



S.T.A.Nos.20 to 24 of 2001, 1 to 8 and 10 to 19 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the order	Date of Pronouncing the order
17.02.2023	03.03.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

S.T.A.Nos.20 to 24 of 2001, 1 to 8 and 10 to 19 of 2002

and

S.T.P.No.1 of 2014 in S.T.A.No.19 of 2002

and

C.M.P.(MD)No.2620 of 2022 in S.T.A.No.19 of 2002

S.T.A.No.20 of 2001:-

Kandasamy @ Muthu Mudaliar

... Appellant

vs.

Sri Ranganathaswamy (Idol),
Rep. through his Executive Officer,
Srirangam, Trichy.

... Respondent

Prayer :- Special Tribunal Appeal filed under Section 30 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 read with Rule 28 of the Rules, against the judgment and decree, dated 30.11.1990, made in C.M.A.No.16 of 1981, on the file of the



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Minor Inam Abolition Tribunal (Principal Sub-Judge), Tiruchirappalli,
reversing the order of the Settlement Tahsildar III (SE), Tiruchirappalli,
dated 29.08.1969.

For Appellant in

S.T.A.Nos.20 and 22 to 24 of 2001 : Mr.P.Thiagarajan

For Appellant in

S.T.A.No.21 of 2001 : Mr.D.Kirubakaran

For Appellant in

S.T.A.Nos.1 to 8 & 10 to 19 of 2002: Mr.K.Prabhakar
and Mr.Raguvaran Gopalan

For 1st Respondent in all the cases : Mr.M.Saravanan

For 10th Respondent in

S.T.A.No.5 of 2002 : No Appearance

For Respondents 2 to 45 & 47 to 76

in S.T.A.No.6 of 2002 : No Appearance

For Respondents 13 & 16 in

S.T.A.No.14 of 2002 : No Appearance

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

These batch of Special Tribunal Appeals are directed against the
order passed by the Inam Estate Abolition Tribunal at Trichy. The facts



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and law involved in all these appeals are similar and in fact arising out of a common order passed by the Tribunal. Hence, these batch of Special Tribunal Appeals filed under Section 30 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, (herein to be referred as "the Act") are taken up together for consideration and the following common judgment is passed.

2. The subject matter of the suit is in respect of the land covered under Inam Title Deed No.1027, granted as Devadayam for the support of the Pagoda of Sri Renganathasami at Srirangam. The land is situated in Vellithirumutham Village at Tiruchirappalli Taluk, which is now known as 'Srirangam'. The minor Inam granted to the Pagoda of Sri Renganathasami, Srirangam, in T.D.No.1027 brought under the purview of Act 30 of 1963 by the State and the same was notified under Section 1(4) of the Act.

3. The Assistant Settlement Officer in exercise of power conferred under the Act took *suo motu* action and caused notice to the parties concerned and took up enquiry for issuance of Patta, on the premise that



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on the date of enforcement of the Act *i.e.*, 15.02.1965, the inam tenure in respect of these lands stood abolished and the lands got vest with the Government, free from all encumbrances as mentioned in Section 3(b) of the Act 30 of 1963. The land admeasuring a total extent of about 390 Acres was classified under three different heads in the Schedule to the notice. *viz.*, Part – I land with building; Part – II vacant land; and Part – III land already vested with the Government and used for public utility as lane, ground etc.,

4. In the *suo motu* enquiry proceedings, one T.K.Srinivasa Raghava Iyer of Srirangam, owner of the house, situated in T.S.No.1098/1, found in Serial No.7 in Part – I of the Schedule, objected the proceedings on the ground that he has perfected his title by adverse possession, so, neither the Devasthanam nor the Government can claim right over the property. According to him, the house sites are to be treated as Natham Poramboke as mentioned under Section 10 of the Act 30 of 1963. However, the Settlement Tahsildar rejected the request of T.K.Srinivasa Raghava Iyer to treat his land as Government Natham Poramboke and to give exemption under Section 10 of the Act.



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5. Sri Renganathasami Devasthanam filed a written statement contending that there is a presumption under Section 44 of the Act in favour of the Temple. The grant to the Temple consists of both Melwaram and Kudiwaram. The nature of the land at the time of grant alone to be taken into consideration for granting Patta and subsequent constructions, if any, the same should be ignored. When the grant was made to the Temple, there was no construction or residential building within 7 Prakarams of the Temple. The constructions are all of recent origin put up by the service holders and servants of the Devasthanam for their convenience to perform the service without any hindrance. The persons, who have put up constructions, have no other interest on the land and their occupation on payment of Pagudi will no way alter or affect the pre-existing right of the Temple before the advent of Act 30 of 1963. The relationship of the Devasthanam and occupier of land is landlord and tenant. The Devasthanam as an Inamdar of Iruwaram Minor Inam retains the Kudiwaram right also. The Hon'ble Supreme Court has recognized the Devasthanam's Iruwaram right in a litigation arising out of land in T.D.No.1027. Hence, the judgment reported in **AIR 1953 SC**



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33 [Raj Lakshmi Dasi and others vs. Banamali Sen and others] will operate as *res judicata* under Section 43 of the Act. Thus, the Devasthanam made a claim for Ryotwari Patta for the land covered under T.D.No.1027. The Settlement Tashildar in the course of his suo motu enquiry and based on the objection, framed the following points for decision.

(1) Whether the grant in favour of Sri Renganathasami Devasthanam is of both the Melwaram and the Kudiwaram or of the Melwaram alone?; and

(2) Who is entitled to Patta?

6. The Settlement Tahsildar rejected the plea of the Devasthanam, holding that the earlier judgment of the Hon'ble Supreme Court regarding the land covered under T.D.No.1027 will not act as *res judicata* to the subsequent proceedings under consideration. The exhibits relied by the Temple does not contain any decision on the point, whether the grant in T.D.No.1027 in favour of Sri Renganathasami Devasthanam is of both Melwaram and Kudiwaram or of the Melwaram alone. The Settlement Tahsildar held that T.D.No.1027 issued by the Inam



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Commissioner in favour of the Managers of Pagoda of Sri Renganathasami at Srirangam, consisting of the right regarding the revenue on the land to the Government. Therefore, the grant to the Devasthanam is Melwaram alone. Referring the entries found in Ex.P.2 the Fair Inam Register (IFR) at column 7, column 14 and column 21, he concluded that, the entries in IFR indicates that the cultivators/holders were paying Pagudi or rent to the Pagoda in the same way as the Government ryots (circular ryots) pay assessment to the Government for Ayan lands, the entries in the IFR indicates two different amount, one the assessment of tax and another the rent for the land fixed. The difference may be due to the fact that a small portion lying waste. The amount collected as rent by the Devasthanam is equivalent to the assessment on the occupied land and nothing more.

7. The Settlement Tahsildar while considering Ex.P.3, the Letter of R.D.O., Trichy, addressed to the Devasthanam, calling for information regarding rent collected in respect of a land proposed to be acquired recognizing the Temple as holder of both warams and Ex.P.4 the Trichy District Court proceedings, ordering the Devasthanam to submit proposal



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to invest the compensation amount received for the land acquired, for want of details about final decision in these two proceedings, declined to take these documents into consideration.

8. The documents relating to the litigations in respect of vacant land, wherein the civil Courts held in favour of the Temple upholding their prayer for declaring the ownership were considered by the Settlement Tahsildar and distinguished it with respect of land with building to hold that the Temple holds only Melwaram. Thus, the Settlement Tahsildar concluded that,

(i) When there is sufficient evidence in the original grant regarding the nature of the grant, presumption under Section 44 of the Act cannot be drawn.

(ii) Ex.P.1 the copy of T.D.No.1027 indicates the Inam Commissioner has acknowledged the title of the Devasthanam only to the Government revenue and nothing more.

(iii) The grant to the Devasthanam in T.D.No.1027 is only Melwaram. The holders of lands alone are entitled to the Kudiwaram in the lands concern.



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(iv) Section 13 of the Act confers right on the owners of the building to possess and enjoy the lands on which the buildings are situated. Therefore, Patta can be given to the person, who is entitled for that right.

(v) Under Section 3 (e) of the Act, the Inamdar is entitled only to such right and privileges as recognized or conferred on him by or under the Act. There is no specific provision which authorizes collection of rent by the Melwaram Inamdar after the appointed date. Therefore, the Devasthanam cannot seek for continuance of the erstwhile liability of the owners of the buildings to pay the rent to them even after the appointed date.

9. The operative portion of the Settlement Tahsildar, proceedings dated 09.08.1969, reads as below:-

"22. In the above circumstances. I decide that in respect of the lands mentioned in Part I of the schedule the owners of the buildings situated on the lands are entitled to Patta under Section 13 of the Act. As regards the lands mentioned in Part II of the schedule, the holders of the lands are entitled to Patta under Section 8(1) of the Act.

23. From the evidence before me and from the available



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records, I find that the persons whose names are given in col. 7 of the schedule are entitled to Patta for the lands mentioned in col. 4 thereof. As the inam tenure of the lands stands abolished as per the Act. I do hereby order under Section 11(2) (b) of the Act, the issue of Patta to the above said persons for the lands detailed in the schedule.

24. During the course of field work, the settlement staff have found that the land in T.S.906-2A (Vide part III of the schedule) is a lane on ground. As the land is used for a common on purpose, it will fall under Section 10 of the Act. I, therefore, decide under Section 11 (2) (b) read with Section 10 (c) of the Act that no one is entitled to Patta for the land mentioned in Part III of the schedule and order that the said land shall vest in the Government."

10. Pursuant to the above order of the Settlement Tahsildar, the owners of the building approached the Project Tahsildar for issuance of Patta in their favour. Accordingly, Pattas were issued. Then, the Temple under Section 11(3) of the Act, preferred appeal before the Inam Estate (Abolition and Conversion of Ryotwari) Tribunal, Trichy, on 28.02.1979, nearly after 9 ½ years from the date of the order impugned.



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11. In the appeals, the Devasthanam contended that as per the earlier decision of the Court, the land granted under T.D.No.1027 are declared as the Temple land, so the Temple is entitled for Patta for both the Melwaram and Kudiwaram. The earlier judgment stands as *res judicata*. The Settlement Tahsildar cannot proceed in respect of same property on the premise the Devadayam was restricted to revenue and not rent. The land under cultivation by the tenants, the Temple is entitled for Patta absolutely and in respect of land where buildings constructed, they are entitled for Melwaram Patta, the Temple's right for Melwaram cannot get extinguished.

12. At this juncture, it is appropriate to record that, these appeals were earlier dismissed on the ground that the appeals are barred by limitation. On further appeal to High Court, in S.T.A.Nos.13 to 25 of 1987, S.T.A.Nos.4 to 18 of 1988 and S.T.A.Nos.3 to 6 of 1989, the Division Bench of this Court, by order dated 13.11.1996, remanded the matter back to the Tribunal to consider the claims of the parties in the light of the Supreme Court's judgment rendered in **K.S.Thirugnasambandam Chettiar (dead) by L.Rs. and others vs.**



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The Settlement Thasildar, Coimbatore and others reported in 1996 (1)

L.W. 19 (SC) : MANU/SC/2240/1995. In the appeal, parties were allowed to adduce additional documents. On behalf of the appellant Devasthanam, Ex.A.2 to Ex.A.11 were marked as additional documents. On behalf of the respondents Ex.B.2 to Ex.B.14 were marked.

13. The Tribunal framed the following points for determination:-

(i) Whether the Miscellaneous Appeals are barred by limitation?.

(ii) Whether Sri Renganathasami Devasthanam is entitled for Patta in respect of agricultural lands and groves?

(iii) Whether in respect of lands upon building constructed, the Devasthanam is entitled for Melwaram Patta?

14. The Tribunal accepting the plea of the Devasthanam that though the Settlement Tahsildar order was passed on 09.08.1969 and 29.08.1969, the copy of the order was not communicated to the Devasthanam forthwith either in person or by registered post as required under Section 45 of the Act and Rule 9 (10) of the Rules framed under the Act. The Devasthanam through its affidavit has asserted that it got the



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copy of the order on application and the appeal filed within three months as provided under Section 11(3) of the Act. To contradict this assertion, there is no evidence to show that the order copy was served on the Devasthanam earlier. Hence, relying upon the judgment of this Court reported in **Pandurangu Chetti and another vs. The Govt. of Tamil Nadu, Represented by the Collector of N.Arcot and another** reported in **1978 (91) LW 367 : 1978 (2) MLJ 388**, held that the appeals are not barred by limitation.

15. Regarding the nature of grant given to the Devasthanam under T.D.No.1027, the Tribunal after considering the earlier judicial pronouncement in respect of a portion of the land covered in T.D.No. 1027, held that in the said judgment, the Court has held that the Temple holds Iruwaram over the land, however, the said pronouncement will not act as *res judicata*, since the context, under which, the pronouncement made was in an ancillary proceedings, arising out of land acquisition and it was prior to the Act 30/1963. This judgment can be taken as precedent and will have persuasive value, but will not act as *res judicata*. For arriving at this conclusion, the Tribunal has relied upon the judgment



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rendered in **Kali Varadaraja Perumal Koil, Pollachi vs. K.S.J.Raju Chettiar** reported in 1978 (91) LW 142.

16. Having held that the *suo motu* proceedings of the Settlement Tahsildar not hit by the principle of *res judicata* on facts, the Tribunal however held that Ex.A.6 - I.F.R., Ex.A.4 - Certified copy of the order passed in C.M.A.No.65 of 1978, dated 23.02.1980 and Ex.A.11 - Certified copy of S.T.A.No.8 of 1986, dated 17.08.1993, establishes the claim of the Devasthanam that it was holding Iruwaram on the appointed date in respect of properties mentioned in Part-II of the Schedule, as per T.D.No.1027 and therefore, the Temple is entitled for both Iruwaram Patta (Melwaram and Kudiwaram). The presumption under Section 44 of the Act applies and the respondents have failed to rebut that the grant to the Devasthanam is restricted only to Kudiwaram.

17. Regarding properties mentioned in Part-I, which is in respect of building with land, the Tribunal relying upon the judgment of the Supreme Court rendered in **K.S.Thirugnambandam Chettiar (dead) by L.Rs. and others vs. The Settlement Thasildar, Coimbatore and**



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others reported in **1996 (1) L.W. 19 (SC)**, held that, it cannot be said that by virtue of Section 13 of the Act, the Ryotwari rights of the site owners (Devasthanam) stood abolished. Dual Estate is conceived in the scheme of Section 13 of the Act. Therefore, the Devasthanam is entitled for Patta in respect of the site where the building stands. The building owners are entitled for Patta for the building alone.

18. The respondents broadly challenge the decision of the Tribunal on the following grounds:-

For limitation:-

*"(i) The learned Tribunal erred in applying the decision in **Pandurangu Chetti and another vs. The Govt. of Tamil Nadu, Represented by the Collector of N.Arcot and another** reported in 1978 (91) LW 367. The learned Tribunal failed to note that even as per the said judgment, the appeal was filed within two months and whereas, in this case, the respondent has not stated any particular date on which he came to know of the order and in what manner he applied for the certified copy.*

(ii) The learned Tribunal failed to note that



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even as per the contention of the respondent the copy was made ready on 24.11.1978 and the appeal was preferred only on 28.02.1979, which is beyond the 3 months period prescribed to prefer appeal.

(iii) The learned Tribunal erred in assuming that after the copy was made ready it should be intimated to the party concerned and on that basis, the finding rendered has become illegal and the appeal is barred by time."

For Iruwaram:-

*(i) The learned Tribunal failed to note that the Judgment in **Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshithulu and others** reported in **1991 Supp. (2) SCC 228**, has got no application to the facts of this case. On the other hand, the Settlement Officer has already given a finding that the decision, dated 29.07.1969 in Case Nos.1/68, 5/18 etc., in T.D.No.1027 has already been ordered in favour of the claimants and the Idol has got no right over the same and therefore, when the Tahsildar has given a finding that the earlier said decisions will apply to the case, the learned Appellate Tribunal without considering the same has given a different reasoning altogether which has*



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got no application to the facts of this case.

(ii) The learned Tribunal erred in relying upon the documents produced by the respondent in Exs.A6 to A.11, especially when no reasoning was given by the respondent why the said documents were not filed before the Special Tahsildar and when the notice was admittedly served on him.

(iii) The reasoning of the learned Tribunal that the claimant has not proved their claim under Section 44 of the Act is not correct especially when the documents produced by the appellants were not at all considered."

19. The questions of law involved in these batch of appeals are formulated as below:-

(1) Whether the Idol of Sri Renganathasami Temple, Srirangam, to be conferred the status of perpetuated minority, if yes whether the law of limitation should be applied in strict sense?

(2) Whether presumption under Section 44 of the Act could be drawn the grant under T.D.No.1027 in favour of Sri Renganathasami Temple to decide the status of the grant as both Melwaram and



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Kudiwaram?

(3) Whether in case of building, Section 13 of Act 30 of 1963 vest absolute right to claim Patta on the owner of the building both in respect of building as well as the site and land appurtenance to the site or does law recognises Iruwaram in respect of such properties?

20.The learned counsel appearing for the appellant submitted that the land in question admittedly fall within the purview of the Act 30 of 1963. In exercise of the power conferred under Section 3(b) of the Act, the land was vested with the Government from the appointed date. Therefore, the Settlement Tahsildar in exercise of the power conferred under him made enquiry and after considering all the records available, held that there is no pre-existing right over the title to the Temple and the right, which was existing confines with revenue arising out the land and once the land gets vested with the Government, the Temple loses its right over the revenue, in case any building is constructed over the land.

21. According to the learned counsel, by virtue of Section 13 of



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the said Act, the site upon which the building is constructed, is vested with the person, who owns the building on the appointed date. Under Section 13(2) of the Act, building includes the sites on which it stands and any adjacent premises occupied as an appurtenance thereto. Therefore, in the course of enquiry, the Settlement Tahsildar has classified the land covered under T.D.No.1027 into three categories, wherein Part – I includes site upon which the building is constructed, Part – II includes the land and groves and Part – III includes the land, which has already been used by the Government as lane or ground for public purpose. Thus, regarding the buildings situated in Part-I of the schedule, the owners of the building is entitled for Patta for the land and building under Section 13 of the Act. As far as Part-II properties are concerned, the holders of the land are entitled for Patta under Section 8(1) of the Act. As far as Part-III property is concerned, no one is entitled for Patta and the land shall vest with the Government. While under Section 11(3) of the Act, limitation is fixed to prefer appeal as three months, the present appeal filed beyond the period of three months so the appeals are barred by limitation. Even assuming that the copy application is made 10 years after the Settlement Tahsildar's order and



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same was received by Devasthanam on 24.11.1978, the appeals were filed on 28.02.1979 beyond the period of three months.

22. Further, referring the order passed by the Revenue, granting parish deduction after classification of the land and conduct of the Devasthanam purchasing the property, subsequently which was vested with the building owner, submitted that the Tribunal has failed to properly appreciate the material evidence as well as the ruling of the Courts. It was also contended by the learned counsel for the appellant that in respect of buildings, the Inam Appellate Tribunal has no jurisdiction to entertain the appeal and only revision against the order of Tribunal will lie. Pointing out certain entries in I.F.R., the learned counsel vehemently argued that the grant in T.D.No.1027 is only in respect of revenue and not a Iruwaram grant.

23. Per contra, the learned counsel appearing for the Temple submitted that the issue regarding the character of grant falling under T.D.No.1027 has been settled by the pronouncement of the Hon'ble Supreme Court and cited the following judgments.



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- (i) **Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshithulu and others** reported in 1991 Supp. (2) SCC 228.
- (ii) **A.T.S.Chinnaswami Chettiar and others vs. Sri Kari Varadaraja Perumal Temple and another** reported in 1995 Supp. (3) SCC 724.

24. The learned counsel also submitted that the grant in the nature of Devadayam (the religious name) of permanent nature would carry both Melwaram and Kudiwaram, particularly, in view of presumption under Section 44 of the Act. Ex.B.6 - Inam Fair Register for the Title Deed No. 1027, dated 02.07.1909 clearly indicates that it is a Devadayam property and entries made in the I.F.R. has better evidentiary value than any other documents. In the absence of proof by the claimants that they were granted with Kudiwaram, the Tribunal rightly held that it is Iruwaram grant. As far as building is concerned, Section 13 of the Act does not prohibit granting dual Patta and to buttress this argument he relied upon the judgment of **K.S.Thirugnasambandam Chettiar (dead) by L.Rs. and others vs. The Settlement Thasildar, Coimbatore and others** reported in 1996 (1) L.W. 19 (SC), which was followed in the



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subsequent judgment of this Court in **Ramae Gounder and Sons, Rep. by Partners (1) Kuppuswami Gounder and others vs. Settlement Tahsildar, Coimbatore and others** reported in **2015 (5) MLJ 265** and submitted that long possession or building constructed without consent will not confer title over the site upon which the building is constructed. Kudiwaram right of the Temple cannot be divested as long as the Temple exists, merely because the possession is not with the Temple.

25. For the point of limitation, the learned counsel referring the judgment rendered by the Division Bench of this Court in **P.Ramadoss and another vs. The Revenue Divisional Officer, Sivakasi, and others** reported in **2004 (3) MLJ 280**, submitted that for the purpose of deciding the limitation for filing appeals, the date of service of the order has to taken into account and in this case, the order was received on 24.11.1978. The appeal was filed on 28.02.1979. It is well within the permissible period of limitation, therefore not hit by law of limitation.

26. It is to be recollected that these appeals were earlier dismissed



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by the Tribunal on the ground of limitation. On the intervention of the High Court, the matter was remanded back for fresh consideration on limitation in the light of the judgment rendered in **K.S.Thirugnansambandam case cited supra**. The Tribunal after consideration has held that the appeals are not barred by limitation. Therefore before adverting to the other questions, it is necessary to answer the point on limitation.

Limitation:

27. The Learned Counsel for the appellants contended that the representative of the Temple participated in the enquiry before the Settlement Tahsildar and were aware of its outcome. Under section 45 of the Act and Rules framed there under , the Settlement Thasildar is supposed to serve the copy of the order in the manner prescribed. The temple litigating against others based on the same order . While so it is to be presumed that they had been served with the copy of the order and due knowledge of the order. Hence attempted to distinguish the facts of the case in hand and the **Panduranga Chetti case cited supra**.



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28. No doubt, the Act and the Rules framed there under, mandates the Settlement Thasildar to serve copy of the order in person or through registered post, however the service of the order is not a fact to be presumed but to be proved through documents. The facts in Panduranga Chetti case cited supra is almost similar. Though it may appear that the appeals are filed after 9 1/2 years, it is evident that the Temple on application received the certified copy on 24.11.1978 and the appeals filed on 28.02.1979. In the absence of proof that prior to 24.11.1978, the Temple had received the copy of the order, the argument of the counsel appearing for the Temple has to be accepted that the limitation commences from the date of receipt of the certificate copy i.e., 24.11.1978.

29. Section 11(3) of the Act reads as below, which gives power to the Tribunal to condone the delay in its discretion for a further period not exceeding two months, on the expiry of 3 months period.

***"11.Determination of lands in respect of
which any person is entitled to ryotwari patta. -***

***(3) Against a decision of the Assistant
Settlement Officer under sub-section (2), the***



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Government may, within one year from the date of the decision, and any person aggrieved by such decision may, within three months of the said date, appeal to the Tribunal:

Provided that the Tribunal may, in its discretion, allow further time not exceeding two months for the filing of any such appeal:

Provided further that the Tribunal may, in its discretion, entertain an appeal by the Government at any time if it appears to the Tribunal that the decision of the Assistant Settlement Officer was vitiated by fraud or by mistake of fact."

30. That apart, it is also pertinent to take note of the fact that contesting party is the idol and it is expected to recognise its status as perpetual minor. The learned counsel for the appellants referring the minority view in **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das**, reported in **(2020) 1 SCC 1 (popularly known as Ayothi case)** which has propounded a contra view following the judgment of Privy Council **Masjid Shahidganj vs. Shiromani Gurdwara Prabandhak Committee**, reported in **AIR 1940 PC 116** and few other judgments of High Courts and Supreme Court submitted that though it is the view of



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the minority, it has a persuasive value in this case where the idol been effectively represented but the appeal filed after a delay of 10 years.

Hence the law of limitation should be strictly applied.

31. This submission does not hold good for two reasons. First, Idols are considered as perpetual minor objectively and not a concept to be considered subjectively case wise. Next, as far as this case the fact discloses that the appeals filed on the 95th day after receiving the certificate copy. As pointed out earlier, there is no proof that the Temple received the copy of the order prior to 24.11.1978 therefore it is incorrect to say the appeal filed with inordinate delay of 9 ½ years.

32. Before proceeding further, it is profitable to recollect and reproduce the view of the Full Bench of this court in **Srinivasan and others vs. Sri Madhyarajuneswaraswami Pattavaithalai** reported in **1998 (1) CTC 630** which spells out the object of the Land Reforms Legislation qua vesting and abolition of inam, for better understanding of the lis under consideration.



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33. Having entertained the appeal and heard the case on merits, after being remanded by the appellate Tribunal to consider the question of limitation in the light of the judgment of the Hon'ble Supreme Court rendered in **K.S.Thirugnasambandam Chettiar (dead) by L.Rs. and others vs. The Settlement Thasildar, Coimbatore and others** reported in **1996 (1) L.W. 19 (SC)**, it is futile to re-canvass the said point on a hyper technical reason that no formal application filed to condone delay of 5 days, while the proviso to Section 11(3) empowers the Government to condone delay upto 2 months.

Presumption under section 44 of the Act:

34. In this case the Inam Fair Register (IFR) is one of the foundational document for the parties to stake claim. The case of the appellants is that the grant was only revenue. To buttress this point, they rely upon the earlier order of Settlement Tahsildar dated 29.07.1969 passed considering the entries in the I.F.R. related to T.D.No. 1027. We fear this argument goes not only against the principle of resjudicata but also against the principle of precedent and judicial hierarchy. The earlier order of the Settlement Tahsildar shall have no binding for the appellate



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authority ie the Tribunal to follow.

35. In fact, through Ex.P.3 and Ex.P.4, the temple able to show that before the advent of Act 30 of 1963, the R.D.O. Tiruchy recognising the Temple right over the property, had sought details of rent collected in respect of the land proposed to be acquired for a public purpose. Like wise, the District Court through its communication had directed the temple to intimate the court how the compensation amount proposed to be invested. Meaning, that the property of the temple being acquired by the state, the compensation amount has to be invested profitable to cater the interest of the temple. Therefore the existing right been proved through these document, presumption under Section 44 of the Act gets attracted. To rebut the presumption, there is no document placed before the settlement thasildar. However the thasildar has erred in not drawing presumption for the reason that the temple has failed to produce document regarding the out come of the communications reflected in Ex.P.3 and Ex.P.4. While, these two document proves that the temple been recognised as owner of the land and to be compensated for the land acquired for public purpose, the out come of the communication is not



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material.

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36. Further the Settlement Tahsildar while examining the I.F.R, he has given his own explanation for the two different amount mentioned in respect of kist and rent. According to him, the difference may be due to a portion of land left barren. He has failed to consider that reference of rent and tax separately also say the grant is tax free. That means that the land granted to Temple fetch rent and also assessed to tax. At the same time the grant is permanent and free from tax. Therefore, it cannot be presumed that the grant was only the revenue.

(i) Srinivasan and six others vs. Sri Madhyarjuneswaraswami, Pattviathalai reported in 1998 (1) CTC 630.

"14. We have carefully considered the submissions of learned counsel appearing on either side in the light of the catena of cases noticed supra by us and the principles laid down therein. A comparison of the provisions contained in the Abolition Act, the Inam Abolition Act as also the Minor Inams Act would go to show that the ultimate object of one or the other of these legislations is the introduction of ryotwari settlement in the areas covered and notified under the respective enactments, after abolishing existing land



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tenure and acquiring the rights of the landholders or inamdars concerned, who, under the system of land tenure which was in vogue in these areas, were considered to be intermediaries in between the actual tiller of the soil and the State and that the other provisions pertaining to the constitution of authorities, their powers, jurisdiction and the finality given to the orders passed, or incorporation of a provision in the nature of res judicata providing for the binding nature of the orders on the parties to the same and persons claiming under them in any suit or proceeding in a civil Court insofar as such matters are in issue between the parties or persons in such suit or proceeding, are almost identical and similar, except certain differences which, in our view, may not be that much relevant for the issue before us. Even while dealing with this aspect of the matter, the Supreme Court in the decision reported in State of Tamil Nadu v. Ramalinga Swamigal Madam, AIR 1986 SC 794 observed that the powers of the statutory authority constituted under the Act are exercised in a summary manner and the claims of occupants comes to be determined only incidentally and they cannot be equated with the civil Courts in respect of what they could do or the nature of relief that they could grant. A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these.



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legislations are subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basis and fundamental rights which entitle a person to preferentially get patta under these legislations and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intended to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claim, in their attempt to project a claim for patta. Consequently, in our view, the ratio of the decisions of the Apex Court reported in *State of Tamil Nadu v. Ramalinga Swamigal Madam*, AIR



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1986 SC 794, R. Manicka Naicker v. E. Elumalai Naicker, (1995) 4 SCC 156 and Sayyed Ali v. A.P. Wakf Board, Hyderabad, (1998) 2 SCC 642 and that of a Division Bench of this Court in Ramanujam Kavirayar, T.K. v. Sri-La-Sri Sivaprakasa Pandara Sannathi Avargal, 1988 (2) L.W. 513 and of a learned single Judge of this Court in Samsuddin Rowther and another v. Avvammal and 2 others, 1992 (1) L.W. 207 would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which has, as their objection and aim, to implement ryotwari settlement in the areas governed by them. (Emphasis added).

37. In V.Subramania Thevar vs. Kannan and others reported in 1998 (1) LW 448 this Court has held that,

"5. Any person claiming to be entitled to kudiwaram right has to prove the same by virtue of any grant in his favour or in favour of his predecessors-in-interest and the kudiwaram interest being a peculiar concept depending upon the status and grant only, could



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not be claimed to have been acquired by mere possession or cultivation of lands for any length of time. Such rights as an ordinary cultivating tenant have got to be asserted or sustained or substantiated only under the ordinary tenancy laws. In view of the above and the factual details noticed in the orders challenged before us, the appellants could not claim to have substantiated their right for patta under the Act, particularly under Section 8(1) of the Act as the persons lawfully entitled to kudiwaram in the inam lands immediately before the appointed day. Consequently, we see no merit in the claim of the appellants in this regard."

38. A.T.S. Chinnaswami Chettiar vs. Sri Kari Varadaraja

Perumal temple and another reported in AIR 1996 SC 234.

"12.Section 44. In proceedings under this Act relating to any inam granted for the benefit of any religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service it shall be presumed unless the contrary is proved that the inam



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consists not merely of a grant of the melvaram in the land but also the kudivaram therein."

39. From reading of Section 44 of the Act and the judicial pronouncement *qua* the entries made in I.F.R., we are able to understand that the permanent grant free of tax been made to support the sub temples of Sri Ranganathaswamy Temple as Devadayam. The learned counsel for the appellants referring the classification of a land as 'natham porambokku' in respect of the piece of a land mentioned serial number 52 column No. 7 of the Inam Register, claim that the nature and character of the land been changed after the grant and been recorded so in the register as early as 1909, therefore, the presumption under Section 44 of the Act cannot be drawn against the document.

40. Though this argument superficially appears to be correct, the entry in column No 21 against the same land makes it clear that this land which is located at the outer three pragram of the temple contains street, roads, house etc vesting with municipality. So the then Collector on 02.07.1909 has recommended that all the lands in three, counting from



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the fourth wall from interior, be registered as temple promboke and all the lands between the fourth and seventh walls be classified as village site promboke. This noting found in the Inam Register, though relied by the appellants to buttress their claim, in fact is does not enhance their claim in any manner. The grant was presumable made several centuries ago a same been recorded during the later part of the 18th century after the enactment of Inam Act. Thereafter, in the year 1909, the physical feature of the land between the fourth wall and seventh wall been found with constructions and streets. Therefore, the then Collector has recommended for reclassifying the nature of the land, it is only a recommendation and no material placed that this was acted upon. Further it is to be noted even after the recommendation, the temple not been divested of any of its right over the property. No records to shown that the right existed till the advent of Act 30/1963 by any legal means divested. Just because there was 'parish' deduction for land acquired, that also *ipso facto* does not tantamount to infer that the grant was only for revenue. In case of grant for both varam including free of tax, parish deduction is part of compensation beside the compensation for the income from the land. That is reason precisely in Ex.P.3 the Temple has



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been asked to intimate the rent collected from the land sought to be acquired and in Ex.P.4, the District Court has asked the Temple to inform how the compensation money is going to be utilised for the purpose of the Temple.

41. When the grant is for the support of the temple and permanent in nature without any indication that the grant is only in respect of revenue, the tax exemption granted is only an additional benefit and not the only benefit under the grant. Therefore, there can be no doubt that the presumption under section 44 of the act applies and in the absence of evidence contrary to the presumption to rebut it, the view expressed by the Settlement Tahsildar is to be set aside.

Section 13 of the Act 30 of 1963

42. It was contended by the learned counsel appearing for the appellants that Section 13 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 very specifically state that in case of land and building, the land underneath the building also shall vest with the owner of the building and patta to be given to the building owner



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inclusive of the site upon which the building stand as well as the land appurtenant to it. Infact the reading of Section 13 of the Act reads as below:

“13. Vesting of buildings. - (1) Every building situated within the limits of an inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day; but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls, to levy the appropriate assessment thereon.

(2) In this section, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto.”

43. The plain reading of the Section indicates that the building upon an inam land shall vest with the person who owned it immediately before this date of appointment and the Government will have the right to collect tax for every Fasli year. When the application of this Act came for consideration before the Supreme Court in **R.Manicka Naicker vs. E.Elumalai Naicker** reported in **1995 (4) SCC 156**, the Hon'ble Supreme Court held as below:



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"12. The contention of the appellant that by virtue of Section 13, the land underneath the building also vests in him must be rejected. Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2) merely provides that the site on which the building stands will also be covered by Section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date.

13. In the case of Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sundararajulu Chettiar [ILR (1975) 1 Mad 501] a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respectfully agree with these findings of the learned



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Single Judge."

44. Following this judgment, this Court in **Ramae Gounder & Sons vs. Settlement Tahsildar, Coimbatore** reported in **2015 (5) MLJ 265**.

"11. As per Section 13 of the Tamil Nadu Act 30 of 1963, every building situated within the limits of Inam land, shall, with effect on and from the appointed day, vest in the person who owned immediately before that day. By relying upon this provision, the tenements under the successors of Shoman Chettiar, claimed right over those buildings, on the ground that they constructed and owned those buildings immediately before the appointed day. Therefore, the individual respondents own the land(s) with buildings, which is as per the provisions of Section 13 of the said Act and the finding of the first appellate Court (Tribunal) in that regard is hereby confirmed, as the same is based on facts and law.

12. From the documentary evidence available on record, it is proved that the appellants have not established their ownership in respect of their properties. A party who is claiming the vesting of the



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property, under Section 13 of the said Act, has to establish that he is the owner of the building as well as the site in which the building stands. Though the appellants claim title, they have failed to prove their adversary right over the properties in question. A person claiming title by adverse possession and also by prescription must prove and show that he has been in possession of the land for the statutory period which is adequate in continuity, in publicity and in extent with the animus of holding the land adverse to the true owner."

45. Thus, it is now been well settled by pronouncement of judicial orders that the party who claims vesting of property under Section 13 of the Act has to establish that he is the owner of the building as well the site in which the building stands. The land if owned by a religious institution and a building stands upon that land does not vest the site upon which the building stands inclusive of the land appurtenant to the building. The inamdar continued to be in constructive possession of the site, even after the notified date and the inamdar will be entitled to recover possession from the vacant site from his tenant. This legal position been settled in catena of judgments which are referred in



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R.Manicka Naicker case cited *supra* followed by *Ramae Gounder case* cited *supra*. Therefore looking at any angle, either the point of limitation or the nature of the grant or the applicability of Section 13 of the Act in respect of the buildings found in Schedule-I of the order of the Settlement Tahsildar, this Court finds that the existing right of the Temple given under the grant cannot be taken away by virtue of the provisions of the Act 30 of 1963. Under Section 44 of the Act, the pre-existing right vested with the Temple is not only for Kudiwaram, but both for Melwaram and Kudiwaram. Therefore, the Temple is entitled for patta absolutely for the land enumerated under second schedule and patta for the site for the land enumerated under First schedule whereupon building has been constructed. It is for the person who claim his right over the building to establish whether they put up the building with the consent of the land owner, namely the Temple or not. These are the issues based on the facts to be decided by a competent Civil Court. As far as the present appeals are concerned, the order of the Tribunal is perfectly valid. There is no legal infirmity either on facts or law. The absolute right vested with the Temple cannot be diverted without taking note of the fact that prior to the advent of the Act 30 of 1963, Melwaram and Kudiwaram right of the



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Temple been recognised and honoured.

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46. It is brought to our notice that there are several suits pending in the Courts below in respect of the land presumably covered under T.D. No.1027. We are not inclined to go into the factual merits of the individual cases, except to record that those cases have to be dealt recognising the right of the Temple over the said property as holder of both Warams, if it is land and holder of Melwaram, if it is land with building. Further, it is also made clear that the identity of the property and correlation of the survey numbers are matters which has to be decided by the Civil Courts after proper appreciation of evidence and therefore those issues are left open for the parties to agitate before the Civil Court in the light of the judgment rendered above.



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47. With this observation, these appeals are disposed of confirming the judgment and decree, dated 30.11.1990, made in C.M.A.Nos.6, 8 ,9, 10, 11, 13, 15, 17, 18, 20, 21, 22, 24, 25, 26, 27, 33, 35 & 37/1981 and 2/1982 , on the file of the Minor Inam Abolition Tribunal (Principal Sub-Judge), Tiruchirappalli. No costs. Consequently, connected miscellaneous petitions are closed.

[G.J., J.] & [K.K.R.K., J.]
03.03.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
SMN2

To

- 1.The Minor Inam Abolition Tribunal (Principal Sub-Judge),
Tiruchirappalli.
- 2.The Executive Officer,
Sri Ranganathaswamy (Idol),
Srirangam, Trichy.
- 3.The Section Officer,
V.R. Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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

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JUDGMENT MADE IN
S.T.A.Nos.20 to 24 of 2001, 1 to 8 and 10 to 19 of 2002
and S.T.P.No.1 of 2014 in S.T.A.No.19 of 2002 and
C.M.P.(MD)No.2620 of 2022 in S.T.A.No.19 of 2002

DATED : 03.03.2023