

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11334-11335/2007

(From the judgement and order dated 22/02/2007 in CRP Nos.402 and 417 of 2004 of the HIGH COURT OF MADRAS)

MANONMANI & ORS.

Petitioner(s)

VERSUS

BHARATHIDASAN UNIVERSITY & ANR.

Respondent(s)

(With prayer for interim relief and office report)

WITH  
SLP(C) NO. 20542-20543 of 2008  
(With office report)

Date: 24/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE V. GOPALA GOWDA  
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

Mr. S. Balakrishnan, Sr. Adv.  
Mr. Venkita Subramoniam T.R., Adv.  
Mr. Sri Narayan Jha, Adv.

For Respondent(s)

Mr. R. Nedumaran, Adv.  
  
Mr. M. Yogesh Kanna, Adv.  
Mr. A. Santha Kumar, Adv.

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

SLP (C) Nos. 11334-11335 of 2007

I.A. Nos. 1-2, which are applications seeking impleadment of the legal representatives of deceased petitioner - G. Pananiappan, are allowed.

These petitions are directed against order dated February 22, 2007 passed by the learned Single Judge of the Madras High Court in CRP Nos. 402 and 417 of 2004 whereby he set aside orders dated 29.09.2004 passed by First Additional Subordinate Judge, Trichy in CMA No. 28/2002 and 09.12.2004 passed by Additional District Munsif, Trichy in E.P. No. 781/1999 in OS No. 2060/1983.

The petitioners filed suit against respondent No.1 - Bharathidasan University and State of Tamil Nadu for restraining them from interfering with their possession and enjoyment of the suit property. Subsequently, the prayer made in the suit was amended and relief of declaration for title and possession was sought.

The State of Tamil Nadu contested the suit but respondent No.1 remained ex-parte. The suit was finally decreed on 03.02.1998. Respondent No.1 filed an application under Order IX Rule 13 CPC for setting aside the ex-parte decree. The trial Court dismissed the application vide order dated 12.02.1999. That order was set aside in CMA No. 28/2002 decided on 29.09.2004 by

First Additional Subordinate Judge, Trichy subject to the payment of cost of Rs.1,000/- on or before 28.09.2004. For compliance report, the appeal was posted on 29.09.2004. Due to non-payment of cost, First Additional Subordinate Judge, Trichy dismissed the appeal.

In the meanwhile, the petitioners filed E.P. No. 781/1999 for delivery of possession. Respondent No.1 contested the same. By an order dated 09.12.2004, the trial Court allowed the execution petition and ordered delivery of possession of suit property to the petitioners.

The learned Single Judge took cognizance of the statement made on behalf of respondent No.1 that the land has been utilised and buildings have been constructed and allowed CRP No. 402/2004 with cost of Rs.50,000/- in addition to Rs.1,000/- awarded by First Additional Subordinate Judge, Trichy. The reasons recorded by the learned Single Judge for allowing the revision petition are reproduced below:

"It is true that the petitioner has not taken advantage of the order that has been passed by the learned First Additional Subordinate Judge, Trichy. But at the same time, I feel that in the interest of justice, the petitioner shall be given an opportunity to contest the suit on merits in view of the fact that the petitioner has filed the written statement stating that the suit that has been filed by the respondents/plaintiffs is not maintainable on various grounds. Further more, it has been brought to my notice that the land in question has been assigned to the respondents/plaintiffs by an authority which has no power to assign. Further more, it transpires that the land in question along with other parts of the land are in possession and enjoyment of the petitioner who has put up several constructions in and around the suit properties. If the petitioner is not given any chance to contest the suit, it will cause considerable loss and hardship to the petitioner University. The hardship that will be caused to the respondents/plaintiffs will be less compared to the loss and hardship that will be caused to the petitioner, if the suit is not allowed to be contested on merits. Considering all the aspects of the matter, I deem it necessary to give one more opportunity to the petitioner to contest the suit on merits."

The learned Single Judge also allowed CRP No. 417/2004 and set aside the order passed by the Executing Court.

Shri S. Balakrishnan, learned senior counsel appearing for the petitioners relied upon Section 35B CPC and argued that non-payment of cost by respondent No.1 was sufficient for dismissal of the appeal filed by it and the High Court committed serious error by allowing the revision petition.

In our view, there is no merit in the argument of the learned counsel, which deserves to be rejected in view of the judgment of this Court in *Manohar Singh v. D.S. Sharma & Anr.*, (2010) 1 SCC 53.

We are further of the view that even though the learned Single Judge did not assign cogent reasons for relieving respondent No.1 of its obligation to pay the amount of cost, which constituted a condition precedent for setting aside the ex-parte decree, substantial justice has been done by him by giving an opportunity to respondent No.1 to contest the suit on merits because the suit land had already been utilised.

In view of the above conclusion, it must be held that the direction given by Additional District Munsif, Trichy in E.P. No. 781/1999 for delivery of possession of the suit property was rightly set aside by the learned Single Judge.

With the above observations, the special leave petitions are dismissed.

SLP (C) Nos. 20542-20543 of 2008

I.A. Nos. 6-7, which are applications seeking impleadment of the legal representatives of deceased petitioner - G. Pananiappan, are allowed.

I.A. Nos. 8-9 are applications seeking condonation of delay in filing the application for substitution and setting aside the abatement. The same are allowed.

Having failed to convince the learned Single Judge and the Division Bench of the Madras High Court to quash G.O.Ms. No. 541 dated 29.03.1982 issued by the State Government for the acquisition of land measuring 205.350 hectares of Village Suriyur for establishment of Bharathidasan University - respondent No.4, the petitioners have filed these petitions under Article 136 of the Constitution.

The petitioners are said to have been granted pattas of agricultural land comprised in various survey numbers by Tehsildar, Tiruchirappalli. They filed Writ Petition Nos. 1869 and 2426/2005 before the Madras High Court for quashing G.O.Ms. No. 541 dated 29.03.1982 by asserting that the State Government did not have the jurisdiction to sanction the acquisition of land in respect of which pattas had already been granted to them by the competent authority.

In the written statement filed on behalf of the State of Tamil Nadu and its functionaries, it was averred that the pattas issued in favour of the petitioners had been cancelled by Revenue Divisional Officer, Tiruchirappalli vide orders dated 24.01.1978 and 21.02.1978, It was further pleaded that the State Government had decided to establish Bharathidasan University and accorded administrative sanction for the acquisition of land in Suriyur Village.

The learned Single Judge dismissed the writ petitions by observing that Tehsildar, Tiruchirappalli, did not have the power to grant pattas to the petitioners and, in any case, in the absence of challenge to the cancellation of pattas by the Revenue Divisional Officer, the petitioners cannot successfully challenge G.O.Ms. No. 29.03.1982.

Writ Appeal Nos. 128 and 129 of 2007 filed by the petitioners were dismissed by the Division Bench of the High Court by observing that settlement authorities alone are competent to grant pattas under Section 12(2) of the Inam Abolition Act, 1963 and the Tehsildar did not have the power to do so.

Shri S. Balakrishnan, learned senior counsel for the petitioners made strenuous efforts to convince us that notwithstanding the long time gap of 23 years between the issue of G.O.Ms. No. 541 by the State Government and filing of the writ petition, the High Court should have entertained the grievance of the petitioners and the matter should have been decided on merits because the land was in their possession and they had been granted pattas by the Tehsildar. He made an alternative argument that even if this Court is not inclined to entertain the petitioners' challenge to the order of the learned Single Judge and the judgment of the Division Bench, a direction may be given to respondent Nos. 1 to 3 to pay compensation to them.

In our opinion, there is no merit in either of the submissions.

Admittedly, the writ petitions were filed after more than two decades of the issue of G.O.Ms. No. 541 dated 29.03.1982. Therefore, the petitioners were not entitled to be heard on the merits of their grievance against the proposed acquisition of land. That apart, we find that the petitioners had not questioned the legality of orders dated 24.01.1978 and 21.02.1978 passed by Revenue Divisional Officers, Tiruchirappalli by which the pattas issued in their favour had been cancelled and in the absence of challenge to the cancellation of pattas, no relief could have been given to the petitioners.

The rule that the High Court will not entertain a petition filed after long lapse of time is well settled. In State of Madhya Pradesh v. Bhailal Bhai & Ors., AIR 1964 SC 1006, the Constitution

Bench held that a writ petition filed after expiry of the period prescribed for filing civil suit should ordinarily be dismissed on the ground of laches unless very cogent explanation is given by the writ petitioner.

The alternative submission of the learned senior counsel also merits rejection because in the writ petition filed by them, the petitioners had not prayed for award of compensation on the ground of alleged illegality committed in the cancellation of pattas granted to them by the Tahsildar. Even in the Letters Patent Appeal no such plea had been raised or argued before the Division Bench of the High Court.

With the above observations, the special leave petitions are dismissed.

| (N.S.K. Kamesh)

| | (Phoolan Wati Arora)

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| Court Master

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