BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.10.2024**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.633 of 2024
and
W.M.P.(MD) Nos.644 and 645 of 2024

M/S.Palladam Cetragani Realty Private Limited,
rep by P.K.Ganeshwar ... Petitioner

/vs./

1.Commissioner of Land Administration,
Chepauk,
Chennai 600 005.

2.The District Collector,
Madurai District,
Collectorate Complex,
Madurai 625 020.

3.The District Revenue Officer,
Madurai District Collectorate Complex,
Madurai 625 020.

4.Revenue Divisional Officer,
Madurai District Collectorate Complex,
Madurai 625 020.

5.The Tahsildar,
Madurai North,
Madurai District Collectorate Complex,
Madurai 625 020.

6.Madura Coats Pvt Ltd.,
No.144, Shubharam Complex,
M.G.Road, Bangalore,
Karnataka 560 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records of 1st respondent order dated 26.12.2023 in Rc. No.F2/4757906/2023 and quash to them.

For Petitioner : Mr.Srinoth Sridevan Senior Counsel for
Mr.J.Adithya Reddy

For R1 to R5 : Mr.J.Ravindran AAG assisted by
Mr.B.Saravanan
Additional Government Pleader

ORDER

Seeking to quash the order passed by the first respondent dated 26.12.2023, the petitioner Company has moved this writ petition for the issue of a Writ of Certiorari to quash the said order.

2. The facts which have been set out in the affidavit filed in support of this writ petition are set out briefly herein below:-

3. It is the case of the petitioner that by an order dated 16.10.1923, the then District Collector, Madurai, had assigned the property comprised in S.Nos.832, 2706/3, 2721/2 and 2722, measuring an extent of 11.83 acres, to the Madura Mills Company Limited, now called Madura Coats Private Limited, the 6th respondent herein. The sixth respondent is in continuous possession and enjoyment of the property and the assignment in their favour did permit the alienations except in certain circumstances. All the revenue records stood in the name of the sixth respondent. The petitioner purchased an extent of 15.91 acres from the sixth respondent on 19.05.2008 under a registered sale deed.

4. It appears that on 15.03.2002, the fourth respondent had cancelled the patta issued to the sixth respondent. The sixth respondent had challenged the order on 16.04.2002 by filing a writ petition and this Court had directed the petitioner to approach the first respondent. Accordingly, the sixth respondent had

approached the first respondent, who by his order dated 13.04.2003 set aside the orders passed by the respondents 4 and 5 cancelling the patta and holding that the conditions of the patta have been fulfilled and the chitta was obtained as early as in the year 1924. The authority had also observed that the property remained a private property and the orders of the respondents 4 and 5 were without documentary evidence and the same was deprecated. However, the first respondent directed the second respondent to examine the truth and veracity of the documents filed by the sixth respondent and the Collector was directed to forward the report to the Government.

5. On 26.12.2023, through the impugned order the first respondent had revoked the assignment totally misconstruing his own order dated 18.02.2003 and overlooking its earlier order dated 05.04.2007 directing the change of patta. The authorities had also overlooked the fact that a disgruntled employee one Jayaparakash had filed a complaint stating that the petitioner Company had encroached into the Government lands. The Police had conducted a detailed investigation and had closed the complaint stating that the lands were no longer the Government lands but were the private lands. 15 years after the original order,

the first respondent had passed the impugned order. Therefore, the petitioner has come forward with the above writ petition for the relief stated supra.

6. The first respondent has filed a counter *inter alia* contending that the lands measuring an extent of 11.83 acres comprised in S.Nos.832, 2706/3, 2721/2 and 2722 were assigned on condition of payment of value of Rs.125/- per acre and the ground rent of Rs.75/- per acre subject to Revision. Further extent of 2.69 acres was assigned on ground rent basis comprised in S.Nos.827/2, 827/3 and 934/1, 2, 4, 5, 8, 10 and 12. Therefore, the total extent of 14.52 acres had been assigned to the sixth respondent on the ground rent basis. The first respondent would submit that the sixth respondent was entitled to an extent of 4.33 acres in S.Nos.837, 838 and 839 by purchase and an extent of 14.52 acres by assignment.

7. The Tahsildar, Madurai (South Taluk) had cancelled the ground rent assignment in the year 2001. The appeal of the sixth respondent to the Revenue Divisional Officer was rejected by order dated 15.03.2002 on the ground that the Company had failed to remit the ground rent and that the assignment was a temporary one. This order was set aside by the first respondent on 18.02.2003.

However, a report was directed to be sent to the Government for obtaining cancellation of the original assignment as it was prior to the year 1973.

8. On 13.05.2023, the second respondent had sent a proposal for cancellation of the assignment granted to the sixth respondent and on receipt of the same, the first respondent *suo motu* initiated the enquiry for resumption. In fact, the sixth respondent had mooted a proposal for forming a layout which is also approved and recommended by the Revenue Divisional Officer. The first respondent would submit that under the Revenue Standing Order 15(18), the first respondent was vested with the powers of Revision. That apart, under RSO 15(5)(2)(xi), the first respondent was the authority for resuming the lands.

9. The first respondent would submit that in the impugned order, it is clearly mentioned that the first respondent had relied upon a proposal of the District Collector , who had mooted the cancellation of assignment for non-remittence of the ground rent as the payment details had not been submitted by the sixth respondent. Further, the District Collector would submit that the sale in favour of the petitioner was after the order dated 18.02.2003. The

recommendation for cancellation was made on the grounds that i) the land is not a patta land, but assigned on payment of ground rent, ii) the assignee has sold the property and they do not have a right to sell, iii) the land has not been utilized for the purpose of which it was assigned and it is intended to be put to commercial use and iv) the land is situated in the heart of Madurai City and is a very valuable peace of land which could be required by the Government for the future purposes. Ultimately, the impugned order cancelling the assignment patta was made for the reasons that the ground rent was not remitted, valuable land not put to use and the sixth respondent have sold the land when there was a dispute. Challenging the same, the petitioner is before this Court.

10. The learned Senior Counsel appearing on behalf of the petitioner would submit that the only condition for the grant of the assignment was payment of ground rent. The ground rent payable with the introduction of the Urban Land Tax Act has been subsumed into the urban land tax. He would draw the attention of this Court to Section 23 of the Tamil Nadu Urban Land Tax Act, 1966, where it has been stated that the urban land tax payable under the Act would be in lieu of certain taxes and one of which is the ground rent.

11. He would submit that this Court in a judgment reported in ***1977 SCC Online Mad 208 (Additional Commissioner of Income Tax, Madras II Vs. Dinrose Estate)***, the Hon'ble Supreme Court was considering the following questions of law:

> *"Whether, on the facts and in the circumstances of the case, the urban land tax paid can be said to fall for deduction while computing the income from property for the assessment years 1964-65 to 1968-69?"*

12. While answering the query, the learned Judges had referred to the reason for enacting the Act. They had also explained the phrase **'in lieu of'** as used in Section 23 of the Urban Land Tax Act in para 7 of the said judgment and therefore, he would submit that on the enactment of the Urban Land Tax Act, the ground rent had transformed into the Urban Land Tax and the said payment having been received by the respondents it does not lie in the mouth of the respondents to contend that the ground rent has not been paid. Since the reason for cancelling the assignment was on the ground that the conditions had not been complied with, the same has to be set aside.

13. *Per contra*, Mr.J.Ravindran, learned AAG assisted by Mr.B.Saravanan, learned Additional Government Pleader for the respondents would submit that the cancellation was not only on the ground of non payment of ground rent but was also on the ground of violation of the assignment conditions and the non utilization of the land for the purpose of which it has been allotted.

14. Heard the learned counsel on either side.

15. A reading of the assignment dated 16.10.1923 would indicate that the Collector had assigned the lands in question with an only condition that the initial value of Rs.125/- per acre was to be paid and that the annual ground rent of Rs. 70/- would be paid. A note was sent by the then Collector to the Secretary to the Commissioner of Land Revenue and Settlement, Madras recommending the assignment to the Madura Mills Company on the basis of their application for assigning an extent of 11.57 acres in T.S.Nos. 832, 2706/3, 2721/2 and 2722.

16. From a reading of this recommendation, it appears that an earlier assignment had been made on 13.10.1922, where once again the initial price was Rs.125/- and Rs.75/- for ground rent had been adopted and the same has been adopted in the instant case. Pursuant to this recommendation, on 02.10.1923 by G.O.Ms.No.1485, Revenue Department, the Government sanctioned the assignment to the erstwhile Madura Mills Company limited of an extent of 11.83 acres of land. The only condition incorporated was that the initial payment of Rs. 125/- per acre and ground rent of Rs.75/- per acre per annum be paid subject to Revision and resettlement. Therefore, the assignment deed does not contemplate any other condition except the payment of ground rent. The patta has also been issued to the Mill.

17. It is also seen that earlier the first respondent had passed an order on 18.02.2003, on the basis of the appeal filed by the sixth respondent questioning the cancellation. The first respondent had allowed the application. The first respondent has opined that there was no documentary evidence on the side of the Revenue when cancelling the patta. Further, the assignment had been made only after considering the orders of the Tahsildar and the Revenue Divisional Officer.

While allowing the Revision and setting aside the order passed by the respondents 4 and 5, the first respondent had observed as follows:-

> *"........ 1973 ம் ஆண்டுக்கு முன்னால் செய்யப்பட்ட ஒப்படை நேர்வுகளில் அதன் தொடர்ச்சியான நடவடிக்கைகளில் ஏதேனும் முறைகேடுகள் கண்டுபிடிக்கப்பட்டு நடவடிக்கை எடுக்கப் போதிய காரணங்கள் இருக்குமானால் தேவையான அறிக்கையை அரசுக்கு அனுப்பி ஆணை பெற்று நடவடிக்கை எடுக்க வேண்டும். அவ்வாறில்லாமல் இதில் வட்டாட்சியர் மற்றும் கோட்டாட்சியர் அளவில் ஆணைகள் வழங்கியிருப்பதும் முறையானதாக இல்லை......."*

18. Therefore, the order would state that if there is any irregularity in the assignment or in the proceedings thereafter, then a report to that effect should be sent to the Government and on receiving the approval of the Government, proceedings could be initiated. Further, the proceedings cannot be initiated on the basis of the report of the Tahsildar or the Revenue Divisional Officer. It appears that this phrase has been misconstrued by the authorities to read that a direction had been issued for re-investigation/re-appreciation of the assignment deed. The order in question clearly indicates that it is a *suo motu* enquiry that has been conducted by the District Collector. The subject of the impugned order would

read as follows:-

"From the above findings and observations, it is crystal clear that the M/s Madura Mills Co. Ltd at present Madura Coats Pvt. Ltd has infringed in every terms of conditions imposed during the grant of ground rent assignment to an extent of 14.52 acres situated in S No. 832, 934/1, 2, 4, 5, 8, 10 and 12, 2706/3, 2721/2 2722, 872/2 etc Madurai North Taluk (Erstwhile Madurai South Taluk) North Madurai Village as early as on 1923 and 1925 and no recorded proof for remittance of ground rent submitted by the Company. As such, considering its location and value of the lands, by involving the provision of R.S.O 15(18) & 15(3) (2) (xi), the above said lands are ordered to be resumed from the clutches of the Mill/ subsequent purchaser and the lands to be safeguarded by fencing and maintained as Government land Tharisu in revenue records by duly entering it into Prohibitory Order Book or land bank"

19. The first respondent would further submit that the *suo motu* enquiry is on the basis of the provisions of the RSO 15(18). The said provision reads as

follows:-

"(18) ***Revision:-*** *The order of the authority making the assignment if no appeal is presented or of the appellate authority if an appeal is presented, is final and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision in cases of assignment made after 14.5.1973 if the Revenue Divisional Officer/District Revenue Officer/Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Commissioner of Land Administration or the Government may set aside, cancel or in any way modify the decision of any authority subordinate to them, if they are satisfied that the decision was grossly in-equitable, etc They may exercise these powers without any limit of fine (ie) even in case prior to 14.5.1973, where there has been a material irregularity in the procedure or where the decision*

exceeded the powers of the officer, who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation The authorities competent to pass orders in revision under this para may also grant stay pending their orders in revision."

20. A reading of this provision would show that in cases, where the assignment is prior to 14.05.1973, the power could be exercised, a) where there has been a material irregularity in the procedure of assignment, b) where the decision exceeded the powers of the officer, who passed it or c) where it was passed under a mistake of fact or d) owing to fraud or misrepresentation. Therefore, the power of Revision could be exercised only in the aforesaid four contingencies. None of these circumstances exist in the instant case. The entire exercise is based on the observations made in the order of the first respondent dated 18.02.2003, where the authority had observed that if there is any irregularity in the assignment, then a report should be sent and on the approval of the Government, fresh proceedings can be initiated. There is nothing to show that there has been a material irregularity in the assignment and neither has the report received the approval of the Government before the Revision has been initiated.

21. The only ground on which the assignment is cancelled is primarily on the ground that the ground rent has not been paid and the other two grounds are that the land was not used for the purpose for which it has been assigned and the sale had taken place. As regards the other points, they do not come within the grounds on which a Revision of the assignment can be done by the authority as provided under RSO 15(18). With reference to the failure to remit the ground rent, as rightly pointed out by the learned Senior Counsel, on the enactments of the Urban land tax Act, the ground rent stood substituted by the Urban Land Tax. The impugned order states that the petitioner has not produced proof of payment of the ground rent. This has been discussed in the judgment of the Division Bench referred to by the learned Senior Counsel appearing on behalf of the petitioner in the case of *Additional Commissioner of Income Tax (referred supra)*, where in para No.7, it has been set out as follows:-

> *"The phrase "in lieu of " used in Section 23 of the Urban Laud Tax Act clearly goes to show that the tax levied under the Tamil Nadu Urban Land Tax Act, 1966, is different from the tax payable under the Madras City Land Revenue Act, 1851, under which alone the*

assessee was, prior to the enactment of this Act, paying the land revenue to the Government. When one enactment substitutes the levy under another enactment, it follows that the substituted levy cannot be taken as the same as the levy which prevailed earlier. Otherwise, there will be no meaning in the substitution. If the two are not different, then appropriate provision would have been made in Section 23 of the Tamil Nadu Act itself. Section 23 has the effect of abolishing land revenue as far as the urban lands are concerned and levying tax on the market value of such land. The two legislations are so wholly different that it is not possible to take the one, viz., the urban land tax, as equivalent to the land revenue for purposes of deduction under Section 24(1)(vii) of the Act."

22. The respondents would submit that from the impugned order, it is seen that the petitioner has not provided proof of having paid the ground rent. Therefore, while setting aside the impugned order, the matter is remitted back to enable the petitioner to produce the proof of having paid the ground rent/land tax. The respondents shall thereafter consider the documents filed and pass

appropriate orders. Till such time, no coercive steps shall be taken.

23. The writ petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.10.2024

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

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