

(2013) 01 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No's. 22054 of 2009 and 4110 of 2010 and connected M.Ps.

Tahsildar Mambalam and Another

APPELLANT

Vs

Kaneez Fathima and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 188, 218, 219

Citation : (2013) 5 MLJ 263

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.C. Swamy, Spl. Government Pleader, for the Appellant;
Muthukumaraswamy, Standing Counsel, K.G. Vasudevan and V.
Ramajegadeesan, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The first writ petition is filed by the Tahsildar, Mambalam-Guindy Taluk, Chennai challenging an order of the Settlement

Officer, Chennai, dated 1.9.2008, wherein and by which the said Officer allowed the request of the contesting Respondents 1 to 9 for the grant of

ryotwari patta, excepting the lands in which Government buildings are situated in terms of Section 15(1) read with Section 12(a)(1) of the Tamil

Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and also in respect of the lands mentioned in Schedule A of the said order.

They were granted patta and the petitioner Tahsildar was directed to change the accounts in the village land records. The said writ petition was

admitted on 29.10.2009. Pending the writ petition, On the same day, this Court had granted an interim stay of the operation of the order passed

by the 10th respondent Settlement Officer. Subsequent to the filing of the said writ petition, the Director of the King Institute of Preventive

Medicine and Research, Guindy has also filed a writ petition in W.P. No. 4110 of 2010 challenging the very same order dated 1.9.2008. That writ

petition was admitted on 1.3.2010 and directed to be posted along with the previous writ petition. Pending the said writ petition, an interim stay

was also granted on the same day.

2. In both writ petitions, on behalf of the contesting respondents, a counter affidavit, dated 11.3.2011 has been filed sworn to by the first

respondent. In W.P. No. 4110 of 2010, the Chennai Metro Rail Limited represented by its Managing Director got themselves impleaded as 11th

respondent vide order of this Court dated 3.8.2012. It was stated by them that permission was granted to the CMRL for public purpose in G.O.

Ms. No. 147, Planning Development and Special Initiatives Department, dated 27.8.2010 for construction of elevated Metro Rail viaduct. The

11th respondent was going to utilize approximately 6118 sq.meters on permanent basis in Block No. 9, T.S. No. 2 of Adyar Village, which is

under the control of the writ petitioner King Institute and permission was granted by the High Power Committee and a Government order has also

been passed to that effect. The King Institute had agreed to hand over the possession of a portion of the land for public purpose to an extent of

2063 sq.m. and that possession has been taken over on 18.10.2010, which was also handed over to the Contractor M/s. Larson and Tubro on

19.10.2010. The land has been vested with the 11th respondent CMRL. Therefore, it was stated by them that any order passed will have a

bearing on their operation. Hence they were impleaded.

3. Before proceeding to deal with the merits of the contentions raised, it is necessary to refer to certain aspects which came up during the course of

hearing of the writ petitions. In the impugned order dated 1.9.2008, the Settlement Officer stated that if any person is aggrieved by the said order,

he can prefer an appeal before the Inam Abolition Tribunal within 90 days. But aggrieved by the wholesale handing over of the land, a suo motu

review was taken up by the Commissioner of Land Administration read with Section 7 of the Tamil Nadu Estate (Abolition and Conversion into

Ryotwari) Act, 1948. The Commissioner by an order dated 20.9.2008 had passed

the following order:

The Government in their D.O. letter 2nd cited has brought to the notice of Principal Secretary and Commissioner of Land Administration that the

Settlement Officer, Chennai-5, in her orders dated 1.9.2008 allowed patta to an extent of 5 Kawnies 11 Ground 775 sq.ft., in T.S. No. 1B Block

6 and 2 Kawnies 5 Ground 1200 sq.ft., in T.S. No. 2B Part, Block 9 of Adyar Village, Mambalam-Guindy Taluk of Chennai District in favour of

some individuals viz. Tmt. Durab Zamam Begam, W/o. M.R. Sherif and 8 others without perusing Government document that exist in favour of the

King Institute of Preventive Medicine Guindy with whom the lands are in active possession and not given sufficient opportunity to the Tahsildar,

Mambalam-Guindy and for the King Institute, Chennai for furnishing documents in support of the King Institute.

2) The orders of the Settlement Officer, Chennai-5 has been examined in detail and prima facie found that the lands, for which the Settlement

Officer allowed ryotwari patta, are belonged to various Government Institutions viz. The King Institute of Preventive Medicine, Dr. M.G.R.

Medical University, TNPL, TNPCB, etc. Under the circumstances, orders of the Settlement Officer are hereby stayed until further orders as the

order of Settlement Officer is being taken for review under the inherent powers vested with the Commissioner of Land Administration read with

Section 7 of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948.

Sd/- Rameshram Mishra

Principal Secretary and

Commissioner of Land Administration.

4. In the meanwhile, the Principal Secretary to the Government, Revenue Department sent a letter to the State Government on 16.9.2008

regarding the conduct of the Settlement Officer, Chennai and the necessity for taking suomotu revision of the order passed by the Settlement

Officer. However, the Additional Chief Secretary to the Government and Director of Survey and Settlement sent a letter dated 24.9.2008 to the

Principal Secretary to the Government, Revenue Department, taking exception to the order passed by the Settlement Officer and held that the

order was unlawful and not within her jurisdiction. But at the same time, it was

opined that the Director of Survey and Settlement cannot take up the matter u/s 5(2) of the Inam Abolition Act for a suo motu enquiry and no stay order can also be passed by the Government. It is in this background, the aggrieved authority, i.e., Tahsildar, Mambalam-Guindy Taluk and the Director of King Institute of Preventive Medicine and Research, Chennai were forced to file the writ petitions challenging the order of the Settlement Officer, i.e., 10th respondent.

5. Mr. M.C. Swamy, learned Special Government Pleader appearing for the writ petitioners also brought to the notice of this Court that the 10th respondent, who was holding the rank of the District Revenue Officer and who passed the order as the Settlement Officer, was subsequently transferred as the Joint Director of Adi Dravidar Welfare. The said officer (Mrs. C. Kasthuri) was placed under suspension by the State Government by G.O.(2D) No. 19, Public (Special.A) Department, dated 26.2.2010. The suspension was made under public interest.

Subsequently, the State Government had framed a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, asking for her explanation. The charges related to the illegal exercise of power in terms of the Tamil Nadu Act 26/1948 and also passing an order causing huge monetary loss to the State Government, approximately to the tune of Rs. 200 crores by the grant of patta to private persons for the lands which were classified as Government poramboke lands during the course of the settlement proceedings and which were in possession and enjoyment of the Government for over 50 years. It was also brought to the notice of the Court that a criminal case was also registered against the said person with J-3 Guindy Police station in Crime No. 207 of 2010 on 17.4.2010 for the offence involving Sections 188, 218 and 219 IPC read with Section 3 of the Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992. Since the said officer had reached the age of superannuation on 30.4.2010, the Government had issued an another order in G.O.(2D) No. 48, Public (Special.A) Department, dated 30.4.2010 in terms of FR 56(1)(c) and retained her service in the department until the conclusion of the disciplinary proceedings. Therefore, in the light of the subsequent developments, it was submitted that the case will have to be considered in the light of the illegal and tainted order passed by

the 10th respondent Settlement Officer.

6. It must be noted that the proceedings before the 10th respondent was conducted by one power of attorney holder of the contesting respondents

by name R. Cheran, S/o. N.C. Raja, Ambattur through his counsel. Subsequently, on notice issued on the two writ petitions, the same counsel

entered appearance on behalf of all respondents including the 8th respondent (Ahmed Sheriff), who also describes himself as an advocate in the

communications sent by him to this Court. When the matters were taken up, the 8th respondent (by name Ahmed Sheriff), claiming to be an

advocate started sending letters to the Registry objecting to this Court hearing the case. On his behalf, a counsel by name R. Sankarasubbu,

represented the matter. It was inspite of the fact already the 8th respondent was represented by an another advocate, who was in turn lead by a

senior advocate. However Mr. Sankarasubbu, the learned counsel stated that he is representing the 8th respondent and he intended to file vakalat

on his behalf. But till date no change of vakalat was filed for the 8th respondent. The 8th respondent filed an application in M.P. No. 1 of 2012

seeking to remove the two writ petitions from this Court. The said petition came to be dismissed by a division bench vide an order dated

30.7.2012. The division bench held that there was no wrong for this Court hearing those two writ petitions. If at all, the respondents are aggrieved

by any order, they can take up the matter before an appellate forum. Thereafter, the matter was set for hearing by this Court on 3.8.2012.

7. Heard the arguments of Mr. M.C. Swamy, learned Special Government Pleader appearing for two writ petitioners and Mr. R.

Muthukumaraswamy, learned senior counsel leading Mr. K.G. Vasudevan, learned counsel for Respondents 1 to 7 and 9. Though the said counsel

stated that he is no longer appearing for 8th respondent (Ahmed Sheriff), no such revocation of vakalat has been made and even his new counsel

who filed the application for transfer did not appear and make any submissions in this case. This will be yet another factor to be noted in these two

writ petitions which came to be filed challenging the impugned order dated 1.9.2008.

8. The impugned order came to be passed on the alleged representations made by the first respondent Kaneez Fathima, dated 12.2.2002. The

said representation, which was purported to have been filed in terms of Section 12 read with Section 15(1) of the Tamil Nadu Act 26 of 1948,

was made seeking for ryotwari patta in respect of the lands set out in the said representation. It is now brought to the notice of the Court that the

said Kaneez Fathima, the first respondent, had filed a writ petition before this Court being W.P. No. 34044 of 2003 seeking for a direction to

consider her representation, dated 12.2.2002 for examining the records, to cause spot inspection and preliminary enquiry and for a direction for

rectification of the error in the relevant records of the lands of the petitioner after giving personal hearing. This Court by an order dated 27.11.2003

had disposed of the said writ petition after notice to the Government advocate and in paragraph 3 of the order, it was observed as follows:

3. Having regard to the above, I am inclined to direct the fourth respondent or fifth respondent as the case may be to consider the representation

dated 12.2.2002, in accordance with law and pass orders thereon in any event not later than 20.1.2004. If the fourth respondent or the fifth

respondent as the case may be feels that personal hearing is called for, it is open to them to give notice in advance to the petitioner and then

decide. The writ petition is disposed of accordingly.....

9. It can be seen from the said order that a direction was given only to consider a representation, dated 12.2.2002 in accordance with law.

Curiously, even while the said direction was pending, the 5th respondent in these two writ petitions filed yet another writ petition being W.P. No.

8764 of 2007 seeking for an identical prayer to consider the representation dated 12.2.2002 allegedly sent by her and pending before the

respondent and to dispose of the same on merits without taking into consideration the delay aspects. This Court by an order dated 9.3.2007 had

directed the then Government advocate to take notice and disposed of the writ petition at the admission stage itself. In paragraph 3 of the order,

this Court had passed the following order:

3. Having regard to the facts and circumstances of the case, this writ petition is disposed of with a direction to the fourth respondent to consider

and pass orders, in accordance with law, on the representation of the petitioner dated 12.2.2002 within a period of twelve weeks from the date of

receipt of a copy of this order. No costs.

10. Subsequently, the matter came to be mentioned by the counsel appearing for the 5th respondent that too after a period of seven months.

Subsequently that writ petition came to be posted under the caption ""for being mentioned"". This Court on 5.10.2007 had passed the following

order:

This miscellaneous petition is being listed today under the caption ""for being mentioned"", at the instance of the learned counsel for the petitioner.

2. Earlier, the petitioner approached this Court seeking for a direction to the Settlement Officer, Chepauk, Chennai to consider the application of

the petitioner dated 12.2.2002 under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, pending before the respondent in

Reference No. 8924 of 2003 and dispose of the same on merits without taking into consideration the delay aspects.

3. The grievance of the petitioner in the said application was not considered by the Settlement Officer as it was filed with a delay. Considering the

grievance, this Court by order dated 9.3.2007, directed the Settlement Officer to consider the application and pass orders in accordance with law

within a period of twelve weeks from the date of receipt of a copy of the said order.

4. It is now submitted by the learned counsel for the petitioner that though this Court had directed the Settlement Officer to dispose of the said

application, since there is no reference as to the delay, the fourth respondent Settlement Officer has not disposed of the said application. Hence,

the order must be clarified by issuing a fresh direction for consideration of the said application without reference to the delay.

5. Heard Mr. D. Sreenivasan, learned Additional Government Pleader as well in this regard.

6. Having regard to the above submission, para 3 of the order dated 9.3.2007, shall be read as follows:

Having regard to the facts and circumstances of the case, this writ petition is disposed of with a direction to the fourth respondent, Settlement

Officer, Chepauk, Chennai to consider the representation of the petitioner dated 12.2.2002 filed under the Tamil Nadu Estates (Abolition and

Conversion into Ryotwari) Act pending before him under Reference No. 8924 of 2003 and dispose of the same on merits and in accordance with

law and without reference to the delay in filing the said application. Such order shall be passed within a period of eight weeks from the date of

receipt of a copy of this order or on production of the same by the petitioner.

(emphasis added)

11. It is on the strength of the subsequent directions issued, without having regard to any legal norms, the 10th respondent took up the matter

notwithstanding the fact that such petitions could not have been heard by her under the Tamil Nadu Act 26 of 1948.

12. Time and again, the Supreme Court has pointed out that in the guise of giving direction to consider representation, the Court cannot revive the

death or stale cause of action. In this regard, it is necessary to point out certain decisions of the Supreme Court.

13. The Supreme Court in *C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another*, had observed as follows:

9. The Courts/Tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere

direction to consider and dispose of the representation does not involve any ""decision"" on rights and obligations of parties. Little do they realise the

consequences of such a direction to ""consider"". If the representation is considered and accepted, the ex-employee gets a relief, which he would not

have got on account of the long delay, all by reason of the direction to ""consider"". If the representation is considered and rejected, the ex-

employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the

representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief

claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the

representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or

ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale

or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to

the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department.

Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a Court/Tribunal to consider or deal with the representation, usually the director (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the Court or Tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

14. The Supreme Court vide its decision in Union of India (UOI) and Others Vs. M.K. Sarkar, had observed as follows:

15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the

Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the Court or Tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect.

15. When this Court directed the 10th respondent to consider the representation of the private respondents, dated 12.2.2002, the 10th respondent cannot take over some other representation and decide the matter in favour of the private respondents. In this case, at the maximum the 10th respondent could have considered only the representation, dated 12.2.2002, wherein they have only asked for reclassification of lands as if the lands were in their possession. In such a case, as to how such a direction can be given by this Court came to be considered by the Supreme Court in A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, it was observed as follows:

14. We may, in this context, examine the significance and meaning of a direction given by the Court to "consider" a case. When a Court directs an authority to "consider", it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to "consider the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to "consider" and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to "consider", in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs

consideration "" without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to ""consider"" afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to ""consider"" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the Court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to consider"" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

18. We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to ""consider"" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the Court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to ""consider"" the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of ""pliable"" authorities have misused the direction ""to consider "" issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to ""consider"" and dispose of the representation. When the Court disposes of the petition with a direction to ""consider"", the authority grants the relief taking shelter under the order of the Court directing him to ""consider "" the grant of relief. Instances are also not wanting where

authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order ""to consider"" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to ""consider"", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the Court's direction to ""consider"" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders ""to consider"".

(emphasis added)

16. If it is seen in the above context, certainly the directions contained in the order dated 5.10.2007 in W.P. No. 8764 of 2007 ought not to have been granted, because this Court could not have granted any direction to waive any limitation, if the statute otherwise prescribes limitation. No such power is vested on this Court under Article 226 of the Constitution to get over the limitation since the proceedings initiated under the Tamil Nadu Act 26/1948 are statutory proceedings. In the order, there was also no reference as to whether the lands in question were in the hands of the petitioners or the nature of the representation sent by them. Further, it is also curious to note that though there are nine contesting respondents, the first writ petition (W.P. No. 34044 of 2003) was filed by the first respondent seeking for an identical prayer, i.e., to consider the representation, dated 12.2.2002 and that was disposed of by a final order dated 27.11.2003 stating that the authority must consider the said representation in accordance with law. It only means that the representation has to be considered in accordance with law, which includes any limitation prescribed under such statute. Thereafter, it is the 5th respondent who wanted to have the same representation, dated 12.2.2002 to be considered by the very same authority especially when an order was already passed on 9.3.2007. Knowing fully well that their representations are not likely to be considered in the absence of getting over the delay aspect, oral mentioning was made for waiving the limitation. It was also ordered

by this Court on 5.10.2007. The respondents could not have filed two writ petitions for the very same subject and thereafter also by oral

mentioning can get the waiver of delay in considering their representation. But the earlier order will operate as a res judicata and hence the

subsequent order is a void order. It could not have been relied by the official respondent while deciding the representation of the private respondents.

17. Further, the respondents never stated whether they have sent a joint representation, dated 12.2.2002 or individual representations. But, the

two orders passed by this Court referred to the same representation. In the impugned order dated 1.9.2008, in paragraph 3, a reference to W.P.

No. 8764 of 2007 was made as if she was given liberty to decide the matter without reference to delay. A reading of the impugned order will

clearly show that an enquiry into the petition allegedly submitted by the respondents was began on 12.1.2004, which correspondingly tallies with

the earlier order passed by this Court in W.P. No. 34044 of 2003, dated 27.11.2003, wherein only a direction was given to consider their

representation in accordance with law. Subsequently, the respondents must have been impressed by the 10th respondent about her inability in

dealing with the representation in view of the long delay. Therefore, they have set up the 5th respondent to file a writ petition on the very same

issue. Though the second writ petition (W.P. No. 8764 of 2007) came to be filed for the very same relief, once again this Court on 9.3.2007

merely directed the respondent to pass an order in accordance with law. At that time, the 5th respondent brought to the notice of the Court that

the 10th respondent has also taken the case on file in reference No. 8924 of 2003 as reflected in the prayer of the writ petition. But, after 7 months

after the said order, it is curious that they have mentioned the matter before the Court to get over the limitation, so that they can get a favourable

order from the 10th respondent. This was what precisely happened in the present case.

18. In the light of these developments, it is clearly seen that all was not well with the 10th respondent and that other private respondents have

indulged in an unhealthy practice in getting their representation considered in their favour. Therefore, this Court is inclined to consider the impugned

order strictly in the light of the provisions of the Tamil Nadu Act 26/1948 and not allow the private respondents to have got over the limitation if

any found in the said Act. Certainly, this Court is not inclined to accept that the order dated 9.3.2007 read with 5.10.2007 in W.P. No. 8764 of

2007 had given a full licence for getting over the limitation if any found under the Act. In the light of the conduct of the private respondents as well

as the circumstances under which the 10th respondent is now facing serious charges, both departmental and criminal proceedings, the matter

requires a greater scrutiny. It is in this background, the present two writ petitions will have to be considered.

19. The contention of the petitioner in W.P. No. 22054 of 2009 was that the dispute is relating to the land measuring 5 cawnies, 11 grounds and

775 sq.ft., in T.S. No. 1B block No. 6 and 2 Cawnies, 5 grounds and 1200 sq.ft., in T.S. No. 2B Part, block No. 9 of Adyar village,

Mambalam-Guindy Taluk. The town survey land register maintained by the Tahsildar showed that the land was Sarkar Poramboke. The first block

of the land covers 286 grounds and 106 sq.ft., held by the King Institute. Similarly, the second piece of land covering 987 grounds and 1300 sq.ft.

also held by the King Institute, Guindy. The Town Survey land register is a basic record for effecting transfer of registry with reference to the

particulars recorded by the Settlement Officer at the time of Town survey. The land under reference was classified as Sarkar poramboke lands and

determined by the settlement authority at the time of town survey. Initially, the property was comprised as part of Adyar Zamin and was notified

under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act 26 of 1948) by G.O. Ms.

No. 3157, Revenue Department, dated 9.12.1959. Under the provisions of the Tamil Nadu Act 26 of 1948, the entire land in the estate vested

with the Government with effect from the date of the notification. Under the said Act, the Assistant Settlement Officer is the competent authority to

issue ryotwari pattas u/s 12 on being satisfied with the conditions prescribed. Insofar as the land in Adyar Zamin was concerned, the entire estate

was settled under the provisions of the Act and settlement proceedings were completed. In other words, the ryotwari patta was issued to the land

holders/ryots, who were ever in possession and were actually cultivating the lands. The property which was under public use was classified as

Government poramboke. Thus the properties were classified as government poramboke which were in possession of the King Institute, the

petitioner in W.P. No. 4110 of 2010, as per the settlement records and they were more than 60 years old. The King Institute has been in

continuous possession of the property for over 100 years. The building in the said property was constructed in the year 1899 for production of

vaccines and has been declared as an heritage building. The Adyar Zamin village was already settled and ryotwari settlement was also introduced

in the village more than 49 years back as per the order of the State Government in G.O. Ms. No. 714, Commercial Tax and Religious and

Endowment Department, dated 28.8.1987. The lands claimed by the private respondents if considered in their favour will worth more than Rs.

400 Crores and that they have not made any claim within the limitation prescribed under the Tamil Nadu Act 26 of 1948.

20. The private respondents were never in possession of the land. Even the land records showed that the lands were sold in Court auction to a

third party. The building which is now in existence in the said land is in continuous possession and enjoyment of the King Institute from the year

1899 onwards. For the first time, the claim of the private respondents were made by their representation on 12.2.2002. In all applications, they

only sought for changing the nature of the tenure of Alandur and Adyar villages, so that they will not come within the purview of the Tamil Nadu

Act 26 of 1948. The contention of the private respondents was that Adyar and Alandur villages will not come under the meaning of ""estate"" as

defined under the Act. The private respondents giving a go-by to the original claim in the application dated 12.2.2002, sent yet another

representation on 20.8.2007 seeking for the issuance of ryotwari patta under the provisions of the Tamil Nadu Act 26 of 1948. This was in direct

contrast with the earlier claim made by them on 12.2.2002, which alone was directed to be considered by the 10th respondent and the claim was

certainly barred by limitation. Section 3(10)(a) of the Estate Act, 1908 clearly stipulates that the land ought to have been under direct possession

and cultivation of the landholder himself for the period of 12 years before the commencement of Madras Estate Act, 1908. In the instant case, the

respondents 1 to 9 were never in possession of the land and the land was sold in Court auction to a third party. The land has also been in

possession of the King Institute from 1899 onwards.

21. The Settlement Officer failed to see that she had no jurisdiction to entertain the application, especially when during the settlement the land has

been classified as Government poramboke and the said classification has not been challenged. The settlement officer had shown undue haste and

unwarranted interest in disposing of the applications made by the private respondents. She had not gone into the veracity of the claim made by the

private respondents that they were the legal heirs of the erstwhile Zamindar. Therefore, the burden of proof heavily lies on the person who claimed

the relief. It is further stated that the lands were covered under the Adyar Zamin and stood vested with the Government absolutely after the

notification of the Act in G.O. Ms. No. 3157, Revenue Department, dated 9.12.1959. It was further submitted that the claim of ryotwari patta

under the Tamil Nadu Act 26 of 1948 is clearly time barred. The lands for which pattas were sought to be given, i.e., over 56 acres (in the heart of

the Chennai city) are in continuous possession of King Institute for over 100 years. The settlement officer had not appreciated the definition of the

term "private land" as defined under the Madras Estate Land Act, 1908, which clearly states that the land ought to have been cultivated as private

land by the landholder himself for a continuous period of 12 years immediately before the commencement of the Act. In the present case, it was

never the case of the respondents that they were in continuous possession of the land for more than 12 years immediately before the

commencement of the Act. Since the lands were already classified as Sarkar Poramboke, they ought to have challenged the same by way of an

appeal in respect of the land classification only before the Tribunal and no power is vested with the settlement officer to deal with the said issue.

22. In W.P. No. 4110 of 2010 filed by the Director, King Institute of Preventive Medicine, identical contentions were raised. It was stated by

them that the lands in question are now in possession of the King Institute of Preventive Medicine, Dr. M.G.R. Medical University, Tamil Nadu

Papers Limited, Tamil Nadu Pollution Control Board. The institute was never given any hearing by the settlement officer. The institute when it

received notice on 20.4.2007 by the 10th respondent, they were not aware of the nature of the claim made by the private respondents. The

institute made a request for furnishing copies of documents and pleadings filed by the private respondents. Instead of obliging the request of the

petitioner, the settlement officer by letter dated 7.5.2007 had directed the production of records to show the institute's right to the property.

Shocking by the behaviour of the settlement officer, the institute wrote a letter to the Director of Medical Education. On advice, once again they

requested the Settlement Officer to furnish documents. But no reply was given. Further, a letter dated 25.8.2008 was sent to the settlement officer

seeking to furnish the copies of documents. Notwithstanding the same, the settlement officer had passed the impugned order dated 1.9.2008. The

entire land was classified as Sarkar Poramboke and was standing in the name of the King Institute. It was further stated that the institute was

established in the year 1899 as a small pox vaccine depot and comes under the Director of Medical Education and the Health and Family Welfare

Department, Government of Tamil Nadu. The institute was expanded for production of vaccine and sera. With the academic activities, diagnostic

work, testing of drugs, vaccines and sera, the King institute was expanded to accommodate different departments which were established. The

institute was having lands covered by various documents. Since the settlement officer never gave an opportunity to produce the documents, they

were handicapped. The documents relating to possession were kept in the Government Archives. Further the settlement officer failed to take note

of the following Government Orders:

1. G.O. No. 50/51 W, dated 17.1.1900
2. G.O. No. 1151 L, dated 14.9.1903
3. G.O. No. 2840W, dated 1.10.1904
4. G.O. No. 581, dated 12.8.1905
5. G.O. No. 798 W, dated 4.8.1909
6. G.O. No. 1155 W, dated 18.10.1909
7. G.O. No. 475 W, dated 14.5.1910
8. G.O. No. 516 W, dated 26.5.1910
9. G.O. No. 577 W, dated 2.6.1910
10. G.O. No. 3157 Revenue, dated 9.12.1959.

Therefore, it was submitted that the impugned order should be set aside.

23. Per contra, in the counter affidavit filed on behalf of respondents 1 to 9, it was stated that they were represented by their power of attorney

one R. Cheran in the proceedings before the Settlement Officer. The respondents 1 to 9 are children of one G.M. Kasim Ali, who was one of the

Zamindars of Alandur and Adyar villages. Their father, by a deed of settlement, had settled the two villages in favour of his brother Haji Ahmed Ali

by a registered document. He became the Zaminder and during his tenure, a notification u/s 3 of the Tamil Nadu Estates (Abolition and Conversion

into Ryotwari) Act, 1948 was issued. In the year 1881, the Zamindari rights were purchased by the ancestors of Haji Ahmed Ali and G.M. Kasim

Ali in a Court auction. Pursuant to the Court sale, the Zamindari rights of the two villages stood transferred to one Gulam Mohammed Kasim Ali

Naqvi Saheb. It was inherited from the said person by his heirs from generations to generations. The father of the respondents 1 to 9 was also a

Zamindar of the two villages. By a deed of settlement, dated 22.9.1937, he settled the zamindari rights of Alandur and Adyar villages in favour of

his younger brother Haji Ahmed Ali Saheb. The properties under question continues to be vacant lands and is possession of the Respondents 1 to

9 through their watch and ward staff, who themselves were looking after the lands continuously for the past 70 to 80 years.

24. It was stated that in the year 2001, through one Bojarajan, the heirs of Haji Ahmed Ali took proceedings before the settlement officer for

correction of revenue records instead of seeking ryotwari patta. But the proceedings initiated by Bojarajan was not seen the light of the day, they

appointed on R. Seran as their power of attorney and took steps to correct the records. The authority on being directed by this Court had gone

through the legal process completely. The town survey land register produced shows grave mistakes were committed and that the private lands

were shown as Sarkar poramboke. The Assistant Settlement Officer is the competent authority to issue the ryotwari patta u/s 12 of the Act. The

fact that vesting of lands pursuant to Tamil Nadu Act 26 of 1948 does not result in transfer of ownership of lands to the Government or State. The

State can only hold the lands for being handed over to the legitimate claimants of such lands. The claim that the King Institute is in possession of the

property for more than 100 years is denied. No doubt, a portion of the vast extent of land which formed part of Adyar Zamin was allotted to the

King Institution and they have constructed building. They may be in possession and enjoyment of the said piece of land. But the entire land was not

under the possession of the King Institute. The classification of the land was uncalled for and erroneous. The order of the State Government in

G.O. Ms. No. 714, Commercial Taxes and Religious and Endowment Department, dated 28.8.1987 will have no bearing on the issue on hand

and it will not have the effect of amendment of the Act and that it cannot fix any time limit for the grant of ryotwari patta. It was admitted that there

is a building within the compound in which the King Institute is functioning, but the land which is claimed by the private respondents will not include

that portion of land.

25. In the light of the above, the following questions arise for consideration:

(i) Whether the respondents 1 to 9 came to this Court with clean hands and when in the original representation, dated 12.2.2002, they had only

asked for reclassification of land and subsequently whether they can substitute their claim by a further representation given during 2007 asking it to

be considered for the grant of ryotwari patta?

(ii) Whether the 10th respondent had jurisdiction to deal with the claim of the private respondents notwithstanding the directions issued by this

Court?

(iii) Whether any limitation can be prescribed for making the claim of this nature made by the private respondents?

(iv) Whether the impugned order is legally valid?

26. It is clearly seen that the Respondents 1 to 9 not only went before the 10th respondent, but they have also attempted to make dubious

proceedings even before this Court as already noted. It is not clear whether the first respondent has sent a representation dated 12.2.2002, which

was directed to be considered in accordance with law by the first order dated 27.11.2003 and whether they were allowed to file the second writ

petition on the same issue. Even in that writ petition, only a direction was issued to consider the representation. But subsequently, after seven

months, on an oral mentioning, they got a direction to consider the representation without limitation. This clearly shows that private respondents are

aware that in the absence of such a direction, their representation was not likely to be considered by any authority including the 10th respondent.

Therefore, on oral mentioning they got a direction to consider the representation without limitation. This can never be allowed considering the vast

nature of land and the value of land, which are in the hands of public institution. Further as held by the Supreme Court in C. Jacob v. Director of

Geology and Mining (supra) and Union of India v. M.K. Sarkar (supra), no direction can be given to get over the limitation. Even assuming that the

representation, dated 12.2.2002 was to be considered, it was only for reclassification of land and not for ryotwari patta in terms of the Tamil Nadu

Act 26/1948. Such reclassification cannot be done by the settlement officer. It has to be done only by the revenue department with the approval of

the Government. Therefore, when the 10th respondent took up the application and subsequently converted into a request for ryotwari

proceedings, she has clearly without jurisdiction. Therefore, the attempt by the private respondents in seeking the relief before the 10th respondent

is clearly not bona fide it is coupled with the fact that the 10th respondent is also facing serious charges both criminal and departmentally at the

hands of the Government.

27. In the present case, since the 10th respondent had exercised her power u/s 15(1), it is necessary to refer to Section 15(1), which is as follows:

15. Determination of lands in which the landholder is entitled to ryotwari patta under foregoing provisions.--(1) The Settlement Officer shall

examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta u/s 12, 13 or 14, as the case may be, and

decide in respect of which lands the claim should be allowed.

(2(a) Against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the date of commencement of

the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1954, or from the date of the decision, whichever is later, and

any person aggrieved by such decision may, within two months from the date, appeal to the Tribunal:

Provided that the Tribunal may, in its discretion, allow further time not exceeding six months for the filing of any such appeal:

Provided further that the Tribunal may, in its discretion, entertain an appeal by

the Government at any time if it appears to the Tribunal that the decision of the Settlement Officer was vitiated by fraud or by mistake of fact.

(b) The decision of the Tribunal on any such appeal shall be final and not be liable to be questioned in any Court of Law.)

28. The State Government had issued a Government order in G.O. Ms. No. 714, Commercial Taxes and Religious Endowments Department,

dated 29.6.1987, rules were specifically made. Under Rule 6 it was stated that the Director or the Commissioner of Land Administration can

condone the delay upto a period of thirty days beyond the period specified. Since a reference was made to Section 12 by the 10th respondent,

wherein in case of Zamindari estate, the landholder is entitled to ryotwari patta, it is necessary to extract Section 12(b)(iii), which reads as follows:

(iii) all lands (not being (i) lanka lands, (ii) lands the description specified in Section 3, clause (16) sub-clauses (a), (b) and (c) of the Estates Land

Act, or (iii) forest lands) which have been abandoned or relinquished by a ryot, or which have never been in the occupation of a ryot, provided that

the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock in the ordinary course of

husbandry from the 1.7.1939, and has been indirect and continuous possession of such land from that time.

29. Section 12(b)(3) clearly stipulates that the person must be cultivating the land by himself or by his own servant. In the present case, the findings

by the 10th respondent that there were some servant quarters in the land which were occupied by zamin servant is without any basis and that a

sweeping conclusion has been made. In paragraph 26, she had observed that there were 6 houses including Cemetery, mutton stall, church and a

hut and 6 houses and that in those houses, the legal heirs of the servants who were with the Zamindars were living. Thereafter, she stated that they

were all encroachment and they have not obtained any patta or licence from the Zamins. It was a wrong understanding of Section 12, where the

possession will have to be either vested with the landholder or tenants where cultivation has been done. In the present case, they have become

already urban lands and hardly any cultivation was done. Secondly, as per the land map showed, there are so many small buildings in and around

the King Institute. If the present impugned order has to be given effect to,

wherein the 10th respondent had given the entire land to private

Respondents 1 to 9, the employees of the King Institute will have to go only by rope-car from the public road and there must be a new bridge to

go to the office. Thoroughly the 10th respondent has made a mechanical application of the entire issue. Therefore, even the findings rendered by

the 10th respondent is wholly illegal and inconsistent with the provisions of the Act.

30. The petitioners have produced G.O. No. 3157, dated 9.12.1950, wherein the estate by virtue of the Madras Estates (Abolition and

Conversion into Ryotwari) Act, 1948 was taken over and that in respect of Chengalput district, Alandur and Adyar Zamins, which were in Sl.

Nos. 83 and 84, were notified. In fact, the petitioners have produced the order of the Public Works Department, dated 17.1.1910 to show that

the King Institute was established for carrying on special research work. In the operative portion of the order in paragraph 5, it was stated as

follows:

5. There is now vacant a more spacious building known as the ""Nawab's Garden"", Guindy, which was acquired and improved at a cost of about

Rs. 18,810 from Provincial revenues, with a view to provide quarters for officers attending the King Institute for special research work. At present

the work conducted at the institute in connection with the analysis of water, chemical and bacteriological, has taken up all available space so that

there is little room for any one engaged on research work.

31. They have even produced the orders starting from the year 1903. In the order dated 14.9.1903, it was stated as follows:

With reference to G.O. No. 636 L., dated 22.5.1903, I have the honour to state that I believe I placed before Government an insufficient

explanation of my reasons for desiring that the Bacteriologist's quarters should be placed on a site not at present in possession of Government. I

trust, therefore, as I consider the matter of importance, it will be pleased to take the facts now stated into consideration.

2. The Bacteriologist's quarters are intended for use of a European, who may possibly be a married man. Consequently, it may be calculated it

would produce considerable discomfort to a lady to have a house so situated that it might be haunted (a) by the odour of calves, however carefully

they may be kept. Attached to the house would be servants (b) whose presence for disciplinary reasons in the compound of the institute would be

most objectionable. Attached to the house would be stables (c) and there are particular bacteriological reasons why horse-dung, or straw

contaminated with it, should not be handled for air drying in the vicinity of laboratories.

32. The fact that lands were under the control of the King Institute also came to be justified by various electricity charges paid by the institute in

respect of the consumption made by them and that the receipts were produced. The bill for property tax and water charges were produced. It is

only because there were very many old documents in the possession of the petitioners, private respondents have gone to the extent of conceding

that the King Institute has been in possession of land in which buildings are situated and that they were claiming only the vacant land around the

buildings. Such a contention ought not to have been accepted by the authority in directing to grant ryotwari pattas in respect of the so-called vacant

lands.

33. As noted already, in this case, the request of the private respondents for reclassification was made by a representation, dated 12.2.2002. Such

a reclassification could not have been entertained by the settlement officer as it does not come within her purview. Even for the subsequent

application made, for which there was no direction to the private respondents for changing the nature of their relief and that they were seeking for

ryotwari patta. As already noted, the 10th respondent was clearly bound by the limitation and no such stale or death cause of action can be

revived by the directions issued by this Court. The 10th respondent had not even verified the records from the Government Archives and simply

proceeded to decide the matter. On the other hand, the burden of proof heavily lies on the private respondents and not on the writ petitioners.

Hence the impugned order is liable to be set aside.

34. Mr. M.C. Swamy, learned Special Government Pleader brought to the notice of this Court a judgment of the Supreme Court in T.S. Pl. P.

Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, , wherein the provisions of the Madras Estate Lands Act 1908 came

to be considered. Section 3(10) defines the term ""private lands"". Section 3(10)

(b)(iv) of the Act reads as follows:

(iv) land the entire kudivaram in which was acquired by the landholder before the first day of November 1933 for valuable consideration from a

person owning the kudivaram but not the melvaram, provided that the landholder has retained the kudivaram ever since and has not converted the

land into ryoti land, and provided further that, where the kudivaram was acquired at a sale for arrears of rent the land shall not be deemed to be

private land unless it is proved to have been cultivated by the land holder himself, by his own servants or by hired labour, with his own or hired

stock, for a continuous period of twelve years since the acquisition of the land and before the commencement of the Madras Estates Land (Third

Amendment) Act, 1936.

35. In the same judgment, the Supreme Court in paragraph 7 had observed as follows:

7.It seems to us that the definition read as a whole indicates clearly that the ordinary test for "private land" is the test of retention by the

landholder for his personal use and cultivation by him or under his personal supervision There must, in our opinion, be something in the evidence

either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the

landholder and his establishment in order to place those lands in the special category of private lands in which a tenant under the Act cannot

acquire occupancy rights. In the present case there is no proof that the lands were ever directly cultivated by the landholder.....

36. In this case, there is no such proof was forthcoming. The said judgment in Chidambaram Chettiar v. Santanaramaswami Odayar (supra) came

to be subsequently quoted with approval in Pollisetti Pullamma and others Vs. Kalluri Kameswaramma and others, , wherein the Supreme Court in

paragraphs 22 and 27 had observed as follows:

22.....Where land proved or admitted to be once ryoti land is claimed to have been converted into private land, the claim is untenable unless the

landholder proves direct cultivation for a period of 12 years before 1.7.1908. No other mode of conversion is permissible. Where you have to find

out whether a land is private or ryoti its originate character not being known, proof of direct cultivation of the land by the landholder for 12 years

before 1.7.1908, would, without other evidence, conclusively establish its character as private land, but this is not the only mode of proof

permitted to landholder. Other evidence may be adduced and looked into and might consist, among other matters, of direct cultivation of the land

at some period anterior to 12 years preceding 1st July, 1908 but this is not indispensable. Direct cultivation may be valuable and weighty evidence

and may be inferred from accounts and other records usually kept by large landholders.

.....

The burden of proof that a particular land in an estate is private land rests on the landholder, the statutory presumption being the other way. This

burden is not discharged merely by proving that both the warms were granted to or enjoyed by the landholder once upon a time. There must be

evidence of the treatment of the lands as private lands by the landholder, either by direct cultivation or otherwise in the manner above stated.

27....There must, in our opinion, be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to

regard these lands as retained for the personal use of the landholder and his establishment in order to place those lands in the special category of

private lands in which a tenant under the Act cannot acquire occupancy rights.

37. He further submitted that initially the claim of the private respondents was only for reclassification of lands, for which the 10th respondent has

no jurisdiction as she is only the authority under the Tamil Nadu Act 26 of 1948 and that reclassification cannot be done by the said authority.

When once it is declared as Sarkar Poramboke, unless classification is satisfied by the competent authority or by any higher Court, the petitioner

cannot seek for ryotwari patta in respect of the government poramboke lands. Therefore, the order passed by the 10th respondent was nullity.

38. In this context, he referred to a judgment of the Supreme Court in Harshad Chiman Lal Modi Vs. DLF Universal and Another, and referred to

the following passage found in paragraph 32, which reads as follows:

32. In Bahrein Petroleum Co. this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise

incompetent to try the suit. It is well settled and needs no authority that "where a Court takes upon itself to exercise a jurisdiction it does not

possess, its decision amounts to nothing". A decree passed by a Court having no jurisdiction is non est and its invalidity can be set up whenever it

is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a Court without jurisdiction is a coram non judge.

39. If it is seen in the light of the above discussion, it is clear that the authority has erroneously held the matter in favour of the private respondents.

He further contended that in this case, it was not a suo motu revision of the authority, but only by an application made by the party, the matter was

sought to be reopened. While there cannot be any time frame for suo motu revision by the authority, but in respect of the application made by the

party, certainly there is limitation prescribed in the Tamil Nadu Act 26 of 1948 as held by this Court in *M. Govindan and Another v. The Special*

Commissioner and Commissioner of Land Administration and Others CDJ 2011 MHC 3039 : LNIND 2011 MAD 1943 : (2011) 6 MLJ 731 :

(W.P. Nos. 14082 of 2004, 13342 of 2009 and 14792 of 2009, dated 12.4.2011) and in paragraph 25, this Court had observed as follows:

25. There is no time limit to exercise the suo motu powers under the Act. The corrective measures can be taken whenever the fraudulent and

irregular order is brought to the notice of the Commissioner of Land Administration. The Act does not provide for any specific time frame. The

time limit of sixty days mentioned in Clause 9 of G.O. Ms. No. 1300, dated 30.4.1971, is only for an application to be filed by the aggrieved party

for not granting patta but not for the suo motu action by the authority.....

40. A similar view was already taken by a Full bench of this Court in *The Special Commissioner and Director of Survey and Settlement Vs.*

M. Arumugam,

41. The fact that the 11th respondent had impleaded themselves to contend that so many square metres were given to them by the King Institute

under the order of the Government for laying down the metro rail showed that the private respondents were never in possession of the land in

question. It is a clear case where the private Respondents 1 to 9 have hatched a conspiracy to grab the lands which are in possession of the

Government department for nearly a century by taking recourse to the dubious legal proceedings and by obtaining an order without any justification

from this Court. In the light of the above, both writ petitions will stand allowed with a costs of Rs. 25,000/- (Rupees twenty five thousand only) to be paid by Respondents 1 to 9 to the Director of King Institute of Preventive Medicine and Research, Guindy (petitioner in W.P. No. 4110 of 2010) within eight weeks. Consequently connected miscellaneous petitions stand closed.