



W.A.No.2678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2023

DATE OF DECISION : 06.03.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Agri Horticultural Society
Society Registered under the
Tamil Nadu Societies Registration Act
having its office at No.18, Cathedral Road
Chennai 600 086 rep by its
Hon.Secretary, Mr.V.Krishnamurthy .. Appellant
v.

1. The Principal Secretary cum
Commissioner of Land Administration
Chepauk, Chennai 600 005

2. The Collector of Chennai
Rajaji Salai, Chennai 600 001

3. Y.Bhuvanesh Kumar
(R3 impleaded as per Court order
dt. 04.12.2012 in MP No.1 of 2012) .. Respondents



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Appeal filed under Clause 15 of the Letters Patent, against the order dated 25.11.2022 passed in W.P.No.26255 of 2011.

For Appellant :: Mr.G.Rajagopalan
Senior Counsel for
M/s G.R.Associates

For Respondents :: Mr.J.Ravindran
Addl.Advocate General assisted by
Mr.A.Selvendran
Special Government Pleader
for R1 & R2
Mr.P.Wilson
Senior Counsel
for M/s P.Wilson Associates for R3

JUDGMENT

The Hon'ble Acting Chief Justice

Agri Horticultural Society represented by its Honorary Secretary Mr.V.Krishnamurthy has brought this writ appeal challenging the impugned order dated 25.11.2022 passed by the learned single Judge in Writ Petition No.26255 of 2011.

2. The appellant/writ petitioner has unsuccessfully challenged the show cause notice dated 01.11.2011 issued by the Principal Secretary and



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Commissioner of Land Administration before the learned single Judge, calling upon the writ petitioner to show cause as to why the orders passed by the District Revenue Officer/Collector (FAC) should not be cancelled for the reasons *inter alia* that the entire extent of land in R.S.No.64 of Mylapore Village has all along been registered as Government poramboke land; that there was no documentary evidence produced by the appellant to establish absolute title over the suit land; etc.

3. Mr.G.Rajagopalan, learned Senior Counsel appearing for the appellant argued that the appellant society was formed on 15 July 1835 as the Madras Agri-Horticultural Society. From the date of establishment of the society, the appellant had purchased lands through private negotiations and even during the period 1910, the Collector also had stated in one of his reports that the society has purchased lands measuring 17 cawnies, 21 grounds and 185 square feet by private negotiations. With regard to 22 grounds situated on the southern side of the Cathedral Road, there is an entry in the encumbrance register. Besides, the Government also had granted



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land to the appellant society from time to time. However, during the year 1964, there was an attempt to resume the land granted to the appellant society, which was challenged before this Court. Subsequently, the matter was compromised and the proceedings were dropped. Later on, in the year 1980, the Government again attempted to resume the land belonging to the appellant society on the alleged ground of violation of the conditions of grant. After detailed discussions, the appellant society unconditionally accepted the Government's title to the land mentioned therein and the said land was re-granted to the appellant society under G.O.Ms.No.513 dated 04.03.1980. But the right of ownership of the Government was confined only to the extent mentioned in the said Government Order. While so, the Government issued a show cause notice in July 1989 calling upon the appellant to show cause as to why the land granted to the appellant society by G.O.Ms.No.513 dated 04.03.1980 should not be resumed on certain alleged grounds mentioned therein. As the Government passed G.O.Ms.No.1259 dated 05.08.1989 grossly violating the principles of natural justice and also took possession of the land, the appellant society



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filed W.P.Nos.11058 and 11059 of 1989 and this Court passed an order of status quo to be maintained. Finally in its order dated 19.06.1998, this Court allowed the writ petitions quashing the order of resumption on the ground that it was politically motivated and there was no material to show that the lands were really required by the Government. Aggrieved by the order passed by the learned single Judge, W.A.Nos.1030 and 1031 of 1998 were filed and the same were also allowed by order dated 11.04.2008, as against which, when appeals were filed before the Hon'ble Apex Court, the said appeals were also finally dismissed in the year 2019 upholding the resumption of the land. In the meanwhile, a notice dated 29.09.2010 was issued calling upon the appellant society to produce the document in support of their claim with regard to the land in question within 15 days time doubting the ownership of the property. The appellant also sent a reply dated 29.10.2010 questioning the jurisdiction of the District Collector to call upon the appellant to establish their title and further informed the District Collector that the Government land was only to the extent mentioned in G.O.Ms.No.1259 dated 05.08.1989 and nothing more. But, ignoring the



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detailed reply, the District Collector proceeded to pass an order dated 08.12.2010 directing the appellant society to vacate from the land in R.S.No.64 (part) on or before 15.12.2010. Therefore, questioning the said order passed by the District Collector, the appellant filed W.P.No.28447 of 2010 contending that it was politically motivated and it is also against the record.

4. Mr.G.Rajagopalan, learned Senior Counsel further contended that the learned single Judge vide the order dated 29.03.2011 in W.P.No.28447 of 2010, recording the statement made by the learned Advocate General that the appellant would be heard and thereafter the District Collector would pass orders in accordance with law, setting aside the order impugned dated 08.12.2010 on the ground that the appellant's explanation was not considered by the District Collector, had disposed of the writ petition with a further direction to the appellant to file additional documents. Pursuant thereto, the appellant produced all the documents, the District Collector, carefully considering the same, passed an order on 22.08.2011 confirming



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the title in favour of the appellant society in respect of R.S.No.64 (part) (O.S.R.No.3412) measuring 4 cawnies, 18 grounds and 1683 sq.ft, Mylapore Village, Mylapore-Triplicane Taluk. When the appellant was under the impression that the issue has been settled, yet again, the order dated 01.11.2011 has been issued by the Principal Secretary and Commissioner of Land Administration, the first respondent herein staying the orders of the District Collector dated 22.08.2011 and 23.09.2011 and thereupon issued a show cause notice on 01.11.2011 calling upon the appellant to show cause as to why the orders of the District Collector dated 22.08.2011 and 23.09.2011 should not be cancelled. Mr.Rajagopalan further contended that a mere reading of the show cause notice would go to show that the show cause notice itself is without jurisdiction and does not appear to be bona fide, for the reason that the revisionary power of the Commissioner of Land Administration was terminated in the year 2008, therefore, the suo motu power cannot be exercised under R.S.O.31.8(A). This vital aspect has been overlooked by the learned single Judge. Secondly, when the first respondent claims that the land in question belonged to the



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Government, the Government cannot be a judge of its own cause and this would run contrary to the principle that no one shall be a judge in his own cause. Thirdly, the provisions of Revenue Standing Orders are applicable only in cases where the dispute is between two individuals and not when the Government itself is a rival claimant. These vital aspects also have been overlooked by the learned single Judge. Therefore, the findings and the justification given for the dismissal of the writ petition are unsustainable in law, hence, they are liable to be set aside and the writ appeal is bound to be allowed, he pleaded.

5. A detailed counter affidavit has been filed by the third respondent. Mr.P.Wilson, learned Senior Counsel appearing for the third respondent, urging this Court to dismiss the writ appeal on the ground that the appellant cannot file the writ petition questioning the show cause notice dated 01.11.2011 issued by the first respondent, contended that the appellant cannot take a double stand before this Court, inasmuch as no one will be entitled to approbate and reprobate. Learned Senior Counsel further argued



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that when the first respondent has issued the impugned notice dated 01.11.2011 calling upon the appellant to produce the relevant documents of title and ownership with regard to the land in question covered in R.S.No.64 (part) in exercise of the suo motu power vested under R.S.O.31.8(A), without proving the case, filing the writ petition before the learned single Judge is unsustainable in law, in the light of the ratio laid down by the Hon'ble Apex Court in the case of *Union of India and another v. Kunisetty Sathyanarayana*, (2006) 12 SCC 28, wherein the Apex Court has clearly held that ordinarily no writ shall be entertained against a show cause notice or a charge sheet, because a mere show cause notice or charge sheet does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. The Apex Court, deprecating the attitude of challenging the show cause notice, has settled the issue by a series of decisions holding that ordinarily no writ lies against a charge sheet or show cause notice. (See *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh*, (1996) 1 SCC 327, *Special Director v. Mohd.*



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Ghulam Ghouse, (2004) 3 SCC 440, Ulagappa v. Divisional Commissioner, Mysore, (2001) 10 SCC 639, State of U.P. v. Brahm Datt Sharma, (1987) 2 SCC 179).

6. Explaining how the appellant has been taking a double stand, Mr.P.Wilson further contended that when the appellant was issued with a show cause notice dated 29.09.2010, after considering their reply dated 29.10.2010, the Collector had passed the order dated 08.12.2010 directing the appellant to vacate from the said R.S.No.64 (part) on or before 15.12.2010. Questioning the same, W.P.No.28447 of 2010 was filed on the ground that the appellant was not heard before passing the order. Learned single Judge, accepting the case of the appellant that they were not heard and their detailed representation was not considered properly, by setting aside the impugned order, remanded the matter back to the District Collector giving liberty to the appellant to produce additional documents with a further direction to the District Collector to decide the case on merits and as per law, by the order dated 29.03.2011. Pursuant thereto, the District



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Collector has decided the title of the land in issue in favour of the appellant.

The appellant, having accepted the jurisdiction of the District Collector in the earlier round and obtained a favourable order in their favour, cannot now say that there was lack of jurisdiction and mala fide, because the first respondent cannot be the judge of their own cause. Such an approach is against the principles of approbation and reprobation.

7. Answering the contention advanced by Mr.G.Rajagopalan, learned Senior Counsel that the revisionary power of the Commissioner of Land Administration was removed in the year 2008, therefore, suo motu power cannot be exercised under R.S.O.31.8(A), Mr.P.Wilson argued that the suo motu power of the first respondent has not been deleted or removed and only the second revision against the order of the District Revenue Officer to the Commissioner of Land Administration in patta transfer matter has been withdrawn. That does not mean that the first respondent has been deprived of the suo motu power under R.S.O.31.8(A) by the said Government Order. In support of his submissions, he has also referred to an order passed by the



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Division Bench of this Court in Writ Appeal No.1930 of 2003 dated 24.02.2004 (Mrs.Rajeswari & another v. Commissioner of Land Administration and others) dealing with a similar issue holding that the Commissioner of Land Administration has the general power of suo motu revision to call for the records of the District, Divisional and Taluk, when representations are made to him about the procedural, material and legal irregularities in the order passed by the subordinates and the revisional authority can examine the case and decide legally. The Division Bench in the aforementioned case has clearly held that the Commissioner of Land Administration has got the suo motu power to review the order passed by the District Revenue Officer. This legal aspect also has been rightly considered by the learned single Judge. Therefore, the contention made by the learned Senior Counsel for the appellant that the first respondent has no power or jurisdiction to exercise the suo motu power under R.S.O.31.8(A) is without any merit.

8. Mr.J.Ravindran, learned Additional Advocate General appearing



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for the respondents 1 and 2 argued that when the appellant has already appeared before the District Collector and obtained an order that they have title and ownership to the land in question, nothing prevents the appellant to appear before the first respondent. Secondly, when the learned single Judge vide the order dated 29.03.2011 passed in W.P.No.28447 of 2010 has remanded the matter back directing the appellant to appear before the District Collector to produce additional documents and accepting the same, the appellant also appeared before the District Collector, it is not now open to the appellant to say that he will not appear before the first respondent to substantiate their claim with valid documents, on the ground that the first respondent cannot decide the title when there is a dispute between the appellant and the respondents. Therefore, the appeal is not maintainable and the impugned order passed by the learned single Judge, being well-reasoned, does not call for any interference.

9. We have heard the learned counsel appearing for the parties and perused the materials available on record.



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10. When the appellant suffered an order dated 08.12.2010 passed by the District Collector, Chennai, the second respondent herein holding against them that they are not the owner of the land in question covered in R.S.No.64 (part), the said order was questioned in W.P.No.28447 of 2010 before the learned single Judge, on the ground that when the District Collector issued a notice dated 29.09.2010 calling upon the appellant to produce the relevant documents showing the title and ownership of the land in question, a detailed reply dated 29.10.2010 was given. But the same was not considered. The learned single Judge, in the first round of litigation, accepting the case of the appellant that their reply dated 29.10.2010 given to the show cause notice issued by the very same Collector dated 29.09.2010 was not considered, by setting aside the order, had remanded the matter back to the District Collector for fresh consideration on merits. The appellant also, accepting the order passed by the learned single Judge, appeared before the District Collector and produced the relevant documents and finally had obtained a favourable order confirming their title to the land in question. Further, the District Collector in his order dated 22.08.2011 has held that



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the title of the land covered in O.S.R.No.3412 Extent 4C - 18G - 1683 sq.ft clearly forms part of RSR No.64 and there cannot be any ambiguity. When this order is sought to be reviewed by the first respondent as a revisional authority exercising the suo motu power vested in R.S.O.31.8(A) and his power of suo motu revision, as rightly held by the learned single Judge, has not been deleted, we do not find any error or infirmity in the impugned order passed by the learned single Judge. This apart, the argument advanced by the learned Senior Counsel appearing for the appellant that the suo motu power vested in R.S.O.31.8(A) has been deleted, has already been found against the appellant by the order passed by a Division Bench of this Court in Writ Appeal No.1930 of 2003 dated 24.02.2004 (Mrs.Rajeswari & another v. Commissioner of Land Administration and others) and this has been rightly considered by the learned single Judge. The relevant paragraph of the Division Bench order is reproduced below:-

"9. From the above Revenue Standing Order, it is seen that the Commissioner of Land Administration has the general power of suo motu revision to call for the records of the District, Divisional and Taluk,



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when representations are made to him about the procedural, material and legal irregularities in the order passed by the subordinates, examine the case and decide. The show cause notice in question was issued on the basis of the report of the District Collector, Kancheepuram. When the report of the Head of the District Administration is received as to the manner in which the order of the District Revenue Officer was made in respect of the classification of "dry Anadeenam" land, as "private patta land" with further direction to transfer the patta, there is absolutely no want of power on the Commissioner of Land Administration, while he exercised the suo motu power under Revenue Standing Order 31.8(A). The report has given the right to the cause for the Commissioner of Land Administration to invoke the Revenue Standing Order 31.8(A). Hence, we neither find any force nor any merit in the contention of the learned Senior Counsel that the Commissioner of Land Administration has no suo motu power to review the order of District Revenue Officer."

Yet another Division Bench of this Court in W.A.(MD) No.513 of 2017



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dated 10.08.2017 (The Commissioner of Land Administration, Chennai and others v. P.Karmegam and others), while considering the same argument that the revisional power vested on the first respondent in R.S.O.31.8(A) has been deleted by way of G.O.Ms.No.409, Revenue Department dated 02.07.2008, has clearly held that this provision contains two parts. The first part deals with the revision against an appeal. This can be done by anyone of the aggrieved parties and the second part deals with the suo motu power of the Commissioner of Land Administration. Observing so, the Division Bench has held that the second part is kept in tact.

11. In the light of the above, the second contention made on behalf of the appellant that the Government cannot decide its own title, is also liable to be rejected, since the issue of suo motu revision is taken against the order of the District Collector. If the argument of the learned Senior Counsel is to be accepted, then the earlier order dated 22.08.2011 of the District Collector in deciding the issue in favour of the appellant would be without jurisdiction. Therefore, when the appellant has accepted the order of the Collector dated



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22.08.2011, it cannot turn around and contend that the first respondent has no authority to decide the revision. When the order passed by the Collector is sought to be reviewed under R.S.O.31.8(A) by the first respondent, the appellant on the one hand, while pleading that the order of the Collector should stay, cannot, on the other hand, raise a contra plea that the authorities cannot decide their own title, as the appellant cannot be permitted to approbate and reprobate at the same time.

12. In this context, the Hon'ble Apex Court in *Union of India and others v. N.Murugesan and others*, (2022) 2 SCC 25, elucidating the principle of approbate and reprobate, has succinctly held as follows:-

"Approbate and reprobate

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours



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of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party..."

(emphasis supplied)

In the light of the above settled legal position, since the appellant had already appeared before the District Collector and obtained an order dated 22.08.2011, when the said order is sought to be reviewed by the first respondent exercising the suo motu power vested in R.S.O.31.8(A), the appellant cannot have any objection for appearing before the first respondent



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to substantiate their claim on merits. Moreover, it is a well settled legal position that a writ petition challenging the show cause notice is clearly not maintainable. Therefore, the said contention of the learned Senior Counsel for the appellant is also rejected.

13. For the aforementioned reasons, the writ appeal fails and it is dismissed confirming the impugned order. The appellant is directed to give reply within a period of three weeks from the date of receipt of a copy of this order and thereafter, the first respondent, after giving an opportunity of hearing to the appellant, shall proceed in accordance with law. Consequently, interim order stands vacated and the C.M.P.Nos.21632 of 2022 & 803 of 2023 are also dismissed. However, there shall be no order as to costs.

Speaking order

(T.R.,A.C.J.)

(D.B.C.,J.)

Index : yes

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- To
1. The Principal Secretary cum
Commissioner of Land Administration
Chepauk, Chennai 600 005
 2. The Collector of Chennai
Rajaji Salai, Chennai 600 001



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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

SS

Judgment in
W.A.No.2678 of 2022

06.03.2023