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W.P.Nos.4936, 6015, 6514  
& 6795 of 2025

In the High Court of Judicature at Madras

Reserved on : <b>18.3.2025</b>	Delivered on: <b>26.3.2025</b>
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.4936, 6015, 6514 & 6795 of 2025 &  
& WMP.No.5474 of 2025

N.S.Krishnamoorthi

...Petitioner in  
WP.No.4936 of  
2025

Maruthamuthu

...Petitioner in  
WP.No.6015 of  
2025

V.Rajendiran

...Petitioner in  
WP.No.6514 of  
2025

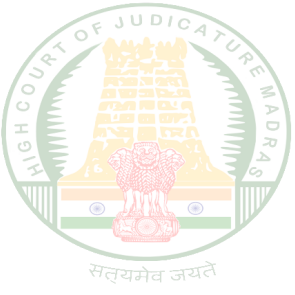
S.Subramani

...Petitioner in  
WP.No.6795 of  
2025

Vs

1.The District Collector,  
Krishnagiri District,  
Krishnagiri.

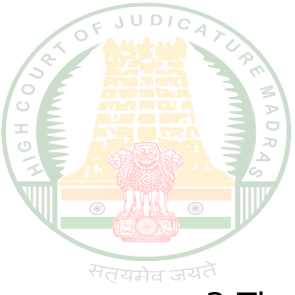
2.The District Revenue Officer,  
Collector Office, Krishnagiri,  
Krishnagiri District.



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3.The Revenue Tahsildar,  
Tenkanikottai Taluk,  
Krishnagiri District.

...Respondents in  
WP.No.4936 of  
2025

4.The District Collector,  
Tirupur District.

5.The Revenue Tahsildar,  
Revenue Tahsildar Office,  
Madathukulam.

6.The Village Administrative  
Officer, Kadathur Village,  
Tirupur District.

...Respondents in  
WP.No.6015 of  
2025

7.The District Collector,  
Tiruvannamalai District.

8.The District Revenue Officer,  
Tiruvannamalai District.

9.The Revenue Divisional Officer,  
Tiruvannamalai.

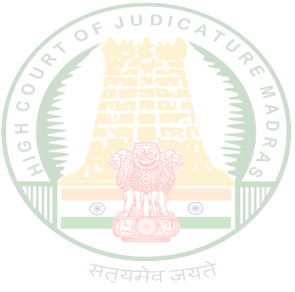
10.The Tahsildar, Tiruvannamalai  
Taluk, Tiruvannamalai District.

...Respondents in  
WP.No.6514 of  
2025

11.The District Collector,  
Tirupur District, Tirupur.

12.The Tahsildar, Tahsildar Office,  
Kangayam, Tiruppur District.

...Respondents in  
WP.No.6795 of  
2025



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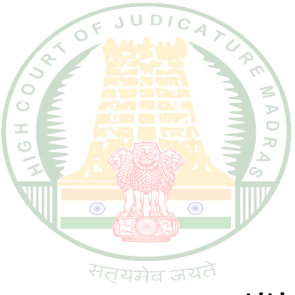
PETITIONS under Article 226 of The Constitution of India praying  
for the issuance of

(i) a Writ of Certiorarified Mandamus to call for the records relating to the impugned order made in Na.Ka.No.2458/2024/B1 dated 31.12.2024 passed by the third respondent, quash the same and consequently direct the respondents to grant patta for the grama natham lands in S.F.Nos.1380/17 (180 sq.meters) and 1380/27 (920 sq.meters), Thenkanikottai Village and Taluk, Krishnagiri District (WP.No.4936 of 2025);

(ii) a Writ of Mandamus to direct the second respondent to consider the petitioner's representation dated 24.12.2024 thereby grant natham patta in the name of the petitioner for the land in survey No.1036 situated at No.449, Near Kadathur Bus Stand, Kadathur, Madathukulam Taluk, Tirupur District-642203 (WP.No.6015 of 2025);

(iii) a Writ of Mandamus to direct the 4th respondent to consider the petitioner's representation dated 07.10.2024 (WP.No.6514 of 2025); and

(iv) a Writ of Mandamus to direct the respondents to consider the petitioner's representation dated 26.12.2023 and issue patta for the



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petitioner's land where the petitioner's house in door No.4/45A (4/45/1), New No.5/43/1 in original survey No.151 was given the re-survey No.470 is situated (WP.No.6795 of 2025).

For Petitioner in  
WP.No.4936 of 2025 : Mr.N.Manokaran

For Petitioner in  
WP.No.6015 of 2025 : Mr.A.Parthasarathy

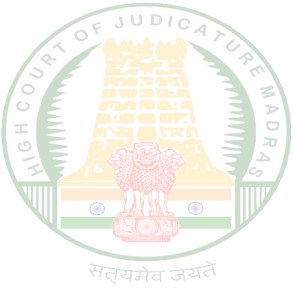
For Petitioner in  
WP.No.6514 of 2025 : Mr.R.Sathishkumar

For Petitioner in  
WP.No.6795 of 2025 : Mr.Vijayakumari Natarajan

For Respondents in  
all the WPs : Mr.Edwin Prabhakar,  
State GP  
assisted by  
Mr.A.Selvendran, SGP

### COMMON ORDER

The issue involved in all these writ petitions pertains to the grant of patta for the grama natham lands and hence, they are taken up together, heard and disposed of by this common order.



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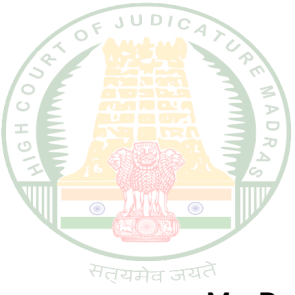
2. Heard all the learned counsel appearing for the respective petitioner and the learned State Government Pleader assisted by the learned Special Government Pleader appearing for the respondents.

3. The facts leading to filing of these writ petitions are as follows:

WP.No.4936 of 2025:

(i) The properties in S.F.Nos.1380/17 (180 sq.meters) and 1380/27 (920 sq.meters), Thenkanikottai Village and Taluk, Krishnagiri District along with vast extent of other properties were owned by petitioner's grandfather. His grandfather constructed a house in a portion of the subject properties and the remaining portion was kept vacant. The petitioner's grandfather died leaving behind him four sons and three daughters.

(ii) There was a family arrangement entered into among the co-sharers vide partition deed dated 20.8.1951 registered as doc.No.733 of 1951 on the file of the Sub-Registrar, Thenkanikottai, pursuant to which, the subject properties were allotted to (1) the petitioner's father - Mr.Subbiah, (2) his paternal uncle - Mr.Vasudevaiah and (3) one Mrs.Saradhammal - wife of his deceased paternal uncle -



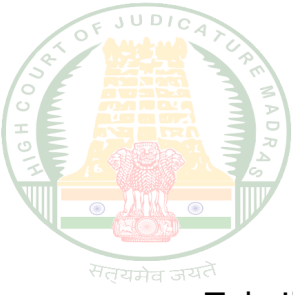
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Mr.Ramachandraiah. Further, the said Mrs.Saradhammal was given only life interest and after her death, the subject properties would devolve around the petitioner's father and his paternal uncle. During the UDR proceedings, the subject properties were classified as grama natham and were subdivided. Thereby, the house portion was given S.No.1380/15 and the vacant lands were given S.Nos.1380/17 and 1380/27. The remaining properties that were owned by the petitioner's father, his paternal uncle and the widow of his paternal uncle were settled in favour of one Mr.V.N.Ramamurthi, who is none other than the son of the petitioner's paternal aunt.

(iii) Later, the petitioner applied for the grant of patta in respect of the subject properties. Based on that, a report was called for from the concerned Revenue Tahsildar, who also recommended for the grant of patta. However, the Commissioner of Land Administration, Chennai-5, vide proceedings dated 12.2.2021, rejected the claim made by the petitioner.

(iv) Aggrieved by that, the petitioner filed W.P.No.20715 of 2024 before this Court and it was allowed by a learned Single Judge of this Court by order dated 31.7.2024 directing the concerned Revenue



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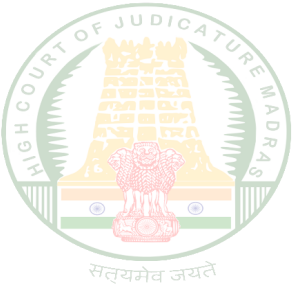
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Tahsildar to pass orders within a period of three months. While dealing with the said writ petition, the learned Single Judge placed specific reliance upon the earlier orders passed by this Court with respect to the issuance of patta for grama natham lands. Thereafter, by the impugned order, the Revenue Tahsildar once again rejected the claim made by the petitioner on the ground that he had no power to grant patta for the grama natham lands beyond three cents. Challenging the same and for a consequential direction to the the third respondent to grant patta for the grama natham lands, W.P.No.4936 of 2025 has been filed.

WP.No.6015 of 2025 :

(v) The petitioner is residing in the property in survey No.1036 situated at No.449, Near Kadathur Bus Stand, Kadathur, Madathukulam Taluk, Tirupur District-642203 for over 30 years along with his children. He made a representation dated 24.12.2024 to the concerned Revenue Tahsildar for the issuance of a grama natham patta in his name. Despite receipt of the said representation, no orders were passed by him. Hence, the petitioner has come forward with this writ petition.





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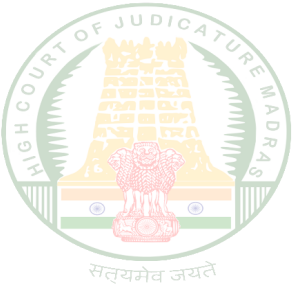
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WP.No.6514 of 2025 :

(vi) The property in S.No.36/1 measuring 2.75 Ares i.e 0.05 cent thatched house was originally in the possession and enjoyment of his great grandfather for over 50 years and by efflux of time, the petitioner inherited the same. He sent a representation on 07.10.2024 to the Tahsildar concerned for the issuance of patta. Since the subject property has been classified as grama natham, the said representation of the petitioner has not been considered and no patta was granted in favour of the petitioner. It is under these circumstances, W.P.No.6514 of 2025 came to be filed.

WP.No.6795 of 2025 :

(vii) The property in S.No.151, Neikkaran Palayam Village is a grama natham land and the petitioner's mother-in-law was in possession and enjoyment of the same for more than 50 years. Patta was also issued in her name in the year 1995. She also constructed a small house in a portion of that property and was paying the property tax. After marriage, the petitioner also constructed a house in the northern side of the house of his mother in law measuring 3 cents, which is also under her occupation. Later, the petitioner made a



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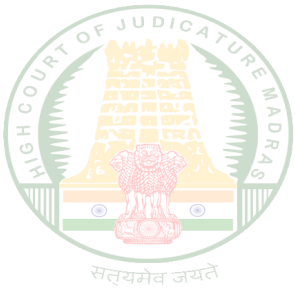
representation dated 26.12.2023 to the concerned Tahsildar for the issuance of patta to the subject property, which is under his occupation. Since the subject property has been classified as grama natham, the said representation has not yet been considered. It is under these circumstances, W.P.No.6795 of 2025 came to be filed before this Court.

4. (a) The learned counsel appearing for the respective petitioner submitted that the issue regarding the entitlement of patta for grama natham lands is squarely covered by the earlier orders passed by this Court.

(b) To substantiate the said submission, they relied upon the following

*"(1) decision of the First Bench of this Court in the case of **the Executive Officer, Kadathur Town Panchayat, Harur Taluk Vs. V.Swaminathan & 3 others [reported in 2004 (3) LW 278];***

*(2) decision of a Division Bench of this Court in the case of **Dharmapura Adhinam Mutt Vs. Raghavan [reported in 2012 (1) CTC 280];***



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(3) *decision of the First Bench of this Court in the case of **D.Shankar Vs. Special Commissioner & Commissioner of Land Administration [reported in 2014 (1) MLJ 818];***

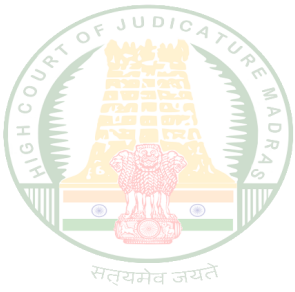
(4) *decision of a Division Bench of this Court in the case of **T.S.Ravi Vs. District Collector, Thiruvallur District, Thiruvallur [W.P.Nos. 26234 & 26237 of 2018 dated 11.10.2018];***

(5) *decision of a Division Bench of this Court in the case of **C.Lakshmanan Vs. District Collector, Sivagangai [reported in MANU/TN/ 0615/2022];***

(6) *decision of the First Bench of this Court in the case of **A.Sacractice Vs. District Collector, Thiruvallur [reported in 2023 (2) LW 24];***

(7) *decision of the First Bench of this Court in the case of **R.A.V. Kovil Annayya Charities Vs. District Collector, Thiruvallur [reported in 2024 (3) CTC 337];***

(8) *decision of a learned Single Judge of this Court in the case of **Palani Ammal Vs.***



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***L.Sethurama Aiyangar [reported in AIR 1949 Madras 814];***

*(9) decision of a learned Single Judge of this Court in the case of **S.Rengaraja Iyengar Vs. Achikannu Ammal [reported in 1959 (2) MLJ 513]***

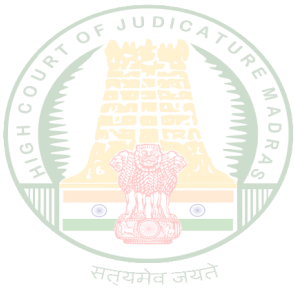
*(10) decision of the learned Single Judge of this Court in the case of **N.S.Kuppusamy Odayar Vs. The Panchayat Narthangudi [reported in 1971 (1) MLJ 190];***

*(11) decision of a learned Single Judge of this Court in the case of **The State of Madras Vs. Kasthuri Ammal [reported in 1974 (2) MLJ 139];***

*(12) decision of a learned Single Judge of this Court in the case of **A.Sankaralingam Vs. Arunachala Reddiar [reported in 1993 (1) MLJ 472];***

*(13) decision of a learned Single Judge of this Court in the case of **A.K.Thillaivanam & another Vs. District Collector, Chengai Anna District at Kancheepuram & others [reported in 1998 (3) LW 603];***

*(14) decision of a learned Single Judge of this Court in the case of **Ellammal Vs.***



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***State of Tamil Nadu [reported in 2007 (2)  
MLJ 1113];***

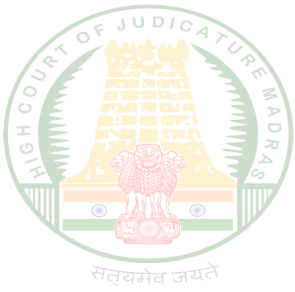
*(15) decision of a learned Single Judge of this Court in the case of **A.Srinivasan & another Vs. The Tahsildar, Egmore Nungambakkam Taluk [reported in 2010 (1) LW 123];***

*(16) decision of a learned Single Judge of this Court in the case of **State of Tamil Nadu Vs. Madasami [reported in 2012 (2) CTC 315];***

*(17) decision of a learned Single Judge of this Court in the case of **A.R.Meenakshi & Others Vs. State of Tamil Nadu & Others [reported in 2013 (4) LW 76];***

*(18) decision of a learned Single Judge of this Court in the case of **K.Ilangovan Vs. The District Collector, Coimbatore & others [reported in 2014 (1) LW 430];***

*(19) decision of a Division Bench of this Court in the case of **K.Shanmugavel Mudaliar Vs. The Secretary, Government of Tamil Nadu & others [W.P.No.7594 of 2011 etc. cases dated 14.3.2024];***



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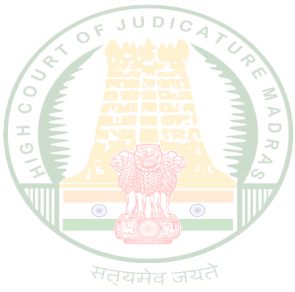
(20) *decision of a learned Single Judge of this Court in the case of **Thiruvenkada Gounder (died) & 3 others Vs. Ammaiappan & 3 others [reported in 2006 (3) LW 368].***"

(c) They further submitted that the latest judgment rendered by a Division Bench of this Court in the case of **S.Anbananthan Vs. District Collector [reported in 2024 (4) LW 431]** is per incuriam since the Division Bench of this Court is bound by the earlier judgments passed by the other Division Benches and that if at all a different decision is taken, the matters ought to have been referred to a Full Bench and that the Division Bench could not disregard the earlier judgments rendered by various Division Benches of this Court.

(d) To substantiate this submission, the learned counsel for the respective petitioner relied upon the following :

'(1) *decision of the Hon'ble Supreme Court in the case of **Dr.Shah Faesal Vs. Union of India [reported in 2020 (4) SCC 1];***

(2) *decision of the Hon'ble Supreme Court in the case of **Union of India Vs.***



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**Godfrey Philips India Ltd. [reported in  
1985 (4) SCC 369] and**

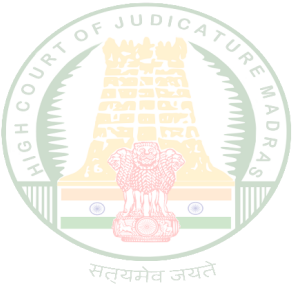
**(3) Larger Bench decision of the Jabalpur  
Bench of the Madhya Pradesh High Court in  
the case of **Jabalpur Bus Operators  
Association Vs. State of MP [reported in  
AIR 2003 MP 81].'****

5. When WP.No.4956 of 2025 came up for hearing on 18.2.2025,  
this Court passed the following order :

*"Mr.A.Selvendran, learned Special  
Government Pleader, takes notice on behalf of the  
respondents*

*2. The issue involved in the present writ  
petition pertains to grant of patta in the name of  
the petitioner for Gramanatham land.*

*3. Learned counsel for the petitioner has  
cited several earlier judgments of this Court  
wherein it has been held that patta can be issued  
for occupied Gramanatham lands. Learned counsel  
also brought to the notice of this Court the earlier  
order passed in W.P.No.20715 of 2024 dated  
31.07.2024 wherein the petitioner approached this  
Court challenging the impugned proceedings of the  
Commissioner of Land Administration. Even in that  
writ petition which was allowed, the earlier*



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*judgments were taken into consideration and directions were issued. In spite of the same, the impugned proceedings have been issued by the third respondent dated 31.12.2024.*

*4. Learned Special Government Pleader appearing on behalf of the respondents brought to the notice of this Court the judgment of the Division Bench in W.A.Nos.203 & 205 of 2023 dated 27.03.2024 wherein the Division Bench has taken a different view and held that patta cannot be granted for Gramanatham lands.*

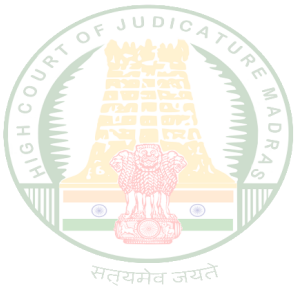
*5. The law on this issue has to be settled and either the matter has to be referred to the Larger Bench or it has to be seen whether the order passed by the Division Bench in W.A.Nos.203 and 205 of 2024 is in line with the earlier judgments of this Court.*

*In view of the above, post this writ petition under the caption 'for orders' on 11.03.2025. In the mean time, the respondents shall file counter."*

6. When WP.No.6015 of 2025 came up for hearing on 26.2.2025, this Court passed the following order :

*"Mr.A.Selvendran, learned Special Government Pleader, takes notice on behalf of the respondents.*





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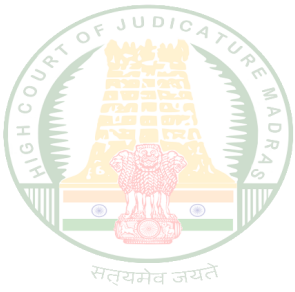
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2. *The issue involved in the present writ petition pertains to grant of patta in the name of the petitioner for Gramanatham land.*

3. *Learned counsel for the petitioner has cited several earlier judgments of this Court wherein it has been held that patta can be issued for occupied Gramanatham lands. Learned counsel also brought to the notice of this Court the earlier order passed in W.P.No.20715 of 2024 dated 31.07.2024 wherein the petitioner approached this Court challenging the impugned proceedings of the Commissioner of Land Administration. Even in that writ petition which was allowed, the earlier judgments were taken into consideration and directions were issued. In spite of the same, the impugned proceedings have been issued by the third respondent dated 31.12.2024.*

4. *Learned Special Government Pleader appearing on behalf of the respondents brought to the notice of this Court the judgment of the Division Bench in W.A.Nos.203 & 205 of 2023 dated 27.03.2024 wherein the Division Bench has taken a different view and held that patta cannot be granted for Gramanatham lands.*

5. *The law on this issue has to be settled and either the matter has to be referred to the Larger Bench or it has to be seen whether the order passed by the Division Bench in W.A.Nos.203 and*



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*205 of 2024 is in line with the earlier judgments of this Court.*

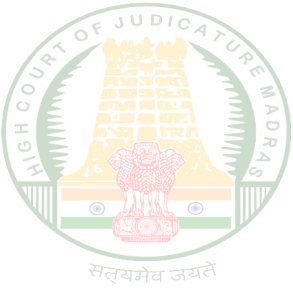
*In view of the above, post this writ petition under the caption 'for orders' on 11.03.2025. In the mean time, the respondents shall file counter."*

7. In the light of the above orders passed by this Court, the State Government Pleader appearing on behalf of the respondents submitted as follows :

(a) The term 'grama natham' does not find a place under Section 2 of the Land Encroachment Act, 1905 (for short, the Act). As on the date of commencement of the Act i.e 19.4.1905, all the lands were declared to be vested with the Government except for the exemptions as stated in Sub-Sections (a) to (e) of Section 2 of the Act. The grama natham poramboke lands are not exempted under Section 2 of the Act. Therefore, all the lands including the grama natham lands are declared to be the properties of the Government from 1905.

(b) According to him, one cannot occupy a grama natham land and declare himself to be the owner of the same. The right claimed by an individual by mere occupation would serve the rights of all the other citizens in rem over the land, which is under occupation. Such

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ownership can be conferred and recognized only by the sovereign power under law. There cannot be any land within the territory of India without the owner. The State, as sovereign authority, is the owner of all the lands declared under Section 2 of the Act.

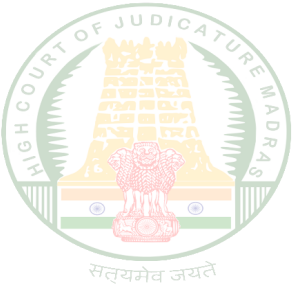
(c) The decision of the learned Single Judge of this Court in the case of **A.K.Thillaivanam** by placing reliance on the earlier decision of the learned Single Judge of this Court in the case of **Achikannu Ammal** is incorrect and is a clear deviation from the point of law decided both on facts and in law.

(d) In order to substantiate his submissions, he relied upon the decisions of

(1) a Division Bench of this Court in the case of **Jayarama Naidu Vs. Secretary of State [reported in AIR 1929 Madras 441];**

(2) a Full Bench of this Court in the case of **Madathapu Ramayya Vs. Secretary of State [reported in 1904 ILR (27) Madras 386];** and

(3) a Full Bench of this Court in the case of **Seshachala Chetty Vs. Para Chinnasami [1917 ILR (40) Madras 410 : AIR 1918 Madras 827].**



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(e) All lands that were not exempted as on the date of coming into force of the Act stood vested with the Government and there was no exemption for the natham lands.

8. The rival submissions fall for consideration.

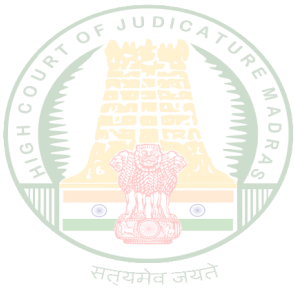
### **IS THE STATE THE OWNER OF THE SOIL?**

9. While examining the primary issue as to whether "grama natham" lands are the properties of the Government by virtue of the provisions of the Act, as contended by the State Government Pleader, it is first necessary to trace the evolution of the concept of ownership by the State in the soil. In other words, was the State the owner of the soil or was it merely entitled to a share in the produce from the soil?

10. Under the common law of England, all land is owned by the Crown. This principle was explained by **Pollock & Maitland** in their celebrated treatise "**History of English Law before the Time of Edward I, Vol 1**" as under:

*"All land in England must be held of the king of England, otherwise he would not be king of all*

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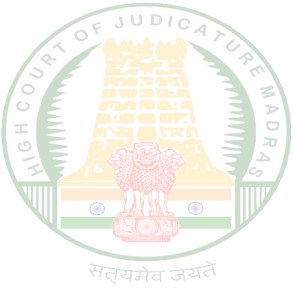
*England. To wish for an ownership of land that shall not be subject to royal rights is to wish for the state of nature."*

11. The concept of ownership in England was a product of feudalism. Subjects could possess the land as an "estate in fee". The learned authors further explain:

*"The estate for life is finite, quia nihil certius morte; the estate in fee is infinite, for a man may have an heir until the end of time. The estate for life is smaller than the estate in fee; it is infinitely smaller; so that if the tenant in fee breaks off and gives away a life estate, or twenty life estates, he still has a fee. Thus are established the first elements of that wonderful calculus of estates which, even in our own day, is perhaps the most distinctive feature of English private law."*

12. The position in India, from the earliest times, was quite the opposite. On 12th August 1765, **Shah Alam**, the titular Emperor of Delhi made a perpetual grant to the East India Company of the Diwani of the three provinces of Bengal, Bihar and Orissa. The right of "Diwani" was the right to collect revenue coupled with the right to

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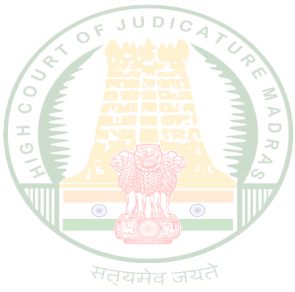
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exercise judicial functions in civil and criminal causes in these areas.

According to **Justice C.D.Field** in his book "**The Regulations of the Bengal Code**", the firman of Shah Alam granting Diwani to the East India Company was "something more". It was a perpetual grant to the company of the revenue collected in return for the payment of Rs.26 lakhs to the Emperor towards defraying the expenses of the Nizamat. The collection of the revenue and the tenure of land being inseparably connected matters, the East India Company soon found themselves face to face with the problem of the tenure of land. This, in turn, required an answer to another question: "who was the owner of the land?"

13. In the said treatise, it is pointed out by **Justice C.D.Field** that the Englishmen initially assumed that "some class in India must own the land in the same way as English landlords own their estates and they set themselves to find out who this class were-in fact to answer the question-"who owns the land?" **Justice C.D.Field**, however, points out the fallacy in this exercise as there was no kind of



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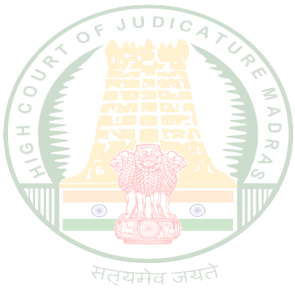
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ownership in India of a nature, which corresponded to the "fee simple" in England. He adds as hereunder:

*"It is important to bear this in mind. That the ownership of the soil was not in the sovereign is proved by a variety of arguments. One of these is remarkable, being drawn from the fact that the Emperors purchased land when they wanted it. Aurangzeb purchased the parganas of Lundi Palan in the vicinity of Delhi. Akbar purchased lands for the forts of Akbarabad and Illahabad; Shah Jahan for the fort of Shah Jahanabad : and Alamgir for the fort of Aurangabad and for mosques. When the Jagirdars got possession, they paid malikana to the zemindars. There is a native Hindu saying that "the land belongs to the zemindar and the revenue to the king;" and according to Mahomadan law the sovereign has a right of property in the tribute of revenue : but he who has the tribute from the land has no property in the land"*

14. The view of **Justice C.D.Field** in his book is corroborated by **S.Sundararaja Iyengar** in his celebrated work "**Land Tenures in the Madras Presidency**". The learned author has observed to the following effect :

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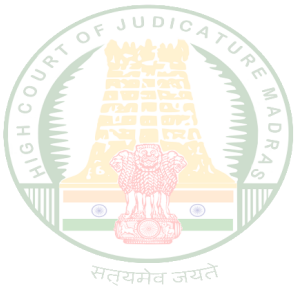
*"Both under Hindu and Mahomedan laws land was not vested in the king and that the proprietor had an absolute ownership and dominion therein, subject to the payment of a share of the produce which was, however, liable to variation at the will of the sovereign."*

15. There was, therefore, no analogy between the Indian ryot and the English tenant, since the latter claims through a landlord (i.e. the Crown) whereas the relation of landlord and tenant does not exist between the government and the ryot.

16. The Permanent Settlement was introduced in the Madras Presidency by Regulations XXV and XXI of the Madras Regulations, 1802. The Preamble to Regulation XXXI of 1802, reads as follows:

*"WHEREAS the ruling power of the provinces now subject to the Government of Fort St. George has in conformity to the antient usages of the country reserved to itself, and has exercised the actual proprietary right of lands of every description; and whereas consistently with that principle, all alienations of land, except by the consent and authority of the ruling power, are violations of that right; but, whereas considerable*





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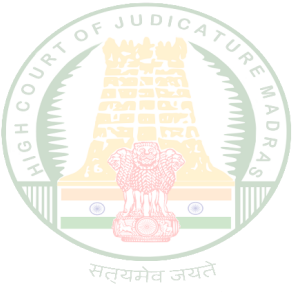


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*portions of land have been alienated by the unauthorized encroachment of the present possessors; by the clandestine collusion of local officers; and by other fraudulent means, and whereas the permanent settlement of the land tax has been made exclusive of alienated lands of every description; it is expedient that rules should be enacted for the better ascertainment of the titles of persons holding, or claiming to hold, lands exempted from the payment of revenue to Government, under grants not being Badshahie, or royal; and for fixing an assessment on such lands of that description, as may become liable to pay revenue to Government: Wherefore the following rules are enacted for that purpose".*

17. The usage of the expression "**has exercised the actual proprietary right of lands of every description**" (emphasis supplied above), in the preamble to Regulation XXXI of 1802, gave room for debate that the actual owner of the land was the East India Company and not the proprietor ie., the Zamindar, Inamdhar or the Ryot. Such a presumption was, however, quickly displaced. In the Full Bench decision of this Court in **Seshachala Chetty**, relied on by the State Government Pleader, one of the Hon'ble judges (**Sir**

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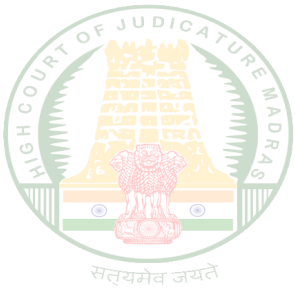
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**C.Sankaran Nair,J)** referred to G.O.Ms.No.667 dated 27.5.1856, wherein the position of the Government as regards waste lands was set out as under:

*"G.O.No.667 of the 27th May 1856: "The waste land in this country, in the villages of the plains at least, is certainly not the property of Government or the State, in the absolute sense in which the unoccupied land in the United States and some of the British colonies is so. The village communities claim an interest in it and that interest has been universally admitted though not accurately defined. To put up the waste to sale, entirely ignoring that prior right of the village communities, would be to introduce a totally new practice; and it would certainly be regarded by the common feeling of the country as an invasion of existing rights"*

18. In the judgment in the case of **Collector of Trichnopoly Vs. Lekkamani [reported in MANU/PR/0009/1874], Sir Barnes Peacock**, who delivered the opinion of the Privy Council, reiterated the above principle in the following words:

*"The object of the Reg. XXXI. of 1802 was merely the protection of the revenue from invalid*



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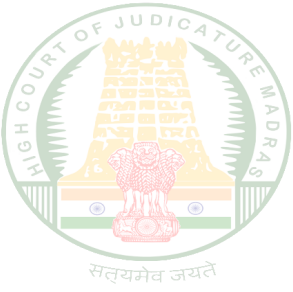


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*lakiraj grants, and to provide for the mode of trying the validity of the titles of persons claiming to hold their lands exempt from the payment of revenue; it was not intended to confer upon Government any title which did not then exist."*

19. Unfortunately, the decision in the case of **Lekkamani** was not brought to the notice of the Board when it subsequently rendered the decision in the case of **Suryanarayana Vs. Patanna [reported in 1918 Law Suit (PC) 46]** wherein it was observed as follows:

*"That is an assumption which no Court is entitled to make, and in support of which there is, so far as their Lordships are aware, no reliable evidence. That fact that rulers In India generally collected their land revenue by taking a share of the produce of the land is not by itself evidence that the soil of lands in India was not owned by them and could not be granted by them; indeed, that fact would support the contrary assumption, that the soil was vested in the riders who drew their land revenue from the soil, generally, in the shape of a share in the produce of the soil, which was not a fixed and invariable share, but depended on the will of the rulers."*



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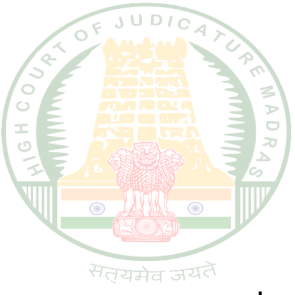
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20. The aforesaid assumption was incorrect as has been rightly pointed out by **S.Sundararaja Iyengar** in the following passage:

*"Their dictum is not warranted by either the Hindu or Mahomedan law, and the actual practice of Indian kings, Hindu and Mahomedan, was against it. Their Lordships cannot free their minds from the feudal notion of property law under which they have been trained and making the assumption which it involved that the soil was the king's, they deduce the natural corollary thereto that enjoyment of profits from land is evidence of ownership therein. This was the very assumption to correct which Regulation IV of 1822 had to be passed. The preamble to Regulation XXXI of 1802 which had been relied on has been the subject of consideration by the Privy Council in an earlier case, Collector of Trichinopoly Vs. Lekkamani in which it has been held that the wording of the preamble was not intended to declare the rights of government against ryots or landholders. But unfortunately this decision has not been brought to the notice of Their Lordships."*

21. In the aforesaid backdrop as regards ownership of lands, the decision of the Full Bench of this Court was rendered in the case of **Madathapu Ramaya**. The appellant - Ramaya, erected a platform

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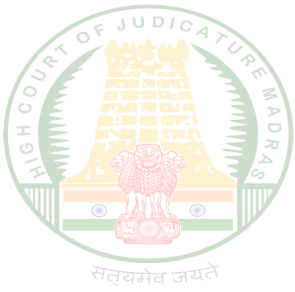
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and a shed over a portion of a path by the side of which, his house was situated and the question was whether the Government had any power to levy a prohibitory assessment against an encroacher of public property. The Full Bench held as follows :

*"These various provisions show beyond the possibility of a doubt, that the land in respect of which land revenue is exigible is vested in some person or persons other than the Crown; and that the Crown possesses nothing more than a charge (though a first charge) in respect of the revenue due to it upon the interest of such person or persons, realizable by sale thereof. They absolutely preclude the supposition that any Crown demand is recoverable as land revenue, unless it be something due from one who is a landholder as defined by the Act."*

22. In other words, it was found that the power of the Government under the law was to recover arrears of land revenue and nothing more. In the context of a prohibitory assessment for trespass to government property, it was pointed out by the **Officiating Chief Justice Sir Subhramanya Ayyar** as under:

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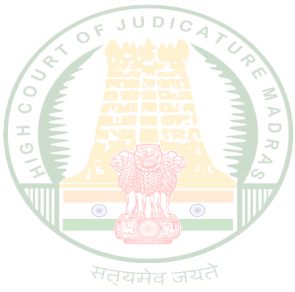
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*"this kind of assessment is professedly imposed only in cases where the land is not lawfully occupied by the party assessed; and it is to compel the immediate abandonment of such occupation that the assessment is made prohibitive. In other words it is imposed not because the party assessed is a landholder, but because he is not."*

23. The assessment was eventually quashed holding that the Government did not have any statutory power to levy a prohibitory assessment against a person, who unlawfully committed trespass on a public street. The immediate fall out of this decision was the enactment of the Act. In the decision in ***Chinnappan Chetty Vs. Secretary of State for India in Council [reported in AIR 1919 Mad 412]***, a Bench consisted of five judges of this Court observed as follows :

*"The history of the Act is well known. It was passed in consequence of a decision of this Court in Madathapu Ramaya v. The Secretary of State for India—to legalise the practice of imposing what was known as penal assessment on lands claimed by the Government and which are encroached upon by a private individual. For that purpose Sect.*

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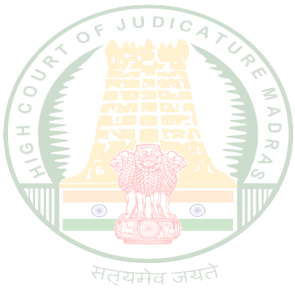
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*2 declares what shall be deemed to be the property of the Government and the rest of the Act lays down the mode of levying assessment or ejecting trespassers from Government lands."*

24. The preamble of the Act states that it is an enactment **"to provide measures for checking unauthorized occupation of lands, which are the property of Government."** It adds as follows:

*"WHEREAS it has been the practice to check the unauthorized occupation of lands which are "the property of Government by the imposition of penal or prohibitory assessment or charge, and whereas doubts have arisen as to how far such practice is authorized by law and it is expedient to make statutory provision for checking such occupation."*

25. Section 2 of the Act declares that all public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks, waters and below high water mark, and of rivers, streams, nalas, & lakes and tanks, and all back waters, canals and water-courses and all standing and flowing water, and all lands, wherever situated are the properties



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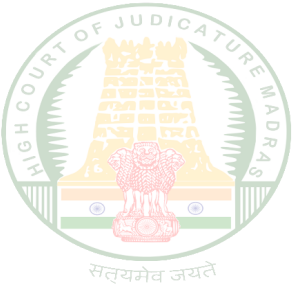
of the Government. The said declaration is made subject to 5 exceptions, with which, we are not immediately concerned. Another exception is carved out in favor of the lands which are a **"*temple site or owned as house-site or backyard.*"**

26. The effect of Section 2 of the Act was to reverse the earlier position and declare that all lands of the description set out therein, barring the exceptions, shall vest in the Government thereby enabling the State to levy penal assessment by way of B Memos under Section 3 or take recourse to eviction proceedings by issuing notice under Section 7 of the Act to the person in occupation.

### **POSITION OF GRAMA NATHAM LANDS**

27. Several judgments of this Court have extensively surveyed the position as regards grama natham lands and examined the issue as regards the application of the Act to evict persons in occupation of these lands.





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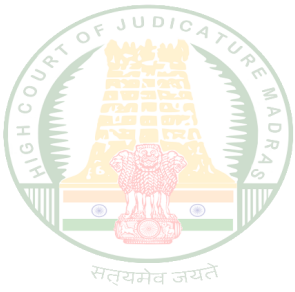
28. In the decision of this Court in the case of **Seshachala**

**Chetty**, the position of "Nattam" has been explained thus:

*"Nattam is the "site of dwellings" above referred to. It does not admit of cultivation and is exempt from assessment, not because it is unfit by nature for the plough (it is frequently cultivated licitly and illicitly) but because it is required and set apart for an indispensable purpose—the building of houses for the various members of the village community. Wherever the ownership or quasi-ownership lies, this overriding limitation is respected by both parties.*

29. The question as to whether the provisions of the Act could be made applicable to a house site situated in a land classified as grama natham came up for consideration before a learned Single Judge of this Court in the case of **Achi Kannu Ammal**. Negating the contention, it was held as follows :

*"A house-site owned by a person in what is generally known as gramathanam is not, under Madras Act III of 1905, property of the Government. Section 2 of Madras Act III 1905 says, in regard to lands which are not covered by Clauses (a) to (e) of Sub-section (1) of Section 2,*



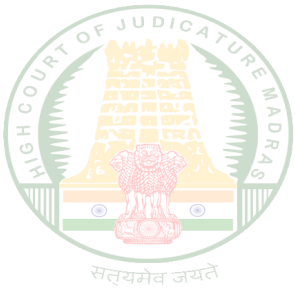
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*that those lands are and are hereby declared to be the property of the. Government, save in so far as they are temple-site or owned as house-site or backyard. In order that a land may properly be described as house-site within the meaning of that expression in Section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramamatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act III of 1905."*

30. This decision of **Subhramanyam,J** was cited and approved by a Division Bench of this Court in the case of **Kasthuri Ammal** and by **Abdul Hadi,J** in the case of **A.Sankaralingam**.

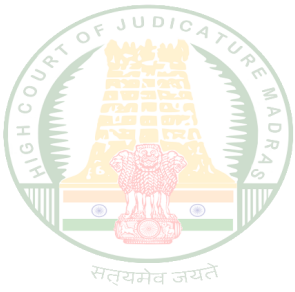


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31. However, from the earliest decisions, this Court has recognized and upheld the right of a person in occupation of a house site in a grama natham land as held in the decision in the case of ***Elumalai Chettiar Vs. Natesa Mudaliar [reported in 1906 ILR Mad. 81]*** wherein a Division Bench of this Court has observed as hereunder:

*"The facts upon which the decision of this case depends are practically undisputed. The place of land for which rent is claimed and a patta is tendered was unassessed poramboke land forming part of the gramannattam or village site. Prior to the purchase of the property by the defendant from the former occupant, there was a house on part of the land, the remainder being used as a backyard. The house came down, and since then the property has been in the occupation of the defendant under the purchase. It is not alleged that the defendant has raised any cultivation upon the land for which rent is ordinarily leviable. The District Judge talks of the land as being used as an orchard, this view being based upon the last that there are a few trees on it including a mango and a margosa tree. The existence of such trees is quite common in backyards of houses in this country and such a circumstance cannot be treated as any evidence*



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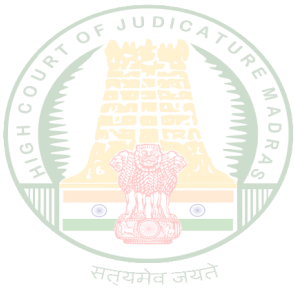
*whatsoever of the conversion of the land occupied as house-site, free of rent, into cultivated land for which rent is payable. The plaintiffs were therefore not entitled to enforce the acceptance of a patta treating the land as liable to payment of rent."*

32. This demonstrates that where persons had occupied grama natham lands and put up houses and their occupation was also recognized by the State, such portions were never regarded as vesting with the State.

33. A careful study of the precedents would show that this Court had made a distinction between an **occupied and unoccupied** grama natham. The legal position that emerges is as follows:

(a) Where the grama natham is occupied and such occupation has been recognized by the State by way of successive transfers etc., the land is the private property of the occupant.

(b) Where the land is unoccupied, the paramount title to these lands would vest in the State to be dealt with according to the Revenue Standing Orders. Unauthorized



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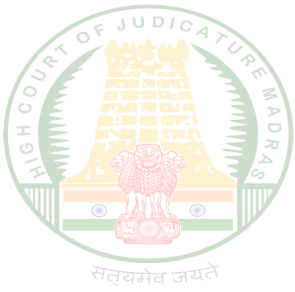
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occupation in these lands can be dealt with under the provisions of the Act.

(c) In cases where unoccupied grama natham is temporarily or recently occupied and there is no evidence of any recognition of such occupation by the State, here too the position is akin to what is set out in paragraph (b) supra. The position would also be the same in respect of an occupant of grama natham lands, against whom, the State has levied prohibitory assessment under the Act by issuing B Memos.

34. A reference to the decided cases also supports the above summation of principles. In the decision in the case of ***Ponnia Pillai Vs. Pannai Minor Sivanupandia Thevar [reported in 1947 (1) MLJ 9]***, a Division Bench consisted of ***Sir Sydney Wadsworth, O CJ and Govindarajachari, J*** had made the following observations as regards an occupied grama natham:

*"It seems to us-that the plaintiffs title to the property has been sufficiently established. Not only have the plaintiffs predecessors been dealing with these lands for a long period of years by means of registered leases and otherwise, but both the village officers have given evidence that the lands.*



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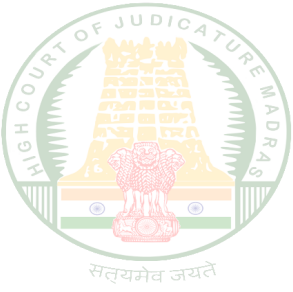
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*in question are occupied gramanatham and do not form part of the land which is at the disposal of the Government. It is also established that when certain of the defendants applied to the Tahsildar for a grant of the lands in their occupation, the Tashildar refused to make the grant on the ground that the sites which they claim were already private property.”*

35. This decision is, therefore, a clear authority for the proposition that where a grama natham land has been occupied for a sufficiently long period of time and the occupation has also been legally recognized by the State by allowing transactions to take place, it becomes a private property and it cannot then be said that those lands still vest with the State.

36. In the decision in the case of **A.K.Thillaivanam**, the facts disclose that the petitioner was in occupation of grama natham lands since 1954 and that these lands were subsequently partitioned and enjoyed by the members of his family. At no point of time, did the State assert its claim to these lands by way of B-Memo or otherwise. On these facts, it was held that the State could not enforce the

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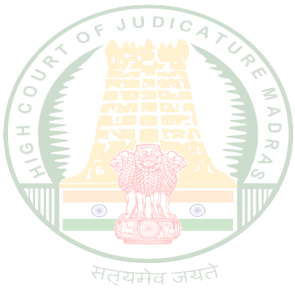
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provisions of the Act since occupied natham, legally recognized, did not vest with the State.

37. This decision was followed by **Raviraja Pandian,J** in the case of **Krishnamurthy Gounder Vs. Government of Tamil Nadu [reported in 2002 (3) CTC 221]**, which was also a case of occupied natham that had seen several transactions. It was held that the provisions of the Act could not be enforced against this type of lands.

38. In the decision in the case of **Executive Officer Vs. Swaminathan [reported in 2004 (2) MLJ 708]**, the petitioners were in occupation and enjoyment for a long time and had even been granted pattas under the natham scheme. Subsequently, the Government canceled these pattas driving the owners to approach the Courts. On these facts, the Division Bench held that the lands did not vest with the Government or Town Panchayat.

39. In the decision in the case of **Nachammal Vs. S. Murugesan [reported in 2011 (1) MWN (Civil) 712]**, a learned



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Single Judge of this Court pointed out the difference between  
**occupied and unoccupied** natham as hereunder:

*“Therefore, for an Occupied Grama Natham, the occupier and his successor-in-title become the absolute owner. For an Unoccupied Grama Natham, which is otherwise known as Natham Poramboke, it was the practice of the Government to issue assignment for the individuals and on such assignment, that person becomes the owner of the house site. The Government, as the custodian, has the right to grant such assignment. The Appellant cannot challenge the assignment, unless he proves better title.”*

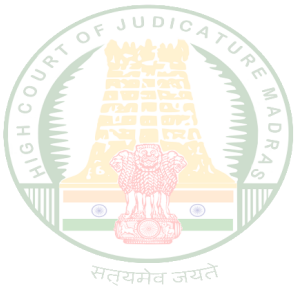
40. It is not necessary to multiply the authorities except to point out that a similar line of reasoning is seen in the decision of **V. Ramasubramanian, J (as he then was)** in the case of **A.R.Meenakshi** and the following decisions:

**(a) Dharmapuram Adhinam Mutt;**

**(b) D.Shankar;**

**(c) T.S.Ravi.** The special leave petition filed against this order by the District Collector before the Supreme Court in **SLP (Civil) No.**





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**12120 of 2019 was withdrawn by the State on 31.10.2023.**

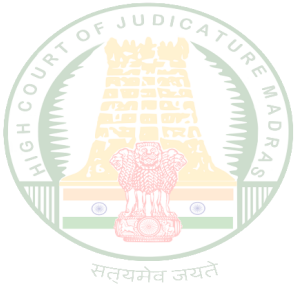
**(d) C.Lakshmanan Vs. Collector, Sivagangai [reported in 2022 SCC Online SC 576];**

**(e) A.Sacratice;**

**(f) R.A.V.Kovil Annayya Charities;**

**(g)** Recently in the decision in the case of **R.Elumalai Vs. The Commissioner of Revenue Administration [W.A.No.1263 of 2024 dated 04.7.2024]**, a Division Bench of **R.Subramanian & R.Sakthivel, JJ** has explained the distinction between occupied natham, which vests with the occupant and unoccupied natham, which vest with the Government for being distributed under RSO 21. It was further observed as follows :

*"Mr.T.K.Kulasekaran, learned counsel for the appellants would contend that the land being classified as Grama Natham, does not vest with the Government and the Government not being the paramount title-holder, is not entitled to resume the grant. The said proposition of law would apply only in cases of occupied natham lands and not unoccupied natham lands, which are assigned under RSO 21."*



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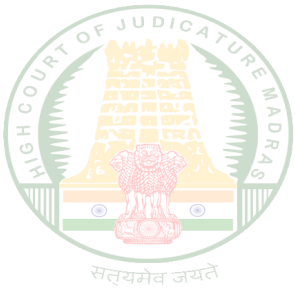


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(h) Still later in the case of **K.Veluchamy Vs. District Collector [WP(MD) No.24407 of 2024 dated 21.10.2024]**, another Division Bench consisting of **R.Subramanian and L.Victoria Gowri, JJ**, quashed the proceedings in respect of a grama natham land, observing, inter alia, as under:

*"It is settled law that Natham land cannot be classified as poramboke or classification of the Natham cannot be converted. This Court, in the long line of decisions held that the land which is used as house site or backyard does not vest in the Government. On the above view, the Government has been barred in taking proceedings under the Tamilnadu Land Encroachment Act, 1905 to remove encroachment in the lands classified as Natham. Perusal of A-Register shows that the land has been classified as Natham and it is also seen that the petitioner is in occupation of the same as his backyard and put up a cattle shed. Hence, we find that the proceedings under the land encroachment of the land are ill-conceived and they are liable to be interfered with."*

### **POSITION IN ANDHRA PRADESH**



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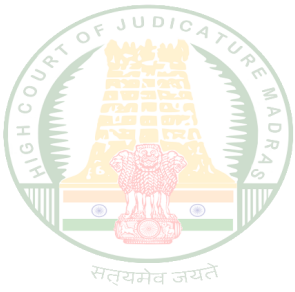
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41. (i) It may also be useful to consider the position in the neighbouring State of Andhra Pradesh, which was a part of the Madras Presidency till 1947 and thereafter a part of the State of Madras till 1953. In Andhra, the word "**natham**" is called "**kantam**" in Telugu and **grama natham** in Tamil Nadu is called **grama kantam** in the State of Andhra Pradesh. The exact position as in Tamil Nadu prevails in that State also. In the decision in the case of **Sagadapu Vijaya Vs. State of Andhra Pradesh [reported in 2015 (4) ALD 88]**, Justice **S.V.N.Bhatti (as then was)** followed the decisions of the Madras High Court adverted to above and held that the occupied grama kantam did not vest with the Government. The learned judge further observed as follows :

*"Therefore, occupied Gramakantam by its nature or classification does not belong to the Government to include the Gramakantam in the prohibitory list.*

(ii) In the decision in the case of **Karri Raghavalu Vs. Principal Secretary [reported in 2015 SCC OnLine Hyd. 692]**, Justice **S.V.N Bhatti (as then was)** once again followed the decisions of the Madras High Court to hold that the occupied grama kantam did not vest with the Government. These decisions were recently followed by

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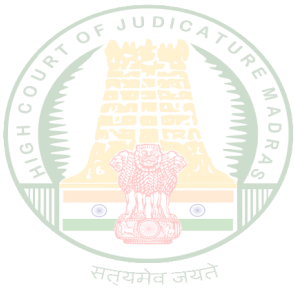
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the First Bench of the Andhra Pradesh High Court in the case of **C.B-haskar Reddy Vs. State of Andhra Pradesh [W.P.(PIL) 98 of 2021 dated 21.2.2024]**.

### **S. ANBANANTHAN'S CASE**

42. Given the overwhelming line of the authorities cited above, this Court would necessarily be bound by the law declared in these judgments. However, the attention of this Court has been drawn to a subsequent Division Bench judgment of this Court in the case of **S.Anbananthan Vs. District Collector [reported in 2024 (4) LW 431]**. According to the learned counsel for the petitioners, this decision appears to have struck a discordant note. It has, therefore, become necessary to examine this decision at some length :

(a) The facts of **Anbananthan's case** disclose that the petitioner therein had sought patta, which was rejected on the ground that the grama natham land had been reclassified as Sarcar poromboke. The learned Single Judge refused to interfere with the reclassification leading to the writ appeal. The Division Bench



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consisting of **S.M.Subramaniam and K.Rajasekar, JJ** began by observing as follows:

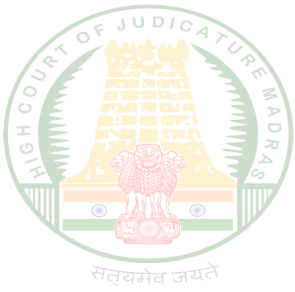
*"There are Division Bench judgments, wherein no adjudication in entirety had been made regarding the origin and history of 'Grama Natham' lands and right of the Government to regulate 'Grama Natham' lands. Those Division Bench judgments are distinguishable and cannot be applied in all cases, merely by stating that 'Grama Natham' lands do not vest with the Government. The land grabbers found a safe passage for grabbing the public lands under the guise of 'Grama Natham' land. If the anomalous situation allowed to continue, then the Government may not get lands for public purposes in future."*

(b) According to the Division Bench, :

*"In view of the ambiguities in dealing with 'Grama Natham' lands in the State of Tamil Nadu and considering the fact that there are conflicting judgments on 'Grama Natham' lands, this Bench has taken an attempt to deal with the origin and history so as to eradicate the confusion in dealing with 'Grama Natham' lands."*

(c) Having had the benefit of going through the earlier Division Bench judgments, one can only say that an exercise undertaken to **"eradicate the confusion"** has only ended up in creating more

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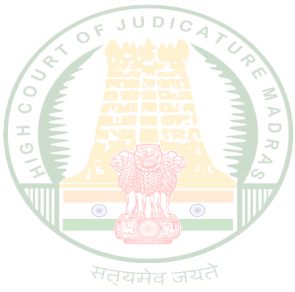
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confusion by refusing to follow the law laid down by Coordinate Benches on wholly superficial grounds. One would also regard the remark that there is "**no adjudication in entirety**" in all the earlier Division Benches of this issue as a wholly uncharitable and sanctimonious observation. Out of a sense of curiosity, this Court decided to embark on examining the sudden wisdom imparted by the Division Bench in the case of **Anbananthan**, which issue had somehow allegedly missed the attention of several eminent Judges of this Court for well over a century.

(d) A careful study of the judgments cited by the Division Bench in support of its findings would show that it has fallen foul of the well-known principle laid down in the case of **Bharat Petroleum Corporation Ltd. Vs. N.R.Vairamani [reported in 2004 (8) SCC 579]**, which is as follows:

*"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*



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(e) In the decision in the case of **Abdul Kayoom Vs. CIT [reported in AIR 1962 SC 680], Hidayatullah,J** had similarly observed:

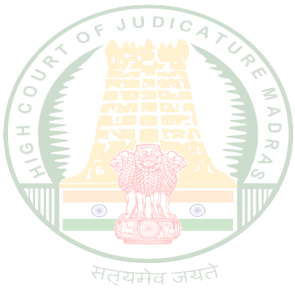
*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another."*

This can now be demonstrated.

(f) The Division Bench, at paragraph 35, has referred to Grama Natham and then stated as follows:

*"The Privy Council as early as in 1860 has held that "Private ownership not existing, the State must be owner as ultimate lord".*

(g) Though the Division Bench does not disclose the source of this observation, this Court traced it to the decision of the Privy Council in the case of **Collector of Musilipatnam Vs. Cavary Vancata Narrainappah [reported in (1859-61) 8 Moo IA 500]**. Upon examining this judgment, it was found that it was a case of escheat. The relevant observations are as under:



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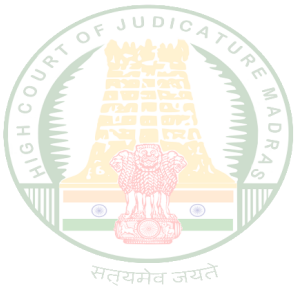
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*"According to the law administered by the Provincial Courts of British India, on the death of any owner, being absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner. This system is made the rule for Hindoos and Mahomedans by positive regulation; in other cases it rests upon the course of judicial decisions. But when it is made out clearly that by the law applicable to the last owner, there is a total failure of heirs, then the claim to the land ceases (we apprehend) to be subject to any such personal law; and as all property not dedicated to certain religious trusts must have some legal owner, and there can be, legally speaking, no unowned property, the law of escheat intervenes and prevails, and is adopted generally in all the Courts of the country alike. Private ownership not existing, the State must be owner as ultimate Lord."*

(h) An observation made in the context of lands acquired by escheat was applied by the Division Bench in the case of **Anbananthan** to grama natham lands. The error is self-evident.

(i) The next decision cited by the Division Bench is in the case of **the Collector of Godavari District on behalf of the Secretary of State for India in Council Vs. Jannavula Pedda Rengayya**





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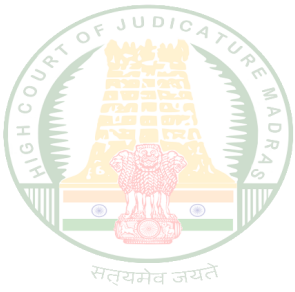
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**[reported in 1903 (4) MLT 440]**, which was followed in the case of **the Taluk Board Dindigul Vs. Venkatarama Aiyar [reported in AIR 1927 Mad. 197]**. However, a close look at the facts of these cases would reveal that they relate to **unoccupied and not occupied** natham. For instance, in the case of **Venkatarama Aiyar**, the claim made was to 2.92 acres of vacant grama natham land. The villagers claimed this as their lands whereas the Government decided that it must be assigned to the Dindigul Taluk Board to build a girl's school. The plaintiff's claim was as follows:

*"The plaintiffs are villagers, who claim that they have a right to use the whole of the vacant land (including the suit site) for various agricultural purposes and plead that the grant to the Taluk Board is consequently illegal."*

(j) Thus, the observations made in these cases also relate to unoccupied grama natham lands, which cannot be imported to occupied natham.

(k) Reference has also been made to the decision of this Court in the case of **Collector of Godavari Vs. Rangayya [reported in AIR 1929 Mad. 441]**. However, this decision also relates to the land, over which, penal assessment by way of B Memo was levied meaning



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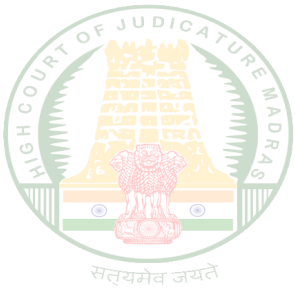
thereby that the Government had not recognized their occupation as legal at any point of time. This is clear from the following facts, which appeared from the judgment of **Jackson,J**:

*"The appellants sued the Secy. of State for a declaration that they were entitled both to a small triangle of land for which penal assessment had been levied by the defendant; and also to a shed and its site lying between this land and their house. They described the suit property as lying within the village natham. It has been found that the small triangle lies in tank poramboke and cannot be claimed by plaintiffs, and in regard to that portion the appeal is not pressed."*

In the concurring judgment, **Reilly,J** observed as follows :

*"It is admitted that for centuries, from time immemorial, the British Crown and its predecessors have had title to all unoccupied village natham. In these circumstances the plaintiffs cannot say that they have been squatting on these plots for a day or a year or for 30 years, as in this case, and that at once throws on the Crown the burden of proving that they have not been there for 60 years and that they are not entitled to the declaration for which they pray."*

(I) The proposition that unoccupied natham lands would vest in the Government as a trustee of the public for being parceled out for



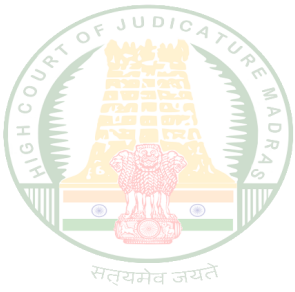
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eligible and needy applicants in accordance with the RSO's is too plain to be contested. Thus, the judgment of the Division Bench of this Court in the case of **Jayarama Naidu** is not an authority for the proposition that occupied natham/house site, which occupation has also been legally recognized, is the private property of the occupant. In fact, the Division Bench, in the case of **Anbananthan**, also agrees that this is the true legal position when it observes as follows:

*"Thus, as early as 1929, this Hon'ble Court has rightly distinguished between lands being enjoyed by individuals as houses – which are private property, and lands merely occupied as vacant lands or other uses – which remain State property and available for disposal / public use."*

(m) The Division Bench of this Court in the case of **Anbananthan** has freely quoted the decision of **Wadsworth, J** in the case of **Chinnathambi Goundan v Venkatasubramania Ayyar [reported in AIR 1939 Mad. 409]**, without noticing that it was a case of unoccupied natham as the learned Judge says **"the control of unoccupied village site vests in the proprietor whoever he may be."** This cannot be imported to a case of occupied natham as has been done by the Division Bench in the case of **Anbananthan**. As a



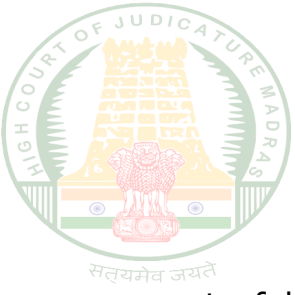
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matter of fact, in the decision in the case of **Ponnia Pillai**, a Division Bench consisted of **Wadsworth, OCJ and Govindarajachari,J** held that an occupied natham does not vest with the Government. This decision was rendered after examining the revenue officials and understanding the practice prevailing in the Presidency.

(n) Reference has also been made to a judgment of this Court in the case of **Corporation of Chennai Vs. Narasa Reddy [reported in 2012 (4) MLJ 66]** for the proposition that grama natham lands are being misused by being commercially exploited. However, as pointed out by **K.K.Sasidharan and R.Subramanian,JJ** in the case of **T.S Ravi**, it cannot be concluded from the decision in the case of **Narasa Reddy** that the construction of a shop along with residential unit in the grama natham land would result in the land losing its character as grama natham.

(o) While quashing the proceedings under the Act, the Division Bench directed the State to pay compensation to the owners of occupied grama natham lands. Interestingly, in the decision in the case of **Dr.V.Kalanidhi Vs State [W.P.Nos.7051 & 7052 of 2017 dated 15.9.2023]**, **S.M.Subramaniam,J**, as a Single Judge, refused



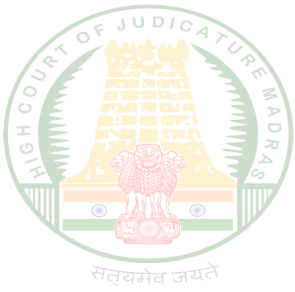
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to follow this judgment of the Division Bench on the ground that an appeal against it was admitted in the Supreme Court. The decision in the case of **Dr.V.Kalanidhi** was rendered on **15.9.2023**. In the meantime, the State of Tamil Nadu withdrew the special leave petition pending in the Supreme Court against the judgment of **K.K.Sasidharan and R.Subramanian, JJ** in **T.S.Ravi** and accepted this judgment vide order dated **31.10.2023**. Unfortunately, this fact was not brought to the notice of the Division Bench in the case of **Anbananthan**, which was decided on **15.3.2024**.

(p) According to the Division Bench, the following is the basis for distinguishing all the previous decisions, which had taken a different view from the one taken in the case of **Anbananthan**:

*"77. Though these judgments of this Hon'ble Court declares the non-vesting of grama natham with the Government, all those judgments are distinguishable to the present interpretation on the ground that there seems to be little or no decision on the legitimate ownership of grama natham lands vis-a-vis the role of Government in verifying the ownership to such lands in grama natham area to prevent the unjust/illegal encroachment and*



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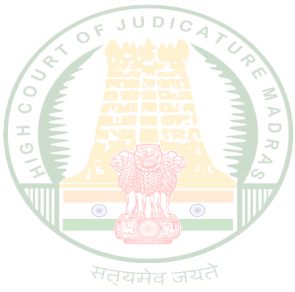
*enrichment by few individuals at the cost of society."*

(q) In a later decision, the very same Division Bench in the case of **State of Tamil Nadu Vs. Mitra Srikanth [reported in 2024 MHC 2303]**, has declared as follows :

*"8. The Division Bench of this Court in the case of S.Anbanathan (cited supra), ruled that all earlier judgments running counter to the legal principles and the Revenue Standing Orders have denuded to lose its status as precedent. Therefore, those judgments running counter to the legal principles settled in S.Anbanathan's case (cited supra) need not be followed for the purpose of dealing with the 'grama natham' lands."*

(r) These are truly surprising statements and one wonders if the Division Bench, which referred to Hobbesian anarchy, should have lost sight of another form of anarchy viz., judicial anarchy, which its decision was bound to let lose in the State as pointed out by the Supreme Court in the case of **Hari Singh Vs. State of Haryana [reported in 1993 (3) SCC 114]** as follows :

*"It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have con-*



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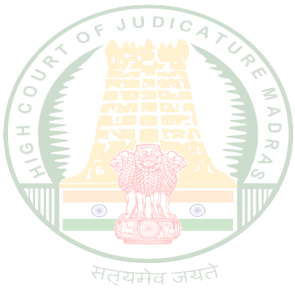
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*sistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy.”*

(s) With greatest respect for the learned Judges of the Division Bench, in attempting to distinguish precedents going back over 100 years, they appear to have overlooked the very elementary proposition of law set out by the Supreme Court in the case of **State of Gujarat Vs. R.A.Mehta [reported in 2013 (3) SCC 1]** in the following terms:

*“It is also correct to state that even if a particular issue has not been agitated earlier or a particular argument was advanced but was not considered the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced has actually been decided. The decision therefore, would not lose its authority “merely because it was badly argued, inadequately considered or fallaciously reasoned”.*

(t) Thereafter, the Division Bench, in the case of **Anbananthan,** has also gone on to observe as follows :



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*"If the rights to the vacant lands in grama natham did not vest in the State, by the very nature of the State, it will lead to a Hobbesian anarchy."*

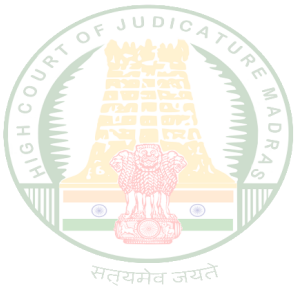
(u) The Division Bench is certainly right in holding that vacant grama natham lands vest with the Government. But, the reference to a Hobbesian anarchy appears to be some what inappropriate since the term is coined with reference to international relations and not with reference to legal relations between the menials of the Revenue Department.

### **UNDERMINING THE ORDERS OF THE CO-ORDINATE BENCHES**

(v) The principle of ***stare decisis*** is an entrenched principle in our system for the administration of justice. It provides that where a declaration of law has been recognized and enforced for a sufficiently long time, Courts are obliged to follow and enforce the same in similar cases. The principle was explained by the Supreme Court in the case of ***Waman Rao Vs. Union of India [reported in 1981 (2) SCC 362]*** in the following words:

*".....for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of long standing should have*





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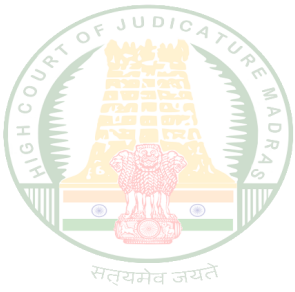
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*considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."*

(w) In the decision in the case of **Shanker Raju Vs. Union of India [reported in 2011 (2) SCC 132]**, the principle was reiterated as under:

*"It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace". The underlying*

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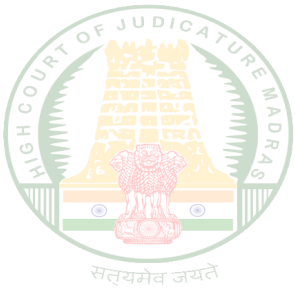
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*logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible."*

(x) As observed in the case of **Saurashtra Cement & Chemical Industries Ltd. Vs. Union of India [reported in 2001 (1) SCC 91]**, the rule of **stare decisis** is a rule of public policy and must be observed in its observance rather than in its breach to serve the people and sub-serve the ends of justice. Thus, where the law had been declared in the decisions going back to over 100 years, the Division Bench in the case of **Anbananthan** was obliged to follow the same, instead of seeking to sanctimoniously declare that those decisions of yesteryears are "**denuded to lose its status as precedent.**"

(y) Before concluding, it is necessary to point out another disturbing aspect of the decision in the case of **Anbananthan**.

(z) In the case of **Babu Vs. District Collector [W.P.(MD) Nos. 9466, 11424, 9469, 9470 & 9471 of 2021 dated 07.8.2023]**, a Division Bench consisting of **S.S.Sundar and D.Bharatha Chakravarthy, JJ** dealt with a circular dated 07.8.2015



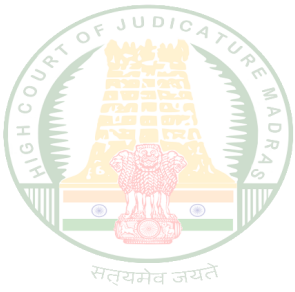
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issued by the Additional Chief Secretary/Commissioner of Land Administration - Mr.S.Nagarajan, IAS, to the effect that the lands are set apart for habitation in the villages are classified as 'Government Poromboke' and that the persons, who are recognized as owners under the natham settlement, cannot claim any right over the same. In the said circular, it is reiterated that the lands classified as natham are clearly Government lands, of course, subject to the Government's pleasure to grant house site patta to the persons in enjoyment of the said lands. This circular dated 07.8.2015, was quashed by the Division Bench with the following observations:

*"The view expressed by the then Commissioner of Land Administration is contrary to the principle settled by this Court and stated by this Court in several cases. Therefore, the circular dated 07.08.2015, is declared as unconstitutional and that therefore either for the present case or for cases which are to be decided in future, the said circular cannot be relied upon by the respondents to deny the right of ownership over the persons in enjoyment of the land classified as Natham."*

(aa) The Division Bench, in the case of **Anbananthan**, appears to have had the benefit of the guidance of the author of the circular



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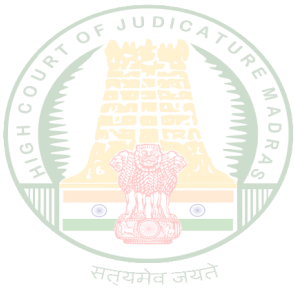
dated 07.8.2015, which is evident from paragraph 9 and it reads as follows:

*"The valuable assistance to collect the history of 'Grama Natham' lands provided by Mr.S.Nagarajan, I.A.S., former Commissioner of Land Administration, stands appreciated."*

(ab) After noting the said circular in paragraph 52, the Division Bench, in the case of **Anbananthan**, issued the following direction:

*"Procedure for dealing with residual cases of claim of natham patta –Commissioner of Land Administration may issue a fresh circular on the lines of the 07.08.2015 circular correcting the lacunae in the same."*

(ac) In other words, the Division Bench, in the case of **Abananthan**, issued a direction, which is directly in conflict with the declaration of law in the case of **Babu**. Such a direction is unheard of in the annals of this Court since it directs the Government to issue a fresh circular on the lines of an earlier circular, which has already been quashed as unconstitutional and that too by a Coordinate Division Bench. The Division Bench appears to have ignored the fact that the High Court is one institution and must speak in one voice. In matters



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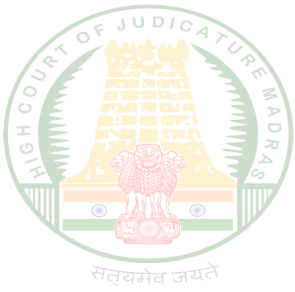
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of law, it is all the more important that the High Court is univocal and not polyvocal.

(ad) If the Division Benches of the High Court start giving contradictory directions and speak in different voices, the very edifice of the High Court, as an independent institution, will be put to peril. It is very unfortunate that the Division Bench, in the case of **Anbananthan**, has thrown all the norms of judicial propriety to the winds and has virtually directed the State to flout the orders of the earlier Division Bench in the case of **Babu** by issuing a fresh circular on the lines of an earlier circular, which had been declared unconstitutional. In the considered opinion of this Court, such a direction could not have been issued by a Coordinate Bench ignoring a declaration of law made by an earlier Division Bench.

(ae) Consequently, the directions of the Division Bench, in the case of **Anbananthan**, in paragraph 79(4), are wholly void and must be disregarded as one without jurisdiction.

43. This Court did ponder on the necessity of making a reference to a Larger bench in view of **Anbananthan's** case. However, given the



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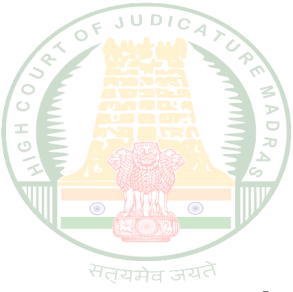
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fact that the Division Bench, in the case of **Anbananthan**, has refused to follow the binding precedents, the question is whether the said decision can be regarded as per incuriam.

44. In the decision in the case of **Union of India Vs. Raghubir Singh [reported in 1989 (2) SCC 754]**, the Supreme Court has observed as follows :

*"It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges."*

45. It would, thus, be clear that it is not open to a Division Bench to disregard let alone circumvent the law declared by the earlier Division Benches on a question of law. Further, guidance is available in the decision in the case of **Sundeep Kumar Bafna Vs. State of**



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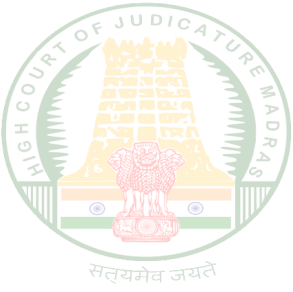
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**Maharashtra [reported in 2014 (16) SCC 623]** wherein it was held

as follows:

*"A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."*

46. Thus, applying the aforesaid test, to the extent that the decision in the case of **Anbananthan** claims to take a different view from the decisions of the earlier Division Benches by disregarding them, it must follow that the decision of the Division Bench in the case of **Anbananthan** is clearly rendered per incuriam.



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47. Lastly, in the decision in the case of **Rattiram Vs. State of M.P. [reported in 2012 (4) SCC 516]**, the Supreme Court has reiterated that a later Division Bench cannot topple the law laid down by the earlier Division Benches by disregarding them. It was observed as follows:

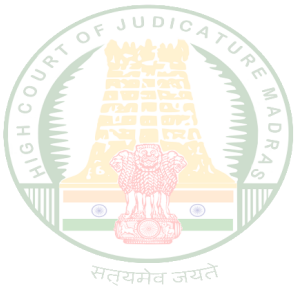
*"27. ... '8. ... The Division Bench of the High Court in Municipal Corpn., Indore v. Ratnaprabha Dhanda [Municipal Corpn., Indore v. Ratnaprabha Dhanda, 1988 SCC OnLine MP 116 : 1989 MP LJ 20] was clearly in error in taking the view that the decision of this Court in Ratnaprabha [Municipal Corpn., Indore v. Ratnaprabha, (1976) 4 SCC 622] was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. ...' (Indian Oil Corpn. case [Indian Oil Corpn. Ltd. v. Municipal Corpn., (1995) 4 SCC 96] , SCC p. 100, para 8)"*

### CONCLUSIONS

48. From a reading of the precedents, the following conclusions emerge:

*"(i) Where the grama natham land is occupied and such occupation has been*





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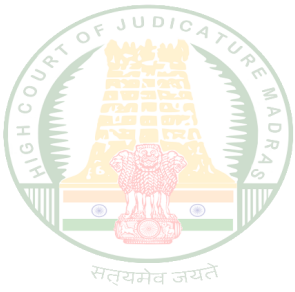
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*recognized by the State by way of successive transfers etc., the land is the private property of the occupant. Such lands cannot be regarded as Government property nor can they be regarded as encroachments by virtue of the exception contained in Section 2 of the Act.*

*(ii) By virtue of the decision in the case of **T.S.Ravi**, the reclassification of grama natham, which is occupied, cannot be done, as the State cannot deprive the rights acquired by the citizen by reclassifying such property. The State of Tamil Nadu is bound by the law declared in the said decision, which it has accepted by withdrawing the appeals filed against the said judgment before the Supreme Court in **S.L.P.(Civil) No.12210 of 2019 on 31.10.2023.***

*(iii) Where the land is unoccupied, the paramount title to these lands would vest in the State, in public trust, to be dealt with according to the Revenue Standing Orders.*

*(iv) In cases where unoccupied grama natham is temporarily or recently occupied and there is no evidence of any recognition of such occupation by the State, here too the position is akin to what is set out in paragraph 48(iii)*



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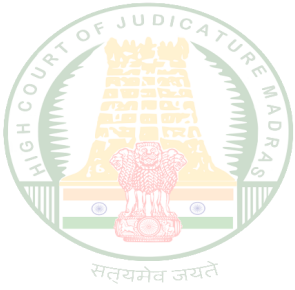
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*supra*. The position would also be the same in respect of an occupant of grama natham lands, against whom, the State has levied prohibitory assessment under the Act by issuing B Memos.

(v) Persons in unauthorized occupation or encroachers of unoccupied grama natham may be evicted through the mechanism of the Act namely the Land Encroachment Act, 1905.

(vi) The circular dated 07.8.2015 issued by the then Additional Commissioner for Land Administration has been quashed by a Division Bench in the case of **Babu**. Consequently, the State is bound to respect the declaration of law and any attempt to resurrect the said circular would be viewed seriously and this Court would not hesitate to initiate proceedings for contempt against the Commissioner of Land Administration if such attempts are made to indirectly interfere in the administration of justice by undermining a series of judicial orders.

(vii) The Commissioner for Land Administration shall issue a circular in line with the conclusions set out *supra*, in paragraph 48(i) to (v). The circular shall further instruct that the concerned Revenue Authorities will



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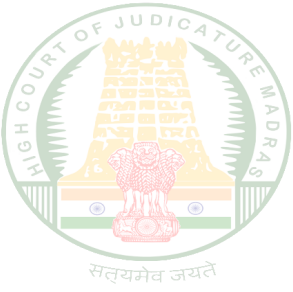
*now be required to examine an application for patta in respect of grama natham lands by applying the guidelines contained in the circular to be issued. The needful be done by the Commissioner for Land Administration within a period of 4 weeks from the date of receipt of a copy of this order."*

### **FINAL DIRECTIONS**

#### **WP.No.4936 of 2025 :**

49. (i) In this case, it is seen from the records that the family of the petitioner has been in occupation and enjoyment since 1951 vide partition deed dated 20.8.1951. An application for patta was made and a report was called for from the concerned Revenue Tahsildar, who also recommended for the grant of patta. However, the Commissioner of Land Administration, Chennai-5, vide proceedings dated 12.2.2021, rejected the claim made by the petitioner. This order was set aside in W.P.No.20715 of 2024 by an order dated 31.7.2024. In the second round, the Revenue Tahsildar has rejected the claim of the petitioner on the ground that he does not have power to issue patta for grama natham lands beyond three cents.

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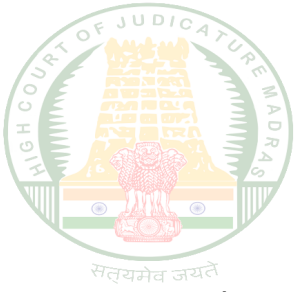
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(ii) In the considered view of this Court, the ceiling of 3 cents prescribed under the RSO is applicable only to assignment of unoccupied natham and not for occupied natham, which, as held above, is the private property of the occupant.

(iii) Consequently, the writ petition is allowed and the impugned order dated 31.12.2024 is set aside and there shall be a direction to the 3<sup>rd</sup> respondent to conduct an inquiry and ascertain the grama natham lands actually in possession and enjoyment of the petitioner and his family as per the partition deed dated 20.8.1951 and issue patta for the said extent. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is closed.

**W.P.Nos.6015, 6514 & 6795 of 2025 :**

50. (i) In these cases, the petitioners claim to be in occupation and enjoyment of gramanatham lands for over 30 years. In W.P.No. 6795 of 2025, patta was granted in favor of the petitioner's mother-in-law in 1995. It is the case of the petitioner that after marriage, the petitioner had constructed a house in the northern side of his mother-in-law's property and sought for patta in respect of this extent. In all



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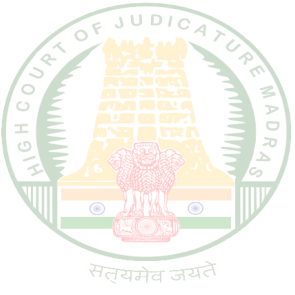
these cases, though the representations have been made, no action has been taken on them. As a result, the writ petitioners are before this Court.

(ii) Accordingly, these writ petitions are disposed of directing the concerned Tahsildars to act on the representations of the respective petitioner and ascertain the grama natham lands that are actually in possession and enjoyment of the respective petitioner. After ascertaining that these lands are occupied natham, the concerned Tahsildar shall issue patta for the aforesaid extents if there is no other impediment.

(iii) In other words, the Tahsildars need not reject the application for the issuance of patta only on the ground that the land is classified as grama natham or by citing the ceiling limits in the RSO, since those limits relate to "**unoccupied**" and "**not occupied**" natham. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

51. List on **28.4.2025** under the caption 'for reporting compliance' of the directions issued in paragraph 48(vii).

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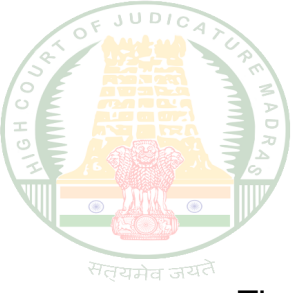
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Index : Yes  
Neutral Citation : Yes

To

- 1.The District Collector,  
Krishnagiri District, Krishnagiri.
- 2.The District Revenue Officer,  
Collector Office, Krishnagiri,  
Krishnagiri District.
- 3.The Revenue Tahsildar,  
Tenkanikottai Taluk,  
Krishnagiri District.
- 4.The District Collector,  
Tirupur District.
- 5.The Revenue Tahsildar,  
Revenue Tahsildar Office,  
Madathukulam.
- 6.The Village Administrative  
Officer, Kadathur Village,  
Tirupur District.
- 7.The District Collector,  
Tiruvannamalai District.
- 8.The District Revenue Officer,  
Tiruvannamalai District.
- 9.The Revenue Divisional Officer,

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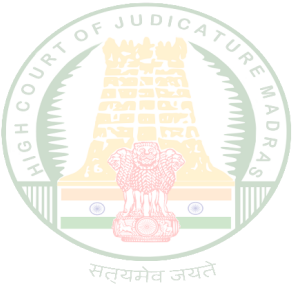
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Tiruvannamalai.

10.The Tahsildar, Tiruvannamalai  
Taluk, Tiruvannamalai District.

11.The Tahsildar, Tahsildar Office,  
Kangeyam, Tiruppur District.

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N.ANAND VENKATESH,J

RS

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