

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 16.08.2019

Reserved On: 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30229 of 2004

Church of South India

Trust Association,

Tiruchirapalli Thanjavur Diocesan Council

represented by its Power of Attorneys

Diocesan Tresurer Rev.Sureshkumar

... Petitioner

Vs.

1. State of Tamil Nadu represented by

its Secretary to Government,

Revenue Department

Fort St.George, Chennai - 1.

2. Special Commissioner cum Commissioner for

Land Administration, Chennai - 5.

3. District Collector,

Perambalur District,

Perambalur.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the Government Order passed by the first respondent in G.O.No.414 dated 7.9.2004 and quash the same as illegal, arbitrary, void and unconstitutional.

For Petitioner : Mr.K.M.Vijayan

Senior Counsel

for M/s.R.Suresh Kumar

For Respondents : Mr.S.R.Rajagopal

Additional Advocate General

Assisted by

Mr.J.Ramesh

O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorari calling for the records pertaining to the Government Order passed by the first respondent in G.O.Ms.No.414 dated 07.09.2004 and to quash the same as illegal, arbitrary, void and unconstitutional.

2.The case of the petitioner is that the Society for Propagation of Gospel [hereinafter called as 'Propagation Society'] had been functioning in India and had been working among the depressed sections of the people in old Perambalur Taluk and more particularly in Jeyankondam and at different places at Udayarpalayam Taluk and nearby places. Impressed upon the functioning of the Propagation Society, the then British Crown granted permanent lease to the Propagation Society by means of a registered document dated 21.07.1903 vide Document No.17/57/1903.

3.It is the further case of the petitioner that the Propagation Society thereafter began to carry out the functions of a lessee by distributing the property among different persons classified as Panchamas. The work Panchama was loosely defined as it prevailed at that time not necessarily restricting the same to the Scheduled Caste members, but also extending the same to other depressed Sections of the Society as is fully available in the lease deed itself. In essence the lease was for the Dalit people as the present day definition construes to include Scheduled Caste and Scheduled Tribe and other depressed Sections of the Society.

4.It is the further case of the petitioner that originally when lease was granted, the lands have been forest and barren lands. The lease was granted in respect of an extent of Acre 310.15 Cents in respect of two places by names Pirancheri in Udayarpalayam Taluk and Jeyankondacholapuram. After obtaining the lease and taking possession of the lands, the Propagation Society christened the area as 'Mahimaipuram' and began to operate in the manner found in the lease deed. Certain families belonging to the Irula community were settled in the lands and houses were constructed for them. Lands were also allotted to them and cultivation was also carried on and a School building was also constructed.

5.It is the further case of the petitioner that in the meanwhile, the operations of the Propagation Society were found commendable by the British Crown and in their wisdom, the then State of India in Council, in the year 1923, made a Settlement in respect of the above said lands in Jeyankondacholapuram and Pirancheri in favour of the Propagation Society and patta was

granted. After grant of patta, the Propagation Society began to carry out the affairs in respect of the said lands in its capacity as a full fledged Proprietor having absolute title and continued further for the welfare of the depressed sections of the society.

6.It is the further case of the petitioner that from the time of Settlement, the property was in enjoyment of the Propagation Society and a School was constructed, free Orphanages were constructed and a Cashewnut Farm was also created. Houses were built for the people belonging to Irula community and other depressed sections of the society including the Harijans and Muthuraja and the entire area got benefited. Besides, roads were laid in the area. As such, the entire extent of Acre 310.15 Cents spread over Jeyankondam, Keelakudiyiruppu, Malangan Kudiyiruppu, Kallathur, Pugalur etc.

7.It is the further case of the petitioner that in the year 1960, the Propagation Society transferred all its immovable properties and various interests in favour of Church of South India Trust Association [hereinafter called as 'CSI'] as the Church of South India was the registered body representing several denominations of Foreign Church of which the Propagation Society Mission was one. The Propagation Society became defunct thereafter.

8.It is the further case of the petitioner that thereafter, CSI functioning for the Republic of India became a fountain head of service for the depressed section of the Society. Though CSI was carrying out missionary activities of Christianity, the prime task of CSI and Propagation Society is to cater to the needs of the local people without any difference in Caste, Religion or Creed. CSI has been paying Kist regularly and it got exemption from payment of Agricultural Income Tax in respect of the said lands vide proceedings dated 12.03.1988.

9.It is the further case of the petitioner that CSI in its capacity as the Proprietor of the said Estate had been carrying out operation in the said Estate only in its uninterrupted capacity as the owner of the said Estate. Though the then Propagation Society entered into a permanent lease, it was open for the then Government in its wisdom to convert the lease into a proprietary holding by granting patta in the Settlement in favour of the then Propagation Society.

10.It is the further case of the petitioner that while being so, on 20.12.1990, the Secretary to the Government of Tamil Nadu, Revenue (D1) Department of Government of Tamil Nadu issued a communication to the Farm Manager of Mahimaipuram, which was received by the said Manager on 13.02.1991, informing that the

Settlement was made by mistake and that the entire possession and enjoyment of the lands by CSI was without animus to possess the same as the owner as against the Government, as the entry primarily was only that of a lessee. The communication further read that the Propagation Society as well as CSI did not carry out the purposes of lease and by violation of the same, it was asked as to why the land should not be resumed by the Government from the control of the Mission for the violation of the condition.

11.It is the further case of the petitioner that thereafter 10 persons had trespassed into the above said lands and against those persons, CSI had filed a suit in O.S.No.1969 of 1978 on the file of the learned District Munsif, Ariyalur. The said suit, after filing of the written statement and the counter for the injunction application was decreed exparte.

12.It is the further case of the petitioner that despite the change in the character of possession of the property from the year 1924, the activities of the Propagation Society as well as CSI had been regular and it had been providing for the benefit of the depressed sections of the society. Thereafter, the District Revenue Officer of Tiruchirapalli sent a communication dated 25.11.1992 calling upon the Manager of the Mahimaipuram Estate to appear before the Additional Personal Assistant to the District Collector by 12.00 a.m., on 07.12.1992. Another letter dated 20.05.1993 was also given and to this letter, a communication was sent by the Farm Manager of Mahimaipuram on 10.06.1993. Having received the reply notice, the Government did not do anything thereafter.

13.It is the further case of the petitioner that during the UDR survey that was taken in the year 1984, the Government issued patta to CSI in respect of the above said lands and CSI had invested more than Two Crores of Rupees in the said lands for the purpose of construction of buildings for Higher Secondary School, Elementary School, three free Hostels, Farm Houses and for providing all necessary amenities to the Settlement Colony of Irulas who are more than 300 in number. Thus, CSI had changed its position by spending huge money in the promise by conduct as Government had repeatedly by 1924 Settlement and also in 1984 UDR Survey Settlement, had stuck to a position that the properties in question belong absolutely to CSI. The Government had been by promise through their conduct, assuring and reassuring CSI that the property belongs absolutely to it.

14.It is the further case of the petitioner that despite all these circumstances, the Government did not mention anything or

addressed any communication to CSI either accepting its explanation or negating the same, but the Government wanted further particulars and the Tahsildar, Jayankondam, in his communication dated 26.09.2001 demanded certain particulars relating the said lands.

15.It is the further case of the petitioner that on 07.09.2004, a Government Order in G.O.Ms.No.414 dated 07.09.2004 was issued to the Special Commissioner cum Commissioner for Land Administration, Chennai and District Collector, Perambalur District. A copy of the Government Order had been marked to the Law Department, Chennai. This order of the Government had been made narrating the said lease in the year 1903, the Settlement of the lands in the year 1924 and with reference to the Settlement, the impugned order states that no document was available as to how patta was granted in favour of the Propagation Society or how the leasehold right was transferred into a proprietary right. It has also been mentioned that a show cause notice has been issued as to why the land should not be resumed by the Government. The reply had been referred to in paragraph 2 of the order and the comments of the District Collector, Perambalur, with respect to the reply made by the Mission through their counsel by reply notice dated 19.08.1983 had ultimately ended with a report that the lands could be resumed.

16.It is the further case of the petitioner that the Special Commissioner cum Commissioner for Land Administration had also accepted the report of the District Collector for resuming and had recommended that the lands could be resumed. The Government had considered the report of the Collector and the recommendation of the Commissioner concerned. The only reason mentioned in the said order is that the lands granted on lease to the Mission for the development of Panchamas was not fully utilised and the terms of the lease were violated and the Mission had used the lands for its personal use, sublease, non payment of rent and obtaining patta. Inter alia, as violation of the said lease in the total extent of Acre 310.15 Cents, lands excluding Acres 83.81 Cents admeasuring an extent of Acres 226.34 Cents had been directed to be resumed and the District Collector, Perambalur had been directed to follow the Rules to resume the lands within a period of 30 days. But the petitioner CSI has not been given any communication in this regard.

17.It is the further case of the petitioner that on 13.01.2004, some of the Officials of the Government of Tamil Nadu had without any permission or information to the petitioner trespassed into the property and begun to survey the field which shows that there is going to be a forcible taking over of the immovable property without the consent or knowledge of the

petitioner. Hence, the petitioner has filed this writ petition.

18.Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner would submit that the Propagation Society had been functioning in India and working for the upliftment of the deprived classes in Old Permabalur Taluk. The then British Crown governing the Country of India granted a permanent lease by means of a registered document dated 21.07.1903 vide Document No.17/57/1903. The object of lease is to provide benefit for Panchama family and other depressed classes, wherein, the lessee shall divide the land into smaller plots of 5 Acres and allow the Panchama family to cultivate and maintain animal husbandry.

19.The learned Senior Counsel appearing for the petitioner would further submit that the lease deed has fixed a rent renewable by the lessor and however the lease deed contains no provision for cancelling the lease itself. Thus the character of lease is perpetual amounting to transfer of ownership to the lessor. The Government issued patta in favour of the lessor in 1924 and also in 1984 UDR Survey Settlement patta and it is admitted by the respondents. After issuance of patta, title of ownership is conferred by the respondent and the same cannot be simply taken away by a general defence that patta is wrongly granted.

20.The learned Senior Counsel appearing for the petitioner would further submit that the patta granted can be cancelled only in the manner known to law after affording opportunity to the petitioner. He would further submit that the respondents have admitted that 65.80 Acres of land were in usage of Panchammars and the remaining 236 Acres is maintained as it was granted in the year 1903 without any alienation or transfer for profit to any third party. Therefore the object of lease contemplated can be still achieved if the possession is retained with the petitioner.

21.The learned Senior Counsel appearing for the petitioner would further submit that the object of lease cannot be determined by a summary enquiry procedure as now adopted by the respondents but only through letting in evidence in proof of the same by both the parties. He would further submit that the cancellation of lease by the lessor cannot be done by a unilateral decision but only by a suit for eviction before the appropriate Civil Court after affording opportunity to both sides to let in evidence and prove whether the grounds for cancellation is available on merits.

22.The learned Senior Counsel appearing for the petitioner would further submit that the petitioner has perfected its title after the lease in 1903 and grant of patta in 1924 is well

within the meaning of settled possession which cannot be unsettled without recourse to law by adopting a summary procedure by the impugned Government Order. The petitioner has established and accrued the rights over the land in the past 100 years preceding the impugned Government Order and the order of resumption of land by an order in a summary proceedings is excess of authority, arbitrary and total violation of Rule of law.

23.The learned Senior Counsel appearing for the petitioner would further submit that there was no quantification of rent or demand of rent after grant of patta in the year 1924 and non payment of arrears is also not raised as a ground in the impugned Government Order which itself would demonstrate that the Government is aware of the fact that the petitioner has no obligation to pay rent post 1924. He would further submit that there is no mismanagement of the property or alienation of the property for profit by the petitioner and the petitioner is bonafidely administering the property for good cause which would be evident from the impugned Government Order itself which allowed 83.81 Acres to be retained by the petitioner. Accordingly, he prayed for allowing the writ petition.

24.Per contra, the learned Additional Advocate General by referring to the written submissions filed by the respondents would submit that the disputed lands were leased by the Government in favour of the Propagation Society vide temporary indenture under the current Board Standing Order 15. The BSO, presently RSO 15 clearly specifies that any grant of land by the Government in the form of assignment, alienation, lease etc., is governed by the provisions for Government Grants Act.

25.The learned Additional Advocate General would further submit that it is well settled law that the rights, privileges and obligations of any grantee of the Government would be completely regulated by the terms of grant even if such terms are inconsistent with provisions of any other law. The lease was for the purpose of rehabilitation of Panchama families. He would further submit that out of the 279.29 Acres of lands leased out to Propagation Society, only 65 acres of lands were used for the benefits of Panchamas.

26.The learned Additional Advocate General would further submit that there is express statement in the indenture that the lease shall not use the premises for any other purpose than for the benefit of Panchamas. He would further submit that the rent has not been paid by the Mission to the Government for several years and would further submit that the terms of the indenture also clearly specify that the lease can be determined by either parties on giving previous notice to the other.

27.The learned Additional Advocate General would further submit that in the cases of Panchami lands assigned to depressed classes, the Government has the power to resume such lands if the conditions of the grant are violated and if the lands are not utilized for the benefit of the Scheduled Caste Community. He would further submit that the Government has the power to terminate the lease in case of violations of any of the conditions of the lease and resume the lands in accordance with law.

28.The learned Additional Advocate General would further submit that the Mission is claiming title over the lands based on the patta which was erroneously granted to them during the 1924 Resettlement. He would further submit that it is well settled law that patta is not a proof of title and would further submit that normally possession of patta signifies lawful possession of the property by a person in possession of patta and would further submit that it is not a document of title but a proof of possession.

29.The learned Additional Advocate General would further submit that mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

30.The learned Additional Advocate General would further submit that in the present case, fair opportunity was given to the petitioner society for furnishing the documents as to whether the petitioner complied with the conditions given in the lease, however, no proof was filed before the Authorities. However, the petitioner has taken the stand that the petitioner has perfected its title after the lease in the year 1903 and grant of patta in the year 1924 and the same is unsustainable and liable to be rejected. Accordingly, he prayed for dismissal of the writ petition.

31.Heard the arguments advanced on either side and perused the materials available on record.

32.On perusal of the entire records, the issues that arise for consideration in the present case are:

(i) Whether the petitioner can claim title through patta when they drawn the disputed lands by way of lease?

(ii) Whether the long term possession through lease can convert into adverse possession?

(iii) Whether the petitioner was given fair opportunity before passing of the impugned order?

(iv) Whether the Government have power to resume the land if

there is violation of lease condition even after granting patta?

33. Before answering the issues raised in this writ petition, it is necessary to peruse the indenture which was created in favour of the Propagation Society. Admittedly, the said indenture was registered on 21.07.1903. In the indenture, the Secretary of State for India in Council was the lessor and the Propagation Society in foreign parts was the lessee. The said indenture further reveal that the execution of the indenture was admitted by John Alfred Sharrcock European Superintending Missionary puthur agent of Revd. George Herbert Smith Attorney of the Propagation Society.

34. The said indenture further reveal that the premises was demised into the lessee and its assignee for the term of one year from the first day of July one thousand nine hundred and one and so on from year to year until the demise shall be determined by either party giving to the other previous notice before the fifteenth August in writing yielding and paying therefore by yearly payments during the first year of the said demise the rent of Rupees thirty four annas fourteen and pies seven, being at the rate of two annas for every acre of the said piece of land and so in proportion for any less quantity than an acre, during the second year of the said demise the rent of Rupees sixty nine, annas thirteen and pies two, being at the rate of four annas for every acre of the said piece of land and so in proportion for any less quantity than an acre; during the third year of the said demise the rent of Rupees one hundred and thirty nine annas ten and pies four being at the rate of eight annas for every acre of the said piece of land and so in proportion for any less quantity than an acre. Accordingly, upto five years proportionately the rent was increased.

35. The said indenture further reveal that the said rent has to be paid clear of all deductions provided always and it was expressly agreed and declared between the parties that the several rents reserved may at any time revised by the Government of Madras for and on behalf of the lessor, his successor or assignees on any general resettlement of land assessment payable in the District of Trichinopoly. It further imposed the condition that at the expense of the lessee, its successors of assignees shall divide the said piece or parcel of land into small plots of five acres each and allow such plots to be occupied by a Panchama family and will assist the Panchamas and other depressed classes who may be in occupation of such plots, in building houses for them and their respective families on the plots occupied by them respectively and in providing them with cattle for ploughing such plots respectively and with implements of husbandary and will at the like expense maintain and keep such Panchamas and their respective families for such period or

periods as the said Panchamas respectively shall be engaged in preparing the land occupied by them for cultivation and ploughing and sowing the same and during such further period, as may be necessary, for the crops sown on such lands to grow and for the produce thereof to become fit for consumption as food.

36. The said indenture further permitted the lessor and his Officers, agents and servants to enter all reasonable times to view the state and condition of the said premises and will not use or suffer the said premises or any part thereof to be used for any purpose other than the purposes aforesaid or otherwise than for the benefit of the Panchamas and their respective families without the previous licence in writing of the Collector and will not without the like license assign whether by way of gift, sale, mortgage or otherwise under led or part with the possession of save to Panchamas as herein before provided, the said premises or any part thereof and will at the expiration or sooner determination of the demise, deliver upto the Collector for and on behalf of the lessor his successors or assigns the said premises and all fixtures and additions thereto in such state and condition as shall be consistent with due performance of the several covenants herein before contained.

37. Issue Nos. (i) and (ii):

The main allegation against the petitioner is that an extent of Acre 310.15 Cents in respect of two places by names Pirancheri in Udayarpalayam Taluk and Jeyankondacholapuram was granted on lease to the Propagation Society and the Propagation Society transferred all its immovable properties including the subject property in favour of CSI. Since the Mission failed to use the lands for the purpose for which they were leased, show cause notice was issued by the Government to the Mission for resuming the lands. It was alleged that the Mission distributed the lands only to a few Panchama family and only to those who converted into Christianity. Lease is a perpetual one until it is determined by either party - indenture is valid and subsisting - as such land belongs to Government and the indenture cannot be set aside by subsequent incorrect recordings in revenue records and as such violated the conditions of lease.

38. Further, this Court considered the reply sent by the petitioner. The petitioner claim that lease is a permanent lease and subsequently patta was granted in the year 1924 and thereafter in the year 1984 in the UDR patta scheme. Hence, the petitioner enjoying the lease property as owner of the property. Further lease was granted in the year 1903. Thereafter, the respondents have not taken any steps to recover the rent from the petitioner. The action of the respondents is clear that the respondents admitted the title of the petitioner and that they have no power to resume the land. The Government itself has

issued patta, then the relationship of landlord tenant got seized and the Mission has perfected the title by way of adverse possession.

39.The learned Senior Counsel appearing for the petitioner has made basically two statements in support of the writ petition. It was firstly contended that the lease was granted in the year 1903. Subsequently in the year 1924 patta was granted in favour of the petitioner Society. Thereafter in the year 1984 under the UDR scheme, again patta was granted in favour of the petitioner Mission. In view of the patta granted by the State, the petitioner Mission prescribed the title over the property and it is not open to the State to resume the land without cancelling the patta.

40.Now this Court has to consider the other submission of the learned Senior Counsel appearing for the petitioner that from the date of patta i.e., from 1924 onwards, the petitioner continues to enjoy the property with the knowledge of the State. Hence, the petitioner prescribed the title by way of adverse possession. If at all there is any violation, the State has to file suit for possession for resume of land and would further submit that the State has no power to resume the land by way of administrative action. In respect of the first contention, this Court has to consider whether the petitioner has right to claim title based on the patta granted by the State allegedly in the year 1924 and subsequently in the year 1984.

41.In the present case, lease was granted in favour of the Propagation Society in the year 1903 with a condition that the lessee Propagation Society shall divide the said piece or parcel of land into small plots of five acres each and allow such plots to be occupied by a Panchama family and will assist the Panchamas and other depressed classes who may be in occupation of such plots, in building houses for them and their respective families on the plots occupied by them respectively and in providing them with cattle for ploughing such plots respectively and with implements of husbandary.

42.In the indenture, the rent was also fixed for five years that lease is not terminated in the manner known to law. Without terminating the lease, on what basis the petitioner obtained patta from the Revenue Authorities in the year 1924 as well as in the year 1984. Further, patta was granted by the Authorities when the lease is in subsistence and that creates doubt in the action of the petitioner.

43.It is also un-disputed fact that a portion of the land were given to alleged Panchama family. Even in that distribution of land also the State made allegation that the

petitioner distributed the land to the Panchama Family after converting the persons into Christianity. That is also violation of the condition and the petitioner did not place any record to show that it complies the condition and paid the rent periodically. Merely because Officials did not collect the rent will not give right to the petitioner Society to claim title over the property. For non payment of rent, the petitioner may be called as defaulter. Hence, the petitioner claiming title over the property through patta is un-sustainable one and the same is not legally permissible.

44. Further the plea of the petitioner that the petitioner has been enjoying the property for a long time and hence the petitioner has perfected its title to the disputed property by way of adverse possession on account of continuous possession and enjoyment of the property also cannot be accepted. In any manner, the plea of adverse possession is a destructive plea. The petitioner though claim title to the disputed property based on the patta and continuous possession, the act of the petitioner would go to show that in as much as the petitioner does not have valid title to the disputed land unless he admitted title to other person, one hand claiming title through patta on the other hand claiming possession based on patta and enjoyment and possession is un-sustainable one.

45. There is no valid materials placed on behalf of the petitioner to hold that they have been in continuous and uninterrupted possession and enjoyment of the property it was resumed by the State. Infact, the State arrived at a categorical conclusion that out of the 279.29 Acres of lands leased out to Propagation Society, only 65 acres of lands were used for the benefits of Panchamas.

46. It is also relevant to note that there were several allegations made against the petitioner for violation of lease condition. However, the petitioner did not deny the allegations of the State, but simply stated that they had obtained patta in the year 1924 and subsequently in the year 1984 and that they had prescribed title. Such a claim is not acceptable and the same is legally un-sustainable.

47. This Court as well as the Hon'ble Apex Court has repeatedly held in several judgments that the revenue records do not confer any title and the revenue records and document of title are only possessory rights. The relevant decisions are as follows:

(i) The decision of the Hon'ble Apex Court reported in (2016) 12 SCC 235 (Prem Nath Khanna and others Vs. Narinder Nath Kapoor), the relevant portion of which reads as follows:

"20. In addition to the abovementioned reason, the contention advanced by the learned counsel appearing on behalf of the respondents that the appellants failed to get the mutation of entries of the suit land incorporated in record shows that there was no intention on their part to act upon the contents of the two sale deeds, cannot be accepted as mere mutation of entries does not confer title upon the deceased Respondent 1 in the immovable property. In *Sawarni v. Inder Kaur* (1996) 6 SCC 223, this Court held as under:

"7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

21. In *Guru Amarjit Singh v. Rattan Chand* ((1993) 4 SCC 349), this Court held that the entries in jamabandi are not proof of title in respect of an immovable property. In *Jattu Ram v. Hakam Singh* ((1993) 4 SCC 403), this Court observed that entries made by patwari in official record are only for the purpose of records and do not by itself prove the correctness of the same nor can statutory presumption be drawn on the same, particularly, in the absence of corroborative evidence. The respondent cannot claim to have acquired title over the suit property by pleading adverse possession only in the absence of the name of the appellants in the revenue records. In *Kishan Singh v. Arvind Kumar* ((1994) 6 SCC 591) and *P.T. Munichikanna Reddy v. Revamma* ((2007) 6 SCC 59), this Court held that in cases where the possession was initially permissive, the burden lies heavily on that person alleging adverse possession to prove that the possession has

become adverse. Mere possession for long time does not convert

permissive possession into adverse possession."

A perusal of the above decision makes it clear un-doubtedly the entries in the record, the patta is not a title. The petitioner's claim based on the patta is also un-sustainable one.

(ii) The decision of the Hon'ble Apex Court reported in (2014) 2 SCC 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and Others), the relevant portion of which reads as follows:

"21. This Court in several Judgments has held that the revenue records do not confer title. In Corporation of the City of Bangalore v. M. Papaiah and another (1989) 3 SCC 612 held that:

"5. ... It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In Guru Amarjit Singh v. Rattan Chand

and others (1993) 4 SCC 349 this Court has held that

"2. ... that entries in the Jamabandi are not proof of title."

In State of Himachal Pradesh v. Keshav Ram and others (1996) 11 SCC 257 this Court held that

"5. ... an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

22. The Plaintiff has also maintained the stand that their predecessor-in-interest was the Pattadar of the suit land. In a given case, the conferment of Patta as such does not confer title. Reference may be made to the judgment of this Court in Syndicate Bank v. Estate Officer & Manager, APIIC Ltd. & Ors. (2007) 8 SCC 361 and Vatticherukuru Village Panchayat v. Nori Venkatarama

Deekshithulu & Ors. (1991) Supp. (2) SCC 228.

23. We notice that the above principle laid down by this Court sought to be distinguished by the High Court on the

ground that none of the above-mentioned judgments, there is any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi registers are maintained. The High Court took the view that Ext.A-3 has evidentiary value since the same has been prepared on the basis of Hyderabad record of Rights in Land Regulation, 1358 Fasli. It was also noticed that column 1 to 19 of Pahani Patrika is nothing but record of rights and the entries in column 1 to 19 in Pahani Patrika shall be deemed to be entries made and maintained under Regulations.

24. We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiffs vendors property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that

the plaintiffs predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned."

(iii) The decision of the Hon'ble Apex Court reported in (2004) 10 SCC 779 (Karnataka Board of Wakf Vs. Government of India and others), the relevant portion of which reads as follows:

"10. Now we will turn to the aspect of

adverse possession in the context of the present case. The Appellants averred that the plea of the respondent based on title of the suit property and the plea of adverse possession are mutually exclusive. Thus finding of the High Court that the title of Government of India over the suit property by way of adverse possession is assailed.

11. In the eye of law, an owner would

be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S.M.Karim v. Bibi Sakina (AIR 1964 SC 1254), Parsinni v. Sukhi ((1993) 4 SCC 375) and D.N.Venkatarayappa v. State of Karnataka ((1997) 7 SCC 567)). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour.

Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma ((1996) 8 SCC 128))."

(iv) The decision of the Hon'ble Apex Court reported in (2006) 11 SCC 600 (Govindammal Vs.R.Perumal Chettiar and Others), the relevant portion of which reads as follows:

"12.In Mohammad Baqar v. Naim-

un-Nisa Bibi (AIR 1956 SC 548) it was observed that under the law possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period. There can be no question of ouster, if there is participation in the profits to any degree.

13.In Md. Mohammad Ali v. Jagadish Kalita ((2004) 1 SCC 271) this Court examined a series of decisions on the question of adverse possession and after extracting the legal propositions from various decisions, their Lordships concluded that long and continuous possession by itself, it is trite, would not constitute adverse possession. Even non-participation in the rent and profits of the land to a co-sharer does not amount to ouster so as to give title by prescription. A co-sharer, as is well settled, becomes a constructive trustee of other co-sharer and the right of a person or his predecessors-in-interest is deemed to have been protected by the trustees.

14.As against this, our attention was also invited to a decision in the case of T.P.R.Palaniam Pillai v. Amjath Ibrahim Rowther (AIR 1942 Madras 622). Their Lordships observed that in order to constitute adverse possession, the possession must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. Therefore, in

cases of adverse possession also their Lordships have said that the possession should be for longer period and it is known to the competitor that it is held adverse to his knowledge. Their Lordships further held that in cases of usufructuary mortgage granted by one of several co-sharers if a person remains in possession of the land and cultivates it for years, the requirement of continuity, publicity and extent for adverse possession are fully complied with. But that is not the case here.

15. In *Nirmal Chandra Das v. Mohitosh Das* (AIR 1936 Calcutta 106) their Lordships observed that in order to succeed on the ground of ouster, the person setting up ouster is bound to show that he did set up an adverse or independent title during the period which was beyond the statutory period of 12 years. Their Lordships further observed that there can be no adverse possession by one co-sharer as against others until there is an ouster or exclusion; and the possession of a co-sharer becomes adverse to the other co-sharer from the moment there is ouster. Therefore, what is ouster and what is adverse to the interest of the claimant depends upon each case. In this case, a plea was raised that certain properties were usufructuary mortgage. But that was not in a manner to show that these properties are adverse to the interest of the plaintiff. It was only when 'B' schedule properties were sought to be sold and it came to the knowledge of the plaintiff that her step sons were not interested in partition of the property and giving her share, she filed the suit in the year 1979. Therefore, for the first time in 1979 she came to know that adverse possession is being sought to be established and her interest in 'B' schedule properties is sought to be sold by her step sons. But in any case, just because she gave a notice and she did not pursue the same, on that basis no adverse inference can be drawn and she cannot be ousted on that count by way of adverse possession."

48. On a perusal of the above decisions makes it clear that a

party claiming adverse possession must prove that his possession is peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

49. In the present case, the disputed land is a lease land which was entrusted to the Propagation Society and thereafter the said Propagation Society handed over the same to the petitioner Mission. When the lease is in subsistence, claiming adverse possession is un-sustainable one. Hence, the decisions cited supra squarely apply to the present case on hand. Accordingly, the claim of adverse possession is liable to be rejected.

50. Issue Nos. (iii) and (iv):

On a perusal of the records it is seen that lease was granted in the year 1903 in favour of the Propagation Society to cater to the needs of the local people without any difference in Caste, Religion or Creed, by dividing the piece and parcel of land into small plots of five acres each and allow such plots to be occupied by a Panchama family and to assist the Panchamas and other depressed classes who may be in occupation of such plots, in building houses for them and their respective families on the plots occupied by them respectively and in providing them with cattle for ploughing such plots respectively and with implements of husbandary. The State came to know that there is violation in complying with the lease conditions.

51. Accordingly, in order to find out whether they complied with the condition imposed in the lease deed, the Authority issued a show cause notice. On 20.12.1990, the Secretary to the Government of Tamil Nadu, Revenue (D1) Department of Government of Tamil Nadu issued a communication to the Farm Manager of Mahimaipuram, which was received by the said Manager on 13.02.1991, informing that the Settlement was made by mistake and that the entire possession and enjoyment of the lands by CSI was without animus to possess the same as the owner as against the Government, as the entry primarily was only that of a lessee. The communication further read that the Propagation Society as well as CSI did not carry out the purposes of lease and by violation of the same, it was asked as to why the land should not be resumed by the Government from the control of the Mission for the violation of the condition.

52. Thereafter, the District Revenue Officer of Tiruchirapalli sent a communication dated 25.11.1992 calling upon the Manager of the Mahimaipuram Estate to appear before the

Additional Personal Assistant to the District Collector by 12.00 a.m., on 07.12.1992. In response to the above notice, the Farm Manager of CSI Mission appeared before the Additional Personal Assistant to the District Collector, Trichirappalli District with supportive documents and records and made his deposition. One of the documents produced by him at the time of enquiry was the reply dated 04.03.1991 to the show cause notice issued by the Government, sent through their counsel, wherein it was stated by the Mission that the indenture has no legal validity and force.

53.The petitioner denied the other averments contained in the show cause notice. Further, in support of their claim, the Farm Manager furnished a copy of the indenture, minutes of the Settlement Committee Mahimaipuram, Jayankondam, copies of kist receipts, pattas, deed of transfer of trust from the Propagation Society to CSI. Thereafter, the then District Revenue Officer, Tiruchirappalli inspected the lands in the Jayankondam Village on 20.01.1993. It was revealed that the Mission had sub-leased major portion of the lands leased out to them and only one fourth of the land was under its direct control and have obtained patta in favour of the Church in three different names.

54.The District Revenue Officer, in his inspection report had directed the Tahsildar, Jayankondam, to furnish further particulars on the area-wise cultivation by Irulas, Vanniyar, the Mission and also the structural details etc., erected in the lands in question. A detailed factual report requesting to pass suitable orders were sent to the Commissioner of Land Administration, Chennai in the then District Collector's letter dated 01.04.1993.

55.In turn, the Commissioner of Land Administration, Chennai in his letter dated 11.06.1993 addressed to the Special Commissioner and Secretary to Government, Revenue Department, Secretariat, Chennai, stated that those who have obtained the lands for cultivation for their upliftment, have sub-leased the lands to some other persons, in violation of the conditions of the lease grant and also that the Mission did not come to spell out in fairly clear terms, how it acquired those properties and became the true owner.

56.Thereafter the State Government issued the second show cause notice dated 20.05.1993 to the Mission to show cause as to why the lands leased out to them should not be resumed from its control for violation of the lease conditions. The notice was served on the Farm Manager, CSI Farm Mahimaipuram, Jayankondam on 14.07.1993. The Farm Manager sent a detailed reply and thereafter, the State Government vide letter dated 15.03.1994 asked for a report from the District Collector, Tiruchirappalli

District through the Special Commissioner and Commissioner of Land Administration, Chennai.

Accordingly, the Tahsildar, Jayankondam was requested to send a report.

57.The Tahsildar, Jayankondam, sent his reply dated 22.11.1994. Based on his report, a detailed report was sent to the Special Commissioner and Commissioner of Land Administration, Chennai, by the then Additional Collector of Tiruchirappalli vide letter dated 03.12.1994, contending that there is violation of condition of indenture on the part of the Mission. The then Additional Collector of Tiruchirappalli thus recommended for resumption of land leased out to the Mission.

58.Thereafter, the District Revenue Officer of the then Ariyalur District inspected the lands on 22.09.2001 and found that only 65.80 Acres of lands were under the control of the Panchamars. Accordingly, a detailed report was sent by the Collector of the then Ariyalur District vide letter dated 18.03.2001 addressed to the Special Commissioner and Commissioner of Land Administration, Chennai, recommending resumption of the lands. Thereafter, the Additional Commissioner (Cinema & Irrigation) vide letter dated 13.09.2001, addressed to the then District Revenue Officer, Ariyalur District called for extent wise details of the lands, on the lines prescribed by the Government to re-examine the issue.

59.In compliance of the above said letter, the then District Collector, Ariyalur District, vide letter dated 25.09.2001 furnished the details to the Additional Commissioner (Cinema & Irrigation), Chennai. Thereafter, the impugned Government Order in G.O.(Ms) No.414 dated 07.09.2004 ordering resumption of 226.34 Acres of lands from the Mission for violation of the lease conditions was issued.

60.On a perusal of all the above details, clearly reveal that the petitioner was given fair opportunity before passing of the impugned order. Hence, this Court do not find any violation of principles of natural justice.

61.Further, in the present case, the State granted lease in favour of the Propagation Society to divide the said piece or parcel of land into small plots of five acres each and allow such plots to be occupied by a Panchama family and will assist the Panchamas and other depressed classes who may be in occupation of such plots, in building houses for them and their respective families on the plots occupied by them respectively and in providing them with cattle for ploughing such plots respectively and with implements of husbandary. But the

petitioner, contrary to the lease condition, built School etc., and the details also were not provided for the State.

62. Further, the indenture reveals that the lessor and his Officers, agents and servants to enter all reasonable times to view the state and condition of the said premises and will not use or suffer the said premises or any part thereof to be used for any purpose other than the purposes aforesaid or otherwise than for the benefit of the Panchamas and their respective families without the previous licence in writing of the Collector and will not without the like license assign whether by way of gift, sale, mortgage or otherwise under led or part with the possession of save to Panchamas, the said premises or any part thereof and will at the expiration or sooner determination of the demise, deliver upto the Collector for and on behalf of the lessor his successors or assigns the said premises and all fixtures and additions thereto in such state and condition as shall be consistent with due performance of the several covenants.

63. The indenture makes it clear that if there is any violation in the lease deed, the State Authority has the right to take action against the lessee. In the present case, the petitioner admitted that only 65.80 Acres of land were alienated in favour of the alleged Panchamas and nearly 18 Acres were used by the petitioner for the purpose of construction of Schools etc., and the remaining portion of the lands were not utilized by the petitioner.

64. Similar issue has also been dealt with by the Hon'ble Apex Court in the following decisions:

(i) Decision reported in (1973) 2 SCC 547 (State of U.P. Vs. Zahoor Ahmad and another), the relevant portion of which reads as follows:

"16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

(ii) Decision reported in (1984) 3 SCC 301 (Manchegowda Vs. State of Karnataka), the relevant portion of which reads as follows:

"11. Legislature in its wisdom and in pursuance of its declared policy of safeguarding, protecting and improving the conditions of these weaker sections of the community, thought it fit to bring about this change in the legal position by providing that any such transfer except in terms of the provisions of the Act will be null and void and not merely voidable. The Legislature no doubt is perfectly competent in pursuance of the aforesaid policy to provide that such transactions will be null and void and not merely voidable. Even under the Contract Act, any contract which is opposed to public policy is rendered void. The State, consistently with the directive principles of the Constitution, has made it a policy and very rightly, to preserve, protect and promote the interests of the Scheduled Castes and Scheduled Tribes which by and large form the weaker and poorer sections of the people in our country. This may be said to be the declared policy of the State and the provisions seeking to nullify such transfers is quite in keeping with the policy of the State which may properly be regarded as public policy for rendering social and economic justice to these weaker sections of the society.

12. In pursuance of this policy, the Legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interests of the Scheduled Castes and Scheduled Tribes for whose benefit only these lands had been granted. Even in the absence of any such statutory provisions, the transfer of granted lands in contravention of the terms of the grant or in breach of any law, rule or regulation covering such grant will clearly be voidable and the resumption of such granted lands after avoiding the voidable transfers in accordance with law will be permitted.

Avoidance of such voidable transfers and resumption of the granted lands through process of law is bound to take time. Any negligence and delay on the part of the authorities entitled to take action to avoid such transfers through appropriate legal process for resumption of such grant may be further impediments in the matter of avoiding such transfers and resumption of possession of the granted lands. Prolonged legal proceedings will undoubtedly be prejudicial to the interests of the members of the Scheduled Castes and Scheduled Tribes for whose benefit the granted lands are intended to be resumed. As transfers of granted lands in contravention of the terms of the grant or any law, regulation or rule governing such grants can be legally avoided and possession of such lands can be recovered through process of law, it must be held that the Legislature for the purpose of avoiding delay and harassment of protracted litigation and in furthering its object of speedy restoration of these granted lands to the members of the weaker communities is perfectly competent to make suitable provision for resumption of such granted lands by stipulating in the enactment that transfers of such lands in contravention of the terms of the grant or any regulation, rule or law regulating such grant will be void and providing a suitable procedure consistent with the principles of natural justice for achieving this purpose without recourse to prolonged litigation in court in the larger interests of benefiting the members of the Scheduled Castes and Scheduled Tribes.

17. The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1)(f) of the Constitution. It was a case of a grant by the owner of the land to the grantee for the possession and enjoyment of the granted lands by the grantees and the prohibition on transfer of such granted lands for the specified period was an essential term or condition on the basis of which the

grant was made. It has to be pointed out that the prohibition on transfer was not for an indefinite period or perpetual. It was only for a particular period, the object being that the grantees should enjoy the granted lands themselves at least for the period during which the prohibition was to remain operative. Experience had shown that persons belonging to the Scheduled Castes and Scheduled Tribes to whom the lands were granted were, because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these poor persons for depriving them of their lands. The imposition of the condition of prohibition on transfer for a particular period could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition on prohibition in the very nature of the grant was perfectly valid and legal.

18. The transferees of the granted lands from the original grantees, acquired the lands improperly and illegally in contravention of the condition imposed on such transfers. Such transferees must have been aware and must in any event be deemed to have been aware of the condition regarding the prohibition on transfer and they cannot be considered to be bona fide transferees for value. Such persons acquired in the granted lands only a voidable title which was liable to be defeated and possession of such lands could be resumed from such transferees. Such a person who only acquires a defeasible legal right cannot make a grievance of any violation of Article 19(1)(f) of the Constitution, when the defeasible legal right is, in fact, defeated by appropriate legal action or by any suitable provision enacted in an Act passed by the competent Legislature. It may further be noted that in most cases such transferees have after the transfer, which is liable to be avoided in accordance with law, enjoyed for a sufficiently long period the benefits of lands transferred to them before the lands

could be recovered from them. Article 19(1) (f), therefore, did not invalidate Section 4 of the Act."

65. In view of the above, this Court has no hesitation to arrive at a conclusion that the petitioner has not complied with the conditions imposed in the lease and since the petitioner has not complied with the conditions, the State has the power to resume the lands on the ground of violation.

66. The learned Senior Counsel appearing for the petitioner, on instructions, would now submit that the petitioner is ready to disburse the land to the Panchama families as per the condition mentioned in the lease deed with the help of the State Government.

67. The lease deed was executed in the year 1903. Admittedly, the petitioner has not utilized the lands fully till today and the State has ordered for resumption of Acres 226.34 Cents of lands from the Mission for violation of the lease conditions. Hence, this Court, after a lapse of more than 100 years is not inclined to depute the petitioner to distribute the land and this Court is of the opinion that the State Government has the absolute power for distribution of lands for the Panchamas. It is for the State to decide the distribution of lands to the Panchamas or for any other purpose and this Court is not inclined to interfere with the functioning of the State.

68. In view of all the above, I am not inclined to interfere with the impugned Government Order passed by the first respondent. Accordingly, the writ petition is dismissed. However, considering the fact that the writ petition is pending from the year 2004 onwards and the fact that the lease which was granted in favour of the Propagation Society was subsequently transferred in favour of petitioner Mission and considering the peculiar situation that the entire leased out land was not used by the petitioner, I am inclined to issue the following directions:

(i) Respondents are directed to resume the land to the extent of Acres 226.34 Cents, within a period of twelve weeks from the date of receipt of a copy of this order.

(ii) Respondents are further directed to fix the land rent to the remaining portion of the land, which was occupied by the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

69.With the above directions, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Revenue Department
Fort St.George, Chennai - 1.
2. The Special Commissioner cum Commissioner for
Land Administration, Chennai - 5.
3. The District Collector,
Perambalur District,
Perambalur.

+1cc to M/s.R.Suresh Kumar, Advocate, S.R.No.69594

+1cc to the Government Pleader, S.R.No.70245

W.P.No.30229 of 2004

PVS (CO)
CS/17/09/2019

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