



W.A.(MD).No.1648 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 23.07.2024

PRONOUNCED ON : 30.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.(MD).No.1648 of 2016
and
C.M.P.(MD).No.12433 of 2016

Regina Jeyapaul

... Appellant/Petitioner

Vs.

- 1.The Revenue Divisional Officer,
Special Deputy Collector (Revenue Court),
No.1, Kamarajar 1st Street,
Chokkikulam,
Madurai -2.
- 2.The Tahsildar,
Under the Record of Tenancy Act (Madurai North),
Madurai Taluk Office,
Collectorate Complex,
Madurai.
- 3.The Trustee,
Sooraveli Subbaier Trust,
1-13, Shanthi Southern,
Melakkal Main Road,
Kochadai, Madurai – 625 016.



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- 4.Abraham (Died)
- 5.A.Seela
- 6.A.S.Solomon Thangaraj
- 7.A.Simpson (Died)
- 8.A.Simpson Selvaraj (Died)
- 9.A.Selvam
- 10.A.Maniarasu
- 11.A.Ezhilarasu
- 12.A.Amos
- 13.S.Anandaprabhuthagamani
- 14.Hemavasthi Simson
- 15.Anandabenjameens

(R-13 to R-15 are impleaded as LR's of the deceased R-7 vide common order dated 22.03.2024 made in C.M.P.(MD).Nos.4135 and 4137 of 2024 in W.A.(MD).No.1648 of 2016)

- 16.Elizabeth Marie
- 17.Sundar Gnana Sigamani
- 18.Pilomin Chandra

... Respondents/Respondents

(R-16 to R-18 are impleaded as LR's of the deceased R-8 vide common order dated 22.03.2024 made in C.M.P.(MD).Nos.4135 and 4137 of 2024 in W.A.(MD).No.1648 of 2016)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, against the order dated 29.04.2014 passed in W.P.(MD).No.1849 of 2010 on the file of this Court.

For Appellant : Mr.V.Ragavachari
Senior Advocate
for Mr.S.Ramesh



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For R-1 & R-2 : Mr.A.Kannan
Additional Government Pleader

For R-3 : Mr.P.Wilson
Senior Advocate for Mr.NC.Ashokkumar

For R-5 : Mr.T.Mohan
Senior Advocate for Mr.A.Balamurugan

For R-9 to R-12 : Mr.P.R.Prithviraj

For R-13 to R-18 : Mr.K.Suresh Babu

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This intra-Court appeal is filed by the writ petitioner challenging the order passed in W.P.(MD).No.1849 of 2010 dated 29.04.2014, wherein, the Writ Court has confirmed the order passed by the Appellate Authority confirming the order of registration of Respondent No.4 as Cultivating Tenant, under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, in A.P.No.2 of 2009 dated 18.12.2009.

2. The brief facts leading to filing of this appeal are as follows:

The lands in Survey No.174, 173/1B measuring 2 Acres and 44 Cents



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in Thallakulam Village, Madurai North, belong to Sooraveli Subbier Trust.

These lands were equally divided into two portions and one portion of subject property in this proceedings was in possession of one Gnanam @ Gnanambal, W/o.Vedamuthu as a cultivating tenant. After her death, one Abraham, as one of the legal heirs of the said Gnanam @ Gnanambal, started cultivating and his name was also recorded under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (hereinafter referred to as 'Record of Tenancy Rights Act'). Subsequently, the writ petitioner has entered into an agreement with the said Abraham and her name was entered as a cultivating tenant as per the proceedings in T.R.No. 24 of 1988 on the file of the Tahsildar under the Record of Tenancy Rights Act in the year 1988. This was not questioned by Abraham and thereafter, in the year 1996, Abraham approached the Registering Authority to include his name in the Register as a cultivating tenant. After due enquiry, proceedings initiated by Abraham in T.R.No.36 of 1996 was dismissed and thereafter, he approached the Appellate Authority, Revenue Court of Madurai and filed an appeal in A.P.No.2 of 2009. The Appellate Authority has considered the case of the parties and held that there is impersonation



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before the Original Authority in the enquiry held in the year 1988 and the order in T.R.No.24 of 1988 was obtained without verification of proper identity of the persons and no documents were marked during the enquiry and the writ petitioner was not a cultivating tenant under the Trust. Accordingly, the Appellate Authority has set aside the orders passed in T.R.No.24 of 1988 and T.R.No.36 of 1996 and thereby, directed the competent authority to record the name of Abraham as a cultivating tenant.

2.1. The writ petitioner has challenged the order passed by the Appellate Authority before this Court in W.P.(MD).No.1849 of 2010 and contended that without any evidence placed on record and without any proper pleadings before the Original Authority, the Appellate Authority has held that there is impersonation and no proper enquiry was held by the Original Authority. He has also held that the order in T.R.No.24 of 1988 was passed by playing fraud on the Registering Authority in the year 1988. The Appellate Authority has failed to appreciate the available evidence placed on record before the Original Authority in T.R.No.24 of 1988 and the various documents produced regarding the recognition of the writ petitioner



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as a cultivating tenant and thereby, the order passed by the Appellate Authority is perverse and not sustainable.

3. The learned Single Judge of this Court, after considering the materials placed on record and after hearing the parties, has accepted the order of the Appellate Authority that the appearance of Abraham before the Original Authority in the enquiry held in the year 1988 is doubtful and the entries made in the record are non-est and thereby, confirmed the order of the Appellate Authority and dismissed the Writ Petition.

4. Aggrieved over the order passed by the learned Single Judge and also challenging the order passed by the Appellate Authority, this Writ Appeal has been filed, on the ground of suppression of various materials by Abraham and also the order of the Appellate Authority is based on presumption and not based on any evidence. Further, the evidence placed on record before the Original Authority, that too in the year 1988 itself, has not been taken into account by the learned Single Judge while considering the validity of the order passed by the Appellate Authority. The Trust has already filed a petition in I.A. No.81 of 1989 in O.S. No.13 of 1932 before



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the II Additional Sub Court, Madurai, under the scheme decree, recognising the tenancy of writ petitioner in O.S. No.13 of 1932 and that the Trust had even gone to the extent of agreeing to sell the leased out property in favour of the writ petitioner herein.

5. It is submitted by the learned Senior Counsel for the appellant/writ petitioner that the name of the writ petitioner was included in the Register of cultivating tenant as per the order passed in T.R.No.24 of 1988 on 14.09.1988, in which, there is a detailed order passed by the then Registering Authority regarding the appearance of both Abraham as well as the Managing Trustee, i.e., the owner of the property. After recording the name of writ petitioner as cultivating tenant in the register, the Abraham has not challenged the same by way of appeal, which is a statutory right provided under the Act. After a delay of eight years, he approached the Original Authority once again seeking modification of the Register by claiming right based on inheritance from original cultivating tenant viz., Gnanam to register his name. As per the time limit provided under Rule 12 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Rules, 1969, he ought to have challenged the said order, if he is aggrieved, within a



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period of 60 days. Instead of challenging the said order, by invoking another provision, which provided for the relief of modification of the record of the register, he has indirectly challenged the order passed in T.R.No.24 of 1988 dated 14.09.1988. The original proceedings initiated by Abraham in the year 1996 in T.R.No.36 of 1996 was not maintainable and the Original Authority has rightly dismissed the same by order dated 19.09.2008.

6. The learned Senior Counsel further submitted that the fourth respondent, Abraham has filed an appeal before the Appellate Authority and has taken a new plea before the Appellate Authority that the order passed in the year 1988 was made behind his back and without hearing him and he has also disputed the fact that he has sub-let the tenancy rights in favour of the writ petitioner. The Appellate Authority has failed to appreciate the fact that, before the Original Authority, Abraham has never taken a stand that the order was passed without hearing him. He has not disputed the execution of deed, though it is titled as 'relinquishment deed', he has given up his right, by way of sub-letting his tenancy rights in favour of the writ petitioner herein. Without any material or evidence, the Appellate Authority has



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accepted the case of Abraham and also held that there is a fraud played on the Original Authority, without any plea or evidence placed on record. The Trust has already filed a petition before the Civil Court, where the scheme decree relating to administration of the Trust is pending, declaring the writ petitioner as a cultivating tenant under the Trust. The enquiry in this petition was taken place after issuing public notice and also after calling for the objections from the persons, who are having interest in the land and an order was passed by the Civil Court that the writ petitioner, Regina Jeyapaul, is a cultivating tenant and the Trust was permitted to sell the leased property in favour of the writ petitioner. These facts have not been considered by the Appellate Authority and during this proceedings before the Civil Court, Abraham has never appeared and raised any objection. Hence, the order passed by the Appellate Authority is based on perverse findings and thereby, the same is not sustainable and liable to be set aside.

7. The learned Senior Counsel for the Trust submitted that Section 5 of the Record of Tenancy Rights Act deals with the modification of entries in the approved record of tenancy rights. Abraham, who was not aware



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about the earlier proceedings i.e., T.R.No.24 of 1988. The Original Authority has not properly appreciated the case of Abraham and subsequently, the Appellate Authority has rightly accepted his case and held that the entire original proceedings initiated in the year 1988 is vitiated by fraud. The fraud and collusion in any proceedings before a Court or quasi-judicial authorities vitiates the proceedings and they are non-est, null and void. In this case, there is a fraud played on the Original Authority in the year 1988 and orders have been obtained. This fact has not been properly appreciated once again by the Original Authority in the year 1996, when Abraham filed a petition for modification. His case shall not be rejected on the ground that he failed to challenge the order passed in the year 1988. Since fraud is pleaded, the impugned order can be challenged at any point of time. In this case, immediately after he came to know that the order has been obtained by impersonation and fraud, he has filed a petition for modification in the year 1996 by invoking Section 5 of the Record of Tenancy Rights Act. The Appellate Authority has rightly held that the said Abraham had not appeared before the Original Authority in the year 1988 and the document relied on by the writ petitioner, Regina Jeyapaul, is also an unregistered



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document and without proper procedure, her name has been registered in the Record of Tenancy. Hence, the Appellate Authority has rightly set aside the order of the Original Authority. In support of his submission, the learned Senior Counsel relied on the judgment of the Hon'ble Apex Court in *A.V.Papayya Sastry and others Vs. Government of A.P. and others* reported in *[(2007) 4 SCC 221]* and contended that if an order is obtained by fraud, it has to be treated as non-est and nullity and it can be challenged at any Court at any point of time in any proceedings.

8. The learned Senior Counsel further submitted that the writ petitioner, Regina Jeyapaul, would not fall within the definition of cultivating tenant under Section 2(b) of the Act, since there is no pleading or evidence that she is contributing physical labour. He further submitted that Section 2(b) mandates the contribution of the physical labour to claim herself as a cultivating tenant. In this case, the lands were not cultivated for several years and the Appellate Authority, in his proceedings, has categorically held that no cultivation has taken place for the past several years, thereby, the writ petitioner cannot claim herself as a cultivating



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tenant. In support of his submission, the learned Senior Counsel relied on the judgment of this Court in ***Mohamed Abubacker Labbai and another vs. Zamindar of Ettayapuram Estate, Koilpatti through his authorized agent K.Raman Nair and others [(1961) 74 LW 151]***.

9. Mr. T. Mohan, learned senior counsel appearing on behalf of the legal heirs of Abraham has submitted that, the fourth respondent-Abraham was not aware about the registration of name of the petitioner in the register of cultivating tenants and based on the unregistered document, the name of the petitioner has been included and the same is not binding on him. Since the name has been entered by fraudulent act, the entries in the register could be challenged to the subsequent proceedings or any other proceedings. In this case, the Appellate Authority has found that no proper enquiry was conducted by the Registering Officer and rightly set aside the order of the Original Authority and the same was also accepted by the learned Single Judge. He further submitted that since the Appellate Authority and the learned Single Judge has properly considered the manner in which the name of the writ petitioner is entered into the register and findings have been



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rendered, this Court need not interfere in the above findings while exercising its power under Article 226 of the Constitution of India and prays to confirm the order passed by the Appellate Authority.

10.1 Taking note of the fact that a scheme suit in O.S. No.13 of 1932 in respect of the Trust was filed before the II Additional Sub Court. We have also called for the records from the concerned Court.

10.2 Heard the submissions made on both sides and perused the materials available on record.

11. For better appreciation of the issue involved in this case, it is necessary to consider the object and various provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. This Act was enacted to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands in the State of Tamil Nadu.

(i) Section 2(1) of the Act defines 'Cultivation' as follows:

“(1) "cultivation" means the use of land for the purpose of agriculture or horticulture;”



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(ii) Section 2(3) defines “intermediary” as follows:

“(3) "intermediary" means any person, who, not being an owner or a possessory mortgagee, has an interest in land by virtue of a tenancy agreement and is entitled by reason of such interest, to possession thereof but has transferred such possession to others;”

(iii) Section 2(5) defines “land owner” as follows:

“(5) "land-owner" means the owner of the land let for cultivation by a tenant and includes the heirs, assignees or legal representatives of such owner or persons deriving rights through him;”

(iv) Section 2(7) defines “Record Officer” as follows:

“(7) "record officer" means any officer of the Revenue Department not below the rank of Deputy Tahsildar authorised by the Government by notification to exercise the powers conferred on, and to discharge the duties imposed upon, the record officer under this Act for such area as may be specified in the notification;”

(v) Section 2(8) defines “tenant” as follows:

“(8) (i) "tenant" in respect of any area in the State (other than the Kanyakumari district)-

(a) means in relation to any land to which the Tamil Nadu Cultivating Tenants Protection Act, 1955 (Tamil Nadu Act XXV of 1955), applies, a cultivating tenant as defined in clause (a) of section 2 of that Act and includes-

(i) a mattuvaramdar referred to in clause (a) or clause



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(b) of section 7 of the Tiruchirappalli Kaiaeruvarum and Mattuvaram Act, 1958 (Tamil Nadu Act XXXVI of 1958); and

(ii) a possessory mortgagor, who, under a tenancy agreement, express or implied, with the possessory mortgagee, contributes his own physical labour or that of any member of his family in the cultivation of the land subject to possessory mortgage; and

(b) means, in relation to any land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961), applies, a cultivating tenant as defined in clause (5) of section 2 of that Act;

(ii)"tenant" in respect of any area in the Kanyakumari district-

(a)in relation to any land other than the land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961) applies-

(i)means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii)includes-

(a)any such person who continues in possession of the land after the determination of the tenancy agreement;

(b)the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land;

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(d) any such sub-tenant who continues in possession of the land, notwithstanding that the person who sub-let the land to such sub-tenant ceases to have the right to possession of such land;

(e) a possessory mortgagor, who, under a tenancy agreement, express or implied, with the possessory mortgagee,



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contributes his own physical labour or that of any member of his family in the cultivation of the land subject to possessory mortgage; but

(iii) does not include a mere intermediary or his heir;

(b) means in relation to any land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act 57 of 1961), applies, a cultivating tenant as defined in clause (5) of section 2 of that Act;]”

(vi) Section 4 of the Act provides inclusion of lands in the approved record of tenancy rights, which reads as follows:

“4. Inclusion of lands in the approved record of tenancy rights.-

(1)(a) Where subsequent to the publication of the approved record of tenancy rights, any land has been let for cultivation, the land owner, intermediary of or the tenant having interest in such land shall make an application to the record officer for inclusion of particulars relating to such land in the approved record of tenancy rights.

(b) Where any land has been let for cultivation before the publication of the approved record of tenancy rights, but the particulars thereof have not been included in the approved record of tenancy rights or any reason, the landowner, the intermediary or the tenant shall make an application to the record officer for inclusion of particulars relating to such land in the approved record of tenancy rights.

(2) An application under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3)(a) Before passing an order on an application under sub-section (1), the record officer shall follow such procedure as may



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be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the record officer decides that the particulars of the land specified in the application should be included in the approved record of tenancy rights, he shall pass an order accordingly and shall make the necessary entries in the approved record of tenancy rights.

(b) If the record officer decides that there is no case for inclusion of particulars of the land in the approved record of tenancy rights, he shall reject the application.

(c) An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed.”

(vii) Section 5 provides for modification of entries in the approved record of tenancy rights, which reads as follows:

“5. Modification of entries in the approved record of tenancy rights.

(1) Where any person claims that in respect of any land already included in the approved record of tenancy rights any modification is required in respect of the entries in such record either by reason of the death of any person or by reason of the transfer of interest or by reason or any other subsequent change in circumstances, he shall make an application to the record officer for the modification of the relevant entries in the approved record of tenancy rights.

(2) An application under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.



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(3) (a) *Before passing an order on an application under sub-section (1), the record officer shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the record officer decides that any modification should be made in respect of the entries in the approved record of tenancy rights, he shall pass an order accordingly and shall effect the modification and make such incidental and consequential changes in the approved record of tenancy right as appear to him to be necessary, for giving effect to his order.*

(b) *If the record officer decides that there is no case for effecting an modification in the entries in the approved record of tenancy rights, he shall reject the application.*

(c) *An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed.”*

(viii) Section 6 provides for appeal against the order passed in Section 3(8), 4(3), 5(3), which reads as follows:

“6. Appeal.- *Any person aggrieved by an order made under sub-section (8) of section 3, sub-section (3) of section 4 or sub-section (3) of section 5 may, within such period as may be prescribed, appeal to such authority as may be specified by the Government in this behalf (hereinafter referred to as the appellate authority) and the decision of such authority on such appeal shall, subject to the provisions of section 7, be final.”*

(ix) Section 7 provides for revision, which read as follows:



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“7. Revision.- *[The District Collector or such officer as may be specified by the Government in this behalf] [Substituted for 'The District Collector' by section 3(i) of the Tamil Nadu Act 34 of 1972.] may of his own motion or on the application of a party call for and examine the record of any record officer of appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit :*

Provided that [the District Collector or the said officer] [Substituted for 'the District Collector' by Tamil Nadu Act 34 of 1972.] shall not pass any order prejudicial to any party unless he has been given a reasonable opportunity of being heard.”

(x) Section 10 provides the procedure to be followed by the Record Officer or the Appellate Authority or the District Collector while exercising their powers vested under this Act, which reads as follows:

“10. Power to take evidence on oath, etc.- *The record officer or the appellate authority or [the District Collector or the officer referred to in section 7] [Words and figure were Substituted for 'the District Collector' by section 4 of the Tamil Nadu Agricultural lands Record of Tenancy Rights (Amendment) Act, 1972 (Tamil Nadu Act 34 of 1972).] shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil procedure, 1908 (Central Act V of 1908) when trying a suit in respect of the following matters, namely:- (a) enforcing the attendance of any person and examining him on oath;*

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;



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(d) issuing commissions for the examination of witnesses; and any proceeding before the record officer or the appellate authority or the District Collector shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (Central Act XLV of 1860). ”

(xi) Section 15 provides for presumption of correctness of entries in the approved record of tenancy rights, which reads as follows:

“15.Presumption of correctness of entries in the approved record of tenancy rights.- Any entry in the approved record of tenancy rights shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted therefore.”

(xii) Section 16-A bars the jurisdiction of Civil Courts, which reads as follows:

“16-A. - Bar of jurisdiction of Civil Courts. [Inserted by Tamil Nadu Act 34 of 1972.] - No Civil Court shall have jurisdiction in respect of any matter which the record officer, the District Collector or other officer or authority empowered by or under this Act has to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act.] ”

(xiii) In consonance with Section 18 of the Act, which



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provides rule making power of the Government of Tamil Nadu,

Rules were also framed by the Government, in the year 1969, called Record of Tenancy Rights Rules, 1969. Rule 11 provides the procedure to be followed in disposing of the application under Section 4(3) and 5(3) of the Act, which reads as follows:

“11. Procedure to be followed in disposing of applications under section 4(3) and 5(3).

- On receipt of an application under sub-section (1) of section 4 or sub-section (1) of section 5, the Record Officer shall fix a date for hearing and give notice thereof to the applicant and all other persons having interest in the lands mentioned in the application. On the date of hearing, the Record Officer shall give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. Where evidence is given orally, it shall be reduced to writing and got signed by the deponent.”

12. The Appellate Authority, whose order is impugned in this Writ Petition, had set aside the order of the Original Authority, dated 19.09.2008 rejecting the modification application filed by Abraham, on the ground that the writ petitioner Regina Jeyapaul has not adduced any evidence before the Original Authority and except marking of the order passed in T.R.No.24 of 1988 dated 14.09.1988, she has not subjected herself for cross-examination of the contesting parties. It is termed as a procedural error and the



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handwriting of Abraham has not been compared. Since the signature was not compared, the Appellate Court presumed itself that there was impersonation in the proceedings taken place in the year 1988, thereby, the order passed in T.R.No.24 of 1988 is not binding on Abraham. The Appellate Authority further held that no tenancy document was produced before the Original Authority, thereby, he rejected the contention of the writ petitioner, accepted the case of the original tenant, Abraham and set aside the orders passed in T.R.No.24 of 1988 and T.R.No.36 of 1996. The above order reveals that since the writ petitioner, Regina Jeyapaul has not come forward to adduce any oral evidence on her side before the Original Authority, her claim of tenancy has not been proved. The Appellate Authority has gone to the extent of rejecting the order passed in the earlier proceedings in T.R.No.24 of 1988, which is sought to be modified in the subsequent proceedings in T.R.No.36 of 1996.

13. Admittedly, in the petition filed by Abraham in T.R.No.36 of 1996, is in Form-V prescribed under Rule 10 of the Record of Tenancy Rights Rules, 1969, wherein, he has stated as follows:



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Originally, one Gnanam, W/o.Vethamuthu has been registered as cultivating tenant to the extent of 2.44 Acres in the record of tenancy rights and after the demise of Gnanam, as a legal heir, one Ayeenees and Abraham inherited the tendency rights by dividing the total extent of 2.44 Acres equally among them. Hence, Abraham is presently cultivating tenant to the extent of 1.22 Acres of the said property and his right has been approved in the order passed in the Revision Petition in R.P.No.11/85 G3, dated 01.08.1986, when the dispute arose between A.Ayeenees and the father of Abraham namely Arulanandham. The Trust has also recognised the petitioner Abraham as a tenant and entered into a lease agreement on 15.09.1983. He has also attached the copy of the order passed in R.P.No. 11/85 G3 and thereby, he has prayed to include his name as cultivating tenant in the approved record of tenancy.

14. The above pleadings show that nowhere in the pleadings, he has stated about the registration of the name of Regina Jeyapaul as a tenant in the subject property and he has called for registration of his name in the place of original tenant Gnanam. The pleadings show that originally,



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Abraham filed the petition in T.R.No.36 of 1996 including only the Trust, the land owner as a respondent.

15. The Trust/land owner filed a counter and intimated that Abraham has already transferred his right in favour of Regina Jeyapaul and the name of Regina Jeyapaul is included as a cultivating tenant in the register. Further, the Trust has also filed a petition to implead Regina Jeyapaul as one of the parties to the proceedings and thereafter, Regina Jeyapaul was also impleaded as a party. Thereafter, counter was filed by Regina Jeyapaul stating various facts, including transfer of Registration of Tenancy Rights in her favour subsequently, some of the third parties, others legal heirs of Arulanandam, claimed that they are also having right over the properties. Pending enquiry, though amendment petition was filed by Abraham in Form-V to include Regina Jeyapaul as the second respondent, he has not amended the pleadings, averring anything against her.

16. During the enquiry, Abraham was examined as a witness and he was cross-examined by the others. In the cross-examination, he has stated



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before the Original Authority that he obtained a loan from the husband of Regina Jeyapaul, namely, Jeyapaul and subscribed his signature in various documents and after repayment of the loan amount, the documents executed by him were not returned to him and denied that he has executed the transfer of right by relinquishment deed in favour of Regina Jeyapaul. However, in the cross-examination, he has stated that he was not aware about the earlier proceedings taken place in T.R.No.24 of 1988 and also admitted that he has subscribed his signature in various documents as demanded by the husband of Regina Jeyapaul and has not taken any steps to get back those documents.

17. On the side of Regina Jeyapaul, no witnesses were examined in the original proceedings however, the Certified copy of the order passed in T.R.No.24 of 1988, dated 14.09.1988, wherein, the order registering the name of Regina Jeyapaul as a cultivating tenant replacing the name of Abraham was produced and placed on record. After analysing the case of Regina Jeyapaul, Abraham, the Tenancy Record Officer/Original Authority has held that since in the year 1988 itself, Abraham has transferred his cultivating right and based on the enquiry conducted in T.R.No.24 of 1988,



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an order recording the name of Regina Jeyapaul as a cultivating tenant is effected. Since, this order has not been challenged by Abraham the present petition filed by him is not maintainable.

18. The Original Authority further held that by suppressing the earlier proceedings, Abraham has approached the Tenancy Record Officer to modify the register, hence he is not entitled to file the present petition without challenging the earlier order. He observed that, he had also conducted the spot inspection and found that the land has not been cultivated for long period and it surrounded by compound wall. The petitioner has to challenge the earlier order passed in T.R.No.24 of 1988, dated 14.09.1988 and to redress his grievance.

19. This order was challenged by Abraham by filing Appeal in A.P.No.2 of 2009, dated 18.11.2009, wherein he has raised 3 major grounds. The Appellate Authority agreed with him and held that (i) marking of the certified copy of the previous proceedings in T.R.No.24 of 1988 without examining the witnesses is not sustainable, (ii) the Original Authority has



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failed to compare the signature of Abraham who is alleged to participate in the earlier proceedings and there is also failure on the part of the Original Authority to verify the identify of Abraham, who had appeared in the earlier proceedings (iii) that the spot inspection made by the Original Authority is not sustainable since it has been made without issuing notice to the parties.

20. This finding of the Appellate Authority has been assiled by the writ petitioner in the writ proceedings. This Court while exercising writ jurisdiction has accepted the finding recorded by the Appellate Authority to the fact that the Original Authority has failed to verify that whether Abraham has appeared in the earlier proceedings and observed that his participation could be doubtful. Further the writ petitioner has not adduce any evidence before the Original Authority and held that, the order passed in T.R.No.24 of 1988, dated 14.09.1988 is not valid and found that inclusion of name of Regina Jeyapaul is not proper consequently, accepted the case of Abraham that he was not aware of the previous proceedings.



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21. Section 4 of the Record of Tenancy Rights Act, 1959 provides mechanism for recording the names of the cultivating tenants in the Register of Tenants whoever, being a tenant to include his name in the approved record of tenancy rights, they shall make an application to the officer appointed for recording the tenancy rights for the purpose of recording his name. Section 4(3) of the Record of Tenancy Rights Act provides procedure to be followed and the nature of orders to be passed. Once, the name of the Cultivating Tenant entered under Section 4 of the Record of Tenancy Rights Act, further modification of the name of tenants shall be made after due enquiry under Section 5 of the Record of Tenancy Rights Act, which provides for proceeding for modification of entries in the approved record of tenancy rights.

22. In this case, it is contended on behalf of Abraham that he has come forward to file a petition under Section 5 of the Record of Tenancy Rights Act, for modification of entries in the approved record of tenancy rights. Section 6 of the Record of Tenancy Rights Act provides Appeal remedy for challenging the orders passed under Section 4(3) and Section



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5(3) of the Record of Tenancy Rights Act.

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23. In the year 1996, Abraham has filed a petition seeking modification in the register. According to him, he has filed a petition on the basis of tenancy rights inherited by him and also based on the arrangements made with one of the co-sharer of the rights. He has not stated anything about the previous proceedings taken place in the year 1988. During the enquiry under Section 5 of the Record of Tenancy Rights Act, by the Original Authority for modification of the register, the duty is caused upon the Registering Authority to follow the procedure and also to give reasonable opportunity to all the parties concerned.

24. Section 5(3) of the Record of Tenancy Rights Act reads that, if the Recording Officer decides that any modification should be made in respect of names in the approved record of tenancy rights, he shall pass orders accordingly. But, before passing such order, he shall issue notice to the concerned parties. In this case, already in the record of tenancy, the name of



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Regina Jeyapaul was entered in the year 1988 itself, there was no challenge made regarding registering the name of Regina Jeyapaul. According to Abraham, he was not aware about this entry made in the register. If that being so, he ought to have challenged the previous entry by initiating appropriate proceedings.

25. Otherwise, after he came to know about the registration of name of Regina Paul, he ought to have challenged it. But without challenging the same, he conveniently proceeded with a petition filed by him in the year 1996. The Original Authority is duty bound to send notice to the parties concerned i.e., including the persons, whose names already entered in the register. Section 15 of the Tamil Nadu Record of Tenancy Rights Act, 1969 provides for presumption of correctness in the approved record of tenancy rights. It states that until the contrary is proved or a new entry is lawfully substituted, the entry in the approved record of tenancy shall be presumed to be true.



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26. In this case, admittedly, the name of Regina Jeyapaul was recorded in the year 1988 itself and even in the absence of production of certified copy of order passed in T.R.No.24 of 1988, dated 14.09.1988, it is mandate on the part of the Registering Officer to enquire about the previous entries. In this case, admittedly, Abraham has based his claim as per tenancy agreement, dated 15.09.1983 and order passed in R.P.No.11/85 G3, dated 01.08.1986. He traces his right based on the tenancy right granted to Tmt.Gnanam. In the order passed in Revision Petition in R.P.No.11 of 1985 shows that, one A.Ayeenees S/o. Anthony Kothanar filed an Appeal against the registration of name of S.Arulanantham S/o. Santhanam challenged the registration of name of the later, as cultivating tenant. While discussing the rights of parties therein, it is recorded that, with regard to the portion of land to the extent of 1.22 acres, there is no dispute, and same was cultivated by Abraham. All these documents were in existence prior to the transfer of right in favour of Regina Jeyapaul. If Abraham has come forward to modify to register the name from the name of Regina Jeyapaul to his name, then, there may not be any problem to entertain the application without challenging the order passed in favour of Regina Jeyapaul. Whereas, in this



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case, he has come forward with the documents claiming the right, which was in existence prior to 1988. Whereas, in the year 1988, the new right has been created in favour of Regina Jeyapaul and without challenging the same, the original proceedings were initiated. Since before the Original Authority, there is an order passed in the year 1988, which shows that the name of Regina Jeyapaul has been registered as cultivating tenant for the very same property in which, Abraham claim tenancy rights, he could not set aside the earlier order without any challenge.

27. On careful perusal of the earlier order passed in R.P.No.24 of 1988 states that, even prior to 1988, the name of Abraham was already registered. Only based on this earlier registration, the Abraham was called for enquiry as cultivating tenant and after recording the statement from him, he has subscribed his signature in this statement. Similarly, the land owner, the Trustee was also enquired and thereafter, the Registering Officer passed an order that modification of the register to record the name of Regina Jeyapaul. The observation made by the District Registration Officer in R.P.No.11/85 G3, dated 01.08.1986 confirms that, the name of Abraham was



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already registered. That being so, there is no occasion arrived to file petition in the year 1996 i.e., after 8 years, the order was passed by the Registering Officer, to register the name of Regina Jeyapaul.

28. The Original Authority has considered the above facts and directed the Abraham to challenge the order in R.P.No.24 of 1988, and observed without removal of said registration, Abraham cannot seek for registering his name in the register based on the documents which were in existence prior to 1986. The Original Authority has properly considered the facts of the case and has held that since the name of Regina Jeyapaul has not been removed from the register, Abraham is not entitled to seek registration of his name. This Court finds there is no infirmity in such order. The said Abraham ought to have challenged the order passed in favour of Regina Jeyapaul in the year 1988, and only after removing the name of Regina Jeyapaul, the Abraham is entitled to seek for modification or recording his name in the register, based on the rights inherited prior to 1986.



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29. The conduct of the Abraham seeking registration of name is not a bonafide act since he was aware that, his tenancy right was recognised in the year 1986 itself by the Original Authority under this Act. Then, there is no further registration is required. However, his attempt to file the petition to register his name, reveals his intention that, he made an attempt to remove the name of Regina Jeyapaul, without challenging the proceedings of her registration, by indirect way.

30. The Appellate Authority while exercising his power has held that, the Original Authority had received the previous order passed in favour of Regina Jeyapaul as an exhibit, without following proper procedure, he further gone to the extent of stating that the Original Authority has failed to verify whether Abraham had appeared in the earlier proceedings and gave a consent for change of registering the name of Regina Jeyapaul and the signature of Abraham was not compared. Admittedly, the earlier proceedings had taken place in the year 1988 and the Original Authority herein is not an Appellate Authority, to decide the validity of the proceedings held in the year 1988 and the same is not an issue before the



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Original Authority. Admittedly, there is no pleadings and Abraham has only stated that he was not aware about the previous proceedings in his evidence.

He has also stated that there was some money transaction between the husband of Regina Jeyapaul and he has also executed some documents. This evidence would no way improve the case of Abraham since there is no challenge of the order passed in the year 1988. Similarly, the observation made by the Appellate Authority that the Original Authority has overstepped by inspecting the property under dispute, is not proper since, the Original Authority has recorded that, the property is not under cultivation. This observation is not the primary reason to reject the claim of Abraham.

31. On careful perusal of the order of Appellate Authority it shows that, the Appellate Authority has passed an order mostly on presumptive basis. For the first time, in the Appeal, Abraham has contended that, he has not given consent or appeared before the authorities in the year 1988 and new pleadings and new case was made. The Appellate Authority ought not have considered these facts and in the absence of challenge is being made,



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considering the validity and merits of the order passed in T.R.No.24 of 1988 is unwarranted. We are of the view that the Appellate Authority has overstepped in this regard more particularly, his findings that the Original Authority has failed to verify impersonation if any, and failed to verify the signatures of Abraham. His findings that there is impersonation based on no evidence, no pleadings and the same is perverse, thereby, liable to be set aside.

32. We have also noted an important fact that, there is an order passed by the Civil Court in I.A.No.81 of 1989 in O.S.No.13 of 1932, on the file of the II Additional Sub Judge, Madurai, accepting the submission of the Trust that Regina Jeyapaul was a cultivating tenant in the year 1988 onwards and, permitted sale of property and this order was not placed before any of the previous proceedings of this Writ Appeal.

33. We are of the view that the Trust is not entitled to contend that either they were not aware about the registration of name of Regina Jeyapaul in the register or there is a fraud on the Registering Authority at



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the time of registering the name of Regina Jeyapaul for the reason that, the Trustee who is making such allegation is making false contention before us.

The suit records shows that in I.A.No.8 of 1988 in O.S.No.13 of 1932, the present Trustee namely Mr.M.S.Lakshmanan has been recognised as a Trustee of the third respondent Trust. He filed a petition in I.A.No.81 of 1989 by invoking Clause 16 of the Scheme Decree and Section 92 of the Civil Procedure Code to sell 1acre 22 cents of land in Survey No.173/1 and 174 at Tallakulam Village to the cultivating tenant namely Regina Jeyapaul and her family members at the rate of Rs.1,100/- as per conditions mentioned in the petition. In which, public notice was effected calling for the objections from general public. During the pendency of the petition, one M.S.Sankarraman @ M.S.Sankar has replaced M.S.Lakshmanan as a Trustee and proceeded further in the applications. After due enquiry, i.e., after examining the parties, the order was passed on 29.10.1992 permitting the Trust to sell the property at the rate of Rs.1,375/- per cent. However, the records show that as per this permission granted, the sale was not effected and the petition was pending for compliances for some time, subsequently, the petition was dismissed for default. Thereby no sale was effected in



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favour of Regina Jeyapaul.

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34. We have also called for records of the proceedings taken place in the year 1988 in T.R.No.24 of 1988 in which, it is recorded that all the parties have appeared. The Recording Officer has recorded in his proceedings that after receiving application from the Regina Jeyapaul, he summoned the parties more particularly, the Abraham and the Managing Trustee of the Trust and the statements were recorded from them. Only thereafter, he has satisfied and passed an order under Section 5 of the Act. It is an appealable order as per Section 6 of the Act, Abraham has neither challenged the order passed by the District Court to sell the properties in favour of Regina Jeyapaul, after recognising her as cultivating tenant nor the order passed by the Registering Officer. Without any challenge, the order passed by the Appellate Authority, has now been set aside in the subsequent proceedings, even without recording any pleadings or evidence of fraud. It is settled law that, fraud must be pleaded and proved. The Appellate Authority without any evidence of proof, as stated in earlier paragraphs, set aside the previous order, while considering the different



cause of action, based on surmises. We are of the view that, the learned Single Judge has not properly exercised the power under Article 226 of the Constitution of India which dealing with the issue.

35. The power of this Court while exercising power under Article 226 of the Constitution of India, in the matters of certiorarified mandamus, well settled, and the Judgment of the Constitution Bench in ***Syed Yakoob vs. K.S.Radhakrishnan and Others [AIR 1964 SC 477]*** is holding the field. In paragraph No.7 it has been held thus:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a



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writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque¹ Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam² and Kaushalya Devi v. Bachittar Singh.”



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36. Above principles have been consistently followed by the Apex Court in various Judgments and recently the very same principles reiterated in ***Bharti Airtel Limited vs. A.S.Raghavendra [2024 INSC 265]***. The entire order of Appellate Authority is based on no evidence and no pleadings. Without considering the jurisdiction of the Original Authority, the Appellate Authority has held that the Original Authority failed to appreciate the validity of previous order in T.R.No.24 of 1988 which was not challenged by the Abraham and also based on presumption and surmises. The order passed by the Original Authority is very clear and in accordance with the Scheme of the Act which regulate the registration of right and protecting the interest of cultivating tenant. These aspects have not been considered by the learned Single Judge, which warrants our interference in this order. Accordingly, the order passed by the Appellate Authority in A.P. No.2 of 2009 dated 18.12.2009 is hereby set aside and the order dated 19.09.2008 passed by the Original Authority in T.R.No.36 of 1996 is hereby confirmed.



37. The Division Bench of this Court way back in ***Mohamed Abubacker Labbai and another vs. Zamindar of Ettayapuram Estate, Koilpatti through his authorized agent K.Raman Nair and others [(1961) 74 LW 151]***, while considering the scope for registering a tenant under Section 4(3) of the Act has held that only the person who is carrying on personal cultivation by contributing his own physical labour or that of his family members alone shall be termed as cultivating tenant. It is observed by the Division Bench in the following paragraphs:

“Clause (ee) of S. 2 of Act XXV of 1955 requires that a person should contribute his own physical labour or that the members of his family in the cultivation of the land before he can be said to carry on personal cultivation on the land”.

38. We also noted from the records that the property is not being cultivated for long period and now the property is situated within the busy and thickly populated area of the city and Madurai Maatuthavani Bus stand is also situated just opposite to the property. It is also admitted by the parties that no cultivation is carried on in the place for several decades and that the large property belonging to the Trust is lying vacant.



39. In the year 1989 itself, the Trust had come forward to sell away the property to cultivating tenant and obtained permission from Civil Court.

Though, at the beginning, the cultivating tenant had agreed to purchase, but she was not able to purchase the property. In the year 1996 itself, the Original Authority also found that, since no cultivation activity is going on for the past several decades the property has to be used for any public purpose. The Hon'ble Apex Court in ***Executive Officer, Arthanareswarar Temple vs. R. Sathyamoorthy and Ors. [(1993) 3 SCC 115]*** has held that the Courts have a general 'parens patriae' jurisdiction in respect of the public and charitable trust, for public interest and for the welfare of the trust. Accordingly, by exercising the 'parens patriae' jurisdiction to ensure that the property of the trust to serve the public interest, we direct the Principal District Court, Madurai to withdraw the scheme decree in O.S.No.13 of 1932 from the file of the II Additional Subordinate Judge, Madurai and list the same before it, and conduct enquiry to decide the scope for maximum utilisation of the property for the public purpose and for the welfare/ benefit of the Trust. The Scheme Court shall take into consideration the locational advantage and the escalation in market value of the property.



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40. In the result, the Writ Appeal is allowed. The order dated 29.04.2014, passed by the learned Single Judge in W.P.(MD).No.1849 of 2010, as well as the order of the Appellate Authority in A.P. No.2 of 2009, dated 18.12.2009 are hereby set aside. No costs. Consequently, the connected miscellaneous petition stands closed.

(A.D.J.C.,J.) (K.R.S.,J.)
30.10.2024

NCC : Yes / No
Index : Yes / No
Lm/ssi



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To

- 1.The Revenue Divisional Officer,
Special Deputy Collector (Revenue Court),
No.1, Kamarajar 1st Street,
Chokkikulam,
Madurai -2.
- 2.The Tahsildar,
Under the Record of Tenancy Act (Madurai North),
Madurai Taluk Office,
Collectorate Complex,
Madurai.

Copy to

The Principal District Judge, Madurai for necessary action as per paragraph No.39 of this order.



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A.D.JAGADISH CHANDIRA,J.
and
K.RAJASEKAR,J.

Lm/ssi

Judgment made in
W.A.(MD).No.1648 of 2016

30.10.2024