



W.P.Nos.36443 of 2006 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 16.11.2022

DELIVERED ON : 25.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.36443 of 2006, 13104 of 2008 and 26255 of 2011
and M.P.Nos.2 of 2008, 1 & 2 of 2011

W.P.No.36443 of 2006

1. The Agri Horticultural Society,
a Society Registered under the
Society Registration Act having
its office at No.31, Cathedral Road,
Chennai - 600 006 rep by its
Hon' Secretary, Mr.V.Krishnamurthy
2. K.N.Jayaraman
3. V.Krishnamurthy
4. L.Tamilarasan
5. V.Sundaram
6. A.Allapichai
7. S.Sundaram
8. P.Krishnasamy
9. R.Nagarajan
10. Muthusamy



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11. C.Ravi
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.. Petitioners

Vs.

1. State of Tamil Nadu rep.
by its Secretary to Government,
Commercial Taxes and Religious
Endowments Departments,
Fort St.George, Chennai - 600 009.

2. The Inspector General of Registration,
120, Santhome High Road,
Chennai - 28.

.. Respondents

Prayer in W.P.No.36443 of 2006: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to the communication of the 1st respondent dated 15.09.2006, in letter No.4552/M1/2000-42, along with the communication dated 20.03.2000 in Letter No.4552/M/2000-3, which is annexed to the Notice dated 15.09.2006 and quash the same and forbear the respondents from taking any action in pursuant to the communication dated 15.09.2006, Letter No.4552/M1/2000-42.

For Petitioners : Mr.G.Rajagopalan
SC for M/s.G.R.Associates

For Respondents : Mr.J.Ravindran, A.A.G
Asst. by Mr.S.Ravikumar,
Spl.G.P.

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W.P.No.13104 of 2008

1. The Agri Horticultural Society,
a Society Registered under the



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Society Registration Act having
its office at No.31, Cathedral Road,
Chennai - 600 006 rep by its
Hon' Secretary, Mr.V.Krishnamurthy

2. K.N.Jayaraman

3. V.Krishnamurthy

4. L.Tamilarasan

5. V.Sundaram

6. S.Sundaram

7. P.Krishnasamy

8. R.Nagarajan

9. Muthusamy

10. C.Ravi

11. A.Allapitchai

.. Petitioners

Vs.

1. State of Tamil Nadu rep.
by its Secretary to Government,
Commercial Taxes and Religious
Endowments Departments,
Fort St.George, Chennai - 600 009.

2. The Inspector General of Registration,
120, Santhome High Road,
Chennai - 28.

3. The Registrar of Societies,
Madras Central Chennai.



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4. District Registrar (Audit),
Chennai Central,
(Special Officer designate)
Chennai - 600 018.

.. Respondents

Prayer in W.P.No.13104 of 2008: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records relating to the order issued by the first respondent in G.O.Ms.No.42, dated 30.04.2008, Commercial Taxes and Registration (M1) Department and quash the same.

For Petitioners : Mr.G.Rajagopalan
SC for M/s.G.R.Associates

For Respondents : Mr.J.Ravindran, A.A.G
Asst. by Mr.S.Ravikumar,
Spl.G.P.

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W.P.No.26255 of 2011

Agri Horticultural Society,
Society Registered under the
Tamil Nadu Societies Registration Act having
its office at No.18, Cathedral Road,
Chennai - 600 086 rep by its
Hon' Secretary, Mr.V.Krishnamurthy

.. Petitioner

Vs.

1. The Principal Secretary cum
Commissioner of Land Administration,
Chepauk, Chennai - 600 005.



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2. The Collector of Chennai,
Rajaji Salai,
Chennai - 600 001.

3. Y. Bhuvanesh Kumar
(R3 impleaded as per this Court Order
dt.04.12.2012 in M.P.No.1 of 2012)

.. Respondents

Prayer in W.P.No.26255 of 2011: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the 1st respondent relating to the Notice dated 01.11.2011 in reference No.K4/27673/2011 (Suo Moto proceedings) and quash the same.

For Petitioner	:	Mr.G.Rajagopalan SC for M/s.G.R.Associates
For Respondents 1 & 2	:	Mr.J.Ravindran, A.A.G Asst. by Mr.U.Baranidharan, A.G.P.
For Respondent 3	:	Mr.P.Wilson, SC for Mr.B.Ullasavelan

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COMMON ORDER

Since the property in question in all the three writ petitions is one and the same, with the consent of parties on either sides all the three writ petitions were heard together and disposed of by means of this common order.



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WEB COPY 2. W.P.No.36443 of 2006 has been filed challenging the Show Cause Notice dated 15.09.2006, along with the communication dated 20.03.2000 and to forbear the respondents from taking any action in pursuant to the communication dated 15.09.2006.

3. W.P.No.13104 of 2008 has been filed seeking to quash the orders passed by the first respondent in G.O.Ms.No.42, Commercial Taxes and Registration (M1) Department, dated 30.04.2008 and quash the same.

4. W.P.No.26255 of 2011 has been filed challenging the suo motu proceedings initiated by the first respondent vide notice dated 01.11.2011, in reference No.K4/27673/2011 and to quash the same.

5. The brief facts leading to the filing of all these writ petitions are as follows:

(i) The writ petitioner Agri-Horticultural Society is a registered Society under the Societies Registration Act, 1892 and deemed to have been registered under the provisions of the Tamil Nadu Societies Registration Act, 1975.



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WEB COPY (ii) According to the petitioner, the Society is doing yeomen service to the development of agriculture and horticulture and owns lands of over 100 Grounds in the heart of the Chennai city and it is considered to be the lung of the Chennai city. The Government has also granted about 316 Grounds of lands for the use of the Society in the late 1800s and early 1900s.

(iii) The lands measuring 316 Ground leased by the Government was resumed by the Government vide order dated 05.08.1989 and the same was challenged before this Court in W.P.Nos.11058 and 11059 of 1989. A learned Single Judge of this Court allowed both the writ petitions. Subsequently, in August 1989, the Government also initiated proceedings for cancellation of registration and the said notice was quashed by this Court in W.P.No.11178 of 1989. Challenging the above orders passed in the writ petitions, the Government filed writ appeal in W.A.Nos.1030, 1031 and 1465 of 1998 respectively. The Hon'ble Division Bench of this Court by judgment dated 11.04.2008 allowed W.A.Nos.1030 & 1031 of 1998 and dismissed W.A.No.1465 of 1998.

(iv) Subsequently, against the judgment of the Hon'ble Division



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Bench, appeals have been filed before the Hon'ble Apex Court in C.A.Nos.7703 & 7704 of 2009. The Hon'ble Apex Court by its order dated 26.03.2019, confirmed the judgment of the Hon'ble Division Bench of this Court. The Hon'ble Apex Court has confirmed the resumption of land allotted in terms of the allotment order and the plea of mala fides raised by the writ petitioner herein for such resumption by the Government was rejected.

(v) In respect of other lands i.e., around 100 Grounds in the possession of the Society, proceedings were initiated under Section 34-A of the Societies Registration Act and notice was issued on 20.03.2000. It is the contention of the writ petitioner that since the Secretary of the Society was close to the then ruling party AIADMK, the DMK Government after coming to power has taken such action against the Society. Notice dated 20.03.2000, has been issued under Section 34-A of the Societies Registration Act for superseding the Executive Committee of the Society was stayed by the Hon'ble Division Bench of this Court in W.A.Nos.638 & 645 of 2000. Thereafter, the said writ appeal has been dismissed as withdrawn as a fresh Committee has been elected in the subsequent General Body elections.



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(vi) It is further submitted that after the DMK Party was again voted to power in May, 2006 again a show cause notice was issued on 15.09.2006 attempting to revive the notice already issued under Section 34-A of the Societies Registration Act, dated 20.03.2000. The above show cause notice was also challenged in W.P.No.36443 of 2006. This Court has granted interim stay and thereafter the interim stay was vacated by this Court on 29.12.2006. After vacating the stay by order dated 29.12.2006, this Court permitted the petitioner to file a reply to the Government within a period of three weeks from the date of receipt of a copy of the order dated 29.12.2006.

(vii) In the meantime, the respondents have issued a fresh notice dated 26.12.2006, for inspection of the petitioner Society under Section 36 of the Societies Registration Act and inspection was done on 27.07.2006. Thereafter, the respondents have issued another show cause notice dated 06.01.2007. The said show cause notice dated 06.01.2007 was also challenged before this Court in W.P.No.1976 of 2007.

(viii) The above writ petition was heard along with writ appeal in W.A.No.1569 of 2006. The Hon'ble First Bench of this Court by judgment dated 12.11.2007, disposed of the writ petition directing the respondents to



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furnish copies of the Report of the Registrar / Inspector General of

Registration referred to in the reference column of the show cause notices dated 20.03.2000 and 06.01.2007, within a period of two weeks to the writ petitioner. The petitioner society was also directed to submit its objections to the show cause notices, within four weeks of the receipt of the copies of the reports from the Government and after receipt of the objections from the writ petitioner to the show cause notice, the first respondent shall provide an opportunity of hearing to the writ petitioner and thereafter pass appropriate orders. It was further directed that if the order is ultimately passed by the first respondents adversely affecting the rights of the writ petitioner, such order shall not be given effect to by the first respondent for a period of four weeks from the date of communication to the writ petitioner to enable the writ petitioner to work out its legal remedies against that order.

(ix) Pursuant to the above directions, the petitioner on 23.01.2008, gave a detailed reply to the show-cause notices dated 20.03.2000 and 06.01.2007 respectively. After providing an opportunity to the writ petitioner, the impugned order came to be passed in G.O.Ms.No.42 dated 30.04.2008 superseding the petitioner society and appointed a Special Officer for a period of one year. Challenging the said impugned order, the



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writ petition in W.P.No.13104 of 2008 has been filed.

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(x) The main ground of challenge to the above impugned order is that the impugned order is as a result of mala fide. It is the contention of the writ petitioner that after furnishing the documents, hearing of the petitioner has been fixed on 18.02.2008. The writ petitioner society represented by its Secretary was accompanied by the two Advocates and a Chartered Accountant attended the meeting and the Senior Advocate argued the matter. While hearing was going on, the Secretary to Government requested the learned senior counsel to argue slowly so that the arguments could be entered into the computer. The learned senior counsel responded that such course is not practicable and if necessary the arguments could be tape-recorded and accordingly the proceedings were tape-recorded. According to the petitioner, this happened after 25 minutes of the proceedings. The arguments were heard for nearly 4 hours.

(xi) Thereafter on 20.02.2008, the Deputy Secretary attached to the first respondent came and handed over the C.D. along with transcribed arguments to the petitioner to see whether it has been properly transcribed.



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(xii) The petitioner heard the recording and it was found that the transcription was not according to the recording and it was also noticed that ever since when the representatives of the petitioner society entered into the Secretary's Chamber for the meeting, tape-recording has been done by the officials. Hence, it is contended that recording has been made without the knowledge of the petitioner's advocate ever since from the beginning of the proceedings. It is contended that the conversation that took place outside the Chamber of the Secretary between the officer and the P.A. to the Secretary, there were reference about the so-called direction from the Hon'ble Chief Minister to the Chief Secretary and the Chief Secretary's instructions to the Secretary, Commercial Tax Department to conclude the enquiry on the same day itself.

(xiii) It is further contended that the enquiry was concluded on 18.02.2008 and no order was forthcoming from the first respondent. However, the first respondent has sought certain particulars which was not connected with the show cause notice dated 07.01.2007, however the same was also submitted to the respondent. Thereafter, on 24.03.2008, the first respondent wanted certain particulars relating to M/s.Meena Advertisers and a suitable reply was sent on 27.03.2008. A further hearing was held on



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04.04.2008. The petitioner participated in the said hearing and contended that the first respondent cannot attempt to use any material received after issue of show cause notice dated 07.01.2007 and that the Society is only concerned with the amount collected by it for the land and they are not concerned with the rent paid by the advertisers to the advertising agency for exhibition of the advertisement on hoarding.

(xiv) According to the writ petitioner, the Government has collected only Rs.1000/- to Rs.1500/- per hoarding per year irrespective of its size. M/s.Meena Advertisers were paying Rs.120/- per running feet per month and they were paying more than thousand times more than other advertisers in the city and the society was benefited on account of that. Hence it is contended that even after the above hearing, no order has been passed. Thereafter, order came to be passed only after the Division Bench of this Court allowed the appeal filed with regard to resumption of land made on 05.08.1989. The observation made by the Hon'ble Division Bench is also referred in the impugned order. When particularly the review application was pending before the Hon'ble Division Bench for expunging the remarks, impugned order came to be passed. Hence, the impugned order dated 30.04.2008, has been challenged mainly on the ground of mala fides.



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WEB COPY (xv) In the meanwhile, notice dated 29.09.2010 has been issued by the then Collector of Chennai calling upon the petitioner society to produce any documentary evidence to establish the ownership of the lands owned by the Society within 15 days from the date of receipt of a copy of the said notice, which was also responded by the Society contending that the Government land was only to the extent mentioned in G.O.Ms.No.1259 dated 05.08.1989 and nothing more. However the Collector proceeded to pass an order dated 08.12.2010, directing the Society to vacate from R.S.No.64 (Part) on or before 15.12.2010.

(xvi) The said order was challenged in W.P.No.28447 of 2010, which was originally stayed by this Court and thereafter on 29.03.2011, this Court set aside the order dated 08.12.2010 on the short ground that the petitioner's explanation was not considered by the respondent and directed the writ petitioner to file additional statement and produce appropriate documents, which they consider necessary. This Court further directed that the District Collector, upon receipt of the same, shall consider the matter and pass orders in accordance with law and if any opportunity of hearing is sought for by the petitioner, it may also be granted to the petitioner Society.



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Thus, this Court permitted the petitioner to file additional statement and documents within three weeks from the date of receipt of the order, and thereafter, the District Collector shall pass final orders as expeditiously as possible on the issue concerned.

(xvii) Pursuant to the above order, writ petitioner sent detailed replies dated 29.04.2011 and 15.07.2011 respectively. On perusal of the reply, the Collector in-charge appears to have conducted a personal enquiry and after taking note of certain documents and the legal opinion of the learned Government Pleader, passed an order dated 28.08.2011, concluding that the lands belonged to the Agri-Horticultural Society, the petitioner herein and cancelled the show cause notice dated 29.09.2010. Thereafter, the District Collector passed further proceedings on 23.09.2011 granting patta in respect of lands in R.S.No.64(Part) (OS No.3142) measuring 4 cawnies, 18 grounds and 1683 sq.ft., Mylapore Village, Mylapore-Triplicane Taluk.

(xviii) After the said order, the Principal Secretary cum Commissioner of Land Administration, Chepauk who is the first respondent in W.P.No.26255 of 2011 initiated suo motu review proceedings invoking



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Board Standing Orders and stayed the District Collector order and also sent notice to the petitioner to show cause why the order of the District Collector dated 28.08.2011 and 23.09.2011 should not be cancelled.

(xix) Challenging the above suo motu proceedings of the Commissioner of Land Administration, Chepauk, the petitioner filed W.P.No.26255 of 2011, mainly on the ground that the show cause notice of the first respondent is without jurisdiction. It is the contention of the writ petitioner that the District Collector passed the order pursuant to the directions passed by this Court in W.P.No.28447 of 2010 dated 29.03.2011 and any decision by the Collector is binding on the Government in as much as the State of Tamil Nadu was the first respondent in the said writ petition.

(xx) Further, any decision taken by the Collector based on records is clearly binding on the Government and on this ground also the first respondent has no jurisdiction to entertain any suo motu review. Further the suo motu revision power of the first respondent has been withdrawn vide G.O.Ms.No.409, Revenue SSI(1) Department, dated 02.07.2008. Therefore, the Commissioner of Land Administration has no jurisdiction to entertain suo motu revision. Hence the writ petitions have been filed seeking the



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aforesaid reliefs.

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6. The respondents have filed counter. In the counter filed in W.P.No.13104 of 2008, inter alia, it is contended as follows:

(i) It is the stand of the Government that in view of the alleged improprieties in the conduct of the affairs of the Society, the District Registrar had initiated certain proceedings in the year 1989 under Section 36 of the Tamil Nadu Societies Registration Act, 1975. Thereafter, inspection was conducted on 29.12.1999 and some irregularities were found. The Government issued show cause notices under Section 34-A of the said Act pointing out the irregularities and calling for an explanations in Government Letter No.4552/M1/2000-3, Commercial Taxes Department, dated 20.03.2000.

(ii) The said letter dated 20.03.2020, was challenged before this Court in W.P.No.6073 of 2000 and the same was dismissed by this Court. Thereafter an appeal in W.A.No.638 of 2000 was filed by the writ petitioner, however the same was withdrawn on 03.01.2005. Thereafter, no reply was received from the Executive Committee Members of the petitioner Society till 2006. Therefore, the earlier show cause notice issued on 20.03.2000 was



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reissued in Government Letter No.4552/M.1/2000-42, Commercial Taxes and Registration Department, dated 15.09.2006. Against the said show cause notice the writ petitioner filed W.P.No.36443 of 2006. Initially this Court granted interim stay and thereafter on the vacate stay petition filed by the Government, vacated the stay on 29.11.2006.

(iii) Thereafter, the District Registrar, Central Chennai once again inspected the Society on 28.06.2006 and 27.12.2006 and found several irregularities in the matter relating to the constitution of the Committee of the Society, functioning of the Society, its financial management and gross abuse of the powers and mismanagement of the Society and submitted his reports. On receipt of those reports, the Inspector General of Registration, Chennai forwarded the said reports to the Government. The Government after considering the reports, decided to issue show cause notice under Section 34-A of the Tamil Nadu Societies Registration Act, 1975. Against the said show cause notice the writ petitioner society has filed W.P.No.1976 of 2007.

(iv) However, a Hon'ble Division Bench of this Court directed the petitioner to submit their objections to the show cause notice and after



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affording an opportunity of hearing to pass appropriate orders. The contention of the writ petitioner that every action of the respondents is mala fide is totally denied. It is contended by the Government that the writ petitioner Society's secretary who has political connections only goes to show the clout exercised by him to abrogate the Society as his personal property. It is further contended that just because the third petitioner claims affiliation to a particular political party, that by itself will not give any right to abdicate the noble objects of the Society and mismanage the Society to enhance his personal prosperity.

(v) It is further contended that the reference to a political party is totally unwarranted and is made only to disguise his mala fide activities and misuse of the power as Secretary to enrich himself at the cost of the Society. The allegations of political vendetta are without any relevance. There is no particulars of person or persons said to have caused political vendetta nor any such persons have been made respondent to this writ petition and hence the allegations regarding political mala fides will necessarily have to be eschewed while considering the writ petition.

(vi) It is the stand of the respondents that the entire proceedings were



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recorded through a dicta phone. However, noticing the difficult position prevailing then in taking dictation of the proceedings, the learned senior counsel representing the Society himself requested the officer who was conducting the personal hearing to use tape recorded to record the proceedings. However, he subsequently raised his objection for having recorded the proceedings from the beginning without his knowledge.

(vii) It is the contention of the respondents that the entire recorded proceedings were transcribed in letter form through skilled stenographers without any omission. It is the contention of the respondents that the junior officials of the Department who were directed to produce a tape recorder used the names of the office of the Hon'ble Chief Minister and the Chief Secretary over intercom with the Legislative Assembly Secretariat only to somehow get a recording device, as in the whole secretariat that is the only one available and there may be demands for its use from several departments.

(viii) Therefore, merely because some under-staff used reference to Chief Minister Officer, it cannot be said that the entire order has been passed with mala fide, whereas the orders have been passed on considering the



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entire materials and documents and the observation made by the Hon'ble Division Bench and that the order of the Hon'ble Division Bench is binding on the Government of Tamil Nadu and therefore, even though they were made on the context of resumption of land since it also touched upon the conduct of the management of the Society, the respondent as enquiry officer cannot ignore those observations and therefore referred to them in the impugned order. However, independent of those observations, the findings are still justified. Hence, prays for the dismissal of the writ petition.

7. Counter has also been filed in W.P.No.26255 of 2011. With regard to the suo motu enquiry it is the stand of the Government that in G.O.Ms.No.409, Revenue Department, Dated 02.07.2008 the Government has ordered that the second revision against the order of District Revenue Officer to the Commissioner of Land Administration in patta transfer matters has been withdrawn. Therefore, it does not mean that the Commissioner of Land Administration has been deprived of the suo motu powers under the Revenue Standing Order 31(8) by the said G.O. The Commissioner of Land Administration as Head of the Department has suo motu powers to call for records of the District, Divisional and Taluk Offices. Further the impugned show cause notice has been issued only for production of the documents and



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therefore the said writ petition is also not maintainable.

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8. The 3rd respondent has filed a miscellaneous petition to implead himself in W.P.No.26255 of 2011. Pursuant to the order dated 06.07.2012 passed by the Hon'ble Supreme Court in S.L.A.(Civil) CC No.10465 of 2012 he was impleaded as 3rd respondent in W.P.No.26255 of 2011.

9. It is the contention of the 3rd respondent in W.P.No.26255 of 2011 that the property which was resumed by the Government measuring an extent of about 316 grounds was earlier acquired by the Government and placed at the disposal of the Society for the purpose of maintaining an Agri-Horticultural garden.

10. There is no documentary evidence with regard to the ownership of the petitioner society. The revenue records from the inception demonstrates that consistently the disputed land belongs to the Government. The petitioner society is a permissive occupant and it is doing agri and horticultural activities. It is further stated that even in the earlier round of litigation, the Government has taken a stand that the balance portion of R.S.No.64(part) is going to be used for Poonga. The petitioner can establish



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their title only by appropriate civil proceedings and not through the writ petition.

11. It is his contention that the order of the District Collector is per-se abuse and misuse of power and wrong interpretation of order of this Court. Secondly, the District Collector has not taken any steps to ascertain the title from revenue records and has abruptly confirmed the title in favour of the petitioner without looking into the revenue records. The act of the District Collector is a colourable exercise of power in alienating the Government largesses under the impugned proceedings. The discretion of the Government to deal with State largesses is not unlimited or according to their whims and fancies. The said proceedings of the District Collector, in other words, amounts to alienation of the Government lands which the District Collector has no jurisdiction or power to deal with the same and therefore the impugned order passed by the District Collector is ab initio void.

12. It is further contended that through the said proceedings dated 22.08.2011, vast lands belonging to the Government were given up. The regular District Collector was transferred and an in-charge Collector viz.,



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District Revenue Officer was posted specifically to pass favourable orders.

Therefore, the District Collector in-charge under guise of dealing with a show cause notice seeking for production of documents has virtually alienated the vast lands of the Government in favour of the petitioners for extraneous reasons even without production of valid documents by the petitioners. According to the 3rd respondent, the Government has not taken any action against the District Collector in-charge who passed the impugned order dated 22.08.2011. Therefore, to protect the vast extent of Government land, the 3rd respondent seek to implead himself in W.P.No.26255 of 2011.

13. Mr.G.Rajagopalan, learned senior counsel appearing for the petitioners mainly submitted that the impugned order in W.P.No.13104 of 2008, has been passed under Section 34-A of the Societies Registration Act as a result of the mala fide act on the part of the respondent Government. Such course of action has been taken by the respondent Government on the ground that the Secretary of the writ petitioner society was affiliated to the then ruling party AIADMK and show cause notices were issued only after the DMK Government came to power and the same were challenged before this Court. Though the show cause notice was issued on 20.03.2000, the same was revived on 15.09.2006 and thereafter on 06.01.2007, another



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notice has been pasted on the writ petitioner's premises, whereas in the earlier two show cause notices the only allegation as against the petitioner society is with regard to non service of notice and non maintaining of proper records. Whereas, after the enquiry has commenced, pursuant to the orders of this Court, the respondents have collected further materials which were not the subject matter of show cause notice. They collected the materials with regard to the advertisement agency and put them against the writ petitioner only for the purpose of passing an order under Section 34-A of the Societies Registration Act.

14. It is the further contention of the learned senior counsel appearing for the petitioners that even during the course of hearing in the first respondent chamber while recording the arguments of the learned senior counsel there was a reference with regard to the staff making reference to the influence made by Chief Minister's Office. Hence it is contended that the entire order is politically motivated and without any substance. It is the further contention of the learned senior counsel that the order impugned cannot survive in the eye of law as it is attached with mala fide and politically motivated.



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15. It is the further contention of the learned senior counsel appearing for the petitioner society that when the Government has initiated proceedings for resumption of part of the land leased to the petitioner society, in the above proceedings, the Government have taken a specific stand that in the counter affidavit filed in W.P.Nos.11058 and 11059 of 1989 that other part of land in the said survey number belongs to the petitioner society. However, in paragraph 34 of the said counter affidavit the respondent Government has stated that the Society is left with its own lands in which it can continue its activities as it likes. Similarly in paragraph 42 of the said counter, the Government has taken a stand that there are three wells in the Society's land and that the Society can make use of them for irrigating the trees and plants in the said lands. In paragraph 44, the Government has taken a stand that the Government has not interfered with the Society's land and that the Government is willing to provide water to the extent possible from the bore well if really the Society does not have any water in the wells in its land and it has been depending entirely on the bore well in the Government land alone, for a specific period till the society makes its own arrangements in its lands.

16. Further the learned senior counsel appearing for the petitioners



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submitted that if really the entire property belongs to the Government while resuming part of the land the Government would not have kept quite. Only after realising that part of the land belongs to the Society, the Government has resumed only part of the land. Therefore, it is his contention that now the Government is some how or the other trying to take over the property of the Society and therefore initiated all the above proceedings with mala fide merely because one of the member of the Society namely Mr.V.Krishnamurthy is close to the opposition party the AIADMK. Hence it is contended that every action has been taken only when the DMK Government came to power. Therefore, the order passed by the respondent Government superseding the Society under Section 34-A of the Tamil Nadu Societies Registration Act suffers from mala fide.

17. As far as W.P.No.26255 of 2011 is concerned, the learned senior counsel appearing for the petitioner society submitted that the suo motu review power of the Commissioner of Land Administration is challenged. It is his contention that the then District Collector of Chennai issued a notice to the petitioner society to produce any documentary evidence to prove their title. Thereafter, he has also passed an order for vacating the Society's property and the same was challenged before this Court. This Court set aside



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the same and directed the writ petitioner to produce all the documents and thereafter the District Collector shall decide. Thus, only on the direction of this Court, the District Collector has now decided the title in favour of the petitioner. Therefore, it is his contention that Revenue Standing Order will not be applicable to exercise suo motu power, whereas, the orders have been passed pursuant to the directions of this Court. Further, this Court has also while disposing of the writ petition granted liberty to the petitioner to approach for appropriate relief in the event any adverse orders has been passed. But no such liberty has been granted by the Court to the Government. Therefore, it is his contention that suo motu power cannot be exercised by the Government in this matter and it is also his submission that the Government itself on previous occasion has admitted the ownership of the Society. Therefore, now the Government cannot exercise such power by invoking Revenue Standing Order No.31(8-A). Hence, the learned senior counsel appearing for the petitioners seeks to quash the impugned show cause notice.

18. Mr.J.Ravindran, learned Additional Advocate General appearing for the Government and Mr.P.Wilson, learned senior counsel appearing for the 3rd respondent in W.P.No.26255 of 2011 made their submissions. The



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learned Additional Advocate General submitted that the writ petition in

W.P.No.13104 of 2008 challenging the impugned order dated 30.04.2008

superseding the Society by appointing a Special Officer has become infructuous, since the Special Officer is appointed only for a period of one year. At any event, it is his contention that the allegation of mala fide has no basis. According to him merely because action was initiated only during the regime of one particular political party, it cannot be presumed that there was mala fide. The writ petitioner's secretary himself is closely associated with a political party and orders were obtained in his favour contrary to law itself speaks about volumes.

19. According to the learned Additional Advocate General, the District Collector has passed orders deciding title in favour of the petitioner, the said District Collector was not a regular District Collector and he was placed in-charge only for this matter by the then Government and he has decided the title on the basis of the opinion given by the learned Government Pleader without any documents and there is no reference whatsoever in the order about the said documents. Therefore, it is his contention that the District Collector (in-charge) has passed the order during the last regime, and therefore, it is easy to allege mala fide merely because the Government



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has changed. The District Collector in-charge has not passed the order in accordance with law.

20. It is the contention of the learned Additional Advocate General that the alleged bias and mala fide has no legs to stand. In fact the very suo motu power has been invoked to review the order of the District Collector during the regime of the then Government to which the writ petitioner Society's secretary is closely associated with. Therefore, it is his contention that irrespective of the political party in power, the Government officials have taken action as per law. Therefore, mala fide cannot be presumed merely on the basis of one political party is in power, it has to be seen from the records how the actions have been taken. Therefore, it is submitted that all the show cause notices have been successfully challenged by the writ petitioner from the very beginning and this Court has directed the writ petitioner to file reply to the show cause notice and participate in the enquiry only after the petitioner society participated in the enquiry, orders came to be passed.

21. Merely because the argument of the learned senior counsel for the petitioner society was recorded in tape recorder and there were some



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reference by under staff of the secretariat about the Chief Minister's office to conclude enquiry expeditiously, that cannot be a ground to presume that the entire order came to be passed only on the instructions of the Chief Minister's Office.

22. It is his further contention that the orders superseding the Society has been passed after giving appropriate hearing and opportunity to the petitioner and documents have been considered and in fact there were serious financial irregularities noticed by the Government which was put against the petitioner in the enquiry and for which he has also replied.

23. It is also stated that one of the advertisement agency was run by the Secretary of the petitioner Society, he has utilised maximum benefit out of the advertisement charges and only a small amount has been credited to the Society which has been established on record. Therefore, it is his contention that the orders have been passed on merits by the respondent Government and therefore the same cannot be challenged in the writ petition.

24. With regard to the Suo motu power of review exercised by the



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Commissioner of Land Administration, it is his contention that originally notice has been issued to produce documents to establish the title of the petitioner, which has also been challenged. Thereafter, this Court directed the petitioner to produce all the document and file a reply before the District Collector and the District Collector was also directed to give an opportunity to the petitioner and thereafter to pass orders. The District Collector was in fact posted only for a specific period at the relevant point of time, the regular District Collector was transferred and the District Revenue Officer was posted as District Collector in-charge and he passed the orders on the basis of his own assumption and also based on the opinion said to have been given by the learned Government Pleader and he decided the title, which is per se illegal in the eye of law. Therefore, the Commissioner of Land Administration exercising his power of suo motu review, issued notice. Therefore, the said show cause notice cannot be challenged by filing a writ petition and the very writ petition itself is not maintainable. The learned Additional Advocate General further submitted that this writ petition is nothing but an abuse of process of law and the petitioner has been squatting on the Government property worth about more than Rs.5000 crores. Therefore, it is submitted that the writ petition is nothing but abuse of process of law. Every stage of the proceedings were challenged before this



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Court by the petitioner society by squatting on the Government property and if at all the petitioner society wants to establish their title, they have to go before the Civil Court and they should not come before this Court by way of a writ petition.

25. Further, it is his contention that even the letter addressed by the Secretary of the petitioner society to the Government from the very inception has clearly admitted that the property is a Government property. Therefore, it is his submission that merely some reference has been made in the counter affidavit by some of the official in the earlier round of litigation that cannot by itself declare the title in favour of the petitioner society. Hence it is submitted that the writ petitions are nothing but abuse of process of law and prays for dismissal of the writ petitions.

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

27. In the light of the above submissions and the facts narrated in all the writ petitions, this Court will deal with the writ petitions one by one. As far as writ petition in W.P.No.36442 of 2006 is concerned, the challenge is



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only to the show cause notice dated 15.09.2006 in and by which the respondent Government is purporting to review the inquiry in pursuance to the notice dated 20.03.2000.

28. It is relevant to note that the writ petition has been filed challenging the show cause notice dated 15.09.2006. This Court has vacated an interim order granted to the petitioner society vide order dated 29.11.2006 and thereafter the petitioner has sought three weeks time to file reply and this Court granted three weeks time to file reply. In the meanwhile, another show cause notice was also issued dated 06.01.2007 and it was also put into challenge and the Division Bench of this Court in W.P.No.1976 of 2007 by order dated 12.11.2007, directed the respondent to furnish the copies and the petitioner to submit their objections and directed the enquiry officer to follow the Principles of Natural Justice and pass orders. Pursuant to the above order now the enquiry has been conducted. Therefore, nothing survives in the writ petition challenging the show cause notice and therefore the writ petition W.P.No.36443 of 2006 is dismissed as become infructuous.

29. As far as the writ petition in W.P.No.13104 of 2008 is concerned, the writ petitioner society challenges the order of the Government in



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G.O.Ms.No.42, Commercial Taxes and Registration (M1) Department dated

30.04.2008. The said G.O. has been issued based on the enquiry conducted on the basis of the show cause notices dated 20.03.2000 and 06.01.2007 respectively. The Government passed the said G.O. after taking note of various documents produced and found the charges in the show cause notice dated 20.03.2000 were proved and the same are serious in nature and warrant supersession of the Society under Section 34-A of the Tamil Nadu Societies Registration Act, 1975. Further, while dealing with the charges particularly collection of the monthly rent of Rs.90,000/- by Meena Advertisers, the specific charge as against the petitioner society was that Meena Advertising Agency is a proprietary concern owned by the Secretary of the Society Mr.V.Krishnamurthy. Thus the amount received for the premises of the Society has been utilized for the benefit of that particular agency owned by the Secretary of the petitioner society in violation of Section 25 of the Act.

30. The Government after collecting various documents with regard to the advertisement charges and rents, sufficient opportunity has been given to the petitioner society and on the basis of the reply and evidence put forth on behalf of the petitioner Society, it is found that permission was granted to



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M/s.Meena Advertisers to erect hoardings for a period of 30 years from the date of erection for a length of 100 running feet before the actual resolution was passed by the Executive Committee therefor on 29.04.1995 and fixed a static rent at the rate of Rs.120/- per running foot per month for a long period of 30 years. Thus the petitioner society has fixed the rent for the land taken for the purpose of erection of hoardings without taking into account the market trend of lease amount leviable on advertisement display area and calculation of land lease on running foot basis and other relevant factors. The Government has found that the Society's land has been misused as a source of prosperity of M/s.Meena Advertisers under the guise of land rent payment to the Society. The Government also considered a source of a receipt bill issued by M/s.Meena Advertisers to M/s.Nalli Silk dated 06.03.2007, wherein, it is disclosed that the monthly charges paid to M/s.Meena Advertisers for the month of March, 2007 was Rs.2,40,000/- for a 100'x30' sq.ft. hoarding, from which the above firm viz., M/s.Meena Advertisers have been paying the Society only Rs.12,000/- at the rate of Rs.120/- per running foot as land rental. Though it is argued before the respondents that the rent paid by M/s.Meena Advertisers is thousand times higher than the rent prevailing at that times and that had the hoardings have not been erected in vantage points by M/s.Meena Advertisers, the other

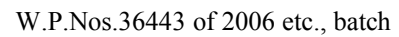


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advertising firms could have erected their hoardings on such places outside the land of the Society and paved way for stopping the income to the Society by way of land rent. Considering the entire gamut of evidence and arguments it is found by the Government that huge rental income has been mainly used for personal benefit of the Secretary of the society and he has earned several crores of rupees by way of his advertisement business.

31. There were 30 advertisement hoardings in the premises of the Society and 21 hardings are presently in the site of the society and according to them from one hoarding Rs.24 lakhs has been collected as per annum rent and recorded a finding that the amount of commercial exploitation of the Society's lands by its Secretary for his personal benefit with the active support of the Committee members cannot be over emphasized and could run to several crores of rupees taking just one hoarding of 'M/s.Nalli Silks' as an example.

32. It is contended by the Government that from 1996 onwards hoarding contracts worth crores of rupees have been awarded to Mr.V.Krishnamurthy, Secretary of the petitioner society for a paltry sum of Rs.10 lakhs only as lease and that too for a period of 30 years. Therefore the



33. On a perusal of the entire impugned order, this Court is unable to find any materials to show that no opportunity has been given to the petitioner. In fact appropriate opportunity has been given to the petitioner as per the directions of this Court. The respondent mainly relied on running of the advertisement agency and making profit in the Society and evidence has been adduced during the enquiry and the petitioner also participated. The factum of receipt of the rent from M/s.Nali could not be disproved by the writ petitioner. These facts were taken by the Government and orders came to be passed. Therefore, when facts have been established on record, the Government has passed an order based on the established facts, it cannot be said that such orders itself cannot be passed only due to the political interference.

34. It is relevant to note that the writ petitioner society filed the writ petition challenging the said order and it is indicated that the Secretary of the petitioner Society is close to the erstwhile Government. Merely because the



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other Government took action on the basis of the available records and on merits, it cannot be said that such action was result of political vendetta or motive.

35. It is relevant to note that when the Government resumed part of the land in the same survey number has not taken any action in respect of part of property since they were not sure about the title. Therefore, the then District Collector issued show cause notice to the petitioner society to produce documents to prove their title. The above show cause notice has been challenged by the writ petitioner on the ground that the District Collector cannot call for such documents, since they are in possession for more than 150 years in the said land. Thereafter the District Collector based on the revenue records passed an order directing the petitioner society to vacate the land. The same was challenged by the petitioner society before this Court in W.P.No.28447 of 2010, wherein this Court has set aside the said order and directed the petitioner society to file additional statement and produce appropriate documents which they consider necessary and upon receipt of the same, the District Collector was directed to consider the same and pass appropriate orders in accordance with law. This Court has also directed the respondents to give an opportunity of hearing to the petitioner



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society and only thereafter it appears that the petitioner society has appeared before the District Collector with some documents.

36. It is relevant to note that after the order passed by the then District Collector has been set aside on 29.03.2011. Thereafter, the petitioner participated in the enquiry. The District Collector has passed an order on 22.08.2011 within five months, it is to be noted that the District Collector was placed in-charge at the relevant point of time and he was not a regular District Collector. He has appeared to have passed the order holding that the Society is the title holder. It is relevant to note that what are all the nature of documents verified by him was not disclosed in the order. It is only stated that the original documents of the Society has been verified with the available records in the Collectorate and authenticity of the same was also found to be in order. Besides, he has also relied upon the so called legal opinion of the learned Government Pleader. The legal opinion given by the learned Government Pleader is as follows:

"It is seen from the records that the Secretary, Agri-Horticultural Society perused 8 documents from the year 1825 to 16.10.1848. From the said document it is clearly established that the lands are possessed by the Agri



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Horticultural Society for more than 100 years without any hindrance. The proceedings issued by the District Collector were challenged by the Society before the Hon'ble High Court. The Hon'ble High Court after perusing the materials, set aside the order on the ground that opportunity was not offered to the Agri - Horticultural Society and the explanation offered by the Society was not considered. Thereafter, the Agri-Horticultural Society made a detailed explanation along with the documents mentioned above.

From the recital of the documents, it is clear that the society purchased through private negotiation. Therefore, all further proceedings by virtue of the office notice dated 29.09.2010 may be dropped and confirmation of the title in respect of these lands in favour of the Agri-Horticultural Society may be confirmed."

37. From the above, it is clear that pursuant to the alleged comparison of the documents by the District Collector (in-charge) and considering the legal opinion of the learned Government Pleader, the District Collector (in-charge) concluded that the land in O.S.R.No.3412 Extent 4C-



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18G-1683 Sq.ft. clearly forms part of RSR No.64 and the District Collector (in-charge) decided the title of the land issue in the show cause notice in favour of the petitioner Agri - Horticultural Society. He has also cancelled the show cause notice dated 29.09.2010, issued by the then District Collector.

38. The very urgency shown in passing the above said order within a period of five months that to by the in-charge District Collector, clearly indicates that someone is in fact behind the back to get undue advantage to the Society. Therefore, the petitioner's allegation of mala fide have no legs to stand.

39. It is relevant to note that the District Collector's order has been sought to be reviewed in the year 2011, by the Government in which the petitioner appears to be associated with. Therefore, the allegation of mala fide in the entire action has no legs to stand.

40. Though this Court is not recording any finding with regard to the title, the above observation is recorded only to show that mala fide raised by one of the party who is also close to one political party and during their



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regime, orders have been passed in his favour, cannot raise mala fide when such orders were challenged legally. Further it is only to make plea of mala fide by person like writ petitioner since he has serious grievance against the Government for resuming vast lands from the possession of the Society. Therefore, the plea of mala fide argued by the learned senior counsel appearing for the petitioners cannot be given any importance.

41. It is his further contention that some reference has been found in the tape recorded conversation by the under staff of the secretariat, that by itself is not sufficient to presume that there was influence from the Chief Minister's Office to pass such orders. Even assuming that there was such reference in the tape recorded conversation, it has been clearly explained by the respondents in the counter that the under staff in the secretariat while arranging for the tape recorder they have made such remarks because in the whole of secretariat only one such device is available and there was demand for that device from other departments. Therefore, such remarks by the staff in the Legislative Assembly Secretariat is normal and cannot be a ground to hold that the entire order is as a result of mala fides.

42. It is relevant to note that under Section 36 of the Tamil Nadu



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Societies Registration Act, 1975 the Registrar may on his own motion or direct some person authorised by him to hold an inquiry into the constitution, working and financial condition of a registered society. When the power is vested with the Registrar to hold an enquiry into the constitution, working and financial conditions of a registered society, merely because such power has been exercised by the Registrar during the regime of the Government which is opposed to the political party to which the petitioner has affiliation, bias and mala fide cannot be attributed merely because the petitioner is affiliated to the opposite political party.

43. Section 34-A of the Tamil Nadu Societies Registration Act deals with Supersession of Committee, which reads as follows:

"Section 34-A. Supersession of
Committee.--

(1) (a) If, in the opinion of the Government,--

(i) the Committee of any registered society is not functioning properly, or

(ii) the affairs of any registered society are mismanaged, or

(iii) the registered society's activities are not in furtherance of the objects of the society, or



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(iv) the committee of any registered society has contravened any of the provisions of this Act or the rules made thereunder, or wilfully disobeys or wilfully fails to comply with any lawful order or direction issued under the provisions of the Act or the rules made thereunder, the Government may, after giving the committee an opportunity of making its representations, by order in writing supersede the committee and appoint a person (hereafter in this section and in section 34-B referred to as the special officer) to manage the affairs of the society for a specified period not exceeding one year.

Provided that nothing in this clause shall prevent the appointment of the same person as special officer for two or more registered societies.

(b) The period specified in such order may, at the discretion of the Government, be extended from time to time, provided that such order shall not remain in force for more than three years in the aggregate.

(2) The Special Officer appointed under subsection (1) shall, subject to the control of the Registrar and to such directions as he may, from



time to time, give, have power to exercise all or any of the functions of the committee and to take such action as may be required in the interest of the societies.

(3) The Registrar may fix the remuneration payable to the special officer appointed under sub-section (1). The amount of remuneration so fixed and such other expenditure incidental to the management of the society during the period of supersession as may be approved by the Registrar shall be payable from the funds of the registered society.

(4) The Special Officer appointed under sub-section (1) shall arrange for the constitution of a new committee in accordance with the provisions of this Act and the rules made thereunder and the bye-laws of the registered society so that the new committee may be constituted and the members thereof come into office at any expiry of the period of appointment of the special officer.

(5) Nothing contained in this section shall be deemed to affect the power of the Registrar to order the winding up of the society under section 40.

(6) An order under sub-section (1) shall take effect from the date specified therein."



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WEB COPY 44. A reading of the above provision makes it clear that if in the opinion of the Government, the Committee of any registered society is not functioning properly or the affairs of any registered society are mismanaged or the registered society's activities are not in furtherance of the objects of the society or the committee of any registered society has contravened any of the provision of this Act or the Rules made thereunder, or direction issued under the provisions of this Act or the rules made thereunder, the Government may, after giving the committee an opportunity of making its representations, by order in writing, supersede the committee and appoint a person as Special Officer to manage the affairs of the society for a specified period not exceeding one year.

45. Perusal of the entire impugned order and the various petitions filed by the writ petitioner, this Court is of the view that sufficient opportunity has been given by the Government and orders have been passed taking note of the documents on record and evidence available with the Government and thereafter only the Government has taken such decision to supersede the Society.



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46. When a huge property which is in the centre of Chennai city is in

the possession of the society and has been commercially exploited for the benefit of certain individuals, it cannot be said that the Government should always sleep over and allow such activities to go on unnoticed. When the authorities have found such irregularities and acted as per law that to after giving an appropriate opportunity, the plea of mala fides cannot be a ground to quash the well reasoned order. Therefore, such allegation of mala fide made by a person who has been already affected by the actions of the Government by resumption of majority portion of the land in the same Survey number cannot be given much importance.

47. The resumption of large part of the area which was under the possession of the writ petitioner society was also upheld by the Hon'ble Apex Court. In the said case before the Hon'ble Apex Court also the plea of mala fide has been raised by the writ petitioner against the Government while exercising the power to resume the lands. The Hon'ble Apex Court confirmed the judgment of the Division Bench of this Court and dismissed the appeals in *V.Krishnamurthy Vs. State of Tamil Nadu* reported in (2020) **14 SCC 408**. The Hon'ble Apex Court has held that the plea of mala fides raised by the petitioner essentially on the ground of political rivalry is



rejected. It is relevant to note that in paragraph 11 of the said judgment the

Hon'ble Apex Court has recorded the following findings:

"11. A plea of mala fides, in our view, has no factual and legal foundation to sustain because we find that it is only based on the averment that since the appellant happened to be a member of the opposition party, the party in power at that time had taken the impugned action to resume the land against them. Such averments by itself do not constitute a plea of mala fides without there being any substantial material in its support. In our view, the appellants having failed to point out any legal infirmity in the resumption order except to take the plea based on mala fides, the Division Bench was right in upholding the resumption order as being legal and in conformity with Clause 4 of the allotment order. We concur with the view taken by the Division Bench calling for no interference. Needless to observe, the State will ensure that the land in question would only be used for the public purpose and not for other purposes."

48. Thus, when a similar plea of mala fides has been raised by the petitioner society in the earlier round of litigation, the Hon'ble Apex Court has rejected it as referred above. Therefore, this Court is of the view that



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any person who is aggrieved by the orders of the Government cannot be allowed to make such plea of mala fides against the Government since he also happens to have political clout with the opposite political party.

49. The learned Additional Advocate General relied on the judgment of the Hon'ble Supreme Court in ***Indian Railway Construction Co.Ltd., Vs. Ajay Kumar*** reported in (2003) 4 SCC 579. In paragraphs 17, 18 and 23 the Hon'ble Supreme Court has held as follows:

"17. Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.[Associated Provincial Picture Houses Ltd.v.Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] (KB at p. 229 : All ER pp. 682 H-683 A). It reads as follows:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has



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frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed: (KB p. 230 : All ER p. 683 F-G)



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“... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another.”(emphasis supplied)

18. *Therefore, to arrive at a decision on “reasonableness” the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.*

* * *

23. *Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of*



bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See S. Partap Singh v. State of Punjab [AIR 1964 SC 72 : (1964) 4 SCR 733] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As



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noted by this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration."

50. Such view of the matter, if the affected party seeks to raise such plea against the Government, this Court cannot entertain such plea and this Court is of the view that such plea is repeatedly made for the purpose of some how or the other to thwart the actions by the Government.

51. From the factual narration of all these writ petitions, the conduct of the writ petitioner in filing various writ petitions even for issuance of show cause notice and at every stage clearly shows that the plea of mala fide is baseless. A perusal of the impugned order superseding the petitioner Society is based on the materials and proved evidence before the Government that to after giving appropriate opportunity. Such view of the matter, this Court do not find any merit in the writ petition in W.P.No.13104 of 2008, challenging the Government Order in G.O.Ms.No.42, Commercial



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Taxes and Registration (M1) Department, dated 30.04.2008 and accordingly
dismiss the same.

52. The writ petition in W.P.No.26255 of 2011 has been filed challenging the show cause notice issued by the first respondent Government exercising suo motu power under Revenue Standing Orders in R.S.O.31(8)(A) to review the orders of the District Revenue Officer / Collector (FAC). It is the contention of the writ petitioner that the first respondent has no jurisdiction to exercise such suo motu review to review the orders passed by the District Collector. It is relevant to note that originally the District Collector, Chennai issued show cause notice on 29.09.2010, calling upon the society to produce the documents in respect of part of lands in R.S.No.64 other than the property which has been already resumed by the Government to show and establish his ownership to the said land. The show cause notice also indicated that the petitioner is in permissive occupation of the Government land.

53. Thereafter, it appears that the District Collector passed an order on 08.12.2010, directing the Society to vacate from R.S.No.64. In the reply to the above show cause notice, the writ petitioner society challenged the



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jurisdiction of the District Collector to issue such show cause notice.

Thereafter, when the orders came to be passed for vacating the premises, it has been put into challenge in W.P.No.28447 of 2010 and this Court by order dated 29.03.2011 set aside the order of the District Collector and permitted the writ petitioner to produce documents before the District Collector and directed the District Collector to afford an opportunity of hearing to the petitioner and thereafter to pass orders.

54. It appears that thereafter the petitioner has produced certain documents to the District Revenue Officer who was given full additional charge of the District Collector of Chennai. Thereafter, orders came to be passed by the said District Revenue Officer cum District Collector (FAC) on 28.08.2011 stating as if certain documents have been verified by him with the revenue records and also considering the legal opinion of the learned Government Pleader, which has been captured in the earlier part of the discussion, decided the title in favour of the writ petitioner society.

55. This Court is of the view that any revenue proceedings would relate only with regard to mutation of records or for issuance of patta and not for deciding the title. Deciding the title of the parties always remain with the



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Civil Court. The Civil Court alone can go into the issue of title by proper appreciation of evidence adduced in that regard. Therefore, deciding the title by the revenue officials is against the very fundamental principles of law.

56. Be that as it may, this Court is not going into the title of the parties. Though the learned senior counsel appearing for the writ petitioner society has drawn the attention of this Court to the admission in certain paragraphs of the counter affidavit filed by the respondent Government in the earlier proceedings, this Court is of the view that the same is not germane for consideration as title has to be proved based on documents and other factors in an appropriate manner before the Civil Court. Merely because some admission here and there in the counter affidavit filed by some officials at some other relevant point of time, the same cannot be taken as an admission and conclusive proof. Therefore, some mere reference indicated in the earlier counter affidavit that the society owns some land, that cannot be a ground for assumption that the society is the owner of the property. Even during the submissions, the learned Additional Advocate General submitted certain letters, wherein, the Society has admitted that the Government is the owner of the property. Such being the position, whether those letters relates to the part of the survey number or not has to be seen in



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some other forum and not in the Writ Court. Therefore, this Court is not venturing into those documents to decide the title.

57. Now the issue is only with regard to the suo motu power exercised by the Commissioner of Land Administration as against the order of the District Collector. The District Collector has in fact decided the title in favour of the petitioner, which is a valuable property in the heart of the city of Chennai. It is the contention of the learned Senior Counsel appearing for the petitioner society that the District Collector has passed the order only based on the directions of this Court. Therefore, the suo motu power cannot be used and according to him, such suo motu power has been deleted by a subsequent Government Order.

58. It is relevant to note that what was challenged in the writ petition is only the show cause notice issued by the Commissioner of Land Administration in order to review the decision of the District Collector. It is the contention of the learned senior counsel appearing for the petitioner society that G.O.Ms.No.409, Revenue SSI(1) Department, dated 02.07.2008 has taken over the power of second revision from the Commissioner of Land Administration. Therefore, the suo motu review power cannot be exercised



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by the Commissioner of Land Administration. It is relevant to extract the relevant provision of R.S.O. 31 8(A) which originally stood before:

"R.S.O.31 8(A): Against the order of the Tahsildar or Deputy Tahsildar, the affected person may file an appeal to the Divisional Officer and a revision to the District Revenue Officer against the orders of the Divisional Officer. The appeal/revision should be filed within 30 days from the date of receipt of the order appealed against. A further revision to the Commissioner of Land Administration can be made within 30 days from the date of receipt of the order and the orders of the Commissioner of Land Administration are final. The Commissioner of Land Administration may, however, exercising the general powers of the suo-motu revision, call for the records of the District, Divisional and Taluk when representations are made to him about the procedural material and legal irregularities in the order passed by the subordinates, examine the case and decide."

59. An amendment was brought in the said R.S.O.31 8(A) by way of G.O.Ms.No.409, Revenue SSI(1) Department, dated 02.07.2008. A careful perusal of the above G.O. the Government has accepted the proposal of the Special Commissioner and Commissioner of Land Administration in detail and decided to accept the amendment to R.S.O.No.31 8(A) by deleting the



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following lines:

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"A further revision to the Commissioner of Land Administration can be made within 30 days from the date of receipt of the order and the orders of the Commissioner of Land Administration are final."

60. From the above amendment what was deleted in the original R.S.O.31 8(A) is the further revision to the Commissioner of Land Administration i.e. second revision powers of the Commissioner of Land Administration. Whereas, the original R.S.O. relate to the Commissioner of Land Administration power to exercise their power of suo motu revision by calling the records of the District, Divisional and Taluk when representations are made to him about the procedural, material and legal irregularities in the order passed by the subordinates, examine the case and decide the same has not been deleted by way of amendment which remains as it is. Therefore, the contention of the learned senior counsel that the Commissioner of Land Administration has no suo motu power for revision cannot be countenanced, what was deleted is only the second revision power of the Commissioner of Land Administration and not the suo motu power of revision. Therefore, this Court holds that the Commissioner of Land Administration has jurisdiction to exercise his suo motu power under R.S.O.31 8(A).



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61. Such view of the matter, the contention of the learned senior counsel appearing for the writ petitioner society has no legs to stand. What was challenged in W.P.No.26255 of 2011 is only a show cause notice issued by the Commissioner of Land Administration while exercising his power of suo motu revision under R.S.O.31 8(A).

62. Thus, their contention that the District Collector passed the order based on the directions of this Court and not on the basis of R.S.O. and therefore suo motu power cannot be exercised under R.S.O. has no legs to stand. Any order relating to the revenue records dealt under the Board Standing Order or Revenue Standing Order and when the authorities are vested with suo motu power and they have power to review the order passed by the subordinate officers, the contention that the District Collector passed the order not under the R.S.O. but only as per the direction of this Court has no legs to stand.

63. The learned Additional Advocate General relied on the judgment of the Hon'ble Apex Court in *Siemens Ltd., Vs. State of Maharashtra* reported in **(2006) 12 SCC 33**, wherein the Hon'ble Apex Court has held that although ordinarily a writ court may not exercise its discretionary



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jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction. Such view of the matter this Court do not find any merit.

64. Therefore, it is well settled that the writ petition challenging the show cause notice cannot be entertained unless the same is questioned for want of jurisdiction. In this regard a Division Bench of this Court in ***W.A.No.1930 of 2003 in Mrs.Rajeswari Vs. The Commissioner of Land Administration*** has held that the very R.S.O.31.8(A) the Commissioner of Land Administration has powers of suo motu revision and call for the records from the district. Therefore, the show cause notice issued by him cannot be interfered with.

65. Such view of the matter, this Court is of the view that mere issuance of the show cause notice exercising suo motu power as per R.S.O.31.8(A) cannot be questioned in the writ petition and accordingly the writ petition in W.P.No.26255 of 2011 fails. The writ petitioner is directed to give reply within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the first respondent after giving an opportunity of hearing to the petitioner shall proceed in accordance with law. Even in the



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event any adverse orders is passed against the writ petitioner society it is for the writ petitioner society to establish their title in the manner known to law by approaching the Civil Court. Such view of the matter, the writ petition in W.P.No.26255 of 2011 is dismissed accordingly.

66. In the result,

(a) The writ petition in W.P.No.36443 of 2006 challenging the show cause notice dated 15.09.2006 along with the communication dated 20.03.2000 is dismissed as become infructuous.

(b) The writ petition in W.P.No.13104 of 2008 challenging G.O.Ms.No.42, Commercial Taxes and Registration (M1) Department, dated 30.04.2008, is dismissed.

(c) The writ petition in W.P.No.26255 of 2011 challenging the suo motu proceedings initiated by the first respondent and notice dated 01.11.2011, is dismissed with the aforesaid directions.

Consequently, the connected miscellaneous petitions are closed. No costs.

25.11.2022

Index : Yes / No
kk



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To

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1. The Secretary to Government,
Commercial Taxes and Religious
Endowments Departments,
Fort St.George,
Chennai - 600 009.
2. The Inspector General of Registration,
120, Santhome High Road,
Chennai - 28.
3. The Registrar of Societies,
Madras Central Chennai.
4. District Registrar (Audit),
Chennai Central,
(Special Officer designate)
Chennai - 600 018.
5. The Principal Secretary cum
Commissioner of Land Administration,
Chepauk, Chennai - 600 005.
6. The Collector of Chennai,
Rajaji Salai,
Chennai - 600 001.



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N.SATHISH KUMAR, J.

kk

PRE DELIVERY COMMON ORDER
in W.P.Nos.36443 of 2006, 13104
of 2008 and 26255 of 2011 and
M.P.Nos.2 of 2008, 1 & 2 of 2011

RESERVED ON : 16.11.2022

DELIVERED ON : 25.11.2022