

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.7417 of 2009

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“To issue an appropriate writ, order or direction more particularly, one in the nature of Writ of Mandamus declaring that the proceedings initiated under the Urban Land (Ceiling and Regulation) Act, 1976 have abated with regard to the land in Ac. 3.38 guntas situated in Sy.No. 129/93 (Old) (New - 403/P), corresponding to Part of T.S.No. 1/1/C/1, Ward No. 9, Block 'H', of Shaikpet Village, Banjara Hills, Hyderabad reflected in annexed Map, which is owned and possessed by the petitioners from the last six decades, by operation of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which was adopted by the State of Andhra Pradesh with effect from 27-3-2008 and consequently direct the respondents not to interfere in any manner with the petitioners' rights of ownership, possession and enjoyment of the above said land or in the alternative direct the respondents to regularise the said land in favour of the petitioners, vide their application for regularisation dated 31-3-2006, as was done in identical cases.”

2. The petitioners 1 and 2 are the sons and 3rd petitioner is the wife of one late Sri Magan Lal, who died on 25.08.2008. After the death of Sri Magan Lal, petitioners herein instituted O.S.No.4571 of 2008, on the file of the Court of the IX Junior Civil Judge, City Civil Court, Hyderabad to declare them as legal heirs of Sri Magan Lal and the said suit was decreed as prayed for on 23.01.2009.

3. According to the petitioners, the grandfather of the petitioners 1 and 2, Sri K.Sheetal Singh, purchased an extent of Ac.3-38 guntas situated in Sy.No.129/93 (Old) (New 403/P) corresponding to part of T.S.No.1/1/C/1, Ward No.9, Block 'H' of Sheikpet Village, Banjara Hills, Hyderabad in the name of Sri Magan Lal (father of Petitioners 1 and 2) when he was minor from one Sri Syed

Bhikkan son of Nizamuddin in the year 1948, by way of a Registered Sale Deed vide Doc.No.B483554, dated 29.01.1948, for valuable consideration. It is also pleaded that the vendor also handed over the subject land to the grandfather of the petitioners 1 and 2. It is further averred in the writ affidavit that as per the orders of the Committee of the Management of the Affairs of Sarfekar Mubarak contained in Lr.No.1373 dated 12th Amardad 1340 Fasli, Sri Syed Bhikkan (vendor) was allotted the land by collecting Rs.562-08-0, which was deposited in the Treasury of the District Office. Along with the said Syed Bhikkan various extents of lands were allotted to other 34 persons and in the statement the name of Sri Syed Bhikkan figured at Sl.No.29, on being forwarded by the District Collector on 10.12.1340 Fasli and Sri Nawab Sadat Jung Bahadur, Hon'ble Minister, affirmed the said proposals by proceedings dated 30.12.1340 Fasli. Thereafter, the office of the Awal Taluqdar, District Atraf Balda, Sarfekar Mubarak issued a patta in the name of Sri Syed Bhikkan on 11th Farwardi 1341 Fasli. Consequent upon the sale of land in favour of Magan Lal vide sale deed dated 29.01.1948, Sri Syed Bhikkan made a request to the Deputy Director of Settlement Estate of Sarfekar Mubarak HeH the Nizam to transfer the patta in favour of Magan Lal. In pursuance of the same, Sri Syed Bhikkan was directed to approach the Collector, Sarfekar Mubarak, Hyderabad as the issue was intimated to the Collector vide letter in outward No.1298 File No.30/28. Accordingly, Syed Bhikkan approached the Collector, Sarfekar Mubarak, Hyderabad and the Collector vide letter outward No.862, dated 4th Amardad, 1358 Fasli stated as under:

“With reference to the subject cited it is to state that regarding the transfer of Patta of the Land survey No.129/93 totally admeasuring 8 Acres-38 Guntas situated at Village Shaikh, in the name of Minor MADAN LAL son of Seetal Singh, for the present would not be reasonable. However, you can deliver possession of the purchaser of the land on your own security. The Nozool of this land in his name in the head treasury and obtain due receipt therefor. It has been intimated to the Tahsildar and Makhadam Patwari of village shaikhpur accordingly.”

4. According to the petitioners, in view of the above factual narration, they are in lawful, peaceful and undisputed possession and enjoyment of the land and their names were also mutated in the revenue records viz., Faisal Patti, Pahanis, Pattadar Passbooks, Title Deeds and Land Revenue Receipts. It is further stated that since the subject land is situated in the urban agglomeration of Hyderabad, Sri Magan Lal filed a declaration under Section 6 (1) of the Urban Land Ceiling Act and the Urban

Land Ceiling authorities issued a number also to the same as C.C.No.E1/1060/94 and the second respondent/Special Officer and Competent Authority, Urban Land Ceiling, while referring to the report of Enquiry Officer dated 30.06.1994, passed an order vide proceedings E1/1060/94 dated 26.11.1994 under Section 8 (1) of the Act, which read as follows:

“One Sri Magan Lal S/o Seethal Singh R/o Hyderabad filed statement in Form-I U/s.6 (1) of U.L.C. (C&R) Act, 1976, declaring the following property as held by him and his family members.

Sl.No.	Description of the Property	Location	Extent Declared
1	Vacant Land in Sy.No.129/93 (old) (403/p new)	Shaikpet village, Hyderabad District	Ac.3-38 gts

The declaration filed by Sri K.Magan Lal has been enquired by the Enquiry Officer basing on the copies of the documents filed along with the declaration which reveals that, in the year 1948 Ac.3-38 gts., of land in Sy.No.129/93 was purchased in his name from one Sri Syed Bikan, s/o Syed Nizamuddin to whom the land was originally allotted in Sy.No.129/93 of Shaikpet village on payment by the Sarfekhas Authority which was confirmed by the then Taluqdar Atraf Balde (Sarfekhas Mubarak) vide his Letter dated 11th Farwari 1341 Fasli. Similarly Sarfekhas Atraf Balda has allotted lands in Sy.No.129 to several other persons for the development of the area.

The Special Deputy Collector of Hyderabad District has published Notification in Gazettee No.84, Dt.9-9-1981 showing some names of allottees of land in Sy.No.129 of Shaikpet village and called for to attend the enquiry and to produce documentary evidence of allotment letter, document title and payment of Land Revenue Assessment if any, made to Sarfekhas Authority etc. The name of Sri Syed Bikan, S/o. Sri Nizmuddin from whom the declarant purchased the Land finds place at Serial No.28 against Sy.No.129/93 in the said Gazettee.

The declarant has filed a copy of sale deed executed by Sri Syed Bikan in his favour wherein the declarant is claiming as Successor in interest of the original allottee Sri Syed Bikan for an extent of Ac.3.38 gts., in Sy.No.129/93 of Shaiket Village.

The Enquiry Officer has reported that the declarant is in possession

Sy.No.129/93 (403 New corresponding to art of T.S.No.11C1 Ward No.'9' Block 'H' of Shaikpet Village to an extent of Ac.3.38 gts.

The declarant has filed a copy of the Orders of the Hon'ble High Court of A.P. issued in W.P.No.9414/82 in respect of Sy.No.129/84, W.P.No.15548/87 in respect of Sy.No.129/85 and W.P.No.9420/82 in respect of Sy.No.129/90 filed by the successor-in-interest to the original allottees challenging the G.O.Ms.No.94, Revenue (Q) Department, dated 23.06.1983.

The Enquiry Officer has reported that the Hon'ble High Court passed the above judgment dated 31.08.1990 allowing all the Writ Petitions and directed mutation of the title of the successors of original assignees in Revenue RecorQds while quashing the Government order issued in G.O.Ms.No.942, Revenue (Q) Department, dated 23.06.1983. The Enquiry Officer further reported that against these Orders Writ Appeal Nos.859 and 872 of 1991 have been filed by the Government are pending.

In the circumstances the land declared Us.6 (1) of the Act covered by Sy.No.129/93 (403/p new) corresponding to TS.No.1/1/C/1, Ward No.'9' Block 'H' of Shaikpet Village, is not computed to the holding of the declarant."

5. By way of the said order, obviously, the Special Officer and Competent Authority refused to compute the subject land in the holding of the declarant on the ground of pendency of W.A.Nos.859 and 872 of 1991.

6. At this juncture, it may be apt to refer to the said writ appeals and the circumstances arising out of the writ appeals. In the year 1981, the Special Grade Deputy Collector, Hyderabad, Gazetted a notice dated 27.08.1981, asking all the 35 assignees including Syed Bhikkan (shown at Sl.No.28) to adduce documentary evidence in support of their title in respect of the land in Sy.No.129 of Sheikpet Village. According to the petitioners 1 and 2, their father approached the Special Grade Deputy Collector, Hyderabad along with all the documents in support of his title along with other 34 individuals. After enquiry, the Special Grade Deputy Collector, submitted reports in respect of only 16 out of 35 cases and the Government vide G.O.Ms.No.942, dated 23.06.1983, accepted the said reports and decided not to recognize the title of 16 Surfekas assignees while directing the collector to take further action. It needs to be noted at this juncture that the name of Sri Syed Bhikkan through whom the petitioners are tracing out their title was not included among the said 16. According to the petitioners, since the assignment was found to be genuine, no report was submitted against the subject land of the

petitioners.

7. Aggrieved by the said G.O.Ms.No.942, dated 23.06.1983, the persons whose assignments were not recognized and whose requests for grant of pattas were rejected, filed W.P.Nos.9414 and 9420 of 1982 and W.P.15548 of 1987. By way of a common judgment dated 31.08.1990, the learned Single Judge of this Court allowed the said writ petitions, holding the assignments as genuine while rejecting the stand of the Government that the land is a Government land and 35 assignments made by Sarfekas authority are not genuine and the learned Single Judge quashed G.O.Ms.No.942, dated 23.06.1983, while directing the respondents not to interfere with the possession of the assignees and their claimants and to mutate the land in their favour. As against the above said order of the learned Single Judge, the State carried the matter in W.A.No.859, 872 of 1991 and 1118 of 1996. Thereafter, the Division Bench rendered the judgment dated 13.02.2001 quashing G.O.Ms.No.942, dated 23.06.1983, while keeping it open for the parties to establish their rights in a proper judicial forum while ordering *status quo* to be maintained till the resolution of the dispute by a proper forum. The said order was carried to the Hon'ble Supreme Court by way of Special Leave Appeal and the same also ended in dismissal on 20.11.2001.

8. Pursuant to the said judgment dated 13.02.2001, Sri Magan Lal, father of the petitioners 1 and 2, filed fresh declaration under Section 6 (1) of the Urban Land Ceiling Act on 21.03.2006, which was received by the second respondent/Special Officer and Competent Authority on 27.03.2006. The petitioners father, Sri Magan Lal also made an application for exemption of the excess land under G.O.Ms.No.456, dated 29.07.2002, by paying the regularization fee of Rs.1,31,37,600/- by way of DD.No.735799, dated 31.03.2006 (1357).

9. In the above background and pleading in the manner indicted *supra* and complaining illegal interference of the respondents and contending that the proceedings under the Urban Land Ceiling Act have abated, the present writ petition came to be filed.

10. The Second respondent/Special Officer filed a counter affidavit on 27.04.2010 and additional counter affidavit dated 20.04.2015, whereas the District Collector/third respondent herein filed counters dated 27.04.2015, 07.09.2015, 30.09.2015 and 5.01.2016.

11. Heard Sri S. Ramchander Rao, learned Senior Counsel, appearing for Sri K.R.Prabhakar Rao, learned counsel for the petitioners on record and the learned Government Pleader for Assignments for the respondents 1 to 5 and Sri C.V.Mohan Reddy, learned Senior Counsel for the sixth respondent on behalf of Sri Ramakrishna Pativada, learned counsel on record for the sixth respondent apart from perusing the material available before the Court.

12. It is contended by the leaned Senior Counsel, appearing for the petitioners that the questioned action of the official respondents in interfering with the possession, right and title of the petitioners is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 300-A of the Constitution of India and contrary to various pronouncements of the Hon'ble Apex Court and this Court; that the controversy with regard to the subject lands attained finality before the Hon'ble Supreme Court, as such, by any stretch of imagination, it is not open for the official respondents to raise the aspect of title to the property and to interfere with the possession and enjoyment of the petitioners; that the principles laid down in the judgment of the Hon'ble Apex Court in **STATE OF A.P. AND ORS. v. MERIT ENTERPRISES AND ORS.** and the judgment of this Court in **ANAND PARBAT CO-OPERATIVE HOUSING SOCIETY LIMITED, SECUNDERABAD v. SPECIAL COURT UNDER A.P. LAND GRABBING (PROHIBITION) ACT, HYDERABAD** are binding on the official respondents therein in view of the provisions of Section 13 of the Indian Evidence Act and as per the law laid down by the Hon'ble Apex Court in **TIRUMALA TIRUPATI DEVASTHANAMS V. K.M. KRISHNAIAH**; that in the judgments reported in the **STATE OF A.P. AND ORS. (supra 1)** and **ANAND PARBAT CO-OPERATIVE HOUSING SOCIETY LIMITED, SECUNDERABAD (supra 2)**, the Hon'ble Apex Court and this Court upheld 35 transactions; that in view of the report of the Sundereshan Committee, the impugned action is untenable; that the Government regularised the lands in Sy.Nos.129/97, 129/116 and 129/11, as such, the impugned action is also discriminatory; that the letter of the District Collector dated 15.03.1994 also dispels the case of the respondents and is a proof positive for the case of the petitioners; that the records of rights filed along with the writ petition in the material papers candidly prove the case of the petitioners and so also the letter of the Hyderabad Urban Development Authority dated 16.05.2007; that the statements of the District Collector in the counter affidavit that there is no subdivision after 129/87 is factually incorrect as the Government regularised the lands in

Sy.No.129/97 and 129/116 and this Court in **ANAND PARBAT CO-OPERATIVE HOUSING SOCIETY LIMITED, SECUNDERABAD** (*supra* 2) dealt with Sy.No.129/94 and 129/110.

13. The learned Senior Counsel in support of his submissions and contentions places reliance on the judgments in **STATE OF A.P. AND ORS.** (*supra* 1) and **ANAND PARBAT CO-OPERATIVE HOUSING SOCIETY LIMITED, SECUNDERABAD** (*supra* 2), **COMMISSIONER OF SURVEY, SETTLEMENTS AND LAND RECORDS, GOVT. OF A.P. AND OTHERS v. G. PADMAVATHI AND OTHERS, TIRUMALA TIRUPATI DEVASTHANAMS v.** (*supra* 3), **U.P. RESI. EMP. CO-OP. HOUSE B. SOCIETY AND ORS. VS. NEW OKHLA INDUS. DEVE. AUTHORITY AND ANR., CONTROLLER OF COURT OF WARD, KOLHAPUR AND ANR. v. G.N. GHORPADE AND ORS., NATIONAL THERMAL POWER CORPORATION LTD.VS. MAHESH DUTTA AND ORS., M/S. REAL ESTATE AGENCIES VS. GOVT. OF GOA AND ORS., KAMAL KANTI DUTTA AND ORS. VS. UNION OF INDIA (UOI) AND ORS., ASHA VS. PT. B.D. SHARMA UNIVERSITY OF HEALTH SCIENCES AND ORS..**

14. Per contra, it is vehemently contended by the learned Government Pleader that there is no illegality committed by the official respondents and the relief to the extent of title or ownership prayed by the petitioners can neither be enquired into nor can be gone into under Article 226 of the Constitution of India as the same is the disputed fact; that the proceedings of the Special Officer and Competent Authority, dated 26.11.1994, issued under section 8 (1) of the Urban Land Ceiling Act is only a draft order and the contents thereof cannot be construed as a proof of ownership of the petitioners; that the subject land is a Government land and the petitioners are never in possession of the said land; that the Joint Collector vide order dated 14.11.1987 rejected the case of the alleged vendor of the petitioners Sri Syed Bhikkan and the Joint Collector considered the title of Sri Syed Bhikkan; that in view of orders in LGC.1/2007 by filed by Syed Nizamuddin son of Sri Syed Bhikkan, the present writ petition is not maintainable; that the report of the Sunderesan Committee would not confer any title in favor of the petitioners; that in view of the orders in Writ Appeals, the issue of title was kept open; that the findings in the Merits case arose under the Land Encroachment Act, as such, the same have no relevance; that the documents which the petitioners place reliance have no

relevance to the facts of the present case and they are fabricated; that the letter of the District Collector dated 15.03.1994 has absolutely no relevance.

15. To bolster his submissions and contentions, learned Government Pleader places reliance on the Judgment of this Court in the case of ***M.S.N.RAJU AND OTHERS v. MANDAL REVENUE OFFICER, JAMI MANDAL, VIZIANAGARAM AND OTHERS*** wherein this Court at paragraph 7, held as under:

“7. As noted hereinabove, the relief sought for in this Writ Petition is to direct the Respondents to deliver possession of the lands, admeasuring Ac.211.90 cents of wet land and Ac.77.30 of dry land, in T.D. No. 1277 of Thandrangi Village, Jami Mandal, Vizianagaram District, to the Petitioners as per the demarcation and identification contained in their ryotwari pattas. In proceedings under Article [226](#) of the Constitution of India this Court would not, ordinarily, determine the title of any individual over immovable property nor would it put him in possession thereof. In cases relating to immovable properties, which are governed by the ordinary civil law, the High Court would not exercise its special jurisdiction under Article [226](#) of the Constitution unless circumstances are exceptional. Parvatibai Subhanrao Nalawade (Smt) v. Anwarali Hasanali Makani : (1992)1 SCC 414. A regular suit is the appropriate remedy for settlement of disputes relating to property rights, and the remedy under Article [226](#) of the Constitution is not available except where violation of some statutory duty on the part of a statutory authority is alleged and established. The High Court would not allow its constitutional jurisdiction to be used for deciding disputes for which remedies under the general law, civil or criminal, are available. It is not intended to replace ordinary remedies available to a litigant which is by way of a suit. The jurisdiction is special and extraordinary, and should not be exercised casually or lightly. Mohan Pandey v. Usha Rani Rajgaria (Smt.) : (1992)4 SCC 61. This Court would not go into intricate questions relating to property rights as a regular suit is the appropriate remedy for settlement of such disputes, and the remedy under Article [226](#) of the Constitution of India, (which is summary in nature), is not available for such purposes. Lambadi Pedda Bhadrhu v. Mohd. Ali Hussain: (2003)4 ALT 611; Union of India rep. by its Secretary, Ministry of Defence, (ix) New Delhi v. S.M. Hussain Rasheed (2003)5 ALT 143; and Prince Shahamat Ali Khan v. Sultan-ul-Uloom Education Society : (2003)6 ALT 307.

8. Disputes, regarding possession of immovable property, cannot be effectively resolved in summary proceeding under Article [226](#) of the Constitution only on the basis of affidavits and counter-affidavits without tendering witnesses for cross-examination. The effective, alternative and comprehensive remedy is by way of private law review for declaration, injunction and damages before the Civil Court. Syed Kazim Bahadur v. District Collector, Rangareddy District : (2002)3 ALT 739.

9. In *Sohan Lal v. Union of India* : 1957 SCR 738, the Supreme Court held:

... We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the Appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Article [226](#) of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered....

(emphasis supplied)

10. The Petitioners' claim to have been granted ryotwari pattas, and pattadar pass books and title deeds, is on the basis of the agreement of sale of the year 1967. Since the genuineness of the alleged sale deed of 1967 is put in doubt by the State Government, and the unofficial Respondents, terming it as a concocted document it becomes necessary for the Court to decide the factual controversy as to whether the said document is real or has been concocted by the Petitioners for a clandestine purpose. As the said controversy is purely factual, it is not proper for this Court to take up investigation of such disputed facts, and record its finding thereupon. Under Article [226](#) this Court would not take up resolution of factual controversies, and would leave the parties to work out other legal remedies available to them. *Revenue Divisional Officer, East, Ranga Reddy Dist. v. Kasula Sathaiah* : (2002)3 ALT 389. Proceedings under Article [226](#) of the Constitution of India are ill suited for the purposes of enquiry into disputes which involve adjudication of disputed questions of fact. *Hindustan Petroleum Corporation Limited v. Ali Jafaar* : (2004)3 ALT 371. The question is one of exercise of discretion, and not of lack of jurisdiction. This Court will not, normally, exercise its jurisdiction under Article [226](#) where the facts in disputes are complex and may, for their determination, require evidence to be let in by the parties to the dispute. *Uttar Pradesh State Road Transport Corporation rep., by its Managing Director, Lucknow v. K.L. Hi-Tech Secure Print Ltd., rep. by its Managing Director*: (2004) 4 ALT 498 (DB). One of the reasons for refusal to exercise discretion under Article [226](#) of the Constitution is where disputed facts have to be investigated. In such cases the rights claimed are not capable of being established, in summary proceedings under Article [226](#) of the Constitution, as it requires a detailed examination of the evidence as may be had in a Suit. A petition under Article [226](#) of the Constitution

cannot be converted into a Suit to resolve factual controversies. The same principle has been extended even to mixed questions of fact and law by Courts. This Court cannot be converted into a trial court while exercising its powers under Article [226](#) of the Constitution, particularly when the party approaching this Court under Article [226](#) can work out his/its remedy by approaching the competent and jurisdictional Civil Court. In general, a disputed question of fact is not investigated in a proceeding under Article [226](#) of the Constitution, particularly where an alternative efficacious remedy is available, and where no effective and conclusive decision can be taken on the basis of the pleadings, and the documents filed in the writ petition. *Industrial Finance Corporation of India Limited, New Delhi v. Sree Krishna Oil Complex Limited, Hyderabad* : (2002)3 ALT 168.

16 Learned senior counsel Sri C.V.Mohan Reddy, representing the Advocate on record for the sixth respondent contends that the sixth respondent is the agreement holder from the petitioners; that the Division Bench found all the 35 assignments valid, as such, the respondents cannot plead ignorance nor it is open for them to dispute the genuineness of the documents and their title cannot be disputed at this length of time; that the report of Sundereshan Committee cannot be disputed in view of the Division Bench Judgment of this Court and there is already a judicial pronouncement on the report of the said Committee; that the Sundereshan Committee referred to Sy.No.129/88 and 129/99; that the findings in the LGC case have absolutely no relevance as Sri Syed Bikkhan lost his title as long back as in the year 1948 itself.

17. In the light of the pleadings and the contentions of the respective learned advocates, now the issues that emerge for consideration and determination by this Court are:

1. Whether the respondents are entitled to dispute the title and ownership of the petitioners in the facts and circumstances of the case?; and
2. “Whether the petitioners are entitled for any relief from this Court under Article 226 of the Constitution of India?”

18. According to the petitioners, they are the lawful owners and possessors of the land admeasuring Ac.3-38 guntas situated in Sy.No.129/93 (Old) (New 403/P), which corresponds to

TS 1/1/C/1 of Block ‘H’ Sheikpet Village, Banjara Hills, Hyderabad. The sum and substance of the case of the petitioners is that without any authority of law, the governmental authorities are interfering with their ownership, possession and

enjoyment of the said property.

19. In support of their case, the petitioners herein rely on a number of documents such as Patta granted in favour of the Vendor of the petitioners 1 and 2 Sri Syed Bhikkan, dated 11th Fervadai 1341 Fasli, sale Deed dated 29.01.1948 executed by Sri Syed Bhikkam in favour of their father,

Sri Magan Lal, letter of the Collector Surfacas Mubarak, Hyderabad vide File No.30/1978 and the Collector's Outward Letter No.862, dated 4th Amardad 1356 Fasli, Pattedar Passbooks, Title Deeds, Pahanis, Land Revenue Receipts, proceedings under the Urban Land Ceiling Act dated 26.11.1984, orders of this Court in **W.P.NO.1963 OF 1983 AND W.A.NO.188 OF 1983 DATED 28.09.1983** and the Judgments in **STATE OF A.P. AND ORS.** (*supra* 1), judgment of this Court reported in **COMMISSIONER OF SURVEY, SETTLEMENTS AND LAND RECORDS, GOVT. OF A.P. AND OTHERS** (*supra* 4), **ANAND PARBAT CO-OPERATIVE HOUSING SOCIETY LIMITED, SECUNDERABAD** (*supra* 2), the letter of the District Collector, dated 15.03.1994 and Sundereshan Committee Report.

20. On the other hand, the official respondents herein seek to justify their stand by placing reliance on the judgment of a Division Bench in W.A.No.859 and 872 of 1991 and W.A.No.1118 of 1996, dated 13.02.2001 and eventually the respondents herein are asking the petitioners to go to a competent Civil Court to establish their right with regard to the property.

21. A reading of the order of the Special Officer and Competent Authority issued vide proceedings No.B1/1060/94, dated 26.11.1994, manifestly, demonstrates that the request of the father of the petitioners 1 and 2 herein was not considered on the ground of pendency of Writ Appeals Nos.859 and 872 of 1991 and W.A.No.1118 of 1996 before this Court. In fact, while disposing of the said writ appeals, this Court permitted the writ petitioners therein to approach the Government with a request for regularization subject to payment of reasonable market value. But the fact remains that the father of the petitioners 1 and 2 was never a party to the said writ petitions nor the writ appeal. The basis and foundation for the case of the petitioners obviously is the order passed by this Court in the **W.P.NO.1963 OF 1983 AND W.A.NO.188 OF 1983 DATED 28.09.1983**. This Court in the said cases dealt with

the subject lands and 35 pattas granted by the Sarfekhas. In the said judgment a Division Bench of this Court directed the respondents not to interfere with the construction activity of the petitioners therein.

22. In fact, the State carried the matter to the Hon'ble Apex Court and the Hon'ble Apex Court by way of a judgment in the **STATE OF A.P. AND ORS.** (*supra* 1) while finding fault with the authorities in initiating action under the Land Encroachment Act, confirmed the judgment of this Court. In fact, this Court in the above referred judgment also referred to the judgment of the Hon'ble Apex Court in the case of **GOVERNMENT OF ANDHRA PRADESH v. THUMMALA KRISHNA RAO AND ANR.** wherein the Hon'ble Apex Court held that **when** there is a *bona fide* dispute with regard to the title summary procedure for the eviction cannot be resorted to.

23. In fact, subsequently also the subject lands came up for consideration before this Court in the case of **GOVT. OF A.P. AND OTHERS** (*supra* 12) and this Court at paragraphs 41 and 42, held as under:

“41. The land involved in this case is one of the lands assigned by Sarfekhas. During some period, different extents of lands were assigned to others. The genuineness of the documents relating to the assignments and the entries made in the revenue records, Khasara Pahani, Holding Register, Cist Receipt, Municipal Receipt and other correspondence between the Secretary to H.E.H. The Nizam and the claim of the assignees over the land assigned were the subject matter in WP No.1963 of 1983 (Ms. Merit Enterprises and others v. State of A.P. and others). The Division Bench of this Court in its order dated 29-9-1983 took into consideration the fact of binding nature of the orders of the criminal Court, the authority of the Secretary to Sarfekhas to assign the land in favour of other persons, Gulam Mohammed Qweshi, the vendor of Nizamuddin, subsequent transfer of the same to the others; calling the respondents therein to appear before the Special Grade Deputy Collector on a particular date to prove their title by producing necessary documents; silence on the part of the authorities in not taking steps for years together; holding of title in question not only passed on to the petitioners therein but also the documents relied on by them were genuine. The Division Bench also observed in Merits Enterprises case that even otherwise the petitioners therein perfected their title by adverse possession as at no point of time the petitioners therein were evicted from the land in their occupation either under the provisions of the Land Encroachment Act or the Land Grabbing Act. The Division Bench further observed that if the authorities were of the opinion that the land in question a Government land and not belong to the assignees, they should have taken steps to file a civil suit to get their title declared. Thus observing the

Division Bench quashed the proceedings ordered under the Land Encroachment Act in the case of Merit Enterprises (WP No.1963 of 1983), dated 29-9-1983. This order was challenged by the State before the Hon'ble Supreme Court in Civil Appeal No.267 of 1984. Almost similar contentions raised in these appeals were raised before the Apex Court. The Hon'ble Supreme Court after hearing both sides rejected the contentions of the State (Appellant herein) and held as follows :

"Learned Counsel for appellant-State raises a fundamental issue contending that it was not the domain of the High Court to undertake such a fact finding enquiry in proceeding under Article [226](#) of the Constitution. It has further been contended that the land in dispute was shown in the revenue records as belonging to Government and thus should have predominantly been viewed over other Government documents so as to establish the title of the Government. On the other hand, it has been contended that the High Court is empowered under its extraordinary jurisdiction under Article [226](#) of the Constitution to widen or limit the parameters of any controversy it is dealing with.

It is asserted that when the High Court chose to examine the entire matter inclusive of the factual side, the State without demur participated in it and it cannot now question the discretion or jurisdiction of the High Court when a decision has gone against it. Otherwise also it has been countered that the State has no explanation to the documents in which the land in dispute was shown to be in private ownership and not in State ownership. Having heard Counsel on both sides on the aspects afore-focused, we find that the High Court was perfectly justified in going into the question of ownership as that was jurisdictional question on the basis of which alone proceedings under Section 7 of the Act would be initiated. The High Court having done so and the appellant-State having participated in the enquiry, it is futile for it to be contending that the High Court travelled beyond its jurisdiction. Otherwise, on merit of the matter regarding ownership, nothing has been suggested to us whereupon we could be presumed to take a view different than the one taken by the High Court. We thus find no reason to interfere in the order of the High Court."

42. Like in Merit Enterprises case (supra) in this case also, the petitioners and earlier to them their predecessors-in-title after purchasing the land in question were put in possession of the same and have been enjoying the said land. If the authorities found that the land in question is not a private land but belonging to the Government they should have resorted to civil proceedings. This Court in several writ petitions filed by the petitioners, after hearing both sides and considering the records produced, held that the petitioners are the owners of S. No. 129/10 (New S, No.403) to an extent of Ac.8.00. In the Merit Enterprises case the possession of Gulam Md, Qureshi as to his acquiring the same and his entitlement to be in possession and enjoyment and the land involved herein and other survey numbers assigned by Sarfekhas authorities had come up for

consideration and the same was considered in favour of Md. Qureshi and 34 others. As mentioned earlier, the points raised in this writ petition are similar to the questions raised in the case of Merit Enterprises which went in favour of the petitioners therein. Later the same was confirmed by the Supreme Court. As such now no new point is involved to take a view contrary to the one taken in Merit Enterprises case.”

24. The letter of the Secretary, Revenue, Andhra Pradesh addressed to the Hon’ble Chief Minister, dated 15.03.1994, clearly demonstrates that the subject lands are patta lands. The contention advanced by the learned Government Pleader on behalf of the respondents that the said letter has no significance is without any substance in the absence of any evidence contrary to the same. The report of the Sundershan Committee placed on record also clearly shows that a Revision Survey was done in 1349 Fasli and the revision records of 1349 Fasli show that the lands in Sy.No.129/88 to 139/99 are patta lands. The Annexure No.2 attached to the said report shows the land in Sy.No.129/93 is standing in the name of Sri Syed Bhikhan i.e., the Vendor of the petitioners 1 and 2.

25. In this context, it may be relevant to refer to the judgment of this Court in the case of **B. VENKATESWARLU AND ANR. VS. DISTRICT COLLECTOR, HYDERABAD DISTRICT, HYDERABAD** wherein this Court referred to Memo No. 3933/02/64-17 dated 6-12-1967 wherein the Government had accepted the report submitted by the Sundershan Committee. The contention of the learned Government Pleader that the petitioners are not in possession of the land also cannot stand in the teeth of various revenue records produced by the petitioners. Undoubtedly, the presumption as contained under Section 6 of the Pattadar Passbooks Record of Rights, 1971 is available to the petitioners. In view of the voluminous evidence available and the judgment of the Hon’ble Apex Court and this Court wherein already 35 transactions were extensively dealt with, the contention of the learned Government Pleader, touching the non-maintainability of the writ petition, in the considered opinion of this Court cannot be sustained. The respondent authorities cannot disregard the findings recorded by the Division Bench of this Court in **W.P.NO.1963 OF 1983 AND W.A.NO.188 OF 1983 DATED 28.09.1983** and the judgment of the Hon’ble Apex Court in **STATE OF A.P. AND ORS.**

(supra 1).

26. At this Juncture, it may be apt to refer to the judgments relied upon by the learned counsel for the petitioners. In **ANAND PARBAT**

CO-OPERATIVE HOUSING SOCIETY LIMITED, SECUNDERABAD

(*supra* 2), this Court, at paragraphs 2, 3, 4, 8, 12, 17 and 22, held as follows:‘

“2. The facts that led to the filing of the writ petition, in brief, are as follows: The petitioner purchased an extent of 20,560.50 Sq.Mts. (24,590.36 Sq. Yds., approximately Ac.5.00 gts.) of land in S.No.129/11 Paiki, Shaikpet village, Banjara Hills, Hyderabad from one T. V. Ramachandraiah. Originally one Ramulu and Narayana were assigned extents of Ac. 10.00 of land each by the Surfekhas authorities during the year 1340-F under Patta Certificates dated 2nd Dai 1340 F and 25th Azure 1340 F, respectively. It is stated that they were in possession of the said lands since the date of the said assignment in their favour. The name of Ramulu appears at Sy.No.26 while the name of Narayana appears at Sy.No.35 of the list of pattas prepared by the Surfekhas authorities. It is further stated that the name of Ramulu appears in the Seesal Pahani issued for the years 1955 to 1958, which shows the Sy.No. as 129/11 Paiki. It is also stated that the said persons were in possession of the lands till they sold the same to T. V. Ramachandraiah under registered sale deeds dated 16-4-1964. According to the sale deeds as well as the plans annexed thereto show that the properties transferred thereunder bear Door Nos.8-2-269/1 and 8-2-269/2, admeasuring Ac.20.00 situate in Sy.No.129/11 paiki of Shaikpet Village. Soon after purchasing the land, T. V. Ramachandraiah applied to the Municipal Corporation of Hyderabad (for short the "MCH") for mutating the said lands in his favour and mutation was effected by the MCH in proceedings dated 23-7-1964. On an application made by T.V. Ramachandraiah in the year 1965, the MCH issued letter dated 7-1-1965 stating therein that house bearing Nos.8-2-269/1 and 8-2-269/2 stand in the name of T. V. Ramachandraiah in the property tax assessment register and that the said door numbers are situated in Sy.No.129/11 paiki. The MCH also issued corresponding certificate dated 18-1-1965 certifying that the said door numbers are situated in Sy.No. 129/11 paiki and the same measures Ac.20.00. The said T. V. Ramachandraiah made the entire suit land into 49 plots bearing Nos.1 to 49 and applied to the MCH for sanction of lay out and obtained sanction vide revision plan No.13/65. Out of the said lay out he sold 21 plots to the petitioner under sale deeds dated 9-12-1966 and 10-12-1966. The petitioner-society in turn sold the said plots to respondents 3 to 22 and 24 to 35 herein and certain other members. T. V. Ramachandraiah sold the rest of the plots directly to certain other members of the society. He paid property tax in respect of the said plots to the MCH upto the date of the sales in favour of the petitioner society and its members. The petitioner and its members are in actual physical possession of the said plots from the date of purchase till date. It is stated that they have erected a temporary shed for Watchman, a stone boundary wall and also displayed the petitioner-society's name on

boards erected in the said plots.

3. It is stated that while the matters stood thus, the petitioner-society came to know that the Collector, Hyderabad was in the process of allotting the said lands to Film Nagar Co-operative Housing Society Limited, (for short "Film Nagar Society") and Indira Nagar Welfare Hutsmen Association (for short "Indira Nagar Association"). Thereupon, the petitioner submitted a petition before the Collector, Hyderabad on 4-4-1979, asserting its title to the said lands and requesting that no allotment should be made in favour of Film Nagar Society and Indira Nagar Association. It is also stated that without considering the aforesaid petition and without notice to the petitioner-society, the District Collector on 22-5-1979 removed the sign boards and damaged the shed. Thereafter the petitioner-society, as the Film Nagar Society and Indira Nagar Association were trying to encroach upon the land, filed a suit in OS No. 1615 of 1979 on the file of the VII Assistant Judge, City Civil Court, Hyderabad for perpetual injunction restraining the Film Nagar Society, Indira Nagar Association, the Collector, Hyderabad and Mandal Revenue Officer, Golconda from interfering with the possession and enjoyment of the petitioner-society over the suit lands admeasuring Ac.20.00 situate in S.No.129/11 paiki of Shaikpet village, Banjara Hills, Hyderabad. In the said suit the District Collector filed written statement contending that there is no such survey number as 129/11 paiki, that no title is conferred by getting sanctioned layout from MCH that as per documents the said lands are shown at Road No.3, while the lands being claimed are at Road No.2, that there is no proper identity of land, that the town survey was published for Banjara Hills and Jubilee Hills area in Gazette dated 6-8-1977, that the said lands were allotted to Filmnagar Society vide G.O. Ms. No.897, Revenue (Q) Department, dated 5-3-1979, that the said lands form part of RS.No.1, Block-B, Ward 10 which correlates to Sy.No.403, that the names of the father of Ramulu and Narayana as shown in the patta certificate do not tally with those shown in sale deeds dated 16-4-1964, that their ages also do not tally, that no land was allotted to the Indira Nagar Association, that the Indira Nagar Association is in unauthorised occupation, that the suit is not maintainable for want of notice under Section [80](#), CPC and that as per Section 14 of the Land Encroachment Act, the Civil Court has no jurisdiction. The civil Court rejected the suit filed by the petitioner observing that there is some sort of resistance or encroachment by the people of Filmnagar Society and Indira Nagar Association and that the same is clear from certain documents. Aggrieved by the said the petitioner filed AS No.209 of 1991 on the file of the Additional Special Judge of SPE and ACB cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad.

4. It is further stated that during the pendency of the suit the Revenue Divisional Officer, Hyderabad filed LGC No.24 of 1991 on the file of the 1st respondent against one Mohd. Mohiuddin Khan and Vadla Hanumantha Chary, alleging that they have grabbed an extent of 1,616 Sq. yards of land which is a part of the above said lands. Later the petitioner-society

and Dr. Krishna Murthy the 15th respondent who is a member of the petitioner-society, were impleaded in the said LGC on the basis of the counter filed by respondents 1 and 2 therein, who stated that they are only watchmen of the petitioner and the 15th respondent respectively. In the said LGC the contention of the petitioner was that the land in question is not Government land and is a patta land bearing Sy.No.129/11 paiki and the same was originally allotted to one Ramulu and Narayana. The case of the Government was that there is no such Sy.No.as 129/11 paiki and that the said lands form part and parcel of Sy.No.403, which is Government land. Pending the above LGC, the petitioner obtained a certified copy of the Jubilee Hills Development plan filed in LGC No.71 of 1991, which was a case between the Government and some other parties, and filed the same in LGC No.24 of 1991 and got the same marked as Ex.B27. In the said plan Sy.No.129/11 is shown as patta land. Based on the said plan, the 1st respondent in its judgment dated 29-12-1995 in LGC No.24 of 1991 held that the said plan is an authenticated copy of Jubilee Hills development plan, that the same was filed by the Government itself in LGC No.71 of 1991, that the same plan is being filed in other land grabbing cases where the Jubilee Hills development plots are involved, that it is clear from the said plan that Sy.No.129/11 paiki exists in two plots besides Sy.No.129/11, that Sy.No. 129/11 paiki came to be shown as adjoining the Jubilee Hills Development plots and that the existence of Sy.No.129/11 paiki prior to 1964 when the sale deeds dated 16-4-1964 were executed in favour of T. V. Ramchandraiah cannot be ruled out. It was further held by the Land Grabbing Court in LGC No.24 of 1991 that at one point of time Sy.No.129/11 paiki was in existence at the same location where the petitioner purchased the land, that it is difficult to appreciate that the petitioner is in occupation of part of Sy.No.403, that if the plaint Ex.B27 in relation to Sy.No.129/11 paiki is the result of mischief and fraud perpetrated by the Government officials at the instance of the predecessor-in-title of the petitioner that has to be explained and the application has to be filed against the petitioner and all its members in respect of entire extent of Ac.20.00 gts. and not against the respondent No.4 therein, who is in possession of 1180 Sq.mts. It is further stated that the Special Judge in A.S.No. 209 of 1991 filed by the petitioner-society while allowing the appeal considering the judgment in LGC No.24 of 1991 and the Jubilee Hills development plan, held that the petitioner is in possession of the said land and Sy.No.129/11 paiki was in existence by the date of the purchase of the land by the vendor of the petitioner and decreed the suit. Aggrieved by the said judgment and decree the Collector and Mandal Revenue Officer, Golconda filed S.A.No.689 of 1998, while Indira Nagar Association filed SA No.574 of 1998 before this Court. This Court heard both the appeals together and placing reliance on the judgment in LGC No.24 of 1991 and on the Jubilee Hills development plan held that S.No.129/11 paiki was very much in existence and that the petitioner has been in possession of the said lands since the date of purchase. According to the petitioner, since no further proceedings are

initiated challenging the said judgment in the second appeals, the common judgment of this Court in the said second appeals has become final and binding on the 2nd respondent Government. It is further stated that since the Revenue Divisional Officer did not question the judgment of the 1st respondent in LGC No.24 of 1991, the same has become final and binding on the 2nd respondent.

8. It is stated that town survey was conducted during the year 1965-70 under the provisions of A.P. Survey and Boundaries Act, 1923 and according to which the petition schedule land is surveyed as TS No.1/1/1, Block-B, Ward No.10 and is classified as Government land. The said survey was notified in A.P. Gazette No.41, dated 6-8-1979 under Section [13](#) of the A.P Survey and Boundaries Act, 1923, which has become final and conclusive proof unless it is modified by a decree of a civil suit within three years from the date of Gazette Notification as stipulated under Section [14](#) of the Act. On the basis of these factors, according to the Government, there is no Sy.No.129/11 paiki existed at any point of time nor any sub-division was created by the Surfekhas authorities during Surfekhas regime. The Sy.No.129/11 paiki is a ghost Survey number and brought into existence with an ulterior motive to lay claim over the Government land.

12. It is further stated that though the writ petitioner-society is claiming Ac.20.00 gts. in fact only Ac.7.29 gts i.e., 31,248 sq. mts. is available and the remaining land is covered by slum known as Indiranagar Slum for which house site pattas have been granted to the eligible beneficiaries by the Government who were in possession. Hence LGC No. 167 of 1999 was filed against the writ petitioner-society in respect of an extent of Ac.7-29 gts.

17. It is submitted by both sides that the Land Grabbing Act was published in the A.P. Gazette on 6-9-1982. The reasons to bring about such a Legislation were that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force, or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including wakf or any other private person. Further the land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and including in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealers or otherwise in favour of certain section of people, resulting in large scale accumulation of the unaccounted wealth. As public order is adversely affected thereby now and the by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable lands, it was felt necessary to arrest and curb such unlawful activities immediately by enacting a special law in that regard. One more reason was that public order it will be also be adversely affected now and then in the State in view of the unlawful activities by the land grabbers in the State.

22. From the above definition it is clear that the words "land grab" is nowhere defined in the Act, but the dictionary meaning says that it is "sudden grasp or clutch or unscrupulous seizure". In other words "grab" means "grasp suddenly and eagerly" and hence appropriate unscrupulously. Thus there shall be some activity relating to possession or entering into land. "Land Grabbing" i.e., every activity of grabbing of any land without any lawful entitlement and with a view to illegally taking possession of such lands."

27. In **COMMISSIONER OF SURVEY, SETTLEMENTS AND LAND RECORDS, GOVT. OF A.P. AND OTHERS** (*supra* 4), this Court at paragraphs 26, 41 and 42 held as follows:

"26. In the case of G. Narasimhamurthy v. Director of Settlements, 1989 (1) ALT 124, this Court while interpreting Sections 4(4) and 5 of A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation Act, 1969, held as follows :

"Even though no period of limitation is prescribed under the relevant enactment for exercise of power suo motu, the power should be exercised within a reasonable time. It is not open to the authorities to take action after a lapse of several years, merely on the ground that there is no period of limitation. What is a reasonable time depends upon the facts and circumstances of each case.

In this case, it was only on 29-8-1987 that the impugned notice was issued seeking to exercise the revisional power under Section 4(4) of the Regulation 12 years after the Director of Settlements had knowledge about the grant of paltas. The period of limitation for filing the appeal is only two months. Therefore, the action of the 1st respondent in seeking to revise the order of (he Settlement Officer dated 2-2-1975 in 1987 is unreasonable."

41. The land involved in this case is one of the lands assigned by Sarfekhas. During some period, different extents of lands were assigned to others. The genuineness of the documents relating to the assignments and the entries made in the revenue records, Khasara Pahani, Holding Register, Cist Receipt, Municipal Receipt and other correspondence between the Secretary to H.E.H. The Nizam and the claim of the assignees over the land assigned were the subject matter in WP No.1963 of 1983 (Ms. Merit Enterprises and others v. State of A.P. and others). The Division Bench of this Court in its order dated 29-9-1983 took into consideration the fact of binding nature of the orders of the criminal Court, the authority of the Secretary to Sarfekhas to assign the land in favour of other persons, Gulam Mohammed Qweshi, the vendor of Nizamuddin, subsequent transfer of the same to the others; calling the respondents therein to appear before the Special Grade Deputy Collector on a particular date to prove their title by producing necessary documents; silence on the part of the authorities in not taking steps for years together;

holding of title in question not only passed on to the petitioners therein but also the documents relied on by them were genuine. The Division Bench also observed in Merits Enterprises case that even otherwise the petitioners therein perfected their title by adverse possession as at no point of time the petitioners therein were evicted from the land in their occupation either under the provisions of the Land Encroachment Act or the Land Grabbing Act. The Division Bench further observed that if the authorities were of the opinion that the land in question a Government land and not belong to the assignees, they should have taken steps to file a civil suit to get their title declared. Thus observing the Division Bench quashed the proceedings ordered under the Land Encroachment Act in the case of Merit Enterprises (WP No.1963 of 1983), dated 29-9-1983. This order was challenged by the State before the Hon'ble Supreme Court in Civil Appeal No.267 of 1984. Almost similar contentions raised in these appeals were raised before the Apex Court. The Hon'ble Supreme Court after hearing both sides rejected the contentions of the State (Appellant herein) and held as follows :

"Learned Counsel for appellant-State raises a fundamental issue contending that it was not the domain of the High Court to undertake such a fact finding enquiry in proceeding under Article [226](#) of the Constitution. It has further been contended that the land in dispute was shown in the revenue records as belonging to Government and thus should have predominantly been viewed over other Government documents so as to establish the title of the Government. On the other hand, it has been contended that the High Court is empowered under its extraordinary jurisdiction under Article [226](#) of the Constitution to widen or limit the parameters of any controversy it is dealing with.

It is asserted that when the High Court chose to examine the entire matter inclusive of the factual side, the State without demur participated in it and it cannot now question the discretion or jurisdiction of the High Court when a decision has gone against it. Otherwise also it has been countered that the State has no explanation to the documents in which the land in dispute was shown to be in private ownership and not in State ownership. Having heard Counsel on both sides on the aspects afore-focused, we find that the High Court was perfectly justified in going into the question of ownership as that was jurisdictional question on the basis of which alone proceedings under Section 7 of the Act would be initiated. The High Court having done so and the appellant-State having participated in the enquiry, it is futile for it to be contending that the High Court travelled beyond its jurisdiction. Otherwise, on merit of the matter regarding ownership, nothing has been suggested to us whereupon we could be presumed to take a view different than the one taken by the High Court. We thus find no reason to interfere in the order of the High Court."

42. Like in Merit Enterprises case (supra) in this case also, the petitioners and earlier to them their predecessors-in-title after purchasing the land in question were put in possession of the same and have been enjoying the

said land. If the authorities found that the land in question is not a private land but belonging to the Government they should have resorted to civil proceedings. This Court in several writ petitions filed by the petitioners, after hearing both sides and considering the records produced, held that the petitioners are the owners of S. No. 129/10 (New S, No.403) to an extent of Ac.8.00. In the Merit Enterprises case the possession of Gulam Md, Qureshi as to his acquiring the same and his entitlement to be in possession and enjoyment and the land involved herein and other survey numbers assigned by Sarfekhas authorities had come up for consideration and the same was considered in favour of Md. Qureshi and 34 others. As mentioned earlier, the points raised in this writ petition are similar to the questions raised in the case of Merit Enterprises which went in favour of the petitioners therein. Later the same was confirmed by the Supreme Court. As such now no new point is involved to take a view contrary to the one taken in Merit Enterprises case.”

28. In ***TIRUMALA TIRUPATI DEVASTHANAMS*** (*supra* 3), the Hon’ble Apex Court at paragraphs 7 and 8, held as follows:

“7. In view of the above contentions, the following three points arise for consideration:

(1) Whether the judgment in OS 51 of 1937, Sub-Court, Chittoor dated 15.6.1942 declaring the title of the TTD, was admissible and could be relied upon by the TTD as evidence in the present case, even though present plaintiff was not a party to OS 51 of 1937?

(2) Whether it was open to the Second Appellate Court to reappraise the evidence and hold that the oral evidence adduced by the parties was not acceptable and that in view of the recitals in Ex B6 delivery receipt dated 12.1.1946, the title of the TTD was to be deemed 'extinguished'. and whether this could be done when there was no such issue raised in the courts below?

(3) Whether, in case we should hold on Point 2 that the Second Appellate Court could not hold that the TTD's title stood extinguished, the decree for possession based on possessory title as granted by the Second Appellate Court, could be sustained?

Point 1:

8. It was argued by the learned counsel for the plaintiff respondent that the earlier judgment in O.S. 51 of 1937 dated 15.6.1942 was rendered in favour of the TTD against Hathiramji Mutt, that plaintiff was not a party to that suit and hence any finding as to TTD's title given therein is not admissible as evidence against the present plaintiff in this suit.”

29. In ***U.P. RESI. EMP. CO-OP. HOUSE B. SOCIETY AND ORS.*** (*supra* 5), the Hon’ble Apex Court at paragraph 10 and 11, held as follows:

“10. It, therefore, prima facie appears that Mr. S. C. Pabreja has filed a false affidavit before this court with a view to mislead this Court and with a view to see that this court does not pass any order, adverse to what NOIDA Authority is contending.

11. It has been held in the case of Hiralal Chawala and Anr. v. [State of U.P. and Ors.](#): [1990]1SCR325 that filing of false affidavit also amounts to Contempt of this Court. The Registry is, therefore, directed to issue show cause notice to Sh. S. C. Pabreja, returnable before us within four weeks from today, as to why action in contempt should not be taken against him for having filed a false affidavit in this court.

30. In ***CONTROLLER OF COURT OF WARD, KOLHAPUR AND ANR.***

(*supra* 6), the Apex Court at paragraph 11, held as follows:

“11. Mr. V.S. Desai, appearing for the appellants argued that the High Court erred in rejecting the appellants' application for filing their counter-affidavit and thus enable them to challenge the correctness of the statements made by respondent 1 in his two special civil applications. He also argued that the appellants were not to be blamed for not having filed their counter-affidavit in time since they were under the impression that the special civil applications would not be proceeded with after the Government had cancelled the said notification. That notification, however, was cancelled on June 29th, 1965. Before that date the appellants had obtained adjournments and had got the special civil applications put off for hearing beyond the summer vacation only on the ground that they should have time to prepare and file their affidavit. Though the appellants had thus obtained time, they did not file their affidavit even on the re-opening of the High Court. Even when the special civil applications ultimately reached hearing on June 29, 1965, the counter-affidavit was not ready and was not filed. Indeed, counsel for the appellants was not even present when the special civil applications reached hearing and the hearing commenced. In these circumstances the High Court cannot be blamed when it rejected a fresh attempt to have the matters adjourned to enable the appellants to file an affidavit. The High Court also cannot be blamed for refusing to accept the affidavit on July 13th, 1965, on the ground of inordinate delay. If, on that ground the High Court refused in its discretion to permit the affidavit to be filed, it is impossible to say that that discretion was exercised wrongly or in breach of any principle or practice. It was, no doubt, a pity that in such a case the High Court had to proceed with the special civil applications without the aid of a reply to them. But for that the appellants had clearly to blame themselves. The ground taken by the appellants that they did not file the reply on the assumption that the special civil applications would not be proceeded with after the cancellation of the said notification has no merit, firstly, because the appellants were told, as the High Court has pointed out in its Judgment, that the cancellation of the notification did not end the matter, and secondly, because the appellants were not willing after that cancellation to hand over the said survey

numbers to respondent 1. There was, therefore, no ground for the appellants to assume that the special civil applications would not be proceeded with. In these circumstances it is impossible to find any fault with the High Court for refusing to allow the counter-affidavit to go on record at that belated stage. Apart from the question as to delay, that would have also meant a further adjournment to enable respondent 1 to prepare and file his rejoinder.”

31. In ***M/S. REAL ESTATE AGENCIES*** (*supra* 8), the Hon'ble Apex Court at paragraphs 16, 17, 18 and 19, held as follows:

“16. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the Petitioner has an efficacious alternative remedy, i.e. a suit for injunction. The Writ Court exercising jurisdiction under [Article 26](#) of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the Writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.

17. However, there is no universal rule or principle of law which debars the Writ Court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under [Article 226](#), even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under [Article 226](#) of the Constitution, normally would not entertain a dispute which would require it to adjudicate contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In *ABL International Ltd. & Anr. V. Export Credit Guarantee Corporation of India Ltd.*[2], the precise position of the law in this regard has been explained in paragraphs 16, 17 and 19 of the Judgment in the course of which the earlier views of this Court in *Smt. Gunwant Kaur & Ors. v. Municipal Committee, Bhatinda & Ors.*[3] and *Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council*[4] has been referred to.

18. The aforesaid paragraphs of the judgment in *ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd.* (*supra*) may, therefore, be usefully extracted below:

“16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be

entertained by a court in the exercise of its jurisdiction under [Article 226](#) of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of [Gunwant Kaur v. Municipal Committee, Bhatinda](#) - 1969 (3) SCC 769 where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under [Article 226](#) merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under [Article 226](#) the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under [Section 4](#) by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have

proceeded to try the petition instead of relegating the appellants to a separate suit.”

17. The above judgment of Gunwant Kaur (supra) finds support from another judgment of this Court in the case of [Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council](#) – 1970 (1) SCC 582 wherein this Court held: (SCC p. 587, para 13)

“Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.” xxx xxx xxx

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under [Article 226](#) of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur (supra) this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”

32. In **KAMAL KANTI DUTTA AND ORS.** (supra 9), the Hon'ble Apex Court, at paragraph 59, held as follows:

“59. While no doubt this Court has constitutional power to review its decision, it is a power to be sparingly exercised because any such review has the tendency to unsettle questions which may have been finally determined. In fact, learned Solicitor General appearing for the Union of India warned us that the credibility of this Court is at stake if it goes on re-opening and reviewing propositions which have been finally determined by this Court. Whose credibility is at stake would be presently pointed out because the examination of this ugly aspect could have been spared if such a contentional was not canvassed. Repeatedly the Government of India kept back material from this Court filing affidavit after affidavit showing its inability to provide such important information on which the decision of the Court would turn even though it can now be demonstrably established that such material and information was with the Government. If the Government of India had not withheld such material information, which has been rather adversely commented upon not by the Court but by the Legislature, the credibility of the department would be exposed. Reference may be made in this connection to the 49th Report of

Committee on Petitions presented on January 9, 1976, to Rajya Sabha Secretariat, set up to dispose of a petition filed by one R.C. Pandey, General Secretary, All India Federation of Income Tax Gazetted Services Associations, praying for repeal of the Income Tax Officers (Class I Service) (Regulation of Seniority) Rules, 1973, and for the framing of fresh seniority rules in lieu thereof. While disposing of this petition, the observation pertinent to the point under discussion may be extracted:

The Committee is shocked at the pleas of loss of vital records taken by the administration. In response to the Committee's requests relating to important files the administration has taken a similar plea. The Committee asked for a file which could possibly show the correct position on the question whether the 80 : 20 quota during the period 1945-50 was really operative. The file is reported missing. Another file reported missing is that relating to the framing of the recruitment rules, 1945. The file relating to Shri R.C. Dutt's affidavit (filed in Jaisinghani's case) is also not available. Even the very recent file relating to the framing of Seniority Rules, 1970, is reported as 'not available'. On our insistence they have produced a thick sheaf of papers said to be 'reconstructed file'. It is strange that many of the files which could probably have thrown light on the question of excess promotion, are reported 'missing' or 'not available'. The conclusion is inescapable that these losses of files are far from being accidental. *We can only conclude that important information was deliberately withheld from the Supreme Court as well as from the Committee.* (emphasis supplied)

On these observations the credibility submission would not only stand squarely answered, but need not deter us from going into the points made in these petitions.”

33. In **ASHA** (*supra* 10), the Hon'ble Apex Court at **paragraph** No. 17, held as follows:

“17. It is a settled principle of the law of pleadings that an averment made by the Appellant is expected to be specifically denied by the replying party. If there is no specific denial, then such averment is deemed to have been admitted by the Respondent. In the present case, it is evident that the above-noted averments in the writ petition were relevant and material to the case. In fact, the entire case of the Appellant hinged on these three paragraphs of the writ petition. It was thus, expected of the Respondents to reply these averments specifically, in fact to make a proper reference to the records relevant to these paragraphs. In view of the omission on part of the Respondents to refer to any relevant records and failure to specifically deny the averments made by the Appellant, we are of the considered view that the Appellant has been able to make out a case for interference.”

34. In the facts and circumstances of the case, in the name of existence of disputed facts, respondent authorities cannot request this Court to relegate the petitioners to a Civil Court and in the considered opinion of this Court, such a course of action is not necessary for redressal of his grievance, having regard to the facts and circumstances of the case.

35. In this context, it may be appropriate to refer to the judgments cited by the learned Senior Counsel in ***NATIONAL THERMAL POWER CORPORATION LTD.*** (*supra* 7) and **COAL INDIA LIMITED v. SAROJ KUMAR MISHRA.**

36. In ***NATIONAL THERMAL POWER CORPORATION LTD.***

(*supra* 7), the Hon'ble Apex Court at Paragraphs 30, 39, 40 and 41, held as follows:

“30. It is difficult to comprehend that if the NTPC had paid 80% of the total compensation as provided for under Sub-section (3A) of Section [17](#) of the Act, out of 65.713 acres of land it had obtained possession only in respect of about 10.215 acres of land and still for such a long time it kept mum. Ex-facie, therefore, it is difficult to accept that merely symbolic possession had been taken.

39. It is not a case where oral evidence was required to be taken. There is no law that the High Court is denied or debarred from entering into a disputed question of fact. The issue will have to be determined keeping in view the fact situation obtaining in each case. If a disputed question can be determined on the basis of the documents and/or affidavit, the High Court may not ordinarily refuse to do so. In a given case, it may also examine witnesses.

40. In Smt. Gunwant Kaur and Ors. v. [Municipal Committee, Bhatinda and Ors.](#) : AIR1970SC802, it was held:

14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article [226](#) merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article [226](#) the High Court has

jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section [4](#) by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.

Such a direction has been issued, as noticed hereinbefore, even in a land acquisition matter.

41. Yet again, in *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*: [1975]2SCR71, this Court has held:

“10. It is not necessary for this case to express an opinion on the point as whether the various provisions of the Code of civil Procedure apply to petitions under Article [226](#) of the Constitution. Section [141](#) of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief

sought. The object of Article [226](#) is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article [226](#), it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article [226](#). The High Court is not deprived of its jurisdiction to entertain a petition under Article [226](#) merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article [226](#) the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see *Gunwant Kaur v. Bhatinda Municipality*). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.”

37. In ***COAL INDIA LIMITED*** (*supra* 14) , the Hon'ble Apex Court at paragraph 19, held as follows:

“19. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties.

See *Zee Telefilms Ltd. and Anr. v Union of India and Ors.* [(2005) 4 SCC 649], *Guruvayoor Devaswom Managing Committee and Anr. v C.K. Rajan and Ors.* [(2003) 7 SCC 546].”

38. In view of the law laid down in the above referred judgments, this Court is of the considered opinion that for redressal of their grievance petitioners herein are

definitely entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India in the facts and circumstances of the case. Therefore, his Court finds absolutely no justification on the part of the respondent authorities in disputing the title and ownership of the petitioners having suffered a number of orders.

.The orders of the Joint Collector, dated 14.01.1987, in view of the orders of this Court and the Hon'ble Apex Court, have no significance and they obviously pale into insignificance. In view of the repeal of the Urban Land Ceiling Act no proceedings under the same are permissible now.

39. Yet, an another contention advanced by the learned counsel for the respondents that there is no further sub-division to Sy.No.129 after sub-division 87 also cannot sustain in view of the various orders of the Government placed on record by the petitioners, which clearly show that the lands after sub-division 87 were also regularized and for this no plausible answer is forthcoming from the respondent authorities. In fact, vide G.O.Ms.No.329, dated 09.02.1978, G.O.Ms.No.366 dated 09.03.1982 and G.O.Ms.No.198 dated 30.01.1979, the Government regularized the land in Sy.No.129/97 and 129/116. Therefore, the contention advanced by the respondents that there is no sub-division of 87 does not hold water.

40. In the result, the writ petition is allowed, directing the respondent authorities not to interfere with the possession and enjoyment of the petitioners in respect of the land admeasuring 3-38 gts situated in Sy.No.129/93 (Old) (New-403/P), corresponding to Part of T.S.No. 1/1/C/1, Ward No.9, Block 'H' of Shaikpet Village, Banjara Hills, Hyderabad. Miscellaneous Petitions, if any, pending shall stand closed. No costs.

A.V.SESHA SAI,J

Dated:08.02.2016

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.7417 of 2009

Dated: 8th February, 2016

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