IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.7857 of 2010 &
M.P.No.2 of 2010

1.Sagamma @ Sythoon Beevi
2.Ayisha Gani ... Petitioners

Vs

1.The Settlement Officer,
Chepauk,
Chennai - 600 005.

2.The Assistant Settlement Officer,
Chepauk, Chennai - 600 005.

3.The General Manager,
Tamil Nadu Small Industries
Development Corporation Ltd.,
Chennai - 600 016. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the first respondent in his Proceedings in R.P.No.8 of 2009 (E1), dated 05.02.2010 and quash the same.

For Petitioners : Mr.R.Jayaprakash

For Respondents : Mr.I.Sathish
Additional Government Pleader
for R1 and R2
Mr.B.Manoharan
Standing Counsel for R3

O R D E R

This Writ Petition has been filed for issuance of Writ of Certiorari to quash the order of the first respondent passed in his proceedings in R.P.No.8 of 2009 (E1) dated 05.02.2010, whereunder, ryotwari patta issued in favour of the petitioners by the Assistant Settlement Officer, Thiruvannamalai, vide proceedings in Ta.Pa.No.19 of 2000, dated 19.07.2000, was set aside.

2. The petitioners would state that the land measuring an extent of 9 grounds and 180 sq.ft in T.S.No.14, Alandaur Village, Mambalam-Guindy Taluk was originally owned by one Madhava Reddy, son of Gurupatha Reddy, who sold the land to Sulaika Beevi in the year 1948, who in turn, sold the properties to the petitioners in the year 1955. Since then, they are in continuous possession and enjoyment of the said land.

3. According to the petitioners, the lands were originally formed Zamin, Alandur Village, which was taken by the Government on 03.01.1951 under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948 [in short "the Act"] as per the G.O.Ms.No.3157 [Revenue], dated 09.12.1950 and a settlement was introduced. The petitioners applied before the Assistant Settlement Officer, Thiruvannamalai for issuance of ryotwari patta under Section 11 of the Act. The Assistant Settlement Officer, issued patta in favour of the petitioners, vide his orders dated 19.07.2000. Aggrieved over the same, the third respondent-Tamil Nadu Small Industries Development Corporation Limited [SIDCO] preferred an appeal.

4. It is a case of the third respondent that the land in dispute was owned by Shri Parthasarathy and others and the Competent Authority acquired the land and Award No.1 of 1962, dated 09.07.1962 was passed and the compensation was deposited in the civil Court. Thereafter, the land was classified as "Industrial Estate" in the revenue records. Hence, the Assistant Settlement Officer has no jurisdiction to issue patta in favour of the petitioners.

5. The first respondent, accepting the case of the third respondent, set aside the order of the Assistant Settlement Officer, which is under challenge in this Writ Petition.

6. The respondents have filed separate counter affidavit disputing the case of the petitioners, wherein, it is stated that the Land Acquisition Tahsildar, in his proceedings in Award No.1 of 62, dated 09.07.1962 acquired the land and deposited the compensation in civil Court. The name of Madhava Reddy does not find place in the orders of the Land Acquisition Tahsildar, but instead, Tvl.V.Parthasarathy, A.V.Sundaram, Kannammal and Kumari Saraswathi, Tmt.Jayalakshmi and E.K.Pattabiraman were listed as eligible persons for receipt of compensation on behalf of the said V.Parthasarathy. Then the name of the Industrial Estate has been registered in the revenue records. The Department of Industries, vide G.O.No.959, dated 23.07.1976 ordered the SIDCO to

maintain the property. The petitioners have not produced any valid documents to show that they have purchased the property and they claim right over through an unregistered document, wherein, there is no proper description of the property.

7. The respondents have further stated that one Krishna Bharathi Welfare Society has filed a suit in O.S.No.7163 of 1987, contending that the property has been enjoyed by them as 'acquired' not as 'purchased property' and therefore, the Assistant Settlement Officer, has no jurisdiction to issue patta under Section 11 of the Act. G.O.Ms.No.714, restricts all the Settlement Authorities to entertain fresh petition or appeal, after 29.08.1987.

8. Mr.R.Jayaprakash, learned counsel for the petitioners would urge that the petitioners are the absolute owners of the property by virtue of a sale deed of the year 1955 and based on their continuous possession and the title deed, the Assistant Settlement Officer, rightly granted patta in favour of the petitioners. It is further contended that the petitioners have established their possession in O.S.No.7163 of 1987. According to the learned counsel, the revision preferred by the third respondent, is time barred.

9. Per contra, Mr.I.Sathish, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.B.Mohan learned Standing Counsel for the third respondent, reiterated the averments made in the counter and further submitted that the Estate Officer, initiated proceedings treating the petitioners as unauthorized occupants under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, and directed the petitioners to surrender possession, and the order of the Estate Officer was confirmed by the District Court in C.M.A.No.181 of 1999, and by this Court in C.R.P.(NPD) No.1355 of 2007 on 22.06.2018.

10. Heard the learned counsels on either side and perused the materials available on record.

11. The issues arise for consideration in this Writ Petition is whether the ryotwari patta issued by the Assistant Settlement Officer, Thiruvannamalai in favour of the petitioners is valid and whether the revision preferred by the third respondent is barred by limitation.

12. In the instant case, it is not disputed that the lands were originally formed Zamin, Alandur Village, which was taken over on 03.01.1951 under the provisions

of the Act, by the Government, vide G.O.Ms.No.3157, Revenue Department, dated 09.12.1950 and a settlement was introduced. It is equally not disputed that the subject land was acquired by the Land Acquisition Tahsildar and an Award was passed in his proceedings No.1 of 1962, dated 09.07.1962 and thereafter, the land was classified as "Industrial Estate" in the revenue records.

13. A perusal of the judgment in O.S.No.7163 of 1987 would show that one Krishnabharathi Nagar Welfare Association, represented by its President Ninamohamed, instituted the suit for permanent injunction, restraining SIDCO, from interfering with the peaceful possession and enjoyment of the land and also obtained an exparte decree, dated 18.11.1992. In respect of the same property, the petitioners approached the Assistant Settlement Officer for issuance of patta under Section 11 of the Act, in the year 2000, claiming that they have been in continuous possession of the land for more than 50 years. It is pertinent to mention here that G.O.Ms.No.714, restricts all the Settlement Authorities to entertain fresh petition or appeal, after 29.08.1987. At the risk of repetition, it is stated that in the year 1962, the disputed land was acquired for establishment of Industrial Estate, however after about four decades, the application was given for ryotwari patta. However, without taking note of these facts and also without putting on notice to SIDCO, the Assistant Settlement Officer erroneously issued patta in favour of the petitioners.

14. A perusal of the impugned order would show that the petitioners lay claim over the property through one Sulaika Beevi and Madhava Reddy, but no document has been produced to establish that it was owned by them and further they seek relief based on unregistered document.

15. It is settled law that any order obtained by practicing fraud is a nullity. In the case on hand, as observed above, the petitioners suppressing the material facts clandestinely approached the Assistant Settlement Officer and snatched the order behind the back of the third respondent.

16. Reference may be made to the following decisions:-

(i) In (2007) 4 SCC 221 (A.V. Papayya Sastry and others v. Government of Andhra Pradesh and others), the Hon'ble Supreme Court has held as follows:

> "22. It is thus settled proposition of law that a judgment, decree or order obtained by playing

fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order--by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is nonexistent and non est and can not be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first in stance or by the final court. And it has to be treated as non est by every Court, superior or inferior."

(ii) In (1994) 1 SCC 1 (S.P. Chengalvaraya Naidu (dead) by LRS. v. Jagannath (dead) by LRS and others), the Hon'ble Supreme Court has held as follows:-

"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowear. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1 S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(iii) In CDJ 2005 SC 541 (The State of Andhra Pradesh & Another v. T. Suryachandra Rao), the Hon'ble Supreme Court has held as follows:

"9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath (MANU/SC/0192/1994 : 1994 (1) SCC 1).

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the trans action void ab initio. Fraud and deception are synonymous. Although in a

given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (MANU/SC/0802/2003 : 2003 (8) SCC 319).

11. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 77 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1 what

constitutes "fraud" was described thus: (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. MANU/UKHL/0012/1983 : (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by ad opting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive."

17. In the light of the above decisions of the Hon'ble Apex Court, in my considered opinion that the

patta issued by the Assistant Settlement Officer, Thiruvannamalai, in favour of the petitioners under Section 11 of the Act, is per-se illegal and it would amount to obtaining the order by playing fraud. Therefore, the first respondent has rightly set-aside the order of the Assistant Settlement Officer, Thiruvannamalai and hence, there is no question of limitation applies to the facts of this case. Further, admittedly, during the pendency of these proceedings, an eviction order was passed against the petitioners under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act.

18. In such view of the matter, this Court does not find any reason warranting interference in this Writ Petition and the same is dismissed as devoid of merits. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

r n s
To

1.The Settlement Officer,
Chepauk,
Chennai - 600 005.

2.The Assistant Settlement Officer,
Chepauk, Chennai - 600 005.

3.The General Manager,
Tamil Nadu Small Industries
Development Corporation Ltd.,
Chennai - 600 016.

+1 cc to Government Pleader Sr.No. 69716

W.P.No.7857 of 2010 &
M.P.No.2 of 2010

A.SK(22/10/2019)