

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

W.P.Nos.13810 and 16754 of 2008

07-03-2017

Smt.V.Swaroop Rani and others

...Petitioners

VERSUS

The State Archaeological Museums Department
Rep. by its Director, Government of Andhra Pradesh,
Gunfoundry, Hyderabad and another.

...Respondents

Date of Judgment pronounced on : 07-03-2017

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

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> HEAD NOTE:

! Counsel for the Petitioners

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Sri P.R.Prasad, learned counsel
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^ Counsel for the respondents

: Government Pleader for Revenue
Government Pleader for
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? Cases referred:

1. (2004) 8 SCC 683
2. (2012) 1 SCC 273
3. (2006) 5 SCC 1
4. 1993 Supp (4) Supreme Court Cases 595

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

W.P.Nos.13810 and 16754 of 2008

COMMON ORDER :

These two writ petitions were filed *initially* seeking Writs of Mandamus directing the Commissioner Survey and Land Records (2nd respondent) to survey the land of the State Archaeological Museums Department (1st respondent) and fix the boundaries as per the orders of the PA to the Collector, Hyderabad District in his order dt.14-08-1980 in B2/392/78 as confirmed by the Commissioner, Survey Settlement Land Records in his order dt.14-09-1981 in Revision Petition No.ROR/1290/80 and further to direct the 1st respondent herein to demolish the compound wall constructed in deviation from the orders of the aforesaid authorities. (*The prayer was amended later*)

2. The case of the petitioners in both the Writ Petitions is that the land in question in S.No.318/1 Gaddi Annaram village was originally owned by H.E.H The Nizam the VII (for short 'the Nizam') as his private property. Ms.Naseem Fatima purchased part of it on 03-10-1964 and Ms.Saleema Fatima purchased another part on 02-09-1963.

3. The 1st petitioner in W.P.No.13810 of 2008 and two others purchased Ac.1.00 cts from Ms.Naseem Fatima on 20-08-1966. The other two purchasers relinquished their shares in favour of the 1st petitioner on 24-06-1967. The 1st petitioner divided the Ac.1.00 cts

into six plots and sold five plots to petitioner Nos.2 to 5 retaining one himself.

4. The petitioners in W.P.No.16754 of 2008 claim different extents of land through Ms.Saleema Fatima.

5. According to the petitioner, in a Column in pahanis for 1959-60 in respect of S.Nos.318/1, 3 and 5, it was shown as “Khareej Khata” and in 1960-61, the name of the Nizam was altogether deleted from column 11 of the pahanies and the land is shown as “Sarkari”.

Proceedings under the A.P (Telangana Area) Record of Rights in land Regulation of 1358 Fasli

6. The Nizam then filed a petition under Section 15 (2) of the A.P (Telangana Area) Record of Rights in land Regulation of 1358 Fasli for the correction of the entries.

7. On 19-05-1965, the petition filed by the Nizam was allowed by the Joint Collector and the entries were directed to be corrected.

8. One Syed Khaza Mohammed claimed title to the property and filed W.P.No.1984 of 1965. The said Writ Petition was allowed on 18-08-1965 and a fresh enquiry was directed to be conducted. The enquiry was to be conducted by the PA to the Collector.

9. In the meanwhile, in the Town Survey Operations, the authorities included the land purchased by the petitioners in both the

Writ Petitions as belonging to Archaeological Department and as part of an archaeological structure by name “Raymond’s obelisk”. T.S.No.8 was assigned as belonging to the Archaeological Department corresponding to old S.No.318/1p of an extent of 3.73 hectares and 36 square meters, based upon the entries in the revenue register as “Khareej Khata”.

10. The first petitioner in W.P.No.16754 of 2008 approached the Assistant Director, Traverse Survey Party, Hyderabad for correction of the entry made in Town Survey Register and for incorporating their names.

11. On 30-05-1977, the Assistant Director, Traverse Survey Party held that the matter requires to be decided by the competent department as the issue relates to title of the land.

12. The petitioners in W.P.No.16754 of 2008 got themselves impleaded in the pending proceedings before the PA to the Collector, initiated by the Nizam.

THE ORDER DT.14.08.1980 OF THE PA TO THE COLLECTOR

13. In Proc. No.B2/392/78 dt.14-08-1980, the P.A to the Collector, who was the competent authority to correct entries in revenue records vide G.O. Ms.No.77 Revenue dt.22.01.1968, based upon the material produced before him concluded that the property in question is the private property of the Nizam and ordered his name to be incorporated in column No.11 and 16 of the pahanies from the year 1960-61 onwards by deleting the word “Sarkari Khareej Khata”. The

contention of the Government Pleader raised before him that land in survey No.318/1 did not belong to the Nizam was rejected and it was held that the whole area of survey No.318/1 was appurtenant land to a palace known as “Fern Hill” or “Asmangadh” and that all royal palaces are surrounded by vast open land which are not separate lands. He held that mistake had crept in the pahani of 1959-60 and that all previous revenue records were in favour of the Nizam. He also held that the suit property did not get merge with the Sarfekhas, which merged with the Government; that it remained with the Nizam and was entered as “Kothiyat Mubarak” (royal palaces); and the Nizam remained in possession thereof even after the merger of the Sarfekhas. He held that the Sethwar, which was the basic record and prepared in 1352 Fasli, also showed that it is the property of Nizam and that the Khasra Pahani prepared in 1954 also indicates his name as the occupant of the said property. He also placed reliance on the judgment dt.02.12.1970 of Additional Chief Judge, City Civil Court, Hyderabad in O.S.No.28 of 1965 and judgment dt.22.11.1978 in O.P.No.242 of 1972 of Additional Chief Judge, City Civil Court, Hyderabad and held that the Civil Courts had also concluded that it is the property of Nizam. He therefore held that the entry in Col.11 of pahanies from 1960-61 as “Sarkari Khareej Khata” was a mistake committed by the Patwari and the name of the Nizam should be entered therein.

**Case No.R.O.R/1290/80 dt.14.09.1981 of the Commissioner, Survey
Settlement and Land Records**

14. On 14-09-1981, a Revision Petition filed by the State of Andhra Pradesh and two others under Section 166-B of Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli against the same i.e, Case No.R.O.R/1290/80 before the Commissioner, Survey Settlement and Land Records, was dismissed.

15. The Commissioner held that in the printed copy of the Blue Book, Fern Hill Palace with municipal number was mentioned without appurtenant land, but the Civil Court vide judgment dt.22.09.1978 in O.P.No.242 of 1972 (Old O.P.No.80 of 1959) declared that the Nizam was the absolute owner of land in Survey No.318/1 and was entitled to receive compensation in proportion to the extent of 7,096.3 sq.yards from out of the extent of 7,659 sq. yards acquired in survey No.318/1 of Gaddiannaram Village; that in Sethwar of 1942, in the Chowfaslas, in the Kasra Pahanis of 1954-55, in the Sesala Pahanies and in the subsequent pahanies upto 1959-60, the Nizam was shown as owner and occupant; and the P.A. to Collector had examined these aspects and rightly held that the deletion of the name of the Nizam by the Patwari was made mischievously without the orders of the competent authority and passed orders for rectification of the mistake. He also rejected the contention of the Government Pleader that Revenue Courts of the State Government do not have jurisdiction to decide the issue of title in respect of property

mentioned in the Blue Book unless the authority is nominated by the Government of India, as not relevant. He observed that the orders of the P.A. to Collector are only in respect of correction of village accounts, but not for deletion, alteration or addition in the Blue Book. He held that it is within the jurisdiction of the Revenue Court envisaged under the A.P. (Telangana Area) Record of Rights in Land Regulation, 1358 Fasli and the Government could not explain the changes made in the title of the suit land as having been done with valid authority; therefore, such changes are unauthorized, warranting restoration of the name of the Nizam.

16. It is not in dispute that the State Government, in a Revision filed by the District Collector against the order of the Commissioner, on 29.03.1984 confirmed his order.

THE JUDGMENT dt. 14-10-1998 IN O.S.No.3903 OF 1986

17. The petitioners in W.P.No.16754 of 2008 filed O.S.No.3903 of 1986 on the file of the Court of the VII Junior Civil Judge, City Civil Courts at Hyderabad for a perpetual injunction restraining the State Archaeological Museums Department (the 1st respondent herein) from interfering with their peaceful possession and enjoyment of the plaint schedule property which is an extent of Ac.1.00 cts., in Survey No.318/1 of Gaddiannaram Village.

18. The petitioners contended that the Town Survey authorities, during the course of survey conducted in the city of Hyderabad, included the six plots of land purchased by them from

Ms.Naseem Fathima in Town Survey No.8 without giving any notice to them; that this was done on a mistaken impression that the land is near a stone pillar by name “Raymond’s Obelisk”; that the 1st plaintiff filed application before the Assistant Director, Traverse Survey Party, Hyderabad for correction of the entry made in T.S.No.8 and for incorporating their names; that after regular enquiry, the Assistant Director of Traverse Survey Party, passed an order on 30.05.1977 holding that the matter requires to be decided by the competent department as the issue relates to title of the land. They stated that they then approached the P.A. to Collector, who passed orders on 14.08.1980 which was also confirmed by the Board of Revenues on 14.09.1981 and by the Government, in a Revision filed by the District Collector on 29.03.1984, upholding the title of the Nizam of Hyderabad to the land in survey No.318/1 and that of the petitioners as the successors and possessors of the land. They contended that there was an attempt to acquire the land for the purpose of the A.P. Electricity Board which was challenged in the High Court in W.P.Nos.4950 and 5322 of 1986 and the High Court had granted stay of dispossession. They contended that since the Archaeological Department of the State Government was attempting to interfere with their possession of the suit land, a temporary injunction be granted.

19. A written statement was filed by the State, Archaeological Museums Department stating that survey No.318/1 in Gaddiannaram Village is called “Raymond’s Obelisk”, that it is a

State protected monument and the revenue records disclose that an extent of Acres 109.21 guntas in survey No.318/1 belonged to the Nizam *and to* the Government. It denied the possession as well as ownership of the petitioners over the suit schedule land. It stated that it was looking after the suit area with the help of servants and also by erecting boundary stones and by putting sign boards and it had title and possession over the land since 1953 and so the suit be dismissed.

20. On 14-10-1998, the suit was decreed as prayed for. The Trial Court recorded that the petitioners contended that “Raymond’s Obelisk” monument was not situated within the suit land and that it was shown as a boundary of the plaint schedule property; though the Archaeological department claimed that the area pertaining to the monument is Acres 3.00 cents in extent, it did not choose to produce any material to show that this extent had been given to it for protection of the monument. It referred to Ex.B14, a Gazette Notification dt.25.02.1960 in relation to “Raymond’s Obelisk” as a protected monument, but held that none of the documents filed by the Archaeological department shows that the said monument is situated in these Acres 3.00 cents. It held that even the Assistant Director of Survey Traverse Party had held that it is not within his purview to decide title, but the decision dt.14.08.1980 of the P.A. to Collector, Hyderabad (in Proceedings vide No.32/392/78 between the Nizam and the State of Andhra Pradesh and others in relation to the rectification of Record of Rights) had held that the Patwari in Col.11

of the Pahani from 1960-61 deleted the name of the Nizam erroneously and added the words “Sarkari Khareej Khata”, that these remarks need to be deleted and the name of the Nizam should be restored since the Setwar etc., up to 1959-60 mentioned his name and the Civil Court had upheld his ownership. It therefore held that the land in survey No.318/1 clearly belongs to the Nizam.

21. It further held that since the land is an open plot, “possession would follow title” and is with the petitioners who are claiming through the Nizam. It also held that the land acquisition proceedings for acquiring the petitioners’ lands had been quashed by the High Court in W.P.NO.4950 of 1986 and W.P.No.5328 of 1986; that if the land belonged to the Government, and is in the possession of the Archaeological Department, there was no question of initiating acquisition proceedings. It therefore concluded that petitioners were in possession of property and were entitled to injunction.

JUDGEMENT DT.12.09.2000 IN A.S.No.176 OF 1999

22. A.S.No.176 of 1999 was filed by the State Archaeological Museums Department before the file of the Court of the Chief Judge, City Civil Court, Hyderabad challenging it.

23. On 12-09-2000, the appeal filed by the State Archaeological Museums Department in A.S.No.176 of 1999 was dismissed.

24. The Appellate Court also held that the material on record proved the title and possession of the petitioners over the subject land

and the State Government, all of a sudden, cannot claim title to the property after orders were passed in 1984; that the petitioners clearly established that the monument “Raymond’s Obelisk” was not situated within the area covered by the suit schedule land; that it is one of the boundaries to the property comprised in survey No.318/1/part; there is no document to show that the said monument is situated in the extent of Acres 3.00 cents; District Collector had preferred a revision before the Government which was dismissed on 29.03.1984; and therefore, the petitioners are in possession of the suit property ever since they purchased it. It also held that there were no proceedings filed by the Government taking it over under the Land Acquisition Act, 1894; that Item 23 of the Gazette Publication issued by the Government showed that the plaint schedule property of Ac 1-00 cents was not covered by the monument claimed by the Archaeological Department. It thus upheld the title as well as possession of the petitioners over the subject land.

THE FACTS LEADING TO FILING OF THE PRESENT WRIT PETITIONS :

25. Petitioners in W.P.No.13810 of 2008 contend that petitioners 2, 4 and 5 are agriculturists residing at Warangal, that other petitioners are married and residing with their respective families, and that the 1st respondent constructed a compound wall covering Ac 9-00 cents including the land of the petitioners taking advantage of their absence from Hyderabad, without identifying and measuring its land, though in the Civil Court, the 1st respondent had claimed only Ac 3-00

cents. They contended that this is a highhanded and arbitrary action and contrary to the decisions of the Civil Court to which the 1st respondent is a party.

26. Similar contentions are raised by the petitioners in W.P.No.16754 of 2008. They also pleaded that when they approached the 1st respondent to furnish details of the land covered by the monument, it refused and that the Survey Department also refused to survey the land of Acres 3-00 cents held by the 1st respondent and to fix up the boundaries on the ground without orders from this Court.

CONTENTIONS OF THE 1st RESPONDENT:

27. Two counter affidavits, one dt.18.02.2010 and another dt.17.04.2012 were filed by the 1st respondent in both writ petitions.

28. In the counter affidavits, it is stated that the department had constructed compound wall covering the area of Ac.7.28 gts. The basis of the claim of the respondents is only the Town Survey Land Records (TSLR). It is also stated in the counter affidavits that as per Subsection (a) (iii) of Section 2 of the Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960, the term '*ancient monument*' means such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and under clause (iv), the means of access to and for convenient inspection of an ancient monument. Reliance is placed on a Hyderabad Gazette Notification No.49/1/111/Archaeology/51 dt.12.01.1953 published on

volume No.83 dt.11.06.1953 under Section 3(1) of the Hyderabad Ancient Monuments Preservation Act, 1337 Fasli and it is stated that for watch and ward purpose, the 1st respondent posted a monument attendant at the monument since it is a State Protected monument. In the additional counter dt.17.04.2012, a new plea is raised for the first time by the 1st respondent that the compound wall was already constructed long back(nearly 40 years) and that the 1st respondent is taking up only raising the compound wall on existing base and follow as per existing plan.

THE AMENDMENT TO THE PRAYERS IN THE WRIT PETITIONS:

29. The prayers in the Writ Petitions were amended vide W.P.M.P.No.6087 of 2010 in W.P.No.13810 of 2008 and W.P.M.P.No.6059 of 2010 in W.P.No.16754 of 2008 on 08.09.2010 substituting for the earlier prayer , a new prayer seeking a declaration that the action of the 1st respondent in constructing the compound wall covering the land of the petitioners without initiating proceedings under the provisions of the Land Acquisition Act as illegal and arbitrary and violative of Article 300-A of the Constitution and also contrary to the orders of the PA to the Collector as confirmed by the Commissioner and the judgments of the Civil Courts in O.S.No.3903 of 1986 and A.S.No.176 of 1999 and consequently direct the respondents to remove the compound wall over and above the land of Ac.3.00 gts covered by the monument.

THE CONSIDERATION BY THE COURT:

30. Copy of the Notification published in the Gazette referred to by the 1st respondent in the counter affidavit mentioned “Raymond’s obelisk” but did not give any area covered by the said monument. The TSLR copy filed with the counter affidavit mentions that the land in Survey No.318/1P is correlated to TS.No.8 and mentions in Col.No.10, the words “Khareej Khata” of Hectares 3-73 ares and in Col.No.23 mentions the words “French General”. There is no mention of the words “Raymond’s obelisk” there. A field map is also filed with the counter affidavit. None of these documents establish that any area was earmarked or allotted to the 1st respondent by the State Government or the Nizam for the purpose of “Raymond’s obelisk”.

31. As I have already set out above, the P.A. to Collector, in proceedings No.B2/392/78 dt.14.8.1980 under Sec.15(2) of the A.P.(Telangana Area) Record of Rights in land Regulation of 1358 Fasli, based upon the material including the judgments of the Civil Courts in O.S.No.28 of 1965 and O.P.No.242 of 1972 concluded that the property in question is the private property of the Nizam and ordered his name to be incorporated in column No.11 and 16 of the pahanies from the year 1960-61 onwards by deleting the word “Sarkari Khareej Khata”. The contention of the Government Pleader that land in survey No.318/1 did not belong to the Nizam was rejected and it was held that the whole area of survey No.318/1 was

appurtenant land to a palace known as “Fern Hill” or “Asmangadh” and that all royal palaces are surrounded by vast open land, which are not separate lands. He held that mistake had crept in the pahani of 1959-60 and that all previous revenue records were in favour of the Nizam. He also held that the suit property did not get merged with the Sarfekhas which merged with the Government and held that it remained with the Nizam and was entered as “Kothiyat Mubarak” (royal palaces) and the Nizam remained in possession thereof even after the merger of the Sarfekhas. He held that the Sethwar, which was the basic record and prepared in 1352 Fasli, also showed that it is the property of Nizam and that the Khasra Pahani prepared in 1954 also indicates his name as the occupant of the said property. He also placed reliance on the judgment dt.02.12.1970 of Additional Chief Judge, City Civil Court, Hyderabad in O.S.No.28 of 1965 and judgment dt.22.11.1978 in O.P.No.242 of 1972 of Additional Chief Judge, City Civil Court, Hyderabad and held that the Civil Courts had also concluded that it is the property of Nizam. He therefore held that the entry in Col.11 of pahanies from 1960-61 as “Sarkari Khariz Khata” was a mistake committed by the Patwari and the name of the Nizam should be entered therein.

32. This was confirmed by the Commissioner, Survey Settlement and Land Records in his order dt.14.09.1981 in Case No.R.O.R/1290/80. He held that in the printed copy of the Blue Book, Fern Hill palace with municipal number was mentioned without

appurtenant land, but the Civil Court vide judgment dt.22.09.1978 in O.P.No.242 of 1972 (Old O.P.No.80 of 1959) declared that the Nizam was the absolute owner of land in Survey No.318/1 and was entitled to receive compensation in proportion to the extent of 7,096.3 sq.yards from out of the extent of 7,659 sq. yards acquired in survey No.318/1 of Gaddiannaram Village; that in Sethwar of 1942, in the Chowfaslas, in the Kasra Pahani of 1954-55, in the Sesala Pahanies and in the subsequent pahanies upto 1959-60, the Nizam was shown as owner and occupant; and the P.A. to Collector had examined these aspects and rightly held that the deletion of the name of the Nizam by the Patwari was made mischievously without the orders of the competent authority and passed orders for rectification of the mistake. He also rejected the contention of the Government Pleader that Revenue Courts of the State Government do not have jurisdiction to decide the issue of title in respect of property mentioned in the Blue Book unless the authority is nominated by the Government of India stating that it is not relevant. He held that the orders of the P.A. to Collector are only in respect of correction of village accounts, but not for deletion, alteration or addition in the Blue Book. He held that it is within the jurisdiction of the Revenue Court envisaged under the A.P. (Telangana Area) Record of Rights in Land Regulation, 1358 Fasli and the Government could not explain the changes made in the title of the suit land as having been done with valid authority; therefore, such

changes are unauthorized warranting restoration of the name of the Nizam.

33. It is important to note that the State Government of Andhra Pradesh was a party to this decision. The matter was contested on its behalf by the Government Pleader for the State Government and his contentions were rejected. A further Revision by the District Collector to the State Government was also stated to have been rejected on 29.03.1984.

34. The Commissioner, Survey Settlement Land Records, Andhra Pradesh, Hyderabad, is one of the senior most Civil Servants in the Revenue Department of the State Government and once he pronounced orders dt.14-09-1981 in Revision Petition Case No.R.O.R./1290/80, the issue cannot be reopened again. The 1st respondent is also a Department of the State Government and it is bound by the decision rendered against the State Government by the Commissioner and has no *locus* to dispute it or raise new points which were not argued at that time and seek to get over the findings therein which also equally bind it.

35. In any event, the Civil Court in O.S.No.3903 of 1986 and in A.S.No.176 of 1999 had also rejected the contention of the 1st respondent that it had both title and possession to the land claimed therein by the plaintiffs/petitioners in W.P.No.13810 of 2008. It found that both title and possession were with the petitioners therein.

This finding operates as a *Res Judicata* and it is not open to the 1st respondent to re-agitate the same.

36. In the light of the material placed on record by the writ petitioners and in particular, the decision dt.14.08.1980 in proceedings No.B2/392/78 of the PA to Collector in relation to rectification of Record of Rights, the order dt.14.09.1981 in Case No.ROR/1290/80 of the Commissioner, Survey Settlement and Land Records under Section 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli, the judgment and decree dt.14.10.1988 in O.S.No.3903 of 1986 of VII Junior Civil Judge, City Civil Court, Hyderabad and the judgment and decree dt.12.09.2000 in A.S.No.176 of 1999 of the Chief Judge, City Civil Court, Hyderabad declaring the title of the Nizam to the land in survey No.138/1 and rejecting the claim for title and possession by the State Government, the claim of the 1st respondent regarding both title and possession of the land claimed by the petitioners in survey No.138/1 of Gaddiannaram Village, cannot be countenanced.

37. The Special Government Pleader appearing for the 1st respondent raised a plea in the oral arguments that the land now claimed by the petitioners in these Writ Petitions is not the land which is subject matter of the civil suit, that it is located elsewhere. There is no pleading to this effect in the two counter affidavits filed by the 1st respondent. Therefore such an argument without any pleading and without any supporting material cannot be countenanced.

38. The contention in the counter affidavit filed on 17.04.2012 in W.P.No.13810 of 2008 that compound wall was constructed 40 years back, is a false contention because, if so, it should have been constructed by 1972. However, in the written statement filed by the 1st respondent in O.S.No.3903 of 1986, no such pleading was raised. It was only stated that it was looking after the suit area with the help of servants by erecting boundary stones and by putting sign boards. If the compound wall had been in existence since 1972, the 1st respondent as defendant in the suit O.S.No.3903 of 1986, would not have omitted to mention it in the written statement. In fact in the said suit, it was clearly held that the “Raymond’s Obelisk” was not located in the land claimed by the petitioners/plaintiffs therein. Thus it is clear that after the decision of the Civil court, the 1st respondent built the compound wall in gross violation of the perpetual injunction granted by the Court and the land belonging to the petitioners was grabbed highhandedly by it. Such conduct of the 1st respondent, a Government Department, is to be strongly deprecated and cannot be countenanced.

39. Also in the suit, the 1st respondent had claimed that only Ac 3-00 cents had been given to the Archaeological Department for protection of the said monument. But now, it is contending in the Counter affidavits that Ac 7-28 guntas is covered by compound wall. Neither for the Ac 3-00 guntas nor for Ac 7-28 guntas, is any scrap of paper filed by the 1st respondent to show that it was allotted to it by

any authority. Thus it is not acting *bonafide*. It's action is highhanded and amounts to land grabbing without any right, title or interest therein.

40. From the facts narrated above, it is clear that the 1st respondent has acted in deliberate and wilful violation of the various orders set out in para 36 above by raising false pleas.

41. In **E.T. Sunup v. C.A.N.S.S. Employees Assn¹**, the Supreme Court deprecated the practice of Government officials like the 1st respondent in finding ways to flout Court orders. It noted :

“ 16. It has become a tendency with the government officers to somehow or the other circumvent the orders of court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the Court's order cannot be countenanced. This Court time and again has emphasised that in a democracy the role of the court cannot be subservient to administrative fiat. The executive and legislature have to work within the constitutional framework and the judiciary has been given the role of watchdog to keep the legislature and executive within check...”

42. In **Maninderjit Singh Bitta v. Union of India²** the Court reiterated the same and observed :

“ 26. It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain

1 (2004) 8 SCC 683

2 (2012) 1 SCC 273

true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad case³, SCC p. 6, para 5)."

43. In a judgment of the Supreme Court in ***S.Nagaraj and others v. State of Karnataka and another***⁴, the Supreme Court has held that if an order has been passed by a Court which had jurisdiction to pass it, then any error or mistake in it can only be corrected by a higher Court or by an application for clarification, modification or recall of the order and not by ignoring it by any authority actively or passively or disobeying it expressly or impliedly. It held that even if the orders had been improperly obtained, the authorities cannot assume on themselves the role of substituting it or clarifying it or modifying it as they consider proper. It observed:

"Any order passed by a court of law, more so by the higher courts and especially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding."

It quoted with approval the passage in Halsbury's Laws of England (4th Edition, Volume-9, P-35, para-55) which stated the law on orders improperly obtained:

3 (2006) 5 SCC 1

4 1993 Supp (4) Supreme Court Cases 595

“The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order.”

44. For all the aforesaid reasons, the Writ Petitions are allowed with costs of Rs.20,000/- (Rupees Twenty Thousand only) to be paid by 1st respondent to each set of Writ Petitioners in both Writ Petitions; it is declared that the action of 1st respondent in constructing the compound wall covering the land of the petitioners in Sy. No.318/1, situated in Gaddiannaram village, Asmangadh, Malakpet, Hyderabad, is illegal, arbitrary and violative of Article 300-A of the Constitution of India and contrary to the orders passed by the P.A. to Collector, Hyderabad District in No.B2/392/78 dt.14-08-1980 as confirmed in Commissioner, Survey Settlement Land Records, Andhra Pradesh, Hyderabad, in Revision Petition Case No.R.O.R./1290/80 dt.14-09-1981 and the judgment of the VII Junior Civil Judge, City Civil Court, Hyderabad dt.14-10-1998 in O.S.No.3903 of 1986 and confirmed in the judgment dt.12-09-2000 in A.S.No.176 of 1999 on the file of the Chief Judge, City Civil Court, Hyderabad and consequently a direction is given to 1st respondent to demolish the compound wall constructed by the 1st respondent over and above the land of Ac.3.00 gts covered by the Monument Mons, Raymonds Obelisk and further direct the respondents not to encroach

upon the land of the petitioners in Sy. No.318/1, Gaddiannaram village, Asmangadh, Malakpet, Hyderabad.

45. Miscellaneous applications pending if any in these Writ Petitions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 07-03-2017

Mark the L.R. copy.

B/o.

Kvr/Gra

