BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.04.2025

PRONOUNCED ON : 09.05.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.(MD)Nos.5723 of 2016 & 5915 of 2020
and
W.M.P(MD)No.5112 of 2020

W.P(MD)No.5723 of 2016:

Mukkulathor Kalvi Kuzhu,
Represented by its President,
Thiruverumbur, Trichy-13. ... Petitioner

Vs.

1. The District Collector,
   Trichy District,
   Trichy.

2. The District Revenue Officer,
   Trichy District,
   Trichy.

3. The Revenue Divisional Officer,
   Trichy.

4. The Tahsildar,
   Thiruverumbur Taluk,
   Trichy District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.Aa4/73951/1990, dated 18.02.2016, quash the same and direct the respondents to issue patta to the petitioner for the land situate in S.Nos.355/1 and 355/3 of Koothaiappar Village, Thiruverumbur Taluk, Trichy District measuring 2.51 acres and 11.68 acres respectively.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.C.Satheesh
Advocate Advocate

W.P(MD)No.5915 of 2020:

Mukkulathor Kalvi Kuzhu,
Represented by its President,
Thiruverumbur, Trichy-13. ... Petitioner

Vs.

1. The District Collector,
   Trichy District,
   Trichy.

2. The District Revenue Officer,
   Trichy District,
   Trichy.

3. The Tahsildar,
   Thiruverumbur Taluk,
   Trichy District.

4.Tamil Nadu Adi Dravidar Housing and Development
Corporation Limited (TAHDCO),
Represented by its Managing Director,
No.31, Cenotaph Toad,
2nd Lane, Teynampet,
Chennai-600 018.

5.The District Manager,
Tamil Nadu Adi Dravidar Housing and Development
Corporation Limited (TAHDCO),
Collectorate Road, Trichy-1.

6.The District Adi Dravidar and Tribal Welfare Officer,
Trichy District,
Collectorate, Trichy. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.Aa4/73951/1990, dated 07.02.2020, quash the same and forbear the respondents from entering into the petitioner's property bearing S.No.355/1 measuring 2.51 acres and S.No. 355/3 measuring 11.68 acres of Koothaippar Village, Thiruverambur Taluk, Trichy District.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.C.Satheesh
Advocate Advocate

COMMON ORDER

The petitioner in both the writ petitions is one and the same. In W.P(MD)No.5723 of 2016, the petitioner challenges the order of the 2nd respondent, dated 18.02.2016 and consequently, seeks issuance of patta to the petitioner in respect of land situated in S.Nos.355/1 and 355/3 of Koothaiappar Village, Thiruverumbur Taluk, Trichy District.

2. In W.P(MD)No.5915 of 2020, the petitioner challenges the order of the 1st respondent District Collector, dated 07.02.2020 and consequently seeks to forbear the respondents from entering into the petitioner's property.

3. The petitioner is a registered Society under the provisions of the Tamil Nadu Societies Registration Act. In fact, the petitioner was formed as early as in March 1945, with a laudable object to establish educational institutions for the benefit of the residents in and around Thiruverumbur. The petitioner initially started with a Primary School which later developed into a Higher Secondary School. Thereafter, the petitioner Society runs two schools under the name and style of Mukkulathor Higher Secondary School and Mukkulathor Elementary School where more than 1500 students are studying.

4. Facts in W.P(MD)No.5915 of 2020:

(i) The Board of Revenue under proceedings, dated 25.04.1948 assigned vacant lands in Survey Nos.355/1 and 355/3 of Koothaippar Village, Thiruverumbur Taluk, Tiruchirapalli District measuring 2.51 acres and 11.68 acres respectively for the benefit of the petitioner-school. The petitioner has also put up school buildings in the said lands and is providing free education to students, especially poor and under privileged children residing in and around Thiruverumbur. Subsequent to the assignment and the schools being set up, a portion of the land was allotted to run a Harijan Welfare Hostel by the Social Welfare Department, Government of Tamil Nadu, to which the petitioner did not raise any objections.

(ii) Subsequently, the 1st respondent by orders, dated 03.01.2000 and 22.01.2001, directed the lands in Survey No.355/1 which were already assigned in favour of the petitioner to be handed over in favour of Tamil Nadu Water and Drainage Board, in anticipation of an allotment order in favour of the said Board. The petitioner Society challenged the said orders in W.P.Nos.9992 of 2000 and 4104 of 2001. By a common order, dated 19.10.2009, this Court set aside both the orders and held that once lands were assigned, it cannot be withdrawn at the will and pleasure of the Government, without providing sufficient opportunity to the beneficiary. Admittedly, the said order has become final, with no appeal being preferred by the official respondents.

(iii) Even earlier, an attempt was made by the Government to cancel the assignment issued to the petitioner Society on the ground that the petitioner Society had violated the conditions of assignment. However, the same was challenged in W.P.No.9671 of 1985 and this Court set aside the cancellation order. The said order was unsuccessfully challenged in W.A.No.1089 of 1997. Despite the finality in the above proceedings, the petitioner was shocked to note that the lands in Survey No.355/1 were being marked by a Contractor, who was assigned a task of putting up construction. On enquiry, the petitioner came to know that the lands had been allotted to the 4th respondent and that the 5th respondent has been appointed for putting up construction and that the ultimate beneficiary was the 6th respondent. The petitioner filed W.P(MD)No.23559 of 2019 and by an order, dated 08.11.2019, this Court directed the 1st respondent to complete the enquiry based on the petitioner's complaint and pass final orders. This Court also granted *status quo* order to protect the possession of the petitioner in the meantime.

(iv) According to the petitioner, pursuant to the said order, enquiry was conducted on 19.11.2019. However, on 19.02.2020, the respondents' contractor entered into subject lands bearing Survey No.355/1 & 355/3 and started putting up construction in gross violation of the order of *status quo* granted by this Court. Contempt notice was issued by the petitioner and in response to the contempt notice, according to the petitioner, an ante-dated order, dated 07.02.2020 was passed by the 1st respondent directing resumption of lands assigned to the petitioner, alleging violations, which is under challenge in W.P(MD)No.5915 of 2020.

5. Facts in W.P(MD)No.5723 of 2016:

(i) The Board of Revenue under proceedings, dated 25.04.1948 assigned vacant lands in Survey Nos.355/1 and 355/3 of Koothaippar Village, Thiruverumbur Taluk, Tiruchirapalli District measuring 2.51 acres and 11.68 acres respectively for the benefit of the petitioner-school. The petitioner has also put up school buildings in the said lands and is providing free education to students, especially poor and under privileged children residing in and around

Thiruverumbur. Subsequent to the assignment and the schools being set up, a portion of the land was allotted to run a Harijan Welfare Hostel by the Social Welfare Department, Government of Tamil Nadu, to which the petitioner did not raise any objections.

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(iii) Even earlier, an attempt was made by the Government to cancel the assignment issued to the petitioner Society on the ground that the petitioner Society had violated the conditions of assignment. However, the same was challenged in W.P.No.9671 of 1985 and this Court set aside the cancellation order. The said order was unsuccessfully challenged in W.A.No.1089 of 1997.

(iv) The petitioner subsequently made an application for issuance of patta on 07.10.2013 to the 4th respondent Tahsildar, Thiruverumbur Taluk. W.P(MD)No.17277 of 2013 was also filed for issuance of writ of mandamus to issue patta to the petitioner. This Court, by an order, dated 25.08.2015 directed the respondents to consider the petitioner's application for patta, dated 07.10.2013 within a period of twelve weeks. Contrary to the order of this Court, according to the petitioner, the revisional authority, namely the 2nd respondent/District Revenue Officer issued notice to the petitioner on 14.12.2015 calling upon the petitioner to produce all the relevant documents with regard to the application for patta. The petitioner under the bonafide impression that after conducting due enquiry, the matter would be referred to the 4th respondent for passing orders since the 4th respondent Tahsildar is the competent authority, attended the enquiry. However, to the petitioner's surprise and shock, in and by order, dated 18.02.2016, the 2nd respondent rejected the petitioner's request for patta. Challenging the said order, W.P(MD)No.5723 of 2016 has been filed.

6. The submission of the learned counsel for the petitioner in W.P(MD)No.5723 of 2016:

The learned counsel for the petitioner would submit that insofar as W.P(MD)No.5723 of 2016, this Court had specifically directed the Tahsildar to pass order on the petitioner's application for patta. However, the revisional authority, namely the District Revenue Officer, Tiruchirapalli has proceeded to pass the impugned order which is clearly without jurisdiction. The learned counsel for the petitioner would further submit that the competent authority is only the Tahsildar and when the statute provides for an appeal to the Revenue Divisional Officer and a further revision to the District Revenue Officer, depriving the petitioner of two efficacious remedies under the Act, the District Revenue Officer ought not to have assumed jurisdiction, especially contrary to the orders of this Court. Therefore, insofar as W.P(MD)No.5723 of 2016, the learned counsel for the petitioner would submit that the petitioner is entitled to the relief sought for in the said writ petition.

7. The submission of the learned counsel for the petitioner in W.P(MD)No.5915 of 2020:

Insofar as W.P(MD)No.5915 of 2020, the learned counsel for the petitioner submits that the 1st respondent has no jurisdiction to pass an order of resumption and in any event the said order being passed without an opportunity by way of show cause, was clearly violative of principles of natural justice. He would further submit that even in the earlier round of litigation, especially in W.P.Nos.9992 of 2000 and 4104 of 2001, which were allowed by this Court in favour of the writ petitioner on 19.10.2009, this Court had in no uncertain terms held that the State Government did not have any absolute right to resume the lands, wholly or in part and that any proceedings for resumption of lands already assigned can only be after providing sufficient opportunity to the grantee. It is needless to state that such power available to the authority concerned can be certainly exercised subject to same being in accordance with law.

8. The submission of learned Additional Advocate General in W.P(MD)No. 5723 of 2016:

Per contra, the learned Additional Advocate General for the respondents would submit that the subject lands are Government lands, which have been assigned to the petitioner-Society and therefore, the District Revenue Officer is the competent authority for initiating land alienation process on behalf of the

District Collector and the petitioner is not entitled to patta, since the subject lands fall within the purview of such land alienation process. The learned Additional Advocate General would further state that the Tahsildar, Thiruverumbur Taluk has already given a detailed report to the fact that Survey No.355/1 has been subdivided as Survey Nos.355/3A1 and 355/3A2 and as admitted by the petitioner as well, Government Backward Class Hostel has already been constructed in Survey No.355/1 and there is also a Circular Well, Over Head Tank besides vacant lands which are not utilized by the school. Additionally, he would contend that Survey No.355/3A1 contains the playground of the Mukkulathore Higher Secondary School. In Survey No. 355/3A2, there are also Tamil Nadu Students Home building, kitchen, huts, shops and type institute. In view of the above, the Tahsildar recommended for issuance of patta in respect of 0.95.5 Ares alone comprised in Survey No. 355/3A2 in favour of Mukkulathore Higher Secondary School. He would further submit that the Revenue Divisional Officer, Tiruchirapalli made a spot inspection and gave a report on 08.04.2024 stating that the school has not utilised the lands assigned to it and that the school has also contravene terms and conditions of the assignment by using the lands for commercial purposes. Only under such circumstances, the proceedings for reclaiming the lands assigned to the petitioner were initiated. Insofar as the jurisdiction assumed by the District Revenue Officer, the learned Additional Advocate General would submit that under Section 13 of the Tamil Nadu Patta Passbook Act, the District Revenue Officer is competent to initiate suo motu proceedings and therefore, no error can be pointed out in the exercise of the consideration of the petitioner's application for patta and consequently rejection of the same.

9. The submission of learned Additional Advocate General in W.P(MD)No. 5915 of 2020:

Insofar as W.P(MD)No.5915 of 2020, the learned Additional Advocate General would contend that show cause notice was issued on 23.10.2019 calling upon the petitioner to attend the enquiry before the District Collector, Tiruchirapallii and only thereafter, the District Collector has forwarded the enquiry report on 28.01.2020 to the Additional Chief Secretary and Commissioner of Land Administration, Chennai stating that only 0.42 acres out of the total lands assigned have been used by the school for the purposes allotted and that the remaining 12.89 acres have not been used for the purposes allotted and that the petitioner Society is exploiting the lands for personal financial benefits by using it for commercial purposes by letting it out for rent, contrary to the allotment orders of the Government. He would therefore submit that it is only in this backdrop that the order of resumption was passed in respect of 12.89 acres excluding 0.42 acres in respect of which the petitioner Society was found to be utilizing the lands for the originally allotted purposes. The learned Additional Advocate General would further submit that there is absolutely no infirmity or error in the impugned orders and seeks for dismissal of both the writ petitions.

10. Written arguments have also filed in both these writ petitions on behalf of the respondents. Apart from the above contentions that have been already set out herein above, additionally the maintainability of the writ petitions by the petitioner without impleading Mukkulathor Higher Secondary School has been raised as a preliminary contention to dismiss the writ petition.

11. I have carefully considered the submissions advanced by the learned counsels on either side.

12. Conclusion:

(i) With regard to the maintainability of the writ petition, unfortunately, I am unable to countenance the said arguments for two reasons. Firstly, such a stand has not been taken in the counter affidavit filed in both the writ petitions. Secondly, even in the earlier writ proceedings, it is only the present petitioner who has approached this Court and obtained favourable orders. Even at that point of time, this preliminary objections was never taken by the respondents. In view of the above, I find that the writ petitions cannot be dismissed on the ground of Mukkulathor Higher Secondary School not being made a party or on the ground that Mukkulathor Higher Secondary School is not the writ petitioner. Another contention which is raised in the written arguments is that the assignment of land was made only for the purposes of welfare of students and when the school has not followed the norms and conditions, it would be permissible for the District Revenue Officer to initiate land alienating process on behalf of the District Collector and therefore, there was no incompetency for the 2nd respondent to have pass an order, more so since the alienation was free of cost by the Government and the District Revenue Officer was the competent authority to conduct enquiry and pass orders on behalf of the District Collector in this regard.

(ii) It is also contended that the matter pertains to land alienation, the

District Revenue Officer was the competent authority. However, nothing is placed on record before me to substantiate such claims. Further, when the original assignment itself has reserved the right of resumption only with the State Government and not even with the District Collector. I am unable to appreciate the said contention that the District Revenue Officer was competent to pass orders of resumption on behalf of the District Collector. This contention is further discussed in detail while dealing with the power of resumption in the following paragraphs.

(iii) In fact even before going into the merits of the respective contentions advanced by the learned counsel for the petitioner and the learned Additional Advocate General, it would be relevant to point out that the learned counsel for the petitioner fairly gave a proposal before this Court stating that in Survey No. 355/1, an Over Head Tank has already been constructed and in a portion of Survey Nos.355/1 and 355/3A1, hostel has already been constructed. Similarly, in Survey No.355/3A2 and 355/3B also Government Backward Class Hostel and houses as well as BHEL Labour Union buildings have been constructed. The petitioner fairly submitted that they are willing to give up their claims insofar as the said lands that have already been utilized and the petitioner is willing to restrict its right to lands in Survey No.355/3A1 to an extent of 5.98 acres alone. Though I adjourned the matter several times for the respondents to come back on the said offer proposed by the learned counsel for the petitioner, the respondents have not chosen to revert on the same, Hence, I am proceeding to decide these writ petitions on merits.

(iv) Two points arises for consideration. The first point is whether the District Revenue Officer, Trichy was competent to decide the application for issuance of patta and the second point is whether the District Collector is competent to order resumption of lands. Insofar as the first point for consideration is concerned, admittedly under the provisions of Patta Passbook Act, the Tahsildar is the competent authority to exercise powers conferred upon him which include issuance of patta. To any order of Tahsildar made under Section 10 of the Act, under Section 12, an appeal is provided to the Revenue Divisional Officer. Further, revision is made available under Section 13 to the District Revenue Officer. Timelines are also fixed for preferring an appeal and revision under the Tamil Nadu Patta Passbook Rules, 1987. Therefore, ordinarily it is the Tahsildar who will decide an application for issuance of patta at the first instance. The learned Additional Advocate General would invite my attention to Section 13 and contend that Section 13 provides for District Revenue Officer to even on his own motion or on the application of a party to call for and examine records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceedings under this Act and pass orders as he may think fit.

(v) As regards the present case is concerned, the learned Additional Advocate would therefore submit that under Section 13, the 2nd respondent was certainly entitled to pass orders and further, as required under the proviso to Section 13, the District Revenue Officer has also given an opportunity to the petitioner. This Court by an order, dated 25.08.2015 in W.P(MD)No.17277 of 2013 directed the respondents to consider the representation of the petitioner, dated 07.10.2013 within a period of twelve weeks. However, I find that the prayer sought for in that writ petition was for issuance of writ of mandamus to direct the respondents to issue patta to the petitioner for the lands situated in Survey No.355/1 measuring 2.51 acres and 355/3 measuring 11.68 acres. The larger relief prayed for was not granted and the respondents were only directed to dispose of the petitioner's representation seeking issuance of patta. The District Revenue Officer, who has passed the order is not even arrayed as a party in the said writ petition. In the light of the above, when there is a specific direction issued by this Court, it would have been proper either for the Revenue Divisional Officer, Tiruchirapalli or the Tahsildar, Thiruverumbur Taluk, the competent authority to have taken up the application of the petitioner and pass final orders. Admittedly, the District Revenue Officer is a revisional authority under the Patta Passbook Act. In the light of the directions passed by this Court and the pursuant suo motu exercise of power by District Revenue Officer, Tiruchirapalli, I find that the petitioner has been clearly put at disadvantage. If either the Tahsildar or the Revenue Divisional Officer had passed an order in compliance of the directions of this Court in W.P(MD)No.17277 of 2013, atleast the petitioner, if aggrieved, would had an opportunity to file a revision before the District Revenue Officer, Tiruchirapalli. The exercise of power by the District Revenue Officer, Tiruchirapalli has clearly deprived the petitioner of such an opportunity to challenge the order of the Tahsildar / Revenue Divisional Officer, Tiruchirapalli. Therefore, I am not able to countenance the submission of the learned Additional Advocate General that the suo motu powers have been exercised by the District Revenue Officer and therefore, no interference is warranted. In the light of the above, I am inclined to interfere with the order of the District Revenue Officer, Tiruchirapalli in W.P(MD)No.

5723 of 2016.

(vi) As far as W.P(MD)No.5915 of 2020 is concerned, the main contention taken by the learned counsel for the petitioner is that the power of resumption is vested only with the Government and the 1st respondent had no jurisdiction or authority to pass the impugned order of resumption. Moreover, he also contended that the said order of resumption has been passed without any show cause notice or enquiry being conducted and thereby there is also violation of principles of natural justice. I have already discussed the earlier litigation between the petitioner-Society and the statutory respondents. This Court in W.P(MD)Nos.4104 of 2001 and 9992 of 2000 took note of the order in W.A.No.1089 of 1997 setting aside the cancellation of land in favour of the petitioner and held that there is an obligation on the part of the respondents to ascertain whether the petitioner-Society has been properly utilizing the lands and if not, whether the lands have to be resumed. Even in the common order, dated 19.10.2009, this Court clearly held that it is the obligation of the District Collector or any other competent authority intending to resume or permit another person to use portion of the lands assigned to the petitioner to undertake such exercise only after giving an opportunity to the petitioner. The contentions of the official respondents that the Government has got absolute right to resume the land wholly or in part was rejected. Therefore, in the light of the earlier orders, it is clear that the respondents can only follow due process of law before proceeding to resume lands assigned to the petitioner-Society. In the present case, the impugned order of resumption has been passed by the 1st respondent District Collector. The primordial challenge to the said order of the 1st respondent is that the power of resumption even under the proceedings dated 25.04.1948 assigning the lands to the petitioner-Society was only reserved with the State Government and therefore, the District Collector could not have exceeded his power and jurisdiction and assumed the power vested with the State Government. I see force in the said submission made by the learned counsel for the petitioner. I have also gone through the proceedings assigning the lands by the Board of Revenue to the petitioner-Society as early as 25.04.1948. In Regulation 5 and again Regulations 11 and 12, it is clear that the power of resumption is only with the Government. Therefore, the impugned order that has been passed by the District Collector is clearly without jurisdiction. Further even otherwise the proceedings initiated by the District Collector ordering resumption are not preceded by any show cause notice or any enquiry giving fair or reasonable opportunity to the petitioner-Society which was infact clearly indicated in the earlier orders passed by this Court.

13. For all the above reasons, the impugned orders, dated 18.02.2016 and 07.02.2020 are quashed and the Writ Petitions are allowed as prayed for.No costs. Consequently, connected Miscellaneous Petition is closed.

09.05.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
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To:

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   Trichy.

2. The District Revenue Officer,
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   Trichy.

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P.B.BALAJI, J.

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