



W.P(MD)No.28280 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.28280 of 2022

and

W.M.P(MD)No.22325 of 2022

Mallika

... Petitioner

Vs.

1.The Tahsildar
Sankarankovil Taluk,
Sankarankovil,
Tenkasi District.

2.The Head Surveyor
Office of the Tahsildar,
Sankarankovil Taluk,
Sankarankovil,
Tenkasi District.

3.Dr.Nallamuthuchamy

... Respondents

(R3 is impleaded vide Court order, dated 22.12.2022
made in W.M.P.(MD)No.22600 of 2022)



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the impugned order vide Na.Ka. A9/68/2022 dated 18.11.2022, quash the same as illegal, arbitrary and devoid of merit and consequentially direct the first respondent to conduct a fresh hearing according a right of hearing to the petitioner herein.

For Petitioner : Mr.M.Maharajan

For Respondents : Mr.J.Ashok - for R1 & R2
Additional Government Pleader
Mr.R.J.Karthick - for R3

ORDER

The writ petition has been filed in the nature of a Certiorarified Mandamus seeking records of the first respondent / Tahsildar, Sankarankovil Taluk, Tenkasi District, relating to an order passed in Na.Ka.A9/68/2022 dated 18.11.2022 and to interfere with the same.



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2. The writ petitioner in her affidavit had stated that after the demise of her husband, Velusamy, her brother Vellathurai had purchased two items of properties in Old Survey No.268/1A in B Ward, Block 5, T.S.No.8 of Sankarankovil Taluk, Tenkasi District, by registered sale deeds, in Document Nos.132 and 137 of 2003 dated 29.01.2003 which were both registered in the office of the Sub Registrar, Sankarankovil. It is alleged by her that totally the lands measured an extent of 341 square meters at the time of purchase.

3. It had been stated that the property originally belongs to one Sudalaimuthu, who had two wives. He had executed a 'Will' in the year 1998 bequeathing the rear portion to one of the wives and the front portion to the other wife. The husband of the petitioner had purchased the property from one of the wives and the brother had purchased the property from the other wife. To use the properties in common, they had also, according to the petitioner, left a common passage which was 10 feet in width. However, it is stated that both the properties were one parcel of land. It had also been stated that with the common pathway, the total area of lands measured 521 sq. mts.



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4. It is stated that the properties had been settled in favour of the petitioner by a settlement deed dated 04.11.2022, registered as Document No.3199 of 2022 in the Office of the Sub Registrar, Sankarankovil.

5. The petitioner claims that she was issued with a notice dated 08.11.2022, which, according to her, was received on 15.11.2022 stating that the third respondent, who had not been impleaded by the writ petitioner, but who had been subsequently impleaded by an order of this Court dated 22.12.2022, had filed a petition seeking sub- division of the property which had been settled in her favour and that the hearing was scheduled on 18.11.2022. It is her specific case that she had also applied and obtained patta. It is stated by the learned counsel for the petitioner that on 18.11.2022, the petitioner had given a representation seeking copies of documents and had also sought personal hearing. It is alleged that the first respondent / Tahsildar, Sankarankovil, had, without giving any such opportunity to the petitioner or furnishing documents, passed an order cancelling the individual patta granted in the name of the petitioner and restoring the joint patta and also restoring the name of the



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third respondent in the joint patta. It is further alleged by the learned counsel that on the very same day, when the order was passed namely, 18.11.2022, quite apart from the order being passed, the patta as aforementioned was also prepared and issued. It is, therefore, alleged that there has been an undue interest shown in the entire issue by the Tahsildar. The learned counsel urged that in such circumstances, the order complained should be interfered with.

5. In this connection, the learned counsel for the petitioner relied on a judgment of a Division Bench of this Court reported in *2019(1) CWC - 168 in State Bank of India, rep. by the Regional Manager, Trichy and others Vs. M.Raja and others*, and specific reference was made to the following paragraphs :-

"19. The factual narration would make it clear that it is also not in dispute that there were two Enquiry Officers appointed by the appellants. After the retirement of Thiru.M.Srinivasan, one A.Karunakaran was appointed as Enquiry Officer. As observed by the learned Single Judge in W.P. (MD)No.5224 of 2004, in paragraph Nos.25, 26 and 30, as referred to above, the enquiry was



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conducted in a hurried manner and exparte report has been filed. This fact is not in dispute. The same was challenged and the enquiry report was set aside by this Court and there was a direction to conduct fresh enquiry from the stage at which it stood on 04.02.2014. Accordingly, fresh enquiry commenced and the Enquiry Officer A.Karunakaran, on assumption of charge, issued a notice for enquiry on 16.08.2014. The first respondent/writ petitioner requested adjournment on the ground that his representative was not well. However, exparte report has been submitted on 10.11.2014. Thereafter, the first respondent/writ petitioner was dismissed from service by order dated 19.12.2014. The learned Single Judge has gone into the factual aspects and found that the finding of the Enquiry Officer is based on the earlier report, which was quashed by this Court. When serious allegations have been made against any delinquent, which has a civil consequence, a reasonable opportunity ought to have been given to the first respondent/writ petitioner, which was not done so not only by the subsequent Enquiry Officer but also the previous Enquiry Officer. Taking note of the above facts, this Court, on an earlier occasion, has set aside the



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enquiry report and directed fresh enquiry to be conducted from the stage as on 04.02.2014. However, once again exparte report has been filed."

6. The learned counsel also placed reliance on a judgment of a learned Single Judge of this Court, dated 27.07.2022 in W.P.Nos.3418 of 2012 batch in *K.N.Krishnasamy Vs. The Commissioner, HR & CE (Admn) Department, Chennai and others*, and was made to the observation of the learned Single Judge in paragraph No.12 :

"12. The sum and substance of the submissions made on the side of the petitioner and supported by the learned Senior counsel appearing on behalf of the 4th respondent is that the entire proceedings before the Joint Commissioner was conducted in a hasty manner and the proceedings hardly went on for two days and on the 3rd day, the orders were passed by the Joint Commissioner. It was therefore submitted that the petitioner was not afforded with sufficient opportunity and the order passed by the Joint Commissioner which was later confirmed by the Commissioner in the Appeal, suffers from violation of Principles of Natural Justice. The learned counsel for the petitioner also



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submitted that the petitioner had challenged the jurisdiction of the Joint Commissioner to initiate proceedings under Section 63(a) of the Act on the ground that the Character of the ashraman had already been determined by this Court in the earlier proceedings. That apart, certain documents were also sought for by the petitioner and the same was not furnished. The petitioner was also not granted adjournment in order to give them some time to reply and cross-examine the witnesses. The learned counsel contended that the Joint Commissioner did not consider any of these submissions and went on to pass the order in a hasty manner."

7. A counter affidavit had been filed on behalf of the first respondent. In the counter affidavit, which had been presented by the learned Additional Government Pleader, it had been stated that the parent document, on which the petitioner relied, does not support the case of the petitioner. It has been stated that the disputed common pathway had been clearly stated in the boundaries of two documents, namely, the sale deeds, which had been registered as Document Nos.132 of 2003 and 137 of 2003. It had been further stated that in the first document, the



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property was said to be to an extent of 1105.5 square feet on the northern part of the 10 feet of public pathway and in Document No.137 of 2003, the property was to an extent of 2562.75 square feet. The total area comes to 341 square meters. excluding the public pathway. It is stated that specific reference had been made to the public pathway and it had been stated that the petitioner, by suppression of material facts, had tried to acquire 180 square meters of the 10 feet common pathway. It had been further stated that the petitioner had relied on the TSLR patta which was obtained by the husband of the petitioner, Velladurai. It was found that during enquiry, the TSLR had been issued in the name of Velladurai, by including the 10 feet pathway erroneously. It was stated that only on the basis of this TSLR patta, the brother had executed a family arrangement deed in document No.3199 of 2022 in favour of the petitioner for a total extent of 521 square meters, whereas the petitioner was actually entitled to only 341 square meters. It had been stated that an additional 180 square meters had been included without there being any document for the same.

8. It had been further stated that the third respondent who



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had been subsequently impleaded, had given an application to issue patta by sub-dividing the pathway. It had also been stated that the second respondent had conducted a field visit after due information to the third respondent and also to the petitioner. It had been specifically stated that the petitioner could not produce any document to prove title relating to the 10 feet common pathway. It had been asserted that there had been suppression of material facts by the petitioner with respect to 1080 square meters of land and it was only on realisation of that, the grant of separate patta to the petitioner had been interfered with and the name of the third respondent had also been included as a joint pattadhar.

9. A counter affidavit had also been independently filed by the third respondent who had been subsequently impleaded. It must be kept in mind that the nature of the writ petition was questioning the inclusion of the name of the third respondent in the patta, but for some strange reason, the petitioner had not impleaded the third respondent when the writ petition was filed. This could also be termed suppression of necessary parties thereby preventing them from appearing before the Court. This itself exposes the case of the petitioner herein. The



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petitioner should have impleaded the third respondent in the first instance, when the writ petition was actually filed.

10. Be that as it may, the third respondent relied on the sale deed dated, 02.04.2014 which stood in the name of his wife. It was that the brother of the petitioner was not able to produce any document relating to the 10 feet pathway in TS.No.8.

11. The issue is just that. The petitioner will have to establish title to the 10 feet pathway and cannot override that aspect by claiming that it is a common pathway. The petitioner is entitled to 341 square meters, but not to 551 Square meters.

12. In the counter affidavit of the third respondent, fraud had been specifically alleged as against the petitioner herein. It had been very specifically stated that by playing fraud, separate patta was obtained, but thereafter, when that had been found out, necessary entry has been made by the first respondent herein.



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13. It is also pertinent to point out that this counter affidavit had been presented in Court on 12.01.2023 and till the hearing of the case today, the petitioner had not thought it necessary to file any reply to the said allegation of fraud. During the hearing, when this was pointed out by this Court, the learned counsel for the petitioner stated that an affidavit would be filed refuting the allegations of the fraud, but that was after he had concluded his argument and when the counsel for the third respondent was on his feet. Such request could have been made in the first instance.

14. This follows a pattern which could be discernible by the fact that even before the first respondent on the hearing date, 18.11.2022, a letter was presented seeking copies of documents and today, it is alleged that proper opportunity had not been granted.

15. Reliance had also been made during the course of arguments by the learned counsel for the third respondent to a judgment reported in *AIR 2022 (SC) 928 in New Okhla Industrial Development Authority Vs. Ravindra Kumar Singhvi (dead) through Lrs.*, wherein



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specific reference was made to paragraph No.19 :

"19. The terms and conditions of allotment conveyed to the plaintiff on 1.12.1988 have a specific clause that if allotment is obtained by any misrepresentation or misstatement or fraud, the lease may be cancelled and the possession of the plot and the building thereon may be taken by the Authority. Therefore, cancellation of allotment of plot obtained after filing false affidavit is a legitimate ground of cancellation of lease. Fraud vitiates all actions as laid down by this Court in S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors., 7 (1994) 1 SCC 1 wherein it was held as under:

“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



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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 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.”

16. I have given careful consideration to the arguments advanced.

17. The only ground on which the order impugned is being questioned by the learned counsel for the petitioner is that the procedure



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adopted is not proper and that, proper opportunity had not been granted to the petitioner herein before the entry so far as the patta was altered. The entry which was altered, was cancellation of the individual patta granted to the petitioner herein and including the name of the third respondent along with the other names which were already there.

18. The short issue is about the 10 feet of common passage. The total area of that passage is 180 sq.mts. The petitioner claims exclusive title. However, there is no title document for that particular land. Without there being any title document to that particular land, the petitioner cannot claim title for that particular land. The petitioner is, as a matter of right, entitled to 341 square meters, but certainly not to 521 square meters. If the petitioner claims right to that 180 square meters, the proper approach would be to file a civil suit seeking declaration of title. Complaining about the nature of the orders passed by the revenue officials and stating they have no right and are not competent to give any finding on title, would not lead the petitioner anywhere. The revenue authorities can only examine the sale deeds to determine whether there is any reference to the common passage, and thereafter, make necessary



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entries in their revenue records. This cannot confer title on anyone of the parties.

19. In the Division Bench judgment relied on by the learned counsel for the petitioner, it had been stated that when proper opportunity has not given, then the order of the authority can be interfered with. But this is a case where, the original order which was interfered with by the first respondent itself is alleged to have been obtained by fraud. When fraud is alleged, then it vitiates every solemn proceeding. When fraud is alleged, then the authorities will necessarily have to set the clock back to the position where it stood and that is what the first respondent had done. He had, however, included the name of the third respondent. If the petitioner is aggrieved by that particular fact, then in accordance with the provisions of the Act, the petitioner could have filed a regular appeal before the Revenue Divisional Officer. Neither has the petitioner taken the risk of filing a suit nor has the petitioner filed an appeal against the order impugned, but, has filed the present writ petition. This Court can never examine whether patta is to be granted to the petitioner herein or whether separate patta is to be



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granted to the petitioner or whether joint patta is to be granted to the petitioner or whether the third respondent's name is to be included in the patta. These are issues beyond comprehension of this Court and it is only the revenue officials who can examine them. If the petitioner confines herself to the issue or non-issue of patta and inclusion or non-inclusion of names in the patta, then, the proper authorities are the revenue officials and by hierarchy, as against the order of the Tahsildar, it is the Revenue Divisional Officer who has to examine the same. If the petitioner claims title to that 10 feet of land which measures in total 180 square meters, then the civil Court is the competent forum to adjudicate such title.

20. The writ Court has been approached, however, for the reason best known to the petitioner and very surprisingly, by not impleading the third respondent and by not filing a reply to the counter filed by the third respondent, which alleged fraud against the petitioner herein. The petitioner should first introspect on that aspect, and take up her rights forward.



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21. The writ petition stands dismissed, giving liberty to the petitioner to approach either the civil Court to assert title with respect to the 10 feet of land or, to file an appeal. If the petitioner prefers to file an appeal even though the period of limitation is over, if the petitioner files an appeal on or before **10.04.2023**, then the issue of limitation should not be put up against the petitioner herein by the appellate authority. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No
RM



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To
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- 1.The Tahsildar
Sankarankovil Taluk,
Sankarankovil,
Tenkasi District.
- 2.The Head Surveyor
Office of the Tahsildar,
Sankarankovil Taluk,
Sankarankovil,
Tenkasi District.



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C.V.KARTHIKEYAN, J.

RM

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