

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2023

Pronounced on : 03.04.2023

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
&
THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN

A.S(MD) No.312 of 2008
and
A.S(MD).No.13 of 2015
and
C.M.P.(MD).No.1081 of 2017

1. State of Tamil Nadu,
Rep. by its District Collector,
Madurai having office at Collector's Office.
2. The Chief Conservator of Forests,
No.1, Jeenis Road, Panagal Building,
Saidapet, Chennai – 15.
3. The Conservator of Forests,
Madurai Circle, Madurai – 20.
4. The District Forest Officer,
having Office at Forest Officers, Madurai – 20.
5. The District Forest Officer,
having office at Collector's Office,
Dindigul.
6. The Forest Settlement Officer,
having Office at Collector's Office.

Dindigul.

... Appellants/Defendants 1 to 6

/versus/

1. Arulmigu Meenakshi Sundareswarar Devasthanam,
Madurai through its Executive Officer/Joint Commissioner.
2. Sirumalai Thenmalai Malaithotta Vivasayigal Sangam,
P.Ayyanan (For itself and on behalf of the members
of the Sangam) at K.Meenakshipuram, Viralipatty,
Vadipatty Taluk, Madurai District. ... Respondents

Prayer: Appeal filed under Section 96 of C.P.C., to set aside the judgment and decree dated 12.03.2008 made in O.S.No.560 of 2004 on the file Additional District and Sessions Court, Fast Track Court No.III, Madurai.

For Appellants : Mr.R.Baskaran, Additional Advocate General

For R1 : Mr.V.Raghavachari, Senior Counsel,
for Mr.S.Manohar &
Mr. VR.Shanmuganathan.

For R2 : Mr.T.S.R.Venkatramana, Senior Counsel,
for Mr.S.Kandasamy.

A.S(MD)No.13 of 2015:-

1. The State of Tamil Nadu,
rep. by its, District Collector, Madurai.
2. The Chief Conservator of Forests,
No.1, Joans Road, Panagal Building, Saidapet, Chennai – 15.
3. The Conservator of Forests,
Madurai Circle, Madurai – 20.

4. The District Forest Officer,
having office at Forest Offices, Madurai – 20.

5. The District Forest Officer,
Collector's Office, Dindigul.

6. The Forest Settlement Officer,
Collector's Office, Dindigul.

... Appellants/Defendants.

/versus/

Sirumalai Thenmalai Malaithotta Vivasayigal Sangam,
through its President P.Ayyanan
(For itself and on behalf of the members of the Sangam),
K.Meenakshipuram, Viralipatty, Vadipatty,
Madurai District.

... Respondent/Plaintiff

Prayer: Appeal filed under Section 96 of Code of Civil Procedure, against the judgment and decree dated 12.03.2008 made in O.S.No.119 of 2005 on the file of the Additional District and Sessions Court, Fast Track Court No.III, Madurai.

For Appellants : Mr.R.Baskaran,
Additional Advocate General

For Respondent : Mr.T.S.R.Venkatramana, Senior Counsel,
for Mr.S.Kandasamy.

COMMON JUDGMENT

(Order of the Court was made by G. JAYACHANDRAN, J.)

These two appeals suit arising out of the judgments passed by the Additional District and Sessions Judge, Fast Track Court No.III, Madurai, in respect of suit property Survey No.1/1, Viralipatti village, Madurai District which is declared as reserved forest by the Forest Department. The proceedings of the Forest Department is resisted by Arulmigu Meenakshi Sundareswarar Devasthanam, the plaintiff in O.S.No.560 of 2004 claiming the suit property belongs to Temple donated by Thirumalai Nayakar as Devadayam and also by an Association by name “Sirumalai Thenmalai Malaithotta Vivasayigal Sangam”, the plaintiff in O.S.No.119 of 2005, claiming that their members are in possession and enjoyment of the suit property.

2. The trial Court allowed both suits. Being aggrieved by that, the State through the Officials of the Forest Department are before this Court by way of an appeals in A.S.(MD).No.312 of 2008 against the judgment and decree passed in O.S.No.560 of 2004 and A.S.(MD).No.13 of 2015 against the judgment and decree passed in O.S.No.119 of 2005.

3. Before adverting to the Law and facts involved in these two Appeal Suits, for better appreciation it is profitable to know the background of the suit subject property which is in dispute.

4. The Inam Commissioner report under the British Government submitted during the year 1863 under the Register No.75, Viralipatti village, Nilakottai Taluk, Madurai District says the land in S.No.1/1 is a “Devadayam” (gifted to 'God'), given permanently in support of the *Pagodas* of Arulmigu Meenakshi Sundareswarar Devasthanam, Thirumalai Nayakkar Kattalai at Madurai Town. The Survey number, Extent and Assessment been mentioned in the T.D.No.1397 prepared by Inam Commissioner on 24.12.1863. The tenure of the said property is mentioned in the Inam Commissioner report as 'Permanent'. The land covering under Survey No.1/1 been classified as Ayakar, Poramboke, dry land, cultivable land and waste dry land. The extent under each head also specified. This land is located on Western side of “Sriumalai Hills” which extents to nearly 22,000 acres. As far as the property now under consideration is located at Viralipatti village in S.No.1/1 to an extent of 3009.84 acres forms part of Viralimalai West.

5. From 'Madura Country Manual' a report by *J.H.Nelson*, by the order of Madras Government and published in the year 1868, it could be understood that, Viralipatti village has been gifted to the Lord *Meenakshi* at Madurai by Thirumalai Nayakkar. There is enough reference about the charity of Thirumalai Nayakkars bestowing various land to 7 Temples in and around Madurai and particularly the land in Viralipatti Village permanently for Goddess *Meenakshi* in the Madura Country manual compiled by *J.H.Nelson*. There is also Tamil literatures of Ancient and Medieval period referring about the Sriumalai hills.

6. In the Inam Fair Register, while referring the land in Viralipatty Village under register No.75, it is noted that the whole of the Ayakar is dry as per fiscal account. The whole of the dry waste land measuring 418.71 acres being Anadi Tarisu or immemorial waste. This extent is situated at the bottom of the hills overgrown with jungle, but the Inam Commissioner has opined that half of the extent may be improved and cultivated. This comment appears to be common to the six villages covered under T.D.No.1397.

7. After independence, on 7th September 1951, in exercise of the powers conferred on him under Section 1(4) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948), the Madras State Government issued a notification through Governor, appointing 1st October 1951 as the date the Act to come into force. From this notification, we understand that Sections 1, 2, 4, 5, 7, 8, 9, 62, 67 and 68 were already notified and came into effect and remaining Sections were given effect from 01.09.1951. The *Inam* lands spread over State been mentioned in the Schedule annexed to the notification. As far as Viralipatti village of Madurai District is concerned, it is found in Serial No.152. The Village Settlement Register prepared by the Settlement Project Officer, on 15.11.1962 indicates that, the land in S.No.1/1 of Viralipatti village measuring 3009 acres 84 cents as unassessed dry land and declared it as *Inam* land based on G.O.No.2302, Revenue Department, dated 1st September 1951. It is also to be noted that, the total extent of Inam land in the Village Settlement Register pertaining to Viralipatti Village is measuring 4053 acres 08 cents, in which, S.No.1/1 measuring 3009 acres 84 cents been classified as unassessed waste dry land and the nature of the land been mentioned as kiy kw;Wk; Cuzp (Hill and Water

Body). The remaining lands in the same survey number been classified as Poramboke, Tharisu Nilam, Wet land, Dry land and Manavari Nilam of different extent. As far as the wet land is concerned, patta has been issued in the name of individuals.

8. In respect of the land situated on the Western side of the Sirumalai hills covering the Villages Kulasekaran, Kulasekarankottai, Sirumalai and Viralipatti to an extent of 22,204.49 acres, the Forests and Fisheries Department, on 28.07.1977 issued G.O.Ms.No.739 and published it in the Government Gazette dated 31.08.1977, declaring the land and extent measured above as reserved forest, subject to exceptions noted and appointed the Tahsildar (Forest Settlement), Dindigul, as ex-officio Forest Settlement Officer, to exercise the powers under Clause (c) of Section 4 of Tamil Nadu Forest Act, 1882, to hear objections and Additional Personal Assistant to Collector, Madurai District appointed as Appellate Authority. In this Government Order, the boundaries of the Forest block on the Sirumalai West region been mentioned and in the boundary, there is a reference about earlier declaration of Western slopes Block “A” on the Western most cover of the Sirumalai North as

Reserved Forest under the Tamil Nadu Forest Act (Act V of 1882), *vide* Revenue Department Notification No.31 of 1900, dated 15th January 1900 and it would be seen that, the land declared as reserved forest area under the said Government Order also shares common boundary of other side of the lands which were already declared as reserved forest under Tamil Nadu Forest Act, 1882, *vide* Notification No.187 of 1883, dated 11th October 1883. Specifically, the Northern boundary of the land declared to be reserved forest under G.O.Ms.No.739 Forests and Fisheries dated 28.07.1977 mentions, it runs on the Western side of S.Nos.1, 7 and 128 of Viralipatti village (104). The process of the proposal to declare 3009.84 acres of land in Viralipatti village, which commenced by issuance of notification under Section 4 of Tamil Nadu Forest Act 1882 in G.O.Ms.No.739, dated 28.07.1977, finally culminated in issuance of notification under Section 16 of Tamil Nadu Forest Act, when it was gazetted on 11.10.1995, fixing the date of effect on and from 4th October 1995.

9. After the notification under Section 16 of the Tamil Nadu Forest Act, the Forest Settlement Officer, Dindigul, received objection from the

Executive Officer, Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai, to exclude 3009.84 acres of land in S.No.1/1 of Viralipatti village, which has been included in the Forest Block. According to the objector, the entire extent of 3009 acres and 84 cents of land at Viralipatti village in Sirumalai was granted as “Devadayam” for the support of Arulmigu Meenakshi Sundareswarar Devasthanam at Madurai Town, as per T.D.No.1397. However, based on the erroneous classification of the Inam land as unassessed dry waste land by the Revenue Department, same been now declared as Reserved Forest, on the presumption that the land is vested with the Government. Therefore, the said land in S.No.1/1, has to be deleted from the notification issued under Section 16 of the Tamil Nadu Forest Act 1882.

10. In the course of enquiry, few individuals had also made their request for grant of patta on the ground that they have been in occupation of the area for a long time. The objection of Arulmigu Meenakshi Sundareswarar Devasthanam as well as the request of the encroachers to assign patta was negatived by citing the judgment and directions of the Hon'ble Supreme Court passed in Public Interest Litigation in W.P.(Civil).No.202 of 1995 in **T.N**

Godavarman Thirumulpad -vs- Union of India and others.

11. The request of the cultivators that patta for the said land was issued to one Thiru.Nagakudubanan by the representative of Arulmigu Meenakshi Sundareswarar Devasthanam in the year 1945 was rejected by the Enquiry Officer since the said patta does not have any supporting document to establish the right of the Temple over the suit land. The delay in making the objections beyond the stipulated period of three months time from the date of notification, was noted by the Forest Settlement Officer and observed that, the objector has not given any sufficient cause for not preferring claim within the period of three months as contemplated under Section 6 of Tamil Nadu Forest Act 1882. Thus, the objection was rejected *vide* order dated 14.06.2000. Thereafter, on 04.06.2002, the Forest Department cancelled the earlier notification dated 10.10.1995 and passed a fresh declaration under Section 16 of Tamil Nadu Forest Act 1882, in G.O.Ms.No.127, Environment and Forest Department dated 14.07.2002 and same was gazetteized in the Tamil Nadu Government Gazette on 25.09.2002.

12. In the said background after final notification under Section 16 of the Tamil Nadu Forest Act, 1882 the two suits which are the subject matter of the present appeals came to be filed in O.S.No.104 of 2001 & O.S.No.51 of 2003 on the file of Subordinate Judge, Madurai and District Munsif Court respectively. Later both the suits been transferred to Additional District and Sessions Court, Fast Track Court No.III, Madurai and renumbered as O.S.No. 560 of 2004 and O.S.No.119 of 2005 respectively.

13. The schedule of the property described in the respective plaint is identical. The parties are also almost same. The trial Court therefore has conducted simultaneous trial and rendered its judgment on the same day.

14. A.S.No.312 of 2008 against O.S.No.560 of 2004:

The Arulmigu Meenakshi Sundareswarar Devasthanam, represented through its Executive Officer/Joint Commissioner as plaintiff and the State of Tamil Nadu represented by District Collector, Chief Conservator of the Forest and his Subordinate Officers, such as Conservators of Forest, District Forest Officers and the Forest Settlement Officer, Dindigul as Defendants in O.S.No.

104 of 2001 filed before the Subordinate Court, Madurai and later transferred to Additional District and Sessions Judge, Fast Track Court No.III, Madurai and re-numbered as O.S.No.560 of 2004.

15. In this suit, the Devasthanam represented by its Executive Officer/Joint Commissioner, has contended that, the suit property forms part of Sirumalai hills and it is situated at Viralipatti village. The property is covered under *Inam* title deed No.1397 granted for the support of the plaintiff/Devasthanam. It is a *Devadayam* property granted to Arulmigu Meenakshi Sundareswarar Devasthanam Arakkatalai at Madurai by Thirumalai Nayakkar. After Tamil Nadu Estate Abolition Act 1948 (Act 26 of 1948) came into force, the land was taken over by the 1st defendant namely the State represented by the District Collector, by wrongly classifying the land as an “Unassessed waste dry land” though, it is an *Inam* land. Further, averred that, till the land taken over by the Government under Act 26 of 1948, the land has been enjoyed by the Devasthanam by leasing it out to ryots and collecting the revenue. Since the suit property is a village *Inam*, it will not fall under the purview of Forest Act 1882. Therefore, notification issued under Section 4 of

Tamil Nadu Forest Act 1882 in respect of the suit schedule property granted as *Inam* to the Devasthanam is not legally valid. The proposal to declare the land granted as *Inam* to the Devasthanam as reserved Forest under Section 16 of the Tamil Nadu Forest Act, 1882, is contrary to law. The unilateral conversion of the nature of the property from Inam land to unassessed dry waste in the revenue records will not enable the Forest Department to declare the land as reserved forest. The proposal to declare the suit property as Forest land was opposed by the Devasthanam as early as in the year 2000 by lodging objection before the Forest Settlement Officer (6th defendant). However, the said objection been overruled by citing the limitation prescribed under Section 6 of the Tamil Nadu Forest Act, 1882. Hence the possession to be given back to the plaintiff/Temple.

16. In O.S.No.560 of 2004, the cause of the action for the suit stated as, it arose on 02.04.1949, when the Tamil Nadu Estates Abolition Act, 1948 came into force, on 01.10.1951, when the suit lands were taken over by the 1st defendant, on 31.08.1977 when notification under Section 4 of Tamil Nadu Forest Act was made to convert the suit lands as Forest lands, on 03.01.1994

when the 1st defendant asked the 6th defendant to finalise the notification under Section 16 of the Forest Act for the suit lands, on 04.04.2000 when the plaintiff came to know all these facts, on 17.04.2000 when the objections was given to the 6th defendant (Forest Settlement Officer) and on 14.06.2000 when the 6th defendant rejected the claim of the plaintiff.

17. The prayer sought in the said suit is as below:-

“(a). Directing the defendants to hand over possession of the suit property to the plaintiff;

(b). Granting permanent injunction restraining the respondents from altering the records in respect of the suit property;

(c). Directing the defendants to pay the costs of this action and;

(d). Granting such other and further reliefs that this Hon'ble Court may deem fit, just and necessary in the circumstances of the case and this render justice.”

18. The subject matter of the property is morefully described in the schedule to the plaint is as below:-

“In Madurai District, Vadipatti Taluk,

*Neerethan Ulvattam Viralipatti Village, Survey No.
1/1-3009 acres 84 cents.”*

19. Pending suit, in O.S.No.560 of 2004, Sirumalai Thenmalai Malaithotta Vivsayingal Sangam, represented through its President Thiru.P.Ayyanan (hereinafter be called as Sangam) got itself implead as 7th defendant.

20. Apart from impleading in the suit filed by Temple, the Sangam also filed O.S.No.560 of 2004, Sirumalai Thenmalai Malaithotta Vivsayingal Sangam filed a suit in O.S.No.51 of 2003, on the file of the District Munsif Court, Madurai, against the Government represented by District Collector and Chief Conservator of Forest and his Subordinate Officers. In the said suit, the Sangam sought a relief to grant permanent injunction restraining the defendants from evicting the plaintiff/Sangam members from the suit property, except by due process of law. In their plaint, the suit schedule property is described as Madurai District, Vadipatti Taluk, Neerethan Ulvattam, Viralipatty Village in Survey No.1/1-3009 acres and 84 cents identical to the previous suit laid by the Temple. This suit was transferred to Additional District and Sessions Judge,

Fast Track Court No.III, Madurai and re-numbered as O.S.No.119 of 2005. Against the judgment and decree passed in O.S.No.119 of 2005, the A.S. (MD).No.13 of 2015 is filed. This case is dealt separately in the later part of this judgment.

21. The District Forest Officer, Madurai/4th defendant in the suit O.S.No.560 of 2004 has filed written statement on behalf of the State, wherein, it is stated that the Government of Tamil Nadu in G.O.Ms.No.739, Forest and Fishers Department issued a notification dated 28.07.1977 under Section 4 of the Tamil Nadu Forest Act 1882, intimating the public its proposal to constitute Sirumalai West Forest Block as Reserved Forest. The total extent of 3009 acres and 84 cents of land in S.No.1/1, Viralipatti village was classified as “*Unassessed dry waste land*” in the revenue account during settlement. After publication of the notification in the Gazette, the settlement process was set into motion and proclamation under Section 6 of the Tamil Nadu Forest Act, 1882, calling for claims over the notified land as reserved forest was published in the Madurai District Gazette on 08.04.1978. The Enquiry Officer and Appellate Officer were appointed to finalise the proposal and to declare the said

land as Reserved Forest. The final notification under Section 16 of the Tamil Nadu Forest Act dated 08.09.1995 was notified in the Gazette on 11.10.1995. The amendment to this notification was brought by another notification dated 14.06.2002, which came into effect from 25.03.2003. The objections given by the Temple authorities to the Forest Settlement Officer, who is the 6th defendant was considered and rejected since there was no supportive document by the Temple to claim right over the property measuring 3009 acres and 84 cents. There is a statutory bar under Section 5 of Tamil Nadu Forest Act, 1882, which says no Civil Court shall, between the dates of publication of notification under Section 4 and of the notification to be issued under Section 16 of Forest Act shall entertain suit. Besides, Section 2 of the Forest (Conservation) Act, 1980 prohibits diversion of forest land for non-forest purpose. That apart, the Hon'ble Supreme Court in ***T.N Godavarman Thirumulpad-vs- Union of India and others***, a Public Interest Litigation in W.P.(Civil).No.202 of 1995 and the Interlocutory Applications had directed the Government not to issue patta for the Forest land. Accordingly, the Government Orders have been passed contending that the suit land is an unassessed dry waste land and subsequent to the notification under Section 4 of the Tamil Nadu Forest Act, 1882, it has been

declared as Reserved Forest following the procedures and the dictum laid down by the Hon'ble Supreme Court. Hence, the suit is not maintainable and liable to be dismissed.

22. Sirumalai Thenmalai Malaithotta Vivasayigal Sangam, who got itself impleaded as 7th defendant has filed written statement, wherein, it is contended that the property being a Inam land, the provision of Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 alone is applicable and not under Tamil Nadu Forest Act, 1882.

23. According to the impleaded 7th defendant, Section 2 of the Tamil Nadu Forest Act, 1882, defines the land at the disposal of the Government. This Section specifically excludes “*Inam land*”. Ignoring the fact that, the suit land is an *Inam* land given as 'Devadayam' to the Arulmigu Meenakshi Sundareswarar Devasthanam, any proceedings under Forest Act, 1882 is illegal. Further, averred that the plaintiff in the suit as Inamdar in turn has inducted the members of the 7th defendant/Sirumalai Thenmalai Malaithotta Vivasayigal Sangam as cultivating tenants, they are in occupation and entitled for grant of

patta as per the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963. Without conducting survey of Sirumalai measuring 3009 acres and 84 cents, the land has been erroneously deemed to be land at the disposal of the Government and an attempt to declare it as reserved forest been carried out by the Forest Department. In Sirumalai village more than 1000 families are living for more than 100 years. There are Schools, road, nutrition hall etc., constructed by the Government for the facility of the residents, so they are entitled for grant of patta.

24. As stated earlier, the 7th defendant/Sangam, who has filed the written statement by getting themselves impleaded in O.S.No.560 of 2004 also filed separate suit in O.S.No.119 of 2005, with the prayer for permanent injunction from evicting the plaintiffs' Sangam members. The merit of that suit dealt in the later part of this judgment.

25. Based on these pleadings, the Court below had framed the following issues in O.S.No.560 of 2004:-

- 1. Whether the plaintiff is entitled to possession of the suit property?*
- 2. Is the plaintiff entitled to permanent injunction as prayed for?*

3. *Was the suit property an Inam land?*
4. *Whether the suit property is an unassessed dry waste land?*
5. *Is it true that the suit property was duly notified as reserved forest land?*
6. *Whether the Civil Court has jurisdiction to try the suit?*
7. *To what relief?*

26. On behalf of the Plaintiff, P.W.1 Selvaraj, Clerk of the plaintiff Temple mounted the witness box. Following four documents marked on behalf of the plaintiff.

(i). 'A' Register of Viralipatti village dated 25.10.1998 marked as Ex.A.1.

(ii). The proceedings of the Forest Settlement Officer, Dindigul, dated 14.06.2000 marked as Ex.A.2.

(iii). Inam Fair Register marked as Ex.A3; and

(iv). Gazette Notification issued by the Government dated 31.08.1977 marked as Ex.A.4.

27. On behalf of the Defendants, S.Balaji, the District Forest Officer, Madurai, was examined as D.W.1 and Kandasamy, the District Forest Officer,

Dindigul, was examined as D.W.2. Following 7 Exhibits were marked on the side of the defendants.

(i). Notification of the Forest Department dated 28.07.1977 marked as Ex.B.1.

(ii). Gazette Notification dated 25.09.2002 issued by the Government which is in respect of Section 16 declaration after cancelling the earlier declaration dated 14.06.2002 is Ex.B.2.

(iii). The Madurai District Gazette dated 16.10.2022 carrying the Tamil version of English notification marked as Ex.B.3.

(iv). The notice from Special Tahsildar, Dindigul, Forest Control Scheme for enquiry on the objection marked as Ex.B.4.

(v). The joint inspection report dated 28.04.1993 is Ex.B.5.

(vi). The proceedings of the Forest Settlement Officer dated 14.06.2000 marked as Ex.B.6 same is marked as Ex.A.2 by the plaintiff.

(vii). The judgment copy of the Division Bench passed by this Court on 06.04.2006 in W.P.No.9461 of 2005 filed by one S.Jeyachandran marked as Ex.B.7.

28. The trial Court accepted the plea of the plaintiff/Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai that before classifying the land as unassessed waste dry land, no proper notice was issued. The reason for converting Inam land given as Devadayam as unassessed waste dry land, not made clear by the Revenue Department. Therefore, the Forest Department cannot presume that the land at the disposal of the Government under Section 2 of the Tamil Nadu Forest Act 1882.

29. Regarding maintainability of the suit, the Trial Court has interpreted Section 5 of Tamil Nadu Forest Act, 1882, that the bar to institute a civil suit is only between the dates of the publication of the notification under Section 4 and of the notification under Section 16 to establish any right over the forest land. Whereas, the suit has been filed only for possession and permanent injunction, thus Section 5 of the Tamil Nadu Forest Act, 1882 will not apply.

30. The trial Court has taken note of the fact that, the suit land has been described as land given as grant for the Devasthanam in the *Madura*

Country Manual compiled by *J.H.Nelson* published in the year 1868. Therefore, the Devasthanam cannot be deprived of its right to hold the property without proper procedure established under law. The suit property is an *Inam* Village and it cannot be converted as Forest land by the 1st defendant, since Act 26 of 1948 is not applicable to *Inam* Estates.

31. Relying upon the judgment of the Hon'ble Supreme Court reported in *AIR 2000 SC 1099* held that, when the possession been taken over through void action, there is no need to seek for declaration. The suit for recovery of possession is sufficient. Therefore, the suit filed by the Devasthanam was allowed.

32. Being aggrieved by the judgment and decree passed by the trial Court, the State represented by District Collector and the Forest Department Officials, who are defendants 1 to 6 has preferred the Appeal in A.S.(MD).No. 312 of 2008.

33. Grounds of Appeal in A.S.(MD).No.312 of 2008:-

The Appellant which is the State has contended that the suit land been duly notified as reserved forest and same been established through Ex.B.1 to Ex.B.6, which are the revenue documents and gazette notifications. They are all public documents. The Court below ignoring these evidences has allowed the suit filed by the Temple without any document to establish how the suit property measuring 3009 acres and 84 cents came to be vested with the Temple as Inam land. The Government Order and notification under Section 4 of the Tamil Nadu Forest Act, 1882, as found in Ex.B.1 and its English version marked as Ex.A.4, undoubtedly establishes the fact that, except the survey numbers mentioned in the Government Order for which patta already granted, rest of the land form part of the proposed constitution of Sirumalai West Forest Block as reserved forest. The land in Survey number which has been excluded since they are patta land, does not fall within the 3009.84 acres of Viralipatti village under S.No.1/1. The land in S.No.1/1 of Viralipatti village, after the process of settlement been classified as unassessed waste dry land in the revenue records. After due process, the final notification under Section 16 of Tamil Nadu Forest Act, 1882 was approved by the Government *vide* letter

dated 08.09.1995 and same was published in the Government gazette dated 11.10.1995. While so, the trial Court ignoring the fact that the Forest Settlement Officer, Dindigul has entertained the objection of the Temple though it was beyond the limitation, after due enquiry, dismissed the objection on 14.06.2000, had erroneously held that no opportunity was given to the plaintiff before classifying the suit land as unassessed waste land.

34. It is also contended that the Court below failed to take the subsequent development in the issue, wherein, the Hon'ble Supreme Court has seized of the matter regarding deforestation and issuing continuous mandamus to the State, in the Public Interest Litigation filed in W.P.(Civil).No.202 of 1995 (***T.N.Godavarman Thirumulpad -vs- Union of India***). The action taken by the State Government through Forest Department is to retrieve forest land and prevent deforestation and further, to involve in the process of afforestation. Pursuant to the directions of the Hon'ble Supreme Court in the aforesaid Public Interest Litigation, State has declared the suit land as Reserved Forest and rejected the objections following due process of law. The trial Court while granting the relief of possession and permanent injunction in respect of 3009

acres and 84 cent of land, failed to take note that the plaintiff has not placed any document of title or enjoyment, more so, when the property is obviously a hill and water body with natural flora, fauna and timbers.

35. Mr.R.Baskaran, the learned Additional Advocate General appearing for the appellant further added that, under the gazette notification dated 07.09.1951, in Serial No.152 in Madurai District, Viralipatti village brought under the purview of the Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948. This fact is admitted by the plaintiff in their plaint and stated in the cause of action clause. From the date of appointment (01.10.1951), the land shall stands transferred to the Government and vest with the Government. The Settlement Register also indicates that the land has been taken over by the Government. This fact also substantially and explicitly admitted by the plaintiff. The Settlement Register dated 15.11.1962 indicates that S.No.1/1 of Viralipatti is mountain and water body (kiy kw;Wk; Cuzp). The State has initiated steps to declare the suit land as reserved forest as early as August 1977. The suit for possession filed belatedly in the year 2004 without any supportive document to substantiate their claim. Furthermore,

when there is a legal embargo under Section 5 of Tamil Nadu Forest Act 1882, to institute Civil suit, the Court below ought not to have been entertained the suit.

36. Section 2 of the Tamil Nadu Forest Act, 1882, interprets “land at the disposal of the government” includes all unoccupied land, whether assessed or unassessed; with certain specific expectation. Those exceptions granted when the Act enacted in the year 1882, when *zamindars*, *shrotriyamdars*, *jagirdars*, *inamdars* were in existence and recognised. However, after enactment of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 intended to abolish '*zamindari*' and '*Inam*'. The exceptions of certain class of lands mentioned in Section 2 of Tamil Nadu Forest Act 1882, has lost its significance. In the background of the fact that Inam Estate got abolished, the expression land at the disposal of the Government has to be interpreted liberally and understood in the light of the present context. Therefore, the Temple which now claim that the entire 3009.84 acres of Viralipatti village on the Sirumalai hills is an Inam land is for

fetching and preposterous without any supporting document.

37. Section 2 of the Tamil Nadu Forest Act, 1882, defines land at disposal of Government as under:-

"2. Interpretation Clause.- In this Act, and in all Rules made hereunder unless there is something repugnant in the subject or context :-

.....

.....

***"Land at the disposal of Government".-** "land at the disposal of Government" includes all unoccupied land, whether assessed or unassessed; but does not include land, the property of landholders by section 1 of Act VIII of 1865, Madras, (namely), all persons holding under a sanad milkiyat-i-istimrar, all other zamindars, shrotriyamdars, jagirdars, jnamdars and all persons farming lands from the above persons or farming the land revenue under Government; also all holders of land under riyotwar settlements, or in any way subject to the payment of land-revenue direct to Government, and all other registered holders of land in property right;*

***Explanation.** - In the transferred territory, "land at the disposal of Government" also includes all land occupied temporarily and all land occupied without permission, whether*

assessed or unassessed, but does not include land being the property of jenmies or Devaswoms;"

38. The learned Additional Advocate General appearing for the appellant submitted that the Inam Fair Register and "A" Register which are sought to be relied by the plaintiff also does not confer any right on the Temple for the entire extent of 3009.84 of land mentioned as suit property. Further, the learned Additional Advocate General for the appellant has specifically submitted that the suit as framed is liable to be dismissed on multiple reasons such as:-

- (i). The bar of Civil Court jurisdiction under Section 5 of Tamil Nadu Forest Act 1882.
- (ii). The relief of possession cannot be granted without establishing title.
- (iii). Improper description of the property in the suit schedule.
- (iv). Latches in seeking relief of possession of the suit property of the year 2004, admitting the loss of possession as early as 1951.

39. Per contra, Mr.V.Raghavachari, learned Senior Counsel for the Temple/1st respondent submitted that the trial Court has taken note of the fact that the land in S.No.1/1 at Viralipatti village is classified as Inam land given as Devadayam, “for the support of Pagodas of Arulmigu Meenakshi Sundareswarar Swamy Thirumalai Nayakkar Kattalai at Madura, now kept up” and it is an unconditional permanent tenure, free of tax. This fact been recorded in the Inam Fair Register T.D.No.1397 by the Inam Commissioner, *G.N.Taylor*, along with his recommendation dated 24.12.1863. Therefore, the contention of the appellant that, the plaintiff failed to prove and substantiate its claim is incorrect. Further, the land in dispute is an *Inam* land and same is proved through (“A” Register), which is marked as Ex.A.3. Therefore, the contention raised by the appellants not sustainable.

40. The learned Senior Counsel for the Temple also submitted that the Temple was never put to notice in any of the proceedings initiated by the Tamil Nadu Forest Department, ever since 1951. The revenue records commencing from Inam Fair Register of the year 1863 proves that, the land sought to be declared as reserved forest is a Devadayam given to the temple.

While the Temple is in possession of land through his tenants, no notice was served and no enquiry undertook by the Forest Department.

41. Under Section 10 of Tamil Nadu Forest Act, 1882, either by agreement or through proceeds of acquisition, the land of the temple came to be taken over and declared as reserved forest. Admittedly, in this case, the Temple neither surrendered the possession nor the forest department has acquired the land after following due process of law and payment of compensation. The objection of the temple was rejected by the Special Tashildar, Forest Settlement Officer, Dindigul on 14.06.2000 through proceedings marked as Ex.B.6, ignoring the facts that, no notice was issued, before Section 6 declaration of Tamil Nadu Forest Act or final notification under Section 16 of the Tamil Nadu Forest Act. The 6th defendant also failed to take note of the fact that, when the Inam been vested with the Temple, no compensation paid to the Temple for depriving the property right of the Temple. This error has been pointed by the trial Court and held that the objection made by the Temple erroneously rejected on flimsy reasons and on the ground of limitation.

42. The trial Court taking note of the fact that there is no evidence placed by the Forest Department to vouchsafe the contention that, notice given to the plaintiff and their objections were considered, also rightly held that, the embargo to entertain a Civil Suit mentioned in Section 5 of Tamil Nadu Forest Act is only for the period between notification under Section 4 and the notification to be issued under Section 16 of Tamil Nadu Forest Act, 1882. The suit for possession filed by the plaintiff does not fall under the embargo mentioned in Section 5 of the Tamil Nadu Forest Act, 1882, more so, when the action be the appellant under Tamil Nadu Forest Act, 1882 itself is questionable, the Limitation prescribed under Section 6 of the Act for preferring appeal against the order of the Forest Settlement Tahsildar also not applicable to the case in hand. The suit for possession filed on the ground that the notifications under Sections 4 and 6 of the Tamil Nadu Forest Act 1882 is illegal is maintainable.

43. The learned Senior Counsel for the Temple/1st respondent submitted that the unilateral decision of the Revenue Department changing the Inam land as unassessed waste land in the revenue record without proper

enquiry and notice to the temple is in violation of Constitution and Law. The witnesses, who have spoken in support of the Forest Department not aware, when and how the land was classified as unassessed waste land. When the facts adduced clearly indicates that substantial portion of the land under cultivation and in a portion of the land public are existing. Contrarily the witnesses D.W.1 and D.W.2 who have mounted the box to support the case of the appellant were not able to ascertain when the land in dispute taken over by the Government or whether due process of law either under Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act (26 of 1963) or under Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari), Act (30 of 1963) was followed by the State. When there is a bar to re-classifying 'Inam land' as unassessed waste dry land more particularly, when the land is granted free of Tax permanently as per Ex.A.3.

44. Further, the learned Senior Counsel for the 1st respondent/Temple would submit that, even if assuming that the land has been taken over by the Government after due notification, for the land gifted to the Temple as *Inam* in support of the Pagoda, the State ought to have paid dastic allowance. In this

case plaintiff Temple not paid dastic allowance for depriving the pre-existing right of the Temple. So looking from any angle, the contention of the State that, the subject land has already declared and classified as unassessed waste land and the land deem to be at the disposal of the Government are all untenable under law and therefore, prays that the judgment of the trial Court has to sustain.

45. The learned Senior Counsel appearing for the impleaded 7th defendant who is the 2nd respondent in the Appeal Suit submitted that, the Members of the Sirumalai Thenmalai Malaithotta Vivasayigal Sangam, being a tenant under the Temple and had executed *muchalika* in favour of the Temple in turn, the Temple has issued patta in their favour. Being a Ryots in the Inam land of Arulmigu Meenakshi Sundareswarar Devasatham, members of the Sangam requested to issue patta in their favour. The said request been declined, ignoring their possession and enjoyment. In the said circumstances, the attempt of Forest Department to evict them is contrary to law and therefore, injunction restraining the defendants from evicting the members of the Sangam without due process of law been sought in the suit filed by them in O.S.No.119

of 2005.

46. As far as the tenants are concerned, they were put in possession of the suit land by the Temple decades ago as tenants and till day, they are paying their rents in kind to the Temple. Being the lease holder under the Temple, they are entitled for patta as per the provisions of Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948 (26 of 1948) and their right of possession is protected. Without dastic allowance to the Temple before classifying the land as unassessed waste land, no proceedings under the Tamil Nadu Forest Act, 1882, could be initiated.

47. The learned Senior Counsel appearing for the 2nd respondent/7th defendant submitted that the trial Court has rightly held that the plaintiff/Arulmigu Meenakshi Sundareswarar Devasthanam is entitled for the relief of recovery of possession and permanent injunction as prayed in O.S.No. 560 of 2004 and also allowed the suit filed in O.S.No.119 of 2005. Relying the Adangal (Ex.A.78), Kist receipts (Ex.A.67), Receipt issued by the Coffee Board and also the Joint Inspection Report conducted by the members of the Sangam and the Revenue Officials. Therefore, prayed that there shall be no

interference in the judgments of the trial Court both in the suit filed by the Temple as well as the suit filed by the Sangam.

48. Point for determination:-

(i). Whether the land measuring 3009.84 acres in S.No.1/1, Viralipatti Village, Sirumalai, given as Devadayam to the Pagodas of Arulmigu Meenakshi Sundareswarar Devasthanam and if so, whether the Forest Department is entitled to declare the suit land as Forest land under the provision of Tamil Nadu Forest Act 1882?

(ii). Whether the claim of the appellant herein that by virtue of the provision under the ***Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948*** (Act 26 of 1948), the suit schedule land been vest with the Government being classified as unassessed waste land is sustainable?

(iii). Whether the temple having admitted that, it has lost his possession on 01.10.1951, the date when ***Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948*** came into force can seek possession after nearly 50 years without relief for declaration of pre-existing right/Title?

49. A.S.(MD).No.13 of 2015 against O.S.No.119 of 2005:-

The gist of the pleadings in O.S.No.119 of 2005 filed by Sirumalai Thenmalai Malaithotta Vivasayigal Sangam, through its President P.Ayyanan (For itself and on behalf of the members of the Sangam), which is the subject matter of suit in A.S.(MD).No.13 of 2015 is substantially similar and flows from the plaint in O.S.No.560 of 2004. While in the Former suit filed by the Temple for the possession, the later suit by the Members of the Sangam is filed for protection of the possession.

50. As per the plaint in O.S.No.51 of 2003 renumbered as O.S.No. 119 of 2005. The plaintiff/Sangam has been registered under Tamil Nadu Societies Registration Act, 1975, on 02.07.2001. The Society consist of about 97 members and it is governed by bye-laws. The suit schedule property of 3009.84 acres of land in S.No.1/1, Vadipatti Taluk, Neerethan Ulvattam, Viralipatti village, Madurai District, is an Inam land granted for the support of Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai. After Tamil Nadu Estate Abolition Act, 1948 (Act 26 of 1948) came into force, the land was taken over by the 1st defendant and been classified as “Unassessed waste land”. The

land been already classified as Inam land cannot be re-classify as unassessed waste land and handed over it to Forest Department. The Tamil Nadu Forest Act does not permits classifying Inam land as Forest Land. In this connection, Inamdars namely Arulmigu Meenakshi Sundareswarar Devasthanam, has already initiated suit in O.S.No.104 of 2001, on the file of Sub-Court, Madurai, for delivery of possession of the plaint scheduled property.

51. It is contended by the plaintiff/Sangam that, till Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948 (Act 26 of 1948) came into force, Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai, was collecting land revenue from the ryots and was issuing receipts. The schedule mentioned property forms part of the 'Sirumalai Hills' and the members of the plaintiff/Sangam are in possession and enjoyment of the schedule mentioned property and cultivating till date. They have also put up construction in the suit property and local body had issued House Tax receipts. When the dispute regarding title and ownership of the suit lands under cloud, the defendants have issued a notification in the District gazette dated 16.10.2002 declaring the suit land is declared as reserved forest, ignoring the

rights of the ryots, who are the members of the plaintiff's Sangam. Its members cannot be termed as trespassers and dispossessed without due process of law by the defendants and suppressing and ignoring the pre-existing rights of the ryots.

52. Further, it is contended by the plaintiff/Sangam that, Vadipatti Panchayat Union has passed a resolution on 01.04.1999, recommending for grant of patta to the occupants of the suit property. In the suit schedule property, there is a public school opened on 05.06.1986. The children of the residents in the suit property are perusing their studies in the said school, which was established before the date of notification under Section 16 of Tamil Nadu Forest Act. The Existing right vest with the ryots, who are cultivating the land and the residents who have put up the houses and paying tax to the Panchayat cannot be deprived without due process of law. Hence, the suit for the following relief:-

(a). Granting permanent injunction restraining the defendants from evicting the plaintiffs Sangam members from the suit property except by due process of law.

(b). Directing the defendants to pay the costs of this

action; and.

*(c). Granting such other and further reliefs that this
Hon'ble Court may deem fit, just and necessary.*

53. The suit is laid on the premise that, the cause of action for the suit arose on 21.02.2003, when the plaintiff came to know about the notification dated 16.10.2002 and attempt by the Forest Department on 21.02.2003 to evict them from the schedule property.

54. In response to this pleadings, the defendants as the District Forest Officer (4th defendant) has filed written statement contending that the plaint averments are false, frivolous and imaginary. The suit property covering an extent of 3009.84 acres on the foothills of Sirumalai in Viralipatti village was notified as Forest land *vide* G.O.Ms.No.738, Environment and Forest, dated 28.07.1977 and notification under Section 4 of Tamil Nadu Forest Act, 1882, for the proposed constitution of Sirumalai West Forest Block as reserved forest measuring 3009.84 acres of land in S.No.1/1, Viralipatti village. The suit property is classified as “Unassessed waste dry land” in the revenue account during the settlement. The proposal of the Forest Department made public and

gazette notification was effected. The proposal was objected by Arulmigu Meenakshi Sundareswarar Devasathanm and said objection was rejected by the Forest Settlement Officer. Aggrieved by that, the Arulgimu Meenakshi Sundareswarar Devasthanam, has filed suit in O.S.No.104 of 2001 before the learned Subordinate Judge, Madurai. (This suit was later transferred to Additional District and Sessions Judge, Fast Track Court No.III, Maudrai and renumbered as O.S.No.560 of 2004 which is the subject matter of A.S. (MD).No.312 of 2008).

55. The possession of the plaintiff denied but their contention that the suit property is part of Sirumalai hills is admitted. The plaintiffs are encroachers of Forest Land. Though there is a school constructed in the year 1986 it is reiterated that, this will not convey any pre-existing right to the members of the plaintiff's Society. Contending that, the suit is not maintainable after proposal under Section 4 of Tamil Nadu Forest Act, 1882, proclamation under Section 6 of Tamil Nadu Forest Act, 1882, after enquiry and declaration under Section 16 of Tamil Nadu Forest 1882 published in the gazette notification dated 11.10.1995, the approval of the Government Order dated 08.09.1995. The said notification under Section 16 of Tamil Nadu Forest Act,

1882 was later amended on 04.06.2002 in (G.O.Ms.No.127 Environment and Forest) and published in the gazette on 25.09.2002. The plaintiff/Society and its members gave objection after publication of notification under Section 16 of Tamil Nadu Forest Act, 1882 requesting to delete the entire extent of 3009.84 acres of land from notification under Section 16 of Tamil Nadu Forest Act. Having all their attempt to delete the suit land from notification under Section 16 of Tamil Nadu Forest Act failed. Suppressing those facts, the suit is filed as if, the defendants attempt to evict them without following due process of law. They are only trespassers into the Forest land, they neither have title nor lawful possession to get protection under law. The maintainability of the suit in representative capacity by the registered Society also questioned in the written statement filed by the 4th defendant on behalf of the other defendants.

56. Based on the pleadings, the trial Court framed following issues:-

- 1. Whether the plaintiff is entitled for permanent injunction?*
- 2. Whether the plaintiff is the proper person to file the suit?*
- 3. Whether the suit is statutorily barred?*

4. Whether the Court has jurisdiction to try the suit?

5. To what other relief?

57. To substantiate the averments found in the plaint, Ayyanan, the President who presented the plaint on behalf of the plaintiff/Sangam as P.W.1. Alagan and Lakshmanaperumal as P.W.2 to P.W.3 respectively were examined. Marked 100 Exhibits. On the side of the defendants, they examined two witnesses and marked 7 exhibits.

58. The registration certificate of the Society, the list of members and clean copy of the plaint in the suit filed by Arulmigu Meenakshi Sundareswarar Devasthanam, in respect of the suit property in O.S.No.104 of 2001, on the file of Subordinate Court, Madurai and later, transferred to learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai and renumbered as O.S.No.560 of 2004 is marked as Ex.A.1 to Ex.A.3. Apart from these three documents, House Tax receipts issued by Viralipatti Panchayat are marked as Ex.A.4 to Ex.A.49. That apart, the B-memos issued to three of the members of the Society under Section 5 of Tamil Nadu Land Encroachment Act, 1905 (Act

3 of 1905), resolution of Vadipatti Panchayat and documents to show that there is a public school opened on 05.06.1986 at Viralipatti Village, the sale of agricultural produce by the villagers of Viralipatti and other official communications in respect of the land declared as reserved forest are the documents relied.

59. The Inam Fair Register of the year 1863 prepared by *GN.Tayler*, Inam Commissioner of Madura District, on 24.12.1863, is the base document relied by the plaintiff and same is marked as Ex.A.100. Ex.A.99, Joint Inspection Report dated 28.04.1993 form part of Ex.B.5. The defendants have not led any oral or documentary evidence in this suit. However, it is noted that, in the connected suit (which referred in the plaint and written statement) filed by Arulmigu Meenakshi Sundareswarar Devasthanam. The documents and witnesses examined in support of the defendants. The trial Court has concluded that, it is admitted by D.W.1 that around 792 acres of land is in possession of ryots, who are cultivating the land and unless that portion is carved out, without following due process of law, the members of the plaintiff Sangam cannot be

evicted. Further, the trial Court observed that, the defendants have not followed due process of law to evict them and therefore, their possession has to be safeguarded. Hence, granted injunction.

60. Regarding maintainability of the suit, the trial Court has held that to avoid multiplicity of proceedings, the representative suit has been filed and plaintiff/Sangam, is entitled to maintain the suit as framed and also held that, the suit is not barred under Section 5 of Tamil Nadu Forest Act, 1882, since the plaintiff has not sought any right but only protection to their possession. Having held so, the suit prayer in entirety been decreed on 12.03.2008.

61. Being aggrieved by the judgment, the appeal in A.S.(MD).No.13 of 2015 is filed challenging the legality of the judgment and decree passed by the Trial Court in O.S.No.119 of 2005 dated 12.03.2008.

62. The grounds of appeal is almost similar to the one raised in the connected appeal A.S.(MD).No.312 of 2008, it is stated that the land which was classified as unassessed waste dry land during the settlement and same form

part of revenue account. Proposal under Section 4 of the Tamil Nadu Forest Act, *vide* Government Order dated 28.07.1977 duly published in the State and District Gazette on 31.08.1977 & 08.01.1978 respectively, which was followed by the proclamation under Section 6 of Tamil Nadu Forest Act, calling for claims and same been published in Gazette on 08.01.1978 and 15.05.1978 in Tamil. After due enquiry affording opportunity, final notification under Section 16 of Tamil Nadu Forest Act, published in gazette on 11.10.1995. The final notification was amendment and notified. These facts were not given due consideration by the trial Court in spite of records placed before it. The trial Court misunderstood the testimony of D.W.1 and D.W.2 regarding their direct knowledge about the classification of the suit land in the revenue records, after settlement as unassessed waste dry land. This cannot be construed as a ground to hold the classification of the land as unassessed waste dry land as found in the public document is vague and doubtful.

63. Further, the representative suit filed on behalf of members for the relief of injunction in respect of the entire extent of 3009.84 acres of land notified as reserved Forest is not maintainable since the relief sought is a right

in personam, which cannot be agitated by a Society, without proof of the right of each of its members over the suit property. In the absence of proof, the land in possession of its members covers the entire 3009.84 acres, the suit is liable to be dismissed for absence of proper description of the property in the suit schedule.

64. Further, it is contended that the trial Court failed to take note of the fact that, even according to the plaintiff/Sangam, the Joint Inspection Report Ex.A.99 was conducted only in the year 1986, much after the proposal to declare the land as reserved forest. The Forest land cannot be diverted for any other purpose, as per the directions of the Hon'ble Supreme Court in ***T.N.Godavarman Thirumulpad -vs- Union of India*** in W.P.(Civil).No.202 of 1995. The Government has passed G.O.Ms.No.168, Revenue Department, directing that, no patta should be issued for the Forest Land. Further, from the B-memo relied by the plaintiff itself speaks the fact that about they are in unauthorised occupation of the land and hence, notice under Section 5 of the Tamil Nadu Forest Act (Act 3 of 1905) been issued to them. According to the

plaintiff, the document which are much later to the proposal initiated for declaring 3009.84 acres of forest land. The documents created and produced before the Court by the plaintiff were taken as true and correct, it is only in respect of 795 acres of land. Therefore, injunction for the entire extent of 3009.84 acres of land as prayed in the plaint ought not to have been granted carving out 791 acres from 3009.84 acres is not at all possible when the identity of the land not clear in the documents relied by the plaintiff/Sangam and furthermore the land they have occupies illegally subsequent to notification. This clearly indicates the non-application of mind and non-appreciation of evidence by the trial Court.

65. Further, it is contended that, the trial Court failed to consider that after proposal under Section 4 of the Tamil Nadu Forest Act, proclamation under Section 6 of the Tamil Nadu Forest Act was made and claims were invited. Enquiry under Section 8 of the Tamil Nadu Forest Act was commenced, some of the occupant of the subject land made their claim and that was considered but rejected for want of merit. The Temple through which the members of the Sangam claims right or possession also participated in the

claim proceedings and sought for deleting the property from the notification, claiming that, it is an Inam land given to them as Devadayam by Thirumalai Nayakkar and same been recorded under the Inam Fair Register. Considering the Inam Fair Register and patta issued in the name of Thiru.Nagakudubanan, by the representative of the Arulmigu Meenakshi Sundareswarar Devasthanam, the said of the Temple was rejected and ordered passed on 14.06.2000. While the Inam Fair Register of the year 1863 itself indicates that, only 45.93 acres of land classified as Inam land and patta issued by Arulmigu Meenakshi Sundareswarar Devasthanam through its Executive Officer/Joint Commissioner in favour of Thiru.Nagakudubanan, which is marked as Ex.A.70 is in respect of very minuscule extent of land for the fasli year 1351 equivalent to the year 1941 'English Era' also not for the entire 3009.84 acres or near about. The trial Court failed to consider that during the enquiry on the objection made by the Temple, same been rejected. While Temple has no title over the suit property, the claim of the plaintiff/Sangam through Temple as representative suit filed on behalf of its members without any reference about the exact measurement of land in the possession of each members ought to have been rejected outrightly. The trial Court has allowed the suit, without proper application of mind and

law.

66. The learned Additional Advocate General appearing for the appellant contended that, by virtue of Section 25 of Tamil Nadu Forest Act, the land deemed to be vest with the Government and Section 5 of the Tamil Nadu Forest Act, civil suits are not maintainable. The right to seek protection of possession under Tamil Nadu Forest Act, 1882, cannot be construed as an issue beyond purview of Section 5 of Tamil Nadu Forest Act. While, the notification under Section 16 of the Tamil Nadu Forest Act is valid and not challenged consequence order of evicting the trespassers pursuant to the notification as well as the direction of the Hon'ble Supreme Court in ***T.N.Godavarman Thirumulpad -vs- Union of India and others*** a Public Interest Litigation in W.P.(Civil) No.202 of 1995. The State cannot be restrained by way of injunction order by a Civil Court at the behest of trespasser which will go contrary to law and the mandate of the Hon'ble Supreme Court which has directed the States and Union Territories to retrieve the Forest land from the encroachers.

67. The learned Additional Advocate General for the appellants besides referring the directions of the Hon'ble Supreme Court in *T.N.Godavarman Thirumulpad -vs- Union of India* in a Public Interest Litigation in W.P.(Civil). No.202 of 1995, also referred the judgment of the Division Bench of this Court in W.P.No.9461 of 2005, dated 06.04.2006, which has directed the Forest Department that, 7528.875 hectares of land already declared as reserved forest to be freed within one year from encroachers. The land referred in the said Writ Petition is part of the Sirumalai hills.

68. Point for determination in A.S.(MD).No.13 of 2015 as below:-

(i). Whether the suit filed on behalf of the members of the Sangam seeking injunction in respect of 3009.84 acres of land is maintainable on facts and in view of Section 5 of the Tamil Nadu Forest Act?

(ii). Whether the oral and documentary evidence Ex.A.1 to Ex.A.100 relied by the plaintiff/Sangam proves the possession of entire 3009.84 acres of land with its members and they are entitle for protection from eviction?

(iii). Whether the defendant has followed

due process of law before attempting to evict the member of the plaintiff's Society from the suit schedule property?

69. This Court, while commencing the judgment had narrated the necessary background facts which has culminated in filing the suit by the Arulmigu Meenakshi Sundareswarar Devasthanam and by the Ryots. Therefore, those facts which has already been narrated are not repeated for consideration of the point for determination as framed above, unless necessary.

70. In this case primarily, it is the Court has to look into the nature of the land which is the subject matter of the suit and how the Forest Department claim that they have lawfully declared the suit land as reserved forest is legally sustainable. Secondly, if the State fails to establish that the process of declaring the suit land as reserved Forest is in accordance with law, will it in turn, automatically confer any right on the Temple to get back the possession.

71. Sirumalai and the action taken by the State under the Forest Acts

To know about the place called "Sirumalai", the following extracts in the *Madura Country Manual* compiled by order of the Madras Government by *J.H.Nelson*, gives us a fair idea and the necessary introduction as below:-

"A few miles to the east of the Palani range commences an irregular congeries of hills of very various shapes and altitudes, which are dotted about the map in every direction round the village of Nattam. Various portions of them are known respectively by the following names. 1 The Sirumaleis 2. The Karunthamaleis 3.The Nattam hills 4.The Alagar hills.

.....

.....

The relative position of the four groups is roughly as follows:- The first is east of Nattam, the second north, the third west, and the fourth south.

The only one of them which is at all extensive and lofty, and which has attracted cultivators, is the first, the Sirumaleis. Its extreme length is something under twenty miles, and in its highest parts it reaches the respectable height of 3,500, or perhaps even 4,000 feet, above the level of the sea."

72. In the *State of Tamil Nadu, rep. by the Revenue Secretary to the Government of Tamil Nadu, Madras -vs- K.M.Pichai Ammal and others* reported in *(1982) 1 Mad LJ 173*, the issue regarding a land which is located in Sirumalai hills declaring as reserved forest came for consideration. In the said suit, declaration relief in respect of 704.88 acres of land situated in Sirumalai village, Nilakottai Taluk, was prayed. This piece of land was originally under the Ammayanaickenur zamin and classified as Zamin Tharisu Punjai. The plaintiff sought for patta claiming it as ryot land, whereas, the State said that it is a forest. In the said suit, the land was assigned in favour of the plaintiff by the zamin for consideration stating that the land is registered as dry waste and it could not be cultivated, hence, the request for grant of patta under Act 26 of 1948, was rejected. The rejection was sought to be declared as illegal through suit. Though the plaintiff succeeded in getting the relief before the trial Court and same confirmed by the Lower Appellate Court. In the Second Appeal, this Court, after framing point for consideration, whether the suit properties are ryots in character as held by the Courts below, held that the suit properties situated in Sirumalai Village, Nilakkottai are classified as 'Zamin Tharisu' originally belongs to K.Rangasamy Naicker Zamindar of Ammayanaickenur,

Dindigul Taluk. Under Ex.B-1 dated 31st December, 1945, he had assigned an extent of 851 'kulis' (502.09 acres) after collecting 'Nazir' amount at the rate of one 'panam' per 'kuli'. After the assignment, Patta bearing No.401 was issued to him, he was paying kist for his 'kudiwaram' interest to the Zamindar and after abolition of Zamin and take over of the estate on 3rd January, 1951 as per the provisions of Tamil Nadu Act 26 of 1951, land vest with the defendants/the State. After considering the facts and evidence, this Court has held as below:-

“11. Having regard to the fact that though the Madras Estates Land Act or the Madras Estates Abolition and Conversion into Ryotwari Act have not defined ‘forest land’, the definition of ‘forest land’ in Tamil Nadu Act 14 of 1947 which preceded Madras Act 26 of 1948, can be looked into. Having regard to the object of the Madras Act 14 of 1947, which is to prevent the alienation of communal, forest and private land in an estate pending the abolition of Zamindaries, the definition of ‘forest land’ occurring therein can be taken to find out what are the lands the erstwhile Zamindar could not alienate. The definition includes any waste land containing trees and shrubs. In this case the assignment deed Ex. B1, would clearly show that the lands assigned were waste lands full of shrubs, trees, thorns, stones and mounds. The document

Ex. B1 also indicates that the motive for assignment is the huge expenditure involved for making them cultivable. Thus, as on the date of the assignment Ex. B1, the lands were hilly tracts full of trees, shrubs, thorns, stones and mounds and were not as such cultivable. It is true that after spending considerable amount for reclamation, they could be made cultivable. But if that were to be the test, then even the bed of tank, or bed of sea could be reclaimed and made cultivable after incurring a huge expenditure on that ground we cannot say a tank bed or sealed is a cultivable land. The trial Court has proceeded on the basis that the State Government has not shown the lands as forest lands in the revenue accounts. But Ex. B16 has been produced by the defendant which is a copy of the communication emanating from the Special Deputy Collector (Forest Settlement) Madurai, dated 31st May, 1971, showing that the lands have been classified as forest lands. Apart from this, the A Register of the village, Ex. B19 also shows that the land has been classified as meaning forest. Apart from this, as already stated, there is intrinsic evidence in Ex. B1 itself that the lands assigned are meaning 'forests'. The Courts below have held without jurisdiction that much significance cannot be attached to the word occurring in Ex. B1. Apart from this, the admission of the authorised Manager of the first plaintiff before the Special Deputy Tahsildar, Madurai in his

statement under Ex. B13, that the suit lands are not accessible even to the pedestrians and it is not possible to climb the hill and reach the lands for the purpose of cultivation or horticulture, that the lands are 7 miles away on the hill from the foot of the hill, would clearly indicate that the lands are forest land covering a hill tract which cannot be approached even by pedestrians. This admission had also been wrongly ignored by the lower court on the ground that the admission by themselves will not show that the property is a forest land. According to the lower court, since the suit property relates to a large extent of land, the presence of trees and uncultivable portions will not itself take away the ryoti character of the land and make it a forest land. The trial court, however, in making that observation overlooks the fact that no portion of the area covered by Ex. B1 was shown to be cultivable at the time of the assignment. It may be that after the assignment and with a view to get patta for the land, the first plaintiff could have brought some portion of the lands under cultivation after incurring a considerable expenditure. But the relevant date for considering whether the lands were forest lands or ryoti lands was the date of assignment.”(Emphasis added)

73. Observing as above, the Hon'ble High Court set aside the

judgment and decree of the Courts below. Though the land in the above case is erstwhile Zamin land and in the instant case, it is claimed to be 'Devadayam Land' by the Temple, the similarity in facts, sequence of events and the pleadings are almost identical. Incidentally, the land in the case cited above, form part of the Sirumalai Hills and reference about this land is found in the Madura Country Manual report compiled by *J.H.Nelson*, in the year 1868 extracted above. Therefore, the law laid in this judgment squarely applies to the facts of the case in hand. We have to consider whether the land in question was forest land or ryot land on the date of assignment.

74. The earliest revenue document before this Court is the Inam Fair Register, dated 24.12.1863. In this register, the suit land is recorded under T.D.No.1397 and the extract of the Inam Fair Register is marked as Ex.A.3. The summary of the title deed in respect of Viralipatti village indicates that, the village land is assessed to tax, the land been classified as Ayakat, Poramboke, Inam, reminder dry, cultivable dry and waste dry. The extent of each category and the English measurement been provided. The substantial portion of the land are been assessed. The tax assessment of the village is Rs.752/- and 1 paise.

From out of total land around 3053.2 acres referred as 'Ayakat dry' and 'Dry waste' as 418 acres 71 cents in 'Anadi Tarisu' and mentioned as immemorial waste. This immemorial waste land been identified as the bottom of the hills overgrown as jungle. However, it has been opined by the Inam Commissioner that, half of this extent may be improved and cultivated. The land has fetched tax an average of Rs.387.12 paise in the past 5 years i.e., from the year 1858 to 1863. This Inam Fari Register under T.D.No.1397 is in respect of Six villagers including the Viralipatti village in register No.75, as per this entry, only 34.12.3 acres is mentioned as Inam. Having mentioned the entire S.No.1/1 as 'Devadayam' given in support of Pagodas of Arulmigu Meenakashi Sundareswara Samy Thirumalai Naicker Kattalai and by classifying the nature of the land gifted under 'Devadayam', only a minuscule portion of the land been mentioned as Inam.

75. The next document is of the year 1950 which is the gazette notification dated 12.12.1950 issued by Madras Government is in respect of notification issued under Section 1(4) of Madras Estates (Abolition and Conversion into Ryotwari) Act 1948, in short (Madras Act XXVI of 1948).

This notification not marked in the present suit but marked as Ex.A.73 in the other suit filed by the Sangam. In this notification, at Serial No.152 Viralipatti Village of Nilakkottai Taluk in Madurai District is mentioned as one of the Inam Estate, which is brought under the purview of Madras Act XXVI of 1948 and stand abolished on the advent of the Act from 16.10.1951. Following this notification, 2nd notification dated 16.10.1951 been issued which is marked as Ex.A.74 in the connected suit.

76. The scrutiny of this Gazette notification indicates that the village has been measured as per the instruction given by the Board of Revenue to survey the Inam land under Madras Survey and Boundaries Act (Madras Act VIII of 1923). This does not reveal any information to infer that 3009 acres and 84 cents of land which is subject matter of the suit falls under the purview of this notification. Though the land is located at Sirumalai village, unless and until this land has been accepted to be an Inam land and surveyed pursuant to this notification dated 16.10.1951, on presumption one cannot say entire 3009.84 acres of land is forest. However, when the Government Notification on 31.05.1961 published in the gazette, the Court could find that the Food and

Agricultural Department had issued a notification under Madras Forest Act for constitution of Sirumalai West Block in Nilakkottai Taluk, Madurai District as reserved forest. The G.O.Ms.1792, the Food and Agricultural Department dated 16th May 1961 published in the said gazette indicates that in exercise of the power conferred under Section 4 of Indian Forest Act 1982, Government in the Food and Agricultural Department has declared that the State has proposed to constitute as reserved Forest, the land within the boundaries specified in the schedule and appoint Revenue Divisional Officer, Dindigul, Madurai District as ex-officio to be Forest Settlement Officer. to exercise the powers under Clause (c) of Section 4 of the Tamil Nadu Forest Act 1882. In the said schedule, Viralipatti Village, S.No.104 extent of 3.026.64 acres of land been notified for declaring it as reserved forest. The four boundaries for Viralipatti village and other two villages namely Sirumalai and Kulasekarankottai also been provided in the notification.

77. Though in the proposal boundaries and extent provided and makes clear that the suit land been dealt by the State as the land vested with the Government as per Section 2 of the Act and proceeded with the Tamil Nadu

Forest Act 1882, it is not made clear by the State that while issuing this notification, whether the entire in the Inam Fair Register (Ex.A.3) was taken into consideration or at least after the notification whether the Government proceeded further affording due opportunity to the stakeholders.

78. The learned Additional Advocate General for the appellants, attempted to impress upon this Court that, after the Act came into force, the Viralipatti village been notified under the Act relying Section 25 of Tamil Nadu Forest Act 1882 by saying the land in question vest with the Government as reserved forest. However, reading of Section 25 of Tamil Nadu Forest Act, does not provide the meaning as the Additional Advocate General wants us to understand. For clarification, Section 25 of the Tamil Nadu Forest Act, 1882, is extracted below:-

“25. Forests reserved previous to the passing of this Act:-

The Government may, by notification 3 in the 4[Official Gazette], declare any forest which has been reserved by order of the Government previous to the day on which this Act comes into force to be a reserved forest under this Act:

Provided that if the rights of the Government or of private persons to or over any land or forest-produce in such forest have not been inquired into, settled and recorded in manner which the Government thinks sufficient, the same shall be inquired into settled and recorded in the manner provided by this Act for reserved forests, before the date on which the notification declaring the forest to be reserved takes effect.

** 3. Notification under this Section are too numerous and subject to much alteration as to make reference here to them is unnecessary.*

** 4. Substituted for the words "Fort St.George Gazette" by the Adaptation order of 1937.*

All questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared hereunder, and the provisions of this Act relating to reserved forests shall apply to such forest."

79. To attract this Section, first of all there must have been a notification under Section 25 of Tamil Nadu Forest Act, 1882 and before any such notification, there should have been an executive order earlier to the commencement of the Act declaring a land as Forest. In the absence of any such executive order declared prior to the Act or notification under Section 25 of the Tamil Nadu Forest Act, 1882, the said submission of the learned Additional Advocate General that by virtue of this notification, the land is to be

vest at the disposal of the Government as interpreted under Section 2 of the Tamil Nadu Forest Act, 1882, is untenable.

80. Nonetheless, the attempt of the State to declare the suit land as Reserved Forest has emanated from the notifications under the Madras Estate Abolition Act 1948, which has declared the Viralipatti village of Nilakottai Taluk, Madurai District as Estate and under the purview of the Act XXVI of 1948. These two notifications are dated 12.12.1950 and 16.10.1951 which are exhibited as Document Nos.73 and 74. As a result, 34.12.3 acres of Inam land mentioned in T.D.No.1397 in respect of Viralipatti village stands abolished. The land classified as Dry waste and unassessed waste deemed to vest with the Government.

81. Next, the Government Order in G.O.Ms.No.739 issued by Forest and Fishers Department dated 28.07.1977, is in respect of the suit land. The said notification has been gazetteized in the Tamil Nadu Government gazette dated 31.08.1977. This notification issued under Section 4 of Tamil Nadu Forest Act 1882, in suppression of the earlier notification dated 16.05.1961

which was published in the gazette dated 31.05.1961. This Government Order dated 28.07.1977 in Tamil version is marked as Ex.B.1. The English version as published in gazette dated 31.08.1977 is marked as Ex.A.4. Comparing the earlier notification dated 16.05.1961 and the subsequent notification dated 28.07.1977 the difference we find is in the total extent of land. In S.No.1/1 of the Viralipatti village as against 3026.84 acres in the earlier notification reduced to 3009.84 acres due to a portion of the land in some of the survey numbers mentioned been excluded. Thus, it is clear from these notifications that, the Forest and Fisheries Department had revisited the earlier decision to declare 3026.84 acres of the land in Viralipatti village as reserved forest and had issued the fresh notification under Section 4 of Tamil Nadu Forest Act, 1882, indicating to declare lesser extent i.e., 3009.84 acres of land and for appointing Tahsildar, Forest Settlement Officer, Dindigul to be the Forest Settlement Officer to hear objections and Additional Personal Assistant to the Collector of Madurai District as ex-officio to hear appeals.

82. This notification did not see much progress and the exhibits marked in the another suit filed by the Sangam/cultivators, reveals that, against

this notification when attempt to survey the land was undertaken by the Revenue Department, objections and request were made by the cultivators to grant patta and have submitted that, the land in S.No.1/1 at Viralipatti village ought to have been dealt with, as per the provisions of Act XXVI of 1948 and the ryots ought to be given patta.

83. In this connection, the Special Tahsildar, Forest Settlement Officer, Dindigul, was asked to make a field visit and report to the District Collector, Madurai to consider the request of the encroachers in the unassessed waste dry land in Viralipatti Village of Nilakkottai Taluk to issue patta for the land under their enjoyment qua intention of the Forest Department, for the formulation of Sirumalai West Forest Block, as per the notification issued in the year 1977 under Section 4 of Tamil Nadu Forest Act, 1882.

84. The Special Tahsildar/Forest Settlement Officer, has submitted his report recording the fact that, the gazette notification dated 31.08.1977 in respect of Sirumalai West Forest Block covering three villages measuring to an extent of 22,204.49 acres of land, in which, Viralipatti Village measures

3009.84 acres of land. After due enquiry, proclamation under Section 6 of the Tamil Nadu Forest Act, 1882, was published in the Madurai District gazette in English version 08.04.1978 and in Tamil version on 08.04.1978 and after considering the claim from 204 persons the same has been disposed of. Thereafter, draft notification under Section 16 of Tamil Nadu Forest Act dated 19.12.1981 submitted to District Forest Officer, Madurai, for further action and he, in turn submitted it to District Collector, Madurai, through R.O.C.No. 25377/81-D2, dated 02.01.1982 for further action. The same has not been finalised and published in view of the objections, from the agriculturists/association of Sirumalai village, as this issue was going on, while the decision could not be taken immediately about the final notification under Section 16 of the Tamil Nadu Forest Act, the notification under Section 16 of the Tamil Nadu Forest Act was published on 11.10.1995 but the same was cancelled on 14.06.2002 by G.O.Ms.No.127 Environment and Forest (FROD for to be republished). Under the same G.O, fresh declaration under Section 16 of the Tamil Nadu Forest Act 1882, in respect of Viralipatti Village, Vadipatti Taluk in S.No.1/1 Forest Block of 3009.84 acres of land published with four boundaries and in this declaration, no admitted right has been given.

85. The above report precisely indicates that after notification dated 14.06.2002 under Section 16 of the Tamil Nadu Forest Act, cancelling the earlier notification dated 11.10.1995, no exemption and right to any of the encroacher been granted.

86. It is pertinent to note, at this juncture that in between the earlier notification dated 11.10.1995 under Section 16 of the Tamil Nadu Forest Act, 1882 and the subsequent fresh notification dated 14.06.2002 after cancelling the earlier notification, the Hon'ble Supreme Court has taken cognizance of indiscriminating felling of trees in the forest and rapid deforestation by unscrupulous persons reducing the green cover. The Public Interest Litigation filed by *T.N.Govdavarman Thirumulpad -vs- Union of India* cited supra in W.P. (Civil) No.202 of 1995, came up for consideration. In I.A.No.418 *vide* order dated 07.05.1999, the Hon'ble Supreme Court directed that, hereinafter no patta should be issued in respect of Forest Land and started monitoring the implementation of this order by issuing Writ of Mandamus as and when required. This judgment is the watershed mark and pivotal factor for deciding

the points under consideration. The Government and Forest Department has taken note of the Supreme Court direction and acted accordingly to preserve the forest area.

87. Under these circumstances, in the year 2002, the Temple has come forward to file objections and same was taken into consideration and rejected since the objections was not supported by sufficient document. In the proceedings dated 14.06.2000, the Forest Settlement Officer, has been referred to the direction of the Hon'ble Supreme Court in Interlocutory Applications filed Writ Petition (Civil).No.202 of 1995 and the G.O.Ms.No.169, Revenue Department, dated 25.07.1989, restraining the Revenue Authority from issuing patta in respect of Forest land.

88. On considering the facts and evidence, this Court summarize its findings and conclusions as below:-

89. The suit property measuring 3009.84 acres at Viralipatti village is entangled between three major entities who claim right over it:-

(i). The Arulmigu Meenakshi Amman Temple: The plaintiff in O.S.No.560 of 2004. In this suit temple claims Devadayam right based on the entry in the Inam Fair Register, T.D.No.1397 recorded on 24.12.1863. This Inam Fair Register extract is marked as Ex.A.3.

(ii). The Forest Department: It has identified the land as forest on the Western side of Sirumalai hills and the land bottom of it, which they have declared as reserved forest under the Tamil Nadu Forest Act, 1882.

(iii). The cultivators in the said land: They claim patta on the ground that, it being an Inam land, after the Tamil Nadu Inam Abolition Act, patta should be given to the Ryots after due enquiry following the procedure under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963.

90. Among the three, the Plaintiff/Arulmigu Meenakshi Sundareswara Devasthanam and the individuals who have formed an Association on one side and the Forest Department on the other side are at

loggerheads to enjoy and possession the suit property measuring 3009.84 acres of land.

91. The extent of 3009. 84 acres of land at Viralipatti village, at the foothills of Sirumalai is the subject matter of these two appeals. The appellant representing the State and the Forest Department in particular claim that, they have declared the said land as reserved Forest following the procedure contemplated under the Tamil Nadu Forest Act, 1882 and therefore, the occupants are liable to be evicted.

92. Whereas, the Arulmigu Meenakshi Sundareswarar Devasthanam, Madurai, represented by its Executive Officer on one side claims that, the suit property is a Devadayam land gifted to the Temple by Thirumalai Nayakkar for the support of the Temple therefore, the possession of the property must be restored to the Temple. The members of the Sirumalai Thenmalai Malaithotta Vivasayigal Sangam on the other hand claim that, they are in possession of the suit property either as ryots or residents. Therefore, they should not be evicted without following due process of law.

Devadayam:-

93. The meaning of the word "Devadayam" been interpreted by our Courts in several judgments. The meaning of the term "Devadayam" as it was prevailing during 1863 when Inam Fair Register was prepared will help us to know and understand the term more exactly. Since Inam Fair Register prepared in the year 1863. *J.H.Nelson* report is of the year 1868 they are records of contemporaneous period.

MISCELLANEOUS
CHAPTER – I
(PART – V)

All the lands of the District may be divided for the purpose of the description into two classes, viz-

- I. Lands paying tax to Government.*
- II. Lands not paying tax to Government.*

The 1st class may be subdivided into -

- (a) Lands which pay tax immediately to Governmental offices.*
- (b) Lands which pay tax immediately to Government, that is to say which pay tax through persons variously*

denominated, such as Zamindars, Poligars, Inamdars and others being intermediate between the landholders and the Government.

The 2nd class may be subdivided into -

(a) Lands under the sole and exclusive dominion of Government.

(b) Lands under the sole and exclusive dominion of private individuals or communities.

(c) Lands under the partial dominion of Government, in which individuals or communities have a certain limited interest or property.

I shall now proceed to enumerate the technical names by which lands falling under each of the above heads are severally called. And first with regard to the lands of CLASS I.

Subdivision (a) comprises -

1 Ryotwari lands.

2 Amdni lands.

3 Inam lands

4 Mamam lands.

Subdivision (b) comprises-

1. Zamindari lands in the occupancy and under the sole and exclusive dominion of individuals not being Zamindars.

2 Paleiyan (Pollam) lands in the occupancy and under the sole and exclusive dominion of individuals not being Paleiyakarans (Pollgars)

3. Muttadari lands in the occupancy and under the solo and exclusive dominion of individuals not being Muttadârs.

4 Maniam lands in the occupancy and under the sole and exclusive dominion of individuals not being Maniamdars.

5. Inam lands in the occupancy and under the sole and exclusive dominion of individuals not being Inamdars.

INAM lands paying tax to Government, are lands the greater portion of the tax on which has been remitted to the holders in consideration of their performing services of various kinds too numerous to mention. The remission may be revoked in case of non-performance of the service The following are the principal classes of Inams, viz -

1 Devadaya.

2.Dhamadaya.

3.Bramhadaya

4.Khayrath.

Devadaya Inams are those granted for the support of Pagodas and other religious institutions, and of the officials employed in them, such as the Bhattans or officiating priests, cooks, musicians, sweepers and others.

INAM lands not in the possession of Inamdars are held upon the same tenure as Mâniam lands not in the possession of Maniamdars.

94. The report of *J.H.Nelson* also explains the term waste land as under:-

WASTE LANDS not included within the limits of any Zamindari, Paleryam, Mita, or freehold estate, are as a rule under the sole and exclusive dominion of Government. Extensive tracts of high-lying lands round the bases of hills and those which form the plateaus on the summits of hills, have lain waste for centuries, and are available for cultivation or pasturage. First class blocks on the Palanis well-watered and partly covered with virgin jungles, may be brought outright and subject to no kind of tax for Rupees ten per acre. and open grass-lands for five Rupees None of the castes settled on the Palanis have ever asserted any claims to the ownership of these promising lands, and no doubt large tracts will be taken up by tea and coffee-planters within the next few years."

95. Meaning of the term '*Devadayam*' came up for consideration before the Court in ***Subramania -vs- Kailasanatha*** reported in ***ILR (1955)***

Mad 35. This Court while clarifying the term Devadayam said;

“It has been pointed out that the word ‘devadayam’ is used in inam registers not only in connection with religious grants strictly so called but also where the ultimate purposes are religious. It is clear from the decision that the test to be applied in distinguishing a grant to an institution from a grant to an individual is the intention and that each case depends upon its own facts. In Sami Ayyangar v. Venkataramana [AIR 1934 Mad 381] it was held that devadayam in a grant does not necessarily import that the grant is made to the temple. It was further held that where a grant contains the clause that it is to be confirmed to party as long as he continues the performance of the service, it is a grant to the party burdened with service and not to the deity even though the word devadayam is used as the inam register disclosed that the land was continuously held at least for two generations by the family of the party. It appears from page 260 of Sundararaja Iyengar's Land Tenures that the mere description of an inam as devadayam is not conclusive that the grant is in favour of a religious institution, though it is a strong proof that the institution is a public one.”

96. The judgment of the Hon'ble Supreme Court in ***Subramania Gurukkal, (dead) Through Muthusubramanis and others -vs- Shri Patteswaraswami Devasthanam Perur by its Executive Officer and others*** reported in ***1993 Supp (4) SCC 519***, while considering the entries found in *Inam Fair Register* in the column 1 as “Devadayam” and column 10 as “Permanent”, Supreme Court held as below:-

“47. Therefore the word ‘permanent’ signifies the grant in favour of the temple. An attempt was made by the appellant to distinguish this case having regard to the other entries, namely, to be confirmed to the party in column 16 — permanently so long as he continues the performance of the service. It is also argued the entry as permanent in column 10 is by no means decisive and in support of this Thirulakshmi Ammal [(1973) 86 Mad LW 613:(1973) 2 Mad LJ 317] is cited. It must be remembered that in the Madras case, it was supported by the statement of the Inam Commissioner which is not so in the instant case. Therefore any conclusion arrived at by the Inam Commissioner without the original title deed cannot change the character of the grant as rightly held by the High Court. An analysis of the above leads us to the following conclusion:

- (1) If a right has been confirmed on the original grantee the proceedings of the Inam Commissioner would have no effect to change its character vide T.V.V. Narasimham v. State of Orissa [1963 Supp (1) SCR 750 : AIR 1963 SC 1227] ;*
- (2) (a) Ex.B-1 dated July 14, 1802 is for the continuance of the Manyam granted to the Devasthanam under jaripatta in respect of the lands in the village in question listing out the 'oozhams' for which the land was assigned.*
- (b) The genuineness of Ex. B-1 was not challenged at any point of time.*
- (c) The appellants sought to rely on this document and wanted to construe the word isum in their favour; Ex. B-1 lists only the various 'isums' and not 'isumdars'.*
- (d) Ex.B-5 to B-27 which are court proceedings lend credence to Ex. B-1.*
- (3) Ex.C-1 also shows the title to a devadayam or pagoda;*
- (4) Ex.B-2 is another valuable document to show the grant as 'sarvamanyam' to the Devasthanam granted by the previous sovereigns and confirmed by the British Government in the year 1799 by issue of a jaripatta;*
- (5) Ex.B-3, though no evidence is produced as to the follow-up action, being a document of high evidentiary value, cannot easily be disregarded;*
- (6) The various entries in the Inam Fair Register taken in conjunction with the other documents lead to the*

conclusion that the grant was in favour of the Devasthanam; more so, when the title deed issued in favour of the Oozhiamdars themselves referred states 'devadayam';

(7) The entry in column 10 as permanent lends support to the view that the grant was in favour of the Devasthanam;

(8) The entries in columns 21 and 22 of the Inam Fair Register alone cannot be decisive in the light of the other valuable evidence above referred to.

(9) No doubt the service holder was in possession and the service holders when in possession as derivate holders of the temple, they cannot set up an individual title.

97. Thus, in the case cited above, the Hon'ble Supreme Court has clearly settled the law that the Inam Fair Register entries have high evidentiary value and it cannot be disregarded, but the entries in Inam Fair Register has to be taken in conjunction with the other documents and if the service holders are in possession, they derive possession only through the Temple and they cannot set up any individual title.

98. The above cited judgment gives quietus to the respondent case in A.S.(MD).No.13 of 2015, who is the plaintiff in O.S.No.119 of 2005. The

members of the Sangam are not service holders but they claim to be cultivators under the Temple. To support the plaintiff/Sangam's case, they rely upon Ex.A. 70, patta issued by the Temple in favour of Thiru.Nagakudubanan. As pointed by the learned Additional Advocate General for the appellants patta (Ex.A.70) is of the fasli year 1351, which is equivalent of the English Calendar year 1941. This patta issued by the Temple in favour of Thiru.Nagakudumban, is not in respect of entire 3009.84 acres of land for which the members of the Sangam claims protection but for a very minimal extent of land and that too patta issued for cultivating on rent basis and for a specific period. Their possession therefore admittedly not connected with any service rendered to the Temple.

99. It is not only interesting but also relevant to refer the Privy Council decision rendered in *Tirupparankundaram etc., Madura Devasthanams -vs- Alikhan Sahib and others* reported in *A.I.R 1931 Privy Council 212*, this case is in respect of a property of the Tirupparankundaram given by the Nayakkar King of Madura as grant. Records and report of *J.H.Nelson* say seven Temples in and in the immediate neighbourhood of the Madura capital were endowed with revenues derived from a number of villages

by Thirumalai Nayakkar and they are known as '*Hafta Devasthanam*'. The appellant/Tirupparankundaram Devasthanam in the case cited above, is one of the Seven Temples for which Nayakkar King granted the villages as “Devadayam” and the Privy Council has held that the tomb on the hill top came up subsequent to gifting of the land cannot deprive the right and title of the Cave Temple and the path around the hill.

100. In the instant case, the Arulmigu Meenkashi Sundareswarar Devasthanam, Madurai, is one among 7 Temples, for which, the Viralipatti Village been granted as 'Devadayam', collectively identified as "Hafta Devasthanam". Therefore, observations made in this judgment about Devadayam are relevant to decide the case in hand.

101. The earliest document relied by the contesting parties is the Inam Fair Register, T.D.No.1397, been prepared in the year 1863 by *G.N.Tayler*, Inam Commissioner. Based on this document, the Temple claims that the entire Viralipatti village was given as Inam by Thirumalai Nayakkar. Therefore, they are entitled for possession which has been taken away by them

on the advent of Act 26 of 1948. We have already seen the contemporaneous record namely J.H.Nelson Manual wherein, it is explained that Devadayam is one kind of Inam.

102. The specific plea as found in the plaint O.S.No.560 of 2004 is that, after Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948 (26 of 1948) came into force on 01.10.1951, the possession has been taken away from them, in spite of protest that the said act not applicable for Inam village. Partly sailing with the Temple, the members of the Sangam consisting of Ryots cultivating in their area claims in O.S.No.119 of 2005 that, till 1948 the property was vested with the Temple and Temple collecting rent from them and patta was issued by the Temple in favour of their predecessors. After abolition of Estate by Act 26 of 1948, as ryots, they are entitled for patta. While there was an assurance to issue patta and resolution by Panchayat to issue patta later contrary to the assurance by the Local body, they were also asked to evict by the Forest Department alleging that, the land is unassessed waste dry land vested at the disposal of the Government and they are all encroachers.

103. The proceedings to declare the land as reserved forest initiated as early as 1976. After much delay culminated in publishing notification under Section 16 of Tamil Nadu Forest Act, 1882 in the gazette dated 25.09.2002. Having gazetteised, the land vested with the Forest Department and the encroachers are liable to be evicted, no patta can be issued or the occupation be permitted. The documents relied by the parties and Manual about the Madurai Country during the Britisher's period indicates that, Viralipatti village is one of the Devadayam village given for Arulmigu Meenakshi Sundareswarar Devasthanam. In the year 1863, same has been recognised and recorded in the Inam Fair Register. However, the actual extent of land gifted to the Temple not specifically mentioned, except a general classification of the village as “Devadayam” for Arulmigu Meenakshi Sundareswarar Devasthanam Thirumalai Nayakkar Kattalai. However, the character of the land been mentioned in this document and from the Madura Country Manual compiled by *J.H.Nelson*, which was published 5 years later indicates that, on deputation by British Government Mr.Hodgson, Member of Board of Revenue had visited Madura District inspected the province and toured the District and collected all

information available and written an elaborate and exhaustive report, wherein, he has said that, the whole lands of the province in India whether cultivated, arable, waste, jungle or hills, have been from time memorial apportioned to a particular village, so that, all lands are within the known boundaries of some village. Further, he has recommended his predecessor Mr.Hurdis, who was well acquainted with the character and resource of the ryots should be directed to draw up a report on which the Board may fix in perpetuity the rents of the unassessed Palayam of Dindigul, and close of Manapara, suggesting the rent collected from peshkash as excessive and to be reduced. Following this, the character of the land given as Devadayam been presumably classified in the year 1863. From the entires found in Inam Fair Register, T.D.No.1397, though village commonly mentioned as Devadayam, at that point of time, there was only 45.93 acres of land identified as Inam land in the Viralipatti village. Combine reading of Madura Country report and the entries found in Inam Fair Register, it is clear that, the substantial portion of the land was virgin, not brought under cultivation and the British Government which was eager to earn revenue was under the pursuit of encouraging Ryots to carry on plantation activity in the area and same been reflected in the Madura Country Manual

compiled by *J.H.Nelson*. At the same time, *J.H.Nelson* has also observed that, indiscriminating felling of trees by encroachers for cultivating plantain, which is popular in that area has to be regulated.

104. The relevant portion of the *Madura Country report* extracted below speaks about the felling of trees in the Forest and need for prohibition.

“The plantains grown on the Palanis are of a peculiar species. The fruit is very rich and aromatic in flavour, and therefore held in great esteem by natives Unlike ordinary trees of the kind, they continue to bear fruit for twenty and even thirty years and are consequently exceedingly profitable, as they require no irrigation, and but little attention and outlay after once reaching maturity Formerly their cultivation was most wasteful and destructive, and caused annually the disappearance of whole tracts of forest Whoever felt inclined to make a plantain garden, walked into the nearest forest, cleared as large a space as he required by felling and burning every tree on it; and prepared the soil for his crop by ploughing in the ashes and so correcting the acidity of the over-rich virgin vegetable mould. In the course of centuries many thousand acres of good land have been thus disforested:

and it is supposed that there is something in this mode of cultivation which prevents nature from repairing injuries so occasioned, for apparently forest trees never spring up again in used- up and deserted plantain gardens A few years ago the practice was strictly forbidden. and under the present system of conservancy men will hardly dare to break through the prohibition.”

105. As far as the Temple is concerned, though they seek for possession admitting the loss of possession in the year 1951 itself not able to place any document for its continuous possession of 3009.84 acres even prior to 1951. The only document available to indicate right of the temple is the patta (Ex.A.70) issued in favour of Thiru.Nagakudubanan, is of the fasli year 1351 equivalent to English Calendar year 1941, which is much prior to Act 26 of 1948 came into force.

106. From the pleadings and documents put forth by both the plaintiffs, no doubt they had pre-existing right in the land at Viralipatti village but there is no evidence to show that these two plaintiffs had any right of occupation or title over the entire 3009.84 acres of the suit property. At the

outset, the failure of the plaintiffs to mention the boundaries of the property and exact extent it claims pre-existing right itself renders their suit liable to be dismissed. Neither relief of possession nor relief of protection of a property not properly described and identified can be granted. Just based on the entry in the Inam Fair Register that it is a Devedhayam land, ignoring the other entries in Column 2 classifying the character of the land, the temple cannot claim that the entire village been given as Devadayam and it is an Inam village, falling outside the purview of Forest Act. The Literature and the Madura Country report recorded by *J.H.Nelson*, indicates the fact that, Viralipatti village is one of the village given by Thirumalai Nayakkar as '*Hafta Devasthanam*' for Meenakshi Sundareswarar Temple which is one of the Seven Temples but without boundaries and identification, the relief sought by the Temple for possession or the relief sought by the Ryots for protection of their possession ought not to have been granted.

107. Furthermore, in the year 1961 itself, the State through Forest Department has initiated proceedings to declare the suit land as reserved forest. The documents produced on behalf of the Sangam in their suit O.S.No.119 of

2005 are mostly subsequent to that, particularly the House Tax receipts, school reopening invitation of the year 1986, the proceedings after objection raised by them when the Forest Department sought for declaring the area as reserved forest. The only document prior to the initiation of proceedings under the Tamil Nadu Forest Act 1882, is the patta issued to Thiru.Nagakudubanan by the Temple presumably executed in the year 1941, which is for a limited period of one year and few more documents which has no relevance and does not co-relate to the property in dispute. That apart, the plaintiff had marked bills and loan details indicating that, they are agriculturist in that area and used to sell their products to the intermediary. This Court not able to understand how these documents will confer title or decide their possession. More so, when all these documents are subsequent to the year 1977 when the Forest Department started their proceedings by publishing notification under Section 4 of Tamil Nadu Forest Act 1882.

Bar of Civil Court Jurisdiction

108. As far as Section 5 of Tamil Nadu Forest Act 1882 is concerned, from commencement of Section 4 of Tamil Nadu Forest Act till culmination of

Section 16 of Tamil Nadu Forest Act, a civil suit is barred and if any person aggrieved can approach the Forest Settlement Officer nominated under the notification.

109. Section 5 of the Tamil Nadu Forest Act, 1882, reads as under:-

"5. Suits barred.- Except as hereinafter provided no Civil Court shall, between the dates of the publication of the notification under section 4 and the notification to be issued under section 16, entertain any suit to establish any right in or over any land or to the forest produce of any land included in the notification published under section 4."

110. Regarding the exclusion of Civil Court jurisdiction when an analogous provision under Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, came for decision by the Division Bench of this Court in *The State of Madras represented by the Collector of Ramanathapuram at Madurai -vs- Ramalingaswamigal Madam (North Thiruppachetti) represented by N.S.K.Paramasiva Thevar* reported in 1969 2 MLJ 281, this Court has held that,

"It is well recognised that in construing the plaint,

the substance of the same should be looked into and not merely the form in which' it has been couched and that if the suit is really one for patta, the Civil Court would not entertain the same. Thus in Ramaswami v. Parimala Pandian I.L.R. (1964) 1 Mad. 740. it has been held that if the suit is in effect for grant of a ryotwari patta in respect of land in a notified estate, such a suit does not lie in a Civil Court. The decisions in State of Madras v. Swaminathan (1955) 2 M.L.J. 178, and Somasundara Servai v. State of Madras I.L.R. (1966) 2 Mad. 539, that if the plaint is framed as one based upon the proviso to Clause (d) of Section 3 of the Act, the plaintiff will be entitled to sue for and obtain an injunction."

111. When the suit filed by Arulmigu Meenakshi Sundareswarar Devasthanam for possession in the year 2004 and the suit filed by the Members of the Sangam is of the year 2005, both the suits been instituted after publication of Section 16 notification of Tamil Nadu Forest Act. The embargo under Section 5 of Tamil Nadu Forest Act, will not apply to these suits. However, it is noted that, after notification under Section 4 of the Tamil Nadu Forest Act till notification under Section 16 of the Act, these plaintiffs have made their representation to the Forest Settlement Officer and The Forest Settlement Officer has considered their request and rejected. Independently,

the local body had on their own, either collected Tax or issued B-memos for the land occupied which has fallen within the purview of Tamil Nadu Forest Act 1882. These documents has to be totally ignored since all their activities to be considered as devoid of legal sanctity.

112. At this juncture, it is also to be noted that, set of ryots in the name of '*Sirumalai Pazhathotta Vivasayigal Sangam, Velanpannai, Sirumalai*', had earlier approached this Court by way of filing Writ Petition Nos.731 of 2007 batch., for seeking issuance of patta and this Court, after considering the nature of the land, the efforts taken by the Government to declare it as reserved forest and reason to preserve the land as reserved forest had, rejected the claim. Thereafter, the present suit is filed in the name of Sirumalai Thenmalai Malaithotta Vivasayigal Sangam, with the list of members of the Sangam marked as Ex.A.2. The adangal alleged to have been issued by Revenue Department marked as Ex.A.78 relied in support of their prayer. The perusal of these documents indicate that mentioning the survey number of the Viralipatti village as 1/1, against the name of each person, small extent of land between ½ acre to 2 acres been mentioned and it is a composite adangal for

about 279 members. The Adangal document is marked as Ex.A.78, indicates as if an extent of 1218.08.0 hectare of land in S.No.1/1 at Viralipatti village, Vadipatti Taluk being cultivated by 278 persons to the extent of land specified in the document. This adangal document (Ex.A.78) is issued for the fasli year 1396 i.e., which is equivalent to the English Calendar year 1986, signed by Chief, Head Quarters Tahsildar, on 23.04.1987. At the same time, Ex.A.77, which is the Settlement Register issued on the same day indicates that, it is unassessed land. As already noted, all these documents relied by the ryots, who claim to be members of the Sangam is in between notification under Section 4 of Tamil Nadu Forest Act, 1882 regarding the proposal to declare the land as reserved forest and the declaration under Section 16 of Tamil Forest Act, 1882, declaring the land as reserved forest. Therefore, these documents after notification under Section 4 of the Tamil Nadu Forest Act by no way will confer them any legal right to possess the land which was subsequently declared as reserved forest land. It is also to be noted, few B-memos been marked (Ex.A.50 to Ex.A.52) on behalf of Ryots. This also clearly establishes that, the B-memos were issued under Section 5 of the Tamil Nadu Forest Act 1908 indicating that, they are encroachers in the Government land and B-

memos issued is to collect penalty from them for the enjoyment of the encroached land.

113. Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent/Temple and Mr.T.S.R.Venkatramana, learned Senior Counsel appearing for the 2nd respondent/Sangam in unison submitted that, the act of the Forest Department usurping the land denoted to the Temple as Devadayam, without following due process of law has to be reprimanded and the judgment of the trial Court has to be upheld.

114. Mr.R.Baskaran, learned Additional Advocate General for the State submitted that the land in question been classified as unassessed waste land long ago and there was no objection or protest from any quarter, leave alone the Temple and the ryots. The attempt of the Government to declare Sirumalai, which is known for flora, fauna and shrubs of medicinal value commenced in the year 1977. However, reached its logical end only in the year 2002 and after facing resistance and hurdle. The attempt got galvanised after the issue of deforestation seized by the Hon'ble Supreme Court in *T.N.Godavarman Thirumulpal-vs-Union of India* in Public Interest Litigation

W.P.(Civil)No.202 of 1995. The encroachers of the forest land made all attempts to defeat the attempt of the State to preserve the forest earlier by filing writ petitions one after another till Justice K.Chandru in W.P.Nos.731 of 2007, batch, gave quietest to the issue after considering the long drawn legal battle between the encroachers and the State. The Learned Judge has extracting in detail, how at last the Government was able to successfully issue the final notification under Section 16 of Tamil Nadu Forest Act. It is profitable to refer the relevant portions of the judgment rendered by Justice K.Chandru, in W.P.Nos.731 of 2007 batch, in Sirumalai Pazhathotta Vivasyigal Sangam.

115. The said Writ Petition was filed by the Association as well as the members individually. These Writ Petitions were filed in batch between 2007 to 2010 and same came to be disposed of on 13.07.2011. While the Writ Petitioners claimed that they are ryots in Sirumalai village form part of the Sirumalai West Block under notification proposed to be declared as reserved forest under the Tamil Nadu Forest Act, 1882. As far as the said Sirumalai village is concerned, notification under Section 16 of Tamil Nadu Forest Act, 1882, was issued by the Government G.O.(D).No.15, Environment and Forest Department dated 04.02.2010. Challenging that, several writ petitions were

filed but they all came to be dismissed referring the directions issued by Hon'ble Supreme Court in I.A.No.418 in W.P.(Civil).No.202 of 1995 (*T.N.Godavarman Thirumulpad -vs- Union of India and others dated 07.05.1995*). What applies to ryots of Sirumalai village also applies to the alleged ryots of Viralipatti village since both fell under Sirumalai Western Block Forest.

116. This Court, from the records, pleadings and the other proceedings finds that, neither the Temple which has laid the suit through the Executive Officer nor the members of the association has come out with a clear case about the exact extent of land, which they hold. From the notification issued by the Forest Department, the Temple and the Association/Sangam claims that, the entire 3009 acres and 84 cents of land at Viralipatti village is granted as Inam or under their cultivation. For the said vagueness itself, the suits are liable to be dismissed, if not for other reasons.

117. While considering their other plea, the Court below had erred in not taking judicial notice of the judgment and directions of the Hon'ble

Supreme Court in respect of protecting the Forest Land. The trial Court has failed to take note of the Constitutional mandate under Part – IV Article 48-A, which directs the State to protect and improve the Environment and safeguard the Forest and Wild Life of our Country.

118. The consistent efforts taken by the State Government to bring around 22,000 acres of land on the Western part of the Sirumalai Hills in Nilakkottai Taluk, Dindigul District, ever since 1961, been thwarted by one way or another. While the records show that, in the year 1863, a small portion of the land alone was under cultivation. Slowly, by deforestation, the cultivable lands had been expanded by commercial activities and residences. This fact is noted by the Special Tahsildar, Forest Settlement Officer, in his communication dated 29.03.1985 addressed to District Revenue Officer, Madurai. This communication is marked as Ex.A.86 in the suit filed by Sangam. It is also brought to the notice of the Court that another group of encroachers forming an association by name Sirumalai Pazhathotta Vivasyigal Sangam, Velanpannai, had approached this Court by way of Writ Petition in W.P.Nos.731 of 2007 batch, when the Forest Department attempted to reclaim the Forest area,

pursuant to the notification issued under Section 16 of Tamil Nadu Forest Act, 1882, this Writ Petition and other connected writ petitions were disposed of by the learned Justice K.Chandru, on 13.07.2011 who in his judgment had discussed how the encroachers of Sirumalai West Block Forest area been resisting the attempt of the Forest Department implementing the directions of the Hon'ble Supreme Court rendered in ***T.N.Godavarman Thirumulpad -vs- Union of India*** cited supra.

119. In W.P.No.731 of 2007 batch, the Hon'ble Justice K.Chandru, after listing the vexatious litigations filed by the encroachers who are similar to the 7th defendant in the suit O.S.Nos.560 of 2004 and plaintiff in O.S.No.119 of 2005 has observed that;

“30.When the attempt by the Supreme Court is to monitor the maintenance of forest and to avoid environment degradation to forest, the petitioners cannot by filing successive writ petitions get an order which will diametrically opposite to the efforts taken by the Supreme Court. The petitioners have failed to prove any violation of

procedure by the department in issuing the impugned notification challenging in the two sets of writ petitions. They have also failed to establish any legal or enforceable right on their part for getting the relief as prayed for by them. Successfully they were involved in forum shopping and are attempting to get orders from this court to prolong their illegal occupation in forest land. Certainly, this court will not be a party to encourage the petitioners' attempt to derail the orders of the Supreme Court. ”

120. It is painful to record that very same *modus operandi* is adopted by the Sirumalai Thenmalai Malaithotta Vivasayigal Sangam the plaintiff in O.S.No.119 of 2005.

121. No doubt, the Temple of Lord Meenakshi been given land in Viralipatti village as Devedhayam and same is reflected in Inam Fair Register. The entries found in Inam Fair Register is undoubtedly more reliable document for ascertaining the right of Inamdars. In the pleadings filed by the Temple it clearly admits that, they have lost their possession as early as 1951. There is no whisper to what extent of land they were granted as Inam and how long they

were exercising their right as Inamdars.

122. The only point in their favour is that, when proceedings initiated under Section 4 of the Tamil Nadu Forest Act 1882, initially, the Forest Department has not maintained the records to show the temple was given opportunity to object. There is no document to show how and when the land was classified as “Devadayam” in the Inam Register been later, re-classified as unassessed waste land during the settlement. Nevertheless, the larger interest of the public and the directions of the Hon'ble Supreme Court to reclaim forest land and prevent deforestation, ought to have been taken judicial notice by the trial Court while considering the suit, more particularly, when the plaintiff/Temple has failed to substantiate their right to claim possession of suit land. Obviously in the disputed land, constructions and public buildings like schools, nutrition hall etc., been put up with road facility. However, substantial extent of land still remains as jungle and never been possessed or enjoyed by the Temple in any manner after 1950. In such circumstances, it is difficulty to countenance the relief sought by the Temple based on the Inam Fair Register prepared in the year 1863 without any proof of continuity of enjoyment of the

Inam.

123. The other point which has some merits for consideration is that, if the Temple had any semblance of pre-existing right at the time of issuing the notification under Section 4 of Tamil Nadu Forest Act, 1882, proposal to acquire the land ought to have been recognised and compensated adequately. But admittedly compensation not paid since the Temple has not placed adequate documents that they have pre-existing right over the entire suit property. In case, if they can produce any document to substantiate the existing right to any extent of land in that village, if not the entire 3009.84 acres of land, then in such case, the State Government is liable to pay them compensation as per law and this issue is left open for the Temple to agitate if they so desire.

124. In any case, the ryots, who claim under the Temple has no locus standi to sustain the relief sought for in the suit, in the light of provision of the Act as well as the directions of the Hon'ble Supreme Court in *T.N.Godavarman Thirumulpad -vs- Union of India* and other judgments followed by this Court in W.P.Nos.731 of 2010 batch in *Sirumalai Pazhathotta Vivasayigal Sangam -vs-*

The State of Tamil Nadu and others as well as the judgment of the Apex Court in *Subramania Gurukkal, (dead) Through Muthusubramanis and others -vs- Shri Patteswaraswami Devasthanam, Perur* cited *supra*.

125. As a result,

Point for determination in A.S.(MD)No.13 of 2015:-		
i.	Whether the suit filed on behalf of the members of the Sangam seeking injunction in respect of 3009.84 acres of land is maintainable on facts and in view of Section 5 of the Tamil Nadu Forest Act?	Answered in Negative
ii.	Whether the oral and documentary evidence Ex.A.1 to Ex.A.100 relied by the plaintiff/Sangam proves the possession of entire 3009.84 acres of land with its members and they are entitle for protection from eviction?	Answered in Negative
iii.	Whether the defendant has followed due process of law before attempting to evict the member of the plaintiff's Society from the suit schedule property?	Answered in Affirmative

Point for determination in A.S.(MD)No.312 of 2008:-		
i.	Whether the land measuring 3009.84 acres in S.No.1/1, Viralipatti Village, Sirumalai, initially given as Inam to the Pagodas of Arulmigu Meenakshi Sundareswarar Devasthanam and if so, whether the Forest Department is entitled to declare the suit land as Forest land under the provision of Tamil Nadu Forest Act 1882?	Answered in Negative
ii.	Whether the claim of the appellant herein that by virtue of the	Answered in

	provision under the <i>Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948</i> (Act 26 of 1948), the suit schedule land been vest with the Government being classified as unassessed waste land?	Affirmative
iii.	Whether the temple having admitted that, it has lost his possession on 01.10.1951, the date when <i>Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act, 1948</i> came into force can seek possession after nearly 50 years without relief for declaration of pre-existing right/Title?	Answered in Negative

126. In fine, these two *Appeal Suits are Allowed*. The judgment and decree passed in O.S.Nos.560 of 2004 and 119 of 2005 on the file of Additional District and Sessions Judge, Fast Track Court No.III, Madurai, are hereby set aside. Consequently suits stands dismissed. Connected Miscellaneous Petition is closed. Parties shall bear their respective costs.

(Dr.G.J, J.) & (K.K.R.K, J.)
03.04.2023

Index : Yes.
Internet : Yes.
Neutral Citation : Yes.
Speaking Order/Non-speaking order.
bsm

To,

1. The Additional District and Sessions Court, Fast Track Court No.III,
Madurai.
2. The Executive Officer/Joint Commissioner,
Arulmigu Meenakshi Sundareswarar Devasthanam,
Madurai.

A.S(MD).No.312 of 2008 & A.S(MD) No.13 of 2015
& C.M.P (MD).No.1081 of 2017

Dr.G.JAYACHANDRAN, J
and
K.K.RAMAKRISHNAN, J.

bsm/smn2

Pre-Delivery common judgment made in
A.S.(MD) No.312 of 2008
& A.S.(MD).No.13 of 2015
&C.M.P.(MD).No.1081 of 2017

03.04.2023