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W.P. (MD) No.26554/2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
24.09.2026	16.10.2026

CORAM

**THE HONOURABLE MR. JUSTICE M.DHANDAPANI
AND
THE HONOURABLE MR. JUSTICE N.DILIPKUMAR**



W.P. (MD) NO. 26554 OF 2023

CNR:{HCMD011229912023}

AND

W.M.P. (MD) NOS.22828, 22830 & 25891 OF 2023

K.Mathavan Pillai (Decd.)

1. Nagammal
2. Sreevalli
3. Pradeep

.. Petitioners

(P-1 to P-3 substituted vide order
Of Court dated 24.9.2026 in WMP
(MD) No.25891/2023)

- Vs -

1. The Secretary to Government
Revenue Department
Government of Tamil Nadu, Chennai.
2. The Commissioner of Land Administration
Chepauk, Chennai 600 005.
3. The Commissioner of Revenue
Administration & Disaster Management
Chepauk, Chennai 600 005.



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4. The Commissioner of Survey & Settlement
Chepauk, Chennai 600 005.
5. The Commissioner of Land Reforms
Chepauk, Chennai 600 005.
6. The District Collector
Kanyakumari District.
7. The District Revenue Officer
Nagercoil, Kanyakumari District.
8. The Revenue Divisional Officer
Padmanabhapuram, Thakkalai
Kanyakumari District.
9. The Tahsildar
Kalkulam Taluk
Kanyakumari District.
10. The Commissioner
Padmanabhapuram Municipality
Thakkalai, Kanyakumari District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Declaration declaring that Revenue Standing Order 26 as amended by the Government Order in G.O. (1D) No.568, Revenue (Ni.Mu.3.3) Department dated 23.10.2000 approving the proposal in Roc. No.24348/98 Q dated 01.07.1998 addressed to the first respondent relying upon B.P. Prem 1039 (E) dated 26.07.1966 as *ultra vires* the Constitution of India and consequentially strike down the same.



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For Petitioners : Mr. N.Gurusamy
For Respondents : Mr. Abdul Hameed, AAG
Assisted by Mr.G.Mohan Kumar,
AGP for RR-1 to 9
No Appearance for R-10

ORDER

M.DHANDAPANI, J.

Assailing RSO 26 (15) as amended by G.O. (1D) No.568, Revenue (Ni.Mu.3.3) Department dated 23.10.2000 approving the proposal in Roc. No.24348/98Q dated 01.07.1998 as *ultra vires* the Constitution, the present writ petition has been filed to strike down the said amended provision.

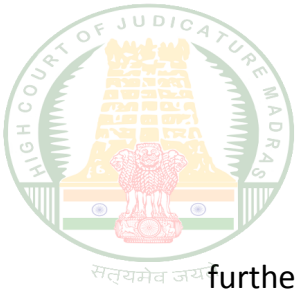
2. It is the case of the petitioners that the subject property in New Survey No.C6/74, Kalkulam Village, Kalkulam Taluk, Kanyakumar District had been classified as 'Nilaviyal Santhu' in the revenue records standing in the name of Koonakani Pillai, the father of the deceased petitioner. The subject property is situated north of the property in Survey No.C6/75 and both the properties, it is averred, belonged to the father of the deceased petitioner. By a Will, the father of the deceased petitioner bequeathed the properties in favour of his three sons, viz., Mathavan Pillai (deceased petitioner), Radhakrishnan and Velayutham Pillai. After the demise of their father, the subject properties devolved on all his sons.



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3. It is the further averment of the petitioners that a suit for partition in O.S. No.111 of 2001 on the file of the Subordinate Court, Padmanabhapuram, was filed by the brothers of the deceased petitioner for partition and in the said suit an Advocate Commissioner was appointed, who inspected the properties and filed a report. It is further averred that the subject property in Survey No.C6/74 had been carved out for the beneficial enjoyment of all the co-sharers of the property in S. No.C6/75 and the subject property had been classified as 'Nilaviyal Santhu' in the revenue records only to the manner of its usage. It is the further averment of the petitioner that the said land will never vest with the Government or the local authority and that they will have no right whatsoever over the subject property.

4. It is further averred that the land in S. No.C6/75 belongs to the petitioners neighbours and the said neighbours filed suit in O.S. No.66/2018 on the file of the District Munsif Court, Padmanabhapuram against the deceased petitioner and the 10th respondent praying for a decree for permanent injunction restraining the petitioner and the 10th respondent from putting up any construction in S. No.C6/74, but no interim was granted pending the suit. It is the



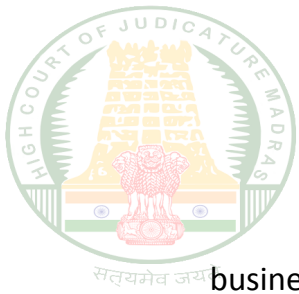
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further averred that a memo was filed in the suit alleging that the subject property is a Government poramboke land and that the petitioner has encroached upon the same and against the same, it was submitted that a writ petition was to be filed before this court to remove the encroachment and, therefore, liberty was sought for to withdraw the suit and file a writ petition and the trial court, recording the same, by order dated 10.08.2023 dismissed the suit as withdrawn.

5. It is further averred that based on the said liberty, W.P. (MD) No.20876/2023 was filed seeking removal of the encroachment made in S. No.C6/74 and also referring to certain orders passed by the Division Bench of this court to the effect that Nilaviyal Santhu is a Government poramboke.

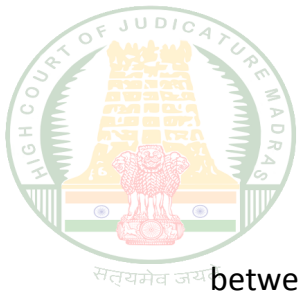
6. It is the further averment of the petitioner that Tamil Nadu Board of Revenue Act, 1894 was enacted to provide for the conduct of business by the Board of Revenue. 8. Before the Board of Revenue Act came into force, the business of the Government regarding revenue matters were carried out in accordance with Regulations I of 1803 and Regulations V of 1804. The Regulations empowered the Board of Revenue to declare what portion of the



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business may be done by a single member or by two members or by the decision of the collective board. These declarations are only executive orders. These declarations were referred as Board Proceedings. By these Board Proceedings, the Board of Revenue declared the procedure to be adopted by the officials handling the revenue arm of the Government, which gave rise to the Board Standing Orders/Revenue Standing Orders.

7. It is the further averred that Tamil Nadu Board of Revenue Abolition Act, 1980 was enacted repealing the Tamil Nadu Board of Revenue Act, 1894 in and by which the powers exercised by the Board of Revenue were conferred upon the Government, Commissioner, Additional Secretary to Government and District Collector. The Section 10 (2) of the Act provides that the Standing Orders of the Board of Revenue as in force on the date of the commencement of this Act shall, on and from the said date, be called Revenue Standing Orders" and continue in force until altered, amended or rescinded by the Commissioner or the Government, as the case may be. It is further averred that these executive orders cannot take away any substantive rights of a person guaranteed under the Constitution of India or any other law enacted by the Parliament or the State Legislature. It is the further averment of the petitioner that if there is a conflict

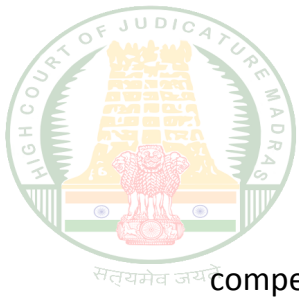


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between a Revenue Standing Order and substantive provisions of law, the substantive law alone will prevail over the Revenue Standing Orders. A Revenue Standing Order cannot take away a vested substantive right and cannot confer such a right also. It is purely procedural based on the long experience.

8. It is the further averment of the petitioner that the decisions, which were relied on in which it has been held that 'Nilaviyal Santhu' is a Government poramboke is directly in conflict with the substantive law on the Transfer of Property Act, 1882 and Article 300A of the Constitution. It is the averment of the petitioner that RSO 26 (15) proceeds on the premise that a plan-marked channel or pathway running in a patta land is a Government land and on that score, if the abovesaid RSO is allowed to survive, then there would be no necessity for the Government to invoke land acquisition to acquire lands from individuals as the Revenue Department can merely mark details of channel or pathway in patta lands in the survey sketches/field maps and later can claim the land as Government land.

9. It is the further averment of the petitioner RSO 26 (15) is illegal and unlawful as it runs counter to the Constitution, laws and the statute and the



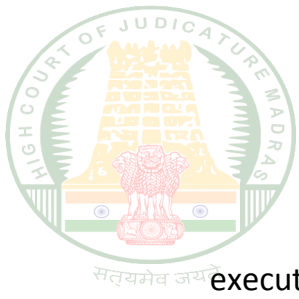
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competence of the Government to bring the said Revenue Standing Orders, more particularly RSO 26 (15) have not been considered by the earlier Division Benches in the said decision and the said RSO 26 (15) is *per se* illegal and against the constitutional mandate and, therefore, deserves to be struck down for which the present petition has been filed before this Court.

10. Basing his submission on the averments made in the affidavit filed in support of the petition, learned counsel for the petitioners submitted that the extraordinary jurisdiction under Article 226 has been invoked by way of the writ of Declaration making a challenge in rem against an executive Government Order, that purports to convert private patta land into state-owned domain in and by which the executive administrative manuals subvert constitutional property guarantees and bypass statutory eminent domain.

11. It is the further submission of the learned counsel that Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law, wherein the term "law" strictly denotes an enactment passed by a competent Legislature, whereas Revenue Standing Order 26(15) as introduced / amended via G.O. (ID) No. 568 dated 23/10/2000 is merely an

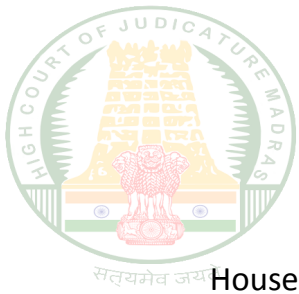


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executive administrative instruction and not a legislative statute, consequently making it legally impermissible for the executive to deploy RSO 26(15) to treat a validly assessed private patta survey subdivision like Survey No. C6/74 as government property or authorize summary eviction.

12. It is the further submission of the learned counsel that Section 10(2) of the Tamil Nadu Board of Revenue Abolition Act, 1980 (Act 36 of 1980) merely provides that pre-existing Board Standing Orders shall continue as "Revenue Standing Orders" until altered, amended, or rescinded, representing a transitional savings / continuity clause intended to prevent an administrative vacuum upon the abolition of the Board of Revenue, which does not confer legislative delegation upon the Government or Commissioner to invent or sustain a substantive rule that divests citizens of vested private property title or rewrites real property laws.

13. It is the further submission of the learned counsel that Section 9 of the Tamil Nadu Board of Revenue Abolition Act, 1980 delegates rule-making power to the Government to carry out the purposes of the Act subject to mandatory publication in the Tamil Nadu Government Gazette and tabling before both

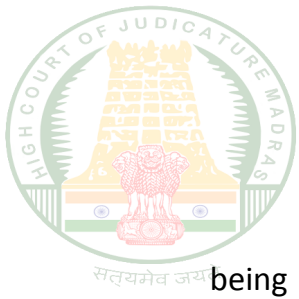


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Houses of the State Legislature, requiring any foundational alteration to revenue or property classification affecting rights across the State has to adhere to this rule-making discipline. However, bypassing the safeguards provided u/s 9 procedural via an executive G.O. renders the modification *ultra vires*.

14. It is the further submission of the learned counsel that Act III of 1905 (Tamil Nadu Land Encroachment Act, 1905) and the broader scheme of RSO 26 govern summary eviction strictly from Government lands / porambokes vesting in the State, whereas sub-rule (15) introduces an illegal jurisdictional contradiction by asserting that a plan-marked channel or pathway running inside a private patta land is "Government land," which an executive standing order cannot achieve because it cannot disassemble the private patta subdivisions through administrative cartographic fiction, which if permitted, violates the the parent statutory jurisdictional boundary.

15. It is the further submission of the learned counsel that RSO 26(1) provides the jurisdictional threshold for the entire chapter, confining eviction and penal mechanisms strictly to encroachment upon Government land and such



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being the case, through sub-rule (15) the foundational jurisdictional boundary established under RSO 26(1) cannot be violated.

16. It is the further submission of the learned counsel that Sections 8 (2) and (3) of the Tamil Nadu Land Encroachment Act, 1905 mandate that all rules and orders made under the Act must be published in the Official Gazette and placed before both Houses of the State Legislature, subjecting them to modification or annulment. However, the impugned amendment in G.O. (1D) No. 568 dated 23/10/2000 was never published in the Gazette and never placed before the Legislature, which completely lacks statutory mandate.

17. It is the further submission of the learned counsel that Section 7 of the Tamil Nadu General Clauses Act, 1891 prescribes mandatory procedural safeguards for rules made after previous publication, including publication of draft rules, notice specifying a date for objections, consideration of public suggestions, and Gazette publication as conclusive proof of due making, meaning the impugned G.O. completely bypassed previous publication and public consultation, making the sub-rule a procedural and substantive nullity.



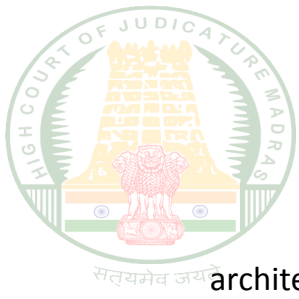
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18. It is further submitted that substantive private property rights flow from registered documents such as the father's registered Will dated 22.01.1986 and civil court partition adjudications in O.S. No. 111 of 2001 on the file of the Subordinate Court, Padmanabhapuram, supported by Advocate Commissioner reports and sketches clearly delineating Survey Nos. 75 and 74, whereas revenue survey sketch notations or labels like "Nilaviyal Santhu" are strictly for fiscal/identification purposes and neither confer title on the State nor extinguish vested private co-sharer title.

19. It is the further submission of the learned counsel that reclassifying or treating a recognized, tax-assessed private patta survey subdivision as "Government land" via RSO 26(15) violates the doctrine of legitimate expectation and Article 14 of the Constitution of India as citizens who have enjoyed property under valid registered instruments and civil partition decrees hold a legitimate expectation that settled title will not be arbitrarily uprooted by executive manual fiat.

20. It is the further submission of the learned counsel that permitting RSO 26(15) to treat private patta land as State property subverts the constitutional



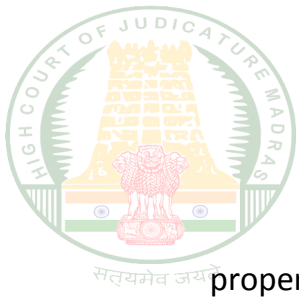
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architecture of eminent domain, because if public access or a pathway is needed over private holdings, the State is bound by statutory acquisition and compensation mandates, and an executive standing order cannot serve as a shortcut to expropriation.

21. It is the further submission of the learned counsel that u/s 4 of the Indian Easements Act, 1882, an easement is a statutorily defined right which the owner or occupier of certain land possesses for the beneficial enjoyment of the land to do and continue to do something or to prevent and continue to prevent something being done in or upon or in respect of certain other land not his own. It is the further submission of the learned counsel that disputed questions of fact with regard to easmentary rights between the land owner and private neighbour cannot be adjudicated under Article 226 and must be decided exclusively by a competent civil court after full trial and therefore the Revenue Department cannot act as an easement or civil tribunal under the garb of RSO 26 (15).

22. Therefore, in fine, it is submitted that measured against Article 300A, Section 10(2) of the 1980 Abolition Act, Section 9 of the 1980 Act, Section 8 of the 1905 Act, Section 7 of the General Clauses Act, RSO 26(1), and fundamental

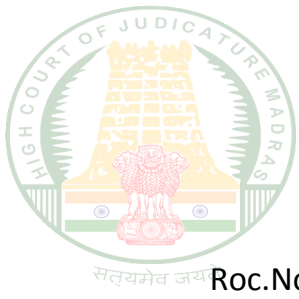


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property jurisprudence, RSO 26(15) insofar as it annexes private patta land is unconstitutional, *ultra vires* and *ab initio void*.

23. Per contra, learned Addl. Advocate General appearing for the respondents submit that the petitioner's grievance essentially arises out of the treatment of Survey No.C6/74, Kalkulam Village, as a plan-marked pathway/Nilaviyal Santhu during 1967 settlement period and the consequential recent action taken by the revenue authorities for protecting the pathway from obstruction or encroachment. It is further submitted that the validity of RSO 26(15) and the question whether the particular property in Survey No.C6/74 answers the description contemplated by the said provision are two distinct questions. A dispute regarding the application of a provision to a particular property cannot by itself establish that the provision is constitutionally or statutorily invalid.

24. It is the further submission of the learned Addl. Advocate General that the challenge to RSO 26 (15) is highly belated, as RSO 26 (15) has its immediate statutory and administrative history in the amendment process undertaken pursuant to the letter of the Commissioner of Land Administration in

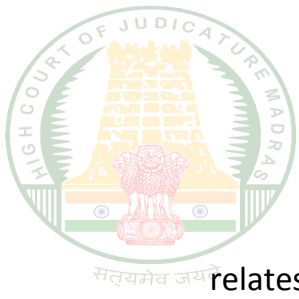


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Roc.No.24348/98 dated 01.07.1998, followed by Government approval in G.O. (1D) No.568. Revenue Department, dated 23.10.2000. The provision has therefore been in force for more than two decades before the filing of the present writ petition in the year 2023. The underlying revenue treatment of plan-marked pathways is much older and can be traced to the earlier Board proceedings, including B.P.Mis.No.894 dated 30.05.1922 and the subsequent proceedings culminating in B. P.Perm. 1039(E) dated 26.07.1966.

25. It is the further submission of the learned Addl. Advocate General that the petitioner has not furnished any satisfactory explanation for the extraordinary delay in either challenging the classification or challenging the validity of a provision which has remained part of the revenue administration for several decades. A subsequent dispute concerning the use or protection of a particular pathway cannot, by itself, revive a stale challenge to the validity of the provision itself. The petitioner may challenge a particular action, if otherwise permissible in law, but such subsequent action cannot automatically furnish a fresh cause of action to invalidate a long-standing statutory or administrative provision. It is further submitted that the petitioner has sought for an in-rem declaration striking down RSO 26 as amended, whereas the factual controversy



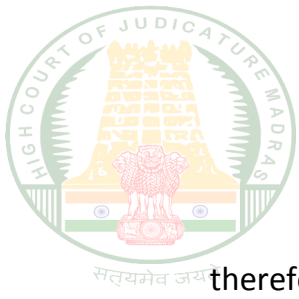
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relates to one specific property, namely Survey No.C6/74 to an extent of 40 sq.meters. The Court is therefore required to distinguish between the legality of the provision generally and the factual question as to whether the particular land in C6/74 is a plan-marked/public pathway to which the provision applies.

26. It is further submitted that petitioner himself relies upon the patta, the Will, partition proceedings and other documents to establish his private claim over the property. Those are essentially questions concerning the title and character of the particular property, which are disputed questions relating to facts, which cannot be challenged to strike down the provision of RSO 26 (15). It is therefore the submission of the learned Addl. Advocate General that the attempt to invalidate RSO 26 (15) at the threshold is liable to be rejected on the ground that it is stale and proper-specific grievance.

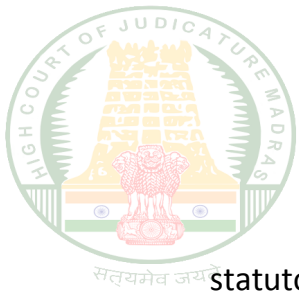
27. It is the further submission of the learned Addl. Advocate General, tracing the historical background relating to RSO 26 (15) as also the treatment of plan marked pathways, submitted that the settlement/resurvey record shows the existing physical and functional character of the land as a pathway and recognised it by recording it during the settlement/resurvey process. It is



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therefore submitted that the classification as "Nilaviyal Santhu" is relevant as official recognition of an existing pathway and not as the sole source by which the pathway came into existence. It is further submitted that the length and continuous public use of a land as pathway determines the character of a pathway. Long-standing public use is evidence of the existing public character of the pathway, particularly where such use is supported by the survey records, settlement records and the historical revenue treatment of plan-marked pathways. The Board proceedings and the present revenue records therefore have to be read together.

28. It is further submitted that once the land is established on the relevant factual and revenue materials to be a public path, Section 2 of the Tamil Nadu Land Encroachment Act, 1905 assumes significance. The provision expressly deals with public roads, streets, lanes and paths and provides the statutory basis for treating such public ways as Government property, subject to the qualifications contained in the provision. It is therefore submitted that it is not the case that RSO 26(15), by itself, converts an otherwise private property into Government property. The case is that the land comprised in Survey No.C6/74 has a pre-existing and independently recognised character as a public pathway and that the



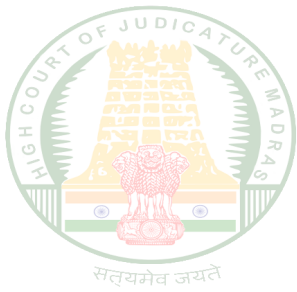
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statutory framework, including Section 2 of the Land Encroachment Act and the Revenue Standing Orders, seeks to recognise and protect that character.

29. It is further submitted that continuation of patta in the name of the petitioners does not by itself negate the public character of S. No.C6/74. The character of a particular portion of the land determines the use of the land and patta entry cannot, by itself, conclude the character of a particular portion of land. It is submitted that when S. No.C6/74 has been classified as 'Nilaviyal Santhu' way back in the year 1967 and had been physically used as a pathway by one and all even prior to the said year, merely because the patta stands in the name of the petitioner cannot be the basis to determine the character of the land, when the entire revenue and factual records speak otherwise.

30. It is the further submission of the learned Addl. Advocate General that the contention of the petitioner that RSO 26(1) concerns only Government land and it cannot support the operation of RSO 26(15) in respect of a pathway which is situated within a patta holding, is wholly erroneous as the two provisions should not be read in isolation or in a manner which renders the specific provision concerning plan-marked pathways meaningless.



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31. It is further submitted that RSO 26(15) specifically addresses a plan-marked channel or pathway running through patta land and its very purpose is to deal with the special situation where a public pathway detail exists within a larger survey holding. It is submitted that in the present case, the plan-marked channel or pathway is supported by the separate survey identity, Nilaviyal Santhu Classification, historical use and recognition of the existing public pathway in C6/74 during settlement.

32. It is further submitted that the contention of the petitioner by relying upon Section 9 RSO 26 (15) ought to have been laid before the Legislature is wholly misconceived as the said procedure is applicable to statutory rules, including publication. It is further submitted that the objection raised by the petitioners as above proceeds on the assumption that the amendment to RSO 26 was an exercise of the rule-making power under Section 9 but it is on the basis of Section 10(2), which specifically provides for the continuance and alteration, amendment or the requirements applicable to the making of rules under Section 9 and rescission of the existing Revenue Standing Orders and it cannot be mechanically imported into an amendment of an existing Revenue Standing



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10(2).

Order undertaken under the specific statutory mechanism contained in Section 10(2).

33. It is the further submission of the learned Addl. Advocate General that the constitutional challenge mounted by the petitioner founded upon Article 300A, on the premise that RSO 26(15) enables the State to convert patta land into Government land without acquisition and payment of compensation is grossly flawed. It is submitted that RSO 26 (15) is not an acquisition notification as it does not purport to acquire or appropriate property, or transfer a private title to Government. The respondents' case is based upon the pre-existing public character of the plan-marked pathway and the statutory treatment applicable to public paths.

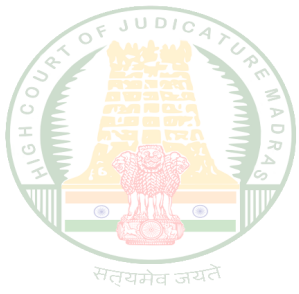
34. It is further submitted that the constitutional question therefore cannot be decided on the assumption that RSO 26(15) itself is the source by which the State acquires private property. If a person establishes an independent and legally enforceable title over a particular portion of land and alleges an unlawful deprivation contrary to Article 300A, that individual question has to be considered on its own facts and in accordance with the appropriate



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legal remedy and it cannot be said that the general Standing Order dealing with plan-marked public pathways is unconstitutional.

35. It is further submitted that the constitutional protection against deprivation of property does not prevent the State from protecting and administering a public pathway whose character is established from the existing survey, settlement and revenue records and its recognised public use. In the present case, the respondents do not contend that RSO 26(15) itself cancelled the patta or transferred the petitioner's property to the Government. The character of Survey No.C6/74 had already been identified as a plan-marked pathway even prior to the impugned amendment. As a ryot the petitioners' right, if any, is subjective to the right of pathway which exists and runs with the land. Once the land is established to be a public path by long usage through survey and settlement records, Section 2 of the Tamil Nadu Land Encroachment Act, 1905, provides the statutory consequence applicable to such public paths. RSO 26(15) therefore operates for protecting such plan-marked pathways as part of the administrative framework governing its usage and cannot be characterised as an acquisition or deprivation of property.



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36. It is further submitted that the challenge under Article 14 also proceeds on an incorrect premise. RSO 26(15) does not arbitrarily distinguish between identifiable category, namely plan-marked channels and pathways similarly situated private landholders. It addresses a specific and identifiable category, viz., plan marked channels and pathways which serve public or Government interests and whose obstruction or diversion affects the use for which the pathway exists. Further, the classification has a rational connection with the object of protecting public access and preserving plan-marked public pathways. The petitioner's property is not being treated differently merely because it belongs to an individual. It is being dealt with on account of the particular character attributed to C6/74 in the survey and revenue records.

37. It is further submitted that the plea of legitimate expectation also cannot confer upon the petitioner a substantive right to obstruct or appropriate a pathway which has historically been recognised and used for public access. A legitimate expectation cannot override the statutory and revenue framework governing public pathways. It is therefore submitted that neither Article 14 nor Article 300A is violated merely because RSO 26(15) recognises and provides for



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protection of plan-marked pathways situated within or passing through patta holdings.

38. It is the further submission of the learned Addl. Advocate General that the reliance placed upon the registered Will dated 22.1.1986, the partition proceedings in O.S. No.111 of 2001 and the advocate commissioner's report and sketch together with other documents though establish the petitioner's private right over the property, which the respondents do not dispute, but the said documents may be relevant for determining the *inter se* rights among the private parties and that will not stand in the way of determining the statutory character of a public pathway or extinguish rights, which are claimed by the Government on behalf of the public and which is persisting.

39. In fine, it is the submission of the learned Addl. Advocate General that the mere holding of patta cannot form the basis for negating the right of the Government over the pathway when it is put to public use and it has been maintaining its character for the last few decades and the petitioners cannot try to challenge the constitutional validity of RSO 26 (15) after keeping silent for



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almost three decades from the coming into force of the said standing order and, therefore, prays for dismissal of the present petition.

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

41. Before proceeding to analyse the contentions, it is to be placed on record that the petitioners have not questioned/challenged the rule making power of the State to bring in the Revenue Standing Orders. The history behind the coming into force of the Revenue Standing Orders would show that it has been in existence in different forms exceeding a century with necessary modifications. The grievance of the petitioners is only with regard to the amendment made to RSO 26 (15), which was brought in through G.O. Ms. No.568, Revenue Department on 23.10.2000. Therefore, this Court is not venturing into the power of the State to bring in the Revenue Standing Orders; suffice to only deal with the validity of RSO 26 (15) vis-à-vis the constitutional mandate under Article 300-A read with the provisions of the other enactments to which this Court's attention was drawn.



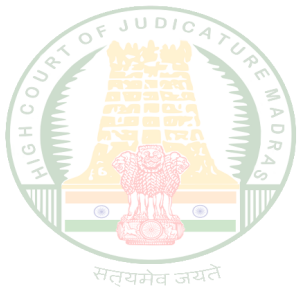
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42. The historical background in the coming into operation of the Revenue Standing Orders, which has been placed on record by the respondents, which is borne out by record, for better appreciation, is captured hereunder :-

“The subject matter requires consideration in its proper historical context. RSO 26(15) was not conceived in the year 2000 as a new mechanism for taking away private property. The treatment of plan-marked details such as pathways, irrigation channels and cart tracks has a long history in the revenue administration. The proceedings relied upon by the respondents refer to the earlier Board Proceedings Mis.No.894 dated 30.05.1922 and the subsequent proceedings including B.P.Rt.No.2606(L) dated 29.04.1966 and B.P.Perm. 1039(E) dated 26.07.1966.

The earlier Board proceedings of 1922 themselves dealt with the treatment of encroachments upon plan-marked details such as pathways, irrigation channels and cart tracks. The subsequent Board proceedings of 1966 examined the question in greater detail and rejected the assumption that a plan-marked pathway would cease to have its Government/public character merely because it was not separately demarcated on the ground or separately subdivided as poramboke.

The 1966 proceedings are particularly relevant to the present case. The Board considered the treatment of plan-marked pathways and cart tracks in the settlement records



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and observed that, during settlement, deductions were made in respect of unprofitable areas and plan-marked details such as ridges, irrigation channels, pathways and cart tracks. The Board consequently held that the mere inclusion of such details within a survey field did not amount to an abandonment of Government rights over such details.

It is also material to notice that the very proceedings of the Board of Revenue in B.P.Perm. 1039(E), dated 26.07.1966, did not treat the plan-marked detail as an inflexible boundary which could never be altered by the Ryot. The Board specifically recognised that there could be cases where the Ryot, through whose holding a plan-marked detail passed, had shifted the detail from its original course so as to make it run along one or more sides of his field, with a view to consolidating his holding or facilitating irrigation of portions which would otherwise be severed. The Board expressly observed that such diversion or alteration of the course need not be treated as an encroachment. Thus, the historical scheme itself recognised the legitimate enjoyment and consolidation of the Ryot's holding, while at the same time preserving the character and public purpose of the plan-marked detail.

The historical treatment of plan-marked pathways was not founded upon the proposition that the mere existence of a plan- marked detail would prevent the Ryot from making reasonable use of his holding. The distinction drawn by the Board was between a legitimate alteration made for consolidation or enjoyment of the holding and an interference



which would obstruct or defeat the public pathway or other protected plan-marked detail. RSO 26(15), therefore, has to be understood in this historical and functional context and not as a provision which automatically deprives a pattadar of all rights over the surrounding holding.

The historical background of the Ryotwari settlement is also material. The Ryotwari system proceeded upon the survey and settlement of individual holdings for the assessment and collection of land revenue. The settlement records themselves recognised that a Ryotwari holding could contain plan-marked portions such as ridges, irrigation channels, pathways and cart-tracks which were not ordinarily available for cultivation. This makes it clear that the Ryot had no right or title over the said portion of land. The patta issued is only subjective to such pre-existing right which runs with the land. The Descriptive Memoirs forming part of the Resettlement Registers/A-Registers specifically unproductive portions while fixing the assessment. Thus, the mere inclusion of a pathway or channel within a survey field and the consequential continuance of the patta over the holding cannot, historically or legally, be understood as conferring upon the pattadar an unrestricted proprietary right to obstruct appropriate the plan-marked detail. The 1966 proceedings of the Board of Revenue in B.P.Perm. 1039(E), dated 26.07.1966, expressly proceeded upon this historical settlement position and recognised the continued distinct character of plan-marked pathways, cart-tracks and irrigation channels.



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7. The settlement/resurvey record shows the existing physical and functional character of the land as a pathway and recognised it by recording it during the settlement/resurvey process. The classification as "Nilaviyal Santhu" is therefore relevant as official recognition of an existing pathway and not as the sole source by which the pathway came into existence.

8. Long and continuous public use is also relevant in determining the character of a pathway. Long-standing public use is evidence of the existing public character of the pathway, particularly where such use is supported by the survey records, settlement records and the historical revenue treatment of plan- marked pathways. The Board proceedings and the present revenue records therefore have to be read together. The historical treatment demonstrates that plan-marked pathways were recognised as distinct details within survey holdings, the settlement records recognise the pathway in the present case, the land is separately identified as C6/74, and the actual use of the land corresponds with the revenue classification as Nilaviyal Santhu.

43. From the above, it is clear that the manner in which the lands are dealt with by the Revenue is governed by the various proceedings issued by the Board under the Revenue Standing Orders, which dates back pre-independence. In the above context of the coming into force of the Revenue Standing Orders, vide the proceedings of the Board of Revenue dated 26.7.1996, vide Letter in RoC.



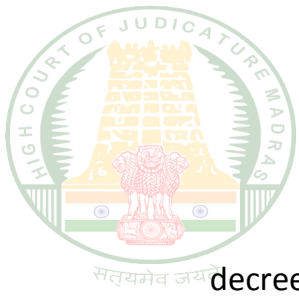
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No.24348/98 Q dated 1.7.1998, amendment was sought to be made to RSO 26 (15) which was amended vide G.O. Ms. No.568 dated 23.10.2000. Therefore, on and from 23.10.2000, the aforesaid amendment had come into force amending RSO 26 (15), which has not been challenged till the year 2023.

44. The facts as narrated by the petitioner in the affidavit would reveal that by a registered Will dated 22.1.1986, the father of the deceased petitioner had bequeathed his properties in favour of his three sons and after the demise of his father, the properties devolved on his three sons. In the year 2001, a suit for partition in O.S. No.111/2001 was filed before the Subordinate Court, Padmanabhapuram by the siblings of the deceased petitioner in which an Advocate Commissioner appointed by the Court had filed his report along with sketches on 22.7.2003 showing the properties in Survey Nos.C-6/75 and C-6/74.

45. It is to be pointed out here that inspite of the fact that RSO 26 (15) was amended vide G.O. Ms. No.568 dated 23.10.2000, which is much prior to the filing of the partition suit, however, the said amendment was not questioned by the deceased petitioner or his siblings even after filing of the partition suit or the



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decree thereafter. Only in the year 2023, through the present writ petition, the deceased petitioner had questioned the amendment made to RSO 26 (15).

46. There is no quarrel with the fact that it is even the admitted case of the petitioners that the subject property in Survey No.C6/74 had been carved out only for the beneficial enjoyment of the property in S. No.C6/75, meaning thereby that it is for the use of the deceased petitioner, his siblings and also the other owners of the adjoining property. It is also the admitted case of the petitioners that even in the revenue records the subject property is classified as 'Nilaviyal Santhu', which is substantiated by the Town Survey Land Register. It is not denied by the petitioners that the said property is used as a pathway/cart-track by the public and the same is evidenced by the other suit filed by the neighbours, which, it is alleged, has since been withdrawn with liberty to file a writ petition.

47. The situations in which the constitutional validity of law, viz., an Act, Rules, Statute, Regulation, proceedings, etc., could be put in issue to test its *vires* was dealt with in ***Naresh Chandra Agrawal - Vs – The Institute of Chartered***



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Accountants of India & Ors. (C.A. No.4672/2012 – Dated 8.2.2024), wherein the

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Apex Court held thus :-

*“21. In **State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors. (2006) 4 SCC 517**, this Court recollected the following principles while adjudging the validity of subordinate legislation, including regulations:*

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules) .

(emphasis supplied)

48. Of the six available grounds for challenging the validity of RSO 26 (15),

it is quite clear that the scope of the challenge raised in this petition could be

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restricted to one ground in the instant case; that the Standing Order is in violation of the fundamental rights guaranteed under the Constitution. Therefore, it becomes imperative to examine whether the said RSO 26 (15) violates the fundamental rights of the petitioners guaranteed under Article 300-A of the Constitution.

49. Article 300-A mandates that no person shall be deprived of his property save by authority of law. In the present case, it is the stand of the petitioners that the amendment to RSO 26 (15) by means of G.O. Ms. No.568 dated 23.10.2000 takes away the right of the petitioners over the said Survey No.C-6/74 and vests it in the Government without following the process of law and relating to acquisition and, therefore, the said provision, according to the petitioners, is *ultra vires* the Constitution.

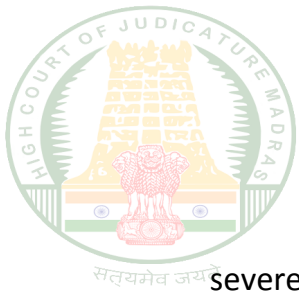
50. In the light of the right guaranteed under Article 300-A of the Constitution, reference to RSO 26 (15) is necessary to adjudicate whether it is *ultra vires* the Constitution and, therefore, for better appreciation the same is quoted hereunder :-

"15. Encroachments on plan-marked details:- A plan-marked channel or pathway running in a patta land is a



Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment."

51. Amendment had been brought to RSO 26 (15) to take care of encroachments on plan-marked details vide G.O. Ms. No.568 dated 23.10.2000, wherein, it provided that a plan-marked channel or pathway running in a patta land is a Government land, where eviction of encroachment shall be invoked only in cases where the encroacher has interfered with the plan-marked detail so as to close its entrance to and exit from his lands and further where the pathways and cart tracks have been used by the public, the ryot shall not be allowed to shift the course of the details to suit his own convenience. But if such diversions of plan-marked channel from its original course has been done with a view to consolidate the holding or to facilitate irrigation of the portions which would be otherwise

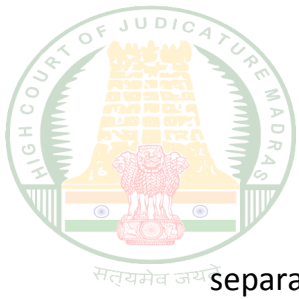


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severed, the said RSO provides that the same need not be treated as encroachment.

52. Article 300-A of the Constitution, as noted above, provides that *no person shall be deprived of his property save by authority of law*. In the light of the above constitutional mandate, could the amendment to RSO 26 (15) be termed to be constitutionally violative, as it is alleged that it offends Article 300-A which is the only issue that requires to be considered.

53. The historical background of the Revenue Standing Orders, which have been spelt out by the respondents and as it is borne out by record. True it is that RSO 26 (15) was not conceived in the year 2000 as a new mechanism for taking away private property, but the system of treating plan-marked details such as pathways, irrigation channels and cart tracks have been in vogue in the revenue administration dating back to the year 1922 and subsequent proceedings of the Board of the year 1966. It is further borne out by record that as early as in 1966, the character of plan-marked pathways, irrigation channels and cart-track was examined in detail and it was decided that a plan-marked pathway would not cease to have its Government/public character merely because it was not

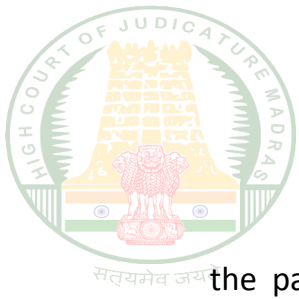


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separately demarcated on the ground or separately subdivided as poramboke.

The said view has been carried on in the Boards proceedings ever-since and it has culminated in the present amendment. The historical background, as extracted above, therefore, gives a clear picture as to the manner in which the treatment of plan-marked pathways, irrigation channels and cart-track have progressed through the various stages in the Board proceedings ultimately culminating in the present amendment. Further, the said standing order has not faced any challenge till date from any person citing take over of the said portion for public usage and keeping it under the umbrella of the Government.

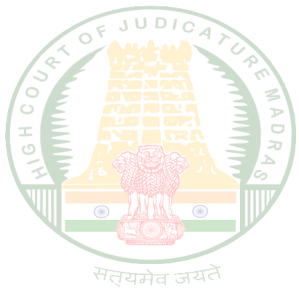
54. A pathway or a cart-track is carved out from a land, which is done not only for utilisation by the landholders for access from and to their lands, but also by all the general public so as to reach their property. The creation of the pathway, cart-track and irrigation channels and earmarking of land for the same is only for the use of the public at large, including the landholder. However, when the piece of pathway/cart-track/irrigation channel is carved from a larger chunk of land, which belongs to one person, though it is put to use for the benefit of the public at large, the said piece of pathway/cart-track/irrigation channel assumes the character of a public utility, though in essence the land from which



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the pathway/cart-track/irrigation channel is carved out, the title to the same rests with the landholder but the character of the land would be noted as a pathway/cart-track/irrigation channel in the revenue records and classified as belonging to the Government, just like patta, which gives possessory rights to the user of the land rather than title. In the same fashion, a pathway/cart-track/irrigation channel, is used by the general public, but carved out of the lands of the landholder, the possessory rights to the same shifts to the Government by deeming it to be a patta-holder, for the benefit of public at large while the right and title to the land rests with the land holder.

55. It is therefore unambiguously clear that the land, which is the subject matter of the present litigation is in usage as a pathway/cart-track/irrigation channel and has been carved out even in the suit filed for partition and the same is carried out in the revenue records and its usage is not disputed by the petitioners. Such being the case, though the right and title to the said land rests with the petitioner, but the same is being maintained by the Government, since the said land is shown as pathway/cart-track/irrigation channel in the plan-marked detail and used as such by the general public for more than two decades.



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56. In the aforesaid backdrop of the logical conclusion that is arrived at in the manner in which the character of a land is determined, more particularly with reference to pathway/cart-track/irrigation channel, when the amendment to RSO 26(15) is looked at, it gives three clear prescriptions for considering whether eviction with regard to any encroachments needs to be made on the plan-marked details, viz.,

- i) Eviction of encroachment need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands;
- ii) In the case of pathways and cart-tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience;
- iii) diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed, need not be treated as encroachment.

57. From the aforesaid amendment, clear prescription has been made that where any encroachment is made on plan-marked details, eviction of such encroachment should be resorted to only when the encroacher interferes with

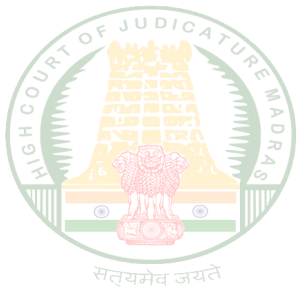
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the plan-marked detail so as to close its entrance to and exit from his lands; or where the said pathway/cart-track is used by the public, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, there is a clear separation in the amendment, which provides that interference shall not be treated as encroachment when diversions of plan-marked channel from its original course, has been done with a view to consolidate the holding or to facilitate irrigation of the portions which would otherwise be severed.

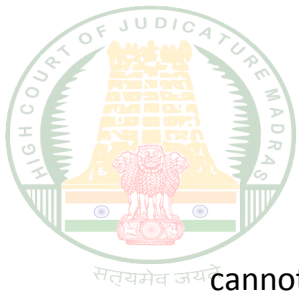
58. By the above amendment, it is clear that with respect to lands, which have been carved out for making a pathway/cart-track/irrigation channel, though the title to the lands vests with the title holder, but the said portion of the lands, which have been marked for public use, would be under the control of the State in larger public interest and so long as the title holder does not in any manner interfere in the usage of the lands by the general public, any deviations made by the landholder on the said plan-marked lands for the purpose of facilitating irrigation of the portions would not be deemed to be encroachment. This also shows that the larger interest of the community with regard to irrigation activities have been secured by allowing the landholder to make deviations in the plan-marked lands if such deviations facilitate irrigation.



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59. The amendment, in clear and unambiguous term, has not taken away the right and title of the landholder from the said lands, but only has preserved the said demarcated space, which have been put to use for the public in larger public interest by carving out the pathway/cart-track/irrigation channels, and interference of the titleholder to the said lands has not been barred except where the titleholder interferes with the usage of the said lands by encroaching upon the same thereby affecting public interest.

60. It is not as if the amendment to RSO 26 (15) has robbed the petitioners of their right and title over the lands in issue. It is to be pointed out that any pathway/cart-track/irrigation channel that is carved out of a larger chunk of land and sub-divided is for the benefit of the larger public and it is not confined to the particular individual/title-holder alone. The land shifts to the coffers of the Government as an usufruct, though the title rests with the title-holder. The Government maintains the land and classifies it as its land with usage rights, which enures to the benefit of the general public. In this analogy, the land, which is the subject matter in issue has been rightly classified as 'Nilaviyal Santhu', which means that it is classified as public property and individual land owners

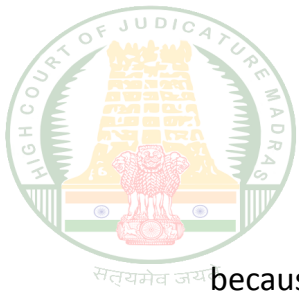


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cannot claim exclusive ownership over it, even if it is mentioned in their private sale deeds or registered documents. Only in the light of the above stated position, necessary classification and entries have been made in the Registers maintained by the Revenue, which cannot be said to be erroneous or illegal.

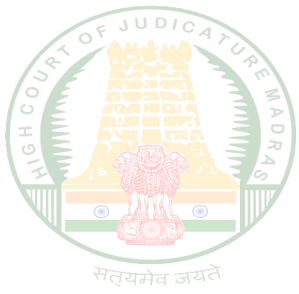
61. Though the provisions of Article 300-A of the Constitution and also various other enactments relating to property jurisprudence and their interpretation thereof vis-a-vis RSO 26(15), insofar as it annexes private patta land, have been pressed into service to declare RSO 26 (15) as unconstitutional, *ultra vires* and *ab initio void*, however, this Court on a clear and holistic appreciation of RSO 26(15) vis-à-vis Article 300-A of the Constitution and the other provisions as discussed above, is of the considered view that there is no violation of any constitutional mandate by RSO 26 (15) so as to render the said provision liable to be struck down as *ultra vires*. Further, the law on easements also have to be appreciated in larger public interest and it cannot be shrunk only to tailor the needs of the petitioners. Individual interest would be subservient to larger public interest and when the said pathway has been in use by the general public for more than two decades and the amendment to RSO 26 (15) has also withered away any attack for more than two decades, merely



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because, the petitioners have a grievance with regard to ownership rights over the said pathway cannot be the basis for this Court cannot to turn the clock to restore the said pathway by declaring the amendment, which has been brought into the Standing Orders even before the partition suit was filed, the partition having taken place under the said Standing Orders, viz., RSO 26 (15), the pathway having been carved out of the lands, which were partitioned for public use, the petitioners cannot now seek for declaration of the said amendment as *ultra vires* Article 300-A, as they have, with open eyes, carved the pathway for being used by the partitioners as well as the general public.

62. Seen from any angle of the issue in relation to the various provisions, which have been pressed into service, even a bare perusal of the RSO 26 (15) clearly shows that the Standing Order is only regulatory in nature, which regulates the use of the land, which has been earmarked and classified for a particular purpose and so long as it does not violate the right guaranteed by the Constitution with regard to title, such earmarking and classification cannot be said to be in violation of Article 300-A of the Constitution and, therefore, the contention advanced in this regard deserves to be rejected.



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63. It is also borne out by record through the typed set of documents, filed by the petitioners in which the Town Survey Land Register extract forms part. A perusal of the said record clearly shows that the title to the said land stands in the name of the deceased petitioner and that the land is classified as 'Nilaviyal Santhu'. The above land has been used for the said purpose since the division of the property on the basis of the partition, which is not disputed by the petitioners. Such being the case when the petitioners with open eyes have created the demarcation and created the pathway, which has been used for more than two decades by the general public in the locality, the petitioners are estopped from challenging RSO 26 (15), which has been in force for more than two decades, as any other construction would have a cascading effect on the easmentary rights of the general public in the said area.

64. One other aspect which stares writ large on the face of the record is the fact that the amendment was made to RSO 26 (15) through G.O. Ms. No.568, Revenue Department dated 23.10.2000. On the said date, through the Will executed by the father of the deceased petitioner, the lands in his holding were bequeathed to the deceased petitioner and his siblings and after the demise of his father, O.S. No.111 of 2001 was filed for partition in which an Advocate

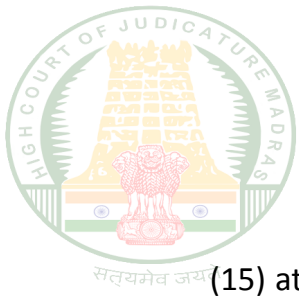


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Commissioner was appointed, who had inspected the property and submitted a report along with a sketch of the lands. Even at that point of time when partition was made in the said suit, the aforesaid amendment had come into which is admitted. However, no challenge was made to the said amendment at that point of time. Even if the pathway had been carved out at the time of partition or after partition, no challenge had been made to RSO 26 (15) by the petitioners. Only about two decades later, in the year 2023, the present writ petition had come to be filed challenging the *vires* of the amendment to RSO 26 (15), which had been done through G.O. Ms. No.568, Revenue Department, dated 23.10.2000.

65. No explanation whatsoever has been given by the petitioners for their silence and abstainment from challenging the said RSO 26 (15) for more than two decades. When the lands have, by usage, been used by the general public and that the classification of the land is shown as 'Nilaviyal Santhu', which has also not been questioned for more than two decades the delay in approaching the court challenging the *vires* of RSO 26 (15), is fatal, moreso when the lands have been carved out for the pathway in the partition suit and have been used by the general public. However, for reasons best known to the petitioner, the present petition has been filed questioning the *vires* of the said amendment to RSO 26



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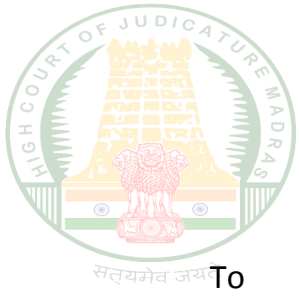
(15) at this belated point of time, which cannot be entertained as the usage over the long period of time had recharacterised the character of the land for public use and at this extreme point of time, the same cannot be interfered with by this Court, as it would run against the interests of the general public who are the users of the said pathway.

66. For the reasons aforesaid, this Court is of the considered view that no case has been made to grant any declaration as sought for and this Court holds that RSO 26(15) is *intra vires* the Constitution and, accordingly, this writ petition fails and the same stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

(M.D.I.J.) (N.D.K.J.)
16.10.2026

Index : Yes / No

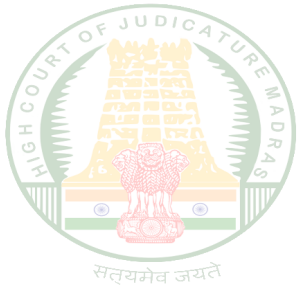
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To
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1. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Chennai.
2. The Commissioner of Land Administration
Chepauk, Chennai 600 005.
3. The Commissioner of Revenue
Administration & Disaster Management
Chepauk, Chennai 600 005.
4. The Commissioner of Survey & Settlement
Chepauk, Chennai 600 005.
5. The Commissioner of Land Reforms
Chepauk, Chennai 600 005.
6. The District Collector
Kanyakumari District.
7. The District Revenue Officer
Nagercoil, Kanyakumari District.
8. The Revenue Divisional Officer
Padmanabhapuram, Thakkalai
Kanyakumari District.
9. The Tahsildar
Kalkulam Taluk
Kanyakumari District.
10. The Commissioner
Padmanabhapuram Municipality
Thakkalai, Kanyakumari District.



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W.P. (MD) No.26554/2023

M.DHANDAPANI, J.
AND
N.DILIPKUMAR, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. (MD) NO.26554 OF 2023**

**Pronounced on
16.10.2026**