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W.P.No.3561 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22..07..2024
Orders Pronounced on : 31..07..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition No.3561 of 2024
and
W.M.P.Nos.3823 & 3824 of 2024

1.G.Gopal

2.R.Visalatchi

..... Petitioners

-Versus-

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Revenue,
Fort St. George, Chennai 600 009.

2.The Land Commissioner,
Ezhilagam, Cheapuk,
Chennai 600 005.

3.The Revenue Divisional Officer,
Dharapuram,
Dharapuram Division.

4.K.Vinayagamoorthy

..... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 3rd respondent in his proceedings in Na.Ka.No.2064/2022/A1 dated 18.01.2024 and to quash the same as illegal.

For Petitioner (s)

: *Mr.M.Ajmalkhan,*



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For Respondent (s)

*Senior Counsel for
Mr.J.Antony Jesus*
: *Mr.P.Sathish,
Additional Government Pleader
for RR1 to 3*
*Mr.T.Mohan,
Senior Counsel for
Mr.P.Saravana Sowmiyan for R4*

ORDER

Challenge in this writ petition is the proceedings of the 3rd respondent dated 18.01.2024 in Na.Ka.No.2064/2022/A1 directing the Thasildar, Dharapuram, Tiruppur District, to (i) sub-divide and demarcate the retainable portion of Acres 8.73 cents of land in S.F.No.552/1 (Old No.514/5), Chittaravuthanpalayam Village, Dharapuram Taluk, and include the name of legal heirs of late Seethaiammal along with the names of the existing pattadars in the joint patta issued earlier; and (ii) to sub divide an extent Acres 3.77 cents of land comprised in S.No.552, which was declared as surplus into two parts and enter the name of Smt.Lakshmi in respect of southern portion measuring an extent of Acre 1.88 ½ cents of land and Smt.Valarmathi in respect of the northern portion measuring an extent of Acre 1.88 ½ cents in the village accounts and grant conditional patta.

2.0. The brief facts leading to the filing of the present writ petition are as follows:



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2.1. A landed property measuring an extent of 88.93 ½ ordinary Acres, equivalent to 23.753 Standard Acres situated in Chittaravuthanpalayam Village, Dharapuram Taluk, Erode District, was originally owned by one Deivasigamani Gounder. He had executed a WILL dated 14.07.1952 registered as Doc.No.20 of 1952 in favour of his daughters (i) Palaniammal, (ii) Krishnammal, (iii) Kaliathal and (iv) Saraswathy in respect of the above said property, however giving life interest to his wife-Seethaiammal.

2.2. After the demise of Deivasigamani Gounder on 13.05.1953, the WILL dated 14.07.1952 came into effect and his daughters partitioned the property amicably among themselves through a registered partition deed dated 27.03.1972 vide Doc.No.539 of 1972.

2.3. Thereafter, the 1st petitioner and the husband of the 2nd petitioner purchased an extent of Acres 12.50 cents of land in S.No.552/1 (Old S.NO.514) from Krishnammal, one of the four daughters of Deivasigamani Gounder for valuable consideration through a sale deed dated 25.08.1980 registered as Doc.No.2572 of 1980 on the file of the Sub Registrar, Dharapuram. The revenue records in respect of the said land were also mutated to reflect the ownership of the 1st petitioner - G.Gopal and Ramakrishnan, the husband of the 2nd petitioner.

2.4. In the meanwhile, a proceedings under Section 10(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (for short, “the



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Land Ceiling Act”) came to be initiated in respect of the entire land in question

and a draft statement was published in the Tamil Nadu Government Gazette.

Seethaiammal who was the life interest holder was served with a notice in the land ceiling proceedings. In response to the same, Seethaiammal filed her detailed objections underscoring that her husband died in 1954 and at that point of time, their four daughters were minors and as such, as per WILL dated 14.07.1952, she was given only a life interest and after the demise of her husband, revenue records reflected the interest of their daughters and at no point on time, she owned more than 15 standard acres in her name. Despite the objections having been made by Seethaiammal that the property was partitioned among her daughters, the authorized officer proceeded to pass an order holding that Seethaiammal was deemed to be the owner and entitled to entire land as per sub-section (28) of Section 3 of the Land Ceiling Act and accordingly declared Acres 8.953 standard acres of land as surplus land under the Land Ceiling Act.

2.5. Challenging the order of the authorized officer declaring 8.953 standards acres of land as surplus land, Seethaiammal preferred an appeal before the Land Tribunal (Principal Subordinate Judge), Erode and the Land Tribunal by its order dated 27.11.1981 dismissed the appeal preferred by Seethaiammal in L.T.A.No.26 of 1979. Aggrieved by such order, Seethaiammal filed a civil revision petition in C.R.P.No.422 of 1982 on the



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file of this Court and this court by order dated 13.07.1983, allowed the revision and remitted the matter to the Land Tribunal for fresh consideration and disposal. Thereafter, the Land Tribunal passed an order afresh confirming the order of the authorized officer. Aggrieved by the same, again Seethaiammal preferred a revision by way of C.R.P.No.3334 of 1987 before this Court and the same was however transferred to the file of Tamil Nadu Land Reforms Special Appellate Tribunal where it was renumbered as T.R.P.No.333 of 1997. The Special Appellate Tribunal upon considering the arguments advanced on behalf of Seethaiammal, remitted the matter to the file of the Assistant Commissioner of Land Reforms to re-determine the holding of the land owners and others in the relevant survey numbers as per the orders of the Settlement Tahsildar. While so, Seethaiammal approached the Hon'ble Supreme Court by way of S.L.P.(C) No.11654 of 1994 and the same was dismissed by the Hon'ble Supreme Court by order dated 02.01.1995.

2.6. Thereafter, the Assistant Commissioner deleted an extent of 7.50 Acres of land as not belonging to Seethaiammal and declared only 6.878 acres of land as surplus. A final statement under Section 12 of the Land Ceiling Act was published in the Tamil Nadu Government Gazette dated 16.12.2005 and a notification under Section 18(1) thereof was published in the Gazette dated 14.02.2006.

2.7. Aggrieved by the order of the Assistant Commissioner, the 1st



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petitioner and his brother-Ramakrishnan filed a revision before the Land Commissioner assailing the order of the Assistant Commissioner in computing the land holdings solely in the name of Seethaiammal by ignoring the rights of her four daughters and claiming absolute right and ownership to the entire extent of 12.50 Acres of land in S.No.552/1 having purchased it from Krishnammal through a sale deed dated 25.08.1980. Seethaiammal died on 01.01.2004. The Land Commissioner thereafter, by her order dated 29.08.2006 in R.P.2/2006 rejected the contentions of the 1st petitioner and his deceased brother. On a review petition filed by the 1st petitioner and his brother, the matter was remitted to the Assistant Commissioner (Land Reforms) for correction in the final statement due to errors in invoking Section 23(2) of the Land Ceiling Act. The Assistant Commissioner (Land Ceiling) did not consider the law applicable to the factual matrix and declined to exclude the said lands from the retainable lands held by Seethaiammal vide his proceedings in Roc.MRI/191S/17-70/A2 dated 23.11.2012. Aggrieved by the said order, the 1st petitioner and his deceased brother filed a revision on the file of the 2nd respondent Land Commissioner, who, in turn by his order dated 02.09.2014 made in R.P.No.24 of 2013 negated the contentions of the 1st petitioner and his brother and held that the sale of the land in S.No.552/1 by Krishnammal in their favour on 25.08.1980 was void for want of title. Aggrieved by the order of the Land Commissioner dated 02.09.2014, the 1st petitioner and his deceased



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brother filed a writ petition in W.P.No.1074 of 2015 before this court and this court by order dated 29.03.2022 disposed of the writ petition recording the statement of the Additional Government Pleader that the 2nd respondent by his order dated 23.11.2012 allowed the retention by G.Ramakrishnan and the 1st petitioner in respect of the land admeasuring 8.73 Acres in S.No.552/1.

2.8. On 18.04.2022, the petitioners made a representation to the 3rd respondent along with a copy of the order of this court dated 29.03.2022 in W.P.No.1074 of 2015 requesting to take steps to comply with the order of this court, but there was no response. When the matter stood thus, the 4th respondent who is the son of Krishnammal, filed a petition in C.M.P.No.11928 of 2002 on 12.07.2022 seeking leave to challenge the order of the learned single Judge dated 29.03.2022 made in W.P.No.1074 of 2015. The said miscellaneous petition was, however, withdrawn on 08.01.2024.

2.9. The 4th respondent also filed a writ petition in W.P.No.34657 of 2022 on 23.11.2022 assailing the order of the Land Commissioner dated 02.09.2014 made in R.P.No.24 of 2013. The said writ petition was also withdrawn by the 4th respondent on 07.12.2023. Thus, both the writ petition and writ appeal filed by the 4th respondent with intent to delay the 3rd respondent from passing orders in accordance with the orders of this court in W.P.No.1074 of 2015 came to be withdrawn by him with quick succession between December 2023 and January 2024. Only thereafter, the order impugned in the writ petition came to be passed



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without giving any notice to the petitioners.

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2.10. In the impugned order of the 3rd respondent, it has been held that legal heirs of late Seethaiammal are also entitled to a share in retainable portion of land admeasuring 8.73 Acres in S.No.552. The Tahsildar was directed to mutate the pattas for the land to reflect the interest of the legal heirs of Seethaiammal, without demarcating the specific extent of their alleged claim over said land. It is this order which is now under challenge in the present writ petition on the grounds that (i) there is a gross violation of principles of natural justice in passing the impugned order ; (ii) when a person transfers a property representing that he has present interest in the property, whereas he has, in fact, only a *spes successionis*, the transferee acquires good title by operation of law under Section 43 of the Transfer of Property Act, 1883 [for short, “**TP Act**”]; the finding of the authorities that transfer made by sale is void cannot be sustained.

3.0. A counter affidavit has been filed by the 3rd respondent.

3.1. The 3rd respondent while opposing the writ petition admitted (i) the ownership of late Deivasigamani Gounder in respect of land measuring an extent of 88.93 ½ ordinary acres, equivalent to 23.753 standard acres in old S.No.514 (part), New S.No.552 in Chittaravuthanpalayam village, Dharapuram Taluk, Tiruppur District; (ii) Will dated 09.07.1952 executed by the said Deivasigamani Gounder bequeathing the entire properties to his children and



with life interest in favour of his wife; (iii) the partition effected among the beneficiaries of the Will; (iv) Pursuant to the partition effected by registered deed dated 27.03.1972, Krishnammal, one of the daughters of Seethaiammal sold 12.50 Acres of land which was allotted to her in the partition deed in favour of the 1st petitioner and his brother-Ramakrishnan, the husband of the 2nd petitioner; (v) various legal proceedings initiated by Seethaiammal pursuant to the Land Ceiling proceedings at different stage right from Section 10(5) Notice issued under the Land Ceiling Act; (vi) land measuring an extent of 6.877 acres which was originally fixed as surplus land by order of the Assistant Commissioner was re-fixed as 3.77 Acres of land as surplus in the lands purchased by the 1st petitioner and his brother, the husband of the 2nd petitioner. The said Seethaiammal died on 01.01.2004.

3.2. The 3rd respondent however, contended that Seethaiammal ought not to have dealt with the property during her life time by partitioning the same among her daughters. The partition effected by Seethaiammal among her daughters during her life time is null and void as he had life interest and only after her death the property would devolve upon her daughters being the beneficiaries under the Will executed by her husband Deivasigamani Gounder.

3.3. The 3rd respondent further contended as follows:

(i) In the revision petition in R.P.No.24 of 2013 preferred before



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the Land Commissioner against the re-fixation of surplus land, the Land Commissioner while dismissing the revision held that out of 12.50 acres of land purchased by the 1st petitioner and his deceased brother, 8.73 acres was kept under retainable portion and only the rest of 3.77 acres were found in the surplus portion. Therefore, the Land Commissioner directed to demarcate and sub-divide the field to identify the extent in the disputed S.F.No.552/1 (old S.No.514/5) that is in surplus and retainable. Regarding registration in the name of revision petitioner (Seethaiammal), the Land Commissioner held that the sale made by Krishnammal during the subsistence of life interest of her mother-Seethaiammal had become invalid as per the Will.

(ii) The 3rd respondent further contended that challenging the order of the Land Commissioner order dated 02.09.2014 in R.P.No.24 of 2013 and seeking to exclude the land in S.F.No.552 (old NO.514/5) from the land ceiling proceedings, the 1st petitioner filed a writ petition W.P.No.1074 of 2015 and this court by order dated 29.03.2022, without going into the issue in detail, directed the 3rd respondent to comply in letter and spirit with the orders of the 2nd respondent-Land Commissioner dated 02.09.2014 by permitting the petitioner to retain 8.73 acres of land while demarcating and sub dividing the portion of 3.77 acres of land which is held to be surplus lands at the hands of the petitioner.



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(iii) Aggrieved by the order of the 2nd respondent-Land Commissioner dated 02.09.2014 directing to survey and sub divide the land in S.No.552 in respect of 3.77 acres of surplus land and retainable portion measuring an extent of 8.73 acres of land permitted to be kept by Tmt.Seethaiammal and to register the names of the legal heirs of Tmt.Seethaiammal in the revenue records, the 4th respondent filed a petition dated 29.11.2023. The 4th respondent also filed a Writ Appeal along with a miscellaneous petition in C.M.P.No.11928 of 2022 seeking leave to permit him to challenge the order dated 29.03.2022 made in W.P.No.1074 of 2015. He however, withdrew the same for the reasons best known to him and the writ petition was dismissed by this court on 08.01.2024 as withdrawn.

(iv) Thereupon, with a view to implement the orders on the appeals and the orders of this court, the 2nd respondent issued a proceedings in Na.Ka.No.D1/706/2015 (L.Ref) dated 11.01.2024 to demarcate and sub divide the field to identify the extent in the disputed S.F.No.552/1 (old NO.514/5) that is, surplus and retainable portion and requested him(3rd respondent) to take necessary action as directed by this court in the order dated 29.03.2022 in W.P.No.1074 of 2015.

(v) regarding registration of land in the name of Gopal, 1st petitioner herein, the 2nd respondent by his order dated 02.09.2014 held that



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sale made by one of the legal heirs of Seethaiammal during the life time of Seethaiammal was held not valid as per the WILL and directed the names of the legal heirs of the deceased Seethaiammal in respect of the retainable portion of land alone.

(vi) Accordingly, conditional patta has been issued in the names of Tmt.Lakshmi and Tmt.Valarmathi for 2 acres of land each by order dated 03.04.2006 in MR IV/569/17-70/C1. The said pattadars have also filed writ petitions seeking a direction to record their names in the revenue records which were disposed of with a direction to take appropriate action to effect mutation in the revenue records. Thereafter, they were directed to be present for enquiry on 09.12.2023.

(vii) Since both the writ petition and writ appeal preferred by the 4th respondent were dismissed as withdrawn, the 1st petitioner - Gopal sent a representation to demarcate and sub divide 8.73 acres of land. Insofar as lands of Tmt.Lakshmi and Tmt.Valarmathi are concerned, the petitioners know that 1.88 ½ acres of land each are surplus for their patta lands, they consented for issuance of patta for 1.88 ½ acres in their names.

(viii) Based on order the orders of the 2nd respondent dated 02.09.2014 and the order of this court dated 29.03.2022 in W.P.No.1074 of 2015 and also the letter of the 2nd respondent dated 11.01.2024, this respondent



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issued the impugned proceedings for (i) sub division and demarcation of 8.73 acres as retainable portion in S.No.552, old S.No.514/5 and to include the legal heirs of Tmt. Seethaiammal in patta No.663 along with the names of the existing pattadars in the Joint Patta; (ii) sub-division of surplus land of 3.77 acres into two, 1.88 ½ cents each and allotment of southern side in the name of Tmt.Lakshmi and northern side in the name of Valarmathi and record the same in the village records and issue conditional patta.

(ix) After the receipt of the orders of this respondent, the Tahsildar, Dharmapuri Taluk, by his proceedings dated 20.01.2024 sub divided the lands in S.F.No.552 as S.F.Nos.552/1, 2, and 3 and granted patta for lands in S.F.No.552/1 in patta No.6593 in the names of (1) Kaalithal, (2) Sakthivel, (3) Umadevi, (4) Visalatchi, (5) Krishnammal, (6) Vijayakumari, (7) Saraswathi, (8) Rukmani, (9) Gopal Chettiyar and (10) Vijayagamoorthy and conditional pattas for land in S.F.No.552/2 in patta No.6594 in the name of Valarmathi and for lands in S.F.No.552/3 in Patta No.6595 in the name of Lakshmi.

(x) As the sale made by Krishnammal, a daughter of late Deivasigamani Gounder, in the name of the 1st petitioner and his brother, the husband of the 2nd petitioner was already declared as null and void by the 2nd respondent by order dated 02.09.2014, it is for the petitioner to approach the civil court having jurisdiction to get their title in respect of the disputed land



declared in their favour. The writ petition is not all maintainable. Since joint patta has already been issued in the name of the petitioners along with other owners for the total extent of 8.73 acres and the orders of this respondent have been complied with, the writ petition is liable to be disposed of.

4. The 4th respondent filed a counter affidavit opposing the writ petition and *inter alia* contending as follows:-

(i) Seethaiammal had only life interest and the property left behind her husband would devolve upon her daughter asper the WILL only after the death of Seethaiammal. Therefore, the alleged partition entered into among the beneficiaries under the Will during the life time of life interest holder-Seethaiammal is void abinitio and non est in the eye of law.

(ii) The land ceiling proceedings and the appeals went upto the Hon'ble Supreme Court ended against Seethaiammal and the order of the 2nd respondent declaring 8.77 acres as surplus has become final. It was clarified that sale executed by the daughters of Deivasigamanai and Seethaiammal in favour of the 1st petitioner and his brother, the husband of the 2nd petitioner was not valid in the eye of law as the sale was executed in violation of the conditions attached to the Will executed by Devisigamani bequeathing his properties in favour of his daughters and reserving life interest to his wife-Seethaiammal.



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(iii) This respondent and his family members are still in possession and enjoyment of their property.

(iv) The writ petition has been filed without impleading the legal heirs of Krishnammal as necessary parties and legal heirs of other land owners.

(v) The order of the 3rd respondent dated 08.01.2024 is a well-reasoned order and it does not require any interference.

(vi) The writ petition is devoid of merits and the same is liable only to be dismissed.

5. Heard Mr.M.Ajmalkhan, learned Senior Counsel appearing for the petitioners and Mr.P.Sathish, learned Additional Government Pleader, appearing for the respondents 1 to 3 and also Mr.T.Mohan, learned Senior counsel appearing on behalf of Mr.P.Saravana Sowmiyan, learned counsel on record for the 4th respondent.

6.1. The learned senior counsel for the petitioners would mainly submit that the prohibition of sale after notification under the Land Ceiling Act is only against the Act and not against the transfer made by *inter vivos* and such a sale will always be subject to the finding in respect of surplus land. If the land is released to be retained by the original owner, the sale already effected in respect of such a land will not be affected.

6.2. Mr.Ajmal Khan would further submit that, as per the Will executed



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by the original owner – Deivasigamani Gounder, his daughters became the owners of the entire property and Krishnnammal, who is one of the daughters of the testator, sold the subject property for valuable consideration in favour of the 1st petitioner and his brother – Ramakrishnan, the husband of the 2nd petitioner, through a registered sale deed dated 25.08.1980 itself. According to him, although Seethaiammal retained life interest and she died only in the year 2004, the sale made by Krishnnammal in 1980 in favour of the 1st petitioner and his brother was valid as, after the death of Seethaiammal on 01.01.2024, Krishnnammal had become the owner of the property as per the Will, and as such, the transfer made by Krishnnammal is saved under Section 43 of TP Act.

6.3. The learned senior counsel bringing attention of this court to the order passed by the 2nd respondent-Land Commissioner, dated 02.09.2014 wherein it was held that out of 12.50 acres of land purchased by the 1st petitioner and his brother, only 3.77 Acres of land were found to be surplus and the remaining 8.73 Acres of land were ordered to be kept under retainable portion, would submit that since the 1st petitioner and his brother had already purchased the subject property from Krishnnammal, who became entitled to the property as per the Will, the 1st petitioner and his brother are entitled to that portion of land as per Section 43 of TP Act. However, the impugned order came to be passed to include the name of the 4th respondent and the other legal heirs



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of Seethaiammal in utter violation of principles of natural justice, as no notice whatsoever was given.

6.4. The learned senior counsel Mr.Ajmal Khan, would in support of his submissions relied upon the judgements of the Hon'ble Supreme Court in the cases of (i) **Jumma Masjid, Mercara v. Kodimaniandra Deviah** [1962 SCC OnLine SC 157 : AIR 1962 SC 847]; **Hardev Singh v. Gurmail Singh** (Dead) by LR's [(2007) 2 SCC 404]; Manohar Lal (Dead) by LR's v. Ugrasen (Dead) by LR's [(2010) 11 SCC 557]; and judgement of this Court in the case of **N.Rajammal (Died) rep. by LR v. P.Maragathammal** [1998- 1 – L.W. 594].

7.1. Per contra, Mr.T.Mohan, learned senior counsel appearing for the 4th respondent would contend that in the land ceiling proceedings, all along, Seethaiammal alone was held to be the owner of the subject property. Thereafter, any partition entered into among the daughters of the original owner - Deivasigamani Gounder, after the notification issued under the Land Ceiling Act, is void, and therefore, the sale made by Krishnammal, one of the daughters of Deivasigamani Gounder in favour of the 1st petitioner and his brother, the husband of the 2nd petitioner, is also void. According to senior counsel, if a sale is held to be void as per Section 23 of the Land Ceiling Act, such a sale will always be deemed to be void in rem, and therefore, such a void sale would not convey any title to the parties who purchased it.

7.2. Mr.T.Mohan would further bring to the notice of this court that



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regarding the ceiling limit of the subject land, Seethaiammal took the orders passed under the Land Ceiling Act up to the Supreme Court, and by the orders of the Supreme Court, the issue of the land ceiling reached finality. Therefore, according to the learned senior counsel, the petitioners cannot now make an attempt to project a new case based on the principle of Section 43 of TP Act before this court.

7.3. Mr.T.Mohan in support of his submission placed much reliance on the judgement of this court in **B.P.Samiappan v. Arunthavaselvan** [Manu/TN/0335/1993 : 1994 – 1- LW 399].

8. Mr.P.Sathish, learned Additional Government Pleader, appearing on behalf of the official respondents would also contend that the sale made by Krishnammal in favour of the 1st petitioner and his brother, the husband of the 2nd petitioner, on 25.08.1980 was declared void by the land ceiling authorities, and therefore, the same would not convey any title to the 1st petitioner and his brother in respect of Acres 12.50 cents of land which was the subject matter in the land ceiling proceedings. The impugned order has been passed in respect of the retainable portion released by the 2nd respondent-Land Commissioner, in favour of the legal heirs of Seethaiammal. He therefore prayed to this court to dismiss the writ petition.

9. This court has considered the rival submissions and also perused the materials placed before the court carefully.



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10. The object of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is to reduce the disparity in the ownership of the agricultural land and concentration of such land with certain persons and to distribute such land among the landless poor.

11. In the case of N.Rajammal (cited supra), a learned single Judge of this court held as under:

“The intention of passing the enactment was that certain persons were owning large extents of lands and, therefore, there was a great disparity in the ownership of agricultural land leading, and, so it had become necessary to acquire the excess land, after fixing a ceiling on the extent of land that may be held by a person, and thereafter distribute the lands so acquired, among the landless. The intention is not to do away with the owning agricultural lands, but to fix a ceiling limit.”

12. According to petitioners, a property measuring 88.93 ½ ordinary acres, equivalent to 23.753 standard acres, was originally owned by one Deivasigamani. He had executed a Will dated 14.07.1952, registered as Doc.No.20 of 1952, bequeathing his property in favour of his daughters (i) Palaniammal, (ii) Krishnammal, (iii) Kaliathal and (iv) Saraswathy, He had, however, given life interest to his wife-Seethaiammal in respect of the entire property. Deivasigamani Gounder died on 13.05.1953 and after his demise, the



Will came into force. During the life time of Seethaiammal herself, her daughters, who were the beneficiaries under the Will, partitioned the property amicably among themselves by way of a registered partition deed dated 27.03.1972. After the partition, Krishnammal (2nd daughter of Deivasigamani and Seethaiammal) sold Acres 12.50 cents in favour of the 1st petitioner and his brother-Ramakrishnan, the husband of the 2nd petitioner. The said Seethaiammal died on 01.01.2004. These facts are all not disputed by the other side.

13. In the mean time, in 1978, a draft statement under Section 10(1) of the Land Ceiling Act was published in the Tamil Nadu Government Gazette dated 22.11.1978 and a notice was duly served upon Seethaiammal. The land ceiling proceedings were initiated only against Seethaiammal. In response to the notice under the Land Ceiling Act, Seethaiammal filed her objection, stating that the land belonged to her daughters. However, the authorized officer under the Land Ceiling Act, rejecting the contention of Seethaiammal, held that since life interest was given to her, she was deemed to be the owner in respect of the entire land. The authorized officer, accordingly, by order dated 08.05.1979, declared 8.953 standard acres of land as surplus land under the Land Ceiling Act.

14. The said order of the authorized officer was put to challenge by the Seethaiammal before the Land Tribunal in LTA NO.26 of 1979 and the Land



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Tribunal originally dismissed the appeal as not maintainable. However, on a revision preferred by Seethaiammal in C.R.P.No.425 of 1982, this court, by order dated 13.07.1983 remitted the matter to the land tribunal for fresh consideration. The land tribunal, on remand, passed an order confirming the order of the authorized officer. Challenging the same, Seethaiammal again preferred a revision in C.R.P.No.3334 of 1987 before this court, which was subsequently transferred to the file of the Tamil Nadu Land Reforms Special Tribunal, where it was renumbered as T.R.P.No.333 of 1991. The Special Tribunal remitted the matter to the file of the Assistant Commissioner, Land Reforms, to re-determine the holdings of the land owners and others for the relevant survey number as per the orders of the Settlement Tahsildar.

15. Finally, special leave petition in SLP (C) No.11654 of 1994 and the Hon'ble Supreme Court by order dated 02.01.1995, while dismissing the SLP, held as under:-

“We have heard learned counsel for the parties and keeping in view the provision of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act and the definition of the expression 'limited owner' given therein we are satisfied that the Will in question did create life interest in favour of the petitioner. The Special Leave Petition is, therefore, dismissed.”

16. Thereafter, the Assistant Commissioner, once again, passed an order



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deleting an extent of 7.50 Acres of land as not belonging to Seethaiammal and declaring only 6.878 acres of land as surplus. Accordingly, a final statement under Section 12 of the Land Ceiling Act was published in the Tamil Nadu Government Gazette on 16.12.2005 and a notification under Section 18(1) of the Land Ceiling was also published in the Gazette on 14.02.2006. After the order of the Assistant Commissioner (Land Reforms) reached finality, the 1st petitioner and his brother-Ramakrishnan filed a revision before the 2nd respondent, the Land Commissioner, in R.P.No.2/2006 dated 29.08.2006 rejected their contentions. The Land Commissioner held that the sale in favour of the 1st petitioner and his brother was void as per the Act. The Land Commissioner, however, remitted the matter to the Assistant Commissioner for corrections in the final statement due to errors invoking Section 23(2) of the Land Ceiling Act. The Assistant Commissioner failed to consider the law applicable to the factual matrix of the case and held that Krishnnammal could not have sold her property during the life time of Seethaiammal and therefore, declined to exclude the subject lands from the retainable lands held by Seethaiammal vide proceedings dated 23.11.2012 in Roc.MRI/191S/17-70/A2. Challenging this order, the 1st petitioner, along with his brother, filed a revision in R.P.No.24 of 2013 and the 2nd respondent, the Land Commissioner, by order dated 02.09.2014 negated the contention of the 1st petitioner and his brother,



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dismissed the revision, holding that the sale in favour of the 1st petitioner and his brother by Krishnammal was void as per the Act. Challenging this order, W.P.No.1074 of 2015 came to be filed. This court, on 29.03.2022, without going into the merits of the case, based on the statement of the Additional Government Pleader that the authorities concerned would demarcate and subdivide the land, disposed of the writ petition by order dated 29.03.2022. The relevant portion of the order reads as under:-

“7. In view of the fair stand taken by the learned counsel appearing on either side, this Court, without going into the issue in detail, directs the 3rd respondent to comply in letter and spirit, the orders passed by the 2nd respondent by permitting the petitioner to retain the portion of 8.73 acres of land, while demarcating and sub-dividing the portion of 3.77 acres of land, which is held to be surplus lands at the hands of the petitioner. The 3rd respondent is directed to complete the aforesaid procedure within a period of twelve weeks from the date of receipt of a copy of this order.”

17. It is relevant to be noted here that after the 1st petitioner gave a representation dated 18.04.2022 requesting to take steps to implement the order of this court dated 29.03.2022 made in W.P.No.1074 of 2015, the 4th respondent, who is one of the legal heir of Krishnammal, filed a miscellaneous petition in C.M.P.No.11928 of 2022 on 08.07.2022 seeking leave to challenge the order of



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this court dated 29.03.2022 made in W.P.No.1074 of 2015. The said miscellaneous petition was, however, withdrawn by the 4th respondent on 08.01.2024. So also, the 4th respondent filed a writ petition in W.P.No.34657 of 2022 on 23.11.2022 challenging the order of the Land Commissioner in R.P.No.24 of 2013 dated 02.09.2014 but, this was also withdrawn on 07.12.2023. Now, based on the orders of this court dated 29.03.2022 made in W.P.No.1074 of 2015 and the representation of the petitioner dated 18.04.2022, the impugned order came to be passed.

18. Thus, it is clear that the contentions of the 1st petitioner and his brother that the land belonged to the four daughters of Deivasigamani Gounder and Seethaiammal were negatived and it was all along held that Seethaiammal alone was the owner of the subject land as she had retained life interest. Further, it was also held that since the transfer was effected after the notification, such a transfer was void. The finding of the Land Commissioner reached finality. Thus, the petitioners came into the picture for the first time only in 2006 and filed a revision before the 2nd respondent Land Commissioner in R.P.No.2/2006. They subsequently filed another revision in R.P.No.24 of 2013 before the Land Commissioner. In both orders, it was categorically held that partition effected among the four daughters of Seethaiammal during 1972, when their mother, who was the life interest holder, was declared null and void and the sale made by Krishnammal on 25.08.1980 in faovur of the 1st petitioner and his brother



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Ramakrishnan was also null and void, as the daughters of Krishnammal got acquired saleable right only after the death of their mother on 01.01.2004.

When the said findings were put to challenge in W.P.No.1074 of 2015, this court, without venturing into the issue, based on the statement made by the learned Additional Government Pleader, simply directed the authorities to demarcate and subdivide the surplus land and retainable portion. Thereafter, the impugned order came to be passed mainly on the basis of the letter of the 2nd respondent Land Commissioner to include the legal heirs of Seethaiammal.

19. This court perused the impugned order carefully. It does not indicate that proper notice was issued to the petitioner and proper opportunity was given.

20. At this juncture, it is relevant to note that Section 22 of the Land Ceiling Act, declares any transfer or partition made on or after the date of commencement of the Act to be void. Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 reads as under:-

“22. Transfer or Partition made on or after the date of the commencement of this Act, but before the notified date.- (1) Where, on and after the date of the commencement of this Act, but before the notified date, any person has transferred any land held by sale, gift (other than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by request or has effected a partition



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of his holding or part thereof, the authorized officer within whose jurisdiction such land, holding or the major part thereof situated may, after notice to such person and other persons affected by such transfer or partition and after such enquiry as he thinks fit to make [declare the transfer or partition to be void if he finds that the transfer or the partition, as the case may be, defeats any of the provisions of this Act.

(2) For For the purpose of sub-section (1), if any transfer or partition has the effect of reducing the extent of surplus land in excess of the ceiling area, such transfer or partition, whether bona fide or not, shall be construed as defeating the provisions of this Act.”

21. The above provisions in Section 22 of the Land Ceiling Act would make it clear that the authorized officer is within his power to declare the transfer or partition to be void , if he finds that the transfer or the partition, as the case may be, defeats any of the provisions of this Act. Therefore, Section 22 mandates that any transfer effected after commencement of the Land Ceiling Act but before the notified date, an enquiry to be caused by an authorized officer and he can pass such orders declaring such transfer as null and void only

22. But, **Section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 reads as follows:-**



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“23. Transfer or sub-division made or effected before the publication of notification under sub-section (1) of section 18.- (1) Subject to the provisions of section 20, for the purpose of fixing, for the first time [after the date of the commencement of this Act], the ceiling area of any person holding land on the date of the commencement of this Act in excess of 15 standard acres -

(a) any transfer, whether by sale (including sale in execution of a decree or order of a Civil Court or of an award or order of any other lawful authority) or by gift (other than gift made in contemplation of death), exchange, surrender, settlement or otherwise; or

(b) any sub-division (including sub-division by a decree or order of a Civil Court or any other lawful authority) whether by partition or otherwise, effected on or after the notified date and before the publication of a notification under sub-section (1) of section 18 shall be, and shall be deemed always to have been, void and accordingly the authorized officer shall calculate the ceiling area of such person as if no such transfer or sub-division had taken place.

Explanation. - This sub-section shall, on and from the 15th day of February 1970, have effect as if for the figures and words "30 standard acres", the figures and words "15 standard acres" had been substituted.

(2) It shall be the duty of the authorized officer to



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include the land so transferred or sub-divided, within the ceiling area of the transferor or the person who held the land immediately before such sub-division, as the case may be, as if no such transfer or sub-division had taken place.”

23. A careful perusal of the above sub-section (b) of Section 23(1) makes it clear that any such transfer effected shall always be deemed to have been void. This legal fiction is created for the purpose of calculating the transferred land as a ceiling area as if no transfer or sub division has taken place, irrespective of any transfer is taken place after notification, such a transfer is void and should always be ignored and the said land also shall be taken into account to arrive at the ceiling area as if no such transfer has taken place.

24. In the judgement relied on by Mr.Ajmal Khan in the case of **Rajammal. N. v. P.Maragathammal [1998 -1-LW 594]**, a learned single Judge of this court in para 24 has held as follows:-

24. On the above principles of interpretation we have to consider what was the intention of the legislature, and what was the mischief which was intended to be done away as provided under the Act. For the said purpose, the Court may have to read down to make it convenient to read the mind of Legislature. I have already extracted the Preamble of the Act. The intention of passing the enactment was that certain persons were owning large



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extents of lands and, therefore, there was a great disparity in the ownership of agricultural land leading, and, so it had become necessary to acquire the excess land, after fixing a ceiling on the extent of land that may be held by a person, and thereafter distribute the lands so acquired, among the landless. The intention is not to do away with the owning agricultural lands, but to fix a ceiling limit. With this in mind, we have to read Section 22. This section does not say that the transactions referred to therein are void for all purposes. The Authorised Officer, on such enquiry as envisaged in the section, may declare the transaction as void, if it violates the provisions of the Act. That means, invalidation is only to the extent where it exceeds the ceiling limits and not otherwise. Sections. 10(4)(A) and 4(B) of the Act also gives a clue that the entire transaction is not declared void. Section 10 of the Act deals with preparation and publication of draft statement as regards land in excess of the ceiling area. Sub-sec.(3) of Section 10 permits a person to specify the land which he desires to retain within the ceiling area. Sub-Section 4(A) and 4 (B) of Section 10 read thus:-

"4-A, Notwithstanding anything contained in sub-sec.(4), where the transfer or partition of any land has been declared to be void under Section 22, it shall be the duty of the authorised officer to include, subject to the provisions of sub-sec. (4-B), such land within the ceiling area of the transferor or the person affecting the partition,



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as the case may be, as if no such transfer or partition had taken place:

Provided that in respect of the land so included nothing in this sub-section shall affect the rights of the transferee or of the person in whose favour the partition was effected.

4-B. Where the transfer of any land has been declared to be void under Section 22 and where the extent of the land so transferred is in excess of the ceiling area of the transferor, the land so transferred shall be included within the ceiling area of the transferor in the following order of preference:

(i) firstly, land transferred to a person who was landless immediately before the date of such transfer and who was not related to the transferor or any member of his family;

(ii) secondly, land transferred to a cultivating tenant who was cultivating that land immediately before the date of such transfer;

(iii) thirdly, land transferred to a person who was not related to the transferor or any member of his family, and

(iv) land transferred to others". (Italics supplied) A reading of these two sub-sections makes it clear that as between the transferor and transferee, the transaction is kept intact, and in the option to be exercised by the



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transferor, the land which he has transferred or parted with, will be allowed to be retained, so that the transferee may not be affected. In cases where lands have been sold in excess of the ceiling the Authorised officer has to give certain preference in identifying the property to be retained. According to me, the Preamble read with sub-Secs. (4-A) and (4-B), shows that the intention is only to invalidate the document as against the Government, and, as between the parties, the transaction shall be retained as such. The mischief that was sought to be remedied is that from the notified date, the person shall not hold extent of land in excess of the ceiling area. Only to that extent, the transaction is declared invalid. It is not void for all purposes, as contended by the learned counsel. I have also perused Exs.A-2 and A-4 judgments, i.e., the order of the Land Tribunal and the Order in C.R.P.No.1102 of 1975, respectively. There also, the document was held to be invalid, on the ground that the same was brought into existence only for the purpose of defeating the provisions of the Act. The contention that Ex.A-1 is void for all purposes is, therefore, rejected. It is invalid only to the extent it exceeds the ceiling limits of the deceased.

25. In the judgement relied on by Mr.T.Mohan, in the case of **B.P.Samiappan v. Arunthavaselvan** [MANU/TN/0335/1993 : 1994 -1-LW 399] wherein the plaintiff sought to enforce the agreement of sale which was entered into after the notification under the Land Ceiling Act, another learned



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single Judge of this court has held that there is a provision in Section 22 of the Land Ceiling Act to declare a transfer or partition to be void. It is a declaration in rem. The transaction is void for any purpose. It cannot be said that it is void only as against the Authorized Officer and valid as between the parties. The very purpose of the amendment is to declare the entire transaction as a nullity from the inception.

26. For ease of reference, it is relevant to state that Section 23 of the Land Ceiling Act makes it clear that any transaction made after the notification, shall be deemed always to have been void and the authorized officer shall calculate the ceiling area as if no no transfer or sub-division has taken place.

27. From a careful reading of the above provision makes it clear that the authorized officer shall proceed as if no such transfer is taken place. Thus, the very object of the Land Ceiling Act is to ignore such a transfer to calculate such ceiling area. Such being the position that void or invalidity of such transaction relate only to transfer made after the notification for the purpose of calculating the ceiling area. If once the authorized officer finds that the entire area is not surplus, it cannot be said that the areas that are excluded by authorities under the Land Ceiling Act will also have to be ignored altogether for calculating the ceiling area. If such an interpretation is accepted, it would defeat the very substantive provisions of the law.



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28. Section 43 of the Transfer of Property Act, 1882 reads as under:-

“43. Transfer by unauthorized person who subsequently acquires interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

29. At this juncture, it is relevant to place reliance on the judgement of the Hon'ble Supreme Court in the case of **State of Gujarat v. Shri Ambica Mills Limited** [(1974) 4 SCC 656], a Constitutional Bench of the Hon'ble Supreme Court has held as follows:-

“37. Article 13(2) is an injunction to the “State” not to pass any law which takes away or abridges the fundamental rights conferred by Part III and the consequence of the contravention of the injunction is that the law would be void to the extent of the contravention. The expression “to the extent of the contravention” in the sub-article can only mean, to the extent of the contravention of the rights conferred under that part. Rights do not exist in vacuum. They must always inhere in some person whether natural or juridical and, under Part III, they inhere even in fluctuating bodies like



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linguistic or religious minorities or denominations. And, when the sub-article says that the law would be void “to the extent of the contravention”, it can only mean to the extent of the contravention of the rights conferred on persons, minorities or denominations, as the case may be. Just as a pre-Constitution law taking away or abridging the fundamental rights under Article 19 remains operative after the Constitution came into force as respects non-citizens as it is not inconsistent with their fundamental rights, so also a pre-Constitution law offending Article 19, remains operative as against non-citizens as it is not in contravention of any of their fundamental rights. The same scheme permeates both the sub-articles, namely, to make the law void in Article 13(1) to the extent of the inconsistency with the fundamental rights, and in Article 13(2) to the extent of the contravention of those rights. In other words, the voidness is not in rem but to the extent only of inconsistency or contravention, as the case may be of the rights conferred under Part III. Therefore, when Article 13(2) uses the expression “void”, it can only mean, void as against persons whose fundamental rights are taken away or abridged by a law. The law might be “still-born” so far as the persons, entities or denominations whose fundamental rights are taken away or abridged, but there is no reason why the law should be void or “still-born” as against those who have no fundamental rights.



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38. It is said that the expression “to the extent of the contravention” in the Article means that the part of the law which contravenes the fundamental right would alone be void and not the other parts which do not so contravene. In other words, the argument was that the expression is intended to denote only the part of the law that would become void and not to show that the law will be void only as regards the persons or entities whose fundamental rights have been taken away or abridged.

39. The first part of the sub-article speaks of “any law” and the second part refers to the same law by using the same expression, namely, “**any law**”. We think that the expression “any law” occurring in the latter part of the sub-article must necessarily refer to the same expression in the former part and therefore, the Constitution-makers have already made it clear that the law that would be void is only the law that contravenes the fundamental rights conferred by Part III, and so, the phrase “to the extent of the contravention” can mean only to the extent of the contravention of the rights conferred......”

30. Admittedly, the fact in the instant case remains that the entire subject property was originally owned by Deivasigamani. He had executed a Will on 14.07.1952 itself bequeathing the entire property in favour of his daughters, he, however, gave life interest to his wife-Seethaiammal. The said Seethaiammal was treated as full owner for the purpose of land ceiling proceedings alone. She



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died on 01.01.2004 and after her death the entire property which was the subject matter of Will shall devolve upon the beneficiaries in terms of the conditions set out in the Will. Therefore, even if any excess or surplus land is found in their shares, the remaining area shall go to the original beneficiaries as per the Will. Such being the position, this court is of the view that the finding recorded by the authorized officer under the Land Ceiling Act that the sale was void will apply only to the land ceiling proceedings and the same will not take away the substantive right of the parties as governed under the Transfer of Property Act, 1882. Section 43 of TP Act embodies the “rule of feeding the estoppel”. Thus, it would make it clear that if a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which transfer of contract subsists. In other words, when a person with imperfect title transfers the property for consideration and subsequently the transferor's title becomes perfect in law, the transferee is entitled to enforce the terms of the contract by equitable doctrine of feeding the grant by estoppel.

31. It was also brought to the notice of the court that for the sale made on 25.08.1980 by Krishnammal in favour of the 1st petitioner and his brother –



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Ramakrishnan, the husband of the 2nd petitioner, the legal heirs of the Krishnammal stood as attesting witnesses. Therefore, now, a question would arise whether the 4th respondent is estopped from challenging such sale or not. Further to claim benefit under Section 43 of TP Act, it has also to be established that there was an erroneous or fraudulent representation made. That fact was not at all pleaded before this court. This court is, therefore, of the view that, whether subject property was sold by fraud or by making erroneous representation? or whether the provision in Section 43 of TP Act could be applied as against the legal heirs of Krishnammal? and How the subject property was dealt with and who was in possession of the property; are all matters of evidence and these issues could be gone into only by a jurisdictional civil court in a comprehensive civil suit and this court being a writ court cannot go into such disputed question of facts.

32. Insofar as transfer in respect of retainable portion of land as held by the authorities, proper remedy available to the petitioners is filing of a comprehensive civil suit not before the writ court. Therefore, liberty is granted to the petitioners to file a comprehensive civil suit to establish their right and title to the subject land (retainable portion alone).

33. Reverting to the impugned order, as already stated, no notice was given to the petitioners and there has been a gross violation of principles of



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natural justice and the impugned order has been passed merely based on the letter issued by the 2nd respondent Land Commissioner, this court is of the view that the impugned order is liable to be quashed.

In the result, the writ petition is allowed. The proceedings of the 3rd respondent in Na.Ka.No.2064/2022/A1 dated 18.01.2024 is set aside. The petitioners are at liberty to work out their remedies by filing a comprehensive suit, if they so desire. It is made clear that, in the event, the petitioners files a civil suit, the civil court concerned shall decide the issues in the suit and dispose of the suit on its own merits without being influenced by any of the observations made by this court hereinabove. No costs. Consequently, connected WMPs are closed.

Index : yes / no
Neutral Citation : yes / no
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To

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of Revenue,
Fort St. George, Chennai 600 009.

2. The Land Commissioner,
Ezhilagam, Cheapuk,
Chennai 600 005.

3. The Revenue Divisional Officer,
Dharapuram,
Dharapuram Division.



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N.SATHISH KUMAR.J.,

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Pre Delivery Order
in
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