

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 22.08.2025

Order pronounced on : 04.09.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

W.M.P(MD).No.15769 of 2025
& W.M.P(MD).No.15772 of 2025
in W.P(MD).No.10638 of 2025

1.Christal Bai
2.Beena
3.Brinda

..Petitioners in both petitions

Vs.

1.Angel Serlin

2.The Tahsildar,
Killiyur Taluk,
Kanyakumari District.

3.The Taluk Surveyor,
Killiyur Taluk,
Kanyakumari District.

4.The Inspector of Police,
Kollamkodu Police Station,
Kanyakumari District.

..Respondents in both petitions

Prayer: Writ Miscellaneous Petition filed under Article 26 of Constitution of India, to re-call the order dated 16.04.2025 of this Court.

For Petitioners : Mr.K.N.Thampi



For Respondents : Mr.Dilipkumar Nagarajan for R1

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ORDER

Third parties to the writ petition have sought for recalling the order dated 16.04.2025 passed by me in WP(MD).No.10638 of 2025.

2.I have heard Mr. K.N.Thampi, learned counsel for the petitioners and Mr.Dilipkumar Nagarajan, learned counsel for the contesting respondent, namely the writ petitioner.

3.Mr. K.N.Thampi, learned counsel for the petitioners would first and foremost contend that the writ petitioner has played fraud on the court and also on the petitioners. It is specifically alleged that the writ petitioner has suppressed material facts and circumstances with regard to the pendency of a civil litigation and has knocked off an order behind the back of interested parties. The learned counsel for the petitioners, in this connection, would take me through the common order passed by this court in CRP(MD)NPD.Nos. 2378 to 2382 of 2015, dated 30.10.2018. Referring to the operative portion of the said common order, Mr.K.N.Thampi, learned counsel for the petitioner would submit that this court has set aside the orders of delivery passed in the



execution petitions and the right claimed by the writ petitioner is clearly under the said orders which have been set aside by this court.

4.The learned counsel for the petitioners would further state that the matter is also pending before the Honourable Supreme Court in respect of the very same proceedings. According to the learned counsel for the petitioners, the 1st respondent was fully aware of the pendency of the litigation, the orders passed in the revisions and has wantonly suppressed these material circumstances, in order to obtain an order to suit his convenience and benefit. He would therefore pray for the order passed by me being recalled.

5.Per contra, Mr.Dilip Kumar Nagarajan, learned counsel appearing for the writ petitioner/1st respondent would state that there is no suppression whatsoever and the question of playing fraud also does not arise, since even in the common order passed by this court, on which heavy reliance is placed on by the counsel for the petitioners, this court has clearly held that the revisions have been disposed of, without affecting the rights of parties who have already taken delivery and further, this court has held that the revisional court has not dwelled into the merits of the matter in the said common order and has only directed the parties to co-operate for disposal of AS.No.120 of 2014 on merits



and expeditiously.

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6.It is therefore contended by Mr.N.Dilip Kumar that admittedly the petitioners predecessors in interest had taken delivery as early as on 16.10.2015, pursuant to final decree application being allowed on 29.01.2014 and therefore, there was no necessity for the petitioners to mention about the pending litigation, since the rights of the earlier title holders had been protected by this court in the common order itself.

7.Mr.N.Dilip Kumar, learned counsel would further state that after passing of preliminary decree in OS.No.55 of 1977 on 21.05.1983, the appeal in AS.No.138 of 1983, challenging the preliminary decree also came to be dismissed on 30.04.1991 and it is only pursuant to that the final decree application was filed and came to be allowed on 29.01.2014 and delivery was effected on 16.10.2015. He would also invite my attention to the fact that all the purchasers, pursuant to the delivery being effected had the revenue records mutated in their names and the present petitioners have not challenged any of the said mutation of records or subdivisions effected. The learned counsel would also state that the branch under which the petitioners claim is entirely a different branch and nothing to do with the branch under which the writ



petitioners claim title. The learned counsel would therefore pray for dismissal of the application seeking recall of the order.

8.The learned counsel for the petitioners has placed reliance on the following decisions:

1.Pohla Singh @ Pohla Ram (D) by LRs and Others Vs. State of Punjab and Others ((2004) 6 SCC 126).

2.Union of India and Others Vs. Ramesh Gandhi ((2012) 1 SCC 476).

3.A.V.Papayya Sastry and Others Vs. Govt. of A.P and Others ((2007) 4 SCC 221).

4.Sheik Mohammed Nizar Vs. Kamal Gupta (2017 (2) CWC 281).

5.Indian Bank Vs. Satyam Fibres (India) Private Limited ((1996) 5 SCC 550).

6.Nidhi Kail and Another Vs. State of Madhya Pradesh and Others (AIR 2017 SC 986).

7.Lekshmipuram College Society and Another Vs. The State of Tamil Nadu, Represented by its Secretary, Higher Education (D2) Department (S.T.A.(MD).No.1 of 2022 dated 12.05.2025).

8.R.Gnanabaranam Vs. Ramkumar and Another (MP. (MD).No.2 of 2012 dated 01.02.2012).

9.I have carefully considered the submissions advanced by the learned counsel on either side.

10.The short question that arises for consideration is whether the writ



petitioner has suppressed any material facts and circumstances and thereby played fraud on the Court, by obtaining an order behind the back of the present petitioners in the WMP.

11.It is the case of Mr.K.N.Thampi, learned counsel for the petitioners that the petitioners are vitally interested in the subject matter of the property, in respect of which, the petition has been filed and that as against the preliminary decree, the matter is pending before the Honourable Supreme Court. The learned counsel has also stated that in the operative portion of the common order, no right has been reserved, though there may have been observations in the earlier portions of the order regarding protecting the interest of persons who have already taken delivery. Therefore it is the contention of Mr.K.N.Thampi that the order has to be read harmoniously and the writ petition, suppressing the common order in the revision and pendency of appeal as against the preliminary decree before the Honourable Supreme Court are material circumstances which ought to have been brought to the notice of this court. It is also contended that the present petitioners should have also been impleaded in all fairness.

12.The writ petition was filed only for issuance of a writ of mandamus to



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direct the Tashildar and the Taluk surveyor Killiyur Taluk to survey the petitioners' land and fix the four boundaries in [SF.No.8/1A1A2](#) of an extent of 2.73 ares situated Adaikkakuzhi village, Killiyur Taluk, Kanyakumari District. The official respondents alone were impleaded in the writ petition and the writ petitioner claimed that the subject property was purchased by her husband under a registered sale deed dated 06.09.2024 in Document.No.4135 of 2024 and that subsequently the writ petitioner's husband had executed a settlement deed on 21.10.2024 in favour of the writ petitioner.

13.It was also claimed by the writ petitioner that pursuant to the Sale Deed, revenue records were also mutated in the petitioner's husband's name. The typed set of papers filed along with the writ petition included joint patta in Patta.No.2877, which was mutated in the name of the vendor of the writ petitioner's husband one Pinny and subsequently Patta.No.7480 was also issued in the name of the petitioner's husband for the subject lands.

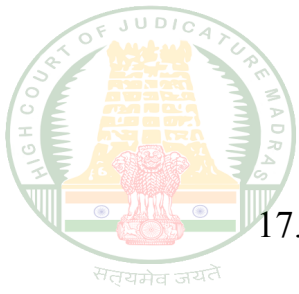
14.The present miscellaneous petitioners have not challenged any of the alienations that have been made subsequent to 2015. The properties have been subdivided and mutation of revenue records have also taken place. There is also a clear and specific observation in the common order passed by this court in the



civil revision petitions that the order in the revisions will not affect the rights of parties, who have already taken delivery of the properties. It is the specific case of the 1st respondent herein that the claim of the writ petitioner is only under a purchaser who has acquired the property pursuant to delivery of property having been effected in 2015.

15.No doubt as contended by Mr.K.N.Thampi, the revisions were allowed and the order dated 14.09.2015 was set aside and the executing court was directed to keep the execution petitions in abeyance till disposal of A.S.No. 120 of 2014.

16.Even though the operative portion of the common order does not refer to the reservation of the right already vested with the parties who have taken delivery of the properties, it should be borne in mind that the court has proceeded to pass the operative portion clearly stating that it is “for the foregoing reasons”. The immediate preceding paragraph talks about the right of parties, who have already taken delivery not to be affected.



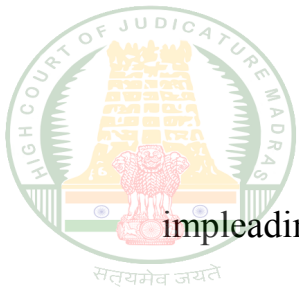
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17. Coming to the decisions on which reliance has been placed on by the learned counsel for the petitioners in *Pohla Singh's case*, the Hon'ble Supreme Court held that if a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as a party in the writ petition, it is open to such aggrieved party who seek recall of the judgment.

18. In *Sheik Mohammed Nizar's case*, this Court following the ratio laid down by the Hon'ble Supreme Court in *Prestige Lights Limited Vs. State Bank of India*, reported in 2007 (4) CTC 727 SC, held that the exercise of jurisdiction under Article 226 is discretionary and party approaching the Court must place all facts before the Court without any reservation and when there has been suppression of several facts, then the High Court is entitled to refuse equitable remedy.

19. In *A.V. Papayya Sastry's case*, the Hon'ble Supreme Court held that fraud vitiates all judicial acts whether in rem or in personam and can be challenged in any Court, at any time, in appeal, revision, writ or even collateral proceedings.

20. In *R. Gnanabaranam's case*, the Madurai Bench of this Court held finding that writ petition was filed suppressing civil suit and also without



impleading proper and necessary parties would entail recalling the order passed in the writ petition.

21.In *Union of India's case*, the Hon'ble Supreme Court held that non disclosure of necessary facts would also amount to playing fraud on Court.

22.In *Indian Bank's case*, the Hon'ble Supreme Court held that when fraud is committed before the Court it is an abuse of process and any decree or order obtained by committing fraud can be recalled in appropriate cases.

23.In *Nidhi Kaim's case*, the Hon'ble Supreme Court has laying down the proposition that even the trivialist act of wrong doing, based on a singular act of fraud could not be countenanced in the name of justice. The said proposition was followed by the Hon'ble Division Bench of this Court in *Lekshmipuram College Society's case*.

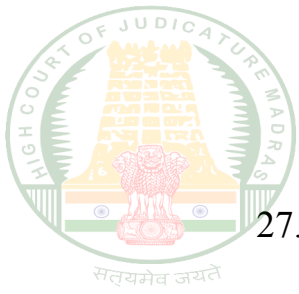
24.There is no quarrel with regard to the ratio laid down by the Hon'ble Supreme Court as well as this Court. However, in view of the elaborate discussion made herein above, I do not see how the writ petitioner can be



accused of having played fraud on the Court in the facts and circumstances of the present case. In view of the above, compelled myself to follow the ratio laid down in the above said cases and apply the same to the facts of the present case.

25. In the light of the above, I am not able to hold that the writ petitioner has played fraud upon this court and that the writ petitioner has suppressed the pendency of the said A.S.No.120 of 2014 and that the writ petitioner is guilty of not impleading proper and necessary parties.

26. In any event, it is only based on the registered Sale Deed, Settlement Deed and mutation of revenue records that I have directed the survey to be conducted. It is made clear that any such survey, even if made, would be subject to the outcome of the appeal proceedings in A.S.No.120 of 2014 and also the proceedings pending before the Honourable Supreme Court. In other words, the mere fact that the survey is directed to be conducted and boundaries are to be identified cannot be taken advantage by the writ petitioner in the event of the predecessors in interest of the writ petitioner suffering any adverse orders in the connected proceedings.



27. With the above clarification, the Writ Miscellaneous Petition is dismissed. There shall be no order as to costs.

04.09.2025

Speaking/Non-speaking order
Index : Yes/No
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To

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Killiyur Taluk,
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P.B.BALAJI.J,

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Pre-delivery order made in
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