



REV. APPLC WRIT (MD) No.41 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

REV. APLC. WRIT (MD) No.41 of 2022

in

WP(MD)No.1188 of 2022

R.Koman

... Petitioner

Vs

1.Periyasamy

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Tahsildar,
Taluk Office, Sivakasi, Virudhunagar District.

4.The Commissioner,
Sivakasi Municipal Corporation,
Sivakasi, Virudhunagar District.

5.The Sub Treasury Officer,
Sivakasi, Virudhunagar District.

... Respondents

Prayer:Review Application filed under Order 47 Rule 1, 2 r/w Section 114 of C.P.C. to set aside the order passed by this Court in WP(MD)No.1188 of



2022, dated 25.01.2022 and to allow the review application.

For Petitioner	:Mr.S.M.Anantha Murugan
For R1	:No Appearance
For R2 to R5	:Mr.N.Muthu Vijayan Special Government Pleader

ORDER

The Review Application has been filed seeking revisitation of the order in WP(MD)No.1188 of 2022, dated 25.01.2022.

2.The petitioner herein is a third party to the said writ petition. Originally, the petitioner in WP(MD)No.1188 of 2022 had filed ***WP(MD)No. 503 of 2022***, wherein the cause title was ***Periyasamy Vs The District Collector, Virudhunagar District, Virudhunagar and three others***. That writ petition came up for admission on 12.01.2022 and the following order was passed.

“The learned counsel for the petitioner stated that he would file a writ petition by incorporating the correct name in the cause title.

2.Necessary permission is granted. The present writ petition is dismissed as withdrawn, however with liberty to file a writ petition giving the correct cause title and after sending a



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representation in the name of the Temple. No costs.”

3. Thereafter, the said petitioner had filed ***WP(MD)No.1188 of 2022***. The cause title in the said writ petition was ***Periyasamy, Managing Trustee of “Bathirakaliamman Mariamman Religious and Charitable Trust Vs The District Collector, Virudhunagar District, Virudhunagar and three others***. That writ petition had been filed for a mandamus, seeking a direction against the second and third respondents/The Tahsildar, Taluk Office, Sivakasi, Virudhunagar District and the Commissioner, Sivakasi Municipal Corporation, Sivakasi, Virudhunagar District to survey the petitioner “Bathirakaliamman Mariamman Religious and Charitable Trust” temple property bearing re-survey No.628/1, measuring 133 acres and 12 cents, at Sivakasi Municipal Corporation, Sivakasi, Virudhunagar District. This Court had passed the following order.

“4. The petitioner may make necessary application through online seeking necessary relief to survey the property and he must also pay necessary charges, as is determined by the second and third respondents. On receipt of such online application and on payment of necessary charges, the second and third respondents may issue notice to the petitioner, issue notice to anybody else, who is in occupation of the aforesaid



land, examine the documents of the petitioner; examine the documents of anybody else who is in occupation and thereafter, take a decision to measure the lands. If a decision is taken not to measure the lands, necessary reasons may be given in writing. At any rate, the entire exercise should be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order / receipt of copy of the application from the petitioner / payment of necessary charges by the petitioner.

5. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs

4.The present review application was then filed. Originally WMP(MD)No.3647 of 2022 was filed seeking leave of this Court to file the review application. In the affidavit filed in support of the application, it had been stated as follows:

3. I respectfully submit that the writ petitioner has no locos standi to file the present writ petition. He filed writ petition as if he is the Managing Trustee of "Bathirakaliarnman -Mariamman Religious and Charitable Trust", and he indirectly claiming title over the property in S.No.628/1, situated at Sivakasi Municipal Corporation, Sivakasi, Virudhunagar District. He has not submitted any documents before this Honlale Court to prove that the land S.No.628/1, situated at Sivakasi Municipal Corporation, Sivakasi, Virudhunagar District, belongs to his Trust. In fact, as



admitted by the 1st respondent herein, the writ petitioner's religious trust was constituted on 14.10.2011.

4.I respectfully submit that after constituting his trust, he had filed many petitions before the revenue authorities and claimed that the properties in the name of "Bathirakaliarnman -Mariamman Religious and Charitable Trust", belonged to his Trust. In fact, when the Virudhunagar District, was form part of Ramanathapuram District, the revenue records in respect of S.No.628/1, situated at Sivakasi Municipal Corporation, Sivakasi, Virudhunagar District, stood in the name of Sri Bathirakaliamman-Mariamman temple", through its present Trustees [1]K.C.A.A.Senbaga Nadar, [2] E.A.P.Ayya Nadar, [3] N.P.A.S.Periyanna Nadar. Therefore, the land in question, at any point of time, never belongs to the writ petitioner's trust. Hence, he has no locus standi to claim for surveying the land which belongs to our temple.

5. I respectfully submit that "Sri Bathirakaliamman - Mariamman temple", are absolutely belonging to Sivakasi Hindu Nadars Uravinmurai Mahamai Fund and these temples are having more than 300 years traditional. Both temples were constructed by Sivakasi Hindu Nadar community people and the land in S.No.62811, situated at Sivakasi Municipal Corporation, Sivakasi, Virudhunagar District, belongs to our temple and the writ petitioner has no locus standi to claim for surveying our temple property land. However, by suppressing the entire facts, he filed the above mentioned writ petition as if



he is the Trustee of "Sri Bathirakaliarnman - Mariamman temple, and wants to survey the land and got an order.

6. I respectfully submit that it is pertinent to note that earlier he filed one writ petition before this Hon'ble Court in W.P(MD)No.11175 of 2012 as if he is the Bathrakaliamman - Mariamman Religious and Charitable trust and prayed to remove encroachments. In that writ petition, we impleaded as one of the respondent and submitted the real facts before this Hon'ble Court. The official respondents also brought the real facts into the notice of this Hon'ble Court that he has no locus standi to claim anything in respect of Sivakasi Sri Bathirakaliamman -Mariamman temple lands. Upon hearing our submissions the Hon'ble Division Bench of this Hon'ble Court dismissed the writ petition in W.P(MD)No.11175 of 2012, vide order dated 13.02.2018."

5.On examining the facts stated, leave was granted.

6.Notice had been directed to the writ petitioner, Periyasamy.

Though notice was served and the name and address of the writ petitioner had been printed in the cause list, he had apparently taken a consistent decision not to appear before the Court. Thereafter, the review application has been numbered.



7.While hearing the review application, my attention was drawn an order passed by the Division Bench in ***WP(MD)No.11175 of 2012***, dated 13.02.2018 in ***P.Periyasamy S/o.Periyasamy, Managing Trustee Badrakaliamman Mariamman Religious and Charitable Trust No.16/36, Murugan Colony Naranapuram Road Sivakasi-626 189 Virudhunagar District /vs/ The State of Tamil Nadu rep.by the Commissioner and Secretary to Government, The Commissioner of Municipal Administration Chepauk, Chennai, The District Collector Virudhunagar District Virudhunagar, The Commissioner Sivakasi Municipality Sivakasi, Virudhunagar District and Sivakasi Hindu Nadar's Uravinmurai Mahamai Fund, a registered Society rep.by its Secretary S.Vidhyadhran.***

8.The Division Bench passed the following order, which is extracted its entirety.

“The petitioner claiming himself to be a Trustee of Badrakaliamman Mariamman Religious and Charitable Trust has filed this writ petition praying for a direction to the Commissioner, Sivakasi Municipality / fourth respondent to remove the encroachments made in Survey Nos.725 to 762 of Sivakasi Municipality as per the legal notice, dated 22.06.2012.

2. The Commissioner, Sivakasi Municipality / fourth



respondent has filed a counter affidavit inter alia contending that the petitioner has to substantiate the relationship between his newly formed Trust created on 14.10.2011 and Arulmighu Bathrakaliamman Temple and Mariamman Temple and its lands. Further, it is submitted that there is no provision in the Tamil Nadu District Municipalities Act, 1920, to remove any alleged encroachments over the Temple lands. It is further submitted that the petitioner has suppressed several material facts. Further, it appears that 16 Cents of land was also gifted to the Municipality for the purpose of constructing a toilet complex.

3. The learned counsel appearing for the fifth respondent submitted that the property in question is managed by the fifth respondent, namely, Sivakasi Hindu Nadar's Uravinmurai Mahamai Fund and no individual person much less the writ petitioner is entitled to claim any right over the property in question.

4. In view of the above submission, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

9.It is thus seen that the writ petitioner Periyasamy has no right over the properties and cannot seek a mandamus to direct the authorities to conduct survey of the lands. There has been a specific finding in the decision of the Division Bench that he cannot claim any right over the properties and it



was also specifically observed by the Division Bench that it is only the Sivakasi Hindu Nadar's Uravinmurai Mahamai Fund, which is managing the properties.

10. Naturally, when this fact has been suppressed, the order in the writ petition WP(MD)No.1188 of 2022, dated 25.01.2022 necessarily to be revisited.

11. Suppression of material fact is a fraud played on the Court. In ***S.P Chengalvaraya Naidu vs Jagannath***, dated 27.10.1993, reported in AIR 1994 853 :: 1994 SCC(1) 1, it had been held:

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice



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between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

10. In the instant case, the writ petitioner has suppressed the fact that Sivakasi Hindu Nadar's Uravinmurai Mahamai Fund, is actually managing the properties. The said trust was also not impleaded as a party in the writ petition.

11. A perusal of the order in the writ petition shows that it had been obtained by suppressing material facts. As a matter of fact, by not impleading a necessary party. If these facts were brought to the notice of the Court and necessary parties had been impleaded, the order in the writ petition would not have been passed. In view of these facts, the following order is passed:-



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- *Review Application Writ (MD) No.41 of 2022 is allowed;*
- *The order in WP(MD)No.1188 of 2022, dated 25.01.2022 is set aside, consequent to the fact that material facts have been suppressed and fraud had been played and*
- *WP(MD)No.1188 of 2022 stands dismissed. No costs.*

06.04.2023

NCS :Yes/No
Index :Yes/No
Internet:Yes/No

PNM

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Tahsildar,
Taluk Office, Sivakasi, Virudhunagar District.
- 3.The Commissioner,
Sivakasi Municipal Corporation,
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C.V.KARTHIKEYAN,J.

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ORDER IN
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in WP(MD)No.1188 of 2022

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