

(2009) 12 MAD CK 0219

In the Madras High Court

Case No : Writ Petition No. 7649 of 2002

Arulmighu Thiruvateeswarar Devasthanam

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madras Estates Land Act, 1908 — Section 6

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 13, 13(2), 3(2), 44, 8(1)

Citation : (2009) 12 MAD CK 0219

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : B. Kumar for T.R. Rajaraman and Pushpa Satyanarayana, for the Appellant; Lita Srinivasan, Government Advocate for R-1 to 4, T.N. Rajagopalan, for R-5, 6, 8, 9, 10, 11, 12, 15 to 28, 30 to 44, 46, 48, 49, 51 to 57, 59 to 61, 66 to 69, 70 to 74, 77, 78, 80, 81, 82, 83, 84 to 86, 88 to 90, 92, 93, 96 to 99, 101 to 105, 107 to 113, 115, 117 and 123, S. Thankasamy, for R-118 and 119, R.S. Ranganadhan, for R-124, P. Seshadri, for R-121 and D. Kanaga Sundaram, for R-45, 90 and 113, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The petitioner herein has filed the present writ petition seeking for a Writ of Certiorari, calling for the records of the 4th respondent in R.Dis.K1/R.P.12/95, dated 19.12.2001 and quash the same.

2. This case has a long history to trace. The historical background of the case starts from the year 1734 onwards. Unfortunately, the dispute started in the year 1970 has continued till date. In the attempt to resolve the dispute the factual matrix is necessary.

2. The brief facts leading to the case are as follows:

The writ petitioner is a religious institution. By two cows dated 01.11.1734 and

10.08.1787 which are in the nature of grants inam of lands have been granted to the petitioner. The lands originally form part of Pudupakkam Village which now forms part of the present Royapettah were originally owned by the Nawabs. After the entry of the East India Company into Chennai, the then Nawabs ceded the said lands in favour of the Company. Thereafter, the East India Company has made the grants referred above in favour of the petitioner. The grants in favour of the petitioner are called Thiruvateeswarar Shothrium which is a religious grant.

The petitioner does not have the cowl granted by the East India Company in its favour. The petitioner also does not have the title deeds to confirm the inam made in its favour. The Inam Fair Register which is usually under the custody of the petitioner is also not available. The petitioner temple is situated in Triplicane and the properties which are subject matter of the writ petition are in Royapettah.

The petitioner has produced extract of "quit rent register" indicating the name of the owner with the particulars of the property and the amount payable as "quit rent" which is called in Tamil as "epy thp". The petitioner has also produced before this Hon"ble Court some other additional documents which are as follows:

___ S.No. Date Particulars of list of documents 1 17.02.1912 L.A. Case No. 2 of 1912 Letter from Special Deputy Collector to the Chief Judge, Small Causes Court, Chennai. _____

_____ 2 31014 Land Case No. 84 of 1914 _____

_____ 3 26.10.1966 Counter filed by the 3rd respondent B.N. Narayanasamy before the Deputy Commissioner, H.R.&C.E., Madras. _____

_____ 4 26.10.1966 Compromise recorded by the respondent with the petitioner temple before the Deputy Commissioner, H.R.&C.E. _____

_____ 5 22.09.1999 Letter from the then Executive Officer of the temple to District Collector. _____

_____ 6 61108 Letter from the Commissioner, Archives Department to the Commissioner, H.R.&C.E. _____

_____ 7 31.12.2001 Letter from the Special Commissioner of Land Administration to the Executive Officer of temple with Survey Register. _____

_____ 8 28.09.1938 Sale Deed regarding the Thiruvateeswaranpet, Shrotriem. _____

_____ 9 13.10.1945 Sale Deed _____

_____ 10 71045 Sale Deed _____

_____ 11 22.03.1941 Sale Deed _____

_____ 12 28.08.1950 Sale Deed _____

After the coming into existence of the Tamil Nadu Minor Inams (Abolition and

Conversion into Ryotwari) Act, 1963 which is otherwise called as Tamil Nadu Act, 30 of 1963, an order was passed by the Settlement Tahsildar who is the 2nd respondent in the writ petition in and by his proceedings No. G.R.Sr. No. 37/MSR dated 25.05.1971 granting patta to the various parties including the respondents. The petitioner did not appear for the said enquiry even though notice was served. Accordingly the 2nd respondent came to the conclusion that the grant made in favour of the petitioner was only a "melvaram" which is a right to collect "quit rent" and the land and building belong to the occupants. In other words, it was held that the petitioner was entitled to collect the revenue alone from the occupants to whom the pattas were issued.

Since in the said proceedings some lands were classified as poramboke lands, a revision was filed by some persons before the Settlement Officer, Chengalpet and the same was allowed in favour of the revision petitioners therein. It appears that no further steps have been taken by the petitioner to challenge the said order.

However after an inordinate and huge delay of 11 years, the petitioner filed a revision challenging the proceedings of the 2nd respondent dated 25.05.1971 before the Assistant Settlement Officer, Chengalpet. The said revision filed by the petitioner was dismissed on 20.06.1982 as barred by limitation. Again after two years, the petitioner filed a further revision before the Settlement Officer, namely the 3rd respondent herein on 06.09.1984. The said revision filed by the petitioner in R.P.12 of 1988 was allowed on the sole ground that in view of the presumption available u/s 44 of Act 30 of 1963 in favour of the petitioner they are entitled to get the patta.

Thereafter, the respondents 5 to 126 preferred a revision before the 4th respondent who in turn allowed it by setting aside the order passed in R.P.12 of 1988 based upon the materials available on record including the documents tracing title in favour of the respondents 5 to 126 which are more than 100 years old. Not satisfied with the said order, the petitioner has challenged the order passed by the 4th respondent by way of the present writ petition seeking to set aside the order passed by the 4th respondent dated 19.12.2001.

Pending the writ petition, the petitioner has filed an affidavit seeking to mark about 12 documents as additional documents in support of its contention. Taking into consideration of the fact that the petitioner is a temple and by applying the principle that a temple is an eternal and perpetual minor, this Court has permitted the learned senior counsel appearing for the petitioner to make his submissions based upon the said documents. The said permission has been granted also in view of the fact that the dispute has been pending for nearly four decades and therefore there is no useful purpose that would be served by sending the documents to the authorities below warranting a finding. Moreover the documents are public documents in nature and the learned Counsel appearing for the respondents fairly submitted that they do not question the admissibility of the documents. It is further brought to the notice of this Court

that some of the offices of the respondents have been wound up. Therefore, the documents filed by the petitioner have been taken into consideration for adjudication.

3. The contentions of the learned Counsel for the petitioner:

The petitioner has raised various contentions by way of arguments and written submissions even though all of them have not been raised in the affidavit filed in support of the writ petition. The said contentions are as follows:

(i) The Estate Land Act, 1908 is applicable to the present case. The said Act provides for only occupancy rights to the ryots in respect of ryoti lands. Therefore in view of the applicability of the Estate Land Act, it is not open to the respondents 5 to 126 to claim any independent patta over the land. In other words, they cannot seek a larger relief than that of a tenant.

(ii) Under Inam Estates (Abolition and Conversion into Ryotwari) Act Tamil Nadu Act 26 of 1948, an estate has been defined as an area granted in a village of melwaram only. However, under the Tamil Nadu Act 26 of 1963, the definition of "estate" includes both warams in Inam such as "melwaram" and "kudiwaram". Therefore, a reading of the said enactments would show that the landlord owns the land and the tenant merely lives in the land of the landlord by paying the rent. Thereafter, Minor Inam Abolition Act 30 of 1963 was introduced and this Act does not provide for the cultivation by the landlord as a criterion for grant of patta.

(iii) Under the Act 30 of 1963, there is a presumption u/s 44 of the said Act that unless the contrary is proved by the tenant, a particular Inam is an "iruwaram" Inam consists of both "melwaram" and "kudiwaram". The said presumption u/s 44 is not a rebuttable presumption.

(iv) u/s 8(2) of the Act 30 of 1963, a transferee is entitled to get the patta where there is a transfer by way of an alienation by the trustee provided the transferee satisfied the requirement of Section 8(1)(a) or 8(1)(b). Therefore, when there is no proof of alienation by a trustee of the petitioner temple, the petitioner alone is entitled to get the patta. Further only when Section 8(2) of the Act does not apply, a person is entitled to get patta u/s 8(1).

(v) Section 13(2) of Act 30 of 1963 which provides for the ground rent patta cannot be made applicable to the contesting respondents, since the mere fact that they have put up the building by itself cannot be a ground to confer patta on them, as there can be a ownership of a building which is different from the ownership of a site and both are separate and distinct.

(vi) The additional documents filed by the petitioner would prove and substantiate the case of the petitioner. The Madras Town Survey Register in column No. 12 which is a remarks column clearly spells the name of the petitioner as Thiruvateeswarar Shothrium, since it is an admitted fact that the Shothrium is a religious grant. The Madras Town Survey Register is an ample

proof to show that the petitioner is the owner of the lands in question.

(vii) The award passed by the Land Acquisition Officer also indicates the title in favour of the petitioner. The proceedings before the Deputy Commissioner, H.R.&C.E. between the petitioner and one B.M. Narayanaswami also establish the said fact. The sale deeds produced by the petitioner also speaks about the payment of "quit rent" which again prove that the petitioner is the owner.

(vii) In support of the above said contentions, the learned senior counsel for the petitioner Shri. B. Kumar has relied upon the judgment reported in R. Manicka Naicker Ors. Vs. E. Elumalai Naicker, and submitted that u/s 13(2) there can be an owner of the building and there can be another owner of the ground. The learned senior counsel also relied upon the judgment reported in 1996 1 L.W. 231 Sri Madhavaperumal Devasthanam v. TMT. Dhanlakshmi and Ors. and submitted that a "quit rent" is paid by the tenant to the superior title holder namely, the landlord for his quiet possession and enjoyment. The learned Counsel further relied upon the judgment reported in Muthusamy Gounder and Others Vs. Arulmigu Varadaraja Perumal Temple and Another, At Nathakadaiyar and submitted that from the available material produced by the petitioner, it has to be held that from the grant in favour of the petitioner is both "melwaram" and "kudiwaram". In fine, the learned senior counsel for the petitioner prayed for the writ petition to be allowed.

4. The submissions of the respondents 5 to 126:

The learned Counsel for the respondents Shri. T.N. Rajagopal has made the following submissions:

(i) Admittedly, the petitioner has not produced the two cowls which alone would throw light of the fact about the nature of the grant given in favour of the petitioner. The petitioner also did not produce any title deeds to confirm the Inam. The failure of the petitioner to produce the Inam Fair Register which is supposed to be under the custody of the petitioner would lead to an adverse inference. Therefore, the non-production of the above said documents would disentitle the petitioner from getting the relief sought for.

(ii) The writ petition has been filed seeking the relief for about 8 streets whereas according to the petitioner the grant covers 25 streets. It is also a fact that for the remaining streets pattas have been given in favour of various third parties and therefore, the petitioner cannot agitate its rights only against the contesting respondents alone in the present writ petition.

(iii) The sale deeds produced by the contesting respondents are more than 100 years old. A perusal of the certificate issued by the Collector in the year 1900 would show that the certificate has been registered by payment of registration fee. The said certificate would clearly indicate that there were houses even at that point of time and the annual quit rent has been fixed by the Collector. It also indicates the description of the property and the transfer of the said property.

Therefore from the said document, it is clear that the transfer has been duly registered and hence there is no title in favour of the petitioner.

(iv) The quit rent register of the petitioner clearly clinches the entire issue, since it states in unequivocal terms that the patta stands in the name of a private party with clear description of the property and what is required to be paid is a quit rent which in Tamil means (epy thp bjhif) which can be translated as "land tax amount". Hence the document of the petitioner itself is the best document to show that the grant is only for the collection of revenue by way of land tax and nothing more.

(v) The land acquisition documents produced by the petitioner do not help its case, since a perusal of the same do not indicate as to whether the said lands are similar to the lands involved in the present cast. There is also no mention about Shrotriem and therefore, the lands involved in the award must have been the temple lands and not Inam lands. Further the sale deeds relied on by the petitioner also helps the case of the contesting respondents, since the sale deeds merely state that what is required to be paid is only a tax. The sale deeds also show that what were sold were both the houses and the ground.

(vi) The reliance made by the petitioner on the counter affidavit filed by the third party and the consequential order passed before the H.R. & C.E. Department also has no factual basis, since it has been clearly stated in the counter affidavit at paragraph 7 that the petitioner temple is not the owner of the property and in any case the said compromise will not bind the contesting respondents. Moreover it is not in dispute that the petitioner is entitled to receive the quit rent.

(vii) The submissions of the learned senior counsel for the petitioner relying upon the Estate Land Act, 1908 is not factually and legally sustainable. The said Act is not applicable to the Minor Inam proceedings. The patta mentioned in the said Act is different, since the same is given every year whereas the present case, the patta is issued as and when the transfer of ownership of land takes place.

(viii) In the present case, it is not in dispute that various sales have been effected on different points of time to the knowledge and concurrence of the petitioner. Therefore in view of the above said fact, it is not open to the petitioner to contend that the petitioner is not the owner of the land.

(ix) In so far as the Madras Town Survey Register is concerned, the same cannot form the basis of title. A Town Survey Register is maintained only for the purpose of surveying the properties with its locations. Further the mere fact that in the remarks column it is mentioned as "Thiruvateesvaranpet Shrotriem" cannot be construed to hold that the petitioner is the owner of the land. There is no dispute that the area is covered by the Shrotriem but the important aspect to be noted is the absence of the petitioner name in the ownership column. Moreover, the certificate issued by the petitioner for transfer of ownership is an important document to show that the petitioner can only collect the quit rent and cannot question the ownership. The said document clearly indicates the title deed with

description the name of the owner.

(x) The judgment relied upon by the learned senior counsel for the petitioner reported in 1996 1 L.W. 231 Sri Madhavaperumal Devasthanam v. TMT. Dhanlakshmi and Ors. regarding the definition of quit rent is not correct, since the said judgment has not consider the scope of the relevant Act which has been considered by the Division Bench of the Hon"ble High Court reported in G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., .

(xi) The provision contained u/s 8(2) Act 30 of 1963 does not apply to the case of the contesting respondents, since the petitioner in the present case has not proved that the grant is iruvaram grant and only when there is an iruvaram, Section 8(2) would be applicable. Hence the contesting respondents are entitled to get the patta u/s 13 of Act 30 of 1963, since they have been put up the construction already.

(xii) In any case, the 4th respondent has considered all the materials available on record and came to the conclusion that the contesting respondents are entitled to get the patta u/s 13 of Act 30 of 1963. The said findings of fact cannot be adjudicated in a writ proceedings.

(xiii) The learned Counsel in support of his contention submitted that a quit rent is only a tax or a revenue and relied upon the judgment of the Hon"ble Division Bench reported in G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., Further in support of his contention that the Estate Land Act, 1908 is not applicable to the present case, a reliance was made on the judgment reported in 1949 (2) MLJ 500 Lakshmanan v. Venkateswarlu. The learned Counsel further relied upon the judgments reported in 1997 2 L.W. 320 Jalini Ammal (DIED), A and Anr. v. Sri Vedaranyaswami Devasthanam; 1997 2 L.W. 323 Sri Vedaranyaswami Devasthanam v. A.C. Dharma Devi and Ors.; 2001 3 L.W. 97 Adheenakartha, Sri Kundrakkudi, Thiruvannamalai Mutt, Kundrakkudi v. Thiru. M. Pattabhiraman and Ors. in support of his contention that the presumption u/s 44 of Act 30 of 1963 is a rebuttable presumption and the fact that the petitioner has acknowledged the transfer made by various persons is an important factor to hold that the grant is not iruvaram grant. Therefore, the learned Counsel submitted that the writ petition will have to be dismissed.

(xiv) Shri. P. Seshadri, learned Counsel appearing for some of the respondents submitted that the petitioner cannot be allowed to expand the scope of the Writ Court, since substantial arguments have been made other than the grounds raised in the affidavit filed in support of the writ petition. He further submitted that the disputed questions of fact cannot be adjudicated in a writ petition. Hence the writ petition will have to be dismissed.

5. I have heard the arguments made by Shri. B. Kumar, learned senior counsel appearing for the petitioner and Shri. T.N. Rajagopal, Shri. S. Thankasamy, Shri. R.S. Ranganathan, Shri. P. Seshadri and Shri. D. Kanaga Sundaram, learned

Counsels appearing for the contesting respondents and Mrs. Lita Srinivasan, learned Government Advocate appearing for the respondents 1 to 4.

6. The issue to be decided in the present writ petition is as to whether the Shrotriem grant given in favour of the petitioner by way of two cowls is iruwaram grant covering both "melwaram" and "kudiwaram" or "melwaram" alone. In other words, whether the "quit rent" payable by the contesting respondents would amount to a rent acknowledging the title of the land in favour of the petitioner or a revenue or a tax to be collected.

7. A reading of the facts narrated above would show that by two cowls in the year 1734 and 1787 lands were granted in inam in favour of the petitioner temple. It is also an admitted fact that the said cowls are not available. The petitioner temple has been receiving quit rent and maintaining the permanent register evidencing the transfer of title of the property made from one person to another person for which a certificate is issued and a separate quit rent register is maintained evidencing the collection of the land. It is also not in dispute that the petitioner temple is not in possession of the Inam Fair Register which would indicate the nature of grant nor does it have the title deeds to confirm the inam made in pursuant to the two cowls. Hence this Court will have to proceed with the available factual matrix to resolve the dispute between the parties.

8. The word "Shrotriem" has been described in the History of Land Revenue Settlement and Abolition of Intermediary Tenure in Tamil Nadu. Shrotriem has been defined as "grants made to Brahmins skilled in the Sruti or Vedas". Such a grant can also be made in favour of the temple. In order to appreciate the disputes raised in the present case one has to see the facts of the case. In the certificate issued by the Deputy Collector of Madras pertaining to the year 1900 which has been examined by the Registrar of the Registration Department after the collection of the payment towards the measuring fees and the Government fees pertaining to the year 1900, it has been mentioned that the person mentioned therein has purchased the said property with clear description from another one. The said document also indicates the payment of annual quit rent mentioned therein for each house payable to the church-warden of Tiroovatteeswarer Pagoda in conformity with the two cowls granted by the Government in the year 1734 and 1787 respectively. The said document is a very important document because it acknowledges the transfer of the property in possession of the occupier to a 3rd party by the Government. Therefore it dispels the contention of the petitioner that the petitioner is the owner of the property. It also indicates the payment of quit rent fixed by the Government, of course payable to the petitioner for each house and therefore it is clear that the houses were in existence even at that point of time. The said document being an ancient document it can very well be relied upon by this Court since its admissibility is not disputed by the parties. Hence from the said document, it is clear that the grant in question cannot be construed for both varams but only with respect to the "melwaram" alone, which is only a right to collect revenue by calling it as a

"quit rent".

9. Another document which is of utmost important is the document of the petitioner itself. The extract of the Permanent Register of the petitioner issued from the year 1952 onwards clearly indicates the name of the owner who is a third party. It also spells about the description of the title deeds which is inclusive of both land and building. It further speaks about the "house quit rent" with the specified amount. The mentioning about the house quit rent is very important because there is no mention about the land but only the house. The said certificate has been issued by the petitioner at the time of transfer made by the owner of the building in favour of the third party. Similarly, a perusal of the quit rent register also throws light about the nature of the grant. It clearly says the name of the pattadhar with the relevant patta, number and the description of the property. Most importantly it states about the quit rent by describing the same in Tamil as "epu thp bjhif". By a normal translation, the said tamil word would only mean as "land tax amount". The said register is maintained for the collection of the land tax. Hence these two documents belonging to the petitioner himself clearly establish the fact that what is collected is only a land tax by way of revenue and not a rent by treating the petitioner as a landlord.

10. The learned Counsel for the petitioner has relied upon the judgment of the Hon'ble High Court reported in 1996 1 L.W. 231 Sri Madhavaperumal Devasthanam v. TMT. Dhanalakshmi and Ors. in support of his contention that the quit rent would only mean rent and not tax. The learned Counsel also relied upon the same to substantiate that the additional documents will have to be admitted in evidence.

11. This Court finds no difficulty in accepting the additional documents filed by the learned Counsel for the petitioner particularly in view of the fact that it was not seriously opposed by the learned Counsel for the contesting respondents. This Court also accepts the view of the learned single Judge that the idol being in the position of the minor additional evidence produced by the petitioner will have to be allowed even though this Court is dealing with the writ petition as against the earlier case in which the Hon'ble Court was dealing with the second appeal.

12. In so far as the interpretation of the quit rent is concerned, the Hon'ble Court has observed as follows:

10. A perusal of the judgment of the lower appellate court shows that it has placed reliance on three circumstances to uphold the claim of the plaintiffs. The first is that there is overwhelming evidence to prove that the plaintiffs are paying quit rent to the temple. According to the appellate judge, the very fact that quit rent is being paid to the temple shows without any doubt that the temple is having only melwaram right (see paragraph 12). There is no warrant or justification in law for taking such a view. The mere use of the expression "quit rent" will not by itself prove that the person who collects quit rent is the owner of melwaram only. In Mozley and Whiteley's Law Dictionary "quit rent" has been

defined as "fixed rent paid by the freeholders and copyholders (especially the latter) of a manor in discharge or acquittance of other services". A "copyhold" is defined in the same dictionary as "signifying a tenure by copy of court roll at the will of the lord of a manor according to the custom thereof. It is stated that it is in manors only that copyholds are to be found, and it is by the immemorial custom of the particular manor that the copyholder's interest must be regulated and originally copyholders were villains and slaves, permitted by the lord, as an act of pure grace or favour, to enjoy the lands at his pleasure; being in general bound to the performance of certain services.

11. In Ramanatha Aiyar's Law Lexicon, "Quit-Rent" is defined as "A certain small rent, payable by the tenant in token of subjection, by which the tenant goes quiet and free. (Tomlins Law dictionary); Chief rent. This is a small yearly payment made by owners of land to a more or less nominal landlord (2 Blackstone, 42)". There is nothing in Indian Law to show that quit rent is payable only to a melwaramdar by a kudiwaramdar. The question as to the extent of ownership of the person who pays the quit rent and of the person who receives the same has to be decided only on the basis of the entire evidence on record. Hence, that reasoning of the Appellate judge is erroneous.

13. Unfortunately, it has not been brought to the knowledge of the learned single Judge about the judgment rendered by the Hon"ble a Division Bench reported in G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., wherein the Division Bench of this Hon"ble Court has considered the relevant Act regarding the definition of revenue which would only mean a "quit rent" which is a form of a tax. Further the learned single Judge went by the general interpretation, since the provisions of the Madras City Land Revenue Act were not brought to his knowledge. Therefore on a consideration of the above said judgment, this Court is of the opinion that the word "quit rent" will have to be construed as a revenue particularly by taking into consideration of the documents issued by the petitioner.

14. The reliance made by the learned senior counsel for the petitioner on the additional documents also does not merit acceptance. As submitted by the learned Counsel for the respondents a perusal of the award passed by the Land Acquisition Officer in favour of the petitioner would show that there is nothing available for this Court to come to the conclusion that the Shrotriem lands have been mentioned and the compensation has been paid to the petitioner for the same. Hence in the absence of any concrete evidence regarding the nature of the lands involved no reliance can be made based upon the award.

15. Further the various sale deeds produced by the petitioner also will disprove the case of the petitioner, since the said documents clearly show that the vendor of the documents owned the lands and the buildings as absolute owners. Hence the petitioner having knowledge of those documents and having given certificate of transfer for the same is estopped from contending that it is the owner of the land. Further reliance made on the settlement between the petitioner and the

third parties also cannot be pressed into service, since the said document only shows the payment of the quit rent and it has got no relevancy to the title more so when it is not pertaining to the contesting respondents. Even the counter affidavit filed in the said proceedings would show that the title of the petitioner has not been accepted.

16. In so far as the Madras Town Survey Register is concerned, as submitted by the learned Counsel for the respondents it only speaks about some of the streets. When the petitioner claims ownership of 25 streets, there is no justification for restricting the claim to the lands in possession of the contesting respondents alone, more so, when pattas have already been granted in favour of various third parties for the other streets. Further the said register cannot be a document to hold that it is a document of title indicating the nature of grant. Admittedly in the present case, the petitioner has produced neither the cowls nor the Inam Fair Register in support of his contention. The mere fact that column No. 12 of the survey register which is a remarks column mentions the name as "Thiruvateesvaranpet Shrotriem" by itself cannot be a ground to presume that the petitioner is the owner of the land. It is not in dispute that the petitioner has been given a grant but the dispute is with regard to the nature of the grant. In this connection, it is useful to refer the ownership column of the said Town Survey Register which only shows as Inam and Poramboke and in nowhere the petitioner's name has been mentioned.

17. Yet another factor to be seen in the present case is that against the earlier proceedings, a revision was filed by one C.S. Duraisamy Mudaliar against the order dated 25.05.1971 classifying a portion of the land as poramboke. The revision was allowed in favour of the person as early as on 05.11.1971 by granting patta in his name which order has not been challenged by the petitioner and the same has become final. Therefore, the petitioner cannot challenge the present proceedings as it cannot pick and choose the parties to suit its convenience.

18. In so far as the reliance made by the learned senior counsel for the petitioner based upon the Estate Land Act, 1908 is concerned, admittedly, the said Act deals with the estates and therefore by necessary implications excludes minor inams. The patta issued under the said Act is renewable for every year. In this connection, it is useful to refer the judgment of the Privy Council reported in 1949 (2) MLJ 500 Lakshmanan v. Venkateswarlu wherein it is observed as follows:

The controversy as between the zamindar and his tenants was settled by Section 6, Madras Estates Land Act (Act I of 1908) which declares:

Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land not being old waste situated in the estate of such landholder shall have a permanent right of occupancy in his holding....

but, having regard to the definition of an "estate" in Section 3(2)(d) of the Act, in a case where an Inamdar sues a ryot in ejectment the question still arises whether the Inamdar owns the kudivaram as well as the melvaram when objection is raised by the defendant that the land forms an "estate" within the meaning of the Act and a Civil Court has no jurisdiction to deal with the case. Section 3(2)(d) of the Act is as follows:

any village of which the land revenue alone has been granted in Inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village.

It may be mentioned here that minor inams do not fall within the purview of the Madras Estates Land Act. The question just adverted to arises in the case of minor Inamdars also as in the present case where rights of occupancy are claimed by the ryots apart from the Act.

19. Hence this Court is of the opinion that the contention of the learned senior counsel for the petitioner making a reliance upon the Estate Land Act, 1908 cannot be accepted.

20. In so far as the reliance made upon the provisions of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963 is concerned, it is useful to refer the provisions of the said Act:

8. Grant of ryotwari pattas:-- (1) Subject to the provisions of Sub-section (2), every person who is lawfully entitled to the Kudiwaram in an inam land immediately before the appointed day whether such person is an inmadar or not shall, with effect on and from the appointed day, be entitled to ryotwari patta in respect of that land.

(2) Notwithstanding anything contained in Sub-section (1) in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), [and in the Tamil Nadu [Transferred Territory] Incorporated and Unincorporated Devaswoms Act, 1959 (Tamil Nadu Act 30 of 1959)], the following provisions shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity--

(i) where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of such land--

(a) for a continuous period of sixty years immediately before the 1st day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land;

(b) for a continuous period of twelve years immediately before the 1st day of

April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be prescribed an amount equal to twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land;

(ii) in the case of any other land, the institution or the individual rendering service shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land.

13. Vesting of buildings.--(1) Every building situated within the limits of an inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day; but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls, to levy the appropriate, assessment thereon.

(2) In this section, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto.

44. Presumption in the case of service inam.-- In proceedings under this Act relating to any inam granted for the benefit of any religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall be presumed, unless the contrary is proved that the inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein.

21. The presumption u/s 44 of Act 30 of 1963 is a presumption of fact. In other words, the presumption is one rebuttable presumption at the instance of a party who seeks patta under the Act. In the present case on hand, the contesting respondents have clearly dispelled the presumption as observed by the 4th respondent and that is the reason why the revision filed by them has been allowed based upon the documents which are very ancient in nature.

22. The Hon''ble Apex Court in the judgment reported in 1997 2 L.W. 323 Sri Vedaranyaswami Devasthanam v. A.C. Dharma Devi and Ors. has observed as follows:

Section 44, though refers to presumption that when it relates to the Inam granted for the benefit of the religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall be presumed, unless the contrary is proved, that the Inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein. It is only a rebuttable presumption that when the grant was in favour of the religious institution or the individual rendering service to the religious institution, the appellant-institution and the individual have both the melvaram and kudivaram

interest therein. But it can be rebutted by contra evidence by the person claiming kudivaram interest in the land. As already seen in the kist receipt there is specific reference to kudivaram right and that what was collected was a kist (revenue) and not the rent as claimed now before us.

23. Hence on a consideration of the judgment of the Hon''ble Apex Court, this Court is of the considered view that the contention of the learned senior counsel appearing for the petitioner that the presumption u/s 44 is final and conclusive does not hold any water and the same is deserves to be rejected and accordingly the same is rejected.

24. Similarly in the judgment reported in 1997 2 L.W. 320 Jalini Ammal (died), A and Anr. v. Sri Vedaranyaswami Devasthanam, the Hon''ble Division Bench was pleased to hold that even in a case where Enam Fair Register was produced by the Devasthanam, it is open to the person who claims patta to let in contrary evidence to discharge the presumption u/s 44. The Hon''ble Division Bench was pleased to hold the fact that a party was dealing with the property covered by a title deed as an absolute owner of the Devasthanam is an important factor to be considered. The very same view has been followed in the judgment reported in 2001 3 L.W. 97 Adheenakartha, Sri Kundrakkudi, Thiruvannamalai Mutt, Kundrakkudi v. Thiru. M. Pattabhiraman and Ors. wherein the Hon''ble Division Bench has observed as follows:

The appellant Adheenam also recognised such Kudivaram rights owned by the ryots for over several decades by permitting them to dispose of their ownership in the lands while retaining its right to collect the beriz or cess amount.

Having regard to the documentary evidence to which appellant Adheenam itself was a party such as pattas, earlier orders of the Assistant Settlement Officer, and in the absence of any entry in the Inam Fair register to show that the appellant had both the varams, we hold that the Kudivaram right vests with the respondents and the orders of the lower authorities in granting patta in favour of the respective owners of Kudivaram right was fully justified. We conclude that what was collected by the appellant Adheenam from the various ryots was only a kist and not rent and that the respondents retained their Kudivaram right while paying kist to the appellant Adheenam. Accordingly the grant of patta in their favour by the lower court was fully justified.

25. Therefore taking into consideration of the above said fact, this Court is of the opinion that in the present case on hand, the respondents 5 to 126 have clearly discharged the presumption u/s 44 Act 30 of 1963. Further in this case also the petitioner issued certificates wherever a transfer of the property was effected from the owner to another. The other contention of the learned senior counsel for the petitioner that u/s 8(2) of the Act 30 of 1963, a duty is cast upon the contesting respondents to prove that they have purchased the property from the petitioner to get the patta also cannot be accepted. A reading of the said Section would show that in order to apply the said provision the petitioner will have to

establish the fact that the grant covers iruwaram inam. Only in a case where there is iruwaram, the question of alienation of a property would arise for a consideration. Moreover in the present case on hand, the respondents have clearly proved that they are entitled to get patta u/s 13 of the Act, since admittedly they had put up the construction a long time ago.

26. The Judgment relied upon by the learned senior counsel for the petitioner reported in AIR 1995 Supreme Court 1613 R. Manicka Naicker v. E. Elumalai Naicker does not apply to the present case on hand, since the petitioner in the present case has not established the fact that it is the owner of the site. There is no difficulty in appreciating the position of law that a owner of the building need not necessarily be the owner of the site and there can be a separate owner for the building and the site as held by the Hon''ble Apex Court. However, the said judgment of the Hon''ble Apex Court is not applicable to the present case on hand. Similarly, the judgment relied upon by the learned senior counsel reported in Muthusamy Gounder and Others Vs. Arulmigu Varadaraja Perumal Temple and Another, At Nathakadaiyar also does not apply to the present case, since the facts involved in the said case are totally different from the present case. In the said case what was produced before the Settlement Tahsildar was a mortgage executed between the private parties. Therefore under those circumstances, the Division Bench was pleased to reject the said document being not sufficient to prove the case of the claimant in that case.

27. The scope of this Hon''ble Court to consider the decision made by the 4th respondent is rather limited. It is a well settled principle of law that a power under Article 226 of the Constitution of India is both discretionary and extraordinary in nature. When a finding of fact has been given by the authority on an appreciation of the entire material available on record, this Court cannot Act as an Appellate Authority and sit in judgment over the same. This Court finds that there is no error apparent on the face of the record warranting any interference. In this connection, it is useful to refer the judgment of the Hon''ble Apex Court reported in (2008) 9 SCC Shamshad Ahmad and Ors. v. Thilak Rai Bajaj (Deceased) Through LRs which is as follows:

38. Though powers of a High Court under Article 226 and 227 are very wide and extensive over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor re-appreciate, nor re-weigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court of Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.

In D.N. Bonerji v. P.R. Mukherjee reported in AIR 1953 SC 58, the Hon''ble Supreme Court laid down that unless there was miscarriage of justice or flagrant

violation of law calling for intervention, it was not for the High Court under Article 226 and 227 of the Constitution to interfere. The above principle of law was relied on and approved by the Supreme Court in *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, (Page 460 para 20):

It is true that in exercise of jurisdiction under Article 227 of the Constitution, the High Court would go into the question of fact or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court also should decline to exercise its jurisdiction under Article 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court should not interfere with finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest injustice.

28. The Hon''ble Apex Court in the another judgment reported in *Ranjeet Singh Vs. Ravi Prakash*, has observed as follows:

Feeling aggrieved by the judgment of the appellate court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the appellate court and restored that of the trial court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate court. Though not specifically stated, the phraseology employed by the High Court in its judgment goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the appellate court. In *Surya Dev Rai v. Ram Chander Rai* this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in *Surya Dev Rai* that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal. The High Court has itself recorded in its judgment that "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate court. On its own showing, the High Court has acted like an appellate court which was not permissible for it to do under Article 226 or Article 227 of the Constitution.

29. Hence on a consideration of the above said factual and legal position and

after going through the entire materials available on record, this Court finds that there is no ground made out to interfere with the order passed by the 4th respondent and accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.