IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.11.2022	2.12.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.14705 OF 2013 & 13313 OF 2017
AND
W.M.P. NOS. 14311 & 14312 OF 2017
W.M.P. NOS.19432 & 20835 TO 20837 OF 2018
W.M.P. NO.19949 OF 2020

W.P. No.14705 of 2013

Church of South India Trust Association
Coimbatore Diocese
Rep. by its Property Officer
256, Race Course Road
Coimbatore 641 018. .. Petitioner

- Vs -

1. The Secretary to Government
Housing & Urban Development Dept.
Fort St. George, Chennai 600 009.

2. The Commissioner of Twon &
Country Planning
807, Anna Salai (Chengalvarayan
Building 4th Floor), Chennai 600 002.

3. The Chairman
Erode Local Planning Authority
and District Collector, Erode.

4. The Member Secretary
Erode Local Planning Authority
TNHB Complex
Surampatti Nall Road, Erode – 9.

5. Erode Makkal Nalam Naduvor
Sangam, rep. by its Secretary
M.Chidambaram
No.113, Gandhi Nagar Colony
(Near KCMH Hospital)
Erode 638 009.
(R-5 impleaded as per order dated
24.10.13 in WP 14705/13) .. Respondents

W.P. No.13313 of 2017

C.S.I. Coimbatore Diocese
Rep. by Finance & Property Administrator
No.256, Race Course
Coimbatore 641 018. .. Petitioner

- Vs -

1. The Assistant Settlement Officer (South)
Chennai 600 005.

2. The Special Tahsildar
Erode Unit I
Town Survey & Settlement
Erode 638 001.

3. Tahsildar
Erode.

4. The President
Mariamman Baktharkal Sangam
No.258, Theppa Kulam Street
Erode 638 004.

5. Erode Makkal Nalam Naduvor Sangam
No.38/5, Mosikeeranar Street
Sixth Street, Erode 638 003.

6. Gurulakshmanan .. Respondents

W.P. No.14705 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the impugned order passed by the 4th respondent dated 12.03.2013 and 22.03.2013 in Roc. No.2871/2012/E.Uo.Thi.Ku-2 and consequential notification issued in Roc. No.346/2009 ELPA-2 dated 10.5.2013 issued by the 4th respondent and to quash the same insofar as the petitioner's land situated in T.S. No.28/1 (Part), 28/2 in Block No.2 and T.S. No.1 (Part) in Block No.3 all under Ward No.E of Erode Town.

W.P. No.13313 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the 1st respondent in Na. Ka.(I1)/7562/2012 dated 10.05.2017 and quash the same and consequently direct the 2nd respondent to grant patta to the petitioner's property admeasuring an extent of 12.66 acres in Old Survey No.586 and 587 present Ward E, Block 2, Town Survey No.28/2 – Bloc 3, Town Survey No.1 & 2 situate in Erode Town, Taluk and District. Boundaries North by Old TS Nos.582 and 583, East by Old T.S. Nos.584, 585 and 616, South by Old T.S. Nos.602 and 603 and West by Old TS Nos.592, 593 and 594.

For Petitioner	: Mr. P.Wilson, SC, for Mr.V.Chandrasekaran in WP 13313/17 Mr. AR.L.Sundaresan, SC, for Mr.V.Chandrasekaran in WP 14705/13
For Respondents	: Mr. P.Sathish, AGP for RR-1 to 3 in both WPs Mr.R.Viduthalai, SC, for Mr. K.S.Jeyaganesan for R-4 in WP 13313/17 Mr. Naveen Kumar Murti for Ms. S.Varsha for R-5 in both petitions Mr. S.P.Yuvaraj for R-6 in WP 13313/17 Mr. Vijayakumar for R-4 in WP 14705/13 Mr. R.Baskaradoss in WMP 19949/2020

COMMON ORDER

While W.P. No.14705/13 has been filed putting in issue the Erode Detailed Development Plan approved by the Town & Country Planning Authority, in which the lands of the petitioner are earmarked for the purpose of laying the 80 Feet Road, W.P. No.13313/17 has been filed assailing the cancellation of patta by respondents 1 and 2 on the ground that the auction sale in which the property is alleged to have been purchased by the London Missionary Society, the said society has no saleable or transferrable right to transfer the subject lands, which are covered in S. Nos.586 and 587 of Erode Town, in favour of the petitioner.

2. As the land in W.P. No.14705/13 is also covered under grant of patta in W.P. No.13313/17, both the writ petitions are taken up together and disposed of by this common order. Though impleading petitions have been filed by the institutions, which are run under the aegis of the petitioner, this Court, without impleading the petitioners as party respondents, however, permits the impleading petitioners to submit their written submissions.

3. It is the case of the petitioner that the property originally was a Sub-Collectors bungalow, which was floated for sale through an auction notice on 05.08.1905. In the said auction, one Rev. H.A.Popley of London Missionary purchased the property in the public auction, which was held on 12.08.1905 and

sale certificate dated 19.01.1906 was issued by the Collector, Coimbatore. A title deed dated 19.01.1906 was also executed by the Collector, Coimbatore.

4. It is the further case of the petitioner that the said Rev. H.A.Popley conveyed the said property to and in favour of London Missionary Society, Erode, by executing a sale deed in Document No.3067 of 1907 dated 12.12.1907 registered on the file of the Sub Registrar, Erode and the subject property was under the exclusive possession and enjoyment of the said London Missionary Society, which was represented by Rev. A.W.Brough, which is evidenced in the Town Survey Land Register.

5. It is the further case of the petitioner that London Missionary Society conveyed the said property to and in favour of the petitioner by executing a sale deed in Document No.1175 of 1965 dated 14.4.1965 registered on the file of the Sub Registrar, Erode and ever since the date of purchase, the petitioner is in absolute possession and enjoyment of the entire extent of 12.66 acres in which many social welfare activities are mooted and several social services are being

rendered by the petitioner, including educational service, hospital service, Home for the boys and girls, etc.

6. It is the further case of the petitioner that the title of the petitioner with regard to 12.66 acres is not only supported by documents, but the petitioner was also complying with the condition of payment of ground rent till 1980, whereinafter, the respondents refused to collect the ground rent, which prompted the petitioner to send the same as demand drafts, which were returned and resubmitted and are pending on the file of the Tahsildar, Erode.

7. It is the further case of the petitioner that when the petitioner applied for patta, after thorough enquiry, the Settlement Officer, vide order dated 30.6.2010 granted patta in favour of the petitioner, which was put in issue by some third parties before the Commissioner of Survey and Settlement, which resulted in reversal of the order passed by the Settlement Officer and with a further direction to the Special Tahsildar/2nd respondent to conduct de-novo enquiry. It is further averred by the petitioner that vide order dated 10.07.2012, without assigning any valid reasons, the 2nd respondent rejected the claim of the

petitioner for patta. It is the further case of the petitioner that when it is specific stand of the Government that the lands are poramboke lands, the initiation of complaint at the instance of the third parties, who have no *locus standi,* resulting in the cancellation of patta granted in favour of the petitioner is wholly perverse, arbitrary and unsustainable.

8. It is the further case of the petitioner that the said order of the Special Tahsildar dated 10.07.2012 was appealed before the Commissioner of Survey and Settlement, which resulted in the transfer of the appeal for adjudication before the Assistant Settlement Officer/1st respondent herein and upon transfer, the appeal was heard by the 1st respondent resulting in the passing of the impugned order confirming the order passed by the 2nd respondent, which resulted in the petitioner filing the present petition.

9. In addition to the facts above, the notification for acquisition issued on the basis of the Erode Detailed Development Scheme is assailed by the petitioner by submitting that the lands having been sold to London Missionary way back in the year 1905, only with a view to deprive the petitioner of the rightful

compensation by following the provisions under the Land Acquisition the present notification has been issued and challenging the same, W.P. No.14705/13 has been filed.

10. Learned senior counsel appearing for the petitioner in W.P. No.13313/17 submitted that the purchase of the property in the public auction by Rev. H.A.Popley stands established by the sale certificate with regard to the public auction held on 12.8.1905 in which the said property was purchased for a sale consideration of Rs.12,910/- and towards initial payment of 25% of the sale value a sum of Rs.3227.80 and the deposit amount of Rs.1000/- was paid on the same date, which stands established by documents relating to the auction conducted on 12.8.1905. It is the further submission of the learned senior counsel that the issuance of sale certificate also further fortifies the stand of the petitioner with regard to balance payment of the sale consideration, whereupon the land and the building, in all aggregating to an extent of 12.66 acres stood transferred in the name of Rev. H.A.Popley.

11. It is the further submission of the learned senior counsel that the transfer of rights by Rev. H.A.Popley in favour of London Missionary Society Corporation rep. by Rev.Brough also stands established by document in Doc No.3067/1907 dated 12.12.1907.

12. It is the further submission of the learned senior counsel that mortgage was made on the property with the British Government by deposit of title deeds during the year 1934 and 1938 which establishes that London Missionary Society had purchased the subject property through Rev. H.A.Popley, which establishes that the purchase by H.A.Popley was by way of outright sale through public auction, as otherwise, mortgage would not have been entertained by the British Government. Thereafter, on 14.04.1965, the subject property was transferred in favour of the petitioner by London Missionary Society vide Doc. No.1175/1965.

13. It is the further submission of the learned senior counsel that the entries in the Town Planning Scheme No.2, floated on 8.2.1937, clearly shows the owner of the lands in S. Nos.586 and 587 as “Manager, London Mission”, and

there is a clear interpolation in the said document, as the classification "Dry" has been struck off and "Por", to mean "Poramboke" has been written over it. Ultimately, the Board of Revenue by its resolution No.3 of B.P. Mis. 2223 dated 13.8.1938 directed the description to be changed to "Dry" from "Poramboke", which clearly shows that the issue relating to description of the land has been settled by the Board of Revenue, the final arbiter under the above proceedings and thus attained finality and, therefore, the classification/changed description of the property vide the impugned order dated 10.5.2017 is invalid as it is hit by the principles of *res judicata.*

14. It is the further submissions of the learned senior counsel that the impugned order of the 1st respondent, with regard to the genuineness of the sale certificate and title deeds issued in favour of H.A.Popley is without basis and the findings recorded without reference to the materials placed before the 1st respondent is wholly baseless and without jurisdiction. It is the further submission of the learned senior counsel that the Special Commissioner, by circular dated 29.4.1991 has already assigned Assistant Settlement Officers to carry out the rectification in the fair accounts after revenue updation and on the

representation of the petitioner, the Settlement Officer, vide order dated 30.06.2010 had made the necessary correction. The setting aside of the said order by the Commissioner of Survey and Settlement, Chennai vide proceedings dated 30.3.2011 and remanding the matter to the Special Tahsildar, Survey and Settlement on the basis of the alleged appeal filed by the Tahsildar and other private entities is against the circular dated 29.4.1991.

15. It is the further submission of the learned senior counsel that the petitioner's complaint before the authorities pertain only to correction of the error that has crept in the 'A' register relating to the classification/description of the properties, but instead of carrying out the aforesaid corrections sought for, the authorities have erroneously assumed jurisdiction and evaluated the title of the petitioners, which is beyond their jurisdiction and, therefore, the said orders are unsustainable.

16. It is the further submission of the learned senior counsel that the documents furnished by the petitioner would clinchingly prove the purchase made by H.A.Popley of the subject lands in the public auction conducted on

12.8.1905 and the sale certificate and title deeds given as per the Board Standing Orders would stand testimony for the purchase of the lands and transfer of title in favour of H.A.Popley.

17. It is the further submission of the learned senior counsel that though the transfer of right was absolute in nature, payment of quit rent/ground rent was stipulated by following the practice that every citizen was a tenant in the kingdom under the King who was styled the “Lord Paramount” or “Lord above all” under the definition of Chief rents and Chief tenants as defined in Black Law Dictionary. It is the further submission of the learned senior counsel that quit rent means that the rent paid by the tenant of freehold by which he qoes quit and free and is discharged from any other rent. Therefore, it is the submission of the learned senior counsel that the fact that quit rent/ground rent was paid would in no way alter the position of the petitioner as the owner of the property and the rights that would enure on H.A.Popley, viz., the purchaser, would automatically devolve upon the petitioner.

18. It is the further submission of the learned senior counsel that the word "revenue" is defined under Section 1 of the Madras City Land Revenue (Amendment) Act, 1867, means assessment, quit-rent, ground-rent or other charge upon the land payable to the Government. Therefore, mere usage of the words quit rent/ground rent in the sale certificate would neither take away the title, which devolved on Rev. H.A.Popley nor would affect the petitioner, on whom the property stood vested by way of transfer.

19. It is the further submission of the learned senior counsel that London Missionary, to which the subject property was transferred by Rev. H.A.Popley, had mortgaged the land in S. No.587-1 acre in favour of the Government for a period of 30 years vide Doc. No.468/1934 dated 21.03.1934 and Doc. No.2014/1938 dated 30.06.1938. It is the submission of the learned senior counsel that if really the Government had been the owner of the land, the said lands would not have been received by the Government as mortgage and this factum clearly proves the title of London Missionary and the petitioner.

20. It is the further submission of the learned senior counsel that the rejection of the sale certificate for want of registration by respondents 1 and 2 is wholly misconceived as Section 90 of Indian Registration Act, 1877 exempts registration of documents of this nature. It is the further submission of the learned senior counsel that Section 90 (d) of the Indian Registration Act, 1877 exempts documents purporting to be grants or assignments by Government of land or of any interest in land. In this regard, reliance is placed on the decision in the case of ***Dr.Meera Thinakaran – Vs – State of Tamil Nadu (2012 SCC OnLine Mad 1046)***.

21. It is the further submission of the learned senior counsel that the order of the appellate authority, viz., the Commissioner of Survey and Settlement in remanding the matter to the Special Tahsildar/2nd respondent, is against the order in G.O. Ms. No.385 dated 17.8.2004 and more so, when the original order has been passed by the Settlement Officer, who is in the rank of District Revenue Officer, who has been prescribed as the authority in the aforesaid Government Order, remanding the matter for enquiry before the Special Tahsildar, who is below the rank of the Settlement Officer, is wholly

erroneous and the said authority has no jurisdiction to pass orders with regard to rectification of defects in updating the Registry cases.

22. Taking this Court through the various documents, which, according to the learned senior counsel unerringly and with a high degree of certainty prove that the lands were indeed sold to H.A.Popley in the public auction and that H.A.Popley and, thereafter, the London Missionary and, thereafter, the petitioner, perfected title to the property and hold the property with perfect title, which are evidenced from the various documents, which were produced by the petitioner before the 1st and 2nd respondents, however, which have not been taken proper notice of by the said respondents resulting in the impugned orders and, therefore, this Court, necessarily shall take judicial notice of the said documents and hold the petitioner's title to the property and consequently direct the respondents to grant patta in favour of the petitioner.

23. Learned senior counsel appearing for the petitioner in W.P. No.14705 of 2013, while adopting the submissions and the arguments advanced in respect of W.P. No.13313/17, further submitted that the petitioner not only holds

absolute right and title to the lands, but for more than 100 years, the petitioner is in occupation and enjoyment of the said lands and they have put up constructions and are running hospitals, schools, old age homes, etc., in the interest of public and are doing yeomen social service to the society and without taking into consideration all the above, merely based on certain vested interests on behalf of certain individuals, the authorities are proceeding illegally and without jurisdiction to usurp the lands of the petitioner, which is nothing but an act of land grabbing being perpetrated by the Government.

24. It is the further submission of the learned senior counsel that even in the earlier round of litigation in W.P. No.24415/2010, the District Collector, in the counter filed, had accepted the ownership of the petitioner to the subject lands and that being the case, the tactics now adopted by the official respondents to cancel the patta is nothing but an arbitrary act, which is aimed at depriving the petitioner of the compensation that would be payable to the petitioner upon acquisition of the lands in the manner known to law.

25. In view of the factum of long possession and enjoyment of the petitioner and also the social services being undertaken by the petitioner for the benefit of the society at large, the balance of convenience is certainly in favour of the petitioner and, therefore, the impugned order of the 4th respondent dated 12.3.2013 and the consequential notification dated 10.5.2013 is wholly unsustainable, as the relevant facts have not been adverted to and, accordingly, prays for allowing the petition.

26. Per contra, written submissions have been placed before this Court in support of the submissions advanced by the learned Addl. Government Pleader appearing for the official respondents. It is the submission of the learned Addl. Government Pleader that the sale certificate itself is doubtful as there are discrepancy in the ground rent mentioned in the schedule to the sale certificate and as reflected in the 'A' Register. It is the further submission of the learned Addl. Government Pleader that though the petitioner claims to have obtained all the aforesaid documents, which have been placed before this Court to substantiate the title of the petitioner, in the year 2016 by filing requisite application under the Right to Information Act, yet, the said documents were not

placed before the 1st respondent when enquiry was conducted as to the right of the petitioner for grant of patta. There is no explanation forthcoming from the petitioner for not placing the said documents before the 1st respondent.

27. It is the further submission of the learned Addl. Government Pleader that the writ petition itself is not maintainable and no relief can be granted to the petitioner as the issue revolves around disputed questions of fact, which cannot be gone into by this Court under Article 226 of the Constitution and the petitioner, for the purpose of obtaining patta, has to establish his title to the property by filing suit before the appropriate civil court and without establishing the same, trying to obtain patta by filing the present writ petition is wholly unsustainable.

28. It is the further submission of the learned Addl. Government Pleader that though sale certificate is alleged to have been issued on 19.1.1906, yet no confirmation of sale has been passed by the Collector pursuant to the auction proceedings, which were communicated to the Collector. That being the case, there arise a grave doubt as to the authenticity of the sale certificate.

29. It is the further submission of the learned Addl. Government Pleader that the order passed by the Settlement Officer in the year 2010 is a collusive order, which has been obtained by misrepresentation and fraud and the Settlement Officer had colluded with the petitioner and without appreciating the materials with regard to the title to the property, patta was issued in favour of the petitioner, which was rightly interfered with by the Commissioner of Survey and Settlement.

30. It is the further submission of the learned Addl. Government Pleader that the survey number of the property, which has been purchased does not find a mention in the sale certificate, which raises a doubt as to the purchase of the subject property by H.A.Popley. It is the further submission of the learned Addl. Government Pleader that the cost of acquisition of the property has not been disclosed by H.A.Popley in the subsequent document in and by which the property was transferred to London Missionary Society represented by A.W.Brough. Therefore, the obtainment of property by H.A.Popley in the auction sale itself is shrouded by grave doubts.

31. It is the further submission of the learned Addl. Government Pleader that even according to the petitioner, the property was with the London Missionary, which was transferred to the petitioner in the year 1965. However, it is the submission of the learned Addl. Government Pleader that post independence, after 1947, all the lands stood vested with the Government of Madras Presidency and the right of London Missionary stood extinguished and, therefore, London Missionary does not get any right to alienate the property in favour of the petitioner after 1947.

32. It is the further submission of the learned Addl. Government Pleader that the payment of ground rent by H.A.Popley and, thereafter, by London Missionary and then by the petitioner would go to show that the property was only leased to H.A.Popley and in the absence of the lease being extended in the manner known to law, neither London Missionary nor the petitioner could derive any right from the lease granted to H.A.Popley. Since the petitioner has not established his right and title over the property, the patta sought for was rightly

rejected by the authorities and, therefore, no interference is warranted with the orders impugned herein.

33. Learned senior counsel appearing for the 4th respondent in W.P. No.14705/13 submitted that though the petitioner claims that the lands were purchased in the auction sale and sale certificate was also issued, however the sale certificate has not been registered in accordance with Section 17 (2) of the Registration Act, 1877, though registration is mandatory according to the said provision.

34. It is the further submission of the learned senior counsel that mutation of records were sought for by the petitioner by submitting a representation to the Settlement Officer on 21.6.10, which was considered and order was passed within 9 days on 30.6.2010 without conducting proper enquiry and verifying the revenue records. It is further submitted that the Tahsildar, who is a necessary and requisite party, was not heard, which prompted the 4th respondent as also the Tahsildar to file appeal before the Commissioner of Land Survey and Settlement, which resulted in the remand of the matter.

35. It is the further submission of the learned senior counsel that though the petitioner claims that H.A.Popley had purchased the entire extent of lands along with the building, but what was purchased by London Missionary is only the building, which would be evident from the documents filed by the petitioner. It is further submitted by the learned senior counsel that the payment of ground rent at Re.1/- per acre would clearly establish that the lands are only leased out to the petitioner and were never sold to the petitioner.

36. It is the further submission of the learned senior counsel that the balance payment with regard to the auction amount has not been placed by the petitioner to show compliance of the condition, which is a mandatory condition to confirm sale in favour of the petitioner. It is the further submission of the learned senior counsel that all along the entire extent of 12.66 acres have been shown as Government Poramboke and even the 1874 survey and settlement shows the said lands to be Government Poramboke. It is the further submission of the learned senior counsel that only S. Nos.584 and 585 were given to the

petitioner by way of grant in the year 1922 and the occupation of the extent of 12.66 acres by the petitioner is by way of encroachment.

37. It is the further submission of the learned senior counsel that the sale certificate does not provide for any transferrable right on London Missionary and in the said backdrop, there being no provision permitting transfer of the property, the transfer effected on 14.4.1965 by the London Missionary in favour of the petitioner is wholly illegal. Further, receipts evidencing payment of ground rent has not been placed by the petitioner, which would entail action in accordance with the conditions laid down in the sale certificate.

38. It is the further submission of the learned senior counsel that the petitioner has also paid 'B' memo charges in the year 2010, which conclusively establish that the petitioner is only an encroacher. It is the further submission of the learned senior counsel that the petitioner having all along stayed silent, had moved only in the year 2010 to apply for patta smelling acquisition proceedings on the basis of the Erode Detailed Development Scheme, which clearly show the

devious mind of the petitioner in thwarting the implementation of the 80 Feet Road.

39. Learned counsel appearing for the 5th respondent in W.P. No.14705/2013 submitted that disputed questions of fact being involved in the present petitions, this Court shall not deal with the same under Article 226 of the Constitution.

40. It is the further submission of the learned counsel that the documents, which have been produced by the petitioner, have been denied by the official respondents and they are categorized as false. It is further submitted that the factum of payment of the balance bid amount to the tune of 75% has not been established by the petitioner and in the absence of the same, the confirmation of sale in favour of the petitioner resulting in the issuance of sale certificate and title-deed is clouded with mystery and, therefore the said documents should not be relied upon.

41. It is the further submission of the learned counsel that the sale certificate contains a condition with regard to payment of quit rent which is variable at every periodical resettlement. It is the submission of the learned counsel that payment of quit rent arises only where the land is held by a person in estate and not as a land owner. Such being the case, the claim of the petitioner to be the land owner is wholly false. Further, the mortgage deed, which is pressed into service is not shown to have been redeemed by the petitioner by paying the amount. No record to substantiate the same has been filed.

42. It is the further submission of the learned counsel that the petitioner’s application of patta after almost a century definitely has to be explained property, as the initial obtainment of the property in the year 1905 is under the British regime, while after independence in the year 1947 and even after the transfer of the property in the year 1965, the petitioner has not taken any steps to obtain patta and has, for the first time come before the Settlement Officer only in the year 2010 filed application for patta. It is the further submission of the learned counsel that the petitioner, by filing petitions repeatedly is trying to

thwart the public welfare scheme sought to be implemented by the Government for more than a decade, which is wholly impermissible, as it has been the consistent view of the courts that public welfare takes precedence over private welfare.

43. The written submissions, which were permitted to be filed by the impleading petitioners, in support of the stand of the petitioner, reveal that many welfare activities are being taken up by the petitioner which are social service acts in the form of running Teacher Training Schools, Boarding Homes for boys and girls, High Schools, Hospitals, etc., which are run under the aegis of the petitioner and only with vested interest third parties are trying to scuttle the acts undertaken by the petitioners which is only on private vendetta. Before cancellation of patta, the petitioner was not granted with any opportunity to submit the documents which were obtained from the official respondents under the Right to Information Act. It is submitted that if the petitioner's land is acquired for the formation of 80 Feet Road, it will adversely affect the interest of the students studying in the schools and also the other welfare activities undertaken by the petitioner. Further, the formation of the road will have a

detrimental effect on the school going children, as the traffic during peak hours will affect the ingress and egress to the schools, which the students will find difficult, thereby hampering the studies.

44. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the materials to which this Court's specific attention was drawn.

45. The following questions arise for consideration in the present writ petitions :-

1) *Whether the writ petitions are maintainable under Article 226 of the Constitution?*
2) *Whether the sale of the subject property in the public auction to Rev. H.A.Popley is an absolute sale in terms of BSO 22?*
3) *Whether the lands to an extent of 12.66 acres in S.No.587 was also sold in the public auction or the building alone was sold in the public auction in terms of BSO 22?*

4) *Would the charge of ground rent/quit rent in respect of the extent of 12.66 acres in S. No.587, negate the claim of absolute sale of the said lands in favour of H.A.Popley?*

5) *What would be the nature and classification of the lands to an extent of 12.66 acres, which were charged with ground rent/quit rent by the Government?*

6) *Whether the cancellation of patta by the 2nd respondent, as confirmed by the 1st respondent is sustainable; if not, whether the petitioner is entitled for grant of patta?*

7) *Whether the acquisition of the lands, which are the subject matter of the lis in the present petitions, need to be acquired by the Government, in public interest, for the purpose of proceeding with the scheme of providing by-pass road and if so, what would be the compensatory relief to which the petitioner would be entitled to?*

Issue No.1

1) Whether the writ petitions are maintainable under Article 226 of the Constitution?

46. Normally, when the issue projected in a petition filed under Article 226 of the Constitution of India, involves disputed questions of fact, the High Court, under its inherent and extraordinary jurisdiction, shall not entertain the same and would necessarily relegate the parties to move the civil court to establish their right and title. This has been the consistent ratio laid down by the Courts time immemorial. However, before coming to the aforesaid conclusion that a writ petition is not maintainable, the Courts have to necessarily look into the materials to find out whether there are disputed questions of fact, which bars the jurisdiction of the Courts to adjudicate on the issue. Keeping in mind the above, this Court will now proceed to analyse whether the jurisdiction of this Court is barred under Article 226 as prefaced by the respondents.

47. The issue raised before this Court pertains to issuance of patta, which normally this Court would entertain with a direction to the revenue authorities to consider the same in the light of the documents relating to title. However, in

the case on hand, the respondents 1 and 2 have rejected the claim of the petitioner for patta on the ground of title. Title to the property being a disputed question of fact, which has to be established through oral and documentary evidence, this Court would have to relegate the petitioner to the aegis of the civil court. However, the petitioner has pressed into service the documents relating to title, which documents, even according to the respondents 1 and 2, were not placed before it and further they dispute the said documents, which have been placed by the petitioner in support of its title. However, the fact remains that the documents placed by the petitioner are the documents, which have come from the official respondents, the said documents having been issued on the application of the petitioner under the Right to Information Act. Therefore, the official respondents cannot dispute the veracity and genuineness of the said documents, as the said documents have emanated from their end. In the aforesaid backdrop, whether the order passed by the official respondents with regard to title of the petitioner, requires to be adjudicated by the civil court.

48. The documents which have been relied upon by the petitioner are the sale certificate pertaining to H.A.Popley of London Missionary purchasing the

property in the public auction and the schedule of the property. The property purchased are the building and the compound around the building. The said public auction is governed by Board Standing Order No.22 (for short 'BSO 22'). The petitioner has placed before this Court the documents relating to the correspondence between the various arms of the then British Government relating to the sale of the property, which has resulted in the issuance of auction notice and the holding of public auction on 12.8.1905. Pursuant to one H.A.Popley, who is alleged to have come out successful in the auction, on payment of the initial deposit and 25% of sale price, the auction is said to have concluded in favour of H.A.Popley, whereupon, on 18.1.1906/19.1.1906, the sale certificate and title deed is alleged to have been issued in favour of H.A.Popley. It is further seen from the materials placed in the typed set of documents that the said sale certificate for building and the title deed for the site of land alleged to have been sold with the building have been issued in Appendix XVIII and XIX respectively as provided in BSO. Therefore, the entire sale is covered under BSO 22 and the confirmation of sale would result in the issuance of Appendix XVIII and XIX, which are alleged to have been issued to H.A.Popley.

49. The documents, mentioned aforesaid, it is to be stated, are copies, which have been obtained from the Public Information Officer, Tamil Nadu Archives by submitting necessary application under the Right to Information Act. The said documents have been issued during September, 2014, on the requisition of the petitioner. Necessarily the said documents are Government documents, which have been issued by the Public Information Officer, Tamil Nadu Archives. Therefore, the authenticity of the documents cannot be questioned, unless it is the stand of the respondents 1 and 2 that it is forged. However, it is to be stated that official respondents have not taken any such stand that the documents, based on which the petitioner claims title to the subject property and on the strength of which it claims patta, are forged. So long as the official respondents are not questioning the authenticity and genuineness of the documents submitted by the petitioner before this Court with regard to one H.A.Popley having secured the property in the public auction held on 12.8.1905, which, for the reasons aforesaid, the official respondents cannot dispute, as it has been issued by another arm of the State, necessarily they are tied by the said documents. In the wake of the genuineness and authenticity of the documents, which are the basis of claiming the purchase of property by

H.A.Popley, the contention of the official respondents that writ petition is not maintainable is wholly erroneous and deserves to be rejected. ***Issue No.1 is answered accordingly holding in the facts and circumstances of the present case, the writ petitions are maintainable.***

50. However, it is to be pointed out that the mere issuance of the document by an arm of the State would not confer title on the petitioner and for a moment, this Court is not adjudicating the title to the property. As submitted by the official respondents, the title to the property cannot be gone into by this Court under Article 226, but the fact that there is a dispute raised, would not curtail the power of this Court and tie the hands of this Court from proceeding any further. On the other hand, this Court could very well go into the whole issue from another perspective, viz., on the basis of the documents, to find out whether the sale by way of public auction made in favour of H.A.Popley is an absolute sale of the land on which the building rests and the lands around the building so as to enable H.A.Popley to transfer the same to London Missionary in the year 1907 and for its subsequent transfer in favour of the petitioner in the year 1965, which would give absolute right and title to the petitioner. In such a

backdrop, this Court will proceed to find out the nature of sale in favour of H.A.Popley and also the subsequent transfer to the petitioner, which would enable the petitioner to seek for patta.

Issue Nos.2 to 6

> ***2) Whether the sale of the subject property in the public auction to Rev. H.A.Popley is an absolute sale in terms of BSO 22?***
>
> ***3) Whether the lands to an extent of 12.66 acres in S.No.587 was also sold in the public auction or the building alone was sold in the public auction in terms of BSO 22?***
>
> ***4) Would the charge of ground rent/quit rent in respect of the extent of 12.66 acres in S. No.587, negate the claim of absolute sale of the said lands in favour of H.A.Popley?***
>
> ***5) What would be the nature and classification of the lands to an extent of 12.66 acres, which were charged with ground rent/quit rent by the Government?***
>
> 6) ***Whether the cancellation of patta by the 2nd respondent, as confirmed by the 1st respondent is sustainable; if not, whether the petitioner is entitled for grant of patta?***

51. As all the aforesaid issues are interconnected, they are taken up together for discussion for rendering a composite finding.

52. The cumulative reading of all the aforesaid issues boils down to a composite issue as to *whether the lands, which are around the land on which the building stood, to an extent of 12.66 acres in S. Nos.586 & 587 was also sold in the public auction in addition to the building and if the answer to the above is in the negative, whether the charge of ground rent/quit rent in respect of the said portion of the lands to an extent of 12.66 acres in S. Nos.586 & 587 would negate the claim of absolute sale of land to an extent of 12.66 acres in S. Nos.586 & 587 in favour of H.A.Popley.*

53. To address the aforesaid issues, it is necessary to skim through the documents, which have been placed by the petitioner before this Court which stands as the basis for the petitioner to claim sale of the property to H.A.Popley in the public auction held on 12.8.1905.

54. Before adverting to the documents placed by the petitioner to establish the purchase of the property and the stand of the petitioner that it is an absolute sale in favour of H.A.Popley, the Board Standing Orders, more particularly, BSO 22 (6) gives the requisite power to the authority competent therein to sell the land belonging to the Government and for better appreciation, BSO 22 (6) as it stood in the year 1905, is quoted hereunder :-

> *"22. Disposal of land and buildings occupied by a Government department.-*
>
> * * * * * * *
>
> *6. Sale notice, sale certificate and title-deed.- Whenever Government buildings are sold with their sites by public auction, it should be stipulated in the sale notice as one of the conditions of sale that the sites will be sold subject to the payment of the appropriate ground-rent or assessment, which ground-rent or assessment will be liable to periodical revision. <u>A certificate in the form given in Appendix XVIII shall be granted for the building and a title-deed in the form given in Appendix XIX issued for the site occupied by the building</u>."*
>
> *(Emphasis Supplied)*

55. From the above provision, it is evident that with regard to the sale of the building, certificate in the form given in Appendix XVIII is granted and a title-deed in the form given in Appendix XIX is issued for the site occupied by the building. From the above, it is clear that the certificate and title deed are issued in segregation for the building and for the site occupied by the building.

56. In this regard, the communication that had been exchanged by the various authorities prior to the public auction on 12.8.1905, which have a bearing on the present issue requires to be adverted to, to find out the nature of the transaction that had taken place.

57. The first of the communication emanates from the Collector of Coimbatore to the Secretary to the Commissioners of Land Revenue, Madras, dated 26.01.1905. For better appreciation, the relevant portion of the said communication is extracted hereunder :-

> *"2. The normal rent, Rs.93/-, being too high for the Deputy Collector, the building was rented to the London Missionary Society as a residence for for its missionary. <u>The Society offers to buy the place outright for Rs.9,000/-. There is no other offer for the</u>*

building and the Executive Engineer thinks the price offered is a fair price. I agree with him. I beg to enclose copy of the valuation statement, which gives the condition of the building at the present moment. I may add that the London Missionary Society will not continue to rent the building at the present rent, but will build a new bungalow if they cannot buy this one for Rs.9,000/- and if they do buy it they will have to spend a good deal in repairs and other matters, as it stands."

(Emphasis Supplied)

58. From the above communication, it is evident that what the intent of the purchaser as well as the seller were only with respect to the buying/sale of the building. Thereafter, valuation report appears to have been sought for, which resulted in the Executive Engineer, Coimbatore Division, submitting the valuation report to the Superintending Engineer, Fourth Circle, Coimbatore, the relevant portion of which is quoted hereunder :-

"The materials and workmanship have been valued at Rs.15,315/- at present rate.

The site covers an extent of 12.66 acres which if valued at Rupees 200/- per acre, comes to Rs.2,532/-.

This makes the total of Rs.18,077. The value of the books is 17000.129. The original estimated cost from the note on the original plan (herewith enclosed) was Rupees 15,000/-.

2. I inspected the building last month with the view of judging of its general condition and value in connection with the offer of Rs.9000/- made for it by the church missionary society and offer following remarks and opinion on this subject:-

* * * * * * *

7. The allowance for unsuitable and extravagant design I cannot estimate. <u>While I do not think it would be desirable to part with this building if there is any reasonable probability of Sub Collector or Assistant Collector being posted to Erode</u>, I am most strongly of an opinion a failing a European Government Officer as a tenant that it is most desirable to part with the property and further considering the defects in the building that Rs.9,000/- is a fair price. I may add that as a private person, I would not give Rs.9,000/- for building as a residence unless I was specially anxious for one on the site. ………"

59. The above communication of the Executive Engineer reveals that valuation has been made of the building and the value has been arrived at Rs.15,315/- for the materials and workmanship, which relates to the building and the land cost is arrived at Rs.200/- per acre, working out to Rs.2532/-, in all

aggregating to Rs.18,077/-. From the above the valuation of the land and building is valued at Rs.18,077/-.

60. Thereafter, the Board of Revenue had written to the Collector calling upon his proposal to fix ground rent for the site of the bungalow and to ascertain from the Missionary about its willingness to pay it and to abide by the conditions mentioned in the form of title deed in Appendix XIX to BSO 22 Para 3.

61. In response to the same, the Collector of Coimbatore, vide communication to the Board of Revenue had recommended a ground rent of Rupee One per acre per annum to be charged for the site of the Sub Collector's bungalow at Erode. Further, a telegram had also been addressed to the Board of Land Revenue by the Collector on 7.3.1905 wherein, it is addressed as under :-

> *"Reference B 136 thirteenth ultimo disposal Erode bungalow London Mission agrees. <u>Actions of lease I recommend one rupee an acre ground rent in view of price paid and extent compound</u>."*
>
> *(Emphasis Supplied)*

62. In continuation of the aforesaid telegram, a detailed letter has also been addressed by the Collector of Coimbatore to the Secretary to the Commissioners of Land Revenue, Madras, dated 7.3.1905, the relevant portion of which is quoted hereunder for better appreciation :-

> *"…… I have the honour to recommend that in view of the high price offered by the Society and the large extent of the compound measuring 12.66 acres an annual ground rent of Re.1 per acre may be charged for the site of the building. The Society has expressed its willingness to pay ground rent at this rate and also to abide by the conditions mentioned in the form of title deed given in Appendix XIX to the Board's Standing Order No.22 para 3."*

63. A conjoint reading of the aforesaid letters and the telegram of the Collector of Coimbatore to the Board of Revenue reveals that for the lease to be given with respect to the vast extent of compound measuring an extent of 12.66 acres, the Collector had recommended the fixation of Rupee One per acre as ground-rent, which has also been accepted by the Missionary, as curiously, the word used by the Collector in the telegram is *"lease"*.

64. Thereafter, a letter has been addressed by the Board of Land Revenue to the Government on 10.03.1905 referring to the letter and telegram of the Collector of Coimbatore and soliciting the orders of the Government for approval to the proposal to the sell the Sub Collectors bungalow to the London Mission Society. In the said communication, a note is appended thereto, which reads as under :-

> *"In, has recorded a note that where compounds are large the rate of ground rent be reduced. Vide Page 27 of B.P. 300/1901 (V) – Vide also the the Hon'ble Mr.Sino's remarks on the subject – Page-50."*

65. Thereafter, pending consideration of the proposal for disposal of the bungalow, once again, vide communication dated 29.6.1905, the Board had written to the Government, which is quoted hereunder :-

> *"The Board requests Govt. will be pleased to pass early orders on its Pro. No.900 Mis. Dt. 10.03.05 regarding the disposal of the Sub-Collector's bungalow at Erode. The Collector reports that the Rev. H.A.Popley of the London Misson desires to have the quest settled at a very early date so that he may provide for the construction of a new building in case Government do not accept offer made by him."*

66. After the abovesaid correspondence, there is a correspondence relating to a counter offer from one Shanmugam Chetty in which communication has been addressed to find out the price that is to be offered by the said Shanmugam Chetty and upon receipt of the same, to provide an opportunity to the Mission to enhance its offer, if they so wish. The said communication is dated 7.7.1905.

67. It is to be noted here that the approval of the Government to the proposal approved by the Board of Revenue, does not form part of the typed set of records. However, auction is said to have taken place on 12.8.1905 in the office of the Deputy Collector, Erode Division and pursuant to the said auction, the bid has been confirmed in favour of H.A.Popley, as evidenced by the communication of the Deputy Collector, Erode Division to the Collector of Coimbatore dated 12.08.1905, which is extracted hereunder :-

> *"With reference to your letter dated 5th August, 1905, R.O.C. No.707 (d)/B & C of 1905, <u>I have the honour to state that revised notices of sale of the Sub Collector's bungalow at Erode were forwarded to all Tahsildars and Deputy Tahsildars in this District</u>*

for wide publicity and distribution among the leading merchants and gentlemen. The sale was conducted in my office at 8.30 A.M. today as notified in the District Gazette dated 5th August 1905 page, 214. There were only two bidders at the sale. The Rev. H.A.Popley of the London Missionary Society and M.R.Ry.C.S.Sitharamier, Secretary, Mahajana High School, Erode. Before the sale was convened, the sale notice was duly read over and the conditions of sale read also. The conditions subject to which the sale of the building will be held after possession is obtained were also explained to them. The highest bidder is Rev. Mr.Popley the highest bid being Rs.12910/-. I have the honour to recommend that the sale may be confirmed as the amount fetched is a fair price.

* * * * * * *

The notice published in the District Gazette dated 5.8.1905 page 214 was duly read over to the bidders before the commencement of the sale – a correct description of the site as noted below was given to them and the following conditions subject to which the site of building will be held after possession obtained were read out and explained to them before the commencement of the sale.

* * * * * * *

The following are the conditions subject to which the site of the building will be held after possession is obtained thereof :-

(1) *That an annual ground rent of Rs.12-11-0 or of such sum as may be fixed at every periodical revision thereof shall be paid to Government on demand before the 15th April of each year.*

(2) *That in default of such payment the ground rent will be realized ……………….*

* * * * * * *"

(Emphasis Supplied)

68. Further to the above auction, sale certificate was issued to H.A.Popley of London Missionary Society in which the description of the immovable property including the building and remarks are found mentioned, which are extracted hereunder :-

Description of the Immovable Property including the building	***Remarks***
Town survey fields Nos.586 & 587 measuring in the aggregate 12.66 acres bearing an annual ground rent of Es. 8-11-0 containing the Sub-Collector's bungalow, a stable, a kitchen and well *Boundaries* *North – 562 & 583* *East – 584, 585, 616* *South – 602 & 603* *West – 592, 593 & 594*	*The quit rent is variable at every periodical resettlement of the Taluk*

69. Title-Deed was issued in favour of H.A.Popley pursuant to the aforesaid auction and the same is quoted hereunder :-

> *"Know all men by these presents that 12.66 acres of land in Erode village, Erode Taluk, bounded on the North Town Survey Fields Nos.582 and 583, East by Town Survey Fields Nos.584, 585, 616, South by Town Survey Fields Nos.602 and 603 and West by Town Survey Fields Nos.592, 593, 594 are granted to the Reverend H.A.Popley of the London Missionary Society at Erode on the following conditions :-*
>
> (1) *That an annual ground rent of Rs.12-11-0 or or such sum as may be fixed at every periodical remission thereof which shall take place at every resettlement of the taluk shall be paid to Government on demand before the 15th April of each year.*
>
> (2) *That in default of such payment the ground rent will be realized ....*
>
> * * * * * * * *"
>
> *(Emphasis Supplied)*

70. The confirmation of auction and the price which was fetched in the auction was communicated by the Collector to the Secretary to Government,

Revenue Department and the initial deposit made thereto along with the 25% sale price and the confirmation of sale made in favour of H.A.Popley were informed to the Government.

71. Town Planning Department, in the year 1938 floated Schemes 1, 2, 3 and 4 for the development of Erode and in that the description of the subject lands, which were bought in auction, viz., S. Nos.586 and 587 were shown as "Poramboke". It is the contention on behalf of the petitioner that the lands were described as "Dry", however, it was scored off and overwritten as "Poramboke" and the name of the owner or occupier therein is shown as Manager, London Mission, which clearly shows that the owner of the said survey numbers is London Mission.

72. In this regard, reference of this Court was invited to Board Proceedings No.2228 dated 13.8.1938, wherein the Board had submitted to the Government the following, more particularly relating to S. Nos.585, 586 and 587, and the same is extracted hereunder :-

"Scheme 2, Schedule I

T.S. Nos.585, 586, 587 are reported to be poramboke, assigned to the London Mission subject to the payment of ground rent. The description "Poramboke" noted in Col. 8 of the Schedule 1 against these numbers should be changed into "Dry".

73. Thereafter, the Collector of Coimbatore was addressed by the Town Planning Department, wherein reference was drawn to S. No.587, 587 and 585 and the same is extracted hereunder :-

"Three fields TS Numbers 585, 586 and 587 of Erode Town are covered under scheme number 2, schedule referred to the remarks of B.P. No.Mis2228 of 13 Aug, 1938. These are registered in the RST as "Porambokes" as stated below :

TS No.585.0.13 'poramboke' assigned to Brough in the Collectors DD is No. 11.5. …. Dt.08.02.1927.

586 – 2.75 por bungalow ground rent rupees 8.4.0

587 – 9.91 por bungalow ground rent

To be fixed at every periodical revision before the 'settlement' of each year. This amount has been increased to rupees 8.4.0 and 29.12.0 at resettlement.

ii) <u>TS No.585</u>

Taluk file 19/27 dt. 30.03.37 which was traced after a laborious search for several days shows that this field which was noted as municipal lane was transferred to natham poramboke at the instance of Rev. Brough and assigned to him in collector DDis

No.1154/27 dt. 8th Feb., 1927 subject to the payment of an initial value of Rs.4.1.0 and ground rent of Rs.2.7.0 per annum which was revisable at periodical resettlements.

* * * * * * *

TS No. 586 and 587

No records are available in the Taluk office to show under what conditions the land fields were assigned to the mission. At collector office file Dis. Nos.244/06 and 57/1 of 1905 show that Popley of London Missionary Society purchased land fields in a public auction held at Erode by the Deputy Collector Erode on 12 August 1905 for Rs.12910/- and that they were assigned to him subject to three conditions, one of which being assignment was subject to the payment of an annual ground rent of Rs.12.11.00 or such other sum as may be fixed. ….”

74. From the above communication, it transpires that S. Nos.586 and 587 were noted in the RSR as “Porambokes” and that it has been assigned to Brough in Collectors DDis No.114/27 dated 8.2.1927. Further, it is evident from the aforesaid communication that the Collector Office Dis file show assignment of the subject property to Popley for Rs.12910/- and that the said assignment was subject to payment of ground rent.

75. Thereafter, communication had emanated from the Collector of Coimbatore with reference to the communication of the Town Planning Department, wherein reference has been drawn to the report of the Tahsildar of Erode, who has stated that the property in S. Nos.586 and 587 have been shown as “Porambokes” in the revenue records. However, the Collector had invited reference to the resolution of the Board of Revenue in No.3 of B.P. Mis 2223 dated 13.8.1938, wherein the description of ‘poramboke’ was directed to be changed into ‘Dry’ and, therefore, direction was issued to change the classification of the aforesaid survey numbers.

76. Thereafter, there have been few correspondence with the Town Planning Department with regard to change in classification of S. Nos.586 and 587 and ultimately, the Collector, vide communication dated 25.10.1939, addressed to the Secretary to the Board of Revenue, Land Revenue and Settlement, Madras had submitted as under :-

> *“In its resolution quoted above, the Board has ordered in respect of scheme 2, Schedule I that the description ‘poramboke’ noted in column 8 of the schedule against T.S. Nos.585, 586 and 587 should be changed into ‘dry’.*

<u>T.S. No.585</u> – This was once a municipal lane and was transferred to Natham Poramboke at the instance of one Rev. Brough and assigned to him subject to the payment of (1) an initial value of Rs.4-1-0 (2) a ground-rent of Rs.2-7-0 per annum. It is now classified as poramboke in the accounts.

<u>T.S. Nos.586 and 587</u> are porambokes 'Bangalow ground-rent' sold to London Mission Society for Rs.12910/- subject to the payment of ground rent.

2. In town areas, sites which are assigned free or on payment of initial value or sold in auction are registered as porambokes only with the appropriate ground-rent noted in the remarks column of the R.S.R. In the circumstances, I request to be informed as to how the modifications suggested in respect of the 3 fields referred to in the preceding paragraph are to be carried out and how the fields are to be registered in the R.S.R. in the event of their transfer to 'dry'."

77. Thereafter, the Assistant Secretary, Board of Revenue, vide communication dated 18.3.1938 had addressed the Huzur Sheristadar, Collector Office, Saidapet, and the communication is quoted hereunder :-

"Please let me know how village-wise poramboke in villages declared as towns and other porambokes in such villages assigned for house site purposes are exhibited in village accounts. Whether

they are shown as porambokes under the appropriate head or as private holdings."

78. In response to the aforesaid communication, the Huzur Sheristadar, Collector Office, Saidapet, vide communication dated, 8.11.1938 had addressed the Assistant Secretary, Board of Revenue, which is quoted hereunder :-

> *"Village site porambokes assigned for house site in villages declared as towns are exhibited in the village accounts as Town site porambokes. They are not shown as private holdings. Porambokes assigned for house site purposes are transferred to Town site before assignment."*

79. Finally, the Board of Revenue, vide proceedings No.B-5286-39 dated 17.11.1939 had directed the Collector of Coimbatore that T.S. Nos.585, 586 and 587, Erode Town should be entered as "Town Site" in Column 8 of the Schedule 1 of Town Planning Scheme No.2 in the remarks column of the Village 'A' and T.S. Register. The relevant portion is quoted hereunder :-

> *"The Collector of Coimbatore is informed that T.S. Nos.585, 586 and 587 Erode Town should be entered "Town Site" in Col. 8 of the Schedule (1) of Town Planning Scheme No.2 and in the remarks column of village 'A' and T.S. Register."*

80. From a careful perusal of the aforesaid communications between the various Departments of the Government with the Collector, the Collector with the Board of Revenue and the Board of Revenue with the Government, it transpires that finally the description of the subject land was settled and the revenue records were directed to be modified to show the description as "Townsite". Therefore, necessarily the classification of the land ought to be mentioned as "Dry" with necessary modification in the RSR to be shown as "Townsite". Further, the description of the subject property was modified way back in the year 1938 as "Townsite" and till date the said description has not been modified inspite of the fact that the petitioner has been in possession of the present documents, obtained through Right to Information Act since 2016. Therefore, the classification and nature of the land in S. Nos.586 and 587 would be have to be shown as *"Town site"* in the RSR and. ***Issue No.5 is answered accordingly.***

81. Once this Court has come to the conclusion that the description of the subject land is *"Townsite"*, it is necessary to find out as to what *"Townsite"*

explicitly means so as to adjudicate the other contentions. *"Townsite"* is defined as -

> *"**Townsite** - A tract of land set apart by legal authority to be occupied by a town and usually surveyed and laid out with streets."*

82. From the above definition it is clear that a tract of land, which has been explicitly set apart for the purpose of town with particular survey and laid out with streets. The subject property is nomenclatured as "Townsite" and such being the case, necessarily it has to be structured in such a manner that streets are laid out and a locality is formed.

83. The subject property having been classified as "Townsite", the next question that arises is the ownership and saleability of the said lands. The whole case of the petitioner hinges on the sale certificate issued in favour of H.A.Popley, which is heavily relied on by the petitioner to submit that title to the subject lands stood transferred to H.A.Popley and, thereafter to the petitioner and, therefore, the petitioner is the owner of the subject property. However, it is contended otherwise by the respondents by submitting that the charge of

ground-rent/quit rent from H.A.Popley and from the subsequent transferees would prove that the title to the land still vests with the Government and only the right of enjoyment of the land, at the best, would be with the petitioner, who having got the land transferred from the London Missionary.

84. The larger question that arises is whether H.A.Popley of London Missionary had purchased the building along with the 12.66 acres of the land around the building. All the material records, which have a bearing on the said auction and the various communications that have flown across the various departments and the officials have already been extracted above.

85. The earliest of the communication is from the Collector of Coimbatore to the Secretary to the Commissioner of Land Revenue in which the Collector had brought to the notice of the Commissioner of Land Revenue that the "*Society offers to buy the place outright for Rs.9,000/- and there is no other offer for the building*. Further the Collector had stated therein that *London Missionary Society will not continue to rent the building at the present rent, but will build a new bungalow if they cannot buy this one for Rs.9,000/-.* The Collector had

therefore solicited orders in *terms of BSO 22 Para (ii) for disposal of the building with the site on which it stands*.

86. As quoted above, valuation report was sought for which was given by the Executive Engineer valuing the material and workmanship at Rs.15,515/- and the land value at Rs.200/- per acre. In all the value was fixed at Rs.18,077/- and value on the books is shown as Rs.17,129.

87. From the above communications, it is fairly evident that what was sought for purchase by the London Missionary through H.A.Popley was only the building at Rs.9,000/-. The value of the building as per the valuation including its material and workmanship was valued at Rs.15,515/-.

88. In the above backdrop, a telegram was addressed by the Collector of Coimbatore on 7th March, 1905 to the Board of Revenue in which there is a clear statement made by the Collector that "*London Missionary agrees for the disposal of the Erode Bungalow and for lease of the land, the Collector had recommended Re.1/- per acre as ground rent in view of the price paid and extent*

of compound". It is to be noted herein that the total extent of land around the compound is 12.66 acres and the building stands on a land of an extent of 1.70 acres. This is not in dispute. The said telegram was followed up with a letter of even date in which the Collector had submitted that *"in view o the high price offered by the Society and the large extent of the compound measuring 12.66 acres, an annual ground rent of Re.1 per acre may be charged for the site of the building".* It was further stated by the Collector that *"the Society has expressed its willingness to pay ground rent at this rate and also abide by the conditions mentioned….".* From the above, it evident that all along the intent of the Government as well as the Missionary was only with regard to the purchase of the building at the price of Rs.9,000/- which was initially offered and it was never the intent, conveyed through any of the communications above, to purchase the land and the land was to be leased on payment of ground rent of Rs.1/- per acre.

89. However, the whole tenor and nature of the issue turned into a different sphere on interpretation of the sale certificate and title deed, which have already been extracted supra. It is to be pointed out that though the

petitioner has placed the documents obtained through the Right to Information Act, however, no materials have been placed on the side of the respondents. In fact, the assistance rendered by the State in this aspect is minimalistic, but for the materials obtained by the petitioner under the Right to Information Act from the State, which having not been countered in a manner known to law, and could not be countered in any manner, should be taken to be genuine.

90. The auction was conducted on 12.8.1905 on which date there were only two bidders and the highest bid to the extent of Rs.12,910/- was by H.A.Popley of London Missionary. The recording in the report of the Deputy Collector to the Collector proceeds that *"Before the sale was convened, the sale notice was duly read over and the conditions of sale read also. The conditions subject to which the sale of the building will be held after possession is obtained were also explained to them."* From the above, it is clearly evident beyond a pale of doubt that the auction pertained only to sale of the building and there is no whisper about the sale of the land to the extent of 12.66 acres. The auction does not mention about the sale of the land, but it speaks only about the sale of the building.

91. In the aftermath of the above, a careful perusal of the earlier communication of the Collector with the Board of Revenue and also with the Government in and by which the Collector had submitted that London Missionary Society was willing to purchase the building for Rs.9,000/- clearly shows that the sale is only with respect to the building and it cannot be for the land as well. The valuation of the materials and workmanship was quantified to the tune of Rs.15,515/- and the land was valued at Rs.200/- per acre totaling to Rs.2,532/-. In all the total amount was arrived at Rs.18,007/-. If the total valuation of the land and building is Rs.18,007/-, definitely the upset price for the land and building cannot be below the valued amount. Further, one other aspect which requires to be mentioned is that no upset price has been fixed from where the bidding would start. Such being the case, when the highest bid has been confirmed at Rs.12,910/-, that too in an auction and not by way of tender, the only inference that could be drawn from the above is that auction was conducted only for the building and not for the land around the building. Any other inference would be very much against the materials available on record.

92. The sale certificate issued to H.A.Popley would stand testimony with regard to sale of building alone. In the sale certificate, the description of the immovable property including the building is shown, which is *"Town survey fields Nos.586 & 587 measuring in the aggregate 12.66 acres bearing an annual ground rent of Rs.12-11-0 containing the Sub-Collector's bungalow, a stable, a kitchen and Well."* What is pertinent to note in the above description is that the town survey fields in Nos.586 and 587 measuring an aggregate of 12.66 acres had been granted on a ground rent of Rs.12-11-0, it contains the Sub-Collector's bungalow, a stable, a kitchen and Well. What is conspicuously to be noted is the fact that the lands for which ground rent is charged is said to contain the above immovable structures, which were sold in the auction. Had really the auction pertained to the lands as well, the terminology that would have been used is *"**alongwith**"* and not ***"containing"***. The word used being *"containing"* really clinches the issue that what is sold is only the building and not the land around the building. Only on account of that fact, there is a clear description that the land to the extent of 12.66 acres is charged to an annual ground rent of Rs.12.11.0. That is one of the reason that there is a mention of the building separately and the compound separately. While the building is sold in the

auction, the compound is rented out on a ground rent of Re.1/- per acre, totaling to Rs.12-11-0. If really the lands to the extent of 12.66 acres had been sold in the said auction, necessarily not only the letter of the Deputy Collector to the Collector would have spoken about the same, but the sale certificate would carry the necessary reflection with regard to the sale of the lands to H.A.Popley of London Missionary Society.

93. The petitioner, to further its stand that the property, which was auctioned, includes the land as well, drew the attention of this Court to the mortgage deed, in and by which the subject property, was mortgaged with the British Government and it is submitted that, but for the land which had been sold, the mortgage would not have been entertained by the British Government, which would clearly show that the lands have been sold along with the building to H.A.Popley.

94. It was contended on behalf of the petitioner that the mortgage of the property made by London Missionary with the Government would emphatically prove that the lands were sold along with the building as otherwise the

Government would not have granted any financial assistance by creating mortgage upon the property.

95. In this context, to appreciate the mortgage deed in Doc. No.468 of 1934 in the context of the absolute purchase by London Missionary as claimed by the petitioner, the relevant portions of the mortgage deed are quoted hereunder:-

> *"Whereas the Secretary of State has at the request of the company advanced to the company the sum of Rs.13205 as a building grant on the terms and conditions contained in G.O. No.1034 PH dated 18th April, 1929.*
>
> * * * * * * *
>
> *<u>The Second schedule above referred to</u>*
>
> *All that piece or parcel of land situated in the Town and Taluk of Erode and District of Coimbatore in the Registration Sub District of Erode and in the Registration District of Coimbatore bearing Town Survey No.3/587 corresponding to Old No.2/T.S.587 and bounded on the north by the Perundurai road east by London Mission Compound S. No.584 south by the London Mission compound No.586 and west by the London Mission compound S. No.587/1 together with the buildings and erections thereon of the <u>total extent of one acre and seventy cents</u>."*

(Emphasis Supplied)

96. Similarly the mortgage deed in Doc. No.2024 of 1938, more especially the schedule attached thereto, which also purports to the very same property, the relevant portion is quoted hereunder :-

> *"<u>Schedule above referred to</u>*
>
> *All that piece or parcel of land situate at Erode in Survey Ward 31 Municipal Ward 14 in the Sub Registration District of Erode Registration District of Erode and Registration District of Coimbatore bearing T.S. No.587 of the extent of about one acre be the same more or less and bounded on the north by that portion of TS No.587 belonging to the London Missionary Society Corporation containing the bungalow and out houses ….."*

97. A careful perusal of the mortgage deeds, extracted supra, reveals that what is mortgaged by London Missionary to the Secretary of State is only one acre and seventy cents of land and not the entire extent. There is no demarcation of the extent of one acre seventy cents, though it is the claim of the petitioner that for the requirement of London Missionary, only the portion of the property, which was necessary for the purpose of raising the finance was alone

mortgaged. This Court is unable to accept the said contention for the simple reason that in the absence of demarcation of the property, the particular portion which has been mortgaged is not clear to hold that the entire lands to the extent of 12.66 acres was sold to London Missionary. Further, the said document also does not reveal that from the larger extent of 12.66 acres, only One acre and Seventy Cents of land alone is mortgaged. That being the case, the stand of the petitioner that the mortgage is only for a small extent from the larger extent of 12.66 acres does not stand to any reason to satisfy this Court.

98. Further, one other aspect which stares on the face of record is the fact that the mortgage amount was to be repaid within a period of thirty years from the date of its execution. Doc. No.468/1934 was entered into on 13th March, 1934, while Doc. No.2024/1938 was entered into on 7th Oct., 1938. There is no material to substantiate repayment of the amount. However, both the mortgage deeds were entered into pre-independence with the British Government and India attained independence in the year 1947. Post-independence, when was the payment on the said mortgage made and the Government to whom the said payment was made is not available in the records. However, it is the stand of

the petitioner that the petitioner has been continuing to pay the ground rent to the British Government pre-independence and to the State post-independence.

99. It is further to be pointed out that 1.70 acres of land has been mortgaged by the London Missionary with the British Government for a sum of Rs.13,205/-, in the year 1934, however, the property to an extent of 12.66 acres along with building is alleged to have been purchased by London Missionary in the auction conducted on 12.8.1905 for a sum of Rs.12,910/-. However, as stated above, the entire extent of 12.66 acres have been granted to London Missionary on payment of an annual ground rent of Re.1/- per acre. This Court is at a loss to understand the basis on which the British Government had accepted the mortgage when it is a fact borne out by record that the land to the extent of 12.66 acres was not at all sold to London Missionary and it was only granted on lease to London Missionary on payment of a ground rent of Re.1/- per acre.

100. It is to be pointed out that upon independence, all the lands would automatically vest with the State and the British Government would not have any hold on the lands. Therefore, necessarily, London Missionary ought to have

paid the amount to the State if it had not been paid prior to independence. However, no material whatsoever is placed before this Court to show as to when the mortgage was redeemed. Though it is contended by the learned senior counsel that the petitioner is possessed of the original title deed dated 19.01.1906, however, for certain reasons, this Court is not inclined to amplify anything on the same as the London Missionary was given a benevolence by the British Government for certain reasons and, therefore, giving a similar relief in the form of return of document, which it was holding on hand, cannot be ruled out. The absence of necessary proof relating to redemption of mortgage deed would leave a void as to which Government had returned the title deed to London Missionary.

101. Further, it is also to be pointed out that if the amount had been paid, necessarily the registered mortgage would have been cancelled in a manner known to law. However, no such document has been placed before this court to show that there was cancellation of the mortgage deeds. This aspect also stares writ large on the petitioner with regard to payment of the amount on the mortgage.

102. Be that as it may. While the contention of the petitioner as aforesaid, which according to the petitioner would establish that the ownership of the land with the London Missionary and, thereafter, with the petitioner on transfer from London Missionary, the sale certificate, which speaks about the sale of the immovable property, refers to two types of rents that are to be paid by H.A.Popley, which requires to be understood in clear terms so as to find out the nature of sale that had taken place.

103. What are the two types of rent and what is the necessity to collect the said rents if really the lands were sold in favour of H.A.Popley is the next issue that falls before this Court. In this regard, the petitioner lays emphasis on the sale of land to the extent of 12.66 to H.A.Popley of London Missionary Society by submitting that the *ground rent* and *quit rent,* which are sought to be collected are in the nature of tax, which is collected as a part of the land revenue and which is akin to property tax.

104. Before proceeding further to decide on the nature of the transaction pertaining to 12.66 acres of land, it is necessary for this Court to find out what is the definition of *"ground rent"* and *"quit rent"* as the sale certificate reveals imposition of the aforesaid two types of rents. While *ground rent* is shown in the column *"description of immovable property"*, in the "*remarks column" "quit rent"* is sought to be levied, which is variable periodically at the time of resettlement of the Taluk. Therefore, the sale certificate carries two types of rents that are collected in respect of the land and building, which have been auctioned.

105. In *P.Ramanatha Aiyar's "The Law Lexicon", 5th Edn., "Ground rent"* is defined as under :-

> *"**Ground rent**" if unexplained, is to be understood a rent less than the rack-rent of the premises, its proper meaning is the rent at which land is let for the purpose of improvement by building (Steward v. Allist on, 1 Mer. 26).*
>
> *<u>A rent reserved on a lease, usually for a substantial term of years</u>. The lessee may dispose of the lease during the term but subject to the ground rent. It is usually stipulated for where land is let on a building lease where the tenant erects buildings on the*

land which at the termination of the lease fall to the landlord along with the reversion of the land.

Payment made normally annually, by the occupier of a building to the owner of the land on which the building stands (the freeholder). Ground rent is paid only if the building is occupied leasehold. If the lessee fails to pay, the property owner has the right to terminate the lease."

(Emphasis Supplied)

106. In *Concise Oxford English Dictionary, South Asia Edition – 12th Edn., "Ground rent"* is defined as under :-

*"**ground rent** – rent paid under the terms of a lease by the owner of a building to the owner of the land on which it is built."*

107. From the above, it is clear that *"ground rent"* is a rent, which is charged for the land, which is reserved on lease, the payment of which amount is made by the occupier of the building to the owner of the land on which the building stands. It is further evidenced that ground rent is paid only if the building is occupied leasehold. Further, the ground rent at which the land is let is for the purpose of improvement by building and further it is clear that the collection of ground rent is governed by the terms of the lease in and by which

the owner of a building pays the rent to the owner of the land on which the building is built. In this backdrop, the description of the property, sought to be entered as *"townsite"* assumes significance, as the land was let out on lease only for the purpose of improvement.

108. A conjoint reading of ground rent, as defined under Ramanatha Aiyar's Law Lexicon as also the Concise Oxford English Dictionary, it is evident that *"ground rent"* is a rent, which is charged from the owner of the building by the owner of the land, which payment is made annually by the occupier of a building to the owner of the land on which the building stands. Further, in case where the land is let on a building lease where the tenant erects building on the land, at the termination of the lease, the buildings fall to the landlord along with the reversion of the land.

109. From the above, it transpires that a charge of ground rent in respect of lands on which a building exists, would only imply that the building alone is sold, whereas the land is retained by the owner/Government and is given on lease to the person, who had bought the building so that the land is improved

during the leased and the termination of the lease at any point of time by the Government would revert the building back to the Government.

110. Further one other type of rent is charged in the present case, which is *"quit rent"*. The sale certificate reveals that *quit rent* is variable and is subject to periodical resettlement of the Taluk. According to the learned senior counsel, *"Quit rent"* is a rent by which the person, who had been given the property is allowed to go free without paying any other form of tax to the Government.

111. In *Ramanatha Aiyar's "The Law Lexicon" 5th Edn., "Quit Rent"* is defined as under :-

> *"**Quit-rent** – A certain small rent, payable by the tenant in token of subjection, by which the tenant goes quiet and free."*

112. In *Concise Oxford English Dictionary, South Asia Edition – 12th Edn., "Quit rent"* is defined as under :-

> *"**Quit-rent** – A small rent paid by a freeholder or copyholder in lieu of services which might be required of them."*

113. *"Quit Rent"* in the above context of the definitions, would mean the payment of a small amount as rent by the tenant, who is given freehold rights over the land, in lieu of services which would be given by the tenant and is subservient to the owner.

114. A conjoint reading of the aforesaid definitions coupled with the sale certificate and the other documents preceding the sale by way of auction, would reveal that what is sold to H.A.Popley is only the building and the lands were never sold, but were only given on lease on payment of ground rent annually and quit rent which is variable at every periodical resettlement. The above view of this Court is on the basis of the communications, which had emanated between the officials, viz., the Collector, Board of Revenue and the Government, which have been discussed above and also extracted in the earlier portion of this order. It is emphatically clear from the communication of the Deputy Collector to the Collector after completion of the auction wherein the Deputy Collector has stated that the auction notice was duly read over and the conditions of sale was also read from which it is clear that the conditions stipulate only the sale of the building. The auction report is very silent with regard to the sale of the land to

an extent of 12.66 acres and only speaks about charging of Re.1/- per acre as ground rent.

115. As stated above, it is the contention on behalf of the petitioner by the learned senior counsel that *ground rent* is necessarily a form of tax collected by the Government for the purpose of revenue and the mere usage of the words *"ground rent"* alone would not alter the character of the collection, as it is nothing but revenue generation and it would not be suffice for this Court to hold that the lands were not sold in the auction.

116. In this regard, it becomes necessary for this Court to look into the meaning of the words *"rent"* and *"tax"* to find out whether the amount collected is really a form of tax.

117. In *Concise Oxford English Dictionary – South Asia Edn. – 12th Edn.,* the words *"rent"* and *"tax"* are defined as under :-

> *"**rent** – a tenant's regular payment to a landlord for the use of property or land."*

*"**Tax** – A compulsory contribution to state revenue, levied by the Government on personal income and business profits or added to the cost of some goods, services and transactions."*

118. In *Ramanatha Aiyar's "The Law Lexicon"- 5th Edn.,* the words *"rent"* and *"tax"* are defined as under :-

*"**rent** – Rent means whatever is paid, delivered or rendered in money, kind or service, by a tenant on account of the use of occupation of land let to him.*

The expression "Rent" means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him."

*"**Tax** – Fixing the amount of ; to lay a tax on;*

A compulsory contribution to the support of the government levied on persons, income, commodities, transaction, etc."

119. A careful perusal of the aforesaid two definitions would clearly indicate that while *"rent"* is a payment made by a tenant to a landlord for usage of the land or property, however, *"tax"* is a revenue to the State, which is levied on the person's income and business profits and it is a contribution to support the Government.

120. If the contention of the learned senior counsel for the petitioner is to be accepted that the amount paid as ground rent is a form of tax on the property, which has been sold to the petitioner in the auction, it is to be pointed out that there is no component of income attached therewith and the aspect of revenue generation for the purpose of usage to public, would be wholly nothing, as the amount levied is only Re.1/- per acre, which amount is nothing but a pittance. Therefore, by no stretch of imagination, could the ground rent be treated to be tax charged from London Missionary.

121. However, the definition of rent would clearly be applicable to the case on hand, and that along would fit the facts of the case, as necessarily, for London Missionary to enjoy the lands that surrounds the building, a very nominal amount is levied as ground rent. In this regard, the recording of the Collector would assume significance, in which the Collector has stated that in view of the high price being paid by London Missionary, ground rent could be fixed at Re.1/- per acre. Therefore, it is clear from the above that in view of the value which was obtained for the building in the auction, which was paid by London

Missionary, though they were ready only to pay a sum of Rs.9,000/-, which was deemed to be a high price, the Collector had made a recommendation to fix the rent for the compound, to the extent of 12.66 acres at Re.1/- per acre, so as to ease out the burden on the shoulders of London Missionary with regard to payment towards occupation of the land.

122. Further, the auction report, which is extracted hereunder, further fortifies the case that sale is only in respect of the building and not of the land, as is evidenced from the following :-

> *"The notice published in the District Gazette dated 5.8.1905 page 214 was duly read over to the bidders before the commencement of the sale – a correct description of the site as noted below was given to them and the following condition subject to which the site of building will be held after possession obtained were read out and explained to them before the commencement of the sale."*
>
> *(Emphasis Supplied)*

123. The above report categorically states the manner in which the site of the buildings will be held after possession. This shows that the purchaser, viz.,

H.A.Popley of London Missionary, would have mere possession of the site of the building after it is obtained and nowhere it stipulates that H.A.Popley of the London Missionary would become the absolute owner of the property.

124. However, the main plank of submission of the learned senior counsel for the petitioner is that the title-deed shows the property which has been conveyed to the petitioner by way of sale and, therefore, H.A.Popley of London Missionary had indeed purchased the land along with the building.

125. Though such a contention, on the face of it looks attractive, however, a careful perusal of the title-deed, which has been given in furtherance of the sale certificate, would reveal that only the building was sold to H.A.Popley of London Missionary and the land was not sold, as could be evidenced from the following recital in the title deed :-

> *"Know all men by these presents that 12.66 acres of land in Erode village, Erode Taluk, bounded on the North Town Survey Fields Nos.582 and 583, East by Town Survey Fields Nos.584, 585, 616, South by Town Survey Fields Nos.602 and 603 and West by Town Survey Fields Nos.592, 593, 594 <u>are granted to the Reverend</u>*

H.A.Popley of the London Missionary Society at Erode on the following conditions :-

(1) *That an annual ground rent of Rs.12-11-0 or of such other sum as may be fixed at every periodical revision thereof shall be paid to Government on demand before the 15th April of each year.*

* * * * * * *"

(Emphasis Supplied)

126. The aforesaid recital in the title-deed uses the expression *"granted"*. Neither the word *"conveyed"* nor the word *"sold"* had been used in the title-deed. Coupled with the condition of fixation of annual ground rent, which is subject to periodical revision, the title-deed could only be deemed to be a lease deed in and by which the lands were granted on lease to H.A.Popley representing London Missionary for the purpose of doing social service, including propagating the religion, which would be evident from the levy of *"quit rent"*, which is nothing but a grant of freehold right to the person in perpetuity for doing certain service, which is subservient to that of the owner of the lands. In the case on hand, on the date when the sale of the building had taken place, the British Government was holding fort and, therefore, the subservience of

London Missionary Society to the British Government cannot be said to be alien and it is truly in consonance with the act of the London Missionary.

127. In the case on hand, the series of documents, which have been discussed above, clearly proceeds on the footing that building alone is sold and that the land is charged at ground rent, which is to be paid annually and that the annual ground rent is fixed at Rs.12.11.0. Further, quit rent is variable at every periodical resettlement, which is also charged. The petitioner has not disputed the fact the ground rent and quit rent have been paid by the London Missionary and, thereafter, by the petitioner. In the backdrop of all the aforesaid materials and coupled with the fact that ground rent and quit rent had been paid by the petitioner and the land to the extent of 12.66 acres, which represents the compound around the building was charged to annual ground rent, it can safely be concluded that the auction was conducted only for the sale of the building and it in no way pertains to the land to the extent of 12.66 acres and the land to the extent of 12.66 acres was never sold to London Missionary. Therefore, the payment of ground rent and quit rent by London Missionary negates the claim of

absolute sale made by London Missionary and, accordingly, ***Issue No.4 is answered against the petitioner.***

128. Learned senior counsel made a submission that in English feudal law, all the lands were held by the Queen, who is held as “Lord Paramount” or “Lord Above All” and those who held anything under Her Majesty was termed as a tenant and only in such a terminology, the British Government had issued the title deed granting the lands to H.A.Popley, which is nothing but an absolute sale, but to be held as a freehold right as a tenant under Her Majesty.

129. *“Freehold”* has been defined in Black’s Law Dictionary to mean *“A freehold estate in lands, held of a superior lord, as a reward for services, and on condition of rendering some service in return for it”.*

130. For the service rendered by the London Missionary, on *quit rent* basis, freehold rights had been granted to it by the Queen, which is during the pre-independence era. Even the contention of the petitioner is that all the lands vests with the Queen and the London Missionary would be categorized as a

tenant, though in actuality, it had purchased the property. However, for the discussion aforesaid, which clearly show that the grant in favour of H.A.Popley on behalf of London Missionary is only on the basis of the ground rent payable by London Missionary along with quit rent, till such time the owner of the property requires the lease to subsist.

131. An absolute sale vests the property absolutely in favour of the purchaser free from all encumbrances and subject to payment of statutory dues. However, ground rent and quit rent are not statutory dues but are rents collected for different purposes subject to the nature of the holding as held by the purchaser. Had no ground rent been charged, then the character of the auction purchase would be different. However, not only ground rent had been charged, but quit rent has also been charged and the documents evidencing the auction along with the bid amount clearly show that the building alone was sold and the compound consisting of 12.66 acres were leased out to the London Missionary Society on payment of ground rent.

132. There is no quarrel that London Missionary and also the subsequent transferees had been paying the ground rent to the State till 1980, which in effect means that the holding of the Queen pre-independence, was realized and accepted by London Missionary and also by the petitioner post-independence resulting in payment of ground rent to the State.

133. Once the petitioner had accepted the payment of ground rent and quit rent by London Missionary and, thereafter, by the petitioner till date, there is no merit in the claim of the petitioner that the sale is an absolute sale, which vests the land solely on the petitioner upon transfer from London Missionary.

134. One other fact, which also clearly reveal that London Missionary is only holding the land on lease would be evident from condition (3) of the title deed, which is quoted hereunder, at the risk of repetition :-

> *"(3) That the right of Government is reserved to all gold or other minerals or coal contained in the said land and that access <u>shall always be allowed to Government by the said grantee</u>, his assigns or successors in title of tenants ….."*
>
> *(Emphasis supplied)*

135. The above condition would also reveal that H.A.Popley, who had purchased the building in the auction on behalf of London Missionary, is only a grantee of the land and is not the owner of the land which has been granted to the grantee. Such being the case, the claim of the petitioner that London Missionary had purchased the land and the building together in the auction is not established through materials, which, without an iota of doubt, prove that the sale pertains only to the building and it is not an absolute sale of land vesting the land and the building on London Missionary. Any other construction on the basis of the materials, which have been placed before this Court, would defeat the tenor and character of the document and would be in detriment to the right and title of State over the lands. In view of the aforesaid discussion, ***Issue Nos.2 and 3 are answered against the petitioner.***

136. Though a contention was advanced by the learned senior counsel appearing for the 5th respondent that a sale certificate should be mandatorily registered u/s 17 (2) of the Registration Act, 1877 and an unregistered sale certificate will not have the force of law, however it is refuted by the learned

senior counsel appearing for the petitioner that Section 90 of the Registration Act, 1877 exempts the registration of certain documents, of which the sale certificate obtained by the petitioner is one.

137. A careful perusal of the aforesaid provisions of the Registration Act, 1877, clearly reveal that exemption has been granted for registration of the sale certificates and, therefore, the sale certificates are not compulsorily registrable documents. Therefore, the non-registering of the sale certificate would in no way affect the authenticity and genuineness of the sale certificate.

138. The learned senior counsel appearing for the petitioner drew the attention of this Court to the impugned orders passed by respondents 1 and 2 and submitted that already the Settlement Officer, who is higher in the hierarchy to the 2nd respondent had granted patta, which was reviewed in appeal at the instance of third parties and the patta was cancelled and the matter was remitted to the 2nd respondent for fresh consideration. It is the submission of the learned senior counsel that the whole exercise is wrong, as the 2nd respondent,

being an authority in lower category than the Settlement Officer, cannot look into the matter and, therefore, the said order itself is bad.

139. It is the further submission of the learned senior counsel that even otherwise, the order of the 2nd respondent reveals that the 2nd respondent has traversed beyond his jurisdiction to adjudicate upon the title to the property, which is not vested with the 2nd respondent and it is only the *prima facie* satisfaction that needs to be looked into by the 2nd respondent. Further, the order of the 2nd respondent, even on a cursory glance would reveal that the 2nd respondent has gone deep into the issue to decide the title and had, thereupon, held that London Missionary has no title to the property and the petitioner, who is a transferee, would not get any title to the property.

140. It is the further contention of the learned senior counsel that the order of the 1st respondent in confirming the order of the 2nd respondent is wholly erroneous. The whole exercise itself is wrong and, therefore, the original order of patta granted by the Settlement Officer deserves to be retained and if the respondents have any grievance with regard to the ownership and title to

the property, the proper course for the official respondents is to go before the civil court and establish ownership and title.

141. True it is that a perusal of the order passed by the 2nd respondent reveals that the 2nd respondent has adjudicated the issue of title to which he has no vested jurisdiction. To that extent the order passed by the 2nd respondent is bad and confirming the said order, the order passed by the 1st respondent can be said to be bad. However, that would in no way give any leverage to the petitioner to claim restoration of patta in his name, which has been granted by the Settlement Officer. Merely because in the appeal, the Commissioner of Land Survey and Settlement had remanded the matter to an inappropriate authority would not be a ground to restore the patta, which had been granted by the Settlement Officer, when the said patta is assessed to have been granted in stark violation of the legal principles and provisions of law and is against the documents. Further, it is to be pointed out that the said order has not been put in issue by the petitioner and the petitioner, accepting the said order, had gone before the authorities and agitated its rights. Therefore, it is too late in the day for the petitioner to contend that the order has been passed by authority, who

has not been vested with power and jurisdiction and, therefore, the said order is bad and the order, which was surviving prior to the present order should be restored.

142. In this regard, useful reference can be had to the decision of the Hon'ble Supreme Court in ***Krishnadevi Malchand Kamathia – Vs – Bombay Environmental Action Group & Ors. (2011 (3) CC 363)***, wherein the Hon'ble Supreme Court held as under :-

> *"17. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. 18. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) & Ors., AIR 1996 SC 906; Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. etc, AIR 1997 SC 1240; M. Meenakshi & Ors. v. Metadin Agarwal (dead) by L.Rs. & Ors. (2006) 7 SCC 470; and Sneh Gupta v. Devi Sarup & Ors., (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.*
>
> *19. In State of Punjab & Ors. v. Gurdev Singh, Ashok Kumar, AIR 1991 SC 2219, this Court held that a party aggrieved by the*

invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Ellore Rural District Council, [1956] 1 All ER 855 wherein Lord Radcliffe observed:-

> *"An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

20. In Sultan Sadik v. Sanjay Raj Subba & Ors., AIR 2004 SC 1377, this Court took a similar view observing that once an order is declared non-est by the Court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

21. Thus, from the above it emerges that even if the order/ notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The *order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."*

143. In the case on hand, the petitioner not having resorted to avail any legal remedy by coming before the Judicial forum, but had once again filed appeal before the Commissioner of Land Survey and Settlement and on failure to get any affirmative and beneficial orders in its favour, has now come before this Court claiming the invalidity and voidable nature of the order, which, though acceptable, however, for the reasons aforesaid, this Court is not in a position to set aside. Though the rejection of patta at the earliest point of time cannot be sustained, as it has been passed by an authority, which is not vested with jurisdiction, however, in view of the fact that the petitioner had accepted the said decision and challenged the same in appeal before the Commissioner and the matter was remanded once again for fresh consideration, now cannot turn back and say that the said order has been passed by an authority who has no

jurisdiction to decide the same, more so when the petitioner is not entitled to the grant of patta as the petitioner has no right over the said lands.

144. For the reasons which this Court has expressed in the earlier portion of the order, the patta sought for by the petitioner cannot be granted as neither London Missionary nor the petitioner is vested with any title as the purchase by London Missionary is only relatable to the building and the lands have not been sold to London Missionary and, therefore, the petitioner, being a transferee having obtained the subject property from London Missionary by way of transfer would not have any better title than the one had by London Missionary and, therefore, there are no merits in W.P. No.13313/17.

Issue No.7

7) ***Whether the acquisition of the lands, which are the subject matter of the lis in the present petitions, need to be acquired by the Government, in public interest, for the purpose of proceeding with the scheme of providing by-pass road and if so, what would be the compensatory relief to which the petitioner would be entitled to?***

145. Now, coming to the issue of acquisition of land to an extent of about 1.93 acres for the purpose of laying of 80 Feet Road on the basis of the Erode Detailed Development Plan No.2, which was notified in the Tamil Nadu Government Gazette No.27 dated 14th July, 2010, the main grievance expressed by the petitioner is that the Detailed Development Plan has not been periodically renewed and, therefore, the acquisition sought to be made on the basis of the approval of the Erode Detailed Development Plan No.2 by the Commissioner of Town and Country Planning is wholly impermissible. It is the further stand of the petitioner that the lands have been put to use by the petitioner for several social activities such as hospital and schools and the present 1.93 acres, which is sought to be acquired, a school is functioning and acquisition for a road would have a cascading effect on the education of the school children. Without considering all the above and without inviting objections of the petitioner, the impugned order of the 4th respondent resulting in the publication of the notification is wholly impermissible.

146. True it is that notification has been issued for acquisition of land for the extent of 1.93 acres, as per the Erode Detailed Development Plan for the purpose of laying of 80 Feet Road on 10.5.2013. The sum and substance of the affidavit of the petitioner in W.P. No.14705/13 is prefaced on the contentions raised in W.P. No.13313/17 where claim has been made by the petitioner that it is the owner of the land to an extent of 12.66 acres in which very many social activities are being undertaken by the petitioner including running hospital, educational institutions, etc. However, this Court, in the preceding portion of this judgment has held that London Missionary from whom the property has come on transfer to the petitioner, has not purchased the lands and that it had purchased only the building in the auction that was conducted on 12.8.1905 and that the lands to the extent of 12.66 acres, to which the petitioner claims title is only being held by the petitioner as a lessee on payment of ground rent. That being the case, when the petitioner as also his predecessor, viz., London Missionary have no title over the said lands to the extent of 12.66 acres, no right accrues to the petitioner to claim that the acquisition is bad and that it is doing social services in the said lands, which should not be disturbed. The petitioner is holding the subject lands on lease to the extent of 12.66 acres and the subject

lands totally vests with the State and is classified in the revenue records as *"Townsite"* way back in 17.11.1939 even by the Board of Revenue. Such being the case, no necessity arises for the State to acquire the said lands.

147. This Court had already dealt with what *"ground rent"* is, which is nothing but a rent paid for lease of a property for a substantial term and any improvement made on the said lands, including any buildings erected thereon, would stand reverted back to the State upon termination of the lease. The payment of ground rent by London Missionary and, thereafter, by the petitioner, would clearly establish that the lands have been granted on lease and that being the case, the lands still being owned by the Government, no necessity arises for the Government to resort to acquisition of land under the relevant statute. When the land itself vests with the Government, the Government is at liberty to use the said land for any purpose as it deems fit and the only embargo here is the lease, which is held by the petitioner, which needs to be cancelled by the State in a manner known to law upon which the lands can be utilized for any purpose for which it is deemed fit, including the laying of the road. The mere fact that the petitioner has been in occupation of the entire extent of 12.66 acres and put up

very many constructions and is doing many social service would not give any leverage to the petitioner to claim retention of the lands, more so when the said lands are required for a larger public purpose.

148. In the present case, the Erode Detailed Development Plan No.2 has been formulated to provide 80 Feet road for the public, so that it would ease out the explosion of traffic due to the expansion of the city. However, by obtaining interim orders on the basis of the aforesaid documents, the formation of road has not culminated till date, which has resulted in grave detriment to the public. Though private respondents have come before this Court and submitted that they are concerned only about the formation of the road and not otherwise with regard to the other portion of the land, which is in occupation of the petitioner, however, it is to be pointed out that the ownership of the entire extent of 12.66 acres has been determined by this Court on the basis of the materials placed by the petitioner, which cannot be disputed by the official respondents, as the document have been provided by the official respondents under the Right to Information Act. Such being the case, the State having been held to be the owner of the aforesaid lands to the extent of 12.66 acres there is no embargo or

impediment for the official respondents to proceed with taking over of the lands, which have been leased out to the petitioner on payment of ground rent. Accordingly, ***Issue No.7 is answered against the petitioner.***

149. Inspite of the above findings rendered by this Court in the present petitions, it is time to point out that this Court, not only in the present case, but in very many cases, have come across instances of similar nature, where, on the basis of documents, alleged to have been executed during the British regime, persons/entities are holding on to vast extent of lands in prime locations, without any authority of law, merely on the basis of certain documents, which was given in the pre-independence era and on payment of paltry . It is to be pointed out that not all the documents given in the pre-independence era would hold good in the post-independence period, as the State Government necessarily has an interest, on behalf of its citizenry in the matter. Vast stretches of land are held without any authority of law and in similar manner by paying a paltry amount as ground rent and quit rent and being enjoyed by private entities, to the detriment of the exchequer due to which the benefit that has to flow to the public from the said lands, had it been in the hands of the State Government are

lost, thereby, jeopardizing the public welfare measures that are being undertaken by the State Government. It is high time that the State Government takes immediate steps to identify such of those lands, which are being charged to ground rent/quit rent and take over such lands, irrespective of the holder of the land, enjoying the same, as the interest of the public will prevail over private interest.

150. In the aforesaid circumstances, this Court directs the Chief Secretary to Government and Revenue Secretary to issue appropriate orders to the Commissioner of Land Administration as also the Commissioner of Land Survey and Settlement to take steps forthwith to identify such of those lands, which have been given on ground rent/quit rent to various entities during the British regime/pre-independence period, which have not been revisited by the State till date and take appropriate steps to recover the lands, keeping in mind that the ground rent/quit rent that is being paid for the said lands would be pittance in the present day scenario, as there is a spiraling upward trajectory in real estate cost in the present day scenario. Such exercise, if not done at this point of time, would be very detrimental as at a later point of time, trying to retrieve the

documents, which would be century old would not only be difficult, but retrieving the property from such entities would be difficult, involving cumbersome procedure and high monetary expenditure, as the value of the property would make the entities to scuttle the attempts of the State to retrieve the lands by resorting to multifarious legal proceedings.

151. In the result the following order is passed :-

i) Both the writ petitions fail and, accordingly, they are dismissed;

ii) The writ petitions are maintainable and the purchase made by London Missionary is only with regard to the building and not the land and neither London Missionary nor the petitioner have absolute right and title over the extent of 12.66 acres of land;

iii) The land to the extent of 12.66 acres, aforesaid, vests absolutely with the State Government and there is no embargo for the State Government to proceed with the *formation of 80 Feet Road and no acquisition needs to be resorted to for utilizing the said lands;*

iv) The Chief Secretary and Revenue Secretary, Government of Tamil Nadu, Chennai, are directed to issue necessary directions to Commissioner of Land Administration as also the Commissioner of Land Survey and Settlement, Government of Tamil Nadu, Chennai, to take steps forthwith to identify the lands for which ground rent/quit rent is being paid and take necessary action for retrieving the said lands to the coffers of the State Government.

v) Consequently, connected miscellaneous petitions are closed. In the circumstances of the case there shall be no order as to costs.

vi) Registry is directed to mark a copy of this order to the Chief Secretary and Revenue Secretary, Government of Tamil Nadu, Chennai for appropriate action.

2.12.2022

Index : Yes / No

Internet : Yes / No

GLN

To

1. The Secretary to Government
Housing & Urban Development Dept.
Fort St. George, Chennai 600 009.

2. The Commissioner of Twon &
Country Planning
807, Anna Salai (Chengalvarayan
Building 4th Floor), Chennai 600 002.

3. The Chairman
Erode Local Planning Authority
and District Collector, Erode.

4. The Member Secretary
Erode Local Planning Authority
TNHB Complex
Surampatti Nall Road, Erode – 9.

5. The Assistant Settlement Officer (South)
Chennai 600 005.

6. The Special Tahsildar
Erode Unit I
Town Survey & Settlement
Erode 638 001.

7. Tahsildar
Erode.

8. The Chief Secretary
Government of Tamil Nadu
Fort St. George, Chennai.

9. The Revenue Secretary
Government of Tamil Nadu
Revenue Department
Fort St. George, Chennai.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO.14705 OF 2013
AND
W.P. NO. 13313 OF 2017

Pronounced on
2.12.2022