IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 28..01..2020
Orders Pronounced : 20..05..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.14752 of 2018
and
W.M.P.Nos.17430 & 17431 of 2018

M/s.SCM Silks P. Ltd.,
Rep. by its Managing Director,
K.Sivalingam
No.74, Near Market Street,
Tiruppur-641 604.

... Petitioner

-Versus-

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore,
Chennai 600 008.

2.The Director of Land Reforms and
Commissioner of Land Reforms (i/c),
Government of Tamil Nadu,
Ezhilagam,
Chepauk,
Chennai 600 005.

3.The Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George,
Chennai 600 009.

4.The District Collector,
Kancheepuram District.

5.The District Revenue Officer,
Kancheepuram.

6.The Revenue Divisional Officer,
Tambaram,
Kancheepuram District.

7. The Tahsildar,
Alandur Taluk,
Kancheepuram District.

8. The International Asset Reconstruction Co. P. Ltd.,
New No.26, G.N.Chetty Road,
T.Nagar,
Chennai 600 0017.

9. The Manager,
Canara Bank,
Spencer Tower-1, Ground Floor,
No.770, Annai Salai,
Chennai 600 002.

10.E.Palani*
[*Impleaded as per order dated 24.10.2018
in M.P.No.25445 of 2018]

11.Sri Ramachandra Educational and Health Trust**
Rep. by its Managing Trustee,
24/26, C.V.Raman Road,
Alwarpet, Chennai 18.
[**Impleaded as per order dated 24.10.2018
made in M.P.No.27747 of 2018]

12.The Principal Secretary, ***
Revenue and Disaster Management,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.

[***Impleaded as respondent suo motu vide
order made in this writ petition today]
... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent - Director of Land Reforms / Commissioner of Land Reforms, Government of Tamil Nadu, Chennai, dated 30.05.2017 in Ref.No.C2/15846/2005 [L.Ref] and the consequential order of the the 5th respondent - District Revenue Officer, Kancheepuram, and consequential order of the 5th respondent - District Revenue Officer, Kancheepuram, dated 01.06.2018 in Na.Ka.No.7351/LR and to quash the same and for a further direction to the 1st respondent to approve the planning permit which is pending before the 1st respondent in respect of land in Survey Nos.24/1 part, 24/2 part, 27/1A and 1B and 2, 28/3 part, 28/4, 28/5 part, 37/1 part, 8/2 part, 9/1A part, 1B, 1C and 1D part, 9/2 part, 17/1 part, 2 part, 18/1, 18/2, 19/2 part, 25 part, 25 part, 26/1 part, 26/1 and 26/2 in all measuring a total extent of 5 Acres situated at Thelliaragaram Village, Alandur Taluk, Kancheepuram District.

For Petitioner	:	Mr.V.Ramesh for Mr.T.Thiyagarajan
For Respondent(s)	:	Mr.S.Thiruvengadam for R1
		Mr.S.R.Rajagopal, AAG Assisted by Mr.V.Jayaprakash Narayanan, GP for RR2 to 7 & 12
		Mr.P.S.Raman, Senior Counsel for M/s.Dua Associates for R8
		Mrs.G.Lavanya for R9
		Mr.M.K.Kabir,Senior Counsel and Mr.T.V.Ramanujam, Senior Counsel for Anand Sasidharan for R11
		No Appearance for R10

ORDER

This writ petition challenges the validity of the proceedings of the 2nd respondent dated 30.05.2017 whereby the 5th respondent was directed to take action to cancel the patta issued in the name of the petitioner company and get the patta effected in the name of the 11th respondent trust in respect of lands sold out to the petitioner and the consequential proceedings of the 5th respondent dated 01.06.2018 whereby the 6th respondent was directed to take action as instructed by the 2nd respondent in and by his proceedings dated 30.05.2017.

2. The brief facts leading to the filing of the writ petition are as follows:- The 11th respondent herein is a public charitable trust, known as "Sri Ramachandra Educational and Health Trust" [hereinafter called as the trust]. In the year 1985, the trust got permission from the State Government to establish a private self-financing medical college and hospital under the name and style of "Sri Ramachandra Medical College Hospital and Research Institute. The State Government also granted permission to the trust to open the medical College in G.O.Ms.No.1196, Health and Family Welfare Department, dated 24.07.1985. Being a trust, they sought permission to hold and acquire lands measuring to an extent of 259.34 Acres of land in various survey numbers situated in and around Porur in Kancheepuram District for the proposed medical college and hospital under Section 37-B of The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 [hereinafter will be referred to in short as 'the Land Reforms Act']. The Government by its order in G.O.(Ms) No.1959, Revenue Department, dated 17.12.1987 granted permission to the trust under Section 37-B of the Land Reforms Act to acquire and hold approximately 259 acres of land.

3. It is stated by the petitioner that thereafter, the trust had established a self financing medical college in certain extent of land. Subsequently, the trust had sold away an extent of 42.70 Ares of land to one M/s.Sterling Computers Limited and its nominees under 19 different sale deeds from 02.03.1990 to 17.05.1990. After purchase of the property, M/s.Sterling Computers applied to the Government for re-classification of the lands from Agricultural Use Zone to Primary Residential Use Zone. The Government, after having considered the request made by M/s.Sterling Computers, by an order in G.O.(Ms.)No.742, dated 29.04.1991, re-classified the lands from Agricultural Use Zone to Primary Residential Use Zone. Subsequently, M/s.Sterling Computers had also obtained planning permission for developing the land. M/s.Sterling Computers, later on renamed as "Siva Industries and Holdings Limited". The said Siva Industries and Holdings Limited [hereinafter referred to as "the company"] had

availed financial assistance from the 9th respondent - Canara Bank [hereinafter will be referred to as "the Bank"] by mortgaging its properties measuring an extent of 40.57 Acres, which were purchased from the trust. Thereafter, the company had committed default in repayment of loan availed by it from the bank and as such, at the instance of the bank, a proceedings was initiated under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter will be referred to as "the SARFAESI Act) and a notice under Section 13(4) of the SARFAESI Act was also issued to the mortgagor company. Subsequently, the secured debt was assigned in favour of the 8th respondent [hereinafter referred to as "the assignor"] and certain extent of the mortgaged properties were sold under private negotiations. The petitioner had purchased an extent of 5 Acres of land from the 8th respondent under a private treaty which is in dispute now.

4. Earlier, in 1989, the State Government had taken over the Sri Ramachandra Medical College and Research Institutes and its assets under G.OMs.No.1012, Health Department, dated 26.12.1989. Thereafter, The Tamil Nadu Arasu Medical Science and Research Institute (TAMARAI) took over possession of the college and hospital on 01.07.1989. The above said Government Order taking over the medical college and its assets was challenged by the trust before this court and this court by order dated 21.07.1992 made in W.A.No.740 of 1991 set aside the above Government Order. In pursuance of the order of this court, the medical college and the other assets were re-vested with the trust.

5. After the purchase of land, the petitioner had applied to the 1st respondent for building plan approval for constructing four permanent Multiplex Cinema Theater and also applied to the District Collector for issuance of no objection certificate. When the applications of the petitioner were pending with the 1st respondent, 10th respondent herein appears to have raised objection for issuance of planning permission to the petitioner on the ground that the original sales made in favour of M/s.Sterling Computers Limited and the subsequent transfer in favour of petitioner company were invalid, as it was made in violation of the exemption granted under Section 37-B of the Act to the trust. Based on that objection, the 1st respondent had sought for certain clarification from the Principal Commissioner, Land Reforms, the 2nd respondent herein and a copy of the letter was communicated to the petitioner, for which, the petitioner had sent a reply. While so, by way of the impugned proceedings dated 30.05.2017, the 2nd respondent directed the 5th respondent to take action to cancel the patta issued in the name of the petitioner and to send a detailed report. Pursuant

to the said communication, the 5th respondent directed the 6th respondent to take action as directed by the 2nd respondent and submit a report to him. The above said proceedings were initiated mainly on the ground that the trust had sold away an extent of 47.23 Acres of land to M/s.Sterling Computers Limited and its nominees in violation of the exemption granted under Section 37-B of the Land Reforms Act to the 11th respondent trust and hence, the sale is invalid, consequently, the patta granted in favour of the the petitioner is liable to be cancelled. It is these proceedings among the official respondents which are now under challenge in the writ petition.

6. According to the petitioner, they are bona fide purchaser under the SARFAESI Act, and they were not aware of any of the proceedings granting permission to the trust under Section 37-B of the Act. Further, according to the petitioner, the original purchaser company got an order for re-classification of lands from agricultural use zone to primary residential use zone and also obtained planning permission from the authorities concerned for developing the lands. Pursuant to the approval, they had also executed necessary deeds gifting certain extent of lands to the local body. Subsequently, the mortgagor company had also obtained a building plan permission from the CMDA for constructing three blocks of residential apartments in the above land measuring to an extent of 47 Acres. After having considered all those overwhelming documents, the properties were accepted as security for the loan extended by the bank, subsequently, the same were sold under the provisions of the SARFAESI Act. The petitioner is the bona fide purchaser of the properties in question and therefore, it cannot be said to be invalid on the ground that there was violation of exemption granted in favour of the trust under Section 37-B of the Act.

7. It is further stated that when the petitioner's application
for development of the property was pending with the 1st respondents, based on the objections raised by the 10th respondent herein, the 1st respondent sought clarification from the 2nd respondent and a copy of the letter was also addressed to them which was suitably replied by the petitioner. That being the position, without any enquiry whatsoever , now, the 2nd respondent by way of impugned proceedings directed the 5th respondent to take action to cancel the patta issued in favour of the petitioner and also get the patta re-transferred in the name of the trust. Thereafter, the 6th respondent called the petitioner for enquiry enclosing the order passed by the 5th respondent. Only thereafter, the petitioner came to know about the proceedings initiated by the respondents 2 and 5. According to the petitioner, the lands were sold to the petitioner under SARFAESI Act by the respondents 8 & 9 and therefore, the

provisions of the Land Reforms Act will not apply to the present case. At the time of mortgaging the property, the lands were not agricultural lands and the Government had converted the lands as primary residential use zone and certain extent of poramboke land which were lying in the middle of the land was also sold to M/s.Sterling Computers Limited. Thereafter, a planning permission was also granted in favour of the company by the 1st respondent. Absolutely, there is no material available to show that the property sold in favour of the petitioner covered under the Land Reforms Act. The petitioner is a bonafide purchaser of the property under the SARFAESI Act and under Section 35 of the SARFAESI Act, the sale in favour of the petitioner cannot be questioned.

8. The 2nd respondent filed a detailed counter affidavit for himself and on behalf of the respondents 4 to 7 wherein it is inter alia contended that a permission was granted to the trust to hold an extent of 259.34 Acres of land under Section 37-B of the Act on 24.11.1987. Later on, in the year 1990, the trust had sold an extent of 42.70 Acres of land to M/s.Sterling Computers and to few others and M/s.Sterling Computers Limited which is later on known as Siva Industries and Holdings Limited had mortgaged the said lands with the Canara Bank. When the mortgagor company failed to discharge the loan, the lands in question were taken over by the bank under the provisions of the SARFAESI Act and the debts were assigned to the 8th respondent. Thereafter, the 8th respondent had brought an extent of 4.43 Acres of the mortgaged land for sale wherein the petitioner company purchased the same. That apart, an extent of 0.57 Acres of lands were also sold to one Vallal RCK Trust by the 8th respondent and that property was also subsequently purchased by the petitioner for valuable consideration. Thus, the petitioner acquired a total extent of 5.00 Acres of land covered under the land ceiling proceedings.

9. The 2nd respondent further contended that the trust had violated the provisions of Section 37-B and 73(iv-A) of the Act. On ceasing of exemption granted under Section 37-B & Section 73 (iv-A) of the Act, the trust holds the lands in contravention of the provisions contained under section 5(3)(C) of the Act and for the above said violation, as a penalty, the total extent of 42.70 Acres of land deemed to be transferred to the Government with effect from the date of violation on a declaration made by the authorized officer under Section 20-A of the Act.

10. It is further contended that the disputed lands are agricultural lands on the date of initiation of acquisition and, therefore, attracts the provisions of The Land Reforms Act. The 11th respondent trust had sold the exempted land to an extent of 42.70 Acres which included the disputed land of 5 Acres

purchased by the petitioner company. The sale of land exempted under Section 37-B is violative of provisions contained under the Land Reforms Act and therefore, the sale is not valid and the lands are deemed to be re-transferred to the Government under Section 20-A of the Land Reforms Act. The provisions of the Land Reforms Act would prevail over the Tamil Nadu Town and Country Planning Act, 1971 and the reclassification of the land as primary residential use zone was done only after the land ceiling provisions violated in respect of the disputed lands. As per Section 95 of The Land Reforms Act, any conversion will not affect the ceiling areas. That apart, the village in which the disputed lands are situated included in the Urban Agglomeration under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, only in the year 1995. But, no lands have been acquired in the above said village under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 as the lands are covered under the land reforms proceedings.

11. It is further stated that the disputed lands are agricultural lands covered under the Land Reforms Act and the sale of agricultural land is not permitted as per Section 31(i) of the SARFAESI Act. That apart, since the sale was made in violation of the Land Reforms Act, the purchaser had lost title over the land. Therefore, the sale of the land under SARFAESI Act should not be considered as valid sale. It is also further contended that the Land Reforms Act will have the overriding effect over any other Acts.

12. The 8th respondent filed counter affidavit inter alia stating that M/s.Siva Industries and Holdings Limited (formerly known as "M/s.Sterling Computers Limited") had availed term loan of Rs.500 crores from the 9th respondent bank towards general corporate purpose and to strengthen its net working capital. As security for the loan availed, an extent of 40.87 Acres of land situated at Thelliaragaram village was mortgaged with the 9th respondent bank by the borrower and guarantors. As the borrowers had committed default in repayment of land, the account was declared as a Non-Performing Asset by the 9th respondent bank on 31.12.2013. Subsequently, after having issued a notice dated 18.02.2014 under Section 13(2) of the SARFAESI Act, the above loan account was assigned by 9th respondent bank to and in favour of this respondent. After stepping into the shoes of the secured creditor pursuant to the execution of the above assignment deed, this respondent had taken possession of 1.3250 acres out of the total extent of 40.5714 acres of the mortgaged properties under Section 13(4) of the SARFAESI Act. Subsequently, the same was sold to a third party under a private treaty. Thereafter, an extent of 4.424 Acres was sold to the petitioner under two different sale certificates dated 30.05.2014 under private treaty under the provisions of the

SARFAESI Act. At no point of time, the borrower revealed the existence of the any proceedings under Section 37-B of the Land Reforms Act and the 9th respondent was also not informed by the respondents 1 to 7 about the existence of any cloud over the title.

13. It is further stated that the impugned order is a non speaking order. Inasmuch as the Government had already issued patta in favour of the original purchaser, based on which the petitioner as well as the 8th respondent and the 9th respondent had acted and sale deeds were registered in favour of the petitioner as well as the owners of remaining 35 acres of land which is currently under the symbolic possession of this respondent. The respondents 1 to 7 are, at this stage, estopped from changing their position and say that the lands in question are agricultural lands.

14. The 11th respondent trust has filed a counter affidavit wherein the trust had admitted that the Government had granted permission under Section 37-B of the Act to the trust to hold 259.34 Acres of land for the objective of the trust and the trust had also established a medical college. The trust further stated that in the year 1987, when there was a change of Government in Tamil Nadu, a vindictive action was taken against the trust with mala fide intentions and the then Chief Minister had informed the trust that the Government had decided to take over the medical college and if the trust did not cooperate with the Government for smooth taking over the college, the Government would pass an ordinance to take over the medical college. Therefore, the trust was compelled to yield to the wishes of the then Chief Minister and pursuant to the same, the trust had passed a resolution on 24.06.1989 thereby resolved to agree to the proposal of the Government to take over the medical college situated in an extent of approximately 176 acres belonged to the 11th respondent. The Government had, accordingly, passed an order in G.O.Ms.No.1012, Health Department, dated 26.06.1989 for taking over the medical college including the hospital and the assets belonging to the trust. Thereafter, The Tamil Nadu Arasu Medical Science & Research Institute (TAMARAI) took possession of the property on 01.07.1989. Subsequently, when the above said Government Order was challenged by the trust, this court had set aside the Government Order by judgement dated 21.07.1992 in W.A.No.740 of 1991, wherein, the Division Bench of this court has held that the action of the trust in passing the resolution was not voluntary.

15. Apart from that, the then Government also compelled the trust to transfer 45 acres of land situate opposite to the college premises to M/s.Sterling Computers Limited and the trust

was informed that by the Government that it would otherwise initiate land acquisition proceedings to acquired the lands. Therefore, yielding to the pressure and left with no other option the trust had executed sale deeds on different dates in the name of M/s.Sterling Computers Limited and its nominees conveying the lands measuring to an extent of 42.70 Acres between 02.03.1990 and 17.05.1990. It is further stated by the trust that there was no necessity for the trust to sell the lands and the sale deeds were executed out of compulsion and coercion. While the sale deeds were executed in different names, the entire sale consideration was paid only by M/s.Sterling Computers Limited. The particulars of various dates of execution of the sale deeds were also set out in the counter affidavit. The trust was forced to sell the lands knowing fully well that the medical college and assets of the trust were taken over. It is also admitted by the trust that the lands were sold in contravention of the permission granted under Section 37-B of the Act. As no declaration as contemplated under Section 20-A of the Act was issued by the authorized officer, the lands are not vested in the Government and that the trust continues to hold legal title to the lands in question.

16. I have heard the learned counsel on either side and also perused the records carefully.

17. Mr.V.Ramesh, the learned counsel for the petitioner would vehemently contend that the petitioner company is a bona fide purchaser of the land under the SARFAESI Act and the petitioner was not aware of any proceedings under the Land Reforms Act. After the purchase of the land in the year 1990, M/s.Sterling Computers Limited had mutated the revenue records in their favour and the land was reclassified as "Primary Residential Use Zone". Planning Permission was also granted in favour of the original purchaser by the competent authority. Pursuant to the same, M/s.Sterling Computers Limited had also executed gift deeds in favour of the local body concerned in respect of the area reserved for public purposes. In the year 1995, the land was also included in the urban agglomeration. Absolutely there was no objection from any of the authorities regarding the violation of Section 37-B of The Land Reforms Act. Thereafter, when the company committed default in repayment of loan, proceedings were initiated under the SARFAESI Act and a portion of the property came to be sold in favour of the petitioner. At no point of time, the petitioner was put on notice regarding the violation of Section 37-B of the Land Reforms Act. The petitioner being the bonafide purchaser his right cannot be disturbed.

18. The learned counsel for the petitioner would further submit that already the petitioner had approached the

authorities concerned seeking permission for development of the land. At that point of time, with a mala fide intention, objections were raised by the 10th respondent, based on such objection an enquiry has been ordered and the same is yet to be concluded. Pending such enquiry, the 2nd respondent ought not have sought to cancel the patta in violation of principles of natural justice without any enquiry whatsoever.

19. The learned counsel would also submit that since the lands were sold under the SARFAESI Act proceedings, Section 35 of the SARFAESI Act has over riding effect against the other Acts, therefore, the sale cannot be disturbed at this stage. Earlier, M/s.Sterling Computers Limited itself made an application to the Government seeking exemption and the petitioner company understand that the same is pending with the Government and no order has been passed on the same till today.

20. Mr.P.S.Raman, the learned senior counsel for the 8th respondent would contend that after the purchase of the land, M/s.Sterling Computers Limited, got transferred the patta in their name. Thereafter, on the application filed by M/s.Sterling Computers Limited, the land was reclassified as primary residential use zone and planning permission was also granted to them for put up a multi-storeyed apartments. M/s.Sterling Computers Limited had also gifted the open reservation area to the local body which were accepted by the local body. All those acts of the Government authorities overwhelmingly go to show that the Government had no objection for the purchase of the land by M/s.Sterling Computers Limited. After classifying the land as primary residential use zone, the Character of Agricultural Land ceased to exist. Considering all those facts, the 9th respondent bank had accepted the property as security. Until then, there was no objection from the Government regarding the purchase in favour of M/s.Sterling Computers Limited. When the mortgagor company committed default in repayment, the 9th respondent bank had initiated proceedings under the SARFAESI Act and the loan amount was assigned in favour of the 8th respondent which in turn had initiated further proceedings to realize the dues and sold a portion of the land in favour of the petitioner company and the remaining extent of 35 Acres of land are in the symbolic possession of the 8th respondent. Therefore, at this stage, it is not open to the respondent Government to contend that the sales were made in violation of the conditions of Section 37-B of the Land Reforms Act. According to the learned senior counsel, the action of the Government is hit by principles of promissory estoppel.

21. The learned senior counsel would further contend that even the order granting permission under Section 37-B of the Land Reform Act for holding the land does not impose any

condition that trust should not alienate the land. That apart, even assuming there is any violation, so far no action has been taken either under Section 37-B of the Land Reforms Act or under Rule 66 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962 [hereinafter referred to in short as "the Land Reforms Rules"] and without passing any such order cancelling the exemption order, it is not open to the Government, after thirty years, to contend that the sale is void. The learned senior counsel would further add that after reclassification of the land, the provisions of the Land Reforms Act would also not applicable as the character of the land has been changed.

22. Mr.M.K.Kabir, the learned senior counsel for the 11th respondent trust while admitting the fact that an exemption was granted by the Government under Section 37-B of the Land Reforms Act would contend that the the sales in favour of M/s.Sterling Computers Limited were made by the 11th respondent under coercion and undue influence and they had not transfered the land on their own volition. Since exemption was granted in favour of the 11th respondent trust, the subsequent purchaser cannot ask for any exemption and the Government has got no power to grant exemption to the purchaser of the land. Merely because, the Government had acted in favour of M/s.Sterling Computers Limited, the same cannot validate a void sale made in favour of the company. Once the sale made by the 11th respondent trust has become void abinitio, the 8th respondent ought not to have accepted the property as security as M/s.Sterling Computers Limited had got no valid title to mortgage the lands in question. That apart, unless an order under Section 20A of the Land Reforms Act is passed taking over the land, the 11th respondent is the lawful owner of the property and if writ petition is allowed, the illegal acts of the other respondents will be validated.

23. Mr.T.V.Ramanujam, the learned senior counsel for the 11th respondent trust would contend that so far no order either under Section 20A or under Section 37-B of the Land Reforms has been passed cancelling exemption and as such the prayer sought for in the writ petition cannot be granted. The order under Section 20-A of the Act would be penal in nature and therefore, no order could be passed without hearing the petitioner.

24. Mr.S.R.Rajagopal, the learned Additional Advocate General at the out set would submit that the writ petition is not at all maintainable in the eye of law as the impugned proceeds were only internal communications between the 2nd and the 5th respondents on one hand and 5th respondent and the 6th respondent on the other hand, and it cannot be put under challenge by the petitioner and the writ petition is premature and not maintainable.

25. On merits, the learned Additional Advocate General would contend that earlier on an application filed by the 11th respondent trust, the Government had granted permission under Section 37-B of the Land Reforms Act to acquire and hold an extent of 259 Acres of land which included an extent of 125.66 Acres of poramboke land and 133.68 Acres of patta land. Thereafter, without obtaining any permission whatsoever, the 11th respondent trust had sold out an extent of 42.70 Acres of land, which is covered under Section 37-B of the Land Reforms Act, in favour of M/s.Sterling Computers Limited in the year 1990. Therefore, the very sale itself void-ab-initio and the subsequent transactions are also not valid in law and the petitioner cannot claim any valid title over the same.

26. The learned Additional Advocate General would further submit that the very purpose for which exemption was granted to the 11th respondent was to establish a medical college and hospital and without utilizing the land for the intended purpose, the 11th respondent trust had sold out a portion of the land to a third party which was in total violation of the provisions contained under Section 37-B and 73(iv)(a) of the Land Reforms Act. He would further submit that the trust is holding the land in violation of S.5(3)(c) of the Land Reforms Act and therefore, the lands are deemed to be transferred to the Government under Section 20A of the Land Reforms Act. According to the learned Additional Advocate General, even the original purchaser of the land on being aware of the violation they themselves requested the Government to regularize the purchase and exclude the land from the purview of Section 37-B of the Act, therefore, it is not open to the petitioner and others to contend that they are bonafide purchaser for valuable consideration.

27. The leaned Additional Advocate General would lastly contend that as the disputed lands were exempted under the Land Reforms Act, mere reclassification of the lands under the Tamil Nadu Town and Country Planning Act, will not affect the character of the lands and it continued to be an agricultural lands. As the sale in favour of the original purchaser is void in ab initio, they had got no title over the same and the subsequent transactions of the property was also not valid, therefore, based on such mortgage the petitioner and the other respondent cannot claim any title over the same stating they had acted with due diligence. Even assuming that the transfer was bona fide when the mortgagor himself had no title over the property in question, the subsequent sales are also liable to be cancelled.

28. Earlier, in order to clear certain doubts, which could not be cleared from the available records, this court had appointed Dr.Niranjan Mardi, I.A.S., Additional Chief Secretary to Government of Tamil Nadu, Department of Home, Prohibition and Excise Department, Chennai, to conduct a detailed enquiry into the following aspects and file a report:

> (i) What is the nature, scope and extent of land / asset that was taken over by the Government in terms of G.O.Ms.1012, Health Department, dated 26.12.1989;
>
> (ii) Whether the Government had approved the sale of land, which was covered by the exemption granted under Section 37-B of the Act, by the 11th respondent to M/s.Sterling Computers Limited and others;
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> (iii) Is the land in dispute also covered by the exemption granted under Section 37-B of the Act and, if so, whether it was taken note of by the Government while reclassifying the lands from agricultural use zone into primary residential use zone;
>
> (iv) Whether the planning and building permissions granted in favour of M/s.Sterling Computers Limited and others were based on evaluation of the nature of the property sold and whether the conditions required by law were followed, if it was a case of land covered by Section 37-B of the Act;
>
> (v) The circumstances, if any whereby, the 11th respondent sold the land in question to M/s.Sterling Computers Limited and others and also the affidavit of the 11th respondent pleading undue influence and coercion;
>
> (vi) Any other relevant aspects that may be found relevant in the course of enquiry and as per records so that it may help the court to render substantial justice to the parties.

29. Pursuant to the order of this court Mr.Niranjan Mardi, I.A.S., conducted a detailed enquiry and after considering the materials collected during enquiry and the representation received from the parties to the writ petition, he had submitted a detailed report, the copies of which were furnished by this court to all the parties, and the reference about which would be made later, at the appropriate stage, in this order.

30. The Admitted facts in this writ petition are as follows:-

(a) The 11th respondent trust was granted permission to establish a private self financing medical college and hospital in the year 1985 under G.O.Ms.1196 dated 24.07.1985;

(b) Thereafter, by order in G.O.No.1959, Revenue, dated 17.12.1987, the Government granted permission to the 11th respondent trust to acquire and hold approximately 259 acres of land in various village in Kancheepuram District, out of which an extent of 125.66 Acres of land are Government Poramboke land and 133.68 Acres were patta land belonging to the trust; thereafter, the 11th respondent had established the medical college and hospital.

(c) Subsequently, in the year 1989, the medical college was taken over by the Government in G.O.NO.1082, Health, dated 26.06.1989 and the same was handed over to Tamil Nadu Arasu Medical Science and Research Institute (TAMARAI) on 01.07.1989;

(d) Challenging the above said order, the 11th respondent filed a writ petition before this court in W.P.Nos.5135 and 5136 of 1991; the writ petitions were however dismissed by a single Judge of this court by a common order;

(e) When the orders in writ petitions were taken on appeal by the 11th respondent trust in W.A.Nos.740 and 741 of 1991, a Division Bench of this court, by order dated 21.07.1992, allowed the Writ Appeals and thereby set aside the order of the single Judge, allowed the Writ Petitions and quashed the GO; accordingly, the hospital and assets taken over by the Government were handed over to the trust;

(f) In the mean time, in the year 1990, the 11th respondent sold an extent of 42.70 Acres of land which was covered under the exemption granted under Section 37-B of the Land Reforms Act to M/s.Sterling Computers Limited and others under 19 different sale deeds;

(g) After the purchase M/s.Sterling Computers filed an application before the 1st respondent for reclassification of the lands covered under the sale deeds executed by the 11th respondent trust from agricultural use zone to primary residential use zone;

accordingly, by accepting the request, the lands were reclassified as primary residential use zone by order in G.O.NO.742/1991, H & UD, dated 29.04.1991;

(h) Thereafter, M/s.Sterling Computers Limited sought for planning permission for construction of building on the land purchased by them and permission was also granted to them in the year 1996;

(i) Thereafter, another planning permission, sought for the construction of residential building complex, was also granted by the Government on 26.10.2013; in the mean time an extent of 3 Acres of poramboke land located within the patta landpurchased by M/s.Sterling Computers Limited was also assigned in their favour by the Government on payment of twice the market value;

(j) Subsequently, the company had availed a loan of Rs.500 crores from the 9th respondent bank by mortgaging the lands measuring about 40.53 Acres, purchased from the 11th respondent trust;

(k) On account of failure by the mortgagor in repayment of loan, the loan account was declared as a Non Performing Asset; the 9th respondent thereafter initiated action under SARFAESI Act and assigned the loan account in favour of the 8th respondent; thereafter, the 8th respondent had sold an extent of 1.32 Acres of land to a third party and 4.40 Acres of land in favour of the petitioner company under private treaty and sale certificate was also issued on 30.05.2017;

(l) Besides the above, the petitioner had purchased some other piece of land from the other purchasers who had purchased from the 8th respondent to a total extent of 5 Acres; and the revenue records were also mutated in their name; after the purchase, the petitioner applied for planning permission for construction of a multiplex theatre;

(m) At that time, the 10th respondent herein raised objection on the ground that the disputed lands are covered under the exemption granted under Section 37-B of the Land Reforms Act and, therefore, the sale is not valid and the planning permission should not be granted in favour of the petitioner; based on such objection, an enquiry has been ordered and the same is pending;

(n) In the mean time, the impugned proceedings have been passed by the 2nd respondent directing the 5th respondent to take action to cancel the patta granted in favour of the petitioner on the ground that the 11th respondent trust had sold the land in favour of M/s.Sterling Computers Limited in violation of exemption granted under Section 37-B of the Land Reforms Act, therefore, the land is liable to be re-transferred to Government under Section 20-A of the Land Reforms Act;

(o) Pursuant to the same, the 5th respondent directed the 6th respondent to proceed further pursuant to the order passed by the 2nd respondent. It is these two proceedings now under challenge in this writ petition.

31. It is the contention of the petitioner that they are bona fide purchaser of the land under SARFAESI Act and they had no knowledge about the proceedings under the Land Reforms Act and the exemption granted under Section 37-B of the Land Reforms Act and, therefore, their title should be protected.

32. On the other hand, it is the contention of the respondents 8 and 9 that by various acts of the government in favour of the original purchaser, they bonafidely accepted the property as security and the Government is estopped from contending that the sale in favour of the original purchaser is not valid.

33. From the perusal of available materials coupled with the report submitted by the Additional Chief Secretary, it is very clear that permission was granted to the 11th respondent under Section 37-B of the Land Reforms Act. to hold agricultural lands to an extent of 259.34 Acres. The lands in dispute also form part of the lands for which exemption was granted. Now, the respondents 2 to 7 would contend that the 11th respondent trust in violation of the exemption granted to them sold the lands in favour of a third party and, therefore, the sale is not valid and the alienation of the lands by the trust is in violation of Section 37-B of the Land Reforms Act and Rule 66 of the Land Reforms Rules and it attract the penal provisions of Section 20-A of the Land Reforms Act.

34. At this stage, it would be useful to refer to the relevant provisions of the Land Reforms Act. Section 37-B of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 reads as follows:-

37-B.- Public trust to apply to government for permission to hold or acquire land for educational or hospital purpose.

(1) Notwithstanding anything contained in this Act, but subject to the provisions of section 73:-

(a) If any public trust created before the 1st March 1972 desires to acquire any land in excess of the ceiling area or desires to hold land acquired in excess of the ceiling area; and

(b) If any public trust created after the 1st March 1972 desires to acquire any land or desires to hold land acquired, for the purpose of,-

(i) establishing any educational institution or hospital; or

(ii) expanding any existing educational institution or hospital by way of addition to, alteration of, or improvement to, any educational institution or hospital,

It shall make an application to the Government, for permission to acquire such land or for permission to hold such acquired land, as the case may be. Every such application shall be in writing and shall contain such particulars as may be prescribed:

Provided that an application for permission to hold such acquired land shall be made within such period as may be prescribed

Explanation. - In this section,-

(A) "educational institution" means any college (including engineering or medical or agricultural or veterinary college) or any school or other equivalent institution or any polytechnic institution;

(B) "hospital" means any place for the reception and treatment of persons suffering from illness or injury and include any maternity home, asylum, infirmary, lying-in-hospital or any place for the reception and treatment of persons during convalescence, but does not include a dispensary.

(2) The Government may grant the permission prospectively for the whole or part of the land specified in the application, subject to such conditions as they deem deem fit, or refuse to grant such

permission. The order granting such permission shall contain the particulars of the land in respect of which such permission is granted.

(3) The Government shall, in deciding whether to grant or refuse the permission under sub-section (2), take into consideration, the following factors, namely:-

(a) the purposes and objectives of the public trust; (b) whether the land is required for immediate use or use in future; and

(c) such other particulars as may be prescribed.

(4) The Government may cancel the permission in respect of any land granted under this section on the breach of any condition specified by the Government.

35. Section 20A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 reads as follows:-

20A. Penalty for future acquisition in contravention of certain provision. - (1) Any acquisition of any land made in contravention of the provisions of sub-section (2) of section 2, of sub-clause (ii) of clause (c) of sub-section (1), sub-clause (ii) of clause (d) of sub-section (1), clause (b) of sub-section (3-B); and of subsection (3-C) of section 5, shall be null and void and any land which is so acquired shall, as a penalty for such contravention, be deemed to have been transferred to the Government with effect from the date of such acquisition on a declaration made by the authorised officer within whose jurisdiction such land or the major part thereof is situated. The authorised officer shall record in writing the reasons for such declaration: Provided that-

(a) no such declaration shall be made unless the transferror and the transferee have been given a reasonable opportunity of being heard and of adducing evidence, if any,

(b) the transferee shall be liable for the payment of the consideration for, and to discharge other liabilities under such transaction and the transferror shall have no claim for such consideration against the

Government, otherwise than in respect of such land,

(c) no suit or other proceeding by the transferee shall lie in any Court for the refund of the consideration for any such transaction.

(2) The Government may make rules providing for the manner in which any right, title or interest transferred to the Government under sub-section (1) shall be disposed of. "

36. The relevant provisions of the Rule 66 of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules 1962 read as follows:-

sub-rule (vii) (a) to Rule 66:

"If the land in respect of which permission has been granted is used for any purpose other than the purpose for which the permission was granted, the public trust concerned shall intimate the diversion of the purpose to the Authorized Officer within 30 days from the date on which such diversion of purpose takes place;"

sub-rule (vii) (b) to Rule 66:

"The Authorized Officer shall, on receipt of such intimation, inspect the land and make such enquiry as he deems fit and if he is satisfied that the land is not used for the purpose for which the permission was granted or for any ancillary purpose, he shall report the matter to the government through the Land Commissioner, for such action as the government may deem fit;

sub-rule (ix) to Rule 66

(ix) the public trust shall comply with such conditions as the Government, may from time to time, by general or special order specify;

sub-rule (x) to Rule 66

(x) in the event of the cancellation of permission by Government for violation of any of the conditions subject to which the permission is granted, the provisions of the Act shall apply to the land in respect of which the permission was granted and action shall be taken under that Act accordingly by the authorities concerned."

37. A careful perusal of the above provisions, would go to show that, if at all, there is any violation of the conditions

specified in the exemption granted under Section 37-B of the Land Reforms Act, the Government has power to cancel the permission under Section 37-B (4) of the Land Reforms Act . That apart, as a penalty for the contravention of any provisions of the Act, under Section 20-A of the Land Reforms Act, the land deemed to have been re-transfered to the Government with effect from the date of such declaration made by the authorized officer. The authorized officer has to record his reasons in writing for such declaration after giving due opportunity of hearing to the transferror and transferee. Admittedly, so far no order has been passed by the Government either under Section 37-B (4) or Section 20-A r/w Rule 66, either to cancel the permission or to resume the lands.

38. From the report submitted by the Additional Chief Secretary, it could be seen that after the purchase of the lands in the year 1990, the original purchasers viz., M/s.Siva Compulink Limited (Formerly known as "M/s.Sterling Computers Limited") and others submitted an application before the Government on 24.02.2016 (vide Annexure 20 of the Report) seeking to exclude the lands purchased by them from the purview of the exemption granted under S.37-B of the Land Reforms Act, on the ground that the lands in question are not agricultural lands and lands are exempted under Section 73(vi) and 73 (vii) of The Land Reforms Act, as only casuarina trees were raised in the lands and as such no exemption was required, without realizing the above position, the trust had sought for exemption, including the lands which were sold to M/s.Sterling Computers Limited. In the above circumstances, they had sought to rectify the mistake and to exclude the lands to an extent of 42.69 Acres of land from the exemption granted under Section 37-B of the Land Reforms Act. Pursuant to such request, remarks were also called for from the 2nd respondent and the 2nd respondent also had submitted his opinion to the Government on 24.11.2016 itself. However, so far no action has been taken on the application. That apart, during the periodical verification of the utilization of the lands covered under Section 37-B of the Act, the Land Reforms Department, under Rule 66 of the Land Reforms Rules, sought for the details of sales made by the trust, for which trust had also said to have given statements periodically from the year 1995, till 2000, alleging that the lands were sold by them under coercion and they are not voluntary sales. Therefore, now, the validity of the sales made by the 11th respondent trust is also pending with the Government for consideration.

39. Considering the above facts and circumstances, the following issues arise for consideration

(i) whether the alienations made by the trust in favour of M/s.Sterling Computers Limited is valid?

(ii) whether the lands are agricultural lands which require exemption under Section 37-B of the Land Reforms Act or it was a casuarina thope exempted under Section 73(vi) & (vii) of the Land Reforms Act?

(iii) whether the alienations made by the trust are voluntary or the trust had sold the lands on coercion?

(iv) Whether the action taken by the 8th and 9th respondents under SARFAESI Act is valid?

(v) Whether the petitioner is a bonafide purchaser of the lands and the Government is estopped from taking action against them?

40. From the perusal of the records, it could be seen that from the beginning in all the transactions, the lands were dealt with as agricultural lands and the patta issued by the revenue authority also treated the lands as agricultural lands. There cannot be any dispute to the fact that, once it is found that the lands are agricultural lands, then, the transfers made by the 11th respondent trust would be in violation of the exemption granted under Section 37-B of the Land Reforms Act, consequently, the alienations made by the trust would become invalid. However, it is contended by the original purchaser viz., M/s.Siva Compulink Limited (Formerly known as "M/s.Sterling Computers Limited") that the lands in dispute are not agricultural lands and it is only casuarina thope exempted under Section 73 (vi) & (vii) of the Land Reforms Act and the application filed by them seeking exemption is now pending with the Government for consideration. It is a disputed questions of fact. It is the settled law that the disputed question of fact cannot be decided in a writ proceedings. In this respect, it is useful to refer to a recent judgement of a Division Bench of this Court in Easun Holdings P Limited v. Standard Chartered Bank in W.P.No.31073 and 31082 of 2019 dated 22.01.2020. In a similar circumstances, the Division Bench has held that whether a land is an agricultural land or not is a disputed question of fact and it cannot be decided by the writ court. Hence, ultimately, it is for the Government to decide the issue on a full fledged enquiry.

41. That apart, the 11th respondent trust would also contend that the sales made by them are not voluntary and they were compelled and coerced to sell the lands in favour of M/s.Sterling Computers Limited. To support their contentions, the trust relied upon the judgement of this court in W.A.Nos.740 and 741 of 1991 dated 21.07.1992 wherein the issue of taking over the medical college and hospital was decided in favour of the trust.

42. From the report submitted by the Additional Chief Secretary, it could be seen that a proceedings has also been initiated under Rule 66 of the Land Reforms Rules in respect of sales made by the trust, for which the trust had also submitted representations stating that the transfers were not voluntary and a proceedings is also now pending with the Government. That apart, even assuming that the alienations made by the trust were not voluntary and they were made on coercion, whether that would save the trust from their act of violation of the exemption granted under Section 37-B of the Land Reforms Act, is also a question to be decided by the Government during full-fledged enquiry on the alleged violation of exemption condition. This is also an issue involving disputed questions of fact which cannot be decided by this court in a writ proceedings and it is also for the Government to decide.

43. It is contended by the Government that the lands in question are continued to be agricultural lands attracting the provisions of the Land Reforms Act and the trust transferred the lands in violation of exemption conditions. The subsequent reclassification of the lands as primary residential use zone would not change the character of the lands. That being so, the 9th respondent bank ought not to have accepted the properties in question as security for the loan. Therefore, the acceptance of the lands in question as security was not valid in law and proceedings under SARFAESI could not be initiated against the agricultural lands. The petitioner, 8th and 9th respondent would dispute the same and contend that the Government is estopped from taking action against them. However, the above issues will become relevant only after the application filed by M/s.Siva Compulink Limited and others dated 24.02.2016 seeking exclusion of the lands is decided by the Government.

44. The Land Reforms Act is a social welfare legislation and it has been enacted with a social objective of distributing the lands to the landless poor persons. It also restrict the right to hold lands. Section 37-B is an exception to the above social purpose legislation and the exemption is granted to the public trust to hold or acquire land only for educational and hospital purposes. In case of any violation, then, the exemption is liable to be cancelled and penal action will also follow. The trust admittedly transferred a part of the land in favour of a third party in violation of the condition of exemption which is in violation of the Land Reforms Act. After realizing the position, the purchaser viz., Siva Compulink Limited (formerly known as "Sterling Computers Limited) and others made an application before the Government dated 24.02.2016 seeking to exclude the lands purchased by them under Section 73(iv) and (vii) of the Land Reforms Act, on the ground that the lands are not

agricultural lands and it was only a causuairna thope and no exemption is required under Section 37-B of the Land Reforms Act. The above said application is still pending with the Government for adjudication. In the said circumstances, until the Government passes suitable orders in the above application, the provisions of the Land Reforms Act will apply to the above said lands. Till the issue is decided on merits, it has to be held that the lands sold by the trust should be considered as agricultural lands only and liable for penal action under the Land Reforms Act.

45. The impugned proceedings of the 2nd and 5th respondents have been issued on the ground that the trust sold the lands in violation of exemption granted under Section 37-B of the Land Reforms Act and sought to cancel the patta and to restore to it to the trust. As the dispute go to the root of the issue , namely, the nature of the land sold by the trust, and the issue is pending with the Government, until the issues are resolved by the Government, the impugned proceedings for cancellation of petitioner's patta should necessarily be kept in abeyance and this issue could be decided after the primary issue is decided by the Government.

46. Now, it is stated that the competent authority to decide the issues referred to above is the "Principal Secretary to Government of Tamil Nadu, Revenue and Disaster Management, Secretariat, Fort St. George, Chennai 600 009". However, the concerned department has not been added as party in this writ petition. Thus, this court suo motu impleads the Principal Secretary to Government of Tamil Nadu, Department of Revenue and Disaster Management, Secretariat, Fort St. George, Chennai 600 009 as 12th respondent in the writ petition. The Registry is directed to carry out necessary amendment to the writ petition.

47. Considering the above facts and circumstances, it is desirable that the 12th respondent should consider all the issues discussed above to give a quietus to the whole issue.

48. Before parting with this order, this court records its appreciation to the sincere efforts made by Dr.Niranjan Mardi, I.A.S., Additional Chief Secretary, Government of Tamil Nadu, Home, Prohibition and Excise Department, Chennai, in submitting detailed report as directed by this court.

In the result, this writ petition is disposed of with a direction to the 12th respondent to conduct a detailed enquiry on the application filed by the original purchaser M/s.Siva Compulink Limited (Formerly known as "Sterling Computers Limited") and others dated 24.02.2016 seeking to exclude the lands under Section 73(vi) and (vii) of the Land Reforms Act and other issues arises in the instant case, based on the available records, after giving an opportunity of hearing to all the parties in the writ petition and other interested parties and pass suitable orders on merits and in accordance with law, without being influenced by any of the findings or observations made in this order. The 12th respondent can make use of the records enclosed along with the report submitted by the Additional Chief Secretary, Home, Prohibition and Excise Department, Government of Tamil Nadu, however, the opinion expressed in the report should not be relied on for deciding the issues. Until such issues are decided by the 12th respondent, the impugned proceedings shall be kept in abeyance. The 12th respondent shall pass appropriate orders as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. The report submitted by the Additional Chief Secretary shall form part of the records. No costs. Consequently, connected WMPs are closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

kmk
To
To

1.The Member Secretary, Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building, No.1, Gandhi Irwin Road, Egmore,
Chennai 600 008.

2.The Director of Land Reforms and Commissioner of Land Reforms (i/c),
Government of Tamil Nadu, Ezhilagam, Chepauk, Chennai 600 005.

3.The Secretary, Government of Tamil Nadu, Housing & Urban Development
Department, Fort St. George, Chennai 600 009.

4.The District Collector, Kancheepuram District.

5.The District Revenue Officer, Kancheepuram.

6.The Revenue Divisional Officer, Tambaram, Kancheepuram District.

7.The Tahsildar, Alandur Taluk, Kancheepuram District.

8.The Principal Secretary, Revenue and Disaster Management, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai 600 009.

9.The Manager
Canara Bank
Spence Tower 1
Ground Floor
No. 770, Annasalai Chennai 2.

Writ Petition No.14752 of 2018

MP(CO)
SP(04/06/2020)