



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM :

WEB COPY

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P.(MD) Nos.1171, 1173 to 1175 and 1465 to 1468 of 2021
and

C.M.P.(MD) Nos.6816, 6818, 6820, 6821, 8167, 8169, 8170 and 8172 of
2021

1.P.Parvathi	... Petitioner in CRP(MD). 1171/ 2021
2.S. Chinnappa Goundar	... Petitioner in CRP(MD). 1173/ 2021
3.S. Vaiyapuri	... Petitioner in CRP(MD). 1174/ 2021
4.P. Mallika	... Petitioner in CRP(MD). 1175/ 2021
5.P.Parvathi,	... Petitioner in CRP(MD). 1465/ 2021
6.S. Chinnappa Goundar	... Petitioner in CRP(MD). 1466/ 2021
7.P.Mallika	... Petitioner in CRP(MD). 1467/ 2021
8.S.Vaiyapuri	... Petitioner in CRP(MD). 1468/ 2021

vs

Managing Trustee,
Manmangalam Rajagopal Chettiar,
Dharma Chatram Endowment,
Manmangalam, Karur Taluk,
Karur District.

... Respondent in all CRPs

Prayer in CRP(MD). 1171/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 04.02.2021 made in Petition No. 50/2019 (Kulithalai) in Miscellaneous Petition No. 76/2019 on the file of the Revenue Court, Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.



Prayer in CRP(MD). 1173/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 04.02.2021 made in Petition No. 49/2019 (Kulithalai) in Miscellaneous Petition No. 75/2019 on the file of the Revenue Court, Special Deputy Collector(Additional Incharge), Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

Prayer in CRP(MD). 1174/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 04.02.2021 made in Petition No. 52/2019 (Kulithalai) in Miscellaneous Petition No. 78/2019 on the file of the Revenue Court, Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

Prayer in CRP(MD). 1175/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 04.02.2021 made in Petition No. 51/2019 (Kulithalai) in Miscellaneous Petition No. 77/2019 on the file of the Revenue Court, Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

Prayer in CRP(MD). 1465/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 23.07.2019 made in Petition No. 50/2019 (Kulithalai) in Miscellaneous Petition No. 76/2019 on the file of the Revenue Court, Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

Prayer in CRP(MD). 1466/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 23.07.2019 made in Petition No. 49/2019 (Kulithalai) in Miscellaneous Petition No. 75/2019 on the file of the Revenue Court, Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

Prayer in CRP(MD). 1467/ 2021 :

This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 23.07.2019 made in Petition No. 51/2019 (Kulithalai) in Miscellaneous Petition No. 77/2019 on the file of the Revenue Court,

<https://hmcse.judges.org.in/csr/Pet>



Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

Prayer in CRP(MD). 1468/ 2021 :

WEB COPY This Petition filed under Section 115 of the Code of Criminal Procedure, to call for the records relating to the order dated 24.09.2019 made in Petition No. 52/2019 (Kulithalai) in Miscellaneous Petition No. 78/2019 on the file of the Revenue Court, Special Deputy Collector, Tiruchirapalli and set-aside the same and consequentially allow the present Civil Revision Petition and thus render justice.

(In all cases)

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.G.Mohankumar

COMMON ORDER

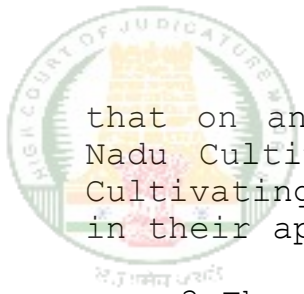
In all these Civil Revision Petitions, a legal defense has been taken by the petitioners. The petitioners would contend that considering the fact that the respondent Trust is a Public Trust, it is only the provisions of Tamil Nadu Public Trust (Regulation of Administration Agricultural Lands) Act, 1961 that would apply and the Tamil Nadu Cultivating Tenants Protection (Amendment) Act, 1955 would not apply. Admittedly, the respondent Trust is a Public Trust. Section 2 (25) of the Tamil Nadu Public Trust (Regulation of Administration Agricultural Lands) Act, 1961, defines a Public Trust as follows:-

*"2.(25) **"public trust"** means a trust for a public purpose of a religious or charitable, or of an educational nature, and includes:-*

i) any temple, math, mosque, church or other place by whatever name known, which is dedicated to, or for the benefit of, or used as of right by, any community or Section thereof as a place of public religious worship;

ii) any charitable or educational institution of a public nature;"

2. Section 19 of the said Act further provides the circumstances and grounds, on which a cultivating tenant may be evicted by a Public Trust. One of the grounds as provided in Section 19 (1) (b) (ii) of the said Act is when a cultivating tenant has altogether ceased to cultivate the land. Section 62 of the Act further provides



that on and from the date of commencement of this Act, the Tamil Nadu Cultivating Tenants Protection Act, 1955 and the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 stood repealed in their application to a cultivating tenant under a Public Trust.

3. The orders, which are the subject matter of revisions, have been passed by the Special Tahsildar Trichy exercising rights under the Tamil Nadu Cultivating Tenants Protection Act, 1955. In fact, the petition for eviction has been filed invoking Section 3 (2) (b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955. Therefore, the very order is a nullity, since it is passed by a Court, which does not have jurisdiction to entertain the petition.

4. In the instant cases, the petitioners are admittedly the cultivating tenants of the respondent Trust and the respondent Trust, which is a Public Trust, seeks to evict them from the property as the tenant has ceased to cultivate the lands altogether. It is also brought to the notice of this Court that to date the lands have not been cultivated. Be that as it may, since the order is passed by a Court having no jurisdiction, the same has to fail.

5. The Hon'ble Apex Court as well as this Court had time and again held that an order passed by a Court having no jurisdiction is a nullity and being an invalid one, it cannot be enforced or relied upon. The Hon'ble Apex Court in the case of **Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (dead) through legal heirs and others** reported in (2004) AIR (SC) 4377, had succinctly brought out the distinction between a decree that is void and a decree, which is wrong, irregular and voidable. In the case of the former, the defect is incurable and the validity can be questioned at any time. As regards the latter, the order need not necessarily be null and void. The Hon'ble Supreme Court has observed as follows with reference to a decree that is a nullity.

"9..... Where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

6. The learned Judge had also relied upon the judgment of the Hon'ble Supreme Court in the case of **Rafique Bibi (dead) by legal heirs Vs. Sayed Waliuddin (dead) by legal heirs and others** and had quoted the following with approval:-

<https://hcservices.ecourts.gov.in/hcservices/>



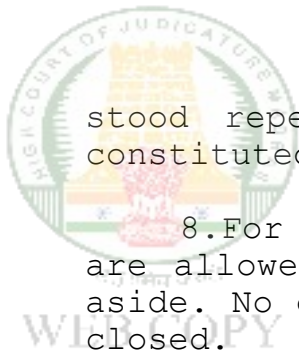
"What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to take cognizance of such nullity based on want of jurisdiction; else the normal rule that an executing Court cannot go behind the decree must prevail.

Two things must be clearly borne in mind. Firstly, the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense; their meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results. (Administrative Law, 8th Edition, 2000, Wade and Forsyth, p. 308). Secondly, there is a distinction between mere administrative order and the decrees of Courts, especially a superior Court. The order of a superior Court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of Court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time limit. (Ibid, p. 312)

A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

7. Therefore, it is amply clear that by the operation of Tamil Nadu Public Trust (Regulation of Administration Agricultural Lands) Act, 1961, the Tamil Nadu Cultivating Tenants Protection Act, 1955

<https://hcservices.ecourts.gov.in/hcservices/>



stood repealed and therefore, any order passed by an authority constituted under the Act would be a nullity.

8. For the above said reasons, all the Civil Revision Petitions are allowed and the respective orders challenged therein stand set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

The Special Deputy Collector,
Revenue Court,
Tiruchirapalli.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-37887[F] dated 09/12/2021)

+1 CC to M/s.G.MOHANKUMAR, Advocate (SR-38063[F] dated 09/12/2021)

C.R.P. (MD) Nos.1171, 1173 to 1175 and 1465 to 1468 of 2021

08.12.2021

RK(17/02/2022) 6P 4C