

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. 5 IN CIVIL APPEAL NO. 3572 OF 2009

VILLIANUR IYARKKAI PADUKAPPU MAIYAM ...
APPELLANT

Versus

UNION OF INDIA & ORS. ...
RESPONDENTS

WITH

I.A. NO. 3 IN CIVIL APPEAL NO. 3573 OF 2009

ORDER

I.A. No.5 in Civil Appeal No.3572/2009 is filed by the Union of India through Ministry of Home Affairs, North Block, New Delhi in which the following prayers are claimed.

"a) Recall the judgment and order dated 14th May 2009, vacate the findings and conclusions recorded therein and dismiss Civil Appeal No.3572 of 2009;

b) Modify the order dated 4th May 2010 and include the expression "do not" between the words "and" and "relate" so as to read as under "The observations, if any, made in the judgment are confined only to the issue

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involved in the matter and do not relate to the ownership of the land pertaining to minor ports in Puducherry"; and

c) Pass such other or further orders as it may deem proper in the facts and circumstances of the case."

Initially, the instant application was listed for preliminary hearing before a Bench comprising Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice B.S. Chauhan on August 17, 2010 and after hearing the learned counsel for the petitioner, following order was passed :

"Post on 26th August, 2010 before a bench presided over by Hon'ble Mr. Justice J.M. Panchal."

That is how, the instant application is placed before this Court for hearing. This Court has heard the learned counsel for the parties at length and in great detail. During the course of hearing of the application, the learned Solicitor General Mr. Gopal Subramaniam has, on instructions not pressed the prayer claimed in clause (a) of the application mentioned earlier. Therefore, the said prayer is rejected as not pressed. From the record of the case what is evident is that,

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the Union of India through the Ministry of Home Affairs, North Block, New Delhi had filed IA No. 2 of 2009 in Civil Appeal No.3572 of 2009 and had claimed the following reliefs:

"a) Recall/Modification its judgment and order dated 14th May 2009 dismissing the Civil Appeal in so far as the observations contained in para 25 of the judgment; and

b) Pass such other or further orders as it may deem proper in the facts and circumstances of the case."

I.A. No. 2 was listed for hearing on 4th May, 2010 before the three Judge Bench of this Court which had decided Civil Appeal No.3572 of 2009. The learned counsel for the petitioners was heard at length and the record of the case including the affidavits filed by the parties in Civil Appeal No.3572 of 2009 were considered in detail. Thereafter, the Court had passed the following order :

"Heard learned Solicitor General and respective counsel for the parties.

The observations, if any made in the judgment are confined only to the issues involved in the matter and relate to the ownership of the land pertaining to minor ports in Pondicherry.

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With the above-stated observations, all I.A.s are disposed of accordingly."

A bare reading of the averments made in the instant application, indicates that, almost all the grounds which are now pleaded in the instant application for claiming the reliefs referred to earlier were stated and mentioned in detail in

memorandum of I.A. No.2 of 2009. The two main grounds, for filing repeated applications in a disposed of matter, urged were (1) in the Writ Petition filed before the Madras High Court, the Ministry of Home Affairs, which is custodian of property of the Central Government situated in State of Puducherry was not impleaded as a party but Ministry of Surface Transport was impleaded as a party (2) the report of the Special Audit Team, submitted pursuant to the directions of the Ministry of Home Affairs, points out number of infirmities and lacunae in bid award process. The contention that an error had crept in the order dated May 4, 2010 passed by the Three Judge Bench of this Court and therefore, the prayer made in clause (b) should be granted has no substance. The order dated May 4, 2010 was pronounced in the open Court immediately after the

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arguments had concluded and that too, to the hearing of the learned counsel for the parties who were present in the Court. What is important to notice is that the signed copy of the order pronounced in the open Court was made available on May 6, 2010 on the web site of the Supreme Court. It will not be out of place to mention that I.A. No.2 of 2009 was heard and decided by a three Judge Bench of this Court, presided over by the then Hon'ble The Chief Justice of India, who laid down the reins of the office on May 12, 2010. Till May 12, 2010, the petitioner did not find time to file any application making grievance that an error had crept in the order dated May 4, 2010 passed in I.A. No.2 of 2009 and therefore the said order deserved to be modified. The record of the case does not indicate that the petitioner had even cared to obtain simple copy of the order dated May 4, 2010 passed in I.A. No. 2 of 2009 and had filed the instant application in the month of July, 2010. No plausible explanation is offered in the application as to why the petitioner could not approach the Court immediately for correction of so called error which had

crept in order dated May 4, 2010.

Therefore, the prayer

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surviving in the application is liable to be rejected on the ground that it is made belatedly.

The argument that Ministry of Home Affairs which is custodian of property of Central Government, situated in the State of Puducherry, was not impleaded as a party and therefore relief claimed should be granted in devoid of substance.

In the Writ Petition filed before the Madras High Court, Union of India through its Secretary to Government, Ministry of Surface Transport, New Delhi, was impleaded as the respondent No.1. Over and above, Union of India, fourteen other parties were impleaded as respondents. The respondent No.13 was Mr. Dhiman, Director (Ports Development) Ministry of Shipping, New Delhi, whereas the respondent No.14 was the Director, National Institute of Port Management East Coast Road, Uthandi, Chennai and the respondent No.15 was the Director, Central Bureau of Investigation, New Delhi. The judgment dated 10.8.2006, delivered by Madras High Court indicates that the then learned Solicitor General assisted by

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the then Additional Solicitor General had represented the respondent Nos. 1, 13, 14 and 15 before the Madras High Court.

At no point of time, it was pointed out by the Secretary to the Ministry of Surface Transport to the Madras High Court that the Ministry of Home Affairs was appropriate ministry and therefore the said ministry should also be impleaded as party. On the contrary, the Ministry of Surface Transport had merrily continued to participate in the Writ Petition heard and disposed of by Madras High Court. As is evident, the original petitioner had lost before the Madras High Court and had,

therefore, preferred Civil Appeal No. 3572 of 2009. The hearing of the appeal had gone on for number of working days together before this Court, but at no point of time, it was brought to the notice of this Court that the Ministry of Home Affairs was a necessary party and the said Ministry should be impleaded as a party respondent in the appeal and should be heard by the Court.

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The basic and fundamental fallacy from which the argument that Ministry of Home Affairs was not impleaded as a party to the Writ Petition filed before High Court of Madras and therefore relief claimed in the application should be granted, is that the Union of India was represented before the Court by one of its department. Another department, after the judgment is delivered cannot be heard to say that it was not impleaded as a party and therefore the judgment delivered by a Court of competent jurisdiction is not binding on the said department. If the Courts of law start entertaining such a spacious plea, there would be no end to the litigation where Union of India and / or the concerned State Government is impleaded as a party nor would there be finality of any judgment whether it is delivered by the High Court or by this Court.

The Union of India is a legal entity. It cannot be split into various departments for the purpose of being arrayed as a party in a litigation before a court of law. Thus, Union of India was duly represented not only before the High Court of Madras

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but also before this Court. It would be unjust to grant prayer of modification / recall of the order passed in I.A. No. 2 of 2009. Even if it is assumed for the sake of argument that the Ministry of Home Affairs was the proper and appropriate department of the Union of India to be impleaded as a party in the Writ Petition which was filed before the High Court of

Madras, the negligence is palpable and delay on the part of the said Ministry would be fatal. Having regard to the facts of the case, constructive knowledge about on going litigation pertaining to development of minor port at Puducherry will have to be attributed to the Ministry of Home Affairs, New Delhi and therefore the instant application cannot be entertained.

This Court further finds that the process of selection adopted by the Government of Puducherry was examined minutely, exhaustively, meticulously, critically and in great detail by the Madras High Court in the Writ Petition filed by V.J.P. Maiyam and by this Court in the appeal filed by Maiyam and approved. Therefore, the Audit remarks relied

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upon by the applicant have no relevance. If the Audit remarks are taken into consideration the issues already settled will have to be unsettled. Such a course is not permissible at all. However, the copy of the Audit remarks is served on the Government of Puducherry. Therefore, the said Government may take into consideration those remarks and may take remedial measures if thought fit.

This Court further finds that after hearing the learned counsel for the parties at length in the main judgment delivered in Civil Appeal No. 3572/2009 it was held that so far as the present development of minor port is concerned the property is vested in the Puducherry State. Those observations are to be found in paragraphs 181 to 188 of the judgment which is now reported in (2009) 7 SCC 561.

The learned counsel for the respondents have rightly contended that the present application which seeks modification and/or recall of the judgment is in fact a review application and, therefore, the present application can not be entertained more particularly when proceedings stand

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Mr. S.J. Arisotle, Adv.
Mr. Gopal Sankaranaryanan, Adv.
Mr. L.A.J. Selvam, Adv.
Mr. Debasis Misra, Adv.
Mr. V.G. Pragasam, Adv.
Mr. P.V. Yogeswaran, Adv.
Mr. Tapeshe Kumar Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

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IA Nos. 5 in Civil Appeal No. 3572 of

2009 and I.A. No. 3 in Civil Appeal

No. 3573 of 2009 are disposed of in

terms of the signed order.

(Sonia)
Sr P.A.

(Sneh Lata Sharma)
Court Master

(Signed order is placed on the file)