

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2019

PRONOUNCED ON : 21.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.2642 of 2012
and M.P.No.1 of 2012

The Authorized Officer,
BGR Power Limited,
No.449, Anna Salai,
Guna Building,
Teynampet,
Chennai - 18.

... Petitioner

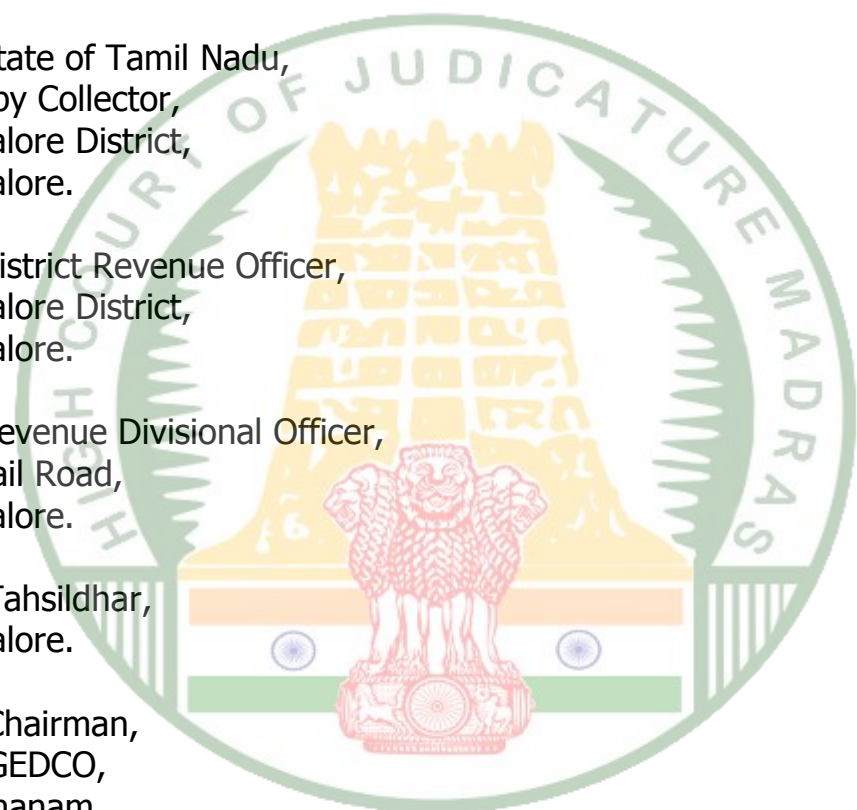
Vs.

1. **Thiyiyagavalli & Kudikadu**
Agriculturists Land Rights
Protection General Welfare
Society (Reg. No.127/2011)
Nochikadu, Thiagavalli,
Cuddalore Taluk,
Rep by its President.

2. The Secretary,
Ministry of Finance,
New Delhi.

3. The Secretary,
Ministry of Industries (Company Affairs)
New Delhi.

4. The Director of Income Tax,
Income Tax Department,
New Delhi.

5. The Director of Central Excise,
New Delhi.
 6. The State of Tamil Nadu
By its Secretary to Government,
Home Department,
Fort St. George,
Chennai.
 7. The State of Tamil Nadu,
Rep. by Collector,
Cuddalore District,
Cuddalore.
 8. The District Revenue Officer,
Cuddalore District,
Cuddalore.
 9. The Revenue Divisional Officer,
Sub-jail Road,
Cuddalore.
 10. The Tahsildhar,
Cuddalore.
 11. The Chairman,
TANGEDCO,
Nandhanam,
Chennai.
- 
- सत्यमेव जयते... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.127 of 2012 on the file of the District Munsif Court, Cuddalore (O.S.No.95 of 2012, Vacation Court) as the same is abuse of Court process.

For Petitioner : Mr.D.Ravichander

For Respondents

For R1, R4 & R5 : No appearance

For R2 & R3 : Mrs.M.P.Jaisha

For R6 to R10 : Mr.S.Jaganathan

Government Advocate (CS)

For R11 : Mr.V.Viswanathan (for TNEB)

ORDER

The petitioner, being the eleventh defendant in O.S.No.127 of 2012 on the file of the District Munsif Court, Cuddalore, filed this Civil Revision Petition with a prayer to strike off the above referred suit.

2. Before the trial Court, the first respondent in this Civil Revision Petition filed a suit in O.S.No.127 of 2012, as against the petitioner and the respondents 2 to 11 for the relief of direction directing the respondents 6 to 11, to effect alteration of revenue records in respect of the suit properties by cancelling the patta transfer effected to the name of the petitioner herein and to restore it to the original names and also to grant permanent injunction by restraining the respondents 6 to 11 and the petitioner in any manner interfering with the first respondent/plaintiff's peaceful possession and enjoyment of the suit property.

3. Now on going through the avernments set out in the plaint, the first respondent/plaintiff has stated as follows :-

3.1. The first respondent/plaintiff is a registered Association meant to protect the interest of agriculturists. The suit properties are the fertile lands situated at Thiagavalli and Kudikadu villages. Since the suit schedule properties being fertile lands, the respondents 2 to 11 ought not to be acquired the said lands for any purpose, more especially for industrial purpose. Though the Acts are themselves loaded heavily against agriculturists, at least the respondents 2 to 11, will ensure the procedure being followed and principles of natural justice being followed. Though the government has passed several order discouraging acquisition, even prohibiting acquisition of wet lands, the same should also apply to dry lands. But number of acquisition proceedings are initiated by the petitioner/11th defendant.

3.2. The petitioner/11th defendant initially known as Cuddalore Power Company Limited and it was floated with the object of generating power. Irrespective of nature of industry, any requirement for the company, should have been fulfilled by resorting to acquisition under the Land Acquisition Act. But the petitioner/11th defendant colluded with politicians and revenue authorities attempted to acquire

the lands. In this regard, the State government passed an government order in G.O.Ms.No.1986 dated 08.08.1986, prohibiting the private sales of property. The villagers did not know the object behind the G.O., and the sale of land was effectively stalled. The government did not acquired any property in Kudikadu, Nochikadu or Thiagavalli villages either for the use by any governmental organization or for any private company, not even for the petitioner/11th defendant.

3.3. However, after several years, the petitioner/11th defendant, a private company, alone was allowed to purchase the properties from the villagers, against the object of the above said G.O. The sale were compelled by threatening that if the properties were not sold to the petitioner, they would be acquired or taken even without paying compensation. Thus the petitioner/11th defendant indulged in land grabbing with the assistance of the respondents 2 to 11. The petitioner/11th defendant is said to be in existence for 20 years but the petitioner/11th defendant did not done any activity. The issue of land grabbing was raised in the Tamil Nadu Assembly and the concerned minister Arcot Veerasamy assured to pay compensation.

3.4. The petitioner/11th defendant has even had the patta transferred to its name, and the respondents 7 to 10 have done it at supersonic speed even without minding to see the truth that the possession has not been taken by the petitioner/11th defendant. Till date the possession continues with the agriculturists. After several years, the agriculturists realised the poisonous nature of the G.O. and thereafter they formed themselves as an Association and challenged the government order in G.O.Ms.No.1986 dated 08.08.1986. They filed a writ petition before this Court in W.P.N.11453 of 2007 seeking to quash the said G.O.

3.5. In the mean time, an extent of 800 hectare out of the total extent of 910.40.5 hectares in Thiagavalli and Kudikadu villages were proposed to be acquired for establishment of a Thermal Power Station by the Tamil Nadu Electricity Board(TNEB). Though a draft scheme is said to have been prepared by the TNEB, it was not pursued. Later after putting, the scheme in cold storage, exploiting the G.O., properties were allowed to be purchased by a bogus company in the form of the petitioner/11th defendant deliberately floated for the purpose and land has been grabbed.

3.6. The said fact came to light only in the year 2007, when the Registration Department refused to register a document presented by one Kennedy and it was advised to register documents only in the name of Cuddalore Power Company Limited i.e., the petitioner herein. The said fact was mentioned before this Court in W.P.No.11453 of 2007 and the First Bench of this Court set aside the proceedings of the government and consequently, all the transactions in favour of the petitioner/11th defendant are also invalidated.

3.7. The first respondent/plaintiff Association gave a complaint dated 13.08.2011 against the petitioner/11th defendant specifically stating the it is suspected to be the benami company of a politician viz., Arcot Veerasamt. The first respondent/plaintiff Association had also filed a writ petition in W.P.No.29368 of 2011 before this Court as against the petitioner and the respondents 2 to 11 for a Writ of Declaration and consequential Mandamus that all the purchases made by the petitioner/11th defendants in Kudikadu, Nochikadu and Thiagavalli villages of cuddalore Taluk are null and void and the said writ petition was withdrawn with liberty to file a civil suit. Though the respondents are not parties to W.P.No.11453 of 2007, the governmental organs were parties and the question involved is the

validity of the action of the government. Further the possession continues with the ryots, and the petitioner/11th defendant is not in possession. All the respondents 2 to 11 are colluded together and they assisted the petitioner/11th defendant to fulfill its object. Hence to set out the plaint is necessary to establish the right of the first respondent/plaintiff.

4. Today when this Civil Revision Petition is taken up for hearing, the learned counsel appearing for the petitioner and the respondents 2, 3 and 6 to 11 are present. In spite of several adjournments, there is no representation on the side of the first respondent.

5. The learned counsel appearing for the petitioner would contend that the owner of the property can file a suit for the relief of permanent injunction. The first respondent/plaintiff Association has no any right over the suit properties and impleading the owners of the suit schedule properties as plaintiffs, is necessary. He further submitted that all the other suits filed by the first respondent association were dismissed and as of now no suit is pending. The other suits filed by the land owners in O.S.Nos.448 of 2008, 174 of 2009, 427 of 2008, 913 of

2011, 914 of 2011, 394 of 2008 and 392 of 2008 were all dismissed by the learned Principal District Munsif, Cuddalore and the learned Additional District Munsif, Cuddalore. Hence the present suit filed before the District Munsif Court, Cuddalore, in O.S.No.127 of 2012 is nothing but abuse of process of law. As of now, the first respondent/plaintiff Association has no right over the suit properties and without having any right over the suit properties, they filed the present suit to make harassment to the petitioner and other respondents 2 to 11.

6. The submissions made by the learned counsel appearing for the petitioner are considered.

7. It is seen from the copies of the judgments enclosed along with the type sent of papers, it reveals the fact that the suits filed by the owners of the land were already dismissed by the Court below. More than that, in order to show the title of the first respondent/plaintiff, no documents has been enclosed along with the plaint. Though this Court granted liberty to file a civil suit, through an order dated 21.12.2011 in W.P.No.29368 of 2011, in order to prove ownership, the first respondent/plaintiff has not enclosed any title document along with the plaint.

8. Now on going through the prayer sought out in the plaint, the first respondent/plaintiff wanted to issue direction to alter the name in the revenue records. In this connection, it is relevant to see the Section 14 of Patta Passbook Act, which reads as follows :-

"14. Bar of suits.- No suit shall lie against the Government or any officer of the Government in respect of a claim in have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended"

Since there is a express bar in filing suit in respect of the order passed by the government, particularly in respect to the claim made in changing the name in the revenue records by way of filing the suit is not at all maintainable. It is pertinent to note that with the same prayer, already several litigations were initiated by the land owners, individually and the same were ended against them. So by way of fraudulent litigation, the first respondent filed the present suit and prayed the relief as above.

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9. In this connection, it is necessary to see the judgment reported in **1998-3-LW 505** in the case of **Nesammal and 3 others Vs. Edward and another**, wherein, this Court has held as follows :-

"4. That apart, on a reading of the plaint, it is clear that the petitioners wants to re-agitate the entire matter once again. It is for that reason the Lower Court held that the plaint is liable to be rejected. It is this conduct on the part of the litigant is commonly known as abuse of process of Law. It is stated.

"(1) The initiation of a proceedings in a Court of Justice for the purpose of mounting a collateral attack on a final decision adverse to the intending plaintiff reached by a Court of competent jurisdiction in previous pro-ceedings in which the plaintiff had a full opportunity of contesting the matter is, as a matter of public policy, an abuse of the process of the Court;

(2) The fact that collateral attack is by means of a civil action raising an identical issue decided against the plaintiff in a competent court of criminal jurisdiction is immaterial since if the issue was proved against the plaintiff beyond all reasonable doubt in the Criminal Court it will be wholly inconsistent if it is not decided against him on the balance of probability in the civil action. The plaintiff's civil action therefore is

liable to be struck out as an abuse of the process of the Court."

So as per the verdict of this Court, similar litigation for the same relief cannot be entertained.

10. Further, the first respondent/plaintiff has suppressed the earlier litigation made by the land owners and filed the present suit in the name of Association, which is nothing but abuse of process of law. In this aspect, though liberty was given to the first respondent/plaintiff Association to file civil suit, considering the fact that the earlier suit filed by the members of the first respondent/plaintiff Association were dismissed, the second round of litigation is nothing but frivolous and vexatious proceeding. In this occasions, it is necessary to see the judgment of this Court reported in **1999-1-L.W.727** in the case of ***Maria Soosai and another Vs. Esakkiammal***, which reads as follows :-

".....The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend

on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.

.....

In McIlkenny v. Chief Constable of West Midlands Police Force (198)2 All E.R. 227, the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined and the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out on the ground of issue estopped the action can be struck out as an abuse of the process of the court because it is an abuse for a party to relitigate question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel."

So in all aspects, the avernments set out in plaint by the first respondent/plaintiff is affected by the express bar to file a suit, in other words, the same was affected by the reason of abuse of process of law. Hence in view of the above discussions, the suit filed by the first respondent/plaintiff should not be allowed to continue further.

11. In the result, this Civil Revision Petition is allowed and the
plaint in O.S.No.127 of 2012 on the file of the District Munsif Court,
Cuddalore (O.S.No.95 of 2012, Vacation Court) is hereby struck off.
Consequently, connected miscellaneous petition is closed. No cost.

21.11.2019

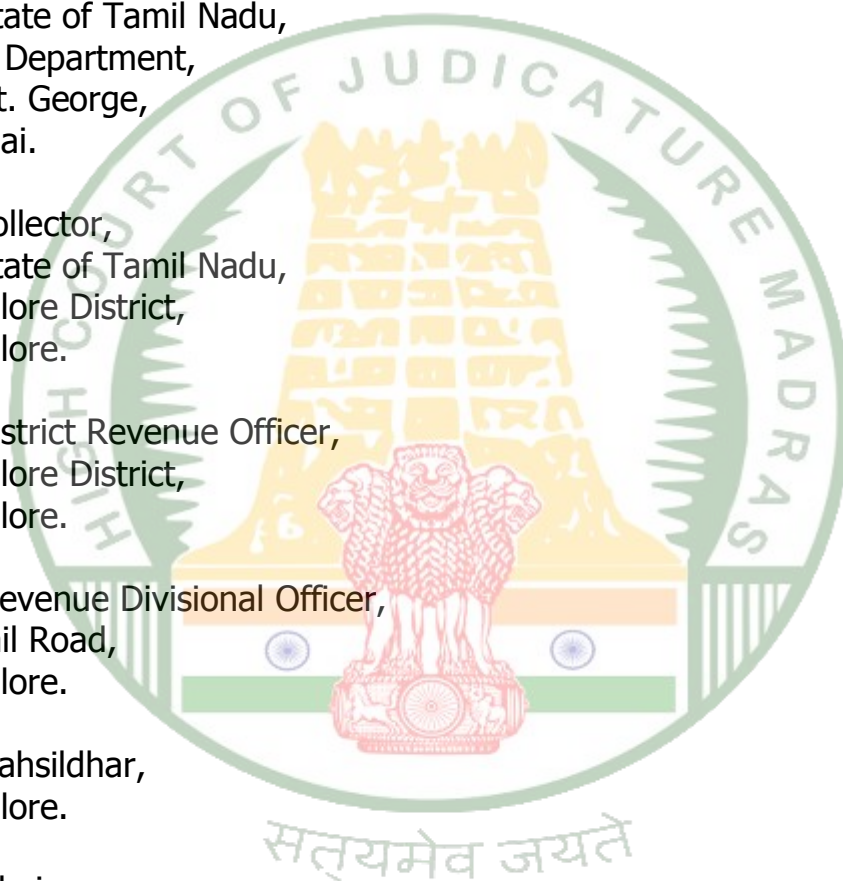
Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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To

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2. The President.
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Agriculturists Land Rights
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R.PONGIAPPAN, J
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Pre-delivery ORDER IN
C.R.P.PD.No.2642 of 2012
and M.P.No.1 of 2012

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