

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.25355 of 2018 and
W.M.P.Nos.29501 & 29504 of 2018

1.N.Umapathy
2.Meera (Widow)
3.M.Menaka
4.V.Rajalakshmi

.. Petitioners

Vs.

1. The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Chief Secretary & Revenue
Administration Commissioner,
Ezhilagam, Chepauk, Chennai - 600 005.
3. The Collector,
Thiruvallur District, Thiruvallur - 602 001.
4. The District Revenue Officer,
Thiruvallur District, Thiruvallur.
5. The Revenue Divisional Officer,
Thiruvallur District, Thiruvallur - 602 001.
6. The Tahsildar,
Thiruvallur District, Thiruvallur - 602 001.
7. The Commissioner,
Survey & Settlement Department,
Survey House, Government of Tamil Nadu,
Ezhilagam, Chennai - 600 005.
8. M/s.JKS Infrastructure (Pvt.) Ltd.,
P-4, Black Bourn Lane,
3rd Floor, Kolkata,
West Bengal - 700 012.

9. The Block Development Officer,
Kadambathur.

.. Respondents

(R9 - suo motu impleaded as
per order dated 30.10.2018)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the 3rd respondent in Na.Ka.No.11554/2018/N1 dated 21.08.2018, quash the same and direct the respondents 1 to 6 to update records inconsonance with records of the 7th respondent to retrieve and restore Government lands in Survey Nos.848, 843, 842, 861 and 865 classified as cart track and water channel located in between S.Nos.732 and 839, 840 as per Polivakkam Village Map encroached by the 8th respondent.

For Petitioner : Mr.P.Subba Reddy

For Respondents : Mr.J.Pothiraj,
Special Government Pleader(R1 to R7)
Mr.Jayesh B.Dolia (R8)
Mr.D.Suryanarayanan,
Additional Government Pleader (R9)
Mr.R.Natarajan, Advocate Commissioner

O R D E R

(Order of the Court made by the Hon'ble Chief Justice and
M.Duraiswamy, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records of the 3rd respondent dated 21.08.2018 and to quash the same and direct the respondents 1 to 6 to update records inconsonance with records of the 7th respondent to retrieve and restore Government lands in Survey Nos.848, 843, 842, 861 and 865 classified as cart track and water channel located in between S.Nos.732 and 839, 840 as per Pollivakkam Village Map encroached by the 8th respondent.

2.Challenging the proceedings of the 3rd respondent dated 21.08.2018 in and by which the District Collector rejected the objections of the petitioners regarding the encroachment said to have been made by the 8th respondent over the cart tracks and irrigation channels in Survey Nos.848, 843, 842, 861 and 865 of Pollivakkam Village, Tiruvallur District.

3. According to the petitioners, these lands are classified as agricultural lands and there are several irrigation channels and cart tracks running through these lands and the 8th respondent, who has purchased these lands is consolidating the lands and is in the process of constructing a compound wall with a view to develop the same. Claiming that any such development would result in the petitioners' losing their right of way as well as normal irrigation sources to their lands, the petitioners have come forward with this Writ Petition challenging the order of the 3rd respondent.

4. The 3rd respondent viz., the District Collector filed her counter stating that the land was inspected and it was found that the lands belonging to the 8th respondent has been covered with compound wall by leaving a cart track pathway with a width of 3 feet. Further, the District Collector has stated that the 8th respondent was directed to utilize their patta lands without affecting the original nature of the detailed cart track and detailed channel land, which appears in between the patta lands. Further, the District Collector has stated that the construction put up does not belong to the 8th respondent and the building belongs to DMI St. Joseph Global School, which is not connected with the 8th respondent. The District Collector has also stated that during the inspection, it was found that a temporary shed exists for the workers involved in the construction of compound wall and other than the temporary shed, no other structure was found in between the patta lands and also in the detailed cart track and water channel.

5. The 8th respondent filed their counter wherein they have stated that the petitioners have already filed a Civil Suit in O.S.No.248 of 2018 before the Sub Court, Tiruvallur for the very same relief sought for in this Writ Petition and they failed to obtain any interim order in the said suit. The 8th respondent has also stated that the said suit is pending and the petitioners have intentionally, with a view to gain undue advantage, suppressed the fact of the pendency of the suit in O.S.No.248 of 2018. The 8th respondent has also produced the copy of the plaint in O.S.No.248 of 2018 in the typed set of papers.

6. On a perusal of the plaint in O.S.No.248 of 2018, it could be seen that the petitioners, who are the plaintiffs 1 to 4, have filed the suit in O.S.No.248 of 2018 for the following reliefs:

"(a) Permanent injunction restraining the defendant, his men, agents, servants, legal representatives or any one acting under them from raising any type of construction affecting the ingress and egress easement rights of the plaintiffs agricultural lands morefully described in the

Schedule-A property; and

(b) Mandatory injunction direction the Defendant to remove the encroachment made upon the plaintiffs lands more specifically described in the suit Schedule-B mentioned property; and

(c) Mandatory injunction directing the Defendant to restore the water channel, cart track, footpath as per the Village Map, FMB Sketch more specifically described in the suit Schedule - C mentioned property; and

(d) Permanent injunction restraining the Defendant, his men, agents, servants, legal representatives or any one acting under him from disturbing the plaintiffs peaceful possession and enjoyment of the suit Schedule - D mentioned property; and

(e) Award damages of Rs.2,00,000/- to the plaintiffs for causing agony to the plaintiffs by the acts of the Defendant; and

(f) for the cost of the suit and may pass further or other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

7. On a reading of the prayer sought for in the suit, it could be seen that the relief sought for in the suit and the consequential relief sought for in the Writ Petition are identical. When the issues involved in the suit as well as in the Writ Petition are identical, the petitioners should have disclosed about the pendency of the suit in O.S.No.248 of 2018 in the affidavit filed in support of the Writ Petition.

8. We have also perused the affidavit filed in support of the Writ Petition and we could not find any averment stated by the petitioners with regard to the pendency of the Civil Suit.

9. It is also pertinent to note that the suit was filed on 07.09.2018 whereas the Writ Petition was filed only on 24.09.2018, which means that on the date of filing of the Writ Petition, the suit filed by the petitioners was pending. In spite of the same, the petitioners suppressed the pendency of the suit in their affidavit. It is also pertinent to note that the petitioners failed to obtain any interim order in O.S.No.248 of 2018, which forced them to file the present Writ Petition.

10. One who comes to the Court, must come with clean hands. A petitioner, who approaches the Court is bound to state all the relevant facts which are relevant to the litigation. If he

withholds some vital or relevant material in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as the opposite party, which cannot be countenanced. A petition or an affidavit containing a misleading and/or an inaccurate statement or in which material facts are suppressed, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.

11. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor would the Court be justified to exercise jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in a case based on false claims or when relief is sought to be obtained by practicing fraud. No sympathy and equitable consideration can come to the rescue of such petitioner.

12. In the judgment reported in (1983) 4 SCC 575 : AIR 1983 SC 1015 [Welcome Hotel and others v. State of Andhra Pradesh and others], the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

13. In the judgment reported in (1991) 3 SCC 261 : AIR 1991 SC 1726 [G. Narayanaswamy Reddy and others v. Governor of Karnataka and another], the Supreme Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the Special Leave Petition, the Court observed:

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected."

14. In the judgment reported in (1994) 1 SCC 1 : JT 1993(6) SC 331 [S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others], the Supreme Court held that where a preliminary decree was obtained by withholding an important document from the Court, the party concerned deserves to be thrown out at any stage of the litigation.

15. In the judgment reported in (2007) 8 SCC 449 [Prestige Lights Ltd. V. State Bank of India], the Supreme Court held that

in exercising power under Article 226 of the Constitution of India the High Court is not just a Court of law, but is also a court of equity and a person who invokes the High Courts jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in R v Kensington Income Tax Commissioners (1917) 1 K.B. 486, and observed:

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

16. In the judgment reported in (2008) 12 SCC 481 [K.D. Sharma v. Steel Authority of India Ltd. and others], the Supreme Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141.

17. In the judgment reported in (2008) 1 SCC 560 [Udyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of Uttar Pradesh and another], the Supreme Court held that a Writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It should not suppress any material fact.

18. The decision in the case of Dalip Singh v. State of U.P.

and others, supra, has been relied upon by the Supreme Court in the case of V.Chandrasekaran and another v. The Administrative Officer and others, reported in (2012) 12 SCC 133. In V.Chandrasekaran and another v. The Administrative Officer and others, supra, the Supreme Court observed that the appellants did neither approach the statutory authority nor the Court with clean hands and therefore, they do not warrant any relief.

19. Similar view has been taken by the Supreme Court in the decision in Kishore Samrite v. State of U.P. and others, reported in (2013) 2 SCC 398, in which, it was held that no relief can be granted to a litigant, who has not come with clean hands before the Court and in fact, an unfair litigant needs to be deprived of any relief.

20. A person approaching a superior Court must come with clean hands. He should state all relevant facts and not suppress any material fact. In the present case, the petitioners have not disclosed that they have filed a Civil Suit in O.S.No.248 of 2018 in respect of the very same land. In these circumstances, we are of the considered view that the petitioners did not approach the Court with disclosure of true facts. Thus, the petitioners have not approached the Court with clean hands. Hence, they are not entitled to the relief sought for.

21. When the petitioners have resorted to alternate remedy by filing a Civil Suit, the present Writ Petition cannot be entertained. The Writ Petition has been filed with ulterior motive, which, we are not inclined to entertain. Since the petitioners have suppressed the material fact in the Writ Petition, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

va

To

1. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.

2.The Chief Secretary & Revenue
Administration Commissioner,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Collector,
Thiruvallur District,
Thiruvallur - 602 001.

4.The District Revenue Officer,
Thiruvallur District, Thiruvallur.

5.The Revenue Divisional Officer,
Thiruvallur District,
Thiruvallur - 602 001.

6.The Tahsildar,
Thiruvallur District,
Thiruvallur - 602 001.

7.The Commissioner,
Survey & Settlement Department,
Survey House, Government of Tamil Nadu,
Ezhilagam, Chennai - 600 005.

8.Thiru R.Natarajan,
(Advocate Commissioner)
No.415, Additional Law Chamber,
High Court Building,
Chennai-104.

+2cc to Mr.P.Subba Reddy, Advocate, S.R.No.10588
+1cc to Mr.R.Natarajan, Advocate, S.R.No.10736
+1cc to M/S.Aiyar & Dolia, Advocate, S.R.No.11440
+1cc to the Government Pleader, S.R.No.11318

सत्यमेव जयते

W.P.No.25355 of 2018 and
W.M.P.Nos.29501 & 29504 of 2018

RR(CO)
CS/26/02/2019

WEB COPY