

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.11.2018

Judgment Delivered on : 19.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

Writ Appeal No.687 of 2018
and
C.M.P.Nos.6552, 10791 and 10792 of 2018

Annai Indira Gandhi Hut Dwellers
Welfare Association,
Rep. by their President Dhananjayan,
Reg.No.416/90, Vijaya Nagar,
Velacherry, Chennai-600 042. ... Appellant

Vs.

1. State of Tamil Nadu, Rep. by its
Secretary, Revenue Department,
Fort St.George, Chennai-9.
2. The District Collector,
Chennai District, Chennai.
3. The Tahsildar,
Mambalam-Guindy Taluk,
Chennai.
4. Union of India owning Southern Railway,
represented by its General Manager,
Park Town, Chennai-600 003.
5. The Chief Engineer,
Metropolitan Transport Project (Railways),
Southern Railway, Egmore, Chennai-600 008.
(Respondents 4 and 5 impleaded as per
order dated 17.07.2009 in W.P.M.P.No.439
of 2009 in W.P.No.12383 of 2004)
6. The Tahsildar, Velacherry, Chennai.
(Sixth respondent suo motu impleaded
as per order dated 04.10.2017)

7. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

(Seventh respondent impleaded as
party respondent, vide order dated 29.08.2018
made in C.M.P.No.15233 of 2018 in
W.A.No.687 of 2018)

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 23.02.2018 passed by the learned Single
Judge in W.P.No.12383 of 2004 on the file of this Court.

W.P.No.12383 of 2004:-

Writ Petition filed under Article 226 of the Constitution of
India, for issuance of a Writ of Certiorari to call for the
records of the first respondent in proceedings in G.O.MS.No.649
dated 29.12.2003 Revenue (Ni.Mu 1(1)) department and quash the
same.

For appellant : Mr.M.S.Krishnan, Senior Counsel for
Mr.M.Venkateswaran

For respondents : Mr.S.N.Parthasarathy, Govt. Advocate
for RR-1 to 3 and 6
Mr.P.T.Ramkumar for RR-4 and 5
Mr.C.Johnson for R-7

R.SUBBIAH, J

This Writ Appeal has been filed by Annai Indira Gandhi Hut
Dwellers Welfare Association, against the order of dismissal
dated 23.02.2018 passed by the learned Single Judge in
W.P.No.12383 of 2004 on the file of this Court.

2. The circumstances which led to the filing of W.P.No.12383
of 2004 are that earlier, the first respondent-Secretary,
Revenue Department, Chennai, by G.O.Ms.No.862, dated 07.08.1992,
had directed the second respondent-District Collector, Chennai,
to take steps to allot one cent of land each to 97 members of
the appellant-Association, whose names were provided in the said
G.O., in S.No.333, then Chennai District, Mambalam Guindy Taluk,
Velacherry Village. The said G.O. was cancelled subsequently by
another G.O. in G.O.Ms.No.649, Revenue Department, dated
29.12.2003, since the said land is required for Chennai MRTS

Project. Challenging the said G.O.Ms.No.649, the appellant-Association filed W.P.No.12383 of 2004, which was dismissed by the learned Single Judge, against which, now, the Association has filed the present Writ Appeal.

3. The case of the appellant-Association is as follows:

(a) The appellant-Association is registered under the Societies Registration Act with Registration No.416/90. There are 97 members in the Association. Most of them are Adi Dravidars and hut dwellers. The members of the appellant-Association have been in possession of the properties comprised in S.No.333, Velacherry Village, Mambalam-Guindy Taluk, Chennai. The members of the appellant-Association had approached the Government for grant of patta in respect of the land under their respective possession. Hence, the first respondent had issued the order in G.O.Ms.No.862, Revenue Department, dated 07.08.1992, by which each member of the appellant-Association is entitled to one cent in respect of the land comprised in S.No.333, Velacherry Village, Mambalam-Guindy Taluk, Chennai. Pursuant to the same, the third respondent-Tahsildar, Mambalam-Guindy Taluk, Chennai, granted patta to the members of the petitioner-Association and the members have been in possession and enjoyment of the land by putting up superstructure and Asbestos shed under their respective possession.

(b) While so, the Government had acquired the lands by G.O.Ms.No.15, Revenue Department, dated 12.01.2000 for the purpose of MRTS, Phase-II Scheme and in the said G.O., there is no reference about the requirements of the land comprised in S.No.333, Velacherry Village, Chennai. The lands comprised in S.No.333 are measuring 4 acres 87 cents. The third respondent prepared a lay-out and as per the lay-out, 1 acre 50 cents were allotted to the members of the petitioner-Association. The remaining lands in the said Survey Number vested with the Government. It is the stand of the petitioner-Association that the lands assigned to its members are not required for MRTS, Phase-II Scheme.

(c) At the instance of the third respondent and the Railway Officers, the Corporation of Chennai, on 07.06.2001, caused demolition notice to the members of the petitioner-Association, which led to the filing of a Civil Suit in O.S.No.2963 of 2002 on the file of the City Civil Court, Chennai, against the first respondent and others. In the said suit, an application was filed in I.A.No.8581 of 2002 for interim injunction against the respondents herein and others. The said suit itself is filed for permanent injunction. In the said suit, the respondents 1 to 3 are represented by the Government Pleader, City Civil Court, Chennai. Counter affidavit was filed by the third respondent therein. In the said suit, the City Civil Court granted interim

injunction on 29.08.2003 in I.A.No.8581 of 2002. During the pendency of the said suit, the third respondent has issued a notice on 25.07.2003 under Section 7 of the Tamil Nadu Land Encroachment Act, to all the members of the appellant-Association, whereby the possession of the said land had been termed as unauthorised occupation by the members, and the members of the appellant-Association gave reply to the said notice. The appellant-Association through its President, made a representation to the second respondent on 08.08.2003 vindicating their right and sought redressal of their grievance. The second respondent did not take action on the said representation. Thereafter, the third respondent issued a notice under Section 6 of the said Act, subsequent to which, the members of the Association gave a representation on 03.10.2003.

(d) While the matter stood thus, the appellant-Association came to understand that the first respondent, by the impugned G.O.Ms.No.649, Revenue Department, dated 29.12.2003, has cancelled G.O.Ms.No.862, Revenue Department, dated 07.08.1992 through some politically influential persons who are trying to dispossess the members from the said land and illegally occupy the same. This fact came to be known to the appellant/Association only on 16.04.2004 when the President of the appellant-Association contacted the first respondent. The first respondent had not issued any notice to the appellant-Association before cancelling the said G.O.Ms.No.862, dated 07.08.1992. The first respondent did not even communicate the cancellation of the said G.O. On enquiry, it was learnt that the first respondent has cancelled the said G.O., as the lands under the occupation of the appellant-Association's members are required for MRTS Phase-II Scheme.

(e) In the impugned G.O.Ms.No.649, Revenue Department, dated 29.12.2003, it has been referred that the entire extent of 4.67 acres of lands have been assigned to the appellant-Association, which is not correct. The third respondent has allotted 1.50 acres of lands to the members of the appellant-Association and the remaining land vested with the Government. The lands under the occupation of the members of the appellant-Association are not required for MRTS Phase-II Scheme, which is evident from G.O.Ms.No.15, Revenue Department, dated 12.01.2000.

(f) In the impugned G.O., there has been a reference about the civil suit pending before the Civil Court and the said G.O. was passed on the presumption as if there is no interim order in the said suit in O.S.No.2963 of 2002 on the file of the City Civil Court, Chennai. Hence, the reference made in the impugned G.O. to the effect that no interim order is granted in the suit, is not correct, whereas the fact remains that interim injunction was granted in the said suit in I.A.No.8581 of 2002 and it was

in force on the date of passing the impugned G.O. Therefore, it is clear that the first respondent has passed the impugned order without application of mind. Hence, the appellant-Association has filed the Writ Petition in W.P.No.12383 of 2004 before the learned Single Judge challenging the said G.O. in G.O.Ms.No.649.

4. Pending Writ Petition, in W.P.M.P.No.14471 of 2004 in W.P.No.12383 of 2004, on 30.06.2004, this Court has granted interim stay of all further proceedings in pursuance of G.O.Ms.No.649, Revenue Department, dated 29.12.2003.

5. The second respondent-District Collector, Chennai, has filed counter affidavit before the Writ Court, inter-alia stating as follows:

(i) The Government lands in S.No.333 of Velacherry Village, was initially encroached by 97 persons unauthorisedly and they have formed an Association in the name and style of Annai Indira Gandhi Hut Dwellers Welfare Association under the Presidentship of one Dhananjayan. On the representation made by the said Association, the Government, in their G.O.Ms.No.862, Revenue Department, dated 07.08.1992, had issued orders to assign lands in S.No.333 of Velacherry Village in favour of 97 persons who were the members of the said Association either free of land cost or after the collection of land value based on the merit of each case, after changing the classification of the land from Meikkal Poramboke to Natham. The PLR extract of the land is as follows:

Name of the village	: 137 Velacherry
S.No.	: 333/1
Extent	: 4 Acres 64 cents
Classification	: Grazing land (Government Poramboke)
S.No.	: 333/2
Extent	: 0.23 cents
Classification	: Grazing land (Revenue Department)
Occupier	: Indian Oil Corporation

(ii) Based on the direction in the G.O., necessary proposals were called for from the Tahsildar, Mambalam-Guindy Taluk. The Government have accepted the request of the said Association in principle to assign one cent of land each in S.No.333 to 97 persons. The then Tahsildar has issued patta to 312 persons instead of 97 persons without any formal orders of the Government/Collector. Therefore, the Collector issued show cause notice to the entire 312 persons for cancellation of patta issued to them in which 97 persons, the members of the

appellant-Association, were also included. All the aggrieved 312 persons filed a suit in O.S.No.1495 of 1997 against the notice of the Collector. As there was no stay granted in the said suit, the Collector of Chennai, after observing all formalities, has cancelled the patta issued by the Tahsildar to 312 persons including 97 persons of the appellant-Association under the provisions contained in Revenue Standing Order (RSO) No.31(8), vide proceedings dated 17.04.1997 and against the order of the Collector, the plaintiff-Association filed a Writ Petition in W.P.No.10400 of 1997, which was dismissed on 08.07.1997.

(iii) Moreover, no assignment orders were issued in accordance with the above G.O. as the land was requisitioned for Railway purpose, and as such, the encroachers have no right over the land(s). Since the above lands in S.No.333 are in need of implementation of MRTS Project Phase-II by the Railway Department, that too for common purpose, the Government, in the impugned G.O.Ms.No.649, Revenue Department, dated 29.12.2003, issued orders cancelling G.O.Ms.No.862, Revenue Department, dated 07.08.1992, in which the appellant-Association's 97 members were ordered to be issued one cent each after observing all formalities. The appellant-Association filed O.S.No.2963 of 2002 before the City Civil Court praying permanent injunction restraining the defendants from interfering with the members of the plaintiff-Association's peaceful possession and enjoyment of the land comprised in S.No.333, Velacherry Village, Mambalam-Guindy Taluk, Chennai, which is covered under G.O.Ms.No.862, dated 07.08.1992. Pending the said suit, the members of the appellant-Association filed I.A.No.8581 of 2002 for interim injunction, which was allowed on 29.08.2003. In the meanwhile, the Tahsildar, Mambalam-Guindy Taluk issued notice under Section 7 of the Tamil Nadu Land Encroachment Act on 02.08.2003 to all the members of the appellant-Association and the same was served on them. Suppressing the above facts, the appellant-Association filed the present Writ Petition in W.P.No.12383 of 2004 before this Court.

(iv) The lands in question are Government Poramboke lands. The Government in G.O.Ms.No.649, Revenue Department, dated 29.12.2003, cancelled the earlier G.O.Ms.No.862, dated 07.08.1992. The Government alone have rights over the interest of the disposal of the Government land and as encroachers, the members of the appellant-Association have no right to establish their claim as owners of the lands which belong to the Government. When a big Railway project work is taken into consideration for implementing the same in large scale and for common public cause, the extent of land, course of project and involvement of the lands required, cannot be decided at the initial stage itself, and hence, it is not possible to determine at the time of issuance of G.O. whether the lands allotted to

the members of the appellant-Association are going to be acquired for implementation of MRTS Phase-II work. Since the MRTS Phase-II Project is an important common public project work by the Railway Department, much affected by the hurdles from the appellant-Association, steps were taken to evict the members of the appellant-Association from the Government land. The entire land in S.No.333 of Velacherry Village, are Government lands and meant for implementation of MRTS Project Phase-II work by the Railway authorities for the use of general public. The eviction process was completed only after observing all formalities as per the Rules in force by the authorities. The appellant-Association and its members were given ample time and opportunity to protect their belongings. Other things done by the appellant-Association are only against the interest of the general public and it is well known to all.

(v) The lands in question have also been handed over to the Special Tahsildar, MRTS Phase-II in vacant possession on 28.06.2004 and in turn, the Special Tahsildar MRTS handed over the land to Railway authorities on the same day itself. All the members of the appellant-Association, except Deivayanai, Lakshmi and Suseela Dhanjayan, are not occupying the lands and the rest of them are only unauthorisedly encroaching the land. Because of the injunction, the entire project in Velacherry Terminal point has been completely paralysed and could not be completed even though funds were allocated for the said purpose. Hence, the second respondent prayed to vacate the interim order.

6. To vacate the interim order, the respondents 1 to 3 have filed W.V.M.P.No.2195 of 2004 in W.M.P.No.14471 of 2004 in W.P.No.12383 of 2004 and by order dated 01.11.2006, the interim stay granted was made absolute.

7. Thereafter, the respondents 4 and 5 have been impleaded as per order dated 17.07.2009 in W.M.P.No.439 of 2009 in W.P.No.12383 of 2004. This Court suo-motu impleaded the sixth respondent/Tahsildar, Velacherry, Chennai, as per order dated 04.10.2017 in W.P.No.12383 of 2004.

8. The respondents 4 and 5, namely the Union of India, Southern Railway, represented by its General Manager, Chennai, and the Chief Engineer, Metropolitan Transport Project (Railways), Southern Railway, Chennai, have filed their affidavit in the impleading petition in W.M.P.No.439 of 2009, which was treated as counter affidavit filed by them, based on their request. In the said affidavit, they have inter-alia stated that the prestigious Mass Rapid Transit System Project was introduced, which is jointly implemented by the State Government and the Railways and the subject lands are classified as Government Poramboke lands, which are very much required for

the said project, more particularly, the approach to the Velacherry Railway Station, as the said lands abut the Velacherry Railway Station. In such circumstances, as the project is a public utility programme which is of great importance to the travelling public, the members of the appellant-Association are to be evicted, they being encroachers. Accordingly, notice was issued under the Tamil Nadu Land Encroachment Act to all the occupants on 02.08.2003. In the meantime, the Association had also filed O.S.No.2963 of 2002 on the file of the City Civil Court, Chennai and obtained interim order of injunction restraining the Revenue Authorities from dispossessing them in I.A.No.8581 of 2002, which forms the basis for interim order being granted by this Court on 30.06.2004 in the present Writ Petition. Suppressing the above facts, the present Writ Petition has been filed and interim order has also been granted. By judgment and decree dated 10.07.2006, the said suit in O.S.No.2963 of 2002 was dismissed for non-prosecution. The public interest outweighs the rights of the members of the appellant-Association, who are encroachers of the Government land.

9. It is further stated by the Railways in the above affidavit that taking advantage of the interim order granted by this Court, as the subject land is in prime location that is near the Velacherry Station Building, some third parties who are neither 97 members whose names are found in G.O.Ms.No.862, dated 07.08.1992, nor 312 members for whom pattas were erroneously issued by the Tahsildar, which was cancelled under proceedings dated 17.04.1997, have started putting up shops with pucca RCC buildings, abutting the approach roads to the Railway Station. Originally, 97 members were allotted one cent of land each for residential purpose only and not for commercial use. A new 18M width road from Perungudi to Velacherry connecting Velacherry-Tambaram Road, is also under execution as part of this project, which culminates near the Velacherry Railway Station building. The lands in question are sandwiched between the newly formed main road and the approach roads to the Station. Hence, the lands are essentially required for the Railways for the overall infrastructural development works. Hence, the respondents 4 and 5 pray to vacate the interim order dated 30.06.2004.

10. The learned Single Judge, after hearing the learned counsel appearing for the parties, has dismissed the Writ Petition upholding the impugned G.O. Aggrieved by the same, the present Writ Appeal has been filed by the writ petitioner-Association.

11. The learned Senior Counsel appearing for the appellant submitted that the members of the appellant-Association were in possession of the land(s) in S.No.333, Velacherry Village.

Recognising the said possession from the year 1982 over the said lands, they were assigned 97 cents of land (97 members each 1 cent land) by G.O.Ms.No.862, dated 07.08.1992. Pursuant to the said G.O., the third respondent-Tahsildar has also granted patta to all the members of the appellant-Association. But the third respondent, while issuing pattas to these 97 members as per G.O.Ms.No.862, had also issued 215 pattas. Thus, the Tahsildar had issued pattas to totally 312 persons through proceedings dated 10.02.1997. Hence, the second respondent-District Collector had issued show cause notice, dated 12.03.1997 to the members of the appellant-Association, whereby they were asked to provide explanation within 15 days as to why the pattas issued to 312 persons by the Tahsildar, should not be cancelled, as the Tahsildar is not a competent authority to assign Government lands and it is only the District Collector who is the competent authority to assign Government lands. Subsequently, by proceedings dated 17.04.1997, the District Collector had cancelled the pattas given to 312 persons including 97 pattas issued to the members of the appellant-Association, on the ground that the Tahsildar is not competent authority to assign the Government lands in Chennai District. Learned Senior Counsel appearing for the appellant-Association further contended that though the pattas issued in favour of 312 persons, was cancelled as stated above, the District Collector had observed that action is being taken separately to assign one cent land each to 97 members of the appellant-Association as mentioned in G.O.Ms.No.862, as per R.S.O.No.21. Aggrieved by the cancellation of pattas, the appellant-Association had filed appeal before the Commissioner of Land Administration, in which the cancellation of pattas granted in favour of 312 persons, was upheld by proceedings dated 02.07.1997 and the Collector was requested to proceed on the basis of G.O.Ms.No.862, dated 07.08.1992. As against the cancellation of pattas by the District Collector, dated 17.04.1997, the appellant-Association also filed Writ Petition No.6278 of 1997 before this Court. Since the appeal before the Commissioner of Land Administration was disposed of on 02.07.1997, the appellant-Association had not pressed the said W.P.No.6278 of 1997 and it was dismissed for non-prosecution on 28.07.1997.

12. Learned Senior Counsel appearing for the appellant-Association further submitted that when the members of the appellant-Association were under the fond hope that insofar as 97 members are concerned, formal assignment deeds would be executed, the official respondents tried to disturb the possession of the members of the appellant-Association over the lands comprised in S.No.333. Hence, in order to protect the members of the appellant-Association, the appellant-Association filed a Civil Suit in O.S.No.2963 of 2002 before the City Civil Court, Chennai, in which they had also filed I.A.No.8581 of 2002

for ad-interim injunction restraining the respondents therein from interfering with the possession and enjoyment of the lands by the members of the appellant-Association. The City Civil Court allowed I.A.No.8581 of 2002 on 29.08.2003. In spite of the interim order, the Tahsildar issued notice on 24.09.2003 under Section 6 of the Tamil Nadu Land Encroachment Act, treating the occupation of the members as unauthorised occupation. Hence, on 05.10.2003, the appellant-Association sent reply notice to the Tahsildar, wherein they have stated that the members are not unauthorised occupants and they are in occupation of the lands on the strength of G.O.Ms.No.862. In the reply notice, they have communicated the order of interim injunction granted by the City Civil Court on 29.08.2003 and requested to drop all further action in that regard.

13. Learned Senior Counsel appearing for the appellant-Association further submitted that in utter disregard and disobedience to the order of injunction granted by the Civil Court, dated 29.08.2003, the first respondent had cancelled G.O.Ms.No.862 by the impugned G.O.Ms.No.649, dated 29.12.2003, stating that the land is required for Velacherry MRTS Project and that no order of injunction was obtained in their favour in O.S.No.2963 of 2002 and I.A.No.8581 of 2002, but the fact remains that there was an order of injunction granted by the City Civil Court, which was also intimated to the respondents through the letter dated 05.10.2003 and the said order of injunction was in force on the date of passing of G.O.Ms.No.649 on 29.12.2003. Learned Senior Counsel appearing for the appellant-Association further submitted that the impugned G.O.Ms.No.649 is nullity in the eye of law, as the same is passed in violation of the order of injunction granted by the City Civil Court. The respondents have deliberately stated in the impugned G.O. that there is no order of injunction in favour of the appellant-Association, without verifying the records. Learned Senior Counsel appearing for the appellant further contended that in fact, the order of injunction was intimated to the respondents through the appellant-Association's letter dated 05.10.2003. Despite the knowledge of the order of injunction passed by Court, the impugned G.O. had been passed without application of mind.

14. Learned Senior Counsel appearing for the appellant-Association further contended that no notice was given to the members of the appellant-Association either before or after cancelling G.O.Ms.No.862 and the appellant was completely unaware about the impugned order dated 29.12.2003 and only during April 2004, when the authorities tried to disturb the possession of the members of the appellant-Association, the passing of the impugned G.O.Ms.No.649 came to their knowledge. Hence, the appellant-Association preferred W.P.No.12383 of 2004.

On 30.06.2004, in W.P.M.P.No.14471 of 2004 in W.P.No.12383 of 2004, this Court had granted interim stay and this Court further observed that so long as the order of this Court is in force, coupled with the injunction order of the competent Civil Court, the respondents should not carry on any demolition work until further orders. Since the right of the members of the appellant-Association was protected by the said interim order of stay, which was made absolute on 01.11.2006 in W.P.M.P.No.14471 of 2004 in W.P.No.12383 of 2004, the suit in O.S.No.2963 of 2002 was not proceeded by the appellant-Association, and hence, the suit was allowed to be dismissed for default on 10.07.2006.

15. Learned Senior Counsel appearing for the appellant-Association further submitted that by G.O.Ms.No.862, dated 07.08.1992, the members of the appellant-Association were vested with right in their favour and are in legal occupation of the lands in S.No.333 on the strength of the said G.O. Pursuant to the said G.O., only formal assignment deeds have to be given as per R.S.O.21 and it is only a consequential act. Thus, the rights of the members of the appellant-Association over 97 cents of land in S.No.333 of Velacherry Village, are crystallised under G.O.Ms.No.862. However, without issuing the assignment deeds, the Tahsildar issued pattas in favour of 312 people and since the Tahsildar has no jurisdiction to issue patta in respect of the lands in Chennai District and since the Tahsildar had issued 215 pattas other than 97 people mentioned in G.O.Ms.No.862, action was initiated to cancel the pattas. Further, since the appellant-Association members had a right conferred under the said G.O.Ms.No.862, which was preserved in the subsequent proceedings before the District Collector and Land Commissioner, it necessitated the respondents to pass a subsequent G.O.Ms.No.649, which is impugned in the Writ Petition, to take away the rights conferred on the members of the appellant-Association under the original G.O. in G.O.Ms.No.862.

16. Learned Senior Counsel appearing for the appellant-Association further contended that the members of the appellant-Association, by invoking the Doctrine of Promissory Estoppel against the respondents, and that as the respondents, by passing G.O.Ms.No.862 and assigning the lands in favour of 97 persons and confirming the assignment in the two subsequent proceedings before the District Collector and the Land Commissioner, the respondents have created a legal right in favour of the members of the appellant-Association in respect of the land under their occupation. Believing such a promise/guarantee made by the respondents, the members of the appellant-Association have altered their position by putting up constructions. Thus, the respondents are estopped from interfering with such vested rights of the members of the appellant-Association. To fortify

the above contention, and also regarding the applicability of the Doctrine of Promissory Estoppel, the learned Senior Counsel appearing for the appellant-Association relied on a judgment of the Supreme Court reported in 2012 (11) SCC 1 (Monnet Ispat & Energy Ltd. Vs. Union of India).

17. Learned Senior Counsel appearing for the appellant-Association further contended that even assuming that the said lands are required by the respondents for any purpose, much less the public purpose, the respondents have to provide an opportunity of hearing to the members of the appellant-Association before disturbing their vested rights. However, in the present case, the respondents have passed the impugned G.O. behind the back of the members of the appellant/Association, without providing them an opportunity of hearing and thereby, it affected their vested rights over the lands in S.No.333. Therefore, not only on the ground of promissory estoppel, but also on violation of the principles of natural justice, the impugned G.O.Ms.No.649 is liable to be quashed.

18. Learned Senior Counsel appearing for the appellant-Association also assails the impugned G.O.Ms.No.649 on the ground of non-application of mind while passing the same and that, when a G.O. is challenged, the validity of the G.O. has to be tested only based upon the reasons provided in the G.O. and the reasons cannot be supplemented by way of counter affidavits or by inspection reports which had been done after passing of the impugned G.O. In this regard, learned Senior Counsel invited the attention of this Court to the decision of the Supreme Court reported in 1978 (1) SCC 405 (Mohinder Singh Gill Vs. Chief Election Commissioner).

19. To substantiate his contention that the impugned G.O. is passed in violation of principles of natural justice, the learned Senior Counsel appearing for the appellant-Association relied on the following decisions:

- (i) 2008 (14) SCC 151 (Sahara India Firm Vs. Commissioner of Income Tax);
- (ii) 1990 (2) SCC 48 (Management of M/s.Nally Bharat Engg. Co. Ltd. Vs. State of Bihar) and
- (iii) 1991 (3) SCC 38 (Union of India Vs. E.G.Nambudri).

20. Learned Senior Counsel appearing for the appellant-Association further submitted that inspite of the order of injunction granted by the competent Civil Court, the impugned G.O. is passed, which is a nullity, in support of which, he relied on the following decisions:

- (i) 2010 (11) SCC 557 (Manohar Lal Vs. Ugrasen);
- (ii) 2007 (11) SCC 374 (All Bengal Excise Licensees' Association Vs. Raghabendra Singh), and

(iii) AIR 1975 Madras 270 (Full Bench) (Century Flour Mills Limited Vs. S.Suppiah).

21. With regard to the contention of the respondents that as per the G.O., the order of assignment has to be issued only after changing the classification of the land from "Meikkal Poramboke" to "Natham", but it had not taken place, as no vested right is created in favour of the members of the appellant-Association, it is submitted by the learned Senior Counsel appearing for the appellant that the lands in S.No.333 had been given an exemption from G.O.Ms.No.186, dated 11.12.2001 from the classification of "Meikal Poramboke" and there is a reference to this exemption in G.O.Ms.No.510 of 2005, dated 01.09.2005. After giving such exemption and without duly issuing a formal assignment deed, the respondents have simply cancelled the earlier G.O. in G.O.Ms.No.862 of 1992 without providing an opportunity of hearing to the members of the appellant-Association.

22. Learned Senior Counsel appearing for the appellant-Association further contended that there is no document on record filed by the respondent-Railways to show that the lands in S.No.333 measuring 4.87 acres, had been legally handed over to the Railways. In this regard, learned Senior Counsel appearing for the appellant-Association has invited the attention of this Court to G.O.Ms.No.510 of 2005, dated 01.09.2005. Further, it is the contention of the respondents that the Special Tahsildar, MRTS had handed over the lands to the Senior Section Engineer of MRTS. Without any G.O. or proceedings to grant the land to Railways for the MRTS Project, there cannot be a mere handing over of possession of the lands in favour of Railways, and the Railways had not produced any G.O. or proceedings whereby the land in S.No.333 had been granted to them before taking over the possession of the said lands on 28.06.2004. Further, the MRTS Project had been completed during the year 2007, which is an admitted fact and there is nothing on record to show that the land is still required for MRTS Project. Hence, for all the above reasons, the learned Senior Counsel appearing for the appellant-Association prayed for allowing the Writ Appeal by setting aside the impugned order passed by the learned Single Judge.

23. Learned counsel appearing for the respondents 4 and 5/Railways submitted that to provide better train facilities to the public, the prestigious Mass Rapid Transport System project was introduced by the Railways to be implemented jointly by the State Government and the Railways. The subject lands in S.No.333, which were classified as Government Poramboke, were very much required for the project, particularly to provide approach roads to the Velacherry Railway Station. Considering

the request made by the Railways, the State Government decided to allot 4.87 acres land in S.Nos.333/1 and 333/2 to Railways and initiated action to evict the members of the appellant-Association by issuing notice under the Tamil Nadu Land Encroachment Act, who are encroaching the said lands. After action taken by the Government to evict the members of the appellant-Association, they filed O.S.No.2963 of 2002 before the City Civil Court and though the suit was filed in March 2002, no interim order was granted till 29.08.2003. The members of the appellant/Association obtained interim order without disclosing the correct facts in the plaint and the patta granted to them had already been cancelled in the year 1997 and they have given a false impression before the City Civil Court as if they were in possession of 97 cents in S.No.333. The interim injunction was granted only not to dispossess them and not against G.O.Ms.No.862.

24. Learned counsel for the respondents 4 and 5/Railways further submitted that by proceedings dated 12.03.1997, the District Collector, Chennai issued show cause notice to all the 312 persons for cancelling the pattas issued erroneously by the then Tahsildar, Mambalam-Guindy Taluk and after obtaining reply from the concerned persons, by order dated 17.04.1997, the District Collector, Chennai, cancelled the pattas granted to 312 persons, including 97 persons of the appellant-Association. Further, it is evident from the proceedings, dated 12.03.1997 and 17.04.1997 that the land remained only as "Meikal Poramboke" and not classified as Natham, as mentioned in G.O.Ms.No.862. Aggrieved by the cancellation of patta, the appellant-Association filed a revision/appeal before the Special Commissioner/Commissioner of Land Administration, Chennai. Considering their submissions and objections, by order dated 02.07.1997, the revision/appeal preferred by the appellant-Association was rejected. Further, in the said order, the District Collector was requested to follow the direction given in G.O.Ms.No.862 and to proceed afresh by following the procedures laid down in R.S.O.21. In the said order dated 02.07.1997, it is clearly mentioned that the lands in S.No.333 were lying vacant without any habitation, and it was also represented by the Collector that action is being taken separately to assign one cent each of the lands to 97 persons of the appellant/Association by following the procedures laid down in R.S.O.No.21. Thus, it is clear that as on that date, the lands were not converted into Natham as mentioned in G.O.Ms.No.862 and no proper form of assignment order was given to the appellant-Association as on 02.07.1997. No such event had taken place at all. Considering the importance of the public project which will benefit the public at large for transportation in Chennai City, the State Government, by G.O. dated 01.09.2005 in G.O.Ms.No.510 of 2005, allotted 4.87 acres

of lands in S.Nos.333/1 and 333/2 to Railways as lease for a period of 99 years. Issuance of the said G.O. was not brought to the knowledge of this Court on 01.11.2006 when the interim order was made absolute by this Court.

25. Learned counsel appearing for the respondents 4 and 5/Railways further submitted that the entire project had been stalled due to the process of assignment and the lands were handed over to the members of the appellant-Association, in favour of whom, the recommendations were made, were not actually residing now and this is established by the inspection report by the Tahsildar pursuant to the direction of this Court. Presently, only most of the members of the appellant/Association have constructed huge commercial structures and making money by renting them out to third parties. Most of the members of the appellant/Association are not residing in S.No.333. These facts are established in the inspection report submitted by the Tahsildar, Velacherry pursuant to the direction passed by this Court and the affidavit filed by the appellant-Association details only 47 persons and out of 97 persons, 35 persons are residing in other places. Learned counsel for the respondents 4 and 5 / Railways relied on a judgment of the Supreme Court reported in 1973 (2) SCC 650 (N.Ramanatha Pillai Vs. State of Kerala) to contend that there cannot be any promissory estoppel as against the State. For all the above reasons, learned counsel for the respondents 4 and 5/Railways prayed for dismissal of the Writ Appeal.

26. Learned Government Advocate appearing for the respondents 1 to 3 and 6 submitted that the lands situated in S.No.333 of Velacherry Village, belong to the Government. The lands were initially encroached by 97 persons unauthorisedly. The said encroachers came together and formed the appellant-Association. Based on their representation, the Government issued G.O.Ms.No.862, Revenue Department, dated 07.08.1992 to assign the lands in S.No.333 of Velacherry Village in favour of 97 persons. It was decided to assign 1 cent each in S.No.333 to 97 persons. But however, the assignment was directed to be made only after the change of classification of the lands from Meikkal Poramboke to Natham. Further, based on the directions in the G.O., necessary proposals were called for from the Tahsildar, Mambalam-Guindy Taluk. The Tahsildar had then submitted his proposals with a copy of the proposed lay-out. In the meanwhile, the Highways Department had requested to transfer 1 acre and 2 cents of land out of total extent of 4.64 acres in S.No.333/1 for road widening, while a portion of the land in S.No.333/1 had already been utilised by the Highways Department for road widening. Therefore, the then Tahsildar has issued revised proposal on 08.05.1995 with a fresh lay-out for the assignment of lands to 97 persons in S.No.333/1. The proposals

submitted by the Tahsildar was under scrutiny of the Collector and no final decision on assignment of 1 cent of land each to 97 members of the appellant-Association was taken by the District Collector. In such a situation, the then Tahsildar, by proceedings dated 10.02.1997, had wrongfully issued pattas to 312 individuals including the said 97 members of the appellant-Association. As per G.O.Ms.No.862, the Government had issued orders to assign the land in S.No.333 of Velacherry Village in favour of 97 members of 1 cent each, either free of land cost or after the collection of land cost, and that too only after converting the classification of lands from Meikkal Poramboke to Natham.

27. Learned Government Advocate further submitted that the appellant-Association had increased its members strength from 97 to 312, contrary to its representation given to the Government and the then Tahsildar had illegally issued pattas in favour of all those 312 members as against the original strength of 97 members, without any order from the Government/Collector. Learned Government Advocate submitted that as per R.S.O.No.21, the assignment of Government lands which is being done with the previous sanction of the Government, should be issued in Form-E in the case of SC/ST and in Form-D in the case of others by the Collector of Chennai, after fixing the land cost to be collected for the lands so assigned. Therefore, the pattas were issued to 312 individuals without following the due process of law and without converting the lands from Meikkal Poramboke to Natham, which is without jurisdiction and erroneous, since the Tahsildars in Chennai are incompetent to assign Government lands. Further, in accordance with R.S.O.31(8), it was proposed to cancel the pattas issued to the said 312 individuals, pursuant to which, notices were sent to those 312 individuals asking them to show cause within 15 days from the date of the notice, as to why the pattas issued to them by the Tahsildar, Mambalam-Guindy Taluk, should not be cancelled and that the original entries restored in the land records in Mambalam-Guindy Taluk Office.

28. Learned Government Advocate appearing for the respondents 1 to 3 and 6 further contended that subsequently, by order dated 17.04.1997, the pattas that were issued to 312 individuals, were cancelled by the District Collector. As against the said cancellation order, the appellant-Association preferred an appeal before the Commissioner of Land Administration, which was also dismissed by order dated 02.07.1997, against which, W.P.No.6278 of 1997 was filed, which was dismissed for default on 28.07.2007. Thus, no assignment orders were issued in accordance with G.O.Ms.No.862. Learned Government Advocate also submitted that the Tahsildar, Mambalam-Guindy Taluk, issued notice under Section 7 of the Tamil Nadu

Land Encroachment Act on 02.08.2003 to all the members of the appellant-Association. Since the lands in S.No.333 were required for the implementation of MRTS project Phase-II by the Railways Department, the Government in G.O.Ms.No.649, dated 29.12.2003, issued order cancelling G.O.Ms.No.862, dated 07.08.1992. The appellant-Association filed suit in O.S.No.2963 of 2002 for permanent injunction restraining the defendants from interfering with the members of the appellant-plaintiff-Association peaceful possession and enjoyment of the lands comprised in S.No.333 covered under G.O.Ms.No.862. Pending suit, interlocutory application was also filed in I.A.No.8581 of 2002 in O.S.No.2963 of 2002 for interim injunction. This I.A. was allowed on 27.08.2003.

29. Learned Government Advocate also submitted that though there was injunction in the suit filed by the plaintiff-Association, the said injunction was only to restrain the defendants from disturbing the possession. The said injunction no way restrained the respondents/defendants from taking any administrative action and proceed with the same. Hence, G.O.Ms.No.649 was issued and absolutely, there is no violation of any order of the Court and that the order passed by the trial Court in the said suit was not to disturb the possession of the members of the appellant-Association during the pendency of the suit. There is no vested right created in favour of the members of the appellant-Association. Hence, there is no illegality in issuing the impugned G.O.Ms.No.649. At the most, it can be said that the members of the appellant-Association are only encroachers and hence, the learned Government Advocate prayed for dismissal of the Writ Appeal.

30. On all the above aspects, this Court also heard the learned counsel appearing for the seventh respondent-CMDA.

31. Though very many contentions have been raised, in view of the above submissions made by the learned counsel appearing for the parties, the following questions fall for consideration in this Writ Appeal and if these questions are answered, that would suffice for disposal of the present Writ Appeal:

(i) Whether a vested right over the subject lands is created in favour of the members of the appellant-Association, in view of G.O.Ms.No.862, dated 07.08.1992 ?

(ii) Whether impugned G.O.Ms.No.649, cancelling the earlier G.O.Ms.No.862, is hit by the Doctrine of Promissory Estoppel ?

(iii) Whether the impugned G.O.Ms.No.649 is passed without application of mind, in view of the existence of interim order of injunction passed by the trial

Court in O.S.No.2963 of 2002 ?

(iv) Whether the members of the appellant-Association are entitled for any relief of equity, since there were so many families residing in S.No.333 and are carrying on their livelihood and conducting business/shops ?

32. As we have dealt with the factual matrix of the case in detail as above, we are refraining ourselves from reiterating the same any further in this appeal. However, for the purpose of disposal of this appeal, certain facts which are absolutely germane and necessary alone are reiterated hereunder. Keeping in mind the submissions made by the learned counsel appearing for the parties, we have given our anxious consideration to the same and perused the materials available on record.

33. Question No.(i): It is the contention of the learned Senior Counsel appearing for the appellant-Association that recognising the possession of the members of the appellant-Association, right from the year 1982 over the lands in S.No.333 in Velacherry Village, and on the representation made by the members, the Government has come forward to issue G.O.Ms.No.862, dated 07.08.1992 assigning 1 cent of land to each of the members. Pursuant to the said G.O., the third respondent-Tahsildar had also issued proceedings issuing pattas to them. But while issuing such pattas, the third respondent-Tahsildar had issued pattas totally to 312 persons including the 97 members of the appellant-Association. Hence, the pattas were cancelled by the District Collector saying that the Tahsildar is not the competent authority to issue the said pattas. Hence, the appellant-Association filed O.S.No.2963 of 2002, in which interim injunction was granted on 29.08.2003 and in the meantime, G.O.Ms.No.862 was cancelled by issuance of the impugned G.O.Ms.No.649, dated 29.12.2003. According to the learned Senior Counsel appearing for the appellant-Association, G.O.Ms.No.862 is the actual assignment order of one cent of land to each of 97 members, whose names have also been mentioned in the Annexure to the G.O., saying that it is not mere proposal, but assignment of lands. The members of the appellant-Association are in legal occupation of the lands in S.No.333 on the strength of the order of assignment issued in G.O.Ms.No.862. In view of these submissions made by the learned Senior Counsel appearing for the appellant-Association, it is useful to extract the relevant portion of G.O.Ms.No.862:

"8. இத்தோவில் பாதிக்கப்பட்ட 97 நபர்களும் ஆதி திராவிட மக்கள் மற்றும் குடிசைவாசிகள். அவர்கள் மேற்குறித்த புல எண்.333இல் 1982லிருந்தே வசித்து வந்துள்ளனர் என்பதும் அவர்களுக்கு பிமெமோ வழங்கப்பட்டது என்பதும்

குறிப்பிடத்தக்கது. அவர்களது ஆக்கிரமிப்பை அகற்ற முற்படும் போது அவர்கள் உயர்நீதிமன்றத்தின் மூலம் தடையாணை பெற்றனர். உயர்நீதிமன்றத்தின் உதவிப் பதிவாளரால் பிறப்பிக்கப்பட்ட இடைக்கால உத்திரவில் முடிவான ஆணைகள் பிறப்பிக்கப்படும் வரை தற்போதைய நிலை (status quo) நீடிக்கப்பட வேண்டும் என்று தடை விதிக்கப்பட்ட போதிலும், அவ்வாணை தாமதமாகப் பெறப்பட்டதால் தடை உத்திரவை அமுல்படுத்த முடியவில்லை என மாவட்டாட்சியார் கூறுகின்றார். அவ்வாணை உரிய நேரத்தில் பெறப்பட்டிருந்தால் மனுதாரர்களை அந்நிலத்திலிருந்து வெளியேற்றியிருக்க முடியாது. அரசாணை நிலை எண்.931, வருவாய், நாள் 20.05.1983இல் பிறப்பிக்கப்பட்டுள்ள ஆணையில் வீட்டுமனைப்பட்டா வழங்குவதில் முன்னாள் இராணுவத்தினரைப் போன்றே நிலமற்ற ஏழை ஆதி திராவிடர் மக்களுக்கு முன்னுரிமை அளிக்கப்பட வேண்டுமென்று குறிப்பிடப்பட்டுள்ளது. மேலும் பாதிக்கப்பட்ட மேற்படி குடும்பங்களுக்கு தமிழ்நாடு குடிசைமாற்று வாரியத்தின் மூலம் வேறிடம் வழங்க பரிந்துரைக்கப்பட்டிருந்தும் இது வரை அவர்களுக்கு மாற்றிடம் வழங்கப்படவில்லை. எனவே, மேற்படி இடத்தை தங்களுக்கு ஒப்படை செய்யுமாறு தொடந்து அரசுக்கு மனுச் செய்து வருகின்றனர்.

.. .. .

1. 10. அதன்படி சென்னை மாவட்டம், மாம்பலம்-கிண்டி வட்டம், வேளச்சேரி கிராமம், புல எண்.333இல் ஏற்கனவே ஆக்கிரமிப்பு, செய்து மாநகராட்சி அலுவலர்களால் அவ்விடத்திலிருந்து வெளியேற்றப்பட்ட அன்னை இந்திரா காந்தி குடிசைவாழ்வுவார் நல உரிமைச் சங்க உறுப்பினர்களாகிய 97 ஆதி திராவிடர் மற்றும் குடிசைவாசிகளுக்கு மேய்க்கால் புறம்போக்கு என்ற வகைப்பாடு கொண்ட மேற்படி நிலத்தை நத்தமாக வகை மாற்றம் செய்து தலா 1 சென்ட் வீதம் தகுதியின் அடிப்படையில் இலவசமாகவோ அல்லது நிலக்கிரயம் வசூலித்துக்கொண்டோ ஒப்படை செய்யுமாறு அரசு இணை ஆணையிடுகிறது. அன்னை இந்திரா காந்தி குடிசைவாழ்வுவார் நல உரிமைச் சங்கம் அரசுக்கு அனுப்பியுள்ள ஆக்கிரமிப்பாளர்கள் பற்றிய 97 பேர் கொண்ட பட்டியலின் நகல் இத்துடன் இணைக்கப்பட்டுள்ளது. இது குறித்து எடுக்கப்பட்ட நடவடிக்கையினை விரைவில் அரசுக்கு தெரிவிக்குமாறு சென்னை மாவட்ட ஆட்சியர் கேட்டுக் கொள்ளப்படுகிறார். "

34. Therefore, on a reading of the above extracted portion in G.O.Ms.No.862, it clearly reveals that it was decided to allot one cent each to 97 members of the appellant-Association, either free of cost or after collecting the land cost, that too only after converting/classifying the lands from Meikkal Poramboke to Natham. But this conversion/classification of the lands had never taken place. The then Tahsildar illegally issued pattas totally to 312 persons as against the original strength of 97 members of the appellant-Association. Therefore, as per R.S.O.No.21, the assignment of Government lands had to be done only with the previous sanction of the Government in Form-E in the case of SC/ST people and Form-D in the case of others by the Collector of Chennai. R.S.O.No.21 deals with assignment of house site in villages and towns for private purpose as to whether it is for individuals, firms or societies and whether

such grant is free or is made on payment of the full or a concessional value for the lands. The rules in R.S.O.No.21 are intended to apply to assignments of sites or buildings primarily intended as dwelling houses or cattle sheds and for similar purposes. It is further clear from R.S.O.No.21 that in the case of lands other than Natham, the Revenue Inspector should conduct enquiry in the village and send proposals for transfer of classification with all the details required as directed from time to time by the Government and the Commissioner of Land Administration. It is further laid down in R.S.O.No.21 that in assigning lands for house sites, care should be taken to see that land is not granted to persons already possessing enough land for their reasonable requirements and that preference is given to those who own no house site and whose family's income does not exceed Rs.12,000/- per annum. Further, people belonging to the Scheduled Castes and Scheduled Tribes are to be given priority in assigning the house-sites.

35. In the instant case, there is no assignment of Government lands as per R.S.O.No.21. However, when it came to light, the Tahsildar had issued pattas wrongly to 312 individuals in accordance with R.S.O.No.31(8). Subsequently, the issued pattas were cancelled by the District Collector. In such circumstances, it cannot be said that a vested right is created in favour of the members of the appellant-Association as per G.O.Ms.No.862. Question No.(i) is answered accordingly.

36. Question No.(ii): Applicability of Doctrine of Promissory Estoppel: With regard to the principles regarding the applicability of the Doctrine of Promissory Estoppel to the case on hand, learned Senior Counsel appearing for the appellant-Association relied on a judgment of the Supreme Court reported in 2012 (11) SCC 1 (Monnet Ispat and Energy Limited Vs. Union of India), wherein it was held by the Apex Court as follows:

"182. In my view, the following principles must guide a court where an issue of applicability of promissory estoppel arises:

182.1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be

entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

182.2. The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

182.3. The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.

182.4. For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.

182.5. In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which

was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.

182.6. It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

182.7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation."

By relying upon the above judgment of the Supreme Court, learned Senior Counsel appearing for the appellant-Association submitted that the Doctrine of Promissory Estoppel could be applied even as against the Government where the interest of justice, morality and common fairness dictate such a course. When the Doctrine of Promissory Estoppel is sought to be invoked, the Court must consider all aspects including the result sought to be achieved and the public good at large. In the instant case, the first respondent, by passing G.O.Ms.No.862, dated 07.08.1992, assigned the lands in favour of 97 persons and confirmed the assignment in two subsequent proceedings before the District Collector and the Land Commissioner, thereby, the respondents have created a legal right in favour of the members of the appellant-Association in respect of the land(s) under their occupation. Believing such a promise/guarantee made by the respondents, the members of the appellant-Association have altered their position by putting up constructions. Therefore, the respondents are estopped from interfering with such vested rights conferred on the members of the appellant-Association.

37. But the learned counsel for the respondents 4 and 5/Railways also relied on a judgment of the Supreme Court regarding the applicability of the principle of Promissory

Estoppel, reported in 1973 (2) SCC 650 (M.Ramanatha Pillai Vs. State of Kerala) and the relevant portion of the said judgment reads as follows:

"37. The High Court was correct in holding that no estoppel could arise against the State in regard to abolition of post. The appellant Ramanatha Pillai knew that the post was temporary. In American Jurisprudence 2d at page 783 paragraph 123 it is stated "Generally, a State is not subject to an estoppel to the same extent as in an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore, as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice." The estoppel alleged by the appellant Ramanatha Pillai was on the ground that he entered into an agreement and thereby changed his position to his detriment. The High Court rightly held that the Courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate."

38. By relying upon the above judgment of the Supreme Court, learned counsel for the respondents 4 and 5/Railways submitted that an exception however arises in the application of the Doctrine of Promissory Estoppel to the State where it is necessary to prevent fraud or manifest injustice. Keeping all the above arguments in mind, when we analyse the facts of this case, it is clear that the absolutely, there is no vested right created on the members of the appellant-Association, even though it is only a decision taken indicating the assignment of lands, and thereafter, no further course of action was taken by the Government to allot 1 cent of land to each of its members. Even as per the impugned G.O., only after changing the classification of land from 'Meikkal Poramboke' to "Natham", the assignment has to be made. In the instant case, such a course has not taken place, and therefore, the question of applying the Doctrine of Promissory Estoppel does not arise in this case. Question No. (ii) is answered accordingly.

39. Question No.(iii): It is contended that the impugned G.O. is passed in violation of the interim order of injunction granted by the Civil Court. It is the submission of the learned Senior Counsel appearing for the appellant/Association that in the impugned G.O.Ms.No.649, it has been stated as if there is no interim order passed in the suit as against the defendants. But actually, on the date of passing of the impugned G.O., interim injunction was in existence. Furthermore, there is also interim order passed by this Court in W.P.M.P.No.14471 of 2004 in W.P.No.12383 of 2004, and this Court, by interim order dated 30.06.2004, had observed that, "There will be an order of interim stay. The party-in-person submitted that the respondents are carrying on eviction. It is made clear that so long as the order of this Court is in force coupled with the injunction order of the competent civil Court, the respondents should not carry on any demolition work until further orders." By the impugned G.O.Ms.No.649, the earlier G.O. passed in G.O.Ms.No.862 was cancelled. Therefore, by G.O.Ms.No.649, the respondents/Government have cancelled the original assignment of grant of 1 cent of land each to the members, on the ground of commercial utilisation and non-occupation of all the members. Only if the respondents/Government has passed any order of assignment subsequent to the issuance of G.O.Ms.No.862, the validity of cancellation of assignment by G.O.Ms.No.649, can be decided by this Court. In the present case, it cannot be decided, as there is no further progress of the process of assignment and that the scope of the Writ Petition is very limited and the only reason assigned for cancellation of assignment is non-existence of interim order by the Court, which is totally contrary to the facts, which, according to the learned Senior Counsel appearing for the appellant/Association, would show that totally, the impugned G.O. is passed on non-application of mind and also in violation of principles of natural justice. In this regard, learned Senior Counsel appearing for the appellant-Association relied on a judgment of the Supreme Court reported in 1978 (1) SCC 405 (Mohinder Singh Gill Vs. Chief Election Commissioner), wherein the Supreme Court observed as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji (Commissioner of Police,

Bombay Vs. Gordhandas Bhanji - AIR 1952 SC 16):

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

40. Learned Senior Counsel appearing for the appellant-Association relied on a decision of the Supreme Court reported in 2010 (11) SCC 557 (Manohar Lal Vs. Ugrasen), wherein the Apex Court observed that inspite of the knowledge of the interim order of a Court, if any order is passed, it is of no consequence, as it remains a nullity. For the same proposition, learned Senior Counsel appearing for the appellant also relied upon a judgment of the Supreme Court reported in 2007 (11) SCC 374 (All Bengal Excise Licensees' Association Vs. Raghabendra Singh).

41. In regard to the above, it is appropriate to notice the nature of the prayer sought for by the appellant-plaintiff-Association in I.A.No.8581 of 2002 in O.S.No.2963 of 2002 on the file of the City Civil Court, Chennai, which is to pass an order of interim injunction restraining the respondents from interfering with the members of the petitioner's peaceful possession and enjoyment of the suit land/property, pending disposal of the suit. The Court below allowed the said I.A. on 29.08.2003 based on the prima-facie case established by the plaintiff-Association and also in the interest of justice. It is the contention of the learned Senior Counsel appearing for the appellant-Association that the impugned G.O.Ms.No.649 ought not to have been issued while the abovesaid interim order of injunction is in force. This G.O. is passed based on the presumption as if there is no interim order and also based on non-application of mind. We find that absolutely there is no violation of the order passed by the Civil Court. The prayer in

the I.A. is not to disturb the peaceful possession and enjoyment of the suit property, pending suit. The said prayer does not speak to restrain the defendants from taking any administrative action, more particularly, when the pattas were subsequently cancelled by the Collector. Since no vested right is created in favour of the members of the appellant-Association and only a decision was taken and no further action was taken, as observed above, the Doctrine of Promissory Estoppel does not arise. Further, Section 15 of the Tamil Nadu General Clauses Act confers a power to make any rule, by-laws, or to issue notifications or orders, and the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, by-laws, notifications or orders. Thus, the respondents are empowered to revoke or amend or vary the order already passed on the subject. In the present case, only a decision was taken to assign the lands of 1 cent each to the members of the appellant/Association and this decision was mooted out by passing G.O.Ms.No.862, and that too, it is stipulated therein that the lands will be assigned only after conversion of lands from Meikkal Poramboke to Natham, either free of cost or collection of land cost. But no decision was taken thereafter and no progress had been made after passing of G.O.Ms.No.862. Therefore, under such circumstances, the Government has got equal power under Section 15 of the Tamil Nadu General Clauses Act to revoke or cancel the earlier G.O. already passed. Actually, the original proposal was to assign 1 cent of land each to the members of the appellant-Association. But the inspection report on the inspection conducted pending Writ Petition before the learned Single Judge shows that the said inspection was conducted on 11.11.2017, and in the said inspection report, it is stated that lots of commercial buildings were put up by third parties. Thus, based on all these reasons, Question (iii) is answered.

42. Question (iv): In the above context, we have also perused the inspection report, photographs, details of enumeration, etc., from which we could see that certain multi-storey buildings and commercial buildings have been there in S.No.333. Therefore, most of the persons in favour of whom originally it was decided to assign the lands, were not actually living there. Further, from the inspection report, it could be seen that lots of construction were put up unauthorisedly and no pattas had been issued in favour of the encroachers. Therefore, members of the appellant-Association are also not entitled to the relief of equity to continue in the lands. Question (iv) is answered accordingly.

43. If any member of the appellant-Association in favour of whom originally it was decided to allot one cent of land, is

residing there, and not in violation of occupying the same, then the Government may decide to allot a land in some other place only in respect of those members. The learned Single Judge has also observed in paragraph 45 of his order that if there are genuine persons who are likely to be affected and whose properties have not been referred to in the inspection report of the respondents, they may be considered for assignment of lands in a different place, and if any person has converted the place into that of commercial units, they need not be considered, and it is open for the respondents/Government to consider the request of the members of the appellant-Association to allot any other place of the choice of the Government, but this will not give them a right to stay in the properties in question on the ground that till another place is allotted, they will continue in the same place. If any such contention is raised, the members of the appellant-Association are not even entitled to any alternative place also. These observations made by the learned Single Judge will suffice to protect the interest of the genuine persons who are residing in the subject lands. Hence, we direct the respondents/Government to consider for allotment of alternative sites only to the genuine persons.

44. The learned Single Judge had deeply analysed the facts and circumstances of the case and has passed a detailed and well-considered order, which needs no interference at the hands of this Court. It is open for the respondents/Government to act as per paragraph 45 of the order passed by the learned Single Judge, as discussed above, if they are so advised.

45. With the above observations, the Writ Appeal is dismissed. No costs. Consequently, C.M.Ps. are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy// जयते

Sub Assistant Registrar

CS

To

1. The Secretary, Revenue Department,
Fort St.George, Chennai-9.
2. The District Collector,
Chennai District, Chennai.

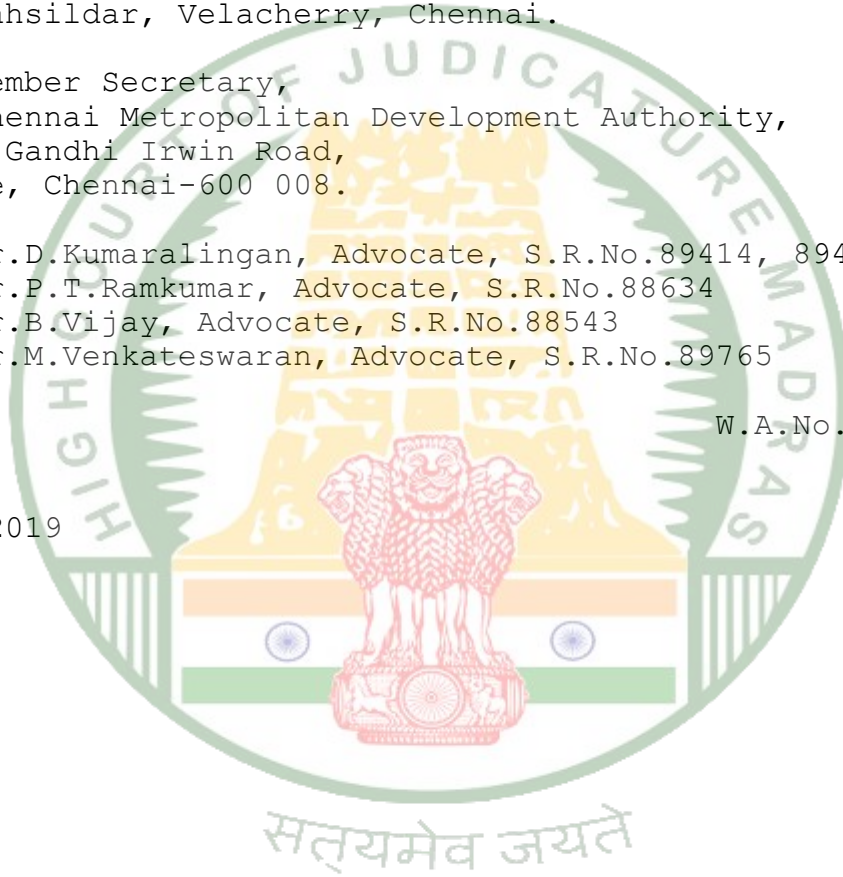
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3. The Tahsildar,
Mambalam-Guindy Taluk,
Chennai.
4. The General Manager,
Union of India owning Southern Railway,
Park Town, Chennai-600 003.
5. The Chief Engineer,
Metropolitan Transport Project (Railways),
Southern Railway, Egmore, Chennai-600 008.
6. The Tahsildar, Velacherry, Chennai.
7. The Member Secretary,
The Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

+2cc to Mr.D.Kumaralingan, Advocate, S.R.No.89414, 89413
+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.88634
+2cc to Mr.B.Vijay, Advocate, S.R.No.88543
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W.A.No.687 of 2018

MP (CO)
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