

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 06/07/2015

DATED: 08/07/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.10532 of 2008 &
M.P.Nos.1 of 2008 and 1 of 2014

VGP Housing Private Limited,
Rep. by Director,
VGP Babudas,
VGP Square,
Saidapet, Chennai - 15.

... Petitioner

Vs.

1. The Land Commissioner,
Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner,
Land Reforms, Villupuram
(Formerly known as Authorized Officer,
Land Reforms, Kancheepuram).

3.The Assistant Commissioner,
ULT, Tambaram.

4.Kasturi Estates (Private) Limited,
Kasturi Buildings,
201-A, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records of the first respondent in D1/6231/2007 (L.Ref) dated 25.01.2008 confirming the notification issued by the second respondent herein under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by Act 17/80 passed in Supplement to Part II Section I of Tamil Nadu Government Gazette dated 26.09.1979 at Page 14 and 15 and quash the same as the land situate in Survey Nos.174/5 etc., in Kilambakkam Village, Chengalput Taluk which is annexed to the petition herein, do not attract the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on land) Act, 1961, as amended by Act 17/80 as

the lands are urban in character.

For Petitioner : Mr.ARL Sundaresan,
Senior Counsel for Mr.S.Raghavan

For Respondents : Mr.A.L.Somayagi, Advocate General
Assisted by
Mr.T.N.Rajagopalan, Spl. Govt. Pleader &
Mr.M.S.Ramesh, Addl. Govt. Pleader
for R1 to R3

O R D E R

The short facts of the case are as follows:-

The petitioner submits that the petitioner-Company is in possession and enjoyment of lands measuring to an extent of 109.49 acres of dry lands comprised in Survey Field No.174/2 etc., in Kilambakkam Village, Chengalpattu District ever since 26.10.1974. The petitioner-Company purchased the subject lands from the fourth respondent. The transaction between the petitioner-Company and the fourth respondent is covered by an agreement of sale dated 03.04.1974. The petitioner-Company paid the entire sale consideration to the fourth respondent on various dates. Subsequently, on 26.10.1974, the fourth respondent handed over possession of the subject lands to the petitioner-Company. Though a sale deed had not been executed and registered in respect of the subject lands, the petitioner-Company had been exercising all rights of ownership over and in respect of the subject lands ever since 26.10.1974 till date. The petitioner-Company purchased the subject lands with a view to establish an industrial Block for the manufacture of pre-fabricated concrete slabs/partitions/ready made doors/windows used in construction activities for ultimate sale to public at cheap costs. The petitioner-Company obtained an approved plan for VGP Housing Factory as per Resolution No.165, dated 28.02.1975 of the Kattankulathur Panchayat Union Council. Likewise, the petitioner-Company also obtained sanctioned plan for building the house factory as per order dated 11.03.1975 in R.C.No.9548/75/A3 from the Panchayat Union Commissioner, Kattankulathur. Besides this, the petitioner-Company registered the housing factory as "Small Scale Industry" with the Department of Industries and Commerce. These facts are set out in the extenso in order to show that the petitioner-Company intended to use and has been actually using the subject lands only for industrial purpose.

2. The petitioner-Company further submits that after taking possession of the subject lands on 26.10.1974, the petitioner-Company levelled the grounds which was otherwise undulating and uneven in large stretches and made it fit for construction of a factory. Then a huge building was constructed upon the subject lands for use as factory after making provision for quarters for servants, drivers and watch and ward staff. Thus

the very character of the subject lands was thoroughly changed from agricultural to industrial. Meanwhile, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 came into force on 03.08.1976. The Village of Kilambakkam in Chengalpattu Taluk was declared as an Urban Agglomeration to which the Urban Land Ceiling Act was extended and applied on and from 03.08.1976. Therefore, by virtue of such statutory mandate, the subject lands became urban lands falling within the purview of the Urban Land Ceiling Act. Consequently, the petitioner-Company filed returns under Section 7 (1) of the Urban Land Ceiling Act in respect of the subject lands. The petitioner-Company also applied on 13.09.1978 for exemption in respect of the subject lands from the operation of the Urban Land Ceiling Act to the Assistant Commissioner, Tambaram, State Government. The Deputy Tahsildar attached to the office of the Assistant Commissioner conducted an enquiry into the application of the petitioner-Company. Thereafter, the Assistant Commissioner inspected the subject lands in the presence of the representative of the petitioner-Company and submitted a detailed report to the Government. The following are the salient features of the said report:-

- A) The subject lands are situated close to the Urban Development Area called Maraimalai Adigal Nagar.
- B) The subject lands have been abandoned as waste lands.
- C) There is no irrigational facility for the subject lands.
- D) Ground Water is also scarce.
- E) Though the subject lands are classified as agricultural lands in the revenue records, the subject lands are best suited for industrial purposes.

The Assistant Commissioner had recommended that the subject lands might be exempted from the operation of the Urban Land Ceiling Act. The matter was under consideration by the State Government. Even the letter from the Member-Secretary CMDA shows that the subject lands are only urban in character.

3. The petitioner-Company further submits that the Government of Tamil Nadu issued an order in G.O.Ms.No.1733, Revenue, dated 10.08.1979 under Section 18(1) of the Land Reforms Act, declaring an extent of 95.74 acres out of the total extent of 118.26 acres of subject lands as surplus lands. In the said order, the fourth respondent was shown as the owner of the subject lands. Consequently, the fourth respondent filed a revision petition before the first respondent which was dismissed by the first respondent by order dated 06.03.1983. The legal proceedings of this kind continued for more than one decade as a result of which the sale deed in respect of the subject lands could not be executed. Therefore, the fourth respondent executed an irrevocable power of attorney in favour of the petitioner-Company on 15.08.1985 in respect of the subject lands and the same was registered as Document No.239/1985 in the office of the Joint Sub Registrar, Chennai. The petitioner-Company has been in continuous and

uninterrupted possession of the subject lands. Upon the dismissal of the revision petition by the first respondent, the petitioner filed W.P.No.11898 of 1983 before this Court, which came to be transferred to the file of the Land Reforms Special Appellate Tribunal, Chennai upon the latter's formation. The prayer in the said writ petition was for a declaration that the provisions of the Land Reforms Act would not apply to the subject lands. The Appellate Tribunal dismissed the plea of the petitioner-Company by its order dated 07.12.1992. The petitioner filed SLP No.9192 of 1993 in the Supreme Court. As the petitioner-Company had already filed the exemption petition under the Urban Land Ceiling Act and the same was pending, the petitioner-Company did not apply under Section 37A of the Land Reforms Act. In view of the pendency of the application of the petitioner-Company under the Urban Land Ceiling Act, no further proceedings were initiated by the Urban Land Ceiling Department, beyond the publication of the draft preliminary statement under Section 9(1) of the Urban Land Ceiling Act. However, no order was passed by the State Government on the said application of the petitioner-Company filed under Land Ceiling Act till the repeal of the Urban Land Ceiling Act on 16.06.1999.

4. The petitioner further submits that thereafter, it transpires that the State Government had informed the concerned officials in view of the repeal of the Urban Land Ceiling Act, no further order was required to be passed on the application of the petitioner-Company for permission to retain the excess urban lands. By letter dated 27.10.2004, the Assistant Commissioner informed the petitioner-Company of the stand of the State Government. Since the action initiated under the Land Reforms Act in respect of the subject lands was not dropped having regard to the facts set out above, the petitioner-Company filed the revision petition before the first respondent seeking the cancellation of the notification under Section 18(1) of the Land Reforms Act. The first respondent dismissed the revision petition of the petitioner-Company as not maintainable without giving any opportunity of being heard to the petitioner-Company. The impugned order was passed in utter violation of principles of natural justice. Hence, the above writ petition has been filed.

5. The respondents 1 to 3 have filed a counter affidavit and resisted the above writ petition. The respondents 1 to 3 have submitted the facts of the case leading to the filing of this writ petition before this Court which are summarized as detailed below:-

(i) M/s.Kasthuri Estate (P) Ltd., Mount Road, Madras held agricultural land to an extent of 198.22 ordinary acres equivalent to 64.94 standard acres as on 6.4.60. Hence, proceedings were initiated under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58/61, declaring an extent of 5.19 acres equivalent to 1.73 standard acres as per the notification under Section 18(1) of the Act published in the Fort St. George Gazette dated 02.07.1969 and the lands were also taken possession on 30.07.1969.

(ii) Subsequently, proceedings were initiated under the Amended Act, 17/70 and 39/72. The landowner-the fourth respondent preferred an appeal before the Land Tribunal, Chengalpattu on 02.04.1976 in C.M.A.No.18/76 against the orders issued under Section 9(2)(b) of the Act in MRI/K65/GGT/39/72, dated 12.01.1976. The Land Tribunal in C.M.A.No.18/76 dismissed the appeal on 19.07.1976 and confirmed the orders of the Authorized Officer.

(iii) The landowner-fourth respondent filed Civil Revision Petition before this Court against the decision of the Land Tribunal. The only contention that was raised before the High Court was that lands covered by that case situated in Vandalur and Kilambakkam Villages were not agricultural lands, since the lands were lying fallow, waste and uncultivated for years together. By judgment dated 16.11.1978, the said Civil Revision Petition was dismissed.

(iv) Then, the final statement under Section 12 of the Act was published in the Tamil Nadu Government Gazette dated 27.06.1979, declaring an extent of 95.74 ordinary acres equivalent to 31.91 standard acres as surplus. The notification under Section 18(1) of the Act was also published in the Tamil Nadu Government Gazette dated 26.09.1979, declaring the same extent as published in the final statement dated 27.06.1979.

(v) In the meantime, the landowner-the fourth respondent filed revision petition R.P.No.44/80 before the Land Commissioner against the final statement published in the Tamil Nadu Government Gazette dated 27.06.1979 and one of the contentions raised by the petitioner in the revision petition was that the lands in question come under the purview of the Urban Land Ceiling Act and that action should be taken under the Urban Land Ceiling Act, which had been rejected.

(vi) The Land Commissioner in his order in R.P.No.44/80, dated 16.04.1983 dismissed the revision petition as devoid of merit by observing that the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 58/61 as amended by Act 39/72 came into force in 01.03.1972, whereas the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 24/78 came into force only on 03.08.1976 and that the lands were treated as agricultural lands under the Land Ceiling Act as on 06.04.1960, 15.02.1970 and 01.03.1972 and that the decision was upheld by the Land Tribunal, Chengalpattu in its LTCMA No.18/76, dated 19.07.1976. Against the decision of the Land Tribunal, Chengalpattu, the fourth respondent filed a Civil Revision Petition before the Hon'ble High Court and this Court in its judgment in CRP No.3428/76, dated 16.11.1978 dismissed the revision petition, also holding that the lands held by the petitioner fall within the scope of Section 3(22) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 58/61 as amended. The Land Commissioner, therefore, dismissed the revision petition

that the lands cannot be defined as urban vacant land contrary to the decision of this Court and the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 24/78 will not therefore, be applicable to the agricultural lands held by the fourth respondent.

(vii) The petitioner filed writ petition in W.P.No.11898 of 1983 before this Court against the notification under Section 18 (1) of the Act published in the Tamil Nadu Government Gazette dated 26.09.1979. On the constitution of the Tamil Nadu Land Reforms Special Appellate Tribunal, the case was transferred and numbered as TRP 59/1991.

(viii) The Tamil Nadu Land Reforms Special Appellate Tribunal also in its judgment in TRP 59/91, dated 07.12.1992, after observing that as on 15.02.1970 and 01.03.1972, the lands were admittedly agricultural lands and under the provisions of the amended Agricultural Land Reforms Act, the officers, the Land Tribunal and the High Court had passed orders well within their jurisdiction and that the proceedings lawfully commenced under the amended Agricultural Land Reforms Act had reached finality on the publication of a notification under Section 18(1) of the amended Agricultural Land Reforms Act and also observing that there was no provision in the Urban Land Ceiling Act which stated that action initiated under the Agricultural Land Reforms Act would lapse once the Urban Land Ceiling Act came into force and dismissed the revision petition by holding that the crucial dates for fixing the ceiling under the amended Agricultural Land Ceiling Act were 15.02.1970 and 01.03.1972 and admittedly as on those dates, the lands in question were only agricultural lands attracting the provisions of the amended Agricultural Land Reforms Act.

(ix) Against the above judgment of the Tamil Nadu Land Reforms Special Appellate Tribunal, the petitioner filed Special Leave Petition in SLP (C) No.9192/93 before the Hon'ble Supreme Court of India and the same was dismissed by the Hon'ble Supreme Court of India on 26.10.1993.

(x) The landowner - the fourth respondent filed a revision petition before the Land Commissioner, 12 years after the order of the Hon'ble Supreme Court of India challenging the same notification under Section 18(1) of the Act published in the Tamil Nadu Government Gazette dated 26.09.1979 in the year 2005, which is 26 years after the notification. The Land Commissioner in her order in R.P.8/2005, dated 04.05.2005 dismissed the revision petition as not entertained, after observing that the fourth respondent had already exhausted all the remedies provided for in the Act before the various appellate forums by way of filing appeals against the orders passed by the authorities below under the Act and that there is no reason to interfere in the matter under Section 82 of the Act that too after the expiry of the period of 26 years from the date of publication of notification under Section 18(1) of the Act.

(xi) The petitioner again after 15 years after the orders of the Hon'ble Supreme Court of India filed a revision petition in 2008 before the Land Commissioner under Section 82 of the Act against the notification under Section 18(1) of the Act published in the Tamil Nadu Government Gazette dated 26.09.1979. The Land Commissioner in her order D1/6231/2007, dated 25.01.2008 dismissed the revision petition as not maintainable. Hence, for the reasons stated above, the respondents 1 to 3 entreat the Court to dismiss the above writ petition.

6. The highly competent senior counsel Mr.ARL Sundaresan appearing for the petitioner-Company submits that the petitioner-Company is in possession and enjoyment of land measuring to an extent of 109.49 acres of dry lands comprised in Survey Field No.174/2 etc., in Kilambakkam Village, Chengalpattu District ever since 26.10.1974. The petitioner-Company purchased the subject land from the fourth respondent herein, who is the owner of the said property, viz., Kasturi Estates. The transaction between the fourth respondent and the petitioner is covered by an agreement of sale dated 03.04.1974. The petitioner-Company paid the entire sale consideration to the fourth respondent on various dates. Thereafter, on 26.10.1974, the fourth respondent handed over possession of the subject lands to the petitioner-Company. As such, the petitioner-Company had been exercising all rights of ownership over the subject lands from 26.10.1974 till now. The highly competent senior counsel further submits that the petitioner-Company purchased the subject land with a view to establish an Industrial Block for the manufacture of pre-fabricated concrete slabs / partitions / ready made doors / windows used in construction activities for ultimate sale to public at a reasonable price. The petitioner-Company obtained an approved plan for VGP Housing Factory as per the Resolution No.165, dated 28.02.1975 of the Kattankulathur Panchayat Union Council. Likewise, the petitioner-Company also obtained sanctioned plan for the building the housing factory as per order dated 11.03.1975 in RC No.9548/75/A3 from the Panchayat Union Commissioner, Kattankulathur. In addition to that, the petitioner-Company registered the housing property as a "Small Scale Industry" with the Department of Industries and Commerce. It clearly proves that the petitioner-Company occupied the subject lands for industrial purpose.

7. The highly competent senior counsel appearing for the petitioner-Company further submits that at the time of purchasing the said land, the ground level was in an undulating manner and the same was brought to level by the Company for construction of a factory. Thereafter, a house building was constructed on the subject lands for use as a factory and after making provision for quarters for servants, drivers, watch and ward staff. Originally, the subject land was an agricultural land and subsequently, brought for use in industrial purpose. Under the circumstances, the Tamil

Nadu Urban Land (Ceiling and Regulation) Act, 1978, came into force on 03.08.1976. The land situated at Kilambakkam Village in Chengalpattu Taluk was declared as an Urban Agglomeration to which the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was extended and applied on and from 03.08.1976. Therefore, by virtue of such statutory mandate, the subject lands have become urban lands falling within the purview of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Further, the petitioner-Company has filed a return under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the subject lands. Further, the Company also applied to the State Government for exemption in respect of the subject lands from the operation of the Urban Land Ceiling Act to the Assistant Commissioner, Tambaram, on 13.09.1978. On the said application, a detailed enquiry was conducted and the Assistant Commissioner had also inspected the lands and found that the subject lands are situated close to the Urban Development Area viz., Maraimalai Adigal Nagar. Besides, there is no irrigational facility for the subject lands and though it has been classified as agricultural lands in the revenue records, the subject lands are best suited for industrial purposes. The Assistant Commissioner had recommended that the subject lands may be exempted from the operation of the Urban Land Ceiling Act. The matter was under consideration by the Government. Further, the Chennai Metropolitan Development Authority also stated that the subject lands are only urban in character. Under the circumstances, the Government of Tamil Nadu issued an Order in G.O.Ms.No.1733, Revenue, dated 10.08.1979 under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, declaring an extent of 95.74 acres out of the total extent of 118.26 acres of the subject lands as surplus lands. In the said order, the fourth respondent was shown as the owner of the subject lands. Hence, the fourth respondent has filed a revision petition before the first respondent / Land Commissioner, which was dismissed by him by an order dated 06.03.1983.

8. The highly competent senior counsel appearing for the petitioner further submits that the legal proceedings in the matter continued for more than one decade as a result of which, the registered sale deed in respect of the subject land could not be executed. Therefore, the fourth respondent has executed an irrevocable power of attorney in favour of the petitioner-Company and the same was registered on the file of Joint Sub Registrar, Chennai. as document bearing No.239 of 1985. After dismissal of the revision petition, the petitioner filed a writ petition in W.P.No.11898 of 1983 before this Court which came to be transferred to the file of Land Reforms Special Appellate Tribunal, Chennai. The prayer in the said writ petition was for a declaration that the provisions of Land Reforms Act would not apply to the subject lands since the land is situated close to the Urban Development Area, viz., Maraimalai Nagar. The Appellate Tribunal dismissed the plea of the petitioner-Company by its order dated 07.12.1992. The petitioner-Company had filed an execution petition

under the Urban Land Ceiling Act and the same is pending, therefore, no further proceedings were initiated by the Urban Land Ceiling Department, beyond the publication of the draft preliminary statement under Section 9(1) of the Urban Land Ceiling Act. However, no order was passed on the said petition. The proceedings initiated by the respondents under the Land Reforms Act in respect of the subject lands is not proper. Further, the first respondent had dismissed the revision petition without giving an opportunity and without a comprehensive enquiry and had passed the said order which is impugned herein.

9. The highly competent senior counsel appearing for the petitioner further submits that the Taluk Tahsildar who is attached to the Chengalpattu Taluk had certified that in the month of September 1982, the petitioner-Company is in occupation of the subject lands and that they are presently being used for the VGP Housing Industry Factory at Kilambakkam Village. Further, these lands are not being used for agricultural purpose. Further, the Assistant Commissioner of ULT, Tambaram has mentioned in his letter stating that the petitioner-Company is in occupation of the subject lands absolutely. The Assistant Commissioner further stated that after inspection of the subject lands that the lands are held by the petitioner-Company by way of putting up stone and concrete pillars around the fence. There is an old building used for residential purpose and also a well with a pump room. All the structures are in existence prior to the enactment of the Urban Land Ceiling Act. The petitioner-Company also constructed a new building after obtaining permission from the Commissioner of Kattankulathur, dated 11.03.1975. The plan has been approved solely for Housing Factory. Besides there are mango gardens and also a pond. Further, the petitioner-Company had obtained a certificate from the Industrial Department for starting a small scale industry for manufacturing wooden frame, doors etc.

10. The highly competent senior counsel appearing for petitioner further submits that the Assistant Commissioner, who is the competent authority had recommended to the Secretary, Board of Revenue, for the exemption of the lands from the acquisition as surplus lands. The recommendation has been made by the Assistant Commissioner after scrutinizing the entire records of the petitioner's company and after a spot inspection. As such, the petitioner is entitled to secure exemption. The highly competent senior counsel further submits that the Assistant Commissioner, Tambaram had sent a communication dated 27.10.2004 to the petitioner herein stating that the property had not been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Besides, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 had been repealed on 16.06.1999. As such, the subject lands cannot be acquired. The Chennai Metropolitan Development Authority had sent a communication to petitioner dated 02.05.1990 and directed the petitioner to furnish some more details for granting planning permission. These are all facts that the petitioner is in

physical possession from 26.10.1974.

11. The highly competent senior counsel appearing for the petitioner submits that with regard to the misleading averment in the affidavit, he submits that against the judgment of the Tamil Nadu Land Reforms Special Appellate Tribunal, the petitioner filed Special Leave Petition in SLP (C) No.9192/93 before the Hon'ble Supreme Court of India and the same was dismissed by the Hon'ble Supreme Court of India on 26.10.1993. However, in the affidavit it is stated that as the Hon'ble Apex Court had given liberty to file exemption under Section 37-A of the Land Reforms Act. It is submitted by the highly competent senior counsel that it was the oral observation by the Hon'ble Apex Court while dealing with the SLP. He further submits that the petitioner was informed by the third respondent herein stating that the subject lands situated in the said Village are covered by the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and that other acts are not applicable to the said lands in the said Village so long as they are not put to agricultural use. The Taluk Tahsildar has issued a certificate dated 22.09.1982 stating that the petitioner has occupied the said property and that it is being used for the VGP Housing Industrial Factory in Kilambakkam Village. These lands were not used for agricultural purpose. As per the certificate issued by the Tahsildar, the Government is not in physical possession of the said lands. The first respondent had issued G.O. dated 05.08.2013, wherein the Secretary to Government had expressed that the lands are totally barren and devoid of any water source and as such, it is not fit for cultivation and therefore, the assigning of lands for farmers for cultivation would not serve any useful purpose. Hence, the highly competent senior counsel entreats the Court to allow the above writ petition as prayed for.

12. The highly competent Advocate General Mr.A.L.Somayaji assisted by the highly competent Special Government Pleader Mr.T.N.Rajagopalan and the highly competent Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents 1 to 3 submits that the fourth respondent held an extent of 198.22 ordinary acres of agricultural lands. The respondents have initiated the proceedings under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. As such, the fourth respondent was allowed to hold an extent of 83.40 ordinary acres, equivalent to 30,000 standard acres in its retainable holdings. After granting exemption to an extent of 93.63 ordinary acres under Sections 73 and 74 of the Act, an extent of 5.19 ordinary acres equivalent to 1.73 standard acres was declared as surplus. To that effect, a notification under Section 18(1) of the Act was approved in G.O.Ms.No.1050, Revenue Department, dated 24.05.1969 and published in the Tamil Nadu Government Gazette dated 02.07.1969 and the surplus lands were also taken possession of on 30.07.1969. Therefore, the surplus lands have been acquired from the fourth respondent under the Tamil Nadu Land Reforms Act. Now, the petitioner is seeking relief under the Tamil Nadu Urban Land

Ceiling Act which is not covered in the instant case, since the subject lands have been classified as agricultural dry lands. The order was passed on 12.01.1976 stating that the fourth respondent was allowed 15 standard acres. After publication, the fourth respondent did not file objection to the draft statement. However, the landowner filed an appeal before the Land Tribunal, Chengalpattu, but the same was dismissed on merits. Aggrieved by the dismissal order passed by the Land Tribunal, the fourth respondent herein filed a revision before this Court and the same was dismissed. Subsequently a final statement was published in the Tamil Nadu Government Gazette dated 27.06.1979, declaring a surplus of 95.74 ordinary acres. The notification under Section 18(1) of the Land Reforms Act was also published in the Tamil Nadu Government Gazette and the same was dismissed on merits.

13. The highly competent Advocate General further submits that the respondents have acquired the surplus lands after initiating necessary legal proceedings and the same was completed on 26.09.1979. The fourth respondent had entered into an unregistered sale deed with the petitioner dated 03.04.1974 which is not sustainable under law. As such, the petitioner has no locus standi to seek any relief from the respondents. Further, the proceedings were initiated in the year 1969 under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land), Act, 1961, but the Tamil Nadu Urban Ceiling Act came into force from 03.08.1976. Therefore, the writ petitioner's allegation that the surplus lands were acquired under the Tamil Nadu Urban Ceiling Act is not appropriate and the lands are not situated within the urban area. The highly competent Advocate General further submits that the notification under Section 18(1) of the Land Reforms Act was published on 26.09.1979 in the name of the fourth respondent. Hence, the highly competent Advocate General entreats the Court to dismiss the above writ petition.

14. From the above discussions, the only crucial question involved in this case is about the applicability of the two enactments to the subject matter of the lands (excess holdings) whether it is the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1975 (hereinafter referred to as ULC Act) or the Tamilnadu Land Reforms (Fixation of Ceiling on Land) Act (hereinafter referred to as ALR Act)?

15. The undisputed factual scenario as obtained in the case is as follows: Admittedly, the 4th respondent being an absolute owner entered into a sale agreement dated 03.04.1974 with the petitioner company for sale of the lands comprised in S.No.174/2, 174/3 etc., admeasuring about 118.26 Acres. Having received entire sale consideration in full on various dates, the 4th respondent put the 2nd respondent in possession of lands on 26.10.1974. The fact remains that no sale deed had been executed in

this regard in favour of the petitioner company by the 4th respondent, but according to the contention of the petitioner, the petitioner company has been exercising all rights of ownership in respect of the subject lands since the date it was put into possession. Indisputably, the aforesaid sale agreement was not registered as it was not mandated at the point of time in law that sale agreement needed to be compulsorily registered.

16. It appears that the petitioner company with the object of running a factory to manufacture building components related to the needs of the building industry took efforts to materialize the establishment of the housing factory in the year 1975. Necessary sanction for building the housing factory was granted by the Kattankulathur Panchayat Union Council through its proceedings in R.C.No.9548/75/A3 dated 11.03.1975. Apart from this, the highly competent senior counsel Mr.ARL Sundaresan submitted that the petitioner company applied to the Central Government through the Director of Industries and Commerce, Government of Tamilnadu and obtained licenses from the Director General of Technical Development, Government of India, New Delhi under Registration No.DGTD/HO/D/5-16/R-6783 C-30 (iii) NU/81 dated 23.01.1981. It was also contended by the highly competent senior counsel Mr.ARL Sundaresan for the petitioner that a huge building was constructed in the subject land with sanctioned plan for running a factory. Therefore, it is very clear that the petitioner company intended to establish a housing factory to produce the housing components in the subject lands. Later on, a registered irrevocable general power of attorney dated 15.10.1985 came to be registered by the 4th respondent in favour of the petitioner company over the subject lands.

17. The ALR Act, (LVIII) of 1961 obtained the assent of the President of India on 13.04.1962. Initially, the ALR Act defined ceiling area in the case of every person shall possess 30.00 Standard Acres. Subsequently, in the year 1970 an amendment was carried out to the ALR Act by way of the Tamilnadu Land Reforms (Reduction of Ceiling on Land) Act, wherein, the ceiling limit of 30.00 Standard Acres was reduced to 15 Standard Acres. Apart from this, the ALR Act was further amended by the Tamilnadu Land Reforms (Fixation of Ceiling on Land), 4th amended Act, XXXIX of 1972. The date of the notification of the above amendment is 01.01.1973.

18. It appears that the 2nd respondent initiated process under the Act to notify the surplus lands in the year 1975. The proceedings were initiated under the ALR Act against the 4th respondent under the amended Act 17/70 & 39/72 on the premise that the 4th respondent was holding excess agricultural lands to an extent of 95.74 Acres (subject lands) out of the total extent as surplus lands.

19. Aggrieved over the order issued, indicating 32.95 of Standard Acres as surplus lands u/s.9(2)(B) of the ALR Act in MRI/K65/CGT/39/72 dated 12.01.1976, the 4th respondent approached the Land Tribunal on 02.04.1976 by way of CMA.No.18/1976 and the same was dismissed on 19.07.1976. Pursuant to this, the 4th respondent preferred civil revision petition in CRP.No.3428 of 1976 before this court contending that the subject lands were not agricultural lands as they were lying fallow, waste and uncultivated for years together. This Court dismissed the revision petition by the judgment dated 16.11.1978 by holding that the lands held by the 4th respondent fell within the scope of section 3(22) of the ALR Act. Subsequently, the final settlement under section 12 of the Act was published in the government gazette dated 26.07.1979 declaring an extent of 95.74 Ordinary Acres equivalent to 31.91 Standard Acres as surplus. Final notification for acquisition of lands under sec.18(1) of the Act published in the Government Gazette dated 26.09.1979 declared an extent of 95.74 Ordinary Acres equivalent to 31.91 Standard Acres as having been acquired. As against the notification issued under section 18(1) of the said Act, the 4th respondent approached the 1st respondent by way of revision in RP.No.44/80. By holding that the crucial date for deciding the nature of the lands as agricultural lands is in the year 1972 as the land reforms came into force on 01.03.1972, the 1st respondent dismissed the revision of the 4th respondent. The 4th respondent filed a writ petition in WP.No.11898 of 1983 before this Court challenging the notification under section 8(1) of the ALR Act. Later on, the said petition was transferred to the Tamilnadu Land Reforms Special Appellate Tribunal on its constitution and numbered as TRP.59 of 1991 and the same was dismissed. Aggrieved over the same, the 4th respondent filed a special leave petition in SLP(C).No.9192 of 1993 before the Hon'ble Supreme Court of India and the same was dismissed on 26.10.1993. Again, revision was preferred before the 1st respondent by the 4th respondent and the same had been dismissed on 04.05.2005. Be that as it may.

20. While the aforesaid proceedings under the ALR Act were in force, the ULC Act came into force and became effective from 03.08.1976 declaring the village of Kilambakkam, Chengalpattu Taluk, comprising the subject lands, as Urban Agglomeration in the category I of the Schedule I appended to the Urban Land Ceiling Act. Consequently, the petitioner company filed return u/s. of 7(1) of the ULC Act in respect of subject lands. Further, the petitioner had applied claiming exemption under section 21(b) of the ULC Act to the 3rd respondent. A detailed report dated 01.12.1980 was forwarded by the 3rd respondent recommending for exemption from the application of ULC Act over subject lands to the Board of Revenue.

21. Before analyzing the merits of the case, it is better to appreciate at the outset the preamble and objects of the ALR Act and the same is extracted as follows:

"WHEREAS under clause (b) and (c) of the Article 39 of the Constitution of India the state should, in particular, directs its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

AND WHEREAS the area of agriculture land available for cultivation is limited.

AND WHEREAS there is a great disparity in the ownership of agricultural land leading to the concentration of such land in the hands of certain persons.

AND WHEREAS it is necessary to reduce such disparity in the ownership of agricultural land in the state.

AND WHEREAS it is necessary to fix a ceiling on the agricultural land holdings.

AND WHEREAS it is necessary to acquire the agricultural land in excess of ceiling area and to distribute such a land to the landless and other person among the rural population.

AND WHEREAS such a distribution will best sub serve the common good, increase agricultural production and promote justice, social and economic,

AND WHEREAS it is expedient to provide all these and other matters connected therewith

BE it enacted in the twelfth year of the republic of India as follows:-"

22. It is apparent from the objectives of the Act that great stress had been laid for the reduction of disparity in the ownership of agricultural land and distribution of agricultural lands notified under the Act to the landless and other persons among the rural populations. Apart from this, it is relevant to refer the definition of the Act. "Land" under the Sec.3(22) of the ALR Act and the same is extracted below:

" 'land' means agricultural land, that is to say, land

which is used or capable of being used for agricultural purpose or purposes subservient thereto and includes forest land, pasture land plantation and tope, but does not include house-site or land used exclusively for non-agricultural purposes;"

23. It is very much crystal clear that the application of the ALR Act extends only to the agricultural lands wherein cultivation and agricultural operation could be carried out or the lands which can be put to use for the agricultural purpose. In view of this, the above Act cannot be extended to any other lands other than the agricultural lands as defined above.

24. When the process of preparing the final statement under the ALR Act commenced in the year 1976 and was in force, the ULC Act declares lands comprised in Kilambakkam, Chengalpattu Taluk, as urban Agglomeration. Admittedly, the subject lands also fell within the purview of Kilambakkam village. Therefore, the petitioner company filed return under sec.7(1) of the ULC Act claiming exemption under the Act to the designated authority, the 3rd respondent.

25. As stated supra, even in the year 1975 itself, admittedly the petitioner company has established the company factory with construction of factory building in the subject lands. Therefore, it is essential to find out whether subject lands is an agricultural land or the land is capable of being used for agricultural purpose or whether the subject land has undergone changes pertaining to its nature and character as urban after the ALR Act came into force in the year 1972. In this regard, there should be subjective satisfaction on the part of the 2nd respondent at the time of preparing the final statement under sec.9 of the Act. Unless and until the 2nd respondent comes to definite conclusion with regard to the land sought to be acquired as agricultural lands, he has no authority to proceed under the Act with regard to those lands.

26. According to Sec.8 of the ALR Act, the persons who are holding excess of lands in the ceiling area have to furnish the relevant details to the authorized officer. Sec.9(1) of the act postulates that if there is any failure to furnish the aforesaid details as required u/s.8 of the Act or furnishes incorrect details, an opportunity would be given by way of notice to advise such person to furnish the return or the correct particulars within the timeframe stated in the notice. In the context of this case, sec 9(2) (a) is quite relevant. In the case of failure to furnish the return or additional particulars by any person, the authorized officer may obtain in such a manner as may be prescribed either by himself or through an agency he may think fit. Only after

satisfying this requirement, the authorized officer shall go to the next stage as contemplated u/s.10 of the ALR Act for the preparation and publication of the draft statement pertaining to the excess lands of the ceiling area.

27. In this regard it is useful to refer sec. 9(2) (a) of the ALR Act which is extracted hereunder as follows:

"Where any person, on whom notice under sub-section (1) has been served, fails to furnish the return, or the additional particulars. As the case may be, within the time specified in that notice, or within the further time allowed by the authorized officer under sub-section (1), the authorized officer may obtain in such manner as may be prescribed the necessary information either by himself or through such agency as he thinks fit."

28. It is noticed from the records that the 2nd respondent carried out the inspection of the lands on two occasions and prepared two reports dated 17.09.1975 and 09.12.1975. According to those reports, the subject lands were not put to cultivation and there were some mango trees which were not raised and scattered. Significantly, those reports also mention about the existence of the factory building put up by the petitioner. The 2nd report dated 09.12.1975 reveals that the entire extent of lands was uncultivated. The sum and substance of those reports indicate that no agricultural activities were going on or in existence of any kind of irrigation facilities. Those reports even do not indicate about the existence of any irrigation channels or water resources which could be a source for the agricultural operations. Therefore, while considering the fact that the subject lands were also brought under the ULC Act, in the year 1976, there is every possibility to assume that the nature and character of the subject lands would have undergone the change from agriculture kind to urban character before the completion of process over the subject lands initiated under the ALR Act. Then statutory duty is enjoined upon the 2nd respondent to ensure that the lands notified under the ALR Act are agricultural lands from the stage of preparing the draft statement till the publication of the final notification under section 18(1) of the ALR Act. Since no time limits have been prescribed from the stage of filing the returns till the stage of final notification under section 18(1) of the ALR Act for authorities to proceed, it is necessary for the 2nd respondent to have reasonable satisfaction that the lands notified are agricultural lands at the stage of final notification under section 18(1). But in this case, there are no records or materials or any kind of inspection indicating that as on 26.09.1979 when the final notification under section 18 (1) was issued, the subject lands were agricultural lands and have not undergone any change of character to the level of urban.

29. It is known that two enactments viz, the ULC Act and ALR Act are operating in their own areas with both Acts containing overriding clauses. As far as ULC Act is concerned, its operation extends to urban Agglomeration as declared under the provisions of the Act. The ALR Act extends its applicability only with regard to the agricultural lands. It is relevant to refer the definition of urban land as defined ULC Act. The proviso section 3(o) of the Act is extracted below.

- (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or
- (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration.

Explanation.- For the purpose of this clause and clause(p),-

(A) "agriculture" includes horticulture, but does not include-

- (i) raising of grass,
- (ii) dairy farming
- (iii) poultry farming
- (iv) breeding of livestock, and
- (v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the commencement of this Act as for the purpose of agriculture.

(C) notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture:

(D) where on the commencement of this Act, any land is actually used mainly for the purpose of agriculture, but is used mainly for a purpose other than agriculture, after such commencement, then, on and from the date on which such land is used for any purpose other than agriculture, the land shall be deemed to be vacant land and accordingly the provisions of this Act shall apply.

30. It is worthwhile to notice the definition section of 3(o)(C) of ULC Act. The 2nd part of the provision states that lands shall not be deemed to be urban or vacant land if it is continued to be used for the purpose of agriculture. The sub clause 'C' indicates that even if the lands are classified as agriculture in the revenue record or specified in the master plan if it is not

used continuously for the purpose of agriculture then the value attached to the nature of the lands as agriculture would not have any bearing on it.

31. The view that the continuing agriculture operation is sine quo non for deeming a land as an agricultural land under the ULC Act is reinforced in the sub clause(D) in section 3 of ULC Act, wherein very clearly it is declared that even though any land is mainly used for agriculture after commencement of this Act, if a land is used for any purpose other than agriculture, the land shall be deemed to be vacant land under the provisions of ULC Act and the same shall be applied. It is evident from the forgoing provisions that it would not suffice to deem or to treat any land as an agricultural land based on the revenue records or in the master plan alone. There should be continuous usage of the land for agriculture by way of cultivation. In the absence of the continuous usage of agricultural activities, such lands shall not be agricultural lands under the ULC Act. In this context, it is relevant to refer the inspection reports of the 2nd respondent dated 17.09.1975 and 09.12.1975. In those reports, the factual situation qua subject lands could be discernable that no agricultural operations were going on the lands and were lying uncultivated.

32. It would be quite different if those reports of the 2nd respondent atleast indicated some sort of existence of water resources to take care of the cultivation operations, then it could be perceived that subject lands are capable of being used for agricultural operations. Mere finding of existence of some trees on the land cannot lead nowhere to the conclusion that the subject lands could be used for an agricultural purpose. For instance, we could find that trees are planted on the both sides of roads and highways and that does not mean that agricultural operations could be carried out on those road sides on the ground of existence of the trees.

33. Therefore, there should be reasonable satisfaction on the part of the competent authority right from the stage of notification till the stage of final publication u/s.18(1) of the ALR Act, that lands sought to be acquired are agricultural lands and there is continuous operation of cultivation with sufficient water resources or existence of various factors like water, irrigation facilities to appreciate that the lands could be put to use for agricultural purpose, otherwise the action of the 2nd respondent in proceeding under the ALR Act would be deemed to be vitiated.

34. Further, the fact that no agricultural operation was going on and there was no cultivation firmly emerges from the report of the 3rd respondent dated 01.10.1980. When the petitioner company filed a statement u/s. 7(1) of the ULC Act, they sought exemption to retain subject lands u/s.21(b) of the ULC Act in respect of the subject lands. Consequent to this, the 3rd respondent carried out spot inspection on the subject lands and forwarded the report dated 01.12.1980 to the Board of Revenue. This report is very crucial to decide the fact about the nature of the subject land. The relevant portion of the report is extracted below.

"I have inspected the lands. The lands now held by V.G.P Housing (P) Ltd. form one block except six blocks held by other persons and lie on the eastern side of G.S.T Road and about one K.M. from Vandalur Railway Station. The lands are bounded on the North by Vandalur village limits and lands occupied by the Seethaladi Trust, on the East by Ayyancheri village limits, the lands as mostly vacant or barren, on the south by illock. All the lands are averaged on ground and the survey marks are obliterated on ground. The entire lands have been fenced by stone concrete pillars. There is an old building in S.No. 7412 used for residential purpose. There is also one building used well with pumphoom in S.No.188. All these structures were in existence even prior to 03.08.1976. M/s V.G.P (Housing) Pvt Ltd., has constructed a new building for work shed in S.No.187/1. This has been constructed with an approval of the Commissioner of Kaatankulathur in his R.Dis.9548/74 A3 dated 19.03.1975. This plan has been approved solely for housing factory. As the building plan has been approved prior to 03.08.1976, the area occupied by the building has to be treated as a building as per section 3(p) (ii) (b) of the Act. There are 48 Mango trees in S.No.194/1 and 2 and 145/1 Part. There is also a pond in S.No.195/2, 3 and 4 which was used previously to supplement irrigation. On the Southern side the level of the land is not even and is rocky. The holder is laying roads and leveling the lands by tractors."

This report throws light that there was no agricultural operations except existence of some mango trees and pond and unused well. The land is totally barren and is rocky. There is nothing in that report which speaks about the cultivation of the crops or existence of irrigation facilities.

35. The date of report is very much relevant that is 01.12.1980 not too distant in terms of time from 26.09.1979, the

date of notification u/s.18(1) of the ALR Act. Therefore, this court can presume that the 2nd respondent had acted without jurisdiction in proceeding under the ALR Act in the subject land.

This conclusion is fortified by the stand taken by the 3rd respondent in his counter affidavit filed before this court in W.P.No.31502 of 2012 filed by one Mrs.A.Karpagam who seeks to implead herself as one of the respondents in this case.

36. The above said writ petition was filed against the cancellation and resumption of assigned land from the petitioner. In the said case, the assigned land, which was cancelled is comprised in the subject matter of lands in this writ petition. According to the counter affidavit of the 2nd respondent, "the land assigned was abutting the national highways of GST Road surrounded by the colleges, schools, industries and housing apartments. The said land cannot be used for agricultural purpose. Further it is stated that the area is very close in proximity to Chennai city and several schools, colleges and multistoried building have come into existence. That apart, there are no irrigation facilities and there is no viable act of any agriculture. Since several public sector undertakings like CMDA for mofusil bus stand, Neyveli Lignite Corporation Limited has come into place." The aforesaid stand of the 1st respondent conclusively establishes the stand of the petitioner company that the subject matter of lands being urban in nature is unfit for cultivation as no irrigation facilities are available. No doubt, both ALR Act and the ULC Act are mutually exclusive and operating in their own areas. In so far as the ALR Act is concerned, its application extends only to the agricultural lands or lands which could be used for agricultural purpose. As far as the ULC Act is concerned, it extends to the area declared as Urban Agglomeration. It is inconceivable that the above said both Acts extend to the same set of lands simultaneously as happened in this case. Any process of notification under the ALR Act can be done on any lands on the premise it is agricultural lands. When its operation extends to the particular land, the ULC Act cannot have any application and vice-versa. As stated supra, there is nothing in this case by way of any materials or records except classification in revenue records to indicate the subjective satisfaction of the authorized officer as to the nature of the lands during the preparation of draft statement. Hence, it can be termed that the notification u/s.18(1) of the ALR Act is vitiated and issued without jurisdiction.

37. In the revision petition dated 30.04.2007, the petitioner had elaborately pointed out about the inspection reports of the 2nd respondent and above report of the 3rd respondent, forwarded to Board of Revenue, to establish his point that the

subject lands are not at all agricultural lands and it came within the purview of the ULC Act. The 1st respondent except narrating sequences of events of the earlier litigating process of the 4th respondent, failed to give the finding to the crucial question pertaining to the subject lands. Since the petitioner has raised the dispute about the nature of the subject lands and the same goes to the very root of the jurisdiction of the authorities under the ALR Act, the 1st respondent ought to have applied her mind and give findings independent of other proceedings. The finding of the 1st respondent that the petitioner company has no locus standi is without any legal basis. As stated supra that having paid entire sale consideration and obtained an irrevocable General power of Attorney in its favour from the 4th respondent, the petitioner company has been exercising all rights of ownership in respect of the subject lands since 26.10.1974, the date it was put into possession. Apart from this, Sec.53-A of the Transfer of Property Act came into play the moment the petitioner company was put into possession. It is entitled to all the benefits and effects under that section. Accordingly, the petitioner company is having all the rights to agitate when its right over the subject lands is affected under the proceedings of the ALR Act.

38. The highly competent Advocate General while referring to various findings of the authorities and of this Court in CRP.No.3428 of 1978 and the Land Administrative Tribunal and ultimate dismissal of the special leave petition preferred by the 4th respondent to drive the point that the aforesaid findings of the authorities, tribunal and this Court had clearly said that the subject lands are coming within the purview of section 3(22) of the ALR Act and operates as res judicata. In this regard, it is useful to refer the judgment of the supreme court reported in 1990 SCC (1) 193 and the relevant portion is extracted hereunder for reference:

"A decree passed by a Court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its validity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the Court to pass a decree which cannot be cured by consent or waiver of the party."

In another decision reported in AIR 1979 SC 193(1) the Hon'ble Apex Court in para 23 of the said judgment laid down as follows;

"Where the decision of a Tribunal is challenged on a pure question of law depending upon interpretation of a constitutional provision, which, if upheld, would make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction, the decision cannot be sustained by invoking doctrine either of res judicata or estoppel."

In another decision reported in 2005 (12) SCC 1 wherein, in para 21 of the judgment, the Hon'ble Supreme Court declares that

"The principle of res judicata would apply only when the lis was inter parties and had attained finality in respect of the issues involved. The said principle will, however, have no application inter alia in a case where the judgment and/or order had been passed by a court having no jurisdiction therefore and/or in a case involving a pure question of law. It will also have no application in a case where the judgment is not a speaking one."

Another relevant judgement I could notice the principle of res judicata is reported in 2008 (3) LW 599, wherein the Supreme Court amply explained the concepts of res judicata. The relevant extract from the judgment is as follows:

"10. Counsel for the respondent raised the question of res judicata on the ground that the earlier orders, which are similar, appointing advocate commissioner to sell the immovable property in question and in favour of the 2nd respondent, Mr. Muralikrishnan, were not challenged by the appellants".

11. The principle of res judicata fell for consideration before the Supreme Court in the case of Dwarka Prasad Agarwal Vs. B.D. Agarwal reported in 2003 (6) SCC 230. The Supreme Court, while observed that an order passed by Court without jurisdiction is a nullity, made the following observation:-

"37. It is now well settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned

orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such".

In a subsequent case of Ramnik Vallabhdas Madhvani & others Vs. Taraben Pravinlal Madhvani reported in 2004 (1) SCC 497, while discussing the principle of res judicata, having noticed the earlier decisions, Supreme Court held that principle of res judicata is not applicable where there is inherent lack of jurisdiction.

Similar was the view of Supreme Court in Ashok Leyland Ltd. Vs. State of T.N & another reported in 2004 (3) SCC 1, wherein Supreme Court held that principle of res judicata, estoppels or waiver are not applicable to an order pass without jurisdiction, which is nullity.

Similar view was expressed by Supreme Court in Sonapat Co-operative Sugar Mills Ltd. Vs. Ajit Singh reported in 2005 (5) SCC 232 and in the case of Shakuntla Devi Vs. Kamla & others reported in 2005 (5) SCC 390, wherein Supreme Court observed that a decree delivered without jurisdiction or contrary to existing law at the time the issue comes up for consideration cannot operate as res judicata in a subsequent case between the same parties, unless it is protected by special enactment.

In view of the authoritative pronouncement of the Supreme Court and in view of our finding that the order passed by learned Judge is without jurisdiction and is a nullity in the eye of law, we answer this question against the respondents and reject such objection."

The aforesaid legal principles pertaining to the concepts of res judicata throw a clear light that if an order has been passed wholly without jurisdiction or want of authority, the principle of res judicata cannot be invoked. That apart, if any judgment is delivered contrary to the existing law and the issue comes up for consideration, subsequently, it will not operate as res judicata. The aforesaid principles could apply to the present case when indisputably subject lands are not agricultural lands and the same fell within the purview of ULC Act. Even there is lack of a

reasonable satisfaction on the part of the 2nd respondent with regard to the nature of the subject lands. Consequently, the whole proceedings commencing from the stage of preparing the draft statement till the stage of issuing final statement u/s.18(1) of the Act are vitiated as wholly without jurisdiction.

39. Keeping the aforesaid principles in mind, I could conclude that if any orders are passed by the authorities or courts without jurisdiction its validity could be questioned at any stage of the proceedings whenever it is sought to be enforced. That apart, if the decisions of the authorities are challenged under the pure question of law on the ground of lack of jurisdiction on the part of the competent authorities, such a decision cannot be sustained by invoking the doctrine of res judicata or doctrine of estoppel. Further, whenever such an action which suffers lack of authority is sought to be enforced, the affected party can agitate at any stage. Because, the defect of the jurisdiction strikes that authority. The 1st respondent by considering all those circumstances ought to have gone into the merits of the case in detail. But by stating merely that there is no locus standi by quoting earlier proceedings without any details or reasons, would lead to inescapable conclusion that the impugned order of the 1st respondent under challenge is arbitrary, unreasonable and vitiated. It is worthwhile to notice section 82 of the ALR Act, which reads as follows:

"82. Revision by the Land Commissioner: The Land Commissioner may call for examine the record of any authorized officer in respect of any proceedings under section [7(3), 12, 13, 14(1), 14(2), 17(3), 18(4), 50(5) or 50(9) or the record of any proceeding under sub section (2) of section 54] and in respect of any other proceeding under this Act not being a proceedings in respect of which a suit or an appeal [***] to the Land Tribunal is provided by this Act to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed thereon; and if, in any case, it appears to the Land Commissioner that any such proceeding, decision or order should not be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly;

....."

The language employed in the above section suggests that it is in the nature of plenary power to enable the 1st respondent to satisfy himself as to the regularity of the proceeding; correctness, legality or propriety of any decision or order passed thereon. It can only be held that when acting under the jurisdiction of section 82, nothing prevents the 1st respondent from considering essential

materials and facts to satisfy himself of correctness, legality and propriety of the process of notifying the surplus land under sec.18 (1). But the purpose and the scope of sec.82 is totally different from a regular appellate power. It is in the nature of plenary provision in an expropriatory legislation for the highest administrative authority to satisfy itself of the correctness, propriety and legality of the procedures and the orders and actions done under the Act. In such proceedings, the 1st respondent cannot approach the issue in a mechanical manner but to appreciate the materials and records in fulfilling the object of the provision.

40. The contention of the highly competent Advocate General that the ULC Act is not at all applicable to the subject lands and in fact there is no initiative on the part of competent authorities to bring the subject lands within the purview of the ULC Act. I am not accepting the submission of the highly competent Advocate General in this regard. In page 47 of the typed set of papers filed by the petitioner, the proceedings of the 3rd respondent in Na.Ka.P/641/2002 dated 12.03.2003 is enclosed. It appears from the said proceedings, an enquiry had been conducted against the 4th respondent, by the 3rd respondent over the transfer of interest in the subject lands by the 4th respondent in favour of the petitioner by way of sale agreement and irrevocable general power of attorney. In the above said proceedings, it emerges that the 3rd respondent had addressed the communication to the 1st respondent recommending for dropping of proceedings against the petitioner over the subject lands under the ULC Act since it had been repealed w.e.f 16.06.1999. The said proceedings could establish clinchingly that the application of the ULC Act was extended to the subject lands in this case.

41. The case of the petitioner is that the ALR Act cannot have any application to the subject matter of the land which by its nature cannot come within the purview of the definition as defined under section 3(22) of the Act and as such the notification under section 8(1) of the Act was passed without jurisdiction. It is well settled ratio that if any order is passed by any statutory forum without authority or want of authority, it could be questioned at any stage of the proceedings. Further it is not a suo moto revisional power exercised by the 1st respondent. It is based on the revision petition preferred by the petitioner company, the 1st respondent had exercised her revisionary power under section 82 of the ALR Act. From the aforesaid circumstances, it can be concluded without any difficulty that the subject matter of the lands are not at all agricultural lands or could it be capable of being used for agricultural purpose.

42. In the course of argument the highly competent counsel Advocate General had pointed out that in paragraph No.9 of the affidavit of the petitioner it is stated that the SLP No.9192 of 1993 filed by the petitioner was dismissed as withdrawn with direction to the petitioner to approach the State Government for exemption under Section 37A of the ALR Act. But, in the order of the dismissal in SLP No.9192 of 1993, it is only mentioned that SLP dismissed. The petitioner made an attempt to mislead this Court by misleading statement. The highly competent senior counsel appearing for the petitioner submitted that according to the instruction that the counsel for the petitioner in Hon'ble Supreme Court told the petitioner that at the time of dismissing the SLP, it was orally observed to work out the remedy under Section 37A of the ALR Act. But, by mistake this fact was not stated in the affidavit. The highly competent senior counsel further submitted that there is no intention on the part of the petitioner to mislead this Court. This Court considered that the conduct of the petitioner may not be appreciated but the explanation of the petitioner in this regard need not to be rejected. While the writ petition is pending, one Mrs.Karpagam filed impleading petition to make her as a party respondent in the writ petition. To decide the issue in this writ petition, the impleading petitioner is not at all a necessary party. Anyhow in the interest of justice, she has given an opportunity to advance arguments in the main case also. The impleading petitioner contended that against the cancellation of assignment she has succeeded in the writ petition in WP.No.31502 of 2012. Subsequently the Government's attempt to thwart the learned Single Judge's order in the said writ petition filed before the Division Bench in the Writ Appeal and ultimately the Hon'ble Supreme Court upheld the order of the learned Single Judge. Since there is a failure on the part of the Government to honour the order of the learned Single Judge in the above writ petition, a Contempt petition has been filed by the impleading petitioner. In so far as the grievance of the impleading petitioner is concerned, she could work out her remedy in the said contempt proceedings pending before the learned Single Judge of this Court.

43. As rightly pointed out by the highly competent senior counsel Mr.ARL Sundaresan for the petitioner that as far as the third party assignments are concerned, the validity of assignment depends upon the validity of publication under section 18(1) of the Act at the finality of the land reforms proceedings. Since the land reforms proceedings is itself is void as it is wholly without jurisdiction, impleading petitioner will not get any right whatsoever. I have to state that proceedings under the ALR Act are for and meant to benefit the poor, landless agricultural

labour. While so, the Government cannot retain the lands acquired under the ALR Act to its entire extent for public purpose. The Government cannot hold up any such lands meant for poor landless people for other public purpose. The Rule 13 of the Land Reforms (Disposal of Surplus Lands) enables the Government to retain such portion of the surplus lands as acquired by the Government for the benefit of public. The word 'used' such a portion cannot be stretched to the entire extent of land but can be confined to the small portion of the land acquired.

44. Any how, the above impleading petitioner has claimed a relief against the writ petitioner as well as the Government and the same is rejected by this Court in separate order in M.P.No.1 of 2015 in W.P.No.10532 of 2008.

45. The action of the government in retaining the entire extent of lands for other public purpose is highly regrettable and need to be deprecated. In the present case, the action of the government can be termed as a colorable exercise of power and the same is violative of Article 14 and 300A of the Constitution of India. It is needless to mention that while there are other legal avenues for acquiring the lands for public purposes like under the Land Acquisition Act which afford reasonable compensation for the land acquired, the action of the government to retain the entire extent of lands under ALR Act is hitting the very object of the ALR Act.

46. The highly competent Advocate General referred to the Kerala High Court judgment reported in AIR 1978 Ker 217 (FB) and the judgment of Karnataka High Court reported in 2010 (3) KCCR 2055. In the above said judgment of Karnataka High Court, it is held that mere agreement for sale creates no legal rights in the property which is the subject matter of agreement. But in the present case, it is not a mere sale agreement between the petitioner and the 4th respondent. Having paid full sale consideration, the petitioner was put into possession and later on, in the year 1985, an irrevocable registered general power of attorney was executed in favour of the petitioner over the subject lands by the 4th respondent and as such the rights and benefits under section 53-A of the Transfer of Property Act become available to the petitioner. The said Kerala High Court judgment merely deals about the general principles of the res judicata as contained in section 11 of Code of Civil Procedure and in any way not relating to the facts of the case in hand.

47. From the above discussions, this Court is of the further view that:-

(i) The respondents 1 to 3 have allotted the subject lands to the beneficiaries through the third respondent proceedings dated 31.10.1998 and assigned the surplus lands to various persons for cultivation. Subsequently, the third respondent / Assistant Commissioner, Land Reforms, Villupuram had cancelled the assignment of the beneficiaries. These proceedings also can only be considered as paper transaction with no materialization.

(ii) As per the proceedings initiated by the respondents 1 to 3 under the Land Reforms Act, the physical possession of the lands should have been vested with the respondents 1 to 3, but in the instant case, it is seen that the physical possession is not under their custody and as such, they have no locus standi to allot the lands to the public sectors for various public purposes.

(iii) The petitioner had obtained building plan from the Kattankulathur Panchayat Union Council dated 28.02.1975. Following this, the petitioner had also obtained sanctioned plan for building the housing factory as per the order dated 11.03.1975 from the Panchayat Union Commissioner, Kattankulathur. The petitioner also constructed a new building over the subject lands.

(iv) The highly competent senior counsel Mr.ARL.Sundaresn appearing for the petitioner submits that the entire proceedings had been initiated by the respondents under the Land Reforms Act which is not covered under the said Act since the property is situated within the urban area and as such, the respondents had not adopted the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The highly competent Advocate General Mr.A.L.Somayaji submits that the subject lands had been acquired under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and the surplus lands were acquired since the property situated at Kilambakkam Village has been classified as non-agricultural barren lands. This Court is unable to entertain the highly competent senior counsel's submission since the proceedings initiated by the respondents 1 to 3 becomes vitiated.

48. On considering the facts and circumstances of the case and arguments advanced by the highly competent senior counsels on either side and on perusing the typed-set of papers and the views of this Court as expressed in the above paras, this Court allows the above writ petition. Consequently, the first respondent's proceeding No.D1/6231/2007 (L.Ref) dated 25.01.2008 confirming the notification issued by the second respondent herein under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by Act 17/80 passed in Supplement to Part II Section I of Tamil Nadu Government Gazette dated 26.09.1979 at Page 14 and 15 is quashed and the subject land situated in Survey Nos.174/5 etc., in Kilambakkam Village, Chengalput Taluk, are released from the proceedings of the

respondents 1 to 3. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

r n s

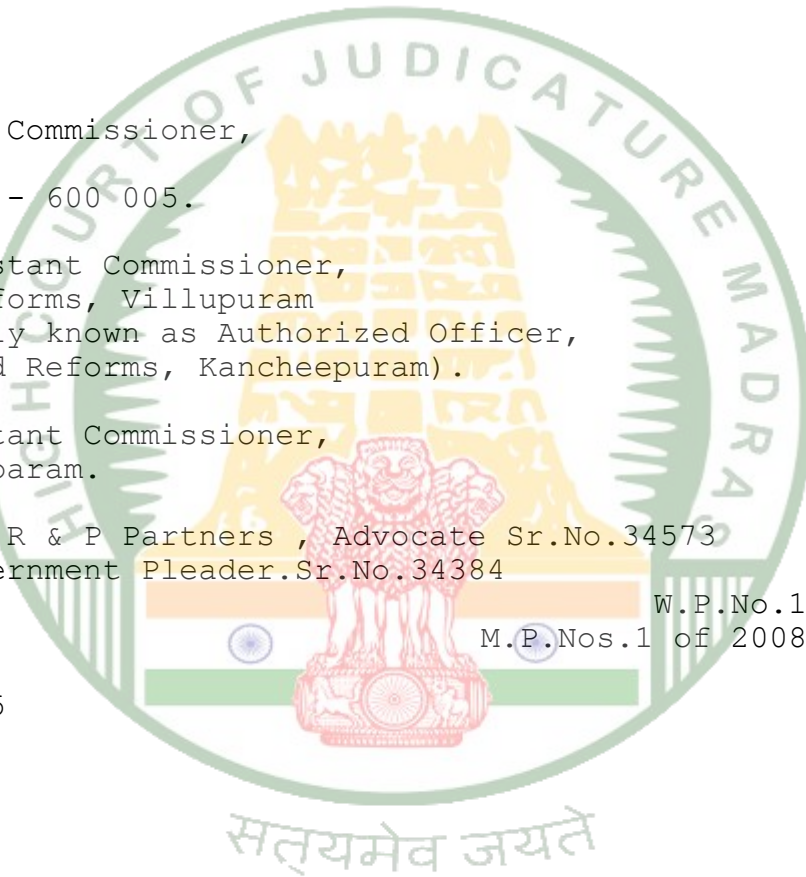
To

1. The Land Commissioner,
Chepauk,
Chennai - 600 005.
2. The Assistant Commissioner,
Land Reforms, Villupuram
(Formerly known as Authorized Officer,
Land Reforms, Kancheepuram).
3. The Assistant Commissioner,
ULT, Tambaram.

1 cc to M/s.R & P Partners , Advocate Sr.No.34573
1 cc to Government Pleader.Sr.No.34384

W.P.No.10532 of 2008 &
M.P.Nos.1 of 2008 and 1 of 2014

svi(co)
pmk.3.8.2015



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