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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2013

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

W.P.Nos.44455, 24903, 15902, 15903,
24643, 42548, 22359 and 21257 of 2006

1. Karuppan (died)
2. Kuppan
3. Velammal
4. Kanakamani
5. Arukkani

Subbal

Mariammal

1. Paleniammal
2. Kuppan

1. Karuppan - Died
2. Kuppan
3. Velammal
4. Kanakamani
5. Arukkani

1. The State of Tamil Nadu,
Rep. By its Secretary,
Revenue Department,
Fort St. George,
Chennai.

2. The Special Commissioner,
Land Reforms,
Chapauk,
Chennai - 600 005.

... Petitioners in W.P.No.44455 OF 2006

... Petitioners in W.P.No.24903, 15902
of 2006

... Petitioners in W.P.No.15903,
24643 OF 2006

... Petitioners in W.P.No.42548, 22359
OF 2006

... in W.P.21257 of 2006 P2 to P5 substituted
in the place of deceased 1st petitioner
as per order dated 7.3.2008 in MP.1/07
in W.P.21257 of 2006 by NPVJ

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**3. The Assistant Commissioner,
(Land Reforms) (I/C)
Erode.**

**4. The Special Revenue Officer,
(Land Reforms)
Erode.**

**5. The Revenue Tahsildar,
Dharapuram,
Erode District.**

**6. The Village Administrative Officer,
Chitharavuthampalayam,
Dharapuram, Erode District.**

7. Govindammal

8. Baravanan

9. Sivanesan.

**1. The State of Tamil Nadu
rep. by its Secretary Revenue Department,
Fort St. George, Chennai.**

(R1 in W.P.44455, 42548 of 2006)

**2. The Special Commissioner,
Land Reforms, Chepauk, Chennai-5.**

(R2 in WP.44455, 42548 of 2006

R1 in W.P.24903, 15902, 15903,
24643/06)

**3. The Assistant Commissioner,
(Land Reforms) (I/C) Erode.**

(R3 in W.P.44455, 42548/06

R2 in W.P.24903, 15902, 15903,
24643/06

R1 in W.P.22359, 21257/06

**4. The Special Revenue Officer,
(Land Reforms), Erode.**

(R1 in WP.44455, 42548/06

R2 in W.P.22359, 21257/06)

**5. The Revenue Tahsildar,
Dharapuram, Erode.**

..R5 in W.P.44455, 42548/06

R3 in W.P.22359, 21257 of 20061

**6. The Village Administrative
Chitharavuthampalayam
Dharapuram, Erode District.**

..R6 in W.p.44455, 42548/06

R4 in W.P.22359, 21257/06)

7. Govindammal

..R7 in WP.44455, 42548/06

R8 in W.P.24903, 15902, 15903,
24643/06)

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8. Saravanan

..R8 in W.P.44455, 42548/06

R6 in W.P.24903, 15902, 15903,
24643/06)

9. Sivanesan

..R9 in WP.44455, 42548/06

R7 in W.P.24903, 15902, 15903,
24643/06)

10. The Collector,
Erode District

..R3 in W.P.24903, 13902, 15903,
24643/06

11. The Commissioner,
Dharapuram Municipality
Dharapuram.

..R4 in WP.24903, 15902, 15903, 24643/06

12. The Tahsildar
Dharapuram T.K.,
Dharapuram.

..R5 in W.P.24903/06, 15902, 15903,
24643/06

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records of the first respondent dated 13.02.2006 in the Abstract bearing G.O.Ma.No.100, Revenue (LR.1(2)) Department and quash the same and forbear the respondents from giving effect to the Notification in the Tamil Nadu Government Gazette dated 08.03.2006. (in W.P.44455 of 2006, 42548 of 2006)

Writ of Certiorari or any other writ or order or direction in the nature of writ to call for the records dated 15.5.2006 in Na.Ka.112/M.R.4/17-70 on the files of the second respondent and quash the same (in W.P.24903 of 2006, 24643 of 2006)

Writ of Certiorari Calling for the records dated 01.09.2009 (received / issued to the petitioner on application on 05.05.2006) in RC.No. 2936/92/A2 on the file of the Second Respondent and consequents notified in Government Gazette dated 14.12.2005 and quash the same (in W.P.15902/06 & 15903 of 2006)

Certiorarified mandamus Calling for the records of the 1st respondent in his proceedings bearing Na.Ka.112/M.R.4/17-70 dated 25.05.2006 and quash the same and forbear the respondents their men or agent from in any manner resuming the lands measuring an extent of 23 cents in T.S.No.3/4 (Old S.F.No.184/1D) Chitharavuthampalayam Dharapuram Taluk an except of ACK 1.49 cents in T.S.NO.3/3 (old S.P.184/1C), Chitharavuthampalayam, Dharapuram T.K. except by due process of law pass such order (in W.P.22359 of 2006 & 21257 of 2006).

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**For Petitioner : Ms. P.T.Asha
for M/s.Saravabhaumen Associates**

**Mr.R.Thirugnanan
for Mr.M. Jagadesan
(in W.P.24903/06) 15902, 15903/06 &
24643 of 2006**

**M/s. P.T.Asha
for M/s. Saravabhaumen Ass.
(in W.P.42548 of 2006)
22359 of 2006 & 21257 of 2006**

**For RR1 to 6 : Mr.R.Rajeswaran, Spl.G.P.,
Assisted by Mr.N.Sakthivel.
in W.P.44455 of 2006**

For RR7 to 9 : Mr.U.M.Ravichandran

**Mr.R. Rajeswaran Special Government Pleader
Asst. by Mr. N. Sakthivel
for RR 1 to 3 & 5
(in W.P.24903/06, 15902, 15903, 24643)**

**for RR 1 to 6 in WP.42548/06
for RR 1 to 4 in WP.22359/06 & 21257/06**

**Mr.V.M. Ravichandran for RR 6 to 8
(in W.P.24903/06, 15902, 15903, 24643
for RR 7 to 9 in W.P.42548/06**

**N.A.for R4 (in WP.24903/06, 15902, 15903,
24643**

COMMON ORDER

One Mr.Chella Muthu Gounder, residing at Chitharavuthampalayam Vilalge, Erode District, was the landlord having vast extent of agricultural lands. It came to the notice of the authorities under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 (hereinafter referred to as "the Act/Principal Act"), that Mr.Chella Muthu Gounder was holding lands in excess of the ceiling area. Therefore, proceedings were initiated under the Act for acquisition of the surplus lands. A draft Statement was prepared as required under Section 10(1) of the Act by the Authorized Officer thereby declaring the lands belonging to Mr.Chella Muthu Gounder comprised in Survey Nos.184, 185 and 186(part) in the said village as surplus. A copy of the draft Statement was also served on Mr.Chella Muthu Gounder. The Authorized Officer published the draft Statement under

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Section 10(5) of the Act, in the official gazette on 22.08.1973. Thereafter, as required under Section 12 of the Act, a final Statement was published in the Tamil Nadu Government Gazette on 12.09.1973. As per the same, after leaving the lands which were wanted to be retained by the land owner namely Mr.Chella Muthu Gounder, the lands comprised in Survey No.184/1A measuring 4.70 acres and in Survey No.185/2 measuring 3.84 acres and in Survey No.186/2 measuring 1.87 acres were declared as surplus. Thereafter, a final Notification under Section 18(1) of the Act was published on 29.05.1974 thereby acquiring the said lands comprised in Survey No.184/1A measuring 4.70 acres and in Survey No.185/2 measuring 3.84 acres and in Survey No.186/2 measuring 1.87 acres.

2. In pursuance of the said taking over under Section 18(1) of the Act, possession of the above said lands comprised in the above said Survey Numbers were also taken by the Special Deputy Tahsildar on 20.07.1974. In the mean while, the land owner namely Mr.Chella Muthu Gounder, preferred a revision before the Land Commissioner, Board of Revenue, Chennai who is the Revisional Authority under the Act, under Section 32 of the Act against the order under Section 18(1) of the Act by the Assistant Commissioner. In the said revision, Mr.Chella Muthu Gounder, contended that surplus lands may be selected from Survey Nos.155 and 156 belonging to him instead of Survey Nos.184 and 185 and 186 as already notified. Having considered the said submission made by Mr.Chella Muthu Gounder, the Revisional Authority, by his proceedings in F.2 R.P/190/74 (Land Reforms), dated 18.07.1975, allowed the revision in part and declared the lands comprised in Survey No.184/1A measuring 4.70 acres and in Survey No.155/3 measuring 5.70 acres as surplus. Thus, the lands comprised in Survey Nos.185/2 and 186/2, already declared as surplus were excluded. The Revisional Authority directed the Authorized Officer to issue a fresh declaration in respect of these lands under Section 18(1) of the Act. On 29.11.1975, Mr.Chella Muthu Gounder gave a letter to the Land Commissioner requesting him to implement the order of the Revisional Authority. Accordingly, a fresh Notification under Section 18(1) of the Act was issued on 16.07.1980, thereby acquiring the lands comprised in S.No.184/1A measuring 4.70 acres and in Survey No.155/3 measuring 5.70 acres. As per the records, possession of these two lands was also taken by the Special Deputy Tahsildar. Thus, on and from 16.07.1980, the Government became the owner of the said lands on account of the acquisition made under Section 18(1) of the Act. The said declaration made under Section 18(1) of the Act in the Tamil Nadu Government Gazette on 16.07.1980 had also become final.

3. Thereafter, the Authorized Officer commenced proceedings for the disposal of the said lands, as per the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 (hereinafter referred to as "the Rules"). The Authorized Officer called for applications from eligible persons for assignment of the said surplus lands comprised in S.No.184/1A (4.70 acres) and in S.No.155/3 (5.70 acres). The writ

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petitioners herein are all landless poor eligible for assignment of such lands. Accordingly, they made appropriate individual application to the Authorized Officer under Rule 7 of the said Rules. After having followed the procedure and after having considered the eligibility of the petitioners herein, the Authorized Officer by his proceedings in Ref.No.112/MRIV/17.70 dated 31.06.1981 assigned the lands to the petitioners in these writ petitions as follows:-

Sl.No	Name and address of the assignee	Survey Number	Extent	Petitioner in Writ Petition
1	Nallethambi	184/1A	1.49	W.P.No.15903 & 24643/2006
2	Karuppan	184/1A	1.49	W.P.No.44455 & 21257/2006
3	Nagan	184/1A	1.49	W.P.No.24903 & 15902/2006
4	Kuppan	184/1A, 155/3	0.23	W.P.No.42548 & 22359/2006
5	Vedamuthu	155/3	1.49	
6	Selvaraj	155/3	1.48	
7	Palaniappan	155/3	1.48	
Total			10.41	

4. Thus, the total extent of 10.41 acres of the land was assigned to the assignees, as stated above by order dated 31.06.1981. After the assignment order, as required under Rule 8(5) of the Rules, the Authorized Officer fixed the amount to be paid by the assignees for the lands assigned to them by his proceedings in M.R.IV/112/17-70 dated 20.08.1990.

5. Admittedly, the petitioners herein also paid the amount and accordingly, deed of assignment in form "F" was executed in favour of each assignee on 21.08.1991. Possession was accordingly handed over to the assignees.

6. While so, in the year 1992, Mr.Chelle Muthu Gounder filed a Civil Suit in O.S.No.138 of 1992 on the file of the learned District Munsif, Dharapuram against (1)the Assistant Commissioner, Land Reforms, Broder (2) the District Revenue Officer, Land Reforms, Thanjavur (Authorized Officer) and (3) the Commissioner, Land Reforms, Chennai. In that suit, Mr.Chelle Muthu Gounder had prayed for a declaration that Form.I Notification dated 25.12.1991 issued by the Authorized Officer is null and void and also prayed for a decree for permanent injunction to restrain the defendants therein from assigning these lands to anybody. Strangely, the writ petitioners viz., the assignees were not added as parties to the said suit.

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7. The Notification dated 25.12.1991, which was challenged in the said suit, was the one issued by the Authorized Officer fixing the amount of compensation to be paid to Mr. Chella Muthu Gounder. Before the learned District Munsif, an issue was raised that the learned District Munsif had no jurisdiction to entertain the suit as the Act, being a self contained Act, bars the Civil Court jurisdiction to entertain the suit. But, the learned District Munsif held that he had jurisdiction and accordingly, went into the other issues. Finally, by decree and judgment dated 24.06.1993, the learned District Munsif decreed the suit as prayed for thereby declaring the Notification dated 25.12.1991 as null and void and also granting a decree for permanent injunction to restrain the Authorized Officer from assigning the said lands to anyone in pursuance of the said Notification dated 25.12.1991 (but the fact remains that as per the proceedings of the Authorized Officer dated 31.06.1981 itself, the lands had been assigned to the assignees and as a matter of fact, deeds of assignment in favour of each assignee were executed on 21.08.1991 itself).

8. However, the defendants in the said suit namely the Authorities under the Act filed an appeal against the said decree before the learned Subordinate Judge, Dharpuram only in the year 2000 that too with a petition in I.A.No.209 of 2000 to condone the delay of 2752 days in filing the above appeal. In the affidavit filed in support of the said Interlocutory Application, the then Assistant Commissioner, Land Reforms, Erode had stated that the delay of 2752 days was caused due to the delay in getting the copies of the decree and judgment and the time taken for obtaining permission from the higher authorities. The said delay was considered to be enormous. The learned Subordinate Judge was not convinced by the said explanation offered by the then Assistant Commissioner, Land Reforms, Erode. Therefore, by order dated 08.07.2002, he dismissed the said Interlocutory Application. Thereafter, no further proceeding was initiated by the Authorities against the decree and judgment in O.S.No.138 of 1992. Thereafter, the Assistant Commissioner, Land Reforms, Erode, based on the above decree and judgment of the learned District Munsif, Erode, re-opened the whole issue and passed an order on 10.08.2005. In the said order, the Assistant Commissioner, Land Reforms made an observation that in the decree passed in O.S.No.138 of 1992, the learned District Munsif had declared that the Notification dated 25.12.1991 as void. He mis-took the decree and judgment as though the learned District Munsif had declared the entire acquisition proceedings made under Section 18(1) of the Act itself as void. On the said misunderstanding of the decree and judgment of the learned District Munsif, the Assistant Commissioner, Land Reforms passed the said order on 10.08.2005 thereby declaring that an extent of 3.60 ordinary acres equivalent to 1.175 standard acres in Survey No.106 (R.S.No.148/1) was selected as alternative land in lieu of an extent of 4.70 ordinary acres equivalent to 1.175 standard acres in Survey No.184/1A already notified as surplus.

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Necessary amendment to final Statement and modification to Section 18 (1) of the Act was also ordered to be published. Based on the same, a publication was made under the Tamil Nadu Government Gazette on 08.03.2006. A final declaration under Section 18(1) of the Act was made as per G.O.Mm.No.100, Revenue (L.R.1(2) dated 13.02.2006. Challenging the said Government Order and the subsequent Notification and all the other consequential proceedings, the petitioners who are assignees or the legal representatives of the assignees of the lands in question have come up with these writ petitions.

9. Mr.Chella Muthu Gounder died some time before filing of these writ petitions and therefore, the respondents 7 to 9 herein who are his wife and sons respectively have been impleaded.

10. In W.P.Nos.44455 & 21257 of 2006, Mr.Karuppan/sole petitioner/the assignee died during the pendency of the present writ petition and hence, petitioners 2 to 5 who are his legal representatives have been impleaded. One Mrs.Subbal wife of Mr.Nagan (Assignee) has filed W.P.Nos.24903 & 15902 of 2006. One Mrs.Mariamammal, wife of Nalla Thanbi (Assignee) has filed W.P.Nos.15903 & 24643 of 2006. One Mrs.Palaniammal, who is the wife of Mr.Kuppan and Mr.Kuppan (Assignee) have filed W.P.Nos.42548 & 22359 of 2006.

11.I have heard the learned counsel for the petitioners; learned Special Government Pleader appearing for the State; the learned counsel for the respondents/legal representatives of Mr.Chella Muthu Gounder and I have also perused the records carefully.

12.The foremost contention of the learned counsel appearing for the petitioner is that the decree passed by the learned District Munsif in O.S.No.138 of 1992 is wholly without jurisdiction and therefore, it is a nullity. The learned counsel would further submit that as per Section 77-G of the Act which was in force during the relevant time, the Civil Court jurisdiction stood ousted. Since, there was express ouster of the jurisdiction of the Civil Court, according to the learned counsel, the learned District Munsif ought not to have entertained the suit.

13.But, it is the contention of the learned counsel for the respondents/the legal representatives of Mr.Chella Muthu Gounder that the decree of the learned District Munsif has become final since, the Application filed seeking to condone the delay was dismissed. It is further contended by the learned counsel that there was no ouster of the jurisdiction of the Civil Court since, the Authorised Officer did not follow the procedure contemplated under the Act, before issuing the Notification under challenge in the said suit. In this regard, we may refer to the relevant provisions. Prior to the coming into force of the Tamil Nadu Land Reforms (Fixation of

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Ceiling on Land Amendment Act, 1983 (Act No.3 of 1984) (hereinafter referred to as "the Amendment Act"), Section 107 of the Principal Act dealt with the bar of jurisdiction of the Civil Court. The said provision stood as follows:-

"107. Bar of jurisdiction of Civil Courts
except a other-wise provided in this Act, the Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act require to decided or deal with by this Authorized Officer, Land Board, the Land Commissioner, the Land Tribunal or other authority."

14. The above said provision contained in Section 107 of the Principal Act was repealed by amendment act (Act 3 of 1984) by which, section 77-G was introduced to the Principal Act. Section 77-G reads as follows:-

"77-G Bar of jurisdiction of all courts
except the Supreme Court.- Notwithstanding anything contained in any other law, the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 32 and Article 136 of the Constitution is excluded with respect to any matter which is by or under this Act required to be decided or dealt with by the authorised officer, the Land Board, the Land Commissioner, the Land Tribunal or the Special Appellate Tribunal."

15. It is seen that again the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment and Special Provisions Act, 2003 (Act No.26 of 2003) was introduced with effect from 10.05.2003. By means of this amendment, Chapter X-A of the Principal Act which was introduced into the Principal Act by Amendment Act 3 of 1984 was completely omitted. Section 77-G of the Amendment Act, which was part of Chapter X-A introduced by means of Amendment Act 3 of 1984, thus, stood omitted from the Principal Act as per the Amendment Act 26 of 2003. By the same Amendment Act of 26 of 2003, Section 107 of the Principal Act as stood prior to the introduction of Amendment Act 3 of 1984 was restored. Thus, on and after 10.05.2003, Section 77-G dealing with the bar of jurisdiction of Civil Court was not in force and instead Section 107 of the Principal Act was restored. Thus, after the said date (10.05.2003), Section 107 governs the issues and from these legislative changes, it is crystal clear that between 29.02.1984, and 07.07.2003, the bar of Civil Court jurisdiction was governed by Section 77-G of the Act.

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16. As I have already extracted, Section 77-G of the Act was an express provision excluding the jurisdiction of the Civil Court. It is needless to point out that Civil Courts have jurisdiction to try all suits of civil nature except the suits of which their cognizance is either expressly or impliedly barred. In the case on hand, the Civil Suit in O.S.No.138 of 1992 was filed in the year 1992 during which, Section 77-G of the Amendment Act was in force. As per the said provision, the Notification issued and the publication made under the Act cannot be challenged before the Civil Court. It is not as though there was no remedy for the land owner to challenge the said Notification. The said Notification issued is after all appellable and reviseble. The notice issued on 29.05.1974 thus, reached finality. In view of the said express bar contained in Section 77-G of the Amendment Act, in my considered opinion, the learned District Munsif had no jurisdiction to entertain the said Civil Suit.

17. As I have already pointed out, however, the learned District Munsif went into the issue of jurisdiction and held that he had final, I am conscious of the fact that in these writ petitions, I am not sitting on appeal over the decree and judgement passed by the learned District Munsif. But, one cannot have doubt that it is the settled law that when the very jurisdiction of a Civil Court or authority is doubted, even in a collateral proceedings, the decree or order passed by the said Court or Authority can be looked into to decide whether it is void for want of jurisdiction.

18. A perusal of the judgment of the learned District Munsif would go to show that before him, it was contended that as per Section 77 of the Principal Act, his jurisdiction stood ousted. Section 77 of the Principal Act deals with the jurisdiction and powers of Land Tribunals. For better understanding, let me extract Section 77 of the Principal Act which reads as follows:-

"77. Jurisdiction and powers of Land Tribunals: (1) Each Land Tribunal shall have such jurisdiction over such area as the Government may, by notification, from time to time determine.

(2) If any question is referred by the authorized officer to the Land Tribunal for its decision under Sections 11(2), 16(3)(a)(iv) or 51 (3) the Land Tribunal shall decide such question.

(3) Every Land Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act V of 1908)."

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19. The above provision makes it clear that the Notification under challenge before the learned District Munsif is appellable under Section 77 of the Principal Act to the Land Tribunal. Therefore, it was contended before the learned District Munsif that in view of the remedy of appeal available to the land owner, jurisdiction of the Civil Court stood implidely barred. Referring to Section 77 of the Principal Act, the learned District Munsif has held that there is no exclusion of the jurisdiction of the Civil Court though the party aggrieved has got right of appeal to the Land Tribunal under Section 77 of the Principal Act. It was never brought to the notice of the learned District Munsif that his jurisdiction stood ousted as per Section 77-G of the Amendment Act.

20. A cursory perusal of the judgment of the learned District Munsif would go to show that when he dealt with the suit in the year 1993 Section 77-G of the Amendment Act and as a matter of fact the entire Chapter X-A was still in force. But, the learned District Munsif did not take note off the said express bar contained in Section 77-G of the Amendment Act and instead, he had approached the issue as though the bar was implied in view of Section 77 of the Principal Act. Thus, without taking note off Section 77-G of the Amendment Act contained in Chapter X-A of the Principal Act, as it stood amended, the learned District Munsif assumed jurisdiction wrongly and decided the matter. Thus, I have no hesitation to hold that the jurisdiction of the learned District Munsif stood barred expressly by Section 77-G of the Amendment Act and therefore, the decree passed by him is a nullity. In this regard, the learned counsel for the petitioners would rely on a judgment of a Division Bench of this Court in St. Antony Teacher Training Institute For Women., etc., v. State of Tamil Nadu, etc., and others (1993 (1) L.W 90) wherein, the Division Bench had an occasion to deal with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It was contended before the Division Bench that under Section 53 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 there was a bar to the Civil Court to entertain a suit seeking a direction for recognition of an educational institution. When a Civil Court had entertained the suit and decreed the same by directing the Authorities concerned to recognise the Institution, referring to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, it was contended before the Division Bench that the decree is a nullity in view of the express bar contained in the Act. While agreeing with the said contention, the Division Bench has held as follows:-

"..... Thus the jurisdiction of the civil court being barred, neither the District Munsif nor the Subordinate Judge had jurisdiction to decide the question of grant of recognition. It is well settled by several decisions of the apex court that if a court lacks jurisdiction

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totally, any decree or order passed by the Court is a nullity and it cannot be enforced in any court of law."

21. In view of the above settled position of law, I have no hesitation to hold that in the instant case, the decree passed by the learned District Munsif is a nullity and the same cannot be acted upon. But, the learned counsel appearing for the private respondents would rely on a judgment of a Constitution Bench of the Hon'ble Supreme Court in *Dhulebhai etc., v. State of M.P. and mother* (AIR 1969 SC 78 (1)). That was a case where the Hon'ble Supreme Court had to deal with the jurisdiction of the civil Courts under Section 9 of the Code of Civil Procedure. In paragraph No.32, the Constitution Bench of the Hon'ble Supreme Court has held as follows:-

"32.....The result of this inquiry into the diverse views expressed in this Court may be stated as follows:-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intentment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into the question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits of illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

(Emphasis supplied)

22. Relying on the proposition No.1, as extracted above, the learned counsel for the private respondents would submit that simply because there is a statutory Tribunal constituted before which, order impugned could be challenged, it cannot be pleaded that there is ouster of the civil court jurisdiction. In my considered opinion, proposition No.1 upon which reliance is made by the learned counsel has got no application to the instant case and this proposition relates only to an implied exclusion of the jurisdiction of the civil court. What all that has been stated in proposition No.1, is simply because there is a statutory Tribunal to which a party can approach seeking remedy, it cannot be readily inferred that the jurisdiction of the civil Court stands ousted by such alternative remedy. But, that is not the case before us. What is before us is a case of express exclusion of the jurisdiction of the civil Court under Section 77-G of the Amendment Act and therefore, the said proposition has got no application to the facts of the present case.

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23. In my considered opinion, it is only proposition No.2 which is applicable to the facts of the present case. According to this proposition, where there is express bar of jurisdiction of the Court, an examination of the scheme of the particular Act to find out the adequacy or the sufficiency of the remedies provided is not relevant. Such examination of the scheme of the Act to find out whether the remedy provided under the statute is adequate, effective and efficacious is warranted only to examine as to whether there is implied bar of civil court jurisdiction on account of the said remedy. When there is express bar, such examination is not available. At the same time, if the said provision providing of remedy is challenged as unconstitutional for want of adequacy or sufficiency of the remedies provided under the statute, then, the availability or adequacy or sufficiency of such remedy can be a matter to be gone into. In the absence of such challenge to the said provision and when there is no declaration by any constitutional court that the said provision is unconstitutional, it is not at all available for the party aggrieved to contend that the civil court has got jurisdiction to decide the fact on the ground that the remedy available under the Act is inadequate or ineffective. The express statutory bar binds the civil Court.

24. In view of the said position, the judgment relied on by the learned counsel for the private respondents does not come to their rescue at all. Further, the learned counsel would rely on the following judgments:-

(i) Sree Raja Kendregula Srinivasa Jagannadharsa Panthulu Bhadoru Guru (dead) by his legal representatives v. The State of A.P. and others (AIR 1971 BC 71) and

(ii) Gurbax Singh v. Financial Commissioner and Another (1991 Supp (1) SCC 167).

25. In these two judgments, the Hon'ble Supreme Court has simply followed the law laid down in Dhulabhai etc., v. State of M.P. and mother's case (cited supra). Since, I have held that in the case on hand, there is express exclusion of the jurisdiction of the civil court these judgments would not come to the rescue of the private respondents in any manner.

26. As has been held by a Division Bench of this Court in St. Antony Teacher Training Institute For Women, etc., v. State of Tamil Nadu, etc., and others case (cited supra) and as per the settled law, I hold that the decree passed by the civil Court in O.S.No.138 of 1992 is a nullity and therefore, the same cannot be given effect to.

27. Assuming for a moment that the decree passed by the learned District Munsif in O.S.No.138 of 1992 is with jurisdiction, even then, in my considered opinion, the authorised officer as well as the Government have failed to understand the decree in its true spirit. As I have already pointed out, in the said suit, the declaration made under Section 18(1) of the Act thereby acquiring lands in question was not at all challenged. What was challenged was only a subsequent Notification issued for fixing the compensation. As we have already seen, the declaration made under Section 18(1) of the Act was challenged by way of a revision before the Revisional Authority by Mr.Chella Muthu Gounder. the revision was allowed in part and subsequently, a fresh notice under Section 18(1) of the Act was issued and the said Notification was not at all challenged by Mr.Chella Muthu Gounder any way. Thus, the declaration made under Section 18(1) of the Act had become final and the same was not challenged either before the Forums constituted under the Act or before this Court or before the learned District Munsif, Dharpuram.

28. What was challenged before the learned District Munsif as I have already stated is only a Notification fixing the compensation for the land. That Notification was declared to be void by the learned District Munsif. Assuming that the decree is enforceable, the Authorised Officer would have only re-fixed the compensation by fresh Notification for the said purpose and he should not have cancelled or modified the earlier Notification issued under Section 18(1) of the Act and to order for issuance of fresh Notification. Thus, in my considered opinion, the Government Order under challenge before this Court as well as the consequential publication of the Notification which is under challenge in these writ petitions are wholly illegal and therefore, they are liable to be interfered with.

29. But, the learned Special Government Pleader appearing for the respondents/State would submit that under Section 18.C of the Act, the Government has got power to cancel or modify the Notification under section 18(1) of the Act in certain cases. In order to appreciate the said contention, we may have a cursory look into the said provision.

"18.C. Power of Government to cancel or modify notification under section 18(1) in certain cases: Where, as a result of any decision in any appeal or revision or other proceeding or in pursuance of a direction under proceeding or in notification published under Section 18-A, the Section 18 requires cancellation or modification, the Government may, by notification, cancel or modify such notification to give effect to such decision and nothing in this section shall be deemed to prevent the issue of a fresh

bn 00219

notification by the Government under sub-section (1) of Section 18 in accordance with the provisions of this Act."

30. Referring to the above provision, the learned Special Government Pleader would submit that the power of the Government to cancel or modify the Notification under section 18(1) of the Act will arise even as a result of any decision taken in any proceeding. According to the learned Special Government Pleader, the phrase "other proceeding" as envisaged in Section 18.C of the Act would refer to a decree of a civil court. Here, in this case, since, the Civil Court declared the notice dated 25.12.1991 as void, the Government thought it fit to issue a fresh Notification under Section 18(1) of the Act. Regarding this legal proposition as propounded by the learned Special Government Pleader, there can be no second opinion. If, a competent civil court passes a decree then, of course, the Government will have power to modify or cancel the Notification issued already under Section 18(1) of the Act. But, in the instant case, the publication under Section 18(1) of the Act was not at all declared by the District Munsif as null and void. Thus, this contention of the learned Special Government Pleader has no merit.

31. As rightly contended by the learned Special Government Pleader, if once such Notification issued under Section 18(1) of the Act is cancelled by the Government, then, the land will stand restored to its original owner and all the consequential proceedings including the assignment made in favour of the assignees will stand cancelled. Regarding this submission of the learned Special Government Pleader, I have no quarrel. But, what I would say is that, if, the Civil Court decree is found to be a nullity, for want of jurisdiction, then, the said decree which is null and void cannot be a ground for the Government to exercise its power under Section 18.C of the Act. In the case on hand, I have already held that the decree passed by the learned District Munsif is null and void. Assuming that it is not a nullity, the said decree has got nothing to do with the Notification issued under Section 18(1) of the Act as it pertains only to the fixation of compensation which was published by Notification dated 25.12.1991. At the most, the Authorities would have done well only to issue a fresh Notification in respect of the compensation and not in respect of the Notification issued under Section 18(1) of the Act. In that view of the matter also, the contention of the learned Special Government Pleader deserves to be rejected.

32. In view of the above position, I have to necessarily hold that the Government Order and the Notification issued by the Government which are impugned in these writ petitions are illegal and therefore, they are liable to be set aside.

bn00219

33. Before ending this order, I want to make the following observations. As we have seen herein above, all these litigations are because of the decree passed by the learned District Munsif. Rightly, before the learned District Munsif, a plea was taken that he lacked jurisdiction. But, unfortunately, it was not brought to the notice of the Court that such exclusion of the civil court jurisdiction was expressly contained in Section 77-G of the Amendment Act. Thus, the suit was not properly contested before the learned District Munsif. That is how the decree and judgment came to be passed by the learned District Munsif without jurisdiction.

34. Admittedly, the decree was passed by the learned District Munsif as early as on 24.06.1993. It is not as if the Authorities the said decree. Certainly, they were not satisfied with the said decree passed by the learned District Munsif that is the reason why the Authorized Officer decided to file an appeal against the same. But unfortunately, such appeal was preferred with a delay of 2752 days only in the year 2000. The explanation for the said delay stated before the learned Subordinate Judge in I.A.No.209 of 2000 was that the copy of the decree and judgment of the learned District Munsif was obtained belatedly and permission had to be obtained from the higher authorities. This explanation was not to the satisfaction of the learned Subordinate Judge. Therefore, he dismissed I.A.No.209 of 2000. Even after that, there was no further proceedings initiated by the Authorized Officer challenging the said order of the learned Subordinate Judge when he was fully satisfied that the decree of the learned District Munsif was not in accordance with law. It is not brought to the notice of this Court that any action was taken against the officials who were responsible for the delay caused in filing I.A.No.209 of 2000. Had there been proper appeal as against the decree and judgment in O.S.No.138 of 1992 on time, the First Appellate Court would have been in a better position to examine the validity of the decree including the jurisdiction of the Civil Court. Thus, deliberately, the Authorities have failed to file the appeal on time and thus, they allowed the decree and judgment, which is a nullity, to be in force. Without even challenging the order of the learned Subordinate Judge, the Authorized Officer had simply taken further proceedings and recommended to the Government for issuing a fresh Notification under Section 18(1) of the Act so as to acquire different land from the original owner.

35. Admittedly, the Authorized Officer did not even notice that the declaratory decree was only declaring the Notification in respect of compensation as null and void and the said decree had nothing to do with the declaration made under Section 18(1) of the Act. Without understanding the decree and judgment properly without taking any steps to file appeal on time, without taking further steps to file

revision against the order passed by the learned Subordinate Judge in I.A.No.209 of 2000 before this Court, the then Authorized Officer, in a very indifferent manner, had recommended to the Government for issuance of fresh Notification under Section 18(1) of the Act in respect of a different land. The Authorized Officer was fully aware of the fact that the lands in question were all assigned to the assignees in the year 1981 itself and the possession was also handed over to them. The amended Notification under Section 18(1) of the Act, after the order of the Revisional Authority was issued on 16.07.1980 and the land was assigned to the beneficiaries on 31.06.1981. After about 25 years of such assignment, the assignees are sought to be deprived of their title and also their possession. It is needless to point out that the assignees have paid the entire amount as directed by the Authorized Officer on time and deeds of conveyance were also executed two decades before.

36. Admittedly, the assignees are landless poor belonging to Scheduled Caste. These landless poor people have been put under the ordeal of these litigations. They have approached this Court in the year 2006 and for about 7 years, their litigation has been pending before this Court. All these years, the petitioners would have been put to lot of physical as well as mental harassment. These poor people have been made to approach this Court by spending a considerable amount towards court fee and Lawyers fees. I want to reiterate that all these agonies to these petitioners are solely because of the attitude of the Authorities under the Act more particularly the then Authorized Officer who had exhibited total indifference. For that, I deem it appropriate to impose a cost on the Government to pay to the petitioners.

37. In the result, all the writ petitions are allowed in the following terms:-

(i) The Government Order in G.O.Ms.No.100, Revenue (I.R.1(2) dated 13.02.2006 and the publication made under the Tamil Nadu Government Gazette dated 08.03.2006 and all the other consequential proceedings are hereby quashed.

(ii) It is declared that the assignment of these lands to the assignees as per the proceedings of the Additional Authorized Officer, Land Reforms in Ref.No.112/MRIV/17.70 dated 31.06.1981 and the consequential execution of deeds of conveyance are confirmed.

(iii) It is further directed that the first respondent shall pay a cost of Rs.5,000/- each to the assignees or to the legal heirs of the deceased assignees within a period of three months from the date of

receipt of a copy of this order failing which, it will be open for the petitioners to approach this Court with contempt petitions. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub. Assistant Registrar

To

1. The State of Tamil Nadu,
Rep. By its Secretary,
Revenue Department,
Fort St. George,
Chennai.

2. The Special Commissioner,
Land Reforms,
Chepauk,
Chennai - 600 005.

3. The Assistant Commissioner,
(Land Reforms) (I/C), Erode.

4. The Special Revenue Officer,
(Land Reforms)
Erode.

5. The Revenue Tahsildar,
Dharapuram,
Erode District.

6. The Village Administrative Officer,
Chithiravuthampalayam,
Dharapuram.

7. The Collector, Erode District.

8. The Commissioner Dharapuram Municipality,
Dharapuram.



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**9. The Tehsildar, Dharepuram T.K.,
Dharepuram.**

**+7 ccs to Government Pleader SR.40383, 40389, 40388, 40387, 40384,
40385, 40386)**

+ 2 ccs to M. Jagadeesan, Advocate Br.40086

+ 1 cc to M/s. Sarvaabhauman Associates Sr.40139.

**W.P.Nos.44455, 24903, 15902, 15903,
24643, 42548, 22359 and 21257 of 2006**

**RV(CO)
By 24.09.13**



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Sec.77-G

Bar of jurisdiction of
all courts except the Supreme court
in respect of Land Reforms matters
as it is expressly contained in sec.77-G.