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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	08.03.2022
Pronounced On	13.04.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P. (MD) Nos.22729 and 22785 of 2018

and

W.M.P. (MD) Nos.20619 & 20656 of 2018

N.Vanitha Sanjay ... Petitioner
in W.P. (MD) No.22729/18

M.Senthilkumaran ... Petitioner
in W.P. (MD) No.22785/18

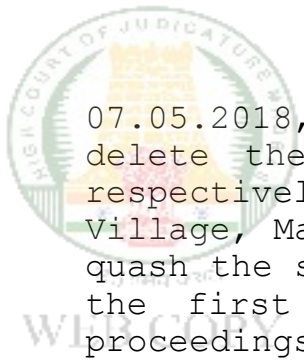
Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department, Chennai - 34.

2.The Executive Officer /
Deputy Commissioner,
Arulmighu Subramania Swami Thirukoil,
Thiruparankundram, Madurai. ... Respondents
in both the W.Ps.

Prayer in W.P. (MD) No.22729/2018:- Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent in his proceedings in Na.Ka.No.8842 of 2015/M1, dated 07.05.2018, cancelling his earlier order granting permission to delete the lands in S.No.258/6, measuring 16 cents and S.No.258/7 measuring 33 cents, situated at Thiruparankundram Village, Madurai, from the list furnished to the Sub-Registrar, Thiruparankundram, in Na.Ka.No.8842/2015/M1, dated 17.06.2017, quash the same and further direct the second respondent to implement the first respondent's earlier order dated 17.06.2017, in his proceedings in Na.Ka.No.8842/2015/M1.

Prayer in W.P. (MD) No.22785/2018:- Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent in his proceedings in Na.Ka.No.23294/2015/M1, dated



07.05.2018, cancelling his earlier order granting permission to delete the lands in S.No.7/1, measuring 5 cents and 2 ½ cents respectively out of 2 acre 40 cents, situated at Thiruparankundram Village, Madurai South, in Na.Ka.No.23294/2015/M1, dated 17.07.2017, quash the same and further direct the second respondent to implement the first respondent's earlier order dated 17.07.2017, in his proceedings in Na.Ka.No.23294/2015/M1.

For Petitioner : Mr.PT.S.Narendravasan
(in both the W.Ps.)

For R1 : Mr.P.Subbaraj
(in both the W.Ps.) Special Government Pleader

For R2 : Mr.V.Chandrasekar
(in both the W.Ps.)

COMMON ORDER

In these writ petitions, the petitioners have challenged the impugned orders of the first respondent recalling the earlier orders passed on 17.06.2017 and 17.07.2017 respectively, by directing the second respondent to delete the properties, which were earlier included in the survey of the lands belonging to the second respondent Temple.

2. It is the case of the petitioner in W.P.(MD)No.22785 of 2018 that he is in possession of lands in Thirupparankundram Village, Madurai South, and that the lands were purchased by him from one Kutti Thevar, who had plotted the lands and sold it to various buyers. The petitioner claims to have purchased three plots each measuring 2.50 cents in Plot Nos.47, 48 and 49.

3. It is the specific case of the petitioner in W.P.(MD) No.22785 of 2018 that no doubt, the land originally belonged to the second respondent temple. However, the land stood vested with the Government pursuant to the enactment of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and thereafter stood vested with Madasamy Pillai in 1972 pursuant to the proceedings of the Settlement Tahsildar, Minor Inams, Madurai and thereafter, in favour of the petitioner's vendor through Madasamy Pillai's wife.

4. It is the specific case of the petitioner in W.P.(MD) No.22729 of 2018 that no doubt, the land originally belonged to the second respondent temple. However, the land stood vested with the Government pursuant to the enactment of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963[Act 30 of 1963] and stood vested with Shanmugam Chettiar in 1972 pursuant to the proceedings of the Settlement Tahsildar, Minor Inams, Madurai.



5. The petitioner in W.P.(MD)No.22729 of 2018 has not disclosed the persons from whom the property was purchased. The details of the land in question are as follows:-

W.P. (MD) No.	Name of person owning the land	S.No.	Extent of land	Settlement Patta issued in favour of
22729/2019	Vanitha (Petitioner)	258/6	15 cents	Shanmuga Chettiar
	Punitha	258/7	33 cents	
22785/2019	Senthil Kumaran	7/1	2.40 acres Plot Nos:-47, 48 & 49	Madasamy Pillai

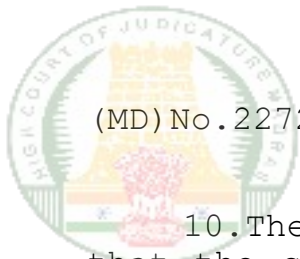
6.The Petitioner in W.P.(MD)No.22785/2019, appears to be have purchased about three plots measuring 2.5 cents each in Survey No.7/1. The list given by the Temple authorities to the Sub-Registrar on 28.01.2012 in Na.Ka.No.1324/95/E1 in respect of the above lands indicate that the Temple has given the details in Hectares as detailed below:-

Thiruparankundram Village		
S1.No.	S.No.	Extent of land in Hectares
1.	7/1	2.40
2.	258/6	0.30
3.	258/7	0.33

7.The proceeding of the Settlement Tahsildar dated 15.05.1972 under the provisions of the Tamil Nadu (Abolition of Inams) Act,1963 [Act 30 of 1963], indicate that the Ryotwari patta for the land in S.No.7/1 was proposed to be given to Madasamy Pillai, Shanmugam Chettiar and others.

8.The legal heirs of Madsamy Pillai appear to have sold the entire extent of land in Survey No.7/1 to one of the earlier predecessors of the in title to the Petitioner in W.P.(MD)No.22785 of 2018 [**M.Senthilkumaran**].

9.The same proceeding also indicates, that Ryotwari patta for the land in S.No.258/6 Part i.e. 15 cents out of 30 cents and the land in S.No.258/7 was 33 cents was proposed to be issued to one Shanmugam Chettiar who appear to have later sold the land to the predecessor of the title to the said land to the Petitioner in W.P.



(MD)No.22729 of 2018 [**Vanitha and her sister Punitha**]

10.The proceedings of the Settlement Tashildar also indicates that the claimants namely, Madasamy Pillai and Shanumugam Chettiar, claimed rights over the lands as Ryots and were required to pay consideration fixed by the Government.

11.Thus, Patta would have been issued in favour of these two claimants pursuant to the proceedings dated 15.05.1972, if they i.e., Madasamy Pillai and Shanumugam Chettiar or their legal heirs had indeed complied with the above requirements.

12.It is stated that Pattas were issued on 11.06.1973 in favour of Madasamy Pillai and Shanmugam Chettiar. However, there are no records to substantiate the same.

13.Prior to the above proceedings under the said Act, a Suit in O.S.No.71 of 1938 was filed by the respondent temple against occupants to whom the priest had sold the land without the authority of the Temple.

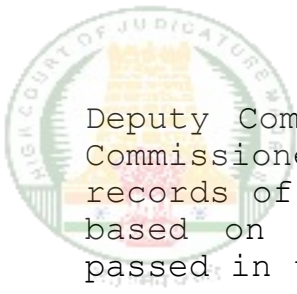
14.The suit was dismissed by the Trial Court. The appeal in A.S No 190 of 1943, the suit was however decreed. A further appeal by occupants in S.A.No.437 of 1943 was dismissed on 04.01.1945. Therefore, the judgement and decree passed by the Court had become final and the title to the land in question stood concluded in favour of the Temple.

15.The occupants lost their case before the Court. It is thus, not clear how these occupants who claimed rights as Ryots.

16.After the disposal of the second appeal, the District Revenue Officer, vide letter No.13275/56B, dated 16.08.1958, had also passed an order of resumption and re-grant the lands to the Temple. Thus, the Temple rights over the property in question stood re-established. Aggrieved by the decision of the District Revenue Officer an appeal was filed by T.Shanmuga Chettiar (one of alienee) before the Sub-Judge, which also appears to have been dismissed on 05.08.1960. These facts were not brought to the knowledge of the Commissioner by the Deputy Commissioner.

17.The order for removal of property survey number was recalled by the 1st respondent, as the then Commissioner had retired and the

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Deputy Commissioner, who advised was transferred. The new Deputy Commissioner after taking charge had gone through the facts and records of the case and has explained the issue to the Commissioner, based on which the Commissioner has recalled the earlier order passed in the year 2017, by order dated 07.05.2018.

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18.The respective petitioners appear to have now decided to sell the lands, but were informed by the Sub-Registrar that the land in the respective survey numbers were included in the list of land owned by the Temple, given by 2nd Respondent.

19.The petitioners approached the 2nd respondent, however, there was no proper response from the 2nd respondent.

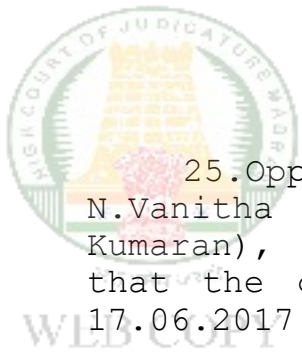
20.The petitioners therefore approached the 1st respondent and after conducting an enquiry and based on the recommendation of the 2nd respondent, the 1st respondent issued an order dated 17/06/2017 for removal of the above mentioned survey numbers from the list of lands of the 2nd respondent Temple Property with the Sub-Registrar.

21.Though the permission was granted by the 1st respondent, the 2nd respondent however did not initiate any steps to remove the said survey numbers. Therefore, the respective petitioners approached the 2nd respondent for implementation of the orders passed by the 1st respondent.

22.Since their representations were not considered by the 2nd respondent, the petitioners had earlier filed Writ Petitions in W.P.(MD)No.3244 of 2018 (N.Vanitha Sanjay) and W.P.(MD)No.4544 of 2018 (M.Senthil Kumaran) before this Court for implementation of the order passed by 1st respondent on 17.06.2017.

23.These Writ Petitions filed by the petitioners were rendered infructuous in the light of the impugned proceedings in these Writ Petitions.

24.The learned counsel for the petitioners referred to a decision of this Court in W.P.(MD)No.2123 of 2013, dated 13.02.2014. It was submitted that under a some what similar situation, this Court interfered and directed the authorities to delete the land in respect of S.No.22/3, measuring an extent of 76 cents out of 1 acre and 36 cents in Thirupparankundram Village, Madurai, from the schedule of property furnished to the Sub-Registrar, Thiruparankundram by the Temple authorities.



25. Opposing the prayer in W.P.(MD)No.3244 of 2018 (filed by N.Vanitha Sanjay) and W.P.(MD)No.4544 of 2018 (filed by M.Senthil Kumaran), the learned counsel for the official respondent stated that the order that was earlier passed by the 1st respondent on 17.06.2017 was recalled.

26. The learned counsel for the official respondents further submitted that earlier, O.S.No.71 of 1938 was filed by the Temple before the Sub-Court, Madurai, against Madasamy Pillai and Shanmugam Chettiar and others, who had made alienations contrary to the service inam. The said suit was dismissed. On further appeal, the first appellate Court in A.S.No.190 of 1940, by its judgment and decree, reversed the decision of the trial Court and thus, the suit was decreed as prayed for by the Temple.

27. It is further submitted that the Second Appeal in S.A.No.437 of 1943 was also dismissed by this Court on 04.01.1945. Thus, it is submitted that the ownership of the land of the 2nd respondent Temple stood concluded by the first appellate Court in A.S.No.190 of 1940.

28. It is submitted that when the earlier order was passed on 17.06.2017 by the 1st respondent, the factum of these earlier proceedings were not brought to the knowledge of the 1st respondent and therefore, the 2nd respondent moved an application, pursuant to which, the impugned order, dated 07.05.2018 was passed by recalling the order, dated 17.06.2017.

29. Opposing the prayer, the learned counsel for the 2nd respondent submits that the petitioners cannot claim right over the lands through their vendors, who were themselves parties to the proceedings before this Court in S.A.No.437 of 1943. It is submitted that though O.S.No.71 of 1938 was dismissed by the Sub-Court, Madurai, on further appeal in A.S.No.190 of 1940, the learned District Judge, Madurai, decreed the suit as prayed for and it stood concluded that Iruwaram (Melwaram and Kudiwaram) stood vested with the Temple all along and that further appeal by the petitioners' vendor in S.A.No.437 of 1943 was dismissed on 04.01.1945.

30. It is submitted that the proceedings of the Settlement Tahsildar under the provisions of the 1963 Act on 15.05.1972 were non-est proceedings and therefore, the sale by the petitioners' vendor to various persons including the petitioner were without authority of law.



31.The learned counsel for the 2nd respondent would further submit that the respective petitioners have an alternate remedy either before a Civil Court to establish that the lands do not belong to the Temple, and belonged to the petitioners' predecessors. It is submitted that if the petitioners were aggrieved, they should file a revision before the Government under Section 114 of the H.R. & C.E. Act.

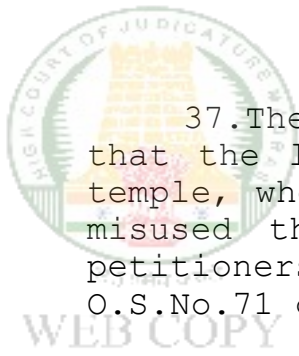
32.The learned counsel for the 2nd respondent would further submit that in the wake of amendment to Registration Act, vide Section 22-A, there is an embargo on registration of lands belonging to the Temple and therefore, the lands in question cannot be registered in favour of the petitioners.

33.It is further submitted that merely because an order dated 15.05.1972 was passed by the Settlement Tahsildar under the provisions of 1963 Act and Patta was directed to be issued on account of the fact that C.M.A.No.451 of 1972 filed by the 2nd respondent against the said order of the Settlement Tahsildar was dismissed by the learned Principal Subordinate Judge [Inam Abolition Tribunal] on 17.02.1977 would not confer a title over the land to the petitioners or their vendors.

34.That apart, it is submitted that earlier order dated 17.06.2017 was passed by the Commissioner based on the wrong report given by the then Deputy/Assistant Commissioner recommending deletion of the temple properties, which included the survey numbers in respect of which the petitioners have obtained sale deed from their vendor.

35.It is submitted that after the previous incumbent was transferred, the new incumbent re-examined the issue and found that the lands in question indeed belong to the Temple and the Iruwarams (Melwaram and Kudiwaram) of the Temple stood established in terms of the judgment and decree of the first appellate Court in A.S.No.190 of 1940 and that the subsequent appeal by the petitioners' vendor in S.A.No.437 of 1943 was also dismissed.

36.It is submitted that since this aspect was not brought to the knowledge of the 1st respondent, Commissioner and therefore, under these circumstances, the impugned order dated 07.05.2018 was passed by the 1st respondent Commissioner based on the recommendation of the Assistant Commissioner and therefore, the said decision cannot be interfered.



37.The learned counsel for the 2nd respondent further submits that the land in question was given long to the Stanikars by the temple, who are officiating rituals in the Temple and that they had misused the trust and had attempted to sell the lands to the petitioners' vendor's predecessors, which has led to filing of O.S.No.71 of 1938.

38.I have considered the arguments advanced by the learned counsel on either side.

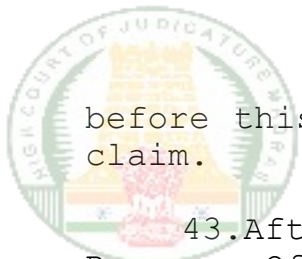
39.The list given by the Temple authorities to the Sub-Registrar on 28.01.2012 in Na.Ka.No.1324/95/E1 in respect of the subject lands indicates that the details of the Temple land in Acres as detailed below:-

Thiruparankundram Village		
Sl.No.	S.No.	Extent of land in Acres
1.	7/1	2.40
2.	258/6	0.30
3.	258/7	0.33

40.The land in S.No.7/1 in Thiruparankundram Village was originally given to Chokka Battar. The land in S.No.7/1 was thereafter transferred to one Visalakshiammal. After her lifetime, her son Madasamy Pillai appears to have enjoyed the possession of the property. After the death of Madasamy Pillai, the Madasamy Pillai's wife Parvathiammal appears to have sold the entire extent by way of three sale deeds in favour of one Kutty Thevar. These dates are not available. After the death of Kutty Thevar, his legal heirs appear to have divided the entire land in S.No.7/1 as plot and sold the Plot Nos.47 & 48 to the petitioner in W.P.(MD)No.22785 of 2018 and Plot No.49 to the sister of the petitioner.

41.As far as the lands in S.Nos.258/6 and 258/7, measuring an extent of 15 and 33 cents are concerned, the land originally was granted to one Manicka Sundara Battar and Chokka Battar, who transferred to a third party and from whom, one Shanmugam Chettiar appears to have purchased the land. These sales appear to have been set aside by the First Appellate Court, vide its judgment and decree in A.S.No.190 of 1940. This is stated to have been affirmed by this Court in S.A.No.437 of 1943, by its judgment and decree dated 04.01.1945.

42.An Appeal Suit filed by the 2nd respondent Temple in A.S.No.190 of 1940 was decreed. Further Appeal in S.A.No.437 of 1943 was dismissed on 04.01.1945. Therefore, the judgment and decree passed by this Court had become final and the Temple has got every right over the lands in question. The occupants lost their case



before this Court therefore, the petitioners have no legal right to claim.

43. After the disposal of the second appeal, the District Revenue Officer, vide letter No.13275/56B, dated 16.08.1958, has passed an order of resumption and re-grant the lands to the Temple. Thus, the Temple rights over the property in question stood re-established. Aggrieved by the decision of the District Revenue Officer an appeal was filed by Shanmugam Chettiar (one of alienee) before the learned Sub-Judge, got dismissed on 05.08.1960.

44. The petitioner in W.P.(MD) No.22785 of 2018 (Senthil Kumaran) claims to have purchased the property, along with his sister M.Devi Sangeetha, to an extent of 7.5 Cents (5 + 2.5) out of 2.40 Acres in S.No.7/1 in Thiruparankundram Village.

45. The petitioner in W.P. (MD) No.22729 of 2018 (N.Vanitha Sanjay) along with her sister N.Punitha purchased the property an extent of 15 Cents and 33 Cents in S.Nos.258/6 and 258/7 respectively in Thiruparankundram Village.

46. The lands in question were earlier sold by the Priest to whom the land was given as Stanikar. The sale was without authority of law and without permission of the 2nd respondent Temple. The sale took place long before the enactment of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and the Tamil Nadu Act No.30 of 1963 viz, the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963.

47. When sales were set aside and ownership of the second respondent was confirmed before the enactment of the Tamil Nadu Act No.30 of 1963 viz, the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. The Settlement Tahsildar in his proceedings dated 15.05.1972, appears to have given permission for grant of Ryotwari Patta to the respective occupants namely, Madasamy Pillai and Shanmugam Chettiar subject to the conditions that they pay the consideration under Section 8(2)(i)(b) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. Section 8(2)(i)(b) of the Act reads as under:-

'8. Grant of ryotwari pattas.-

(1)

(2) *Notwithstanding anything contained in sub-section (1) in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), and in the Tamil Nadu (Transferred Territory) Incorporated and Unincorporated Devaswoms Act, 1959 (Tamil Nadu Act 30 of 1959), the following provisions shall apply in*



the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institutions or for the performance of a charity or service connected therewith or of any other religious charity -

(i) where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession a such land -

(a) for a continuous period of sixty years immediately before the 1st day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land;

(b) for a continuous period of twelve years immediately before the 1st day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be prescribed an amount equal to twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land;''

48. Aggrieved by the aforesaid order of the Settlement Tahsildar, the Temple appears to have filed an appeal before the Subordinate Court, Madurai, in C.M.A.No.451 of 1973. In the aforesaid proceedings, both the Madasamy Pillai and Shanmugam Chettiar were impleaded as respondent Nos.4 and 6. They died pendente lite. The said appeal was dismissed on 17.02.1977. The order dated 17.02.1977, in C.M.A.No.451 of 1973, reads as under:-

''This appeal after restoration having been heard finally on the 3rd day of February, 1977, before me, upon perusing the Appeal Memo, order of the Settlement Tahsildar and other material records and upon hearing the arguments of Thiru P.T.Vijayaraghavachariar, advocate for the appellant, of Thiru S.Narayanaswami Sastri, advocate for the 1st respondent, of Thiru V.S.Ramasubramaniam, advocate for the 2nd respondent, of Thiru T.Rengaraj, advocate for the respondents 3 and 7, of S.Padmanabhan, advocate for the respondents 5, 10 and 12 to 14, of Thiru A.Srinivasa Iyengar, advocate for 11th respondent and of Thiru R.Govindaraja, advocate for respondents 15 to 17 and the respondents 8 and 9



being absent and set exparte and the respondents 4 and 6 having died pendente lite and having stood over to this day for consideration, this Court doth order and decree as follows:-

1.that the order under Appeal be and the same hereby is confirmed and the appeal be and the same hereby is dismissed.

2.that there be no order as to costs.''

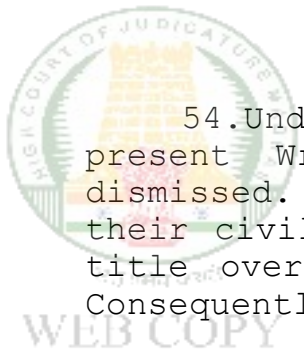
49.The proceedings of the Settlement Tahsildar, dated 15.05.1972, indicate that Patta in S.No.7/1 was to be issued in the name of Madasamy Pillai, the predecessor of M.Senthilkumaran [Petitioner in W.P.(MD)No.22785 of 2018] who has claimed an extent of 2.40.

50.The proceedings of the Settlement Tahsildar also indicates that the claimants namely, Madasamy Pillai and T.Shanmuga Chettiar, claimed rights over the lands as Ryots. They were required to pay consideration fixed by the Government. Patta was said to have been issued on 11.06.1973 in favour of Madasamy Pillai and Shanmugam Chettiar pursuant to the proceedings dated 15.05.1972 of the Settlement Tahsildar. However, it was to be issued subject to the compliance of the above requirements.

51.There is no discussion in the above order whether these persons paid the amount. Be that as it may, it is also not clear whether the legal heirs of Madasamy Pillai and the legal heirs of Shanmugam Chettiar had paid the amount that was to be paid under Section 8(2)(i)(b) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. There are also no documents whether Madasamy Pillai and Shanmugam Chettiar were indeed issued with a Ryotwari Patta on 11.06.1973 to prove the valid title to the lands.

52.There are no documents to substantiate that the petitioners have clear title to the land except for the fact that the persons who claim Ryotwari Patta had approached the Settlement Tahsildar for issue of Ryotwari Patta. In the absence of copy of Patta issued to late Madasamy Pillai and late Shanmugam Chettiar, it may not be correct to assume a valid title was passed on to them during their life time.

53.This issue has to be determined only by a Civil Court after a proper trial. Therefore, the 2nd respondent Temple cannot be forced to delete the survey numbers if there are no records to substantiate that the claimants had indeed complied with the terms of the proceedings of the Settlement Tahsildar, dated 15.05.1972.



54. Under these circumstances, I do not find any merits in the present Writ Petitions. These Writ Petitions therefore are dismissed. However, liberty is given to the petitioners to work out their civil remedy before the Civil Court for a declaration of the title over the subject lands in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

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/ /2022

Sub Assistant Registrar(CS)

jen / smn2

To

The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 34.

+2 CC to M/s.PT.S. NARENDRAVASAN, Advocate (SR-18741[F] dated 13/04/2022)

+1 CC to M/s.SPL.GP (SR-18968[F] dated 18/04/2022)

+1 CC to M/s.V. CHANDRASEKAR, Advocate (SR-19207[F] dated 19/04/2022)

W.P. (MD) Nos.22729 and 22785 of 2018
13.04.2022

RD(13.05.2022) 12P 6C