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W.P.No.32993 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
22.10.2024	22.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.32993 OF 2023

AND

W.M.P. NOS.32689 TO 32691 & 26242 OF 2023

W.M.P. NOS.7123 & 7126 OF 2024

The Church of South India Trust Association

Rep. By its Power of Attorney

Mr. S.Rajendran, Diocesan Treasurer

Tiruchirappalli – Thanjavur Diocese

CSI Diocesan Office

Puthur, Tiruchirappalli 620 017.

.. Petitioner

- Vs -

1. The Revenue Divisional Officer

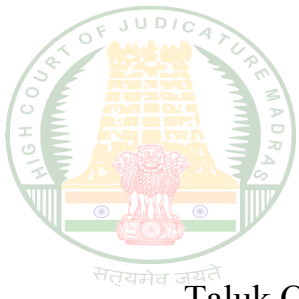
V.O.C. Road, Mannargudi

Tamil Nadu 614 001.

2. The Tahsildar,

Taluk Office Road, Mannargudi, Tamil Nadu 614 001.

3. The Revenue Inspector



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Taluk Office Road
Mannargudi, Tamil Nadu 614 001.

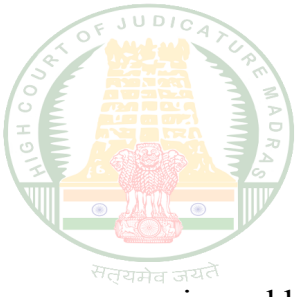
4. The Sports Development Authority of Tamil Nadu
Rep. By its Member Secretary
Jawaharlal Nehru Stadium Raja Muthiah Road
Periyamet, Chennai 600 003.

5. The Director of School Education
DPI Campus, College Road
Chennai 600 006.

6. The Chief Educational Officer
Thiruvarur District
Thiruvarur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the impugned notice vide cK180/2023/tUM issued by the 3rd respondent on 15.09.2023 and quash the same as illegal, arbitrary, an abuse of process of law and issued without any authority in law and consequently forbear the respondents from proceeding further and taking any steps whatsoever pursuant to the impugned notice vide cK180/2023/tUM



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issued by the 3rd respondent on 15.09.2023.

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For Petitioner : Mr. T.Mohan, SC, for
M/s.Cibi Vishnu

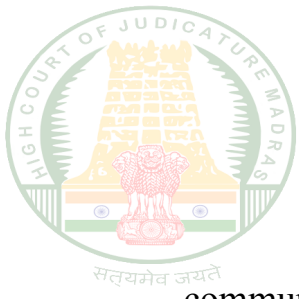
For Respondents : Mr. P.Wilson, Spl. SC, Assisted
by Mr. U.Bharanidharan, AGP
for RR-1 to 3

Mr.Richardson Wilson for R-4

ORDER

The present petition seeks quashment of the notice issued by the 3rd respondent calling upon objections from persons interested with regard to transfer of lands in Ward No.1, Block No.95, T.S. No.63 which are under the occupation of the petitioner to an extent of 7 acres, for the purpose of establishing Tamil Nadu Sports Development Authority.

2. It is the case of the petitioner that that it is involved in a wide range of activities, including education, healthcare and social welfare and charitable endeavours. The petitioner is an organisation associated with the Church of South India and was incorporated on 31.08.1948 and is actively involved in initiatives that address poverty, empower marginalised



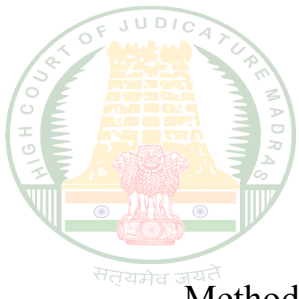
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communities and contribute to the overall well-being of society.

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3. It is the further case of the petitioner that it manages and supports numerous schools, colleges and other educational initiatives across South India and that these institutions are providing quality education and one such institution is functioning is the Findlay Higher Secondary School, V.O.c. Road, Mannargudi, Thiruvarur District (for short 'the school') which was founded in the year 1862 and that for over 160 years, the school has been striving to nurture students and is imparting quality education to more than 1100 students.

4. It is the further case of the petitioner that earlier the Wesleyan Methodist Missionary Trust Association, London, was holding in trust, various properties, including properties situated in South India for the benefit of Wesleyan Methodist Missionary Society and after enactment of the Methodist Church Union Act, 1929, the Wesleyan Methodist Church was united along with two other churches into the "Methodist Church" and by virtue of the provisions of the said Act, the Wesleyan Methodist Missionary Trust Association was then holding the said properties in trust for the

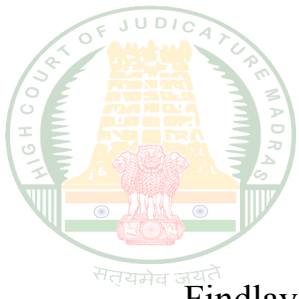


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Methodist Church. Subsequently, the petitioner, in the year 1947, was incorporated to act as trustee for the Church of South India and since the Wesleyan Methodist Missionary Trust Association was holding properties in trust for the benefit of the Methodist Church, after the formation of the Church of South India, the Wesleyan Methodist Missionary Trust Association decided to transfer few of those properties to the petitioner herein, as the petitioner was one of the trustees of the Church of South India. Pursuant to the same, on 11.5.1961, the Wesleyan Methodist Missionary Trust Association executed a transfer deed in favour of the petitioner, which is registered as Document No.2146/1961 at SRO, Madras-Chengalpet District.

5. It is the further case of the petitioner that the lands comprised in S. Nos.4551/2, 4553/1 & 2, 4556, 4542 to 4548, 4554 and 4555 to an extent of 11 acres and 78 cents situate at Mannargudi Town were also transferred to the petitioner by the Wesleyan Methodist Missionary Trust Association. It is the further case of the petitioner that portions of the said lands have been utilised by the Findlay Higher Secondary School as playground for its students, more particularly Old S. No.4542, now New S. No.63 to an extent of 4 acres 38 cents, which lands have been in possession and occupation of



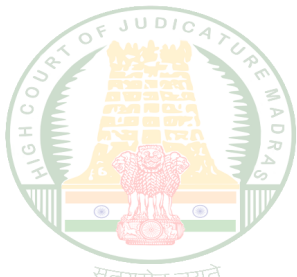
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Findlay Higher Secondary School since 1862 and that the school has been utilising the said land as playground for its students.

6. It is the further case of the petitioner that the revenue records pertaining to Old S. No.4542, now New S. No.63 including the A-Register, Village Adangal, TSLR, etc., stand in the name of the petitioner and the land has also been classified as school playground in the revenue records. Further, the Rural Development and Local Administration Department has listed out the parks, play-fields and open spaces in Mannargudi Municipal Council, as per the Tamil Nadu Parks, Play-fields and Open Spaces (Preservation and Regulation) Act, 1959 and the lands comprised in Ward I, Block 65, S.Nos.4542, 4544, 4555 and 4557 have been used by the Findlay Higher Secondary School as their playground and that the said gazette notification also mentions that the ownership of the said land belongs to the Christian Mission (Government poramboke).

7. It is the further case of the petitioner that the said playground is used for various purposes including conducting of Annual Sports Meet and the entire school population participates in various events and that the school



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has been in complete control and usage of the said land for over 100 years.

8. It is the further case of the petitioner that to its shock and dismay, the petitioner came to know that the local revenue authorities along with few authorities of the Mannargudi Municipality have been attempting to enter the property belonging to the petitioner, more particularly the school's playground and trying to survey the lands and on enquiry, it came to the notice of the petitioner that the land has been classified as Government Porakboke and so, the authorities are contemplating taking over the said land for some other purpose. Shocked and irked by the said answer, the petitioner approached the authorities to bring to their knowledge that the lands comprised in Old S. No.4542 now New S.No.63, belong to the petitioner that the Findlay school is in possession and occupation of the lands for over 100 years. The petitioner also sent a representation to the Revenue Department and the District Collector, Thiruvarur on 16.2.2022 explaining in detail that the petitioner holds the title to the lands situate in Old S. No.4542 now New S. No.63 and also requested the authorities to refrain from interfering with the peaceful possession and enjoyment of the lands belonging to the petitioner.

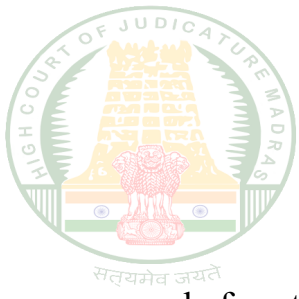


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9. It is the further case of the petitioner that since the representation of the petitioner was not considered, the petitioner filed W.P. No.7379/2023 and this Court, vide order dated 15.3.2023, disposed of the said writ petition granting liberty to the petitioner to make an application in Form II as specified u/s 3 (4) of the Patta Pass Book Act, 1987, r/w 3 (2) of the Rules and directed the 2nd respondent to consider the same within a prescribed time frame. The petitioner also filed the application as directed by this Court and the petitioner was called for enquiry on several dates by the 2nd respondent and the petitioner also appeared before the Tahsildar along with all the requisite documents. On 31.8.2023, the 2nd respondent called upon the petitioner to appear for enquiry along with the original documents for which the petitioner sought some time to produce the original documents, as the said documents pertained to pre-settlement period, viz., 1923-1924. However, even before the petitioner could produce the same, the 2nd respondent, vide order dated 14.9.2023 rejected the application on the ground that the petitioner has not proved the ownership of the lands through documents.

10. Aggrieved by the said order, the petitioner moved an appeal

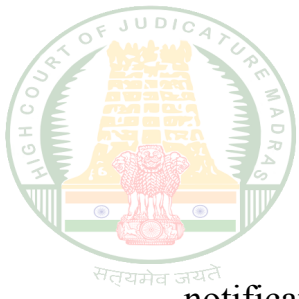


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before the 1st respondent, which appeal is still pending and in the meantime, on 15.9.2023, the impugned order had come to be issued, wherein the land comprised in Ward I, Block 95, S. No.63 to the extent of 4.38.11 hectares 7 acres Sircar Poramboke, by mentioning that the said land is required for construction of a stadium, which is to be transferred to the 4th respondent. It was further stated in the said notice that in case of any objections, it was open to the public to raise objection within 15 days either before the 3rd respondent or the 2nd respondent either in writing or in person. Though the impugned notice is dated 15.9.2023, it was brought to the knowledge of the petitioner only on 18.10.2023 and no notice was issued to the school or the petitioner, who admittedly was in possession and occupation of the said lands.

11. It is the further averment of the petitioner that the impugned notice of the 3rd respondent is illegal, arbitrary and an abuse of process of law, which is absolutely without any authority. It is the further case of the petitioner that the revenue records stand in the name of the petitioner and the school and that the records clearly reveal that the land is being utilised by the school as a playground and it has been shown as such in the official gazette



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notification. However, without ascertaining the same, the impugned notice has come to be issued by the 3rd respondent without any notice to the petitioner.

12. Without admitting, it is the further averment of the petitioner that even if the disputed land does not belong to the school, however, the notification in the official gazette dated 28.3.1964 clearly states that the land is under usage of the school and the land not having vested with the Government or the local authority at any point of time, the land being in possession and occupation of the school prior to issuing the impugned notice for the transfer of the land, the procedure contemplated under the Tamil Nadu Parks, Play-fields and Open Spaces (Preservation and Regulation) Act, 1959 ought to have been followed. However, in the present case, the procedure contemplated under the Act has not been followed. Though it is the admitted case that the lands are in possession and occupation of the petitioner, however, the objections have been sought for after the proposal to transfer the said land to the 4th respondent has been formulated.



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13. Aggrieved by the impugned notice, which was brought to the knowledge of the petitioner on 18.10.2023, the petitioner, on 19.10.2023, submitted its objections against the said transfer of lands to the 4th respondent for construction of the stadium. The said objection was made since the petitioner holds title to the said land and has been in peaceful possession and occupation of the said lands for over 100 years. Further, objection also pointed out that the appeal before the 1st respondent is pending, however, without waiting for the outcome of the appeal the 3rd respondent had issued the impugned notice in a haste. It is the further averment of the petitioner that till date, the petitioner's objections have not been considered and no orders have been passed by the 2nd and 3rd respondents. The respondents, without affording an opportunity to the petitioner and without considering the objections of the petitioner with regard to the fact that the land belongs to the petitioner has arbitrarily proceeded with the transfer of the land to the 4th respondent. It is the further averment of the petitioner that the 2nd respondent rejected the petitioner's application for issuance of patta on 14.09.2023 on the very next day, i.e., on 15.9.2023, the day on which the 3rd respondent issued the impugned notice.

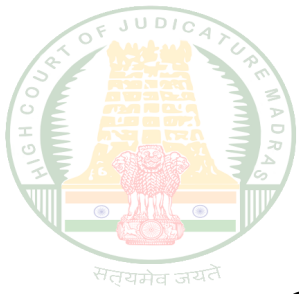


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14. It is the further averment of the petitioner that even without admitting that the lands comprised does not belong to the petitioner and it is a Government Poramboke, it is admitted position, which is evidenced through the revenue records that the school is in possession and occupation of the lands and is being used as a playground for more than 100 years. Such being the case, the respondents ought to have taken steps under the Tamil Nadu Land Encroachment Act to evict the school after following the due process of law prior to issuance of impugned notice. However, without doing so, the 3rd respondent has issued the impugned notice. It is the further averment of the petitioner that the power to dispose of the disputed lands is only with the Government and the procedure contemplated under RSO 24 has to be followed. However, none of the procedures have been followed before the issuance of the impugned notice and, therefore, the impugned notice is issued without any authority of law and, therefore, the said notice is unsustainable.

15. It is the further averment of the petitioner that No Objection sought for from the Mannargudi Municipality has also been granted to the 3rd



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respondent and steps are being taken for transfer of the land to the 4th respondent for construction of the stadium and all the aforesaid acts have been done without considering the petitioner's objection and passing any orders on the appeal filed by the petitioner. It is the further averment of the petitioner that if the lands, which are utilised by the school are allowed to be transferred to the 4th respondent, the school would be left with no playground for its students and the provision of playground being a mandatory requirement under the provisions of the Right to Free and Compulsory Education Act, 2009, and no school can be established or recognized unless it fulfils the norms of having a playground. In case the land under the possession and occupation of the school is transferred to the 4th respondent, the recognition granted to the school by the authority would stand withdrawn thereby jeopardizing the education of the students studying in the school. The said action would have cascading repercussions academically and financially not only on the school, but also on the students and, thereby, tarnishing the reputation of the school, which has been built over a period of more than 100 years. Therefore, left with no alternative, the present writ petition has been filed by the petitioner.



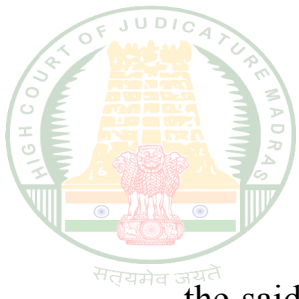
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16. Learned senior counsel appearing for the petitioner submitted that the present act of issuance of impugned notice pending the appeal before the 2nd respondent by the 3rd respondent is illegal, arbitrary and abuse of process of law, which has been issued without any authority of law.

17. It is the further submission of the learned senior counsel that without putting the petitioner on notice, who has been using the land for more than 100 years and has been continually in possession and occupation of the said lands, calling for objections from the public clearly reveals the clandestine approach of the 3rd respondent to take over the lands of the petitioner without following the due process of law.

18. It is the further submission of the learned senior counsel that if the lands, which is used as a playground, is taken over by the 3rd respondent for construction of stadium by the 4th respondent, it would not only cause much hardship to the school, which has been in existence for more than 150 years and using the said lands as its playground, but would cause much prejudice and hardship to the education of the students not only studying in



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the said school, but all the other schools in the locality, which are using the said lands as playground for various activities, thereby, it would result in withdrawal of recognition granted to the school, which would directly affect the rights and the future of the students studying in the said school and it would be a direct affront on the rights of the students as enshrined under Article 21A of the Constitution.

19. It is the further submission of the learned senior counsel that the impugned notice is not only violative of Article 21A of the Constitution, but is also violative of Articles 14 and 19 of the Constitution as prior to issuance of the impugned notice, the petitioner has not been put on notice, being the absolute and rightful owner of the land and the objections of the petitioner have not been considered before issuing the impugned notice.

20. It is the further submission of the learned senior counsel that the impugned notice is without any reference to the Transfer Deed dated 11.5.1961 executed by the Wesleyan Methodist Missionary Trust Association in favour of the petitioner, which stands registered as Document No.2146/1961 at SRO, Madras-Chengalpet District. The lands, which belonged to Wesleyan Methodist Missionary Trust Association, pre-

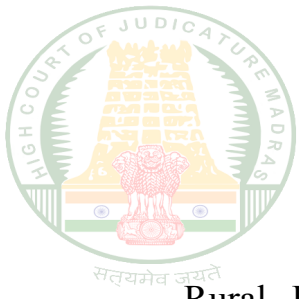


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settlement period, having been transferred to the petitioner and further the fact that the possession and occupation of the lands at the hands of the petitioner having been considered by the appropriate authority under the Tamil Nadu Parks, Play-fields and Open Spaces (Preservation & Regulation) Act and that the revenue records, including the A-Register, Village Adangal, TSLT, etc., all stands in the name of the shool and the lands have been classified as school playground in the revenue records, contrary to the aforesaid prescription in the official Gazette dated 28.3.1964, published by the Rural Development and Local Administration Department, and the records of the Mannargudi Municipal Council specifically mentions the said lands as being used by the school as their playground, the impugned notice without affording an opportunity to the petitioner to put forth its objections and also the non-consideration of the relevant materials with regard to the ownership of the lands, renders the impugned notice arbitrary, illegal and perverse.

21. It is the further submission of the learned senior counsel that it is not the case of the 3rd respondent that the land stood vested with the local authority or the Government at any point of time and such being the case, the



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Rural Development and Local Administration Department had already published in the Official Gazette on 28.3.1964 that the lands are being used by the school as their playground, the transfer of the lands to the 4th respondent without following the procedure contemplated under the Tamil Nadu Parks, Play-fields and Open Spaces (Preservation and Regulation) Act, is wholly erroneous and perverse.

22. It is the further submission of the learned senior counsel that even if the petitioner is treated to be an encroacher of the lands, which according to the respondents is classified as a Government poramboke, the course open to the respondents is only to resort to the provisions of the Tamil Nadu Land Encroachment Act and evict the petitioner and the school from the lands by following the due process of law before issuing the impugned notice. However, without following any of the procedure prescribed, either as an encroacher, or as an occupant under the Open Spaces Act, the 3rd respondent is proceeding to divest the petitioner of its right over the lands, which have vested with the petitioner by way of the Transfer Deed executed as early as on 11.5.1961.

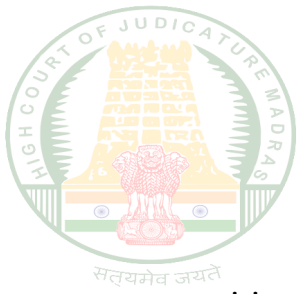


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23. It is the further submission of the learned senior counsel that the procedure contemplated under RSO 24 has also not been followed prior to issuance of the impugned notice and the lands, as on date, worth several crores of rupees, the power to dispose of the said lands only vests with the Government as per RSO 24 and the 3rd respondent, by issuing the impugned notice, cannot divest the petitioner of the lands.

24. It is the further submission of the learned senior counsel that the title documents, revenue records and the official gazette notification dated 28.3.1964 all categorically spell out that the petitioner is the owner of the land comprised in Old S. No.4542, now New S. No.63 and the said land is being utilised by the school as its playground for over 100 years and, therefore, the present impugned notice, without hearing the petitioner and also without considering the objections raised by the petitioner and without looking into the relevant records, if allowed to stand, would be nothing but depriving the petitioner of its property without the authority of law and would be violative of Article 300A of the Constitution. It is further pointed out by the learned senior counsel for the petitioner that pending the appeal of the



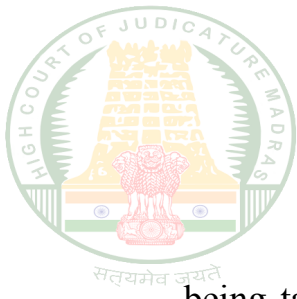
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petitioner, the act of the 3rd respondent in issuing the impugned notice is nothing but ousting the appeal remedy of the petitioner, as the said impugned notice and, if it is allowed to stand, the consequent take over of the land, pending the appeal, would virtually make the appeal infructuous.

25. It is the further submission of the learned senior counsel that the conclusion arrived at by the 2nd and 3rd respondent with regard to the land being a Government pormaboke, is unilateral and premature, as the said finding has been arrived at without affording an opportunity to the petitioner to establish that it is the rightful owner of the lands and that the school continues to be in possession and occupation of the said lands till date.

26. It is therefore submitted by the learned senior counsel that the impugned notice, which has been issued, without affording an opportunity to the petitioner and the consequent measures taken to dispossess the petitioner of the lands and also to transfer the lands to the 4th respondent is not only illegal and perverse, but causes great hardship, sufferance and irreparable loss to the petitioner as also the students studying in the school and, therefore, left with no opportunity, as the appeal is pending consideration though action is



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being taken, the present writ petition has been filed and considering all the above, this Court may quash the impugned notice and direct the 3rd respondent not to interfere with the peaceful possession and occupation of the petitioner.

27. Per contra, learned senior counsel appearing for respondents 1 to 3, placing reliance on the counter affidavit filed by the 1st respondent, submits that the lands in Survey No.4542, admeasuring 10 acres and 35967 sq.ft., since 1925, has been entered as 'school playground' in the revenue records, which would also be evident from the Resettlement 'A' Register of the village dated 15.9.1925. It is the further submission of the learned senior counsel that the same also finds reflection in the Town Settlement Field Register dated 24.12.1942. Therefore, ever since, the land belongs to the Government and it has been used as a playground by the students of the petitioner school and also other schools and also the public in Mannargudi and surrounding villages. It is the further submission of the learned senior counsel that the said playground was used for various sports activities and that the vacant space was bereft of any compound wall or any other structure and has since been used as a playground.



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28. It is the further submission of the learned senior counsel that in the publication in the official gazette made by the Rural Development and Local Administration Department with reference to Tamil Nadu Parks, Play-field and Open Spaces (Prevention & Regulation) Act, 1959, the above mentioned land in survey No.4542, which belongs to the Government has been erroneously clubbed with the adjacent lands in S. Nos.4554, 4555 and 4557, which belongs to the petitioner and, therefore, both “Christian Mission” and “Government Poramboke” found its place in the ownership entry.

29. It is the further submission of the learned senior counsel that as early as in the year 1925, the Resettlement register reveals the ownership of the lands as “Government Portmboke” with the remarks that it is used as a playground. The re-settlement ‘A’ register dated 15.9.1925 as also the Town Settlement Field Register dated 24.12.1942 clearly reveal s. No.4542 as Government Poramboke and is used as school playground.

30. It is the further submission of the learned senior counsel that



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the error occurred in the revenue records in the year 2007 when the Assistant Director, Survey and Land Records had made a wrong entry in the Town Settlement Field Register dated 2.8.2007 by marking the survey number as “Findlay Higher Secondary School”. It is the further submission of the learned senior counsel that the entries in the records with reference to the survey number and the classification would reflect the land classification as Government Poramboke and it does not carry the details of the petitioner or the patta issued thereof in the records and the records still show that the land is utilised as ‘playground’. It is the further submission of the learned senior counsel that the error came to light only after orders came to be passed by this Court in W.P. No.7379/2023, in and by which direction was given to consider the petitioner’s representation dated 16.2.2022 on merits.

31. It is the further submission of the learned senior counsel that in compliance of the aforesaid directions, the 2nd respondent conducted an enquiry on 9.6.2023 and 31.8.2023 and passed a detailed final order dated 14.9.2023 rejecting the request of the petitioner by recording the following findings :-

i)The Resettlement Register dated 15.9.1925 has



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classified the land as a Government poramboke;

ii)The 1942 Town Survey Field Register has classified the land as Government Poramboke;

iii) The Town Survey Register has classified the land into Government Poramboke. Though the entry 17 reflects Findlay School Playground, details of the petitioner nor the patta number is reflected and the record shows that the land is utilised as a playground in entry 18;

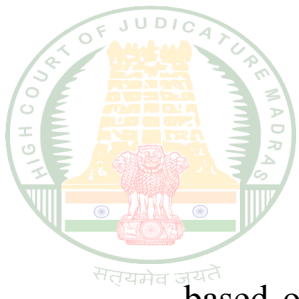
iv) There are no revenue records/registered documents to show the title or possession and no tax receipts have been furnished by the petitioner during enquiry;

v) There is no document or evidence to show that the school was using the property as a playground;

vi) There is no temporary/permanent constructions to show that the playground was used by the school;

vii) The mere possession of a transfer deed with regard to the said land would not be suffice to grant patta in favour of the petitioner.

32. It is the further submission of the learned senior counsel that



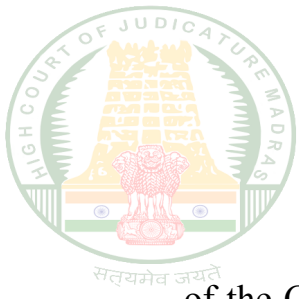
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based on the order of the Tahsildar dated 14.9.2023, the entry in the Town Settlement Field Register dated 2.8.2007 was modified and the appeal of the petitioner against the same before the 1st respondent was dismissed by order dated 20.11.2023.

33. On the merits of the writ petition, it is the submission of the learned senior counsel that no right accrues to the petitioner to challenge the show cause notice and such an action is premature, as by the said notice, only objections to the proposal for construction of a stadium has been called for and, therefore, the present writ petition is not maintainable. It is the further submission of the learned senior counsel that the claim of title cannot be adjudicated in a writ petition and the application for issuance of patta having already been dismissed, the only avenue for the petitioner is to approach the civil court seeking declaratory relief by establishing its title over the land and it cannot be adjudicated by means of a writ petition.

34. It is the further submission of the learned senior counsel that the State of Tamil Nadu is not a party respondent and all the lands, being property of the State, the Government is a necessary party and in the absence



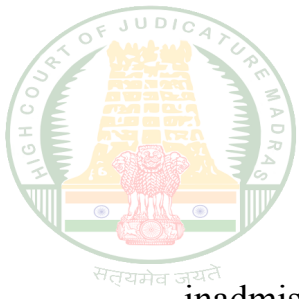
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of the Government of Tamil Nadu, the writ petition is liable to be dismissed for non-joinder of parties.

35. It is the further submission of the learned senior counsel that though the writ petition has been filed on behalf of the Association, which is registered under the Companies Act, however, there is neither any pleading nor any Board resolution authorising the filing of the writ petition, which renders the writ petition not maintainable. It is the further submission of the learned senior counsel that if the petitioner is aggrieved with respect to the title of the property, the petitioner ought to have filed a suit for declaration and as against the rejection of the petitioner's appeal for grant of patta, the petitioner has to take recourse to proviso to Section 14 of the Tamil Nadu Patta Pass Book Act and a writ petition cannot be maintained.

36. It is the further submission of the learned senior counsel that the claim of title on the basis of the transfer deed dated 11.5.1961 also cannot be acceded to as the said deed is unstamped and without the deed of the transfer of the property being stamped in accordance with the provisions of the Indian Stamp Act, any unstamped deed conveying the property is



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inadmissible in legal proceedings till the time deficit stamps are paid and that such document has to be impounded by the Court and sent for adjudication u/s 33 of the Indian Stamp Act.

37. It is the further submission of the learned senior counsel that the claim of the petitioner that the school would be derecognized as it would not be having sufficient space for playground is wholly erroneous as it has available space as would be evident from the extent of land in which the school is located, which is to an extent of 3 Acres and 20 cents. If at all the petitioner wants separate space for playground, the school has to either purchase lands or acquire lands for the purpose of recognition and it cannot use the lands belonging to the Government for recognition purpose. Merely because the petitioner has shown the part of the land in its application for recognition purpose on the basis of which recognition has been granted cannot be the basis for the petitioner to claim title over the said lands.

38. It is the further submission of the learned senior counsel that the petitioner, though claims transfer from Wesleyan Methodist Missionary, however, there are no materials placed to prove that the said Missionary had title to the said property and till date no materials have been placed before the

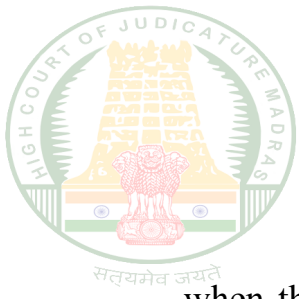


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authorities to prove title to the said lands. In fact, it is the specific case of the petitioner that it had sought time to produce the documents relating to title to the said lands before the authorities, but till date, even before this Court, except for the transfer deed, no materials have been placed to prove the title and, therefore, it is for the petitioner to establish its title to the property and it cannot lay its claim on the basis of the transfer deed.

39. It is the further submission of the learned senior counsel that all along, the property is shown in the Resettlement Register as “School Playground” and no where the title to the property, viz., S. No.4542, is shown to have been with Wesleyan Methodist Missionary Trust Association. It is the further submission of the learned senior counsel that S. No.4542 was shown as Government Poramboke with remarks as School Playground and, therefore, Wesleyan Methodist Missionary Trust Association could not have transferred the property in S. No.4542, which stood in the name of the Government by way of transfer deed dated 11.05.1961.

40. It is the further submission of the learned senior counsel that the vast area of 10 acres 35967 sq.ft. of land would not be required to be earmarked as playground for the school in the year 1961 itself , more so,



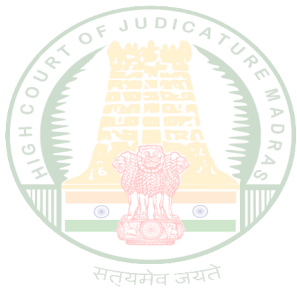
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when the playground in T.S. No.63 (Old No.4542) is not within the school premises, but situate nearly one kilometre away from the school.

41. It is the further submission of the learned senior counsel that patta transfer is permissible under RSO 31 (2) and the present claim of the petitioner does not fall within the scope of patta transfer rules and regulations and the petitioner having failed to prove his case before the respondents with regard to title through any documentary evidence, the claim for patta was rightly rejected in the light of the Resettlement Register, which reveals that the land is classified as Government Poramboke.

42. It is the further submission of the learned senior counsel that the said land is sought to be put to construction of a sports stadium, which is in the interest of the common public. Such being the case, it is for the petitioner to provide sufficient space for its students for the purpose of playing activities and the lands belonging to the Government cannot be usurped by the petitioner on the basis of a transfer deed, when the petitioner has not proved its title to the property.



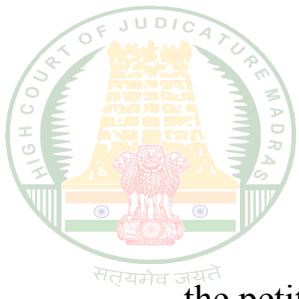
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43. It is the further submission of the learned senior counsel that there is no question of eviction of the petitioner by considering the petitioner as an encroacher under the Land Encroachment Act, as the said land is lying waste and it is free from encroachment. In fact, it is even the case of the petitioner that it is merely used as a playground by the petitioner as also other schools in and around the vicinity of the petitioner. Such being the case, there could be no case of encroachment as pleaded by the petitioner.

44. It is the further submission of the learned senior counsel that even according to the petitioner, the common public and the children of other schools nearby are utilising the land as playground and the land being classified as a Government poramboke and only part of the land has been proposed for construction of sports stadium. Further, the notice of the 3rd respondent calling for objections from the public is only a preliminary notice and that proposals will be submitted to the District Collector for transfer of land and the present petition is premature as no action has been taken on the land till date.

45. In fine, it is the submission of the learned senior counsel that



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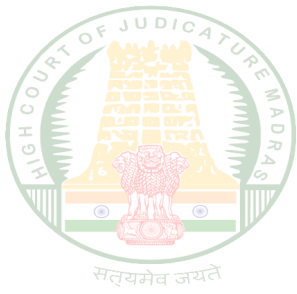
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the petitioner not having established its title to the property through necessary documentary evidence and the petitioner not filed any document to show the authorisation for filing the writ petition in a representative capacity and the revenue records reveal that the lands have all along been classified as Government Poramboke lands and that only notice has been issued calling for objections, the writ petition itself is not only premature but also not maintainable. Accordingly, he prays for dismissal of the present writ petition.

46. Learned counsel appearing for the 4th respondent, in sum and substance, adopted the submissions advanced on behalf of respondents 1 to 3 and further prayed that this court may dismiss the present petition.

47. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

48. The crucial questions that arises for determination in the present writ petition are :-



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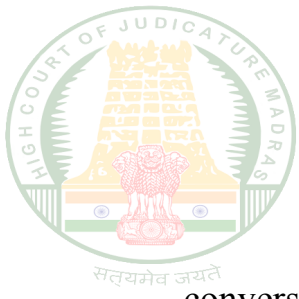


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- i) *Whether the writ petition filed by the petitioner is maintainable.*
- ii) *Whether the petitioner has established its title to the property in S.No.4542, New S. No.63 which is proposed to be handed over to the 4th respondent for construction of a stadium.*
- iii) *Whether the lands in which the stadium is proposed to be put up has been in possession and occupation of the petitioner as also the other public in and around the vicinity of the said place.*
- iv) *What relief could be granted by this Court, while entertaining this petition under Article 226 of the Constitution.*

49. While the title to the property is disputed by the respondents, at the outset, the issue of maintainability is raised on behalf of the respondents towards which submission have been made supra

50. In ***St. Mary's Education Society & Anr. – Vs – Rajendra Prasad Bhargava & Ors. (2023 (4) SCC 498)***, the Supreme Court had culled out the instances where a writ against a private institution is maintainable, though it be not a “State” and the Supreme Court has also explained that the



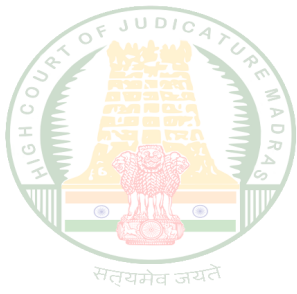
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converse is also applicable and in this context, the Supreme Court held as under:-

“34. In *Km. Anita Verma v. D.A.V. College Management Committee, Unchahar, Rai Bareilly*, (1992) 1 UPLBEC 30:

*“....30 where the services of a teacher were terminated, the Court held that the writ petition Under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in *M/s. Habans Kaur v. Committee of Management, Guru Teghbahadur Public School, Meerut and Anr.*, MANU/UP/0653/1992 : 1992 Labour and Industrial Cases 2070 (All), wherein the services of the Petitioner were terminated by the Managing Committee of the institution recognised by the C.B.S.E. It was held that the Affiliation Bye-laws framed by the C.B.S.E. has no statutory force. The Court Under Article 226 of the Constitution of India can enforce compliance of statutory provision against a Committee of Management as held in a Full Bench decision of this Court in *Aley Ahmad Abdi v. District Inspector of Schools, Allahabad and Ors.* MANU/UP/0141/1977 : AIR 1977 All. 539. The Affiliation Bye-laws of C.B.S.E. having no statutory force, the only remedy against the aggrieved person is to approach C.B.S.E. putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution.*

33. Thus, where a teacher or non-teaching staff challenges action of Committee of Management that it has violated the



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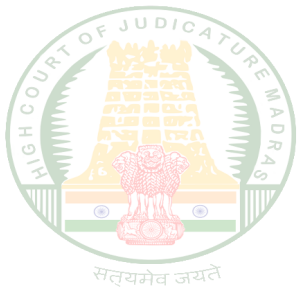
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terms of contract or the Rules of the Affiliation Byelaws, the appropriate remedy of such teacher or employee is to approach the CBSE or to take such other legal remedy available under law. It is open to the CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws.”

* * * * *

37. This Court in the case of K.K. Saksena v. International Commission on Irrigation and Drainage and Ors. MANU/SC/1213/2014 : (2015) 4 SCC 670, after an exhaustive review of its earlier decisions on the subject, held as follows:

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition Under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts.



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Therefore, even if writ petition would be maintainable against an authority, which is 'State' Under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

xxxx

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

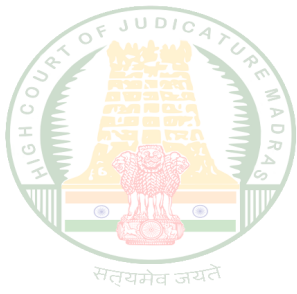
(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(ii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal."

* * * * *

42. In the penultimate para, this Court ruled as under:



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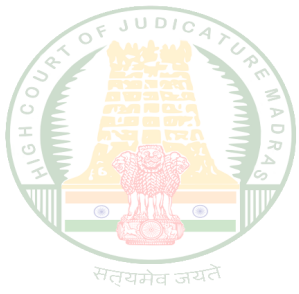
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“32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction Under Article 226 of the Constitution and the High Court Under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.”

(Emphasis supplied)

43. In the background of the above legal position, it can be safely concluded that power of judicial review Under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an Authority or an Instrumentality of the State but there must be a public element in the action complained of.”

51. In the present case, the writ is filed by a private entity against the Government, but the maintainability is put in issue by pointing out that the challenge is made to the notice inviting objections, which cannot be put in issue by this Court and the title of the petitioner is sought to be established before the writ court, which is impermissible, as the same could be adjudicated only by the civil court and on certain other aspects.



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52. However, this Court is not venturing into all those contentions,

but only would like to point out that from the aforesaid decision, it is implicitly clear that where there is a public element involved, a writ is maintainable. In the case on hand, the lands are being used by the petitioner as also other schools in and around the locality as playground and that it has been used as such for more than 100 years. In fact, even the revenue records reveal the classification of the lands as school playground, though it spells out that it is a Government Poramboke. Therefore, all along, the said lands have been used as a school playground, notwithstanding the fact that the lands are classified as Government Poramboke and, thus, it has been used for the benefit of the public. Therefore, there could be no quarrel that a public element is involved, as the interests of the public, which takes into its fold the school going children, who require a place for their sports activities and in such a backdrop, this Court could very well adjudicate on the writ petition under Article 226 of the Constitution.

53. Now turning back to the next question as to whether the petitioner has proved its title to the property, while placing reliance on the revenue records, which includes the pre-settlement period, the case of the



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petitioner is that the lands were initially held by Wesleyan Methodist Missionary Trust Association and later, on the formation of the petitioner, the lands were transferred to the petitioner by means of a transfer deed.

54. Though the transfer deed has been placed before the court, however, there is no material evidencing the title of the petitioner to the property. In fact, there is no iota of evidence to show that the Wesleyan Methodist Missionary Trust Association had any title to the property.

Except for the averment of the petitioner that the property, viz., the lands in S. No.4542 vests with the Wesleyan Methodist Missionary Trust Association, which was later passed on by means of transfer to the petitioner, there is no scrap of material placed either before the 3rd respondent or before this Court to conclude that the title was held by the Wesleyan Methodist Missionary Trust Association, which stood passed on to the petitioner upon execution of the Transfer Deed.

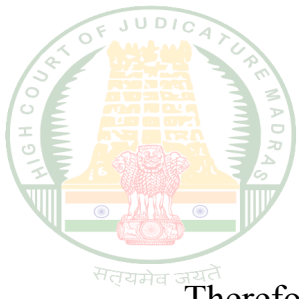
55. In fact, it is the case of the petitioner, even before this Court that before the 3rd respondent the petitioner had pleaded for time to establish



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through records and documents that the title to the lands are with the petitioner, which was passed on from Wesleyan Methodist Missionary Trust Association, however, no materials were placed before the 3rd respondent. Though the petitioner claims that requisite time was not granted to the petitioner to place the documents, however, it should not be lost sight of that the documents with regard to title to the property, which the petitioner wanted to placed before the 3rd respondent, but, which were denied on account of non-grant of time, has not been placed even before this Court even after passing of the order of rejection on 14.9.2023. In spite of the fact that more than a year had passed since the date of rejection of the claim of the petitioner, till date, the petitioner has not placed the said document even before this Court at the time of hearing the present petition. In the absence of any material evidencing the title to the lands, this Court cannot adjudicate upon the title and render any definitive opinion that the title vests with the petitioner. If at all the petitioner has any grievance with regard to the title, the same has to be espoused before the civil court, where alone it could be established and without any documentary proof, claiming title over the lands is impermissible and it cannot be decided in the present writ petition.



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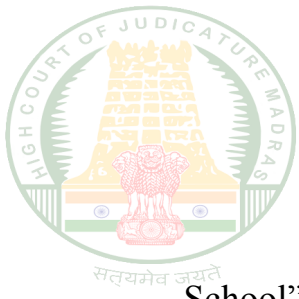
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Therefore, this Court is not inclined to decide the title to the property with one entity or the other when there are no materials to prove the same.

Therefore, the second issue is answered in the above terms.

56. Insofar as the third issue with regard to whether the lands in which the stadium is proposed to be put up has been in possession and occupation of the petitioner as also the other public in and around the vicinity of the said place, it is evident from the materials available on record, as also the counter of the 1st respondent that as per Re-settlement 'A' Register dated 15.9.1925, the lands in R.S. No.4542 to an extent of 10 acres and 35967 sq.ft. are classified as Government Poramboke and that it carries the remarks that it is used as a "school playground". Further, even as per Town Settlement Field Register dated 24.12.1942, the lands in R.S. No.4542 is classified as Government Poramboke and carrying similar remarks as "School Playground".

57. In fact, it is fairly admitted by the 1st respondent that in 2007, an error crept into the Town Settlement Field Register dated 2.8.2007, the land in R.S. No.4542 were shown as belonging Findlay Higher Secondary

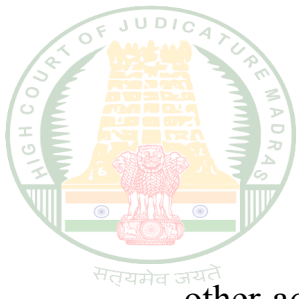


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School”. However, even then, the classification of the lands were still reflecting as “Government Poramboke”.

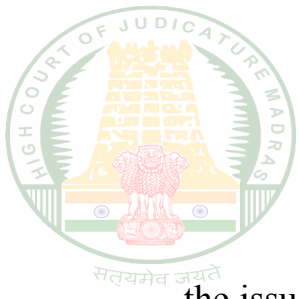
58. It is also not to be lost sight of that in the notification published in the Official Gazette by the Rural Development and Local Administration Department vide G.O. Ms. No.763, L.A., dated 28.3.1964, the said notification specifically mentions that the land have been used by the Findlay Higher Secondary School as their playground. There is no quarrel with the fact that the said lands are shown to be utilised as a school playground and even the respondents are not objecting to the same. However, the mere publication in the official gazette that the lands have been used by the Findlay Higher Secondary School as their playground in the gazette issued by the Rural Development and Land Administration Department would not confer title to the said lands with the petitioner. The lands in S. Nos.4554, 4555 and 4557, which falls within the same block as the lands in S. No.4542, have been erroneously clubbed together and shown as “Christian Mission” and “Government Poramboke”. However there is no material evidencing title with the petitioner and the error committed by the Department while making remarks in the appropriate column and including S. No.4542 along with the



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other adjacent lands as belonging to the petitioner cannot be taken to confer title to S. No.4542 with the petitioner. When even in the official gazette, the lands have been clearly shown as Government Poramboke, if really the petitioner was aggrieved at the said entry, which would derail the title of the petitioner, the petitioner ought to have taken steps to establish its title to the lands in S. No.4542 through proper materials before the civil court. However, the petitioner has kept silent inspite of the fact that the Resettlement 'A' Register, the Town Settlement Field Register of the year 1925 and 1942 as also the Official Gazette Notification dated 28.3.1964 by the Rural Development and Local Administration Department, have all shown the lands as "Government Poramboke", and the inaction on the part of the petitioner to have the land register to reflect the correct classification of the lands in S. No.4542, by having the classification of "Government Poramboke" deleted stares against the petitioner and if really the petitioner was the owner of the lands with proper title, the petitioner ought to have taken the requisite steps before the appropriate judicial forum. The act of the petitioner in keeping silent without taking any proper steps would only lead to the inference that the petitioner was not in a position to establish its title so as to claim ownership over the property. However, this Court is not deciding

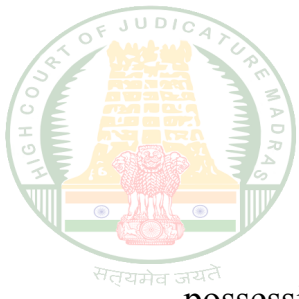


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the issue of ownership, but only highlighting the fact that the classification of the land is shown as Government Poramboke and, therefore, it is for the petitioner to establish its title over the property to claim ownership.

59. However, it is even the admitted case of the respondents that barring the classification, which shows the land in S. No.4542 as Government Poramboke, the land has been a waste land and that it has been used by the general public and the schools in the locality as a playground, including the school belonging to the petitioner. In fact, the petitioner also has been using the playground for the playing activities of its students and the usage of the said lands has been solicited from the petitioner from other schools and institutions, inspite of the fact that the petitioner has not established its title over the property. The petitioner school has been in existence for more than a hundred years and all along, the petitioner and as also the other schools in the locality have been using the said lands as playground and the said factum has also not been disputed by the respondents and it also finds strength from the remarks in the settlement register, which shows the lands as 'School Playground'. Therefore, in such a backdrop, the continuous usage of the land in S. No.4542 as a school playground stands established, but the claim of



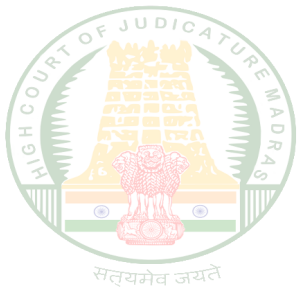
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possession and occupation at the hands of the petitioner cannot be adjudicated by this Court under its extraordinary jurisdiction unless the petitioner establishes its title to the property. Therefore, this Court is not venturing into the possession and occupation of lands at the hands of the petitioner, but this Court holds that the lands in S. No.4542, which is the subject matter of the present *lis*, has been used as a playground for over a century and, therefore, the usage of the lands for the benefit of the public, more particularly the school students, being used as a playground stands established through the records, even by the respondents.

60. Therefore, this Court holds that the possession and occupation of the lands cannot be held to be with the petitioner, but the usage of the lands in S. No.4542 as a school playground stands established through the documents placed before this Court and has continued to be used as such for over a century. The third issue is answered in the aforesaid terms.

61. Now the only issue that requires determination is the relief that could be granted by this Court by exercising its inherent jurisdiction under Article 226 of the Constitution.

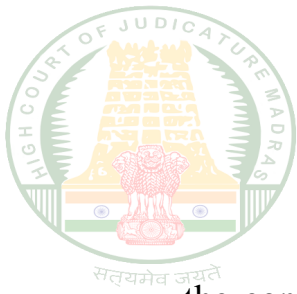


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62. The main grievance espoused in this regard by the petitioner is that the lands are very much required for the petitioner to retain its recognition to run a school and the same would stand enlarged to the other schools in the locality as well. Further, it is the admitted stand of the respondents 1 to 3, as is evidenced through the counter that the land has been classified as Government Poramboke for the usage as playground and part of the land has been proposed for construction of sports stadium, which is for public purpose. Therefore, there is not only an unequivocal admission that the lands have been used as a playground inspite of its classification as Government Poramboke, but only a part of the land is proposed to be used for the construction of a sports stadium, which is for a public purpose.

63. In the light of the stand taken by the respondents 1 to 3 that the lands in entirety is not going to be used for the construction of a sports stadium and that only a part of the lands are going to be used for the said construction and that the sports stadium is for a public purpose and that the land in which the sports stadium is going to come up has long been used as a playground, this Court, to balance the interests of either parties to the *lis* is of

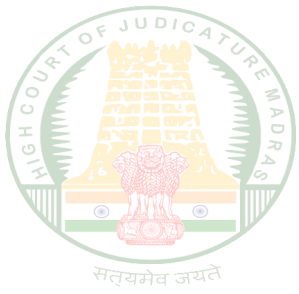


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the considered view that by invoking the inherent jurisdiction of this Court under Article 226 of the Constitution a direction for part utilisation of the lands for the construction of sports stadium and the balance portion to be utilised as playground for the welfare of the students studying in the schools in and around the locality, including the school of the petitioner, could be issued, which would definitely subserve the cause of justice.

64. In such view of the matter, while this Court is not inclined to quash the impugned notice, however, the writ petition stands disposed of with the following directions :-

- i) Upon receipt of objections and considering the same in accordance with law, it is open to the respondents 1 to 3 to hand over the requisite portion of the lands, as has been averred in the counter of the 1st respondent, to the 4th respondent, for the construction of a sports stadium for public purposes by passing appropriate reasoned order.*
- ii) Since the land in Old S. No.4542, New TS. No.63, Block No.95, Mannargudi Taluk, Tiruvarur District, has all along been used as a playground by the petitioner school as well as other schools in*



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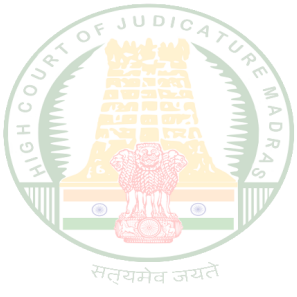


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the locality, the District Collector, Tiruvarur, is directed to ensure that the balance portion of the unused land shall be maintained by the Mannargudi Municipality by duly fencing the entire lands and the said portion shall be earmarked as playground for utilisation by the schools in the locality for the students studying in the said schools.

iii) The portion of the land, which is allotted to the 4th respondent for construction of sports stadium, shall also be made available to the petitioner school as well as the other schools in the locality as and when sports events are conducted by the schools in addition to the stadium being used for public purposes related to sports activities.

iv) It is also made clear that since a portion of the land has been allowed to be utilised for the construction of a sports stadium, the balance portion is directed to be maintained as school playground for being utilised by all the schools in the locality, including the petitioner, this Court directs the Secretary, Education Department, to instruct all the authorities, including the Director of School Education and Director of Higher Education not to take any action with regard to



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cancellation of recognition for the school of the petitioner as also the other schools in the locality citing want of space for playground.

v) Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

vi) Registry is directed to mark a copy of this order to the Secretary, Education Department, Government of Tamil Nadu, who shall ensure the compliance of the directions issued by this Court at S. No. (iv) above by its subordinate authorities.

22.11.2024

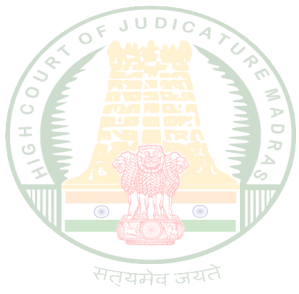
Index : Yes / No

GLN

To:

1. The Revenue Divisional Officer
V.O.C. Road, Mannargudi
Tamil Nadu 614 001.

2. The Tahsildar
Taluk Office Road
Mannargudi, Tamil Nadu 614 001.



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3. The Revenue Inspector

Taluk Office Road

Mannargudi, Tamil Nadu 614 001.

4. The Member Secretary

Sports Development Authority of Tamil Nadu

Jawaharlal Nehru Stadium Raja Muthiah Road

Periyamet, Chennai 600 003.

5. The Director of School Education

DPI Campus, College Road

Chennai 600 006.

6. The Chief Educational Officer

Thiruvarur District

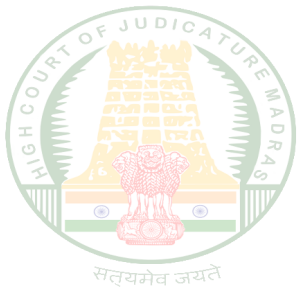
Thiruvarur.

7. The Secretary

Education Department

Government of Tamil Nadu

Fort St. George, Chennai.



WEB COPY



W.P.No.32993 of 2023

M.DHANDAPANI, J.,

GLN

**ORDER IN
W.P. NO.32993 OF 2023**

Pronounced on:
22.11.2024