



AS.No.220/2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N.MALA

AS.No.220/2011

Sri Karivaratharajaperumal Temple
Pollachi, rep.by its Executive Officer
Temple Premises, Pollachi Town and
Taluk, Coimbatore District.

.. Appellant

Vs.

The Pollachi Municipality
rep.by its Commissioner
Palghat Road, Pollachi Town & Taluk
Coimbatore District.

.. Respondent

Prayer:- Appeal Suit filed under Section 96 of CPC against the judgment and decree of the learned Additional District Judge / Fast Track Court No.II, Coimbatore, made in OS.No.685 of 2007 dated 14.09.2010.

For Appellant	:	Mr.P.Dinesh Kumar for Mr.J.Ramakrishnan
For Respondent	:	Mr.G.Sankaran



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JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1) The unsuccessful plaintiff in the suit in OS.NO.685 of 2007 on the file of the Additional District Court-cum-Fast Track Court-II, Coimbatore, is the appellant in the present Appeal Suit.
- (2) The appellant filed the suit in OS.No.685 of 2007 for directing the respondent herein/defendant, its officers, subordinates, staff and contractors to deliver vacant possession of the suit property after removing the construction or improvement done by the defendant and for further orders as may deem fit and proper in the facts and circumstances of the case.
- (3) The suit property is described as an extent of 2 acres 25,114 sq.ft., of land comprised in TS.No.256/7 [part] in Ward No.2 of Pollachi within the jurisdiction of Pollachi Municipality. The defendant in the suit is the Pollachi Municipality.
- (4) The case of the plaintiff/appellant is that the suit property was a



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Devadayam inam land as it was a grant by the ancient rules by way of a title document in favour of temple. When the minor inam lands were taken over under the Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963, the suit property was also taken over by the Government. However, it is admitted that ryotwari patta was granted in favour of the appellant/temple after a contest. Though ryotwari patta was originally granted in the name of occupiers of the land with certain conditions, and subsequently on appeal, the conditions were removed by the Inam Tribunal. As against the order of the Tribunal, it is stated that the appellant/plaintiff/temple preferred an appeal before this Court, which is the Appellate Tribunal under the Minor Inams [Abolition and Conversion into Ryotwari] Act in STA.No.210 of 1974 and batch. This Court, vide judgment dated 11.07.1976, allowed the appeal by directing grant of ryotwari patta in favour of the appellant/temple for the lands in TS.No.296/1, 254/20 and 256/7 in Pollachi Town.

- (5) The persons who were in occupation of the Inam lands filed Special



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Leave Petitions before the Hon'ble Supreme Court and the Civil Appeal Nos.2476 to 2578 of 1978 as against the judgment of this Court in STA.No.210 of 1974 and batch were dismissed by the Hon'ble Supreme Court by judgment dated 22.09.1995. Though the order of the Inam Tribunal was set aside by this Court in the year 1976 and the order of this Court was confirmed by the Hon'ble Supreme Court in the year 1995, some transactions had taken place ignoring the fact that persons who were claiming possessory right, were not entitled to ryotwari patta. It is admitted that the appellant/plaintiff/temple initiated further proceedings for transfer of patta in respect of inam lands including the suit property and the Settlement Authority also directed the Revenue Tahsildar to order transfer of holdings in favour of the appellant/temple. The appellant/temple was shown as a registered landholder as per Revenue Records. From the documents it is seen that one Mr.A.T.S.Chinnasamy Chettiyar and Mr.A.T.S.Paramasiva Chettiyar who were contesting the case against the appellant/temple claiming ryotwari patta, ultimately failed in their attempt. Similarly,



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the other individuals also were unable to sustain their claim on the basis of their possessory right. However, the suit property is stated to have been shown as a scheme road in the Development Plan prepared under the Town and Country Planning Act, 1971, with the connivance of the respondent/Municipality, who claimed to have obtained a Gift Deed from a Society. It is stated that all the transactions by which the defendant claims title or enjoyment are void and not binding on the temple whose right to get patta under the Tamil Nadu Act 30 of 1963 is upheld by the Hon'ble Supreme Court. When the respondent/defendant started laying road on the basis of a Gift Deed and the Development Plan, the appellant/temple filed a suit in OS.No.378 of 2000 before the District Munsif Court, Pollachi, against the respondent/defendant for a permanent injunction restraining the defendant and its contractor from laying any road or any other construction work in the suit property. It is the specific averment in the plaint that there was an order of temporary injunction as against the defendant restraining the defendant from laying road. However, the earlier suit filed by the



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appellant/temple in OS.No.378 of 2000 was dismissed by judgment and decree dated 19.12.2005 on the ground that the road had already been laid and therefore, the appellant/temple cannot maintain the suit. Thereafter, the appellant filed the present suit for recovery of possession after removing construction or improvement.

- (6) The suit was contested by the respondent herein by filing a written statement. The respondent/defendant raised various issues. The title of the appellant/temple was specifically denied and the appellant was put to strict proof of the averments relating to the title to the suit property as per the proceedings initiated under the Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963. It is the specific case of respondent that the suit property was treated as the property belonging to private individuals and that there was a Partition Deed dated 15.02.1988 under which the suit properties were allotted to the predecessor in interest of the defendant. A specific contention was therefore raised in the written statement that as per the registered Partition Deed dated 15.02.1888, the suit property and other properties were owned and enjoyed by the family



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of one Kuppanna Mudaliar. It is further stated that the family members of late Kuppanna Mudaliar have dealt with the properties and there were several transactions in respect of the suit properties and other properties to which the appellant/temple claim ryotwari patta. Though the title of any individual is not traced by the respondent/Municipality with reference to any Title Deeds, it is contended by the respondent in the written statement that one Tr.A.T.S.Chinnasamy Chettiyar, became the owner and enjoyment of the suit property along with other properties as per the document of sale in the year 1948. It was further stated that the temple was never in enjoyment of the suit property as the properties were in the enjoyment of private individuals who were doing agricultural operations and that there were constructions put up by the actual owners. As regards the proceedings initiated under the Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963 [Act 30 of 1963], it is contended by the respondent that the issue concluded by the authorities under the Act relates to grant of patta and that the decision of the authorities under the Act will not affect



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the title of owners of the property. It is further stated that there is no enabling provision under the Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963, to decide the rights of parties asserting title to the suit properties on the basis of a long and continuous enjoyment of inam lands. In effect, the respondent pleaded adverse possession on the basis of the long enjoyment of the property by private individuals. In other words, it is contended by the respondent that the grant of ryotwair patta under Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963 will not revive the lost title of the appellant/plaintiff. It was also contended by the respondent that the appellant/temple who has not challenged the transactions by third parties, cannot question the Gift Deed executed in favour of the respondent. The respondent also claimed that the scheme road with the width of 80 feet having been approved by the Government, cannot be used for any other purpose and therefore, the appellant/plaintiff/temple cannot claim title to the suit property which has now become a road maintained by the respondent / Municipality.



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(7) It was further contended by the respondent that the plaintiff/temple who has failed to recover possession within the period of limitation, has no subsisting right over the property. In sum and substance, the respondent raised the following contentions:-

- (a) The plaintiff has lost title as the property was never in the enjoyment of the plaintiff for a long period of time.
- (b) The respondent has prescribed title by adverse possession.
- (c) The plaintiff/temple who has failed to challenge the various transactions by individuals who were in possession, cannot file the present suit for recovery of possession.
- (d) Since the land is being used by public as a road, which was laid pursuant to the formation of scheme road as approved by the Government, the plaintiff/temple cannot claim title over the suit property.
- (e) Referring to the previous dismissal of the suit in OS.No.378/2000 by judgment dated 19.12.2005, it is contended that the present suit is not maintainable as barred by *res judicata*.

(8) Before the Trial Court, the plaintiff/temple examined one



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Maruthupandian as P.W.1. and filed Exs.A1 to A8. On behalf of the defendant, one D.Vasanth was examined as D.W.1 and Exs.B1 to B4 were filed.

(9) The Trial Court framed the following issues :-

(a) Whether the plaintiff is entitled to the possession of the suit properties?

(b) Whether the plaintiff has derived title to the suit properties by adverse possession?

(c) Whether the plaintiff has never enjoyed the suit properties?

(d) To what relief the plaintiff is entitled if any?

(10) The following additional issue was also framed by the Trial Court:-

Whether the suit is barred under the doctrine of constructive res judicata?

(11) From the issues framed by the Trial Court, this Court is able to see how the Trial Court has misconceived the pleadings and the nature of claim by the plaintiff/appellant/temple as well the defendant/Municipality. The documents filed by the respondent under Exs.B2 to B4 do not relate to the title to the property. The



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Gift Deed under Ex.B1 is dated 31.12.1997. Though the document refers to the rights of the Society, no other document or the source of title in favour of the Society is referred to in the said document. It is admitted that the document Ex.B1 was executed long after the judgment of this Court as Special Appellate Tribunal. The trial Court has rendered a specific finding that the plaintiff has proved its title by the judgment of the Hon'ble Supreme Court under Ex.A2. It is further held that the defendant is bound by the judgment of the Hon'ble Supreme Court and they cannot claim any independent right. The Trial Court found that there is no limitation for the plaintiff temple and hence, the defendant has not prescribed title by adverse possession. However, the Lower Court dismissed the suit only on the ground that the suit is barred by *res judicata* by referring to Explanation IV of Section 11 of CPC. Even though the Trial Court held title in favour of respondent, the learned counsel appearing for the respondent raised an issue regarding title.

(12) The fact that this Court has granted ryotwari patta in favour of the



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Temple, is evident from the order of this Court which was in the year 1976. There was no interim direction or order passed by the Hon'ble Supreme Court during the pendency of the Civil Appeal before the Hon'ble Supreme Court as against the judgment of this Court in S.T.A.Nos.174, 181 and 210 of 1974. The fact that the Settlement Tahsildar issued direction to the Revenue Tahsildar cannot be disputed and that patta also was issued in favour of the appellant Temple. A specific pleading was taken by the appellant/temple that patta was granted in favour of the Temple in 1996, and Patta Passbook itself has been issued in favour of the appellant under Ex.A5 dated 24.12.1998. No revenue record is produced before this Court to show that the person or the Society which had executed the Gift Deed or the Deed of Conveyance under Ex.B1 in favour of the respondent/Municipality had title or possession or patta. In the absence of any revenue record, this Court cannot presume that possession was with the Settlor under the document Ex.B1. It is seen from the order of this Court in STA.Nos.174, 181 and 210/1974, the properties were admitted to be



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Inam lands in favour of temple. While the temple was claiming Iruwaram, the rival claimants contended that the temple was entitled only Melwaram, ultimately, it was held by this Court that Inam was in respect of both warams.

- (13) The fact that the defendant was taking steps to lay a road in the property on the strength of such Gift Deed, is not in dispute. Therefore, the appellant had filed the earlier suit in O.S.No.378 of 2000 on the file of District Munsif Court, Pollachi, for bare injunction, restraining the respondent herein from laying any road or doing any other construction in the suit property belonging to the appellant/temple. It is to be seen that the said suit, filed by the appellant/temple earlier, was dismissed only on the short ground that the road which was not laid when the suit was filed, had been laid when the suit was heard finally. It is to be seen that the title of the Temple, though was not an issue, the Trial Court found that the appellant/temple is the title holder and is entitled to file a suit for injunction without there being a declaration of title. It was only on the admission of P.W.1, who was examined on behalf of the



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appellant/temple earlier, that the suit property is being used as a road and that the road had already been laid, as evident from the documents Ex.B6 to B9 therein, the learned District Munsif, Pollachi, gave a finding that the suit for permanent injunction is not maintainable

- (14) Now, in the present suit, the Trial Court, on appreciation of several documents produced by the appellant/temple, has categorically found that the appellant/temple is the owner of the suit property. Even though it was contended by the appellant/temple that the principle of *res judicata* cannot be applied in the present case, in view of the prayer in the previous suit and the prayer in the present suit, which are not identical, the Trial Court held that there is an identity of properties and identity of issue and that therefore, the present suit is barred by *res judicata*. Several precedents have been considered by the Trial Court to hold that the present suit is bared by constructive *res judicata*.

- (15) The Trial Court has specifically found that the appellant/temple was



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fighting against one Mr.Chinnasamy Chettiyar Vagayara before this Court in S.T.C.Nos.174, 181 and 210 of 1974 and succeeded against all the individuals including Chinnasamy Chettiyar Vagayara as per the judgment of this Court dated 09.11.1976. The Trial Court also found that the defendant/respondent is claiming right only under those individuals, who failed to establish their claim against the appellant/temple before the Hon'ble Supreme Court and before this Court. It was specifically observed that the defendant, though was not a party to the proceedings before the Hon'ble Supreme Court in the Civil Appeal, held that the judgment of the Hon'ble Supreme Court and this Court is binding on the defendant. Even after finding that the principles of *res judicata* as per Section 11 of CPC is applicable to the defendant to claim title against temple, the Trial Court held that the appellant/temple's suit is barred under Explanation IV to Section 11 of CPC.

(16) Though the Trial Court specifically held that the defendant had not



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derived title to the suit property by adverse possession, gave a finding that the suit property is being utilised as a public road for a long time and that therefore, the appellant/temple ought to have filed the previous suit not for injunction but for appropriate relief. The Trial Court then observed that the appellant/temple is not entitled to a decree which is non-executable, as granting such decree will be highly dangerous in view of the developments.

(17) From the findings of the Trial Court, this Court is able to see that the conclusions of the Trial Court are perverse and is not supported by either documents or any statutory provisions. Having regard to the nature of pleadings and findings of the Trial Court and the submissions of the learned counsels on either side, this Court is of the view that the following points arise for determination in this appeal :

- i. Whether the judgment in earlier suit in O.S.No.378 of 2000 on the file of the District Munsif Court, Pollachi, will operate as *res judicata* to bar the present suit filed by the appellant for recovery of possession ?
- ii. Whether the appellant/temple is the holder of title in respect of the



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suit property by virtue of the orders passed by the statutory authorities under the Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963 (Act 30 of 1963) ?

- iii. Whether the formation of a road and showing the suit property as a scheme road under the Development Plan would preclude the appellant/temple from claiming title to their property ?
- iv. Whether the suit property vest with the respondent/defendant, namely the Municipality, by virtue of the Gift Deed and the reservation of the suit property as a scheme road in the Development Plan prepared under the Act?

(18) Section 11 of CPC reads as follows :

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a



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suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

Explanation III.—*The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

Explanation IV—*Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

Explanation V—*Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

Explanation VI—*Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.*

Explanation VII—*The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be*



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construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —*An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”*

- (19) The Trial Court has found that the present suit is barred by referring to Explanation IV to Section 11 of CPC. The previous suit filed by the appellant/temple is for bare injunction restraining the respondent herein from laying a road or putting up any construction in the suit property. Since it was reported that the road was laid and was in existence at the time of hearing the suit, the previous suit was dismissed on the short ground that the relief for injunction cannot be sustained. As a matter of fact, this Court has already noticed that the Trial Court in the previous suit had upheld the title of temple based on documents relied upon by the appellant/temple in the previous suit. But observed that the suit filed by the plaintiff for



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permanent injunction restraining the defendant from laying road or putting up any construction in the suit property, is not sustainable, after referring to the admission of appellant/temple that the road had been already laid. When all the issues on title is decided in favour of appellant in the previous suit and in the present suit, dismissal of previous suit for bare injunction does not bar the present suit for recovery of possession. Explanation IV to Section 11 of CPC has no application to the present case. The question whether the plaintiff was entitled to recovery of possession was not necessary in the earlier suit. The fact that the suit property had been declared as the property of appellant/temple, who is entitled to ryotwari patta, is not disputed. Though several individuals claim title as against the appellant/temple on the basis of their alleged possession and occupation, it is seen that this Court has upheld the claim of appellant/temple for ryotwari patta. When ryotwari patta has been granted in favour of the appellant/temple in recognition of its pre-existing right under the provisions of the Tamil Nadu Act 30 of 1963, the Revenue and Settlement Authorities are bound by the



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order passed by this Court, which was also confirmed by the Hon'ble Supreme Court in the Civil Appeal filed by the individuals. It is not a case where the individuals have approached the Civil Court thereafter to establish their title as against the appellant/temple by a Civil Suit. It is true that the Hon'ble Supreme Court, in the case of the *State of Tamil Nadu Vs. Ramalingam Madam and Others* reported in *1985 [4] SCC 10* and the Full Bench of this Court in the case of *Srinivasan and Others Vs. Sri Madhyarjuneswaraswami and Others* reported in *Manu/TN/0123/1998*, have recognized the jurisdiction of the Civil Courts to go into the question of title, irrespective of the decision of the authorities under the Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963 (Act 30 of 1963). However, the title of appellant/temple by granting ryotwari patta was never challenged before the Civil Court by the individuals. Except the Gift Deed stated to have been executed by the Society, no other document was filed by the respondent to establish that title and possession was always with individuals, who were unable to sustain their claim before the Hon'ble Supreme Court



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or before this Court. Quite interestingly, it is noted that the title of those individuals were not even found in any of the documents filed by the respondent. The document of Gift does not refer to the title of the Society or the source for its claim. In the absence of any material to sustain the plea that the defendant's predecessor in interest had title or enjoyment, this Court is unable to hold that the Settlor, who gifted the property under Ex.B1 in favour of the defendant, had title or enjoyment of the property.

- (20) Learned counsel appearing for the respondent submitted that the public road was in existence and that a scheme road was also formed. It is the case of the defendant that, scheme for laying the road was published in Tamil Nadu Government Gazette on 14.11.1973 under Ex.B3. The learned counsel also produced the document Ex.B3. This Court is unable to find the suit survey number in the said Gazette publication. Be that as it may, Ex.B3 dated 14.11.1973, assuming to be valid, it would only indicates that the Government has approved the scheme that was framed by the Planning Authorities under the Tamil Nadu Town and Country



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Planning Act, 1971. It is open to the Planning Authorities to reserve any private land for public purpose in a Development Plan or any other plan as can be prepared under the provisions of the Town and Country Planning Act. However, when a private land is shown as a land reserved for a public purpose, the procedure contemplated under Section 37 of the Town and Country Planning Act has to be followed.

- (21) Sections 37 and 38 of the Town and Country Planning Act read as follows :

“37. Power to purchase or acquire lands specified in the development plan.-

(1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):



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***Provided** that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.*

(2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

***Provided** that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice.*

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the



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market value prevailing on the date of publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

38. Release of land.- *If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27- (a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or*

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.”

- (22) After publication of a notice in the Tamil Nadu Government Gazette, if a land is reserved or required for a public purpose, it is the appropriate authority who is required to acquire the land by an agreement or by otherwise as contemplated under the provisions of Section 37 of the Act. If the land is not acquired within a period of three years from the date of publication of notice in Tamil Nadu



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Government Gazette, such land which is reserved or required for public purpose, shall be deemed to be released from such reservation, allotment or designation, as per Section 38 of the Act. Merely because a land is reserved in a development plan as a scheme, that does not vest with the local body. Once the land is reserved for a public purpose or for a scheme road, it may satisfy the term 'public purpose' within the meaning of Section 3[f] of the Land Acquisition Act. The preliminary notification required under Section 4[1] of the Land Acquisition Act can be dispensed with and the publication may be treated as a declaration under Section 6 of the Land Acquisition Act. After the amendment pursuant to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act 30 of 2013], unless an application is submitted to the Government for acquiring such land under Act 30 of 2013 and the land is acquired by agreement or otherwise, the case of respondent cannot be considered. In the present case, by mere publication of notice in the Tamil Nadu Government Gazette on 14.11.1973 under Ex.B3, the claim of



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respondent is unsustainable.

- (23) The document Ex.B2 does not show the land in Survey No.256/7. It is seen that an Advocate Commissioner was appointed at the request of the respondent. The Advocate Commissioner has filed a report and plan. It is noted that the warrant issued to the Advocate Commissioner was to note down the physical features after inspecting the property in Survey Nos.256/7 and 256/6 and to measure both Survey Numbers with reference to revenue records with the assistance of Taluk Surveyor. It is to be noted that this Court has observed that appointment of Advocate Commissioner is very much essential, as the respondent/Municipality has derived title to Survey No.256/7 by virtue of a Gift Deed. We are of the view that the Court was misled while appointing an Advocate Commissioner to note down the physical features of the property. This Court cannot rely upon the Advocate Commissioner's report, as the issues are to be addressed only on the basis of the pleadings and documents filed by either side before the Trial Court. The Advocate Commissioner's report and finding is not binding on this Court on



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the crucial issues that arise for consideration. When there is no dispute with regard to the title of the appellant/temple all along and the respondent claims title on the basis of a Gift Deed, this Court, having regard to the findings of this Court earlier in the settlement proceedings which was confirmed by the Hon'ble Supreme Court and fact that plaintiff's claim of title had already been upheld by the Trial Court, while answering the issues, this Court is unable to find any relevance to the Advocate Commissioner's report.

- (24) The learned counsel appearing for the respondent submitted that the suit property exist on ground as road and that the same was laid. It is also contended that the respondent is in possession of the property pursuant to the Gift Deed executed in the year 1998. The appellant/temple has established its title by establishing that the appellant/temple has been granted ryotwari patta in recognition of their pre-existing right in terms of the provisions of Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963 [Act 30 of 1963]. The person who had executed the Gift Deed in favour of the respondent was found to be a person not entitled to



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ryotwari patta. The Temple, which has been found to be in possession to get ryotwari patta, came forward with a suit for injunction. The suit for injunction was dismissed, as the Trial Court then found that a road had already been laid and therefore, the relief of injunction is not appropriate. In such circumstances, the conclusion of the Trial Court to dismiss the suit on the ground of *res judicata* is unsustainable, as it has been observed by this Court earlier. The question of title having been upheld in favour of the appellant/temple, this Court cannot refuse to grant consequential relief of recovery of possession. Even though a plea of adverse possession is set up by the defendant/respondent, there is no question of limitation when the suit is filed by the Temple. This has been held by the Trial Court.

- (25) For the above reasons, this Court is unable to sustain the findings of the Trial Court, while dismissing the suit filed by the appellant for recovery of possession on the plea of *res judicata*. In view of the conclusions we have reached, this Court is of the view that the appellant is entitled to a decree as prayed for.



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(26) Accordingly, this Appeal Suit is **allowed** and the judgment and decree of the Trial Court is set aside and **the suit in O.S.No.685/2007 stands decreed as prayed for.**

(27) In view of the fact that a road has been laid in the suit property and part of the suit property is being used as a road, this Court, while granting decree in favour of the appellant/temple to recover the property, gives liberty to the appellant/temple to file another suit for recovery of damages towards use and occupation at least for a period which falls within three years from the date of suit. In case, at the time of execution of the decree for recovery of possession, any individual public or plot owners are deprived of free access or any right of easement, they are at liberty to proceed against the promoter of the layout and the local body for compensation. No costs.

[SSSRJ] [NMJ]

24.11.2022

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Internet : Yes



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To

1. Additional District Judge
/ Fast Track Court No.II,
Coimbatore.
2. The Commissioner
Pollachi Municipality
Palghat Road, Pollachi Town & Taluk
Coimbatore District.
3. The Section Officer
VR Section, High Court
Chennai.



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S.S.SUNDAR, J.,

AND

N.MALA, J.,

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