IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2023	Delivered on: 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.Nos.660 of 2010 & 359 & 360 of 2013
and
C.M.P.No.4680 of 2022

W.A.No.660 of 2010

Arulmighu Thiruvateeswarar Devasthanam

Triplicane, Madras - 5

Rep. by its Executive Officer .. Appellant / Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by its Secretary

Land Administration Department

Fort St. George, Chennai - 9.

2.The Settlement Tahasildar – II,

Chengalpattu.

3.The Settlement Officer,

Thanjavur.

4.The Special Commissioner and

Commissioner of Land Administration

Chepauk, Chennai - 5.

5.S.P.Mohansundaram

6.Saroja

7.Palani Mudaliar K.

8.S.K.Karunakaran

9.S.K.Rajendran

10.C.S.Gopalakrishnan

11.K.N.Velusamy

12.P.Sivagami Ammal

13.R.Krishnaveni Ammal

14.K.Rajeswari

15.K.R.Selvaprakasam

16.A.Nagappan

17.T.C.Jayammal

18.M.Thangamani

19.V.R.Srinivasan

20.E.Devarajan

21.E.T.Nirmala

22.Prema Arthur

23.V.N.Kothandaraman

24.C.Padmavathi Ammal

25.R.Babu

26.R.Gopalakrishnan

27.K.Rajalakshmi

28.J.Bhoopathy

29.E.Nagabushana Rao

30.S.Kanagam

31.S.P.Dhananjayan

32.M.B.Thanigaivelu

33.Sajeeda

34.Nazima

35.Syed Mohammed

R33 - Syed Abdul Kadir died substituted R 33 tot R35 vide order dated 27.03.2023 made in CMP.No.3786/2023

36.J.Suryanarayanan

37.V.Krishnakumar

38.M.V.Devaraj

39.Rupchand M.Shah

40.Mafibhan R.Shah

41.A.Krishnamurthy Rao

42.T.Arumuga Naicker

43.Syed Nooruddin

44.A.Arumuga Chettiar

45.E.Panchaksharam

46.C.D.Devasenan

47.A.Marimuthu

48.G.Ramiah

49.S.Jebathai Ammal

50.P.K.Sundram

51.S.P.Soundarapandian

52.Dhanarathina Sivakumar

53.T.Vijayammal

54.Moulvi. Mohamed Riyasathullah

55.S.Mohana

56.K.Chandrasekaran

57.A.Babulal Bokadia

58.Krishna Pillai

59.S.Visalakshi Ammal

60.C.K.Rajendran

61.Padmasini Shanmugam

62.K.Sridevi

63.R.Humara Begam

64.Radha Ammal

65.Tharani Kumar

66.Dilli Bai

67.M.Loganathan

68.G.Alamelu

69.B.Dhanalakshmi

70.Vittal Rao

71.E.V.Parthasarathy

72.Amsa

73.P.Murali

74.V.Santhanakrishnan

75.N.Karunanidhi

76.Jayabhai Benedict

77.V.Abraham

78.R.V.Baskaran

79.S.Govindarajan

80.Leela Ammal

81.S.Subbulakshmi

82.F.R.Shakir

83.M.Shanthi

84.L.Natarajan

85.J.Ramani

86.Shanthi Devichanden

87.V.Siva Raman

88.V.Tharanipathy

89.N.Chandra Kantha Bai

90.K.Premila

91.K.Bhavaneswari

92.Athiya Shakir

93.D.Ranganathan

94.Kamala Devi

95.P.E.Sundaramurthy

96.A.Anbazhagan

97.Janab Jailani Beevi

98.M.I.Waheeda Begam

99.M.I.Yasmin Sulthana

100.M.I.Feroza Sulthana

101.M.I.Masooda Begam

102.Dr.D.Saravana Muthu

103.S.Devaraja Chettiyar

104.R.Shanmugam

105.Manak Chand

106.G.Naresh Kumar

107.G.Shreepal Kumar

108.G.Prakash Chand

109.G.P.Jain

110.P.D.Sivaji

111.Kotteswaraiah

112.V.R.Subramanian

113.Ghulam Abid Ali Khan

114.G.Hari Babu alias G.H.Babu

115.G.H.Chandra

116.P.Kasthuri

117.S.Sathya Booshanam

118.V.C.Rao

119.T.S.Prakasam

120.Somasundaram

121.B.M.Narayanaswamy (died)

122.K.Mohanakumar

123.K.Sridhar

124.S.K.Meenakshi Sundaram

125.Selvi S.K.Sathyakumari

M.Bharathi died R122 to 125 brought on record as LRs of deceased M.Bharathi vide order dated 27.03.2023, in

CMP.No.8573 of 2022

126.V.S.Singaravelu

127.B.Shanthi

128.R.V.Bhaskar

129.L.S.Lakshmi @ C.Lakshmi Prasad

130.S.P.Loganathan

131.M.Shyamala

126.V.S.Singaravelu

127.B.Shanthi

128.R.V.Bhaskar

129.L.S.Lakshmi @ C.Lakshmi

130.S.P.Loganathan

131.M.Shyamala

132.R.Vijayalakshmi

133.S.Vijayalakshmi

134.S.Rithika Meenakshi

135.P.Gnanasakthi

136.B.Premila

137.P.Sivaprakash

138.R.Suguna

139.Venkatraman Palani

140.P.Subramani

141.S.Amudha Rajendran

142.Balakumar Rajendran

143.Divya Kugan

144.G.Ganesan

145.G.Kandaswamy

146.G.Gangadharan

147.G.Ramesh Kumar

148.G.Jayashankar

149.V.Lakshmi

150.K.N.V.Sundareswaran

151.K.Geetha

152.Sahunkuthala

153.S.Sundar

154.Shanthi

155.Ravi Shankar

156.Revathi

157.N.Saraswathy

158.N.Uma Devi

159.M.Mahalakshmi Devi

160.S.Barathy Devi

161.M.Hemavathy

162.D.Sundararajan

163.D.Mohanraj

164.V.Chitralekha

165.B.Vijayalakshmi

166.M.Bakkiyalakshmi

167.B.Murali Krishnan

168.A.Saraswathi

169.A.Balasubramanian

170.A.Parimala

171.Syed Nizamuddin

172.Ayesha

173.Syed Moimuddin

174.Khousalya Bai

175.Kirubanamdhavari

176.Nagalakshmi

177.Harikrishnan

178.Kalavathi

179.Banumathi

180.Latha

181.Chandra

182.Selvaraj

183.Devaraj

184.Samraj

185.Anandabala

186.Asirvatham

187.Agastin

188.Roselin

189.P.S.Jagatheesan

190. Udayakumar

191.S.Meenakshi

192.P.Jeyalakshmi

193.S.Hemavathi

194.S.Hari Raman

195.K.Sivakumar

196.S.Soundarya

197.S.Shenbagam

198.K.Logambal

199.V.Thavamani

200.K.Muralidharan

201.Chandra

202.G.Krishna Kumar

203.R.Kanchana

204.C.R.Balasubramanian

205.C.R.Kamala Bai

206.K.Sakku Bai

207.V.Naindara

208.V.Parvathybai

209.V.Chandrakala

210.V.Kamala

211.V.Revathy

212.S.Lalitha

213.T.Nisha

214.Rajyalakshmi

215.S.Shalini

216.Samuel Ebenezer

217.Daniel Benedict

218.Angelin Abraham

219.Lalitha

220.Malini

221. V.Shanmugha Sundaram

222.Maragathavalli

223.Athiya Shakir

224.Nazreen Jehangir

225.Jawahar Molchane

226.Dhavakaval Chanden

227.Praveen Chanden

228.Rajesh Chanden

229.Dhilip Chanden

230.N.Malabai

231.K.Bhuvaneshwari

232.B.Umayaparvathi

233.D.Kasthuri

234.Devasena

235.D.Srinivasan

236.Satyapankajam

237.Arungalai Selvi

238.Deva Priya

239.R.Vigaasini

240.Manakchand

241.G.Nareshkumar

242.M.Vasantha

243.Shreepal

244.G.P.Jain

245.V.Vedavalli

246.S.Sugumaran

247.R.Akila

248.G.Samundeswari

249.J.Girija

250.P.Indirani

251.V.Kalaiselvi

252.Tamarai Selvi

253.Malarvizhi

254.Sivakumar

255.S.Velambal

256.R.Devika

257.Tamilselvi

258.S.Gopi

259.S.Kumar

260.S.Balasubramani

261.N.Leelavathi

262.M.Vasantha Lakshmi

263.N.Viswanathan

264.N.Venkatesh

265.Jaganath

266.Swaran

267.Sowmya

268.Ajay

269.Noorjehan Shakir

270.S.P.Dhanaraj

271.S.Mahendran

272.Dr.Meera Thinakaran

273.Ankit Navlakha

274.S.Valailyapathy

275.P.Sakunthala Ammal

276.T.S.Ganesan

277.S.Thanu Krishnan .. Respondents /Respondents

(*R269 to R279 are impleaded, vide order of court dated 14.09.2023 made in C.M.P.Nos.19262/2023,18768, 18769, 18770, 18771, 18772, 18773, 18774 of 2017 and 8574 of 2022 in W.A.NO.660 of 2010 (DKKJ & PBBJ)

Prayer:- Appeal filed under Clause 15 of Letters Patent, against the judgment in W.P.No.7649 of 2002, dated 04.12.2009 passed by the learned Single Judge of this Court.

For Appellant : Mr.N.R.Elango, Senior Counsel
for Mr.Manuraj

For Respondents : Mrs.Geetha Thamaraiselvam
Special Government Pleader for R1 to 4

: Mr.D.Kanagasundaram
for R5, 6,8,13,18,19,21,24,25,27,30,31,
32 to 35, 37,38,41,45,48,53 to 55,57,
63 to 67,71 to 75,78 to 80,83,85,88, 91,95,

96, 98 to 101, 103 to 107,110,111,
115 to 117, 126, 129, 131.

: Mr.T.N.Rajagopalan
for R135, 136, 137, 140 to 150, 152 to 155,
168 to 173, 181 to 187, 189, 191 to 194,
202, 212, 216, 221 to 224, 230, 231, 232,
237, 238 to 244, 246,250, 252, 254, 258.

: Mr.V.Ragavachari, Senior Counsel
for Mr.P.Suresh Babu for R132 to 134

: Mr.S.Vijayakumar, Senior Counsel,
for Mr.G.Baharadwaj for R122 to 125

: Mr.C.Jagadish
for R261, 262, 264, 265 to 268

: Mr.Adithya Reddy
for R39 & 40

: Mr.S.Sethuraman for R247

: No appearance for R12, 53, 92, 97, 108,
109,114, 127, 128

W.A.Nos.359 & 360 of 2013

1.The Inspector General of Registration,
Santhome High Road,
Chennai – 600 028.
2.The Sub Registrar,
Triplicane, Chennai-600 014. .. Appellants /Respondents

V.

1.M.Latha ... Respondent / Petitioner

2.The Executive Officer,
Arulmighu Thiru Vakeeswarar Thirukoil,
Thiruvateeswaranpettai,
Triplicane, Chennai – 600 005. ... 2nd Respondent

(R2 impleaded as party respondent vide order of the Court, dated 18.06.2013 made in M.P.No.3/2013)

Prayer:- Appeals filed under Clause 15 of Letters Patent, against the judgment in W.P.Nos.3057 and 3951 of 2012, dated 12.03.2012 passed by the learned Single Judge of this Court.

For Appellants : Mrs.Geetha Thamaraiselvam
Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by **P.B.BALAJI,J.**)

W.A.No.660 of 2010 is at the instance of the temple, the writ petitioner in W.P.No.7649 of 2002. Writ Appeals, W.A.Nos.359 and 360 of 2013 are at the instance of the Inspector General of Registration, Chennai - 28, who was the first respondent in W.P.Nos.3057 and 3951 of 2012.

2. All these Writ Appeals have been clubbed together in view of the common issue involved in all the three matters and were heard together.

3. W.P.No.7649 of 2002, in respect of which W.A.No.660 of 2012 has been filed was at the instance of the temple, seeking issuance of a Writ of Certiorari, to quash the proceedings on the file of the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai - 5, in R.Dis.K1/R.P12/95, dated 19.12.2001.

4. Writ Petitions in W.P.Nos.3057 and 3951 of 2012 were filed against the Inspector General of Registration and the Sub Registrar, Triplicane, Chennai, where the writ petitioners therein sought for issuance of Writ of Mandamus, to direct the Registration authorities to register pending documents which were presented for registration, without insisting on any No Objection Certificate from the H.R. & CE Department.

5. Insofar as W.P.No.7649 of 2002 is concerned, it was the case of the appellant that the appellant is a religious institution and as early as 01.11.1734 and 10.08.1787, by way of grants of Inam lands, forming part

of the then Pudupakkam village and now Royapettah, owned by the Nawab, were bestowed on the appellant after entering of the East India Company into Chennai. The grants being religious in nature and in favour of the petitioner, they came to be called as “Thiruvateeswarar Shothrium”.

6. It is the specific case of the appellant that they did not have the cowls granted from the East India Company and also the grant, viz., title deed in their favour. However, the appellant produced extract of “Quit Rent Register”. It is the further case of the appellant that after coming into existence of the Tamil Nadu Minor Inams (Abolition and Conversion in to Ryothwari) Act, 1963, Tamil Nadu Act 30/1963, the settlement Tahsildar passed an order on 25.05.1971, granting patta to the respondents in the writ petition. The appellant did not appear for the enquiry, despite notice being served on them. The settlement Tahsildar proceeded to hold that the grant in favour of the appellant is only “Melvaram”, which is a right to collect “Quit Rent” and not Kudivaram rights and held that the lands and buildings belong to the occupants, namely, the respondents. Further, some of the lands were classified as “Poramboke lands” in the said order of the Tahsildar and therefore, aggrieved persons filed a revision

before the Settlement Officer, Chengalpet and the same came to be allowed in favour of the aggrieved respondents. Thereafter, after a delay of 11 years, the appellant filed a revision challenging the proceedings of the Settlement Tahsildar, Chengalpet, dated 25.05.1971 and the said revision came to be dismissed on 20.06.1982 as barred by limitation. Thereafter, the petitioner filed a revision before the Settlement Officer in R.P.No.12 of 1988, on 06.09.1984 and the said revision was allowed in favour of the appellant on the ground that there has to be a presumption drawn under Section 44 of Tamil Nadu Act 30 of 1963, in favour of the appellant and therefore, the appellant is entitled to get patta.

7. Challenging the said order in favour of the appellant, the respondents 5 to 126 preferred a revision before the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai – fourth respondent herein, who allowed the same and set aside the order passed in R.P.No.12 of 1988. Aggrieved by the said order, the appellant has filed the Writ Petition in W.P.No.7649 of 2002, seeking to set aside the order of Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai, dated 19.10.2001.

8. On the side of the respondents, counter affidavits were filed stating that the appellant has not produced 2 cowls which alone would be in the nature of grant in favour of the appellant and no title deeds were also produced admittedly and therefore, adverse inference should be drawn against the appellant. They have also contended that the pattas have been issued in the name of private parties, which clearly stipulates that payment of "Quit Rent", namely, land tax amount has to be paid and therefore, the appellant never held any Inam land in their favour and sought for dismissal of the Writ Petition.

9. The Writ Court, after considering the various submissions and contentions canvassed before it, held that the order of the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai, was proper and did not warrant any interference and ultimately, proceeded to dismiss the Writ Petition and accordingly, dismissed the Petition.

10. Aggrieved by the said order of the Writ Court, the appellant

has filed the Writ Appeal No.660 of 2010, on the grounds that the appellant was entitled to grant of ground rent patta under Section 13 of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act 1963, Tamil Nadu Act, 30 of 1963; the fact that two cowls were granted to the appellant was never in dispute; under Section 44 of the Tamil Nadu Act, 30 of 1963, there is a presumption that all grants by way of Inam falling under the Act are presumed to be, where the grant is to a religious institution, as consisting of both the Melwaram and Kudiwaram rights; the appellant has not alienated the land granted to it by way of Inam; burden was on the respondents to rebut the presumption under Section 44 of the Act; The Madras Town Survey Register was produced and was admitted by the respondents themselves to be true and in such circumstances, the Writ Court erred in not relying upon the same; the Writ Court failed to see that even the document relied on by the respondents established their liability to pay "Quit Rent" to the appellant temple, which clearly acknowledged title of the appellant; the respondents have not placed and proved any acceptable material to draw an inference that what was granted in favour of the appellant was only Melwaram rights; the Writ Court erred in holding that the appellant was collecting only land tax by way of revenue and not rent;

the Writ Court failed to see that the land acquisition proceedings were only in favour of the appellant alone; the Writ Court erred in holding that the respondents had successfully dispelled the presumption under Section 44 of the Act; the Writ Court ought not to have interfered with the finding of the fact, exercising jurisdiction under Article 226 of the Constitution of India.

11. Urging the above grounds, amongst several other grounds, the unsuccessful writ petitioner prays for the order of the Writ Court being set aside.

12. Insofar as the W.P.Nos.3750 and 3759 of 2012, the case of the writ petitioner was that the writ petitioners had purchased undivided share of lands for construction of flat and after paying necessary registration fee and stamp duty, sale deeds were presented for registration. The Sub Registrar, Triplicane, who is the second respondent in the writ petition, kept them as pending documents and insisted on production of a No Objection Certificate from the HR & CE Department. Aggrieved by the same, the petitioners filed Writ Petitions, seeking issuance of Writs of Mandamus, citing Section 22-A of the Registration Act as it then stood had

been struck down. Therefore, it was urged by the writ petitioners therein that there was no justification to refuse registration as per G.O.(Ms) No.150, Commercial Taxes Department, dated 22.09.2000, when it was also challenged before this Court and in view of Section 22(A) having struck down, it was held that the notification issued thereunder was also illegal and invalid. It is also stated by the writ petitioners that pursuant to an order in W.P.No.7237 of 2006, the Government has also withdrawn the notification itself. Therefore, according to the writ petitioners therein, they were entitled to register the sale deeds presented and the authorities could not insist on a No Objection Certificate from the HR and CE Department. The Writ Court had referred to an earlier Writ Petition in W.P.No.29896 of 2011, where similar Mandamus was sought for and the said writ petition was allowed in line with the order in the earlier Writ Petition. The Writ Court allowed the writ petition and directed the Registration Department to register the pending documents, without insisting on a No Objection Certificate from the HR and CE Department.

13. Aggrieved by this common order in W.P.Nos.3057 and 3951 of 2013, Writ Appeals in W.A.No.359 and 360 of 2013 have been filed by

the Registration Department, who were the respondents in both the Writ Petitions. The grounds of challenge in these Writ Appeals, W.A.Nos.359 and 360 of 2013 are that the Writ Court failed to see that the lands belonging to the temple, which were coming within the purview of the Tamil Nadu HR & CE Department and Section 34 (1) of the said Act. There was a clear prohibition of any sale, exchange or mortgage and any lease for a term exceeding five years of immovable property either belonging to or given or endowed for the purposes of any religious institution and that any contravention to the said provision would only be null and void, unless and until if the same was sanctioned by the Commissioner functioning under the HR and CE Department; the Writ Court failed to notice that Act 2 of 2009 was never stayed by this Court and in W.P.Nos.9030 to 9033 of 2009, only Section 22-A (2) of the Registration Act had been stayed; the Writ Court failed to consider that identical issues were referred to the Full Bench of this Court and the same was pending at that time; the Writ Court failed to see that under Section 71 of the Registration Act, the registering authority has power to refuse Registration, when there was "sufficient cause". Canvassing these grounds among other grounds, the Registration Department has prayed for the orders passed in Writ Petition Nos.3057 and 3951 of 2012, dated 12.03.2012, to be set aside.

14. We have heard the learned counsel on either side. We have paid anxious and careful consideration to the submissions advanced by the parties and we have also perused the material records placed before us by way of typed sets. We have also carefully gone through the impugned order in all the three Writ Petitions.

15. If the contentions and issues in Writ Appeal No.660 of 2010 are decided first, then automatically, the decision in the other two Writ Appeals, namely, W.A.Nos.359 and 360 of 2013 would follow. Therefore we take up W.A.No.660 of 2010 first.

W.A.No.660 of 2010:

16. The case of the appellant is that as early as on 25.05.1971, the Settlement Tahsildar, passed an order under the Tamil Nadu Act 30 of 1963, granting pattas to the contesting respondents. It is an admitted position that despite being served with notice, the appellant did not participate in the proceedings before the Settlement Thasildar. The

Settlement Tahsildar examined as many as 126 witnesses and documents submitted before it and also after field staff inspected the properties, proceeded to grant patta. The specific findings of the Settlement Thasildar were that both the land and building belong to the occupants and it was only Melwaram, that is land revenue tax that was collected from them and not rent. Though the appellant woke up late and sought to challenge the order of the Settlement Tahsildar, after a long delay of 11 years, the appellant was unsuccessful as the revision was dismissed as being barred by the law of limitation. However, Revision against the said rejection of the revision filed by the appellant came to be allowed in R.P.No.12 /1988, as against the reversing finding rendered in R.P.No.12 of 1988, the respondents preferred a revision before the Special Commissioner and Commissioner of Land Acquisition and a detailed order came to be passed on 19.12.2001, setting aside the order in R.P.No.12 of 1988 and restoring the order of the Settlement Tahsildar in favour of the respondents. It is aggrieved by the said order that the temple chose to approach this Court and sought for a Writ of Certiorari.

17. The learned Senior Counsel, Mr.N.R.Elango, appearing for

the appellant would revolve his submissions mainly on the following grounds, namely, (i) Section 44 of the HR and CE Act and its scope and legal effect have not been properly addressed by the Writ Court; (ii) the Writ Court failed to see that the burden was only on the respondents to prove that the grant in their favour was both Warams, namely, Melwaram as well as Kudiwaram and no satisfactory evidence was let in by the respondents (iii) the expression "Quit Rent" has been misconstrued by the Writ Court and the Special Commissioner did not even undertake a proper exercise in examining the evidence produced by the individual revision petitioners, namely, the respondents herein and dispose of the matter, namely, a batch of 120 odd cases, merely referring to the documents produced only by some of them, which the Writ Court has failed to take note of.

18. Per contra, the learned counsel for the respondents would submit that the appellant has slept over its right from the very beginning and despite having been given an opportunity before the Settlement Tahsildar in 1971, they did not avail of the same and after examining 126 witnesses, the Settlement Tahsildar passed a considered order in favour of

the respondents. The said order was allowed to become final until 11 years, thereafter, when a revision was filed by the appellant, which was rightly dismissed as time barred. Further, the revision was also filed belated, after lapse of 3 years, but, unfortunately, the delay was condoned and the revision came to be allowed on erroneous grounds. However, on further revision at the instance of the respondents, the Special Commissioner and Commissioner of Land Administration, rightly set aside the order of the Settlement Officer and the Writ Court has also elaborately considered all the grounds projected by the appellant and found that there was no warrant to interfere with the order of the Special Commissioner and thereby, dismissed the Writ Petition. The respondents, therefore, prayed for dismissal of the Writ Petition.

19. Section 44 of the Act 30 of 1963, is extracted as follows:

> *"44.Presumption in the case of service inam.- In proceedings under this Act relating to any inam granted for the benefit of any religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall*

be presumed, unless the contrary is proved that the inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein."

20. A reading of the above provision placed, a clear rebuttable presumption, inspection any religious educational or charitable institution that the Inam in its favour shall consist of not only a ground of "Melwaram" in the land, but, also "Kudiwaram" rights. The Writ Court has rightly interpreted the said Section and held that it is the presumption available to the appellant under Section 44 was a presumption of fact and was rebuttable at the instance of the respondent, who sought for patta. However, the Writ Court at paragraph No.21 has held as follows:

"........

21. The presumption under Section 44 of Act 30 of 1963 is a presumption of fact. In other words, the presumption is one rebuttable presumption at the instance of a party who seeks patta under the Act. In the present case on hand, the contesting respondents have clearly dispelled the presumption as observed by the 4th respondent and that is the reason why the revision filed by them has been allowed based upon the documents which are very ancient in nature."

21. We have perused the order of the fourth respondent, namely, the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai. In the said order of the fourth respondent, though the fourth respondent has discussed the scope of Section 44 of the Tamil Nadu Act 30/1963 and also the entitlement under Section 8 of the Act, the fourth respondent has held at paragraph Nos.21 & 22 of which the order is as follows:

> *" 21. In the arguments put forth by learned counsel for Thiru. M.Narayanaswamy and Thiru. Somasundaram among other points a mention was made of a eligibility of patta under Section 8 of the Act for the lands in R.S.No.1282/2 and 1213/6 of Pudupakkam Village. Perusal of the file of Settlement Tahsildar relating to the proceedings shows that the Tahsildar has considered documentary evidences like Certificate issued by the Collector of Madras which mentions about the existence of the buildings in the lands. The ownership of the lands has been traced from 1734 onwards. There is evidence about payment of "Quit Rent" to the temple in this case also. Hence this is also a case similar to the case of Revision petitioners discussed above. Therefore, the orders of the*

Settlement Tahsildar is found to be correct.

22. As discussed above there is enough evidence in this case to prove the Kudiwaram rights of the occupants and hence the presumption under Section 44 is clearly dislodged. The Settlement Tahsildar issued patta in his proceedings No.GRSR No.37/MSE/Act 30/63, dated 25.05.1971 to 252 persons after verifying documents and field inspection which is in order. Hence the orders passed by the Settlement Officer, Thanjavur, in his proceedings R.P.No.12/88, dated 10.08.1995 is hereby set aside and the orders passed by the Settlement Tahsildar, Chengalpattu, in GRSR No.37/MSE/Act 30/63, dated 25.05.1971 is confirmed."

22. Unfortunately, on an entire reading of the order of the fourth respondent, it is seen that though as many as 126 persons claimed pattas, attacking the presumption in favour of the appellant, the fourth respondent has not discussed any of the documents filed on behalf of the 126 revision petitioners before it. On the contrary, referring to, merely one or two documents, the fourth respondent has chosen to treat all the 126 cases on the same footing, without adverting to the facts and circumstances of each individual case. The said approach of the fourth respondent is beyond

comprehension. The grant of patta to an individual would depend on his individual right and entitlement to the same. More so, in that instant case, where there is already a presumption in favour of the appellant, admittedly, the burden is heavier on the persons claiming patta, who have to successfully rebut presumption in favour of the appellant. That being the position, the manner in which, the fourth respondent has gone about deciding the 126 cases cannot be countenanced. Though it is strenuously contended by the learned counsel for the respondents that all 126 revision petitioners before the fourth respondent had produced their respective documents under which they were claiming right and clearly rebutting the presumption in favour of the appellant, the same has not been referred to in the order and just because there is no mention about the individual documents, the order of the fourth respondent cannot be set aside, since the respondents have produced all materials before the fourth respondent.

23. Insofar as the 119th respondent in the writ petition, who is the 121th respondent in the Writ Appeal, and pending the above writ appeal, he has passed away and his legal heirs have been substituted as respondents 261 to 268. It is contended by some of his legal heirs, namely, respondents

261, 262 and 264 that in respect of the said deceased, M.Narayanasamy's property, the temple had earlier filed a suit in O.S.No.2685 of 1974 and subsequent to issues being framed in the suit, the appellant chose to withdraw the suit on 01.04.1976, thereby, giving up all the claims against the deceased M.Narayanaswamy. It is also brought to our notice that the Government has also passed G.O.(Ms).No.1103, dated 21.05.1979, granting exemption to M/s.Wood Lands Hotel, in which, the said Mr.M.Narayanasamy was one of the partners.

24. The learned counsel for the respondents 261, 262, 264 and 265 to 268, Mr.C.Jegathish would contend that the appellant can have no quarrel with regard to their right. However, we find from the grounds raises in writ petition that a specific ground has been raised insofar as the said 121st respondent, namely, Mr.M.Narayanasamy, viz., ground No.17, where it is contended that the Commissioner erred in holding that building existed on the date of notification that there was no evidence forthcoming in that regard and therefore, being vacant land on the date of notification, the Commissioner erred in applying Section 13 instead of considering the Claim under Section 8 of the Act 30/1963. Moreover, all the legal heirs are

not before us and it is only three of them, who contend that Mr.M.Narayanasamy's pattas cannot be recalled or cancelled.

25. Be that as it may, we have already found that the approach of the fourth respondent was highly unsatisfactory. Section 8 of the Act 30/1963 deals with the grant of Ryotwari patta. Section 8(2) specifically deals with Inams granted for support or maintenance of a religious institution or for purpose of a Charity or service or connected therewith or any religious charity. Before becoming entitled to grant of Ryotwari patta under Section 8, the person, seeking such patta, who has established that the land was transferred by resale and that the transferee or heir, assignee legal representative or person deriving the rights through him, have been in exclusive possession of the land for continuous period of 60 years immediately before first of April, 1960 or for a continuous period of 12 years immediately before first of April 1960. These conditions have to be satisfied by the respondents.

26. It is specifically contended by the appellant that the

respondents have not been able to show that there has been any transfer of interest and the fourth respondent has not adverted to the fact that there has been no compliance of the provisions of the Act 30/1963. Unfortunately, the Writ Court has also accepted the case of the respondents that they have clearly proved their entitlement to get patta under Section 30/1963 of the Act, as they had put up construction a long time ago. The fourth respondent has also not discussed the provisions of the Act, namely, Sections 8 and 13 and the Act 30/1963 in a proper perspective and have clubbed more than 100 cases together and decided the issue without independently applying the facts of each case of the respondents and see whether the case falls under Section 13 or under Section 8 and if so whether they are entitled to grant of patta. Only if such a process is adopted, the presumption under Section 44 of the Act in favour of the appellant's can be dislodged. Though we are not in a position to give any finding with regard to the claim of the respondents that individually all of them submitted their title documents and the relevant documents before the fourth respondent along with the writ petitions, without going into the merits or demerits of such claim, we feel that substantial justice could be done only if the matter is remitted back to the fourth respondent to individually consider all the claims of the respondents.

27. It is also brought to our notice that many of the original respondents have passed away and their legal heirs are in possession of the respective properties.

28. In view of the above discussions, we find that the order of the fourth respondent impugned in the Writ Petition is liable to be set aside and accordingly, set aside. The Writ Appeal in W.A.No.660 of 2010 stands allowed, by remitting the matter back to the fourth respondent, namely, the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai, with a direction to fix a date for enquiry and consider all the cases individually /independently and decide the claims of the respondents, after hearing the appellant temple in accordance with law. Wherever the original owners, who are respondents in the writ petitions are not alive, the fourth respondent shall issue notices to the legal heirs, who would be entitled to represent the estate of such deceased respondents.

29. The fourth respondent shall also consider the documents that

are said to have been filed by the respondents along with the revision petitions while challenging the order of the Settlement Officer granting patta in the name of the appellant temple. The parties shall be entitled to adduce further oral and documentary evidence before the fourth respondent and the fourth respondent shall consider on merits, each of the petitions individually and shall ensure that the revisions are disposed of as expeditiously and not later than four months from the date of receipt of a copy of the judgment.

W.A.Nos.359 and 360 of 2013

30. These two Writ Appeals will be subject to the come out of the proceedings before the fourth respondent. In the event of the fourth respondent holding that the respondents in the Writ Appeals, are entitled to grant of patta, then the order in W.P.Nos.3057 and 3951 of 2012 shall be complied with by the appellants in these two writ appeals, namely, Registration Authorities.

31. However, in the event of the fourth respondent holding that the appellant is entitled to patta, the writ appeals filed by the Registration Department, would automatically stand allowed and the respondents would

not be entitled to any indulgence directing the registration of their respective sale deeds, without a No objection Certificate from the HR & CE Department.

32. The Writ Appeals W.A.Nos.359 and 360 of 2013 stand disposed of and W.A.No.660 of 2010 stands allowed by remitting the matter to the fourth respondent, the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai, to decide each of the respondent's case individually, after giving an opportunity to the appellant temple and also hearing both the appellant as well as the respondents concerned and pass orders in accordance with law. We make it clear that the private respondents shall satisfy the fourth respondent for their entitlement for grant of patta strictly in accordance with the Act No.30 of 1963 without any deviation. In case those revisions are liable to be set aside, the authorities concerned shall take necessary further course of action in accordance with the provisions of the relevant Act and Rules.

33. In fine, with the directions issued in paragraph Nos.28 & 29 herein above W.A.No.660 of 2010 is allowed and in line with the

discussion in paragraph Nos. 30 & 31, W.A.Nos.359 and 360 of 2013 are disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K.J.) & (P.B.B.J)
08.11.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls/kpr

To

1.The Secretary
Land Administration Department
Fort St. George, Chennai - 9.

2.The Settlement Tahsildar – II,
Chengalpattu.

3.The Settlement Officer,
Thanjavur.

4.The Special Commissioner and
Commissioner of Land Administration
Chepauk, Chennai - 5.

D.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J

Ls/kpr

Pre-delivery judgment in
W.A.Nos.660 of 2010 & 359 & 360 of 2013

08.11.2023