

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.07.2018

PRONOUNCED ON:03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**C.R.P.(PD).No.4109 of 2011,  
C.R.P.(NPD) Nos.919 and 721 of 2012 &  
M.P.Nos.1,1 of 2012 and  
WP.No.13232 of 2012 &  
WMP.No.31585 of 2017**

K. Lakshmi

..Appellant in C.R.P.(PD).  
No.4109 of 2011, CRP.(PD)  
No.721 of 2012  
CRP.NPD.No.919 of 2012

-VS-

M. Palanisamy

.. Respondent in  
C.R.P.(PD).No.4109 of 2011  
CRP.(PD) No.721 of 2012,  
6<sup>th</sup> respondent in CRP.NPD.  
No.919 of 2012

1. Arukkani
2. Kannal
3. Rangaswamy
4. Ganeshan
5. Malliga

.. Respondents 1 to 5 in  
CRP.NPD.No.919 of 2012

**W.P.No.13232 of 2012**

Tamilnadu Dalit Peoples Association,  
represented by its Secretary S.Selvakumar  
(Reg.No.338/2010),  
No.27, First Street,

WEB COPY

Kumaran Colony,  
Saidapet, Chennai 600 015.

.. Petitioner

Vs

1. The State of Tamil Nadu,  
represented by its Special Commissioner  
and Secretary to Government,  
Revenue Department,  
Fort St. George, Chennai-9.
2. The Commissioner for Land Administration,  
Ezhilagam, Chepauk, Chennai.
3. The District Collector,  
Coimbatore.
4. M. Palanisamy
5. Tmt.Kanniyammal
6. Thiru K.Ganesan
7. Thiru Rangasamy
8. Tmt.Lakshmi  
(Respondents 5 to 8 legal heirs of  
Karuppasamy)
9. M/s.Euro India Exports (P) Limited,  
represented by its Executive/Director,  
having office at No.36,  
KPN Colony 4<sup>th</sup> Street,  
Tiruppur Town, Tiruppur.

.. Respondents

**Prayer in CRP.(NPD) No.4109 of 2011:** Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 20.07.2011 made in IA.No.597 of 2010 in O.S.No.756 of 2006 on the file of Principal Sub Court, Coimbatore.

**Prayer in CRP.(NPD) No.919 of 2012:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 22.12.2011 passed in E.A.No.970 of 2007 in E.P.No.115 of 1999

in O.S.No.615 of 1998 by the learned II Additional Subordinate Judge, Coimbatore.

**Prayer in CRP.(NPD) No.721 of 2012:** Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 22.12.2011 in E.A.No.276 of 2007 in E.P.No.115 of 1999 passed by the learned II Additional Subordinate Judge, Coimbatore.

**Prayer in WP.No.13232 of 2012:** Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents 1 to 3 from resuming the land of 6.14 acres in Survey Nos.709/2, and 709/3 of Kallapatty Village, Ramasamy Goundenpudur, Coimbatore, allotted to the scheduled caste community and hand over the same and not allot the above land to any other persons other than scheduled caste community.

For petitioner in CRP.(NPD)  
No.721 of 2012 : Mr.B. Ravi Raja

For Respondent in CRP.(NPD) : Mr.N.A.Nissar Ahmed  
No.721 of 2012

For petitioner in CRP.(NPD)  
No.919 of 2012 : Mr.B.Raviraja and  
G.Vikraman

For respondent in CRP.(NPD) : Mr.N.A.Nissar Ahmed for R6  
No.919 of 2012 Mr.S.Sridhar for R4

For petitioner in CRP.(NPD) : Mr.B.Raviraja  
No.4109 of 2011

For Respondent in CRP.(NPD)  
No.4109 of 2011 : Mr.N.A.Nissar Ahmed

For petitioner in WP.No.13232  
of 2012

: Mr.N.R.Chandran,Senior  
Advocate for Mr. R.Kannan

For Respondent in WP.No.13232 : M/s.R.Janaki,  
of 2012 Additional Govt. Pleader R1-  
R3

### **COMMON JUDGMENT**

#### **CRP.(NPD) No.721 of 2012**

This Civil Revision Petition is directed against the order passed by the Execution Court in E.A.No.276 of 2007 in E.P.No.115 of 1999 refusing to declare the decree passed by the trial Court as nullity and unenforceable against the petitioner.

2. The petitioner filed an application in EA.No.276 of 2007 in E.P.No.115 of 1999 before the Execution Court under Section 47 of CPC to declare the decree the decree passed in O.S.No.615 of 1998 as nullity.

3. According to the petitioner, the property which is sought to be executed and taken possession is a land specifically allotted to Depressed Class. The Decree Holder/respondent being a caste Hindu

is not entitled to claim title over the same as it violates the conditions of assignment. As per the conditions of assignment, the lands specifically reserved for scheduled caste cannot be alienated to other community people and the Decree Holder, by fraud and misrepresentation, obtained a decree for specific performance suppressing the statutory conditions attached to the assignment and hence unenforceable.

4. It is also her further contention that her father was kidnapped by her own brother and the appeal filed by him before the High Court was withdrawn fraudulently without his consent and knowledge during the period of his medical treatment as an inpatient. Therefore the decree is not executable as it is tainted with fraud. When there is a statutory restraint, any decree passed without consideration of the same is without jurisdiction and therefore the decree passed is not binding on her as the same is nullity.

5. Controverting the statements, the learned counsel for the respondent has contended that the property originally assigned to one Kittan Madhari and Chinnasamy Madhari. Thereafter the legal heirs of

the above assignees sold the same to one M.Karuppaswamy who is the father of the Revision Petitioner on 19.6.1967 by virtue of a registered sale deed. Thereafter, in order to do away the Depressed Clause conditions, the said Karuppaswamy applied to District Collector for granting Ayan patta. The Ayan patta was granted in his favour on 24.10.1978. After a period of 12 years from the date of grant of Ayan patta, the said Karuppasamy sold 1.10 acres to caste Hindus and entered into an agreement with the respondent for sale of the remaining extent of land. Since the said Karuppasamy failed to execute the sale deed, the respondent herein filed a suit for specific performance in O.S.No.615 of 1998 before the file of II Additional Sub Court, Coimbatore and the same was defended by the petitioner's father by raising the very same point of assignment conditions along with fraudulent representation.

6. The trial Court, after considering all the objections and the legal issues, decreed the suit on 15.2.1998, against which, the said Karuppusamy filed an appeal in A.S.No.155 of 2000 before this Court and the same was dismissed as withdrawn on 25.11.2004. In the meantime, the respondent Palansiamy filed an execution petition in

EP.No.115 of 1999 against the Judgment Debtor herein to execute and register the sale deed in terms of the agreement of sale dated 19.6.1987 failing which, to execute and register the sale deed through Court on behalf of the respondent. In the meanwhile, Government passed orders resuming the land. Against the said order, the first respondent Palanisamy filed a Writ Petition in W.P.No.32273 of 2004 before the High Court seeking to call for the records of the Special Commissioner to Government in G.O.Ms.No.281/Revenue Ni.Mu.1(2) Department date 10.6.2004 and the consequential order of the District Collector, Coimbatore in R.C.Va.Pa.8A/93(A1) dated 29.9.2004 and quash the same and direct the respondents to forthwith grant patta to the petitioner. In the said Writ Petition, this Court, by its order dated 22.4.2010 held that the proceedings of resuming the subject land by the Government was bad, when the Ayan patta issued in the name of Karuppasamy was not cancelled. Liberty was granted to the Government to pass appropriate orders after giving sufficient opportunity to Karuppasamy, Palanisamy and the villagers of Athikuttai and after due enquiry. Further a direction was given to the respondent herein to apply for issuance of patta in his name after execution of the sale deed either by the Court concerned or by the

vendor Karuppasamy. After the death of Karuppasamy, the petitioner and other legal heirs were impleaded in the Execution petition. Then the petitioner and other legal heirs were impleaded in the Execution petition. Then, the petitioner came out with an application in Execution Petition under section 47 CPC in E.A.No.276 of 2007 to declare the decree passed in O.S.No.615 of 1998 as nullity.

7. He would further contend that since the issue was already been raised and decided by the Court, the execution court cannot go beyond the decree and can only decide the disputes regarding the execution of discharge and satisfaction of decree and nothing more than that. Therefore the order passed by the execution court is very much legal and need not be interfered with and thus prayed for dismissal of the above Civil Revision Petition.

8. Heard the rival submissions made on both sides and perused the materials available on record.

9. From the materials available on record, it is seen that one Kitta Madari and one Chinnasamy Madari got assignment of land from

the Government of Tamilnadu measuring 6.14 acres out of 7.42 acres in S.Nos.709/2 and 709/3 by Kallapatti Village, Coimbatore. They sold their respective shares in favour of one Rengan by Registered Sale Deeds and the said Rengan sold the entire extent of 6.14 acres in favour of Karuppasamy, the father of the revision petitioner under a registered sale deed dated 19.7.1967. Thereafter on his application, the Additional Collector vide proceedings in N.Ka.No.188160/78-B2 dated 25.9.1978 directed the Tahsildar, Coimbatore to issue Ayan patta in favour of the said Karuppasamy. Accordingly, the Tahsildar, Coimbatore issued Ayan patta to Karuppasamy vide his proceedings in Na.Ka.No.33201/78/A1 dated 24.10.1978. While granting Ayan patta, no condition was imposed. The said Ayan patta remains valid till date. Thereafter with the strength of Ayan patta granted, the said Karuppasamy sold 1.10 acres out of 6.14 acres to three persons viz., Kumarasamy Gounder, Chandrammal and the joint purchasers of Pappannan, Chinnappan and Selvaraj. In respect of the remaining extent of 5.04 acres, he entered into a sale agreement with the respondent herein.

WEB COPY

10. It is pertinent to note that the said Ayan patta was cancelled by the Government in G.O.Ms.(3D) No.31, Revenue, dated 25.11.1991. The same was challenged by the said Karuppasamy in W.P.No.2813 of 1992, which was dismissed by the learned Single Judge on 15.8.1997. Against the order of dismissal, he preferred Writ Appeal in W.A.No.1214 of 1997, wherein, the Division Bench of this Court, vide its order dated 2.12.1997 set aside the cancellation order giving liberty to the Government authorities to pass appropriate orders after granting an opportunity to hear the parties concerned in accordance with law.

11. Again the said order was further clarified to include to re-enter the name of the petitioner in all revenue records by an order dated 18.12.1997. Thereafter, the Government did not take any action in respect of cancellation of Ayan patta granted in favour of Karuppasamy and as stated supra, the Ayan patta issued in favour of Karuppasamy remains valid without any condition as to restriction of alienation.

12. While the matter stood thus, the District Collector of

Coimbatore, all of a sudden, communicated a non speaking order passed by the Special Commissioner and Secretary to Government, Revenue Department rejecting the representation of the respondent/Palanisamy dated 17.12.1999 and directed the District Collector to resume the property and to take action to grant assignment to encroachers, if they were found to be eligible persons. The said order was challenged by the respondent herein in W.P.No.32273 of 2004 against the State of Tamilnadu, Revenue Department and others seeking to call for the records of the first respondent in G.O.Ms.No.281/Revenue Ni.Mu.1(2) Department dated 10.6.2004 and the order of the 3<sup>rd</sup> respondent /District Collector, Coimbatore in R.C.Va.Pa.8A/93(A1) dated 29.9.2004 and quash the same and direct the respondents to forthwith grant patta to the petitioner. Simultaneously the trespassers also have filed another Writ Petition in W.P.No.9139 of 2003 for a direction directing the official respondents to conduct enquiry pertaining to the Ayan patta issued in favour of Karuppasamy. Both the WP.No.32273 of 2004 and W.P. 9139 of 2003 were disposed of by a common order dated 22.4.2010, wherein, it has been categorically observed as follows;

*' 12. It is the admitted case that the  
Additional Collector vide proceedings*

No.188160/78-B2 dated 25.9.1978 directed the Tahsildar, Coimbatore to issue ayan patta in favour of Karuppasamy. Accordingly, the Tahsildar, Coimbatore issued ayan patta to Karuppasamy vide his proceedings in Na.Ka.No.33201/78/A1 dated 24.10.1978. While granting ayan patta by the Tahsildar Coimbatore pursuant to the orders passed by the Additional Collector, Coimbatore, no condition was imposed in the ayan patta granted to Karuppasamy.'

.....  
'16. The properties were originally poramboke lands belonging to the Government. Out of the reservation of poramboke land, the Government assigned the subject lands to Kitta Madari and Chinnasami Madari. The Collector is empowered to transfer poramboke land to ayan to an extent of 2.2.5 hectares in each case without the special sanction of the Commissioner of Land Administration. The Additional Collector also exercises the powers of the Collector. Therefore, it is too far etched to argue that the Additional Collector has no authority to transfer the subject land to ayan.'

.....

.....

27. The Special Commissioner and

Secretary to Government, Revenue Department was pleased to pass the impugned order in G.O.Ms.No.281/Revenue (Ni.Mu.1(2)) Department dated 10.6.2004 directing the Collector to resume the subject lands when the ayan patta issued in the name of Karuppasamy was not cancelled after due enquiry giving opportunities to the parties concerned as directed by this Court in W.A.No.1214 of 1997 dated 2.12.1997. As no enquiry was held and even patta issued in the name of Karuppasamy was not cancelled so far, the Special Commissioner and Secretary to Government, Revenue Department has no authority to pass the aforesaid impugned order.

28. In view of the above, the impugned order passed by the Special Commissioner and Secretary to Government, Revenue Department in G.O.Ms.No.281/Revenue (Ni.Mu.1(2)) Department dated 10.06.2004 is quashed. The District Collector, Coimbatore is given liberty to pass appropriate orders as to the cancellation or otherwise of the ayan patta already granted to Karuppasamy after giving sufficient opportunity to Karuppasamy, M. Palanisamy and the villagers of Athikuttai, Annanagar, Coimbatore.

29. The petitioner M. Palanisamy is entitled to apply for issuance of Patta in his name after he

*becomes the absolute owner of the property on execution of the sale deed either by the court concerned or by the vendor Karuppasamy. But, it is made clear that he cannot pray for grant of patta as on date as he has not yet become the absolute owner of the subject property inasmuch as he is yet to purchase the property. In terms of the above, both the writ petitions are ordered accordingly. There is no order as to costs. '*

13. At these circumstances, the Revision Petitioner filed a petition under section 47 CPC in E.A.No.276 of 2007 in E.P.No.115 of 1999 to declare the decree passed in O.S.No.615 of 1998 dated 15.2.1998 as nullity and does not bind the petitioner and unenforceable as against the petitioner and for dismissal of the execution petition.

14. The execution court elaborately gone through the entire facts and decided the issues as to whether the decree has to be declared as nullity and should be enforceable and as to whether it is not binding on the party and enforceable against the petitioner and ultimately came to a conclusion that the decree is enforceable and dismissed the petition filed by the petitioner, against which, the

petitioner filed the above Civil Revision Petition.

15. The learned counsel for petitioner would rely on the judgment of High Court of Punjab and Haryana in Civil Writ Petition No.2318 of 2002, dated 8.11.2018. The relevant portion is extracted as under;

*'It would also be necessary to refer to a judgment of the Hon'ble Supreme Court in Sushil Kumar Mehta v. Gobind Ram Bohra, 1990(1) Supreme Court Cases, 193. The question before the Hon'ble Supreme Court was whether a decree passed by a*  
*Kumar Naresh N 2014.02.06 14:46 I attest to the accuracy and integrity of this document High Court Chandigarh Court, which was jurisdictionally incompetent to pass such a decree is a nullity and whether the plea can be raised in execution and whether the decree operates as resjudicata. A relevant extract from the judgment reads as follows:-*

*12. This Court has held that it is a well established principle that a decree passed by a court without jurisdiction is a nullity and the plea can be set up whenever and wherever the decree is sought to be enforced or relied upon, and even at the stage of execution or in collateral proceedings.*

16. He would further rely on the judgment of the Supreme Court

reported in **2001(6) SC 534 (Dhurandhar Prasad Singh Vs. Jai Prakash University and others)** , wherein, it is held as follows;

*'4. The executing court allowed the objection and thereafter when the matter was taken to the High Court in revision, the case was remanded to the executing Court to dispose of the objection afresh after giving opportunity of adducing evidence to the parties. After remand the parties adduced evidence in support of their respective cases and the executing Court by its order dated 22<sup>nd</sup> September, 1997 rejected objection under Section 47 of the Code, against which order when a revision was preferred before the High Court, the same was allowed, order passed by the executing Court was set aside and objection under Section 47 of the Code was allowed. Hence, this appeal by Special Leave. '*

*.....*

*'10. In the case of Kiran Singh and others v. Chaman Paswan and others AIR 1954 S.C.340, question was raised, when decree passed by a Court is nullity and whether execution of such a decree can be resisted at the execution stage which would obviously mean by taking an objection under Section 47 of the Code. Venkatarama Ayyar, J. speaking for himself and on behalf of B.K.Mukherjea, Vivian Bose, Ghulam Hasan, JJ., observed at page 352 thus: It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution*

and even in collateral proceedings.

.....

'12. Again, in the case of *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others* AIR 1970

S.C.1475, the Court was considering scope of objection under Section 47 of the Code in relation to the executability of a decree and it was laid down that only such a decree can be subject matter of objection which is nullity and not a decree which is erroneous either in law or on facts. J.C.Shah, J.speaking for himself and on behalf of K.S.Hegde and A.N.Grover, JJ., laid down the law at pages 1476-77 which runs thus:- A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the

*objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. '*

13.....

14. In the case of *Haji Sk.Subhan v. Madhorao*, AIR 1962 S.C.1230, the question which fell for consideration of this Court was as to whether an executing Court can refuse to execute a decree on the ground that the same has become inexecutable on account of the change in law in Madhya Pradesh by promulgation of M.P.Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 and a decree was passed in ignorance of the same. While answering the question in the affirmative, the Court observed at page 1287 thus:-

*The contention that the Executing Court cannot question the decree and has to execute it as it stands, is correct, but this principle has no operation in the facts of the present case. The objection of the appellant is not with respect to the invalidity of the decree or with respect to the decree being wrong. His objection is based on the effect of the provisions of the Act which has deprived the respondent of his proprietary rights, including the right to recover possession over the land in suit and under whose provisions the respondent has obtained the right to remain in possession of*

*it. In these circumstances, we are of opinion that the executing Court can refuse to execute the decree holding that it has become inexecutable on account of the change in law and its effect.*

.....

.....

22. Thus the expressions void and voidable have been subject matter of consideration on innumerable occasions by courts. The expression void has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, *ab initio* void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a

*transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.*

23.....

*24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing. In the case on hand, the decree was passed against the governing body of the College which was defendant without seeking leave of the Court to continue the suit against the University upon whom the interest of the original defendant devolved and impleading it. Such an omission would not make the decree void ab initio so as to invoke application of Section 47 of the Code and entail dismissal of execution. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under*

*law on the ground that original defendant absented himself from the proceeding of the suit after appearance as it had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.'*

The principle relied on by the petitioner would apply when a decision is taken by a Court which has no jurisdiction to try the issue. But in the instant case, the power of the Revenue Department was tested and decided to be valid. Even in the suit for specific performance, relevant issues were raised and decided by the competent court. In the latter portion of the judgment of High Court of Punjab and Haryana **(Prakash Singh and others Vs. Joint Development Commissioner)**, cited supra, it is held as follows;

*'26. Thus it is settled law that normally a decree passed by a Court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned.'*

The above judgment will squarely apply to the facts of the present case.

16. As discussed above, the transaction between the petitioner's father namely Karuppasamy and the respondents were held to be valid by this court by its order dated 22.4.2010 passed in W.P.Nos. WP.No.32273 of 2004 and W.P. 9139 of 2003. When this Court has given a categorical finding that as long as Ayan patta stands in favour of Karuppaswamy and the same was not cancelled after due enquiry giving opportunity to the parties, the Government Authorities have no power to resume the subject lands by passing the order passed by this Court under Article 226 of Constitution of India. The respondents therein have not preferred any appeal and the order has become final. While the legal position is so, the execution court cannot declare the decree as nullity. This Court, had further declared that the respondent is entitled to transfer of patta after the sale deed is executed by the Court or by the said Karuppasamy. In that event, the statement that the decree is nullity is not sustainable, particularly when this Court has dealt with the relevant provisions with regard to the power of District Collector in granting Ayan patta in favour of the respondent's vendor.

In Revenue Standing Orders-15, sub clause (2) of Rule 41 reads

as follows;

*'(41) Reservation of land for assignment to Scheduled Castes –*

*(1) Powers of Revenue Divisional Officers to set apart land:-*

*.....*

*(2) The needs of schedule castes to be considered when lands are transferred to assessed waste:- In the case of transfer of considerable areas of poramboke or unassessed land to assessed, as for example, when reserved forests are disforested, or grazing poramboke are transferred to ayan, particular care should be taken that the present and prospected needs of the scheduled castes are considered."*

In paragraph 16 of the order dated 22.4.2010, it is categorically held as follows;

*'16. The properties were originally poramboke lands belonging to the Government. Out of the reservation of poramboke land, the Government assigned the subject lands to Kitta Madari and Chinnasami Madari. The Collector is empowered to transfer poramboke land to ayan to an extent of 2.2.5 hectares in each case without the special sanction of the Commissioner of Land Administration. The Additional Collector also exercises the powers of the Collector. Therefore, it*

*is too far etched to argue that the Additional Collector has no authority to transfer the subject land to ayan.'*

17. When such a declaration is given and the very same issue has already been considered and decided by the trial Court, the decree cannot be held a nullity. Further it is pertinent to note that the appeal filed against the decree and judgment of the trial Court was also dismissed by a Division Bench of the Court. The Honourable Division Bench, after considering the objection of the petitioner, directed the Sub Court, Coimbatore, to record the submission of the appellant Karuppasamy in person and the power of Attorney executed by him in favour of his son Ganesan to withdraw the appeal. The same being complied with and after the said Karuppasamy affirmed his intention to withdraw the appeal only, it was dismissed as withdrawn. The Execution court has elaborately discussed that the misrepresentation, in fact, is on the part of the revision petitioner and dismissed her petition.

18. In such circumstances, this Court is of the considered view that the execution court, had rightly observed that it cannot go

WEB COPY

beyond the decree and can decide only if the dispute regarding the execution proceedings be discharged and satisfaction of the decree and nothing more than that.

19. Further, it is rightly observed that when a question was raised before the trial Court at the stage of trial and decided by the trial Court, it is not open to the parties to raise it again at the stage of execution. From the perusal of the entire order, it can be seen that the petitioner is not only indulged in making misleading statement, but also introduced a witness to give false statement before the Court.

20. A person who come before the Court with unclean hands is not entitled to any equitable relief. In such circumstances, this Court is of the considered opinion that the finding of the execution Court in the impugned proceedings before this Court is very much correct, legal and based on sound reasons. Such findings need not be interfered with. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

**CRP.(NPD) No.919 of 2012:**

21. The above Civil Revision Petition is filed against the order dated 22.12.2011 passed in E.A.No.970 of 2007 in E.P.No.115 of 1999 in O.S.No.615 of 1998 by the learned II Additional Subordinate Judge, Coimbatore.

22. During the pendency of the Execution Petition, the other legal heirs of the said Karuppasamy filed a petition in E.A.No.970 of 2007 seeking permission to withdraw their respective shares in the balance sale consideration lying in the court deposit after the sale deed is executed in favour of the decree holder.

23. The revision petitioner has contested the same on the very same ground of restriction on alienation on the basis of conditions of depressed class patta. Further, the issue of fraud and misrepresentation has also been pleaded. The Execution Court, having dismissed the petition under section 47 CPC allowed the request for withdrawal.

24. In view of the discussions made in the Civil Revision Petition No.721 of 2012, the present Civil Revision Petition merits no

consideration and accordingly the same is dismissed. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

**WP.No.13232 of 2012**

25. The above Writ petition is filed for issuance of Writ of Mandamus, forbearing the respondents 1 to 3 from resuming the land of 6.14 acres in Survey Nos.709/2, and 709/3 of Kallapatty Village, Ramasamy Goundenpudur, Coimbatore, allotted to the scheduled caste community and hand over the same and not allot the above land to any other persons other than scheduled caste community.

26. The present writ petition has been filed to forbear the Government from resuming the land from the occupation of trespassers by an Association in which none of the trespassers are members. The OMNI BUS prayer raised is raised. The Writ Petition is more in the nature of Public Interest Litigation. It is well settled that the trespassers themselves cannot have any legal right to maintain the petition, whereas this Association, in which the encroachers are not members has filed the above Writ Petition as if the land continues to be the land earmarked for depressed class. It is pertinent to note

that this court while exercising its constitutional power under Article 226 of the Constitution of India declared that the Ayan patta issued confers absolute title on Karuppasamy, purchaser of the land.

27. As already discussed, the conditions attached to Depressed Class patta has already been done away in the year 1978, while granting Ayan patta to the said Karuppasamy. Further, this court has declared that the 4<sup>th</sup> respondent viz., K.Palanisamy, decree holder in O.S.No.615 of 1998, on the file of II Additional Subordinate Judge, Coimbatore is entitled to transfer of patta in his favour after execution of the sale deed, which means that there cannot be any fetters in transfer of right, title and interest of the property in question as it is an absolute property and the 4<sup>th</sup> respondent has a superior title and it is no more a land classified as belonging to Depressed class. There cannot be any restriction on transfer of the same. The power exercised in accordance with law, which has become final by declaration of Constitutional power, cannot be unsettled at this distance of time.

28. Now that a submission is made that the sale deed was

already executed by the execution Court in favour of the 4<sup>th</sup> respondent M. Palanisamy, in that event, the 4<sup>th</sup> respondent herein is entitled to patta. As such, it is very clear that the trespassers cannot have any right to perpetuate the illegal act committed by them and the petitioner association has no locus standi to maintain the writ petition to perpetuate an illegal cause in public interest.

29. Accordingly, the writ petition merits no consideration and is dismissed. No costs. Consequently, W.M.P.No.31585 of 2017 is closed.

**CRP. PD. No.4109 of 2011:**

29. The above Civil Revision Petition is filed against the order dated 20.07.2011 made in IA.No.597 of 2010 in O.S.No.756 of 2006 on the file of Principal Sub Court, Coimbatore.

30. During the pendency of the Execution Petition, the Revision Petitioner herein filed a suit in O.S.No.756 of 2006 to set aside the decree passed in O.S.No.615 of 1998 dated 15.2.1999. In the said

suit, the respondent was set exparte. He filed a petition to set aside the exparte order passed on 12.4.2007.

31.The respondent would state that even though the Revision Petitioner was contesting the execution petition filed by the respondent, she had sent the summons in respect of the suit proceedings to the old address of the respondent. The affidavit filed before the Execution Court reveals the present address of the respondent. Despite knowing well the correct address, the summons and private notice with regard to O.S.No.756 of 2006 were sent to previous address by the petitioner with an ulterior motive to defeat the ends of justice. Further, after return of the cover containing summons, with an endorsement unserved, private notice was taken to the present address of the respondent without mentioning the door number or street number. It was returned as 'unclaimed' with an endorsement 'door number and street number is required' . Based on the endorsements made in the postal cover 'as unclaimed', the respondent was set exparte without effecting service through substituted service.

32. Since the respondent was contesting the case before the

Execution Court, obviously there is no reason for him to evade summons. Setting out all the above reasons, he filed a petition to set aside the exparte decree passed against him. The trial Court finding that the summons were not duly served and the service of summons were not properly proved by examining witnesses, with an intention to give an opportunity to the respondent to put forth his defence, set aside the exparte decree.

33. In the judgment of the Honourable Supreme Court made in Civil Appeal Nos.8183 and 8184 of 2013 (***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others***) reported in **(2013) 12 SCC 649**, it is held as follows;

*14. In B. Madhuri Goud v. B. Damodar Reddy[21], the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.*

*15. From the aforesaid authorities the principles*

*that can broadly be culled out are:*

*i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

*ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*

*iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

*iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

*v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

*vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

*vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot*

*be allowed a totally unfettered free play.*

*viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

*ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

*x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

*xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

*xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

*xiii) The State or a public body or an entity representing a collective cause should be given some*

*acceptable latitude.*

*16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -*

*a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

*b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

*d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

.....

.....

' The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. We have painfully re-stated the same.

33. When the matter involves very serious issues of title to property, which requires elaborate evidence, the parties cannot be deprived of opportunity on technicalities. It is held by the Honourable Supreme Court and very many High courts that— instead of dismissing the petitions on the grounds of technicalities, it is always better to do substantial justice on merits. The trial Court has rightly allowed the

petition giving an opportunity to the respondent to put forth his defence. I do not find any illegality in the order passed by the trial Court. Therefore, the Civil Revision Petition merits no consideration and accordingly the same is dismissed. No costs.

34. In fine, all the Civil Revision Petitions and W.P.No.13232 of 2012 are dismissed.

03.06.2019

msr

Index: Yes/No

Internet:Yes/No

Speaking order/non speaking order

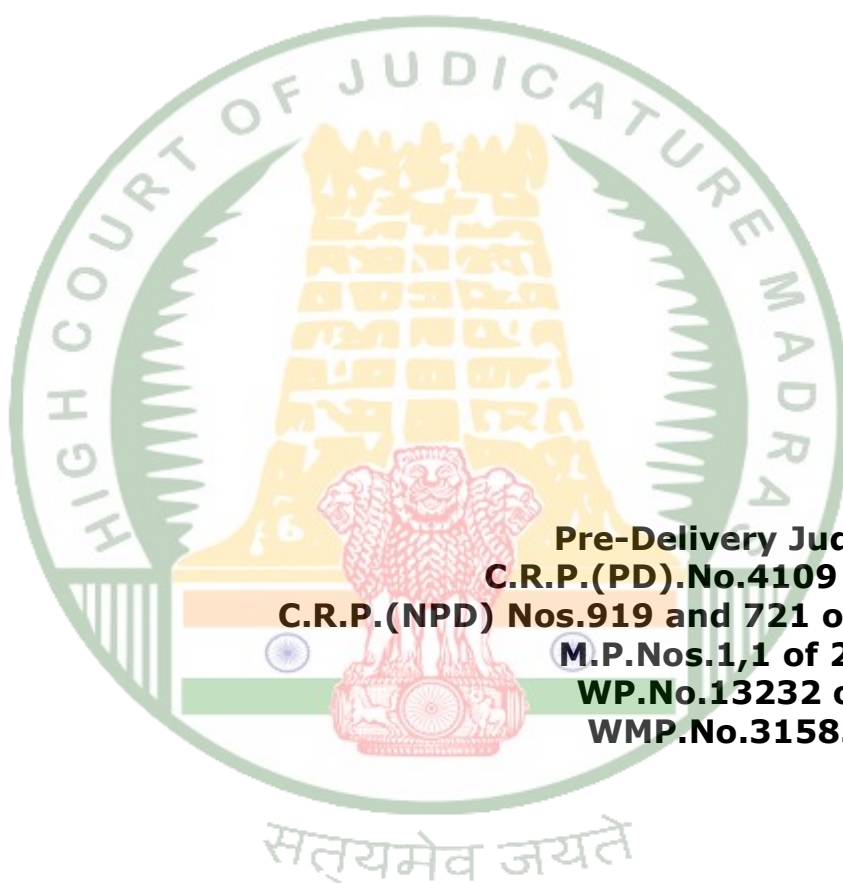
To

1. The Special Commissioner and Secretary to Government, Revenue Department, Fort St. George, Chennai-9.
2. The Commissioner for Land Administration, Ezhilagam, Chempauk, Chennai.
3. The District Collector, Coimbatore.

WEB COPY

**M.GOVINDARAJ, J.**

msr



**Pre-Delivery Judgment in  
C.R.P.(PD).No.4109 of 2011,  
C.R.P.(NPD) Nos.919 and 721 of 2012 &  
M.P.Nos.1,1 of 2012 and  
WP.No.13232 of 2012 &  
WMP.No.31585 of 2017**

WEB COPY

03.06.2019

**PREDELIVERY JUDGMENT IN C.R.P.(PD).No.4109 of 2011,**

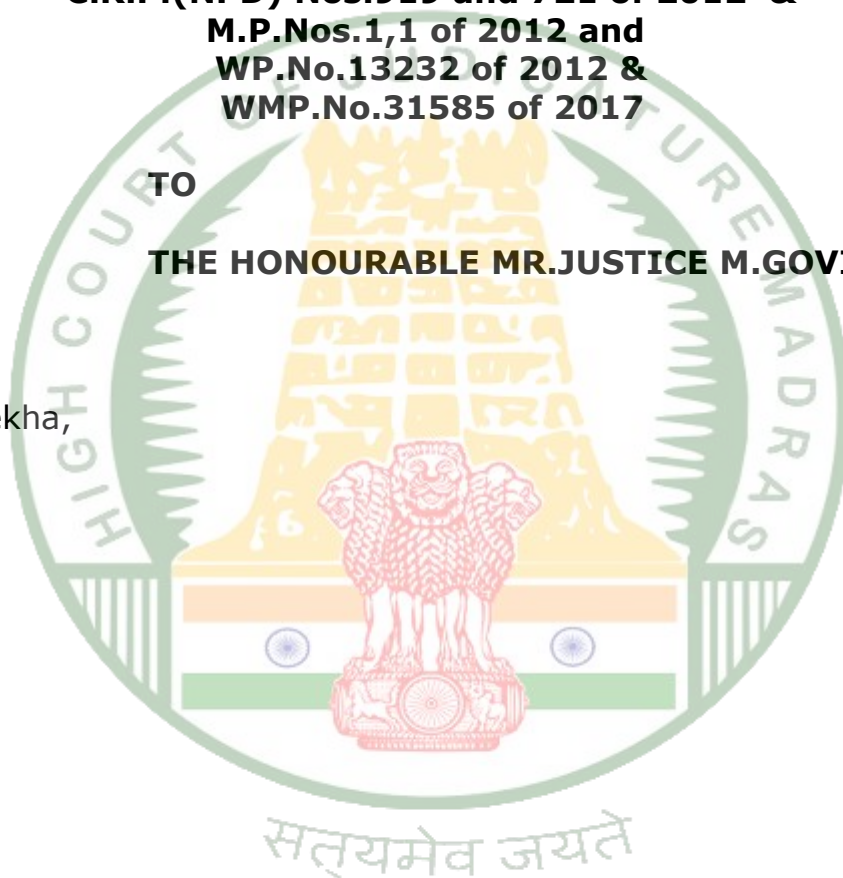
**C.R.P.(NPD) Nos.919 and 721 of 2012 &  
M.P.Nos.1,1 of 2012 and  
WP.No.13232 of 2012 &  
WMP.No.31585 of 2017**

**TO**

**THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**

FROM

M. Sasirekha,  
PA.



**WEB COPY**