

**HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

W.P.Nos.6890 & 6909 of 2012

COMMON ORDER:

Heard Sri Y.Chandra Sekhar, learned counsel for the petitioners, learned Government Pleader for Revenue, State of Telangana, for respondent Nos.1 to 7 and Sri K.R.Koteswara Rao, learned Standing Counsel for respondent No.8 in both Writ Petitions.

2. As the parties to both these Writ Petitions are one and the same and both these cases relate to the same land, and since common questions of fact and law arise for consideration in both these cases, they are being disposed of by this Common Order.

FACTS PLEADED BY PETITIONERS

3. Petitioners are the grand children of late Khaja Jalal. A *Munthakab* No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) was granted by the Nizam of Hyderabad in respect of land admeasuring Ac.204.22 gts in old Sy. Nos.253, 285, 288 and 290 of Khanojiguda, h/o.Alwal village, Malkajgiri Mandal, Ranga Reddy District.

4. Petitioners contend that the bandobast

department of the Nizam maintained by his Estate headed by Raja Saraswathi Pershad recorded that this land was under occupation of Khaja Jalal, that they were recorded as "*panmakhta inam lands*", that revenue was assessed @ Rs.744/- as per orders dt.1st Behman 1315 Fasli, that entries in the Classer Register of old Sy. No.285 recorded them as *Panmakhta inam lands* and they were subdivided into several new survey numbers from Sy.No.357 to 372. According to the petitioners, the *Wasool Baqui* Register of 1354 Fasli also depicts the nature of the land situated in old Sy. No.285 and 253 of Alwal village as "*Bapat Inam Maktha*" and records that this land was assigned new Sy. Nos.357 to 372, 424 and 426 belonging to Khaja Jalal. The *Sethwar* of Alwal village for 1950 and *Khasra Pahani* for the year 1954-55, they contend, also mentioned that the land situated in old Sy. No.285 is "*Panmakhta Inam*" land belonging to Khaja Jalal and his family members. Petitioners contend that Khaja Jalal was in possession of the property as Inamdar prior to the coming into force of the AP (Telangana Area) Abolition of Inams Act, 1955 and all revenue records disclose that he was the pattedar and possessor of the property.

5. According to the petitioners, the Revenue Divisional Officer, Hyderabad issued a Succession Certificate vide proceedings in Case No.A5/4342/58 dt.04-07-1962 stating that the lands situated in Old Sy. No.253 and 285 correspond to new Sy. Nos.357 to 372 and 424 and 426 describing the same as "*Maktha Khaja Jalal*" and allotted shares by granting succession certificate among the inamdars.

6. Petitioners contend that the revenue records thus disclose that the land situated in sy. No.285 (old), 253, 288 and 290 of extent Ac.204.22 gts of Khanojiguda, h/o.Alwal village, Malkajgiri Mandal is "*panmaktha*" land belonging to "*Maktha Khaja Jalal*".

7. According to petitioners, a survey conducted during 1351 Fasli (1941 AD) showed that the land situated in Sy.No.285 (old) to be of extent Ac.167.22 gts in one compact block. They contend that resurvey was conducted of the same land in 1358 Fasli (1948 AD) and old Sy. No.285 was divided into 17 parts; that out of these 17 parts, 16 parts were assigned new survey numbers 357 to 372 for an extent of Ac.146.16 gts , but a portion of Old Sy.No.285 of extent Ac.21.04 gts

was not assigned any Survey Number.

8. The subject matter of both these Writ Petitions is this extent of Ac.21.04 gts in old sy. No.285 of Khanojiguda which had not been assigned a new survey number in the resurvey held in 1358 Fasli.

9. After the enactment of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, the lands in possession of the successors of Khaja Jalal vested in the Government subject to regrant under the said Act.

10. Petitioners contend that as successors in interest of the original inamdar Khaja Jalal, they made several representations to the respondents to conduct survey for the left over area of Ac.21.04 gts in old Sy. No.285, to assign new survey number to it and to consequently enter their names in the revenue records as pattedars. Reference is made to representations dt.23-04-2007, 19-03-2008, 14-12-2009 and 29-08-2010 in this regard.

REPRESENTATION DT.23.4.2007 OF PETITIONERS

11. On 23-04-2007, petitioners filed an application before the District Revenue Officer,

Ranga Reddy District (Respondent No.6) under Section 87 of the AP (Telangana Area) Land Revenue Act, 1317 Fasli to assign new survey numbers to the portion of old Sy. No.285 of Khanojiguda which had not been given a new survey number in the resurvey of 1358 Fasli and also to register their names in the revenue records of the said village as pattedars. This was followed up by a reminder on 10-03-2008 by way of representation to the 2nd respondent seeking his intervention and requesting him to direct the 6th respondent to conduct survey of the said land.

PROCEEDINGS DT.19.3.2008 OF RESPONDENT No.2

12. Vide proceedings Rc.No.N1/2208/2208 dt.19-03-2008, the 2nd respondent observed that the land in question is covered by Sy. No.371 on North, 364 on East, 365 on West and land of Hasmathpet on South of Alwal village, that *prima facie it appears to be part of old Sy. No.285 of Alwal village but left unsurveyed* during revision survey as per records and that this requires correction under Section 87 of the AP (Telangana Area) Land Revenue Act, 1317 Fasli and has to be dealt with at the District Level. The applicants were advised by him to submit representation to

6th respondent for necessary action.

13. Thereafter, the petitioners approached the 6th respondent for conducting survey and for assigning new survey numbers to the left over/gap area of the old Sy.No.285. He instructed the 7th respondent to conduct a detailed enquiry and prepare a sketch map for the said land. The 7th respondent did so and on request dt.15.07.2008 of one of the legal heirs of Khaja Jalal by name Khaja Naseeruddin, he informed that the Mandal Surveyor of Malkajgiri Mandal had prepared the sketch relating to old Sy.No.285, new Sy.Nos.357 to 372 of Alwal Village as per the map issued by the Assistant Director, Survey and Land Records, Ranga Reddy District (1351 Fasli) and furnished the said location sketch to Khaja Naseeruddin. *The said sketch shows that the unsurveyed part of old Sy.No.285 falls in Alwal Village only.*

14. When there was no further action taken by the 6th respondent for assigning a new survey number for this land, Khaja Naseeruddin gave a representation dt.20.01.2009 to the 1st respondent for assigning of a new survey number to this land.

MEMO DT.29.1.2009 OF RESPONDENT No.1

15. Thereupon the 1st respondent vide a memo No.4014/SS-1/2009-1 dt.29.01.2009 directed 3rd respondent to allot a new survey number for this land which formed part of old Sy.No.285 situated at Khanojiguda, H/o Alwal Village, Ranga Reddy District within one week.

ORDER DT.12.11.2009 IN W.P.No.27506 OF 2007 FILED BY RESPONDENT No.8

16. In the meantime, the 8th respondent filed W.P.No.27506 of 2007 alleging that it had purchased Acres 28.29 guntas in 1939 from the Nizam Government, that this extent of land was located *between Hasmathpet village and Khanojiguda* h/o Alwal village and that an additional Ac.0-17 guntas in Sy.No.285 consisted of an approach road. It questioned the action of the respondents 1, 3, 7 and others in not mutating the name of the Government of India represented by the 8th respondent in the revenue records as owner and possessor of this property in spite of the fact that the 8th respondent had allegedly been in uninterrupted peaceful and physical possession of the same since 29.08.1937, It contended that it is arbitrary, illegal and violative of Article 14 and

300A of the Constitution of India and sought a direction to the above respondents to conduct survey of the said land, assign a survey number for it and enter the name of Government of India represented by 8th respondent as owner and possessor of this land. The father of the petitioners herein by name Khaja Abdul Rahman and other family members of Khaja Jalal were impleaded as respondents 7 to 10 in the above Writ Petition.

17. By order dt.12.11.2009, the said Writ Petition was disposed of directing respondent Nos.3, 7 and the Mandal Revenue Officer, Balanagar Mandal to get the land claimed by the 8th respondent surveyed, to give a survey number to it and also to decide whether the said land falls in Balanagar Mandal or Malkajgiri Mandal within six (06) weeks. The Court observed that the other reliefs claimed by the 8th respondent cannot be agitated in a Writ Petition filed under Article 226 of the Constitution of India and it is for the 8th respondent to workout its remedies before the statutory authorities as per law.

18. Pursuant to the above direction, the 4th respondent conducted a detailed enquiry. He

verified the *Sethwar, Wasoolbaqui, Classer Register* and *Bandobast Record* of Khanojiguda village, H/o Alwal of Malkajgiri Mandal pertaining to old Sy.No.285 and found that an extent of Ac.21.04 guntas was available as left over land for which no survey had been done earlier. He observed that the total extent of old Sy.No.285 is Ac.167.20 guntas, that during survey and settlement operations, the old Sy.No.285 was correlated to 16 new survey numbers covering an area of only Ac.143.30 guntas and thus there was a deficit of Ac.23.30 guntas in old Sy.No.285. He stated that a former Inspector of Survey attached to his office demarcated the land with the help of relevant record of his office by using ETS instruments, that the said Inspector of Survey demarcated and picked up measurements for the unsurveyed/leftover/gap area and worked out its extent as Ac.21.04 guntas which tallied on the ground and the former Assistant Director also inspected the land on 25.07.2008 and found that there is unaccounted and left over area which is a part and parcel of old Sy.No.285 of Alwal Village. He also stated that he inspected the land on 20.07.2010 along with Cantonment Board Officials and noticed that the land was protected by a

compound wall, that a board "Cantonment Land" was also shown and the land was covered by debris, thick growth of shrubs and municipal waste was dumped on it. He therefore recommended vide proceedings No.Rc.A1/963/2007, dt.07.08.2010 to the 2nd respondent to assign new Sy.No. 606 to the extent of Ac.21.04 guntas, which is the left over area in Khanojiguda.

ORDER DT.27.9.2010 OF RESPONDENT No.2

19. Thereupon the 2nd respondent issued proceedings Rc.No.N1/5213/2010 dt.27.09.2010 observing that the extent of Ac.21.04 guntas was left unsurveyed during the last survey in 1940 for the reason that it did not form part of the holding of any Khatedar at that time; as such, it cannot be related to holdings in old Sy.No.285 which was recognized and correlated to 16 new survey numbers as mentioned in the proceedings dt.07.08.2010 of the 4th respondent; and therefore, it follows that this land is an unassessed waste land vested in the Government, even if it were to be an Inam village. He stated that there was no claim or objection from any quarter in this regard after resurvey, for several decades after the survey, that an

occupancy right, if any, arising from survey and settlement done six decades back cannot be now enlarged to include a neighbouring piece of unsurveyed land vested in Government and there is no question of applicability of Section 87 of A.P. (Telangana Area) Land Revenue Act, 1317 Fasli.

20. This above proceeding Rc.No.N1/5213/2010 dt.27.09.2010 of 2nd respondent is questioned by the petitioners in W.P.No.6909 of 2012.

CONSEQUENTIAL ORDER DT.25.5.2011 OF RESPONDENT No.4

21. On the basis of the proceeding Rc.No.N1/5213/2010 dt.27.09.2010 issued by the 2nd respondent, the 4th respondent issued consequential proceeding in Case No.A1/963/2007 dt.25.05.2011 stating that Section 87 of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli is not applicable, that the A.P.(Telangana Area) Abolition of Inams Act, 1955 is also inapplicable to unsurveyed lands, that rights of private parties are not recognized or recorded in respect of unsurveyed lands and such lands have to be treated as lands vested in the Government. He stated that in the revenue record the extent of

Ac.21.04 guntas would be assigned new Sy.No.606 in Khanojiguda and shown as *Pot Kharab* by mentioning that it is *Poramboke* under the pattedar column.

22. Assailing this proceeding in Case No.A1/963/2007 dt.25.05.2011, the petitioners filed W.P.No.6890 of 2012.

THE CONTENTIONS OF PETITIONERS

23. Petitioners contend that respondents 2 and 4 have no authority or jurisdiction to decide the title to the property contrary to the records. They contend that in his order dt.19.03.2008 in Rc.No.N1/2208/2008, it was the 2nd respondent who directed the petitioners' family member Khaja Naseeruddin to take steps for survey correction under Section 87 of the A.P.(Telangana Area) Land Revenue Act, 1317 Fasli, but contrary to the same the 2nd respondent in the proceedings Rc.No.N1/5213/2010 dt.27.09.2010 now stated that the said provision of law is inapplicable and such a *volte face* cannot be countenanced. They contend that the 2nd respondent, who is an authority to deal with correction of survey records, exceeded his jurisdiction and recorded a finding that the unsurveyed land in old Sy.No.285

is Government land without any basis and both respondents 2 and 4 were not entitled to enter into disputed questions of title and record that the land in question is *Poramboke* land i.e. Government land. They contend that the 4th respondent had no jurisdiction to declare that the provisions of A.P. (Telangana Area) Abolition of Inams Act, 1955 is inapplicable to the case since the *Sethwar, Wasoolbaqui, Classer Register, Khasara Pahanies* show that the entire land forms part of old Sy.No. 285 of Khanojiguda and belongs to late Khaja Jalal, that a *Muntakhab* No.1251 in File No.3/11 of 1329 Fasli was issued to him and a Succession Certificate was also issued by the Revenue Divisional Officer, Hyderabad in Case No.A5/4342/58 dt.04.07.1962. Therefore the said lands are *Panmakta Inam lands* and the petitioners are entitled to grant of Occupancy Rights Certificate for the land of extent Ac.21.04 guntas in Sy.No.606. Lastly it is contended that the 4th respondent also cannot assume the powers of a Civil Court and decide title and therefore both orders of 2nd and 4th respondents impugned in the Writ Petitions be set aside.

THE STAND OF RESPONDENT No.S 1-7

24. Through the 7th respondent, a counter has been filed on behalf of the respondents reiterating the stand taken in the impugned orders. He did not dispute that old Sy.No.285 was shown as *Pan Makhta* land of extent Ac.167.20 guntas in *Wasoolbaqui* and *Sethwar* submitted by the petitioners. The counter affidavit also does not dispute the fact that Khaja Jalal was granted Mutakab No. 1251 in file No.3/11 of 1329 Fasli or the fact that the same was confirmed by the Bandobast department maintained by the Nizam's Estate Department. It is categorically stated that in the sketch prepared by the Mandal Surveyor, the gap area is shown to be part and parcel of old Sy.No.285 of Khanojiguda H/o Alwal Village, that this sketch was prepared basing on the map issued by the 5th respondent and that a Memo No.B/45/2008 dt.13.8.20008 was issued to this effect to the petitioners by the office of 7th respondent. It is also stated that the extent of Acs.21.04 guntas left unsurveyed during the last survey conducted in 1940 was given new survey No.606 and the 5th respondent was directed to issue supplementary *Sethwar* after obtaining permission from the 6th respondent.

THE STAND OF RESPONDENT No.8

25. The 8th respondent filed a counter contending that there is no documentary evidence that Khaja Jalal was inamdar and was inducted into possession of the extent of Ac.21.04 guntas in the newly allotted Sy.No.606 of Khanojiguda. It is pleaded that this property is situated between Khanojiguda and Hashmathpet villages and was acquired for garbage dumping (trenching ground) by the Cantonment Board Authorities from the then Nizam Government after paying Rs.8,101.19 paise on 18.08.1937 and forms part of Ac.32.29 guntas so acquired. It is also stated that for an approach road to the trenching ground, an additional land of Ac.017 guntas was acquired in Sy.No.285 by paying compensation of Rs.98.06 paise to the then Nizam Government on 22.08.1940 through cheque. It claims that the 7th respondent, with the help of 5th respondent conducted a joint survey and demarcated the land, fixed boundaries of the trenching ground and communicated it to the 8th respondent by Lr.No.B1/674/95, dt.15.03.1985 along with certified demarcation plan. It is stated that the 8th respondent addressed a letter No.934 dt.19.03.1998 requesting the 3rd respondent to

allot new survey number to the land and also requested to mutate its name in revenue records as the owner and possessor of the land. According to the 8th respondent, garbage dumping was done in the land till 2005 when the A.P. Pollution Control Board stopped it from continuing the said activity. It is also stated that in 2005, the 8th respondent constructed a compound wall to protect the trenching ground and posted a guard there. While admitting that the respondents 2 and 4 have, in the impugned orders, directed the said unsurveyed land of Acres 21.04 guntas in old Sy.No.285 to be treated as land vested in the Government, and that the 2nd respondent allotted new Sy.No.606 for it, the 8th respondent contends that the land should be treated as belonging to the Ministry of Defence, Union of India represented by the 8th respondent and the 8th respondent's name should be incorporated in the revenue records. There is also reference to the suit O.S.705 of 2006 filed before the II Additional District Judge, Ranga Reddy District at L.B.Nagar by the father of the Writ petitioners Khaja Abdul Rahman and another against four private individuals and an employee of 8th respondent and an order of interim injunction

granted therein. The right of the petitioners to question the proceedings of the 2nd and 4th respondents in these Writ Petitions is challenged by the 8th respondent on the ground that it is an abuse of judicial process. It is stated that Section 87 of the A.P. Telangana Area Land Reforms Act 1317 Fasli has no application to the case on hand since only clerical or arithmetical errors could be corrected under the said provision. Certain material papers including photographs are filed by the 8th respondent.

26. The learned Government Pleader appearing for respondent Nos.1 to 7 and Sri K.R.Koteswara Rao, learned Standing Counsel for 8th respondent reiterated the stand taken in the respective counter affidavits of respondent Nos.7 and 8.

REPLY AFFIDAVIT OF PETITIONERS TO COUNTER OF RESPONDENT No.8

27. Reply affidavit was filed by the Writ petitioners to this counter affidavit of respondent No.8 denying the right, title or interest of the 8th respondent in the land of extent Ac.21.04 guntas in the new Sy.No.606 of Khanojiguda. The petitioners filed translation of the copy of

statement of enquiry of succession in Sl.No.1 of Secretariat File No.3/11 of 1329 Fasli prepared by the Office of the Talukdar HQR Alwal, Jagir Area of 1346 Fasli wherein *Munthakab* No.1251 was referred to in respect of *pan maktha land* known as Khaja Jalal situated at Khanojiguda village, translation of *Bandobusth* Department's Report relating to the File No.3/11 of 1329 Fasli referring to Khaja Jalal *Maktha* and mentioning that it is of extent Ac.204.22 gts in old Sy. Nos.285, 253, 288 and 290 of Khanojiguda village.

28. They contend that the 8th respondent, having alleged that it had acquired Ac.32.29 guntas from the Nizam Government in 1937 for using it as trenching ground, has not filed any documents in support of said pleading of acquisition such as notification under the Land Acquisition Act,1894 or an award passed thereunder or conveyance of title to the 8th respondent. It is also denied that land allotted to the 8th respondent was located between Hasmatpet village and Khanojiguda as alleged by the 8th respondent. The acquisition of Ac.0-17 guntas for providing approach road to the trenching ground in 1940 was also denied.

Petitioners contended that they had no knowledge of any survey conducted by respondents 7 and 5 in 1985 and that they had no notice of any such survey. They also denied that compound wall was constructed by the 8th respondent around the land of Acres 21.04 guntas or the posting of a guard therein. The filing of O.S.No.705 of 2006 by the petitioners' father is admitted, but it was denied that after obtaining an injunction order therein, the petitioners trespassed into the property and removed sign boards erected therein. It is asserted that entitlement of the petitioners for issuance of Occupancy Rights Certificate under the provisions of A.P. (Telangana Area) Abolition of Inams Act, 1955 has to be decided by an appropriate forum under the said Act, that the cutoff date under the said Act was 01.11.1973 and on that day, their family was in actual and physical possession of the property by doing cultivation. The petitioners denied the right of the 8th respondent in respect of the extent of Ac.21.04 guntas in the new Sy.No.606.

29. Petitioners pointed that in W.P.No.27506 of 2007 the 8th respondent filed W.P.M.P.Nos.35980 and 35981

of 2007 and in that Writ petition, the 8th respondent challenged a letter No.F1/6065/2007 dt.10.11.2007 of the 3rd respondent, but when the petitioners applied to the 3rd respondent for a copy of the same on 29.04.2008, the 3rd respondent replied that no such letter in file No.F1/6065/2007 dt.10.11.2007 was addressed after 01.11.2007. They contend that the 8th respondent fabricated the said letter dt.10.11.2007 of the 3rd respondent, misled this Court and obtained interim orders from this Court.

30. They pointed out that the 8th respondent relied on a Lr.NoB1/674/1995, dt.15.03.1995 allegedly issued by the 7th respondent referring to a joint survey and demarcation of the land in para 4 of its counter, but when the petitioners applied to the office of the 7th respondent for the said letter, the 7th respondent stated that the connected file of his office was not available and did not furnish the copy of the same.

31. They contended that some of the other documents relied upon by the 8th respondent are

also fabricated. In particular they pointed out that copies of certain letters filed by the 8th respondent pertaining to years 1937 to 1940 are fabricated ones since all of them were created on stationery printed on 26-04-1944 and they alleged that this was done by the officials of the 8th respondent to grab the petitioners' inam land which they are entitled to as successors in interest of Khaja Jalal.

32. They pointed out that in all the letters filed by 8th respondent, the land allegedly allotted to 8th respondent was shown to have been acquired *between* Khanajiguda and Hasmathpet villages; that instead of being in Urdu, the official language then, strangely these documents were in English language; instead of being handwritten, they are typewritten and such typewriters were not in use in the 1930s; that they do not bear the official seal of the Nizam Government; that the letter dt.29-06-1937 mentions a telephone number 502 and there is no such history of use of telephones at that time in the Nizam Government; that the rubber stamps on the letters could not have been in existence in 1937 and they emerged much later recently; that the letter dt.29-07-1938 mentions that a cheque

for H.S.Rs.8003-13-0 was given as compensation to the Nizam Government by the 8th respondent, but at that time the official currency was Osmania Sikkas and not Indian rupees, that the bank on which the said cheque was allegedly drawn is not mentioned nor is the name of the person in whose name it was drawn, indicated. Also no payment receipt was filed and there is no evidence as to whether payment was made in the Treasury or credited in the bank account of the Nizam.

33. They contend that neither the boundaries nor survey number was given to the land allegedly given by the Nizam to 8th respondent, and it is merely mentioned that the land is *between* Khanojiguda and Hasmathpet and such vague orders for transfer of land could not have been given by the Nizam without mentioning extent or boundaries. In any event, they point out that nowhere is it mentioned that the land given to 8th respondent by the Nizam is in old Sy. No.285 and if really there was such allotment, necessary steps would have been taken to properly record it in the revenue records then itself.

34. It is pointed out that during the regime of the Nizam, whenever Government had allotted

any land to any institution or individuals, the Government always issued *firmans* in the name of the Nizam and no such *firman* has been produced by the 8th respondent.

35. They contend that once the *munthakab No.1251* was issued in File No.3/11 in 1329 Fasli in favour of Khaja Jalal, there could not have been any grant of the same land covered by the *Munthakab* to 8th respondent in 1937 under some letters.

36. They also contend that the 8th respondent, with a view to avoid provisions of the AP (Telangana Area) Abolition of Inams Act, 1955, the Land Acquisition Act, 1894 and the AP Rights in Land and Pattedar Passbooks Act, 1971 created the letters as part of a plan to grab this land.

37. They contended that the 8th respondent filed W.P.No.17697 of 1989 in this Court through its Cantonment Executive Officer, A.S.Raja Gopal against M/s.Railway Employees Cooperative Housing Society Limited and others including the then State of Andhra Pradesh wherein 8th respondent alleged that they acquired from the State Government Ac.32.21 gts in Sy.

No.1 of Hasmathpet village in 1929 for a trenching ground to put rubbish and offensive materials apart from human waste and the plea of the 8th respondent in this Writ Petition is totally different and inconsistent with its plea in W.P.No.17696 of 1989 and is obviously a false plea. They also point out that in another W.P.No.12509 of 2004 filed by Lt.Col.(Retd.) N.K.Yadav against the 8th respondent and the A.P.State Pollution Control Board, the Chief Executive Officer of the 8th respondent filed a counter stating that *its trenching ground is in Hasmathpet village* (and not in Khanojiguda). Reliance is also placed on the provisions of the Cantonment Board Act, 1924 and the Cantonment Act, 2006 and it is contended that under the 1924 Act (as amended in 1936), Cantonment Board can only request the Central Government to procure land by acquisition under the provisions of the Land Acquisition Act, 1894 and there is no evidence of this placed on record by 8th respondent.

38. I have noted the pleadings and contentions of both sides.

THE POINTS FOR CONSIDERATION

39. The following points arise for

consideration in the matter:

- a) *Whether the orders of 2nd respondent in his proceedings Rc.No.N1/5213/2010 dt.27-09-2010 addressed to the 3rd respondent and those of the 4th respondent in his proceedings Case No.A1/963/2007 dt.25-05-2011 are void in law?*
- b) *Whether they are competent to declare that the unsurveyed extent of Ac.21.04 gts in old Sy. No.285 of Khanojiguda, h/o. Alwal village as Government land and to declare that provisions of AP (Telangana Area) Abolition of Inams Act, 1955 as well as the AP (Telangana Area) Land Revenue Act, 1317 Fasli (in particular Section 87 thereof) have no application to the land?*
- c) *Whether the petitioners or 8th respondent are entitled to any relief?*

THE CONSIDERATION BY THE COURT

40. In **Bandari Ramchander and Others v . Special Court under the A.P.Land Grabbing (Prohibition) Act^[1]**, this Court explained the nature of Crown Grants under the Nizam Government. It observed that the law relating to Crown Grants obtaining in the former Nizams' Dominions is well settled by the several decisions of the former Hyderabad High Court as well as the subsequent decisions of this Court and the Supreme Court. The sum and substance of the law declared is that every grant made by the Ruler

was only for the lifetime of the grantee. On the death of the grantee, the grant reverted to the Crown and it was in the sole discretion of the Crown either to re-grant it, or not. It was open to the Crown to re-grant it to the heirs and successors of the previous grantee, or to one or more of them, or to total stranger. The grants were of several kinds and were known under different expressions, viz., 'Jagir', 'Samasthan', 'Maktha', '**Inam**', etc. The fact remains that each one of them was a grant and was governed by the same rule referred to hereinabove. If the grant was of a whole village, it was generally referred to as 'Jagir' or 'Samasthan'; but, if the grant pertained only to a certain land in a given village, it was called '**Inam**' or 'Maktha' as the case may be.

41. Sec.2(c) of the AP (Telangana Area) Abolition of Inams Act, 1955 defines an “inam” as land held under a gift or a grant made by the Nizam or by any Jagirdar and continued or confirmed by virtue of a *Muntakhab* or other title deed. **So a Muntakhab is essentially a grant from the Nizam.**

ADMITTED/UNDISPUTED FACTS

Before I deal with the points framed by me, the following admitted facts need to be noted.

42. In the counter filed by the 7th respondent, it is not disputed by respondent Nos.1 to 7 that a *Munthakab* No.1251 in File No.3/11 of 1329 Fasli was issued to late Khaja Jalal, the great grandfather of the petitioners in respect of an extent of Ac.204.22 gts of Khanojiguda in old Sy. Nos.253, 285, 288 and 290. The contents of the *Wasool Baqui* and *Sethwar* filed by the petitioners showing that old Sy. No.285 of Khanojiguda is of extent Ac.167.20 gts, that it is classified as *Pan Makhta*, and its Khatedar is Khaja Jalal, are not disputed.

43. In the counter affidavit filed by 7th respondent, it is not disputed that representations dt.23-04-2007, 10-03-2008, 14-12-2009 and 29-08-2010 were given by family members of Khaja Jalal to the respondents and were received by respondents. In these representations, it was contended that in the resurvey in 1358 Fasli (1948), old Sy. No.285 of Khanojiguda had been divided into 17 parts of which 16 parts were assigned new survey numbers 357 to 372 of extent Ac.146.16 gts and a portion was left without assigning any new survey number.

44. The representation dt.23-04-2007 was made to the 6th respondent invoking Section 87 of the AP (Telangana Area) Land Revenue Act, 1317 Fasli. When no action was taken thereon, the petitioners family member Khaja Naseeruddin submitted a representation dt.10-03-2008 to the 2nd respondent.

45. In response to the said representation, the Office of the 2nd respondent vide proceedings Rc.No.N1/2208/2008 dt.19-03-2008 (Ex.P-2) informed him that the land in question *prima facie* appears to be part of old Sy.No.285 of Alwal, but left unsurveyed during revision survey as per records, that this requires correction under Section 87 and Khaja Naseeruddin should approach the 6th respondent.

46. The inspection note of the 5th respondent dt.25-07-2008 (marked as Ex.P-3) states that he had inspected the land in old Sy. No.258 of Alwal village with reference to the Tippans and village map, that there is unaccounted, left over unsurveyed gap area, that as per Classer Register, *Sethwar*, *Wasool Baqui*, and other *Bandobusth* records, the land in old Sy.

No.285 stands registered in the name of Khaja Jalal and it is his patta land, and this requires to be assigned new survey number by way of correction.

47. The proceedings Rc.A1/963/2007 dt.07-08-2010

(Ex.P-9) of the 4th respondent addressed to the 2nd respondent also corroborates that Khaja Jalal was Khatedar of land in old Sy. No.285, that it is *Pan Maktha* land, that its total extent is Ac.167.20 gts of which Ac.143.30 gts was distributed among 16 new survey numbers (Sy. No.357 to 372), that there is an unsurveyed extent/gap area of Ac.21.04 gts on ground, and the 2nd respondent should accord permission for assigning new survey number to this extent located in Khanojiguda, h/o.Alwal village.

POINTS (a) & (b) :

(i) FINDING OF RESPONDENT NO.2 AND 4 THAT SEC.87 OF THE ACT DOES NOT APPLY IS ERRONEOUS

48. Section 86 of the AP (Telangana Area) Land Revenue Act, 1317 Fasli states:

“ Sec.86. Preparation of Register :

- (1) *The Survey officer shall, at each settlement, prepare a separate register for each village*

showing the area and assessment of each number together with the name of the pattadar. This register and other records shall be prepared in accordance with the rules made by the Government by notification

(2) ..”

49. Section 87 of AP (Telangana Area) Land Revenue Act, 1317 Fasli states:

“Section 87 - Settlement Officer to correct clerical and other errors admitted by all parties and application for correction of name to be made within two years:

The Director of Settlements and on making over the settlement records to the Collector, the Collector may, at any time, correct or cause to be corrected any clerical error or errors admitted by the party concerned.

The aforesaid officer shall hear all applications made within two years after the introduction of the settlement, for the correction of any wrong entry of a pattadar's name in the register referred to in the preceding section and if satisfied about the error whether such error has been made through negligence, fraud, or collusion shall correct the same, notwithstanding that the party concerned does not admit the error but no such application shall be entertained after two years, unless reasonable cause is shown to the said officer for the delay, and in such cases if any error is proved it shall not be corrected without obtaining the sanction of the Government.”

50. Section 87-A provides for delegation of power of the Government under Section 87 of the Act to the 2nd respondent.

51. The above provisions provide for correction of clerical and other errors in settlement register maintained under Sec.86 and confer powers on the 2nd respondent to sanction such correction if request for correction is made by an applicant, before or after two years from the introduction of the settlement.

52. Since there is no dispute that the request of the family members of Khaja Jalal for allotting a new survey number to the unsurveyed extent of Ac.21.04 gts in old Sy. No.285 of Khanojiguda village was made long after the settlement/resurvey in 1350 Fasli, in the year 2007, the competent authority to sanction such correction is the 2nd respondent. That was why the Office of the 2nd respondent in proceedings Rc.No.N1/2208/2008 dt.19-03-2008, after accepting that after the resurvey in 1940, still there is unsurveyed extent in old Sy. No.285 of Khanojiguda, directed that correction be sought by the family members of the petitioners (Khaja Naseeruddin) under Section 87 of the Act before the 6th respondent.

53. Having so directed the family members of the petitioners to approach the 6th respondent

under Section 87 of the Act, it is inexplicable how the 2nd respondent in the proceedings Rc.No.N1/5213/2010 dt.27-09-2010 changed his opinion and stated that the said provision of law does not apply.

54. In my opinion, the omission of the respondent no.s 1-6 in not surveying the land other than the land for which they had assigned 16 Survey no.s in 1940 and in not allotting a Survey number to the said land at that time, clearly falls within the ambit of Sec.87 of the Act since it is admitted by all parties that it is true. This appears to be on account of negligence of the Survey officials in 1940. Therefore to that extent, it is not open to 2nd respondent to state that Sec.87 is not attracted.

(ii) FINDING OF RESPONDENT No.2 THAT UNSURVEYED EXTENT IS NOT PART OF OLD SY.No.285 ERRONEOUS

55. The inspection note of the 5th respondent dt.25-07-2008 (marked as Ex.P-3) states that he had inspected the land in old Sy. No.258 of Alwal village with reference to the Tippans and village map, that there is unaccounted, left over unsurveyed gap area, that as per Classer Register, *Sethwar, Wasool Baqui,*

and other *Bandobusth* records, ***the land in old Sy. No.285 stands registered in the name of Khaja Jalal and it is his patta land***, and this requires to be assigned new survey number by way of correction.

56. The 4th respondent in his proceedings Ref.A1/963/2007 dt. – 8-2010 (Ex.P9) categorically asserted that after verifying the survey records of Alwal village of Malkajgiri Mandal (Khanojiguda is a hamlet of Alwal village), total extent of Old Sy.No.285 is Ac.167.20 gts, that during Survey and Settlement operation, the old Survey number was correlated to 16 new Survey Numbers covering Ac.143.30 gts and *there is deficit to an extent of Ac.23.30 gts in old Sy.No.285* compared to new Survey numbers.

57. In fact in the proceedings dt.07-08-2010, nowhere did the 4th respondent say that old Sy. No.285 *in its entirety* was not granted under the *Munthakab* No.1251 in File No.3/11 of 1329 Fasli to Khaja Jalal. Nor is such a plea taken in the counter affidavit by respondent Nos.1 to 7.

58. If the entire old Sy. No.285, according to the *Sethwar* and *Wasool Baqui*, as admitted by 4th respondent in proceedings No.Rc.A1/963/2007

dt. -8-2010 (Ex.P9) and by 5th respondent in proceedings dt.25.7.2008 (Ex.P3), is of extent Ac.167.20 gts and it is classified as *Pan Maktha* belonging to Khaja Jalal, merely because a part of it was assigned new Sy. Nos.357 to 372 after the resurvey in 1350 Fasli (1940), and the balance extent of Ac.21.04 gts on the ground in old Sy. No.285 was not assigned a new survey number at that time, it does not cease to be *Pan Maktha* land (Inam land) and does not automatically become Government land.

59. So the finding of the 2nd respondent that the unsurveyed extent of Ac.21.04 gts in old Sy. No.285 did not form part of the holding of any Khatedar is unsustainable.

(iii) FINDING OF 2ND RESPONDENT THAT SUBJECT LAND IS UNASSESSED WASTE LAND VESTED IN THE GOVERNMENT EVEN IF IT WERE TO BE IN AN INAM VILLAGE ERRONEOUS

60. As stated above, the proceedings of 5th respondent dt.25.7.2008 (Ex.P3) as well as the proceedings No.Rc.A1/963/2007 dt. -8-2010 of 4th respondent refer to land in old Sy.No.285 at Khanojiguda as *Panmaqtha* land. This, according to above proceedings, is based on *Wasool baqi* and *Sethwar*.

61. The term "*Pan Makhta*" means a nominal amount fixed on the grant of Maqta to preserve the proprietary rights of the Government over the land granted. [See Glossary in the Book "Revenue Laws of Andhra Pradesh (Telangana Area) by V.Rajaiah (October 2004 Edition)].

62. If it is Inam land, according to provisions of AP (Telangana Area) Abolition of Inams Act, 1955, all the inams vest in State as on 20th July, 1955. However, in case the inamdars or various types of persons mentioned in Sections [5](#), [6](#), [7](#) and [8](#) of the Act were in possession of the land as on 1-11-1973, they would be entitled to get occupancy rights under the Act. A Division Bench of this Court in **B. Ramender Reddy and Ors. v. The District Collector, Hyderabad District** and Ors^[2] held that right to get occupancy rights is not co-related to the vesting of inams in the Government and that even though all the inams vested in State as on 20th July, 1955, in case the inamdars or various types of persons mentioned in Sections [5](#), [6](#), [7](#) and [8](#), who were in possession of the land as on 1-11-1973, they would be entitled to get occupancy rights under the Act.

This view has also been followed in **G.Venkat Ram Reddy v. Najeebunnissa**^[3]. Therefore the mere fact that the inam vested in the State as on 20th July, 1955 does not mean that rights, if any, of persons such as petitioners, get extinguished and the State becomes owner of the property.

63. It is settled law that the AP (Telangana Area) Abolition of Inams Act, 1955 empowers the competent authority under Section 10 thereof to decide not only the nature and history of the land but also to determine who is entitled to be registered as an occupant of the land subject to appeal under Section 24 and further revision under Section 28. It is thus a complete code in itself. The 2nd respondent and the 4th respondent are not competent authorities under the AP (Telangana Area) Abolition of Inams Act, 1955 to decide whether the said land of Ac.21.04 gts in old Sy. No.285 of Khanojiguda village, h/o.Alwal which is now assigned new Sy. No.606 is inam land or not and whether the petitioners or somebody else is entitled to Occupancy Right Certificate under the provisions of the said Act. This legal position is not disputed by the Government Pleader for

Revenue, State of Telangana who appeared for respondent Nos.1 to 7.

(iv) SURVEY AFTER 2008 BY RESPONDENTS DOES NOT DESTROY RIGHTS, IF ANY, OF PETITIONERS

64. Also, any survey got done after 2008 by the respondent nos. 1-7 of the land in old Sy.No.285 of Khanojiguda does not result in the title to it, if any, of persons like petitioners vanishes and gets vested in the Government.

65. In **Hyderabad Potteries Limited Vs. Collector, Hyderabad**^[4], it has been held that the scheme of the AP Survey and Boundaries Act, 1923 (under which the survey after 2008 was done) makes it clear that survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. It held that there is no provision under the Act intending to make any detailed enquiries with regard to the right, title or interest of persons in the lands. This view received its affirmation in the hands of a Division Bench of this Court in W.A. No. 1096 of 2001 against which the District Collector preferred S.L.P. and the same was dismissed. This is stated in **State of Andhra Pradesh Vs. Prameela Modi**^[5].

66. Therefore it is not open to the 2nd respondent to state that even if this land in an inam village, it is unassessed waste land which vests in the Government or for the 4th respondent to state that the AP (Telangana Area) Abolition of Inams Act, 1955 has no application to unsurveyed land. Neither of them has explained how land which is *unsurveyed* is *waste land*. These observations of 2nd and 4th respondent are not supported by any evidence, clearly without any jurisdiction and vitiate their respective orders.

67. Therefore points (a) and (b) are answered in favour of the petitioners and against the respondents.

Point No.(c):-

68. It is the case of petitioners in the application

dt.23-04-2007 filed by them before the 6th respondent under Section 87 of the Act that their great grandfather Khaja Jalal was inducted into possession of land covered by old Sy. No.285 of Khanojiguda by grant of *Muntakhab* granted by the Nizam, that the old Sy.No.285 comprised of Ac.157.20 gts and twelve new survey numbers for an extent of Ac.100.15 gts were assigned and for

the balance Ac.57.05 gts, no survey numbers were assigned. They pleaded that they were in continuous possession and enjoyment of the entire land of Ac.157.20 gts in Sy. No.285 for more than 100 years. They sought not only assignment of new survey number to the extent of Ac.57.05 gts but also registration of their names in the revenue records of the village.

69. The Assistant Director, Survey and Land Records, Ranga Reddy District (5th respondent) issued an inspection note dt.25-07-2008 (Ex.P3) stating that the land in old Sy. No.285 stands registered in the name of Khaja Jalal and that it is his patta land. On 27-11-2009, the 6th respondent issued copy of the inspection report stating that old Sy. No.285 consists of Ac.167.20 gts, that it is *Pan Maktha* land of Khaja Jalal on the basis of *Wasool Baqui* and that Ac.25.09 gts was the deficit area after taking into account the land for which new survey numbers 357 to 372 had been assigned. Subsequently, after survey, the gap area or unsurveyed area was found to be Ac.21.04 gts.

70. Since this land is *prima facie* inam land, it is open to the petitioners to approach the

competent authority under AP (Telangana Area) Abolition of Inams Act, 1955 for grant of an Occupancy Right Certificate and after obtaining the same, they can seek for mutation of their names in the revenue record by making an application in Form 6A prescribed under the AP Rights in Land and Pattedar Passbooks Act, 1971.

71. Coming to the claim of the 8th respondent Cantonment Board is concerned, the correspondence dt.29-06-1937, 06-07-1937, 09-08-1937, 20-08-1937, 06-10-1937, 29-07-1938, 31-12-1938, 17-07-1940 filed along with the counter affidavit suggest that an extent of Ac.32.72 gts *between* Khanojiguda and Hasmathpet was allegedly acquired by the then Nizam Government and handed over to 8th respondent for trenching purposes. *This area therefore cannot be within Khanojiguda and has to be outside it* since it is alleged to be *between* Khanojiguda and Hasmathpet.

72. Secondly the letters dt.29-06-1937, 06-07-1937 and 09-08-1937 appear to have been drafted on stationery printed in the year 1944. *Prima facie* they are dubious.

73. Thirdly, if any land was to be acquired for the benefit of the Cantonment Board, the provisions of Section 110 of the Cantonment Act, 1924 as amended and substituted by Act 24 of 1936 which is extracted below is not shown to have been followed.

“Section 110 - Acquisition of immovable property:

When there is any hindrance to the permanent or temporary acquisition upon payment of any land required by a (Subs. by Act 24 of 1936, S.69, for “Cantonment Authority”.) [Board] for the purposes of this Act, the²[Subs. by the A.O.1937, FOR “l.g.”) (Central Government) may, at the request of the (Subs. by Act 24 of 1936, S.69, for “Cantonment Authority”.) [Board], (Subs., ibid., for “proceed to acquire it”.) [procure the acquisition thereof] under the provisions of the Land Acquisition Act, 1894, and on payment by the (Subs. by Act 24 of 1936, S.69, for “Cantonment Authority”.) (Board) of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the (Subs. by Act 24 of 1936, S.69, for “Cantonment Authority”.) [Board].

No proceedings of acquisition of any land have been filed by the
8th respondent to prove that there was any such acquisition.

74. Also the boundaries of the extent of Ac.32.72 gts are not indicated anywhere. Most of the official correspondence during the regime of the Nizam was conducted in Urdu language and not in English language, but the above correspondence is in English language which also throws a doubt on the genuineness of the above documents.

75. As rightly pointed out by the learned counsel for the petitioners the prevailing currency at the time of the Nizam's Rule was Osmania Sikka but not Indian Rupees, but the proceeding dt.29-07-1938 and 17-07-1940 mention the currency as H.S.Rupees 8003-13-0. The said payment was allegedly made by cheque, but no cheque number or name of the bank is mentioned. These circumstances throw any amount of doubt over the genuineness of the claim of the 8th respondent to the above land.

76. It is not disputed that counter affidavit had been filed on behalf of 8th respondent in W.P.No.12509 of 2004 (filed against it by one Lt.Col. (Retd.) N.K.Yadav) and an affidavit was filed by its Executive Officer A.S.Raja Gopal in W.P.No.17697 of 1989 (filed by M/s.Railway

Employees Cooperative Housing Society Limited) asserting that *the trenching land is in Sy. No.1 of Hasmathpet village and not in Khanojiguda village.*

77. This admission of the 8th respondent is fatal to its claim that the unsurveyed extent of Ac.21.04 gts in old Sy. No.285 of Khanojiguda is the land which was in its occupation and which was being used as a trenching ground.

78. Therefore, point (b) is answered holding that petitioners can approach the competent authority under AP (Telangana Area) Abolition of Inams Act, 1955 for grant of an Occupancy Right Certificate and after obtaining the same, they can seek for mutation of their names in the revenue record by making an application in Form 6A prescribed under the AP Rights in Land and Pattedar Passbooks Act, 1971. The claim of 8th respondent to the unsurveyed extent of Ac.21.04 gts in old Sy. No.285 of Khanojiguda (new.Sy.No.606), is rejected.

79. The Writ Petitions are accordingly allowed to the above extent; proceedings in letter Rc.No.N1/5213/2010 dt.27-09-2010 of 2nd respondent and proceedings in letter

Rc.No.A1/963/2007

dt.25-05-2011 of 4th respondent except to the extent they held that Ac.21.04 gts. in old Sy.No.285 of Khnannojiguda should be given new Sy.No.606 are set aside; costs of Rs.5,000/- (Rupees Five Thousand only) each shall be paid by Respondent No.1 and Respondent no.8.

80. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-08-2016

Kvr/Gra

[\[1\]](#) (2003) 4 ALD 429 (DB)

[\[2\]](#) 1993 (2) A.W.R.84 (D.B.)

[\[3\]](#) 2005(5) ALD 156 (DB)

[\[4\]](#) 2001 (3) A.L.D. 600

[\[5\]](#) 2005 (4) A.L.D. 105 (DB)