IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 21.06.2023**

**PRONOUNCED ON : 04.07.2023**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**WP No.17612 of 2023**
**and**
**WMP Nos.16694 to 16697 of 2023**

Agri-Horticultural Society
A Society registered under the Societies Registration Act
Rep by its Honorary Secretary, Mr.V.Krishnamurthy
Having its Office at –
No.31, Cathedral Road,
Chennai – 600 006. ... Petitioner

Vs.

1.The State of Tamil Nadu
Represented by the Secretary to Government
Revenue Department
Fort St. George,
Chennai – 600 009.

2.Commissioner of Land Administration
Ezhilagam
Kamarajar Road
Chepauk
Chennai – 600 005.

3.The District Collector
Chennai
Singaravelar Maaligai
Rajaji Salai
Chennai Collectorate
Chennai – 600 001.

4.The Tahsildar
Mylapore
Mylapore Taluk Office
No.28, Pasumpon Muthuramalingam Salai
Raja Annamalaipuram
Chennai – 600 028.

5.Director of Horticulture and Plantation Crops
3rd Floor, Agriculture Complex
Ezhilagam
Chepauk
Chennai – 600 035.

6.Y.Bhuvanesh Kumar
[R-6 impleaded vide order of Court
dated 21.06.2023 made in WMP
No.17661 of 2023 in WP No.17612 of 2023] ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to order of the second respondent in Rc No.R2(K4)/27673/2011 dated 05.06.2023, and quash the same.

For Petitioner : Mr.G.Rajagopalan,
Senior Counsel
For M/s. G.R.Associates.

For Respondents-1 to 5 : Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.D.Ravichander,
Special Government Pleader.

For Respondent-6 : Mr.P.Wilson,
Senior Counsel
For M/s. P.Wilson Associates.

**O R D E R**

The Writ of Certiorari on hand has been instituted to quash the proceedings issued by the Commissioner of Land Administration dated 05.06.2023.

**FACTS AND ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONER:**

2. The writ petitioner is the Agri-Horticultural Society registered under the Tamil Nadu Societies Registration Act, 1975. The petitioner-Society states that originally the Society had lands granted by the East India Company / British Government, as well as, lands purchased out of its own funds through Private Negotiation, 1836 onwards. Certain

portions of land were leased out to the Society by the Government of Tamil Nadu in the year 1912.

3. The Society's gardens, which are now claimed by the Government, are situated on the Northern side of Cathedral Road. On the Northern side, apart from the Society's private lands, and adjoining the same having Lloyds Road on its Northern Border is, another portion of land, which is now Senganthal Poonga, a portion of land granted by the Government to the Society and now resumed. On the Southern side of Cathedral Road, lies Semmozhi Poonga, which comprises the land, originally leased out and later granted to the Society. Within the portion now occupied on Semmozhi Poonga, lies private lands of the Society are also, originally identified as OS Nos.3411 and 3062, Mylapore Village, which essentially makes it four tracks of land.

4. The Government attempted to resume the subject property in the year 1960. The petitioner filed WP No.469 of 1962 and eventually the matter entered into a settlement between the Society and the Government ofTamil Nadu and the question of ownership of the land in possession of the

Society was left open. The Government re-granted portion of the land in the year 1980. Subsequently, there was no dispute for several years.

5. The petitioner states that the present action has been taken due to political reasons, since the petitioner had invited a family friend and the former Chief Minister in the year 1988 to inaugurate the Flower Show function. The petitioner states that the politicians of the DMK Party compelled the Honorary Secretary of the petitioner-Society Mr.V.Krishnamurthy to resign and he refused to do so. Therefore, there is political vendetta for resuming the lands belonging to the petitioner-Society.

6. The petitioner claims that the subject property is a private land of Agri-Horticultural Society and in its possession for over 150 years. The Government has wrongly claiming title over the property with an ulterior motive to resume the land, more specifically on certain political motives.

7. The impugned order of the Commissioner of Land Administration under RSO No.31 (8-A) was passed issuing the following

three primary directions:-

(1) Setting aside the Order of District Collector dated 22.08.2011 and 23.09.2011, accepting Title and Order Transfer of Registry.

(2) Direction to the District Collector to take possession of the lands forthwith.

(3) Direction to Collect interim lease amount of Rs.341,10,79,205/- for the period from 2012 to 2023 and within a month and further compute and collect final lease amount for the period from 1989 to 2012, within a period of 3 months.

8. The impugned order has been challenged in various grounds, a few of which are crystallized herein.

(i) Possession deprived by State, without notice, contrary to law and without following due process. When the State claims title, against a long term possessor, it can do so by establishing title in a suit and praying for possession. Even in cases of encroachment or unauthorised possession, R.S.O. 26 applies and proceedings under 1905 Act can only be resorted to.

(ii) Violation of Principles of Natural Justice (Audi Alteram Partem): by, not disclosing documents based on which the Show Cause

Notice was issued, and the impugned order was passed. This was despite specific request being made on multiple occasions for providing documents and opportunity, it was consciously denied. It was not brought to the notice of the petitioner that a statement has been filed by the District Administration, contrary to the petitioner's case, which is revealed only upon reliance in the impugned order.

(iii) Violation of Principles of Natural Justice (Audi Alteram Partem) by passing direction to take possession and collect lease amount in regard to which no notice was issued, or no hearing was conducted.

(iv) Lack of Jurisdiction and Ultra Vires: Going beyond what is contemplated in R.S.O. 31 (8-A), which only pertains to Transfer in Registry. By hearing and deciding Title in its own favour; by directing possession to be taken, by directing collection of lease amount, all of which are not matters, competent to be decided under R.S.O. 31(8-A), when it could have at best gone into correctness of order dated 23.09.2011 and not beyond. To put it short, beyond correcting the Revenue Entry, no other aspect could have been gone into by the CLA.

(v) Violation of Principles of Natural Justice, (Rule Against Bias) : Government being claimant to the property, deciding its own case.

(vi) The Government has clearly acknowledged in the past, by way of conduct as well as on record as to the Societies ownership of its private lands. More specifically in 1989, the Resumption Order of the Government, in G.O.Ms.No.1259 clearly admits that Society has Private Lands also, and the Counter Affidavit filed by the Government in WP No 11058 and 11059 of 1989 clearly acknowledges the Society owning its lands and its activities not affected. These lands were demarcated and identified in 1989 and fenced. The Government is bound by its conduct and estopped from claiming title.

(vii) The only basis that the Government has, is that Revenue Entry states it is Government Poromboke and secondly in 1910, a letter stated to be sent by the Societies official, claims Government to be the Landlord. The Factum of the property therein being dealt with by several private parties prior to such entry being made, shows that the property is private in nature and not Poramboke. Transfer Deeds Nos.934/1825, 4454/1847, 4455/1847, 4456/1847, 4457/1847, 4977/1848, 4978/1848, 4817/1878. Deed No.1124 of 1880 also is a Indenture/Sale Deed in the name of the Society itself. The letter in 1910, not being disclosed to be relied upon, does not mention as to what portion of lands they pertain to. As there

has been other lands granted by Government also, it ought to have been identified as to which portion it pertains to, and reference to Northern border of Lloyds Road, clearly refers to the Government portion of the lands. It is a settled principle of law that revenue records do not confer title and cannot be based reliance upon by the Government.

(viii) Several Government communications including Madras Deputy Collectors Report dated 19.11.1877, Letter of C.L.A. dated 03.07.1911, Collectors Letter dated 06.08.1959, Opinion of Government Pleader dated 24.03.1960, Letter of Secretary to Government, in regard to acquisition of land for widening of Road, in Nov.1960 etc., refer to the Society purchasing the lands out of Private Funds.

(ix) The various findings of the District Collector dated 22.08.2011 has not been impeached and found to be factually incorrect. None of the Documents referred to by the District Collector has been discussed in the impugned order and findings given are contrary to them.

(x) The direction for collection of lease amount is arbitrary and perverse. The petitioner has ownership and enjoyed the property not as a leaseholder. The Government cannot conclude title in its favour and charge lease amount without notice. There is no guideline value for the property,

which has not been dealt with in hundred and fifty years and the Government has filed an affidavit accepting the same to be the Government property.

(xi) The CLA has suppressed the various documents given by the petitioner to establish its case, not discussed the relevant material on record and has come to a perverse conclusion.

9. The learned Senior Counsel appearing on behalf of the petitioner-Society mainly contended that the Government merely relying on the revenue records cannot claim any title over the property. Contrarily, the petitioner-Society is in continuous possession of the subject land for over 150 years right from the British Regime and therefore, the petitioner-Society is the absolute owner of the property. Mere revenue records would not confer any title and the resumption of lands are made particularly due to political reasons and through erroneous exercise of powers by the Commissioner of Land Administration. Even the opportunity as contemplated under law has not been provided to establish their case. The power of suo motu revision exercised by the second respondent is improper and the second respondent assumed suo motu power, which is not

contemplated under the Revenue Standing Orders.

10. The learned Senior Counsel appearing on behalf of the petitioner reiterated that no such suo motu power of revision has been conferred on the Commissioner of Land Administration and therefore, the impugned order is liable to be set aside on the ground of lack of jurisdiction. Unilateral proceedings conducted by the second respondent without affording an opportunity to the petitioner-Society is in violation of the principles of natural justice. To substantiate the claim, the learned Senior Counsel relied on their letters and contended that this Court also directed the respondents to provide an opportunity to the petitioner to establish their case in the manner known to law. But the respondents have failed to honour the directions issued by this Court. The Government itself has re-granted the land and the District Collector passed an order to that effect by assigning the reasons for passing orders. While-so, the second respondent has erroneously exercised suo motu revision power and set aside the order passed by the District Collector, which is otherwise in consonance with the provisions of the Revenue Standing Order.

11. The District Collector, Chennai in proceedings dated 22.08.2011 has clearly sated that the Government has no claim whatsoever. However, the title of the land in possession being enjoyed by the Agri-Horticultural Society in RS No.64 (pt) and 13 is subjudiced and the matter is pending before the Hon'ble Supreme Court of India.

12. Based on the findings, the District Collector had cancelled the show cause notice dated 29.09.2010 issued against the Agri-Horticultural Society and confirmed the title in favour of the petitioner-Society. While-so, the Commissioner of Land Administration initiated suo motu revision without jurisdiction and set aside the order of the Collector contrary to the facts and law.

13. The learned Senior Counsel defending the contentions of the Government states that the pleadings made by the Government in their counter regarding ownership of the land, is perverse and the Government themselves have accepted the continuous possession of the petitioner in the subject property and the District Collector also issued proceedings to that effect. The unilateral decision taken by the Government in their favour, is

untenable and if at all the Government claims that they are the title-holder of the property, they have to approach the Competent Civil Court, since the petitioner-Society is in possession of the property for several decades.

14. The findings made in the judgment relied on by the respondents are unconnected with the present issue and the common judgment dated 25.11.2022 is not relevant to the present suo motu proceedings initiated by the Commissioner of Land Administration. Thus, the order in WP No.26255 of 2011 alone is relevant. Even in the order passed by this Court on 25.11.2022, the learned Single Judge has stated that if any adverse order is passed by the Authorities, it is open to the writ petitioner to approach the Civil Court. The said remedy has became futile on account of the fact that even before the impugned order was delivered to the Society, the possession was taken by the respondents. The first respondent has no authority to decide the title in favour of the Government of which, he is an Officer and therefore, the order impugned is to be set aside.

15. It would be practically impossible for the petitioner to

approach the Civil Court, in view of the guideline value mentioned in the impugned order and it would be an impossible task for the society to pay the Court Fee assuming that the valuation is correct.

16. The learned Senior Counsel for the petitioner further contended that the Commissioner Land Administration has no jurisdiction to decide the question of title over the property. suo motu revision initiated by the second respondent is improper and no opportunity was given to the petitioner nor the documents were furnished to them. Thus, the action of the respondents are clear abuse of process and the possession was taken forcibly and therefore, the writ petition is to be allowed.

17. To substantiate the grounds relying on the abuse of process during the course of resumption of subject property, the learned Senior Counsel states as follows:-

(a) In the order of resumption dated 05.08.1989, it is clearly admitted that the society has its own lands and it is further confirmed in the counter affidavit filed in 11058 and 11059 of 1989.

(b) Various materials produced by the Petitioner before the Commissioner of Land Administration has not even been referred to by him in his order, which clearly shows that he does not want to address the issue and somehow wants to take over the land.

(c) The observation made by the collector in his order dated 22.11.2011 that, ownership and possession of the lands of the society has been confirmed by Madras Deputy Collector's Report No.1903 dated 19.11.1877 has not been set aside by the Commissioner of Land Administration and said position remains.

(d) A crystal clear reason has been given in the order of the Collector and the show-cause notice proceeded on the footing that no reasons are given as if no documents were produced which error apparent on the face of the record.

18. Regarding the possession of property, the petitioner has relied on the following judgments:

(a) **State of Uttar Pradesh and Others vs. Maharaja Dharmendar Prasad Singh and Others [(1989) 2 SCC 505]**.

(b) **Chief Conservator of Forests, Government of Andhra Pradesh vs. Collector and Others [(2003) 3 SCC 427]**.

(c) **Delhi Development Authority vs. Engineering and Industrial Corporation Pvt., Ltd [(2019) 256 DLT 426]**.

(d) **Bishan Das and Others vs. State of Punjab and Others [AIR 1961 SC 1570]**.

(e) **Sukh Dutt Ratra and Another vs. State of Himachal Pradesh and Others [(2022) 7 SCC 508]**.

19. In order to establish the grounds raised by the petitioner that the revenue records do not establish the title and they relied on the following judgments:-

(a) **Prahalad Pradhan and others vs. Sonu Kumhar and Others [(2019) 10 SCC 259]**.

(b) **Prabhagaya Van Adhikari vs. Arun Kumar Bhardwaj**

**[2021 SCC OnLine SC 868]**.

(c) **Vishwas Footwear Company Ltd vs. The District Collector, Kanchipuram and Others [2011 (5) CTC 94]**.

(d) **H.Lakshmaiah Reddy and Others vs. L.Venkatesh Reddy [(2015) 14 SCC 784]**.

(e) **State of Andhra Pradesh vs. Hyderabad Potteries Pvt. Ltd and Another [(2010) 5 SCC 382]**.

(f) **Ramesh Dutt and Others vs. State of Punjab and Others [(2009) 15 SCC 429]**.

20. To substantiate the ground of non-disclosure of documents relied upon by the petitioner amounting to violative of natural justice and they relied on the following judgments:-

(a) **State of Orissa vs. Dr. (Miss) Binapani Dei and Others [AIR 1967 SC 1269]**.

(b) **K.Vijayalakshmi vs. Union of India and Others [(1998) 4 SCC 37]**.

(c) **M.A.Jackson vs. Collector of Customs [(1998) 1 SCC 198]**.

(d) **Pepsu Road Transport Corporation vs. Lachhman Das Gupta and Another [(2001) 9 SCC 523]**.

(e) **Bishambhar Nath Kohli and Others vs. State of Uttar Pradesh and Others [AIR 1966 SC 573]**.

(f) **M/s.North Bihar Agency and Others vs. State of Bihar and Others [(1981) 3 SCC 131]**.

(g) **Union of India vs. T.R.Varma [AIR 1957 SC 882]**.

(h) **T.Takano vs. SEBI and Another [(2022) 8 SCC 162]**.

(i) **State of Madhya Pradesh vs. Chintaman Sadashiva Waishampyan [AIR 1961 SC 1623]**.

**FACTS AND ARGUMENTS ADVANCED ON BEHALF OF THE OFFICIAL RESPONDENTS:**

21. Regarding the maintainability of the writ petition, the respondents have stated that the grounds and contentions raised by the petitioner in the present writ petition had already been negatived by this Court in WP Nos.36443 of 2006, 13104 of 2008 and 26255 of 2011. In order to substantiate the ground on non-maintainability of the present writ

petition, the learned Additional Advocate General relied on the findings made by this Court in the above writ petitions, more specifically, in the following paragraphs as extracted hereunder:-

> *"46. When a huge property which is in the centre of Chennai city is in the possession of the society and has been commercially exploited for the benefit of certain individuals, it cannot be said that the Government should always sleep over and allow such activities to go on unnoticed. When the authorities have found such irregularities and acted as per law that to after giving an appropriate opportunity, the plea of mala fides cannot be a ground to quash the well reasoned order. Therefore, such allegation of mala fide made by a person who has been already affected by the actions of the Government by resumption of majority portion of the land in the same Survey number cannot be given much importance.*
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> ... ... ... ... ... ... ...
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> *51. From the factual narration of all these writ petitions, the conduct of the writ petitioner in filing various writ petitions even for issuance of*

*show cause notice and at every stage clearly shows that the plea of mala fide is baseless.*

... ... ... ... ... ... ...

*56. Be that as it may, this Court is not going into the title of the parties. Though the learned senior counsel appearing for the writ petitioner society has drawn the attention of this Court to the admission in certain paragraphs of the counter affidavit filed by the respondent Government in the earlier proceedings, this Court is of the view that the same is not germane for consideration as title has to be proved based on documents and other factors in an appropriate manner before the Civil Court. Merely because some admission here and there in the counter affidavit filed by some officials at some other relevant point of time, the same cannot be taken as an admission and conclusive proof. Therefore, some mere reference indicated in the earlier counter affidavit that the society owns some land, that cannot be a ground for assumption that the society is the owner of the property.*

... ... ... ... ... ... ...

> *65. ".....Even in the event any adverse orders is passed against the writ petitioner society it is for the writ petitioner society to establish their title in the manner known to law by approaching the Civil Court. Such view of the matter....,*
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> *The same has also been confirmed by the Hon'ble Supreme Court of India and therefore the proper and appropriate remedy for the petitioner is to approach the competent Civil Court of Law."*

22. The respondents have stated that the subject land has been classified as 'Sarkar Poromboke' as per Permanent Land Register maintained by the Department, the said land is earmarked so from 1910. Thus, the contentions of the petitioner to the contra are clearly mischievous and liable to be rejected. In the present case, the petitioner cannot be permitted to agitate that the petitioner is having ownership of the demised land.

23. The learned Additional Advocate General contended that Certiorari cannot be issued for the purpose of declaring title of the subject

property and the scope of Certiorari is well settled by the Constitutional Courts in catena of judgments. Accordingly, the power to issue Writ of Certiorari does not see the decision, whereas the decision making process. The writ petitioner was provided with ample opportunities and documents were produced and perused by the petitioner. The petitioner is estopped from denying that he was not provided with sufficient opportunity, as the petitioner is well aware of the entire proceedings, as the petitioner is litigating with respect to the property in dispute for more than four decades. When the petitioner was heard with sufficient opportunities and given the fullest audience and materials were discussed with all clarity, the present writ petition is liable to be rejected.

24. In the context of the above submission, the respondent relied on the following judgments:

(a) In the case of **West Bengal Central School Service Commission and Others Vs.Abdul Halim and Others [(2019) 18 SCC 39]**, wherein, the Hon'ble Supreme Court of India held as follows:

> "***28.*** *In any case, the High Court exercises its extraordinary jurisdiction under*

*Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty.*

***29.*** *The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.*

***30.*** *In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it.*

*If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.*

(b) In the case of **Sant Lal Gupta vs. Modern Coop. Group Housing Society Ltd [(2010) 13 SCC 336]**, wherein, the Hon'ble Supreme Court held as follows:

"***28.*** *The High Court ought to have considered that it was a writ of certiorari and it*

*was not dealing with an appeal. The writ of certiorari under Article 226 of the Constitution can be issued only when there is a failure of justice and it cannot be issued merely because it may be legally permissible to do so. There must be an error apparent on the face of record as the High Court acts merely in a supervisory capacity. An error apparent on the face of the record means an error which strikes one on mere looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. Such errors may include the giving of reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence. Such a writ can be issued when there is an error in jurisdiction or authority whose order*

*is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to act. While issuing the writ of certiorari, the order under challenge should not undergo scrutiny of an appellate court. It is obligatory on the part of the petitioner to show that a jurisdictional error has been committed by the statutory authorities. There must be a breach of the principles of natural justice for resorting to such a course. (Vide Harbans Lal v. Jagmohan Saran [(1985) 4 SCC 333 : AIR 1986 SC 302], Municipal Council, Sujanpur v. Surinder Kumar [(2006) 5 SCC 173 : 2006 SCC (L&S) 967], Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417 : (2008) 1 SCC (L&S) 449] and CIT v. Saurashtra Kutch Stock Exchange Ltd. [(2008) 14 SCC 171] )"*

(c) In the case of **Hari Vishnu Kamath vs. Syed Ahmad Ishaque and Others [1955 AIR 233]**, wherein, the Hon'ble Supreme Court of India held as follows:

*"**21.** Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was*

*considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry & Co. v. Commercial Employees' Association, Madras [(1952) 1 SCC 449 : 1952 SCR 519], Veerappa Pillai v. Raman and Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583], Ibrahim Aboobaker v. Custodian General [1952 SCR 596] and quite recently in T.C. Basappa v. T. Nagappa [AIR 1954 SC 440] . On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is*

*that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute. (4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or Tribunal is erroneous in law. This question came up for consideration in Rex v. Northumberland Compensation Appeal Tribunal Ex parte Shaw [(1951) 1 KB 711] and it was held that when a tribunal made a "speaking order" and the reasons given in that order in support of the decision were bad in law, certiorari could be granted. It was pointed out by Lord Goddard, C.J. that had always been understood to be the true scope of the power.*

*Walsall Overseers v. London and North Western Ry. Co. [(1879) 4 AC 30] and Rex v. Nat Bell Liquors Ld. [(1922) 2 AC 128] were quoted in support of this view. In Walsall Overseers v. London and North Western Ry. Co. [(1922) 2 AC 128] Lord Cairns, L.C. observed as follows:*

*"If there was upon the face of the order of the court of quarter sessions anything which showed that order was erroneous, the court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it upon the face of it, and if the court found error upon the face of it, to put an end to its existence by quashing it."*

*In Rex v. Nat Bell Liquors Ld. [15 QB 446] Lord Sumner said:*

*"That supervision goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise."*

*The decision in Rex v. Northumberland Compensation Appeal Tribunal Ex parte Shaw [(1879) 4 AC 30] was taken in appeal, and was*

*affirmed by the court of appeal in Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw [(1952) 1 KB 338] . In laying down that an error of law was a ground for granting certiorari, the learned Judges emphasised that it must be apparent on the face of the record. Denning, L.J. who stated the power in broad and general terms observed:*

*"It will have been seen that throughout all the cases there is one governing rule : certiorari is only available to quash a decision for error of law if the error appears on the face of the record."*

*The position was thus summed up by Morris, L.J.*

*"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown".*

*In Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583] it was observed by this Court that under Article 226 the*

*writ should be issued "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record". In T.C. Basappa v. T. Nagappa [AIR 1954 SC 440] the law was thus stated:*

*"An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision".*

25. Regarding the allegations of mala fide and bias raised by the petitioners, the learned Additional Advocate General reiterated that the said allegations were negated by the Courts during earlier round of litigations. The petitioner has raised similar grounds in the earlier rounds of litigation and the same were consistently negatived by the Court of Law. In this context, the learned Additional Advocate General relied on the

observations made in the order passed in W.P.Nos.36443 of 2006, 13104 of 2008 and 26255 of 2011, wherein this Court rejected such allegations as under:

> "***38.*** *The very urgency shown in passing the above said order within a period of five months that to by the in~charge District Collector, clearly indicates that someone is in fact behind the back to get undue advantage to the Society. Therefore, the petitioner-s allegation of mala fide have no legs to stand.*
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> ***39.*** *It is relevant to note that the District Collector-s order has been sought to be reviewed in the year 2011, by the Government in which the petitioner appears to be associated with. Therefore, the allegation of mala fide in the entire action has no legs to stand.*
>
> ***40.*** *Though this Court is not recording any finding with regard to the title, the above observation is recorded only to show that mala fide raised by one of the party who is also close to one political party and during their*

*regime, orders have been passed in his favour, cannot raise mala fide when such orders were challenged legally. Further it is only to make plea of mala fide by person like writ petitioner since he has serious grievance against the Government for resuming vast lands from the possession of the Society. Therefore, the plea of mala fide argued by the learned senior counsel appearing for the petitioners cannot be given any importance.*

***47.*** *The resumption of large part of the area which was under the possession of the writ petitioner society was also upheld by the Hon-ble Apex Court. In the said case before the Hon-ble Apex Court also the plea of mala fide has been raised by the writ petitioner against the Government while exercising the power to resume the lands. The Hon-ble Apex Court confirmed the judgment of the Division Bench of this Court and dismissed the appeals in V.Krishnamurthy Vs. State of Tamil Nadu reported in (2020) 14 SCC 408. The Hon-ble Apex Court has held that the plea of mala fides raised by the petitioner*

*essentially on the ground of political rivalry is rejected. It is relevant to note that in paragraph 11 of the said judgment the Hon-ble Apex Court has recorded the following findings:*

*"11. A plea of mala fides, in our view, has no factual and legal foundation to sustain because we find that it is only based on the averment that since the appellant happened to be a member of the opposition party, the party in power at that time had taken the impugned action to resume the land against them. Such averments by itself do not constitute a plea of mala fides without there being any substantial material in its support. In our view, the appellants having failed to point out any legal infirmity in the resumption order except to take the plea based on mala fides, the Division Bench was right in upholding the resumption order as being legal and in conformity with Clause 4 of the allotment order. We concur with the view taken by the Division Bench calling for no interference. Needless to observe, the State will ensure that the land in question would only be used for the public purpose and not for other purposes."*

The same was approved by the Hon'ble Division Bench of this Court and ultimately by he Hon'ble Supreme Court of India. Thus, the petitioner cannot be permitted to raise the very same ground time and again.

26. The learned Additional Advocate General is of an opinion that the principle of res judicata as defined under Section 11 of Civil Procedure Code is applicable to the writ petitions as approached by the Hon'ble Supreme Court of India in catena of judgments. The plea of mala fide and political vendetta were rejected by this Court on previous occasions and confirmed by the Apex Court of India. Thus, the petitioner is estopped from raising the similar issue again in the present writ petition, which is barred by the principles of res judicata.

27. Regarding the above legal position, the respondents relied on the following judgments:

(a) In the case of **Shiv Chander More and Others vs. Lieutenant Governor and Others [(2014) 11 SCC 744]**, wherein, the Hon'ble Supreme Court of India held as follows:

*"**21.** We may briefly refer to some of those decisions which elaborate the principle and extend their application to proceedings before a writ court. But before we do so, we need to say what is trite, namely, the doctrine of res judicata being one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilised society in the world. It is founded on a twofold logic, namely, (1) that there must be finality to adjudication by the competent court; and (2) no man should be vexed twice for the same cause. These two principles attract the doctrine of res judicata even to inter partes decisions that may be erroneous on a question of law. That the doctrine is applicable even to writ jurisdiction exercised by the superior courts in this country is settled by a Constitution Bench decision of this Court in Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara [AIR 1964 SC 1013] wherein this Court observed : (AIR p. 1018, para 17)*

*"17. ... Therefore, there can be no doubt that the general principle of res judicata applies to writ*

*petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."*

***22.*** *The principles of constructive res judicata which are also a part of the very same doctrine have been held to be applicable to writ proceedings, by another Constitution Bench decision of this Court in Devilal Modi v. STO [AIR 1965 SC 1150] wherein this Court observed : (AIR p. 1152, para 8)*

*"8. It may be conceded in favour of Mr Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him*

*and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."*

***23.*** *Reference may also be made to the Constitution Bench decision in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] wherein this Court once again reiterated that the principles of constructive res judicata apply not only to what is actually adjudicated or determined in a case but every other matter which the parties might and ought to have litigated or which was incidental to or essentially connected with the subject-matter*

*of the litigation. This Court observed : (SCC p. 741, para 35)*

*"35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Civil Procedure Code was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."*

(b) In the case of **Pondicherry Khadi and Village Industries Board vs. P.Kulothangan and Another [(2004) 1 SCC 68]**, wherein, the Hon'ble Supreme Court of India held as follows:

"***11.*** *The principle of res judicata operates on the court. It is the courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier*

*proceedings between the same parties, provided the court trying the subsequent proceeding is satisfied that the earlier court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in Workmen v. Board of Trustees of the Cochin Port Trust [(1978) 3 SCC 119 : 1978 SCC (L&S) 438] and Pujari Bai v. Madan Gopal [(1989) 3 SCC 433 : AIR 1989 SC 1764] . The "lesser relief" of reinstatement which was the subject-matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The correctness of the*

*decision in the writ proceedings has not been challenged by the respondent. The decision was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to reagitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and redecide the matter in the face of the earlier decision of the High Court in the writ proceedings."*

(c) In the case of **Raghavendra Rao and Others vs. State of Karnataka and Others [(2009) 4 SCC 635]**, wherein, the Hon'ble Supreme Court held as follows:

"***13.*** *As noticed hereinbefore, leave had been granted to avail any other remedy available only to those petitioners who had not been paid their salary for the period during which they worked as Accountants. The claim of the appellants is, thus, barred under the principles of res judicata/constructive res judicata, the earlier judgment having attained finality. It is now a well-settled principle of law*

*that the principle of res judicata applies also to the writ proceedings."*

28. The second respondent states that the petitioner if at all the petitioner asserts title over the property, the petitioner could very well approach the competent civil court of law. The question of title involves disputed questions of facts which in normal circumstances, this Court would not entertain a Writ Petition on deciding the title of parties. The petitioner during the course of arguments had addressed that it had perfected title by adverse possession. The concept of adverse possession stipulated under Article 65 of Limitation Act. For the purpose of establishing adverse possession, the petitioner is bond to establish his long, uninterrupted and enemical possession which facts needs to be pleaded and proved thus essentially constituting a serious question of fact. Thus, the petitioner cannot venture upon establishing his title over the property in the guise of attacking the impugned order. The said liberty was also granted by this Court in W.P.Nos.36443 of 2006, 13104 of 2008 and 26225 of 2011 as follows:

*"55. This Court is of the view that any revenue proceedings would relate only with*

*regard to mutation of records or for issuance of patta and not for deciding the title. Deciding the title of the parties always remain with the Civil Court. The Civil Court alone can go into the issue of title by proper appreciation of evidence adduced in that regard. Therefore, deciding the title by the revenue officials is against the very fundamental principles of law.*

*56. Be that as it may, this Court is not going into the title of the parties. Though the learned senior counsel appearing for the writ petitioner society has drawn the attention of this Court to the admission in certain paragraphs of the counter affidavit filed by the respondent Government in the earlier proceedings, this Court is of the view that the same is not germane for consideration as title has to be proved based on documents and other factors in an appropriate manner before the Civil Court. Merely because some admission here and there in the counter affidavit filed by some officials at some other relevant point of time, the same cannot be taken as an admission and conclusive*

*proof. Therefore, some mere reference indicated in the earlier counter affidavit that the society owns some land, that cannot be a ground for assumption that the society is the owner of the property. Even during the submissions, the learned Additional Advocate General submitted certain letters, wherein, the Society has admitted that the Government is the owner of the property. Such being the position, whether those letters relates to the part of the survey number or not has to be seen in some other forum and not in the Writ Court. Therefore, this Court is not venturing into those documents to decide the title."*

29. The petitioner has raised a ground that the Commissioner of Land Administration has no jurisdiction to initiate suo-moto revision and no such power has been conferred under RSO 31(8)(a). In this context, the respondents have stated that the petitioner has conveniently omitted the portion of the RSO, which would clearly indicate that the Commissioner of Land Administration is empowered to exercise suo-moto revision power to set aside the orders passed by the Sub-ordinate Authorities.

30. The learned Additional Advocate General, appearing on behalf of the respondents 1 to 5 relied on the judgment of the Hon'ble Division Bench, wherein the very same Revenue Standing Order has been referred. The petitioner has relied upon G.O.Ms.No.409, Revenue dated 02.07.2008. A bare reading of the Government order would unambiguously establish that the power of Second Appeal alone was taken away and the exercise of suo-moto power remains intact. Thus, the ground raised in this regard is untenable. The said legal position has been upheld by the Hon'ble Division Bench of this Court in W.A.(MD)No.513 of 2017 dated 10.08.2017 and the relevant paragraph is extracted hereunder:

> *"**2.** This provision contains that two parts. The first part deals with a revision against an appeal. This can be done by any one of the aggrieved parties. The second part deals with suo motu power of the Commissioner of Land Administration. The second part is kept in tagged. In the aforesaid Government Order, as could be seen from the following paragraphs:-*
>
> *"**3.** The Special Commissioner and*

*Commissioner of Land Administration has suggested draft amendment to the existing R.S.O. Para 31.8(A) by way of deletion of the following lines:- "A further revision to the Commissioner of Land Administration can be made within 30 days from the date of receipt of the order and the orders of the Commissioner of Land Administration are final".*

***4.*** *In the above circumstances, the Government examined the proposal of the Special Commissioner and Commissioner of Land Administration in detail, and decided to accept Amendment to R.S.O.31.8(A) as mentioned in para 3 above. Accordingly, the Government direct the Special Commissioner and Commissioner of Land Administration that all ongoing enquires may be carried on to the logical conclusion and orders issued. The Special Commissioner and Commissioner of Land Administration should ensure that in all cases where enquires are not commenced, they may be returned back, with direction to approach-Competent Court of Law."*

> ***3.*** *In such view of the matter, the learned single Judge has committed an error in misconstruing the deletion made by way of amendment.*
>
> *"What has been enunciated in the impugned order is only an exercise of suo motu power. Therefore, we are constrained to set aside the order of the learned single Judge. The first respondent/writ petitioner is given further period of four weeks time to give his response. On receipt of such response, the appellants shall pass appropriate orders, on merits and in accordance with law, within a period of eight weeks thereafter."*

31. Regarding the interim demand of lease rent the respondents have stated that the petitioner has been demanded with a sum of Rs.341,10,79,205/- towards illegal use and the reason for issuing interim demand from 01.04.2012 is due to the fact, that show cause notice was issued to the petitioner on 01.11.2011, is taken as a base date for calculating he value of interim demand of the demised premises. Therefore, an interim demand of lease amount for the period 01.04.2012 to 31.03.2023 is

calculated on the basis of the guideline value and fixed at 7% on prevailing market value of the land as per GO.460 dated 04.08.1998, the said charge is only an interim demand and the final demanded will be issued after consideration of the value with respect to the period in prior point of time. The second respondent respectfully submits that the petitioner was in occupation of the premises and the said amount is demanded as per provisions of Section 14 of Transfer of Property Act.

32. The respondents have stated that the Government of Tamil Nadu has decided to use the subject land for public purposes. The Government is intending to establish a world class botanical garden on par with Dubai's Miracle Garden and Royal Botanical Garden of London thereby preserving the ecological balance. A detailed study is being made in this regard. Thus, the usage of land will serve the public purpose at large. Thus, the writ petition is to be rejected.

33. The learned Additional Advocate General, appearing on behalf of respondents 1 to 5, made a submission that the subject land has already been resumed by the Government and the Department of

Horticulture and Plantation Crops is continuing their activities in the public interest.

34. The impleaded sixth respondent (R-6) Mr.Y.Bhuvanesh Kumar states that he was permitted by the Hon'ble Supreme Court of India to participate in the proceedings in the interest of public.

35. The learned Senior Counsel appearing on behalf of the impleaded sixth respondent relied on the observations made by the Apex Court in SLP No.10465 of 2012, wherein the Hon'ble Supreme Court of India made the following observations:-

> *"However, keeping in view the fact that legality of the action taken by the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai on 01.11.2011 is being examined by the High Court in Writ Petition No.26255 of 2011 filed by the respondent No.6, we deem it proper to dispose of this petition with liberty to the petitioner to file an application for impleadment in the pending writ petition and direct that if such an*

*application is filed, the High Court shall favourably consider the same.*

*We also direct that after his impleadment as party to Writ Petition No.26255 of 2011, the petitioner shall be entitled to file appropriate affidavit and raise all legally permissible points to support the action initiated by the Government for cancellation of order dated 22.08.2011 passed by the District Collector."*

The impleaded respondent is consistently pursuing the issue in the interest of public and to protect the Government land.

36. The learned Senior Counsel appearing on behalf of the impleaded sixth respondent (R-6) mainly contended that the writ petitioner is attempting to take away the Government land, despite the fact that they have admitted the land belonging to the Government. An agreement was signed between the parties and the status of the land being 'Sarkar Poramboke' has been admitted by the writ petitioner and therefore, now they cannot turn around and claim title over the subject property.

37. The learned Senior Counsel appearing on behalf of the impleaded sixth respondent (R-6) contended that the District Collector in the year 2011 passed an order based on extraneous considerations and on political reasons. Thus the Commissioner of Land Administration invoked suo motu revision under the Revenue Standing Order, which was rightly exercised and the order of the District Collector was set aside. The petitioner-Society is attempting to take away the valuable land belonging to the Government, which must be utilised for public purposes and for the benefit of public at large.

38. Mere possession of the Government land would not confer any title on the petitioner. The situation prevailing in this aspect has been considered by this Court in the case of **A.Lakshmanan vs. The Principal Secretary cum Commissioner of Land Administration, Chepauk and Others in WP No.26878 of 2014 dated 18.09.2018 [MANU/TN/6291/2018]**, wherein in paragraphs 7 and 8, it has been observed as under:-

*"7. It is frequently noticed that patta are*

*granted by some officials in a routine manner, without verifying the revenue records, maintained in the office of the district administration. Such issuance of patta must be properly scrutinized and suitable actions are to be initiated, in order to maintain the public lands for the welfare of the public at large. On account of growing market value of the lands, this Court is of an opinion that the public authorities must be vigilant in respect of maintaining the public lands, water bodies and water resources.*

*8. Few greedy men are tempted to encroach such Government lands and water bodies for their personal gains. In the event of allowing such encroachment, the rights of other citizens will be infringed. Encroachment is a grave offence. If such encroachments are permitted, then the welfare of the public will be paralyzed. Government lands, water bodies and water resources are to be protected as per the provisions of law, for the welfare of the public at large. The public lands are to be utilised for implementing welfare schemes, and thus, the encroachers and the occupiers, who are*

*occupying the Government lands, water bodies and water resources are to be evicted by following the procedures, as contemplated under the Tamil Nadu Land Encroachments Act, 1905, and the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007."*

**DISCUSSIONS:**

39. Regarding the maintainability of the present writ petition, the facts as established in the present writ petition would reveal that the disputed issues regarding title is to be adjudicated before the Competent Civil Court of Law. The power of Judicial Review of the High Court under Article 226 of the Constitution of India, is to ensure the processes through which the decision taken by the Competent Authorities whether in consonance with the provisions of the Statute and the Rules, but not the decision itself. Thus the scope of the present writ petition cannot be expanded for adjudicating the disputed issues regarding title with ownership or otherwise. However the power of the Government to resume the land belonging to the Government under the relevant Statute and Board Standing

Orders need not be interfered with by the Court ordinarily. A person claiming title over the property has to approach the Competent Civil Court of Law for establishing his title.

40. In the present case, the Commissioner of Land Administration has made a categorical finding that the petitioner-Society has failed to produce any document to establish their title. In this context, this Court also made a categorical observation in the order dated 25.11.2022 passed in WP No.36443 of 2006 "that even the letter addressed by the Secretary of the petitioner-Society to the Government from the very inception has clearly admitted that the property is a Government property. Therefore, a mere reference made by some Officials in the earlier round of litigation cannot by itself declares the title in favour of the petitioner-Society".

41. There are several allegations raised by the Government against the petitioner-Society. One of the allegation is that the Government found that the huge rental income has been mainly used for personal benefit of the Secretary of the Society and he has earned several crores of rupees by

way of advertisement business.

42. Importantly, this Court, in paragraph-36 of the above judgment, has stated that the petitioner-Society has participated in the enquiry and the District Collector has passed an order on 22.08.2011, within five months. This Court made an observation that the District Collector was placed as In-charge at the relevant point of time and he was not a regular District Collector. He has appeared to have passed the order holding that the petitioner-Society is the title-holder. However, the nature of documents verified by him or the documents referred were not disclosed in the order itself.

43. Mere statement that the document of the petitioner-Society has been verified would be insufficient to form an opinion that the petitioner-Society is the title-holder. The District Collector relied upon the legal opinion of the learned Government Pleader, which was also not made with reference to the document in particular.

44. Based on the legal opinion of the Government Pleader, the

District Collector has made such a finding. Referring all the above findings made by the District Collector, this Court made an observation that the very urgency shown in passing the said order, within a period of five months that too by the In-charge District Collector clearly indicates that someone is in fact behind the back to get undue advantage against the petitioner-Society. Therefore, the petitioner has no legs to stand.

45. Regarding the multiplicity of writ proceedings initiated at the instance of the petitioner, to continue to be in possession of the Government subject land belonging to the Government, this Court made an observation in the said order that the conduct of the present writ petitioner in filing various writ petitions even for issuance of show cause notice at every stage clearly shows that the plea of mala fide is baseless. This Court has clearly stated that in writ proceedings, title cannot be gone into. Therefore, this Court held that in the event of any adverse order is passed against the writ petitioner-Society, it is for the petitioner-Society to establish their title in the manner known to law by approaching the Competent Civil Court of Law.

46. The order passed in the above writ petition was taken by

way of an appeal in WA No.2678 of 2023, the Division Bench of this Court passed an order on 06.03.2023, dismissing the writ appeal and directed the writ petitioner-Society to give reply, within a period of three weeks from the date of receipt of a copy of this order and thereafter the Commissioner of Land Administration shall proceed in accordance with law by affording an opportunity to the writ petitioner and pass orders. The petitioner-Society filed SLP (C) No.6254 of 2023, which was also dismissed by the Hon'ble Supreme Court of India on 21.04.2023.

47. Pursuant to the orders of the Apex Court of India, the Commissioner of Land Administration in order to provide further opportunity, issued a show cause notice on 25.04.2023 and the petitioner-Society through their counsel sent a reply on 04.05.2023. Again a reply was sent on 09.05.2023. Notes of submissions were also made during the personal hearing held on 05.05.2023 and 09.05.2023. The impleaded respondent also filed his submissions on 16.05.2023.

48. Considering the pleadings and arguments as advanced between the parties and the Commissioner of Land Administration passed

the order impugned on 05.06.2023 elaborately considering details of suit land, cause of action for enquiry and made findings.

49. The findings made by the Commissioner of Land Administration states that there is no admission by the Government to the title of the Society of such lands i.e., the present suit lands and the passing reference in the affidavit can in no way be construed as admission of the Society's title by the Government and the contention of the petitioner has no legs to stand on.

50. The findings further read as under:-

> *"It may be seen that the membership of the Governing Body of the Society is described by the name as well as the Official Designation/ Occupation of the person. Two thirds of the members are seen to be holding an employment under the Government or State Agencies, akin to various Societies or Government Companies existing today, where the legal requirement of individual persons being on the Governing Council / Executive Committee are met but at the*

*same time, the individuals are in fact discharging their official responsibilities and the membership is only by ex-officio.*

*As late as 1962-1963, the membership of the Society comprised of Public Institutions as varied as the Corporation of Madras, Madras University, Madurai Municipality (as it then was), District Boards of various Districts of Madras State and present day Andhra Pradesh with the Governor of Madras (as the State was then called) listed as the Patron and the 5 ex-officio Members including the Director of Agriculture, Chief Conservator of Forests, Director of Public Instruction, University of Madras – Professor of Botany, and Mayor of Madras explicitly listed as ex-officio Committee members indicating the public and educational character fo the institution with Horticulture as the underlying theme or the institution. In the last correspondence in 2011, the Society indicates His Excellency The Governor of Tamil Nadu to be its Patron.*

*However, as it stands today, the Society's membership is a total of 196 members which*

*appears to be mostly private individuals and the Executive Committee is entirely private. As such the membership appears anomalous, illustratively that about 70 members are from Perambalur District alone.*

*It appears that the Society itself existed as a Public Institution or an Agency of the State, which has not only been whittled and stripped of its public character, but has also been hijacked to serve private interests as a purely private entity, in complete deviation from its original character as a Public Institution. It is not in the scope of this enquiry or Forum to enquire as to how such diversion has happened.*

*The District Collector, Chennai is requested address the Inspector General of Registration to cause necessary enquiry and correct the State of affairs if found warranted."*

51. The impugned order concludes by stating that the petitioner-Society has been in enjoyment of these highly valuable lands belonging to the Government, without remittance of any nominal amount whatsoever to the Government for several decades. The lands would have

fetched substantial income to the State Government to the tune of several crores.

52. Based on the facts and circumstances, the Commissioner of Land Administration made an interim demand of lease amount for the period from 01.04.2012 to 31.03.2023 calculated at 7% (non-commercial purpose) of the prevailing guideline value works out to Rs.341,10,79,205/-. The District Collector, Chennai is directed to calculate the final lease rent for the period from 05.08.1989 onwards and recover the same from the petitioner-Society.

53. Primarily, the present writ petition is not entertainable as all the grounds and contentions raised by the petitioner-Society have already been negatived by this Court in WP Nos.36443 of 2006, 13104 of 2008 and 26255 of 2011. In paragraph-56 of the judgment, this Court made a significant finding that “merely because some admission here and there in the counter-affidavit filed by some Officials at some other relevant point of time, the same cannot be taken as an admission and conclusive proof. Therefore, some mere reference indicated in the earlier counter-affidavit that

the society owns some land, that cannot be a ground for assumption that the petitioner-Society is the owner of the property". It is for the writ petitioner-Society to establish their title in the manner known to law by approaching the Competent Civil Court of Law.

**SCOPE OF WRIT OF CERTIORARI:**

54. The power of issuance of writ of certiorari is well settled by the Hon'ble court in catena of judgements. Where under the principle summarised by the Hon'ble Supreme Court while exercising the power to issue the writ of certiorari does not see the decision, whereas the decision - making process.

55. In the case of **WEST BENGAL CENTRAL SCHOOL SERVICE COMMISSION AND OTHERS vs. ABDUL HALIM AND OTHERS [(2019) 18 SCC 39]**, wherein the Hon'ble Supreme Court has stated that as follows :

*"28. In any case, the High Court exercises its extraordinary jurisdiction under Article 226*

*of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the Petitioner, or whether there has been lapse in performance by the Respondents of a legal duty.*

*29.* ***The High Court in exercise of its power to issue writs , directions or orders to any person or authority to correct quasi - judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities .***

*30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self - evident on the face of the record or whether the error requires examination or argument to establish it.*

*If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde vs. Millikarjun Bhavanappa Tirumale. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari. "*

56. In the case of **SANT LAL GUPTA vs. MODERN COOP. GROUP HOUSING SOCIETY LTD [2010 13 SCC 336]**, wherein in paragraph-28 the Hon'ble Supreme Court of India held as follows:-

*"28. The High Court ought to have considered that it was a writ of certiorari and it was not dealing with an appeal.*

*The writ of certiorari under Article 226 of the Constitution can be issued only when there is a failure of justice and it cannot be issued merely because it may be legally permissible to do so. There must be an error apparent on the face of record as the High Court acts merely in a supervisory capacity. An error apparent on the face of the record means an error which strikes one on mere looking and does not need long drawn - out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. Such errors may include the giving of reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence. Such a writ can be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without*

*jurisdiction or in excess of its jurisdiction or has failed to act . While issuing the writ of certiorari, the order under challenge should not undergo scrutiny of an appellate court. It is obligatory on the part of the Petitioner to show that a jurisdictional error has been committed by the statutory authorities. There must be a breach of the principles of natural justice for resorting to such a course. ( VideHarbansLal vs. JagmohanSaran , Municipal Council , Sujanpur vs. SurinderKumar ,Sarabjit Rick Singh vs. Union of India and CIT .Saurashtra Kutch Stock Exchange Ltd )."*

57. In the case of **HARI VISHNU KAMATH vs. SYED AHMAD ISHAQUE AND OTHERS [AIR 1955 SC 233]**, wherein in paragraph-21, the Hon'ble Supreme Court of India held as under:-

*"**21.** Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry &*

*Co. vs. Commercial Employees' Association, Madras [(1952) 1 SCC 449 : 1952 SCR 519] , Veerappa Pillai vs. Raman and Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583] , Ibrahim Aboobaker vs. Custodian General [1952 SCR 596] and quite recently in T.C. Basappa vs. T. Nagappa [AIR 1954 SC 440]. On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has*

*jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute. (4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or Tribunal is erroneous in law. This question came up for consideration in Rex vs. Northumberland Compensation Appeal Tribunal Ex parte Shaw [(1951) 1 KB 711] and it was held that when a tribunal made a "speaking order" and the reasons given in that order in support of the decision were bad in law, certiorari could be granted. It was pointed out by Lord Goddard, C.J. that had always been understood to be the true scope of the power. Walsall Overseers vs. London and North Western Ry. Co. [(1879) 4 AC 30] and Rex vs. Nat Bell Liquors Ld. [(1922) 2 AC 128] were quoted in support of this view. In Walsall*

*Overseers vs. London and North Western Ry. Co. [(1922) 2 AC 128] Lord Cairns, L.C. observed as follows:*

*"If there was upon the face of the order of the court of quarter sessions anything which showed that order was erroneous, the court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it upon the face of it, and if the court found error upon the face of it, to put an end to its existence by quashing it."*

*In Rex vs. Nat Bell Liquors Ld. [15 QB 446] Lord Sumner said:*

*"That supervision goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise."*

*The decision in Rex vs. Northumberland Compensation Appeal Tribunal Ex parte Shaw [(1879) 4 AC 30] was taken in appeal, and was affirmed by the court of appeal in Rex vs. Northumberland Compensation Appeal Tribunal; Ex parte Shaw [(1952) 1 KB 338] . In*

*laying down that an error of law was a ground for granting certiorari, the learned Judges emphasised that it must be apparent on the face of the record. Denning, L.J. who stated the power in broad and general terms observed:*

*"It will have been seen that throughout all the cases there is one governing rule : certiorari is only available to quash a decision for error of law if the error appears on the face of the record."*

*The position was thus summed up by Morris, L.J.*

*"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown".*

*In Veerappa Pillai vs. Raman & Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583] it was observed by this Court that under Article 226 the writ should be issued "in grave cases where the*

*subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record". In T.C. Basappa v. T. Nagappa [AIR 1954 SC 440] the law was thus stated:*

*"An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision".*

**MALA FIDE AND BIAS:**

58. The averments of the mala - fide or political bias is found for the occasion of filing of the Writ Petition as the same was negated in the early round of litigations. The Petitioner has raised similar grounds in the earlier rounds of litigation and the same was consistently negated by the court of law. The relevant portions of the order made in W.P. Nos. 36443 of

2006, 13104 of 2008, 26255 of 2011, wherein in paragraphs-38 to 40, 47 and 48, this Court has rejected the same, as under:-

*" 38. The very urgency shown in passing the above said order within a period of five months that to by the in - charge District Collector, clearly indicates that someone is in fact behind the back to get undue advantage to the Society. Therefore, the Petitioner's allegation of mala fide has no legs to stand.*

*39. It is relevant to note that the District Collector's order has been sought to be reviewed in the year 2011, by the Government in which the Petitioner appears to be associated with. Therefore, the allegation of mala fide in the entire action has no legs to stand.*

*40. Though this Court is not recording any finding with regard to the title, the above observation is recorded only to show that mala fide raised by one of the party who is also close to one political party and during their regime, orders have been passed in his favour, cannot raise mala fide when such orders were challenged legally. Further it is only to make plea of mala fide by person like writ Petitioner since*

*he has serious grievance against the Government for resuming vast lands from the possession of the Society. Therefore, the plea of mala fide argued by the learned senior counsel appearing for the Petitioners cannot be given any importance.*

*47. The resumption of large part of the area which was under the possession of the writ Petitioner society was also upheld by the Hon'ble Apex Court. In the said case before the Hon'ble Apex Court also the plea of mala fide has been raised by the writ Petitioner against the Government while exercising the power to resume the lands. The Hon'ble Apex Court confirmed the judgment of the Division Bench of this Court and dismissed the appeals in V.Krishnamurthy vs. State of Tamil Nadu reported in (2020) 14 SCC 408. The Hon'ble Apex Court has held that the plea of mala fides raised by the Petitioner essentially on the ground of political rivalry is rejected. It is relevant to note that in paragraph 11 of the said judgment the Hon'ble Apex Court has recorded the following findings :*

***"11.** A plea of mala fides, in our view, has*

*no factual and legal foundation to sustain because we find that it is only based on the averment that since the appellant happened to be a member of theopposition party, the party in power at that time had taken the impugned action to resume the land against them. Such averments by itself do not constitute a plea of mala fides without there being any substantial material in its support.* ***In our view , the appellants having failed to point out any legal infirmity in the resumption order except to take the plea based on mala fides , the Division Bench was right in upholding the resumption order as being legal and in conformity with Clause 4 of the allotment order . We concur with the view taken by the Division Bench calling for no interference. Needless to observe, the State will ensure that the land in question would only be used for the public purpose and not for other purposes."***

*48. Thus, when a similar plea of mala fides has been raised by the Petitioner society in the earlier round of litigation , the Hon'ble Apex Court has rejected it as referred above . Therefore , this Court is of the view that any*

*person who is aggrieved by the orders of the Government cannot be allowed to make such plea of mala fides against the Government since it also happens to have political clout with the opposite political party .*

The same was approved by the Division Bench of this Court and ultimately by the Hon'ble Supreme Court of India. Thus, the petitioner cannot be permitted to raise the very same ground time and again.

**RES JUDICATA:**

59. Principles of res judicata as defined under Section 11 of the Civil Procedure Code is applicable to Writ Petitions also as approved by the Hon'ble Supreme Court in catena of judgements. In view of the same, the plea of mala fide and political vendetta, is settled and nullified. The petitioner is estopped from stating the same time and again and the said averments have to be rejected as per the principles of Res Judicata.

60. In the case of **SHIV CHANDER MORE AND OTHERS vs. LIEUTENANT GOVERNOR AND OTHERS**

**[2014 11 SCC 744]**, wherein in paragraphs 21 to 23, the Hon'ble Supreme Court of India held as under:-

> *"21. We may briefly refer to some of those decisions which elaborate the principle and extend their application to proceedings before a writ court. But before we do so, we need to say what is trite, namely, the doctrine of res judicata being one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilised society in the world. It is founded on a twofold logic, namely, (1) that there must be finality to adjudication by the competent court; and (2) no man should be vexed twice for the same cause. These two principles attract the doctrine of res judicata even to inter partes decisions that may be erroneous on a question of law. That the doctrine is applicable even to writ jurisdiction exercised by the superior courts in this country is settled by a Constitution Bench decision of this Court in Amalgamated Coalfields Ltd. vs. Janapada Sabha Chhindwara [AIR 1964 SC 1013] wherein this Court observed : (AIR p.*

*1018, para 17)*

*"17. ... Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."*

*22. The principles of constructive res judicata which are also a part of the very same doctrine have been held to be applicable to writ proceedings, by another Constitution Bench decision of this Court in Devilal Modi v. STO [AIR 1965 SC 1150] wherein this Court observed : (AIR p. 1152, para 8)*

*"8. It may be conceded in favour of Mr Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil*

*Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."*

*23. Reference may also be made to the Constitution Bench decision in Direct Recruit Class II Engg. Officers' Assn. vs. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] wherein this Court once again reiterated that the principles of constructive res judicata apply not only to what is actually adjudicated or determined in a case but every other matter which the parties might and ought to have litigated or which was incidental to*

*or essentially connected with the subject-matter of the litigation. This Court observed : (SCC p. 741, para 35)*

*"35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Civil Procedure Code was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."*

61. In the case of **PONDICHERRY KHADI and VILLAGE INDUSTRIES BOARD vs. P. KULOTHANGAN AND ANOTHER [(2004) 1 SCC 68]**, wherein in paragraph-11, the Hon'ble Supreme Court held as under:-

*"11. The principle of res judicata operates on the court. It is the courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the court trying the subsequent proceeding is satisfied that the earlier court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in Workmen vs. Board of Trustees of the Cochin Port Trust [(1978) 3 SCC 119 : 1978 SCC (L&S) 438] and Pujari Bai vs. Madan Gopal [(1989) 3 SCC 433 : AIR 1989 SC 1764] . The "lesser relief" of reinstatement which was the subject-*

*matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The correctness of the decision in the writ proceedings has not been challenged by the respondent. The decision was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to reagitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and redecide the matter in the face of the earlier decision of the High Court in the writ proceedings."*

62. In the case of **RAGHAVENDRA RAO AND OTHERS vs. STATE OF KARNATAKA AND OTHERS [(2009) 4 SCC 635]**, wherein in paragraph-13 the Hon'ble Supreme Court held as under:-

*"13. As noticed hereinbefore, leave had been granted to avail any other remedy available only to those petitioners who had not been paid their salary for the period during which they*

*worked as Accountants. The claim of the appellants is, thus, barred under the principles of res judicata/constructive res judicata, the earlier judgment having attained finality. It is now a well-settled principle of law that the principle of res judicata applies also to the writ proceedings."*

**SCOPE OF RSO 31 (8-A):**

63. The learned Senior Counsel appearing on behalf of the writ petitioner argued that, the second respondent do not have power under RSO 31 (8-A). By relying upon RSO 31(8-A). By relying upon G.O.Ms.No.409 Revenue SS1 (1) Department dated 02.07.2008, a bare reading of the Government Order would establish that the power of Second Appeal alone is taken away and the exercise of suo motu power remains intact. Thus the Petitioner cannot be permitted to question the jurisdiction of exercise of suo motu Power.

64. The same is upheld by the Divisional Bench of this Hon'ble Court in **WA (MD) No.513 of 2017 dated 10.08.2017** in **THE COMMISSIONER OF LAND ADMINISTRATION AND 4 ORS vs. P.KARMEGAM & ORS,** wherein in paragraphs 2 and 3, the Hon'ble Division Bench of Madurai High Court observed as under:-

> *"2. This provision contains two parts. The first part deals with a revision against an appeal. This can be done by any one of the aggrieved parties. The second part deals with suomotu power of the Commissioner of land Administration. The second part is kept intact. In the aforesaid Government Order, as could be seen from the following paragraphs: - " 3.The Special Commissioner and Commissioner of Land Administration has suggested draft amendment to the existing R.S.O. para 31.8 (A) by way of deletion of the following lines: - " A further revision to the Commissioner of Land Administration can be made within 30 days from*

*the date of receipt of the order and the orders of the Commissioner of Land Administration are final". 4.In the above circumstances, the Government examined the proposal of the Special Commissioner and Commissioner of Land Administration in detail, and decided to accept Amendment to R.S.O.31.8 (A) as mentioned in para 3 above. Accordingly, the Government direct the Special Commissioner and Commissioner of Land Administration that all ongoing enquires may be carried on to the logical conclusion and orders issued. The Special Commissioner and Commissioner of Land Administration should ensure that in all cases where enquires are not commenced, they may be returned back, with direction to approach - Competent Court of Law."*

*3. In such view of the matter, the learned single Judge has committed an error in misconstruing the deletion made by way of amendment.What has been enunciated in the impugned order is only an exercise of suomotu power. Therefore, we are constrained to set aside the order of the learned single Judge. The first*

*Respondent / writ Petitioner is given further period of four weeks time to give his response. On receipt of such response, the appellants shall pass appropriate orders, on merits and in accordance with law, within a period of eight weeks thereafter."*

**CONTINUING CAUSE OF ACTION:**

65. In the case of **BankeyBihari Social Welfare vs Delhi Development Authority and Others [CONSUMER CASE NO. 1381 OF 2018 dated 13.03.2023]**, wherein the NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI in paragraphs 15 and 16 observed as under:-

*15. In CWT vs. Suresh Seth, a two-Judge Bench of this Court dealt with the question of whether a default in filing a return under the Wealth Tax Act amounted to a continuing wrong. E.S. Venkataramiah, J. (as the learned Chief Justice then was) observed that: (SCC pp. 798-99, para 11)*

*"11. ... The distinctive nature of a* ***continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty.Explaining the expression "a continuing cause of action" Lord Lindley in Hole v. Chard Union observed: (Chpp 295-96) '... What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for whichthe action was brought.'***

*16. The Court further provided* ***illustrations of continuous wrongs:*** *(Suresh Seth case, SCC p. 800 para 17)*

*"17. The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act.* ***Breach of a covenant to keep the premises in good repair, breach of a continuing guarantee, obstruction to a right of way,***

***obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil or criminal liability, as the case may be, de die in diem."***

**CONTINUING WRONG AS A DEFENCE TO PLEA OF LIMITATION:**

66. In the case of **M. Siddiq (Ram Janmabhumi Temple-5 J.) vs. Suresh Das [(2020) 1 SCC 1]**, **a Constitution Bench of this Court** [of which one of us (DY Chandrachud, J.) was a part] examined the precedents with regards to a continuing wrong. The Court observed that: (SCC p. 369, para 343)

*"343. The submission of Nirmohi Akhara is based on the principle of continuing wrong as a defence to a plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist from acting*

*in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. This indeed was the basis on which the three-Judge Bench in Maya Rani Punj [Maya Rani Punj . CIT, (1986) 1 SCC 445 : 1986 SCC (Tax) 220] approved the statement in a decision [G.D. Bhattar vs. State, 1957 SCC OnLine Cal 200 : AIR 1957 Cal 483 : (1956-57) 61 CWN 660 : 1957 Cri LJ 834] of the Calcutta High Court in the following terms : (Maya Rani Punj case [Maya Rani Punj vs. CIT, (1986) 1 SCC 445 : 1986 SCC (Tax) 220] , SCC p. 458, para 20)*

*"20. ... In G.D. Bhattar vs. State [G.D. Bhattar v. State, 1957 SCC OnLine Cal 200 : AIR 1957 Cal 483 : (1956-57) 61 CWN 660 : 1957 Cri LJ 834] it was pointed out that a continuing offence or a continuing wrong is after all a continuing breach of the duty which itself is continuing. If a duty continues from day to day,*

*the non-performance of that duty from day to day is a continuing wrong."*

*Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation."*

67. In the case of **Madras Race Club vs. The Commissioner of Land Administration1. ADMINISTRATION, in W.P.No.33945 of 2018** dated 25.06.2019**,** the following paragraphs are relevant to be cited :

*"19.Whereas, the facts of the case under consideration is the resumption of Government land, which is presently held by the private Club. If the principle of 'public trust' to be applied, then, the entire extend of 52.34 acres of land is liable to be resumed from the petitioner, who is holding the public land for the interest of few race goers and betting punters. The nature of the land is noway going to be altered by carving out, a portion of land given to race course, for parking space.*

*20.This Court, considered the respective submissions of the parties concerned. At the outset,* ***this Court is bound to remind the petitioner that 'he is neither the land owner nor a lessee' in law. He is holding over the property due to intervention of the Court and lackadaisical attitude of the Government allowing the petitioner to hold over the property without renewing the lease or collecting the lease rent."***

*"...In a pure and simple language, the show*

*cause notice is issued with reasons. 15 days time was granted to the petitioner to give reply. The petitioner instead of giving reply, on the 13th day, i.e., on 12.12.2018, has sent a letter stating that he needs time to give effective reply and he is in the process of gathering all relevant documents for the purpose of submitting effective reply to the show cause notice.* ***Having failed to avail the opportunity to reply to the show cause notice, the petitioner cannot cry foul that, no opportunity was given by the respondents and the principle of natural justice is violated.***

*21.**The terms and conditions** of the indenture dated 28/05/1981 as well the Government Orders of the Revenue Department in G.O.Ms.No.775 Revenue dated 04.04.1977 and G.O.Ms.NO.2509 Revenue Department dated 15/11/1979 **which granted lease hold right to the petitioner vest the power to resume the Government land leased with the District Collector a**s per the terms and conditions laid down in G.O.Ms 66 Revenue dated 27/03/1976.*

*25.**The writ petitioner has deliberately tried to delay the process of providing amenity to the public by giving a bald representation to the show cause notice. He has rushed to the Court to obtain interim order. The allegation attributing motive for issuance of the show cause notice found to be baseless. The grounds raised in the writ petition challenging the show cause notice, are illusionary.**"*

*26.For the reasons stated above, the writ petition is liable to be dismissed. This case cannot end with mere dismissal in view of its strange and peculiar facts. It requires further more discussion.*

*(i)The writ petitioner was served with show cause notice dated 30/11/2018 inviting his objections within 15 days. The writ petitioner has sent a letter dated 12/12/2018 as interim reply seeking extension of time. He neither waited for the respondents to give time nor the petitioner gave his detailed reply thereafter. The writ petition is filed in the Registry on 18/12/2018 challenging*

*the vires of the show cause notice and interim order granted on 19/12/2018.* ***Thus, the writ petitioner has consciously forfeited his right to respond to the show cause notice issued by the second respondent, in alternate, had opted to agitate all the grounds before this Court and had invited the above order.***

*(ii)The* ***principle of audi- alteram-partem*** *does* ***not envisage perpectual hearing or hearing at the choice or pleasure of the defendant.*** *Fair hearing includes two major components. First is, 'notice' and next is 'adequate opportunity'.*

68. Initiation of the writ petitioner-Society challenging the show cause notice on an earlier occasion itself was to delay the process of resumption. The Courts have time and again had repeatedly declared that, show cause notice cannot be subjected to judicial review unless, it bristles with want of jurisdiction, arbitrariness or mala fide. Normally, the Writ Court should not interfere at the stage of issuance of show cause notice by the Authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned Authorities and to satisfy the concerned Authorities about the absence of case for proceeding against the

person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned Authorities is the normal rule. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

69. Despite the settled principle, seasoned litigants like the petitioner venture to file writ petition challenging show cause notice with the hope that they can get some ex parte interim relief projecting fake or illusory reasons and later, even if the Court holds against them, they can get an observation from the Court that the Authority, who issued the show cause notice should continue the process and decide the matter without being influenced by the order of the Court. This tactics to delay the action contemplated under show cause notice, in several cases, caused irreparable loss and prejudice to the respondents, who all are mostly the State or limbs of the State. If a person is unsuccessful in challenging the show cause notice, after canvassing the merit of his side, in a Higher Forum, he deemed to have

exhausted his right to re-canvass the same before the Authority, who caused the notice.

70. In the present case, the show cause notice was issued by the Commissioner of Land Administration in exercise of his powers under the Revenue Standing Order for initiation of suo motu revision proceedings. The petitioner has challenged the proceedings and this Court has elaborately considered all grounds raised by the petitioner, including the grounds relating to mala fide, lack of jurisdiction, political vendetta etc. All grounds were elaborately adjudicated by this Court, which were confirmed by the Hon'ble Division Bench of this Court and subsequently by the Apex Court of India.

71. That being the factum established, the petitioner has deemed to have exhausted his right to re-canvass the said grounds once again before this Court, which were elaborately adjudicated. Even then this Court has independently considered the grounds and the legal positions once again and does not find any reason for reconsidering the claim of the petitioner. The additional grounds raised by the petitioner is also untenable.

72. As far as the impugned order is concerned, the Commissioner of Land Administration categorically considered the grounds raised by the petitioner and made a finding in unambiguous terms. The Commissioner of Land Administration has stated that the petitioner-Society has been in enjoyment of highly valuable lands belonging to the Government, without remittance of any nominal amount whatsoever to the Government for several decades. Serious infringement of the rights of the public at large has been rightly taken into consideration by the Commissioner of Land Administration. In the event of abuse of Government land by any private individuals, the right of public at large is violated and in such circumstances, the Government is duty bound to resume the land and recover the lease rent by following the procedures as contemplated. Thus the Commissioner of Land Administration has not committed any error in issuing a direction to recover the interim lease rent from the petitioner-Society and directing the District Collector to calculate the final lease rent and recover the same by following the procedures. The petitioner-Society is in possession of the Government land for several decades and therefore they are liable to pay the minimum lease rent as calculated by the Authorities in

the interest of public and to protect the State revenue, which is the constitutional obligation on the part of the Government.

73. The factum established in the present writ petition would be sufficient enough to arrive an inevitable conclusion that the petitioner has not established even a semblance of legal right to occupy the land belonging to the Government.

74. Pertinently, the subject land has already been resumed by the Government and the Department of Horticulture and Plantation Crops is in possession of the Government land as of now. Thus the Government has to protect the property in the interest of public and utilise the said land for the welfare of the public as they have stated in their affidavit filed in support of the present writ petition.

75. With the above observations, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

**04.07.2023**

Jeni/Svn
Index : Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No

To

1.The Secretary to Government,
The State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Land Administration,
Ezhilagam,
Kamarajar Road,
Chepauk,
Chennai – 600 005.

3.The District Collector,
Chennai,
Singaravelar Maaligai,
Rajaji Salai,
Chennai Collectorate,
Chennai – 600 001.

4.The Tahsildar,
Mylapore,
Mylapore Taluk Office,
No.28, Pasumpon Muthuramalingam Salai,
Raja Annamalaipuram,
Chennai – 600 028.

5.The Director of Horticulture and Plantation Crops,
3rd Floor, Agriculture Complex,
Ezhilagam,
Chepauk,
Chennai – 600 035.

**S.M.SUBRAMANIAM, J.**

Jeni/Svn

**W.P.No.17612 of 2023**

**04.07.2023**