

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	10.01.2022
Delivered on	27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) Nos.7288, 7696, 7697 and 7698 of 2021

and

W.M.P. (MD) Nos.5547, 5548, 5857, 5859 and 5863 of 2021

1.M.Mohanalakshmi ... Petitioner
in W.P.(MD)No.7288 of 2021

2.R.Sekar @ Rajasekar ... Petitioner
in W.P.(MD)No.7696 of 2021

3.R.Mohankumar ... Petitioner
in W.P.(MD)No.7697 of 2021

4.R.Karthikeyan ... Petitioner
in W.P.(MD)No.7698 of 2021

vs.

1.The District Collector,
Trichy District, Trichy.

2.The District Revenue Officer cum
Additional District Magistrate,
Trichy, Trichy District.

3.The Revenue Divisional Officer,
Trichy, Trichy District.

4.The Tahsildar,
Trichy East,
Trichy District.

... Respondents 1 to 4
in all the writ petitions

5.R.Sekar @ Rajasekar

6.R.Mohankumar

7.R.Karthikeyan

... Respondents 5 to 7
in W.P.(MD)No.7288 of 2021

8.R.Balachandran

... 8th Respondent
in W.P.(MD)No.7288 of 2021 &
5th respondent in W.P.(MD)Nos.7696 to 7698 of 2021

COMMON PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for issuance of Writ of Certiorari, to call

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for the records pertaining to the impugned order passed by the second respondent in Na.Ka.Aa2/27396/2020, dated 08.02.2021 and quash the same.

For Petitioner (in W.P.(MD)No.7288 of 2021)

: Mr.T.Mohan
for Mr.R.Ponkarthikeyan

For Petitioner (in W.P.(MD)Nos.7696 to 7698 of 2021)

: Mrs.Hema Sampath
Senior Counsel
for Mr.M.Saravanan

For R1 to R4 (in all petitions)

: Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.D.Ghandiraj
Special Government Pleader

For R5 to R8 (in W.P.(MD)No.7288 of 2021)

& R5 (in W.P.(MD)Nos.7696 to 7698 of 2021)

: No Appearance

COMMON ORDER

Since the issues raised in all these writ petitions are the same and they call into question the very same order and arguments in unison were advanced with respect to the issues raised in all these writ petitions, a common order is passed.

2. The writ petitioners are daughter and three sons of one Rajappa, who had died on 25.07.2007.

3. W.P.(MD)No.7288 of 2021 had been filed by M.Mohanalakshmi, daughter of the said Rajappa, in the nature of Writ of Certiorari, seeking interference with the order passed by the second respondent/District Revenue Officer cum Additional District Magistrate, Trichy, dated 08.02.2021 in Na.Ka.No.Aa2/27396/2020.

4. W.P.(MD)Nos.7696, 7697 and 7698 of 2021 had been filed by R.Sekar @ Rajasekar, R.Mohankumar and R.Karthikeyan, three sons of the said Rajappa also calling into question the very same order referred *supra*.

5. All the four writ petitioners have also raised a grievance against the other son Rajappa/their own brother, R.Balachandran, who is also shown as a respondent in all the four writ petitions. They claimed, that he has, though a member of the family, fallen to greed and had stabbed them in their back, leading to the passing of the impugned order.



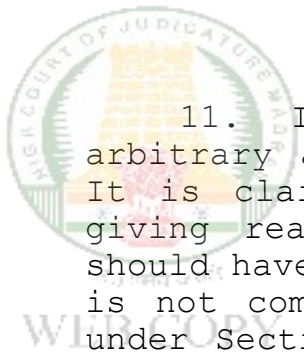
6. They have also questioned the impugned order on practically the same grounds. The writ petitioner in W.P.(MD)No.7288 of 2021/daughter also questions the impugned order on the ground that she was not heard prior to the passing of the said order.

7. It had been claimed that Rajappa had been assigned lands measuring 2.38 acres in S.No.185/1 part, Kottapattu Village, Trichy, by assignment order, dated 10.04.1974 in Darhast No.140/83. The petitioner, in W.P.(MD)No.7696 of 2021, R.Sekar @ Rajasekar had been assigned lands measuring 1.54 acres in S.No.185/3, by Darhast No.148/83 also dated 10.04.1974. The fifth respondent/another brother, R.Balachandran had been assigned lands measuring 2.38 acres in Darhast No.154/83 in S.No.185/5.

8. The petitioners claim that their father/Rajappa and his named sons took possession of the property and cultivated the same. Subsequently, in the year 1996, they constructed a Tannery in the name of Trichy Prime Tannery. Rajappa died on 25.07.2007 and the mother and themselves claimed that they succeeded to the property of the father. They, then partitioned the properties including the Tannery by a partition deed, dated 28.04.2011. They also partitioned the business. They had also included in the partition deed an aided school, which was administered by the father as one of the items in the partition deed. It is claimed that the fifth respondent started a new Tannery in the name of Bala Prime Tannery. It is claimed that the said partition deed when presented for registration was refused to be registered by the Sub Registrar and questioning that, W.P.(MD) No.4989 of 2016 had been filed and the same is pending. The mother, Rajalakshmi died on 21.05.2007.

9. It is stated that the respondent brother/Balachandran filed O.S.No.102 of 2019 on the file of the II Additional District and Sessions Court at Thanjavur for partition and separate possession of 1/5th share. The petitioners in W.P.(MD)No.7696 to 7698 of 2021, call him a "trouble maker".

10. It had been further stated that the petitioners in the three writ petitions mentioned/sons received a notice, dated 02.02.2021 from the second respondent to appear for an enquiry on 08.02.2021 with respect to the assignment made in S.No.185. In the enquiry, the second respondent informed that the respondent brother/Balachandran had given a complaint and an enquiry had been initiated. The copies of the complaint were sought and was assured to be given. But on 02.03.2021, the petitioners in the aforementioned three writ petitions, received the impugned order, dated 08.02.2021 cancelling the patta granted to the father and to the two sons with respect to the lands S.Nos.185/1 measuring 2.38 acres, in S.No.185/3 measuring 1.54 acres and in S.No.185/5 measuring 2.38 acres in Kottapattu Village, Trichy.



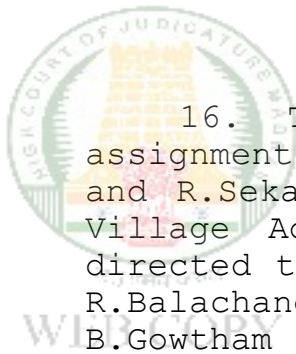
11. It is claimed that the reasons given for cancellation are arbitrary and violative of statutory provisions and unsustainable. It is claimed that a show cause notice should have been issued giving reasons and a copy of the complaint and other documents should have been furnished. It is stated that the second respondent is not competent to pass the order cancelling the patta and that under Section 12 of the Patta Passbook Act, the Revenue Divisional Officer is the Appellate Authority and under Section 13 of the said Act, the second respondent/District Revenue Officer is only a Revisional Authority. It is claimed that the patta issued to the two sons were cancelled owing to the fact that the files relating to the assignment of the lands in the year 1974 could not be found and it is asserted that such a ground cannot be held against them. It is claimed that the petitioners have been extremely prejudiced by the said order and questioning the said order, they had filed the aforementioned writ petitions.

12. The writ petitioner, in W.P.(MD)No.7288 of 2021/the daughter/Mohanalakshmi has an additional grievance. She claimed that as legal heir of Rajappa, the original assignee, she had succeeded to the property. She claimed that the patta had been cancelled without issuing notice and without hearing her.

13. The writ petitioners in one voice claimed that the impugned order should be interefered with and set aside by this Court.

14. A counter affidavit had been filed by the second respondent/District Revenue Officer, stating that during Field Inspection in Kottapattu Revenue Village, he found that S.F.No.185/2, which was earlier classified as "Odai" Poramboke had been transferred in the name of an individual pattadhar during 1994 based on an assignment given in the year 1974. The adjacent field was also so assigned in the year 1974 and patta transferred to members of the same family. It was stated that three members of the same family had been assigned lands in a Corporation area, where, no agricultural activities are carried on.

15. The Tahsildar (East Taluk) was then requested to submit the files relating to the Dharkast Nos.140/83, 148/83 and 154/83 and also "D" Namuna files, the proceedings of the Tahsildar, Trichy, dated 05.05.1994 and the Adangal for the period from 1994 to 2000. However, the fourth respondent/Tahsildar forwarded only the file relating to the proceedings, dated 05.05.1994 and stated that the other particulars, namely, Dharkast and "D" Namuna are not available in the Record Room. It was stated that from the file of the proceedings, dated 05.05.1994 in 8A No.91/1403, it was found that the lands had been assigned to G.Rajappa, his two sons, Balachandaran and R.Sekar @ Rajasekar and subsequently, patta was also issued in the year 1994.

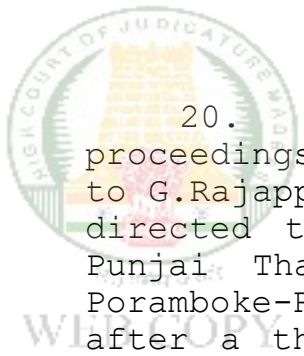


16. The second respondent then initiated enquiry regarding the assignments and notices were issued to G.Rajappa, R.Balachandaran and R.Sekar @ Rajasekar, the named assignees. The jurisdictional Village Administrative Officer and the Town Surveyor were also directed to attend the enquiry. The four sons of G.Rajappa, namely, R.Balachandran, R.Sekar, R.Mohankumar, R.Karthikeyan and one B.Gowtham Arun S/o. R.Balachandran and the Village Administrative Officer appeared during the enquiry. It is stated that one of the sons of G.Rajappa, namely, R.Sekar/petitioner in W.P.(MD)No.7696 of 2021 and Gowtham Arun S/o. R.Balachandran had also given depositions. It was stated that the Village Administrative Officer, also stated that the adjoining S.No.185/2 admeasuring 1.25.0 hectares has been classified as "Odai".

17. It was further stated in the counter that on detailed examination, it was found that in 1927 Re-settlement Register, the extent of 4.77 acres had been mentioned as "Arasu Punjai-Tharisu" and the extent of 2.72 acres had been classified as "Arasu Poramboke-Odai" in S.No.185/2. The land in S.No.185/1 had been assigned to G.Rajappa and his son, R.Balachandran. With respect to the assignment given to R.Sekar, there was no entry in the Re-settlement Register. It was found that at the time of such assignment, R.Balachandran was aged 9 years and R.Sekar was aged 7 years. The assignment was granted to minors. All the assignees belonged to the same family/father and two sons and they were effluent people running Tannery in a Special Industries and Hazardous Use Zone. The records pertaining to the assignment could not also be traced. There were no entries in the Register and there were no entries with respect to S.No.185/3. It was, therefore, concluded that the assignments were bogus. On the basis of such bogus assignments, pattas had been obtained and the village accounts have been mutated.

18. G.Rajappa had stated before the Local Planning Authority that, he is running a Tannery for more than 100 years. However, on boosthuthi, it was found that the demised lands are being kept as Tharisu without any cultivation. It was further stated that in the Current Town Survey Land Record and Online Tamil Nilam Records, the old S.No.185/1, 5 has been classified as "Rayathu Punjai-Tharisu". In the Town Survey Land Records, the old S.No.185/3 has also been classified as "Rayathu Punjai-Tharisu". But in the computer, the entry was not found.

19. It was also stated that the grandson of G.Rajappa, namely, B.Gowtham Arun S/o.Balachandran had stated that his grandfather had obtained the assignments fraudulently in his name and also in the name of his sons. In S.No.185/5, a building had been constructed and in S.No.185/1, a Tanneries Treatment Plant had been constructed. S.No.185/3 is kept as Tharisu.



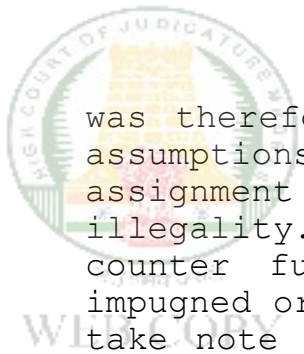
20. It was under these circumstances that the impugned proceedings were issued on 08.02.2021 cancelling the pattas granted to G.Rajappa, R.Balachandran and R.Sekar. The fourth respondent was directed to restore and maintain the revenue records as "Sarkar Punjai Tharisu" and as "Sarkar Poramboke-Odai" and as Sarkar Poramboke-Road". It had been stated that the order had been passed after a thorough enquiry. It was also stated that notices were issued prior to the order being passed and the petitioners were represented by their Advocates. It had been stated that they had grabbed the lands. It was stated that the writ petitions should be dismissed.

21. A reply affidavit had been filed by the petitioners, wherein, they had stated that the grandson, Gowtham Arun was not even born in 1974 and therefore, was not competent to speak about the assignment. They also stated that the petitioner in W.P.(MD) No.7696 of 2021/ R.Sekar had not given any deposition. They reiterated that the impugned order should be interfered with and set aside.

22. Heard arguments advanced by Mrs.Hema Sampath, learned Senior Counsel on behalf of the petitioners in W.P.(MD)No.7696 to 7698 of 2021 and Mr.T.Mohan, learned counsel representing Mr.R.Ponkarthikeyan, learned counsel for the petitioner in W.P.(MD) No.7288 of 2021 and Mr.Veera Kathiravan, learned Additional Advocate General assisted by Mr.D.Ghandiraj, learned Special Government Pleader for the respondents 1 to 4 in all the writ petitions.

23. There is no appearance on behalf of the eighth respondent in W.P.(MD)No.7288 of 2021/fifth respondent in W.P.(MD)No.7696 to 7698 of 2021.

24. Mrs.Hema Sampath, learned Senior Counsel after taking the Court through the facts of the case, pointed out that the assignments had been granted in the year 1974 to G.Rajappa and to his two sons, Sekar @ Rajasekar and Balachandran. They had been enjoying the lands. Patta had been transferred in their names and their names had been mutated in other revenue records. They have constructed a Tannery in the year 1996 and are carrying on business. There is also an aided school in the said lands. The learned Senior Counsel stated that one of the assignees/Balachandran, to grab more properties, had filed a civil suit before the II Additional District Court at Thanjavur and had also given a complaint to the second respondent/District Revenue Officer. The learned Senior Counsel stated that the entire enquiry process had to be interfered with, since the second respondent is only a Revisional Authority under Section 12 of the Patta Passbook Act. If the patta has to be cancelled, then under Section 11 of the Act, the Appellate Authority is the Revenue Divisional Officer. The learned Senior Counsel stated that the assignment, granted in the year 1974 cannot be cancelled after a period of 50 years. It had been admitted by the second respondent that the file itself could not be traced and it



was therefore urged an order cannot be passed on presumptions and assumptions. The order had also been passed in haste. The assignment could only be termed an irregularity and not an illegality. The learned Senior Counsel also stated that in the counter further facts which have not been pointed out in the impugned order, had been stated and urged that this Court should not take note of those facts. The learned Senior Counsel stated that the writ petition should be allowed and the impugned order should be interfered with.

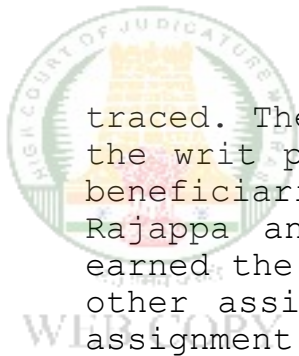
25. Mr.T.Mohan, learned counsel for the petitioner in W.P.(MD) No.7288 of 2021, while adopting the arguments of the learned Senior Counsel further pointed out that the petitioner/daughter was not put on notice at all. She was one of the legal heirs of Rajappa and had acquired the lands allotted to him and therefore, before any order could be passed, it was imperative that she should also be heard. The learned counsel therefore stated that there was violation of the principles of natural justice and the impugned order should be set aside.

26. Mr.Veera Kathiravan, learned Additional Advocate General pointed out the facts stated in the counter affidavit and stated that the entire assignment is bogus and there are no corresponding entries in the revenue records. Learned Additional Advocate General stated that on the basis of such bogus assignment, patta and other revenue documents had been obtained. He further pointed out that the land had been classified as "Odai Poramboke" and therefore, they could not have been assigned. It was also classified as "Tharisu". However, it had been assigned as cultivable lands, which is not possible. The learned Additional Advocate General stated that the two sons were minors aged 9 and 7 and could not have been considered as assignees lawfully entitled for such grant. He further pointed out that notices had been issued to the writ petitioners in W.P.(MD) Nos.7696 to 7698 of 2021 and they had appeared through an Advocate. Opportunity had been granted. A detailed enquiry had been cancelled. He claimed that the assignees were not entitled for assignment of such vast area of land.

27. The learned Additional Advocate General stated that the entire assignment has to interfere with and the patta had to be cancelled. He justified the impugned order and also stated that the District Revenue Officer was competent to pass the impugned order.

28. I have carefully considered the arguments advanced and perused the material records.

29. The facts are clear. They are simple. They are straight forward. A father (Rajappa) and his two minor sons claimed they had been assigned with 2.38 acres, 1.54 acres and 2.38 acres of land in 1974 at Kottapattu Village. Patta had been granted in 1994. They had constructed a Tannery and a school. When enquiry was made, it was found that the records relating to the assignment could not be



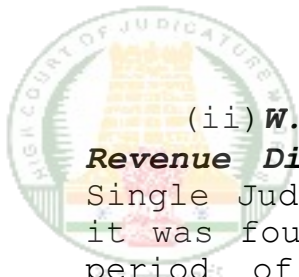
traced. The patta granted was cancelled, necessitating the filing of the writ petitions. The petitioners/legal heirs of Rajappa are the beneficiaries of assignment of lands measuring 6.3 acres to the said Rajappa and his two minor sons on 10.04.1974. Rajappa had not earned the said lands. Sekar @ Rajasekar and R.Balachandran, the two other assignees/his sons, were aged 9 and 7 years at the time of assignment. They could not have dreamed of such bountiful property to an extent of 1.54 acres and 2.38 acres being handed to them on a platter, free by the Government. None of them sacrificed their blood, sweat or toiled to get the said property. It is not known on what basis, they were said to be 'landless poor' and were found favorable and in so woeful need to be assigned with such large area of land in the year 1974. One single family had benefited by that assignment.

30. Curiously, the respondents have stated in the counter affidavit that the entire file relating to the assignment is missing and not traceable. Though a reply had been filed, that specific ascertainment has not been denied. There is an underlying stench in the whole assignment. This pollution will have to be cleaned. The petitioners cannot take advantage of an illegal and unlawful and fraudulent assignment and now claim innocence and ignorance and seek indulgence of this Court.

31. After getting the assignment, the assignees had constructed a Tannery. I am really bemused by the statement of Mr.T.Mohan, learned counsel for the petitioner, who lamented that in the area where, the writ petitioner in W.P.(MD)No.7288 of 2021, lays a claim, there is a Treatment Effluent Plant and the learned counsel stated that if the assignment has to be interfered with, then the Tannery will not have any effluent plant to discharge the waste. When there is a deep suspicion that the entire assignment itself has been the result of collusion and fraud, the learned counsel certainly need not shed tears over the loss of an effluent plant. Cleaning up the area would necessitate wiping out the assignment.

32. The learned Senior Counsel had relied on a string of judgments to indicate that this Court cannot interfere with the assignment. The judgments relied are examined below:-

(i) ***W.P. (MD)No.4457 of 1984 [D.Ramaraj Vs. Government of Tamil Nadu, Rep. By its Secretary, Revenue Department, Fort St. George, Madras] dated 21.02.1992***, wherein, a learned Single Judge of this Court had interfered with an order cancelling the assignment, since the assignment was cancelled after a period of ten years. It was found in that particular case, that assignment could not have been cancelled beyond a period of three years. I would accept that contention, but in the instant case, the assignment itself is under a cloud of suspicion and therefore, the facts are distinguishable.



(ii) **W.P. (MD)No.6229 of 1988 [Sri Venkateswara Oranite Vs. The Revenue Divisional Officer]**, dated 31.03.1997, wherein, a learned Single Judge of this Court had interfered with cancellation, since it was found on facts that alienation after assignment was after a period of ten years and therefore, the cancellation was not improper. The facts, in this case, are totally different and the ratio in the said judgment is not applicable herein.

(iii) **W.A. (MD)No.33 of 2000 [Madhar Sahib Vs. The State of Tamil Nadu and others]**, dated 30.01.2002. In that case, sale pursuant to the assignment was after 23 years of the assignment. It was found that there was no illegality in the same. Again, this judgment is distinguishable, since the assignment itself is alleged to be bogus.

(iv) **W.P. (MD)No.10857 of 1994 [Nagamalai Vs. The District Revenue Officer and Other]**, dated 25.04.2001, where again, the assignment was on 10.03.1960 and the petitioner had purchased the property after 24 years and by order, dated 04.03.1992 resumption was directed after 32 years. In those circumstances, it was found that the order has to be interfered with. In the present case, the assignment itself is questionable.

(v) **W.P. (MD)No.6533 of 1988 [K.Kunhalavi Vs. The Revenue Divisional Officer, Gobichettipalayam, Periyar District]**, dated 22.04.1997. In that case, following the order in W.P.(MD)No.6229 of 1988 referred supra, the cancellation of assignment was interfered with. Again, it has to be stated that the fact of assignment was not questioned, whereas that is an issue in the present writ petitions.

(vi) **R.Ramanathan and others Vs. The State of Tamil Nadu** reported in (1997) 2 MLJ 406. In that case, the assignment was of the years 1922 and 1923. Thereafter, the assignee or their legal representatives have conveyed the property by sale deeds, dated 14.03.1949 and 19.07.1949. The learned Single Judge had interfered with the cancellation of the assignment in the year 1957. It was stated that initiating action after 40 years, is highly arbitrary. But, once again to repeat, the fact of assignment, had not been challenged or questioned, which is done in the instant case and therefore, the said ratio will not apply.

(vii) **Kamalammal Vs. The Government of Tamil Nadu, rep. By Secretary to Government, Revenue Department, Fort St. George, Madras and others** reported in 2000 Writ L.R. 736. In that case, initiation of cancellation of assignment was after 22 years and had been questioned and that order was interfered with by a learned Single Judge of this Court. The assignment had been made in the year 1960. Once again, no doubt has been raised with respect to the actual

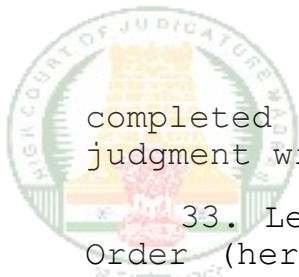


assignment granted whereas in this case, assignment is disputed by the respondents. Therefore, the facts are distinguishable.

(viii) **A.Kodanda Rao and another Vs. Government of A.P. rep. By the District Collector, Srikakulam** reported in 1981 (2) APLJ 158, wherein, a Division Bench of the Andhra Pradesh High Court had examined the **A.P.(Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948** and had stated that though no period of limitation is prescribed in the Act for the exercise of the *suo motu* power of revision, still, the power has to be exercised within a reasonable period of time. It was stated that such revisional jurisdiction *suo motu* must be exercised to advance the cause of justice and not to upset the settled rights. In the instant case, the cause of justice requires the assignment to be cancelled, since it was allotted to a father and two minor sons, who were aged 9 and 7 years old. The records have mysteriously disappeared and there is a cloud over the assignment itself. There has been no justification for granting substantial area of land to two young minors aged 9 and 7 years. They do not deserve the assignment. The ratio laid down is actually applicable, since the *suo motu* revisional powers in this case, had actually been initiated for the cause of justice.

(ix) **Mansaram Vs. S.P.Pathak and Others** reported in (1984) 1 SCC 125. In that case, the issue was with respect to the rent control and eviction and the Hon'ble Supreme Court examined exercise of powers and stated that it should be in a reasonable manner, within reasonable time even where time is not stipulated in the statute. In the instant case, once it had been found that there has been unlawful assignment and a complaint had been received, the time commences only from when the complaint had been received. Therefore, the petitioners cannot complain that the respondents had commenced enquiry after undue delay. Complaint been received and no action been taken, then the petitioners would have a case. But the second respondent had acted immediately when a complaint had been received from R.Balachandran. Thus the facts are distinguishable and the ratio laid is not applicable to the facts of the instant case.

(x) **Pakala Narasimha Reddy and another Vs. The State of A.P. rep. By the Joint Collector, Karimnagar, Karimnagar District and another** reported in 1989 SCC online AP 100, where again, with respect to A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, it had been held that power must be exercised within a reasonable time. It had been stated that the issue of reasonable time is a question of fact. In the instant case, as soon as a complaint had been received, enquiry had been initiated and had been



completed within a reasonable period of time. Thus, again the judgment will not be of help to the petitioner.

33. Let me extract some of the provisions in the Board Standing Order (hereinafter referred to as "Revenue Code" for convenience). Search as I can, I am not able to understand how the lands were assigned, as Rajappa or his two minor sons do not certainly fit into any of the classes mentioned as deserving of assignment.

34. Part II of Revenue Standing Orders deals with disposal of land. Standing Orders 15 (1)(i) of the Board of Revenue (Volume I, Chapter 1) deals with the grant of lands for occupation and it is extracted hereunder:

"General principles:- (i) Before making an assignment, the officer, who is competent to order the assignment, should consider whether the land is to be required for public purpose in the near future or whether a permanent grant may be made. In the former case, or when any special reasons exist which make it inadvisable for Government to commit themselves to a permanent grant, the assignment should be on a temporary basis and power should be reserved to Government to resume the land at their pleasure at any time, unless and until the assignment has been declared absolute by them. When such a power of resumption is reserved to Government, the order of assignment should indicate clearly what compensation, if any, would be payable in the event of resumption. Where no such power has been reserved, the land would, if required for a public purpose, have to be acquired under the Land Acquisition Act and compensation paid to the grantee in accordance with the provisions of that Act.

(ii) Unless the assignment is definitely temporary, or unless it is subject to conditions intended to limit permanently, the assignee's property rights over the surface soil, the grant should, for purposes of acquisition, be treated as an outright assignment and the land acquired under the Land Acquisition Act, if it is required for any public purpose. Where the assignment is definitely temporary, or where it is subject to conditions permanently limiting the assignee's property rights over the surface soil, suitable provisions should be inserted in the order of assignment for resumption of the land and the payment of equitable compensation in the event of the land being required for public purposes. Cases in which special conditions have been imposed, not for the purpose of limiting the grantee's property rights over the surface soil but solely for the purpose of safeguarding his ownership of the land must be treated in the same manner

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as assignments in which there are no conditions



restricting the grantees' powers of disposal over the land.

(iii) Care must be taken to see, that, in all cases of disposal of land, the conditions of the grant are fully settled and clearly mentioned in the order of the assignment. When special conditions are imposed, each such special condition should contain a clause that Government may resume and re-enter the lands if the condition is infringed, unless the usual conditions cover this contingency." [G.O.Ms. 1538, Rev. dt. 24.6.40, B.P.I 18, Press, dt. 11.1.40, Memo. No. 1760-F/42-1, Rev, dt. 11.1.40, B.P.31. Press, dt. 20.6.42 and G.O.Ms.3316, Rev. dt. 5.9.58]

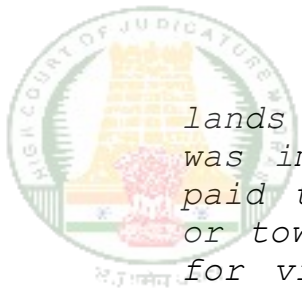
1. A.(i). Grant of land by the Government in the form of assignment, alienation, lease, etc., is governed by the provisions of the Government Grants Act (Central Act). According to the provisions in the Government Grant Act, grant of Government land will not be governed by the provisions of the Transfer of Property Act, unless specific provisions are made in the order of grant by the Government that title to the property will pass on to the assignee subject to complying with the conditions of grant or after the expiry of a certain period. The grantee of the land, therefore, does not acquire title, simply under the orders of grant of land by the Government.

(ii) The land may be assigned for private purpose, such as for cultivation, for house site and for industrial purposes free of land value or on payment of land value, subject to the conditions imposed in order of grant. The land would be available with the grantee, so long as the conditions of grant are satisfied. The question of acquisition of title to the land will be governed only by the conditions of grant and not otherwise.

.....

(v) Assignment of land on payment of value:- In case, the land is assigned, on payment of land value and a condition was imposed in the order of grant, to the effect that the assignee could not dispose of the property, then the land could be resumed, if the land was either not utilised for the purpose for which it was granted, within the specified period or alienated to others, even after utilising the land.

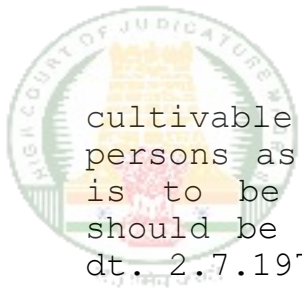
(vi) Payment of compensation on resumption:- Regarding the payment of compensation of the land or improvements made therein or towards structures erected, in the case of



lands assigned, on payment of land value, if a condition was imposed to the effect that no compensation would be paid towards the land value or improvements made therein or towards structures erected, and if the land is resumed for violation of the conditions of grant, then the land could be resumed, without payment of compensation to land value or improvements made or structure constructed. If the condition imposed relates only to the non-payment of compensation to the improvements made or structures erected, then it should be taken for granted that no compensation should be made to the land value also. (viii) Payment of compensation on resumption:- If, on the other hand, a condition was imposed to the effect that the assignee could not alienate the land after expiry of the specific period, within which the land should be utilised then the land could be resumed, without payment of compensation to the land or for the improvements made or the structures constructed, if the land is alienated, at any time, notwithstanding the fact that the conditions of grant are complied with. [G.O.Ms. No. 619, Rev. dt. 17.3.1977]

35. RSO 15(2)(2) deals with lands reserved for special purposes. As per the provision, land is said to be "reserved" when it is earmarked as being required or likely to be required for special purposes, an entry being made in the settlement register and village adangal, and also in the prohibitive order book. Land reserved for Scheduled Castes need not however be entered in the prohibitive order book, but the necessary entries should be made in the settlement register and the village adangal. Before any land which is not assessed can be assigned, it must be transferred to assessed. After transfer the ordinary rules under section 11 apply. The Divisional Officer may order such transfers, subject to the provisions of paragraphs 36 and 38 below. He may also order the transfer of "assessed" and "unassessed" land to "poramboke" and their entry as "reserved".

36. RSO 15(3)(2)(ii) defines "Landless persons", which means a person, who owns a total extent of less than 1.21.5 Hectares of land, if dry, or a total extent of less than 60.5 acres, if wet. "Assigning Authority" as defined in RSO 15(3)(2)(x) means, the Revenue Divisional Officers shall be the authority competent to assign all valuable lands under the rules subject to the maximum limit of 0.60.5 hectares if the land is wet or irrigable dry and to the maximum limit of 1.21.5 hectares if the land is dry. Similarly, Tahsildars shall be competent to assign non valuable lands, subject to the above limit. The monetary powers fixed for assignment of



cultivable land is only for provision of land to eligible poor persons as per the norms fixed. In all other cases, where the cost is to be collected from the assignee or beneficiary, proposals should be sent to the Government for orders. [B.P. Perm. 2929 (B) dt. 2.7.1971]

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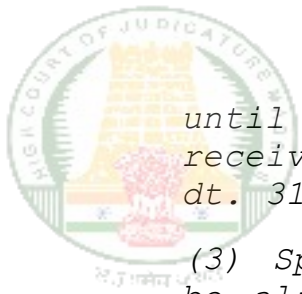
37.RSO 15(3)(3) speaks about, who are eligible for assignment and it reads as follows:

"(3) Who are eligible for assignment:- (i) Only landless and poor persons who are likely to engage themselves in direct cultivation shall be eligible for assignment of land free of land value subject to the conditions of assignment, imposed in the 'D' Form patta. Co-operative societies consisting entirely of landless and poor persons who are likely to engage themselves in direct cultivation, shall also be eligible for cost free assignment of both valuable and non-valuable lands provided lands are available in compact blocks. [G.O. No. 296, Rev. dt. 10.2.1954 and B.P. Mis. No. 1791, dt. 21.12.1956]."

38.Standing Order 15(12) deals with Communication of Orders on Darkhasts which runs as follows:

"(12) Communication of orders on Darkhasts:- (1) Form and Contents:- The Tahsildar's order sanctioning the assignment of the land should be recorded in the 'A' Memorandum received from the village and the duplicate copy of the Memorandum, with the Tahsildar's order, should immediately be sent to the village authorities. It should also be communicated at once by the Tahsildar to all the parties concerned, printed endorsements in Form D given in Appendix V being used for the purpose. In part of the Tahsildar's work are promptitude and system more important than in the disposal of darkhast cases. While on tour, he should dispose of any darkhasts that may be pending in the villages visited. [B.P.1943, dt. 1.9.86, G.O.406, dt.12.5.03, G.O.687, dt. 9.5.08, B.P.79, dt. 22.4.08, B.P.123, dt. 19.6.08, B.P.123, dt. 19.6.08 and G.O. Mis.3316, Rev. dt.5.9.58]

(2) Conditional assignment:- In the case of each conditional assignment, the Tahsildar should specify in the order communicating to the Village Administrative Officer the fact that the assignment has been made and all the register of conditional to it that are to be entered



until a report supported by the revenue register has been received by him. [G.O.Ms.123, Rev. dt. 18.1.28, B.P. 5, dt. 31.1.28, and G.O.Ms. 3316, Rev. dt. 5.9.52]

(3) Special Conditions:- (i) The assigned land shall not be alienated for a period of ten years from the date of assignment. In the event of the assignee wishing to dispose of the land after the above period, he should get prior permission of either the Tahsildar or the Revenue Divisional Officer, who should give permission only, if the sale is to one of the categories, eligible for assignment of Government/Waste lands for cultivation purposes. [G.O.Ms. No. 2485, Rev. dt. 9.11.1979]

The restriction on alienation cannot be enforced against the procedures in Court auction in satisfaction of decrees. [Govt. Lr. No. 11286/FN/71-6, Rev. dt. 24.11.71].

The land assigned may be hypothecated to a co-operative society consisting entirely of landless and poor persons likely to engage themselves in direct cultivation. This prohibition shall not apply in a case where an assignee offers to give such conditionally assigned land to the Gramadan Sarvodaya Co-operative Society with specific understanding that he/she will not be eligible for further assignment of Government land on the pretext of becoming landless poor consequent on the gift of that land. The assignee can hypothecate the assigned land in favour of scheduled banks including Nationalised Banks for affording credit to the Agriculturists subject to the following conditions:-

(i) That loans for minor irrigation purposes should be contingent on ground water discipline.

(ii) The Commercial Banks can be allowed to lend for minor irrigation purposes on the security of the land assigned wherever Primary Land Development Banks are not able to lend for the purpose. [G.O.Ms. No. 397, Rev. dt. 21.2.1979 and B.P. Perm. 312, dt. 27.3.1979]."

39.RSO 15(15) and RSO 15(18) deal with appeals and revision respectively and they are extracted hereunder:

"(15) Appeals:- From every original decision in darkhast cases whether it is passed by the Tahsildar, the Divisional Officer, or the Collector, one appeal shall be allowed, provided that it be made within 30 days of the date on which the original decision was pronounced or communicated if the appeal is from the Tahsildar to the



Divisional Officer or from the Divisional Officer to the Collector and within 60 days, if it be from the Collector to the Commissioner of Land Administration. In computing the period of limitation the day on which the decision appealed against was pronounced or communicated and the time requisite for obtaining a copy of that decision shall be excluded. On all copies issued shall be entered the date of the decision or communication, the date of application for copy, the date on which the copy was ready for delivery and the date on which the appeal time expires. Any persons interested in the matter may appeal. Appeal to the Revenue Divisional Officer and to the Collector in Darkhast cases should be stamped with a court fee label to the value of two rupees and appeals to the Commissioner of Land Administration should be stamped with a court fee label to the value of five rupees.

From every original decision in the matter of assignment of house sites to Scheduled Castes, Scheduled Tribes and other eligible persons by the Special Tahsildar (Adi Dravidar and Tribal Welfare) concerned from the lands acquired with the funds of the Adi Dravidar and Tribal Welfare Department and taken possession of, one appeal shall be allowed to the District Adi Dravidar Welfare Officer provided, it is made within thirty days from the date on which the decision appealed against was pronounced or communicated and the time requisite for obtaining a copy of the decision shall be excluded. On all copies issued, shall be entered the date of decision or communication, the date of application for copy and the date on which the appeal time expires. Any person interested in the matter may appeal. Appeals to District Adi Dravidar and Tribal Welfare Officer shall be stamped with a court fee label of Rs. 2/-.

..... .

..... .

(18) Revision:- The order of the authority making the assignment if no appeal is presented or of the appellate authority if an appeal is presented, is final, and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision in cases of assignment made after 14.5.1973 if the Revenue Divisional Officer/District Revenue Officer/Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing



to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Commissioner of Land Administration or the Government may set aside, cancel or in any way modify the decision of any authority subordinate to them, if they are satisfied that the decision was grossly in-equitable, etc. They may exercise these powers without any limit of time (i.e.) even in case prior to 14.5.1973, where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer, who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. The authorities competent to pass orders in revision under this para may also grant stay pending their orders in revision. [Govt. Lr. 36741/LD3-1/97-1, Rev. dt. 15.7.97]"

40. Maintenance of assignment records is given in RSO 15(21) and the same is reproduced hereunder:

"(21) Maintenance of assignment records:- Files of A and B Memoranda and the Register C should be maintained by the Village Administrative Officers, while a register in Form No. 4 prescribed in the Taluk Manual should be kept in the Tahsildar's office. It will be the duty of the Tahsildar to have the village file of Memorandum and C Register examined and compared with the taluk register, and to submit the latter at the jamabandi to the Jamabandi Officer, with an attestation under his signature duly certifying that it is correct. It will be the duty of jamabandi officers to examine how far the rules in this Standing Order have been observed. [B.P. 159, dt. 18.3.90, B.P. 5632. dt. 9.9.63 and B.P. 10, dt. 28.2.22] .

41. Standing Orders 15(29) under the caption 'D' FORM reference to the conditions of assignment is extracted hereunder:

"All conditions subject to which land is assigned or sold should be specified in the D Form or in the "Form of order of assignment by sale" printed in Appendix V. The "forms of notice or sale" printed in the same Appendix should be used for notifying such sales."

42. Standing Order 15(41) deals with reservation of land for assignment to Scheduled Castes and the powers of Revenue Divisional Officers to set apart the land which reads as follows:



"In the case of villages which contain a considerable extent of land available for occupation, the Divisional Officer should, and in all other villages, he may, if he thinks it necessary in the interests of the Scheduled Castes, set apart a specific area for assignment for cultivation to the Scheduled Castes. Land occupied on sivayijama may be included in the reserved list, but if such lands have been cultivated by the same person for three or more years, whether continuously otherwise, provided that they have not been cultivated by any other person in the intervening years, they should not be included in the list unless and until assignment has been offered to and referred by the sivayijamadar, when land is placed in the list is wrongly occupied, action should be taken promptly to evict the occupation. [G.O.Ms. 1736, Rev. dt. 11-10-26, B.P. Mis. 2480, dt. 29-10-26, G.O.Ms. 1215, Rev. dt. 10-7-33, B.P. Press, 53, dt. 17-7-33, and G.O.Ms. 3316, Rev. dt. 5-9-58]

Note:- A person who is himself a convert may be assigned lands available for assignment from the reserved area while the second generation of converts will not be so eligible. [Govt. Memo. No. 96861/F1/70-10, Rev. dt. 22-10-1971]

2) The needs of scheduled castes to be considered when lands are transferred to assessed waste:- In the case of transfer of considerable areas of poramboke or unassessed land to assessed, as for example, when reserved forests are disforested, or grazing poramboke are transferred to ayan, particular care should be taken that the present and prospected needs of the scheduled castes are considered.

(3) Darkhasts how dealt with:- Darkhast for land in such areas will be dealt with in accordance with the general rule above, but no application will be considered unless it is in the name, and genuinely on behalf of a member of the scheduled castes or of an approved society acting on behalf of the scheduled castes, such as a missionary or philanthropic or co-operative society. Assignment to societies by Tahsildars require the previous approval of the Collector. [G.O.Ms. 1934. Rev. dt. 11-8-20, B.P. 66, dt. 20-8-20, G.O.Ms. 118. Rev. dt. 7-6-29 and B.P.Ms. 1723. dt. 17-6-29].

4(i) Restrictions to be imposed on alienation:- Assignments whether of ordinary land or of valuable land in these areas, will be subject to the condition that the lands shall not be alienated to any person (whether a member of the scheduled castes or not) in any manner



before the expiry of ten years from the date of grant not even thereafter, except to other members of these castes. However, in cases when the assignees offer to give such conditionally assigned lands to Gramdan Sarvodaya Co-operative Societies within 10 years from the date of assignment or even thereafter, the Tamil Nadu State Bhoodan Yagna Board is permitted to accept such gift of lands. The Collectors of the districts concerned are, authorised to relax the conditions of assignment of lands on receipt of a joint request from the Bhoodan Board and the donor. [G.O.Ms. 882, Rev. dt. 22-8-67 and B.P. Press 1546 (B) dt. 6-12-67].

(ii) Special conditions when to be imposed:- In cases of assignment outside these areas, the special conditions should be imposed only when concessions are enjoyed by assignees as being members of the scheduled castes. [G.O.Ms. 2557, Rev. dt. 22-12-32 and B.P.2, dt. 6-1-33 and G.O.Ms. 3092, Rev. dt. 12-12-40]

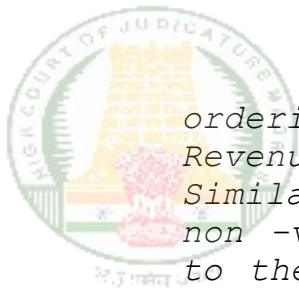
(iii) Power to re-enter in case of violation of conditions:- If the conditions of non alienation is violated or if the land ceases to be owned by the assignee or his legal heirs or (after the ten years) other members of their class, owing to sale by process of law or otherwise, or if default is made in the payment of the Government revenue on the dates prescribed, the grant will be liable to be resumed by the Government who will be entitled to re-enter and take possession of the land without payment of any compensation or refund of the purchase money. [G.O.Ms. 3316, Rev. dt. 5-9-58, B.P. Press, 16, dt. 20..41 and G.O.Ms. 3316, Rev. dt. 5-9-58]

(iv) Hypothecation to Government:- This prohibition does not however apply to hypothecation of the land to a co-operative institution advancing loans on the security of lands or to a scheduled bank including the Nationalised Banks for affording credit to the Agriculturists subject to the following conditions:

(i) That loans for minor irrigation purposes should be contingent on ground water discipline.

(ii) The commercial Banks can be allowed to lend for minor irrigation purposes on the security of the land assigned wherever Primary Land Development Banks are not able to lend for the purposes.

It does not also operate to debar payment of compensation if such lands are subsequently acquired under Land Acquisition Act. The power of resuming the grant and



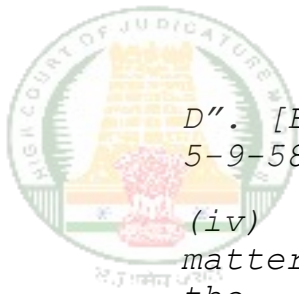
ordering re-entry referred to above will vest in the Revenue Divisional Officer in regard to valuable lands. Similar powers will be exercised by Tahsildar in regard to non-valuable lands. Both can exercise the powers subject to the limits (extent) prescribed. [G.O.Ms. 397, Rev. dt. 21-2-79].

Where this limit is to be exceeded the previous sanction of the Government should be obtained. Lands unsuitable for assignment for some reason or other may be removed from the reserved list. As in cases of resumption and re-entry, the Revenue Divisional Officer will be the authority to eliminate valuable lands from the reserved list, and in regard to non-valuable lands, the Tahsildar will exercise similar power. The officer eliminating the land from the reserved list may use his discretion in deciding whether a particular land is unsuitable for assignment.

5(i) Concession regarding payment of assessment:- Assignment of lands to members of the scheduled castes the cultivation of which entails much labour, and expense will be free of assessment for a period of seven years from the date of the grant, but subject to the conditions that one-fifth of the extent assigned is brought under cultivation in each of the five years succeeding the grant. The exemption will be for seven years only and not for shorter periods. If however, an assignee whom the concession is granted fails to cultivate in accordance with the condition, assessment will be collected from the year in which the default occurs.

(ii) Procedure in granting the concession:- Applications from members of the scheduled castes for lands (other than lands already in their sivaigama occupation) the cultivation of which in the opinion of the Tahsildar involves much labour and expense should be reported to the Divisional Officer for orders on the question whether the lands should be exempted from the payment of assessment for a period of seven years. The Tahsildar should without reference to the Divisional Officers dispose of all applications for assessed waste lands which are fit for cultivation and are therefore not entitled to the concession. Against an order refusing the concession an appeal will lie to the Divisional Officer. [B.P. I41, dt.27-10-36 and G.O.Ms. 3316, Rev. dt. 5-9-58]

(iii) Form of order of assignment to be used:- The special form of order to be used in the case of assignments to the scheduled castes is printed in Appendix V as "Special Form



D". [B.P. Press 120, dt. 7-9-34 and G.O.Ms. 3316, Rev. dt. 5-9-58]

(iv) Assignment of lands to Scheduled Tribes:- In the matter of assignment "of lands for cultivation purposes the concession enjoyed by the Scheduled Castes as enumerated in R.S.O. No. 15-41, are extended to Scheduled Tribes also, subject to the modification that the maximum extent of land to be assigned to the Scheduled Tribes, will be 1-21-5 hectare of dry land, and 60.5 acres of wet land in hilly tracts, if sufficient lands are available. Any limitations imposed on Scheduled Castes, along with the concessions, are applicable to the Scheduled Tribes also. The form of order of assignment to be used, is the same as for the Scheduled Castes, mentioned in clause (iii) above, which should be adopted with suitable modifications, wherever necessary. [G.O.Ms. No. 4027, Rev. dt. 29-10-1956 and B.P. Press No. 1, dt. 17-1-1959]."

A re-reading of the above provisions only confirms the bewilderment at the assignments. They are fraudulent. Rajappa and his two minor sons are undeserving of assignment.

43. In **K. Palaniappan alias K. Subramanian v. The Government of Tamil Nadu, represented by its Commissioner and Secretary, Revenue Department, Madras-9, reported in 1993 (1) L.W. 272**, the dispute was with reference to assignment of land by a member of the scheduled caste community to another, who did not belong to the said community. The question was whether prohibition in clause (9) in Special Form-D of the Board Standing Orders was violative of the provisions of the Transfer of Property Act. Following the decisions in **Sisili Ammal v. Sundararaja Naidu**, reported in **AIR 1946 Madras 52** and **Manchegowda v. State of Karnataka** reported in **AIR 1984 SC 1151**, the Division Bench of this Court presided over by Hon'ble Mr. Justice Dr. A.S. Anand, at paragraphs 4, 5 and 6, held as follows:-

"4. Appearing for the appellant, the learned Counsel submitted that the condition imposed in Clause (9) of the Special Form D. Board Standing Order 15, para 9 was unreasonable as it would be violative of the rights available to a bona fide purchaser under the Transfer of Property Act. The other ground of attack by the learned Counsel for the appellant was that the restriction contained in Clause (9) prohibiting the alienation in favour of a non-Harijan by a Harijan was unconstitutional and therefore liable to be struck down.

5. Both the arguments raised by the learned Counsel for the appellant need not detain us, as the questions are no



longer res integra. So far as the submission that the condition of restriction on alienation is violative of the provisions of the Transfer of Property Act is concerned, a Division Bench of this Court in *Sisili Ammal v. Sundararaja Nairdu* A.I.R. 1946 Mad. 52, while dealing with a condition, similar to the one contained in Clause (9) in this case, in the Crown Grants Act, 1895 held that though such a condition would be invalid if the grant was made by a private individual, the condition was perfectly valid in the case of a Crown grant. It was held by the Bench that the prohibition against alienation was not violative of the provisions of the Transfer of Property Act. The Supreme Court of India also in *State of U.P. v. Zahoor Ahmad*, considered a similar argument and repelled the contention identical to the one raised by the learned Counsel for the appellant. The apex court observed as follows:

"Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants Act is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

Both the aforesaid judgments are the complete answer to the first submission made by the learned Counsel for the appellant.

6. Coming not to the second contention raised by the learned Counsel for the appellant, suffice it to say that the classification is both rational and has a clear nexus with the object sought to be achieved, that is to prevent alienation by exploitation of the Harijans by persons, other than Harijans. In *Sri Manche Gowda v. State of Karnataka*, the apex Court was considering the vires of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, which provided for cancellation of alienation in contravention of the conditions relating to the transfer of such assigned land. Before the Supreme Court, the appellants were the purchasers of land which had been originally granted by the State of Karnataka to persons



belonging to the Scheduled Castes and Scheduled Tribes under the provisions of law or on the basis of rules or regulations governing such grant. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979), notices were issued by the appropriate authority to the transferees of such lands to show cause as to why the lands transferred to them in violation of the terms of assignment should not be resumed for being restored to the original grantees or their legal heirs or for distribution other: wise to the members of Scheduled Castes and Scheduled Tribes. The question about the vires of such a condition was raised before the Supreme Court and it was repelled. The apex Court held that the object of the Act was to protect and preserve the economic interests of persons belonging to Scheduled Castes and Scheduled Tribes and to prevent their exploitation. The Supreme Court found that for the purpose of that Act, the classification has a clear nexus to the object sought to be achieved. The Bench expressed the view that special provisions made for the resumption of "granted" lands, originally granted to the members of Scheduled Castes and Scheduled Tribes and restoration of the same to the original grantees or their heirs and legal representatives and failing them to other members of these communities do not infringe Article 14 of the Constitution. In view of the settlement of law by the Supreme Court which has again been reiterated in *Lingappa Pochanna v. State of Maharashtra*, the second ground of attack viz., the unconstitutionality of the restrictions contained in Clause (9) of Special Form D, Board Standing Orders 15, paragraph 9 must also fail and holding that Clause (9) is constitutionally valid, we reject the argument raised to the contrary by Mr. Doraiswamy."

44. In ***Muralidhar Dayandeo Kesekar vs. Vishwanath Pandu Bade***, reported in ***JT (1995) 3 SC 563***, it was further held as it was further held as follows:

"the State is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and tribes and to distribute material resources of the community to them for common welfare etc. Therefore, civil, political, social, economic and cultural rights are necessary to the individual to protect and preserve human dignity, social and economic rights are sine quanon concomitant to assimilate the poor, the depressed and deprived, i.e., the dalits and tribes in the national main



stream for ultimate equitable society and democratic way of life to create unity, fraternity among people in an integrated Bharat. Property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. Liberty, independence, self-respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority of people. The economic rights provide man with freedom from fear and freedom from want, and that they are as important if not more, in the scale of values. The effect of social and economic legislation was held thus: "In fact, the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes." The Prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void under section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment."

45. In ***VGP Prem Nagar v. The State of Tamil Nadu*** reported in **2010 (3) CTC 845**, the history of assignment of lands to the depressed classes is given in nutshell and that the same is extracted hereunder:

"The history of the assignment of lands to depressed classes is important. In 1891, the then Chengalpet District Collector J.H.A. Tremen Heere, a Britisher, submitted a report to the British Government on seeing the plight of the depressed classes and their socio-economic, political and cultural condition. He mentioned in the



report that even after the abolition of slavery in 1844, the practice continued in the name of Padiyaal (bonded labourer). At that point of time, lands were in the total control of persons who were considered to be in the caste hierarchy on a higher level and the bonded agricultural labourers and landless workers mainly belonged to the depressed classes. He noted in his report, "The small or marginal land holdings, housing, literacy, free labour without force/bondage, self-respect and dignity are the factors that could lead to transformation in (their lives)". Based on this, the British Parliament passed the Depressed Class Land Act in the year 1892 and 12,00,000 acres of land were distributed to them in Tamil Nadu. The lands were called Panchami lands and were given away under certain conditions, viz., that they cannot sell the lands or lease them out or give as gifts or pledge them for the first ten years and after the expiry of the ten year period, the lands could be transferred, but only to persons belonging to the depressed classes and any breach of these conditions will entail cancellation of the assignment. It would appear that these conditions were imposed bearing in mind that it would be easy to exploit persons belonging to the depressed classes who had long been kept in a subjugated condition."

46. It is to be mentioned that the petitioner have never claimed that Rajappa was a person, who fell within the category of persons, who can be assigned with land and that the two minor sons can also be assigned with the lands. The entire assignment is fraudulent and valuable land had been assigned to ineligible persons. The petitioners therefore cannot claim any right to hold on to the lands.

47. The learned counsel for the petitioner in W.P.(MD)No.7288 of 2021 bemoaned that the petitioner was not heard prior to the order being issued.

48. The principle of natural justice cannot be stretched to extreme limits when issue of notice would be an empty formality. The law is clear.

49. In **(2000) 7 SCC 529, Aligarh Muslim University and Others Vs. Mansoor Ali Khan**, the Hon'ble Supreme Court had an occasion to consider the effect of "**useless formality**" - a theory, which is an exemption to the principles of natural justice.

"21. As pointed recently in **M.C. Mehta Vs. Union of India (1999 (6) SCC 237)**, there can be certain situations



in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in **Gadde Venkateswara Rao vs. Government of Andhra Pradesh [1966 (2) SCR 172 = AIR 1966 SC 828]**, it is not necessary to quash the order merely because of violation of principles of natural justice.

22. In **M.C.Mehta {1999} 6 SCC 237** it was pointed out that at one time, it was held in **Ridge vs. Baldwin (1964 AC 40)** that breach of principles of natural justice was in itself treated as prejudice and that no other 'defacto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In **S.L. Kapoor Vs. Jagmohan (1980 (4) SCC 379)**, **Chinnappa Reddy, J. followed Ridge vs. Baldwin** and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. **Chinnappa Reddy, J. in S.L.Kapoor's case [(1980) 4 SCC 379]**, laid two exceptions (at p.395) namely, " if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In **K.L.Tripathi Vs. State Bank of India (1984(1) SCC 43)**, **Sabyasachi Mukherji, J.** (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting **Wade Administrative Law, (5th Ed.PP.472-475)** as follows: (para 31)

"....it is not possible to lay down rigid rules as to when principles of natural justice are to apply or as their scope and extentThere must



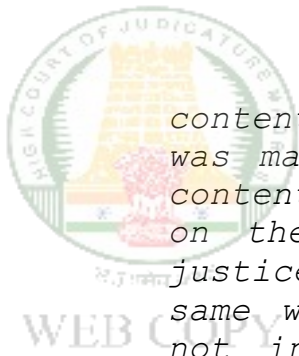
have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala Vs. S.K. Sharma* (1996(3) SCC 364). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in *Rajendra Singh Vs. State of M.P.* (1996(5) SCC 460).

25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in **M.C. Mehta** referred to above. This Court surveyed the views expressed in various judgments in **England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton L.J.** etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

50. The same position had been reiterated in **2006 (8) SCC 647 [Punjab National Bank and Others]:**

"In an industrial dispute referred to by the Central Government which has an all-India implication, individual workman cannot be made parties to a reference. All of them are not expected to be heard. The Unions representing them were impleaded as parties. They were heard. Not only the said Unions were heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court, Their



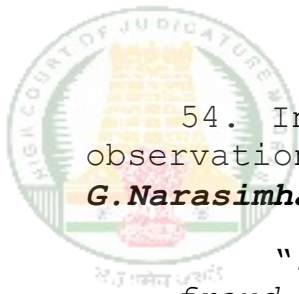
contentions had been noticed by this Court. As the award was made in presence of the Unions, in our opinion, the contention of Respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance of the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice."

51. A Division Bench of this Court in a Judgement reported in **2006 4 LLN 358 [Dr.C.Chendroyaperumal Vs. National Institute of Port Management]** had also expressed their views on this aspect.

"9. Coming to the legal aspects canvassed by the learned counsel for the appellant, it is seen that they revolve around violation of the principles of natural justice. Even at the outset, we are not impressed with the said argument, since in our opinion, "Principles of natural justice is for thoroughbred horses and not wild horses." Wild horses understand only the language of the whip and hence there is no use trying to tame them with persuasion. The principles of natural justice themselves have traversed a long way from the stage at which they were treated as a "tharaka manthra" or panacea for all diseases, to the present stage where the Courts have started looking at the credentials of the person using them as a shield or sword and accepting the fact that they are not indispensable."

52. Here, even if notice had been given to the petitioner, it would only have been an empty formality, since she cannot claim a better right over the land, which had been unlawfully assigned to her father.

53. All the petitioners have enjoyed the lands practically from the time when they were born. Their father had not spent a single paisa for acquiring such assignment of more than 6 acres of land. Certainly, the petitioners did not spend any single naya paisa for acquiring the land. They do not deserve such assignment. The entire issue has fraud written on the face.



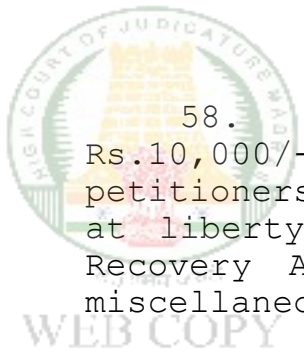
54. In this regard, this Court is fortified by the following observations of the Supreme Court in **Meghmala and others v. G.Narasimha Reddy and others, reported in (2010) 8 SCC 383:-**

"...33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage..... A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

55. Once there is an underlying fraud or collusion, it would only be appropriate that the second respondent takes action in manner known to law.

56. It is complained that he has no power under Section 13 of the Patta Passbook Act and that the procedure should have been to file an appeal under Section 12 and then move onto Section 13. Even if it is to be assumed that the entire procedure had been initiated under that the Patta Passbook Act, Section 13, also gives the right to the second respondent/District Revenue Officer, to take action on his own motion. When the assignment papers are not traceable, then a reasonable suspicion arises and it is imperative that a responsible Government official initiate enquiry. The underserving beneficiaries cannot complain.

57. They should be grateful that their family had benefited for the past 50 years by earning money from the Tannery and the school. They have had a long long run. They should be satisfied. They should now hand back the lands unlawfully gained. They cannot hold onto the property forever and ever and claim, title and ownership. They have not spent any money towards the acquisition of the lands or towards the cost of the property. They do not deserve the assignment. The writ petitions do not deserve any consideration.



58. All the Writ Petitions are dismissed with costs of Rs.10,000/- (Rupees Ten Thousand Only) payable by each of the petitioners to the Chief Justice Relief Fund. The respondents are at liberty to initiate appropriate proceedings under the Revenue Recovery Act and to recover the costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Trichy District,
Trichy.
- 2.The District Revenue Officer cum
Additional District Magistrate,
Trichy,
Trichy District.
- 3.The Revenue Divisional Officer,
Trichy,
Trichy District.
- 4.The Tahsildar,
Trichy East,
Trichy District.

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THE SECTION OFFICER,

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ACCOUNTS SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-2701[F]
dated 27/01/2022)

+2cc to Mr.M.SARAVANAN, Advocate, SR.No.2698 & 2699

+1cc to Mr.R.SUBRAMANIAN, Advocate, SR.No.2700

+1 CC to M/s.SPL.GP (SR-2782[F] dated 28/01/2022)

Order Made in

W.P. (MD) Nos.7288, 7696,
and 7698 of 2021

and

W.M.P. (MD) Nos.5547, 5548, 5857,
5859 and 5863 of 2021

27.01.2022

NSN (CO)

GC (09.02.2022) 31P 11C