



WA No.309 of 2009, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WA No.309 of 2009 and WP.No.13941 of 2009
and WMP.No.21064 of 2023 in WP.No.11872 of 2023

W.A.No.309 of 2009

1. A. Muniappan
2. R. Perumal
3. M. Kanniyammal
4. M. Veeramani
5. Menaka
6. E. Kulasekar
7. Manonmani
8. Janakiraman
9. K. Subramani
10. A. Usha
11. V. Kutty
12. Pahaiaammal
13. M. Rajasekhar
14. Kumaresan
15. Kumari
16. Vijayalakshmi
17. S. Prakash
18. Thanthoni
19. P. Usha
20. Fathima
21. Chithra
22. R. Loganathan
23. Ponnusami
24. Palani



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25. Suganthi
26. Elumalai
27. K. Subramanian
28. Nagaraj
29. J. Banu
30. Thangam
31. B. Selvam
32. Chellamuthu
33. Vanaja
34. Thamizhkani
35. Vatchala
36. Kannan
37. Poorani
38. Sekhar
39. Manjula
40. Anjalai
41. Chithambaram
42. Shanthi
43. Arokiasami
44. Velankanni
45. Palani David
46. T.K.Namasivayam
47. Kasthuri
48. Karpagam
49. Dhanasekaran
50. Ramasami
51. Ganesan
52. Sarada
53. Mariammal
54. Saraju
55. Mani
56. Madheswaran

.. Appellants

-VS-

1. The Tahsildar,
Tambaram Taluk,
Tambaram, Chennai - 600 045
2. The District Collector,



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Kancheepuram District,
Kancheepuram.

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3. The Burma India Co-Op. House Constructions
Co-operative Society Limited,
Rep. by its Special Officer,
Ramanathan Street, T.Nagar,
Chennai - 600 017.
4. The Palavakkam Panchayat,
rep.by its President,
Palavakkam, Kancheepuram District. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 30.01.2009 passed in W.P.No.30329 of 2008 on the file of this Court.

W.P.No.13941 of 2009

1. S. Raja
2. T.Dhanavel
3. V.Kasthuri
4. T.Mahalakshmi
5. S.Balasundaram
6. A.Rucku
7. A.Raji
8. A.Lakshmi
9. A.Sundhar
10. A.Shankar
11. M.Gurusamy
12. E.Babu
13. D.Prakash
14. M.Vani
15. M.Sasikumar
16. E.Jaya
17. Kumudha
18. J.Srinivasan



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19. O.Ganesan
20. E.Maragadham
21. M.Saravanel
22. S.Ramachandran
23. P.Meenakshi Sundaram
24. M.Velmurugan
25. Vasantha
26. S.Sundari
27. K.Gowri
28. N.Murugadas
29. N.Dhachinamurthi
30. K.Kaliyaperumal
31. A.Masilamani
32. D.Pandurangam
33. K.Ramasamy
34. P.Rajendiran
35. T.Valli
36. A.Durairaj
37. L.Aravindhan
38. K.Kasthuri
39. P.Yadhavamurthi
40. A.Gunasekaran
41. V.Amudha
42. H.Ayyappan
43. G.Rani
44. G.Venkatesan
45. R.Sumathi
46. S.Chellammal
47. A.Nallasami
48. K.Kannammal
49. P.Bhavani
50. P.A.Sundhar
51. A.Beeman
52. N.Kumarasami
53. K.Selvi
54. S.R.Pattukannu
55. R.Gomathi
56. S.Robert
57. M.Malliga
58. A.Panjalai



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59. E.Ramakeni
60. D.Saroja
61. R.Jayalakshmi
62. Santha
63. S.Sekar
64. R.Ravi
65. V.Baskar
66. G.Seetha
67. A.Ravi
68. Ruckmani
69. A.Mahalingam
70. B.Fathima
71. P.Anjalai
72. E.Dilli
73. Parvathi Ammal
74. S.Kalavathy
75. R.Indirani
76. S.Narayanan

.. Petitioners

-VS-

1. The Tahsildar,
Tambaram Taluk, Kancheepuram District,
Tambaram - 600 045.
2. The District Collector,
Kancheepuram District,
Kancheepuram, Tamil Nadu.
3. Palavakkam Panchayat,
rep.by its President, Palavakkam,
Kancheepuram District, Tamil Nadu.
4. Burma India Co-Operative House Construction
Co-operative Society Ltd., Rep. by its
Special Officer, Ramanathan Street,
T.Nagar, Chennai - 600 017.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for



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issuance of a Writ of Declaration to declare the decision of respondents 1 and 2 to evict the petitioners herein as reflected in the order Nos.301/93-Aa1 dated 13.01.2009 passed by the 1st respondent herein as illegal and unconstitutional and consequently restrain the respondents from evicting the petitioners from their respective houses at tenements/houses at 1st Cross Street, to 10th Cross Street at Ward No.5, Burma Colony, Thiruvalluvar Nagar, Palavakkam, Kancheepuram District.

W.M.P.No.21064 of 2023 in W.P.No.11872 of 2023 filed under Article 226 of the Constitution of India seeking to grant leave to the petitioners to restore the WP and to consequently set aside the order dated 24.04.2023.

For the Appellants
in WA.309/2009 and
For the Petitioners in
WP.13941 of 2009 &
WMP.21064/2023

: Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran

For the Respondents
in WA.309/2009 and
WP.13941/2009 &
WMP.21064/2023

: Mr.A.Edwin Prabakar
State Govt. Pleader, assisted by
Mr.K.Karthik Jegannath, G.A.
for official respondents

For Respondent-
Society

: Mr.Satish Parasaran,
Senior Counsel
for Mr.S.Senthil



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COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

W.A.No.309 of 2009 is directed against the order of the learned Single Judge dated 30.01.2009 passed in W.P.No.30329 of 2008. By the order under appeal, the learned Single Judge dismissed the writ petition. The writ petition was filed by the appellants herein challenging the proceedings of the first respondent, namely, Tahsildar, Tambaram Taluk, in Na.Ka.301/93/AA1 Nil dated 07-2008 and consequently, to forbear the respondents from evicting the appellants from their settled possession of their respective houses in Thiruvalluvar Nagar, Old Mahabalipuram Road, Palavakkam Village, Kancheepuram District.

2. W.P.No.13941 of 2009 is filed by the petitioners therein to declare the order passed by the 1st respondent, Tahsildar, Tambaram Taluk, as illegal and unconstitutional and further to restrain the respondents from evicting the petitioners therein from their respective tenements/houses.



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3. W.M.P.No.21064 of 2023 is filed by the petitioners therein to restore the writ petition in W.P.No.11872 of 2023 which was filed the Burma Indians Cooperative House Construction Society Ltd. seeking direction to the respondents therein to evict the encroachers from the land of the Society by implementing the order of the District Collector and the Tahsildar for removal of the encroachments.

4. For the sake of convenience, the facts are narrated as referred to in the writ appeal.

5. The facts until this date which are relevant for the disposal of the present Writ Appeal, Writ Petition and Writ Miscellaneous Petition are as follows:

(a) The property in question came to be vested in the third respondent Society, namely, Burma Indians Cooperative House Construction Cooperative Society Limited. The said Society inter alia was formed for the purpose of rehabilitating the repatriates from Burma and to provide them housing. While so, in the year 1985, the



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appellants herein along with other families numbering about 250 came to be in occupation of the lands in S.Nos.131/15, 131/10, 131/6 and 142 measuring an extent of 4.47 acres out of the total extent of 24 acres. As a matter of fact, their long occupation can be fortified by the various proceedings such as issue of identity and ration cards, grant of relief measures, grant of electricity connection to the houses, etc. and the appellants are in enjoyment of their respective pieces of lands.

(b) As a matter of fact, on behalf of the Tamil Nadu Slum Dwellers Federation, a writ petition in W.P.No.6750 of 1991 came to be filed claiming issuance of patta and assignment in respect of the lands in occupation and the same was disposed of by an order dated 26.04.1991 to consider the representation given. An order was passed on 14.02.1993 by the District Collector disposing of the said representation by stating that since the land is a patta land belonging to the third respondent Society, the Collector has no jurisdiction to grant any assignment. Challenging the same, again a writ petition in W.P.No.14270 of 1993 was filed by the said Federation and by judgment dated 06.08.1993, the writ petition was disposed of by directing the petitioner Federation to move the civil Court as the title



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to the land was in dispute.

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(c) Pursuant thereto, a suit was filed by the said Federation in O.S.No.937 of 1992 on the file of the District Munsif Court, Poonamallee and the same came to be dismissed for default in the year 1993. Yet another suit was also filed in O.S.No.532 of 1993. Further suit in O.S.No.3311 of 1993 which was filed by the alleged encroachers also came to be dismissed. Another association of encroachers filed W.P.No.15691 of 1993 and the third respondent Society filed W.P.No.8992 of 1991 for eviction of the encroachers and both the writ petitions were taken up together and by a common order dated 11.01.1994, the parties were relegated to Civil Court as the suits were pending as on that date. Between the years 1997-1999, the third respondent Society also sold the lands to various third parties being its members. At that juncture, without reference to the earlier orders in the writ petitions, the third respondent Society once again filed W.P.No.8236 of 2001 in which by order dated 25.04.2001, the official respondents were directed to dispose of the representation of the Society. A writ petition in W.P.No.24345 of 2002 was also filed by the occupants against Palavakkam Panchayat to provide street lights in



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which also an order was passed on 20.12.2001 to consider the representation.

(d) The third respondent Society once again filed W.P.No.38168 of 2002 in which an order dated 09.10.2002 was passed directing the Society to approach the Civil Court since the lands are private lands. However, on appeal filed by the Society in W.A.No.477 of 2003, by judgment dated 10.02.2003, the official respondents were again directed to consider the representation given. Upon such orders, the District Collector by order dated 17.08.2003 directed the Tahsildar to remove the encroachers and to provide alternate accommodation for them. An appeal against the said order was preferred before the Special Commissioner and Commissioner of Land Administration and by an order dated 29.10.2003, the said appeal was disposed of on the ground that the appeal will not lie as the lands were patta lands. Therefore, the two associations of encroachers filed W.P.Nos.29235 of 2007 and 29330 of 2007 challenging the order of the District Collector dated 17.08.2003. A Coordinate Bench of this Court by order dated 20.12.2007 disposed of the writ petitions on the following terms:

" 10. Therefore, we see no reason to interfere with the impugned order of the District Collector dated 17.08.2003. However, it is seen from



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the impugned order itself that the District Collector has directed the Tahsildar, Tambaram, to proceed further in the matter. Therefore, it is always up to the individuals to lodge objections before the Tahsildar, when individual notices are issued to them.

11. Accordingly, the writ petition is disposed of with liberty to the individual members of the Petitioner Associations, to raise all objections before the Tahsildar, Tambaram, when notices of eviction are served on them. Connected M.Ps. are closed. No costs."

(e) As against the said order, Special Leave to Appeal Petitions were filed before the Hon'ble Supreme Court of India in SLP Civil Nos.5533 and 5534 of 2008 and the said petitions were dismissed by the following order:

" Heard learned counsel for the parties.

We do not find any ground to interfere with the impugned order.

The Special Leave Petitions are, accordingly, dismissed."

(f) Thereafter, a show cause notice was issued on 21.05.2008 calling for explanation as to why the encroachment of the appellants should not be removed and they be rehabilitated at the Tamil Nadu Slum Clearance Board accommodation at Kannagi Nagar Houses/tenements allotted to the appellants. The appellants submitted their explanation. Upon consideration thereof, on



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05.08.2008, the Tahsildar, Tambaram, the first respondent herein, rejecting the explanation submitted by the appellants, ordered that they should vacate the premises within seven days from the date of receipt of the notice and occupy the houses allotted to them by way of rehabilitation by the Slum Clearance Board. Challenging the same, the present writ petition being W.P.No.30329 of 2008 was filed, which came to be dismissed by the order dated 30.01.2009 under appeal.

6. When the present appeal W.A.No.309 of 2009 was filed, the same was taken up along with connected writ petition in W.P.No.13941 of 2009 filed by some of the similarly situated encroachers challenging the eviction order passed against them. Before the Division Bench, reliance was made by the respondents to the earlier orders. It was submitted that in W.A.No.477 of 2003 dated 10.02.2003, the Division Bench passed the following orders:

"5. Accordingly, the appellant is hereby directed to give a fresh representation furnishing all the particulars with regard to Survey number and the extent of lands under encroachment within a period of two weeks from today and the fifth respondent, on receipt of such representation is directed to consider the same, after issuing notice to the appellant as well as the alleged encroachers and dispose of the same on merits and in accordance with law within a period of two months from the date of



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receipt of the representation.

6. We venture to pass this order since the learned Judge made a remark that the land belongs to a private party and encroachment on a private land cannot be sought to be removed by the State Authority. Here, the appellant being registered under the Societies Registration Act, consisting of Burma Indians and repatriates, and that the same has been formed pursuant to the policy of the Government to rehabilitate them and the entire sale consideration for the land in question has been funded by the Central Government and to see that the said object is not frustrated by unlawful means. We are of the view that suitable relief to the appellant and direction to the fifth respondent are necessary."

(emphasis supplied)

Again, in the common order in W.P.Nos.29235 and 29330 of 2007 dated 20.12.2007, the following was the finding and the order of the Division Bench:

"9. It is clear from the averments contained in the affidavits and counter affidavits that the petitioners are not entitled to any relief, for the following reasons, viz.,

(a) The order impugned in the writ petitions was passed by the District Collector, only in pursuance of the direction issued by the Division Bench of this Court in W.A.No.477 of 2003 dated 10.02.2003. The representatives of the encroachers have participated in the enquiry conducted by the District Collector and they have been granted a fair hearing. Therefore, neither jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned.



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(b) The encroachers have lost the battle in several rounds of litigation, from the year 1991, both before this court as well as in the Civil Court. Therefore, they cannot agitate the issue once again.

(c) The respondents have actually been allotted alternative accommodation, in a place, which is just 3 kms. away from their present place of encroachment. The encroachers have no right to insist that they should be allowed to continue in the encroached placed, despite having been offered alternative accommodation.

10. Therefore, we see no reason to interfere with the impugned order of the District Collector dated 17.08.2003. However, it is seen from the impugned order itself that the District Collector has directed the Tahsildar, Tambaram, to proceed further in the matter. Therefore, it is always up to the individuals to lodge objections before the Tahsildar, when individual notices are issued to them.

11. Accordingly, the writ petition is disposed of with liberty to the individual members of the Petitioner Associations, to raise all objections before the Tahsildar, Tambaram, when notices of eviction are served on them. Connected M.Ps. are closed. No costs"

(emphasis supplied)

7. Thus, it was argued that the earlier Division Benches have categorically decided on merits that the authorities should remove the encroachments. The SLPs filed against the said judgments were also dismissed confirming the said judgments. In this background, the Division Bench considered whether the earlier order of the Division Bench decided the question as to whether the revenue authorities



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would be entitled to invoke the provisions of the Tamil Nadu Land Encroachment Act to evict the appellants from the private patta lands.

The Division Bench held in paragraph 27 that the provisions of the Land Encroachment Act are not applicable in respect of private patta lands. However, since orders were passed by the two Division Benches earlier, in deference to judicial discipline and propriety, the Bench referred the matter to a larger Bench with the following questions:

(i) *Whether the earlier orders of the Division Bench in the given case have conclusively decided the issue of applicability of the provisions of Tamil Nadu Land Encroachment Act, 1905 to patta land?*

(ii) *If not, whether the provisions of the Tamil Nadu Land Encroachment Act can be made applicable even to patta land ? "*

8. The reference was answered by the Judgment of the Full Bench dated 19.08.2014. Even though the said terms of reference were referred to by the Hon'ble Full Bench in paragraph 1, after considering the entire gamut of facts and the earlier orders of the Court, the Full Bench framed the following question in paragraph 21 and it is essential to extract the same:

" 21. In the preceding paragraphs, we have noted the factual matrix of the case and the contentions of the counsels appearing for the parties. Taking note of the contentions raised for the first question, two questions are to be considered. The first issue would be what is the effect



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of the decision rendered by the Division Bench in W.A.No.477 of 2003, dated 10.02.2003 and W.P.Nos.29235 & 29330 of 2007, dated 20.12.2007, on the parties to this litigation. The second issue would be whether dismissal of the special leave petition filed against the order, dated 20.12.2007, in W.P.Nos.29235 & 29330 of 2007, by order dated 14.03.2008, would operate as res judicata on the present petitions/appeals. The subsidiary issue to Issue No.I would be whether at all the doctrine of per incuriam would stand attracted."

In paragraph 24, the Full Bench made the following findings:

"24. ... Therefore, the plea raised by the petitioners/appellants in the writ petitions/appeals as regards the applicability or non-applicability of the Tamil Nadu Land Encroachment was devoid of merits and based on misconception. When the Division Bench heard the writ petitions, the same contentions, which were raised in the grounds of challenge, were canvassed. These contentions were considered by the Division Bench and the Division Bench held that the order impugned in the writ petition (17.08.2003) was passed by the District Collector only in pursuance to the directions issued by the Division Bench in W.A.No.477 of 2003, dated 10.02.2003. The representatives of the encroachers have participated in the enquiry conducted by the District Collector and have been granted a fair hearing and therefore neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned. Further, it was held that the encroachers have lost the battle in several rounds of litigation, from the year 1991, both before this Court as well as in the Civil Court. Therefore, they cannot agitate the issue once again. Further, it was pointed that the encroachers have been allotted alternative accommodation in a place,



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which is just 3 kms., away from their present place of encroachment. The encroachers have no right to insist that they should be allowed to continue in the encroached place, despite having been offered alternative accommodation. Accordingly, the Division Bench found no reason to interfere with the impugned order of the Collector, Kancheepuram District, dated 17.08.2003. In the meantime, since the Tahsildar, Tambaram Taluk, had issued individual notices to the encroachers, liberty was granted to the individual members of the Association to submit their objections before the Tahsildar."

9. The Full Bench again considered the directions of the earlier Division Bench in W.A.No.477 of 2003 while dealing with the contention that the provisions of the Tamil Nadu Land Encroachment Act would not be applicable and found that in view of the factual position, once the earlier judgments having become final, the Full Bench distinguished the other judgments cited on behalf of the encroachers and finally answered the issue No.1 in paragraph 30 as follows:

"30. In the light of the above discussions, we have no hesitation to hold that the decision in W.A.No.477 of 2003 would bind the encroachers. They have participated in the enquiry conducted by the District Collector, Kancheepuram District, pursuant to the notice, dated 08.04.2013 and so held by the Division Bench in W.P.Nos.29235 & 29330 of 2007, dated 20.12.2007, which had attained finality as the special leave petition as against the said decision was dismissed. The finding rendered by the



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Division Bench in the order, dated 20.12.2007, to the effect that the encroachers neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned as attained finality and therefore the decision is binding. Accordingly, the first issue in question No.1 is answered against the petitioner/appellant in favour of the respondent Burma Society."

10. Then, the Full Bench answered the issue as to whether the dismissal of the SLPs would lead to finality and found that the SLPs were dismissed with a finding that no ground is made out for interference in the impugned judgment and answered the issue in paragraph 40 as follows:

" 40. In the light of the above findings, we are of the firm view that the appellants and writ petitioners cannot be allowed to reagitate the matter in these cases as their rights are conclusively decided and they are not entitled to plead that the provisions of the Tamil Nadu Land Encroachment Act, 1905 cannot be applied for evicting them from the encroached area."

11. Thereafter, the Full Bench adverted to the question No.2 which was made for reference and answered the question in general in paragraph 43 as follows:

" 43. On perusal of the above enactment, it is clear that the said Act was enacted for the purpose of evicting the encroachers from the



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Government land. The purport of the Act was already considered by the Full Bench of this Court in the decision reported in 2005 (2) CTC 741 (T.Ramaraju v. The State of Tamil nadu). In paragraph 38(7) it is held that,

"So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905."

Thus, it is evident, eviction under the provisions of the Tamil Nadu Land Encroachment Act, 1905 can be initiated and completed with regard to the land belonging to the Government and not in respect of the patta lands. Question No.2 is answered accordingly."

(emphasis supplied)

12. Finally, the Full Bench made the following order answering the reference in paragraph 44 as follows:

" 44. In fine, we answer the two questions raised as follows:

(i) The earlier orders of the Division Bench in the given case between the Society and encroachers have conclusively decided the rights of the parties and they are not entitled to plead that the provisions of the Tamil Nadu Land Encroachment Act, 1905, cannot be applied for evicting them from the encroached area.

(ii) Eviction under the provisions of the Tamil Nadu Land Encroachment Act, 1905 can be initiated and completed with regard to the land belonging to the Government and not in respect of patta lands."



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13. It is thereafter once again W.A.No.309 of 2009 and W.P.No.13941 of 2009 were placed before us for disposal after the answer of the reference by the Full Bench.

14. Heard *Mrs.Chitra Sampath*, learned senior counsel for the appellants, *Mr.Satish Parasaran*, learned senior counsel for the third respondent Society and *Mr.A.Edwin Prabakar*, learned State Government Pleader for the official respondents.

15. *Mrs.Chitra Sampath*, the learned senior counsel, taking this Court through the order of the Coordinate Bench of this Court in the selfsame appeal in W.A.No.309 of 2009 would submit that the impugned orders passed by the first respondent Tahsildar can be only under the Tamil Nadu Land Encroachment Act. There is no other provision of law under which the first respondent can act. As far as the Tamil Nadu Land Encroachment Act is concerned, an order under Section 6 can be passed if only the land is a Government interest land within the definition of Section 2 of the said Act. Private patta lands



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which belong to the third respondent Society cannot be termed as Government interest lands within the meaning of the said Act. The Division Bench while referring the matter to the larger Bench has given a categorical finding that the Tamil Nadu Land Encroachment Act will not be applicable to the patta land. However, in deference to the order passed by the earlier Division Benches, had referred the matter to the larger Bench. Specific questions have been referred to the larger Bench for its answer. The larger Bench is expected to only answer the reference. However, the Full Bench framed different issues and answered the same without considering the questions under reference. Therefore, that part of the judgment of the Full Bench has to be ignored by this Court and since the Full Bench has held that the Tamil Nadu Land Encroachment Act is not applicable, the appeal has to be allowed.

16. The learned senior counsel would rely upon the judgment of the Supreme Court of India in ***T.A.Hameed vs. M.Viswanathan***, reported in **(2008) 3 SCC 243**, more specifically to paragraph 12 to contend that the Full Bench should have only answered the questions referred to it and ought not to have dealt with the factual situation on



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merits, as it is only the question which is referred for answer and not the very appeal itself for decision.

17. *Mrs.Chitra Sampath*, the learned senior counsel, would submit that the impugned order is passed by the first respondent, Tahsildar. It could not have been passed under the Tamil Nadu Land Encroachment Act. The further contention that the same is passed upon direction of this Court also cannot hold any water. This Court under Article 226 of the Constitution of India can only direct the exercise of jurisdiction which is already vested in the authorities and cannot confer any jurisdiction on any authority or Tribunal which is non-existent with the authority. In support of the said proposition, the learned senior counsel would rely upon the judgment in ***Kalabharati Advertising vs. Hemant Vimalnath Narichania*** reported in ***(2010) 9 SCC 437***, more specifically relying upon paragraph 29 of the said judgment.

18. Per contra, *Mr.Satish Parasaran*, learned senior counsel appearing on behalf of the third respondent Society, would submit that



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in the first round of litigation, that is, in W.A.No.477 of 2003 itself, the said plea was taken. On the special facts and consideration of the instant case, the Division Bench rejected the said contention. As against the same, an appeal was filed before the Hon'ble Supreme Court of India. The Supreme Court did not merely dismiss the SLPs, but specifically found that there is no ground to interfere on merits. Therefore, when the inter se rights of the parties having been decided in the earlier round and when the question of jurisdiction of the authorities was negated even in the second round by yet another Division Bench by specifically considering the fact that alternative accommodation was also allotted to the appellants, there was no occasion for the petitioners to raise the selfsame question in the present third round of litigation. The question inter parties having been decided authoritatively by the competent Court would act as *res judicata*.

19. *Mr.A.Edwin Prabakar*, learned State Government Pleader appearing for the official respondents, would submit that the two special factors in this case are that even for the initial purchase of the lands, the fund was granted by the Central Government to the third



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respondent Society. This apart, the Society was administered by the Special Officer for a large part during which the alleged encroachments are said to have happened. Thirdly, considering the plight of the encroachers, houses are allotted in the Kannagi Nagar Slum Clearance Board tenements and the house number itself is mentioned in the impugned order. Therefore, when further benefits are bestowed by the State, the encroachers have no right to repeatedly re-agitate the matter and to stay put in the encroached places.

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

21. On a perusal of the checkered history of this case, it is true that originally orders were passed relegating the parties to the Civil Court and the said orders dated 06.08.1993 in the first round has become final. Without considering the said order, once again when yet another round of litigation was filed in W.P.No.38168 of 2002, fresh orders were passed on merits on 09.10.2002 directing the Society to approach the Civil Court. It is against the said order, an appeal in W.A.No.477 of 2003 was filed which was allowed directing the District



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Collector to take action. We have also extracted the relevant portion of the order in W.A.No.477 of 2003 supra.

22. It can be seen that an objection was raised that the lands were private in nature and therefore, the officials cannot take any action and the same was negated. Again the very same submissions were made in the next round of litigation and the observations of yet another Coordinate Bench are also extracted supra. It can be seen in the said round also that the appellants' contentions were negated and they were directed to give reply to the show cause notices. As a matter of fact, the order of the Supreme Court is also not just dismissing the SLPs alone, but it is also stated that there are no grounds to interfere on merits. *Mrs Chitra Sampath* would place strong reliance on the various observations of the Division Bench made in the present writ appeal on 16.11.2010. But, it has to be seen that the Coordinate Bench did not pass any final orders but referred the matter to the Full Bench. Therefore, any observations made are only for the purpose of reference and at best can be termed as contemplated or proposed disagreements and are not final findings in the present writ appeal will not be binding on the Court when finally



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disposing of the matter after the reference is answered by the Full Bench.

23. But, we are bound by the findings of the earlier Coordinate Benches. It is to be seen that initially in the present matters, when it was proposed to disagree with the earlier Coordinate Benches and the matter was referred to the Full Bench, the Full Bench has re-affirmed the judgment of the earlier Division Benches. It is now argued by *Mrs.Chitra Sampath*, the learned senior counsel that the Full Bench ought not to have answered those issues. But, we are afraid that the same cannot be canvassed before us. The appellants, if aggrieved, ought to have taken further steps against the judgment of the Full Bench. The same having become final would be binding on this Court and this Court cannot go into the correctness or otherwise of the judgment of the Full Bench. Therefore, when the rights of the parties having been determined in two earlier rounds and affirmed by the Supreme Court and the Full Bench after considering the decision of the Supreme Court having held that it would not be open for the parties to re-agitate the matter, we cannot but hold that the plea to the contrary in the present writ petitions and writ appeal would be barred by the



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principles of *res judicata*.

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24. Secondly, the propriety or otherwise of the judgments of the Benches of equal strength or of the larger Bench or higher fora cannot be canvassed in collateral proceedings. The only exception being that the orders that were obtained by fraud or that the orders being *void ab initio*. What is canvassed before us is a ground of illegality and not a ground of fraud or that the earlier judgments were void. Therefore, the argument on behalf of the appellants cannot be countenanced in the present writ appeal.

25. Thirdly, the contention of the learned senior counsel for the appellants is that this Court could not have vested the jurisdiction on the authorities if they do not have one. There can be no disagreement to the said proposition of law. But, it is essential to extract Section 2 of the Tamil Nadu Land Encroachment Act, which reads as follows:

"2.(1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks, and all back waters, canals and water-courses and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

(a) of any zamindar, poligar, mittadar, shrotriendardar or inamdar or any person claiming through or holding under any of them, or



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(b) of any person paying shist, kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure, including that of a janmi in the Gudalur taluk of the Nilgiris district and in the transferred territory or in any way subject to the payment of land-revenue direct to Government, or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than byway of licence.

and, as to lands, save also in so far as they are temple site or owned as house- site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land-owners, and to all customary rights legally subsisting.

(2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government.

Explanation.- In this section "high water mark" means the highest point reached by ordinary springtides at any season of the year."

(emphasis supplied)

26. Thus, if we consider Section 2(1)(e), the earlier Division Bench in W.A.No.477 of 2003 considered the grant of funds by the Central Government and had taken a view. It is one thing to contend that Section 2(1)(e) would only mean the land granted by the Government and that the said interpretation is erroneous and it is another to contend that the Court had vested a non-existent jurisdiction. Therefore, at best, it can only be contended as an



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erroneous view of Section 2(1)(e), in which case, this Court is cannot pronounce upon the legality in a collateral proceeding, that too, after two rounds of proceedings. The Learned Senior Counsel would also rely upon the settled position of law and other rulings to contend that the impunged orders are without jurisdiction, which has to be rejected in view of the judgment inter-parties on the same matter. The pronouncement of the the legal position by the Hon'ble Supreme Court of India in **Neelima Srivatsava -Vs- State of Uttar Pradesh and others (2021 17 SCC 693)** would squarely apply to the context of the instant case. The relevant paragraphs 29,31,34 & 34 read thus :

“29. Mere overruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between overruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognised by law. Mere overruling of the principles by a subsequent judgment will not dilute the binding effect of the decision inter parties.

30. ...

31. The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23-1-2006 [Neelima Srivastava v.State of U.P., WP (SS) No. 7890 of 2003, order dated 23-1-2006 (All)] of the learned Single Judge which had already attained finality. The appeal filed under the Rules of the Court was filed against the judgment



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dated 15-5-2014 rendered in Neelima Srivastava v.State of U.P.[Neelima Srivastavav.State of U.P., 2014 SCC OnLine All 16618] It is a well-settled principle of law that a letters patent appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of res judicata and doctrine of finality.

32. ...

33. ...

34. *In Union of India v.S.P. Sharma [Union of India v. S.P. Sharma, (2014) 6 SCC 351] , a three-Judge Bench of this Court has held as under : (SCC p. 389, para 76)*

“76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be ‘confusion and chaos and the finality of proceedings would cease to have any meaning’.”

35. *Thus, it is very well-settled that it is not permissible for the parties to reopen the concluded judgments of the court as the same may not only tantamount to an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice.”*

27. Finally, as observed by the earlier Coordinate Bench in and by order dated 20.12.2007, when the appellants are all given rehabilitation in the tenements allotted by the Tamil Nadu Slum Clearance Board (presently Tamil Nadu Urban Habitat Development



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Board), still the appellants are refusing to move of the encroached place and are insisting that they can only be thrown out by a decree of Civil Court. The petitioners are encroachers who do not have any right in respect of the lands in question. Their entire case that let them be thrown out only by a decree of the civil court. They have no plausible answer to the question as to why they are the cotesting the matter when an alternative accommodation is provided to them. Apart from being detrimental to their own interest, their plea which is raised after repeated rounds of litigation being in litigious possession for this length of period would certainly be against public interest. In the writ appeal the appellants are challenging the order of the first respondent seeking to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In exceptional and extraordinary cases, even if the petitioners point out a case, if the factual situation so warrants, this Court can refuse to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. Useful reference in this regard shall be made to the judgment of the Supreme Court in ***Godrej Sara Lee Ltd -Vs- Excise and Taxation Officer-cum-Assessing Authority and others (2023 SCC Online SC 95)*** and the relevant portion of paragraph 4 is extracted hereunder :



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“4....A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest.... “

28. For all the above reasons, the Writ Appeal and the Writ Petition fail and are accordingly dismissed.

29. In view of the dismissal of the Writ Appeal, when the proceedings taken by the respondents for eviction of the appellants being confirmed by this Court, the prayer in W.P.No.11872 of 2023 would only be superfluous and therefore, there is no necessity to pass any further orders in W.M.P.No.21064 of 2023 and accordingly, the said Writ Miscellaneous Petition is also closed. There shall be no order as to costs.

(S.V.G., CJ.)

(D.B.C., J.)

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2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Palavakkam Panchayat,
rep.by its President,
Palavakkam, Kancheepuram District.



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

(sra)

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and WP.No.13941 of 2009
and
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