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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.26270, 26272 & 26432 of 2021
and W.M.P.Nos.27718, 27719, 27721, 27722, 27899, 27901
& 27903 of 2021

Order reserved on 08.04.2022	Order pronounced on 15.06.2022
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S.Nalini Selvaraj

..Petitioner in W.P.No.26270/2021

D.Gnanaraj

..Petitioner in W.P.No.26272/2021

1.Selvaraj,
rep. By S.Amirtharaj
2.S.Anandaraj
3.S.Rajapriya

..Petitioners in W.P.No.26432/2021

Vs.

1.The Joint Commissioner/
Hindu Religious Charitable Endowments,
Kanchipuram.

2.The Assistant Commissioner,
Hindu Religious Charitable Endowments,
Kanchipuram.

3.The Executive Officer,
Arulmighu Kasiviswanathar and
Venugopalaswamy Thirukkivil,
Pappan Chathiram, Sriperumputhur Taluk,
Kanchipuram District.

4.Arulmighu Kasi Viswanathar Thirukoil
and Arulmigu Venugopaleeswarar Thirukkivil,
Pazhajer, rep. By its Fit Person.

..Respondents 1 to 4 in all W.Ps.



5.The District Collector,
Kancheepuram. ..5th Respondent in W.P.Nos.26270 & 26272/2021

(R5 suo motu impleaded vide order
dated 08.12.2021 made in W.P.No.26270/2021)

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Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned notice proceedings initiated by the 1st respondent in M.P.Nos.217, 216 & 219 of 2021/E1 dated 08.10.2021 on the file of the Joint Commissioner of Hindu Religious and Charitable Endowment, Kanchipuram under Section 78 (2) of the Tamil Nadu Hindu Religious and Charitable Endowment Act and quash the same as illegal, without jurisdiction and arbitrary in the eyes of law and forbearing the 1st respondent from taking any further proceeding against the petitioners under the Tamil Nadu Hindu Religious and Charitable Endowment Act to remove the encroachment in M/s. Queens Land Amusement Park, at Pappanchathiram Village, Kanchipuram District comprised in Survey No.352/4 admeasuring 4.16 acres, Survey No.354/2, admeasuring 16.78 acre and Survey No.365, admeasuring 0.12 acre and in all 21.06 acres at Pappanchathiram Village, Kanchipuram District.

(In all W.Ps.)

For Petitioners : Mr.Om Prakash (Senior Counsel)
for Mr.P.Gunaraj

For RR1 & 2 : Mr.R.Shanmugasundaram
(Advocate General)
Assisted by Mr.N.R.R.Arun Natarajan,
Special Government Pleader (HR & CE)

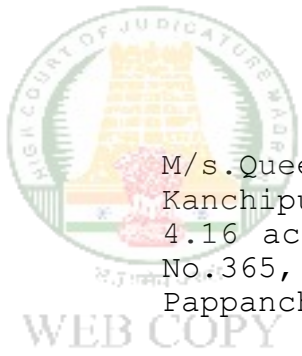
For RR3 & 4 : Mr.A.K.Sriram

(In W.P.Nos.26270 & 26272/2021)

For R5 : Mr.R.Kumaravel
(Additional Government Pleader)

C O M M O N O R D E R

These Writ Petitions are filed challenging the impugned notice proceedings initiated by the 1st respondent in M.P.Nos.217, 216 & 219 of 2021/E1 dated 08.10.2021 and forbearing the 1st respondent from taking any further proceeding against the petitioners under the Tamil Nadu Hindu Religious and Charitable Endowment Act to remove the encroachment in



M/s. Queens Land Amusement Park, at Pappanchathiram Village, Kanchipuram District comprised in Survey No.352/4 admeasuring 4.16 acres, Survey No.354/2, admeasuring 16.78 acre and Survey No.365, admeasuring 0.12 acre and in all 21.06 acres at Pappanchathiram Village, Kanchipuram District.

2.The issues and parties involved in all the Writ Petitions are one and the same and hence, all the Writ Petitions are disposed of by this common order.

3.The land in question bearing Survey No.352/4 measuring 4.16 acres, Survey No.354/2 measuring 16.78 acres and Survey No.365 measuring 0.12 acres, along with larger extent of land of 177.7 acres in Pappanchathiram Village, Sriperumputhur Taluk, Kanchipuram District, by the Will dated 28.09.1884, registered as Document No.130/1884 in the office of the District Registrar, North Chennai, is said to have been bequeathed by one Venkaiah, S/o.Udayagiri Samiah Zamindhar of Samudrapedu Village as Zamin Village lands to Sri Arulmighu Kasi Viswanathar Thirukoil and Arulmigu Venugopaleeswarar Thirukoil. When the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 came into force on 01.01.1951, the 4th respondent had made an application under the said Act before the Assistant Settlement Officer, Tirupathur, to get patta for said 177.7 acres, based on the Will dated 28.09.1884. The 4th respondent had no valid proof or necessary title deeds or documents to establish and prove their rights and title. The Assistant Settlement Officer, Tirupathur, on 30.11.1956, rejected the application made by the 4th respondent.

3(i).The major part of land measuring 177.7 acres was under the occupation of the villagers of Pappanchathiram village as house sites and they have put up their respective residential houses. On their applications, the Assistant Settlement Officer declared the same as 'Gramanatham Natham' and classified as 'Gramanatham Poromboke' and Gramanatham patta was granted to all respective house owners under Grama Natham grant of Patta Act. The rest of the lands were declared as 'Anatheenam lands' as nobody made any claim and vested with State Revenue Department.

3(ii).After being declared as 'Anatheenam lands', the Government assigned certain lands in Survey No.390/1 to the Ground Water Resources Department and Disaster Management Department. The Government also had the proposal to assign certain lands to the State Police Department.

3(iii).The family members of said Samiya Zamin also made several petitions to the District Collector of Kanchipuram District, the 5th respondent herein and Government of Tamil Nadu, by filing Writ Petitions. The Government considered twice the



said requests in G.O.Ms.No.1209, HR & CE Department and Commercial Tax Department, dated 20.10.1983. Despite giving several opportunities to the 4th respondent and legal heirs of the said Samiya Zamin, they were unable to establish and prove their title or claim to said 177.7 acres of land at Pappanchathiram village. In spite of several opportunities, the 4th respondent could not establish their right over the land in question. The 4th respondent filed Writ Petition Nos.1119 of 1984 and 6072 of 1983. This Court, by the order dated 19.12.1991 made in W.P.Nos.1119 of 1984 and 6072 of 1983, directed the Government to dispose the petitions submitted by the 4th respondent temple for grant of patta in accordance with law. As per the direction of this Court, the 4th respondent was again heard and after affording several opportunities of personal hearing to 4th respondent, the 4th respondent could not establish their right for the said 177.7 acres of land at Pappanchathiram village. Consequently, the Government, after considering the claim of the 4th respondent, rejected the claim of the 4th respondent by G.O.(Ms).No.338, Revenue (L.R.1(2)) Department, dated 27.03.1997 and upheld and confirmed the title of the State Revenue. By the said Government Order, the title of the State Revenue was confirmed as 'Government Anatheenam lands'.

3(iv).The land in question is 'Anatheenam land' belonging to the State Revenue Department. The 4th respondent is not the owner of the said land and petitioners are not encroachers of the land belonging to the 4th respondent. While so, the Executive Officer of the 4th respondent illegally brought for auction an extent of 21.06 acres of land comprised in Survey Nos.352/4, 354/2 and 365, out of 177.7 acres of Pappanchathiram village, where the petitioners have established M/s. Queens Land Amusement Park, knowing fully well that the 4th respondent is not the owner of the land. Believing the action of the 4th respondent as true, the petitioners participated in the auction for grant of lease on 20.04.1995. The petitioners have been declared as highest bidder and hence, the lease in respect of 21.06 acres comprised in Survey No.352/4 measuring 4.16 acres, Survey No.354/2 measuring 16.78 acres and Survey No.365 measuring 0.12 acres, being the part and out of the said lands of 177.7 acres for 3 fasli from 1405 - 1407 have been granted in favour of the petitioners.

3(v).Subsequent to grant of above said lease on 20.04.1995 on the basis of the decision taken by the Government of Tamil Nadu in rejecting the claim of patta to the 4th respondent, the Government of Tamil Nadu, by G.O.(Ms).No.338, Revenue (L.R.1(2)) Department, dated 27.03.1997, demanded rents from the petitioners for use and occupation of 21.40 acres of land through the Tahsildar, Sriperumputhur Taluk and his Subordinate Revenue Officials. The officials from the Revenue Department



started to initiate legal proceedings against the petitioners under the provisions of the Tamil Nadu Land Encroachment Act, 1905. Hence, the petitioners have not renewed the said lease granted by the 4th respondent on 20.04.1995, as the petitioners came to know that 4th respondent temple is not at all owner of the lands in question.

3(vi).The 4th respondent also filed a suit in O.S.No.427 of 1997 on the file of the District Munsif Court, Poonamallee, for permanent injunction restraining the petitioners from converting the lease land from agriculture. The said suit was decreed by the judgment and decree dated 10.12.2008, holding that as per Section 116 of the Evidence Act, the petitioners are estopped from questioning the title of 4th respondent temple. The appeal filed by the petitioners before the Sub Court, Poonamallee in A.S.No.73 of 2009, was dismissed. The petitioners filed S.A.No.112 of 2013 before this Court and the same is pending. While so, the State Revenue Department issued several notices to the petitioners under the Tamil Nadu Land Encroachment Act, 1905 and made a demand notice dated 01.08.2013 for a sum of Rs.1,08,69,423/- being the amount due for use and occupation of the lands. The petitioners paid a sum of Rs.5,00,000/- on 08.11.2013 and filed W.P.No.31132 of 2013. Initially, this Court granted interim stay on 18.11.2013 and by the order dated 07.10.2021, this Court dismissed the Writ Petition, upholding the demand of Revenue Department dated 01.08.2013 for a sum of Rs.1,08,69,423/- and directed the petitioners also to pay a sum of Rs.27,54,648/- per month from 01.12.2011 to the 4th respondent temple as per the demand made in the notice dated 26.06.2013 and directed the 4th respondent to initiate proceedings under Section 78 of the HR & CE Act. The State Revenue Department initiated proceedings for evicting the petitioners under the Tamil Nadu Land Encroachment Act, 1905 and passed an order of eviction on 30.05.2019. The petitioners started to pay the rents to the State Revenue Department and also filed an appeal against the eviction order passed under the Tamil Nadu Land Encroachment Act, 1905, before the District Collector on 27.12.2019. The 5th respondent/District Collector granted interim stay, considering the submissions of the petitioners that petitioners are ready to give 21.06 acres of patta land in the very same village of Pappanchathiram as an exchange of lands. The 5th respondent also inspected the said patta lands along with the District Revenue Officer, Kanchipuram based on the proposal submitted by the petitioners for the exchange of lands. The said proposal is pending for consideration.

3(vii).The petitioners filed W.A.No.2737 of 2021 against the order dated 07.10.2021 made in W.P.No.31132 of 2013. The Division Bench of this Court disposed the Writ Appeal by the



judgment dated 28.10.2021 with directions, upholding the State Revenue demand dated 01.08.2013 for Rs.1,08,69,423/- and set aside the direction of this Court made in Writ Petition to pay a sum of Rs.27,54,648/- as monthly rent to the 4th respondent temple from 01.12.2011 and held that the other observation made thereunder is outside the scope of W.P.No.31132 of 2013. A Public Interest Litigation in W.P.No.14113 of 2020 filed by one Radha Krishnan on the ground that the 4th respondent, as on date, lost all the legal rights by the order dated 10.08.2021 passed by the 5th respondent and 4th respondent temple have no right or title over the land, to remove the encroachment of petitioners in the said lands measuring 21.06 acres, was negatived by the Hon'ble First Bench of this Court as State Revenue's right and their revenue demand were already upheld in W.A.No.2737 of 2021 by the judgment dated 28.10.2021. The 4th respondent temple had filed an appeal before the Commissioner of Land Administration, Chennai.

3(viii).The 4th respondent temple has no right, title over the lands in question. Hence, notice issued invoking the provision of Section 78 (2) of the HR & CE Act is not maintainable and the said Section is not applicable to the petitioners.

3(ix).The 1st respondent is quasi-judicial authority, while exercising power under Section 78 (2) of the HR & CE Act. The 1st respondent, without applying his mind on the report submitted by the 2nd respondent and without furnishing the report and other documents relied on, issued the notice, which is arbitrary, unjust, illegal and is in violation of the principles of natural justice. Hence, the petitioners have come out with the present Writ Petitions.

4.The learned Senior Counsel appearing for the petitioners submitted that the impugned notice is liable to be set aside for the following reasons:

(1).The 4th respondent is not owner of the property in question.

(2).The request of the 4th respondent for grant of patta was rejected by the Assistant Settlement Officer, Tirupathur. The property in question was declared as 'Anatheenam lands' belonging to the Revenue Department.

(3).The Government twice rejected the claim of the 4th respondent for issue of patta.

(4).The Division Bench of this Court in the Writ Appeal No.2737 of 2021, confirmed the claim of the Revenue Department demanding rent and set aside the portion of the order in W.P.No.31132 of 2013, with regard to lease amount claimed by the



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4th respondent and direction to the 4th respondent to initiate proceedings under Section 78 (2) of the HR & CE Act.

(5).The impugned notice is issued by the 1st respondent without application of mind, contrary to and in violation of judgment of the Hon'ble Division Bench of this Court.

4(i).The learned Senior Counsel appearing for the petitioners extensively referred to the various orders and judgments filed in the typed set of papers and prayed for setting aside the impugned notice. The judgments relied on by the learned Senior Counsel appearing for the petitioners are as follows:

(i) AIR 1954 SC 340 [Kiran singh and ors. vs. Chaman Paswan and ors.]:

"6.The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section II of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position."



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(ii) (1987) 4 SCC 424 [D.Satyanarayana Vs. P.Jagadish]:

"3.The appeal must be allowed on the short ground that there being a threat of eviction by a person claiming title paramount i.e. head lessor Krishnamurthy, the appellant was not estopped under s. 116 of the Evidence Act from challenging the title and his right to maintain the eviction proceedings of the respondent P. Jagadish as the lessor. S. 116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words "during the continuance of the tenancy" have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the Courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however, defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy. The rule of estoppel is thus restricted not only in extent but also in time i.e. restricted to the title of the landlord and during the continuance of the tenancy; and by necessary implication, it follows that a tenant is not estopped, when he is under threat of eviction by the title paramount, from contending that the landlord had no title before the tenancy commenced or that the title of the landlord has since come to an end.

4.The rule of estoppel embodied under s. 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See: Bilas Kumar v. Desraj Ranjit Singh ILR (1915) 37 All 557 (PC) and Atyam Veerraju & Ors. v. Pechetti Venkanna & ors., [1961] 1 SCR 83 1. The general



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rule is however subject to certain exceptions. Thus a tenant is not precluded from denying the derivative title of the persons claiming through the landlord. See: Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Limited & ors., AIR (1937) PC 251. Similarly, the estoppel under s. 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy. From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by a paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title-holder. In order to constitute eviction by title paramount, it has been established by decisions in England and in India, that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant however gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title paramount, no question of estoppel arises under s. 116 of the Evidence Act. See: Adyanath Chatak v. Krishna Prasad Singh & Anr., AIR (1949) PC 124. The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence a new jural relationship of landlord and tenant as between them. The law is stated in 27 Halsbury's Laws of England, 4th edn., para 238:

"238. Eviction under title paramount. In order to constitute an eviction by a person claiming under title paramount, it is not necessary that the tenant should be put out of possession, or that proceedings should be brought. A threat of eviction is sufficient, and if the tenant, in consequence of that threat, attorns to the claimant, he may set this up as an eviction by way of defence to an action for rent, subject to



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his proving the evictor's title. There is no eviction, however, if the tenant gives up possession voluntarily. "

Quite recently, this Court in *Mangat Ram & Anr. v. Sardar Meharban Singh & ors.*, [1987] 1 Scale 964, to which one of us was a party, observed:

"The estoppel contemplated by s. 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end."

(iii) (1999) 7 SCC 474 [S.Thangappan Vs. P.Padmavathy]:

"14.This section puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy. The significant words under it are at the beginning of the tenancy. This is indicative of the sphere of the operation of this section. So a tenant once inducted as a tenant by a landlord, later he cannot deny his landlord title. Thus, this principle of estoppel debars a tenant from denying the title of his landlord from the beginning of his tenancy. Howsoever defective title of such landlord could be, such tenant cannot deny his title. But subsequent to his induction as tenant if the landlord loses his title under any law or agreement and there is threat to such tenant of his eviction by subsequently acquired paramount title holder then any denial of title by such tenant to the landlord who inducted him into the tenancy will not be covered by this principle of estoppel under this Section. In *Mangat Ram and Ors.* (supra) this Court held:

The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end."



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(iv) (2006) 12 SCC 33 [Siemens Ltd. Vs. State of Maharashtra and ors.] :

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

.....

11.A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."



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(v) 2016 SCC Online 2839 [Mahesh Durai Vs. The District Collector, Sivagangai District and 6 ors.]:

"17.(ii) On the other hand, the learned Appellate Judge unfortunately has not considered any of the above submissions and the findings of the learned trial Judge but proceeded on the irrelevant consideration that the plaintiff has not proved the partition among the legal heirs of Shanmuga Raja. When it is admitted by the first respondent in clear terms and supported by the Settlement records that the land in Survey No.91 was given to Shanmuga Raja as a Ryotwari patta under the proceedings initiated under the provisions of Act 26/48, it is to be assumed my presumption that he was in personal cultivation of the land and became owner with the grant of patta. On proof of such title and possession of the land in Survey No.91 over the predecessor of the plaintiff, it has become the duty of the first respondent to establish how and when the title was transferred to the first respondent or its predecessor the seventh respondent. The only submission by the first respondent that it was by Sale Deed executed by the Shanmuga Raja in the year 1957 but failed to show that the property in Survey No.91 or Paimash No.109 was one of the properties conveyed under the said Sale Deed Exhibit B8. The Appellate Judge has not taken note of this material issue in this dispute. In fact, the learned District Judge proceeded on a wrong assumption that the plaintiff is claiming title for 100 acres of land, may be the area of the original Paimash No.109 existed prior to settlement and doubted how the plaintiff could seek declaration for 100 acres when the Shanmuga Raja was given patta for only 44.57 acres in Survey No.91. Such finding is perverse and without any consideration of the documents produced or the evidence adduced.

(iii) Further, the learned Appellate Judge overlooked that respondents 2 to 6, the other legal heirs of the Shanmuga Raja have no quarrel with the Appellant and have



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filed a written statement through second respondent that they admit all the averments in the plaint and pray the suit to be decreed as prayed. The plaint clearly avers that there was an oral partition among the legal heirs of the Shanmuga Raja after the grant of patta and when such averments been admitted, it is not for the Court to seek the Appellant to prove the same in any other manner particularly when the same is not a material issue as the suit is basically between the first respondent and the appellant and the respondents 2 to 6 on the other side being the legal heirs of Shanmugaraja. The proof of partition is not even raised as an issue before the trial Court and the learned District Judge is not correct in proceeding with such issue, when it is not even a contentious issue. Besides it is also not noted that the legal heirs of Shanmuga Raja were added as Respondents 2 to 6 and hence the suit cannot be thrown out in favour of the first respondent on the ground that there was no partition among the appellant and respondents 2 to 6. It is seen from the written submission filed before the trial Court which the learned counsel for the appellant filed in this appeal as well that the learned trial Judge raised the doubt whether the appellant being a co-owner can maintain the suit but only afterwards the appellant, it is submitted added the other co-owners as parties but it was still submitted that even assuming for the sake of argument that the suit property is not allotted to the plaintiff in the family arrangement, still the plaintiff as a co-owner can maintain this suit for declaration and injunction. The said submission is acceptable in the light of the Judgment of in the case of Ramachandran Vs. Valliammal reported in 1992 (2) LW 470 wherein it is observed in para-18 that 'Even assuming that she (the plaintiff) was not the exclusive heir, she would only be a co-owner along with her brother or brothers vis a vis the defendants, who are only in the position of trespassers. The suit by one co-owner can certainly be maintained



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for ejecting them and recovering possession. The suit for recovery of possession was only for the benefit of all the co-owners in the event of there being other co-owners' The issue involved in this case is the title of the plaintiff, inherited through his predecessor Shanmuga Raja as against the claim of the first respondent that Shanmuga Raja had conveyed the same in the year 1957 to the M/s.Combined Industries and was surrendered to Government as a surplus land and that plaintiff succeeds on the same.

(iv) On the cancellation of patta by first respondent, it is only a natural consequence that the patta is to be issued once the title of the suit property is found in favour of the appellant. The proceedings of the first defendant in canceling the patta issued to the appellant and the respondents 2 to 6 is otherwise void for the reason that no notice was given to either the appellant or the respondents 2 to 6 as to why the patta granted by Revenue Divisional Officer in 2005 was not to be cancelled. A perusal of the said order in Ex.A15 wherein the contents of the plaintiff's application is extracted clearly shows that no question was raised by the first respondent as to why the patta should not be cancelled. Hence, the enquiry conducted by the first respondent by no such of imagination could be construed to mean as an enquiry for the cancellation of patta and the order passed by the first respondent is correctly set aside by the learned trial Judge and the Judgment relied by the Appellant in Malarkodi and 6 others Vs. The Secretary to the Government of Tamil Nadu reported in 2008 (4) LW 29 supports the submission that the cancellation of patta without notice is void and non-est in law. In any case as the appellant is held to be the owner of the suit property and the patta in his name is to be restored with immediate effect."



5. The 3rd respondent filed counter affidavit. The learned Advocate General appearing for the respondents 1 and 2 and learned counsel appearing for the respondents 3 and 4 separately contended that the Writ Petitions challenging the show cause notice are not maintainable. The petitioners being the tenants under the 4th respondent temple cannot deny the title of the temple. As per Section 116 of the Evidence Act, the petitioners are estopped from denying title of 4th respondent. The issue to be decided in these Writ Petitions is disputed question of facts. The disputed question of facts cannot be decided in a Writ Petition. The petitioners have alternate remedy under the Act and availability of alternate remedy is a bar for entertaining the present Writ Petitions. The present Writ Petitions are not maintainable on the principles of resjudicata. The petitioners have suppressed the material facts. The petitioners have not approached this Court with clean hands. The petitioners filed counter affidavit in the proceedings initiated under Section 78 (2) of the HR & CE Act and participated in the proceedings. The petitioners cross-examined the deponent of the affidavit. On behalf of the petitioners, a witness has filed proof affidavit, but he did not appear for cross-examination. These Writ Petitions filed in suppression of above facts is attempting to circumvent the proceedings before the 1st respondent. For the said reasons, the Writ Petitions are liable to be dismissed in limini.

5(i). The HR & CE Act is a self-contained code. If aggrieved by the orders in the proceedings initiated under Section 78 (2) of the HR & CE Act, the petitioners have an alternate remedy of revision or Civil Appeal. The present Writ Petitions are therefore not maintainable.

5(ii). The present stand of the petitioners is that the land in question is 'Anatheenam/Grama Natham land' belonging to the Government. The stand taken by the petitioners now in the present Writ Petitions is contrary to the stand taken by the petitioners in the earlier Writ Petition in W.P.No.31132 of 2013, O.S.No.427 of 1997 and A.S.No.73 of 2009. The petitioners took a stand that they are in occupation on their own. The stand now taken by the petitioners is only for the purpose of present Writ Petitions.

5(iii). The petitioners have become tenants under the 4th respondent. The petitioners are estopped from disputing the title of the 4th respondent on the basis that the land in question is 'Anatheenam land'.

5(iv). The learned counsel appearing for the respondents 3 and 4 filed notes of submission and made the following further submissions:



(i) The petitioners have not approached the Court with clean hands and are making false statement with regard to the judgment made in W.A.No.2737 of 2021 filed against the order dated 07.10.2021 made in W.P.No.31132 of 2013, order in W.P.No.31132 of 2013 and the judgment in W.P.No.14113 of 2020. In Writ Petition No.14113 of 2020, the Division Bench of this Court specified that the matter will be governed by the judgment in W.A.No.2737 of 2021 and that the issue between the temple and the Revenue will be governed by the appeal pending before the Commissioner of Land Administration.

(ii) The petitioners have suppressed the material facts. The petitioners appeared before the Joint Commissioner and participated in the enquiry. The petitioners have taken the same stand before the Joint Commissioner as the stand taken in the Writ Petitions.

(iii) The petitioners are challenging the jurisdiction of the Joint Commissioner, the 1st respondent herein, which can be decided only on the facts of the case.

(iv) The Writ Petitions are based on classification of land as 'Anatheenam lands' and temple lost the title, are legally untenable, since the revenue records or patta are not document of title.

5(v).The learned Special Government Pleader appearing for the respondents 1 and 2 filed typed set of papers containing the following judgments:

Writ Petition challenging the show cause notice not maintainable:

(i) (1995) DLT 751 [Hari Chand and others Vs. DTC and another];

(ii) 1996 AIR 691 [The Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar singh and others];

(iii) 2004 (166) ELT 153 SC [Malladi Drugs and Pharma Ltd., Vs. Union of India];

(iv) Order of this Court dated 16.07.2014 made in W.P.No.18686 of 2014 [V.Ananda Mudaliar Vs. Joint Commissioner, H.R. and C.E. Department, Villupuram and another];

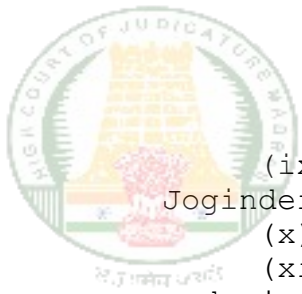
(v) Judgment of this Court dated 18.09.2018 made in W.A. (MD).No.1284 of 2018 [M.Chelladurai Vs. The Commissioner, HR & CE Department & Others];

(vi) Judgment of the Hon'ble Apex Court dated 14.11.2019 made in Civil Appeal No.8609 of 2019 [Commissioner of Central Excise, Haldia Vs. M/s.Krishna Wax (P) Ltd.];

The petitioner being a tenant under the 4th respondent Temple cannot deny the title of the temple - Section 116 of the Evidence Act:

(vii) (1916) 31 MLJ 712 [Venkata Chetty Vs. Aiyanna Goundan];

(viii) 1966 AIR 629 [Atyam Veerraju and others Vs. Pechetti Venkanna and others];



- (ix) 1996 AIR 1654 [Joginder Singh and another Vs. Jogindero and others];
(x) 1999 7 SCC 474 [S.Thangappan Vs. P.Padmavathy];
(xi) Judgment of the Hon'ble Apex Court dated 08.08.2012 made in Civil Appeal No.5822 of 2012 [State of A.P. & others Vs. D.Raghukul Pershad (D) by Lrs & others];

Disputed questions of law cannot be decided in Writ Petition:

- (xii) ILR 2005 KAR 1583 [Suguna Rajkumar Vs. R.Rajmal & another];
(xiii) Judgment of this Court dated 09.12.2011 made in W.A.No.849 of 2009 etc. batch [Narayanan Vs. The State of Tamil Nadu & Others];

Presence of alternate remedy is a bar for entertaining the present Writ Petitions:

- (xiv) Judgment of the Hon'ble Apex Court dated 06.08.2008 made in Civil Appeal No.4912 of 2008 [Pimpri Chinchwad Municipal Corporation and others Vs. M/s. Gayatri Construction Company and another]
(xv) Order of this Court dated 23.03.2020 made in W.P.(MD). No.5892 of 2020 [S.Neducheliyan and others Vs. The Joint Commissioner, HR & CE Department and others].

Res judicata:

- (xvi) 1966 AIR 91 [Sadhu Singh vs. Delhi Administration] and
(xvii) 1989 AIR 1764 [Pujari Bai vs. Madan Gopal];

5(vi).In support of their contentions, the learned counsel appearing for the respondents 3 and 4 relied on the following judgments and prayed for dismissal of the Writ Petitions:

- (i) (2002) 2 SCC 50 (Vashu Deo vs. Balkishan);

"6.We now proceed to examine whether the appellant could have directly attorned to the owner-Trust by-passing the respondent-tenant on 1.4.1983, relying on the event of institution of suit for eviction by the owner Trust against the tenant-respondent on 30.3.1983 and whether the said event enables successfully raising of the plea of tenant-respondent's eviction by paramount title, bringing the obligation of the appellant sub-tenant to deliver possession over the tenancy premises to the respondent and to pay rent to him till that date? Under Section 108 clause (q) of the Transfer of Property Act, in the absence of contract or local usage to the contrary, it is an obligation of the tenant to put his lessor into possession of the property on the termination of the lease. Section 116 of the Evidence Act, which



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codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features : (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; (iii) Section 116 of Evidence Act is not the whole law of estoppel between landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an immovable property and his tenant would also mutatis mutandis govern a tenant and his sub-tenant in their relationship inter se. As held by the Privy Council in *Currimbhoy & Co.Ltd. v. L.A.Creet & Ors.*: AIR 1933 PC 29 and *Mt. Bilas Kunwar v. Desraj Ranjit Singh and Ors.* : AIR 1915 PC 96, the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord. It follows that the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by his landlord's eviction by a paramount title holder. Eviction by paramount title holder is a good defence bringing to an end the obligation of the tenant to put the lessor in possession of the property under Section 108 (q) of the Transfer of Property Act. The burden of proving eviction by title paramount lies on the party who sets up such defence....."

(ii) (2012) 11 SCC 405 (*Payal Vision Limited Vs. Radhika Choudhary*);

"17.We may, before parting, refer to yet another contention that was raised by the defendant-respondent in her defence before the courts below. In para 1 of the written statement filed by her it was contended that the property in



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question had vested in the Gram Sabha and that the plaintiff, therefore, could not seek her eviction from the same. The contention was, it appears, based on an order dated 17th February, 1999 passed by the Revenue Authority under the Delhi Land Reforms Act whereby it was directed that the property would stand vested in the Gram Sabha if the plaintiff did not re-convert the land in question for agricultural purposes within three months. What is important is that the tenancy under the lease agreement dated 10th October, 2001 started subsequent to the passing of the said order of the Revenue Authority. In other words, the challenge to the title of the plaintiff qua the suit property was based on a document anterior to the commencement of the tenancy in question. It also meant that the challenge was in substance a challenge to the landlord's title on the date of the commencement of the tenancy. Section 116 of the Evidence Act, 1872, however, estoppes the tenant from doing so. The legal position in this regard is settled by several decisions of this Court and the Privy Council. Reference may in this regard be made to *Mangat Ram v. Sardar Mehartan Singh* (1987) 4 SCC 319 and *Anar Devi (Smt.) v. Nathu Ram* (1994) 4 SSC 251. In the later case this Court observed:

"13. This Court in *Sri Ram Pasricha v. Jagannath*, has also ruled that in a suit for eviction by landlord, the tenant is estopped from questioning the title of the landlord because of Section 116 of the Act. The Judicial Committee in *Kumar Krishna Prasad Lal Singha Deo v. Baraboni Coal Concern Ltd.*, when had occasion to examine the contention based on the words 'at the beginning of the tenancy' in Section 116 of the Evidence Act, pronounced that they do not give a ground for a person already in possession of land becoming tenant of another, to contend that there is no estoppel against his denying his subsequent lessor's title. Ever since, the accepted position is that Section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attornment or conduct. Therefore, a tenant of immovable property under landlord



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who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's title, even when he is sought to be evicted by the latter on a permitted ground."

(iii) (2012) 8 SCC 584 (State of Andhra Pradesh and others vs. D.Raghukul Pershad (dead) by legal heirs and others);

"7.The law is settled by this Court in D. Satyanarayana vs. P. Jagdish 1987(4) SCC 424 that the tenant who has been let into possession by the landlord cannot deny the landlord's title however defective it may be, so long as he has not openly surrendered possession by surrender to his landlord. Although, there are some exceptions to this general rule, none of the exceptions have been established by the appellants in this case. Hence, the appellants who were the tenants of the respondents will have to surrender possession to the respondents before they can challenge the title of the respondents."

(iv) (2011) 5 SCC 435 (Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others vs. Director General of Civil Aviation and others);

"12.The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."

6.The petitioners filed reply affidavit and denied all the averments made in the counter affidavit. The learned Senior Counsel appearing for the petitioners referred to Sections 3, 11, 12 and 15 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and contended that on coming into force of the said Act, the land in question with larger extent vested with the Government free from encumbrance and interest if any, of the 4th respondent, ceased. The 4th respondent did not file any appeal challenging the order of the Assistant



Settlement Officer as contemplated under the Act, orders of the Government rejecting grant of patta and also the orders passed by the Revenue Officers. The 4th respondent, knowing fully well various orders passed against it and not challenging the same, is falsely claiming ownership of the land.

6(i).The learned counsel appearing for the petitioners filed written submissions. The learned Senior Counsel appearing for the petitioners further submitted that the stand of the respondents 1 to 4 are untenable in view of the orders and judgment of this Court in W.P.No.31132 of 2013, W.A.No.2737 of 2021 and W.P.No.14113 of 2020. In the above proceedings, this Court held that the Revenue Department and temple can sort it in the tussle amongst themselves. The 4th respondent approached the 5th respondent/District Collector, Kanchipuram, for issue of patta. The 5th respondent, by the order dated 10.08.2021, rejected the claim of the 4th respondent and held that lease granted by the 4th respondent on 20.04.1995 of the Government land, is erroneous. In view of the said finding, the contentions of the respondents 1 to 4 with regard to estoppel, resjudicata and disputed question of facts, are without merits. The 4th respondent has filed an appeal before the Commissioner of Land Administration, Ezhilagam. Unless the 4th respondent succeeds in the appeal, the 4th respondent cannot initiate proceedings under Section 78 of the HR & CE Act. The learned Senior Counsel appearing for the petitioners further submitted that the petitioners are negotiating with the Government Revenue Department for giving alternate site of equal value in lieu of land in question. The said proposal is under consideration by the Government and Officials have inspected the alternate site offered by the petitioners and prayed for setting aside the impugned notice and allowing the Writ Petitions.

7.This Court, by the order dated 08.12.2021, suo-motu impleaded the District Collector, Kanchipuram District, as 5th respondent in Writ Petition Nos.26270 & 26272 of 2021. No counter has been filed by the said 5th respondent, setting out the stand of the Government or Revenue.

8.Heard the learned Senior Counsel appearing for the petitioners as well as the learned Advocate General appearing for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 and 4 and the learned Additional Government Pleader appearing for the 5th respondent and perused the entire materials on record.

9.The petitioners have filed Writ Petitions to quash the impugned notice issued by the 1st respondent in M.P.Nos.217, 216 & 219 of 2021/E1 dated 08.10.2021 under Section 78(2) of the HR & CE Act and consequently, forbearing the 1st respondent from



removing the encroachment in M/s. Queens Land Amusement Park at Pappanchathiram Village, Kanchipuram District.

10. The petitioners are seeking the above said relief on the ground that 4th respondent is not the owner of the land and therefore, the 1st respondent has no jurisdiction to initiate proceedings under Section 78(2) of the HR & CE Act and impugned proceeding is arbitrary, illegal and not maintainable. In view of such stand taken by the petitioners, Sections 78(1) and (2) of the HR & CE Act have to be considered to decide the issue. Section 78 of the HR & CE Act is extracted hereunder for easy reference:

Section 78 of the HR & CE Act:

"78. Encroachments by persons on land or buildings belonging to religious institutions.-(1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee, has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.

Explanation.-For the purpose of this section, the expression "encroacher" shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include-

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence); and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before



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the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may, by order and for reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed."

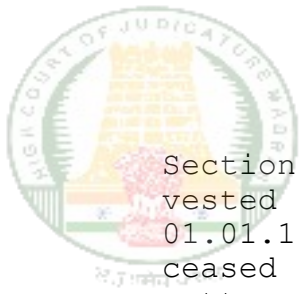
11.To initiate proceedings under Section 78(2) of the HR & CE Act to remove the encroacher:

(i)The land in question must belong to the religious institution or endowment.

(ii)The Assistant Commissioner, having jurisdiction either suo-motu or on complaint from the Trustee has reason to believe that any person has encroached the property belonging to the religious institution or endowment, shall send a report with relevant particulars to the Joint Commissioner having jurisdiction of the division.

12.From the above, first thing which enables the 1st respondent to initiate proceedings under Section 78(2) of the HR & CE Act is that the property in question must belong to/owned by the 4th respondent.

13.The 4th respondent claimed title/ownership based on the Will dated 28.09.1884 bearing Document No.130/1884, on the file of the District Registrar, North Chennai. According to the 4th respondent, 177.7 acres of zamin land, including the property in question was bequeathed to the 4th respondent by Venkaiah, S/o.Udayagiri Samiah Zamindhar of Samudrapedu village. According to the petitioners, the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, came into force with effect from 01.01.1951 and from that date onwards, as per



Section 3(b), the zamin estate land has been transferred and vested with the Government free from all encumbrances. As on 01.01.1951, the interest created under the Will dated 28.09.1884 ceased and the 4th respondent is entitled to claim only ryotwari patta. Section 3(b), (c), (d) and (e) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, are relevant to decide the contentions raised by the petitioners and the same are extracted hereunder for easy reference:

Section 3(b), (c), (d) and (e) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948:

"3. With effect on and from the notified date and save as otherwise expressly provided in this Act-

(a)

(b) the entire estate (including all communal lands; porambokes; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests; mines and minerals; quarries; rivers and streams; [tanks and ooranies (including private tanks and ooranies) and irrigation works]; fisheries and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances and the [Tamil Nadu] Revenue Recovery Act, 1864, the [Tamil Nadu] Irrigation Cess Act, 1865, and all other enactments, applicable to ryotwari areas shall apply to the estate;

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine;

(d) the Government may after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta-

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;

(ii) if such person is a landholder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta;



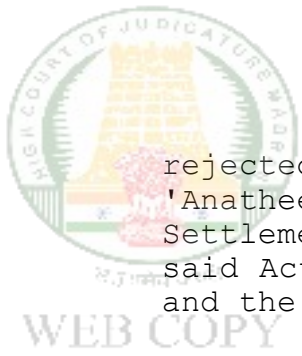
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(e) the principal or any other landholder and any other person, whose rights stand transferred under clause (b) or cease and determine under clause (c), shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act;"

14. From Section 3(b) of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, it is seen that from the notified date, the entire estate shall be transferred to the Government, free from all encumbrances. As per Section 3(b), (c), (d) and (e), all the rights and interests created over the estate before the notified date will cease and determine against the Government. The Government has right to remove any obstruction and take possession. Any person, whose rights transferred, shall be entitled only to rights and privileges as recognized or conferred on him by or under the said Act. The rights created before the notified date ceased and determined by the provisions of the Act and such rights are not enforceable against the Government.

15. The Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 was enacted to repeal permanent settlement to acquire right of land holders who permanently settled and certain other aspects and for introduction of ryotwari settlement. As per Section 3(b) to (e) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, on and from the date of the Act came into force, all the rights created before the Act ceased and determined and property vested with the Government free from all encumbrances. The person, in whose favour any right or interest was created, is entitled before the notified date to ryotwari patta or the rights recognized by the Act. As and when the Act came into force, the right, interest and title as per the Will dated 28.09.1884 created and conferred on the 4th respondent in respect of entire land of zamin of Samudrapedu village ceased and determined and vested with the Government free from all encumbrances. The 4th respondent is not entitled to make any claim against the Government. The 4th respondent is entitled to only rights and privileges as recognized or conferred under the Act. As per the provisions of Section 3 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, the 4th respondent ceased to be the owner of the entire land measuring 177.7 acres and the same vested with the Government free from all encumbrances.

16. The respondents 1 to 4, as per the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, approached the Assistant Settlement Officer for issue of patta. The Assistant Settlement Officer examined the claim of the 4th respondent under Section 15(1) of the said Act and



rejected the claim of the 4th respondent and declared the land as 'Anatheenam land'. An appeal against the order of the Assistant Settlement Officer is provided under Section 15(2)(a) of the said Act. The 4th respondent did not avail the said appeal remedy and the said order became final.

17. From the above, it is seen that the 4th respondent not only ceased to be owner of the land, but also failed to prove the possession and cultivation of the land. The contention of the learned Senior Counsel appearing for the petitioners that number of persons who were in possession of various portions of the land, residing there in the residential building put up, were issued with Gramanatham pattas and the Government assigned certain lands in S.No.390/1 to the Ground Water Resources Department, Disaster Management Department and Commissioner of Police, Avadi and construction work commenced, is not denied by the respondents 1 to 4. The Assistant Settlement Officer, by the order dated 30.11.1956, rejected the claim of the 4th respondent. On two occasions, the 4th respondent approached the Government Revenue Department for issue of patta. Both the requests of the 4th respondent were rejected by G.O.(Ms).No.338, Revenue (L.R.1 (2)) Department, dated 27.03.1997 and G.O.(Ms).No.1209, HR & CE and Commercial Tax Department, dated 20.10.1983.

18. The Government, from the date of the Act came into force and Assistant Settlement Officer, classifying the entire land as 'Anatheenam land', asserted its ownership by assigning certain portion of the land to third parties. The 4th respondent did not challenge the action of the Government and also grant of Gramanatham house pattas to the persons, who had put up houses and residing therein. The Government further demanded ground rent from the petitioners. In W.P.No.31132 of 2013 filed by the petitioners, this Court, by the order dated 07.10.2021, directed the petitioners to pay the rent both to the Government as well as to the 4th respondent. The Division Bench of this Court, by the judgment dated 28.10.2021, made in W.A.No.2737 of 2021, set aside the portion of the order directing the petitioners to pay the amount to the 4th respondent, which was not challenged by the 4th respondent. The Division Bench, in the judgment dated 28.10.2021, did not decide the title of Revenue Department or 4th respondent. The same was left open.

19. This Court, in the order dated 07.10.2021, made in W.P.No.31132 of 2013, referring to the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, held that the 4th respondent is a landlord as they are entitled to collect rent from the petitioner and directed the 4th respondent to initiate proceedings under Section 78 of the HR & CE Act. The Division Bench of this Court, in W.A.No.2737 of 2021, set aside the order of this Court made in W.P.No.31132 of 2013, directing the



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the petition is disposed of by permitting the parties hereto to pursue their rights in accordance with law and by requesting the fifth respondent to pass a reasoned order in the relevant appeal upon affording due opportunity of hearing to the temple within a period of three months from date."

22.The respondents 3 and 4, in the notes of submission, admitted that the issue between the Revenue Department and the temple will be governed by the appeal pending before the Commissioner of Land Administration.

23.The proposal of the petitioners offering alternate land in lieu of land in question is under consideration by the Government. According to the learned Senior Counsel appearing for the petitioners, the Officials of the Government have already inspected the alternate land offered by the petitioners.

24.The District Collector had held that lease granted by the 4th respondent of the Government land is erroneous. In view of such finding, the judgments relied on by the learned Senior Counsel appearing for the petitioners, learned Advocate General appearing for the respondents 1 and 2 and learned counsel appearing for the respondents 3 and 4 do not advance their respective stand.

25.Considering the above materials in its entirety, especially the order of the Hon'ble First Bench of this Court dated 29.10.2021 made in W.P.No.14113 of 2020 that the rights pertaining to the land in question will be governed by the result of appeal, which is still pending before the Commissioner of Land Administration, this Court is of the view that the petitioners are entitled to the relief sought for in the Writ Petitions.

26.In the result, impugned notice proceedings initiated by the 1st respondent in M.P.Nos.217, 216 & 219 of 2021/E1 dated 08.10.2021 are liable to be set aside and are hereby set aside. The Writ Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar



gsa/kj

To

1. The Joint Commissioner/
Hindu Religious Charitable Endowments,
Kanchipuram.
2. The Assistant Commissioner,
Hindu Religious Charitable Endowments,
Kanchipuram.
3. The Executive Officer,
Arulmighu Kasiviswanathar and
Venugopalaswamy Thirukkivil,
Pappan Chathiram, Sriperumputhur Taluk,
Kanchipuram District.
4. The Fit Person,
Arulmighu Kasi Viswanathar Thirukoil
and Arulmigu Venugopaleeswarar Thirukkivil,
Pazhajor.
5. The District Collector,
Kancheepuram.

+3ccs to Mr.A.S.Kailasam & Associates, SR.Nos.35746, 35747, 35748
+3ccs to Mr.P.Gunaraj, Advocate SR. No. 35499, 35500 & 35501
+1cc to Government Pleader SR. No. 35936

W.P.Nos.26270, 26272 & 26432 of 2021

GSM (CO)
PR (24/06/2022)