

(2014) 08 MAD CK 0282

In the Madras High Court

Case No : Writ Appeal No. 309 of 2009 and W.P. No. 13941 of 2009

A. Muniappan

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : AIR 2014 Mad 215 : (2014) 5 CTC 241 : (2014) 6 MLJ 257

Hon'ble Judges : T.S. Sivagnanam, J; N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Full Bench

Judgement

N. Paul Vasantha Kumar, J.—These matters are posted before us on the reference made by the Division Bench consisting of Mr. Justice D. Murugesan and Mr. Justice Vinod Kumar Sharma (as they then were) by reference dated 16.11.2010 to answer the following questions:

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

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

For deciding the first issue, the following facts and orders passed by this Court are to be necessarily considered.

2. The Burma Indian Co-operative House Construction Society Limited was formed with an object of rehabilitating the repatriates from Burma with the aid of the Central Government in February, 1968. The said society purchased the land to an extent of 24.57 acres situate in S. Nos. 131/2A, 142, 136/1, 140/1, 141/1, 137/1, 138/2B, 136/2, 131/1A and 130 of Palavakkam Village, Saidapet Taluk and according to the Society in the year 1991 as per the orders of the Director of

Rehabilitation, Chennai, 20 Srilankan refugees were temporarily permitted to reside in the said Society land by the District Revenue Authority till alternate accommodation is provided to them. Along with the said Srilankan refugees some local people also encroached into the said lands. According to the appellants and writ petitioners, an attempt was made to dispossess them.

3. The association approached this Court by filing W.P. No. 6750 of 1991 praying for a direction contending that in about 4 acres of land situate in Palavakkam village called Tiruvalluvar Nagar, about 230 families are residing for long number of years and on 22.4.1991 the members of the said Tamil Nadu Slum Dwellers Federation were asked to vacate by public announcement and therefore the members went before the Revenue Officials, who in turn informed that the said land belongs to the Burma Indian Co-operative House Construction Society Limited and therefore the encroachers are not entitled to reside in that place. According to the Tamil Nadu Slum Dwellers Federation, which was formed by the encroachers, even assuming that they are encroachers, they can be ordered to be vacated only by following the procedures contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905. This Court by order dated 26.4.1991 disposed of the writ petition holding that there seems to be some dispute regarding ownership of the land and without going into the merits of the matter, the District Collector was directed to enquire into the matter on the request made by the Society and pass orders within a period of six weeks after issuing notice to the Federation and till orders are passed, a direction was issued not to dispossess the members of the Federation/encroachers. Pursuant to which, on 14.2.1993 the District Collector, Kancheepuram passed an order stating that he has no jurisdiction to deal with the land as the land is a patta land.

4. Again the Tamil Nadu Slum Dwellers Federation filed W.P. No. 14270 of 1993 before this Court on behalf of its members/occupants praying for issuing a writ of mandamus forbearing the District Collector and Others from evicting 230 members in the above said 4 acres of land. In the said writ petition the Burma India Co-operative House Construction Society was impleaded as 5th respondent, who claimed title and contended that the members of the Federation have no right to enter into the land belonging to the Society. Since there was a dispute and due to the pendency of the Civil Suit in O.S. No. 543 of 1993 filed by the Federation and Another suit was pending in O.S. No. 937 of 1992 before the DMC, Poonamallee in respect of the said land, this Court dismissed the writ petition holding that the dispute appears to be of rival dispute, which cannot be decided under Article 226 of the Constitution of India. This Court also expressed displeasure regarding suppression of filing of the civil suit and dismissed the writ petition filed by the Federation.

5. The Burma Indian House Construction Society Limited filed W.P. No. 8992 of 1991 and Another association of occupants also filed W.P. No. 15611 of 1993 and those writ petitions were heard together and disposed of on 11.1.1994 holding that a comprehensive suit in O.S. No. 3311 of 1993 was filed against the Society

and Revenue Officials, praying for issuance of patta and due to the pendency of the suit, writ petitions cannot be entertained and the parties were directed to abide by the decision of the Civil Court.

6. Again the Burma Indian House Construction Society filed W.P. No. 8236 of 2001 for issuing writ of mandamus directing the Revenue Officials to remove all encroachments and unauthorised occupants in respect of the lands allotted and earmarked to the Society in S. No. 131/2A (4.2 acres), Palavakkam Village, Saidapet Taluk and this Court by order dated 25.4.2001 directed the Secretary, Home Department and Secretary Public Rehabilitation Department, Government of Tamil Nadu to consider the representation of the Society and pass orders within a period of four weeks.

7. The said Society again filed W.P. No. 38168 of 2002 before this Court praying for removal of encroachments and unauthorised occupants in respect of the lands and order restoration of the same to the Society. In the said writ petition this Court passed order on 9.10.2002, by holding that the relief sought for by the petitioner (Society) to remove the encroachment of the unauthorised occupants from the private property of the Society is not maintainable in law as there is no public duty cast on the official respondents and the Society has no enforceable statutory right to seek removal of encroachment of unauthorised occupants in the private land and granted liberty to approach the competent Civil Court. Having aggrieved over the said order W.A. No. 477 of 2004 was preferred by the Society and the Division Bench of this Court passed the following order on 10.2.2003:

"4. Instead of entertaining the appeal, we are of the view that the appellant can be given an opportunity of making a representation afresh to the respondents and the respondents can be directed to dispose of the same on merits.

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

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

8. Pursuant to the said direction issued by the Division Bench dated 10.3.2003, the District Collector, Kancheepuram by proceedings dated 17.8.2003 directed the Tahsildar, Tambaram to verify and find out the encroachments in the lands belonging to the Society and file a report. After seeing the report, the Tahsildar was ordered to assign 0.5 acre (1.5 cents) of land at Vengambakkam village for each of the families of the Srilankan Tamil repatriates, who have been temporarily accommodated at the site belonging to Burma Indian Co-operative House Construction Society Limited and resettle at Vengambakkam village along with those who were already settled there. As there was no possibility for any other encroachers to be accommodated in the Tamil Nadu Slum Clearance Board area the Tahsildar directed to remove the encroachments after making necessary arrangements as stated supra and the aggrieved persons were granted liberty to prefer appeal before the Special Commissioner and Commissioner of Land Administration, Chepauk, within 30 days. The Special Commissioner, through memorandum dated 29.10.2003 in the appeal filed by some of the persons, who were in possession, stated that the land in question does not come under the purview of the Tamil Nadu Land Encroachment Act, 1905, and the said Act can be implemented only in respect of the Government Poramboke lands and hence the appellants were directed to approach the competent Civil Court.

9. The Residents' Welfare Association (occupants) again filed W.P. No. 29235 and 29330 of 2007 before this Court and the Division Bench of this Court taking note of the earlier orders passed by the Division Bench dated 20.12.2007 as well as the order of the District Collector dated 17.8.2003 and having regard to the fact that the parties are litigating for the past over 13 years on facts held thus,

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

(a) The order impugned in the writ petitions was passed by the District Collector, only in pursuance of the direction issued by the Division Bench of this Court in W.A. No. 477 of 2003 dated 10.2.2003. The representatives of the encroachers have participated in the enquiry conducted by the District Collector and they have been granted a fair hearing. Therefore, neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned.

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

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

10. Therefore, we see no reason to interfere with the impugned order of the

District Collector dated 17.8.2003. However, it is seen from the impugned order itself that the District Collector has directed the Tahsildar, Tambaram, to proceed further in the matter. Therefore, it is always upto the individuals to lodge objections before the Tahsildar, when individual notices are issued to them.

11. Accordingly, the writ petition is disposed of with liberty to the individual members of the Petitioner Associations, to raise all objections before the Tahsildar, Tambaram, when notices of eviction are served on them."

As against the said order of the Division Bench, the aggrieved persons filed SLP No. 5533, 5534 of 2008 before the Hon'ble Supreme Court and the Supreme Court dismissed the Special Leave Petitions by specifically holding as follows:

"Heard the learned counsel for the parties.

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

The SLPs are accordingly dismissed."

Thereafter, the individual notices were issued by the Tahsildar, Tambaram to the occupants. The individual members of the Association subsequently challenged the notices issued in W.P. No. 30329 of 2008 and the said writ petition was dismissed by the learned single Judge in the light of the Division Bench Judgments giving liberty to the Revenue Officials to initiate eviction, against which the writ appeal is filed and reference is made in the said writ appeal as stated supra.

10. The learned senior counsel appearing for the third respondent raised an objection as regard the maintainability of the writ petitions on the ground that they are barred by res judicata. To consider this issue, a brief prelude as regards the contentions advanced on either side would be necessary.

11. The learned counsel for the petitioners/appellants, after referring to the averments in the affidavit filed in support of the writ petition with reference to the manner in which the land was allotted to Burma Society Ltd., submitted that the members of the Society did not occupy the land and it is the petitioners, who occupied the land and put up huts, semi-permanent structures and were living without any interruption, several of their houses have been assessed to property tax, they have secured electricity connection and door numbers etc., have been provided.

12. It is further submitted that the third respondent Society is a defunct Society and such information was obtained by the petitioners/appellants under the Right to Information Act. Therefore, it is submitted that the present impugned action for evicting the petitioners/appellants pursuant to the Order, dated 17.08.2003 itself is to benefit "land sharks" and not for the Burma repatriates and none of the Burma repatriates are there and the lands were sold to real estate brokers. Further, it is submitted that the provisions of the Tamil Nadu Land Encroachment Act, 1905, are not applicable to Patta lands and the impugned order of eviction,

dated 17.08.2003, is without jurisdiction.

13. It is submitted that what is prevented by the statute cannot be done by a Court Order and Court cannot vest jurisdiction. In this regard, reference was made to the decision of the Honourable Supreme Court in the case of Supreme Court Supreme Court Bar Association Vs. Union of India and Another, . Further, it is submitted that there cannot be any estoppel against statute and concession of counsel cannot override statutory mandatory provisions. In this regard, the learned counsel placed reliance on the of the decision of the Honourable Supreme Court in the case of Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others, . By relying upon the decision in the case of Deo Narain Singh v. Daddan Singh and Others, 1986 (Supp) SCC 530, it is submitted that the Honourable Supreme Court dismissed the special leave petition by a non-speaking order and when it is clear that the provisions of the Tamil Nadu Land Encroachment Act is not applicable, the earlier order would be per incuriam as the law, which was not applicable, was mistakenly applied. Therefore, the petitioners/appellants are entitled to canvass the question as regards the applicability of the Tamil Nadu Land Encroachment Act to the lands in question, which are private Patta lands.

14. The learned senior counsel appearing for the third respondent Society submitted that the Division Bench in W.A. No. 477 of 2003, dated 10.02.2003, observed that the appellant therein, being a Society, registered under the Societies Registration Act, consisting of Burma Indians and repatriates, and that the same has been formed pursuant to the policy of the Government to rehabilitate them and the entire sale consideration for the land in question has been funded by the Central Government and to see that the said object is not frustrated by unlawful means, the Division Bench opined that direction to the Collector, Kancheepuram District, is necessary. Pursuant to the said order, passed by the Division Bench, proceedings were initiated, which culminated in the impugned order, dated 17.08.2003.

15. It is further submitted that out of the total extent of 24 Acres, which was purchased utilizing the Central Government funds, about 4.47 Acres was allowed to be occupied by the Government to accommodate the Srilankan Refugees and in this regard, a temporary permission was granted. It is submitted that the Thiruvalluvar Nagar Residents General Welfare Association, petitioner in W.P. No. 29235 of 2007, in the affidavit filed in support of the writ petition raised a contention regarding the non-applicability of the Tamil Nadu Encroachment Act and the Society having disposed of the land to third parties invoking the power under the Land Encroachment at their behest is bad in law as they have a remedy in the Civil Court. It was further contended that the invocation of the power provided under Tamil Nadu Land Encroachment Act is clear abuse of the power and it would amount to by passing the remedy provided under the Code of Civil Procedure and deprived the right of detailed adjudications with regard to the right over the said land. This contention raised by the petitioners/appellants

was resisted by the third respondent Society as well as by the State.

16. After considering the contentions raised by the petitioners/appellants and taking note of the directions issued by the Division Bench in W.A. No. 477 of 2003, dated 10.02.2003, the First Bench of this Court in W.P. Nos. 29235 & 29330 of 2007, dated 20.12.2007, observed that neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned. Aggrieved by the said order, the Thiruvalluvar Nagar Residents General Welfare Association preferred a special leave petition before the Honourable Supreme Court and the same grounds, which were raised before the High Court, regarding non-applicability of the provisions of the Tamil Nadu Land Encroachment Act and the contentions regarding lack of jurisdiction of the District Collector to pass orders, were specifically raised in the grounds of special leave petition in Ground Nos. IV, XII, XVII and XX and the Honourable Supreme Court, by Order, dated, 14.03.2008, dismissed the special leave petition on the ground that there is no ground to interfere with the order of the Division Bench of this Court.

17. It is contended that the order of dismissal of the special leave petition is not a dismissal simpliciter but the Honourable Supreme Court on perusing the grounds raised by the petitioner held that there is no ground to interfere with the order passed by the Division Bench of this Court. Therefore, the entire proceedings having been attained finality and the present attempt of the petitioners/encroachers is barred by res judicata. It is further submitted that the petitioners in the writ petitions/appeals, who are all members of the Association/Federation in the earlier round of litigation. It is further submitted that if a finding has been rendered in a given case, which shall be binding and there can be no per incuriam in a case of res judicata and the finding rendered inter parties is binding. Further, it is submitted that it is not a case of per incuriam since the order passed by the Division Bench of this Court in the earlier round is not a case of an order passed in ignorance of an earlier order. In the light of the above facts, it is submitted that there would be necessity to answer question No. 2 in the order of reference. In support of this contention, the learned senior counsel referred to the decisions of the Honourable Supreme Court in the cases of *S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc.*, and *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, . Therefore, it is submitted that in a given case, the doctrine of res judicata will be applicable and such a finding, which has attained finality inter parties cannot be once more agitated. Further, it is submitted that the petitioners filed a suit in O.S. No. 3311 of 1993, wherein they sought a direction to grant Patta and the suit was dismissed for default.

18. The learned Additional Advocate General appearing for the respondent State submitted that the provisions of the Tamil Nadu Land Encroachment Act, 1905 cover lands, which are defined under Section 2 of the Act and admittedly the land in question is a Patta land and not a land covered under Section 2 of the

Act. It is further submitted that the order passed by the Division Bench is a direction given to the State to proceed in a particular manner and the official respondents complied with the Court directions and therefore the decision of the Division Bench is not per incuriam. In this regard, the learned Additional Advocate General made reference to the observations made by the District Collector in the impugned order.

19. It is further submitted that the Srilankan Refugees, who had been given temporary permission to occupy a portion of the land, have been allotted different lands. In support of this contention, reliance was placed on the decision of the Honourable Supreme Court in the case of State of A.P. and Others Vs. Merit Enterprises and Others, and State of Andhra Pradesh Vs. Anjuman Ara Begum and Others, to drive home the point that the doctrine of res judicata would stand attracted and the earlier decision is binding inter parties.

20. In the preceding paragraphs, we have noted the factual matrix of the case and the contentions of the counsels appearing for the parties. Taking note of the contentions raised for the first question, two questions are to be considered. The first issue would be what is the effect of the decision rendered by the Division Bench in W.A. No. 477 of 2003, dated 10.02.2003 and W.P. Nos. 29235 & 29330 of 2007, dated 20.12.2007, on the parties to this litigation. The second issue would be whether dismissal of the special leave petition filed against the order, dated 20.12.2007, in W.P. Nos. 29235 & 29330 of 2007, by order dated 14.03.2008, would operate as res judicata on the present petitions/appeals. The subsidiary issue to Issue No. I would be whether at all the doctrine of per incuriam would stand attracted.

Issue No. I:

21. The Burma Indians Co-operative House Construction Society Limited preferred an appeal in W.A. No. 477 of 2003 against the order made in W.P. No. 38168 of 2002. The petitioner in the said writ petition was the very same Society, wherein they sought for issuance of a writ of mandamus claiming ownership of the land in question, measuring an extent of 24.57 Acres complaining that the Srilankan Repatriates have encroached the said land and the encroachment of unauthorized occupants should be removed and lands restored back to the Society. The learned single Judge of this Court, by order, dated 09.10.2002, dismissed the writ petition without prejudice to the right of the petitioner to move the competent Civil Court for appropriate relief. In the operative portion of the order, the learned single Judge held that the relief sought for to remove the encroachment by unauthorized occupants from the private property of the petitioner is not maintainable. The Burma Society preferred a writ appeal in W.A. No. 477 of 2003, pointing out that they have earlier filed another writ petition in W.P. No. 8236 of 2001, in which a direction was issued to consider their representation and dispose of the same in accordance with law and the said order was not complied with and therefore the second writ petition in W.P. No. 38168 of 2002 was filed. The Division Bench,

while disposing of the appeal, by Judgment, dated 10.02.2003, observed that instead of entertaining the appeal, it was of the view that the appellant can be given an opportunity of making a representation afresh to the respondents and the respondents can be directed to dispose of the same on merits. Accordingly, the appellant Society was directed to give a fresh representation furnishing all the particulars with regard to survey number and the extent of lands under encroachment within a period of two weeks from the date of the Judgment and the Collector, Kancheepuram District, on receipt of such representation, was directed to consider the same, after issuing notice to the appellant as well as the alleged encroachers and dispose of the same on merits and in accordance with law, within a period of two months from the date of receipt of the representation. It was further observed that the Judgment was passed since the learned single Judge made a remark that the land belongs to a private party and encroachment on a private land cannot be sought to be removed by the State authority. It was further observed that the appellant, being registered under the Societies Registration Act, consisting of Burma Indians and repatriates and that the same has been formed pursuant to the policy of the Government to rehabilitate them and the entire sale consideration for the land in question has been funded by the Central Government and to see that the said object is not frustrated by unlawful means, suitable relief has to be granted to the appellant and therefore direction to the Collector, Kancheepuram District is necessary.

22. Thus, on perusal of the Judgment passed by the Division Bench, dated 10.02.2003, it is seen that nowhere there is a reference to the provisions of the Tamil Nadu Land Encroachment Act, 1905. The Collector, Kancheepuram District, was directed to look into the representation, in the light of the fact that the land in question was for the purpose of rehabilitating Burma Repatriates and the lands were purchased with the funds allotted by the Central Government. This was the justification given by the Honourable Division Bench to entertain the writ appeal and disposed of the same with a direction to the appellant therein to give representation to the Collector, Kancheepuram District, with a further direction to the Collector to issue notice to the petitioner and the alleged encroachers and take action within a period of two months. This Judgment had attained finality as there has been no challenge to the said Judgment. Pursuant to the directions issued by the Division Bench, notices were issued by the Collector, Kancheepuram District, on 08.04.2013. The Association, which represented the encroachers, appeared before the District Collector and raised their contentions and sought to sustain their possession and occupation. The Collector, Kancheepuram District, by order, dated 17.08.2003, rejected the contention raised by the encroachers on the ground that there is no possibility to assign any other land as there is no vacant puramboke land in Tambaram Taluk.

23. The Order, dated 17.08.2003, passed by the District Collector, Kancheepuram District, was challenged in W.P. No. 29235 & 29330 of 2007. In the grounds raised in the writ petitions, it was contended that the provisions of the Tamil Nadu Land Encroachment Act, does not apply to Patta lands and the action of the

District Collector is bad in law. As noticed above, nowhere in the impugned order there is any reference to the provisions of the Tamil Nadu Land Encroachment Act and the notice, dated 08.04.2013, of the Collector, Kancheepuram District, is not a notice under Section 7 of the Land Encroachment Act, but proceedings were initiated pursuant to the directions issued by the Division Bench. The justification, being the land was intended for rehabilitation of the repatriates and purchased from Central Government funds and the appellant before the Division Bench was a Society registered under the Societies Registration Act. Therefore, the plea raised by the petitioners/appellants in the writ petitions/appeals as regards the applicability or non-applicability of the Tamil Nadu Land Encroachment was devoid of merits and based on misconception. When the Division Bench heard the writ petitions, the same contentions, which were raised in the grounds of challenge, were canvassed. These contentions were considered by the Division Bench and the Division Bench held that the order impugned in the writ petition (17.08.2003) was passed by the District Collector only in pursuance to the directions issued by the Division Bench in W.A. No. 477 of 2003, dated 10.02.2003. The representatives of the encroachers have participated in the enquiry conducted by the District Collector and have been granted a fair hearing and therefore neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned. Further, it was held that the encroachers have lost the battle in several rounds of litigation, from the year 1991, both before this Court as well as in the Civil Court. Therefore, they cannot agitate the issue once again. Further, it was pointed that the encroachers have been allotted alternative accommodation in a place, which is just 3 kms., away from their present place of encroachment. The encroachers have no right to insist that they should be allowed to continue in the encroached place, despite having been offered alternative accommodation. Accordingly, the Division Bench found no reason to interfere with the impugned order of the Collector, Kancheepuram District, dated 17.08.2003. In the meantime, since the Tahsildar, Tambaram Taluk, had issued individual notices to the encroachers, liberty was granted to the individual members of the Association to submit their objections before the Tahsildar.

24. When the Association carried the matter by way of special leave petitions before the Honourable Supreme Court, the same contentions were raised. Copy of the memorandum of grounds of the special leave petitions have been filed in the typed set of papers of the third respondent Society, from which it is evident that the challenge to the impugned Judgment was mainly on the ground that the Collector, Kancheepuram District, has no jurisdiction to evict the petitioners by invoking the provisions of the Land Encroachment Act, since the land is a private land. The special leave petitions were heard by the Honourable Supreme Court and dismissed by an order, dated 14.03.2008, stating that they do not find any ground to interfere with the impugned order (order of the Division Bench). The special leave petitions were accordingly dismissed.

25. It is the endeavor of the learned counsel for the petitioners to state that the Court cannot confer jurisdiction on the District Collector, when the provisions of the Tamil Nadu Land Encroachment Act are not attracted to Patta lands. The submission made is under misconception that the District Collector exercised power under the provisions of the Tamil Nadu Land Encroachment Act, rather notices were issued by the District Collector, pursuant to the direction of the Division Bench in W.A. No. 477 of 2003 and the Division Bench justified the need for issuing such a direction by observing thus:

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

26. Once we steer clear of the factual position, if we take a look at the decision cited by the learned counsel for the petitioners/appellants in support of the contention that there can be no estoppel against statute that the present writ petitions/appeals are not barred by res judicata. In the decision in the case of Deo Narain Singh v. Daddan Singh and Others (supra), the earlier decision of the Honourable Supreme Court was held to be per incuriam as well as of High Court in view of the mistake in applying the relevant statute. The decision in the case of Vijay Narayan Thatte v. State of Maharashtra (supra) was a case where a concession was given before the learned single Judge and it was held that the same cannot be over ride by a mandatory statutory provision. These two decisions are clearly distinguishable on facts and does not render any support to the case of petitioners/appellants.

27. The Honourable Supreme Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra (supra) took a note of the observation of the House of Lords and observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered per incuriam. Therefore, to attract the doctrine of per incuriam, it has to be established that the Court acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow that decision or when the decision is given in ignorance of the terms of a statute or rule having statutory force.

28. As noticed above, the writ petition filed by the Burma Society in W.P. No. 36168 of 2002 was dismissed by the learned single Judge of this Court, by order dated 09.10.2002, holding that the District Administration cannot be called upon to remove the encroachment in respect of the private land. This decision was

contested by the Burma Society by filing W.A. No. 477 of 2003. From a reading of the Judgment of the Division bench, dated 10.02.2003, the Division Bench was convinced about the contention raised by the appellant Burma Society and instead of entertaining the appeal, issued direction to the Burma Society to give a representation to the Collector, Kancheepuram District with further directions. Paragraph No. 6 of the decision of the Honourable Division Bench, referred supra, is of significance since the Division Bench assigned reasons as to why such liberty was granted to the Burma Society to approach the Collector, Kancheepuram District and the consequential direction to the Collector to proceed further. Therefore, the decision was rendered on facts, which have peculiar to the case and the reasons were assigned by the Division Bench to differ with a view taken by the learned single Judge, dismissed the writ petition. Therefore, the question of invoking of doctrine of per incuriam is alien to the facts of the case by applying the decision of the Honourable Supreme Court (referred supra), which has explained theory of per incuriam. The Honourable Supreme Court, in the case of S. Nagaraj v. B.R. Vasudeva Murthy (supra) has held that the principles of per incuriam has relevance to the doctrine of res judicata. In the light of the above, the question of invoking the principles of per incuriam does not arise on the facts of the present case.

29. In the light of the above discussions, we have no hesitation to hold that the decision in W.A. No. 477 of 2003 would bind the encroachers. They have participated in the enquiry conducted by the District Collector, Kancheepuram District, pursuant to the notice, dated 08.04.2013 and so held by the Division Bench in W.P. Nos. 29235 & 29330 of 2007, dated 20.12.2007, which had attained finality as the special leave petition as against the said decision was dismissed. The finding rendered by the Division Bench in the order, dated 20.12.2007, to the effect that the encroachers neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned as attained finality and therefore the decision is binding. Accordingly, the first issue in question No. 1 is answered against the petitioner/appellant in favour of the respondent Burma Society.

Issue No. II:

30. A contention was raised by the learned counsel for the petitioner stating that the special leave petition having been dismissed at the threshold without detailed reasons thereof will not constitute any declaration of law or a binding precedent and res judicata will not operate.

31. The Honourable Supreme Court in the case of Fuljit Kaur Vs. State of Punjab and Others, , while considering the said issue, pointed that there is dispute to the settled proposition of law that dismissal of the special leave petition in limine by this Court does not mean that the reasoning of the judgment of the High Court against which the special leave petition has been filed before the Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition and that it simply means that this Court

did not consider the case worth examining for the reason, which may be other than merit of the case. Nor such an order of this Court operates as res judicata and an order rejecting the special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law or a binding precedent. While rendering such finding, the Honourable Supreme Court referred to the decisions namely Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, ; Ahmedabad Manufacturing and Calico Printing Co. Ltd. Vs. Workmen and Another, ; Indian Oil Corporation Ltd. Vs. State of Bihar and others, ; Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, ; Yogendra Naryana Chowdhury and other Vs. Union of India and other, ; Union of India and another Vs. Sher Singh and others, ; V.M. Salgaocar and Bros. Pvt. Ltd. Vs. Commissioner of Income Tax, ; Saurashtra Oil Mills Association, Gujarat Vs. State of Gujarat and Another, ; Union of India (UOI) and Others Vs. Jaipal Singh, ; and Y. Satyanarayan Reddy Vs. The Mandal Revenue Officer, A.P., : LNIND 2009 SC 1739 : (2010) 2 MLJ (Crl) 495.

32. In the case of Deo Narain Singh v. Daddan Singh and Others (supra), a review petition was entertained by the Honourable Supreme Court, since the Honourable Supreme Court as well as the High Court proceeded on the basis that a particular act namely U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 was applicable. On review, the Supreme Court held that the said Act was not applicable and therefore the decision was per incuriam as it was passed by applying wrong statute. The case on hand is factually different. It may be true that the special leave petition was dismissed at the threshold. But, on a reading of the order of the Honourable Supreme Court, it is seen that the Honourable Supreme Court on examination of the grounds raised by the petitioners/appellants herein was not convinced and did not interfere and with the order passed by the Division Bench. Thus, the Order passed by the Division Bench attained finality, in which there is a clear finding to the effect that the encroachers cannot question the jurisdiction of the District Collector nor the procedure adopted by the District Collector. As noticed above, in the grounds of the special leave petition, the petitioner contended that the provisions of the Tamil Nadu Land Encroachment Act, 1905 could not have been invoked. The factual position being at no point of time reference has been made to the provisions of the Land Encroachment Act not the procedure contemplated therein was followed, but action was initiated pursuant to the direction issued by the Division Bench in W.A. No. 477 of 2013, dated 10.02.2003, which has attained finality. Furthermore, under the provisions of the Tamil Nadu Land Encroachment Act, the District Collect is the appellate authority and the procedure contemplated is quite different. In the light of the factual situation, the decision of the Division Bench, dated 20.12.2007, is binding inter party.

33. Further, the Honourable Supreme Court in the case of U.P. State Road Transport Corporation Vs. State of U.P. and Another, , while considering the object and applicability of the principle of res judicata, observed that the

principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of the Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings.

34. In a recent decision of the Honourable Supreme Court in the case of Union of India (UOI) and Others Vs. Major S.P. Sharma and Others, , one of the questions, which fell for consideration, pertains to the doctrine of res judicata and finality of proceedings. Referring to the decision in the case of M. Nagabhushana Vs. State of Karnataka and Others, it was pointed out that the doctrine of res judicata is not a technical doctrine but a fundamental principle, which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. It was further pointed out that the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretense of law inasmuch as there will be no end to litigation and the doctrine of res judicata has been evolved to prevent such anarchy. Therefore, the Honourable Supreme Court held that the doctrine of finality has to be applied in a strict legal sense.

35. The Hon''ble Supreme Court in the decision reported in Abbai Maligai Partnership Firm and Another Vs. K. Santhakumaran and Others, held that even if the dismissal of the SLP is by just one sentence, reviewing the order again by the High Court is an affront to the order of the Supreme Court. In paragraph 4, the Supreme Court held thus,

"4. The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the selfsame order had been dismissed by this Court after hearing learned counsel for the parties, to say the least, was not proper. Interference by the learned Single Judge at that stage is subversive of judicial discipline. The High Court was aware that the SLPs against the orders dated 7-1-1987 had already been dismissed by this Court. The High Court, therefore, had no power or jurisdiction to review the selfsame order, which was the subject-matter of challenge in the SLPs in this Court after the challenge had failed. By passing the impugned order on 7-4-1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case, was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by

the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by this Court, abused the process of the court and indulged in vexatious litigation. We strongly deprecate the matter in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this Court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order dated 7-4-1994 passed in the review petitions is hereby set aside. The respondents shall pay Rs. 10,000 as costs."

The said decision was followed by the larger Bench of this Court in J. Alex Ponseelan Vs. The Director General of Police, The Director, Tamil Nadu Uniformed Services Recruitment Board and The Superintendent of Police, wherein as against the order of the Full Bench decision of this Court (3 Judge Bench) reported in Manikandan and Others Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, were filed which was dismissed by the Hon"ble Supreme Court stating that

"No ground is made out for our interference in the impugned judgment. The SLPs are dismissed accordingly."

Subsequently, the learned single Judge without reference to the said dismissal of the SLP while hearing another matter, referred the matter to the larger Bench by order dated 7.11.2013 by framing a question as to whether the law laid by the Full Bench of this Court in Manikandan v. Chairman, T.N. Uniformed Services Recruitment Board (supra) holds the field or it need to be overruled. The larger Bench while answering the said issue held that when there is a binding precedent, the learned single Judge should not have referred the matter to the larger Bench and answered the issue to the effect that the earlier Full Bench decision is a good law.

36. In these cases, while dismissing the SLP, the Hon"ble Supreme Court held as follows:

"Heard the learned counsel for the parties.

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

The SLPs are accordingly dismissed."

Thus, the three Judge Bench Judgment of the Supreme Court cited above and the larger Bench decision of this Court referred above regarding the finality of the issue agitated between the parties, which have become final, cannot be allowed to be reagitated and the same will apply with full force.

37. The doctrine of finality in judicial proceedings is well recognised by our judicial system and Section 11 of CPC was enacted only for the said purpose. Section 11 of CPC reads thus,

"11. Res judicata.--No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a

former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.--The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.--For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.--Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.--Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and Others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.--The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.--An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

The Hon^{ble} Supreme Court in the decision reported in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, considered the said issue and conclusive and finality of judicial proceedings was emphasised and in paragraph 35 held thus,

"35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate

purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

In *M. Nagabhushana v. State of Karnataka* (supra) considered the issue of finality of judicial proceedings by applying the principle of res judicata and in paragraphs 12 and 13 held thus,

"12. The principles of res judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis litium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties."

Thus, it is evident that the appellants and writ petitioners who have agitated the issue, which is now referred as Question of Law No. 1 upto the Hon"ble Supreme Court, and for which a decision was rendered, is binding on the appellants and writ petitioners. Admittedly the appellants and writ petitioners are members of the Society/Federation, which agitated the issue in the earlier proceedings and the subject matter of the property/encroachment is also one and the same.

38. We have elaborately referred to the factual position in the preceding paragraphs and we have no hesitation to hold that the attempt of the petitioners/appellants is to dislodge the finality, which had been arrived at in the proceedings, which cannot be permitted. Therefore, we hold that the present proceedings initiated by the petitioner/appellant is clearly barred by the principles of res judicata. Accordingly, the second issue is also answered against the petitioners/appellants.

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

40. Insofar as question No. 2 framed by the Division Bench is concerned, the Tamil Nadu Land Encroachment Act, 1905 was enacted in the year 1905 with the object and reasons which is stated in the preamble of the Act, which reads thus,

"Whereas it has been the practice to check the unauthorised occupation of lands which are (the property of Government) by the imposition of penal or prohibitory assessment or charge, and whereas doubts have arisen as to how far such practice is authorised by law and it is expedient to make statutory provision for checking such occupation."

The property of the Government are stated in Section 2 of the Act, which reads as follows:

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

(a) of any zamindar, poligar, mittadar, jag-irdar, shrotriendardar or inamdardar or any person aiming through or holding under any of them or

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

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

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

(e) of any other person holding land under grant from the Government otherwise than by way of licence,

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

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

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

The procedures contemplated viz., issuing notice, calling for objections and passing an order under section 7, are mandatory before ordering eviction of an encroacher. The said Act can be applied only if there is no title dispute with regard to the land in question. Title dispute will arise only if the land in question is a patta land. It is well settled proposition of law that patta is a piece of evidence to prove title to the property. Section 6 of the Act gives liberty to summarily evict a person, who is unauthorisedly occupying the land, by the Revenue Officials or any other officer authorised by the State Government and before passing an order under section 6, prior notice to the person in occupation is bound to be issued, which is a mandatory requirement. The core section 6 being the enabling provision to evict the unauthorised occupant under the Act, which is applicable only to persons unauthorisedly occupying the land, goes without saying that the patta lands are excluded from the purview of the provisions of the Act. As per Section 13, a person in unauthorised occupation empowers the authorities to proceed against under any other law in force, notwithstanding the enactment of the Tamil Nadu Land Encroachment Act, 1905. Section 15A deals with certain persons deemed to be in unauthorised occupation of the land, which reads thus,

"Sec. 15-A. Certain persons deemed to be in unauthorised occupation of land.- Where a lease of land which is the property of the Government expires or is terminated by the Government or any other authority competent in that behalf, the lessee or any other person remaining in possession of the land after such expiry or termination or,

Where land granted to any person is liable to be resumed by the Government for the breach or non-observance of any of the conditions subject to which the grant is made and the Government or any other authority competent in that behalf have passed orders resuming the land for such breach or non-observance, the grantee or any other person remaining in possession of the land after the passing of those orders."

On perusal of the said section it is clear that even if a lease was granted to a person in respect of the property of the Government, after expiry or on termination, the person remaining in possession can be treated as an unauthorised occupant and action as per the provisions of the Act can be initiated.

41. The learned Senior Counsel for the third respondent Society as well as the learned Additional Advocate General appearing for the State/Official respondents conceded the said proposition with regard to non-application of the Tamil Nadu Land Encroachment Act, 1905 insofar as patta lands are concerned.

42. On perusal of the above enactment, it is clear that the said Act was enacted for the purpose of evicting the encroachers from the Government land. The

purport of the Act was already considered by the Full Bench of this Court in the decision reported in Ramaraju Vs. The State of Tamil Nadu and Others, . In paragraph 38(7) it is held that,

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

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

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

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

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