

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WA.NO. 2423 OF 2008 (C) IN WP(C).28735/2008

AGAINST THE ORDER/JUDGMENT IN WP(C) 28735/2008
DATED 16-10-2008

APPELLANT(S)/PETITIONER IN WPC:

BANERJI MEMORIAL CLUB
TRICHUR 680001, REPRESENTED BY ITS SECRETARY
P.V.THOMAS.

BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SRI.SANTHEEP ANKARATH

RESPONDENT(S)/RESPONDENTS IN WPC:

1. TALUK TAHSILDAR TRICHUR AND OTHERS
2. THE REVENUE DIVISIONAL OFFICER,
TRICHUR.
3. THE DISTRICT COLLECTOR, COLLECTORATE,
TRICHUR 680001.
4. THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE BUILDINGS, MUSEUM JUNCTION
THIRUVANANTHAPURAM 695 033.

WA.NO. 2423 OF 2008 (C)

5. COCHIN DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE COCHIN DEVASWOM BOARD,
ROUND NORTH, THRISSUR,

IS IMPEADED AS ADDITIONAL RESPONDENT VIDE
ORDER DATED 12.11.2012 IN I.A. NO.280 OF 2012.

R1 TO 4 BY ADDITIONAL ADVOCATE GENERAL
SHRI K.A. JALEEL
BY SENIOR GOVERNMENT PLEADER SHRI P.I. DAVIS
ADDL 5 BY ADV. SRI.KRISHNA MENON,
SC, COCHIN DEVASWOM BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
16.11.2015, THE COURT ON 25.11.2015 DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.2423 of 2008

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Dated this the 25th day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment and order dated 16.10.2008 by which W.P(C) No.28735 of 2008 filed by the appellant has been dismissed. Writ Petition was filed by the petitioner, Banerji Memorial Club (for short, “the Club”) challenging orders passed for eviction of the Club from the premises in question under the Kerala Land Conservancy Act, 1957 (hereinafter referred to as “the 1957 Act”). The parties shall be hereinafter referred to as described in the Writ Appeal.

2. Following facts of the case emerge from the pleadings of the parties: The Club, now registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 was established in Thrissur Town on

two plots, i.e. 51 5/8 cents in Sy.No.246/1 and 13 cents in Sy. No.246/2 of Thrissur Village in the year 1914. The petitioner claimed that the land was gifted by His Highness, the Maharaja of Cochin State for construction of the Club. The first meeting of the Club was held on 17.05.1914 (4th Edavam 1089). The Club was named in memory of the Diwan of Cochin State, A.R.Banerjee, ICS. The first president of the Club was J.W.Bhor, ICS, Diwan of the Cochin State. Construction of the Club building was completed on the aforesaid two plots within a year and the second Board meeting of the Club was held in the Club building on 29.06.1090 (08.02.1915). The Club started functioning since 1914. The Thrissur Municipal Council proposed construction of a Sathram (Inn) by taking a part of the land on which the Club was functioning, i.e., 13 cents by exchanging another plot of land from the Devaswom Board. Petition was sent by the Club to the Government of His Highness, the Maharaja of Cochin State on 08.06.1124 (22.01.1949). The Commissioner, Thrissur Municipality, also sent a letter dated 02.02.1949 to the Government of His Highness, the

Maharaja of Cochin State. The Government recorded its proceeding on 17.02.1949 that if the Club site is included in the Sathram, it cannot be helped. The Commissioner of Thrissur Municipality on 19.10.1953 wrote to the Honorary Secretary of the Club asking the Club to give consent for exchange of 13 cents of land in Sy.No.246/2 with another 13 cents of land owned by the Devaswom on the southern side of the Club building contiguous to the Club compound. The Club communicated its concurrence by letter dated 30.01.1954. The Devaswom Board asked the Secretary of the Club to sent copy of the letter dated 29.10.1953 of the Municipal Commissioner, Thrissur. After several correspondences between the Thrissur Municipality and the Club, ultimately by letter dated 29.06.1956 the Commissioner communicated to the Club about the approval by the Municipal Chairman and Devaswom Board regarding exchange of 13 cents of land with Sy.No.247/1. The Devaswom Board has also communicated that the Club shall be paid compensation of Rs.2,500/- towards demolition of the construction and other improvements in the 13 cents of land

in its possession. Consequently, 13 cents land was exchanged and the Club was given another 13 cents of land in plot No.247/1 which the Club continued to be in enjoyment of the aforesaid plot of land with the Club building existing thereon. The Club had also sent a letter to the Municipal Board dated 26.07.1954 seeking sanction of a safety tank in the Club premises. The Municipal Board communicated the said sanction by letter dated 27.08.1954. The Club has been paying water charges and electricity charges to the Thrissur Municipality. The Club premises was also connected with telephone connection by the Department of Posts and Telegraph, Government of India with regard to which payments were also made by the Club. The Club celebrated its Platinum Jubilee in the year 1990. Various correspondences acknowledging celebration of Platinum Jubilee have been brought on record. The Club continued to function in the building situated on the aforesaid plots without any objection or interruption for 85 years from the establishment and functioning of the Club. No kind of objection from any quarters including the State Government

was ever raised. Suddenly, in the year 1999 the Tahsildar initiated proceedings under the 1957 Act against the Club by issuing notice asking the Club to show cause as to why order for eviction shall not be passed. The club prayed for two months' time to produce relevant materials. However, the Tahsildar did not pursue the notice any further. Another notice was issued on 03.07.2003 under the 1957 Act requesting the Secretary of the Club to appear. The Tahsildar passed order dated 25.8.2003 and issued notice dated 9.8.2003 for eviction. Against the said orders, the Club filed W.P(C) No.29342 of 2003. This Court vide judgment dated 22.11.2006 set aside the proceedings of the Tashildar dated 29.08.2003 and 25.08.2003 and directed the Tahsildar to pass fresh orders after adverting to the contentions taken by the petitioner. After the order of this Court dated 22.11.2006, the Tahsildar again passed an order dated 14.02.2007 directing for eviction of the petitioner from Sy.No.246/1 - 51.625 cents. Petitioner filed an appeal on 14.02.2007 before the Revenue Divisional Officer, Thrissur which too was dismissed on 31.05.2007. Order dated

31.05.2007 was served on the petitioner on 02.06.2007 against which the petitioner filed a Revision before the District Collector on 03.06.2007 praying for stay of eviction order. Petitioner thereafter filed W.P(C) No.16942 of 2007 in this Court challenging the order of the Revenue Divisional Officer dated 31.05.2007. The District Collector did not pass any order in the stay application filed along with the Revision and possession was hurriedly taken from the petitioner on 04.06.2007. This Court disposed of the Writ Petition on 04.06.2007 itself directing that possession be given back to the petitioner forthwith. This Court observed that the prayer for interim stay shall be decided only after hearing the petitioner. Possession was given back to the petitioner. The District Collector passed an interim order in the Revision. However, by order dated 11.01.2008, the District Collector dismissed the Revision filed by the petitioner. Against the order dated 11.01.2008 dismissing the Revision, petitioner filed a Revision Petition before the Land Revenue Commissioner. The Land Revenue Commissioner also vide its order dated 03.09.2008 dismissed the Revision Petition.

Challenging the aforesaid orders W.P(C) No.28735 of 2008 has been filed by the petitioner in this Court which was dismissed by the learned Single Judge on 16.10.2008 against which this Writ Appeal has been filed.

3. We have heard Shri P.K. Suresh Kumar, learned Senior Advocate for the petitioner, Shri K.A. Jaleel, Addl. Advocate General assisted by Shri P.I.Davis, learned Senior Government Pleader was heard on behalf of the State. Shri V.Krishna Menon, learned counsel has appeared for the Cochin Devaswom Board. Shri K.S.Madhusoodanan and Shri P.B. Krishnan, learned counsel have been heard for the applicants who had sought impleadment in the Writ Appeal as additional respondents.

4. Shri P.K. Suresh Kumar, learned Senior Advocate appearing for the petitioner submitted that initiation of proceedings under the 1957 Act was wholly without jurisdiction. It is contended that petitioner was not an unauthorized occupant of the land and hence the Tahsildar could not have initiated proceedings nor petitioner could have been evicted in the above summary proceedings.

Petitioner is admittedly in possession of the Club premises for the last 85 years without any objection from any one having possessory title which cannot be unsettled by a summary proceedings. Petitioner's possession was lawful possession and no offence has been committed by the petitioner within the meaning of the 1957 Act so as to direct eviction of the petitioner. 13 cents of land in Sy.No.246/2 which was in possession and enjoyment of the Club was exchanged for construction of Sathram by the Municipal Council, Thrissur by a proceedings in which the Devaswom Board, Municipal Council and petitioner were parties. Petitioner was given another 13 cents of land in Sy.No.247/1 in exchange of the land given to the Municipal Council. Petitioner was also paid compensation of Rs.2,500/- for demolition of the structures. All these facts clearly indicate that petitioner was treated to be the lawful owner in possession and it was treated as the owner of the land by all concerned including the Municipal Authority, Devaswom Board, etc. All the relevant documents including correspondences and proceedings regarding exchange of 13 cents of land were brought on record by

filing documents before the Land Revenue Commissioner which has been brushed aside without any proper consideration. Proceeding dated 02.02.1949 of Government of His Highness, the Maharaja of Cochin State was also brought on record wherein giving of the above portion of land for construction of Sathram by the Club was also taken note of. Thus the respondents ought to have drawn a presumption that petitioner entered into possession of the property as a lawful owner and use of the property for long period of more than 85 years was sufficient to draw the presumption. Present was a fit case where presumption regarding lost grant was required to be raised by the respondents, which having not done, serious error was committed by the respondents in directing eviction of the petitioner as per the summary proceedings under the 1957 Act. Proceedings under the 1957 Act cannot be initiated against a person who is in lawful possession for more than 85 years.

5. Learned Additional Advocate General, Shri K.A. Jaleel, refuting the submissions of the learned Senior

Advocate for the petitioner contended that the petitioner could not prove its title to the land on which the Club is constructed by document or any transaction, hence no error was committed in initiating proceedings under the 1957 Act and the consequent eviction of the petitioner. It is submitted that although petitioner had claimed that the land was gifted by the Government of His Highness, the Maharaja of Cochin, no evidence of any gift was brought on record. No lease deed or any other document showing its ownership has been brought on record. The petitioner having failed to prove any title to the land, the land admittedly belonged to the Government and initiation of proceedings under the 1957 Act was in accordance with law.

6. Learned counsel for the Cochin Devaswom Board submitted that the Board was not a party to the Writ Petition and it is claiming right only with regard to the 13 cents of land. The Board has initiated proceedings under the 1957 Act with regard to 13 cents of land in Survey No.247/1 owned by it but on account of the interim order passed in the Writ Petition, the Board Could not proceed against the 13

cents of land comprised in Sy.No.247/1 belonging to the Devaswom Board.

7. Learned counsel Shri K.S.Madhusoodanan who has filed application on behalf of one T.K.Vasu seeking impleadment contends that T.K. Vasu is the Convenor of Thrissur Banerji Club Protection Samithi formed to defend the preservation of the public property, hence he may be impleaded and heard. It is contended that as a citizen, T.K. Vasu is interested in seeing that public property is not unauthorizedly possessed and enjoyed by anybody. We have heard learned counsel for T.K.Vasu without formally impleading him. The State which has taken proceedings under the 1957 Act is already on record, we see no reason to implead T.K.Vasu as additional respondent.

8. Similarly I.A. No.934 of 2014 has also been filed by applicants who are seeking impleadment as additional respondents 7 to 11. They claim to be members of the Club. Applicants prayed that they be permitted to support the Club by impleading them as additional respondents. We have heard P.B. Krishan, learned counsel for the applicants

without formally impleading the applicants to the array of party.

9. Learned counsel for the parties in support of their contentions have placed reliance on various judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

10. From the submissions made by the learned counsel for the parties and pleadings on record, the following are the issues which arises for consideration in the Writ Appeal.

I. Whether the petitioner has been in possession and enjoyment of the land/premises of the Club in question for the last more than 85 years before the proceedings under the 1957 Act were initiated?

II. Whether the authorities under the 1957 Act as well as the learned Single Judge before whom petitioner filed various documents (as referred to in Ground F of the Writ Petition) committed error in brushing aside those documents as irrelevant?

III. Whether the petitioner had brought on record sufficient materials to prove that petitioner was in occupation of the land in question with the permission of the Government?

IV. Whether the petitioner having been in settled possession and enjoyment of land for a considerable period of time, i.e., for more than 85 years, a presumption ought to have been raised that the possession had a legal origin?

V. Whether in the facts of the present case, petitioner could have been evicted in exercise of the powers under the 1957 Act?

VI. To what relief the petitioner is entitled?

11. All the issues being interconnected are taken together. Proceedings having been taken against the petitioner under the 1957 Act, it is useful to refer to the relevant statutory provisions of the 1957 Act and the law as earlier prevalent to appreciate the issues raised in the Writ Petition.

12. We shall first note the provision relating to land conservancy Acts which were in operation prior to the

enactment of the 1957 Act. The first enactment which was made on the land conservancy was the Cochin Land Conservancy Act (IV of 1096) enforced with effect from 26.10.1920. Section 3 defined property of the Government, Section 4 defined Poramboke. Section 5 provided that from and after the commencement of the Act it shall not be lawful for any person to occupy a land which is the Government Property whether poramboke or not without permission from the Government. Section 5 reads as follows:

“5. From and after the commencement of this Act it shall not be lawful for any person to occupy a land which is the property of Government whether poramboke or not without permission from the Government or such officer of Government as may be empowered in this behalf.”

Section 6 provided for levy of assessment on lands which are property of the Government unauthorisedly occupied. Section 6(2) provided for levy of prohibitory assessment. Section 6 is quoted as below:

“6(2) Any person unauthorisedly occupying a poramboke shall be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Diwan Perishkar in accordance with the rules that may be prescribed by the Government from time to time in this behalf.

Payment of assessment under sub-section (1) or prohibitory assessment under sub-section (2) shall not confer any right of occupancy, and the liability to pay such assessment shall cease from the date on which the land concerned is relinquished.”

Section 8 provided that a person unauthorisedly occupying any land shall be liable to summarily evicted. Section 8 is quoted below:

“8. Any person unauthorisedly occupying any land for which he is liable to pay assessment or prohibitory assessment under section 6 may be summarily evicted by the Diwan Peishkar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Diwan Peishkar may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Diwan Peishkar and any property so forfeited shall be disposed of as the Diwan Peishkar may direct.”

13. Prior to Act IV of 1096, Chapter IV of Cochin Revenue Recovery Act IV of 1083 contained provisions pertaining to prevention of encroachments on lands at the disposal of the Sirkar which chapter was repealed by Act IV of 1096.

14. The Travancore-Cochin Land Conservancy Act (Act XIX of 1951) was enacted for checking the unauthorised occupation of Government lands. Provisions of the 1951 Act were pari materia to Act IV of 1096. Section provided for summary eviction of unauthorised occupation. Section 10(1) is quoted as below:

“10(1) Any person unauthorisedly occupying any land for which he is liable to pay a fine under Section 6 and an assessment or prohibitory assessment under Section 7 may be summarily evicted by the Collector and any crop or other product raised on the land shall be liable for forfeiture and any building or structure erected or anything deposited thereon shall also if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct.”

Provisions of the 1951 Act were repealed by the 1957 Act which was enacted to check the unauthorised occupation of Government lands and to provide for matters connected therewith or incidental thereto. Section 3 defines property of Government, Section 4 defines poramboke and Section 5 provided that land which is the property of the Government

not to be occupied without permission. Section 5 as amended by Act 11 of 1971 provided as follows:

“5. Land which is the property of Government not to be occupied without permission.- (1) From and after the commencement of this Act, it shall not be lawful for any person to occupy a land which is the property of Government, whether a poramboke or not, without permission from the Government or such officer of the Government as may be empowered in this behalf.

(Explanation.- For the removal of doubts it is hereby declared that the erection of any wall, fence or building or the putting up of any over-hanging structure or projection (whether on a temporary or permanent basis) on or over any land aforesaid shall be deemed to be occupation of such land.)

(2) Notwithstanding anything contained in sub-section (1), it shall not be lawful for any person to erect or cause to erect any wall, fence or building or put up any overhanging structure or projection (whether on a temporary or permanent basis) on or over any land referred to in sub-section (1) except under and in accordance with the terms and conditions of a licence issued by the Government or such officer of the Government as may be empowered by them in this behalf.

(3) Any person desirous of obtaining a licence referred to in sub-section (2) may apply to the Government or to such officer of the Government as may be empowered by them in this behalf for an appropriate licence.

(4) An application under sub-section (3) shall be in such form and shall contain such particulars and shall be accompanied by such fee, as may be prescribed by rules made under this Act.”

Section 7 provided for punishment for unauthorisedly occupying land which is the property of the Government. Section 9 deals with cognizance of offence. Section 11 provided for liability of unauthorised occupant to summary eviction. Section 11(1) is quoted as below:

“11. Liability of unauthorised occupant to summary eviction, forfeiture of crops, etc.-(1) Any person unauthorisedly occupying any land for which he is liable to pay a fine under section 7 and an assessment or prohibitory assessment under section 8 may be summarily evicted by the Collector, and any crop or other product raised on the land shall be liable to forfeiture, and any building or structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjusted by the Collector and any property so forfeited shall be disposed of as the Collector may direct.”

A perusal of the aforesaid provisions of Act IV of 1096, Act XIX of 1951 and the 1957 Act indicate that property of the Government whether poramkoke or not cannot be occupied without permission of the Government and those who occupy lands without permission of the Government are liable to be summarily evicted in exercise of the powers given under the respective Acts as noted above.

15. Now we revert to the facts of the present case and the materials brought on record by the petitioner disclosing the sequence of events and the claim of the petitioner raised before the authorities. Petitioner has filed relevant documents in the Writ Petition on which reliance has been placed. Some documents were also filed before the Revenue Divisional Officer and District Collector and all the documents were filed before the Land Revenue Commissioner as described in Ground F of the Writ Petition. Petitioner's categorical case in the Writ Petition is that the Club started functioning in the year 1914. Minutes book of the Club has been filed which indicate that the first meeting of the Club was held on 17.05.1914 and the first President of the Club was J.W. Bhor, ICS (Diwan of the State). It was claimed that the land for construction of the building was gifted by the Government of His Highness, the Maharaja of Cochin and the Club building was constructed within one year. Proceeding of the second meeting of the Club was held on 29.06.1980 in the Club building. The Club building initially existed in Sy.No.246/1 - 51 5/8 cents and 246/2 - 13 cents.

16. Petitioner has brought on record the relevant materials to prove that in the year 1949 proceedings were initiated by the Thrissur Municipal Council for construction of a Sathram and 13 cents of land in Sy.No.246/2 which was in possession of the Club was sought to be taken from the petitioner. Commissioner, Thrissur Municipality wrote a letter to the Government in this context. Petition was also sent by the Club to the Government and proceedings dated 17.02.1949 of the Government of His Highness, the Maharaja of Cochin has been brought on record (Ext.P1 -5). It is useful to extract the aforesaid proceedings:

“PROCEEDINGS OF THE GOVERNMENT OF HIS
HIGHNESS THE MAHARAJA OF COCHIN
Development Department

Site between Banerji Club and Assistant Devaswom
Commissioner's Office – Trichur – Leasing of.

Read petition dated 8-6-1124, from the Secretary, Banerji Club, Trichur.

(2) Letter, G-1-1686/1121, dated 2nd February 1949, from the Commissioner, Trichur Municipal Council.

Order L. Dis 29711/1124, datd 17th February 1949.

A square plot is needed for the Sathrom. Therefore, it cannot be helped if the bunk site intended by the Club is included in the sathrom site. The matter is recorded.

(By order of the Government of Cochin)

Sd/-

Assistant Secretary.

To
The Secretaty, Banerjee Club,
The Commissioner, Trichur Municipality (through Chairman)”

The Government in its proceedings recorded that area of club be included in the Sathram site. Proceedings of the Government of His Highness, the Maharaja of Cochin dated 17.02.1949 is clarified by subsequent correspondences between the Thrissur Municipality and the Club. Letter dated 29.10.1953 was written by the Commissioner of Thrissur Municipality to the Honorary Secretary of the Club where it was noted that 13 cents of land in Sy.No.246/2 which is in the possession of the Club be exchanged with equal extent of land of the Devaswom in the southern side contiguous to the Club compound and the petitioner has to part with 13 cents. This proposal was accepted by the Municipal Council also. It is useful to extract the said letter which is the following effect:

Municipal Office,
Trichur, 29.10.53

From

The Commissioner, Trichur Municipality.

To

The Honorary Secretary, Banerji Club, Trichur.

Sir,

Sub : Municipal Sathrom --- Site belonging to the
Devaswom Department Dispute regarding.

Ref : Your Letter dated 31-3-53 and the compromise talk
between the Club representatives and the Chairman
of this Council.

The Devaswom Department has given charge to this Municipality 37 cents of land from Survey No. 247/A and 13 cents of land from Survey No. 246/A as per copies of the plans enclosed, for the construction of a Municipal Sathrom. Out of this, you subsequently informed this Office that the 13 cents of land from Survey No. 246/A is in your possession and that the Municipality cannot enter therein, unless an agreeable compromise can be reached. The question was, therefore, talked out between the Club representatives and the Chairman and a compromise was reached. According to this compromise, an equal extent of land will be given to you by the Devaswom on the northern side of the Club building, contiguous to the Club compound i.e., for the portion of the land which you have to part with (13 cents coloured red in the sketch), you will be given an equal extent of land coloured green in the sketch. Also, this Municipality will reconstruct the northern compound-wall of the Club and shift and re-erect the garage buildings westward to your new eastern boundary at its own cost.

2. The above compromise proposals are also accepted by this Council as per its resolution No. 21 dated 19-10-53, a copy of which is herewith enclosed for your reference.

3. I, therefore, request you to kindly communicate your formal consent in this matter and also forward to me one copy of the sketch herewith sent duly signed, in token of your acceptance of the compromise proposals.

A.R.

Yours faithfully,
Sd/-
Commissioner"

Subsequently, the Municipal Commissioner again wrote a letter dated 15.02.1954 for exchange of 13 cents. The Commissioner sent several reminders in this regard to the

Club and on 26.09.1956 again wrote to the Honorary Secretary of the Club, the following:

“From,
The Commissioner,
Trichur Municipality.

To
The Secretary,
Banerji Club Trichur.

Sir,
Sub: Site for Municipal Sathrom – Acquisition of
Ref: Nil.

I have to inform you that at a joint discussion with the Members of the Devaswom Board by the Municipal Chairman, the Board has agreed to the following terms in connection with the acquisition of the site for the construction of the Sathrom, including the 13 Cents of lands in Sy. No. 426 which is in your possession.

“ In view of the legal complications apprehended by the lease of the site as originally proposed, the Board has agreed for taking regular acquisition proceedings of the 50 cents of land which they have transferred to the Municipality for the construction of Sathrom, including the 13 cents of land in Dy. No. 246 in the possession of the Banerji Club. In return for the 13 cents of lands in Sy. nO.246 which the Banerji Club Authorities will have to part with when that is acquired by the Municipality for Sathrom, the Devaswom Board would give a free lease of an equal extent of land on the northern side of the Club Building contiguous to the Club Compound as formerly agreed. The Board has also agreed to fix the land value for the 50 Cents of lands to be acquired at Rs.5000/- viz, 20 times the ground rent already, fixed for the site. The Club Authorities shall

agree for a compensation of Rs.2,500/- towards the demolition of the structures and other improvements standing in the 13 cents of lands in their possession which the Municipality will acquire. The Club Authorities shall also take free the materials of the structures by removing them soon after the acquisition proceedings are over and payment made accordingly and an equal extent of land on the northern side of the Club Compound is given over to them by the Devaswom Board.”

2. I request you to kindly place the above before your Committee and inform me in writing the Committee's concurrence to the proposals above mentioned, so that I may take further steps for the acquisition.

Yours faithfully,
Sd/-
Commissioner.”

After the aforesaid proceedings petitioner parted with possession of 13 cents of land in Sy.No.246/2 and given in exchange 13 cents of land in Sy.No.247/1 by the Devaswom Board. The aforesaid proceedings indicate that possession of the Club over the plots was well within the notice of the Government as well as the Municipal Authority and Devaswom Board and 13 cents of land in 246/1 which was in the possession of the Club was exchanged with another 13 cents of land in Sy.No.247/1 in the year 1953-56 which clearly proved that possession and enjoyment of the Club over the land in question was accepted and acknowledged

by all concerned. The above facts indicate that possession of the Club over the land in dispute was not without permission of the Government. Had the Club been in unauthorised occupation of the aforesaid plot there was no occasion for exchange of 13 cents of land in Sy.No.246/1 with 13 cents in Sy.No.247/1 of the Devswom Board. All these correspondences and materials brought on record have been clearly ignored by the authorities from consideration. There is another relevant material which was brought on record by the Club. The Club by letter dated 26.07.1954 wrote to the Commissioner, Thrissur seeking sanction for construction of a safety tank in the Club premises. The said request was considered by the Municipality and by proceeding dated 27.8.1954 sanction was granted for construction of a safety tank in the Club premises. It is useful to refer to the said proceedings which is quoted below:

“Proceedings of the Trichur Municipality

Construction of a septic tank latrine in the Banerji
Memorial club premises - sanction for.

READ (1) Petition dated 26.7.1954 from the
Secretary, Banerji Memorial club,
Trichur.

- (2) Report dated 13.8.54 from the
Municipal Engineer.
- (3) Also report dated 20.8.54 from the
Health Officer.

Order dated 27.2.54 L.Dis.5016/54.

- (a) Site Approved.
- (b) Building A Septic tank latrine in the
Banerji Memorial club
premises.
 - 1. Sanctioned subject to
Notifications and directions if
any given in the plans.
 - 2. The work should be completed
within 3 months.
 - 3. The plans as approved are
returned.
 - 4. The date of completion of the
construction should be intimated
within 15 days of its completion.

Sd/-
Commissioner.

To

The petitioner.
the Municipal Engineer.
The health officer.
The Revenue Officer."

It is relevant to note that the said proceedings of the Thrissur

Municipality was also sent to the Revenue Officer apart from other Officers. Petitioner was thus permitted construction by the Municipal authority on the land in question which was also informed to the Revenue Officer. Sanction of construction of safety tank in the Club premises by the Municipality is clear indication of possession and enjoyment of the petitioner of the property as a matter of right.

17. Petitioner in the Writ Petition has also brought on record various documents proving payment of telephone charges to the Post and Telegraph Department, property tax to the Municipality, electricity charges, water charges, etc. The receipts brought on record by the petitioner relates to 1969, 1974 and 1975. Petitioner has brought on record letters written by the then Chief Minister dated 19.04.1990 and letter dated 18.04.1990 sent by the Honourable Minister for Agriculture acknowledging that the petitioner is celebrating Platinum Jubilee in the year 1990. The above documents which were brought on record by the petitioner would clearly indicate that the Club was in possession and enjoyment of the property where the Club premises was

situated since 1914 which possession and enjoyment was never objected from any quarters including the Government or Revenue Authorities. It was suddenly in the year 1999, i.e., more than 85 years after the uninterrupted and unobjected possession and enjoyment of the property, the Tahsildar issued notice dated 10.06.1999 to produce records to prove ownership of the petitioner. The said notice was not further proceeded and a fresh notice dated 03.07.2003 was issued to the petitioner asking the petitioner to produce documents relating to ownership of the property. The Tahsildar passed an order for eviction of the petitioner by order dated 14.02.2007. Appeal was filed before the Revenue Divisional Officer on 31.05.2007 along with documents showing payment of property tax, etc. Revenue Divisional Officer observed that petitioner had not filed any valid and documentary evidence to prove that the petitioner was in possession of the land for sufficiently long period. The District Collector before whom petitioner filed Revision against the order of the Revenue Divisional Officer, after noticing the history of the case held that the petitioner could

not produce any documents to prove title for the property comprised in Sy.No.246/1. He further noticed that Secretary of Club vide letter dated 07.08.1999 requested to assign the property which was not assigned till date, hence the occupation is unauthorised. It is useful to quote the reasons given by the District Collector which are to the following effect:

"ORDER

The Authorities of the Banerji Memorial Club, Thrissur, or the Counsels appeared did not produce any documents to prove their ownership over the land comprised in Sy.No.246/1P of Thrissur Village till date. Moreover, the Secretary, Banerji Memorial Club, as per the petition dated 07.08.1999 had requested to assign the property to the Club. The property has not been assigned till date. In the result, it is seen that the occupation of an extent of 51 625/1000 cents of land in Sy.No.246/1 and an extent of 13 cents of land in Sy.No.247/1 of Thrissur Village and Thrissur Taluk is unauthorised. In the circumstances, the Revision Petition dated 12.06.2007 put in by the Secretary, Banerji Memorial Club, Thrissur, is hereby rejected."

After the dismissal of the Revision, petitioner approached the Land Revenue Commissioner by filing a Revision in which Revision petitioner has again reiterated the facts and filed all

the relevant documents as referred to in Ground F of the Writ Petition. Petitioner pleaded before the Land Revenue Commissioner that proceedings under the 1957 Act could not have been initiated since the petitioner is not in unauthorised occupation, and peaceful occupation and enjoyment of the property was proved by materials. The Land Revenue Commissioner has noticed that in the Settlement Register the land in question is Pravarthi Kacheri Poramboke (Village Office Premises). It was also noticed that there is no deed of grant or lease or licence in favour of the Club for giving title of the property to the Club. After considering the submissions of the petitioner, it was held that property of the Government cannot be owned or possessed by an individual/organization unless and until the same is recognised by the Government by way of a deed of grant of lease or licence. It was held that petitioner failed to produce any document to prove its ownership and claim over the property in question. The Commissioner held that the petitioner is in unauthorised occupation of the land. It is

useful to extract the reasons given by the Land Revenue Commissioner in holding petitioner as unauthorised occupant:

“The counsel for petitioner appeared for hearing before this authority and argued their case in a detailed manner regarding the possession of the land. The petitioner contended that the land in dispute was gifted to them by the Maharaja of Cochin in 1914 and that the exchange of land took place between Devaswom, municipality and the club in 1953; copy of the minutes of the club meeting held in 1914 was produced. Kerala Land Conservancy Act will not apply as there is no unlawful possession. Other documents (copies) of correspondence between devaswom and municipality as well as property tax, electricity bills, etc., were produced to prove the possession of the land for long years. The counsel also contended that the Tahsildar, RDO and District Collector did not take into account the claim of the club supported by documents while passing orders in their respective capacities. The counsel also stated that in 1999 the club submitted an assignment application and that is pending.

The question before this authority is whether the petitioner has legal claim over the said land in question. The land is located in survey number 246/1 and 247/1 of Thrissur Village, Thrissur Taluk and as per the settlement register of Thrissur Village, it bears the tenure “Village office premises”. Village office premises could never be land other than “the property of the Government”. The property of the Government cannot be owned or possessed by an individual/organization unless and until the same is recognized by Government by way of a deed of grant or lease or licence. Though the petitioner produced several documents like payment of property tax receipts, electricity bills, etc., he failed to produce any document to prove their ownership claim over the said land. The

claim that the club has been in existence in the premises since 1914, do not confer any right on the property of the Government. The Kerala Land Tax Act, 1964 makes the payment of yearly land tax a statutory obligation to the jenmom holders of land. The petitioners had not produced any evidence to show that they have received land tax on the land they possess.

The respondents had deposed that, the petitioners as per the petition dated 07.08.1999 had requested for the assignment of the said land. This means, the petitioners themselves had a different view regarding the title of the land then, contrary to the claims being made during the hearing. Section 3 of the Kerala Land Conservancy Act, 1957 clearly defines the property of the Government and the land in question exemplifies the same. Any unauthorized occupation of property of Government without a valid grant/lease/license could be considered an encroachment on Government land warrants the action as per the Rules provided in the Kerala Land Conservancy Rules, 1958."

18. From the Order of the District Collector and the Land Revenue Commissioner, as noted above, it is clear that proceedings were initiated against the petitioner on the ground that petitioner failed to bring on record any deed of grant or lease or licence to prove title. It was held that in the Settlement Register it was recorded as Village Office Premises which is a Government property and hence no ownership can be claimed by the petitioner over the property and the petitioner having failed to prove its ownership there

was no error in initiating land conservancy proceedings against the petitioner.

19. For the purpose of this case it is not necessary for us to enter into the question as to whether the petitioner proved ownership or title over the land in question. For the present case it shall be sufficient to decide as to whether possession of the petitioner was unauthorised so as to initiate proceedings under the 1957 Act. As noted above, Section 5 of Act IV of 1096 and Section 5 of Act 19 of 1951 provided that from and after the commencement of the Act it shall be unlawful for any person to occupy a land which is the property of the Government whether a poramboke or not without permission from the Government or such officer of the Government as may be empowered in this behalf. The provisions clearly indicate that for occupation of property of the Government it is not necessary that person or entity should prove ownership of the land which is occupied by him. What was prohibited that no one shall occupy a Government land without permission. With the permission of the Government any land could have been occupied. There is no

dispute that the land comprised in Sy.No.246/1 - 51 5/8 cents and Sy.No.246/2 - 13 cents were Government property. Petitioner constructed the Club building in 1914-15 and has been in possession and enjoyment of the Club premises for more than 85 years without any interruption or objection from the Government or any public Authority. Proceedings of the Government of His Highness, the Maharaja of Cochin as noted above and the proceedings undertaken by the Municipality and Devaswom Board and the compromise entered into for exchange of 13 cents of land in Sy.No.246/2 which was in the possession of the Petitioner with 13 cents of land in Sy.No.247/1 belonging to the Devaswom clearly indicate that possession and enjoyment of the petitioner was accepted and the petitioner was treated to be entitled to enjoy the land which is fortified by the exchange of 13 cents of land as recorded in the proceedings. The aforesaid proceedings were sufficient to indicate that possession of the petitioner over the land and Club premises was not without permission of the Government. Possession of the land and Club premises which was claimed for construction of

Sathram has been specifically recorded in the proceedings of the Government of His Highness, the Maharaja of Cochin dated 17.02.1949, as extracted above. Authorities under the Land Conservancy Act upheld the proceedings against the petitioner on the ground that petitioner failed to prove its title by any deed of grant or licence and hence the proceedings were validly initiated. As noted above, proceedings under the 1957 Act could have been initiated against the petitioner, if the petitioner was in unauthorised occupation of the Government land. Section 5 of the 1957 Act as extracted above provided that without permission from the Government, whether a poramboke or not, Government property cannot be occupied. Section 5(2) which was added by Act 11 of 1971 provided that it shall not be lawful for any person to erect or cause to erect any wall, fence or building except under and in accordance with the terms and conditions of the licence issued by the Government. Provisions of Section 5(2) were enforced with effect from 05.01.1971. Thus for initiating proceedings under Section 11 of the 1957 Act the question to be considered was as to whether the petitioner was

unauthorisedly occupying the land. Instead of adverting as to whether the occupation of the petitioner was without permission of the Government or whether it can be treated with permission of the Government, rejected the claim of the petitioner on the ground that petitioner has failed to prove ownership by any deed of grant or licence. There was sufficient materials on record to prove that the petitioner was in possession and enjoyment of the property with the permission of the Government, hence present was not a case where proceedings under the 1957 Act could have been initiated against the petitioner when the petitioner was in authorised and lawful possession.

20. Both Collector and Land Revenue Commissioner has held that the fact that petitioner has made an application in the year 1999 for assignment of land leads to the conclusion that the petitioner accepts that they have no title to the land. The mere fact that after issuance of notice under 1957 Act, the petitioner adopted course of making an application for assignment cannot lead to the presumption that petitioner accepted that their possession was

unauthorised. The step of making an application for assignment can at best be treated as an additional course of action. The Collector and Land Revenue Commissioner thus were unduly carried away by the above fact.

21. It is settled principle of law that when a person is in continuous possession of a property for a considerable long time under an assertion of title without any challenge, the said possession has to be ascribed of a legal origin. In this context it is useful to refer to the judgment of the House of Lords in **Harris and another v. Earl of Chersterfield and another** ([1911] AC 623) where the above principle was referred to and recognised. It is useful to quote the following observations made by Earl Loreburn L.C:

“When long and continuous enjoyment is established, a lawful origin will be presumed if it is reasonably possible. This doctrine has been repeatedly affirmed, and in no case better illustrated than in that of Goodman v. Saltash Corporation ([1882] 7 App. Cas.633), so often quoted during the argument. In that case the corporation possessed a several fishery in part of the river Tamar, but the inhabitants of ancient tenements in Saltash had from time immemorial dredged for oysters in the same water during some months in the year. They had no charter or ancient records of title to rely upon, but simply the fact that they had so dredged openly, as of right and without interruption. Upon this the House of

Lords held that a lawful origin for the exercise of this right of dredging ought to be presumed, and the House presumed that, in the original grant to the corporation of a several fishery, there must have been a condition or trust in favour of the inhabitants of ancient tenements under which they were authorized to dredge for those months in the year. Lord Blackburn, indeed, dissented; but Lord Cairns, Lord Selborne, Lord Watson, and Lord Bramwell concurred in this decision. There was no evidence whatever of such a condition of trust, and no evidence of the original grant upon which it was supposed to be engrafted, but the decision proceeded upon the doctrine I have stated.

I do not say that we are entitled to presume anything which, upon the facts of the particular case, is impossible, still less that we are entitled to set up a right which the law does not allow. But the principle is surely based upon good sense. The lapse of time gradually effaces records of past transactions, and it would be intolerable if any body of men should be dispossessed of property which they and their predecessors have enjoyed during all human memory, merely upon the ground that they cannot shew how it was originally acquired. That is the reason why the law infers that the original acquisition was lawful, unless the property claimed is such that no such body of men could lawfully acquire it, or the facts shew that it could not have been acquired in the only ways which the law allows.”

The Privy Council had also reiterated the same principle in **Syed Muhammead Mazaffaramusavi v. Bibi Jabeda Khatun and others** (AIR 1930 PC 103). In the above case a suit was filed in which defence was taken regarding long

user and enjoyment. Contention of the defendant was that the said presumption was declined by the Subordinate Judge but the High Court held that subordinate court ought to have made a presumption that the grant was in its origin lawful.

The following was laid down at page 104:

“To meet this, otherwise irrefragable, argument, the defendants contended that, by way of completing their title to a tenure actually enjoyed over so long a period of years, there ought to be presumed some lawful origin, and the existence of such facts, though unrecorded and forgotten, as would establish a lawful origin. Mohammedan Law affords such an origin in the exception to the rule (whether still acted on in practice in modern times or not), that with the leave of the Kazi such an alienation, otherwise unlawful, permissible to a mutwalli; Ameer Ali, Mohammedan Law, 4th Edn., p.428. The Subordinate Judge declined to make this presumption, but on appeal, the High Court made it and reversed his decree for possession. Greaves, J., with whom Mukerji, J., concurred observed:

“I think that the Court, under the circumstances of the present case, should make the assumption that the grant was in its origin lawful, having regard to the fact that the lease has existed unchallenged since at any rate 1843, that the rest has remained unchanged, that applications for enhancement have been made and failed, and that no mutwalli has changed it for a period of over 70 years.”

The Privy Council further laid down the following in page No.105:

“The presumption of an origin in some lawful title, which the

Courts have so often readily made in order to support possessory right, long and quietly enjoyed, where no actual period of title is forthcoming, is one which is not a mere branch of the law of evidence. It is resorted to because of the failure of actual evidence. Hence their Lordships cannot accept the appellant's contention that the provisions of the Evidence Act, S.114, prevent the inference of a consent by the kazi in the absence of any evidence of an application to the Kazi for leave or some other proved fact of that kind. The matter is one of a presumption, based on the policy of the law, but even considered as an inference from proved facts, the leave presumed is a thing which may well be regarded as likely to have happened. At the same time it is not a presumption to be capriciously made, nor is it one which a certain class of possessor is entitled to de jure. In a case such as this, where it is necessary to indicate what particular kind of lawful title is being presumed, the Court must be satisfied that such a title was in its nature practicable and reasonably capable of being presumed, without doing violence to the probabilities of the case. The presumption is not an "open sesame," with which to unlock in favour of a particular kind of claimant a closed door, to which neither the law nor the proved facts would in themselves have afforded any key. It is the completion of a right, to which circumstances clearly point, where time has obliterated any record of the original commencement."

The Privy Council ultimately approved the presumption made by the High Court as noted above which was held to be complete answer to the plaintiff's claim to possession. The appeal was dismissed accordingly.

22. In **Satyanarayana v. Venketapayya** (AIR 1953 SC 195) the following was held in paragraph 3 (relevant portion) :

“3. Re. 1.-It is urged by the learned Attorney-General that as the defendants and their predecessors have been in possession of the properties from ancient times it should be presumed that their possession originated in some lawful title conferred on them. In short, the contention, founded on several judicial decisions, is that the principle of a lost grant should be applied in this case in favour of the Archakas who have been in quiet possession for over a century and a half. There is no doubt, on the authorities, that a presumption of an origin in some lawful title may in certain circumstances be made to support possessory rights long and quietly enjoyed where no actual proof of title is forthcoming but it is equally well established that that presumption cannot be made where there is sufficient evidence and convincing proof of the nature of the grant and the persons to whom it was made.

To the same effect is the judgment of the Apex Court reported in **Manohar Das v. Charu Chandra** (AIR 1955 SC 228). In paragraph 7 the Apex Court laid down the following:

7. The circumstances and conditions under which a presumption of lost grant could be made are well settled. When a person was found in possession and enjoyment of land for a considerable period of time under an assertion of title without challenge; Courts in England were inclined to ascribe a legal origin to such possession, and when on the facts a title by prescription

could not be sustained, it was held that a presumption could be made that the possession was referable to a grant by the owner entitled to the land, but that such grant had been lost. It was a presumption made for securing ancient and continued possession, which could not otherwise be reasonably accounted for, But it was not a 'presumptio juris et de jure', and the Courts were not bound to raise it, if the facts in evidence went against it.

"It cannot be the duty of a Judge to presume a grant of the non-existence of which he is convinced" observed Farwell, J. in -

'Attorney-General v. Simpson', 1901-2 Ch 671 at p. 698 (A). So also the presumption was not made if there was any legal impediment to the making of it. Thus, it has been held that it could not be made, if there was no person competent to be the recipient of such a grant, as where the right is claimed by a fluctuating body of persons. That was held in - 'Braja Sundar Deb v. Moni Behara', AIR 1951 SC 247 at pp. 251-252 (B). There will likewise be no scope for this presumption, if there is no person capable of making a grant: (Vide Halsbury's Laws of England, Vol. IV, page 574, para 1074); or if the grant would have been illegal and beyond the powers of the grantor. (Vide - 'Barker v. Richardson', 1821-106 ER 1048 at p. 1049 (C) and - 'Rochdale Canal Co. v. Radcliffe', (1852) 118 ER 108 at p. 118 (D))."

Further the Apex Court in **Konda Lakshman Bapuji v. Govt. of A.P. and others** ([2002] 3 SCC 258) reiterated the same principle in paragraph 67:

"67. The principle of the lost grant is a presumption which arises in cases of immemorial user. It has its origin from the long possession and exercise of right by user of an easement with the acquiescence of the owner that there must have been originally a grant to the claimant which had been lost. The presumption of lost grant was extended in favour of possessor of land for a considerably long period when such user is found to be in open assertion of title, exclusive and uninterrupted. However, when the

use is explainable, the presumption cannot be called in aid. A constitution Bench of this Court explained the principle in *Monohar Das Mohanta* (supra) thus:

"7. The circumstances and conditions under which a presumption of lost grant could be made are well settled. When a person was found in possession and enjoyment of land for a considerable period of time under an assertion of title without challenge, Courts in England were inclined to ascribe a legal origin to such possession, and when on the facts a title by prescription could not be sustained, it was held that a presumption could be made that the possession was referable to grant by the owner entitled to the land, but that such grant had been lost. It was a presumption made for securing ancient and continued possession, which could not otherwise be reasonably accounted for. But it was not a 'presumptio juris et de jure'.

A presumption *juris et de jure*. means an irrebuttable presumption is one which the law will not suffer to be rebutted by any counter evidence, but establishes as Conclusive; whereas a presumption *juris tantum* is one which holds good in the absence of evidence to the contrary, but may be rebutted. (*Juris et de jure*--Of law and of right)

"and the courts were not bound to raise it, if the facts in evidence went against it.

'It cannot be the duty of a Judge to presume a grant of the non existence of which he is convinced' observed Farwell, J. in -- *Attorney General v. Simpson* (1901) 2 Ch 671 : 70 LJ Ch 828."

In that case the possession of the defendant was claimed to be for over 200 years but there was no finding on the length of possession. On the ground *inter alia*, that the land was part of Mal lands (assessed land) within the zamindari, it was held that there was no scope for applying presumption of lost grant. In the case on hand the appellant traces his possession from 1954 under an unregistered perpetual lease from the erstwhile Inamdar (Maqtedar). Therefore, the presumption of lost grant will not be available to the appellant."

23. We are thus of the view that from the facts of the present case and the materials brought on record as noted

above the present was a fit case where presumption was to be drawn that petitioner who was continuing in peaceful enjoyment of the land in question and the premises for the last more than 85 years, possession was of legal origin and was occupied with the permission of the Government and petitioner's long possession could not have been held to be unauthorised so as to empower the Revenue Authorities under the 1957 Act to proceed against the petitioner.

24. Learned counsel for the petitioner has also placed reliance on the judgment of the Apex Court in **Government of Andhra Pradesh v. Thummala Krishna Rao and another** ([1982] SCC 134). In the above case summary proceedings under the Andhra Pradesh Land Encroachment Act, 1905 were initiated. The Apex Court held that summary proceedings can be initiated only where unauthorised occupation of Government property is not disputed and when title to the land is bona fide disputed by the occupant such dispute must be adjudicated not by the summary proceedings but by civil suit. It is held that bona fides of the occupant's claim can be inferred from his

occupation for a long period. The Division Bench of the High Court in the above case held that whether the land vested in the Government or University which dispute going back from 1942 summary proceedings could not have been initiated under S.7 of the Land Encroachment Act." Observations made by the Division Bench were noted in paragraph 6 which is to the following effect:

"6. Three appeals were preferred to the Division Bench against the judgment of the learned single Judge, two of them being by the petitioners in one writ petition and the third by the petitioner in the other writ petition. The Division Bench, while setting aside the judgment of the learned single Judge, held :

"The question whether the lands belong to Osmania University or not will have to be decided as and when the Government comes forward with a suit for the purpose. Even if we assume for the purpose of our judgment, as we are not pronouncing any conclusion as to whether the land vested in the Government or University that the Government is the owner, the dispute going back from 1942 cannot be dealt with in summary proceedings under S.7 of the Land Encroachment Act."

The Apex Court approved the observations of the Division Bench and laid down the following in paragraphs 7 and 8:

"7. We are in respectful agreement with the view taken by the Division Bench, subject however to the observations made herein below. The Andhra Pradesh Land Encroachment Act, 1905, was passed in order "to provide measures for checking unauthorised occupation of lands which are the property of Government". The preamble to the Act says that it had been the

practice to check unauthorised occupation of lands which are the property of the Government "by the imposition of penal or prohibitory assessment or charge" and since doubts had arisen whether such practice was authorised by law, it had become necessary to make statutory provisions for checking unauthorised occupations. S.2 (1) of the Act provides that all public roads, streets, lands; paths, bridges, etc. shall be, deemed to be the property belonging to Government, unless it falls under clauses (a) to (e) of that section. S.2 (2) provides that all public roads and streets vested in any public authority shall be deemed to be the property of the Government. By S.3 (1), any person who is in unauthorised occupation of any land which is the property of Government, is liable to pay assessment as provided in clauses (i) and (ii) of that section. S.5 provides that any person liable to pay assessment under S.3 shall also be liable, at the discretion of the Collector, to pay an additional sum by way of penalty. S.6 (1) and 7, which are relevant for our purpose. read thus :

"S.6 (1). Any person unauthorisedly occupying any land for which he is liable to pay assessment under S.3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar and any crop or other product raised on the land shall be liable to forfeiture and, any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar, or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct."

"S.7. Before taking proceedings under S.5 or S.6, the Collector or Tahsildar or Deputy Tahsildar as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under S.5 or S.6."

8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by S.6 of the

Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is "the property of Government". In regard to property described in sub-sections (1) and (2) of S.2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in S.6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in Unauthorised occupation of property which is declared by S.2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But S.6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under S.3." S.3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that, the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by S.6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab

Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by S.6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.”

25. We have already noticed that both under Act IV of 1096 and Act XIX of 1951, for unauthorised occupation of land assessments and prohibitory assessments were contemplated and thereafter summary eviction of unauthorised occupation. It is not even suggested that at any time any proceedings under Act IV of the 1096 and Act XIX of 1951 were initiated for assessment or prohibitory assessment or summary eviction. Suddenly after more than 85 years, the Tahsildar initiated proceedings which according to us was clearly without jurisdiction and beyond the scope of the 1957 Act for the reasons as noted above.

26. As a result of the above discussion all the issues are answered in favour of the petitioner.

27. In view of the foregoing discussion, we are of the view that proceedings under the 1957 Act against the petitioner were unsustainable and the authorities committed error in upholding the said proceedings. The learned Single Judge has not adverted to the materials on record as noted above. We are thus of the view that petitioner is entitled to the relief sought for in the Writ Petition.

In the result, the Writ Appeal is allowed. Judgment dated 16.10.2008 passed by the learned Single Judge in W.P(C) No.28735 of 2008 is set aside. The Writ Petition is allowed and orders, Exts.P4 to P7 are set aside.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**