



WEB COPY



W.A. No.967 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2023

CORAM :

THE HON'BLE MR. SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

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1. M.Subramaniam
 2. K.Mani
 3. S.Loganathan
 4. P.Valpoorappan (died)
 5. K.Saraswathi
 6. V. Vijaya
 7. Shankar
 8. Sandeep
- [Appellant nos. 6 to 8 brought to record as Legal Representatives of the deceased Fourth Respondent vide order dated 15.06.2022 in C.M.P.No.8939 of 2022.]

... Appellants

-VS-

1. The Special Commissioner and Commissioner
Of Land Administration
Chepauk, Chennai-5.
2. The District Collector
Coimbatore District
Coimbatore.
3. The District Revenue Officer
Coimbatore District
Coimbatore.



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4. The Tahsildar
Palladam Taluk
Palladam, Coimbatore District.

5. The Executive Officer
Arulmigu Mahaliamman Temple
Palladam, Coimbatore District.

... Respondents

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 02.02.2021 passed in W.P. No. 38670 of 2005 by the learned Single Judge.

For Appellants	: Mr.P.V.S.Giridhar Senior Counsel Mr.P.R.Krishnaraj
For Respondents	: Mrs.R.Anitha, SGP (R1 to 4) Mr.R.Rajesh Vivekananthan Deputy SGI (R5)

J U D G M E N T

(Judgment of the Court was made by P.D. AUDIKESAVALU, J.)

This intra-Court appeal invoking Clause 15 of the Letters Patent, 1865, arises out of the order dated 02.02.2021 in W.P. No. 38670 of 2005 passed by the Learned Single Judge of this Court.



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2. The parties are hereinafter referred as per their description in the said Writ Petition for the sake of clarity and convenience.

3. We have heard Mr. P.V.S.Giridhar, Learned Senior Counsel assisted by Mr.P.R.Krishnaraj, Learned Counsel for the Appellants; Mrs.R.Anitha, Learned Special Government Pleader for the First to Fourth Respondents; and Mr.R.Rajesh Vivekananthan, Learned Deputy Solicitor General of India for the Fifth Respondent.

4. The facts leading to the filing of the Writ Petition have been extensively captured in the order dated 02.02.2021 in W.P. No. 38670 of 2005 and hence, the same are not repeated in this order except with regard to the material facts relevant for the purpose of disposal of this Appeal.

5. The Fifth Respondent is a Temple governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter referred to as 'the TNHRCE Act' for short) and claimed ownership of the land that had been classified as 'Natham Poramboke' in the revenue records maintained by the Government, measuring an



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extent of 0.41 cents at S.F. No. 261/B1, Palladam, Coimbatore

District relying on the certificate of possession dated 11.04.1973 issued by the Tahsildar, Palladam. Several persons including the First to Fifth Petitioners were carrying on business in the premises bearing Door Nos. 170-D, 170-B, 170-C, 170-A and 162, 261/B1 and 262/3 forming part of the said land with whom the Fifth Respondent had entered lease. The claim of the Fifth Respondent for re-classification of the land from 'Natham Poramboke' to 'Kovil Poramboke' had been rejected by the Additional Collector, Coimbatore in his Proceedings dated 26.04.1992 and the revenue authorities were directed to consider the claim of all persons (including the First to Fifth Petitioners) for assignment by following the existing rules. The said order was challenged by the Fifth Respondent before the Commissioner for Land Administration, Chennai, who had by Proceedings in D.Dis.F3/50495/92 dated 13.11.1995, confirmed that order. The Fifth Respondent as well as the First to Fifth Petitioners were unsuccessful in assailing the said orders passed by the Revenue Authorities in the Writ Petitions in W.P. Nos.17164 of 1995 and 10320 of 1996 which were disposed by common order dated 21.01.2002 passed by this Court. However, as



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the Fifth Respondent had not established its title to that property, this Court had observed in the said order that the Fifth Respondent cannot recover any rent from the First to Fifth Petitioners in respect of the shops under their occupation with the clarification that while considering the status of those parties, the Revenue Authorities would have to give due weightage to the long uninterrupted possession of the Temple, which has been approved by the Tahsildar, Palladam over the claim of the First to Fifth Petitioners. Subsequently, the District Collector, Coimbatore in his Proceedings dated 24.05.2004 in Na.Ka. 78055/ 99/ A3 upheld the claim of the Fifth Respondent for grant of patta for the entire extent of land of 0.41 Acres of land in S.Nos. 261B/2 and 262/3 (page 48 translation) in Palladam Village, Coimbatore District, and it was affirmed by the Commissioner of Land Administration in his Proceedings dated 20.10.2005 in Roc.No. F3/24127/2004 (P.No.54). The First to Fifth Petitioners challenged the said orders in the Writ Petition in W.P. No. 38670 of 2005 before this Court, and it was dismissed on 02.02.2021 against which the First to Fifth Petitioners have preferred instant appeal. On the demise of the Fourth Petitioner on 20.03.2022 during the pendency of this appeal, the



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Sixth to Eighth Petitioners have been brought on record as his Legal Representatives by order dated 15.06.2022 in C.M.P. No. 8939 of 2022 passed by this Court.

6. The primordial contention of the Learned Senior Counsel for the Appellants is that when this Court in the earlier order dated 21.01.2002 in W.P. No.17164 of 1995 had held that the lease deed entered into by the Temple with the First to Fifth Petitioners cannot be held to be valid in the eye of law and had attained finality in the absence of any appeal against that order, it would operate as *res judicata* in the subsequent proceedings and the Fifth Respondent cannot rely on Section 116 of the Indian Evidence Act, 1872, to claim better title to the property against the First to Fifth Petitioners, who have been in continuous occupation of the same, particularly when no lease agreement between the parties has been produced.

7. *Per contra*, Learned Counsel appearing for the Fifth Respondent strenuously asserts that the initial entry into the property by the First to Fifth Petitioners was only by way of permissive occupation on lease by the Fifth Respondent and by virtue of the legal principles



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embodied in Section 116 of the Indian Evidence Act, 1872, the First to Fifth Petitioners cannot deny the title of the Fifth Respondent to the property. It is pointed out that the possession held by the First to Fifth Petitioners cannot by mere long lapse of time and non-payment of rent turn out to be hostile so as to be treated as adverse to the Fifth Respondent to efface its right over that property.

8. Having regard to the rival submissions made, it must be remembered that the actual dispute in the Writ Petition relates to the issuance of patta in favour of the Fifth Respondent for the property as against the claim made by the First to Fifth Petitioners. It is apparent from the materials borne out of the record that the First to Fifth Petitioners have not been able to dislodge that their initial entry into the property was only as lessees of the Fifth Respondent. The necessary inference that has to be drawn from this incontrovertible fact situation is that the legal character of the possession of the First to Fifth Petitioners has to be attributed to a jural relationship of Lessor and Lessee between the Fifth Respondent and the First to Fifth Petitioners arising out of lease created by oral



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agreement accompanied by delivery of possession, falling within the purview of second para of Section 107 of the Transfer of Property Act, 1882, as declared in the authoritative pronouncement of the Hon'ble Supreme Court of India in **Anthony -vs- K.C. Ittoop & Sons** [(2000) 6 SCC 394] which holds the field. Neither the circumstance that the Fifth Respondent was denied the right to recover rent from the First to Fifth Petitioners nor their continuance in possession of the property for a long period could nullify the rights of the Fifth Respondent over that property or attract the doctrine of *res judicata* to this case. It would also assume significance here that the claim of the First to Fifth Petitioners for patta to the property had been denied by this Court in the order dated 21.01.2002 in W.P. No. 17164 of 1995 against which no appeal had been preferred by them and has attained finality. As such, it does not lie in the mouth of the First to Fifth Petitioners to contend that the Fifth Respondent had forfeited the right to that property in view of the common order dated 21.01.2002 in W.P. Nos. 17164 of 1995 and 10320 of 1996 passed by this Court. On the other hand, it had been made clear by this Court in the said order that while considering the status of the Fifth Respondent



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viz-a-viz the First to Fifth Petitioners, the Revenue Authorities should give due weightage to the long and uninterrupted possession of the Fifth Respondent as approved by the Tahsildar, Palladam in his Certificate of Possession dated 11.04.1973.

9. It is in that context that the Fifth Respondent must be held to be entitled to the full effect of the benefits arising from Section 116 of the Indian Evidence Act, 1872, which reads as follows:-

"116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given. "

This conclusion arrived is fully fortified by the decision of the Hon'ble Supreme Court of India in **Atyam Veerraju -vs- Pechetti**



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Venkanna [(1966) 1 SCR 831], where it has been observed as

follows:-

*"13. Having regard to s. 116 of the Indian Evidence Act, 1872, during the continuance of the tenancy, a tenant will not be permitted to deny the title of the deity at the beginning of the tenancy. In **Bilas Kunwar -vs- Desraj Ranjit Singh**, the Privy Council observed :*

"A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

*14. It is also well settled that during the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See **Mohammad Mumtaz Ali Khan -vs- Mohan Singh, Madhavrao Waman Satindalgekar -vs- Raghunath Venkatesh***



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Deshpande, Naini Pillai Marakayar -vs-

Ramanathan Chettiar. In the last case, Sir John Edge

said :

"No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands."

Viewed from that perspective, the Revenue Authorities cannot be faulted in deciding that the Fifth Respondent was having better title so as to be granted patta as against the claim made by the First to Fifth Petitioners in respect of that property and we concur with the Writ Court in that regard. There does not appear to be any infirmity in the decision making process carried out by the First and Second Respondents warranting interference by this Court in the exercise of the discretionary powers of the judicial review under Article 226 of the Constitution.

10. Learned Senior Counsel for the Petitioners raised a fervent plea that as the buildings in the respective portions of land occupied by the First to Fifth Petitioners have been constructed by them, they



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would have to be treated as their owners so as to be entitled for patta from the Revenue Authorities to that extent, in the event it is held that the Fifth Respondent is the owner of the appurtenant land. Since that part of the controversy does not appear to have been discussed either before the Revenue Authorities or by the Writ Court, we are not inclined to express any view on those factual aspects of the matter at this advanced stage of the proceedings. At any rate, it is made clear that the adjudication made in this order relates only to the land in the property.

In the upshot, the Writ Appeal, which is devoid of merits, is dismissed. No costs.

(S.V.G., CJ.) (P.D.A., J.)
21.09.2023

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Index : Yes/No

NCS : Yes/No

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