fit, in the interest of justice, to grant four weeks to maintain status quo. Accordingly, status quo as on today shall be maintained for a period of four weeks from today.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

To

1.The Collector of Chennai,
Singaravelan Maligai,
Rajaji Salai, Chennai-600 001.

2. The Assistant Registrar,
O.S. High Court, Madras.

+1cc to Mr.RICHARDSON WILSON, Advocate, S.R.No. 53543
+1cc to Mr.A.KARTHIKA ASHOK, Advocate, S.R.No. 55371
+1cc to the Government Pleader, S.R.No. 53146

Pre-Delivery Judgement
in O.S.A.No.24 of 2017 and
CMP Nos.14618 to 14620/2017

TR(07/08/2018)