

(2011) 10 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 9092 of 2009 and M.P. No. 1 of 2009

Then Chennai Palavakkam Section Sri Lanka Repatriates
Welfare Association (Regn. No.100/2008)

APPELLANT

Vs

Government of Tamilnadu and Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Citation : (2011) 10 MAD CK 0089

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R.Thyagarajan, SC for M/s. J. Muthukumaran, for the Appellant; V. Subbiah, Spl. G.P. For RR1, Mr. R. Muthukumarasamy, SC and M/s. A. Jenasenar for R-6, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner is an association of Sri Lankan Repatriates at Chennai Palavakkam. It was started for the welfare of those repatriates. It is a registered society with registration No.100/2008. In the the present writ petition, the prayer of the petitioner association is to set aside the order of the third respondent, i.e., the District Collector, Kancheepuram, dated 4.3.2009 and after setting aside the same, seeks for a consequential direction to regularise the possession of the members of the petitioner association relating to house sites in S.No.131/10 A1 at Palavakkam village by grant of patta in their respective names.

2. The writ petition was initially admitted by this court on 14.5.2009. Subsequently, it was claimed that in respect of the same survey number, there are other proceedings pending, i.e., W.P.No.13941 of 2009 and W.A.No.309 of 2009, before the division bench. This writ petition was also listed before a division bench. The division bench on 19.1.2010 held that the interim order

granted will not create any third party right or any right for the members of the petitioner association to alienate the property and the present occupants will not add, alter or change the nature of the structure except for necessary repairs and maintenance. During the pendency of the matter before the division bench, the sixth respondent got themselves impleaded in the writ petition which was ordered by the division bench on 19.1.2010. But, however, the division bench by an order dated 27.10.2010 had directed this writ petition to be delisted from those cases and be heard by a single bench. Pending the writ petition, this court had directed status quo to be maintained as on the date of the order. A counter affidavit, dated 15.7.2011 was filed by the official respondents. The impleaded sixth respondent had also filed a counter affidavit, dated 13.5.2011.

3. It is the case of the petitioner association that the Government of Tamil Nadu on recommendations of the second respondent had provided house sites for 54 families at Palavakkam through the Tahsildar, Saidapet during the year 1983-84. They had put up thatched shed in the house sites allotted to them. The second respondent had also arranged for funds through Indian Overseas Bank for the purchase of cycle rickshaws for their livelihood. The repatriates were also given identification certificates. Those who were given house sites were also paying house tax to the panchayat from the year 1984 and that ration cards were also issued by the Civil Supplies authorities. They have got electricity connection for their respective houses. Considering their poverty, the Indian Overseas Bank had also waived the loan granted to them. Most of the members were engaged in some private companies in and around Palavakkam and engaged as coolies. The female members of the society have joined in Women Self Help Groups. The places where they had put up huts, cement streets were laid, street lights were provided and public water taps were also provided by the panchayat. Their children are studying in the nearby schools.

4. It was stated that the adjacent lands measuring about 20 acres were allotted to the 6th respondent society and they have formed layouts and sold it to its members. The sixth respondent society has nothing to do with the house sites allotted to the petitioner association. Even though it was allotted to the sixth respondent, no Burma repatriates are residing and most of them have sold their house sites. The land measuring about 4 acres was only allotted to the petitioner association and that they are not encroachers. Hence they are entitled to get pattas. The Burma repatriates who were given lands for providing shelter have abandoned the allotment and have sold the same for a valuable consideration. In fact, the Government had acquired 24.57 acres under the Urban Land ceiling and had assigned the same to the Burma repatriates in the year 1968, dividing into 322 plots and had constructed 87 small houses to them. But, instead of occupying the same, they have alienated their plots. Further the alternate accommodation offered to the members of the petitioner association by the Slum Clearance Board at Okkiam Thoraipakkam is hardly 100 square feet and insufficient for its members and they were already in possession of 600 square feet building in the present site.

5. It was further stated that the respondents are planning to dismantle their houses in the guise of alternate accommodation and those accommodation was already under the occupation of illegal trespassers. They have also sent a representation dated 24.3.2008. When a writ petition was filed before this court in W.P.No.25612 of 2008, this court had directed the respondents to consider their representation. It is on this direction, the impugned order, dated 4.3.2009 came to be passed. By the impugned order, the District Collector, Kancheepuram had informed the petitioners that when the Village Administrative Officer made an enquiry in the village, he found that under the village account and as per the patta No.972, the land in S.No.131/10A1 is in the name of the 6th respondent association. It has been encroached by the persons who have built houses. Already under the directions issued by this court in a writ petition, eviction notices have been issued by the Tahsildar. Since already patta for the land stands in the name of the sixth respondent, the petitioner's request cannot be entertained.

6. It is the case of the sixth respondent that their society was formed on 29.2.1968. Under the orders of the second respondent, in the year 1991, 20 Srilankan refugees were temporarily permitted to stay in the society's land. Thereafter, the sixth respondent filed a writ petition in W.P.No.38168 of 2002 seeking for a direction to the revenue authorities to remove the encroachers. That writ petition was dismissed by this court on 09.10.2002 stating that they should move the competent civil court. As against the dismissal, the sixth respondent had filed a writ appeal being W.A.No.477 of 2003. The division bench allowed the writ appeal and directed the respondents to evict the encroachers. Pursuant to the directions, the District Collector, Kancheepuram gave notice to the petitioner to vacate the places. But till such time they are allotted tenements under the Slum Clearance Board as an alternate accommodation, they are allowed to stay in the same land. It was thereafter, they were informed that they were allotted lands in the Vengambakkam village and they should move to the said place. It is at this stage, 5 members led by R.Munusamy of petitioners filed an another writ petition before this court being W.P.No.36258 of 2004 seeking to challenge the eviction notice dated 05.10.2004. This court had dismissed the writ petition, but however gave three months time for vacating the place. While passing the order, the sixth respondent was not heard.

7. In any event, once again W.P.No.29235 of 2007 was filed by one Thiruvalluvar Nagar Residents General Welfare Association, Palavakkam challenging an order dated 17.8.2003 which was an eviction notice issued by the District Collector. It was claimed by them that the members of their association as well as one Dr.Puratchi Thalavi Nagar Hutment Dwellers Welfare Association were occupying the land in the said survey numbers and therefore, they should not be evicted. The other association, i.e., Dr.Puratchi Thalavi Nagar Hutment Dwellers Welfare Association also filed a writ petition in W.P.No.29330 of 2007 for similar relief. Both writ petitions were posted before the division bench and the division bench by an order dated 20.12.2007 held that the encroachers have lost the battle in

several rounds from the year 1991 both before this court as well as in the civil court and they cannot re-agitate the issue all over again. They have been given alternate accommodation which is only 3 Kms from the existing location and they should accept the alternate accommodation. Further after dismissing the writ petitions, they were given liberty to raise any objection before the Tahsildar.

8. Not satisfied with the order passed by the division bench, the two associations had preferred SLP before the Supreme Court being SLP(C)Nos.5533 and 5534 of 2008. The Supreme Court by its order dated 14.3.2008 had dismissed the SLPs. It was after the dismissal of the SLPs, the present association came to be formed in the year 2008 to be more precisely on 20.3.2008 only to start the battle all over again in the name of the new association. It is also stated that the Government order relied on by the petitioner association for grant of patta will not apply to the case of the petitioner as the said G.O referred the patta from the poramboke land and that the present land is the patta land standing in the name of the members of the sixth respondent. It is also stated that 4 out of 73 members of the petitioner association who have filed a writ petition in W.P.No.36258 of 2004 were allotted alternate place in Vengambakkam village and that noting the same, that writ petition was dismissed on 17.3.2005. Under these circumstances, it was claimed that no relief can be given to the petitioner. In the counter affidavit filed by the sixth respondent, it was stated that the very association itself was formed to file the present writ petition and that their intention is only to grab the land belonging to the sixth respondent.

9. In the counter affidavit filed by the official respondents, it was stated that the issue relating to the claim of Srilanka repatriates to get patta has already been concluded. There was specific direction to evict them from the present place. The petitioner's subsequent challenge in the name of the two new associations were also repelled by the another division bench and the SLPs filed by them were also dismissed. Further, already the District Collector had given directions to the Tahsildar to evict them. It is also stated that the house for every family of the petitioner association is ready and available at Kannagi Nagar in Thoraipakkam village. Their claim that they have been provided with basic amenities and have got ration cards and identity cards cannot give them ownership of land which belonged to the sixth respondent which has been duly recorded in the village account. As it is the patta land, no free house sites can be given. Some of the members of the petitioner association were allotted to occupy S.No.131/10A1 in Palvakkam village only as a temporary measure. The Slum Clearance Board had constructed nearly 3500 houses for accommodating the families evicted from the Chennai city.

10. In the light of the stand of the parties, it has to be seen whether the petitioner has made out any case for entertaining the writ petition.

11. It must be noted that in one garb or other, the petitioners have been moving this court and have successively failed to get any relief. The matter had also gone upto Supreme Court and had reached its finality. Therefore, by registering

another association, the petitioner cannot raise an issue all over again. The petitioner's attempt to file the present writ petition for the very same relief in the fourth round cannot be countenanced by this court and it is a clear abuse of process of the court.

12. In this context it is necessary to refer to a recent decision of the Supreme Court in *Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another*, . 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 *The Ramjas Foundation and Others Vs. Union of India and Others*, , *Noorduddin Vs. Dr K.L. Anand, Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, , *Sabia Khan and Others Vs. State of U.P. and Others*, . *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, and *Union of India (UOI) and Others Vs. Shantiranjana Sarkar*, .

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 Vs. The Government of Madhya Pradesh and Others*, . *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, and *Afzal and another Vs. State of Haryana and others*, .

165. In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, 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.

13. In the light of the above, this court is of the view that the petitioner association has not made out any case for entertaining the writ petition. Hence the writ petition will stand dismissed. Consequently connected miscellaneous petition stands closed. However, under the facts and circumstances of the case, this court is not inclined to order any cost on the petitioner. The parties are allowed to bear their own costs.