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W.P. Nos.4699 & 26785 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.4699 & 26785 of 2021
and WMP.Nos.5319, 5320, 28223 and 28224 of 2021

W.P.No.4699 of 2021

N.Selvaraj

... Petitioner

-Vs-

1. The State of Tamil Nadu
Represented by Secretary to Government,
Revenue Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Tiruppur District, Tiruppur.
4. District Revenue Officer,
Tiruppur District, Tiruppur.
5. The Tahsildar,
Avinashi Taluk,
Tiruppur District.
6. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
188, Sakthi Nagar, Koyampalayam,
Thiruppur – 2.

... Respondents



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare the classification of petitioner's land classified as Government Land in the updated revenue records published in the website of Revenue Department from the year 2017 and all connected records as illegal in respect of the land measuring an extent of Acres 9.42 cents in S.No.112/1 and another extent of Acres 3.47 cents in S.No.113/1 situated at Pongalur Village, Avinashi Taluk, Tiruppur District is null and void and consequently direct the respondents to issue patta in the name of the petitioner for the subject lands.

W.P.No.26785 of 2021

N.Selvaraj

... Petitioner

Vs.

1. The District Revenue Officer,
Tiruppur District, Tiruppur.
2. The Revenue Divisional Officer,
Tiruppur, Tiruppur District.
3. The Tahsildar,
Avinashi Taluk,
Tiruppur District.
4. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
188, Sakthi Nagar, Koyampalayam,
Thiruppur -2.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India



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praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 23.08.2021 vide proceedings No.Na.Ka.6769/2021/J1 passed by the 1st respondent and quash the same as illegal and unconstitutional and consequently direct the respondents 1 to 3 to transfer the patta, in respect of the property measuring an extent of Acres 9.42 cetns in S.No.112/1 and another extent of Acres 3.47 cents in S.No.113/1 situated at Pongalur Village, Avinashi Taluk, Tiruppur District in favour of the petitioner and legal heirs of the petitioner's father.

For Petitioner : Mr.S.Thanka Sivan
[in both W.Ps.]

For Respondents : Mr.P.Sathish
[in both W.Ps.] Additional Government Pleader
[R1 to R6 in W.P.No.4699 of 2021
and R1 to R3 in W.P.No.26785 of
2021]

Mr.M.Babu Muthu Meeran [R7 in
W.P.No.4699 of 2021 and R4 in
W.P.No.26785 of 2021]

COMMON ORDER

Since the issue raised in these writ petitions is one and the same and interconnected with each other, with the consent of learned counsel appearing for the petitioner as well as the learned Additional Government Pleader and the Standing Counsel appearing for the respondents, these



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writ petitions were heard together and are disposed of by this common order.

2. W.P.No.26785 of 2021 has been filed seeking for a writ of Certiorarified Mandamus to quash the impugned proceedings of the first respondent in .Na.Ka.6769/2021/J1 dated 23.08.2021 and consequently direct the respondents 1 to 3 to transfer the patta, in respect of the property measuring an extent of Acres 9.42 cetns in S.No.112/1 and another extent of Acres 3.47 cents in S.No.113/1 situated at Pongalur Village, Avinashi Taluk, Tiruppur District in favour of the petitioner and legal heirs of the petitioner's father.

3. W.P.No.4699 of 2021 has been filed seeking for a Writ of declaration to declare the classification of petitioner's land classified as Government Land in the updated revenue records published in the website of Revenue Department from the year 2017 and all connected records as illegal in respect of the land measuring an extent of Acres 9.42 cents in S.No.112/1 and another extent of Acres 3.47 cents in S.No.113/1 situated at Pongalur Village, Avinashi Taluk, Tiruppur District and null and void and consequently direct the respondents to issue patta in the name of the petitioner for the subject lands.



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4. For the purpose of disposal of these writ petitions, the short facts, which are required to be taken note of are as follows:

4.1. The land at S.Nos.112/1 and 113/1 at Pongalur Village, Avinashi Taluk, Tiruppur District is the subject matter. In survey No.112/1, the total extent was 9.42 acres and in survey No.113/1, the total extent was 3.47 acres, totally 12.89 acres.

4.2. It is the case of the petitioner that the said land was purchased by the petitioner's father one Nallama Naicker by way of registered sale deed dated 02.04.1928, which was registered as document No.453/1928 in the office of the Sub Registrar, Annur from one Rakkiya Goundar and Ayi Goundar.

4.3. Thereafter, in order to avail a loan, the said Nallama Naicker has created a mortgage in respect of these properties to and in favour of Masi Chetty by way of sale deeds in document No.1426 of 1928 and document No.1990/1937. Thereafter, he purchased back the said land from Masi Chetty by way of sale deed dated 21.06.1938 *vide* registered



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document No.703 of 1938. Since then, continuously, the said Nallama Naicker had been in possession and enjoyment of the property in question and that is how the title has been traced by the petitioner, as the petitioner being the son and also one of the legal heirs of the said Nallama Naicker, who is no more, as he died on 04.03.1990.

4.4. When that being so, only in about 2005, the petitioner and others seem to have approached the Revenue Authorities to get patta in the name of the petitioner and other legal heirs of the said Nallama Naicker, as according to them, till such time after the demise of the said Nallama Naicker, the property had been in possession of them and they have been continuously cultivating the land, prior to that, the said Nallama Naicker claimed to have cultivated the land.

4.5. However, in 2005, the said attempt made by the petitioner and other legal heirs has not fructified. Therefore, in 2010, the petitioner approached this Court and filed a writ petition in W.P.No.5649 of 2010, that writ petition was ordered by this Court by giving direction to the Tahsildar concerned to conduct an enquiry on the plea of the petitioner to get patta.



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4.6. It is the further case of the petitioner that, pursuant to the order passed by this Court in the said writ petition, enquiry was conducted by the Tahsildar sometime in 2010, however, thereafter, no further action had been taken and no patta had been issued in favour of the petitioner and other legal heirs.

4.7 When that being so, in the year 2013, there has been some correspondences and proceedings, which had been issued by the Revenue Tahsildar, which disclose certain new facts, under which, the Revenue Department took a stand that though the said Nallama Naicker had title over the property in question and had been in possession and enjoyment of the property till 1950, between 1950 and 1954, the said Nallama Naicker had not paid the land kist in respect of the land in question. Since continuously four years land kist had not been paid, when this was questioned, the said Nallama Naicker wanted to relinquish the right of the land itself, which is otherwise called as Jodi Raginama, that means, the said Nallama Naicker did not want to enjoy the property and voluntarily he had given relinquishment to and in favour of the Revenue Department,



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this according to the petitioner is not a correct statement, as no such Jodi Raginama or relinquishment has been made either by the said Nallama Naicker or any other legal heirs of the said Nallama Naicker. Be that as it may, it is the further case of the petitioner that subsequently, some time in 2019, the land since has already been considered to be a relinquished land to and in favour of the Revenue Department, they treat it as a Government land or poromboke land or Tharisu land belongs to the Government and accordingly, they seems to have allotted the said land by giving enter upon permission to the Tamil Nadu Slum Clearance Board presently known as Tamil Nadu Urban Habitat Development Board for construction of thousands of tenements for several crores of rupees budget by taking the land by way of enter upon permission given by the District Collector. The said board started to construct the tenements and as of now such tenements have been constructed to the considerable extent as multi story buildings i.e., structure to that effect have already been constructed.

4.8. At this juncture, the petitioner had approached this Court once again by filing a writ petition in W.P.No.9639 of 2020 seeking a writ of mandamus forbearing the respondents from interfering or disturbing or



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forcibly evicting the petitioner without following the due process of law.

The said writ petition was disposed of by a learned Judge of this court by order dated 24.07.2020, where under, a learned Judge of this Court has passed the following order:

"5. On the other hand, perusal of the materials would show that there is title dispute with regard to the property and the Tamil Nadu Slum Clearance Board claims to have right over the said property. Therefore, it is for the petitioner to agitate the matter only by way of Civil Suit before the competent Court and not by way of filing the present Writ Petition with a prayer as stated supra. Therefore, I find that the present Writ Petition is not maintainable. Accordingly, the Writ Petition is dismissed, however by granting liberty to the petitioner to agitate the matter before the competent Civil Court by raising all his contentions. It is made clear that this Court is not expressing any view on the merits of the claim made by the respective parties, as it is for them to agitate the matter before the Civil Court. No costs."

4.9. Aggrieved over the said order passed by the learned Single Judge, the petitioner preferred intra-court appeal in W.A.No.634 of 2020, which was also disposed of by the order of the Division Bench of this Court dated 19.08.2020, where the Division Bench has passed the following order:

"After the matter was heard, learned counsel for the appellant submits that he may be permitted to withdraw the appeal to avail of such remedies, which are available for questioning the correctness or otherwise of the proceedings that had commenced in the year 2013 with the passing of the order of Tahsildar dated 06.06.2013. Learned counsel for the appellant has rightly taken the step as the remedy lies before the appropriate authorities or as suggested by the learned single Judge and not by way of writ petition before this Court.



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The Writ Appeal stands dismissed as withdrawn with the said liberty. No costs. Consequently, C.M.P.No.8870 of 2020 is also dismissed."

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4.10. After getting this order from the Division Bench, the petitioner since has been given liberty either to approach the proper authority or suggested by the learned single judge, the petitioner had chosen to approach the appropriate authority viz., Revenue Department, by thus, they had given an application to issue patta in the name of the petitioner and other legal heirs to the Revenue Divisional Officer concerned.

4.11. The Revenue Divisional Officer, after hearing the petitioner and after having gone through the Revenue records, has passed an order on 02.03.2021 rejecting the plea of the petitioner for issuance of patta.

4.12. Aggrieved over the said order passed by the Revenue Divisional Officer, petitioner preferred further revision before the District Revenue Officer i.e., the first respondent herein and that revision also has been rejected by the first respondent through the order dated 23.08.2021 which is the order impugned in W.P.No.26785 of 2021.



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4.13. Parallely, W.P.No.4699 of 2021 has been filed seeking the afore-referred prayer of writ of declaration to declare that the classification made some time in 2011 in respect of the subject land as a Government land is illegal and therefore, such a declaration has been sought for in the said writ petition that is how these writ petitions came to be filed by the petitioner.

5. Heard Mr. S.Thanka Sivan, learned counsel appearing for the petitioner, who would submit that, even according to the respondents, upto 1950 the property in question had been in possession and enjoyment of the said Nallama Naicker and who is none other than the father of the petitioner and so far as the claim of the said Nallama Naicker by way of title towards the property is concerned also there has been no dispute upto 1950, even according to the admitted case of the Revenue Department. From 1952 to 1954 alone since the land kist was not paid and in order to avoid payment of land kist continuously, the said Nallama Naicker did not want to pay and he wanted to relinquish the property to and in favour of the Government i.e., Revenue Department by way of Jodi Raginama, which has been accepted and recorded in the concerned Revenue records, that is the stand of the Revenue Department.



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6. However, this position has been questioned by the petitioner and other legal heirs for whom actual knowledge about this development come to the notice of the petitioner and other legal heirs. Therefore, learned counsel would submit that, merely because this claim is made by the Revenue Department by stating that voluntary relinquishment by way of Jodi Raginama has been executed or stated orally by the said Nallama Naicker, ipso facto that would not confer any right on the Revenue Department to seek title over the property unless the property is acquired by the Government under the Land Acquisition Act.

7. Learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of ***State of Haryana Vs. Mukesh Kumar and Ors.*** reported in [2011 10 SCC 404], where he relied upon the following few passages:

"39. We inherited this law of adverse possession from the British. Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in the law in the larger public interest. The government instrumentalities - including the police - in the instant case have attempted to possess land adversely. This, in our opinion, is a testament to the absurdity of the law and black mark upon the



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justice system's legitimacy. The Government should protect the property of a citizen - not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of Parliament, then at least the law must require those who adversely possess land to compensate the title owners according to the prevalent market rate of the land or property in question. This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors - some of whom may be poor - to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case.

45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No government department, public undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case."

8. Relying upon this decision, learned counsel would contend that the title of the property flows only from the acceptable documents under law. Therefore, the title flows from the petitioner's father Nallama Naicker from 1928, where he has purchased from the erstwhile owner and this position had been continued admittedly upto 1950. Thereafter, it cannot be automatically transferred in the name of the Revenue Department, for



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which, the strength of the document according to the Revenue Department is only the alleged Jodi Raginama i.e., voluntary relinquishment and that has not been made by the said Nallama Naicker and therefore, based on which, the title over the property cannot be denied to the petitioner and the other legal heirs of the said Nallama Naicker.

9. Learned counsel would also submit that, how many years such kind of possession has been claimed by any third party or the Government i.e., Revenue Department that would not *ipso facto* confer any title by way of adverse possession and it is not an adverse possession, it is only a claim made, therefore, some documentation, if any which according to the Revenue Department, has taken place during the year 1950 or 1960 that has to be proved by the Revenue Department only through the competent Court of law, without which, the title cannot flow. Therefore, on that ground, Revenue Department cannot claim the property from the petitioner.

10. Learned counsel would also submit that, when that being so, without these issues to be resolved properly, though this issue has been



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continuously agitated by the petitioner and without the knowledge of the petitioner, high handedly, the respondents have given permission to the Tamil Nadu Urban Habitat Development Board by way of enter upon permission to raise several tenements for huge project, which itself is unlawful. Therefore, such a declaration has been sought for in the second writ petition that the classification made in respect of the land as Government land is an illegal classification. Therefore, that prayer also has to be allowed, learned counsel appearing for the petitioner contended.

11. On the other hand Mr.P.Sathish, learned Additional Government Pleader appearing for the respondents 1 to 6 and Mr. M.Babu Muthu Meeran, learned Standing Counsel appearing for the seventh respondent has heavily relied upon the counter affidavit filed by the second respondent Tahsildar, where they relied upon the following passages:

"5. I submit that during enquiry I found that in the year of 1912 "A" Register for corresponding 1364 fasali year, the petitioner's father Nallama Naicker had failed to pay land revenue to the government for the period from 1950 to 1954 in respect of the land in S.F.No.112/1, 113/1 and as taxes to the Government was not paid properly by the petitioner's father Nallama Naicker he had voluntarily handed over the possession of said land to the government by way of joint relinquishment (ஜோடி ராஜினாமா). The abvoe said land was converted into sarkar Tharisu (சர்க்கார்



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தரிசு) way back in 1954 vide the proceedings Taluk R Dis 1/5 of 1362 dated 04.05.1954. The relinquishment notes by the then Revenue Divisional Officer/Jamabandhi Officer are very much available with the Revenue authorities.

6. It is relevant to state that subsequently, under Updating Registry Scheme (UDR) in 1985 the lands were surveyed and as per the records, the said land in S.F.No.112/1 measuring 3.81.5 Hec and S.F.No.113/1 measuring 1.40.00 Hec were classified as assessed waste land (தீர்வை ஏற்பட்ட தரிசு). It remains as Government land till date. It is further submitted that at the time of updation of revenue record i.e., UDR was carried out, the petitioners or their ancestors had not contested or claimed patta or title before any Revenue authority or Competent Court. After the death of Nallama Naicker, as an afterthought, the petitioners have raked up their claim over the land. The UDR was published as a gazette notification prior to 1990, which was never contested by the petitioners or their ancestors at that point of time.

7. I submit that on 09.12.2019, a permission was granted by the District Collector, Tiruppur District in his proceedings Na.Ka.No.11624/2019/A1 for construction of multi storied tenements under the Hon'ble Prime Minister's Housing for all scheme PMAY-U. Subsequently, on 23.12.2019 the Firka Revenue Inspector, Cheyur sub-division, Avinashi Division granted possession certificate to the 4th Respondent and based upon that, the possession of the land was handed over to the 4th Respondent herein. I state that on 31.07.2019, the "A1 Publication" was issued in the particular village to call for the objections, if any, from the general public but no objection received from the general public including the petitioner also didn't raise any objection about the construction of multistories tenements under Hon'ble Prime Minister's Housing for all scheme PMAY-U. While the petitioner kept silent like a spectator then, but now he has filed one and another vexatious Writ petitions before this Hon'ble Court only with an intention to stop the welfare scheme to the general public.

9. I further submit that from the date of joint relinquishment (ஜோடி ராஜினாமா) by the said Nallama Naicker in the year of 1954 till today the Title, Possession and enjoyment



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of the petition mentioned properties were not with the petitioner or with his previous ancestors at any point of time. Since 1954 to till today for more than 69 years the petitioner was not in possession and enjoyment. The State Government was having exclusive and continuous possession and without interruption for nearly 69 years and even as per the Article 65 Schedule-I of the Limitation Act, 1963, the petitioners cannot claim ownership. Presently, the possession and enjoyment of the petition property is with the 4th respondent viz., the Tamil Nadu Urban Habitat Development Board (erstwhile Tamil Nadu Slum Clearance Board).

10. I further submit that the petitioner or any of the others claiming to be legal heirs or his ancestors have not paid any land tax including kist for the land claimed since 1954. This petitioner has never paid tax to the government at any point of time. Therefore, he was not in possession and enjoyment of the property. Further, Government had possession and enjoyment over the property, since more than 69 years and the petitioner or his ancestor were not in the possession of the land.

11. I further submit that this petitioner without any title and possession also filed a writ petition W.P.No.9639 of 2020 before this Hon'ble Court praying Writ of Mandamus to forbear these respondents from in any manner interfering, disturbing or forcefully evicting the petitioner without following due process of law in respect to the petition mentioned property and the same was dismissed by this Hon'ble Court by an Order dated 24.07.2020 and directed the petitioner to approach the civil court.

"On the other hand, perusal of the materials would show that there is title dispute with regard to the property and the Tamil Nadu Slum Clearance Board claims to have right over the said property. Therefore, it is for the petitioner to agitate the matter only by way of Civil Suit before the competent Court and not by way of filing the present Writ Petition with a prayer as stated supra. Therefore, I find that the present Writ Petition is not maintainable. Accordingly, the Writ Petition is dismissed, however by granting liberty to the petitioner to agitate the matter before the competent Civil Court by raising all his contentions. It is made clear that this Court is not expressing any view on the merits of the claim made by the respective parties, as it is for them to agitate the matter before the Civil Court. No costs."



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12. It is relevant to state that, aggrieved by the same, the petitioner preferred a Writ Appeal in W.A.No.634 of 2020 before this Hon'ble Court on 19.08.2020 and the said Writ appeal was dismissed as withdrawn. The petitioner instead of following the directions of the Hon'ble High Court in Judgment dt. 24.07.2020 in W.P.No.9639/2020 has filed this Writ Petition again, thereby attempting to waste the precious time of the Hon'ble Court. Further, if he has any grievance on the order of the District Revenue Officer, he can approach the competent civil court instead of coming to Hon'ble High Court."

12. Relying upon these avements made in the counter affidavit filed on behalf of the respondents, learned Additional Government Pleader and learned Standing Counsel appearing for the respondents would contend that since the original owner viz., Nallama Naicker had not paid the land kist for continuously four years, therefore, when that was demanded since he did not want to make such land kist at that time, he wanted to relinquish the very land to and in favour of the Revenue Department that is called voluntary relinquishment colloquially it is called as "Jodi Raginama" and when that Jodi Raginama has been made by the said owner of the property viz., Nallama Naicker that has been recorded in the concerned record of the Revenue Department and even now those records are available.

13. Thereafter, the land has been taken as a Government Tharisu



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land for several years and in 1985, the UDR survey was undertaken.

During the UDR survey, also there has been no objection raised by any one including the petitioner or the other legal heirs of the said Nallama Naicker, after he died in 1990. Even during the life time of the said Nallama Naicker and after the demise of the said Nallama Naicker, the legal heirs including the petitioner had never raised any objection before the Revenue Department for the UDR record made after the UDR survey, which was completed in the year 1959 and 1980.

14. Therefore, the land has been in continuous possession and enjoyment of the Government and it has been classified as a Government / Sarkar Tharisu and therefore, in 2017, such a classification has been made as a Government land and based on which, when such a demand was made by the Tamil Nadu Urban Habitat Development Board for construction of several tenements, the Government wanted to give the land and entrust the same to the Board. Therefore, enter upon permission was given in 2019 by the District Collector and accordingly, the Board having taken possession of the said land started construction of multi story tenements and the construction have been in the advanced stage and in this regard, learned counsel appearing for the respondents have



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produced certain photographs taken very recently, which show that at least four floors of tenements have already been constructed. First unit consists of 880 tenements, second unit consists of 528 tenements and another unit consists of 360 tenements.

15. When these constructions have been made already, which is in advanced stage, at this juncture, the order passed by the District Revenue Officer confirming the order passed by the Revenue Divisional Officer refused to give patta in the name of the petitioner and other legal heirs of the said Nallama Naicker is fully justifiable and therefore, in order to sustain these orders, learned Government Counsel would contend that based on the aforestated documents and the development that has been taken place for all the 69 years, the present plea raised by the petitioner is totally untenable. Therefore, these writ petitions are liable to be dismissed, they contended.

16. I have given my anxious consideration to the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.



17. It is to be noted that upto 1950, there has been no dispute or much dispute with regard to the title claimed by the said Nallama Naicker over the property in dispute. The property was purchased in 1928 from the erstwhile owner and subsequently, it was mortgaged and thereafter, it has been repurchased by the said Nallama Naicker and these transactions have been recorded by way of registered documents, which have been quoted herein above.

18. Thereafter, for nearly about 20 years, there has been no disturbance with regard to the possession and enjoyment of the property of the late Nallama Naicker. Now, the claim first time had been made stating that between 1950 and 1954 the said Nallama Naicker did not pay the land kist, therefore, when this was demanded, he wanted to relinquish the right of the very property itself through Jodi Raginama, which was said to have been given by the said Nallama Naicker and which is claimed to have been registered in the concerned records of the Revenue Department.

19. Whether the Nallama Naicker has given any Jodi Raginama i.e., voluntary relinquishment and such a record made in the revenue



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records would entitle the Revenue Department to claim title over the property is a crucial question to be decided in these writ petitions, which in the considered opinion of this Court cannot be decided by this Court under Writ jurisdiction and naturally, this has to be decided by the Civil Court, this, my view, has already been indicated and it has been fortified by the earlier order passed by the learned Judge of this Court in the first round of litigation, which has also been quoted herein above, wherein liberty was given to the petitioner to agitate the matter before the competent Civil Court by raising all his contentions and it was also made clear in the said order that the Court did not express any view on the merits of the claim made by the respective parties.

20. The same has been reiterated or confirmed by the Division Bench of this Court by order dated 19.08.2020, which has also been quoted herein above, where one more liberty was given to the petitioner either to go before the appropriate authority or to the competent Civil Court. The choice was given to the petitioner, therefore, the petitioner had chosen to go before the appropriate authority, which according to them is the Revenue Department. Therefore, the plea was made before the Revenue Divisional Officer as well as subsequently before the District



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Revenue Officer, of-course, unsuccessfully.

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21. Merely because these attempts have been taken by the petitioner by approaching the Revenue Authorities and they have rejected the plea of the petitioner for issuance of patta, which is culminated in the impugned order dated 23.08.2021, it does not mean that the petitioner has lost all his remedy or right to agitate the issue by approaching the competent Civil Court to file an appropriate civil suit seeking for a declaration about the title over the property of-course based on the documents and evidences, which are very much available with the petitioner. But, at the same time, if any suit is filed impleading the Revenue Department as defendant in the suit as no other third party is taking any claim over the property, the defendant i.e., Revenue Department also can very well defend their case by contesting the suit properly by adducing both documents as well as oral evidences, which can be let in before the Civil Court to establish their right as to whether the Revenue Department can claim title over the property because of the alleged Jodi Raginama made by the said Nallama Naicker.

22. These issues since can be sorted out only by the Civil Court in



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an appropriate suit to be laid in this regard by the petitioner, this Court feels that the issue raised in these writ petitions need not be adjudicated for any other conclusive decision at this juncture.

23. At the same time, this Court also feels that since nearly about 13 acres of land involved in this issue, which had been given by way of enter upon permission by the District Collector to the Tamil Nadu Urban Habitat Development Board and they have started construction constructing the tenements as stated supra and the construction is in the advanced stage, therefore, what construction has already been made, for which, whatever the land has been utilized is concerned, cannot be tinkered with or interfered with at this juncture.

24. But at the same, out of the roughly about 13 acres of land, whatever the vacant land now has been left for whatever purposes either for construction or for open space or for any other thing that open land need not be meddled with by the said Board, till a decision is taken by the competent civil court, for which, a time frame can very well be fixed by this Court.

25. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order:



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- ◆ That it is open to the petitioner to file an appropriate civil suit before the concerned Court having jurisdiction over the property in question. Such an attempt can be made by the petitioner as early as possible preferably within a period of three months from the date of receipt of a copy of this order.
- ◆ If such a suit is laid by the petitioner arraying the respondents herein as defendants in the suit, where if the petitioner seeks any interim relief by filing interlocutory application, that shall be taken up first and decided by the competent Civil Court within a period of three months from the date of institution of the suit.
- ◆ Till the disposal of the interlocutory application, whatever the vacant land, which is available other than the land, which is being utilized by the Tamil Nadu Urban Habitat Development Board for making construction of these tenements as referred to above shall not be further meddled with or put up any permanent or temporary construction by the Tamil Nadu Urban Habitat Development Board.
- ◆ It is made clear that if the interlocutory application as indicated above to be filed by the petitioner in the suit is decided, depending upon the decision to be made by the Civil Court, this restraintment



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order made against the Tamil Nadu Urban Habitat Development Board will be made absolute or will got extinguished.

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- ◆ The aforesaid arrangement is the only remedy to safeguard the interest of both the petitioner as well as the Revenue Department because, if ultimately the petitioner succeeds in the suit, then it will be a great task for the Revenue Department to compensate the petitioner by way of private negotiation or acquiring the land within the meaning of Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- ◆ If the petitioner fails to get a decree in the suit and the suit is ultimately dismissed, then the construction, which has already been made need not be disturbed. Therefore, that construction unnecessarily need not be disturbed at this juncture that is how, in order to protect the money spent by the Department of-course from the Government ex-chequer, this arrangement is being made by this Court.
- ◆ While deciding either the interlocutory application or the Civil suit, the Civil Court shall independently decide the application as well



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as the suit based on the evidences to be let in by both the parties.

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Therefore, in this regard the order, which is impugned herein passed by the District Revenue Officer or any other Revenue Authorities, which is under challenge in these writ petitions need not be taken as guidance.

With these observations and directions, these writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

13.02.2023

Index : Yes

Speaking order: Yes

Neutral Citation: Yes

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To

1. The Secretary to Government,
Revenue Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Tiruppur District, Tiruppur.
4. District Revenue Officer,
Tiruppur District, Tiruppur.



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5. The Tahsildar,
Avinashi Taluk,
Tiruppur Distirct.



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R. SURESH KUMAR, J.

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6. The Revenue Divisional Officer,
Tiruppur, Tiruppur District.
7. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
188, Sakthi Nagar, Koyampalayam,
Thiruppur – 2.

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