IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 25.04.2019

Delivered on : 29.04.2019

CORAM:

THE HON'BLE MR. **JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.4477 of 2006
and
M.P.No.4811 of 2006

1.Sennimalai Gounder(Died)
2.P.Chinnasamy
3.Maruthathal(Died)
4.Palaniammal (Died)
5.Sellamuthu Gounder(LR of the Deceased P6)
6.Palaniswamy Gounder(Died)
7.Rangathal
8.S.Wiswanathan
9.S.Manthrachalam
(P7 to P9 are substituted as LRs of the Deceased First Petitioner)
10.S.Dhandapani
11.S.Sadaiappan
(P10 and P11 are substituted as LRs of the deceased P3)
12.R.Muthulakshmi
13.M.Ramasamy
(P12 and P13 both got right under the WILL executed by Maruthammal on 09/09/2002 (Registered Will)
(P12 and P13 are substituted as LRs of the deceased 4the Petitioner)
(P7 to P13 are substituted as LRs of the Deceased P1, P3 and P4 vide Order dated 18.12.2018, made in W.P.No.4477/06 by SMSJ) ... Petitioners

Vs.

1.Additional District Magistrate &
District Revenue Officer,
Coimbatore,
Office of the District Revenue Officer,
Coimbatore.

2.The Sub Collector,
Pollachi,
Office of the Revenue Divisional Officer,
Pollachi.

3.The Tahsildar
Udumalpet Taluk,
Coimbatore District.

4.Arulmigu Karikaliamman Temple,
Moongiltholuvu,
Rep. by its hereditary trustees,
Moongiltholuvu Post,
Jakkarpalayam,
Udumalpet Taluk

5.The Joint Commissioner
HR & CE Department,
Coimbatore.

6.The District Collector,
Coimbatore District.
(R5 and R6 suo-moto impleaded) ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari cum Mandamus calling for the records of the First Respondent relating to the Order R.P.No.11/2005/C2 dated 06.01.2006 confirming the order of the Second Respondent passed in Na.Ka.No.7422/04/B1 dated 29.06.2004, quash the same in so far as it relates to the lands belonging to the Petitioners herein bearing Survey Nos.194/C8,

194/C10A, 194/C10D, 194/C11A, 194/C11B, 194/C11C, 194/C12 and 194/C13 in Village No.11,Moongiltholuve, Udumalpet Taluk, Coimbatore District, direct the Third Respondent to restore and record the names of the Petitioners in respect of the aforesaid lands in the village records.

For Petitioners : Mr.V.Sanjeevi
for P1 to P9 and P12 and P13
Mr.P.S.Venkatasubramanian
for P10 and P11

For Respondents : Mr.K.S.Suresh
Government Advocate
For R1 to R3
Mr.K.Ganesan for R-4
Mr.M.Maharaja
Spl. Government Pleader
(HR & CE) for R-5

<u>O R D E R</u>

This Writ Petition is filed to quash the Order of the First Respondent in R.P.No.11/2005/C2 dated 06.01.2006 confirming the order of the Second Respondent in Na.Ka.No.7422/04/B1 dated 29.06.2004 and consequently to direct the Third Respondent to restore and record the names of the Petitioners in the village records in respect of the lands that are subject matter of the present Writ Petition.

2.The primary question that arises for consideration in this Writ Petition is whether the Sub Collector, Pollachi, namely, the Second Respondent herein, had the jurisdiction to issue the Order dated 29.06.2004 to cancel the pattas that were issued to the Petitioners, which Order was confirmed in Revision by Order dated 06.01.2006. The ancillary question that also arises for consideration is whether the Petitioners herein acquiesced in the exercise of jurisdiction by participating in proceedings before the Second Respondent and by filing a Revision Petition before the First Respondent and, therefore, relinquished the right to raise the plea of lack of jurisdiction.

3.The relevant facts for the purposes of deciding this Writ Petition are as follows:

3(i)According to the Petitioners, the lands comprising several sub divisions in Survey No.194/C of an aggregate extent of 45 acres 32 cents in Moongiltholuvu Village, Udumalpet Taluk were originally comprised in T.D.No.264, Devadayam Inam (unenfranchised minor inam). The inam tenure of the said lands were abolished pursuant to the entry into force of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act,1963 (the Tamil Nadu Minor Inams Act) and G.O.No.309 Revenue dated 09.02.1965.

3(ii)After the entry into force of the Tamil Nadu Minor Inams Act, the Settlement Tahsildar-I, Gobichettipalayam re-surveyed and sub-divided the land bearing Survey No.194/C into 13 sub-divisions, namely, 194/C1 to 194/C13. After considering the documentary and oral evidence with reference to the possession of lands, the Settlement Tahsildar-I, Gobichettipalayam by Order bearing S.R.No.479/1968/M.I.Act 30/1963/Udumalpet Taluk dated 27.06.1968 granted Ryotwari patta under Section 8(2)(i)(a) r/w Section 11 of the Tamil Nadu Minor Inams Act as follows:

(a)Ryotwari patta in respect of land bearing Survey No.194/C8 - extent Ac.6-37 cents, jointly to the First Petitioner herein and Thangavelu(elder brother of Second Petitioner herein);

(b)Ryotwari patta in respect of land bearing Survey No.194/C10 - extent Ac.5-31 cents to Pappal alias Valliammal(mother of the 3rd and 4th Petitioners);

(c)Ryotwari patta in respect of land bearing Survey No.194/C11, 194/C12 and 194/C13 respectively admeasuring 3.31 acres, 0.50 acres and 1.50 acres respectively, jointly to Rangasamy Gounder, Nachimuthu Gounder and Vanjimuthu Gounder(the predecessors-in-interest of the 5th and 6th Petitioners).

3(iii)According to the Petitioners, the joint pattadar in respect of the land bearing Survey No.194/C8, Thangavelu, died and the Second Petitioner herein, who is the younger brother, succeeded him as his legal heir and, therefore, the patta in respect of the land in Survey No.194/C8 was transferred in the joint names of the First and Second Petitioners herein. The pattadar in respect of the land bearing Survey No.194/C10, namely, Pappal alias Valliammal, conveyed two pieces of land of an aggregate extent of 0.09 acres in Survey No.194/C10 and subsequently died while in possession of land ad-measuring 5.22 acres in Survey No.194/C10, leaving behind the Third and Fourth Petitioners and, her son, Nachimuthu Gounder, as her heirs. Pursuant to the partition entered into between the Third and Fourth Petitioners and the said Nachimuthu Gounder, Petitioners 3 and 4 became entitled to the lands bearing Survey No.194/C10A and 194/C10D. The patta in respect of lands bearing Survey No.194/C10A and 194/C10D respectively were transferred in the name of the 3rd and 4th Petitioners consequent to the death of Pappal alias Valliammal and the partition among her heirs.

3(iv)The pattadars in respect of the land bearing Survey Nos.194/C11, 194/C12 and 194/C13, namely, Rangasamy Gounder, Nachimuthu Gounder and Vanjimuthu Gounder, transferred the lands bearing Survey Nos.194/C11, 194/C12 and 194/C13 to the

5th and 6th Petitioners herein under the Deed of Exchange dated 24.06.1970 registered as document No.1446/1970 in the office of the Sub Registrar of Udumalpet. The Petitioners 5 and 6 partitioned the lands amongst themselves and pursuant thereto the land bearing Survey No.194/C11B is contained in patta No.650 in the joint names of 5th and 6th Petitioners, the land bearing Survey No.194/11A is contained in patta No.228 in the name of the 5th Petitioner and lands bearing Survey Nos.194/C11C, 194/12 and 194/13 are contained in patta No.986 in the name of the 6th Petitioner.

3(v)As regards the current usage of the land, the First and Second Petitioners state that they have developed a coconut thoppu, dug one open well and three bore wells in the land bearing Survey No.194/C8. The Third Petitioner states that he is raising crops in the land bearing Survey No.194/10A. The Fourth Petitioner states that he had put up a construction upon a portion of land bearing Survey No.194/10D wherein a flour mill is functioning with service connections and is raising crops in the remaining part of the land with bore wells. The 6th Petitioner states that he has constructed a superstructure upon land bearing Survey No.194/11A. It is further stated that there is a well in land bearing Survey No.194/11B. Coconut thoppu has been developed in portions of the land bearing Survey Nos.194/C11A and 194/C12 and the crops are raised in Survey No.194/C13. It is also stated that there is a well with an electricity service connection in Survey No.194/C11C.

3(vi).In these facts and circumstances, it is stated that the Second Respondent issued notice in Na.Ka.No.4495/01/B1 dated 17.05.2004 to revoke the orders transferring the patta to the Petitioners and called upon the Petitioners to produce the relevant documents relating to their respective lands. The Petitioners state that after receiving the said notice, they went to the office of the Second Respondent on 07.06.2004 but were not able to meet the Second Respondent. Thereafter, the Petitioners went to the office of the Revenue Inspector at Udumalpet wherein the Office Assistant from the office of the Second Respondent recorded statements made by the Petitioners and, pursuant thereto, the Second Respondent without conducting an enquiry passed Order bearing Na.Ka.No.7422/04/B1 dated 29.06.2004 directing the deletion of names of the Petitioners in respect of their afore-mentioned lands and for recording the said lands in the name of Arulmigu Karikaliamman Temple. According to the Petitioners, the copy of the said order was not communicated to them. Upon obtaining a typed copy of the said order, the Petitioners preferred a Revision Petition before the First Respondent herein challenging the said order. The First Respondent, by Order dated 06.01.2006, dismissed the Revision Petition. As stated earlier, the aforesaid orders dated 29.06.2004 and 06.01.2006 are impugned in this Writ Petition.

4.At the hearing, the learned counsel appearing for the Petitioners 1 to 9 and 12 and 13 referred to the Notice dated 17.05.2004 at pages 7 to 17 of the typed set of papers filed by the Petitioners, wherein it is stated that the lands belong to the temple. He, thereafter, pointed out that the order dated 29.06.2004 of the Sub Collector was not initially communicated to the Petitioners herein. He also referred to the Revision Petition that was filed before the District Revenue Officer and to the order whereby the Revision Petition was dismissed.

5.The order of the Settlement Tahsildar was referred to by the learned counsel for the Petitioners thereafter. In particular, he pointed out as to how the Settlement Tahsildar issued Ryotwari patta under three categories, namely, Section 8(2)(i)(a), 8(2)(i)(b) and 8(2)(ii). He also referred to the A-Schedule, which is a table at page 5 and 6 of the typed set filed by the Petitioners, and pointed out as to how Ryotwari patta was issued not only to the Petitioners, but also to the Arulmigu Karikaliamman Tample. The relevant provisions of the Tamil Nadu Minor Inams Act were, thereafter, referred to by the learned counsel. In particular, he invited the attention of the Court to Section 3 of the said Act which provides for repeal of various laws enumerated therein and the abolition of all minor inams and the vesting thereof in the Government as per Section 3(b) and (c). He also referred to Section 8, which deals with the grant of Ryotwari pattas, and pointed out as to how the Petitioners herein were granted Ryotwari pattas under Section 8(2)(i)(a), which reads as follows:

> (2)Notwithstanding anything contained in sub-section (1) in the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959 (Tamil Nadu Act 22 of 1959), [and in the Tamil Nadu Transferred Territory) Incorporated and unincorporated Devaswoms Act,1959(Tamil Nadu Act 30 of 1959)], the following provisions shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity-
>
> (i)where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of such land__
>
> (a)for a continuous period of sixty years immediately before the 1st day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land;

6.He then referred to Section 11(1) and 11(3) of the Tamil

Nadu Minor Inams Act so as to point out that the power is vested in the Assistant Settlement Officer to enquire into the claims of any person for Ryotwari patta under the Act in respect of any inam land and to decide whether the claim should be allowed. He further pointed out that a person aggrieved by the decision of the Assistant Settlement Officer may appeal against the order to the Tribunal within three months from the date of the order and that, as regards the Government, it may file an appeal within one year of the date of the order. He further pointed out that the proviso to Section 11(3) confers discretion on the Tribunal to extent the time limit to file an appeal by not more than two months, except in cases where the appeal is filed by the Government on the basis that the decision of the Assistant Settlement Officer was vitiated by fraud or by mistake of fact. In such event, he submitted that no time limit is specified.

7.He, thereafter, relied upon various judgments in order to substantiate his submissions. The judgments that were referred to and relied upon by the learned counsel for the petitioners 1 to 9 and 12 and 13 are as follows:

(1).Palaniappa Pandaram and 10 others vs. The Special Commissioner and Commissioner Land Administration and three others in (1996) 1 CTC 217 (DB).

(2).V.P.Kandasamy and 29 Others Vs. The Tahsildar, Coimbatore North Taluk in (2009) 1 MLJ 93.

(3).K.S.Raja Shanmugavel Vs. The State of Tamil Nadu and Others in (2011) 1 CWC 228.

(4).Arulmigu Lakshmi Narayanaswamy Temple, rep. by its Chariman, Board of Trustees Vs. Nallammal (Dead) through LRs. and Others in (2012) 1 MLJ 715 (SC).

(5).Arulmigu Paravai Annam Katharuliya Swamy Deity through its Executive Officer Vs. District Collector, Virudhunagar in (2015) 6 MLJ 39.

(6).Balakrishnan (Died) and others Vs. Sivagangai Samastham Devastham, through his Manager in (2018) 1 TNLJ 466 (Civil).

8.In the judgment reported in **1996 (1) CTC 217**, he relied upon paragraphs 4 and 5, which read as follows:

> "4.Heard the learned Counsel on either side. The order of the learned single Judge is well merited one not warranting any interference. As noticed by the learned single Judge, the statutory Authority has issued a ryotwari patta under a special enactment in favour of the deity. The nature of the grant which has been confirmed also is in favour of the temple. The proceedings by which the patta was issued in favour of the deity was subject to a statutory right of appeal before the concerned Sub Court constituted as a

tribunal and thereafter a further appeal to a Division Bench of this Court and subject to such remedies as notices above, the other granting patta is rendered final under the statute. Of course, this Court as well as the Apex Court have declared the position that even thereafter, the parties are at liberty to vindicate their respective claims before a civil court, if they so desire. So far as the facts on hand before us are concerned, the order granting patta in 1969 in favour of the deity remains in full force and effect and has not been also challenged. If that be the position, it was most improper on the part of the appellants who claim to be pujaris/service holders and also on the part of the Tahsildar, to order for the transfer of patta in favour of the appellants replying upon a provision which in our view, is totally irrelevant, Section 21 of the Act has relevance only to service inams and the grant of the nature in favour of the deity and for the support of the Pagoda cannot be said to be a service inam. If the inam is really a service inam, Patta would have been granted only in favour of the service holders subject to the condition of performance of the service. It is only in such cases, there is scope for having recourse to Section 21 and not a case like the one concerned before us. That apart, the Regular Tahsildar of the Taluk under the Revenue side has no power to deal with claims under the special enactment in question. The patta granted in favour of the temple cannot be interfered with by the Tahsildar or any of the ordinary revenue authorities exercising their powers under the Revenue Standing Orders and that the patta granted under the said Special enactment under a particular provision can, if at all, be interfered or modified only by the statutory authorities provided under the statute itself in the manner and the extent provided therein. The District Revenue Officer has only set right the grave irregularity and the illegality committed by the appellants in connivance, as we are constrained to observe, with the Tahsildar, Perundurai relying upon some irrelevant provisions for surreptitiously getting a transfer of patta in the name of the appellants, thereby denying the temple and the deity the lands and the title to a large extent and very valuable property. We are constrained to observe that the Tahsildar, Perundurai, has not only exceeded his limits, but has passed the order dated 21.01.1994 in gross abuse of his powers.

5.Consequently, we see no merit whatsoever, in the writ petition as well as in the writ appeal as noticed supra. As long as the Settlement Tahsildar's order of patta granted in favour of the deity and the temple stands, the appellants cannot have any rights in derogation of the rights of the deity or the temple and therefore, there is no legal right for the appellants to be enforced under Article 226 of the

Constitution of India. The appeal, therefore, fails and shall stand dismissed with costs of Rs.1,000/-".

In the judgment reported in **2011 (1) CWC 228,** he relied upon Paragraphs 13 to 15 to contend that once patta was issued under Tamil Nadu Minor Inams Act after conducting an enquiry, the Revenue Authority does not have right to decide otherwise. In the judgment reported in **2012(1) MLJ 715 (SC),** he relied upon paragraph 12, wherein it was held as follows:

"12) Once the lands are notified as minor Inam lands under Act No.30 of 1963, the same is binding on the authorities constituted under the Act. Thereafter, they cannot go beyond the Act and decide the character of the lands, namely, whether the lands are minor Inam lands or not. With these factual details, we agree with the conclusion arrived at by the High Court, particularly, in para 5 of its order."

He also relied upon the judgment reported in **2018 (1) TNLJ 466 (Civil)** wherein, at paragraph 11, this Court held that the settlement patta is a document of title. He, thereafter, referred to the additional typed set of documents filed by the 4th Respondent to point out as to how fresh pattas have been issued in respect of the Petitioners' land after cancellation of the pattas that were issued to the Petitioners.

9.In response, the learned counsel for the 4th Respondent Temple submitted that the Order dated 27.06.1968 of the Settlement Tahsildar-I is not an order granting patta but is a declaration of entitlement to Ryotwari patta. Consequently, he submitted that the Petitioners were under an obligation to apply for a patta on the basis of the said order and that this was not done until the Updating Registry Scheme(UDR Scheme) was introduced in 1987. In effect, he submitted that the patta that was issued to the Petitioners is an UDR scheme patta. Accordingly, he submitted that the Sub Collector has jurisdiction to cancel the UDR scheme patta. He also pointed out as to how an enquiry was admittedly held before the pattas of the Petitioners were cancelled and that this is reflected in the Revision Petition filed by the Petitioners. He further submitted that the temple was allotted Ryotwari patta for 11.04 acres only although the temple was the original owner of the entire extent of lands. He further submitted that notice was not given for the enquiry as per the requirements of Section 11(2) of the Tamil Nadu Minor Inams Act. In specific terms, his submission was that if the inam was granted for the benefit of a Hindu religious institution or for service therein, notice of enquiry should be given to the Commissioner appointed under the Tamil Nadu Hindu Religious and

Charitable Endowments Act,1953, or to an officer specified by the said Commissioner in this behalf.

10.Contrary to the requirements, he submitted that notice was issued by the Settlement Tahsildar-I to the Assistant Commissioner who was not an Authority to receive the notice on behalf of the Commissioner. In this connection, he referred to Section 8 of the Hindu Religious and Charitable Endowments Act and also Section 45(3) thereof. In order to substantiate his arguments, he referred to the judgment of the Hon'ble Supreme Court in **A.T.S CHINNASWAMY CHETTIAR AND OTHERS Vs. SRI KARI VARADARAJA PERUMAL TEMPLE AND ANOTHER reported in 1995 supp (3) SCC 724** wherein it was held that the High Court was right in setting aside the order of the Settlement Tahsildar because the appellants therein miserably failed to prove that the Respondent temple (Inamdar) transferred the lands by way of sale. In effect, his submission was that unless there is alienation by the inamdar, a Ryotwari patta cannot be granted under Section 8(2) of the Tamil Nadu Minor Inams Act. Paragraph 16 of the said judgment is relevant and it was held therein as under:

> "16**.**The High Court has rightly distinguished the case on which reliance was placed by the appellants, namely (1949) 2 MLJ 609 by pointing out that that was a case which did not deal with a statute

like the present Act and High Court was called upon in the present case to consider the grant of ryotwari patta under the provisions of the Act and not outside the Act. As pointed out earlier, before us two more decisions were cited and we find in both the cases the admitted fact was that the alienation was by the inamdar temple itself. That makes all the difference. Therefore, those decisions will not help the appellants. At the risk of repetition we may point out that it is an admitted fact that the appellants have failed to establish that there was *any alienation by the inamdar* to enable the appellants to claim ryotwari patta under Section 8(2). The inam in question, as found earlier, was an inam granted for the benefit of a religious institution and so the statutory presumption provided under Section 44 will come into full play in the absence of the appellants proving anything contrary to get over the said statutory presumption. In this context, the decision relied on by the first respondent before the High Court and also relied on before us in *Marimuthu* v. *Kalasanthi Kattalai* [(1974) 87 LW 652 (Mad)] helps the first respondent in sustaining the judgment and order of the High Court. The learned Judges have clearly pointed out while considering the provisions of Section 8(2) as follows:

> *"That provision, in our opinion will not apply to a case of alienee. The policy of the law, as it stood prior to Madras Act 30 of 1963, was that alienations by way of sale would be null and void. The Madras Hindu Religious and Charitable Endowments Act of 1959 and its predecessors provided for*

resumption and re-grant of such alienated service inam lands. We have got to approach Section 8 in that context. The policy of the law in respect of alienated religious or charitable inam lands is indicated in sub-section 2(i) of Section 8. The alienation should have been made by the inamdar and the transferee or his heir, assignee, legal representative or person deriving rights through him should have been in exclusive possession for the period provided by clause (a) or clause (b). These two clauses lead to different results. If possession with the alienee is proved as coming within the ambit of clause (b) subject to payment of consideration to the Government as provided by the section, patta may be granted to the alienee. Where a religious or charitable inam land had been alienated but possession was not proved as provided in clause (i) of sub-section (2) of Section 8, the alienee will not be entitled to patta."

11.He also referred to the judgment of the Division Bench of this Court in **KESAVAMOORTHY Vs. A.C.CHANDRASEKAR AND OTHERS in W.A.Nos.1316 and 1317 of 2014** wherein, at paragraph 5, it was held as follows:-

"5.In the present case, when the lands belonging to the temple were given to the appellant's father only as a service holder of the religious institution, the act of the appellant in alienating the property is against the judgment of the Apex Court in **Joint Commissioner, H.R. & C.E., Administration Department v. Jayaraman and others [(2006) (1) L.W. 306],** wherein, it was held that in respect of the

> lands belonging to the temple governed by the H.R & C.E. Act, no alienation is permissible and even under the settlement proceedings, the alienation of the temple property by third party cannot be approved, if the property had been dedicated for the purpose of the temple. In such view of the matter, we find no reason to interfere with the order passed by the learned Single Judge."

In support of the contention that an UDR Patta can be modified by Revenue Authorities, the learned counsel for the 4th Respondent referred to G.O.Ms. No.385 dated 17.08.2004 which records that it has been recommended by the Commissioner and Director of Land Survey that the powers of the Zonal Deputy Collector under G.O.No.921, Revenue dated 15.06.1991 be cancelled. On that basis, he submitted that until the date of this G.O., namely, 17.08.2004, this power was available. In this connection, he referred to the fact that the order was issued by the Sub Collector about two months prior to this Government order, namely, on 29.06.2004. He also referred to the Survey re-settlement register for the village of Moongiltholuvu of the year 1914 and pointed out as to how the said document shows that the patta is in the name of the Karikaliamman Temple and not in the name of the Petitioners. By referring to the Impugned Order of the First Respondent at page 41 of the typed set of papers filed by the Petitioners, he pointed out as to how it is recorded therein that the Revision Petitioners are trying to usurp the property of the temple through the hereditary pujaries. He also pointed out from the Revision Petition as to how the Petitioners herein did not file original documents and instead filed photo copies of documents in the proceedings before the First and Second Respondents. He, thereafter, concluded his submissions by contending that the Writ Petition is liable to be dismissed and that the 4th Respondent should be permitted to initiate appropriate proceedings under the Tamil Nadu Minor Inams Act by excluding the time taken in the present Writ Petition.

12.The learned counsel for the Respondents 1 to 3 submitted that the Sub Collector has the power to cancel pattas and that the order in Revision is an appealable order. He further submitted that unless an appeal or revision is filed, the order passed by the Respondents 1 and 2 attains finality in terms of Section 46 of the Tamil Nadu Minor Inams Act. He also referred to the judgment of this Court in **S.NAGARAJ Vs. THE SUB COLLECTOR, HOSUR AND OTHERS in W.P.No.19955 of 2008** and contended that the power of the Sub-Collector to cancel the Ryotwari pattas is implicitly recognized in the said judgment. For this purpose, he referred to paragraph 10 to 12, 23 and 28 of the said judgment. He further submitted that the Petitioners did not obtain pattas after the order of the Settlement Tahsildar and, therefore, the Petitioners names were not reflected in the revenue records and that the temple did not file an appeal probably for that reason. He submitted that the judgments that were relied upon by the learned counsel for the Petitioners 1 to 9, 12 and 13 were distinguishable because the Writ Petitions were filed by the temple concerned in those cases and not by individual Ryotwari patta holders.

13. The learned counsel appearing for the Petitioners 10 and 11 made his submissions thereafter. He submitted that there was no averment in the proceedings before the revenue authorities or herein that the patta was issued under the UDR scheme and that, therefore, the Respondents cannot raise that contention. He further pointed out that the G.O.Ms.N0.385, Revenue dated 17.08.2004 does not empower the Sub Collector to cancel the Ryotwari pattas. He, thereafter, referred to Section 11(3) of the Tamil Nadu Minor Inams Act, including the proviso thereof, and contended that there is an appellate remedy against the Order of the Settlement Tahsildar, which is required to be exercised within a stipulated time limit. He further pointed out that the Impugned Order at Page No.41 of the typed set of papers discloses that the First Respondent was fully conscious of the fact that a statutory remedy is prescribed under law. Nevertheless, the First Respondent proceeded to confirm

the order of the Sub Collector. By referring to the notices from the Sub Collector on 17.05.2004, the learned counsel pointed out as to how the said notices disclose that they have been issued on the instructions of the Sub Collector's superior officer, namely, the Collector and that, therefore, the decision to issue notices and, thereafter, to cancel the pattas is not an independent decision but a decision dictated by the superior officer.

14.In response to the contention that the Petitioners ought to have obtained a patta pursuant to the order of the Settlement Tahsildar, the learned counsel submitted that the order of the Settlement Tahsildar confers a statutory patta on the Petitioners and that, therefore, there is no question of applying for and obtaining a patta from the revenue authorities. With regard to the contention that photo copies of the Settlement Tahsildar's order and other documents were produced before the Sub Collector and Revenue Authority, he submitted that the validity of the said documents is not in dispute. He concluded his submissions by pointing out that the Writ Petition was admitted because the existence of an alternative remedy is not a bar to the exercise of jurisdiction by this Court.

15.In response to the said submissions, the learned counsel for the 4th Respondent pointed out from the judgment of this Court in **(2009) 1 MLJ 93**(cited supra) that it is necessary to obtain patta and other revenue documents pursuant to the order of the Settlement Tahsildar. It was also pointed out that a patta granted under the Tamil Nadu Minor Inams Act does not create an absolute right but only a notional right. For this purpose, he relied upon the judgment of this Court in **ANGAPPA GOUNDER Vs. SIVANMALAI GOUNDER AND OTHERS reported in 1998 (2) MLJ 225,** wherein, at paragraph 9, this Court held that in so far as Minor Inams are concerned, the vesting is notional and does not extinguish the existing rights is an Inam land.

16.The affidavit, counter affidavit documents on record and oral submissions of all the parties were carefully considered.

17.As stated earlier, the main issue to be considered is whether the Sub Collector had subject matter jurisdiction to cancel the Ryotwari patta and whether the Petitioners are estopped from challenging the jurisdiction of the Sub Collector and the District Revenue Officer in view of the Petitioners' participation in proceedings initiated by the Sub Collector. In this regard, the judgment of the Division Bench of this Court, which is reported in **1996 (1) CTC 217**(cited supra), is relevant. As stated therein, the

Settlement Tahsildar is the statutory authority for grant of Ryotwari patta under the Tamil Nadu Minor Inams Act and a person aggrieved by the order of the Settlement Tahsildar is required to file an appeal as per Section 11 of the said Act before the Sub Court concerned, which is constituted as the Tribunal for purposes of the said Act. In the instant case, admittedly, neither the 4th Respondent/Temple nor the Government filed an appeal under Section 11 of the Tamil Nadu Minor Inams Act. Instead, it is the undisputed position that the notices were issued by the Sub Collector, Pollachi on 17.05.2004 and the Petitioners were called upon to attend an enquiry with regard to the proposed cancellation of the Ryotwari pattas in their favour. Pursuant thereto, the Sub Collector by Order dated 29.06.2004 cancelled the Ryotwari pattas. The order of the Sub Collector, Pollachi is not an order passed by the statutory appellate authority under the Tamil Nadu Minor Inams Act. As such, the question arises as to whether the said order is valid. The contention of the learned counsel for the 4th Respondent temple, in this regard, is that the pattas that were issued to the Petitioners herein are not Ryotwari Pattas but UDR Scheme pattas and that, therefore, the Sub Collector is empowered to and has jurisdiction to cancel the pattas. However, this contention is contrary to the documents on record. It is very evident from the order dated 27.06.1968 of the Settlement Tahsildar -I, Gobichettipalayam that the Petitioners herein received Ryotwari pattas under Section 8(2)(i)(a) of the Tamil Nadu Minor Inams Act. As such, the said Ryotwari pattas cannot be cancelled by the Sub Collector, Pollachi.

18.This leads to the next question as to whether the Petitioners relinquished their right to challenge the jurisdiction of the Sub Collector, Pollachi both by participating in the enquiry conducted by the said Sub Collector and also by filing a Revision Petition against the said order before the First Respondent. In this connection, it is relevant to refer to judgments of the Hon'ble Supreme Court relating to the exercise of jurisdiction and acquiescence in respect thereof. In **HAKAM SINGH Vs. GAMMON INDIA LIMITED, reported in (1971) 1 SCC 286,** it was held, at paragraph 4, that parties cannot by agreement confer jurisdiction on a court that does not posses jurisdiction. Similarly, in **MD.ARMY WELFARE HOUSING ORGANISATION Vs. SUMANGAL SERVICES (P) LTD, reported in (2004) 9 SCC 619,** it was held as follows in paragraph 40:

> "40.It is, therefore, not correct to contend that the said order was passed on consent of the parties. For all intent and purport, Sumangal could not have consented to grant of such a prayer which would virtually put a final

seal over the disputes. We have here to before quoted the purported order dated 1-9-1997 which ex facie demonstrates that the arbitrator assumed jurisdiction to pass the said interim order at the behest of AWHO. Furthermore, as noticed herein before, Sumangal filed a review application which was also dismissed in the manner noticed herein before. The said interim order was, thus, not passed with the consent of the parties. If the learned arbitrator has no jurisdiction to pass an interim order, even by consent no such jurisdiction could be conferred. [See *United Commercial Bank Ltd.*v. *Workmen* [AIR 1951 SC 230 : 53 Bom LR 958] and *Hakam Singh* v.*Gammon (India) Ltd.* [(1971) 1 SCC 286 : AIR 1971 SC 740]"

19.Moreover, in **HARSHAD CHIMAN LAL MODI VS. DLF UNIVERSAL LTD AND ANOTHER reported in 2005(7) SCC 791,** the Hon'ble Supreme Court differentiated between cases wherein the court or authority has jurisdiction over the subject matter but there may be pecuniary or territorial requirements with regard to the exercise of jurisdiction. In such cases, the Hon'ble Supreme Court held that if parties acquiesce in the exercise of jurisdiction by participating in proceedings, they cannot subsequently question the jurisdiction. On the other hand, in cases where the court or authority does not have subject matter jurisdiction under the relevant statute, jurisdiction cannot be conferred through acquiescence or even express consent. In this regard, paragraphs 30 and 32 of the said judgment are significant and read as under:

> "30.We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (*i*) territorial or local jurisdiction; (*ii*) pecuniary jurisdiction; and (*iii*) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.
>
> 32**.** In *Bahrein Petroleum Co.* [(1966) 1 SCR 461 : AIR 1966 SC 634] this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that "where

> a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is *non est* and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a *coram non judice*."

In **SHAHABAD COOP SUGAR MILLS LTD Vs. SPL. SECRETARY TO GOVERNMENT OF HARYANA CORPN. AND OTHERS reported in (2006) 12 SCC 404,** it was held in paragraph 27 that the order of the State Government was without jurisdiction and is a coram non judice.

20.On examining the aforementioned judgments of the Hon'ble Supreme Court, it is very evident that the Second Respondent herein, namely, the Sub Collector, Pollachi does not have jurisdiction under the Tamil Nadu Minor Inams Act to initiate proceedings and cancel the Ryotwari pattas issued under the statute because the power and jurisdiction, in this regard, is expressly conferred on the Tribunal, namely, the designated Sub Court concerned. In view of the fact that there is complete lack of jurisdiction and not merely a pecuniary or territorial limitation, the principles laid down in the case reported in **2005 (7) SCC 791** (cited supra) are squarely applicable and this would be a case where neither acquiescence nor consent can confer jurisdiction.

21.Accordingly, the contention of the Petitioners herein that the Second Respondent did not have jurisdiction or authority to cancel the Ryotwari pattas in favour of the Petitioners is valid. In view of the fact that neither the Second Respondent nor the First Respondent possess jurisdiction under the Tamil Nadu Minor Inam Act, the existence of an alternative remedy is not material. As such, this Writ Petition is maintainable and the Petitioners herein are entitled to the relief requested.

22.For the aforesaid reasons, the Impugned Orders of the Second Respondent dated 29.06.2004 and that of the First Respondent dated 06.01.2006 are liable to be and are hereby quashed. Needless to say, in these proceedings, no findings are being recorded on the merits of the dispute relating to title to the said lands. Therefore, the judgments cited by the learned counsel for the Fourth Respondent, which are reported in 1998 (2) MLJ 225, W.A. Nos. 1316 and 1317 of 2014 and 1995 Supp.(3) SCC 724 and deal with the merits of the title claim, are not relevant for the purposes of this Writ Petition.

23.In fine, this Writ Petition is allowed and the Impugned Orders are quashed. Consequently, the pattas and other revenue documents issued in favour of the 4th Respondent on the basis of the Impugned Orders are also set aside and the Third Respondent is directed to restore the names of the Petitioners in the relevant records within 60 days of the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.P. is closed.

29.04.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/Non speaking order
rrg
To

1.Additional District Magistrate &
District Revenue Officer,
Coimbatore,
Office of the District Revenue Officer,
Coimbatore.

2.The Sub Collector,
Pollachi,
Office of the Revenue Divisional Officer,
Pollachi.

3.The Tahsildar
Udumalpet Taluk, Coimbatore District.

4.The Joint Commissioner
HR & CE Department,
Coimbatore.

5.The District Collector, Coimbatore District.

SENTHILKUMAR RAMAMOORTHY, J.,
rrg

Pre Delivery Order in

W.P.No.4477 of 2006

29.04.2019