IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM : JUSTICE **N.SESHASAYEE**

W.P.No.181 of 2021
and WMP.No.248 of 2021

1.Jayalakshmi
2.Nattan
3.Govindarasu
4.Karunanidhi
5.Kolanchinathan
6.Pachaiyammal
7.Saminathan
8.Renganathan
9.Rajaraja Chozhan
10.Vengadachalam
11.Arumugam ... Petitioners

Vs

1.The State of Tamil Nadu
Rep by its Principal Secretary to Government
Revenue and Disaster Management Department
Fort St.George
Chennai – 600 009.

2.The District Collector
Perambalur District
Perambalur.

3.The Special Tahsildhar(LA)
Adi Dravidar and Tribal Welfare Department
Perambalur District
Perambalur. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 2 and 3 to grant patta in the name of the petitioners in S.No.26/1, 26/5, 26/4A, 26/6, 27/3, 26/4B, 27/7, 26/10B, 32/6B, 26/11, 33/2, 26/7, 27/8, 27/9, 27/10, 32/1, 32/7 and 33/1 situated at Keezhaperambalur Village, Kunnam Taluk, Perambalur District.

For Petitioners : Mr.M.R.Jothimanian
for Mr.K.Balu

For Respondents : Mr.D.Raja
Additional Government Pleader

ORDER

The case at hand may be the result of what this Court may term as inadequate bureaucratic impulses in respecting the citizen's right to property. What necessitates this preludial statement, though may preempt what is to follow, can be appreciated if the facts are told.

The Facts:

2.1 There is a group of 11 petitioners and either some of them or their predecessor-in-title owned a block of land, totally measuring 5.81.0 hectares in several survey numbers, the details of which are tabulated below:

Sl.No.	*Survey No.*	*Acquired Land Hectares Ares*	*Details of Land Owners*
1.	26/1	0.33.5	P.Periyasamy
2.	26/5	0.16.5	P.Periyasamy
3.	26/4A	0.20.5	R.Nattan
4.	26/6	0.07.0	R.Nattan
5.	27/3	0.47.0	R.Nattan
6.	26/4B	0.6.0	R.Chinnasamy
7.	27/7	0.33.0	R.Chinnasamy
8.	26/10B	0.23.5	P.Karuppaiya
9.	32/6B	0.25.5	P.Saminathan
10.	26/11	0.25.5	T.Renganathan T.Rajaraja Chozhan (Guardian Sivanantham)
11.	33/2	0.21.0	T.Renganathan T.Rajaraja Chozhan (Guardian Sivanantham)
12.	26/7	0.48.5	T.Krishnanpillai
13.	27/8	0.41.0	T.Krishnanpillai
14.	27/9	0.38.0	T.Krishnanpillai
15.	27/10	0.38.0	T.Krishnanpillai
16.	32/1	0.25.5	T.Krishnanpillai
17.	32/7	0.10.0	S.Venkatachalam S.Palanivel S.Arumugam
18.	33/1	0.21.5	S.Venkatachalam S.Palanivel S.Arumugam
Total :		5.81.0	

2.2 These properties were notified for acquisition under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act,1978. The acquisition commenced with the issuance of a preliminary notification on

30-12-2004, under Sec.4(2). The land owners offered their objection to it, but it was rejected, Vide proceedings of the second respondent/the District Collector on 17-11-2005. Following this, the final notification under Sec.4(1) of the Act came to be issued by the second respondent/the District Collector on 23-11-2005. Promptly the revenue records were mutated.

2.3 The proceedings dated 17-11-2005 and the final notification dated 23-11-2005 were separately challenged by some of the petitioners respectively in W.P. 6247/2006 and W.P.4483/2006, and they came to be allowed by this Court on 29-09-2010. This Court however granted liberty to the Government to acquire the lands free of flaws. But no fresh acquisition was attempted. Yet, there was no re-mutation of the names of the original land owners in the revenue records.

2.4 In these circumstances the petitioner in W.P.4483/2006 came forward with an alternative proposal. He would now offer another block of land in the same survey field as an alternative site, but since this did not evoke any response from the officials, he filed another petition in W.P. 8211 of 2012 for a direction to consider his offer. During its pendency, the second respondent/the

District Collector rejected it on 22-09-2012. Consequently, W.P.8211 of 2012 was withdrawn. No attempt however, was made to acquire the land afresh. Still, the revenue officials would not re-mutate the land in the name of the petitioners in the record of rights/the Village Permanent Register. This state of affairs continued till 20-07-2020.

2.5 The petitioners would thereafter addressed a communication in two batches, one dated 20-07-2020 and another dated 26-07-2020. Nothing however, happened, except a statement that these lands are now proposed to be acquired again.

3. Heard Mr.M.R.Jothimanian, learned counsel for the petitioners and Mr.D.Raja, learned Additional Government Pleader for the respondents. Mr.D.Raja, learned Additional Government Pleader has produced a copy of the proceedings in Na.Ka.No.I1/30616/2004 dated 08.01.2021 issued by the Adi Dravidar and Tribal Welfare Officer, Perambalur before this Court. The message that this proceedings convey is that the lands involved in this case are proposed to be re-acquired.

4. How to name it? Callousness? Apathy? Negligence? Ignorance? Or, plain indignation? The lexicon provides choice of epithets, but anyone or all of them would only reflect a natural tendency to relate themselves to the level of respect, or absence of it, which the right to property of the common man is subject to.

5. The remedy which the petitioners seek is resolvable as quickly as solving a straight-line algebraic problem with a single variable in the mould fashioned by this Court in ***Ravindran Vs The District Collector, Vellore District*** [W.P.19428 of 2020, dated 06-01-2021]. However, this Court has chosen to expand it, as it considers an imminent need to remind the stakeholders of the judicial system, how not to use it.

6. There are two parts to the cases that fall under this category: Seeking issuance of patta, or more generically having one's name entered in the record of rights. This particular case, however, is a variant in this category. The other is the onset of an attitude among stakeholders of the judicial system which appears to make the misuse and under use of the Courts as a default-setting in the judicial system.

7. The present case hardly requires any adjudication, for what is sought is performance of a consequential action pursuant to the earlier orders passed by this Court in W.P.6247 of 2006 and W.P.4483 of 2006. The petitioners were the owners of the lands in question, and had their names in the Village Permanent Register, and but for the intervention of the Executive in attempting an unsuccessful acquisition of this block of property, their names would have continued in the revenue record. Inasmuch as the acquisition is now judicially annulled by this Court, they demand that the status quo ante be restored, and that the lands be re-mutated in their names. There is a curious tail piece to it: The petitioners have offered an alternate land, when they are under no obligation to do it after this, but the District Collector has rejected it on the ground that the intended beneficiaries do not want it. Which law grants or permits it? The District Collector perhaps knows the answer.

Under-use of Courts:

8. The prevailing procedure for issuance of *patta* does not leave many opportunities for this Court to interfere in the process of judicial review. There is made available a three tier, and a two tier system within the revenue

administration, depending on whether the nature of proceedings is for issuance/transfer of patta, or for cancellation of patta, with an inbuilt provision for internal appeals. Then there are infrequent instances such as the one involved in this case. And, where there arises a dispute over the title to the property, it has to be resolved only by the civil court. If the officials vested with the responsibility to address the issues such as these that concern the lives of the laity, discharge the same, enforced by a self-driven, self-guided, and well automated and disciplined administrative mechanism, this Court may not have to step in to interfere with its functioning. But, the cases on this category of avoidable litigation persists and piles up. The following are the statistics since 2017-2020* as provided by the Registry of this Court relating to cases filed for issuing or transferring or canceling *patta*:

Year	***Total cases filed***	***No. of cases disposed***	***No. of cases pending***
2017	612	502	110
2018	677	489	188
2019	560	265	295
2020	408	261	147

*The data may not be accurate for the data base is created manually and is based on the coding given by the litigant. And, even in this particular category, data is collected under multiple heads, though all of them substantially deal with the same issue.

This data pertains to just one among the many categories of cases this Court

handles. With no need to invest on analysis of this data, or those in other branches, a statement, summoned from experience, can still be made: that in a sizable number of these cases, only a direction of a non-adjudicatory variety would have been sought, the solitary purpose of which is only to remind the authorities of what they ought to do, that which they have the capability to do without the intervention of the Court. This has been the state of affairs after three scores and a decade since we became independent and turned a Republic. It is worrisome that the policy makers should accord least priority for streamlining and strengthening their internal mechanism that may address the ordinary issues of the common man. But, worse still is their unwillingness to realise that their inadequate responses to common issues ultimately burden the Courts. And, visible in its attitude is its inadequate appreciation that the duty of the Courts is limited to the judicial review of administrative action, akin to a referee in a foot ball game - to pull the yellow card or the red card when the player sidesteps the rules of the game, and not to kick the ball along with the players.

Litigation Avoidance and Constitutional Morality:

9. This Court is conscious that a litigant is interested primarily in the concluding paragraph of any judgement: The result - his take-away after a forensic examination of his cause. However, when the Court senses that the stakeholders demonstrate a proclivity to under-use the judicial process with litigation where there ought not to be any, it becomes its responsibility to sensitize them in self-interest, to unclog its system of avoidable litigation.

10.1 Any impression that the principal Constitutional institutions – the Legislature, the Executive and the Judiciary, with their well marked line of demarcation of powers, are entirely bound together by the pages of the Constitution may nigh be a misconception. It goes beyond it. The central theme of the Constitution is not these institutions, but the citizen. We, the People. They provide the center of gravity to the Constitution, and the centrifugality to the institutions which the Constitution has created.

10.2 The Constitution fundamentally makes declaratory statements, and has left it to the judiciary to pronounce on the consequences of its violation. (After all, it cannot be equated to a positive law *simpliciter*, even though law schools may have it in their curriculum). Between the citizen in the centre and the

judiciary at the outer periphery, lies a vast mid-space, and it is left to the other Constitutional institutions to function in a manner which the Constitution envisages. The citizen therefore cannot resign from his responsibility to hold the Constitutional institutions together. "*If We, the People, have given unto ourselves the Constitution, then it becomes the responsibility of every citizen to protect the Constitution not in fear of any State regulations, but in respect for the Constitution.*." See ***Cheziyan Vs Commissioner of Police, Trichy & others*** [(2019) 2 CTC 135 : 2019 (2) MLJ (CRL) 398).

11. What then binds the Constitution together? Or, more precisely what can bind it together? The statements in the Constitution (which suit the preference, approval and comfort of the legal positivists) may provide clarity on what it states, or how it expects its vision to happen. But, they by themselves may not be able to bind the Constitutional institutions together, nor may be able to establish the requisite connect between the Constitution and the citizen, who to re-emphasize, is central to its theme and purpose. Therefore, any search for a binder of the Constitution – the spirit to hold it together, necessarily has to be made outside the pages of the Constitution (a suggestion that is more likely to perplex the legal-positivists), and in the morality of those

who the Constitution cares and governs.

12.1 Morality is not a taboo-word, but is an inseparable psychological element borne out of sense of righteousness, which shapes up the attitude of those who ought to shoulder the responsibility of preserving that which ought to be protected for the common good of the largest number. If this factor that makes up, and hence differentiates, people are taken away, then people cease to be people any longer. But, the Constitution (even if it were to be narrowly understood as a law), is for the people, and in our Constitutional scheme, it is also of the people, and by the people. Therefore, in providing the basic fabric to the positive law, the human element of those for whom it is intended need not be eliminated. And, where the Constitutional values themselves become the nursery of morality for the cultivation of an invisible binder for holding the Constitution and its institutions together, it transcends beyond the conceptual morality which is normative to the natural law. This moral force defines the citizens' connect to the Constitution and binds the Constitutional institutions together.

12.2 ***George Grote,*** the English Historian in his epic 12 volume work "***A***

History of Greece" writes in the Chapter titled "***Athens After the Peisistratids***" that the Greeks found it necessary to protect their Constitution by kindling *"a passionate attachment"* and termed it as "*the Constitutional morality*". He explains:

> "*A paramount reverence for the forms of the constitution, enforcing obedience to the authorities acting under and within those forms, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts, – combined too with a perfect confidence in the bosom of every citizen, amidst the bitterness of party contest, that the forms of the constitution will be not less sacred in the eyes of his opponents than in his own."*

The dichotomy between morality and legal positivism notwithstanding, the Oxfordian Prof. A.V. Dicey reinforced the idea of Constitutional morality through, what he chose to term it as the conventions of the Constitution (as distinguished from enforceable rules). Dicey in his '***Introduction to the Study of the Law of the Constitution'***, (8 th Ed, 1915) observes:

> *"Constitutional law, as the term is used in England, appears to include all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the state. . . . The one set of rules are in the strictest sense "laws," since they are rules which . . . are enforced*

by the Courts . . . . The other set of rules consist of conventions, understandings, habits, or practices which, though they may regulate the conduct of the several members of the sovereign power . . . are not in reality laws at all since they are not enforced by the Courts. This portion of constitutional law may, for the sake of distinction, be termed the "conventions of the constitution," or constitutional morality."

The framers of the Constituent Assembly were not oblivious to the significance of morality as a binder of Constitutional principles and values. In a telling passage, Dr. Ambedkar (Constituent Assembly Debates, 04.11.1948) states:

"By constitutional morality Grote meant &quote; a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own...

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of adminis-

tration has a close connection with the form of the Constitution. ***The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution****. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them.* ***The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic****."*

The need for according Constitutional morality its role has been recognized by the judiciary as could be seen from the authority of the Hon'ble Supreme Court in ***Manoj Narula v. Union of India*** [(2014) 9 SCC 1], wherein it was observed:

"*75. The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and*

conventions have to grow to sustain the value of such a morality. The democratic values survive and become successful where the people at large and the persons in charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the Constitution is a facet of constitutional morality. In this context, the following passage would be apt to be reproduced:

> *"If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. [James Madison as Publius, Federalist 51] "*

See also ***State (NCT of Delhi) Vs Union of India***, [(2018) 8 SCC 501(para 501)] and also ***K.S. Puttaswamy Vs Union of India***, [(2019) 1 SCC 1].

13. Constitutional morality may not be considered as a reference material for appreciating the issues concerning the fundamental rights (where its efficacy

may be doubted and debated as a dependable tool of interpretation by the puritans of positivist school) but is extendable to every aspects in energizing the working of the Constitution – from the orderliness of the citizens to the discipline of the judiciary. It is a composite expression of convenience, and in its deeper layers it appears as the responsibility of the citizen, the fairness of the bureaucracy, the respect of the legislature and the discipline of the judiciary, knitted together by an invisible yet perceivable ligature called the 'sense of duty'. The health of the Constitution depends on the health of each of these facets of Constitutional morality, and the strength of the sense of duty of all.

14. If the Executive, and its support system in the bureaucracy are not adequately effective, and the citizen's responsibility is also disproportionate to the requirement, then they put pressure on the judiciary. Hence, to believe that the duty is exclusively on the judiciary to protect the Constitution will necessarily be a hypothesis in escapism. If there is a sustained under use of the judiciary, then judiciary as a Constitutional institution is bound to face a possibility of its system weakening. The vitality of the Constitution must be understood as the combined strength of all the stakeholders, the citizen

included, yet it cannot be considered as balancing an equation of variables internally to adjust themselves to attain a certain constant. To state it differently, constitutional morality signifies shared responsibility of all in equal vigor, and not one to the exclusion, or to the disadvantage of any of the constitutional institutions. Contextually, the emphasis here is on the institution of Courts.

15. It is here, what appears to be an ordinary issue like registering the land owner in the record of rights – the village permanent register, and its indispensability to a common man for enjoying his right to property to the fullest, becomes critical. Even though these issues may not interest the Constitutional pundits as much as issues like free speech, there is as much Constitutionalism involved in them as in some of the fancied spheres of the Constitution, since these issues silently yet surely impact the right to property of the citizens. More to it from paragraph 18 upwards.

16. As outlined, the present case is avoidable. But it is not limited to an additional case or its possibility of its avoidance, but about how it leads to the under use of the adjudicatory mechanism which when multiplies, backed by an

attitude providing for that possibility, then that may weaken judiciary as a Constitutional institution. Then, there surely is a possibility for breaching Constitutional morality.

17.1 There is another angle to it. Administrative fairness and the respect for rule of law necessarily includes respect for judicial orders. Article 261 of the Constitution mandates that the Executive shall give full faith and credit to all judicial acts. This provision indeed is a positive prescription written in a tone of moral philosophy. It may not have exhorted a sense of duty as in Article 51A of the Constitution, nor have installed any fear of penalty for its violation, but being a moral-binder it deserves spontaneous respect.

17.2 In ***K.S. Puttaswamy Vs Union of India***, [(2019) 1 SCC 1], the Hon'ble Supreme court has elevated the content of this provision as an aspect of Constitutional morality. The Court observes:

> "*1521.3.2. Institutions of governance are bound by a sense of constitutional morality which requires them to abide by judicial orders. What seems to emerge from the course of action which has been followed in the present case by the Government is a perception that judicial directions can be ignored on a supposed construction of the statute. Besides the fact that this construction is erroneous in law,*

it is above all, the fundamental duty of this Court to ensure that its orders are not treated with disdain. If we were not to enforce a punctilious compliance with our own directions by the Government, that would ring a death-knell of the institutional position of the Supreme Court. If Governments were free to ignore judicial directions at will, could a different yardstick be applied to citizens? The obligation to comply with judicial orders is universal to our polity and admits of no exception. Confronted with a brazen disregard of our interim orders, I believe that we have no course open except to stand firm.

1525. Constitutional morality requires a government not to act in a manner which would become violative of the rule of law. [Manoj Narula V Union of India, (2014) 9 SCC 1] Constitutional morality requires that the orders of this Court be complied with, faithfully. This Court is the ultimate custodian of the Constitution. The limits set by the Constitution are enforced by this Court. Constitutional morality requires that the faith of the citizens in the constitutional courts of the country be maintained.

1526. Many citizens, although aggrieved, are not in a condition to reach the highest Court. The poorest and socially neglected lack resources and awareness to reach this Court. Their grievances remain unaddressed. Such individuals suffer injury each day without remedy. Disobedience of the interim orders of this Court and its institutional authority, in the present case, has made a societal impact....Non-compliance of the interim orders of this Court is contrary to constitutional morality. Constitutional morality, as an essential component of the rule

of law, must neutralise the excesses of power by the executive.

.... Deference to the institutional authority of the Supreme Court is integral to the values which the Constitution adopts..... The orders of the Court are not recommendatory — they are binding directions of a constitutional adjudicator. Dilution of the institutional prestige of this Court can only be at the cost of endangering the freedom of over a billion citizens which judicial review seeks to safeguard."

It sums it up all. Now the bureaucracy has to reflect on it. It is unfortunate that the moral binder that ought to influence the collective conscience of the citizens which includes respecting judicial orders, or what ought to be done concomitant to a judicial order, is often seen ignored by one of the Constitutional institutions – the Executive, of which the bureaucracy is an inseparable part. The habit to respect judicial orders minimise the scope for further litigation. It is better to have one case less for the Court than to add one case more to it. But will the bureaucracy set the course for mission-change?

Over to the present case:

18. The respondents now have little option than to re-mutate the revenue records in the name of the petitioners. They do not have a choice here. And, to direct the authority to do what it should have done if only it were guided by

rule of law and fairness in administration, and exact obedience to any such direction is easily available course. Here, it is relevant to state that this Court had an occasion to consider a strikingly similar case in ***Ravindran Vs The District Collector, Vellore District*** [W.P.19428 of 2020, dated 06-01-2021]. and it is apposite to reproduce the following passage:

> *"9. ...The Executive, in all probability may now comply with a direction to re-mutate the record of rights, but is it not true that the petitioner has been a silent victim of the Executive insensitivity? To stop with a direction such as the one indicated may only aid in providing an exit route to the Executive to escape from accounting for its default. Should this Court with the Constitutional obligations on it, turn a Nelson's eye to such administrative defaults?*
>
> *10. It is indisputable that the possession of the land in question is with the petitioner, but its profitable enjoyment is largely curtailed since his name has not been re-mutated in the revenue records. The State has no authority to interfere with the right to property of the citizen except in accordance with law. Here, the State machinery is caught on the wrong foot when it failed to re-mutate the land in question in the petitioner's name in the revenue records. A record of right such as the patta is indispensable for exercising absolute right of ownership over the property, and when patta is not re-mutated despite the petitioner requiring it for ten years now, it is an obvious instance of the Executive interfering with the right to property of the citizen.*

11. The bureaucracy is told that right to property has a close nexus to right to life under Art.21 of the Constitution, since the former, to a substantial extent, defines the quality of life a citizen has secured for himself under the Constitution. In ***Delhi Airtech Services Private Limited v State of U.P*** *[2011 9 SCC 354] the Supreme Court termed the right to property as a human right under Article 21 and alluded to it as the seed bed for securing other human freedoms such as liberty. The Supreme Court observed:*

> *"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."*

The growth of Constitutional jurisprudence in this country has been chiefly characterized by the constant search of the Constitutional Courts to discover the expandability of the concept of right to life under Article 21. Its objective is to include as many, exclude none, and at all times to check the Executive temptations to tread upon it, even accidentally, except in accordance with the procedure established by law. The multitude of rights that go to constitute right to life, some time termed as penumbral rights, are comparable to the advaita philosophy in that each of such fractional right itself possesses

the characteristics of the whole. Soham. Hence, an understanding of the right to property only in economic terms may not be a right idea, nor will be an understanding that its infringement should produce a tangible loss. An infringement of right to property will therefore enjoy an expanded meaning proportionate to the expandability of the right to life under the Constitution. It will now accommodate a meaning which includes the quality of life even in terms of the happiness-quotient which a citizen is entitled to, and the State machinery shall stay away from affecting it, unless it has a warrant in law to interfere. Failure to re-mutate the land in the name of the petitioner may not affect his title, but definitely restrict his ability to enjoy it in the manner of his choice. It could therefore, be derived that when one is denied of his right to exercise all that emanates from the right of ownership, which includes right to alienate or encumber by a method not supported by law, the anxiety such denial generates in the hearts of men will offend the quality of life under Article 21, and impinge upon the cherished ideals of human dignity zealously guarded by it."

Here it may be of relevance to quote ***Justice K.K. Mathew*** who in his article titled '***The Basic Structure Theory and the Right to Property***', [(1978) 2 SCC -J.63] observes:

"Once upon a time, it was thought that the so-called personal rights like the right to vote, right to freedom of speech or personal liberty occupied a higher status in the hierarchy of values than property right. As a result the courts were more astute to strike down legislations which impinged upon these rights, than upon property rights. But

Learned Hand, a great judge, felt that the distinction between the two was unreal and said that nobody seems to have bestowed any thought on the question why property rights are not personal rights. The Supreme Court of America which once gave hospitable quarter to the distinction between personal rights and property rights and accorded a preferred position to the former, has given a decent burial both to the distinction and the preferred status of the so-called personal rights or liberties in 1972 by saying "the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, not less than the right to speak or the right to travel is in truth a 'personal' right, whether the 'property' in question be a welfare cheque, a home or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognised."

To continue from ***Ravindran's case***,

"12.1 In ***Nilabati Behera v. State of Orissa,*** *[(1993) 2 SCC 746], the Hon'ble Supreme Court has held:*

> *"30. ….we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights*

and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress — by awarding monetary damages for the infraction of the right to life.

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. ..... The purpose of public law is not only to civilise public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim

compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v State of Bihar[(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. ***It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims*** *in exercise of their writ jurisdiction. In*

doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned…."

This was followed by the Hon'ble Supreme Court in ***United Air Travel Services v. Union of India,*** *[(2018) 8 SCC 141], where it held that "..it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available under public law notwithstanding that damages are claimed in those proceedings".*

19. In the spirit of what the Supreme Court has held, this Court now directs the respondents to pay the petitioner a sum of Rs.50,000/- as compensation for interfering with the right to property of the petitioner for over a decade, with no lawful justification. To extract again from the order in ***Ravindran case,***

"12.3 It is not ameliorative, but palliative. When an infraction of a fundamental right is spotted on which the Executive chose to repose and allowed it to continue when it had an option to remedy, Constitutional courts will draw strength from the spirit of the Constitution to remedy the wrong. Courts shall not patronize that which the Constitution does not encourage. As was pointed out by the

Supreme Court in ***Nilabati Behera v. State of Orissa*** *[(1993) 2 SCC 746], this Court, under Article 226, is empowered to make monetary amends by granting suitable compensation in public law for the infraction of fundamental rights by the State and its officials. It is to inform the State and its bureaucratic machinery that when it interferes with the fundamental right of the citizen without lawful excuse, it may have to answer for it. Far from being a deterrent, where there is an institutional pride in the bureaucracy, this Court hopes that it might not like to have a recurrence.*

20.1 In conclusion, this Court allows the petition and directs the second respondent to mutate the Village Permanent Register in the name of the petitioner or or before 30.03.2021. For all the sufferings that the administrative machinery has inflicted on the petitioner for twenty years now, the State shall now pay the petitioner a sum of Rs.50,000/- in damages. No costs. Consequently, connected miscellaneous petition is closed.

20.2 The District Collector, Perambalur District, the second respondent is also now required to file a report as to what mechanism that would be put in place to avert and avoid situations such as the one involved in this case.

21. Post it for reporting compliance to 15.04.2021.

17.02.2021

ds

Index : Yes /No
Speaking order / Non-speaking order

To:

1.The State of Tamil Nadu
Rep by its Principal Secretary to Government
Revenue and Disaster Management Department
Fort St.George
Chennai – 600 009.

2.The District Collector
Perambalur District
Perambalur.

3.The Special Tahsildhar(LA)
Adi Dravidar and Tribal Welfare Department
Perambalur District
Perambalur.

N.SESHASAYEE.J.,

ds

W.P.No.181 of 2021

17.02.2021