



W.A(MD)Nos.114 to 116 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.04.2024

Pronounced on: 19.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

W.A(MD)Nos.114 to 116 of 2017

W.A(MD)No.114 of 2017

M.Subramanian

.... Appellant/Petitioner

Vs.

1. The District Revenue Officer,
Trichy, Trichy District.

2. The Assistant Commissioner,
Revenue Court,
Trichy, Trichy District.

3. The Revenue Divisional Office,
Trichy, Trichy District.

4. The Tahsildar,
Trichy West, Trichy.

5. The Village Administrative Officer,
Pirattiyur East Village,
Trichy West, Trichy

6. Kalika Prameswari Temple,



W.A(MD)Nos.114 to 116 of 2017

Periya Kammala Theru,
Trichy, Rep. By its Executive Officer,
S.Rajendran

... Respondents/Respondents

Prayer:- Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 02.12.2016 in W.P(MD)No.16867 of 2016.

W.A(MD)No.115 of 2017

M.Subramanian

.... Appellant/Petitioner

Vs.

1. The District Revenue Officer,
Trichy, Trichy District.

2. The Assistant Commissioner,
Revenue Court,
Trichy, Trichy District.

3. The Revenue Divisional Office,
Trichy, Trichy District.

4. The Tahsildar,
Trichy West, Trichy.

5. The Village Administrative Officer,
Pirattiyur East Village,
Trichy West, Trichy

6. Kalika Prameswari Temple,
Periya Kammala Theru,
Trichy, Rep. By its Executive Officer,
S.Rajendran

... Respondents/Respondents

Prayer:- Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 02.12.2016 in W.P(MD)No.16868 of 2016.

W.A(MD)No.116 of 2017



W.A(MD)Nos.114 to 116 of 2017

M.Subramanian

.... Appellant/Petitioner

Vs.

1. The District Revenue Officer,
Trichy, Trichy District.

2. The Assistant Commissioner,
Revenue Court,
Trichy, Trichy District.

3. The Revenue Divisional Office,
Trichy, Trichy District.

4. The Tahsildar,
Trichy West, Trichy.

5. The Village Administrative Officer,
Pirattiyur East Village,
Trichy West, Trichy

6. Kalika Prameswari Temple,
Periya Kammala Theru,
Trichy, Rep. By its Executive Officer,
S. Rajendran

... Respondents/Respondents

Prayer:- Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 02.12.2016 in W.P(MD)No.16868 of 2016.

In all Appeals:

For Appellant	: M/s.J.Anandhavalli
For R1 to R5	: Mr.V.Nirmal Kumar Government Advocate
For R6	: Mr.Lakshmi Shankar for Mr.T.V.Sivakumar

JUDGMENT



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(Judgment was delivered by N.SESHASAYEE. J.)

This batch of three appeals are directed against the common order of the learned Single Judge of this Court in WP(MD) Nos.16867, 16868 and 19223 of 2016 dated 02.12.2016.

2.1 The causes of action for filing these writ petitions is now set out as below:

(a) an extent of 8.26 acres situated in R.S.Nos.18/4, 40/2, 40/3,44/7 and 44/2 of Pirattiyur Village in Srirangam Taluk belongs to the 6th respondent. The property lies as one single block of agricultural land. According to the petitioner, the property was given in lease to Ganesan, Panneerselvam and Asokan by the 6th respondent. They, vide document dated 05.07.1990, inducted one Gurumoorthy as the sub lessee. The 6th respondent, did not recognize the transfer of lease to Gurumoorthy but still recognized Gurumoorthy as its lessor based on its independent arrangement with him. Atleast there is a



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consensus that Gurumoorthy eventually had become the lessor of the 6th respondent.

(b) Some time in 1992, Gurumoorthy registered himself as a cultivating tenant. Be that as it may, on 04.07.2000, Gurumoorthy transferred his leasehold right to Subramanian, the writ-petitioner/appellant herein. Pursuant to the said transfer, Subramanian approached the authorities concerned to recognize him as a cultivating tenant. Vide proceedings dated 10.06.2004, Subramanian was registered as a cultivating tenant. In that proceedings, the Special Officer of the 6th respondent appeared on its behalf.

(c) Subsequently, the Trustees of the Temple preferred an appeal in A.P. No.25 of 2004 before the Assistant Commissioner, Revenue Administration (the 2nd respondent) and he, vide his order dated 27.07.2009, allowed the appeal and remanded the matter back to the Original authority. After remand, nothing had taken place on the



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matter;

(d) Even as the application filed by the petitioner for recognizing him as a cultivating tenant was pending a denovo consideration of the authority, the 6th respondent, who is the trustee of the temple, had moved the revenue Court seeking eviction of its tenant Gurumoorthy under Section 19(i)(a)(2) of the Public Trust (Regulation of Agricultural Lands) Act, 1961 (henceforth would be termed the Public Trust Act, for convenience). The same appellate authority, who had earlier remanded the matter pertaining to the petitioner's application for declaring him as a cultivating tenant, would now pass an order dated 21.11.2011, directing the eviction of Gurumoorthy.

2.2 This is the setting and it gave rise to three writ petitions, and they are:

- a) When on the strength of the eviction order the 6th respondent tried to take possession, the appellant, who claims leasehold right from Gurumoorthy, moved this Court with the first of three petitions, namely, WP(MD) No.16867/2016, for restraining the 6th respondent



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from interfering with the petitioner's peaceful possession and enjoyment of the property.

- b) He would then file another petition in WP(MD) No.16868/2016 for a direction to the 4th respondent to dispose of his application to record him as a cultivating tenant, which to repeat is pending denovo consideration before the latter.
- c) While things stood thus, the petitioner complained that he faced constant disturbance to its possession and preferred a petition in the Public Grievance Day before the District Collector, and it came to be forwarded to the 3rd respondent. After enquiry the 3rd respondent found that the 6th respondent had already taken possession of the property, and passed an order dated 16.09.2016, in which, he had held that the 6th respondent temple had already taken possession. This Order gave rise to the third of his petitions in W.P.(MD)19223 of 2016.

3. The 6th respondent had filed its counter, wherein, it pleaded:



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- a) Gurumoorthy was originally the sub lessee of the land but later he came to be recognized as a lessee since 1992. So far as the temple is concerned, Gurumoorthy alone was its tenant and the petitioner has little to do with the property.
- b) The petitioner is running an educational institution and hence, he does not qualify to be recognized as a cultivating tenant since he does not contribute the physical exertion. Indeed the document dated 04.07.2000, which the appellant had obtained from Gurumoorthy cannot confer any right, since there cannot be a transfer right of a cultivating tenant.
- c) Be that as it may, the appellant had filed TR No.2/2000 before the 4th respondent to record himself as a cultivating tenant and also instituted a suit in O.S.No.477/2001 before the District Munsif Court, Trichy but without impleading the 6th respondent as a party in the said suit. During the enquiry of T.R.No.2/2000, only the Executive Officer of the Temple had participated, as he did not



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file his objections, nor did he defend the application of the appellant effectively, the 4th respondent vide his proceedings dated 10.06.2004 passed an order recording the petitioner as a cultivating tenant.

d) This order of the 4th respondent was put to challenge before the third respondent and the third respondent vide its order dated 27.07.2009 set aside the order of the 4th respondent and remanded the matter back to the 4th respondent. In its order, the third respondent had reasoned that the application for recording the appellant as a cultivating tenant had been filed without impleading the 6th respondent and also the Assistant Commissioner, HR&CE as parties.

e) While the matter was remanded in 2009, the petitioner did not pursue his petition for recording him as a cultivating tenant. In the meantime on 06.05.2013, the third respondent had passed an order evicting Gurumoorthy, who alone was the lessee of the 6th



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respondent.

- f) So far as the entitlement of the petitioner to have him recorded as a cultivating tenant is concerned, even as per the entries in the revenue records, the property in question is stated to be lying fallow, and that even Gurumoorthy had stopped cultivating it since around 2004. Secondly, the petitioner is an educationist and not an agriculturist, and unless a lessee contributes his physical exertion, he is not entitled to be registered as a cultivating tenant.

4. The learned Single Judge, in his Common Order, dated 02.12.2016, did not find the contentions of the appellant convincing enough to grant any relief in his favour. His line of reasoning was:

- a) The appellant, with his request for disposing his application for recording him as a cultivating tenant before the 4th respondent subsequent to the order of the remand, vide his communication dated 01.08.2016 has literally abandoned his application.



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- b) That the entire attempt of the petitioner is hit by laches as he had been in a state of inaction for atleast five years.
- c) That even as per the Adangal, the property is not shown to be under cultivation and that it is lying fallow, which belies the appellant's contention that he could be a cultivating tenant of agricultural lands.
- d) At the end of the day, the appellant is essentially an educationist and not agriculturist; and
- e) So far as the proceedings regarding the eviction is concerned, the appellant has a statutory alternative remedy under the Public Trust Act.

This order of the learned Single Judge is now under challenge in this batch of appeals.

5. Arguments for the Appellant:

5.1 The learned counsel for the appellant made the following submissions:

- a) On 05.07.1990, the then tenants of the properties of the 6th respondent had transferred their lease in favour of certain Gurumoorthy. This document is not disputed. On 04.07.2000,



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Gurumoorthy, in turn, had transferred his lease hold right to the appellant herein. What is required to be noted is that on 17.02.1992, Gurumoorthy had been recorded as a cultivating tenant by the 4th respondent. Now inasmuch as the 6th respondent had recognized transfer of lease in favour of Gurumoorthy in 1990, it is now estopped from challenging the transfer of lease by Gurumoorthy to the appellant.

b) It is not as if when the appellant moved the 4th respondent to record himself as a cultivating tenant he kept the 6th respondent in dark. Indeed, the then Executive Officer of the 6th respondent was arrayed as the 3rd respondent in T.R.No.2 of 2000. The order of the 4th respondent (in the writ petition) dated 10.06.2004 indicates that even though some objection appeared to have been taken by the 6th respondent, they were not attempted to be established. This order of the 4th respondent came to be challenged before the 2nd respondent in Appeal No.25 of 2004. In its order dated 27.07.2009, the 2nd respondent records that it could be gathered the appeal was preferred



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by the Fit Person of the Temple and that this Fit Person later came to be substituted by the Managing Trustee of the Temple. This Managing Trustee necessarily represents the entire Board of Trustees. The 2nd respondent did not choose to enter a finding on the merit of the appeal, but, opted to hold that inasmuch as the Trustees of the Temple were not given an opportunity to be heard by the 4th respondent, the matter was fit enough to be remanded. What it highlights is that even in 2009, the 6th respondent knew fully well that the appellant herein did make a claim to a right as a tenant over its property in question.

c) Now notwithstanding the fact the 6th respondent had adequate knowledge about the appellant claiming a right over the property chose to file a petition in A.P. 28 of 2011 against its erstwhile tenant Gurumoorthy. In fitness of things, the 6th respondent ought have impleaded the appellant herein as a party to the proceedings. Gurumoorthy did not respond to the notice and the proceedings proceeded. Indeed, Gurumoorthy did not even respond to the



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substituted service of notice which the 6th respondent had taken through paper publication. After all he would not respond since he had already transferred his right to the appellant. It is in these circumstances, on 21.11.2011, the 2nd respondent passed the order directing delivery of the property without hearing the party who ought to have been heard, namely the appellant herein.

d) After obtaining the aforesaid order dated 21.11.2011, the 6th respondent approached the District Collector for physical delivery of possession. An order indeed came to be passed on 22.04.2013 and in terms of the order, delivery too was stated to have been effected. On 06.05.2013, delivery was effected by the Village Administrative Officer. It was a mere paper dealing but till this moment, the appellant was never granted an opportunity to demonstrate that the transfer of lease he had obtained from Gurumoorthy has all the features satisfying requirements of a cultivating tenant in terms of the Public Trust Act.

5.2 The appellant has been in possession of the property can be borne out by



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the fact that when the 2nd respondent remanded the matter back to the 3rd respondent (for a *de novo* consideration of the appellant's right to have his name entered as a tenant in the record of tenancy). Indeed, the appellant began to pay land tax to the property which establishes his actual physical possession. It is exactly for this reason on 29.07.2016, the 6th respondent had approached the District Collector complaining that the appellant was attempting to prevent it from enjoying the property in a manner which it thought fit. This perhaps was the first ever notice that the appellant had obtained about the order of eviction. He therefore approached the Revenue Divisional Officer, the 3rd respondent with his representation dated 01.08.2016.

6.1 At one level, the appellant has been waiting for the 3rd respondent to take a call on his application to record himself as a tenant pursuant to the order of remand passed by the 2nd respondent and at another level, even as the earlier mentioned proceedings are pending, the 6th respondent claims that it had taken possession from somebody, who had zero interest in the property on the date when it claimed right to obtain possession. It is hence



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the appellant has sought a direction to the 4th respondent to expedite the disposal of his application to record himself as a cultivating tenant and along side has also challenged the other order passed under the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands), Act, 1961.

6.2 The learned single Judge, however, has overlooked the fact the appellant has been trapped without a hearing. When a matter is remanded for re-consideration, it is the obligation of the 3rd respondent to issue notice of his hearing on the petition for recording him as a cultivating tenant. Unfortunately, the consequence of the failure of the 3rd respondent to discharge his responsibility is shifted on the appellant, and he is now blamed that he has abandoned his petition. Secondly there cannot be a case for laches either, since the matter is already before the 3rd respondent. It is only the 6th respondent which played foul of the rule of fairness when it chose to institute a proceedings for eviction, when it knew too well that Gurumurthy might not even contest it. But 6th respondent is made to appear as a holy cow, argued the learned counsel.



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7. Argument of the Sixth Respondent:

7.1 Per contra, the learned counsel for the 6th respondent submitted that the appellant's prayer seeking a Writ of mandamus to direct the fourth respondent-Tahsildar in W.P.(MD)No.16868 of 2016 to hold an enquiry into his application is concerned, that may have to be understood in the backdrop of the subsequent events that followed after the remand. He also contended that the Court ought to consider whether a direction if now given to the fourth respondent would be meaningful. Developing his arguments, the learned counsel submitted that:

- The nature of the right which the appellant claims to sustain his three writ-petitions are traceable to a document, dated 04.07.2000. This document was executed not by Gurumurthy, the lessee of the 6th respondent, but by his father, based on certain authorisation given by the lessee. This authorisation which is made part of the record, does not authorise the lessee's father to transfer the leasehold right, but only authorised him to represent his son in judicial or quasi judicial proceedings and no more. Therefore, the document itself is executed



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by someone, who does not have the *locus standi* to execute it. Therefore, the very title of the appellant to maintain his petitions is incompetent.

- There is yet another reason why the alleged transfer of lease deed which the appellant relies on shall not be treated as granting him a right. Sec. 4 of the Public Trusts Act, mandates that no public trust shall personally cultivate, or lease out the land held by such trust, except in accordance with the provisions of this Act. In other words, this provision essentially provides for some kind of statutory supervision in the manner in which the lands of the public trusts must be managed. So far as the execution of lease etc. of the agricultural lands of the public trusts are concerned, it is governed by Sec.21 of the Public Trusts Act. It, in essence, provides that a lease deed must be executed in triplicate and have to be signed by the trustees of the public trust and the lessee, and out of the three copies so prepared, each of the parties shall retain one copy and the third copy must be entrusted to the Tahsildhar, and if in case any one of the parties



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evades execution of lease deed, then the other side should lodge the said deed in the office of the Tahasildar with his remark about the failure of the other side to join the execution of the lease deed. What could be derived from the above is that insofar as the lands belonging to the public trusts are concerned, a lease itself can be created only in the mode envisaged under Sec. 21 r/w Sec. 4 of the Public Trusts Act.

- The next aspect is that unless this document satisfies the stipulation under Sec. 21 of the Public Trusts Act, it vest no right in the appellant. Given the scenario, it would be impossible to construe that the appellant has even a *prima facie* possibility of establishing the jurisdictional point necessary for the fourth respondent to consider the appellant's application to record him as a cultivating tenant, more particularly, in cases where the lands belonging to a public trust. Consequently, he may not be able to maintain his writ-petitions.

7.2 Arguing further, the learned counsel submitted that:



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- It is not in dispute that the properties of the 6th respondent in question are governed by Public Trusts Act. Section 3 of the Act, makes it abundantly evident that the provisions of this Act, will have a overriding effect on all other existing clauses, in other words, as between the application of the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955 (T.N.Act 25 of 1955) and the Tamil Nadu Public Trusts Act, latter Act, will alone prevail.
- If the lease made over the document in favour of the appellant is perused, it is recited therein that the land itself has become incapable of being cultivated due to water logging etc. It is also recited in the document that even Gurumurthy, the lessee of the 6th respondent, could not cultivate the land.
- Insofar as the contention of the appellant that he was not issued any notice before taking possession is concerned, if the appellant cannot be considered as a lessee under the Public Trusts Act, then, there is no obligation on the 6th respondent or the authorities concerned to issue



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notice to the appellant.

- As long as the contractual relationship leading to the creation of a lease is not created within the meaning of the Public Trusts Act, no privity of statutory relationship is established between the sixth respondent and the appellant.

8. In reply the learned counsel for the appellant submitted that:

a)the appellant filed his petition to record himself as a cultivating tenant, not under the Tamil Nadu Cultivating Tenants Protection Act, 1955, but, the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act,1969. It is true that as between the Cultivating Tenants Protection Act and the Public Trust Act, the latter will prevail vide Section 3 of the Public Trust Act. However, for the purpose of recording a tenant under Act 10/1969 as per Section 2(8) thereof, a tenant who could be recorded as such includes a cultivating tenant within the meaning of Section 2(5) of the Tamil Nadu Public Trust Act, 1961. It could therefore be derived that notwithstanding the fact



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that the Cultivating Tenants Protection Act falls outside the purview of the Public Trust Act, still it is possible to invoke the provisions of Act 10/1969 if a tenant fulfils the criteria as a cultivating tenant under Public Trust Act.

b) If according to the appellant, delivery of the property was taken on 06.05.2013, it should have complied with the procedures prescribed under Sections 8, 9 and 10 of the Public Trust Act to be read along with Rule 23(A) of the Rules framed under the said Act. These provisions mandate that the 6th respondent ought to have filed a return before the authorized authority and also is required to lease out the property within 90 days. This apparently has not been done.

Discussion & Decision

9. Heated arguments were heard on how lease of the lands of public trusts could be created, and whether the lease which the appellant claims satisfies the criteria for recording him as a cultivating tenant, no matter whether it was under the Cultivating Tenant Protection Act, 1955 or under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. But the issue



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hinges on two admitted facts: (a) Irrespective of whether a lessee of the lands belonging to a public trust could transfer his lease, or whether a cultivating tenant could transfer his personal right as a cultivating tenant whether there at all a valid transfer of lease from Gurumurthy to the appellant de hors the application of the Public Trust Act even in the manner the appellant has projected his case; and (b) what is the state of land in relation to which the appellant makes a claim to have him registered as a cultivating tenant, no matter in which of the enactment which provides for it.

10. If provisions of the Public Trust Act is kept aside for a while and the document dated 04.07.2000 under which Gurumurthy is said to have transferred his lease to the appellant is considered, as rightly contended by the counsel for the 6th respondent, it was not executed by Gurumurthy but by his father, who had executed it on the basis of an authorisation that did not authorise him to transfer the lease which Gurumurthy enjoyed. Therefore where is the prima facie title which may enable the appellant even to sustain much of what he now contends?



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11. The second aspect is about the character of the property even at the time when the appellant claims to have obtained transfer of lease from Gurumurthy. The said document itself states that it was not in a cultivable state. Where is the possibility for the appellant to claim that he is a cultivating tenant of a land which either is not cultivated for decades, or is incapable of being cultivated. How is he going to overcome the statement in the very document dated 04.07.2000 under which he claims right, that the lands are incapable of cultivation. A recital in any document *prima facie* binds the parties to it, and so is the said recital in the document dated 04.07.2000. And, no recital operates as a conclusive admission and can be explained, but in the instant case there is hardly any explanation forthcoming from the appellant. Indeed, during the course of the arguments, some photographs were circulated to show that the lands in question, and they hardly show that the land was under any cultivation.

12. The appellant claims to have obtained transfer of lease on 04.07.2000,



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and claims that he continues to be in possession till date, or at least till date the possession of the land was handed over by the District Collector to the 6th respondent through the Village Administrative Officer. Has the appellant any evidence that he has been cultivating the land during the interregnum? None. He claims he is in possession, but that possession, as stated earlier, is traceable to an incompetent document.

13. How lease of land belonging to public trusts must be created is provided with absolute clarity in the Public Trusts Act. And anything done contrary to the procedure prescribed cannot be accommodated in law. When law prescribes a mode of doing an act, it shall be done in the manner so prescribed and not in any other way. That the 6th respondent did not follow the statutory procedure for granting lease to Gurumoorthy cannot be taken advantage of by the appellant since there cannot be an estoppel against statute.

14. Is this court, while exercising jurisdiction attempts to enter a finding on facts, something the Courts ordinarily refrain from? This court does not consider it to be so. The two facts – that the document dated 04.07.2000 is



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incompetent and that the lands in question are not under cultivation for decades figure as the legal consequence of the existing state of affairs which the appellant either cannot dispute or can he ever dispute. These are the basic facts which are fundamental to the emergence of the cause for the appellant's triple action. A disputed question under circumstances may arise for deciding which a statutory authority is vested with the exclusive authority to decide, only if these foundational facts also remain a disputed fact, but not otherwise. When the stated position of the appellant exposes the existence of a right that law recognises, this court cannot ignore it and direct the statutory authority to waste its time in requiring the latter to decide.

15. The appellant cannot now sustain W.A.(MD)No.115 of 2017 in W.P(MD)No.16868 of 2016 when he claims himself to a lessee which he is not in relation to a land which is not under cultivation for decades. Turning to W.A.(MD)No.116 of 2017 in W.P(MD)No.19223 of 2016 if the transfer of the purported lease by Gurumurthy on its very face is incompetent necessarily Gurumurthy alone could be treated as the lessee by the 6th



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respondent. Therefore, the appellant, with no right in him, cannot object to the 6th respondent approaching the District Collector to evict Gurmurthy. The only issue is when the 6th respondent knew that the appellant had claimed a right over the property in question, whether it proceeding only against Gurumurthy without any notice to the appellant breaches the rule of fairness. As stated a few times, the document dated 04.07.2000 vests no right in him, therefore, a mere claim without any legal right to make a claim does not entitle the appellant to feel aggrieved. The fate of these two appeals will automatically decide the fate of W.A(MD)No.114 of 2017 against W.P(MD)No.16867 of 2016.

16. To conclude, this court does not find merit in any of the three appeals and they are dismissed. No costs.

**(N.S.S., J.) & (P.V.M., J.)
19.07.2024**

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AND
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CM

Pre-delivery Judgment in
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19.07.2024