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W.P.Nos. 19047 & 25783 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos. 19047 & 25783 of 2010

and

W.M.P.No.14014 of 2018

and

M.P.Nos. 1 of 2010, 1 & 2 of 2012

**W.P.No. 19047 of 2010**

N. Senthamarai

... Petitioner

Vs

1. Government of Tamil Nadu,  
Rep. by its Secretary,  
Department of Revenue,  
Fort St. George, Chennai - 9.
2. District Collector,  
Erode District, Erode.
3. Raja Packing Company,  
Rep. by K. Eeswaramoorthy,  
Suryampalayam,  
Vasavi College Post, Erode - 638 316.
4. S. Rajendran
5. S. Sebastain



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6. C. Yuvaraj

(Impleaded as per order dated 23.08.2010  
in M.P.No. 2 of 2010 in W.P.No. 19047 of 2010)

... Respondents

**Prayer:** Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent in order Na.Ka.No. 18263/2008 E2, dated 10.05.2010 and quash the same and to direct the second respondent to conduct fresh enquiry according proper opportunity for the petitioner to participate in the same.

|                |                                                                  |
|----------------|------------------------------------------------------------------|
| For Petitioner | : Mr.N.Manoharan<br>Assisted by Mr.S.Mohanasundaram              |
| For R1 & R2    | : Mr.K.Surendran<br>Additional Government Pleader                |
| For R3         | : Not ready in notice                                            |
| For R4 to R6   | : Mr.V.P.Prakash, Senior Counsel<br>Assisted by K.Sudalai Kannu. |

**W.P.No. 25783 of 2010**

1. S. Rajendiran
2. C.Yuvaraj
3. S.Sebastian

... Petitioners

Vs

1. Government of Tamil Nadu,  
Rep. by its Secretary,

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Department of Revenue,  
Fort St. George, Chennai.

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2. The District Collector,  
Collectorate  
Erode.
3. The Tahsildhar  
Erode.
4. Management of Raja packing,  
Rep. by its Proprietor Mrs.N.Senthamarai,  
Suriyamapalayam,  
Vasavi College P.O.  
Erode.
5. N. Senthamarai, Chairman,  
Kandasamy Spinning Mills,  
No. 230, Salem Main Road, Kumarapalayam,  
Namakkal District.

(R5 impleaded as per order dated  
12.12.2024 in W.M.P.No. 18400 of  
2016 in W.P.No. 25783/2010)

... Respondents

**Prayer:** Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the respondents 1, 2, 3 to recover money due to the petitioners under G.O.D.Nos. 457, 458, 459 dated 26.06.2006 respectively from the 4<sup>th</sup> respondent namely Mrs. N.Senthamarai in accordance with the order of the 2<sup>nd</sup> respondent bearing ref. Na.Ka. 18263 of 2008 E2, dated 10.05.2010 together with interest as fixed by this Court.



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For Petitioner : Mr.V.Prakash, Senior Counsel  
Assisted by Mr.K.Sudalaikannu

For R1 to R3 : Mr.K.Surendran  
Additional Government Pleader

For R4 : Notice served

For R5 : Mr.B.Jaganathan  
for Mr. A.Jenasenan

### **ORDER**

These two writ petitions pertain to the same subject matter and as such are taken up for disposal by way of this common order.

2. W.P.No. 25783 of 2010 is filed by three workmen. It is their case that they have got an award in their favour in I.D.Nos.252 to 254 and 258 of 1992 on 03.11.1995. By the said award, their non employment by the management of one M/s.Raja Packing Company, Suriyampalayam, Erode was held to be illegal and they were directed to be reinstated into service with continuity of service. Even thereafter, the workmen were not reinstated and therefore, they had earlier filed W.P.Nos. 37199 to 37201 of 2007 with a prayer to recover the sum of Rs, 4,79,090/- being the amount of wages and



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the other benefits payable by the management pursuant to the said award, which came to be thereafter computed in C.P.Nos.299 to 301 of 2005. Before this Court in the above writ petitions, for the first time, the name of *Mrs.N.Senthamarai* was mentioned as proprietrix of the management of M/s.Raja Packing Company.

3. In view thereof, when the writ petition came up for hearing, an objection was taken on behalf of the said *Mrs.N.Senthamarai*, who was arrayed as the fourth respondent in the writ petition, that she is totally unconnected to the said M/s.Raja Packing Company and that she has been willfully and belatedly named as the proprietrix of the said M/s.Raja Packing Company which is a partnership firm and she has nothing to do with the same. When such an objection was raised during the course of the arguments, the learned counsel appearing on behalf of the workmen also submitted that the name of *N.Senthamarai* which is mentioned as proprietrix of the management of M/s.Raja Packing would be given up and an endorsement would be made. After recording the same, this Court directed the District Collector to ensure that the said award passed by the Labour Court is



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recovered from the management of M/s.Raja Packing Company. The relevant portion of the order of this Court dated 07.11.2008 in paragraph Nos. 3, 4 and 5 is extracted hereunder:-

*“3. An objection has been taken on behalf of one N.Senthamarai, stating that the award had been obtained only against Raja Packing Company and that the award has not been obtained against her and hence, the same cannot be enforced against her. Learned Senior Counsel appearing for the third respondent has represented that the said N. Senthamarai has no objection in the amount is sought to be recovered from Raja Packing Company and that wilfully her name had been included as though she is the proprietor of the Management of Raja Packing Company and if her name is deleted, the relief could be granted in favour of the petitioners.*

*4. Learned Senior Counsel appearing for the petitioner would submit that the name of the N.Senthamarai as proprietor of the Management of Raja Packing Company will be given up and an endorsement had been made by the learned counsel on record in this regard.*

*5. In view of the stated position and in view of the fact that the petitioners has obtained award before the labour Court against Raja Packing Company and obtained order in C.P.Nos. 299 to 301 of 2005 and certificates have been issued in this regard, there cannot be any objection for the petitioners to recover the amount from the said management. The second respondent who is the competent*



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*authority has to ensure that the said award passed by the Labour Court is recovered from the Management of Raja Packing Company and such a direction shall be given by the second respondent to the Tahsildar concerned and the amount shall be recovered and payable to the petitioners. The second respondent is directed to carry out the said exercise within a period of six weeks from the date of receipt of copy of this order.”*

4. Though the said concession was made during the course of the argument by the learned counsel appearing on behalf of workmen, thereafter, M.P.No. 1 of 2009 was filed in the said disposed of writ petition with a prayer to clarify the order dated 07.11.2008 in W.P.No. 37199 of 2007 by clarifying that the Certificate of Recovery issued by the Government under Section 33-C(1) of the Industrial Disputes Act, 1947 is liable to be enforced against the true owner of the management of M/s.Raja Packing, whoever it may be. In the said petition, the following order was passed by this Court and paragraph No.3 is extracted hereunder:-

*“3. While passing the order in the above writ petition, I have directed the second respondent to recover the amount from the management of Raja Packing Company against which award was obtained by the petitioners. Hence, it is needless to say that the second respondent shall recover the*



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*amount from the management of Raja Packing Company whoever is in management of the said company since the award was obtained against the Company and not against an individual owner. The second respondent is directed to do so within a period of one month from the date of receipt of a copy of this order. Further, the District Collector is at liberty to ask the petitioners to appear before him if he feels that some clarification is required from them. The Clarification application is ordered accordingly.”*

5. Pursuant thereto, the District Collector took up the enquiry to determine who was the true owner of the management of M/s.Raja Packing Company. By an order dated 10.05.2010, the District Collector found that *N.Senthamarai*, the Managing Director of Kandasamy Spinning Mills Private Limited is the ultimate owner of M/s.Raja Packing Company as well and after making this finding, directed that the said arrears in respect of the three workmen be recovered from her. Aggrieved by the same, the said *N.Senthamarai* has filed the writ petition in W.P.No.19047 of 2010 seeking to call for the records of the said order, to quash the same and to direct the second respondent to conduct a fresh enquiry affording a proper opportunity for the petitioner to participate in the same.



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6. *Mr N.Mohoharan*, the learned counsel appearing on behalf of *N.Senthamarai* would submit that the corporate entity, namely M/s. Kandasamy Spinning Mills Private Limited, came into being in the year 1969. The entire mill premises belongs to the said company. While so in the year 1985, the Cone Winding Unit alone was leased out to one *A.S.Mani* and two others who were carrying on business as Jupiter Packing Company, by an agreement dated 20.04.1985. Thereafter, the partnership of the said Jupiter Company underwent further change by inducting *B.K.Rajendiran*, *S.P.Thangavelu* and *K.L.Yuvaraj*. When the lease agreement between M/s.Kandasamy Spinning Mills Private Limited and the said persons was renewed, in view of the original partners getting out and the new partners namely *B.K.Rajendiran*, *S.P.Thangavelu* and *K.L.Yuvaraj* who took the Cone Winding Unit on lease, they carried on the business firm in the name M/s.Raja Packing Company. In the agreement dated 01.04.1986, it was mentioned as such and they took on lease the machineries and space for a period of 5 years.



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7. Furthermore, on 27.10.1990, M/s.Raja Packing Company was further reconstituted, by and which, *B.K.Rajendran* and *S.P. Thangavelu* had retired and in their place *R.Selvamani* and *K.Soundappan* were inducted to carry on the firm along with *K.L.Yuvaraj*. On 27.10.1990, again, the lease agreement was entered into under similar conditions with the aforementioned persons for a further period of 5 years. As a matter of fact, the trade union, in respect of certain claims had earlier raised a claim in I.D.No.77 of 1987 with reference to its claim in the said Cone Winding Unit run by M/s.Raja Packing Company. However, in the claim petition M/s.Kandasamy Spinning Mills Private Limited was also added as the second party. While considering the said dispute, the Tribunal had rendered the following finding:-

*“On a consideration of the evidences, I hold that there is no nexus or rational basis between composite textile mills and smaller undertakings which do only reeling etc., by getting yarn from spinning mills on a contract basis. I, therefore, hold on both the points that the employees of the First Respondent do not have any legal claims for wages against Second Respondent and that the wages paid by the First Respondent cannot be increased by restoring to a comparison with the wages, paid by the composite textile mills. The claim of the workmen is liable to be dismissed. An award is*

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*passed accordingly".*

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8. Therefore, it is clear that there is absolutely no connection with M/s.Raja Packing Company and M/s.Kandasamy Spinning Mills Private Limited. While so, the present industrial dispute was filed in the year 1992 by these workmen, being aggrieved by their non employment by the said M/s.Raja Packing Company. An award was also passed against the management of M/s.Raja Packing Company alone. Pertinently, the name of *N.Senthamarai* is not at all mentioned in the claim petition or in the cause title. As a matter of fact, the then partner of M/s.Raja Packing Company one *K.V.Eswara Moorthy* challenged the said awards by filling W.P.No.7197 to 7200 of 1996 and initially a conditional order was passed. The workmen also withdrew the amount deposited pursuant to the conditional order. Thereafter, the writ petitions were dismissed and even the writ appeals filed by the said *K.V.Easwara Moorthy* on behalf of M/s.Raja Packing Company in W.A.Nos.535, 595 and 938 of 1998 were also dismissed on 25.03.1998. All along, notices were also issued by the Provident Fund Authorities and the other statutory authorities to M/s.Raja Packing Company. In none of the proceedings, *N.Senthamarai* is shown as the owner or partner or as a person



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connected with the said M/s.Raja Packing Company.

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9. Pursuant to the award in favour of the workmen becoming final, they approached the Government to issue a recovery certificate and on 26.06.2006, by G.O.Nos. 457, 458 and 459, the recovery certificate was also issued by the Government, in which also, only the name of M/s.Raja Packing Company alone is mentioned and the name of *N.Senthamarai* is not mentioned. As a matter of fact, *N.Senthamarai* has nothing to do with M/s.Raja Packing Company as is also clear from the information obtained by the General Secretary of a trade union on 23.02.2007 which reads as under:-

*"2. The building and machineries of the establishment are owned by M/s. Kandasamy Spinning Mill represented by Smt. N. Senthamarai, Managing Director*

*3. M/s. Raja Packing Company, represented by Sri M. Sivasamy, S/o. Manickam and Shri K.V. Eswaramurthy, S/o. Vaiyapuri Mudaliar, as partners leased out the factory from 19.5.95 to 31.8.98*

*4. M/s. Kamatchi Textiles, represented by Shri. K.?. Ramasamy, Proprietor, leased the factory with effect from 18.11.98 and subleased a portion of the building and machineries (cone winding and packing) to M/s. Kamatchi Packing Company, represented by Sri. Shanmugam, Proprietor, with effect from 25.12.98, thus making M/s.*



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*Kamatchi Textiles as the principal employer and Kamatchi Packing as ancillary unit. On the death of Shri K.M. Ramasamy, legal heirs Smt. R. Kaliammal, wife and Sri R. Rathinasamy and Sri R. Sundaram, sons of Shri K.M. Ramasamy, became partners of M/s. Kamatchi Textiles and principal employers of M/s. Kamatchi Packing"*

10. Under these circumstances, when the writ petition was earlier filed by the workmen to implement the award, an objection was duly taken and the learned counsel for the workmen readily agreed to remove the name of *N.Senthamarai*. When the said order having become final, thereafter in the course of an enquiry relating to the true owner of the said M/s.Raja Packing Company, *N.Senthamarai* was again sought to be brought on record.

11. The learned counsel would submit that, firstly, no proper enquiry has been conducted by the Collector, inasmuch as the three workmen concerned were not examined in detail. It is only a trade union representative who is a sitting MLA at that time who came before the Collector and hijacked the proceedings. The Collector ought not to have allowed the said trade union representative to represent the workmen. Secondly, when the finding was



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returned against *N.Senthamarai*, no opportunity was given to her to put forth her case. Though it is correct that notices were sought to be served, it can be seen that the said notices returned because the *N.Senthamarai* was not available at her home. When the enquiry was proceeding, it was only because the counsel for the *N.Senthamarai* became sick, and later also died of the ailment that *N.Senthamarai* could not effectively represent her by filling all the documents before the Collector. Therefore, at least an opportunity should be given to *N.Senthamarai* by remanding the matter back to the Collector for a fresh enquiry.

12. The finding of the Collector that it is only *N.Senthamarai* who is the owner of M/s.Raja Packing Company is absolutely perverse. It runs contrary to all the judicial pronouncements made in the industrial dispute and in the writ petition. The Collector is not even empowered to render such a finding which virtually amounts to overruling the judgements of the Courts of law. The Collector merely relied on the oral statements of the erstwhile partners. The erstwhile partners are interested witnesses because otherwise if they are held to be the real partners, then they will be liable for the payment



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of the sum. Therefore, naturally, they will merely depose as if they were only inducted as namesake and that the original owner is only *N.Senthamarai*. In the absence of any document in the form of a partnership deed or if it is a proprietorship concerned, any proof with reference thereto that only *N.Senthamarai* is the proprietrix, the finding of the District Collector in this regard is absolutely perverse and therefore, this Court should interfere and quash the impugned order.

13. Further the learned counsel would submit that after a period of 25 years, and having filed earlier writ petitions, all these erstwhile partners are now turning the table, which is readily believed even in the absence of any other corroborating documents. Therefore, he would submit that this Court should allow the W.P.No. 19047 of 2010 and quash the impugned order.

14. Per Contra, *Mr.V.Prakash*, the learned Senior Counsel appearing for the workmen, by taking this Court through the order passed by the District Collector, urges this Court to consider each of the erstwhile partners' statements which were given before the Collector. They have all categorically



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said that they were either clerks or drivers working in the company, namely M/s.Kandasamy Spinning Mills Private Limited and only because they were loyal workers of their Managing Director, namely *Mr.J.K.K. Natarajah Chettiar*, they were requested by him to be signatories in the partnership deed, etc., so as to run the unit in their names. It is an absolutely benami venture and they have nothing to do with the management of the said M/s.Raja Packing. The entire business is manned only by the said *J.K.K. Natarajah Chettiar* and thereafter, his daughter *N.Senthamarai*. They are all ordinary clerks and drivers and they have nothing to do with the business of M/s.Raja Packing Company. Therefore, when such is the categorical statement given by each and every partner and when the Collector, pursuant to the order of this Court, conducts an enquiry as to who is the true owner and if the truth is unearthed that only *N.Senthamarai* is the true owner, then the Collector is absolutely right in passing the impugned order and it does not call for any interference by this Court. Even going by the documents which is now produced by *N.Senthamarai*, the learned senior counsel for the workmen would submit that it can be seen that the entire contract was to take the works of the Cone Winding Unit and supply the product, the threads. Therefore, the



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said M/s.Spinning Mills being a composite unit, if one activity alone is given to a person and that too which is part of the larger management activity, even the said agreement can be construed only as a labour contract and therefore, when *N.Senthamarai* admittedly being the Managing Director of M/s.Kandasamy Spinning Mills, being the principal employer, in view of the provisions contained in Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 would again be liable. Substantially when it is only *N.Senthamarai* who has to pay the wages, this Court will not interfere with the findings on any technical basis. The workmen having obtained an award as early as in the year 1995, have been made to run pillar to post and therefore, this Court should also take that into consideration and they are yet to realise the fruits of the award duly passed by the Labour Court.

15. I have considered the rival submissions made on either side and perused the material records of the case.

16. Firstly, in this case, the impugned order was passed by the District Collector in terms of the direction issued by this Court in the earlier Writ

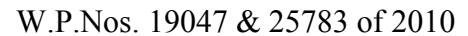


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Petition Nos. 37199 to 37201 of 2007. The original order in the Writ Petition and thereafter the order passed in the clarification petition are extracted supra.

Therefore, the Collector has rightly undertaken the exercise of finding out who is the true owner. During the enquiry, the workmen appeared before the Collector and made their claim. They have also filed 22 documents to claim that *N.Senthamarai* is the only owner. It is in this context, the Collector has taken up the detailed enquiry. Each one of the partner from the said Jupiter Company and also thereafter M/s.Raja Packing Company have given their deposition. They were also duly cross-examined. It can be seen that each one of them have categorically deposed that they are only the employees of the mill and only because *Mr.J.K.K Natarajah Chettiyar* asked them to sign in the relevant documents, they signed and they are not the true owners of the Jupiter Packing Company. Repeatedly, one *A.S.Mani* thereafter *D.K.Soundappan*, *Vairavel*, *Karuppannan*, *Shanmugan*, *Sivasamy* and *K.V. Eswaramoorthy*, have all categorically deposed in the same lines.

17. The point raised by the learned Counsel *Mr.N.Manoharan* that they are interested witnesses is a relevant consideration. However, on reading the



18. Further, persons may lie, but the circumstances may not. It can be seen from the case of the *N.Senthamarai* that the Cone Winding Section been on lease since 1985. Even as per the version, it can be seen that in



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the year 1985, the entity was called M/s.Jupiter Packaging Company with three persons as the partners who are claimed to be the employees. Thereafter, new partners came into place in the year 1986, in the name of *B.K.Rajendiran*, *S.P.Thangavelu* and *K.L.Yuvaraj*. Then the name changed from M/s.Jupiter Packing Company to M/s.Raja Packing Company. Again, within four years in 1990, the partners were changed by removing the names of *B.K Rajendiran* and *S.P Thangavelu* and inducting *R.Selvamani* and *K.Soundappan* who again they claimed to be the employees. Then, when the entity continued in the year 1995, two new names *K.V.Lakshmanan* and *K.V. Eswara Moorthy* are inducted as partners. *K.V.Eswara Moorthy* also claims to be the driver of the *J.K.K.Natarajah Chettiar*. Thus, even though it is normal for partners to retire and partners to join, but the manner in which the partners kept on changing adumbrates the true fact that the said M/s.Raja Packing Company is nothing but a make believe affair set up by *N. Senthamarai* and her father on behalf of their Mills, for their convenience.

19. This part, serious allegations of forgery is also made by one of the erstwhile employees as if that when the earlier writ petition was filed in his



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name to represent the said M/s.Raja Packing Company, he was already not in service and his signature itself was forged. Even then, inspite of summons being sent repeatedly to *N.Senthamarai*, she did not choose to participate in the inquiry before the District Collector. From the impugned order, it can be seen that from January upto April,2010 the District Collector was sending repeated summons requesting the *N.Senthamari* to appear before him for the enquiry. The summons were sent on 29.01.2010, 24.02.2010, 19.03.2010, 07.04.2010. The said summons were returned as refused. Therefore, when the enquiry was undertaken pursuant to the order of this Court, to which the petitioner *N.Senthamarai* was very much a party, refusing the summons of the enquiry would only show that the petitioner *N.Senthamarai* was shying away from the truth.

20. The Collector also made sincere efforts by sending notices in person through the Tahsildar, Tiruchengode and even the said summons were returned, as if the petitioner *N.Senthamarai* had gone out of station. The Collector records with anguish that even though several opportunities were granted, the petitioner chose not to appear. When cross examination of the



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witnesses, etc., is done, I reject the submission made by the learned Counsel appearing for *N.Senthamarai* that she was not given proper opportunity. The petitioner *N.Senthamarai* deliberately chose not to avail the opportunity before the District Collector only fearing the truth.

21. As regard the arguments that there are findings in the connected industrial dispute, it can be seen that in adversarial jurisprudence, when contentions are raised by two parties, the Court decides the same based on the evidence adduced. Earlier when the petitioner claimed that they got some right in *M/s.Raja Packing* in which *M/s.Kandasamy Spinning Mills* was also arrayed, it was only decided that there was no nexus or rational basis between composite textile mills and smaller undertaking which do only reeling etc., by getting yarn from Spinning Mills on a contract basis. That doesn't decide as to who is the true owner of *M/s.Raja Packing Company*. The question as to who was the true owner of the *M/s.Raja Packing Company* came only for consideration first time in W.P.No. 37199 of 2007. While in the main writ petition order, there is a finding in favour of the petitioner *N. Senthamarai* that her name be given up, by clarification, the question was again left open



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with a direction to enforce the award as against the true owner. Therefore, when the question itself was decided by an Order inter-parties in the earlier order of this Court in W.P.No. 37199 of 2007, then accordingly, the petitioner *N.Senthamarai* is also bound by the same and thus the Collector is right in finding out as to who is the true owner of M/s.Raja Packing Company. When it is found that the said M/s.Raja Packing Company, the partnership firm is only a make-believe affair and the partners were not real partners and the entire thing was originally arranged by the *J.K.K.Natarajah Chettiyar* and thereafter by *N.Senthamarai*, it is logical to treat it as a proprietorship concern owned by the *N.Senthamarai*. Accordingly, the finding is given and I do not see any illegality in the same.

22. With reference to the argument that earlier in the original award the *N.Senthamarai*'s name was not mentioned is concerned., in beneficial labour jurisprudence, the workmen are not expected to know the constitution or the real owners of the management and that is why the privilege of describing the management as the management of M/s.Raja Packing Company itself is given to the workmen. Therefore, the industrial dispute was filed and the non-



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mentioning of the name of *N.Senthamarai* in the award, in the claim petition or in the cause title cannot be an issue. As long as the award being passed against the management of M/s.Raja Packing Company and ultimately, it is now found that partnership in M/s.Raja Packing Company is nothing but dubious entity, a make believe affair which came into being for the unlawful convenience of *J.K.K.Natarajah Chettiyar* and thereafter *N.Senthamari*, the finding of the District Collector that the petitioner *N.Senthamari*. is only the true owner of M/s.Raja Packing Company is in order and as per the direction of this Court dated 02.11.2009, the amount due has to be recovered only from the petitioner N. Senthamarai. Accordingly, the writ petition No. 19047 of 2010 is dismissed and the W.P.No.25783 of 2010 is disposed of on the following terms:-

(i). The recovery certificates were already issued in G.O.D.No. 457 to 459 dated 26.06.2006 and by proceedings dated 10.05.2010, the District Collector has found that N.Sendhamarai is the true owner of M/s.Raja Packing Company. Therefore, the Writ Petition is disposed of with a direction to the second and third respondents to take immediate steps to



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recover the said arrears as arrears of land revenue and realise the same and pay the same to the workmen within a period of three months from the date of receipt of the website uploaded copy of this order without waiting for the certified copy of the order.

(ii). Consequently, connected miscellaneous petitions are closed. No costs.

18.12.2024  
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Neutral Citation: Yes  
nsl

To

1. The Secretary,  
Department of Revenue,  
Fort St. George, Chennai - 9.
2. District Collector,  
Erode District, Erode.
3. The Tahsildhar  
Erode.

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**D.BHARATHA CHAKRAVARTHY, J.**

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