



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.01.2022

PRONOUNCED ON : 14.03.2022

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.571 of 2020

and

CMP (MD) No.3579 of 2020

and

C.M.P. (MD) SRNo.63612 of 2021 and Cont.P. (MD) SR.No.30335 of 2021

C.R.P. (MD) No.571 of 2020:

M/s Tamil Nadu Small Industries Development
Corporation Ltd.,

represented by its Branch Manager,
SIDCO Industrial Estate,
Ariyamangalam,

Tiruchirappalli-620 010. : Petitioner//Respondent/Judgment Debtor
(Defendant1)

Vs.

R.Krishnamoorthi : Respondent/Petitioner/Decree Holder/
(Plaintiff)

PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to strike out the petition in E.P.NO.218 of 2014 in O.S.No.168 of 1989 on the file of II Additional Subordinate Court, Tiruchirappalli.

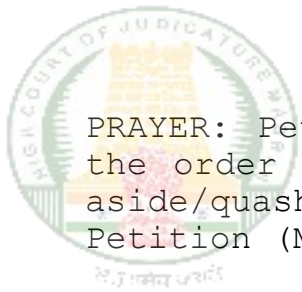
For Petitioner : Mr.Shangar Murali
For Respondent : Mr.R.Krishnamoorthi
Party-in-Person

C.M.P. (MD) SRNo.63612 of 2021

R.Krishna Murti : Petitioner/respondent/Party in Person

VS.

Smt.Jayalakshmi,
Branch Manager,
Tamil Nadu Small Industries Development
Corporation Ltd.,
SIDCO Industrial Estate,
Ariyamangalam PO,
Tiruchirappalli-620 010. : Respondent/Petitioner



PRAYER: Petition filed under Section 151 C.P.C., seeking to reopen the order dated 16.03.2020 in C.M.P.(MD)No.2493 of 2020 and to set aside/quash the order made on 16.03.2020 in the Civil Revision Petition (MD)No.571 of 2020.

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For Petitioner : Mr.R.Krishnamoorthi
Party-in-Person
For Respondent : Mr.Shangar Murali

Cont.P. (MD) SR.No.30335 of 2021

R.Krishna Murti : Petitioner/respondent/(Respondent)
Party in Person

VS.

1.K.S.Shankara Murali,
Advocate,
2nd floor, Hotel Sri Rajeswari building,
Municipal Office road,
Cantonment,
Tiruchy-620 001. : 1st Respondent/Counsel in CMP and /CRP

2. Smt.Jayalakshmi,
Branch Manager,
Tamil Nadu Small Industries Development
Corporation Ltd.,
SIDCO Industrial Estate,
Ariyamangalam PO,
Tiruchirappalli-620 010. : 2nd Respondent/Petitioner/Petitioner

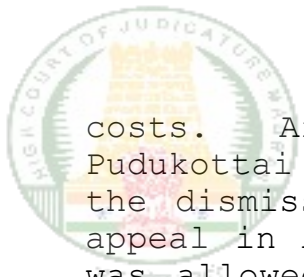
PRAYER: Petition filed under Section 151 CPC., and Sec.2 and Sec.2 (c) and Sec.11 and 15 of Contempt of Courts Act 1971 to initiate proceedings for contempt of Court as per law against the respondents.

For Petitioner : Mr.R.Krishnamoorthi
Party-in-Person
For Respondents : Mr.Shangar Murali

COMMON ORDER

The Civil Revision Petition has been filed, invoking Article 227 of the Constitution of India, to strike out the petition in E.P.No.218 of 2014 in O.S.No.168 of 1989, pending on the file of II Additional Subordinate Court, Tiruchirappalli.

2. The revision petitioner is the respondent/defendant/judgment debtor. The respondent/plaintiff/decreed holder has filed a suit in O.S.No.168 of 1989, on the file of the Sub Court, Pudukottai for recovery of a sum of Rs.80,000/- towards repair and construction



costs. After trial, the suit was dismissed by the Sub Court, Pudukottai vide judgment and decree dated 16.02.1995. Aggrieved by the dismissal of the suit, the respondent herein has preferred an appeal in A.S.No.418 of 1994 before this Court and the said Appeal was allowed and the case was ordered to be remanded to the trial Court, vide judgment dated 21.07.2010. After remand, the Sub Court, Pudukottai decreed the suit on 31.10.2011. Challenging the judgment and decree, dated 31.10.2011, the petitioner herein has preferred an appeal in A.S.No.9 of 2011 and the learned Additional District Judge, Pudukottai has passed the judgment dated 20.11.2013 dismissing the appeal and thereby confirming the judgment and decree passed by the Sub Court, Pudukottai. Since the decree was not complied with, the respondent has initiated the execution proceedings in E.P.NO.5 of 2012 before the Sub-Court, Pudukottai for attachment and a sale of properties of the judgment debtor. As per orders of this Court in Tr.CMP.No.77 of 2014, the execution petition pending on the file of the Sub Court, Pudukottai was ordered to be transferred to the file of the Sub Court, Trichirappalli and the petition was taken on file in E.P.NO.218 of 2014, on the file of the Additional Sub Court, Tiruchirappalli.

3. Though the petitioner has entered into appearance in the execution proceedings, by alleging that they have preferred a Second Appeal before this Court, had taken time. No doubt, the petitioner has taken a stand that they have preferred the Second Appeal before this Court and the same was returned for rectification of certain defects pointed out by the Registry and that since the Second Appeal papers were misplaced, steps were being taken to reconstruct the same.

4. As already pointed out, the respondent had initiated execution proceedings before the Sub Court in the year 2012, but till now, the petitioner has not shown that their Second Appeal was admitted and is pending. It is evident from the records that the petitioner has participated in some of the proceedings and remained exparte in some of the proceedings during the execution. It is further evident that the respondent has shown three plots of properties situated in (1) S.F.No.636/1, O.S.R.No.1 - 0.195 acres, (2) S.F.No.426, O.S.R.No.5 - 0.348 acres and (3) S.F.No.426, O.S.R.No.6 - 0.556 acres and after the transfer of the execution proceedings to the Sub Court, Trichirappalli, since one plot was situated within the territorial jurisdiction of Trichirappalli and the other two properties were situated within the jurisdiction of Pudukkottai, at the instance of the respondent, this Court has directed the Sub Court, Tiruchirappalli to proceed with the plot No.1 for Court auction and if the respondent is not able to realise the decree amount or there is any short fall in realisation of the decree amount, he is at liberty to proceed against the plot Nos.2 and 3. It is further evident that the respondent, thereafter has applied to the Executing Court and got permission to bid at the



Court auction and accordingly, in the Court auction, all the three properties were sold to the respondent. When the execution petition is pending for confirmation of sale, the above Civil Revision Petition came to be filed by the judgment debtor for quashing the execution proceedings. The revision petitioner along with the Civil Revision Petition has filed an application to accept the cause title in the Civil Revision Petition in C.M.P.(MD)No.2493 of 2020 and this Court has passed an order dated 16.03.2020 directing the petitioner to deposit the entire decretal amount along with interest on or before 30.03.2020. The petitioner, in pursuance of the directions of this Court, has deposited the amount and thereafter the Civil Revision Petition was taken on file.

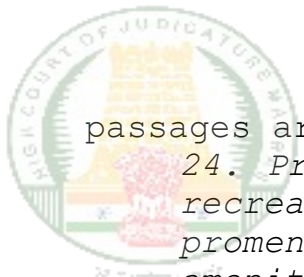
5. The only ground canvassed by the judgment debtor for quashing the execution proceedings is that the properties sought to be attached and sold are segregated as Open Space Reservation area and the same are in an approved lay-out plan granted by the Local Planning Authority and that neither the respondent nor the Government has any power to sell or encumber the said areas segregated as Open Space Reservation.

6. The learned Counsel for the petitioner/judgment debtor would submit that the properties segregated as Open Space Reservation cannot be sold, alienated and used for any other purpose as per the Tamil Nadu Parks, Play fields and Open Space (Preservation and Regulation) Act, 1959, that the said Act 1959 was virtually floated out by the Executing Court while ordering the sale of Open Space Reservation area, that the Executing Court ought not to have entertained the Execution Petition and ought not to have ordered to sell the Open Space Reservation area and that the Executing Court remained as silent spectator and thereby permitted the decree holder to perpetuate fraud on the judgment debtor.

7. No doubt, the respondent, who is appearing as a Party-in-Person would contend that the said plea was not at all raised before the Executing Court at any point of time and that the judgment debtor is not entitled to canvass that plea before this Court.

8. The respondent would submit that Open Space Reservation area alleged by the petitioner is false and is made deliberately to defeat the rights of the decree holder. He would further submit that the said properties were attached earlier and the same was informed to the concerned Sub-Registrar office and that the same was recorded, since the plots were only referred as usable plots.

9. Before entering into further discussion, it's time to refer the legal position with regard to Open Space Reservation Area. It is necessary to refer the leading judgment of the Honourable Supreme Court on this issue in **Bangalore Medical Trust Vs. B.S.Muddappa and Others** reported in **(1991)4 Supreme Court Cases 54** and the relevant



passages are extracted hereunder:

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.

.....

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its morn but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in



a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility. "

10. A Division Bench of this Court in **K.Rajamani and others Vs. Alamunagar Residents' Welfare Association and others** reported in **2011(1) CTC 257**, has specifically held that a survey of the law shows that the land once earmarked for public purpose cannot be earmarked for any other purpose and, particularly, to de-reserve or put to use as housing plots or any other purpose and the relevant passages are extracted hereunder:

"17. In our considered view, such power cannot be extended to alter, revoke or modify the conditions imposed in the layout plan. In that view of the matter, we hold that once such permission is accorded and in that permission if a specified area is earmarked for public purpose, even the planning authority shall not have power to exempt that land for being put to use for any other purpose. In that context, the State Government also cannot have any jurisdiction to alter the conditions imposed in the layout, whereby certain lands are earmarked as open space to be used for public purposes.

18..... In that view of the matter, the contention of Mr.K.M.Vijayan, learned senior counsel that the Government has power to de-reserve the land earmarked for public purpose to housing plots cannot be accepted. The learned Judge has rightly held that the Government has no power to de-reserve the open space and that finding requires no interference. Accordingly, we answer point no.

23. It is one thing to say that the land should be released to the owner and another thing to say to change the use of the said land. In this case, the question is whether after the layout has been approved showing certain extent of land to be used as park, etc., whether it could be de-reserved for the use of housing plots by an order of the



Government. The Government's power to de-reserve the land is not available after the layout plan is approved, except as per the provisions of Section 90, which confers power on the Government only in respect of legality or correctness of the layout plan and not in respect of power to change the usage of the land as shown in the layout."

11. In **Karpaga Nagar Nala Urimai Sangam represented by its Secretary Vs Municipal Administration & Water Supply Department represented by its Secretary** reported in **2007(4) MLJ 1006**, another Division Bench of this Court has held that the open space earmarked for public purpose cannot be altered and that the layout sanctioned by the Municipal authority cannot be altered by the Government by issuance of a Government Order de-reserving such plots.

12. A Single Judge of this Court in **E. Elumalai and Others vs. Corporation of Madras represented by its Commissioner and Others** reported in **2002(3) LW 180**, after considering the various decisions, has concluded that the places earmarked for the park and other purpose of civic amenity, cannot be taken away for any other purpose, even assuming that such purpose may be of public use and the relevant passages are extracted hereunder:

"10. One aspect of the matter is to consider the legality of the action of respondents land 2 relating to the provisions of law. The other aspect of it is as to whether the action of the first respondent would affect or interfere with the existing rights of the inhabitants of the locality. When admittedly, the public park is held to be an amenity or civic amenity to the residents of the locality, and the development authorities compel the promoter to earmark the specified place for such purpose, the Government officials themselves have to comply with those provisions, while undertaking the development work by submitting the Development Plan, and such of those civic amenities cannot be taken away by the administrative action of the executives.

11. The third respondent, who is the lessee to erect the kerosene bunk, contended that when already the buildings for the Noon meal scheme as well as well as Aavin milk booths are located, it cannot be said that the erection of the kerosene bunk is not in the interests of the public at large. Providing of kerosene to the downtrodden is also a public civic amenity and as such, the same cannot be objected. So long as the use of the land is for a public purpose, the same should be permitted.

12. This Court carefully considered the above contentions



raised on behalf of the third respondent Co-operative society. If such contentions are to be accepted, there cannot be any dispute that in future, the remaining land also may be taken away by the first respondent for some other purpose, which instantly may be of civic amenity or public amenity. In that case, the place earmarked for the public purpose such as public park, which is essential, considering the air pollution of the present days, will be totally lost for the other purposes. In such a situation, the decision of the Planning Authority to have the places earmarked for public purpose on the health ground of the residents of the locality, especially considering the air pollution of today will be totally disregarded."

13. It is necessary to refer the judgment of the Hon'ble Supreme Court in **M.I.Builders Pvt Ltd, Vs. Radhey Shyam Sahu** reported in **1999(6) SCC 464** wherein the Hon'ble Apex Court held as follows:

"By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality including density of population living in the area, the floating population and other certain relevant considerations. This study was never done. The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in Span Resort Case (M.C. Mehta vs. Kamal Nath 1997 I SCC 388) Public trust doctrine is part of Indian law. In that case the respondent who had constructed a hotel located at the bank of River Beas interfered with the natural flow of the river. This Court said (at SCC p 413 para 35) that the issue presented in that case illustrated.

"the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change."

In the treatise Environmental law and Policy, Nature, Law and Policy. Nature, Law and Society by Plater Abrahams



Goldfarb (American Casebook Series, 1992 under the chapter on Fundamental Environmental Rights, in Section 1 (The Modern Rediscovery of the Public Trust Doctrine) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the "doctrine of the public trust". In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was stated.

"The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests like the air and the sea have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And finally, that it is the principal purpose of a Government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit"

With reference to a decision in *Illinois Central Railroad Co., Vs. Illinois* (146 US 387- 37 L Ed 1018) 1892. It was stated that "the court articulated in the case the principle that has become the central substantive thought in public interest litigation. "When a state holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties".

Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only section 114 of the Act but also the public trust doctrine"

14. The Hon'ble Apex Court in **Anjuman E Shiate Ali and Others Vs. Gulmohar Area Societies Welfare Group and Others** reported in **AIR 2020 SC 2011** has observed as follows:

"23. It is also to be noticed that the open spaces are required to be left for an approval of layout or for the purpose of creating lung space for the owners of other plots where constructions are permitted. The 4 plots bearing Nos. 1, 3, 5 and 6, were sub-divided at the instance of the appellant-Society in its entirety and approval was taken for dividing such land into 61 plots. It is not open to claim for construction in the two plots



which are reserved for open spaces/garden spaces also. It is fairly well settled that in an approved layout, the open spaces which are left, are to be continued in that manner alone and no construction can be permitted in such open spaces. The Development Plan which was submitted in the year 1999, as per the 1991 DCR, will not divest the utility of certain plots which are reserved for open spaces in the approved layout. The appellants cannot plead that such a layout was only temporary and as a stop gap arrangement, the said two plots were shown as open spaces/garden and now they be permitted to use for construction."

15. Yet another Division Bench of this Court in **Sri Devi Nagar Residents Welfare Association V. Subbathal and Others** reported in **2007(3) LW 259** has observed as follows:

"11. The open space in a residential area or in busy townships is treated as lung space of the area. It provides fresh air and refreshment to the persons in the neighbourhood. Its presence ameliorates the hazards of pollution and it has to be preserved and protected for the sustenance of the men around. It is for the health and well-being of the inhabitants of the residential area. The same cannot be bartered for any other purpose. Apart from that, in view of the conditions imposed by the fifth respondent, by his proceedings dated 17.7.1974 addressed to the Executive Officer, Ganapathy Town Panchayat, which remain unchallenged by the owners of the layout land for all these years, the fourth respondent is estopped from using the area set apart as open space, for any other purpose."

16. Another Division Bench of this Court in **Kirubhakaran and Others Vs The Commissioner (East), Corporation of Coimbatore, Coimbatore**, reported in **2013(6) CTC 441**, while considering whether the Corporation has the power to permit construction of a private hospital in the area which is reserved for a public purpose, after referring to **Bangalore Medical Trust's case** as well as **Sri Devi Nagar Residents Welfare Association's case** rejected the contention that even though an offer was made by the Hospital to treat 50% of the patients free, the same cannot be held to be in public interest and rejected the appeal upholding the order of the learned Single Judge.

17. Considering the above, it is clear that the position of law is well settled that the areas earmarked for public purposes or open space reservation area cannot be used for any other purpose other than the purpose, for which they were earmarked and that the same cannot be alienated or encumbered.



18. As already pointed out, in the case on hand, the property sought to be attached and sold are shown as Open Space Reservation area. After hearing the arguments, this Court, on noticing a copy of the plan produced by the respondent, wherein the properties now under challenge are shown to be earmarked for canteen and mess, sought a clarification from both the parties.

19. Despite taking adjournments, both of them were not in a position to clarify the same. As rightly pointed out by the learned Counsel for the petitioner, the decree holder himself, in the execution petition filed in the year 2012, has specifically mentioned that the properties sought to be attached and sold are Open Space Reservation properties. In the approved layout plan produced by both parties, the properties now under consideration are shown as Open Space Reservation area. No doubt, as already pointed out, the petitioner/judgment debtor has not taken such a plea before the Executing Court, but since it is a question of law, the same can be raised at any time. Moreover, the respondent/decreed holder would submit that the said properties alleged as Open Space Reservation area by the judgment debtor were permitted to be used by the neighbouring three private companies and there existed collusion between them and the petitioner. If that be the situation, it is for the other owners, who had purchased the plots, to raise objections and it is for the concerned authority to keep the areas earmarked as Open Space Reservation area, without allowing anybody to use it for any other purpose.

20. Moreover, the Executing Court should have verified the description of the property before ever numbering the petition or at least should have seen the nature of the properties at the time of ordering attachment or at the time of settlement of proclamation or at the time of reducing the upset price or at least at the time of ordering sale of the properties. Neither the decree holder nor the judgment debtor nor the Executing Court has cared about the nature of the properties. Applying the settled position of law above referred, this Court has no other option but to hold that the very filing of the Execution Petition in respect of the property earmarked as Open Space Reservation area is legally not sustainable and consequently the entire proceedings are to be declared as invalid.

21. The respondent, as party-in-person, has been prosecuting the case from the trial Court till now before this Court, but he has taken some more defence which are untenable and not expected from a person conducting Court proceedings for the past 32 years. The first objection is that the revision should not have been entertained since the petitioner has not challenged any order/decretal order in the interlocutory applications of the trial Court. Secondly, he has taken the plea of limitation. According to



the respondent, the above revision petition is barred by limitation for a delay of more than 8 ½ years, as per Order 21 Rule 106 C.P.C. Since the petitioner has invoked Article 227 of the Constitution of India to quash the execution proceedings, the above objections, which are untenable and devoid of substance, are liable to be rejected instantly.

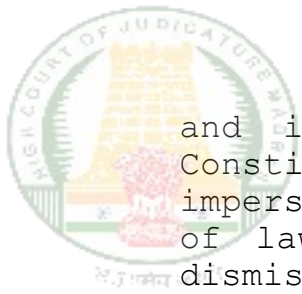
22. After reserving for orders in the main Civil Revision Petition, the respondent 10 days back, has appeared before this Court and represented that he has filed two petitions one for contempt and the other for restoration of the another C.M.P., that the Registry has been returning the petitions again and again and that the Registry may be directed to number the said petitions. Thereafter, I was informed by the Registry that the respondent has filed a petition seeking permission to initiate contempt proceedings against the Counsel for the petitioner for tampering the Court records and another application to re-open the petition in C.M.P. (MD)No.2493 of 2020, which was already disposed of by this Court and was confirmed by the Hon'ble Supreme Court and that the said petitions were returned and the respondent has been representing the same again and again. Thereafter, as per the directions of this Court, both the petitions were listed under the caption "for maintainability"

23. I have heard the submissions made by the respondent - party-in-person directly and the learned Counsel for the revision petitioner virtually.

24. The main allegation of the respondent in the contempt application is that the Counsel for the petitioner in order to escape from the limitation point, by striking out the provision of law shown as Section 115 C.P.C., altered the same as Article 227 of the Constitution of India without the permission of this Court and the relief claimed in contempt petition is extracted hereunder:

" CONTEMPT PETITION UNDER 151 OF CPC., AND CONTEMPTS OF
COURTS ACT 1971 (70 OF 1971) Sec.2 and Sec.2(c) and
Sec.11 and 15"

For the reasons stated in the accompanying affidavit it is very respectfully prayed that this Honourable High Court, Madurai Bench may be pleased for proceedings to contempt of court as per law, as the 1st Respondent had tampered the case bundle of CRP(MD)no.571/2020 and CMP (MD)no.2493/2020 in order to escape from the law of Limitation Act, as in Execution Order 21, R.106(3) since there had been a delay in filing 2980 days in the above case and for the same maintainability of Act originally entered as under Sec.115 of Civil Procedure Code was tampered and rewritten as Under Article no.227 of Constitution of India in the top of petition and then as, Under Article 222 of Constitution of India in the middle



and in the end of prayer as Under Article 227 of Constitution of India, and the 2nd respondent having made impersonalisation/imposter by subverting the due process of law and the Hon'ble Court may also be pleased to dismiss CRP(MD)No.571/2020, and as a consequential effect CMP(MD)no.2493/20 and CMP(MD)no.3579/20 apart from punishing the respt 1 and 2 and not to make any kind of proceeds till final disposal of this petition, in CRP(MD) no.571/2020 (listed on 05/7/2021 in court no.8, Hon'ble Justice Sri.Murali Shankar and thus render justice." (**extracted as such**)

25. Before hearing the parties, this Court was under the impression that probably, such alteration or correction could have taken place before filing the revision petition before the Registry or even after filing of the revision petition, on coming to know about the correct provision of law to be stated.

26. The learned Counsel for the petitioner would submit that before numbering of the petition, on instructions and as advised by the Registry, Section 115 C.P.C., was deleted and instead Article 227 of the Constitution of India was mentioned. He would further submit that by oversight and mistake, the copy meant for the respondent was omitted to be corrected and by taking advantage of the same, he has been raising such frivolous and vexatious allegations against him.

27. As rightly contended by the learned Counsel for the petitioner, just because the copies sent to the respondent was not corrected, it cannot be presumed that the correction was made only after numbering of the revision petition. Even assuming that such correction was made after filing of the revision or even after the revision was taken on file, it is not the case of the respondent that he was prejudiced or was affected by such alteration or correction. Moreover, the respondent has also not shown that the petitioner was benefited by such correction or alteration.

28. Section 2(c) of the Contempt of Courts Act, 1971 defines the criminal contempt and the same is extracted hereunder:

2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;



29. Considering the complaint of the respondent, he is attempting to bring the alleged tampering of records as contempt under Section 2(c)(iii) and according to him, the learned Counsel for the petitioner, by tampering the Court records, obstructed the administration of justice. It is also necessary to refer Section 13 of the said Act, which is extracted hereunder:

"13. Contempts not punishable in certain cases.— Notwithstanding anything contained in any law for the time being in force,—

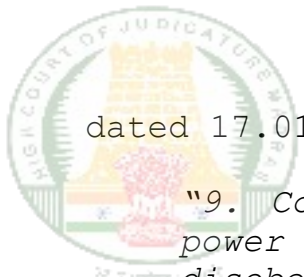
(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide."

30. Section 15 of the said Act contemplates that in the case of the criminal contempt, the Supreme Court or High Court can take action of its own motion or on a motion made by the Advocate General or any other person with the consent of the Advocate General. The respondent has also filed an application under Section 15(1)(b) of the Contempt of Courts Act seeking consent of the Advocate General for initiating the contempt proceedings in Consent Petition No.12 of 2021 and the learned Advocate General of Tamil Nadu, by observing that since the alleged offence is of a very serious nature of committing forgery before the High Court or using the forged document in the proceedings before the High Court, the High Court alone is competent for taking cognizance as prescribed under Section 195(1)(b)(ii) of Cr.P.C., and by following the procedure under Section 340 of Cr.P.C., advised the respondent to file appropriate complaint before the Registrar General of the High Court for suitable action for the alleged forgery of the affidavit and thereby declined the consent.

31. It is evident from the copy of the order of the Advocate General that the respondent herein has alleged that there was some alteration/deletion/correction made by the petitioner's Counsel without the knowledge of the High Court and that all of a sudden, a false affidavit has been filed before the High Court. But the respondent has not elaborated anything further about the affidavit alleged to have been filed.

32. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Ram Kishan vs Tarun Bajaj & Ors** (in Contempt Petition No.336 of 2013 in CIVIL APPEAL NO. 4985 of 2012,



dated 17.01.2014) has held as follows:

"9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi- criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. (Vide: V.G. Nigam & Ors. v. Kedar Nath Gupta & Anr., AIR 1992 SC 2153; Chhotu Ram v. Urvashi Gulati & Anr., AIR 2001 SC 3468; Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors., AIR 2002 SC 1405; Bank of Baroda v. Sadruddin Hasan Daya & Anr., AIR 2004 SC 942; Sahdeo alias Sahdeo Singh v. State of U.P. & Ors., (2010) 3 SCC 705; and National Fertilizers Ltd. v. Tuncay Alankus & Anr., AIR 2013 SC 1299).

10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily."

33. As already pointed out, according to the respondent, the
<https://hcservices.ecourts.gov.in/hcservices/>



provision of law was changed only to escape from the limitation plea. As rightly contended by the learned Counsel for the petitioner, since he has claimed the relief of quashing of the entire execution proceedings, the question of limitation nor application of Order 21 Rule 106 C.P.C., as claimed by the respondent, does not arise at all.

34. As per the dictum laid down by the Honourable Supreme Court, in the above decision, the respondent has to show that the said alteration or correction has been done wilfully. But in the case on hand, the respondent has neither averred nor shown that the learned Counsel for the petitioner had corrected or altered the records with a bad purpose or without justifiable excuse or perversely. Even assuming for arguments sake, that the correction or alteration was made after numbering of the petition, it cannot be said that the same was done wantonly and purposely to make unlawful gain or to cause loss to the other side.

35. Section 340 Cr.P.C., makes it clear that a prosecution under this Section can be initiated only by the sanction of the Court under whose proceedings, an offence under Section 195(1)(b) has allegedly been committed and the Court has to consider not only the prima facie case, but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

36. The Hon'ble Supreme Court in **Chajoo Ram vs Radhey Shyam & Anr** reported in **1971(1) SCC 774**, has held that the prosecution under Section 195 Cr.P.C., could be initiated only by the sanction of the Court and only if the same appears to be deliberate and conscious.

37. Chapter XI of IPC deals with false evidence and offences against public justice and Section 193 I.P.C., provides for punishment for giving or fabricating false evidence in a judicial proceedings. Section 195 Cr.P.C., provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 I.P.C., etc., or to an offence relating to documents actually used in a Court, private prosecution are barred absolutely and only the Court in relation to which the offence was committed may initiate proceedings.

38. No doubt, any correction or alteration in the records of the Court cannot be viewed lightly. It is settled law that every incorrect or false statement does not make it incumbent upon the Court to order prosecution, but to exercise judicial discretion, to order prosecution only in the larger interest of administration of justice. It is only in glaring cases of deliberate falsehood that the Court should direct prosecution. Viewing the same from another angle, even quoting a wrong provision of law, does not disentitle a party from claiming the relief.



39. Considering the above, as rightly pointed out by the learned Counsel for the petitioner, the respondent by alleging the said alteration/correction of provision of law as tampering of Court records, has been attempting to make a mountain out of a mole hill. Hence, this Court has no hesitation to hold that the application for contempt cannot legally be entertained and as such, the same is liable to be rejected.

40. Regarding the other application for re-opening of the petition in C.M.P.(MD)No.2493 of 2020, it is evident from the records that the petitioner has filed an application to accept the cause title in the Civil Revision Petition in C.R.P.(PD)(MD) SR.No.12402 of 2020 and that this Court, vide order dated 16.03.2020, has directed the petitioner to deposit the entire decretal amount along with interest on or before 30.03.2020 and posted the matter on 31.03.2020 for compliance and for final hearing.

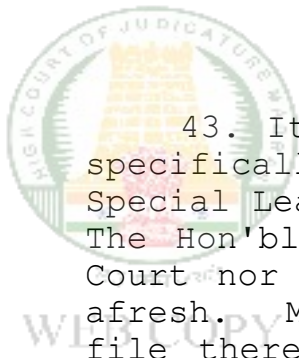
41. It is not in dispute that the petitioner, in pursuance of the directions of this Court, has deposited the amount and thereafter the petition in C.M.P.(MD)No.2493 of 2020 was ordered to be allowed and the revision petition was ordered to be taken on file. It is pertinent to note that the respondent, aggrieved by the said order in C.M.P.(MD)No.2493 of 2020, dated 16.03.2020, has filed a petition for Special Leave to Appeal (C) No.8295 of 2020 and the Hon'ble Supreme Court, vide order dated 11.09.2020, dismissed the Special Leave Petition and the order is extracted hereunder:

" This special leave petition is filed against an interlocutory order passed by the High Court dated 16.03.2020. We are not inclined to entertain this special leave petition, which is dismissed.

However, all submissions of petitioner are left open, which shall be pressed before the High Court.

Pending application(s), if any stands disposed of."

42. No doubt, thereafter, the Assistant Registrar of the Hon'ble Supreme Court of India has sent a certified copy of the order dated 11.09.2020 to the Registry of this Court, for information, necessary action and compliance. The respondent, by relying on the last line of the order of the Hon'ble Supreme Court that " all submissions of the petitioner are left open, which shall be pressed before the High Court" and also the covering letter of the Assistant Registrar forwarding the certified copy of the order dated 11.09.2020 " for information, necessary action and compliance", has been alleging that the Hon'ble Supreme Court has directed the High Court to re-open the petition in C.M.P.No.2493 of 2020 and to consider the submissions of the respondent.



43. It is pertinent to note that the Hon'ble Supreme Court has specifically held that they were not inclined to entertain the Special Leave Petition and dismissed the petition of the respondent. The Hon'ble Supreme Court has neither remitted the matter to this Court nor directed this Court to consider the petition in C.M.P., afresh. Moreover the Civil Revision Petition itself was taken on file thereafter and after hearing the arguments of both sides at length, this Court has already reserved the same for orders. Hence, the very claim of the petitioner for re-opening the petition in C.M.P.(MD)No.2493 of 2020 is totally misconceived and without understanding the orders of the Hon'ble Supreme Court and the covering letter of the Assistant Registrar, Supreme Court, the respondent has been attempting to take the proceedings back to the original position. Hence this Court has no hesitation to hold that the above petition is not legally maintainable and the same is liable to be rejected.

44. It is pertinent to note that the petitioner is a Government undertaking. Even after the dismissal of their appeal and since the Second Appeal was not taken on file, the petitioner should have paid the decretal amount. Even after filing of the execution proceedings, as already pointed out, the petitioner had been taking time alleging that the Second Appeal was filed and even thereafter, they have not chosen to discharge the decretal amount.

45. As already pointed out, the execution proceedings are pending from 2012 onwards. After coming to know they could not prosecute the Second Appeal, they should have satisfied the decree, but even thereafter allowed the Executing Court to proceed further till conducting of Court auction sale. No doubt, the respondent had approached this Court half a dozen time challenging each and every order passed by the Execution Court. But, on considering the entire facts and circumstances, this Court is of the clear view that the petitioner being a Government undertaking, by allowing the proceedings to continue for the past 32 years, had been successfully preventing the decree holder from realising the fruits of the decree for the past 10 years and thereby wasted the time of all the concerned and also the money of the Government. Hence, this Court is constrained to impose a cost of Rs.2,00,000/- (Rupees Two Lakhs only) on the petitioner and after payment, the Corporation is at liberty to realise the same from the officers in-charge of that Unit for their lapses.

46. In the result, the Civil Revision Petition is allowed and the execution petition in E.P.No.218 of 2014 in O.S.No.168 of 1989 and the entire execution proceedings, on the file of II Additional Subordinate Court, Tiruchirappalli are quashed. The petitioner is directed to pay cost of Rs.2,00,000/- (Rupees Two Lakhs only) to the respondent within a period of four weeks from the date of receipt of a copy of this order and the respondent is also permitted to



withdraw the amount deposited by the petitioner at the Executing Court. The petitions in C.M.P.(MD)SRNo.63612 of 2021 and Cont.P.(MD) SR.No.30335 of 2021 are rejected. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The II Additional Subordinate Court, Tiruchirappalli.

Copy to

1) **M/S.Tamil Nadu Small Industries Development Corporation Ltd.,
SIDCO Industrial Estate,
Ariyamangalam, Tiruchirappalli 620 010.**

2) The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai

+2 CC to M/s.R.KRISNA MURTHI, Advocate (SR-11917[F],11916 dated 14/03/2022)

+1 CC to M/s.K.S.SANKAR MURALI, Advocate (SR-12043[F] dated 15/03/2022)

C.R.P. (MD) .No.571 of 2020
and

CMP (MD) No.3579 of 2020
and

C.M.P. (MD) SRNo.63612 of 2021 and Cont.P. (MD) SR.No.30335 of 2021
14.03.2022

SVS (CO)

KB(30.03.2022) 19P 8C