BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2024

PRONOUNCED ON : 13.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16593 of 2024

Malleswari Nayagam ... Petitioner

Vs.

1. The Collector,
   Dindigul District,
   Thiagi Subramania Siva Malihai,
   Velu Nachiyar Valaham,
   Chettinaickenpatti,
   Dindigul – 624 004.

2. The District Revenue Officer,
   Dindigul District,
   Thiagi Subramania Siva Malihai,
   Velu Nachiyar Valaham,
   Chettinaickenpatti, Dindigul – 624 004.

3. The Sub Collector / Revenue Divisional Officer,
   Kodaikanal Circle,
   Kodaikanal – 624 101. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.En.710/2023/A2 dated 08.07.2024 on the file of the third respondent, quash the same and consequently direct the third respondent to restore the patta in the name of the petitioner within a time frame fixed by this Court.

For Petitioner : Mr.K.Sharath Chandran

For Respondents : Mr.P.Sasikumar,
Additional Government Pleader.

* * *

<u>O R D E R</u>

Heard both sides.

2. The petitioner purchased the petition-mentioned property on 05.10.2001. Patta was issued in her favour. This was cancelled by the Revenue Divisional Officer, Kodaikanal without notice. Challenging the same, the petitioner filed an appeal before the District Revenue Officer, Dindigul. The appeal was dismissed. Thereupon, the petitioner filed W.P.(MD)No.11841 of 2023. The writ petition was allowed by me on 12.05.2023. The matter was remitted to the file of the Revenue Divisional Officer, Kodaikanal. Pursuant to the direction given by this Court, enquiry was conducted. The Revenue Divisional Officer, Kodaikanal vide order dated 08.07.2024 held that the petition-mentioned land is a Government land / assessed waste. The earlier proceeding dated 23.11.1994 issued by the Tahsildar, Kodaikanal for issuance of patta was cancelled. The petitioner's appeal was dismissed.

3. Questioning the same, this writ petition came to be filed. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The first contention urged by the respondents is that this writ petition is liable to be dismissed for non-exhaustion of the appeal remedy before the Director of Settlement and Survey, Chennai. It is strongly contended that the foundational documents from which the petitioner traces her title are forged / fabricated. The respondents have only acted in terms of the circular dated 31.03.2022 issued by the Director of Survey and Settlement. The respondents seek dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is true that the case of the petitioner is that the property was originally assigned in favour of one Vijayarajan vide DKT No.172/82 dated 18.09.1978 and that the said Vijayarajan sold the same in favour of M/s.Maxima Investments and Finance in the year 1995. The stand of the respondents is that this assignment order is a piece of forgery and that the patta could not have been directed to be issued in favour of Vijayarajan in the year 1995. In the face of such a stand taken by the respondents, the burden would have been on the petitioner to establish her title. In this case, there is one vital difference. It is not as if the petitioner herein purchased the property from Vijayarajan or M/s.Maxima Investments and Finance. The financial establishment had committed default and the High Court of Madras framed a scheme vesting the administration and management of the Government in favour of an Administrator. It was the said Administrator appointed by the High Court who sold the property in favour of the petitioner vide registered sale deed dated 05.10.2001. A copy of the sale deed has been enclosed in the typed set of papers. In the said sale deed, the following recitals are found:-

> "AND WHEREAS apart from original sale deeds executed in favour of Maxima Farms and Resorts Pvt. Ltd. by Sriram, Vijayarajan and Bhavani, it is ascertained from

the Collector and Tahsildar concerned that Vijayarajan was issued patta on 23.11.1994 for land inclusive of the portion sold to Maxima Farms and Resorts.

AND WHEREAS one Pathianathan, son of late Michael Das of Kodaikanal filed a petition before the Revenue Divisional Officer in NAKA 2749/2000 claiming that his family is in enjoyment of 0.90 cents of land in Ward 'C' Block 19, T.S.No.20/1 which was purchased by Maxima Farms and Resorts Ltd., and the Revenue Divisional Officer after perusing the revenue and settlement records and after conducting enquiry with the Tahsildar, Village Officers and Surveyor, dismissed Pathianathan's petition on 29.11.2000 stating that the land in question in T.S.No.20/1, is a patta land and that it is not in the possession of Pathianathan."

7. A copy of the proceedings bearing Na.Ka.No.A5/1749/2000 dated 29.11.2000 issued by the Revenue Divisional Officer, Kodaikanal reads that the petition-mentioned land is the patta land of Vijayarajan. A copy of the proceedings has been enclosed in the typed set of papers. If the then Revenue Divisional Officer, Kodaikanal had not held out that the land in question was the patta land of Vijayarajan, the Administrator would not have invited tenders and subsequently sold the property in favour of the petitioner herein. The petitioner has thus acted on the representation held out by the authorities. It is therefore not open to the third respondent herein to now take a stand that the 1978 document relied on by the petitioner is forgery and that the 1995 proceedings are liable to be cancelled.

8. Admittedly, patta was issued in favour of Vijayarajan. Vijayarajan sold the property in favour of financial establishment. From the Administrator appointed by the High Court to manage the affairs of the financial establishment, the petitioner has purchased the property in the year 2001. She was also issued with patta. In these circumstances, it is not open to the authorities to *suo motu* pass an order of cancellation.

9. The learned counsel appearing for the petitioner draws my attention to the judgment of the Hon'ble Supreme Court reported in ***(2015) 3 SCC 695 (Collector V. D.Narsing Rao)***. Paragraph Nos.31 and 32 of the said judgment read as follows:-

> “31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when

there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

32. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the Respondents. The attempt of the Appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the

> ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed."

The ratio laid down above squarely applies to the case on hand. The respondents have not stated as to when they discovered that the 1978 document is a piece of fraud.

10. The sale in favour of the petitioner had taken place 23 years ago. The respondents effected mutation of revenue records in view of the execution of the sale deed. It is not open to them to exercise the power of cancellation on a *suo motu* basis after a lapse of close to three decades.

11. None of the reasons set out in the impugned order are sustainable. No adverse inference can be drawn against the petitioner on the ground that the 1978 document relied on by the petitioner cannot be traced. In fact, the petitioner has not purchased the property from the assignee directly. The title changed hands in the meanwhile and only from the Administrator appointed by the High Court, the petitioner purchased the petition-mentioned property. The documents which are now painted in dark colours by the third respondent were very much produced before the High Court and based on them, sale was made in favour of the petitioner. Having made the petitioner change his position, the officials cannot do any U-turn. The doctrine of estoppel would clearly operate in favour of the petitioner and against the respondents. The petitioner is obviously a *bonafide* purchaser for valuable consideration. The sale that took place under the aegis of the High Court cannot be undone at this point of time.

12. The impugned order is also not in consonance with the order passed by me in W.P.(MD)No.7050 of 2024 dated 21.03.2024. The petitioner questioned the memo dated 28.12.2023 issued by the third respondent calling upon the petitioner to produce the following documents:-

> "a) D.K.T.No.172/82 dated 18.09.1978 in the name of Vijayarajan.
>
> b) Order dated 18.06.1998 passed by the Madras High Court in W.P.No.12437 of 1997 etc.
>
> c) ASO communication bearing Na.Ka.No. 17264/94 on the file of ASO, Madurai.

d) Communication bearing No.25211/1999/D1 dated 22.10.1999 on the file of the District Collector, Dindigul.”

I held that calling upon the petitioner to produce the aforesaid documents is a vexatious exercise because documents 3 and 4 are very much available with the Revenue Divisional Officer, Kodaikanal and that there is a reference to them in the earlier proceedings. I also held that the petitioner cannot be called upon the produce the assignment document dated 18.09.1978 because he purchased the property from the Administrator and not from the assignee. I noted that since in the earlier proceedings, there is a reference to issuance of patta in favour of Vijayarajan, genuineness of the documents cannot be questioned. In the face of such specific order passed by this Court, it was not open to the third respondent to render a contra finding. It borders on contempt. Since the third respondent has not been arrayed in person, I refrain from passing any remark or awarding costs.

13. In this view of the matter, the impugned order is set aside. The third respondent is directed to restore the patta in favour of the petitioner. It is for the respondents to coordinate with the concerned authorities including the Director of Settlement and Survey for making

appropriate changes in the system. It is the duty of the Director of Settlement and Survey to remove the block in the system. The entire exercise shall be carried out by the respondents within a period of six weeks from the date of receipt of a copy of this order. This writ petition stands allowed. No costs.

13.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

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G.R.SWAMINATHAN,J.

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