SUPREME COURT OF INDIA

The Tahsildar, Taluk Office, Thanjore

Vs.

G.Thambidurai

C.A.No……of 2017

(Arun Mishra and Amitava Roy,JJ.,)

09.05.2017

JUDGMENT

Amitava Roy,J.,

SLP(Civil)No.35755 of 2015

1. Leave granted.

2. The appellants are aggrieved by the judgment and order dated 16.4.2015 rendered by the Madurai Bench of the Madras High Court in SA (MD) No. 626 of 2011, whereby it has directed them to restore the property involved to the respondent No. 1 within a period of two months unconditionally and further to mutate it in his name in all relevant records. This verdict has reversed the pronouncement in Appeal Suit No. 125 of 2006 by which the suit being O.S. No. 299 of 2005, instituted by respondent No.1, had been dismissed. Incidentally, the suit had been decreed by the Trial Court.

3. We have heard Mr. Subramonium Prasad, learned senior counsel for the appellants, Mr. Vivek K. Tankha, learned senior counsel for the respondent No. 1 and Mr. M. Yogesh Kanna, learned counsel for the respondent No. 2.

4. The indispensable facts essential for comprehending the controversy need be gathered at the outset from the pleadings in the suit, in which the present appellants were the defendants along with respondent No. 2.

5. According to the respondent No. 1/plaintiff, the suit property bearing Survey Field No. 199/2 ad-measuring Ac. 4.59 cents and located at Village Pillayarpatti, Thanjavur Taluk belonged to his grand-father, Kailasam Sanaiyar and after his demise, he eventually being the only legal heir had been enjoying the same. It is his pleaded case that this land was taken over by the Tahsildar, Thanjavur for the government in the year 1935 vide fasli 1343 Order No. 18431/35 A3 dated 31.12.1935 for non-payment of land tax and was converted into "bought in" land. This land was later converted into "Punjai Tharisu" (Government Dry)

fallow land vide order Ni-mu/164/45/A5 dated 1.3.1945 of the R.D.O., Thanjavur. Subsequent thereto, by Order L.R 158 dated 31.12.1958 of the Special Tahsildar (Loan) and Taluk 8A order vide 51/21-1-59, the Survey Field No. 199/2 was sub-divided into 199/2A ad-measuring Ac. 2.23 cents and S.F. No. 199/2B ad-measuring Ac. 2.36 cents. Following further sub-division of the suit property, the same was assigned to Karuppaiah Sanaiyar and Muthusamy Sanaiyar of Thanjavur in the year 1958. Being aggrieved by this assignment, the respondent No. 1 questioned the same before the Tahsildar, Thanjavur, who by his order R.C. 1015/91 dated 18.6.1971, cancelled the same.

6. At this, the assignees preferred appeal before the D.R.O. Thanjavur, who too dismissed the same on 7.10.1996. The Board of Revenue, to which the assignees carried their further appeal, however by its order dated. 21.10.1978 revised the determination and remanded the matter to the D.R.O., Thanjavur for re-enquiry.

7. This authority, on remand, again cancelled the assignment in favour of the Sanaiyars vide order dated 2.2.1980, whereupon they unsuccessfully appealed against the same before the Commissioner of Land Administration, Chennai, who refused to intervene by his order dated 1. 4.1991. Thus, the litigation qua the assignment of the suit land in favour of Karuppaiah Sanaiyar and Muthusamy Sanaiyar culminated on 1.4.1991 with the rejection of their appeal by the Commissioner of Land Administration, Chepauk, Madras, as aforementioned.

8. It was at this stage that the respondent No. 1/plaintiff vainly pleaded with the Tahsildar, Thanjavur for restoration of the suit land to him in the capacity of being the only legal heir of the erstwhile owner with the offer to pay the arrears of land tax. However, as this request fell in deaf ears, he preferred an appeal before the higher revenue authority which also was of no avail. Instead, the land was handed over to the Sericulture Development Department and Bharat Petroleum Corporation Limited. Situated thus, the respondent No. 1/plaintiff returned to the civil court for redress.

9. In the plaint, the respondent No. 1/plaintiff has pleaded that in terms of Revenue Standing Orders (for short, hereinafter to be referred to as "RSO") 45(4), the lands taken from a person for non-payment of arrears of land tax ought to be re-assigned to him or his legal heirs in preference to the others, on payment of the dues. He alleged that no notice of any kind was given to him by the concerned revenue authorities before assigning the suit land in favour of Karuppaiah Sanaiyar and Muthusamy Sanaiyar in violation of the prescriptions of RSO 45(4). His further remonstrance was that in case, under RSO 45(4), "bought in" land for kist due was not to be restored to the original occupant or his legal heirs, the same was required to be auctioned and that the assignment in favour of Karuppaiah Sanaiyar and Muthusamy Sanaiyar was arbitrarily made even without following this course as mandated. He also impeached the lease of the suit property in favour of the Sericulture Development Department and the Bharat Petroleum Corporation Limited on the cancellation of the assignment of the Sanaiyars as well in contravention of the imperatives of RSO 45(4). The following are the reliefs prayed for in the suit:

"1. The Hon'ble Court might be ordered to the defendants that the suit property must be assigned to the plaintiff, if not so, the re-assignment might be executed by this Hon'ble Court.

2. The possession of the suit property should be handed over by the defendants to the plaintiff, if no so, the Hon'ble Court execute the above."

10. The appellants/defendants in their written statement denied the allegations more particularly pertaining to the alleged violation of RSO 45(4), as highlighted in the plaint. While admitting that the patta with regard to the suit property, as mentioned therein, originally stood in the name of Kailasam Sanaiyar, the land, for arrears of land tax, was "bought in" by the government. They denied the possession thereof subsequent thereto by the respondent No. 1 or any other heir of Kailasam Sanaiyar. They pleaded that the respondent No. 1 did never offer to pay the arrears tax/dues within a period of two years seeking re-assignment on the basis thereof, as contemplated under RSO 45(4). According to them, the assignment of the suit land in favour of the Sanaiyars having been cancelled by the concerned revenue authorities in the proceedings pertaining thereto, it was duly leased out to the Sericulture Development Corporation and Bharat Petroleum Corporation Limited. It was averred in clear terms that after the suit land was "bought in" by the government, it was converted into "Punjai Tharisu" land. They reiterated that the land tax due notice was sent to the owners and as they failed to respond thereto, the suit land was "bought in" by the government, whereafter as well, the land-owners remained passive for which eventually the same was converted into "Punjai Tharisu" land.

11. In the suit, amongst others, the parties adduced oral and documentary evidence. Whereas the respondent No. 1 examined himself as PW1 and testified in endorsement of the averments made in the plaint, one P.Muthukumaran, assistant in the Taluk Office, Thanjavur, acquainted with the facts of the case, was offered as the witness on the side of the appellants/defendants. As would be patent from the deposition of the respondent No.1/plaintiff, he admitted on oath that the suit land, which originally stood mutated in the name of his grand-father Kailasam Sanaiyar and thereafter of his father was "bought in" by the government for arrears in land tax and subsequent thereto was converted into "Punjai Tharisu" in the years 1935 and 1945 respectively. He admitted to have questioned the assignment of the land in favour of Karuppaiah Sanaiyar and Muthusamy Sanaiyar and that the proceedings in connection therewith did eventually end on 01.04.1991 in his favour. It is indeed apparent from his testimony as well that it was thereafter that he applied to the revenue authorities for assignment of the land in his favour offering to pay of the arrears. Referring to the RSO 45(4), he emphasized that in terms thereof he being the legal heir of the previous owner/occupant was entitled to a preference in the matter of such assignment and that the denial thereof in the facts and circumstances was illegal and arbitrary. He, to be specific, was critical of the omission on the part of the revenue authorities to issue a notice to him before assigning the suit land in favour of the Sanaiyars.

12. As would be evident from the testimony of the witness of the appellants, the suit land, in the year 1935, was "bought in" by the government for non-payment of land tax, whereafter

in 1945 it was classified as "Punjai" bare land. The witness deposed that even after taking over of the suit land by the government for non-payment of tax, the respondent No.1/plaintiff did not apply for restoration of the possession by offering the arrears of tax, for which the same was classified as "punjai" bare land" and was thereafter sub-divided and assigned to the Sanaiyars. He, however admitted that this assignment in favour of Karuppaiah Sanaiyar and Muthusamy Sanaiyar was cancelled at the instance of the respondent No.1/plaintiff. According to this witness, it was only in the year 1981, when the proceedings were still pending with the concerned revenue authorities that the respondent No.1/plaintiff for the first time gave an offer to pay the arrears tax for restoration of the land to him.

13. The Trial Court, on a consideration of the pleadings of the parties and the evidence adduced, decreed the suit and directed restoration of the suit land on payment of the tax due. This conclusion was principally based on the finding that before the assignment of the suit land in favour of the Sanaiyars in the year 1958, no notice had been given to the respondent No.1/plaintiff and that no auction prior to such assignment had also been conducted. The Trial Court held the view that in the factual backdrop, the appellants/defendants ought to have issued a notice to the respondent No.1/plaintiff and on realizing the tax dues, should have restored the land to him.

14. As aforementioned, the First Appellate Court reversed the decree on the ground that though admittedly the suit land was "bought in" by the government in the year 1935 for arrears of land tax, it was only in the year 1981 that the respondent No.1/plaintiff approached the government for reassignment. It also dismissed his claim of being in possession of the suit land since 1935 till 1958. The Appellate Court was thus of the clear opinion that the respondent No.1/plaintiff from 1935 to 1958 did not approach the revenue authorities with the offer to pay the land arrears and instead did so after a lapse of almost 30 years and claimed reassignment. The Appellate Court thus held the view that the respondent No.1/plaintiff was not willing to pay the land arrears at the earliest opportunity and, therefore the course adopted by the appellants/defendants in the facts of the case could not be denounced as illegal or in violation of RSO 45(4).

15.The High Court in the decision impugned, ruled that prior to the conversion of the land as "Punjai Tharisu" (government dry land), a notice to the original owner of the land ought to have been given and the failure to do so has resulted in violation of the principles of natural justice. It also found fault with the appellants/defendants for taking over of the land for non-payment of land tax. According to it, the leasing out of the portions of the suit land to the Sericulture Development Department and the Bharat Petroleum Corporation Ltd. was also unsustainable in law. It noted as well that documentary proof on behalf of the appellants/defendants in support of the fact that the suit land had been "bought in" by the government was lacking. In this context, it favorably recorded the offer made by the respondent No.1/plaintiff to pay the arrears of land tax for securing the restoration of the suit land. The suit was thus decreed with the directions as heretofore mentioned.

16. The learned counsel for the appellants/defendants has emphatically argued that in the face of the admission of respondent No.1/plaintiff that the suit land had been taken over by

the government for the default in the payment of land tax, the High Court was in error in repudiating the same in absence of any challenge thereto at any point of time. According to Mr. Prasad, the impugnment on behalf of the respondent No.1/plaintiff had been directed consistently solely against the assignment of the suit land in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar in the year 1958 without prior notice to him and that thus, the question of validity or otherwise of the process of taking over of the land by the government for non-payment of arrears of land tax had never been an issue between the parties. According to the learned senior counsel, a plain reading of RSO 45(4) makes it abundantly clear that mere cancellation of the assignment of the suit land in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar does not entitle the respondent No.1/plaintiff ipso facto to the restoration of the suit land even on payment of the tax dues by way of preference to others unless the conditions precedent as prescribed therein are essentially complied with. He has urged that as the predecessor of the respondent No.1/plaintiff and he himself had deliberately defaulted/failed to pay the land tax and the arrears, he cannot claim any preference in the matter of reassignment of the land to him following the cancellation of the assignment to Kuruppaiah Sanaiyar and Muthusamy Sanaiyar and thus, the very foundation of the impugned judgment is non est warranting interference of this Court therewith. The omission on the part of respondent No.1/plaintiff to question the taking over of the suit land by the Government for the default in payment of land tax and his inexplicable failure to offer to pay off the dues since 1935, clearly demonstrates that the non-payment of land tax had been deliberate, thus dis-entitling him to a preference in the matter of assignment of the suit land under RSO 45(4), he emphasized.

17. Per contra, Mr. Vivek K.Tankha, learned senior counsel for the respondent No.1/plaintiff has insisted that on the cancellation of the assignment of the suit land in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar, after a slew of adjudications by the revenue authorities at the instance of respondent No.1/plaintiff, the latter clearly was entitled to a preference for restoration thereof to him under RSO 45(4) and, thus the impugned judgment is unassailable in law and on facts. According to him, the appellants/defendants having grossly erred in assigning the suit land to Kuruppaiah Sanaiyar and Muthusamy Sanaiyar without affording a prior opportunity to the respondent No.1/plaintiff to pay off the arrears land tax. As a logical consequence as sanctioned by RSO 45(4), he was entitled to be restored therewith to the exclusion of others, he urged.

18. No other point has been canvassed. Noticeably, both sides are ad idem that at all relevant times, RSO 45(4) was applicable to the facts of the case.

19. The materials on record, as available, and the contentious assertions have received our due consideration. That the Revenue Standing Orders, as framed, are of binding impact and are enforceable in law is an accepted premise as no demurer has been expressed by either side. These standing orders of the Board of Revenue, inter alia, outline the general procedure under the Tamil Nadu Revenue Recovery Act, 1864 for realization of the arrears of land revenue and incidentals thereto. RSO 45, the pivotal provision for the present adjudication is an integral part of the said process. RSO 45 provides that if no bid is made in any sale of any land for realization of such arrears of land revenue etc., it should be purchased on behalf of

the Government at a nominal price, the amount of the purchase money being written off the accounts as an irrecoverable arrears with the sanction of the competent authority and thereafter as per RSO 45(2), the government would have an absolute right to lands purchased by it and consequently such land would not be treated as a village waste available for occupation by ryots or without darkhast, but has to be entered in a Taluka Register No.18A and would not be dealt with under the Darkhast Rules and that any unauthorized entry upon it would render the trespasser liable. RSO 45(4) being of decisive relevance is extracted herein below in full.

> "45(4). Disposal of bought-in-lands.- (1) In the matter of assignment of bought-in-lands. the original owners or their undisputed heirs should be preferred to outsiders, provided that the assigning authority is satisfied that the original owner was not a willful defaulter and that the default was due to circumstances beyond the defaulter's control and that such assignment is otherwise unobjectionable. If there be more than one heir of the original owner, the assigning authority shall have the power to decide to whom among them the land should be reassigned. The re-assignment will be free of market value; but, the re-assignment should be ordered only on the assignee paying the arrears of land revenue for which the land was bought-in, together with the interest thereon. Back assessment should also be collected from the year in which the land was bought-in, to the year of re-assignment, or for a period of twelve years, whichever is less. In cases, where the land has been under the occupation of any person or persons other than the original owner or his successor in title, for any period during the 12 years immediately preceding the year of reassignment, the period of such occupation should be excluded and back assessment should be collected only for the remaining period. If before the land was bought-in, and takkavi loan had been granted to the original owner on the security of the land and if such loan amount has not been repaid in full, the loan amount or the balance due, together with interest should also be recovered from the original owner or his undisputed heir before the and is re-assigned to him, even though the loan arrears, have been written off the account as irrecoverable. (2) With a view to giving effect to the above instructions, the following procedure is laid down:-
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> Immediately after a land is bought-in and its purchase money is written off the accounts under paragraph 1 above, if there is no objection to the assignment of the land the Tahsildar should issue a notice in writing to the defaulter informing him that the land would be re-assigned to him if he pays the arrears back assessment, balance of loan, if any, etc., and applies to the tahsildar for re-assignment of the land, within a period of one year from the date of receipt of such notice. The arrears and the back assessment due from the defaulter and, whenever possible, the interest due on the arrears should be specified in the notice. In the case of lands bought-in before Fasli 1366 time may be given till 30th June, 1958 or such other date as the Board of Revenue may by general instructions specify. In such cases, if the original owner is not alive, the notice mentioned above should be issued to his undisputed heirs. On receipt of an application for re-assignment of the land, the Tahsildar will verify whether all the arrears and back assessment, etc., due, together with interest on the

arrears, have been remitted by the applicant and whether the applicant, if he is not the original owner is the undisputed heir of the original owner. The tahsildar will then submit the application together with his recommendation to the Revenue Divisional Officer. The Divisional Officer will pass orders on the application himself- (a) in cases where the land is wet or other valuable land coming under sub-paragraph (1) (a),(b) and (c) of paragraph 22 of S.O. 15 and whether the extent involved does not exceed 2 V2 acres, and (b)in the case of other kinds of land where the extent involved does not exceed 5 acres. In all other cases, the Revenue Divisional Officer will forward the application with his recommendation to the Collector for his orders. If no application for re-assignment of the land is received within the specified time or if the original owner or his undisputed heir informs the tahsildar that he does not want the land back, or if after enquiry it is found that the original owner or his undisputed heir is not traceable, the tahsildar should submit a report in the matter to the Revenue Divisional Officer. The Divisional Officer may then direct that the land be put up to sale again with the widest publicity. On getting the Divisional Officer's order sanctioning resale, the tahsildar can himself sell the land or appoint the Deputy Tahsildar or the Revenue Inspector as the selling officer. The sale will be subject to confirmation by the Divisional Officer. If however, the Divisional Officer is satisfied that the land will not fetch more than Rs. 10 per acre at a fresh sale, he may direct that the land be struck off in the Taluk Register No. 18-A and classed as ordinary village waste. It will then be assigned, subject to darkhast rules in Standing Order No. 15, as modified from time to time."

20. A plain reading of this provision yields the following salient features:

"(a) It deals with disposal of "bought in" lands.

(b)In the matter of assignment of such "bought in" lands, the original owners or their undisputed heirs should be preferred to outsiders.

(c) Such preference would be available provided the assigning authority satisfied that the original owner was not a willful defaulter and that the default was due to circumstances beyond the defaulters control and that such assignment is otherwise unobjectionable.

(d) If there is more than one heir of the original owner, the assigning authority shall have the power to decide to whom amongst them the land should be reassigned.

(e)The reassignment will be free of market value but the reassignment should be ordered only on the assignee paying the arrears of land revenue for which the land was bought in, together with interest thereon.

(f) Back assessment should be collected from the year in which the land was bought in to the year of reassignment or for a period of 12 years, whichever is less.

(g) In cases where the land has been under the occupation of any person or persons other than the original owner or his successor in title, for any period during the 12 years immediately preceding the year of reassignment, the period of occupation should be excluded and back assessment should be collected only for the remaining period.

(h) In order to give effect to these pre-requisites, immediately after a land is bought in and its purchase money is written off, if there is no objection to the assignment of the land, the tahsildar should issue a notice in writing to the defaulter informing him that the land would be reassigned to him, if he pays the arrears, back assessment, balance of loan, if any etc. and if he applies to the Tahsildar for a reassignment to the land within a period of one year from the date of receipt of such notice.

(i)In the case of lands bought in before Fasli 1366, time may be given till 30th of June 1958 or such other date as the Board of Revenue may by general instructions specify.

(j) In such cases, if the original owner is not alive, the notice mentioned should be issued to his undisputed heirs.

(k) On the receipt of an application for reassignment of the land, if made, the Tahsildar will verify whether all the arrears and back assessment etc., due together with the interest on the arrears have been remitted by the applicant and whether the applicant, if he is not the original owner, is the undisputed heir of the original owner.

(l) In case all these are complied with, the Tahsildar would then submit the application together with his recommendation to the Revenue Divisional Officer.

(m) Except in the eventualities, as mentioned therein, the Revenue Divisional Officer would forward the application with his recommendation to the Collector for his orders.

(n) In case, no application for reassignment is made or received within the specified time or if the original owner or his undisputed heir informs the Tahsildar that he does not want the land back or, if after enquiry, it is found that the original owner or his undisputed heir is not traceable, the Tahsildar would submit a report in the matter to the Revenue Divisional Officer, who would then either direct that the land be put up for sale again, or if he satisfied that the land would not fetch more than Rs.10 per acre at a fresh sale, may direct that the land be struck off in the Taluk Register 18A and classified as ordinary village waste."

21. It would thus be evident that to avail the preference in the matter of assignment of "bought in" lands, the obligatory pre-requisite is the absence of willful default in the payment of land tax by the original owner. Further the default, if any, was due to circumstances beyond his control and that assignment to him again is otherwise unobjectionable. It is only when these pre-conditions exist and the assigning authority is

satisfied that the original owner was not a willful defaulter and that the default was due to circumstances beyond the defaulter's control and that such assignment is otherwise unobjectionable that the original owners or the undisputed heirs would have to be preferred to the outsiders. If it is not proved to the satisfaction of the assigning authority that the original owner was neither a willful defaulter nor was the default due to circumstance beyond his control and that the assignment proposed is otherwise not objectionable, the subsequent steps as outlined in RSO 45(4) with regard thereto in favour of such assignment would be wholly impertinent. As a matter of fact, as the provision predicates, the procedure prescribed for the assignment of the "bought in" lands in favour of the original owners or their undisputed heirs distinctly pre-supposes these contingencies. In absence thereof, the concerned authority is under no obligation to issue notice either to the original owners or their undisputed heir(s) informing him/them that the land would be reassigned to him/them if he/they pay the arrears, back assessment, back balance of loan, if any etc. on their application to the Tahsildar to the said effect. The eventuality of a fresh sale would occur in case, in response to such notice, no application for reassignment is received from the original owner or his undisputed heir or if he/they inform the Tahsildar that he/they do not desire to have the land back. Here again, the Revisional Divisional Officer, at his discretion and if he is satisfied that the fresh sale would not fetch more than Rs.10 per acre, would refrain from undertaking that exercise and instead direct that the land be struck off in the Taluk Register No. 18A and classed as ordinary village waste.

22. In the face of such clear and unambiguous method of disposal of "bought in" lands, as prescribed by RSO 45(4), there is no semblance of doubt that for an original owner or his undisputed heir to claim preference in the matter of assignment thereof to him/them, the above three pre-conditions would have to be essentially complied with. In absence of such compliance, any plea of preference in the assignment of "bought in" lands under RSO 45(4) is patently fallacious and untenable. As a corollary, even if such an assignment has been made, as in the instant case in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar, which ultimately had been cancelled, the same would not per se either indicate that the aforementioned pre-conditions were satisfied or would render the respondent No.1/plaintiff automatically eligible to avail the preference in the matter of such assignment under RSO 45(4). In our view, it would be incumbent upon the respondent No.1/plaintiff in order to prove his entitlement for such preference, to establish that the original owner, when the land was "bought in" by the government, was not a willful defaulter of the land tax and that the default was due to circumstances beyond his control and that the assignment is otherwise unobjectionable to the satisfaction of the assigning authority. In the absence of the discharge of this otherwise statutorily prescribed obligation, it would be idle for him to contend that he was, even sans the same, entitled to be preferred in the matter of assignment of the "bought in" land merely on the cancellation of the previous assignment in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar.

23. As the enumerated facts culled from the pleadings and the documents on record would proclaim, no evidence is forthcoming of any endeavour made by respondent No.1/plaintiff to this effect or the satisfaction of the assigning authority on these three otherwise inalienable aspects so as to render him preferable to others for the assignment of the "bought in" land.

Contrary thereto, it is the specific stand of the appellants/defendants that admittedly the land was "bought in" in the year 1935 for the failure of the original owner/the respondent No.1 to pay the land tax in 1935, whereafter till 1958, he did not either object to such take over or offer to pay the arrears. It was only in 1958, when the "bought in" land was assigned in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar that he questioned the same on the ground of want of prior notice to him. This challenge, to reiterate, was focused only on the assignment of the "bought in" land to the Sanaiyars without prior notice to him and is not qua the process by which the land had been bought in by the government. Noticeably, the proceedings before the revenue authorities initiated on this challenge by the respondent No.1/plaintiff to the assignment of the "bought in" land to the Sanaiyars were also confined to the grievance of want of notice to the respondent No.1/plaintiff prior to such endowment to them. There is no shred of evidence to demonstrate that the default in the payment of land tax, which resulted in the taking over of the land by the government was not willful and that the same was due to circumstances beyond the defaulters' control and further that the assignment, if to be made to the respondent No.1/plaintiff would be unobjectionable in the facts and circumstances of the case. Significantly, the respondent No.1/plaintiff admits that the land was "bought in" by the government in the year 1935 in view of the failure to pay the land tax. To reiterate, this process had not been objected to until the suit was filed in the year 2005. In any view of the matter, any demurral to this process of taking over of the land in 1935, even if made in the year 2005 in the suit, can by no means be taken of cognizance of or be entertained. As a matter of fact, PW1 (respondent No.1/plaintiff) did admit that the land was auctioned for failure to pay the land revenue and it was essentially therefore his burden to also establish that such default was not willful and was due to circumstances beyond his control and that the assignment to him was otherwise not objectionable, as obligated by RSO 45(4). The belated willingness of respondent No.1/plaintiff to clear the arrear land tax post 1958 also does not further his case in this regard. On the other hand, it would be permissible to deduce that the inactive, casual and passive disposition of the respondent No.1/plaintiff to offer payment of the arrears due immediately after 1935, till at least 30 years hence, demonstrates not only a willful default in that regard but also a persistent unwillingness to clear the outstanding dues, which in terms of RSO 45(4) disqualifies him to avail any preference in the matter of assignment of the "bought in" lands.

24. It is the foundational principle of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all and all other methods of performance are necessarily forbidden. This pristine legal postulation is traceable to the decision in *Taylor v. Taylor*[1] which was followed in *Nazir Ahmed v. The King Emperor*[2] and in a plethora of pronouncements thereafter. Tested on this anvil as well, the preference in the matter of reassignment of the suit land in favour of the respondent No. 1 sans the adherence to the mandatory pre-requisites engrafted in RSO 45(4) could not have been extended to him.

25. That the suit was filed claiming restoration of the land relying on RSO 45(4) seven decades after the land had been bought in, is writ large on the face of the record. As the above analysis evince that in the facts of the case, the respondent No.1/plaintiff was not entitled to the preference as contemplated in RSO 45(4), the omission on the part of the

revenue authorities to hold a public auction before leasing out the suit land to Sericulture Development Department and Bharat Petroleum Corporation Ltd., is of no consequence. The preference to an original owner or his undisputed heir in the matter of assignment of "bought in" lands being contingent on the compliance of the essential pre-requisites therefor, as eluded hereinbefore, we are of the unhesitant opinion that the High Court was wrong in decreeing the suit on the sole ground that no notice had been issued to the respondent No.1/plaintiff prior to the assignment of the "bought in" land in favour of Kuruppaiah Sanaiyar and Muthusamy Sanaiyar in the year 1958 and that the same was cancelled in the related revenue proceedings. The apparent huge delay on the part of respondent No.1/plaintiff in offering to clear off the arrears and in the institution of the suit are as well formidable factors weighing against him. RSO 45(4) being of binding dispensation, any assignment in departure therefrom, cannot receive judicial imprimatur. In the facts and circumstances of the case, in our estimate, the respondent No1/plaintiff is not entitled to the preference as contemplated therein for assignment of the "bought in" land. The High Court having failed to examine the issues in the perspectives, as mandated by RSO 45(4), the impugned judgment and order cannot be sustained and is, therefore set aside. The appeal is allowed. No order as to costs.

Judgment Referred.

[1]*(1875) 1 Ch.D. 0426*
[2]*LR 63 Ind Ap 0372*