BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.11.2021
CORAM

**THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.(MD)Nos.19124 and 19125 of 2021
and
W.M.P(MD).Nos.15888, 15889, 15890 and 15891 of 2021

W.P(MD).No.19124 of 2021

D.Kothai ... Petitioner

Vs.

1. The Government of Tamil Nadu,
   Through its Secretary,
   Commercial Taxes and Registration Department,
   Fort St.George, Chennai - 600 009.

2. Inspector General of Registration,
   Mandhaveli, Chennai - 600 028.

3. Sub-Registrar,
   Aruppukottai.

4. District Collector,
   Virudhunagar,
   Virudhunagar District.

5. Tahsildar,
   Aruppukottai.

6. Aruppukottai Municipality,
   Aruppukottai,
   Through its commissioner.

7. Tamil Nadu Electricity Generation and
   Distribution Corporation Ltd.,
   Aruppukottai,
   Rep. by its Executive Engineer.

8. Superintendent of Police,
   Virudhunagar,
   Virudhunagar District.

9. Inspector of Police,
   Aruppukottai Town Police Station,
   Aruppukottai.

10. Director of Vigilance and Anti-Corruption,
    M.K.N.Road, Alandur, Chennai-600016.

11. T.R.V.Ramkumar.

12. T.R.Dhinakaran. ... Respondents

**Prayer**: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the fifth respondent Tahsildar, Arppukottai in Na.Ka.No.aa2.7929/2016 dated 29.11.2016 allegedly based on the entry in the Town Survey Register, quash the same and issue a mandatory direction to the respondents 5 and 6 to amend to include the name of the petitioner in the revenue records relating to the disputed property in Aruppukottai Village Iyan Dry S.Nos.195/2A,195/2B,195/3, 195/4A and 195/4B measuring Ac 5 Cents 20 corresponding to Aruppukottai Town Survey No.14/2,3 and 4 based on the Arbitration Award.

W.P(MD).No.19125 of 2021

D.Kothai ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Through its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 600 009.

2. Inspector General of Registration,
Mandhaveli, Chennai - 600 028.

3. Sub-Registrar,
Aruppukottai.

4. T.R.V.Ramkumar.

5. T.R.Varadharajan.

6. T.R.Dhinakaran. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent Sub-Registrar, Aruppukottai relating to the impugned illegal settlement document No.4787/2016 dated 09.12.2016, executed by T.R.Varadharajan (R5) in favour of T.R.V.Ramkumar (R4) in utter violation of the Award dated 23.02.1996, quash the same and direct the third respondent to make necessary entries in books relating to such quashing.

For Petitioner : Mr.T.S.R.Venkat Ramana
(in both W.Ps)
For Respondents : Mr.Ajmal Khan, Senior Counsel,
for M/s.Ajamal Khan Associates

for R4 and R5
(in W.P(MD).No.19125 of 21)
for R11 (in W.P(MD).No.19124 of 21)
Mr.P.Subbaraj,
Counsel for the State
FOR R1 TO R5,8 TO 10 in WP(MD).19124/21
and for R1 to R3 in WP(MD).No.19125/21

**COMMON ORDER**

The common petitioner in these two writ petitions assails an order dated 29.11.2016 of the fifth respondent-Tahsildar, Aruppukottai, in W.P(MD).No.19124 of 2021 and a settlement deed dated 09.12.2016 in W.P(MD).No.19125 of 2021.

2. The petitioner is the daughter of Mr.T.R.Dhinakaran, who is arrayed as a respondent in both these writ petitions. The petitioner states that her grandfather, the late Sadhu T.Ramasamy Naicker, had two wives and the petitioner is an heir through the second wife. The petitioner relies upon an arbitral award dated 23.02.1996 by which the properties of the extended family were partitioned between the five different groups of the family. The said award was pronounced under the Arbitration Act, 1940. Consequently, such award had to be converted into a decree of Court by filing an appropriate petition before the High Court. The petitioner states that O.P.No.279 of 1996 was filed for such purpose. Meanwhile, two siblings, namely, T.R.Varadharajan and T.R.Kannan challenged the said award. By a common order dated 07.10.1998, the High Court converted the arbitral award into a decree and dismissed the petitions challenging the award. The said common order was assailed by filing original side appeals. The said appeals were subsequently dismissed as withdrawn by an order dated 29.07.2010. According to the petitioner, as per Annexure IV of the award, the assets of Shri Ramalinga Mills Press Factory (SRM Press Factory) were allotted to Group 'B', namely, her father, Mr.T.R.Dhinakaran, and the the assets of Shri Pattabhi Textiles to Group 'C', namely, Mr.T.R.Varadharajan. The petitioner asserts that the award clearly describes the property allotted to Group B consisting of land admeasuring 5 acres and 20 cents and the property allotted to Group 'C' consisting of land admeasuring about 4 acres and 67 .

3. Pursuant to the award, the petitioner states that property tax was assessed as regards the above mentioned 5 acres and 20 cents in the name of Shri Ramalinga Mills Pvt. Ltd. and her father. The electricity service connection also stands in the name of Shri Ramalinga Mills Pvt. Ltd. In addition, the petitioner states that shopping complexes were constructed on the said land after obtaining requisite building permits in respect thereof.

4. The petitioner states that her father discovered that T.R.Varadharajan and his son attempted to grab the property of SRM Press Factory by creating a fraudulent settlement deed in favour of Shenbagadevi. Pursuant to objections raised by her father, the said document was not registered. Subsequently, it is stated that the petitioner came to know that the Sub-Registrar Office, Aruppukottai, in collusion with T.R.Varadharajan and his son, T.R.V.Ramkumar, registered a settlement deed on 09.12.2016 as Document No.4787 of 2016. Meanwhile, the petitioner's father filed W.P.(MD).No.24127 of 2016 to quash the earlier settlement deed in favour of Shenbagadevi which was pending registration. The petitioner alleges that the subsequently registered settlement deed was not disclosed in course of the said proceedings. According to the petitioner, she acquired knowledge of the settlement deed only upon obtaining a certified copy of the said document after receiving a communication from the Municipality about the mutation application.

5. Upon coming to know of the mutation of the patta in the name of Mr.T.R.Varadharajan, the petitioner's father submitted a petition before the Tahsildar, Aruppukottai seeking mutation of the patta in the name of the petitioner's father as per the arbitral award. The said application was rejected by order dated 29.11.2016. According to the petitioner, the said order is based on an illegal entry in the Town Survey Register dated 19.08.2016.

6. The petitioner states that her father orally partitioned and allotted the land, building and shopping complex to the petitioner and informed the sixth respondent-Municipality to amend the assessment in her name. Pursuant thereto, it is stated that the property tax assessment stands in the name of the petitioner and that municipal taxes have been paid for the period 2021-2022.

7. In these circumstances, the petitioner states that she received a letter dated 13.09.2021 from the Municipal Commissioner indicating that T.R.V.Ramkumar had given a petition to mutate the property tax assessments in his name on the basis of the settlement deed executed by Mr.T.R.Varadharajan in his favour. The present writ petitions are filed in these facts and circumstances.

8. The petitioner placed considerable reliance on the arbitral award. By referring to Annexure-IV of the said award, the petitioner pointed out that Sl.No.1(a) deals with the SRM Press Factory, Aruppukottai. In the table set out therein, the said assets were valued at Rs.64.39 lakhs and allotted to T.R.Dhinakaran. Pattabhi Textiles, Aruppukottai, is dealt with in Sl.No.1(b). The said assets were valued at Rs.59.96 lakhs and allotted to T.R.Varadharajan. The breakup of the valuation of the assets of SRM Press Factory are also annexed to the award. The said annexure clearly indicates that the land is of an extent of 5.2 acres and has been assigned a valuation of Rs.26 Lakhs. After assigning value to the buildings and machinery, an aggregate value of Rs.64.39 lakhs has been assigned.

Likewise, the breakup of the valuation of the assets of Pattabhi Textiles, Aruppukottai are also contained in the said annexure. The land is of an extent of 4.67 acres and has been assigned a value of Rs.23.35 lakhs. After assigning value to the building and machinery, an aggregate value of Rs.59.96 lakhs has been indicated. Thus, the breakup and valuation was incorporated in Annexure-IV which dealt with the allotment of assets to the five groups of the extended family.

9. In view of the above mentioned award, which was converted into a decree of Court, the petitioner says that the private respondents cannot question the title of the petitioner over the said assets. By relying upon the judgment of the Hon'ble Supreme Court in *Narayanamma and Another v. Govindappa and Others*, *(2019) 19 SCC 42* and, in particular, paragraph 14 thereof, the petitioner contends that no court will come to the assistance of a person who relies upon an immoral or illegal act. By contravening the terms of an arbitral award which attained finality, the petitioner contends that Mr.T.R.Varadharajan and his son are not entitled to the assets which were allotted to the SRM Press Factory.

10. The petitioner also relies upon a judgment of the Supreme Court in *Ripudaman Singh v. Tikka Maheshwar Chand*, *Civil Appeal No.2336 of 2021*. The petitioner places emphasis on paragraph 10 thereof, wherein the Court relied upon the judgment in *Kale and Others v. Deputy Director of Consolidation and Others*, *(1976) 3 SCC 119*, to hold that a family arrangement does not require registration if it records an understanding that had been previously arrived at orally. The petitioner also contends on such basis that the law requires that such family arrangements be given effect to. The petitioner also places the judgment of the Hon'ble Supreme Court in *Baleshwar Tewari by Legal Representatives and Others v. Sheo Jatan Tiwary and Others*, *(1997) 5 SCC 112*. By relying upon paragraph 15 of the said judgment, it is contended that entries in revenue records should not be given much importance since it is the paradise of the patwari.

11. On the contrary, Mr.T.R.V.Ramkumar and Mr.T.R.Varadharajan contest the maintainability of the writ petitions. By referring to the relief prayed for in W.P(MD).No.1924 of 2021, these respondents contend that the order of the Tahsildar was issued on 29.11.2016. Under the Tamil Nadu Patta Passbook Act 1983 (in short "the Patta Passbook Act"), an appeal lies against the said order before the jurisdictional Revenue Divisional Officer. Moreover, it is pointed out that the order was passed on a petition filed by Mr.T.R.Dhinakaran. Therefore, he should have filed an appeal under Section 12 of the Patta Passbook Act before the jurisdictional Revenue Divisional Officer. Such order cannot be assailed in proceedings under Article 226 of the Constitution by the daughter of Mr.T.R.Dhinakaran.

12. As regards W.P(MD).No.19125 of 2021, it is contended that a registered settlement deed bearing Document No.4787 of 2016 is assailed in such writ petition. These respondents contend that a registered document may be challenged by filing a civil suit but not by filing a writ petition. On this issue, these respondents refer to and rely upon the judgment of the Hon'ble Supreme Court in *Satya Pal Anand v. State of Madhya Pradesh, (2016) 10 SCC 767*. In particular, paragraph 40 of the said judgment is relied upon for the proposition that a writ petition is not the proper remedy and that an aggrieved person can challenge the registration and validity of the document before a civil court.

13. These respondents also point out that a writ petition would not ordinarily be entertained when there is a statutory alternative remedy. By relying upon the celebrated *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1* case, these respondents point out that the exceptions are where there is a violation of principles of natural justice, an infringement of fundamental rights or where the authority concerned did not have jurisdiction. According to these respondents, the present case does not fall within any of the three recognized exceptions. Besides, it is also pointed out that time limits are prescribed for challenging a registered document in the schedule to the Limitation Act, 1963. Specific reference is made to Articles 56 and 59 of the Schedule.

14. Based on the rival contentions, the first question that arises for consideration is whether these writ petitions are maintainable. Two of the private respondents contend that the writ petitions are not maintainable in view of the existence of an alternative remedy. The existence of an alternative remedy is not a bar to the exercise of jurisdiction under Article 226 of the Constitution. Nevertheless, it is a material factor while deciding whether to exercise jurisdiction. As regards the relief prayed for in W.P(MD).No.19124 of 2021, there is no doubt that the Patta Passbook Act enables an aggrieved person to file an appeal against the order of the Tahsildar by taking recourse to Section 12 thereof. In this case, the order of the Tahsildar is dated 29.11.2016. Such order was issued on a petition filed by Mr.T.R.Dhinakaran. Till date, it appears that he has not assailed the order. Instead, his daughter has assailed the order after the lapse of about five years.

15. As regards the relief claimed in W.P(MD).No.19125 of 2021, the petitioner seeks to quash a registered settlement deed dated 09.12.2016, bearing Document No.4787 of 2016. As held in *Satya Pal Anand*, a person aggrieved by the wrongful or fraudulent registration of a document should ordinarily approach the jurisdictional civil court. The obvious reason for relegating parties to the civil court is that the adjudication of the validity of the registered document would entail adjudication of disputed questions of fact, which cannot be conveniently addressed on affidavit evidence.

16. The petitioner relies heavily on the arbitral award, which was affirmed in subsequent proceedings before the Hon'ble High Court. If the said arbitral award was not adhered to by the parties thereto, the remedy is by way of execution proceedings under the Code of Civil Procedure. Unlike the Arbitration and Conciliation Act 1996, the Arbitration Act, 1940 did not contain a deeming provision by which the arbitral award is given the status of a decree of a civil court for purposes of execution. Therefore, an arbitral award under the Arbitration Act, 1940 becomes enforceable once such award is converted into a decree by an order of Court. In the case at hand, the admitted position is that the arbitral award was converted into a decree by order dated 07.10.1998. Although the said award was appealed against, it appears that the appeal was withdrawn on 29.07.2010. Thus, the award is capable of being enforced by filing an execution petition.

17. For reasons set out above, the present writ petitions are liable to be rejected. However, it is made clear that no findings have been recorded on the merits of the matter and it is open to the petitioner or Mr.T.R.Dhinakaran to exercise any or all of the following options in accordance with law: institute execution proceedings against the other parties to the arbitral award, file a civil suit or an appeal under the Patta Passbook Act.

18. W.P(MD).Nos.19124 and 19125 of 2021 are disposed of on these terms without any order as to costs. Consequently, connected W.M.P(MD).Nos.15888, 15889, 15890 and 15891 of 2021 are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Secretary,
   Government of Tamil Nadu,
   Commercial Taxes and Registration Department,
   Fort St.George, Chennai - 600 009.

2. Inspector General of Registration,
   Mandhaveli, Chennai - 600 028.

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 Aruppukottai Town Police Station,
 Aruppukottai.

10. Director of Vigilance and Anti-Corruption,
 M.K.N.Road, Alandur, Chennai-600016.

+1 CC to M/s.SPL.GP ( SR-33695[F] dated 08/11/2021 )

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-33807[F] dated 09/11/2021 )

+4 CC to M/s.T.S.R. VENKATRAMANA, Advocate ( SR-33647[F],33646 dated 02/11/2021 )

W.P.(MD)Nos.19124 and 19125 of 2021
02.11.2021

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