



W.P(MD)Nos.2807 & 5206 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.2807 & 5206 of 2011

MP(MD) Nos.2,3 & 4 of 2011

B.Srinivasa Raja

Petitioner

in WP(MD) No.2807/ 2011

1.R.Sureshkumar

2.R.Baskar Raja

3.Tmt.C.Sujatha

Petitioners

in WP(MD) No.5206 of 2011

Vs.

**1.The District Collector,
Virudhunagar District,
Virudhunagar.**

**2.The Tahsildar,
Rajapalayam.**

**3.The Assistant Settlement Officer,
Kovilpatti,
Now having office at
Assistant Settlement Officer(South),
Chepauk,
Chennai – 600 005.**



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4. The Executive Officer,
Sri Vaidyanatha Swami Devasthanam,
Madavarvalagam,
Srivilliputhur.

Respondents
in both WPs

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records of the third respondent in SR.19/2002/TN Act 26 of 1963 (A1) dated 27.05.2009 insofar as it relates to an extent of 2.47 acres in S.No.856/5 and 1.21 acres in S.No.856/3 and to a total extent of 3.96 acres in S.No.855/1, S.No.856/2 & 858/3 of Sambanthapuram Village, Rajapalayam Taluk of and quash the same.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.M.Murugan

COMMON ORDER

These writ petitions are filed as against the orders of the third respondent/Assistant Settlement Officer, South in SR No.19/2002, dated 27.05.2009. The said order was passed by the Settlement Officer under Tamil Nadu Act 26, 1963 on the application filed by the fourth respondent Executive officer, Vaithiyanathaswamy Devasthanam, Srivilliputhur.

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2.Since both the writ petitions are arising out of the order of the third respondent, dated 27.05.2009, both the writ petitions are taken up together and disposed of by this common order.

3.The case of the petitioner in WP(MD) No.2807 of 2011 is that he purchased a land in S.No.856/5 to an extent of 2.47 acres and another piece of land to an extent of 1.21 acres in S.No.856/3 in Sambanthapuram Village from one Singaraja by registered sale deeds, dated 14.12.1987 & 22.02.1988 respectively. The patta and chitta of the lands were issued in the name of the petitioner. He raised coconut trees and cultivating the land from the date of purchase. While so, in the year 2011, the Village Administrative Officer informed him that steps were being taken to transfer the Patta of the petitioner's land in the name of the fourth respondent, pursuant to the order of the third respondent. On verification, he found that the third respondent has passed an order dated 27.05.2009 in the year 2009 behind his back and the order passed by the third respondent is even without any notice to the petitioner and therefore he challenged the aforesaid order in this writ petition.



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4.The case of the petitioners in W.P(MD) No.5206 of 2011 is also similar to that of the case of the above writ petitioner. The petitioners' mother purchased a land to an extent of 3.96 acres in S.No.855/1, 856/2, 858/3 in Sambanthapuram Village, by a registered sale deed, dated 01.04.1976 from one Subbiah. Patta was also transferred in her name. The petitioners' mother died in the year 2009. Thereafter, these petitioners raised coconut trees, mango trees and jack fruit trees in the land. Thereafter they were jointly enjoyed the property and they also got an information through the Village Administrative Officer about the order of the third respondent, dated 27.05.2009. According to the petitioner, the said order was passed behind their back without any notice. Hence, they challenged the order by way of this writ petition.

5.The learned counsel appearing for the petitioners submits that the petitioners are the vendees, purchased the property by a registered sale deeds and all other revenue records were also mutated in their favour. When the revenue records stand in the name of the petitioners or their vendors, the



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third respondent without issuing any notice to the petitioners/ the owners of the land, proceeded with the settlement proceedings as against one Singaraja, their vendor, who also died on 15.09.1991. The proceedings went on for more than six years and finally an order was passed in favour of the fourth respondent, that too, as against a dead person. On the violation of principles of natural justice, the impugned order of the third respondent, dated 27.05.2009 is liable to be set aside.

6.The learned counsel further submits that though the impugned order refers due notice was served upon the parties, no notice was served on the petitioners and Singaraja, who is a party in the proceedings was not alive on the date of initiation of proceedings. While, the third respondent was conducting spot inspection on 02.08.2008 along with Tahsildar, Revenue Inspector, Surveyors, Village Administrative Officer and other Officers, the third respondent must be aware that the petitioner's vendor Singaraja was not alive at that relevant point of time. Therefore, the order of the third respondent is liable to be quashed on the ground that it has been passed against the dead person and without impleading the necessary



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parties and also without any notice to the parties concerned. The learned counsel for the petitioner has also relied on the judgment of the Honorable Supreme Court in, ***Gurnam Singh (D) Thr.Lrs and others Vs. Gurbachan Kaur (D) by Lrs. And others***, reported in ***AIR 2017 SC 2419*** and the order of this Court, in ***Ramajayam and others Vs. Rajasekaran***, reported in 2019 (5) LW 625.

7.The learned counsel appearing for the fourth respondent submits that these writ petitioners are not parties to the impugned order and therefore they are not having any *locus standi* to challenge the orders passed by the third respondent. He further submits that Thoppupatti Inam Estate in Srivilliputhur Taluk, Ramanathapuram District now within the limits of Rajapalayam Taluk, Virudhunagar District is a new Inam Estate notified in G.O.P.No.1118, Revenue, dated 03.06.1969 and taken over under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act 26 of 1963 on 01.07.1969. The lands of an extent of 40.21 acres in Thoppupatti Village comprised in Survey Nos.851/1, 851/2, 855/1,855/2, 855/3, 855/4, 855/5, 855/6 and 855/7, 856/1,856/2,856/3,856/4, 856/5,856/6,859/1,859/2,



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859/3, 859/4, 859/5 and 859/6 and 862/2 were granted as Inam under the Title Deed No.385 in favour of the fourth respondent/temple.

8. He further submits that the subject lands were leased out to various persons by way of the registered lease deed, dated 22.09.1896 with certain conditions. Since the lessees have not paid the lease amount properly, a civil suit was also instituted by the Temple in S.C.S No.210 of 1955 and the suit was decreed on 09.09.1955, in favour of the Temple. The aforesaid lands are Inam lands and pursuant to the notification issued under Tamil Nadu Act 26 of 1963, a *suo motu* settlement enquiry was conducted by the Assistant Settlement Officer, Kovilpatti in the year 1971 and he passed a common order, dated 17.11.1971, granted Ryotwari patta in favour of one Singaraja and others. Aggrieved over the order of the learned Assistant Settlement Officer, Kovilpatti, the fourth respondent Temple filed an appeal before the Inam Abolition Tribunal, Sivagangai in Revenue Appeal No.90 of 1972, in which, the petitioners vendor Subbiah Thevar was impleaded as party. The appeal was allowed and the matter was remanded back to the Assistant Settlement Officer for fresh consideration. Thereafter,



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the Assistant Settlement Officer, Madurai took up the enquiry in SR No. 1/Srivilliputhur/2000 and due to transfer of Settlement Office to Chennai, it was renumbered as SR 19 of 2002 for de nova enquiry. Due to the frequent transfer of the Assistant Settlement officers, enquiry was delayed and whenever the new officer took charge, fresh notices have been issued to all the respondents, including the petitioners and their vendors, thereby the enquiries were held on 10.07.2002, 07.08.2002, 06.09.2002, 11.10.2002, 22.11.2002, 10.01.2003, 04.02.2003, 18.03.2003, 20.07.2007, 20.08.2007, 20.09.2007, 18.10.2007, 22.12.2007, 30.04.2008, 02.06.2008, 25.06.2008 and 02.08.2008. The Assistant Settlement Officer has also conducted a field Inspection of the subject lands and pass the final order on 27.05.2009 and since these petitioners are the alienees from the erstwhile lessees of the fourth respondent, they are not entitled for any claim for Ryotwari Patta. The petitioners are the subsequent purchasers during the pendency of the appeal proceedings before the Tribunal and therefore they are also not entitled to any notice. Though they claimed to purchase the lands in the year 1987 and 1976, they have not come forward with any application during the enquiry by the third respondent. As the petitioners' vendors themselves are



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not having any legal right over the property, the petitioners who are the subsequent purchasers of the property during the pendency of the appeal, are also not entitled for any notice, on the ground that the sale itself is void. The learned counsel further submits that the issuance of the notice would be an empty formality and he also relied on the judgment of the Honourable Supreme Court in ***Dharampal Satyapal Limited Vs Deputy Commissioner of Central Excise, Gauhati and others***, reported in **2015 (8) SCC 519**. The learned counsel for the petitioner also relied on the following judgments of this Court in support of his contention.

- ♦ ***K.Seethalaxmi and another Vs. Commissioner, Land Reforms Department, Tirunelveli and others***, reported in **2019 (1) CWC 358**.
- ♦ ***A.A.Gopalakrishnan Vs. Cochin Devaswom Board and others***, reported in **2007 (7) SCC 482**.
- ♦ ***A.Radhakrishnan Vs. Commissioner of Survey & Settlement and others***, reported in **2020 (1) CWC 80**.



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9.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

10.The petitioners have filed the above writ petitions, challenging the order of the third respondent Settlement Officer, dated 27.05.2009. By the order impugned in this writ petition, the third respondent granted Ryotwari patta with regard to the certain lands in favour of the fourth respondent temple. The case of the petitioners is that the subject lands in Survey Nos.851/1, 851/2, 855/1 to 7 are the lands belonged to their vendors that they have purchased the same, through the registered sale deed in the year 1987 and 1976 respectively. The fourth respondent temple claims that these lands are Inam lands granted as Inam, under the title deed No.385. The fourth respondent temple leased out these lands under the registered deed of lease in Doc.No.2307 of 1896, dated 22.09.1896 to one Ottakkaran Servakaran and others. In the said lease deed, there is specific recital that the lessees should enjoy the lands, only on payment of lease amount and they should not encumber the inam lands. After introduction of the Tamil Nadu Inam Estates (Abolition and



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Conversion into Ryotwari) Act 26 of 1963, the inam estate was notified in G.O.P.No.1118, Revenue, dated 03.06.1969 and vested with the Government. One Singaraja and Subbaiah Thevar made a request for Ryotwari patta and the Assistant Executive Officer, Kovilpatti in SR No.47 of 1971, along with SR.12 (Act 26/63), 22, 28,29,55,73,75,76,89,90 and 92/AR/71 granted patta in favour of them on 17.11.1971. The fourth respondent temple filed an appeal before the Inam Abolition Tribunal in Revenue Appeal No.90 of 1972, wherein, the vendors of the petitioners are also parties. The appeal was allowed on 08.02.1996 remanded for fresh enquiry. The petitioners claimed to have purchased the land in the year 1987 and 1976 pending the appeal. However, they have not taken any steps to implead themselves as a party in the Revenue appeal No.90 of 1972. The vendors of the petitioners were parties to the appeal. However, the petitioners have not taken any steps to implead themselves in those proceedings. Subsequent to the remand, the vendors to these petitioners have failed to follow the appeal. The files of the Assistant Executive Officer, Kovilpatti was also transferred to Chennai and the proceedings was conducted at Chennai. Due to periodical transfer of Assistant Settlement



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Officer, the enquiry was delayed. However, it is stated that whenever a new enquiry officer takes charge, fresh notices were issued to the petitioners and their vendors, for contesting the proceedings effectively. The learned counsel for the respondents have also stated that the proceedings were conducted before the third respondent settlement officer on various dates and notice were issued for all the date of hearings.

11.As rightly pointed out by the learned counsel for the fourth respondent that the petitioners are the subsequent purchasers, who purchased the property from their vendors, pending the appeal proceedings before the Inam Abolition Tribunal. However, they did not take any steps to implead themselves as a party in those proceedings. In the appeal No.90 of 1972, the Assistant Settlement Officer proceeded with the parties available to the proceedings. The learned counsel for the petitioner submits that one Singaraja, the vendor of the writ petitioner, namely, Srinivasa Raja died even in the year 1991 and the order was passed as against the dead person and therefore it has to be remanded back mainly on the ground that the order was passed as against the dead person and without any proper notice.



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12.The learned counsel for the fourth respondent establishes his case that the lands are inam lands and the lands were leased out by a registered lease deed on 22.09.1896 with a condition that the lessee should not encumber or alienate the lands. But, the lessees sold these lands by violating the condition and the petitioners have purchased the property from the alienee, erstwhile lessee of the respondent temple lands. The alienation of the property to the petitioner's vendors itself is void and therefore, as rightly pointed out by the learned counsel for the fourth respondent, remitting this matter back for providing notice to the petitioners would be an empty formality and the same does not serve any purpose. Even if any notice is issued, they cannot make out a case in favour of them, since the vendors themselves are not having any valid right. Moreover, the petitioners are the subsequent purchasers from their vendors, who have purchased the subject lands pending the appeal proceedings. In order to substantiate the same, the judgment of the Honourable Apex Court in ***Dharampal Satyapal Limited Vs Deputy Commissioner of Central Excise, Gauhati and others***, reported in ***2015 (8) SCC 519***, has been relied on by the learned counsel, wherein, it has been held as follows:-



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35.....in *Maharashtra State Financial Corporation Vs.M/s. Suvarna Board Mills*, this aspect was explained in the following manner: (SCC p.568, para 3)

3. *It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law: All will depend on facts and circumstances of the case."*

39. *We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the*



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jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation, who said that : (WLR p.1595: All ER p.1294)

“...A 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'.

Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority: W.L.Rp.593:All ER p.377)

'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'.



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In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.

- *The said proposition has been laid by the Division Bench of this Honourable Court in K.Seethalaxmi and another Vs Commissioner land reforms and others, reported in 2019 (1) CWC 358.*
- *This Hon'ble Court being the Court being parens patriae has to protect its interest of the idol as held by the Hon'ble Supreme Court in A.A.Gopalakrishnan Vs Cochin Devaswom Board and others, reported in 2007 (7) SCC 482, which is extracted as follows:*
- *“The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of*



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"fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

- *The Division Bench of this Hon'ble Court (RPAJ & BPJ) in A.Radhakrishnan Vs Commissioner of Survey and Settlement reported in 2020 (1) CWC 80 has held that the interest of the bonafide purchasers of the Temple land from patta holders cannot protected but they are encroachers and liable to evicted. In the present case the very sale was by the lessee and not a patta holder and the sale also after the Inam Act and therefore they are not entitled to get any ryotwari patta under the Act. As such any opportunity, if given, on the ground of violation of natural justice, will not and cannot protect their right or interest. On the other hand, it will only protract the litigation and the interest of Idol would be under peril"*



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13.In view of the foregoing discussions and reasons, these writ

petitions are liable to be dismissed and accordingly, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No.

Internet: Yes / No.

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To

- 1.The District Collector,
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- 2.The Tahsildar,
Rajapalayam.
- 3.The Assistant Settlement Officer,
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Common Order made in
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