

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**TUESDAY, THE TWENTY FIRST DAY OF APRIL TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.21052 of 1995 & 29871 of 1997

Between:

P.V. Narasimha Rao, S/o. Late P.V. Ramanaiah,

Aged about 61 years,

Occ: Retd. Employee,

H.No.11-4-336/3,

Chilakalguda, Secunderabad & 4 others

.. Petitioners

AND

The District Collector,

Hyderabad Urban,

Hyderabad District & 21 others

.. Respondents

AND

WRIT PETITION No.29871 of 1997

Between:

P.V. Narasimha Rao, S/o. Late P.V. Ramanaiah,

Aged about 47 years,

Occ: Govt. Service,

H.No.11-4-336/3,

Chilkalguda, Secunderabad & 4 others

.. Petitioners

AND

The District Collector,

Hyderabad Urban,

Hyderabad District & 20 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.21052 of 1995 & 29871 of 1997

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COMMON ORDER:

The grievances in both the writ petitions are one and the same and the contest

in the writ petitions is among the same parties. Hence, both writ petitions are considered and disposed of by this common order.

2. Heard Sri Peri Prabhakar, learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue, State of A.P. No representation for Respondent Nos.6 to 17 in W.P.No.21052 of 1995 and Respondent Nos 6 to 16 in W.P.No.29871 of 1997. Insofar as Respondent Nos.18 to 21 in W.P.No.21052 of 1995, who are Respondent Nos.17 to 20 in W.P.No.29871 of 1997, the writ petitions are dismissed.

3. Smt. P. Sona Bai was the absolute owner and in possession of Ac. 13.00 guntas of land in Survey No.194/8/1 of Begumpet Village. From out of the above extent of land, Smt. P. Sona Bai sold an extent of Ac. 7.30 guntas of land to M/s. Srinivasa Agricultural Firm, Vijayawada, in the year 1971. On 29.06.1971, she executed a registered Will bearing Document No.15 of 1971 in respect of the remaining land admeasuring Ac. 5.10 guntas in favour of her two sons viz., P.V. Narsimha Rao, P. Venugopal Rao and three daughters viz., P.V. Raghavamma, P. Nagamani and P. Subhasini (petitioners herein). Smt P. Sona Bai died on 01.02.1976. After her death, the names of the petitioners were mutated in the revenue records by the order of the Tahsildar, Hyderabad Urban, dated 04.04.1977.

4. Town Survey was conducted in accordance with the Andhra Pradesh Survey and Boundaries Act, 1923, and Town Survey numbers were assigned within the Hyderabad Urban Agglomeration. Out of Ac. 13.00 guntas of land in Survey No.194/8/1 of Begumpet Village, an extent of Ac.9.30 guntas fell in Ward No.99, Block No.E, bearing Town Survey No.5 of Begumpet Village and an extent of Ac. 3.10 guntas fell in Ward No.79, Block No.A, in Town Survey No.6 of Khairatabad Village. Ac. 2.30 guntas, in Ward No.99, Block No.E, Town Survey No.5 and Ac. 2.20 guntas in Ward No.79, Block No.A, Town Survey No.6 of Khairatabad Village, i.e. Ac.5.10 guntas fell to the share of the petitioners.

5. Respondent Nos.6 to 11 herein filed O.S.No.3888 of 1988, on the file of the III Assistant Judge, City Civil Court, Hyderabad, praying to grant mutation of their names in the Revenue and Town Survey Records in respect of land to an extent of Ac. 1.13 guntas in Survey No.19, Ac. 1.27 guntas in Survey No.55/1 and Ac. 2.00 guntas in Survey No.55/2 of Bholakpur Village in Ward No.79, Block No.A, Town Survey No.1 to 4 of Bholakpur Village. Respondent Nos.12 to 17 were impleaded in the said suit as defendants. The petitioners herein filed I.A.No.470 of 1992 in the said suit praying to implead them as defendants, as the claim of the plaintiffs in the suit is covering the extent of land owned by them. The same was opposed by the plaintiffs. It was categorically asserted by the plaintiffs in their counter affidavit filed in the above I.A. that at no stretch of imagination, it could be said that the issues involved in the suit in any way connected with the property belonging to the petitioners and the petitioners in the I.A. have no cause of action nor interest in the suit schedule property. It was further asserted that the suit schedule property is situated in Bholakpur Village, whereas the petitioners' property is situated in Begumpet Village and as the properties are situated in two different villages, the petitioners in the I.A. are not at all necessary parties to the suit. Having considered the said submissions, the trial Court dismissed the I.A.No.470 of 1992 by Order, dated 07.09.1992. The trial Court held:

“So admittedly it is very clear the properties under the sy. Nos. claimed by the petitioners are entirely different to that of the properties claimed by the respondents/plaintiffs herein and their situation is also entirely different location. So it cannot be said that there is nexus in between the claim of the petitioners herein and the relief sought with that of the relief claim by the respondents/plaintiffs in the main suit. The original suit is filed for correction of revenue records by entering the respondents/plaintiffs names. So, in order to decide the issues involved in the original suit, the presence of petitioners on record is appears to be not necessary. More, particularly when the properties claimed by them and their situation is totally different and there is no connection in between them.”

6. The suit filed by respondent Nos.6 to 11 herein in O.S.No.3888 of 1988 was decreed on dated 05.10.1992. The Mandal Revenue Officer, Secunderabad

(5th respondent) and the District Collector, Hyderabad Urban, Hyderabad District (1st respondent) were directed to carry out the corrections in the Town Survey Records as well as mutation of their names in the concerned revenue records in respect of the suit land to an extent of Ac. 1.27 guntas in Survey No.55/1 and Ac. 2.00 guntas in Survey No.55/2, situated in Ward No.79, Block No.A, Town Survey No.1, 4, 5 and 6 of Bholakpur Village. Further directions were also issued.

7. The trial Court held that respondents 12 to 17 herein, who were the defendants in the suit, are also entitled to the similar decree in respect of land to an extent of Ac. 2.00 guntas in Survey No.55/2, Block No.A, Ward No.79 in T.S.Nos.1, 4, 5 and 6 of Bholakpur Village subject to payment of court fee.

8. In purported compliance of the decree passed in O.S.No.3888 of 1988, the District Collector, Hyderabad Urban, Hyderabad District (1st respondent) issued Memo, dated 06.05.1993, directing the Mandal Revenue Officer, Secunderabad (5th respondent) and the Deputy Director, Survey and Land Records Urban, Hyderabad (4th respondent), to comply with the decree passed by the Civil Court. In compliance therewith, the Deputy Director, Survey and Land Records Urban, Hyderabad District (4th respondent), issued Orders, dated 19.05.1993, directing the Mandal Revenue Officer, Secunderabad (5th respondent) to carry out the corrections in the connected records of his Office and to report compliance. On 01.06.1993, the Mandal Revenue Officer, Secunderabad, issued proceedings in purported compliance of the decree passed in O.S.No.3888 of 1988 indicating the names of the persons as pattadars and possessors of the land as included in the tabulated statement.

9. Names of the plaintiffs and defendants in the suit were reflected in the lands in Town Survey Nos.1/2, 6/2, 5/2, 1/1, 6/3, 27/2, 4/2 and 5/1. While doing so the respondent authorities correlated Survey Nos.55/1 and 55/2 of Bholakpur Village to that of T.S.Nos.1, 4, 5 and 6 of Ward No.79, Block-A. Further, they have sub-divided T.S.No.6 into T.S.Nos.6/1, 6/2 and 6/3 and T.S.No.5 into

T.S.Nos.5/1, 5/2, 5/3 and entered the names of respondents 6 to 17 in respect of T.S.Nos.5/1 and 5/2 of Ward No.99 and T.S.Nos.6/2 and 6/3 of Ward No.79 and deleted the name of Smt. P. Sona Bai in T.S.No.6 of Ward No.79, Block-A, which correlated to Survey No.194/8/1 of Begumpet Village and in T.S.No.5 of Ward No.99, Block-E.

10. Aggrieved thereby, the petitioners herein submitted application before the Deputy Director, Survey and Land Records Urban, Hyderabad (4th respondent). On the said representation petitioners were informed that on verification of the details of the suit schedule property in the decree, it was noticed that the plaintiffs' lands are falling in Town Survey Nos.1 and 6 of Ward No.79, Block No.A, Town Survey Nos.4 and 5 of Ward No.99, Block No.E and Town Survey No.27 of Ward No.94, Block No.G and are not located in the same ward as mentioned in the decree i.e., Ward No.79, Block No.A. They were also informed that the above corrections have also been carried out in the Town Survey Records. The petitioners were also informed that since W.P.No.21052 of 1995 was filed and the order of *status quo* was granted by this Court and that they have also filed O.S.No.101 of 1996, on the file of the XI Assistant Judge, City Civil Court, Secunderabad, the request for cancellation of corrections already made in Town Survey Records could not be considered.

11. Petitioners herein instituted O.S.No.101 of 1996, on the file of the XI Assistant Judge, City Civil Court, Secunderabad, praying to set aside the decree in O.S.No.3888 of 1988. The said suit was dismissed by judgment, dated 05.06.2000, on the ground that W.P.No.21052 of 1995 is pending before this Court and the relief sought in the writ petition is identical to the relief sought in the suit and, thus, the petitioners herein are not entitled for the relief of directing defendant Nos.7 and 8 therein to cancel the mutation made in respect of Town Survey Nos.5 and 6.

12. Challenging the corrections made in revenue records by deleting the name of Smt. P. Sona Bai and incorporating the names of respondents 6 to 17 in T.S.No.5 of Ward No.99, Block-E of Begumpet Village, W.P.No.29871 of

1997 was filed. Challenging the deletion of name of Smt. P. Sona Bai and incorporating the names of respondents 6 to 17 in the place of Smt. P. Sona Bai in respect of the land in T.S.No.6 of Ward No.79, Black-A of Khairatabad, W.P.No.21052 of 1995 was filed.

13. Learned counsel for the petitioners contends that the land of the petitioners was in a different village and originally bore different survey number and as specifically averred by respondent Nos.6 to 11 in the counter affidavit filed in I.A.No.470 of 1992, the land claimed by them is no way concerned with the property owned and possessed by the petitioners. Therefore, in purported compliance with the decree passed by the Civil Court in O.S.No.3888 of 1988, the respondent authorities ought not to have changed the ownership of the land owned and possessed by the petitioners and the same amounts to exercising the power and authority vested in them in illegal and arbitrary manner.

14. Learned counsel for the petitioners further submits that respondents having agreed with the contentions of the petitioners that a wrong description was given in the suit schedule and even though the description is not tallied, failed to rectify the mistake on the ground of institution of O.S.No.101 of 1996 and W.P.No.21052 of 1995. The said admission by respondent authorities would substantiate the claim of the petitioners that illegally the name of Smt. P. Sona Bai was removed in the revenue records in respect of the property owned and possessed by the petitioners.

15. Learned counsel for the petitioners further contends that petitioners were not parties to the suit and their implead application was dismissed on the ground that they are no way concerned with the said properties. Therefore, on verification of revenue records, if it was found that implementation of the decree in O.S.No.3888 of 1988 would mean altering the ownership of the land owned by the petitioners, the petitioners ought to have been put on notice.

16. Learned counsel for the petitioners further submits that as informed

by the Survey and Land Records authorities, after conducting of survey under the the Andhra Pradesh Survey and Boundaries Act, 1923, Town Survey Numbers were assigned and there were no sub-divisions, whereas in the order of the Mandal Revenue Officer, Secunderabad (5th respondent), he has shown the sub-division numbers. It is not known how the sub-division numbers were invented by the Mandal Revenue Officer to reflect the names of the plaintiffs in O.S.No.3888 of 1988. Even after carrying out the amendments of the plaint and the suit schedule, properties were not correctly reflected. But, respondent authorities acted overzealously to confer benefit on the plaintiffs on a land, which plaintiffs themselves declared as not belonging to them.

17. Learned counsel for the petitioners submits that respondent Nos.18 to 21 in W.P.No.21052 of 1995 are the subsequent purchasers of property to an extent of 5691 square yards, which was sold by respondent Nos.6 to 17 by virtue of several sale transactions. During the pendency of the writ petition, petitioners and respondents 18 to 21 in W.P.No.21052 of 1995 and respondents 17 to 20 in W.P.No.29871 of 1997 have come to an understanding and as agreed by the parties, petitioners have decided to give up claim of land to an extent of 5691.55 square yards even if petitioners succeed in the writ petitions. Accordingly, petitioners have filed W.P.M.P.No.13822 of 2009 in W.P.No.21052 of 1995 and W.P.M.P.No.13823 of 2009 in W.P.No.29871 of 1997 seeking to delete respondents 18 to 21 and respondents 17 to 20 respectively from the array of respondents.

18. Learned counsel for the petitioners further contends that the subject lands are inam lands and the petitioners and their ancestors were in continuous occupation and enjoyment of the said land. Petitioners have applied for Occupancy Rights Certificate, but the said request of the petitioners was rejected by original authority. Aggrieved thereby, the petitioners filed W.P.No.11058 of 2008 and the said writ petition was disposed of by order, dated 16.09.2008, directing the respondent authorities to grant Occupancy Rights Certificate in favour of the petitioners. Writ Appeal filed against said

decision was dismissed by the Division Bench of this Court by judgment, dated 24.08.2010. Special Leave Petition Nos.32823-32826 of 2010 was dismissed by the Hon'ble Supreme Court of India on 03.04.2013. As a consequence to the dismissal of the writ appeal and the S.L.P., in compliance of the orders issued by this Court in W.P.No.11058 of 2008, the Occupancy Rights Certificate was issued on 23.04.2014. Learned counsel for the petitioners, therefore, submits that as a consequence to issue of Occupancy Rights Certificate, the rights are vested in the petitioners to the same extent of the land and no other person can claim the land. He, therefore, submits that wrong entries made in the revenue records are liable to be corrected.

19. Learned Assistant Government Pleader submits that entire exercise undertaken by the respondent authorities was only in compliance of the decree passed by the competent Court.

20. Learned Assistant Government Pleader further contends that land in Survey Nos.55/1 and 55/2 of Bholakpur Village is adjoining to Survey No.194/8 of Begumpet Village. Though wrong survey numbers were mentioned in the suit schedule, but the description of the properties was verified and on correlation of the Town Survey numbers, it was found that the land claimed by the plaintiffs in O.S.No.3888 of 1988 is the land, which is now demarcated and accordingly, the corrections were made in the revenue records. Therefore, he submits that, there was no illegality and irregularity in the order granting such corrections.

21. The case has a checkered history. There has been litigation for more than five decades concerning the said property. Estate of Paigah filed O.S.No.353 of 1978, on the file of V Additional Judge, City Civil Court, Hyderabad, for declaration that the registered Sale Deed, dated 29.06.1971, executed by Smt. P. Sona Bai in favour of Srinivasa Agricultural Firm at Vijayawada (1st defendant) as illegal, inoperative and *void ab-initio* and does not create any right, title and interest in favour of the first defendant therein and for permanent injunction, restraining the defendants from interfering with the possession of the land bearing R.S.No.194/1 of Begumpet Village. On hot

contest the suit was dismissed. Aggrieved thereby, the estate filed C.C.C.A.No.59 of 1981, on the file of this Court. On detailed consideration of the evidence on record, this Court held that the contention of the Paigah Estate that no assignment was made in favour of Smt. P. Sona Bai and that an alleged assignment document bearing Ex.B-10 was not a valid document was rejected. This Court also gone into the lease entered into by Smt. P. Sona Bai with Defendant No.1 in the year 1970, which was the subject matter of O.S.No.779 of 1970. The said suit was filed against the Defendant No.1 in the C.C.C.A.No.59 of 1981 alleging that the defendants are trying to interfere with the possession of the plaintiffs in respect of the same extent of land. Having noticed the several documents in support of the claim on behalf of Smt. P. Sona Bai, this Court held:

“Thus, from all the aforesaid proceedings, it can be gathered that right from the year 1353 F, Sona Bai has been claiming R.S. No. 194/8-1 as the land designed to her. The Pahanies also support her case. In all these proceedings, the Paigah Estate did not question the genuineness of the letter of assignment in favour of Sona Bai. Even in the suit filed in the year 1970 by the Paigah Estate, the Tenant of Smt. Sona Bai set up title of Smt. Sona Bai as a defence. But the Paigah Estate got the suit dismissed. Hence, I am not prepared to agree with the contention that the assignment order is got up document and is never acted upon.”

22. The Court also declared that the petitioner Smt. P. Sona Bai was in possession and enjoyment of the said property. The successors of Smt. P. Sona Bai applied for issuance of Occupancy Rights Certificate on the same extent of land. The said request was rejected by order, dated 25.10.1997, of the Revenue Divisional Officer, Chevella Division, affirmed by the Joint Collector, Ranga Reddy District, in his proceedings, dated 09.04.2001. Aggrieved thereby, they have filed W.P.No.11058 of 2001. This Court dwelt into the history of the litigation and the validity of the claim on behalf of Smt. P. Sona Bai. This Court held that genuineness and competence of the grant made in favour of Smt. P. Sona Bai was upheld by the RDO in his order, dated 31.05.1978, which order was affirmed in O.S.No.353 of 1978 and Division Bench of this Court in C.C.C.A.No.59 of 1981 and gave authoritative pronouncement regarding the right vested in Smt. P. Sona Bai. Having regard to the merit in the claim of the

successors of Smt. P. Sona Bai for issuance of Occupancy Rights Certificate, the rejection orders were set aside and directions were issued for grant of Occupancy Rights Certificate to an extent of Ac. 5.10 guntas in Survey No.194/8 of Begumpet Village. This decision of learned Single Judge, dated 16.09.2008, in W.P.No.11058 of 2001, was affirmed by the Division Bench in W.A.(SR).No.82947 of 2009 vide judgment, dated 24.08.2010. The S.L.P. filed against the said decision was also dismissed by the Hon'ble Supreme Court. As a consequence to finalization of issue regarding grant of Occupancy Rights Certificate, proceedings were issued on 23.04.2014, by the Special Grade Deputy Collector and Revenue Divisional Officer, Rajendranagar Division, Ranga Reddy District, granting Occupancy Rights Certificate in favour of the petitioners to an extent of Ac. 5.10 guntas in Survey No.194/8/1 of Begumpet Village, Balanagar Mandal.

23. Thus, the history of litigation as stated above and issuance of Occupancy Rights Certificate by the competent authority settles the issue with reference to the ownership of petitioners on the land to an extent of Ac.5.10 in Survey No.194/8/1.

24. As noticed above, when the claim was made by the respondents herein in O.S.No.3888 of 1988 for mutation of their names in the Revenue and Town Survey Records, the petitioners' application for impleading as defendants and to contest the said claim was opposed by the plaintiffs in the said suit, who are respondents herein saying that the claim made by them in the said suit is no way concerned with the property owned by the petitioners. Having regard to the said stand, the I.A.No.470 of 1992 was dismissed. Thus, insofar as the claim of the plaintiffs in O.S.No.3888 of 1988 for mutation in Revenue Records as well as Town Survey Records to the extent of land claimed by them in the pre-revised Survey Nos.55/1 and 55/2 of Bholakpur Village is nothing to do with the land owned and possessed by the petitioners. This has been the contention of the petitioners all along before the revenue authorities.

25. The claim of the petitioners was rejected on erroneous ground that in

the verification of the revenue records after the Town Survey, it was found that the survey numbers and the extent mentioned by plaintiffs in OS No 3888 of 1988 is overlapping with the present extent of land claimed by petitioners and, therefore, the action done was valid and is in compliance with the decree passed in O.S.No.3888 of 1988. The respondent authorities failed to appreciate that the petitioners are not opposing the claim set up by the plaintiffs in O.S.No.3888 of 1988 nor do they have any grievance regarding the decree obtained by them with reference to the mutation of their names in the Revenue as well as Town Survey Records.

26. The grievance of the petitioners is only to the extent of protecting their land in the Survey No.194/8/1 of Begumpet Village. It is not the case of the respondent authorities that the petitioners do not own any extent of land in the above survey number or on conducting survey, it was found that the extent of land is falling short and, therefore, there is no other extent of land which can be earmarked to the petitioners. On the contrary, the orders passed by the Revenue Divisional Officer on 23.04.2014 granting Occupancy Rights Certificate to an extent of Ac. 5.10 guntas in the same survey number justifies the claim of the petitioners that they continued to be in possession and enjoyment of the land to the extent of Ac. 5.10 guntas.

27. Heavy reliance is placed on the decree passed in O.S.No.101 of 1996. The petitioners instituted the above suit on the file of XI Junior Civil Judge, City Civil Court, Secunderabad, seeking a declaration that the judgment and decree, dated 05.10.1992, passed in O.S.No.3888 of 1988 is null and void and for setting aside the said judgment and decree and with consequential directions. By the time the said suit came up for consideration, W.P.No.21052 of 1995, one of the two Writ petitions being disposed of by this order, was filed and pending consideration of this Court. Holding that the suit is not maintainable on identical relief in view of the pendency of the writ petition, the suit was dismissed. The trial Court also held that the plaintiffs have failed to establish that they are in possession and enjoyment of property in Survey No.194/8 of Begumpet Village and having any valid title in respect of the said land. The trial Court also held that plaintiffs failed to establish as to actually what was the loss caused to them due to decree obtained by the plaintiffs in the suit. The judgment in

O.S.No.101 of 1996 settles the issue concerning claim of plaintiffs in O.S.No.3888 of 1988. But, in the guise of enforcing the decree in O.S.No.3888 of 1988, respondent authorities erred in deleting the name of late Mrs Sona Bai from revenue or town survey records.

28. As noticed above, the entitlement of Smt. P. Sona Bai to the extent of land in Survey No.194/8/1 of Begumpet Village stood concluded by judgment in C.C.C.A.No.59 of 1981 which was again considered by this Court in W.P.No.11058 of 2001 on an issue concerning grant of Occupancy Rights Certificate. The issue of grant of Occupancy Rights Certificate stood concluded by virtue of the orders passed on 15.04.2014 and consequential certificate issued on 23.04.2014. It appears, before passing orders on 15.04.2014, a detailed enquiry was conducted. Thus, the rejection of the application submitted by the respondent authorities is erroneous and it amounts to total non-application of mind to the issue. It is startling to notice that the very same authorities have now issued Occupancy Rights Certificate on the same extent of land.

29. It is also erroneous on the part of the respondent authorities in not putting the petitioners on notice before undertaking correction of Revenue Records and Town Survey Records, more particularly, when they were aware that it would amount to deleting the name of Smt. P. Sona Bai and thus, affecting the right of the petitioners to own and enjoy the property which was standing in their name for several decades and dispute resolved in their favour. Further more, their application to implead as defendants was rejected on the ground that they are no way concerned with the property claimed by the plaintiffs in O.S.No.3888 of 1988. Thus, on this ground also order is not sustainable and is liable to be set aside.

30. For the above stated reasons, the orders impugned are not sustainable and they are, accordingly, set aside. The Writ Petitions are, accordingly, allowed. The respondent authorities are directed to take consequential steps to restore the names of the petitioners in the Revenue as well as Town Survey Records. It is made clear that this order is with reference to the corrections made in the

Revenue as well as Town Survey Records in purported compliance of decree passed in O.S.No.3888 of 1988. If there are any other claims or issues that require further consideration on account of any other material, this order does not come in the way of undertaking such exercise after following the due procedure. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

P.NAVEEN RAO, J

Date: 21st April, 2015

KL/INL/KKM

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION Nos.21052 of 1995 & 29871 of 1997

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Date: 21st April, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.21052 of 1995 & 29871 of 1997

Date : 21.4.2015