

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2023

PRONOUNCED ON : 25.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15957 of 2021

and

W.M.P.Nos.16861 & 16864 of 2021

M/s.Hotel Saravana Bhavan,
No.19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026.
Rep. by its Partner,
Mr.R.Saravanan.

... Petitioner

(The writ petition in W.P.No.15957, was filed by the original petitioner i.e.,

“M/s.Hotel Saravana Bhavan
No.19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026.
Rep. by its Power of Attorney Agent,
M/s.Baashyaam Constructions Pvt. Ltd.,
Rep. by its Director, Mr. Abinesh Yuvaraj
at No.87, G.N.Chetty Road,
T.Nagar, Chennai 600 017.”

and the said cause title has been amended as per order dated 13.09.2023 in
W.M.P.No.26583 of 2023 by SMSJ)

Vs.

1. The Additional Chief Secretary,
Revenue and Disaster Management Department,
Land Disposal Wing, (LD 5 (2) Section,
Fort St. George, Chennai 600 009.

2. The District Collector,
Chennai, No.62, Rajaji salai,
Chennai 600 001.

3. The Tahsildar,
Aminjikarai Taluk,
Gajalakshmi colony,
Shenoy Nagar, Chennai 600 030.

4. The Addiltional Chief Secretary/
Commissioner of Land Administration,
Ezhilagam,Chepauk, Chennai 600 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to G.O.(Ms) No.234 dated 08/02/2021 and quash the same and direct the 2nd to 4th respondents to issue patta in respect of T.S.No.9.10.11,12.13.14,15,16,17,18, 19 and 5, corresponding to survey No.151 in Block No.35 of Koyambedu Village, Poonamallee High Road, Amijikarai Taluk, Chennai District, to the petitioner through his Power of Attorney agent.

For Petitioner

: Mr.AR.L.Sundaresan, Senior Counsel
for
Mr.AR.Karthik Lakshmanan

For Respondents : R.Ramanlaal,
Additional Advocate General,
assisted by
Mr.T.Arun Kumar,
Additional Government Pleader.

ORDER

The lis on hand has been instituted to quash the Government Order issued in G.O.Ms.No.234 dated 08.02.2021 and to direct the respondents 2 to 4 to issue patta in respect of T.S.No.9.10.11,12.13.14,15,16,17,18, 19 and 5, corresponding to survey No.151 in Block No.35 of Koyambedu Village, Poonamallee High Road, Amijikarai Taluk, Chennai District, to the petitioner through his Power of Attorney agent.

2. Though the petition was filed by M/s.Hotel Saravana Bhavan through his power of attorney Agent M/s.Baashyaam Construction Pvt.Ltd. Initially, the petitioner in W.M.P.No.26583 of 2023 prayed to amend the cause title which was allowed by this Court. Accordingly, M/s.Hotel Saravana Bhavan, the petitioner is now represented by its Partner, Mr.R.Saravanan.

Case of the petitioner:

3. The petitioner states that the subject land admeasuring 3.45 acres comprised in R.S.No.151, of Koyambedu Village, Block No.35, presently Aminjikarai Taluk, Chennai District, classified as “Government Poramboke-Natham” was alienated under RSO No.24 with the terms and conditions on payment of land cost to the petitioner in G.O.Ms.No.234 dated 08.02.2021. The said Government order is under challenge in the present writ petition. The petitioner states that they have entered into a memorandum of understanding for developing an extent of 3.45 acres with the Baashyaam Constructions Pvt.Ltd., who was the power agent of the petitioner.

4. The petitioner states that the subject lands have been in continuous possession and enjoyment of the owners and their predecessors since 1943. The lands have been classified as “Grama Natham” in Koyambedu Village. The lands comprised in Survey No.151 admeasuring 4.17 acres belonged to one Mr.Duraisamy Naidu and Tmt.Ranganayaki Amman. They had purchased the said lands from (1)Mr.Munuswamy Pillai sold an extent of 0.03 cents to Mr.Duraisamy Naidu, (2)Mr.Gnana Prakasa Desikar sold an extent of 2.60 acres to Mr.Duraisamy Naidu, (3)Samy Pillai

and Ganga Pillai sold an extent of 0.36 cents to Mr.Duraisamy Naidu (4)Mr.Kanna Pillai and Kokilam Ammal sold an extent of 0.62 cents to Mr.Duraisamy Naidu, (5)Sarada Ammal and Rani Ammal sold an extent of 0.21 cents to Mr.Duraisamy Naidu, and (6)Ramanajalu Naidu sold an extent of 0.35 cents to Mrs.Renganayaki Ammal.

5. After the demise of the said Thiru L.K.Duraisamy Naidu on 03.07.1973, his only son and daughter namely Thiru L.D.Raghavan ad Tmt.V.Renganayaki Ammal, sold a portion of the said land measuring to an extent of 0.67 acres, to M/s.Ponnammal Jothi Prakasam Educational Trust in the year 1978, under a sale deed dated 11.05.1978. The Educational Trust is now running a school in the name and style of “Daniel Thomas Matriculation Higher Secondary School” .

6. The writ petitioner, M/s.Hotel Saravana Bhavan purchased in all an extent of 3.45 acres in S.No.151 from the legal heirs of Late Duraisamy Naidu in the year 1994 and 1996 by different sale deeds as mentioned below:

<i>S.No.</i>	<i>Doc.No./S RO Anna Nagar</i>	<i>Date</i>	<i>Name of the Vendor</i>	<i>Survey No.</i>	<i>Extent in Sq.Ft.</i>
1.	1394/1994	10.04.1994	L.R.Vijayanthi	151	13,920
2.	1445/1994	10.04.1994	Kamala	151	5,220
3.	1446/1994	10.04.1994	Kamala	151	5,220
4.	1478/1994	10.04.1994	V.Ranganayaki	151	14,355
5.	1479/1994	10.04.1994	L.D.Raghavan	151	13,920
6.	1492/1994	10.04.1994	R.Bhuvaneswari	151	13,920
7.	1493/1994	10.04.1994	L.R.Raviprasad	151	13,920
8.	2091/1996	29.03.1996	K.Venkataratnam	151	14,355
9.	2092/1996	29.03.1996	K.V.Santhanakrishnan	151	14,790
10.	2093/1996	29.03.1996	P.Vedha	151	13,920
11.	2094/1996	29.03.1996	K.V.Yogan	151	14,355
12.	passage			151	12,180
			TOTAL		1,50,075 or 3.45 Acres

7. Necessary entries were made in the encumbrance certificate by the registering authority.

8. The request made by the writ petitioner for grant of patta for 3.45 acres was rejected by the Tahsildar, Aminjidarai Taluk, vide his letter No.B3/7212/2003 dated 17.04.2003 stating that the lands have been classified as “Government Poramboke – Grama Natham”. The petitioner preferred an appeal to the District Collector of Chennai vide letter dated 16.05.2003. The third respondent Tahsildar recommended for grant of patta

when the Natham Settlement is taken up. In the recommendations, the Tahsildar has stated that “As there is no classification as Natham poramboke or Village site in Madras city, the Koyambedu area have to be classified as “Ryotwari Manai”.” Tahsildar requested to take steps to correct the entries in the revenue registers. Mr.L.D.Raghavan and V.Ranganayaki submitted an application for change of classification from Village Natham to Ryotwari on 08.08.1983. The Tahsildar, in proceeding dated 12.08.1983, ordered for change of classification of the land from Village Natham to Ryotwari based on the instructions of the second respondent-District Collector dated 29.05.1978. He ordered the names of L.D.Raghavan and V.Renganayaki to be included in the Adangal Column.

9. The petitioner through his power of attorney agent, M/s.Baashyaam Constructions Pvt.Ltd. applied for grant of patta. The second respondent District Collector, refused to accede to the request of the petitioner on the ground that the District Revenue Officer and third respondent had rejected the request for grant of patta. The petitioner filed an appeal before the Additional Chief Secretary/Commissioner of Land Administration on 23.01.2019. The petitioner has paid urban land tax as

demanded by the Assistant Commissioner. The Additional Chief Secretary/ Commissioner of Land Administration directed the second respondent District Collector to examine and send a report. The second respondent submitted a report to the Commissioner of land Administration and thereafter, based on the inquiry conducted, it was erroneously classified as “Sarkar Poramboke-Grama Natham”. The second respondent recommended to remove the entries made in the prohibitory order book of Koyambedu Village.

10. The petitioner states that the Grama Natham land was re-classified as “Ryotwari Manai” in the proceeding dated 12.08.1983 and thereafter restoration of the classification as “Sarkar Poramboke – Grama Natham” at the instance of the Commissioner of Land Administration is erroneous.

11. Surprisingly, the Government issued G.O.Ms.No.234 dated 08.02.2021, directing the alienation of the subject lands of 3.45 acres under RSO 24, in favour of the petitioner, considering the fact that the petitioner proposed development of world class shopping mall and hyper market with

an investment of Rs.1,575 crores and providing direct and indirect job opportunities to around 7,500 people with the usual terms and conditions. The value of the land was fixed at Rs.12,500/- per square feet.

Arguments on behalf of the Petitioner:

12. The learned Senior Counsel, Mr.AR.L.Sundaresan, appearing on behalf of the petitioner mainly contended that it is not the Government Poramboke Land, but a Patta Land. The petitioner is able to establish title, right from the year 1943 and that they are in continuous possession and enjoyment of the subject land. The petitioner has taken steps to develop the subject land for construction of world class shopping mall, hyper market with an investment of Rs.1,575 crores. The classification originally prevailing in the revenue register was “Village Natham”. At the request of the owners of the land, the classification was changed and reclassified as “Ryotwari”. Therefore, subsequent classification made at the instance of the Commissioner of land administration as “Sarkar Poramboke-Grama Natham” is erroneous and in violation of the title document produced by the petitioner before the Commissioner of Land Administration.

13. The learned Senior Counsel for the petitioner made a submission that the Government has now cancelled the impugned Government Order issued in G.O.Ms.No.234, Revenue and Disaster Management, Land Disposal Wing dated 08.02.2021. A revised Government Order was issued in G.O.Ms.No.530, Land Disposal Wing, dated 04.11.2022, cancelling the impugned G.O.Ms.No.234 and resumed the land by erroneously stating that the subject land has been classified as “Government Poramboke-Natham”. Mere cancellation of the impugned order is not a ground to hold that the present writ petition is infructuous since the petitioner has submitted an application for grant of patta. The impugned Government order is alienating the subject land in favour of the power agent of the petitioner M/s.Baashyaam Constructions Pvt.Ltd. on payment of land cost. Therefore, cancellation of G.O. would be insufficient and the relief sought for in the present writ petition is to grant a patta, which is to be considered by this Court.

14The learned Senior Counsel appearing on behalf of the petitioner contended that the alienation of the Government Land under RSO 24 does not arise at all. The petitioner is claiming title over the property. Thus,

assigning the land under RSO 24, on payment of land cost is perverse. The petitioner produced the documents to establish their title which were not considered. Thus, the order impugned is to be set aside and directions have to be issued to grant patta.

15. The learned Senior Counsel, in support of the contentions, relied on the Judgement of the Division Bench of this Court, held in the case of *The Executive Officer, Kadathur Town Panchayat, Vs.V.Swaminatham and others, reported in 2004(3)CTC 270*, and the relevant paragraphs are extracted as under:

“9. A perusal of a combined reading of Section 3(b) and Section 18 of Madras Estates (Abolition and Conversion into Ryotwari) Act viz., Madras Act XXVI of 1948 and Section 2 of the Madras Land Encroachment Act, 1905 discloses that the title to a house site in a Grama Natham is protected from transfer to Government.

10. We draw inference for the above view from the decision rendered by this Court in S.Rangaraja Iyengar v. Achi Kannu Ammal, 1959 (2) MLJ 513 : 1959 (72) L.W. 767. A similar view is expressed by the Apex Court in its

*decision rendered in **C.V.Subbaya v. P.Anjayya**, AIR 1972 SC 1421, while referring to Section 3(b) of the Madras Act XXVI of 1948, it is held therein that the communal lands, poramboke, other ryotwari lands, waste lands, forests, mines and minerals, quarries, rivers and streams tanks and irrigation works etc., vest with the Government other than the land classified as ‘Grama Natham’. This Court in its decision rendered in **N.S.Kuppuswamy Odayar v. Narthangudi Panchayat**, 1971 MLJ Reports 190 has held that the classification of ‘Natham Poramboke’ and the description of ‘Poramboke’ in the settlement register will not, by itself, establish title of the Government to the land in question.*

*11. Similarly, this Court in **Thillaivanam, A.K. and another v. District Collector, Chengai Anna District and 3 Others**, 1998 (3) L.W. 603 and in **Krishnamurthy Gounder v. Government of Tamil Nadu**, 2002 (3) CTC 221 held that the house sites classified as ‘Grama Natham’ cannot be construed as vesting with the Government.*

12. Further, ‘Grama Natham’ is defined in the Law Lexicon as “ground set apart on which the house of village may be built”. Similarly, Natham land is described in Tamil lexicon published under the authority of University of

Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.

13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summary eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions."

16. In yet another matter, in the case of ***A.Sacractice Vs.The District Collector*** in *W.P.No.31688 of 2022 dated 14.03.2023*, the Division Bench held as follows:

*"11. As a matter of fact, this Court, right from the Judgment in **Palaniammal v. Sethuraman Iyyengar**,*

*has categorically held that the 'Grama Natham' land is the land set apart for the villagers to build houses and such land does not vest with the Government. As a matter of fact, an earlier Division Bench of this Court in **T.S. Ravi v. The District Collector, Tiruvallur** (cited supra) has traced out the legal position in all the earlier pronouncements and has categorically held that as opposed to Ryotwari lands for cultivation purposes, Grama Natham lands is habitation for the land owners to built houses and reside there and as a matter of fact, under UDR scheme, these lands were surveyed and the Government attempted to levy tax by a scheme known as Natham Nilavari Patta and only a Thoraya Patta, for tax purposes were issued in respect of Grama Natham. After considering the issue in detail, this Court has categorically held that the Grama Natham land does not vest with the Government and the Government has no paramount title to the land classified as Grama Natham and thirdly, upon considering the provisions of Section 2 of The Tamil Nadu Land Encroachment Act, 1905, the Act cannot be invoked for the purpose of eviction of people who are in occupation of the lands classified as Grama Natham or to transfer the title in favour of the Government by using such act.*

12. *As a matter of fact, in yet another recent Judgment in W.P. No. 6992 of 202, a Division Bench of this Court (in which one of us, the Hon'ble Acting Chief Justice is a member) has again reiterated the said legal position. In view thereof, we hold that when the land in question in Adi-Draavidar Natham i.e., the Grama Natham land which is meant for occupation by Adi-Draavidars by putting up their houses, it cannot be set to be Government interest lands so as to made over to the CMRL without acquisition of title.*

13. *Further, the question of grant of Patta has been clearly dealt with earlier Division Bench of this Court in **T.S. Ravi v. The District Collector, Thiruvallur** (cited supra) in paragraph No. 32 whereby it is held that the Patta does not confer title in respect of Grama Natham, but is issued only under the 'Natham Nilavari Thittam' that is the Natham Land Tax Scheme only for the purpose of levying tax and therefore, non-issue of Patta by itself will not vest the Government with the title. The very same Division Bench had also considered in paragraph No. 27 that merely because the persons residing have also built up shops and are using the property partly by letting out the same as shops, the same again will not make the land loose its character and will not confer the title of the*

Government.”

17. In respect of the above Division Bench order, the State preferred SLP before the Supreme Court and it was admitted and is pending before the Apex Court.

18. In the case of ***K.Mummurthi Vs.The District Collector***, the Division Bench of this Court in W.P.No.4927 of 2018 dated 06.03.2018 held as follows:

“14.It is to be noted that the payment of electricity card charges, possessing Adhaar card, I.D. Card etc. will not confer any vested right on the Petitioner to sit or squat on the property especially on the Government property over which he lays a claim and also that he is not the owner of the property.

15.In regard to the plea of Equity taken by the Petitioner, it is to be pointed out that an 'Encroacher' or a 'Violator' of Law cannot take the plea of Equity, since the person who seeks 'Equity' must do 'Equity' and also must come to Court with clean hands.”

19. Relying on the above judgements, the learned Senior Counsel appearing on behalf of the petitioner reiterated that it was a Grama Natham Land and Grama Natham land do not vest with the Government. The Government cannot claim right over the Grama Natham lands and the occupant is the owner of the Grama Natham land as per the principles settled. The original owner was in occupation and in enjoyment of the subject land, which was initially classified as Grama Natham. That apart, Koyambedu village was partly an “Inam” Village and partly a “Zamin” Village for which settlement was carried out and completed in the year 1962 under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act XXVI/1948. The Koyambedu village originally belonged to the then composite Chengalpattu District till 1978 and in the year 1979, 22 revenue villages were merged with Chennai District. During both the original and Town settlements, an extent of 4.12 acres of lands was settled as Sarkar Poramboke – Grama Natham, as early as 1962.

20. It is admitted by the petitioner that no claims were made within

the stipulated time period as per G.O.Ms.No.714, CT & RE department dated 29.06.1987. The settlement process under Act 26 of 1948 attained finality on 20.08.1987. Pertinently, the original owners or the subsequent purchaser of the subject land, admittedly had not submitted any application for grant of Ryotwari patta before the cut-off date, i.e., 20.08.1987, fixed by the Government in G.O.Ms.No.714 dated 29.06.1987. No such Ryotwari Patta was granted admittedly.

21. The learned Senior Counsel for the petitioner states that the vacant lands in Natham or Village site should be registered as “Vacant site poramboke” which can be used for house site assignment in future. Therefore, the entire action of the Government in assigning the land in favour of the petitioner on payment of land cost is untenable and the petitioner is entitled for grant of patta, as the owner of the land.

Reply by the 4th Respondent:

22. The 4th respondent has filed a detailed counter affidavit stating that out of the total extent of 10.50 acres held by Baashyaam Constructions Private Limited, the aforesaid land measuring an extent of 3.45 acres is

classified as "Sarkar-Poromboke-Grama Natham" in the revenue records. Hence, the application for a patta grant was rejected by the respondents. Due to this classification, Baashyaam Constructions Private Limited was unable to complete their construction of commercial shopping mall and hypermarket on the wide-spread land of 10.50 acres in Koyembedu Village. Regarding the subject property, Mr. L.K. Duraisamy Naidu had acquired the said land through the following documents:

Document No.date	Survey Number	Extent	Executant	Claimant
566/1943 Dt. 11.03.1943	O.S.No.151	3.5 cents	Munusamy Pillai	L.K. Duraisamy Naidu
1830/1943 Dated 29.04.1943	Paimash Nos. 782 to 792, 813, 814 O.S.No.151	2.60 acres	Gnanaprakasa Desikan	L.K. Duraisamy Naidu
2459/1943 dt. 17.11.1943	Paimash No.795 O.S.No.151	0.35 cents	Sami Pillai Ganga Pillai	Duraisamy Naidu
756/1953 dated 19.02.1953	Paimash No.795 O.S.No.151	62.5 Cents	Kanna Pillai Kokilam Ammal	Duraisamy Naidu
3425/1964 Dated 15.09.1964	O.S.No.151	21.0 cents	Saratha Ammal Rani Ammal	Duaisamy Naidu
2764/1970 dated 01.09.1970	Paimash Nos. 779, 780 O.S.No.151	35.0 cents	Ramanjalu Naidu	V. Ranganaya ki Ammal
Total		4.17 acres		

23. Thereafter, Tvl. Hotel Saravana Bhavan have acquired the said

lands by virtue of the following documents for a valuable consideration:

<i>Doct.No. and date</i>	<i>S.No.</i>	<i>Extent In Sq.feet</i>	<i>Executant</i>	<i>Claimant</i>
<i>1394/1994 dated 10.04.1994</i>	<i>151/9</i>	<i>13920</i>	<i>Tmt.L.R. Vijayanthi</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>1445/1994 Dated 10.04.1994</i>	<i>151/6B</i>	<i>5220</i>	<i>Tmt. Kamala</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>1446/1994 Dated 10.04.1994</i>	<i>151/6A</i>	<i>5220</i>	<i>Tmt. Kamala</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>1478/1994 Dated 10.04.1994</i>	<i>151/2</i>	<i>14355</i>	<i>Tmt.V. Ranganayagi</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>1479/1994 Dated 10.04.1994</i>	<i>151/8</i>	<i>13920</i>	<i>Thiru.L.D. Raghavan</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>1492/1994 Dated 10.04.1994</i>	<i>151/11</i>	<i>13920</i>	<i>Tmt.R. Bhuvaneswari</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>1493/1994 Dated 10.04.1994</i>	<i>151/10</i>	<i>13920</i>	<i>Thiru L.R. Ravi Prasad</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>2091/1996 dated 29.03.1996</i>	<i>151/3</i>	<i>14355</i>	<i>Thiru.K. Venkatarathinam</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>2092/1996 Dated 29.03.1996</i>	<i>151/4</i>	<i>14790</i>	<i>Thiru K.V. Santhanakrishnan</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>2093/1996 dated 19.03.1996</i>	<i>151/7</i>	<i>13920</i>	<i>Thiru P. Vedha</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>2094/1996 dated 29.03.1996</i>	<i>151/5</i>	<i>14355</i>	<i>Thiru K.V. Yogan</i>	<i>Partner of Hotel Saravana Bhavan</i>
<i>Common passage</i>		<i>12180</i>		

<i>Doct.No. and date</i>	<i>S.No.</i>	<i>Extent In Sq.feet</i>	<i>Executant</i>	<i>Claimant</i>
<i>TOTAL</i>		<i>150075 S.ft. or 3.45 Acres</i>		

24. Thus, the total extent of 4.17 acres in Koyambedu Village was owned by one Thiru L.K. Duraisamy Naidu. The said L.K. Duraisamy Naidu had already sold an extent of 67 cents of land to Ponnammal Jothi Pragasam Educational Trust by his son and daughter namely L.D. Raghavan and Ranganayaki vide deed of sale registered as document No.2766/1978 dated 11.05.1978. The remaining 3.45 acres was sold to Tvl. Hotel Saravana Bhavan in the years 1994 and 1996 in various documents. Besides this, Tvl. Hotel Saravana Bhavan had also purchased about 5.80 acres of land nearby and were holding a total extent of 9.25 Acres. When they applied for patta, they were issued with patta only for an extent of 5.80 Acres. Their request for grant of patta for an extent of 3.45 acres in T.S.Nos, 9 to 19 of Block No.35 of Koyambedu village was rejected by the Revenue authorities for the reason that the said lands stood classified as "Sarkar Poromboke- Gramma Natham",

25. The then District Revenue Officer, Chennai District had

conducted enquiry in this regard and passed an order to evict the Tvl. Hotel Saravana Bhavan stating that they were only encroachers on the said land and also ordered to enter the said land in the Prohibitory order Book.

26. Aggrieved by this, Tvl. Hotel Saravana Bhavan had filed W.P.No.23589 of 2005 where the Hon'ble Court in its order dated 24.07.2017 disposed the writ petition with a direction to both the parties to agitate their case in C.S.No. 166 of 2017. At these circumstances Tvl. Saravana Bhavan had withdrawn the said suit in C.S.No. 166 of 2017 and also appointed Tvl. Baanshyaam Constructions private Limited as their Power of Attorney holder by way of deed of power of attorney registered as document No.4453/2018.

27. The said Koyambedu village is an Inam village. The Ryotwari Settlement was introduced in the said Village under the provisions of the Tamil Nadu Estates (Abolition and conversion into Ryotwari) Act 1948. During settlement, the said land was settled as "Sarkar Poramboke-Grama Nnatham" and no appeal was preferred by the claimants under the provisions of the said Act. Hence, the decision of the Settlement Authorities attained

finality. In the year 2005, the then District Revenue officer had taken a suo moto action and cancelled the Patta issued in subject survey number and ordered to restore the original entries as "Government Poromboke-Grama Natham". At these Circumstances Tvl. Baashyaam Constructions private Limited had submitted a representation to the Government to grant patta for aforementioned survey number so as to enable them to implement a project which would provide indirect and direct job opportunities to nearly 7500 people.

28. After careful consideration and obtaining an opinion from the Advocate General of Tamil Nadu, the Government of Tamil Nadu issued an order in G.O.Ms.No.234, Revenue and Disaster Management Department Land Disposal Wing L.D.5(2) Section, dated 08.02.2021, to alienate the said land measuring 3.45 acres comprised in T.S.Nos. 9 to 19 of Block No.35 of Koyambedu town to Tvl. Baashyaam Constructions Private Limited, subject to certain conditions. These conditions include collecting the land cost at the rate of Rs. 12,500/- per sq. feet and ensuring that the subject land is used for the purpose mentioned in the proposal, which is to establish a shopping mall and hypermarket with an investment of Rs. 1,575 crore and providing direct

and indirect employment to 7,500 people. In case the said conditions are not fulfilled within a period of 5 years from the date of issue of Government order then the alienation will be cancelled, and the land will be reverted back to the government after the refund of the market value of the land collected without any interest. The Government's decision is made solely for the benefit of the larger public interest.

29. At these junctures, despite accepting the Government Order in G.O.No.234 dated 08.02.2021, by Revenue and Disaster Management Department Tvl. Baashyaam Constructions Private Limited sent a letter to the government dated 12.07.2021 by mentioning that it would be impossible to make an investment of Rs.1,575 crore in the present economic scenario, to establish a shopping mall and hypermarket, and provide employment to 7,500 persons. The petitioner has also not accepted the guideline value for the subject land. Given these circumstances, the petitioner has filed the present Writ Petition before the Hon'ble High Court of Madras to quash the impugned G.O.

30. Under these circumstances, after careful examination, the

Government passed G.O.(Ms).No.530 dated 04.11.2022, cancelling G.O.Ms.No.234 dated 08.02.2021, which had granted alienation in favor of the petitioner. The Government also ordered that the subject land should be fenced and kept under government custody to protect it from any encroachment or unauthorized usage. Hence, the Petitioner's claim and prayer to quash G.O.Ms.No.234 dated 08.02.2021 have become infructuous and not maintainable in the eye of the law.

Arguments by the learned Additional Advocate General:

31. The learned Additional Advocate General mainly contended that the Koyembedu Village is an Inam village. Ryotwari settlement was introduced in the said village under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948. During the settlement, the subject land was classified as “Sarkar Poramboke – Grama Natham” and no appeal was preferred by the claimants under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948. Thus, the decision of the settlement authorities attained finality as on 20.08.1983 as per G.O.Ms.No.714 dated 29.06.1987.

32. It is wrong to suggest that the Grama Natham land can be granted indiscriminately to the occupants, irrespective of the extent of land occupied by such persons. Grama Natham was brought into existence in order to stress that the lands could be used as house sites, where the owner of the house could build houses. This was used to differentiate the house sites from the Government held land such as Inam land (gift land), Ryotwari land (currently abolished system of assessment where land revenue was imposed directly on the individual cultivators called ryots), Pannai lands, Waste lands.

33. The subject land is wanted by the Government as many Government projects in Chennai are held up due to lack of Government lands for the larger public interest. The subject land is classified as “Government Poramboke-Grama Natham”. Thus, any transaction after settlement registers is void of these issues and therefore, the claim of the petitioner is not maintainable in the eye of law. The government issued impugned G.O.Ms.No.234 dated 08.02.2021, considering larger public interest, specifically, considering the employment opportunity proposed by the petitioners. As far as the classification of the land as “Government Poramboke-Grama Natham” is concerned, it attained finality as on

20.08.1987 itself as per G.O.Ms.No.714 dated 29.06.1987. It is further confirmed in the final notification published under Section 13 of the Tamil Nadu Survey and Boundaries Act 1923, published in respect of Koyembedu Village.

34. The petitioner has no locus standi to sustain the present writ petition since the petitioner has not approached the High Court with clean hands. The petitioner pleaded financial inability to pay alienation value for the subject land as per RSO 24 by suppressing the fact that the petitioner is trying to illegally occupy the subject land. The alleged financial difficulty is false and incorrect.

35. The learned Additional Advocate General relied on the order passed on 20.06.2011 by the Division Bench of this Court in Writ Appeal 1248 of 2007 in the case of **Zonal Officer Vs. V.K.Narasa Reddy**, and the relevant portions are extracted as under:

“16. In view of the facts noted above, the conclusion arrived at by the learned Single Judge cannot be accepted especially when the first respondent has made the construction not for his own occupation but for

commercial purpose only. Therefore, we find no ground to interfere with the impugned order dated 17.04.2007 passed by the Commissioner. Consequently, the order under challenge is liable to be set aside and accordingly it is set aside.

17. The pathetic situation prevailing in this part of the globe, as we observed is that, ignoring the fact that Gramanatham land is a common village land, the greedy persons like the Writ Petitioner in this case are indulging in activities which are purely commercial in nature. When the appellants themselves have accepted in all fairness that patta has been issued erroneously and that they have initiated necessary proceeding to cancel the same, we are unable to find fault with the impugned action initiated by the appellants herein. This rampant practice of misusing the Gramanatham lands in this part of the globe has to be curtailed immediately so as to protect the common village lands for the welfare of the public in general. Therefore, the Government of Tamil Nadu and its revenue officials are directed to strictly protect the Gramanatham lands from being misused particularly for commercial purpose.”

36. The learned Additional Advocate General contended that the

Civil Suit instituted by the writ petitioner in C.S.No.166 of 2007 before the High Court of Madras have been withdrawn by the plaintiff therein for the reasons known to them. The classification made by the Government as Government Poramboke-Grama Natham was not challenged by any one and it attained finality as on 20.08.1987 itself as per G.O.Ms.No.714 and the Government Order was upheld by the Hon'ble Division Bench of the High Court of Madras.

37. It is contended that the government has to protect the interest of the public at large especially when the land involved has high market value. When the public rights are infringed upon through illegal occupation of Government lands, it can result in a significant financial loss to the State Government and also the Government would not be able to implement its schemes for larger public interest as wanted of Government lands.

38. It is brought to the notice of this Court that the Government has already taken possession of the subject land and proposed to utilise the said land for larger public purposes.

LEGAL PRINCIPLES:

39. In the present case, through the impugned order, the government alienated the valuable Government lands classified as “Government Poramboke-Grama Natham”, in favour of M/s.Baashyam Constructions Pvt.Ltd. for the purpose of developing world class mall and hyper market. The impugned order has been passed only based on the information provided by a private construction company namely Baashyaam Constructions Pvt.Ltd. that they will be providing employment to 7500 people in the world class mall and hyper market. The Private company proposed to invest about Rs.1575 Crores for developing the subject land which belongs to the Government. In the context of the impugned order, this Court is of an opinion that it does not sound well as construction of a commercial mall or hyper market cannot be construed as a larger public interest and it is a commercial venture by a private construction company. Thus, the assignment of the land on payment of the land cost in favour of a private construction company is in consonance with the legal principles and not needs to be primarily examined.

Concept of Public Interest in the matter of Public Policy:

40. The Hon'ble Apex Court in the case of ***Kasturi Lal Lakshmi Reddy vs State Of Jammu And Kashmir & another on 9 May, 1980, 1980 SCR (3) 1338***, made a detailed discussion on Government contracts, Limitations on the Government to grant contracts, Test of reasonableness, **concept of public interest** and Articles 14 & 19 of the Constitution and held :

“While others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion.

(i) There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other. In regard to the persons who may be recipients of such largess.

(ii) So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him

under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. **If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.**”

Concept of Reasonableness:

41. (i) The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by the Supreme Court in the case of **Maneka Gandhi v. Union of India reported in (1978) 1 SCC 248**, clearly demonstrated that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of the Apex Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice, which inspires and animates the Directive Principles.

(ii) It has been laid down by the Apex Court in the case of **E.P. Royappa v. State of Tamil Nadu reported in (1974) 4 SCC 3**, and **Maneka Gandhi's case (supra)** that Article 14 strikes at arbitrariness in State action and since the, principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is protected by this article, it must characterize every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that

restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable.

(iii) Similarly Article 21 in the full plenitude of its activist magnitude as discovered by *Maneka Gandhi's case*, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. **The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights.** By defining the national aims and the constitutional goals, they set forth the standards or norms of reasonableness, which must guide and animate governmental action. Any action taken by the Government with a view to give effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action, which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable.”

Concept of Public Interest:

42. “Concept of public interest must as far as possible receive its orientation from the Directive Principles.

What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody par excellence the constitutional concept of public interest.

If, therefore, any governmental action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid.

It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest.

The Government, therefore, cannot, for example, give a contract or sell

or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property.

Illustratively, there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that **the Court would have to decide whether the action of the Government is reasonable and in public interest.**

But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the

party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material.

The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action **and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law.**

The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted.

43. It is now well settled as a result of the decision of this Court in the

case of *Ramana D. Shetty v. International Airport Authority of India & Ors reported in (1979) 3 SCC 489*, that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone. but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess. the Government cannot act arbitrarily at its, sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14.

44. The Hon'ble Supreme Court in the case of *Ram and Shyam*

company vs State of Haryana and ors, dealt with the aspect of disposal of the public property and held that :

*“...disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. **This is subject to one important limitation** that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. **But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy.***

An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur.

A welfare State as the owner of the public property has no such freedom while disposing of the public property. A

welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages.

45. In the case of *Sachidanand Pandey & Anotherr. vs. State of West Bengal & Ors. [1987 (2) SCC 295]*, it was held that as regards the question of propriety of private negotiation with an individual or corporation, it should be borne in mind that **State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed, public interest being the paramount consideration.**

46. In the case of *M/S Style (dress land) vs. Union Territory Chandigarh and another reported in (1999) 7 SCC 89*, the Hon'ble

Supreme Court of India reiterated the observations of Mathew, J., in *Punnan Thomas v. State of Kerala* AIR 1969 Ker 81 (FB) that:

"The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal" **The same point was made by the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West bengal (1975) 2 SCR 674; (AIR 1975 SC 266)** where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. **But the court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is**

trading with the public, "the democratic form of Government demands equality and absence of arbitrariness....The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non- discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the

departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

While exercising the powers of judicial review the Court can look into the reasons given by the Government in support of its action but cannot substitute its own reasons. **The Court can strike down an executive order, if it finds the reasons assigned were irrelevant and extraneous.**

DEFINITION AND ORIGIN OF 'GRAMA NATHAM' LANDS

47. 'Grama Natham' has been defined in the Law Lexicon as follows:-

“Ground set apart, on which the house of a villager may be built”.

48. 'Grama Natham' is the village habitation, where the land holders may build houses and reside. They are also known as 'House Sites' (Manai). They were classified as 'Grama Natham' to differentiate from Inam lands, Ryotwari lands, Pannai lands and Waste lands, while later vested with the Government, the 'Grama Natham' did not vest with the State.

49. As far as the Corporation limits and Municipal limits are concerned, the Government imposed ban for assignment of 'Grama Natham' lands and in many cases, the Government has reclassified the 'Grama

Natham' lands as 'Government Poramboke' and in such circumstances, the occupants are not entitled to claim patta or right over the property.

50. If the Natham is unoccupied, it will be classified as a 'Poramboke Natham'. Where such 'Poramboke Nathams' are concerned, the Government acts as a custodian, and may allocate the piece of land to an individual, only for the construction of houses.

51. The Government Order has provisions for “encroachments” on poramboke land. A penalty is levied on encroachments on poramboke land, which also acts as a record of occupancy (because it makes them visible on an official register). It’s called a B-memo and is issued by the village panchayat or the government agencies under whose control the poramboke land lies. Although Tahsildars are supposed to act to remove encroachments within three months of the B-memo being issued (pending appeals), it has been observed that the memo is often used as a proof of occupancy.

52. According to Government Order issued, no poramboke land “shall be used for any purpose other than that for which it was originally intended

except with the prior approval of the Collector” (G.O. [Ms] No.317, Rural Development [C4], dated December 6, 2000). In case it is not required for the purpose originally intended, it may be used for any other “specified public purpose”, in which case the panchayat must publish the notice in the village and invite objections to its proposed use of the poramboke land. The proposal, along with any objections, must then be submitted to the district collector, who will take the final call.

53. Poramboke land is often compared with 'Grama Natham'. “Poram” means outside, and “boke” means revenue record. Hence the word, 'poramboke', can be defined as land, which lies outside revenue records. By such a definition, any piece of land can be classified either as a privately-owned Patta land, 'Government Poramboke' land or 'Grama Natham land'. Although 'Grama Natham' can be used for building a house, there is always a risk of litigation when the Government needs the land for its projects.

54. 'Grama Natham' lands are house sites, and must be actively used by the land owner. If the 'Natham' is unoccupied, it will be classified as a 'Poramboke Natham'. Where such 'Poramboke Nathams'

are concerned, the Government acts as a custodian, and may allocate the piece of land to an individual. Hence, 'Grama Natham' may not be an ideal investment if the buyer does not have intention to build a house and reside in it.

55. Grama Natham lands cannot be used for commercial activities. A joint venture to construct an apartment complex on such a land is treated as a commercial activity. Any activity that does not clearly show the intent of the owner of a 'Grama Natham' to reside on the land can be classified as a commercial activity. In June 2011, a judgement was passed in the Madras High Court on a joint venture project built on a 'Grama Natham' land where one owner had entered into a joint venture to construct stilt + 4 floors of an apartment complex. Since the apartment was built on a 'Grama Natham' land, the Madras High court ruled that this activity could be classified as a commercial activity.

NEED FOR UNIFORMITY IN NOMENCLATURE WITH RESPECT TO 'NATHAM' LANDS

56. The Government has announced that the nomenclature with respect

to lands will be changed to reflect the difference between private and Government ownership. As 'Natham' land records have adopted different nomenclature for different areas, the Government has found an urgent need to bring in uniformity in these records. This change will have to be brought to all 'Natham' land records of different places excluding Chennai.

57. 'Natham' lands belongs to no one. There is no legal proof of the ownership of such a land. 'Grama Natham' land can only be used for residential purposes and not commercial. There is no surrounding social infrastructure and almost negligible scope of development in future. The extract of Natham chitta from Tamil Nilam will be treated as a valid and legal document. Hence the necessary changes have to be made. When the land is titled as Government-manai, it leads to a perception that the public may be encroaching on private property. But that is not the case, as many land holdings are private holdings within the 'Natham' land settlement. This particular change will lead to all 'Natham' lands falling under two categories of 'Ryotwari Manai' and 'Sarkar Poromboke'. This will ensure uniformity and ease confusion between different names for 'Natham' lands.

58. Pertinently, in **Chinnathami Goundan vs. Venkatasubramania Iyer [1939 MWN 207]**, **Wadsworth J.**, dealt with unoccupied village site and it is held as follows:-

“I am of opinion that by the recognised practice of this Presidency - excluding areas with a Special Revenue law such as Malabar - the control of unoccupied village site land vests in the proprietor whoever he may be. In Ryotwari areas that control is exercised by the Government in the Revenue Department by means of the grant of house site Pattas without which occupation by an individual villager would be unauthorised. In Zamindari areas that control is exercised by the Zamindar. In a Shrotriem village not falling under the Estates Land Act, I am of opinion that according to the common practice of this Presidency the control of such unoccupied village site vests in the Shrotriemdar. My attention has been drawn to the decision of a Bench of this Court in Venkataramana Sivan v. Secretary of State for India (1), which is a case arising out of a whole Inam village wherein the Government claimed the right to penalise an unauthorised occupation of a cremation ground poramboke. It was held in that

case that the Government was vested with the right of protecting such communal ground for the benefit of the community and there is an observation in the judgment of Spencer, J. To the effect the Government is the custodian of the rights of the public in lands such as sites for Pagodas, burning grounds, threshing floors, cattle stands, unassigned house sites and backyards. The suggestion is that the legal title vests in the Government in trust for communal purposes”.”

59. In the present case, the title has not been established by the petitioner's vendor except by stating that they were having uninterrupted possession and enjoyment of the land. It is not stated, whether the petitioner's vendors were granted assignment of the subject land by the Government. The statement in the Sale Deed would be insufficient to prove the title. The said statement itself is doubtful in view of the fact that the executants of the Sale Deeds of the year 1995 belonged to the same family or the relatives and they made statements that they were in uninterrupted possession of the land without any assignment from the Competent Authorities. More-so, there was an absolute ban during the relevant point of time and the lands earlier classified as 'Grama Natham' were reclassified as 'Sarkar Poramboke – Grama

Natham' on account of urbanisation. The urban belt areas urbanised no more remain as villages. On urbanisation, the land values were sky-rocketing and the Government thought fit to protect such 'Grama Natham' lands and accordingly imposed ban and reclassified the lands as 'Sarkar Poramboke'.

60. In the event of permitting such greedy men to encroach upon the 'Grama Natham' lands to a larger extent, and usage of 'Grama Natham' lands for commercial purposes, it would lead to lawlessness in the Society. Persons with money power, muscle power or political power alone would be in a position to occupy such vast extent of 'Grama Natham' lands for exploitation and for unjust gains, which would cause infringement of the rights of homeless poor people and the same will result in an unconstitutionality with reference to the Constitutional mandate of 'Social Justice'.

DISCUSSION:

61. It is not in dispute that Koyembedu Village was an “Inam Village”. Thus, Ryotwari settlement was introduced in the said village under

the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. During the settlement, the subject land was classified as “Sarkar Poramboke-Grama Natham” and no appeal was preferred by the claimants under the provisions of the Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. Therefore, the decision of the settlement authorities attained finality as on 20.08.1987 as per G.O.Ms.No.714 dated 29.06.1987 and the Government Order was upheld by the Hon'ble Division Bench of High Court of Madras.

62. In respect of the contentions of the petitioner that Grama Natham land do not vest with the Government and the occupant is the owner of the Grama Natham land, the definition of Grama Natham is to be taken into consideration. First of all, Koyembedu area has been declared as Chennai City area long before the purchase of the property by the petitioners. There was a ban to assign the properties in and around Chennai and the Collector, Chengalpattu also notified the same. The ban originally imposed in the year 1958 was extended in the year 1962. Koyembedu area is falling under the Chennai Belt area and therefore, even in the absence of any reclassification

of “Graman Natham” Land as “Government Poramboke-Grama Natham” the said lands cannot be assigned by the Government in favour of any person. That apart, the Grama Natham lands are meant only for construction of houses for the benefit of the homeless poor people in a particular village. The lands cannot be utilised for commercial purposes. The very terminology “Grama Natham” was brought into existence in order to stress that the land could be used as house sites where the owner of the land could build houses.

63. Since the Koyembedu area was falling under Chennai Belt area and now the Central Bus Stand for Chennai city itself is situated in Koyembedu and the property is just opposite to the Central Bus Stand in Koyembedu, the said lands cannot be assigned since any such assignment would be detrimental to the larger interest of the public. The Government has clearly stated that the subject land is wanted for Government as many Government projects in Chennai are upheld due to lack of Government lands for the larger public interest.

64. The impugned G.O.Ms.No.234, Revenue and Disaster Department dated 08.02.2021 issued itself reveals that some extraneous

considerations were shown in favour of the petitioner and their power agent is M/s.Baashyaam Constructions Pvt.Ltd. Assignment of land in favour of private individuals for commercial purposes itself is in violation of the principles laid down by the Constitutional Courts across the country. The state cannot act as it pleases in the matter of giving largess. The Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The Constitutional powers conferred on the Government cannot be exercised arbitrarily or capriciously or in an unprincipled manner. It has to be exercised for the public good. If the Government grants assignment in respect of the Government lands, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

65. Where any Government action fails to satisfy the test of reasonableness and public interest discussed in the aforementioned paragraphs in the present judgement and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. The Court would have to decide whether the action of the Government is reasonable and is in public interest.

66. An important limitation on the discretion of the government in grant of assignment is in regard to the persons to whom such largess may be granted. A welfare state as the custodian of the public property has no such freedom while disposing of the public property. A welfare state exist for the largest good of the public. State owned or public properties are not to be dealt with at the absolute discretion of the executives. Certain precepts and principles have to be observed, public interest being the paramount consideration.

67. In the present case, the impugned Government Order itself emanated from the request of M/s.Baashyaam Construction Pvt.Ltd. through their application dated 01.12.2020. The land was assigned for the benefit of the private building construction company for establishing mall and hyper market. Undoubtedly, the said M/s.Baashyaam Construction Pvt.Ltd. will establish mall and hyper market etc., and earn huge profits, which is no way comparable with the land cost fixed in the impugned government order. The land cost fixed in the year 2021 for assigning the land was Rs.12,500/- per sq.ft. The actual market value of the subject land is far higher than the value

fixed by the Government in the impugned order. By developing the commercial project in the said land, the said M/s.Baashyaam Construction Pvt.Ltd. would earn huge profit which will result in unjust gain from and out of the public properties. Therefore, at no stretch of imagination, one can arrive at a conclusion that the Government has not issued the Government Order in the interest of the public at large and pertinently the Government Order impugned is not satisfying the principles of reasonableness. But the order has been issued on extraneous or political considerations or otherwise.

68. In the context of the Government Order, this Court appreciate the courage shown by the then District Revenue Officer, Chennai Collectorate, Thiru.U.Sagayam, who passed an order in proceeding in Proc.No.J3/60320/02 dated 08.06.2005. When the file was placed before him, he has clearly stated that :

“As per the Town Survey Land Records, the above Land is classified as 'Sarkar Poramboke' with description in Adangal column as 'Natham'.” It is seen from the remarks column of the TSLR pertaining to the land, the name of M/s.Hotel Saravana Bhavan, Managing Partner Thiru.P.Rajagopal, S/o.Pitchai, indicating his occupation of

the land has been stated. It is also seen that there are no structures put up by the said individual on the ground in the land under reference. Besides, the individual has put up a sign board on the Southern boundary of the land which is just right at P.H.Road indicating that the land belongs to “Hotel Saravana Bhavan”.

Inspection of the land under reference by the District Revenue Officer further reveals that the major portion of the land is uneven and it is approximately low lying and that the land is full of thorny bushes (Velikathan mull). Inspection of the land under reference further reveals that the said occupant has also got patta lands in T.S.No.2, 2/2, 8/2 and 8/4 comprised in Block No.35 and 36 of Koyambedu Village abutting the lands in Grama Natham. The total extent of the patta lands is 2H-15A-45-0 Sq.Mtrs. The entire extent of the land is fenced with barbed wires and at the entry point pucca iron grill gate is put up.

It is a fact that this Government land is a prime land located just on the P.H.Road and in close proximity to newly established Central Bus Stand. This land is highly valuable land and the value will be approximately more than Rs.30 Crores (value indicated is of the year 2005) and in these circumstances, the Revenue Administration cannot remain a

mute spectator to this open act of land grabbing by influential and wealthy people and the said valuable land should be protected from encroachment at any cost.

Therefore in right earnest, I hereby order removal of the name of the encroacher Viz "Saravana Bhavan, Rojagopal" from the T.S.L.R of Koyambedu village pertaining to the land under reference classified as Government Poramboke Grama Netham forth with

The Tahsildar Egmore Nungambakkam Taluk is directed to remove the encroachment in the said land immediately and take possession of the land under his control. He should take urgent measures to protect the land from future encroachment by anti social elements and land grabbers. The notice board put up by the individual Indicating that the land belongs to Hotel Saravana Bhavan is unlawful and therefore the same should be removed forthwith. Any attempt to regain the land by land grabbers or others should be treated as an act of land grabbing and criminal prosecution should be launched against the individual concerned without any hesitation.

It is a fact that the Government land becomes too scarce in Chennai District and even a cent of land will not be

available for Government purpose in case of necessity in future. Therefore this land should be taken to the prohibitory order book for protection and it is more essential to create a Land Bank in Chennai District to meet future need of the Government and as a first step this land should be considered for inclusion for creation of Land Bank. The action taken in the above aspects should be reported by the Tahsildar Office of the Egmore Nungambakkam Taluk within 3 days without fail. Any move to regain this land after our taking possession by the present encroacher, either directly or discreetly should be treated as an act of land grabbing and Criminal action taken against him forth with.”

69. The then Revenue Divisional Officer Mr.U.Sagayam, with the sense of public interest and commitment, had inspected the subject land and categorically stated about the truth behind the entire episode of land grabbing by M/s.Hotel Saravana Bhavan.

70. Pertinently, the reliance placed by the petitioners in respect of the document of the year 1943 is to be looked into. Document No.566/1943 dated 11.03.1943 unambiguously states that the subject land is the Village

Natham land and it is a Service Inam. The person in occupation was performing services for the benefit of the village people by residing in the 'Grama Natham' lands. The document No.1830 of 1943 also indicates that it is a Natham land and a Service Inam. The description of the property has been clearly stated that the "Grama Natham" in Survey No.151 Paimash 782 is a Service Inam. Document No.756 of 1953 dated 19.02.1953 also unambiguously portrays that the subject property is a Grama Natham in the schedule of properties. Document No.3425 of 1964 also indicates that the subject property is a Grama Natham in Survey No.151. Document No.2763 of 1970 also reveals that the subject property is a Grama Natham in Survey No.151.

71. The Possession Certificate issued by the Tahsilar in favour of Thiru.L.D.Raghavan, S/o.Duraisamy Naidu and the Ranganayaki cannot be considered for the purpose of determining title in favour of the said Mr.L.D.Raghavan. More so, the certificate itself cannot be trusted upon in view of the fact that the documents executed by the persons in the year 1943 up to 1978 reveals that the subject property was an "Inam land" and was classified as "Grama Natham". The Tahsildar Egmore, Nungambakkam, in

proceeding dated 12.08.1983 surreptitiously changed the classification of Village Natham to Ryotwari without any reason. The said letter seems to be issued on extraneous consideration or based on some influence. After converting the classification from Village Natham to Ryotwari in the year 1983, the said Ranganayaki executed a deed of family arrangement which was unregistered. In the unregistered deed of family arrangement, the said Ranganayaki has stated that all the piece and parcel of land measuring 1.42 cents comprised in Survey No.151 of Koyembedu Village No.106, Egmore, Nungambakkam Taluk, Chengalpattu District, now within the city limits of Madras was purchased by late L.K.Doraiswamy Naidu, the father of A.Ranganayaki. The documents registered in the unregistered deed of family arrangement of the year 1943 clearly indicates that the subject land was an Inam land and classified as "Village Natham".

72. First time in the year 1989, Tmt.Ranganayaki signed an unregistered deed of family arrangement in favour of other persons.

73. The present case on hand is a classic one, where schematic way of land grabbing was carried out by the persons, who all are highly influential in the society. After executing an unregistered deed of family arrangement, a

sale deed was executed in the year 1994 in favour of M/s.Hotel Saravana Bhavan, a partnership firm. The said Registered Sale Deed reveals that the late L.K.Doraisamy Naidu purchased the subject land and Ranganayaki Ammal, daughter of Doraisamy Naidu purchased a portion of the land. The unregistered family partition was referred in the said sale deed executed in favour of M/s.Saravana Bhavan. This exactly is the modus and point, from where the land grabbers attempted to convert the Government land as private land. The modus operandi adopted by the land grabbers in the present case would establish that there was an active collusion of the Revenue Authorities through corrupt activities. One Tahsildar in the year 1983 issued a letter changing the classification of the land from Grama Natham to Ryotwari. However, no Ryotwari patta was granted in favour of any occupant under the provisions of the Abolition Act 26 of 1948. The Government has stated that the Settlement Officer concluded that there was no claim in respect of the subject land. Pursuant to the Government Order issued in G.O.Ms.No.714 of 1987, by virtue of the letter given by the Tahsildar in the year 1983, unregistered family settlement deed was executed in the year 1989 and the lands were sold in favour of the M/s.Saravana Bhavan in the year 1994. The straight facts are sufficient enough to form an opinion that the petitioners, in

collusion with the Government officials, grabbed the Government land and attempted to develop a commercial project through M/s.Baashyaam Construction Pvt.Ltd. The Town Survey Register placed before this Court indicates that the subject land is “Sarkar Poramboke”. The petitioner earlier filed W.P.No.23589 of 2005 and this Court disposed of the writ petition by observing that the petitioner has already instituted a Civil Suit in C.S.No.166 of 2007 and the parties are at liberty to pursue their relief. Pertinently, the C.S.No.166 of 2007, filed by Hotel Saravana Bhavan has been dismissed as withdrawn at request of the plaintiff therein on 28.03.2018. After withdrawing the Civil Suit filed before the High Court, the petitioner Hotel Saravana Bhavan executed a general power of attorney in favour of M/s.Baashyaam Construction Pvt.Ltd. on 29.10.2018. Thereafter, the said M/s.Baashyaam Construction Pvt.Ltd. were addressing letters to the District Collector for grant of patta and based on the application, the Government issued the impugned order, assigning the land on payment of land cost at the rate of Rs.12,500/- per Sq.ft.

74. Pertinently, the impugned Government Order has been already withdrawn by the Government in G.O.Ms.No.530, Revenue and

Disaster Management Department, Land Disposal Wing dated 04.11.2022. The Government, in the cancellation order, stated that the subject land classified as “Government Poramboke- Natham”, which was assigned in favour of the petitioner had been withdrawn. Pursuant to the cancellation of the impugned order issued in G.O.Ms.No.234 dated 08.02.2021, it is brought to the notice of this Court that the respondents have already taken possession of the subject land and it is fenced and protected by the Government for using the same for larger public interest.

75. The case on hand reveals that the impugned Government Order, assigning the Government Poramboke-Natham land in favour of M/s.Baashyaam Construction Pvt.Ltd. in G.O.Ms.No.234 dated 08.02.2021, was passed just before the announcement of the Assembly Elections in the State of Tamil Nadu, by the then Governmnt (A.I.A.D.M.K.). After change of Government (D.M.K.) in May 2021, now the said impugned Government Order is cancelled through G.O.Ms.No.530 Revenue and Disaster Management, Land Disposal Wing dated 04.11.2022.

76. This Court is astonished at the manoeuvres exhibited in a systemic fashion to grab lands belonging to the government illegally.

Grama Natham lands in essence, refers to lands granted for the benefit of the villagers in instances where the land is not required for common use subject to the conditions as specified in RSO 21, the particular extent of land as allowed under the RSO can be assigned to bonafide applicants.

This Court is coming across instances in numerous cases where not only the conditions specified under the RSO has been circumvented but the entire process has been subverted to assign lands to a particular group of people majorly the wealthy, influential and political members of the society.

The stratagem employed by the land grabbers is foll proof and can be witnessed specifically in lands belonging to the government across different political spectrums.

The method adopted in bringing about this systemic violations is done hand in hand by the bureaucracy and the politico. The convergence happens at this singular point. Inspite of different parties being in power across different political landscapes, the convergence and tactics adopted in such systemic

violations are all in a similar fashion and is all pervasive across different layers of governance.

This is not only a matter of grave concern but raises several serious questions. THIS STRUCTURAL CORRUPTION IS THE BEGINNING OF ALL FORMS OF SOCIAL EVILS. It shakes the foundation of a good governance.

Particularly in assignment of government lands, be it the procedures adopted or the process followed, there is a general lack of transparency. This ought to be addressed at the earliest.

77. It is high time that the Government contemplates the bringing about of a special legislation to penalise land grabbing. The cases relating to land grabbing is piling up and the methodical ways in which the land grabbing is done with the collusion of the government officials is a serious issue. The complicity between different layers of the executive and political power players in offences such as these is undoubted.

It is an understatement to say that there is political interference and

connivance of government bureaucracy in land grabbing cases.

Land grabbing prohibition legislation is the need of the hour. More so, it is essential to ensure criminal prosecution is initiated against land grabbers. Land grabbing definitely attracts the provisions of the Indian Penal Code. The criminality attached to land grabbing is undisputed. Land grabbing is equivalent to theft of another's property. But more serious is grabbing of Government owned land. This is unquestionably an offence against the State. Grama Natham lands are properties under the custody of the Government. It is envisioned to be used for the welfare and well being of the public. The RSO 21 clearly stipulates the terms and conditions of usage of the Grama Natham lands. Any contravention of the same entails the entire transfer or assignment of such Grama Natham land as ineffective and against the object as implied under the RSO 21.

But by using certain backhand techniques, the land grabbers, grab such land and use it for commercial exploitation and for personal gains. This is nothing short of thieving and such land grabbers should not be left Scot-free.

Criminal prosecution ought to be pressed into service in such land grabbing cases and the wrong doer ought to be punished under such legislations. An

offence against the State is an offence against the people of the State.

78. The facts established and the documents produced by the respective parties to the lis on hand would be sufficient enough to arrive at an inevitable conclusion that the petitioner is not entitled for grant of patta. The petitioner is an encroacher of the Government land who has grabbed the Government land for unjust gains in a systematic manner, more specifically with the connivance of the Government officials in support of few private individuals who all are influential people in the society. Thus, this Court is inclined to pass the following orders:

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The respondents are directed to take possession of the Government Lands in entirety and fence the property and utilise the same for larger public interest in consonance with the principles laid down by the constitutional Courts, which has been elaborately discussed in the present judgment.

(iii) The respondents are directed to initiate appropriate criminal prosecutions and disciplinary actions against all the persons including the

Government officials and public servants, who all are responsible and accountable for grabbing of the high value Government properties in Chennai city and across the state of Tamil Nadu.

(iv) The respondents are directed to look into the structural corruptions in the matter of grabbing of government lands, consider and enact suitable law to deal with the offences, so as to prevent such illegal grabbing of Government properties.

(v) The respondents are directed to appoint a High Level Committee to identify the grabbing of Government Lands, illegalities and irregularities in dealing with the Government properties, recovery of arrears of lease rent, unlawful occupation of Government properties etc., and initiate all appropriate actions including Criminal prosecutions, to protect the financial interest of the State and to safeguard the poor and voiceless people of the State Tamil Nadu.

79. With the above directions, the writ petition stands **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

80. Registry is directed to list the matter before this Court under the caption 'For Reporting Compliance' on 10.01.2024.

25.09.2023

Index:Yes
Speaking order
Neutral Citation:Yes
(*sha*)

To

1. The Additional Chief Secretary,
Revenue and Disaster Management Department,
Land Disposal Wing, (LD 5 (2) Section,
Fort St. George, Chennai 600 009.

2. The District Collector,
Chennai, No.62, Rajaji salai,
Chennai 600 001.

3. The Tahsildar,
Aminjikarai Taluk,
Gajalakshmi colony,
Shenoy Nagar, Chennai 600 030.

4. The Addiltional Chief Secretary/
Commissioner of Land Administration,
Ezhilagam,Chepauk, Chennai 600 005.

W.P.No.15957 of 2021

S.M.SUBRAMANIAM, J.

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W.P.No.15957 of 2021

25.09.2023