

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : **04.04.2019**
Delivered on : 11.04.2019

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CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE S.THARANI

W.P. (MD) .No.12532 of 2018
and
W.M.P. (MD) .Nos.5985 and 6131 of 2019

L.Leela

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District at
Nagercoil.
2. The Revenue Divisional Officer,
Nagercoil,
Kanyakumari District.
3. The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.
4. The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.
5. The Estate Officer,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

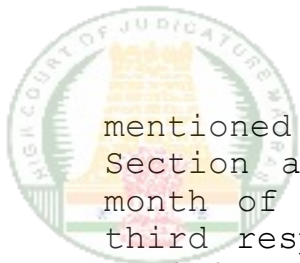
... Respondents

PRAYER: Writ Petition is filed under Section 226 of the Constitution of India for issuance of writ of Certiorari to call for the records pertaining to the impugned order passed by the fifth respondent in Roc.No.2520/2005/F1, dated 06.06.2018 and quash the same.

For Petitioner
For R1 to R3

: Mrs.J.Anandhavalli
: Mr.Aayiram K.Selvakumar
Additional Government Pleader
: Mr.P.Athomoola Pandian

For R4 & R5



mentioned in the challan, dated 18.07.1994 was allotted to C2 Section and it relates to the review of Survey's diary for the month of April 1994 and it has no relation to this subject. The third respondent has further stated that the husband of the writ petitioner has obtained favourable decree and judgment in collusion with certain revenue officials and hence, a criminal case was registered by the District Crime Branch, Nagercoil in Crime No.93 of 2013 and the same is pending before the Judicial Magistrate No.I, Nagercoil. The counter further proceeds that the land is essential for public utility purposes and it is important to reclaim the land for Government purpose.

7. The fifth respondent has denied and disputed the case of the petitioner. According to the fifth respondent, an area measuring 9.32 acres of land was transferred to Nagercoil Municipality vide G.O.(Revenue Department), dated 16.06.1986, to establish the Municipal Bus Stand. Out of 9.32 acres, 7.25 acres of the land was handed over to Nagercoil Municipality and the remaining area belongs to CSI Diocese. So, again, the Municipality approached the Government including Public Works Department and the Collector, Kanyakumari District, in his proceedings in Na.Ka.M3.No.81870/1999, dated 25.08.2000, transferred the right and title to the Nagercoil Municipality in respect of 2.07 acres of land including the land in dispute. It is further stated that the petitioner had obtained a decree by suppressing the fact and on the secret connivance with erred revenue officials.

8. It is also stated by the fifth respondent that the decree and judgment passed in O.S.No.150 of 2000 is not binding on the fifth respondent as the real owner / the Municipality was not impleaded in the suit.

9. The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the writ petition and also urged that since the Civil Court has already issued mandatory injunction directing the respondents 1 to 3 to grant Patta in favour of the petitioner, she cannot be now termed as an encroacher. It is the submission of the learned counsel that the Civil Court finding is binding on the fifth respondent when the application filed by the fifth respondent in the Execution Petition is pending consideration, the impugned order cannot be issued and hence the same is to be set aside.

10. Per contra, Mr.P.Athimoola Pandian, learned counsel for the fifth respondent would state that the petitioner and her husband Vasudevan knowing fully well that the fifth respondent was the owner of the property, without including the fifth respondent had filed the suit colluding with the revenue officials and hence, the judgment is not binding on the fifth respondent.

11. Heard the rival submissions and perused the materials available on record.



12. In the case on hand, it is not disputed that the property in Survey Nos.2/2, 3 and 4 were classified as poramboke lands. It is seen that 'A' register produced by the first respondent would show that the land was originally classified as Kanmoi. The suit in O.S.No.140 of 2000 was laid mainly relying on Ex.A1, a perusal of which shows that the Tahsildar had inspected the site on 09.02.1976 and even after seeing that it was classified as Kanmoi poramboke has recommended for reclassification of the land as poramboke. He has referred in his letter that the site is not required for public purpose and it will not affect the tank in any way. It is also observed that the petitioner is an encroacher of the land. It is evident from the judgment in O.S.No.140 of 2000 annexed in the typed set that no piece of material was produced before the trial Court to show that the value of the land was fixed at Rs.6,372/- in the year 1976 and it was enhanced to Rs.15,000/- in the year 1994. We want to make it clear that the value said to have been fixed by the District Collector was not produced before the Civil Court.

13. In the counter filed by the fifth respondent, it is specifically stated that the challan was not issued for payment of land cost of Rs.15,000/- and it relates to some other file and a criminal case is also registered in this regard in Crime No.93 of 2013. Therefore, the submission of the learned Standing counsel for the fifth respondent that the decree was obtained behind his back and also in collusion with the revenue officials cannot be brushed aside lightly. It is relevant to point out that the petitioner is said to have deposited Rs.15,000/- in the year 1994 and has been enjoying the property for the past 25 years without paying rent.

14. It is settled position of law that the decree obtained by playing fraud is a nullity. In **CDJ 2005 (SC) 541** (the State of Andhra Pradesh and Another vs. T.Suryachandra Rao), the Hon'ble Supreme Court has held as follows:

"12. In that case it was observed as follows: "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 traphim 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 17 of the Contract Act 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 the fact with knowledge that it was false. In a leading English case *Derry v. Peek* [(1886-90) ALL ER Rep 1: (1889) 14 AC 337 (HL)] what constitutes fraud was described thus : (All Er p. 22 B-C)

13. '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'."

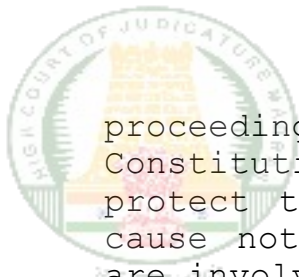
14. This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal* (2002 (1) SCC 100) *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* (2003 (8) SCC 311), *Ram Chandra Singh's case* (supra) and *Ashok Leyland Ltd. v. State of T.N. and Another* (2004(3) SCC 1).

15. Suppression of a material document would also amount to a fraud on the court. (see *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996 (3) SCC 310) and *S.P. Chengalvaraya Naidu's case* (supra).

16. "Fraud" is a conduct either by letter or words, which induces 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. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav's case* (supra).

17. In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.

15. In view of the above facts, we find no force in the submission of the learned counsel for the petitioner. Perusal of the photographs reveal that the buildings in dispute are situated in the middle of the Highways. When the Municipality initiates



proceedings to serve the larger interest of public, the Constitutional Courts shall not interfere in a routine manner to protect the interest of some individual especially in cases show cause notice are challenged and also disputed questions of facts are involved.

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16. A similar show cause notice challenged by one G.Rajesh in W.P.(MD).No.15143 of 2018 was dismissed by this Court, on 13.07.2018. Considering the facts and circumstances of the case, in our considered opinion the writ petition has no merits and the same is liable to be dismissed and accordingly dismissed.

17. If the petitioner gives a reply to the show cause notice within a period of two weeks from today, the fifth respondent shall consider the same and pass orders in accordance with law, failing which the fifth respondent shall take steps to remove the encroachment forthwith. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The District Collector,
Kanyakumari District at
Nagercoil.
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+1CC TO MR.J.ANANDHAVALLI, Advocate Sr. No.60288
+1CC TO MR.P.ATHIMOOLAPANDIAN, Advocate Sr. No. 60509

Pre-delivery order made in
W.P. (MD) .No.12532 of 2018
11.04.2019

TR (16.04.2019) 7P 8C