



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM: JUSTICE N.SESHASAYEE

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WP.No.4734 of 2021

Dr.Anbuchelvi Appulingam

...Petitioner

-Vs-

1. The District Collector,
Kancheepuram District.

2. The Revenue Divisional Officer,
Tambaram Revenue Division,
Kancheepuram District.

3. The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.

4. M.Muneeswaran

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.833/2018/A dated 31.08.2018, in so far as it relating to directing the 3rd respondent to effect mutation of patta in favour of the writ petitioner, based on the outcome of the criminal proceedings and set aside the same as illegal, arbitrary, contrary to statute, Revenue Board Standing Orders and further direct the 3rd respondent to forthwith effect change of patta in favour of the writ petitioner, pursuant to the Sale Deed in her favour dated 06.07.2006 registered as Document No.4947 of 2006 at the office of Joint-Sub Registrar, Saidapet, Chennai for her vacant house site plot bearing No.64, measuring an extent of 2100 sq.ft situated, in Survey No.693/2, Thiru-Vi-Ka-Public Servant's Welfare House Site Society, Pallikaranai Village, Tambaram Taluk, within a time as may be fixed by this Court.

For Petitioner : Mr.R.Veeramani

For R1 to R3 : Mr.E.Balamurugan
Special Government Pleader



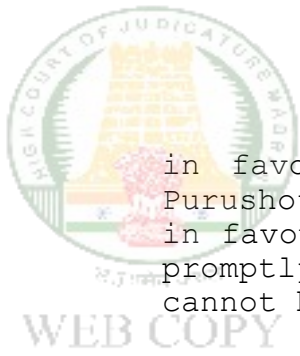
ORDER

This petition is filed seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.833/2018/A dated 31.08.2018, insofar as it relates to directing the 3rd respondent to effect mutation of patta in favour of the writ petitioner, based on the outcome of the criminal proceedings and set aside the same as illegal, arbitrary.

2. The one-liner of this case according to the petitioner is that a certain Muneeswaran has challenged the title of the petitioner over a plot of land on the strength of a fraudulent fabricated sale deed, and obtained patta in his name. She moved the second respondent - Revenue Divisional Officer (hereinafter RDO) to restore her name in the revenue records, but that was rejected Vide the impugned order.

3. The facts as could be gathered on a combined reading of the affidavit herein filed along with the materials in the typed set of papers filed by the petitioner are:

- Petitioner claims title over a plot of 2,100 sq.ft. in S.No:693/2 of Pallikaranai Village. It originally belonged to a certain Purushotaman. According to the petitioner, Purushotaman sold it to one Sivakumar, who in turn sold it to the the petitioner under a sale deed dated 06-07-2006. While so, a certain Muneeswaran, arrayed as 4th respondent herein, aided by another person, who impersonated himself as Purushotaman, had fabricated false documents, and brought into existence a fraudulent sale deed on 21-08-2006, as if Purushothaman had sold the property to Muneeswaran.
- The petitioner, on coming to know of this mischief, made a complaint to the police, based on which an FIR was registered in Crime No:163/2015 against Muneeswaran. She also required the Registration authority to cancel the registration of the aforesaid fraudulent sale, for which purpose she obtained an order of this Court to consider her representation pending before the said authority, in W.P.43033 of 2016. The registering authority however, directed the petitioner to approach the civil court for remedy.
- Consequent to this, the petitioner instituted O.S.207/2018 before the Principal District Court, Alandur, arraying both Purushothaman, the original owner and Muneeswaran respectively as first and second defendants, for a



in favour of Muneeswaran is stated to have been executed by Purushothaman himself. Petitioner cries foul of the sale deed in favour of Muneeswaran as fraudulent and bad in law. She also promptly files a civil suit. Up to this point her strategy cannot be questioned.

6.1 What happens thereafter is disturbing. Muneeswaran remains exparte. And, a compromise memo appears to have been filed to which Muneeswaran was not a party. But, it still reads that Muneeswaran had agreed to hold the sale deed in his favour as fraudulent, a self incriminating statement of an accused, if only it was ever made. It amazes the conscience of this Court as to how the consent of a non-participating defendant, and the one who was accused of committing a crime, was procured.

6.2 Then comes the Lok Adalat. It heard both the plaintiff (petitioner herein) and Purushotaman, between whom there is no dispute, and then proceeds very strangely to 'decree the suit as prayed for'. This indeed is startling. In Afcons Infrastructure Limited and another Vs. Cherian Varkey Construction Company Private Limited [(2010) 8 SCC 24], the Hon'ble Supreme Court has held:

'27. The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:

(i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.,).

(iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of



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documents, forgery, impersonation, coercion, etc.

(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

(vi) Cases involving prosecution for criminal offences.' (emphasis supplied)

The facts of the case fit with utmost comfort within the forbidden domain of the Lok Adalat, since the Lok Adalat had taken upon itself to resolve an issue of fraud and fabrication of document by impersonation. Even though the Hon'ble Supreme Court has made a general qualification when it used the expression 'normally considered not suitable for ADR', it cannot be construed that the caution which the Supreme Court advocates can be over looked.

7. The flaws in the proceedings of the Lok Adalat are far too apparent for this court to ignore:

- The court should not have referred the matter to the Lok Adalat, nor the latter should have entertained it as one fit for resolution by it, since the fraud is the core of the petitioner's cause of action in the suit.
- Secondly, the Lok Adalat is only expected to facilitate the parties to a dispute to resolve their differences and to pass an award, and not expected to wear the robe of a Judge and assume an adjudicatory role. The 'decree' it has passed is plainly incompetent. [See: LIC Vs Suresh Kumar [(2011) 7 SCC 491], the Hon'ble Supreme Court observed that: "It is needless to state that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed."]
- Thirdly, it failed to note that there was no dispute between those who appeared before it. And, the one who might have offered a contest was not before it. It does appear that the Lok Adalat had functioned well below the standards expected of any Lok Adalat on that day.

8. It is seen that there is no reference to this Award (or is it a 'decree'?) of the Lok Adalat in the affidavit of the petitioner but its copy is available in the typed set. Arguments too were addressed on its basis. The manner of passing this



award defies law and logic; and shakes the rule of fairness. This Court, having taken cognizance of an incompetent award, realises a duty dawning on it not to blindfold itself to this flagrant illegality and allow it roam free. In Bangalore Development Authority v. Vijaya Leasing Ltd., [(2013) 14 SCC 737], the Supreme Court observed:

"Therefore, while exercising the extraordinary jurisdiction under Article 226 of the Constitution, the learned Single Judge came across the above incongruities in the proceedings of the Hon'ble Minister which resulted in the issuance of denotification dated 5-10-1999. We fail to note as to how the ultimate order of the learned Single Judge in setting aside such a patent illegality can be held to be beyond the powers vested in the constitutional court. The conclusion of this Court in Gujarat Steel Tubes case [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] that judicial daring is not daunted when glaring injustice demands even affirmative action and that authorities exercising their powers should not exceed the statutory jurisdiction and correctly administer the law laid down by the statute under which they act are all principles which are to be scrupulously followed and when a transgression of their limits is brought to the notice of the Court in the course of exercise of its powers under Article 226 of the Constitution, it cannot be held that interference in such an extraordinary situation to set right an illegality was unwarranted."

This Court, hence takes the extraordinary decision of setting aside the Award of the Lok Adalat, dated 19-05-2019, passed in O.S. 207 of 2018 on the file of the District Munsiff Court, Alandur, in exercise of its powers under Article 226 and 227 of the Constitution of India. See also : Annapurani Vs Janaki [1995-1-LW 141]

9. This Court requires the State Legal Services Authority to adequately sensitize both the District Judiciary and also those who constitute the Lok Adalat on the aspects that are herein discussed.

10. Now, it is important that in a suit of this nature, the Court concerned ought to pass a decree. Even if it were to be an exparte decree (since Muneeswaran remained exparte) still it will be a product of adjudication by a Court, passed in



conformity with the procedure and the rule of fairness that lies beneath it. The trial Court now has to pass a decree in the manner that the Code of Civil Procedure mandates, and the plaintiff's remedy lies there.

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11. As and when the trial court proceeds with O.S.207 of 2018, it will caution itself not to be influenced by anything that are stated in this Order against the petitioner's strategy. To a large part, these are the strategies evolved by those who provide professional legal assistance. And today, that game is over. What will be now before the District Munsiff Court is a suit pending trial, and the trial Court is required to dispose of the same in accordance with law.

12. Turning to the core allegation on which the cause of action is founded in this case, the petitioner contends that the Revenue Divisional Officer has rejected her request for cancellation of patta issued to Muneeswaran, solely because a criminal case against Muneeswaran is pending. On going through the impugned proceedings of the RDO, this Court finds that the RDO merely refers to the criminal case, but has only directed the petitioner to approach the civil court for appropriate remedy.

13. This would now mean that the petitioner necessarily have to remove the cloud cast on her title for which she necessarily has to go back to the civil Court. This Court has already required the trial court to proceed with the case. If the trial Court finds merit in the case of the petitioner and decrees the suit, the petitioner will be at liberty to re-approach the RDO with a fresh request for cancellation of patta in the name of Muneeswaran and for issuing it in her name.

14. This petition is disposed of accordingly. No costs.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

dn/tsg

To:

1. The District Munsiff,
Alandur.



2. The District Collector,
Kancheepuram District.
3. The Revenue Divisional Officer,
Tambaram Revenue Division,
Kancheepuram District.
4. The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.
5. The Member Secretary
Tamil Nadu State Judicial Academy
Chennai.

+1cc to M/s.R.Veeramani, Advocate, Sr.13063
+1cc to the Government Pleader, Sr.13758

W.P.No.4734 of 2021

PCH[co]
NSK 27/08/2021