

A.Muthu Vs. State Rep by

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Court : Chennai

Decided On : Nov-08-2011

Judge : K.Chandru, J.

Appeal No. : Writ Petition (MD)No.427 of 2011 and Writ Petition (MD)No.428 of 2011

Appellant : A.Muthu

Respondent : State Rep by

Judgement :

1. The two writ petitioners have filed identical writ petitions seeking for a direction to the Commissioner for Land Administration i.e., the first respondent to reclassify the land in R.S.No.127/2 and renumbered as T.S.No.5/2 in Emaneswaram Village, Paramakudi, Ramanathapuram District describing them as a Government punjai dry land and also to issue patta on the basis of their representation dated 17.08.2010.

2. In the representation dated 17.08.2010, the petitioners stated that earlier the two petitioners have filed a suit before the District Munsif Court, Paramakudi in O.S.No.123 of 2008, seeking for a declaratory relief stating that the properties in question are in their possession and enjoyment and the respondents/defendants should not interfere with the petitioners right to enjoy the property and to that effect a permanent injunction was sought for and they also sought for a mandatory

injunction directing the respondents(defendants) to grant patta in respect of the lands which are in possession of the petitioners.

3.The said stand was resisted by the official respondents in the written statement stating that the lands were shown as Kanmai Neerpidippu (catchment area for the Kanmai) as per the village accounts. Only when these lands reclassified and made as Governemnt Poramboke lands, they are eligible for consideration for grant of patta. After a contest in the suit, the learned Munsif vide his judgment and decree, dated 27.04.2004 partially decreed the suit stating that the patta should be granted in favour of the petitioners and they were also entitled for the declaratory and permanent injunction in respect of the said properties in their possession and enjoyment. Aggrieved by the said judgment and decree, the official respondents filed an appeal before the lower Appellate Court, i.e., the Sub Court, Paramakudi. The said appeal was taken on file as A.S.No.49/2006. But the appeal filed by the State after notice to the petitioners was partially allowed with observation and the judgment and decree granted by the District Munsif Court, Paramakudi was set aside and the parties were ordered to bear their own costs.

4.It now transpires that the petitioner in W.P.(MD)No.427 of 2011 has filed a second appeal before this Court. Even before the second appeal could be decided in favour of the petitioners, the petitioners have come forward to file the present writ petition.

5.The lower appellate court had decided against the petitioners' by allowing the appeal partially. By taking advantage of the lower appellate's court, observation that the patta cannot be directed to be granted by the Civil court and the Civil Courts jurisdiction are barred, the petitioners sent representation to the first respondent. Within three months, thereafter, the petitioners had filed the present writ petitions seeking for the relief stated supra.

6.When the matters came up on 11.01.2011, notice of motion were ordered in both writ petitions. On notice from this Court, the third respondent Tahsildar, has filed a counter affidavit. It was averred that the property was classified as 'Kanmoi poramboke' and the petitioners were till now given penal notices under 'B' memos. Their initial request for patta was rejected by the revenue authorities.

7.It was also brought to the notice of this Court that the petitioners have earlier filed two other writ petitions being W.P.(MD)Nos.26635 and 26636 of 2010, seeking for identical reliefs. When these matters were listed for hearing, there was no representation on the side of the petitioners. Those writ petitions were dismissed by this Court for want of prosecution by a common order dated 29.11.2010. Even these facts were not disclosed in the present affidavit. Further, in the Second appeal filed by the first writ petitioner being in S.A.(MD)No.265 of 2009, notice of motion was ordered on 17.04.2009 and the same is pending. This fact was also not disclosed.

8.Subsequently, two other writ petitions were also filed but were not numbered. When the matters listed before this Court at the S.R.stage being W.P.(MD)S.R.Nos.130833 & 130835 of 2010, they were disposed of at the S.R.stage giving liberty to the petitioners to proceed before a competent civil Court as their Appeal suit was dismissed by the lower Appellate Court.

9.It is not clear as to why the petitioners in their affidavits did not mention about the filing of the appeal and the subsequent filing of four writ petitions. When the petitioners sent representations, dated 17.08.2010 to the first respondent there also they did not state about the pendency of the second appeal.

10.Therefore, the petitioners are guilty of suppression of vital information to this Court. A person who seeks relief of this Court must come with clean hands and cannot suppress any information for consideration by the Court. In such cases, the Court need not even go into the merits of the case made by a litigant before this Court.

11.The parties who comes to Court must come with clean hands. In this context it is necessary to refer to a recent decision of the Supreme Court in State of M.P Vs.Narmada Bachao Andolan reported in 2011 (7) SCC 639@ 705 & 706. In paragraphs 163 to 167, it was held as follows:

163.Whenever the court comes to the conclusion that the process of the court is being abused, the Court would be justified in refusing to proceed further with the matter. This rule has been evolved out of the need of the courts to deter a litigant

from abusing the process of the court by deceiving it. However, the concealed fact must be a material one in the sense that had it not been suppressed, it would have an effect on the merit of the case/order. The legal maxim *jus ex injuria non oritur* means that a right cannot arise out of a wrongdoing, and it becomes applicable in a case like this. (Vide *Ramjas Foundation v. Union of India* (1993 Supp (2) SCC 20 : AIR 1993 SC 852), *Noorduddin v. Dr.K.L.Anand* ((1995) 1 SCC 242) *Ramniglal N.Bhutta v State of Maharashtra* ((1997) 1 SCC 134: AIR 1997 SC 1236), *Sabia Khan v.State of U.P.* ((1999) 1 SCC 271). *S.J.S. Business Enterprises (P)Ltd. v.State of Bihar* ((2004) 7 SCC 166 and *Union of India v.Shantiranjan Sarkar* ((2009) 3 SCC 90: (2009) 1 SCC (L&S) 575).

164.It is a settled proposition of law that a false statement made in the court or in the pleadings, intentionally to mislead the court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court, for the reason that causing an obstruction in the due course of justice undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity.(Vide *Naraindas v. Govt. of M.P.*((1975) 3 SCC 31: 1974 SCC (Cri) 727:AIR 1974 SC 1252). *Advocate General, State of Bihar v.M.P.Khair Industries* (1980) 3 SCC 311: 1980 SCC (Cri) 688:AIR 1980 SC 946 and *Afzal v.State of Haryana* ((1996) 7 SCC 397: 1996 SCC (Cri) 424)).

165. In *K.D.Sharma v.SAIL* ((2008) 12 SCC 481) this Court held that:(SCC p.492, para 34)

34.....Prerogative writs.....are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim

(emphasis added)

166.While deciding the said case this Court relied upon upon the leading case of R.v.Kensington Income Tax Commissioners ((1917) 1 KB 486 (CA), wherein it had been observed as under (KB p.514)...when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - (it says) facts, not law. He must not misstate the law if he can help it-the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement. (emphasis added)

36....If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone.....The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. (emphasis supplied)

167.In such a case the person who suppresses the material facts from the court is guilty of suppressio veri and suggestio falsi i.e. Suppression or failure to disclose what a party is bound to disclose, which may amount to fraud.

12.In the light of the above, the writ petitions stands dismissed. Though the Courts could have ordered heavy costs considering the fact that the writ petitioners are poor agriculturists, this Court lets them off with a warning for their attempting to over- reach the Court. Hence, no costs are ordered.

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