

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.08.2022

PRONOUNCING ORDERS ON : 04.08.2022

Coram:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Review Application No.166 of 2021
in
WP.No.15507 of 2021

The District Collector
Collectorate,Rajaji Salai
Chennai-600 001.

..Review Applicant/
1st Respondent

.Vs.

1.Mr.R.Vetri

2.N.Sivaraman
Rep.by their Power of Attorney Agent
Mr.K.M.Syed Khalifa

..Respondents 1-2/
Petitioners

3.The Corporation of Chennai
Rep.by its Commissioner
Ripon Buildings, Chennai 600 003.

..3rd Respondent/
2nd Respondent

PRAYER: Review Petition has been filed under Order 47 Rule 1 & 2 of CPC ., r/w Section 114 of Civil Procedure Court to review the order passed in W.P.No.15507 of 2021 dated 21.09.2021.

For Petitioner : Mr.Edwin Prabakar
Special Government Pleader

For Respondents : Mr.Vijay Narayan
Senior Counsel
for M/s.Waron & Sairams
for R1 and R2

ORDER

The District Collector who was the 1st respondent in the Writ Petition has filed this Review Application and sought for setting aside the Order passed by this Court on 21.09.2021 in W.P.No.15507 of 2021.

2. For easy understanding, the parties will be referred as per their rank assigned in the Writ Petition.

3.The petitioners claimed absolute ownership over the property situated at Survey No.138/2, Kolathur Village, Chennai, measuring an extent of 1.05 acres, by virtue of a registered sale deed, dated 6.1.1990 executed by one, S. Rathinavelu. The petitioners filed a suit in O.S.No.528 of 2000 on the file of the XIVth Assistant City Civil Court, Chennai, seeking for the relief of declaration of title and permanent injunction. In the said suit, the Special Commissioner and Commissioner for land administration, the Secretary to Government, Agriculture Department and the Collector, Chennai district were made as the defendants. The suit came to be dismissed by a judgment and decree dated 6.1.2010. Aggrieved by the same,the petitioners filed an Appeal in A.S.No.122 of 2011 before the XVIII Additional Judge, City Civil Court, Chennai and the appeal was allowed through a judgment and decree dated 3.1.2013 and thereby the suit was decreed in favour of the petitioners. This decree became final and it was not put to challenge by the defendants in the suit.

4.The petitioners made several representations seeking for granting patta in their favour. That apart, the Corporation of Chennai had also put up a shed in the property and was taking steps to construct compost yards. Hence, the petitioners filed W.P.No.15507 of 2021. The said Writ Petition was disposed of by an Order dated 21.9.2021 and the relevant portions in the Order are extracted hereunder:

“7.The facts that have been discussed Supra makes it clear that the title of the petitioners have been declared by a competent civil court and it binds the respondents/defendants. The 2nd respondent seems to be utilising the property based on the entry found in the Revenue Records as if the subject property is classified as "Anadhennam". However the fact remains that the subject property was found to be the absolute property of the petitioners and this judgment and decree was passed in the appeal after it was contested by the official defendants. It is also seen from the counter affidavit that the 2nd respondent has addressed a letter to the 1st respondent seeking for a permission to enter upon the property for setting up a Micro Compost Centre in the property.

8.In the considered view of this Court, the 1st respondent cannot grant any such permission in view of the fact that the District Collector is bound by the judgment and decree of the competent civil court. Till this judgment and decree is reversed in the manner known to law, there is no question of anyone denying the title of the petitioners. Even the 2nd respondent is attempting to put up a Micro Compost Centre in the property based on the entries made in the Revenue Records. The moment a Civil Court renders a decree by declaring the title to the property, the entry in the Revenue Records will become irrelevant.

9.In view of the above, the 2nd respondent cannot go forward and construct any Micro Composting Centre in the property and the 1st respondent cannot grant any such permission. That

apart, the 2nd respondent has to necessarily consider the representations made by the petitioners on 23.02.2018 and 17.07.2020 and necessary steps must be taken to remove the shed, equipments and the solid waste that is lying in the property. The 2nd respondent cannot straight away get into the property belonging to the petitioners without following the due process of law and such an interference will violate the constitutional right guaranteed under Article 300A of the Constitution of India.

10. The decision shall be taken by the 2nd respondent, within a period of four weeks from the date of receipt of copy of this order and effective steps shall be taken to remove the equipments and the solid waste lying in the property.”

5. Pursuant to the above Order, the 1st respondent has filed this Review Application mainly on the ground that the petitioners had relied upon an Order passed by the Assistant Settlement Officer, dated 15.4.1976 and this Order formed the basis for the suit to be decreed in favour of the petitioners and that this Order is a forged and fabricated document and hence, the petitioners have played a fraud on the Court and the decree itself is non-est in the eye of law.

6. Heard Mr. Edwin Prabakar, learned Special Government Pleader for the petitioners and Mr. Vijay Narayan, learned Senior Counsel for R1 and R2.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The following issues arise for consideration in this Review Application:

a) Where a competent Civil Court has granted a decree in favour of the petitioners and there was no finding to the effect that the Order dated 15.4.1976 is a fabricated and forged document and this decree has become final, whether this Court can go into the issue of genuineness of the Order dated 15.4.1976 in collateral proceedings under Article 226 of the Constitution of India ?

b) Whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can nullify the judgment and decree passed by a competent Civil Court ?

9. Before rendering findings to the issues formulated in this Review Application, this Court wants to remind itself on the scope of the Review Application. That apart, this Court must also bear in mind the extent to which fraud can vitiate proceedings.

10. Rule 29(1) of The Madras High Court Writ Rules, 2021 specifically provides that the Court may review its orders but no petition for review will be entertained except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908. One of the grounds that is provided under Order XLVII is "for any other sufficient reason". The words "any other sufficient reason" has been interpreted to mean a reason sufficient on grounds at least analogous to those specified immediately previously, i.e. excusable failure to bring to the notice of the Court new and important matters or error apparent on the face of the record. In other words, if the fact had been brought to the notice of the Court,

a different view would have been taken by the Court. One ground which can easily fit in the words "any other sufficient reason" is fraud on the Court.

11. Insofar as the effect of fraud is concerned, useful reliance can be made to the judgment of the Hon'ble Supreme Court in ***A.V. Papayya Sastry v. Govt. of A.P.***, reported in **(2007) 4 SCC 221**. The relevant portions are extracted hereunder:

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

12. It is clear from the above judgment that where a judgment or decree or order is obtained by playing fraud, it can be interfered even in collateral proceedings including Writ proceedings.

13. Having discussed the scope of the Review jurisdiction and the effect of fraud committed during judicial proceedings, this Court will now deal with the grounds raised in this Review Application.

14. The specific case of the petitioners in the suit is that their vendor, S. Rathinavelu was granted patta and to substantiate the same, the land register record dated 18.05.1972 was relied upon and marked as Exhibit A3 in the suit. The original land register record that was furnished before this court is extracted hereunder:

65. (கனத்தரி மீள்.)

1	2	3	4	5	6	7	8	9	10	11	12
136	3	...	...	...	...	...	...	...	...	...	...
	4	...	...	...	...	...	...	...	...	...	...
	5	...	...	...	...	...	...	...	...	...	...
	6	...	...	...	...	...	...	...	...	...	...
	7	...	...	...	...	...	...	...	...	...	...
137	1	...	...	...	...	...	...	...	...	...	...
	2	...	...	...	...	...	...	...	...	...	...
	3	...	...	...	...	...	...	...	...	...	...
	4	...	...	...	...	...	...	...	...	...	...
	5	...	...	...	...	...	...	...	...	...	...
	6	...	...	...	...	...	...	...	...	...	...
138	1	...	...	...	...	...	...	...	...	...	...
	2	...	...	...	...	...	...	...	...	...	...
	3	...	...	...	...	...	...	...	...	...	...
	4	...	...	...	...	...	...	...	...	...	...
	5	...	...	...	...	...	...	...	...	...	...
	6	...	...	...	...	...	...	...	...	...	...
	7	...	...	...	...	...	...	...	...	...	...
139	...	...	...	...	...	...	...	...	...	...	...
140	...	...	...	...	...	...	...	...	...	...	...
141	...	...	...	...	...	...	...	...	...	...	...

A. கனத்தரி மீள் கனத்தரி மீள் வகுப்பு.

15. On a cursory glance, it can be seen that Survey No.138/2 has been recorded as an Anadheenam in the original record and whereas the name of S. Rathinavelu has been hand written and inserted in Column 11 and parallely the categorisation of the land is also mentioned as Anadheenam, in the document that was marked as Exhibit A3.

16. The next document to be taken into consideration is the order of the Assistant Settlement officer, dated 15.4.1976. This order was the basis for the vendor of the petitioners to claim a right over the subject property. The original order that has been furnished before this Court has been passed in proceedings S.R.No.1/75/Sec.11(a)/XXVI/48-SDT, dated 15.4.1976. This order has been passed in the name of Tmt. Hussani Begam and 4 others and they have been granted ryotwari patta as follows:

SCHEDULE.				
Name of the Village		: Kolathur.		
Name of the Taluk		: Saidapet.		
Name of the District		: Chengalpattu.		
S.No.	Extent- No.	Paimash	Extent	Nature of order.
Under section 11(a) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948, ryotwari patta allowed in favour of:				
13/1pt.	3-85	721 Pt. 722 Pt.	3-20 3-20	1) Hussani Begam W/o Sabdhay Hussain
				2) Maliga Begam W/o Mir Akbar Hussain.
				3) Mir Maskar Hussain S/o Mir Mohamed Hussain
				4) Mir Askar Hussain S/o Mir Mohamed Hussain.
				5) Tahira Begam W/o Fida Hussain.
13/2pt.	1-85	720/3	0-86	Sri Selliamman Temple represented by Trustee for the time being.
14	4-07	721 Pt. 722 Pt.	-	1) Hussani Begam W/o Sabdhay Hussain
				2) Maliga Begam W/o Mir Akbar Hussain.
				3) Mir Maskar Hussain S/o Mir Mohamed Hussain
				4) Mir Askar Hussain S/o Mir Mohamed Hussain
				5) Tahira Begam W/o Fida Hussain.

17. The order that was marked in the suit also carried the same proceedings number and date and the body of the order was also the same. The change was made only in the schedule to the order as under:

161			
Name of the Village			Kulathur
Name of the taluk			Saidapet
Name of the district			Chengalpattu
Sl. No.	Extent	Paimash No.	Nature of order
			Under Section 11(a) of the Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act 1948, Ryotwari Patta allowed in favour of
6/8	1-70	736	1. K. Prabakaran s/o Kandabalan
60/4	0-71	151 & 160/2	2- Niramudeen s/o Mohammed Kamaludeen
88/5	2.84	561 & 564	3. Naasimhan s/o Lokeshiah
89/1	0.78	570	4. Kalyanasundaram s/o Annamalai
138/2	1.05	249	5. Rathinavelu s/o Subbiah

18. It can be seen that the name of the parties and the survey numbers were changed and it gives an impression as if S. Rathinavelu was given a ryotwari patta for Survey No. 138/2 measuring an extent of 1.05 acres.

19. On going through the contents of the order, there is reference to two other orders dated 25.4.1975 and 17.7.1975. This Court wanted to ascertain the names of the persons involved in these two orders. On going through the original file, it is seen that these proceedings pertained to Hussani Begam and 4 others. Therefore, a reference to these orders perfectly syncs with the original order that was produced before this Court in the name of Hussani Begam and 4 others, while granting them ryotwari patta. The order also confined itself to Survey Nos. 13/1, 13/2 and 14. Whereas the order that was marked

before the Civil Court shows as if it was passed in favour of Prabhakaran and 4 others and the survey numbers covered in Exhibit A4 are 6/8, 60/4, 88/5, 89/1 and 138/2 part. The order dated 15.4.1976 is not relatable to these survey numbers at all and the same is evident from the contents of the order which refers to the earlier orders passed in the matter of Hussani Begam and 4 others covering Survey Nos.13/1, 13/2 and 14.

20.The learned Senior Counsel took this Court through the proceedings of the Collector dated 3.5.1993, pleadings in O.S.No.528/2020, deposition of witnesses, issues framed in the suit and also the judgment of the Trial court. The judgment that was passed in the appeal in A.S.No.122 of 2011 was also brought to the notice of this Court. By pointing out to all these documents, it was submitted that, at no point of time, the 1st respondent took steps to establish about the availability of the so called genuine order and the Civil Court also did not hold Exhibit A4 to be a fraudulent document and therefore, the exercise of finding out the genuineness of Exhibit A4 cannot be undertaken in this Review Application. The learned Senior Counsel also brought to the notice of this Court, the encumbrance certificates to demonstrate the fact that 4 other persons whose names are found in Exhibit A4 are merrily dealing with the properties and several transactions had taken place and no action has been taken against them by the respondents, if really Exhibit A4 is a forged document.

21.On carefully going through the proceedings of the Collector dated 3.5.1993,

which was the spark for filing the suit in O.S.No.528 of 2020, it is seen that Exhibit A4 that was relied upon by the petitioners was held to be a fraudulent document and hence, a direction was given to cancel the patta and restore the original position by showing the concerned lands as Anadheenam. Even in the written statement, the 1st respondent has taken the same stand to the effect that Exhibit A4 is a fictitious and a fraudulent document. Similarly, DW1 in the evidence has also taken this stand. Unfortunately, both the Trial Court as well as the Appellate Court focused only on the power and jurisdiction of the Collector to pass the order of cancellation and both the Courts did not go into the genuineness of Exhibit A4. If both the Courts had turned their attention to Exhibit A4 based on the stand taken by the defendants, it could have been easily found that Exhibit A4, on the face of it, is a fraudulent document. If this issue had been considered, there was no occasion to go into any other issue and to test the power and jurisdiction of the Collector.

22. This Court will now deal with the issues that were formulated. This Court cannot shut its eyes in a case where the document, on the face of it, is found to be fabricated and fraudulent only on the ground that the Civil Court has not rendered any findings on the genuineness of the document and had relied upon it and decreed the suit in favour of the petitioners. The entire concept of Writ jurisdiction exercised is founded on equity and fairness. This Court can never allow perpetration of an illegality merely on technicalities. This is not a case where there is a private dispute between the parties and the genuineness of a document relied upon by the parties is put to scrutiny in the Writ proceedings. This is a case where the property belonging to the Government and which

was categorised as Anadheenam, is sought to be knocked off by producing a fabricated order as if it was passed by the Assistant Settlement Officer, through proceedings dated 15.4.1976. This Court has already dealt with the original (genuine) order and the order that was marked as Exhibit A4 and found Exhibit A4 to be a forged and fabricated document. This document was the basis for the vendor of the petitioners to claim a right over the subject property as if ryotwari patta was granted in his favour. In the absence of this order, no right will enure in favour of the vendor of the petitioners. In fact, it was cancelled by the Collector only on the ground that it was found to be a fraudulent and fictitious document. Instead of focusing on this important issue, unfortunately, the Civil Courts misdirected themselves and focused on the power and jurisdiction of the Collector to cancel the patta. The Civil Courts did not appreciate the fact that the cancellation was done not on considering the right of the parties but on the only ground that the document relied upon was a fraudulent one.

23. The judgment of the Hon'ble Supreme Court in *Papayya Shastry*, referred supra, makes it abundantly clear that a decree obtained by playing fraud on the Court is a nullity and non-est in the eye of law and it can be questioned even in collateral proceedings. In the present case, Exhibit A3 and Exhibit A4 are fraudulent documents and a decree that was obtained based on these documents will be rendered to be a nullity and non-est in the eye of law. Such jurisdiction can be exercised even in Writ proceedings under Article 226 of the Constitution of India.

24. The learned Senior Counsel appearing on behalf of the petitioners submitted that they came into the scene much later, only in the year 1990 and they honestly believed the land register record and the order of the Assistant Settlement Officer to be genuine and hence, they should not be victimised for the alleged fraud committed by their vendor. This submission is untenable since the petitioners cannot get a better right than what their vendor had on the principle of *nemo dat quod non habet*. The concept of bona fide purchaser does not have any role to play in the present case since the property that was dealt with belongs to the Government and it was attempted to be knocked off by means of fraudulent documents.

25. The other submission made by the learned Senior Counsel to the effect that the others who got the ryotwari patta along with the vendor of the petitioners are still dealing with those properties, is equally untenable since there cannot be equality in illegality. Infact, the District Collector must take immediate steps to take over those lands also.

26. In view of the above, this Court holds that even where a competent Civil Court has granted a decree in favour of the petitioners and there was no finding to the effect that the order dated 15.4.1976 is a fabricated and forged document and this decree has become final, this Court can go into the issue of genuineness of the order dated 15.4.1976 in collateral proceedings under Article 226 of the Constitution of India, since it was a fraud played on the Court by using a forged order. This Court also holds that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can nullify

the judgment and decree passed by a competent Civil Court if it has been obtained by playing fraud on the Court and such a decree is a nullity and non-est in the eye of law.

27. In the result, the Order passed in W.P.No.15507 of 2021, dated 21.9.2021 is hereby set aside. The judgment and decree passed in A.S.No.122 of 2011, dated 3.1.2013 is declared to be a nullity and non-est in the eye of law. There shall also be a further direction to the District Collector to immediately initiate proceedings against 4 other persons who had utilised the forged and fabricated order dated 15.4.1976 and dealt with the properties in Survey Nos: 6/8, 60/4, 88/5 and 89/1. This Review Petition is accordingly allowed. There shall be no order as to costs.

04.08.2022

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
KP

To

The Corporation of Chennai
Rep.by its Commissioner
Ripon Buildings
Chennai 600 003.

N. ANAND VENKATESH, J.

KP

**Pre-Delivery Order in
Review Application No.166 of 2021
in WP.No.15507 of 2021**

04.08.2022