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CRP.No.1964 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.1964 of 2022
and CMP.No.9949 of 2022

The State of Tamilnadu
represented by the District Collector,
Namakkal District,
Tiruchengodu Main Road,
Siluvampatty Village,
Namakkal Taluk and District.

...Petitioner/Defendant

Vs.

Sellamal

...Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the order passed by the learned Additional District Munsiff, Namakkal vide order dated 24.02.2020 in I.A.No.1329 of 2012 in O.S.No.528 of 2006.

For Petitioner :Mr.T.Arunkumar
Additional Government Pleader

For Respondent :Mr.H.Shabeer Ali for
M/s.Sarvabhaum and Associates

ORDER

This civil revision petition has been filed by the petitioner-District Collector, Namakkal District, as against the order dated 22.02.2020 passed in I.A.No.1329 of 2012 in O.S.No.528 of 2006 on the file of Additional District



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Munsif Court, Namakkal, whereby, the petition filed by the petitioner-State under Section 5 of Limitation Act praying to condone the delay of 2194 days in filing petition to set aside the ex-parte decree dated 10.09.2006, has been dismissed by the trial court. Aggrieved by the said order, the present civil revision petition has been filed.

2. According to the petitioner-State, they are the defendant in the suit. The respondent herein/plaintiff has filed the main suit for relief of declaration and permanent injunction. The said case was posted on 11.09.2006 for appearance. But due to the fact that the said case bundle got mingled with other bundles, they were unable to know about the date of hearing and due to their non-appearance, the trial court has passed ex-parte decree on 11.09.2006.

3. Thereafter, the respondent/plaintiff has filed REP.No.115 of 2009, wherein, attachment order was passed on 17.08.2012. Based on the attachment order, when the court Amin came to the office of the petitioner on 11.09.2012, the petitioner came to know about the stage of the case.

4. According to the petitioner-State, the suit properties, in fact belongs



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to the Government and it was classified as Samudhaya Poramboke; as such, the petitioner is having good case and due to the above said reasons, there is a delay of 2194 days in filing the petition to set aside the ex-parte decree and therefore, prayed this court to condone the delay.

5. According to the respondent/plaintiff, the suit was decreed on 11.09.2006. Thereafter, the respondent has filed REP.No.115 of 2009 and the same was posted on various dates for filing counter and due to non filing of counter, the respondent-State was set ex-parte in E.P and the ex-parte order was passed on 05.03.2010. Thereafter, the petitioner-defendant filed petition to set aside the said ex-parte order with delay of 85 days in REA.No.407 of 2010 and REA.No.408 of 2010. REA.No.407 of 2010 was dismissed on 07.08.2012 and REA.No.408 of 2010 was dismissed on 17.08.2012. Even at that stage, the petitioner-State has not filed any petition to set aside the ex-parte decree. Even thereafter, the Petitioner-State filed Civil Revision Petition before this Court in CRP.No.2145 of 2010 and at that time also they have not filed any petition praying to set aside the exparte order, but now the petitioner-State filed petition stating that when the Amin came to attachment only, they came to know about the exparte order, which is not acceptable. The petitioner-State has not properly explained and assigned reasons for the delay of 2194



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days. Hence, the petition is liable to be dismissed.

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6.Before the trial Court, on the side of the petitioner, PW1 was examined and marked Ex.P1 and P2. On the side of the respondent, RW1 was examined and marked Exs.R1 to R9. The trial Court after considering the evidences adduced on both sides, dismissed I.A.No.1329 of 2012 in O.S.No.528 of 2006. Aggrieved by the said order, the present civil revision petition has been filed by the petitioner-State.

7.The learned counsel appearing for the petitioner-State would contend that the petitioner is the defendant in the main suit. The respondent herein has filed the suit for the relief of declaration and permanent injunction. In fact, the suit properties are Government Poramboke lands and sought for the relief of declaration in respect of the title of the properties which belongs to Government. The said suit was posted on 10.09.2006 for filing written statement. On that date, defendant has not filed the written statement due to the fact that the case papers got mingled with other bundles. The trial court passed exparte decree. Thereafter the respondent-plaintiff filed E.P. In the said E.P also, the petitioner-State appeared through Government Pleader. But at that time, after appearance before the Execution Court. they failed to file



petition seeking to set aside the exparte order, however, the petitioner-State have a good case. In such circumstances, taking advantage of the delay, the respondent-Plaintiff attempting to take the Government properties. Before the trial Court, P.W.1 who was examined on the side of the petitioner-State marked EX.P1 and P2 and deposed about the reasons for the delay. But the trial Court failed to consider the evidence of PW1 and dismissed the petition erroneously. Therefore, the order passed by the trial Court is liable to be set aside and the delay may be condoned.

8.The learned counsel for the respondent-plaintiff would contend that originally the property belongs to one Valliammal and she executed registered Will dated 20.10.1961 in favour of her two sons namely Muthusamy Gounder and Kuppusamy Gounder. After the demise of said Valliammal, her above said two sons enjoyed the properties jointly. Thereafter, they entered into partition deed dated 20.10.1961. As per the partition deed, A schedule property belongs to Muthusamy Gounder; B schedule property belongs to Kuppusamy Gounder. The said Kuppusamy Gounder, sold the property to the respondent/plaintiff through sale deed dated 20.11.1978; they also obtained patta for the said property. While so, the defendants classified the suit property as Samudhaya Poramboke. Thereafter, the respondent has given so



many representations before the revenue authorities and they have not considered their representations. Therefore, they filed suit for the relief of declaration and injunction. The suit was decreed in their favour on 10.09.2006. The petitioner herein has not filed any written statement and thereby, the Court passed ex-parte decree as against them. Thereafter, they filed E.P in REP.No.115 of 2009, in the said E.P also, they have not filed any counter and thereafter ex-parte order was passed on 05.03.2010.

9.Further the plaintiff/defendant-State filed petition to condone the delay of 85 days to set aside the ex-parte order passed against them in the E.P and the said petition was dismissed. Thereafter, the petitioner-State filed revision in CRP.No.2145 of 2010. As per the order passed by this court, E.P was proceeded thereafter. The petitioner-State after knowing the exparte order, when they appeared in the execution proceedings, they have not filed this application immediately, but they filed application only on 21.09.2012. The reason stated by the petitioner is that the papers were mingled with other bundles and thereafter, when the Court Amin came for attachment of the properties, they came to know about the ex-parte decree dated 11.09.2006, is false one. Therefore, the trial Court after considering the evidences adduced by both the parties, dismissed the petition. Therefore, the reason stated by the



petitioner are un-acceptable. the petitioner have not stated any valid reasons for the delay of 2194 days. Hence, this petition is liable to be dismissed.

10.To support his contention, he relied the following judgments:

1.University of Delhi Vs.Union of India and others reported in (2020)

13 SCC 745.

2.The Union of India Owning Southern Railway represented by its General Manager Vs. Kommu Sumathi and others on the file of this Court in M.P.No.1 of 2010 in C.M.A.SR.No.64708 of 2010 dated 01.02.2021.

3.Postmaster General and others Vs.Living Media India Limited and another reported in (2012) 3 SCC 563

4.V.M.S.Kandasamy Nadar Vs.The Province of Madras through the District Collector of Ramnad at Madura and another reported in 65 L.W. 787

5.Lingappa Gounder Vs.Palanisamy Gounder and others reported in 2006 (2) CTC 36.

11.This Court heard both sides and perused the records.

12. This Civil Revision Petition has been filed challenging the order of the trial Court, wherein the trial Court dismissed the petition for condoning the delay of 2194 days. It is admitted fact that the petitioner/defendant filed



suit for the relief of declaration and permanent injunction in respect of the suit properties. Further there is a prayer that the classification of Samudhaya poramboke has to be deleted and patta has to be granted in favour of the plaintiff.

13.It is admitted fact that on the date of filing of suit, the property was classified as Samudhaya poramboke. The suit was decreed on 11.09.2006. The said decree was ex-parte decree. This Court also perused the ex-parte judgment passed by the trial Court. The trial Court has not passed a detailed judgment and only passed three line orders and decreed the suit. Thereafter the respondent-plaintiff has filed execution petition in REP.No.115 of 2009. In that petition also, the petitioner-State being the defendant has not filed counter. Therefore, the said REP was set ex-parte. After some time, the petitioner-State filed petition in REA.No.407 of 2010, praying to condone the delay of 85 days in filing the petition to set aside the ex-parte order passed in REP.No.115 of 2009. The Executing Court dismissed the petition on 7.8.2012.

14.Thereafter, the petitioner-State preferred revision before this Court in CRP.No.2145 of 2010. The said revision petition was allowed. The



petitioner-State have not filed any petition after knowing about the ex-parte decree, while appearing before the Executing Court. They could have filed petition seeking to set aside the ex-parte order passed in the E.P. But the Petitioner-State failed to file application to set aside the ex-parte decree passed against them. Thereafter, they filed the present petition with delay of 2194 days to set aside the ex-parte decree.

15.The reasons stated by the petitioner-State is that the case bundle got mingled with other bundles and they came to know about the stage of the case only after the Court Amin came for the attachment of the properties on 11.9.2012. Therefore, it is clear that the petitioner-State have not taken any steps after appearance before the Executing Court and the present petition is filed on 21.09.2012. The above said attitude of the petitioner is not appreciable. The petitioner-State have not filed any application immediately after knowing about the case i.e., after appearance before the Executing Court. However, the property involved in this case is classified as Samudhaya poramboke and the same was also admitted by the respondent-plaintiff in their plaint and that is why they sought for the relief of declaration and to change the classifications. While so, this court is of the considered view that only because of the mistake done by the officials, the public property cannot be taken by the private parties just because of the wrong done by the officials.



Further there is a special provision in the CPC in respect of the matters involving the Government. Therefore, merely because of the wrong committed by the officials, the public property cannot be taken away by the private parties. That why there are special provisions envisaged in CPC to deal with the case as against the Government under Section 79 to 81 and Order 21 CPC. Though there is a huge delay in filing the present petition, considering the reasons stated by the petitioner that the case bundle was mingled with other bundles and though the petitioners have not taken any steps immediately after having knowledge about the ex-parte decree when they appeared before the Executing Court. However, considering the nature of the property and the relief sought for by the plaintiff and in order to protect the public property, this court deems it fit and appropriate to allow this application. At the same time, due to huge delay on the part of the petitioner-State, the respondent-plaintiff also to be compensated by way of cost. There is no hardship caused to the respondent by allowing the petition and to decide the case on merits. Therefore, in order to give a fair chance to the petitioner, this Court is inclined to allow this petition by imposing heavy cost.

16. I have carefully gone through the judgments relied on by the learned counsel appearing for the respondent-plaintiff. On careful perusal it is



clear that the condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments, no doubt the explanation given by the State that the case bundle was kept along with other files cannot be accepted but it shows that due to procedural red tapism, such things happen in the Government Department, it is clear that sufficient cause should be indicated by the petitioner to justify the delay, every day delay need not be explained. But reasonable and acceptable explanation is very much necessary and accrued right to opposite party cannot be dealt with lightly.

17. In the case on hand also, there is a delay of 2194 days, however, the nature of relief is declaration and injunction in respect of the immovable property which according to the petitioner-State belongs to the Government poramboke and the respondent also admitted the classification of the land is one of Samudhaya poramboke. Therefore, the case laws cited by the respondent-plaintiff will not be applicable to the present facts of the case, since the facts of the present case are distinguishable.

18. In view of the above said discussions and in order to meet the ends of the justice and in order to give fair chance to the petitioner-State, this Civil Revision Petition is to be allowed on payment of cost of Rs.25,000/- to



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be paid by the petitioner-State to the respondent/plaintiff counsel, on or before
04.06.2024.

19. Post the matter on 05.06.2024 for reporting compliance.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mpa
To
The Additional District Munsiff, Namakkal.

P.DHANABAL, J.,

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