

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.9 OF 2016

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Aggrieved over the order of the learned Single Judge in W.P. No.24298 of 2015, dated 22.12.2015, writ petitioners therein preferred the present Writ Appeal under Clause 15 of the Letters Patent.

2. The appellants sought a Writ of *Certiorari* under Article 226 of the Constitution of India impugning the Notice No.C/622/2015 dated 31.07.2015, issued by respondent No.4, the Tahsildar, Tirumulgherry Mandal, Tirumulgherry, Secunderabad under Section 7 of the Andhra Pradesh Land (Encroachment) Act, 1905 (for short 'Act, 1905') as being illegal, arbitrary, without jurisdiction, contrary to law and contrary to the judgments of this Court and the Hon'ble Supreme Court, and, therefore, to quash the same; request is also made to call for the connected records including the notice impugned.

3. Respondent No.4 issued impugned Notice under Section 7 of the Act, 1905, dated 31.07.2015, requiring the appellants to show cause within seven (7) days, why they should not be subjected to eviction from the land in an extent of Acs.18.02 guntas out of total extent of Acs.119.34 guntas described as Government land (B2 -

Lands) entered in General List Register No. 243 (part), located in Cantonment Area, Tirumulgherry Village and Mandal, Hyderabad District. Questioning the said notice, appellants moved this Court by filing the aforesaid writ petition.

4. Their case mainly rests on the so called official bias attributed to respondent No.4 - The Tahsildar, Trimulgherry Mandal, Secunderabad. The basis being a letter addressed by respondent No.2 - District Collector, Hyderabad District, Hyderabad on 20.06.2015, to the Chief Executive Officer, Secunderabad, Cantonment Board asserting State Government's claim over the said property and requiring him to cancel the building permission granted to the appellants by the Cantonment Board. On the ground that the Tahsildar is directly subordinate to the District Collector, the enquiry that would be conducted by respondent No.4 would only be an empty formality in the presence of the letter of respondent No.2, referred to hereinabove, as respondent No.4 cannot come to a different conclusion, sought to quash the notice.

5. They claim that the subject land has been in their possession and enjoyment for over hundred (100) years and the layout was granted by the Cantonment, Secunderabad in 2008 and the no-objection certificate issued by the Revenue and the Military authorities would exemplify their right over the same. They attack the action of the State in claiming right over the subject property merely basing on certain entries made in G.L.R. records and the records

maintained by the Defence Estate Officer, as empowering the State Government to resort to the action under the provisions of the Act 1905.

6. The appellants referred to the writ petitions earlier filed and the interim orders obtained by them in W.P. No.22575 of 2010 dated 20.04.2012 preventing the revenue authorities from interfering with their possession without following due process of law. In W.P. No.23607 of 2012, they obtained interim orders on 24.08.2012, suspending all the three (3) letters addressed by respondent No.4 to the General Officer, Commanding, Head Quarters, Andhra Sub Area, the Chief Executive Officer, Secunderabad, Cantonment Board and the Sub Registrar, Bowenapalli, Secunderabad, asserting title of the State. On the allegation that the military authorities were obstructing when they were developing the land as per layout sanction, they filed W.P. Nos.14286 of 2013, 385 of 2014, 3991 of 2014 and 12842 of 2015. Even questioning the letter referred to above addressed by respondent No.2 to the Chief Executive Officer, they filed W.P. No.19401 of 2015.

7. Respondent No.2 strongly resisting the claim, filed counter. Refuting the allegation of official bias, respondent No.2 states that issue of notice under Section 7 of the Act, 1905, was in exercise of the power vested in respondent No.4 and, as such, he has nothing to do with the hierarchy of officers and the hierarchiality will not affect the functions of statutory authority and stating that there are no *bona*

fides, as no basis is to be found in the petitioners' (appellants) claim for title, sought to dismiss the writ petition.

8. The learned Single Judge extracted the order dated 31.07.2015, passed by him while disposing of the last of the writ petitions in W.P. No.19401 of 2015. As could be seen from the extracted portions, the learned Single Judge has disposed of the said writ petition on the ground that there was no subsisting cause of action to entertain the writ petition. An interim order to the effect that the impugned notice requiring the petitioners (appellants) to submit their explanation shall not be enforced was initially granted on 11.08.2015, by granting six (6) weeks time to file counter at request of the learned Advocate General and later the said order was extended from time to time till the order under challenge was passed.

9. The learned Single Judge taking note of the rival contentions, formulated the following two (2) points for consideration:

- “1. Whether judicial review is justified against the impugned show cause notice?
2. Whether the fourth respondent is, in law, biased and is incompetent to invoke the A.P. Land Encroachment Act by issuing the impugned notice?”

10. Referring to the rulings relied on by the learned Advocate General in **Executive Engineer, B.S.H.B. v. Ramesh Kumar Singh**¹, extracting the ratio laid down therein, that the show cause notice therein cannot be viewed as “nullity” or totally “without jurisdiction” in the traditional sense of that expression, that is to say even the commencement of proceedings or initiation of proceedings, on the face of it and without anything more, is totally unauthorised; in such a case, entertaining the writ petition under Article 226 of the Constitution of India against a show cause notice, at power or jurisdiction, to enter upon the enquiry in question; in all other cases, it is only appropriate that the party should avail alternative remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then; in the event of an adverse decision, it will certainly be open to him, to assail the same either in revision or appeal, as the case may be, in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

11. In **Special Director v. Mohd. Ghulam Ghouse**², the ratio laid down by a learned Judge, that unless the High Court is satisfied that the show cause notice is totally *non-est* in the eye of law for absolute want of jurisdiction of the authority to even investigate in to facts; writ petitions should not be entertained for mere asking and as a matter of routine; the writ petitioner should invariably be directed to

¹ (1996) 1 SCC 327

² (2004) 3 SCC 440

respond to the show cause notice and take all stands highlighted in the writ petition; whether the show cause notice was found on any legal premises is a jurisdictional issue, which can even be urged by the recipient of the notice and as such issues can also be adjudicated by the authority issuing the very notice initially before the aggrieved could approach the court.

12. The learned Single judge did not agree with the submission based on the decision in **Government of Andhra Pradesh v. Thummala Krishna Rao**³ relied on by the learned Senior Counsel for the appellants, that summary proceedings under the Act, 1905, cannot be invoked, particularly, when there is a serious contest on title. The learned Single Judge opined that the appellants in response to the impugned show cause notice neither filed any reply nor explanation, and, therefore, the stand of the appellants as to the title is yet to be pleaded, and, thus, the said decision would not render any assistance to the appellants or at the threshold when the show cause notice is questioned and consequently, the judicial review against impugned show cause notice cannot be entertained. The learned Single Judge, thus, answered the first point.

13. In answering the second point, the learned Single Judge opined that it requires to be considered in some detail touching the allegation of bias and the learned Judge projected three categories of bias which would disqualify any adjudicatory authority viz., (1)

³ (1982) 2 SCC 134

pecuniary bias, (2) personal bias and (3) department or policy or official bias, and the case in hand attracts the third category of bias alleged against respondent No.4. The same was examined in the backdrop of the submissions, that the District Collector wrote a letter to the CEO, Cantonment Board which issue was agitated in W.P. No.19401 of 2015, in regard thereto, the learned Single Judge opined that it was a mere assertion made by the Collector of the State Government's title to the subject land; the said order has admittedly attained finality as it was not appealed against by any of the parties and, therefore, it has to be considered as to whether existence of the said letter by the Collector would vitiate the statutory power exercised by the Tahsildar under Section 7 of the Act, 1905; that the District Collector is administratively superior to respondent No.4; whether the administrative superiority can be taken into consideration while adjudicating upon discharge of statutory duty of respondent No.4 requires consideration; that the question of bias and reasonable apprehension of bias are required to be understood in the context of facts set out earlier in the order; whether the exercise of the power by respondent No.4 while issuing the impugned notice violates the principle that no man can be judge of his own cause or whether existence of any bias or reasonable apprehension of bias can be attributed to respondent No.4 and that except claiming possible official bias, no other allegations against respondent No.4 were made.

14. Touching the official bias, the learned Judge extracted the discussion made in detail from the text, “The Administrative Law”, Tenth Edition, pages 392 and 393, H.W.R. Wade and C.F. Forsyth.

“In administrative cases the same exigency may easily arise. Where statute empowers a particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognised type of ultra vires. In one case it was unsuccessfully argued that the only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament. The court will naturally not allow statutory machinery to be frustrated in this way. It is generally supposed, likewise, that a minister must act as best he can even in a case where he, for instance, himself owns property which will be benefited if he approves a development plan. Such cases of private and personal interest are conspicuous by their absence in the law reports ...”

“Similarly in a New Zealand case the Privy Council held that a marketing board could not be prevented from making a zoning order allotting the milk produced by a certain district to a certain dairy company, even though the board had given the company a large loan and therefore had a pecuniary interest in its prosperity. Both the power to make zoning orders and the power to make loans to dairy companies were expressly conferred

by statute on the board and on no one else, so that ‘although the board may find itself placed in an unenviable position’, it was bound to exercise both powers if the statutory scheme was to be workable. The same doctrine should, perhaps, have been invoked in English cases where local authorities had to exercise different functions one of which could prejudice the other.”

The learned Judge then extracted the discussion in D.E. Smith’s judicial review, Sixth Edition, and a passage from the Principles of Administrative Law by M.P. Jain & S.N. Jain, 6th Enlarged Edition at pages 550-551.

15. The learned Judge referred to the rulings of the Hon’ble Supreme Court in **Hindustan Petroleum Corporation Limited v. Yashwant Gajanan Joshi**⁴ **A.K. Kraipak v. Union of India**⁵, **Union of India v. Col. J. N. Sinha**⁶, **Union of India v. Sanjay Jethi**⁷, **G. Sarana v. University of Lucknow**⁸, and applying the test laid down therein, opined that the District Collector asserted title to the subject land as belonging to the State Government and held that the District Collector is only superior authority to respondent No.4 and statutory function or duty bestowed by the Act, 1905, on respondent No.4 cannot be put under administrative control of any other superior authority; while respondent No.4 exercises statutory duty of a primary

⁴ AIR 1991 SC 933

⁵ AIR 1970 SC 150

⁶ AIR 1971 SC 40

⁷ (2013) 16 SCC 116

⁸ (1976) 3 SCC 585

authority under the Act, 1905, even the Revenue Divisional Officer, who is the appellate authority cannot exercise his administrative superiority over the statutory function to be exercised by the primary authority nor any other superior authority; accepting contention of the learned Senior counsel would amount to restraining a statutory authority from discharging its statutory duty merely because its administratively superior authority makes a claim over the subject land and held that respondent No.4, in law, is required to independently examine the issue and come to a just and reasonable conclusion duly supported by reasons by granting six (6) weeks time to the appellants to file their reply to the impugned notice with a further direction that respondent No.4 shall fix a date of hearing on receipt of such reply, intimate the appellants and, if they so desire, hear them, examine the records and then pass a reasoned order.

16. The aforesaid order is under challenge in the instant appeal mainly on the following grounds;

- 1) the order/notice impugned in the writ petition, is without jurisdiction,
- 2) the final appellate authority (District Collector) under the Act, 1905, has made the claim raising disputed questions of title,
- 3) the order under challenge is contrary to the record,

- 4) the order/notice impugned in the writ petition is bereft of any details, vague and cryptic,
- 5) the impugned order is contrary to the law laid down by the Hon'ble Supreme Court in **Thummala Krishna Rao**³.

17. Each of the aforesaid points, is elaborated by the appellants, but all these points revolve around the two points formulated by the learned Single Judge except the main ground that the notice impugned in the writ petition is bereft of any details, vague and cryptic.

18. Heard Sri D. Prakash Reddy, learned Senior Counsel for Sri Avinash Desai, learned counsel for the appellants, and the learned Advocate General and the learned Government Pleader for Revenue for the respondents - State.

19. The learned Senior Counsel appearing for the appellants would submit that the finding recorded by the learned Single Judge to the effect that judicial review against the impugned show cause notice is impermissible is not correct in view of the law declared in **Thummala Krishna Rao**³ for the reason that the summary remedy for eviction as provided for by Section 6 of the Act, 1905, can be resorted to by the Government, only against the persons who are in unauthorised occupation which property belongs to the Government, but the provisions of Section 6(1) of the Act, 1905, limits the power of

summary eviction of the Government to cases in which a person is in unauthorised occupation of the land for which he is liable to be assessment under Section 3 of the Act, 1905, which provision in turn refers to unauthorised occupation of any land which is the property of the Government and when there is a *bona fide* dispute regarding title of the Government to any property, the Government cannot take unilateral decision in its own favour that the property belongs to it and on the basis of such decision, it can not resort to the summary remedy provided by Section 6 of the Act, 1905, for evicting the person who is in possession of the property under a *bona fide* claim of title, more particularly, when the letter of the District Collector, Hyderabad dated 20.06.2015 would *ex facie* projects assertion of title over the subject property.

20. The learned Senior counsel would further submit that the District Collector's Letter dated 20.06.2015, since reflects assertion of title by the State over the subject property, which claim was made by the District Collector, who is final appellate authority under the provisions of Section 10 of the Act, 1905, and respondent No.4, the statutory authority being inferior authority, cannot pass order contrary to the claim made by the superior authority. In the said context, it is his submission that the learned Single Judge, somehow, overlooked this aspect of the case, more particularly, when the counter affidavit itself has been filed by the District Collector, and went wrong in holding that the District Collector is only administratively superior

authority to respondent No.4 or the statutory function or the duty bestowed by the Act, 1905, on respondent No.4 cannot be put on the administrative power by any other superior authority. According to the learned Senior Counsel, the doctrine of necessity has no application to the facts of the present case, as the Government has remedy to approach the Civil Court for asserting a claim of title with respect to the subject land which is the appellants' ancestral land.

21. His further submission is that the order impugned in the present appeal is contrary to the record, basing on certain interim orders passed by this Court in W.P.M.P. No.28790 of 2010 in W.P. No.22575 of 2010 and also dated 24.08.2012 in W.P.M.P. No.30154 of 2012 in W.P. No.23607 of 2012, contending that the words "without following due process of law" can never be construed as taking action under the Act, 1905, as the enactment is not for the purpose of deciding the disputed questions of title and that the counter affidavits filed by the respondents were based on the very same survey report which would favour the appellants' case.

22. In response, the learned Advocate General would submit that the relief sought for by the appellants in the writ petition is not maintainable as the judicial review against the impugned show cause notice is impermissible and the learned Single Judge rightly held as such, by recording reasons. To fortify the submission that this Court has no jurisdiction to entertain the writ petition, learned Advocate General places reliance on the rulings in **Bellary Steels and Alloys**

Limited v. Deputy Commissioner, Commercial Taxes (Assessments)⁹, and **Ramesh Kumar Singh**¹. On facts, the learned Advocate General would rely on the ruling in **Usha Kapoor v. Government of India**¹⁰ as to significance of the entries recorded in General List Register maintained by the Military Estate Officer of the Cantonment under the provisions of Cantonments Land Administrative rules framed in exercise of power under Section 280 of the Cantonments Act, 1924, the corresponding Section being 346 under the Act 41 of 2006.

23. We have perused the order impugned in the present appeal and the material placed on record.

24. On consideration of the contentions raised by both sides, we are of the view that we are confronted with the following three (3) aspects in the present writ appeal.

1. Whether the judicial review is permissible against the show cause notice issued by respondent No.4?
2. Whether the show cause notice impugned is tainted with illegality for want of relevant details, besides being vague and cryptic as contended by the appellants?
3. Whether the alleged official bias attributed to respondent No.4 renders him incompetent to invoke the provisions of the Act, 1905, in issuing the impugned notice?

⁹ (2009) 17 SCC 547

¹⁰ 2014 (16) SCC 481

Point Nos.1 and 2:

25. The learned Senior Counsel has drawn our attention to the correspondence between the District Collector and the Cantonment Board, the joint inspection report dated 14.03.2013, containing the findings recorded by the Regional Deputy Director, Survey and Land Records, Hyderabad and the Assistant Director, Survey and Land Records, Ranga Reddy District on the demarcation of GLR No.243 of Cantonment Area, counter affidavit filed by respondent No.2, District Collector, in earlier writ proceedings, order passed in W.P. No.19401 of 2015 and the interim orders passed in W.P.M.P. No.28790 of 2010 in W.P. No.22575 of 2010, W.P.M.P. No.30154 of 2012 in W.P. No.23607 of 2012, W.P.M.P. No.17412 of 2012 in W.P. No.14286 of 2013 and also, the interim orders in three more writ petitions.

26. The letter dated 20.06.2015 addressed by the District Collector, Hyderabad to the C.E.O., Cantonment Board, Secunderabad, is relied on by the learned Senior Counsel for two main purposes; firstly, to show that the letter issued by the Tahsildar dated 21.06.2014, pursuant to the clarification sought touching the legal position and title in respect of GLR No.243 as per the decision taken in the Cantonment Board Meeting held on 04.06.2015, in which, the field report obtained from the Revenue Divisional Officer, Secunderabad was discussed and a decision was taken to make a

reference to the State Revenue authorities and, second, the said letter of the Tahsildar favours the appellants' case. It is according to him, to overcome the same, the Collector, in the said letter, purposely states that the letter/report of the Tahsildar dated 21.06.2014, is totally false; it does not co-relate to the facts borne by record on ground; that the said report is based on certain survey reports which were not conclusive and were misleading and the survey reports have been misinterpreted and picked up certain points which were favourable to the parties.

27. The next document referred to by the learned Senior Counsel is the reply given by the Defence Estate Officer, A.P. Circle, dated 22.06.2015. The said letter is dated 16.06.2015 issued by the Collector, Hyderabad District, annexing thereto, the "List of B2 Lands" under the management and ownership of the State Government as per GLR maintained by their office, also making a mention that the said list of "B2 lands" includes private lands also since no separate classification was given for the private lands in the Cantonment. But, on perusal we find that the entries against GLR No.243 under the vertical column would show the area as "Acs.119.840 guntas", under the column "description" as part of "Alwal and Malkajgiri villages", under the column clauses "B" as capital "B2", "By Whom Managed" showing "State Government" and "Land Lord" recording the words "State Government". The learned Senior Counsel would mainly rely on the recital in the said letter to

the effect that the list “B2 lands” includes “private lands” since no separate “classification” is given for the private lands in the Cantonment.

28. The next document is a letter dated 03.04.2013, addressed by the Deputy Director, Survey and Land Records, Hyderabad District to the Col. Administration OC Tps, Military College of Electronics and Mechanical Engineering, Secunderabad and the Tahsildar, Trimulgherry Mandal, referring to a joint survey conducted by the Deputy Director, Survey and Land Records and the Assistant Director, Survey and Land Records, Ranga Reddy Districts with a team of Surveyors and Tahsildars, Trimulgherry of Hyderabad District and Malkajgiri of Ranga Reddy District to identify the boundaries of the Cantonment area and also the boundaries of GLR No.243 and preparation of combined sketch showing the village boundaries of Alwal, Trimulgherry and GLR No.243 along with joint inspection report dated 14.03.2013. The observations recorded in the report are thus:

- “I). Alwal village extends up to Ammuguda Railway station.
- II). GLR 243 is falling within the limits of Alwal village and more distinctly in an area mentioned as cantonment in traverse map.
- III). When compared with initial survey map large area in old Survey Nos.196 & 197 etc., is merged in Cantonment area without assigning any new survey number, GLR 243 also

falls in the same area where old survey no.196 of Alwal village used to exist.

IV). In the revision (present) map of Alwal village of 1358 Fasli land to the east of SY.No.603 and 602 of Alwal village is shown as “Ilakha Cantonment boundary” means Cantonment area boundary. Similarly, only the cavalry barracks railway station is shown as last point of Alwal village in the north east. All the land east of this railway station is shown as cantonment area.”

29. The learned Senior counsel, thus, basing on all these observations, points out that the counter affidavit filed by respondent No.2, would contradict these recitals. It is, therefore, his submission that the letter addressed by respondent No.2 to the Chief Executive Officer, Cantonment Board is nothing but assertion of title over the subject land by the District Collector, and, therefore, the issue is pre-judged and consequently the impugned notice issued by respondent No.4 is illegal and the action of the appellants in invoking the jurisdiction of this Court under Article 226 of the Constitution of India cannot be viewed as impermissible, and, therefore, the order of the learned Single Judge is legally unsustainable.

30. The learned Senior counsel, relied on the ruling in **Thummala Krishna Rao**³ contending that if there is a *bona fide* dispute regarding the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it and on the basis of such decision, take recourse to

summary remedy provided by the provisions under the Act, 1905, for evicting the person, who is in possession of the property, under a *bona fide* claim or title. It is his submission that the appellants cannot be construed as persons in unauthorised occupation of the land to which they are liable to assessment under Section 3 of the Act, 1905, and, therefore, the impugned notice issued by respondent No.4 is illegal and is liable to be quashed.

31. As to the maintainability of the writ petition to question a show cause notice, the learned Senior Counsel placed reliance in **Thummala Krishna Rao**³ contending that the minimum requirements of show cause notice, in the context of an action initiated under the provisions of the Act, 1905, to enable the appellants to rationally respond and submit objections, if any, are conspicuously absent, and, therefore, the appellants have every right to maintain the writ petition. These submissions require examination/consideration in the light of the submissions made by the learned Advocate General and the rulings relied on by him.

32. The learned Advocate General has drawn our attention to paragraph Nos.14 to 17 and 24 of the order of the learned Single Judge. The observations of the learned Single Judge are that in response to the impugned show cause notice, the appellants have neither chosen to file any reply nor explanation; the appellants yet to plead their stand as to title; the mere fact that the appellants have asserted title in various other judicial proceedings, itself cannot be

accepted, that the title set up by them elsewhere would attract the ratio in **Thummala Krishna Rao**³, and, therefore, it would not render any assistance to the petitioners (appellants) at the threshold when the show cause notice is questioned and consequently judicial review against the impugned show cause notice cannot be entertained. To draw support, the learned Advocate General relied in **Bellary Steels and Alloys Limited**⁹. In a writ petition filed against the show cause notice without even reply to it, the scope of judicial review under Article 226 of the Constitution of India in ‘administration matters’ was examined holding in paragraph No.3, thus:

“3. Before concluding, we may state that we have allowed the appellant(s) to withdraw the original writ petition as the said proceedings came to be filed against the show cause notice. We have repeatedly held that in the absence of factual foundation, it would be impossible to decide matters of this kind. When the doctrine of promissory estoppel is invoked, the doctrine needs to be based on factual data which has not been pleaded. The High Court should not have interfered in the matter. In these cases, the writ petition was filed without reply to even the show-cause notice. In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy, but for the fact that huge investments involving the large number of industries is in issue.”

33. In **Ramesh Kumar Singh¹**, relied on by the learned Advocate General, the Hon'ble Supreme Court dealing with a situation, where the show cause notice was assailed, held that for entertaining a writ petition under Article 226 of the Constitution of India against a show cause notice, at the threshold, it should be shown that the authority had no power or jurisdiction to enter upon the enquiry in question and in all other cases, it is only appropriate that the party should avail alternate remedy and show cause against the same before the authority concerned and take objection regarding jurisdiction also, then in the event of any adverse decision, it would be certainly open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India. It would be appropriate to extract paragraph Nos.10 and 11 thus:

“10. We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is not attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression -- that is to say even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a

Writ Petition under [Article 226](#) of the Constitution of India against a show-cause notice, at power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under [Article 226](#) of the Constitution of India.

11. On the facts of this case, we hold that the 1st respondent was unjustified in invoking the extraordinary jurisdiction of the High Court under [Article 226](#) of the Constitution of India, without first showing cause against Annexure Ext.P-4 before the 3rd respondent. The appropriate procedure for the 1st respondent would have been to file his objections and place necessary materials before the 3rd respondent and invite a decision as to whether the proceedings initiated by the 3rd respondent under Section 59 of the Bihar State Housing Board Act, 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case, proceedings under [Article 226](#) of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the Writ Petition and in allowing the same by quashing Annexure Ext.P-4 and also the Eviction proceedings No.6/92, without proper and fair investigation of the basic facts. We are, therefore,

constrained to set aside the judgment of the High Court of Patna in CWJC No.82/93 dated 10.2.1993. We hereby do so. The appeal is allowed with costs.”

34. Keeping in view, the afore-stated submissions, we would like to examine the findings recorded by the learned Single Judge under point Nos.1 and 2:

(1) Admittedly, the appellants are yet to plead their main stand by laying factual foundation as they approached this Court without filing any reply to the notice impugned. It is no doubt true, as could be seen from the earlier writ proceedings, the appellants, laid claim over the subject land setting up their title, but as rightly observed by the learned Single Judge, the pleadings put forth by them elsewhere cannot enure to the benefit of resolving the controversy in the present proceedings. Certainly, in our view, the stand of the appellants in that regard is without merit.

(2) We have referred to hereinbefore, the submissions made by the learned Senior counsel touching the contents of the District Collector's letter dated 20.06.2015; that the letter of the Defence Estate Officer dated 22.06.2015 enclosing the list containing the details of the land recorded as 'B2' lands wherein, he has mentioned that the said list of 'B2 lands' include private lands also since no separate

classification has been given for the private lands in the Cantonment records and the joint inspection report dated 14.03.2013, a portion of which we have extracted in the above, on which the learned Senior Counsel, mainly, relied on. We would like to mention that the entries in GLR Register, concerning GLR No.243, which we have referred to in the above would contain “State Government” under the last two vertical columns which relate to “by whom managed” and “land lord” respectively, and, thus, *prima facie* indicates that the Government is the landlord and managing the land covered by GLR No.243.

- (3) We find from the counter averments besides the Collector’s letter dated 20.06.2015, referring to the dispute raised by the A.P. State Wakf Board claiming the entire extent of Acs.119-34 guntas in GLR No.243 as belonging to it by instituting a suit in O.S. No.121 of 1998 on the file of A.P. State Wakf Tribunal, Hyderabad, against the Secretary, Revenue Department and five others, which includes the subject land herein and becoming unsuccessful and, thereafter, filing the writ petition in W.P. No.17768 of 1996 and W.A. No.1297 of 1997 and again becoming unsuccessful, would all indicate the interest or the right pleaded by the respondents herein over the subject land herein besides the remaining extent in GLR No.243. In

these circumstances, the finding tendered by the learned Single Judge, that the survey report and the claim made by the appellants are all questions of disputed facts which can be resolved only in a properly instituted suit, cannot be held to be wrong.

- (4) The interim orders referred to by the appellants are not conclusive as the writ petitions filed by the petitioners (appellants) along with others, against the Cantonment Board and others and some of which are against the respondents herein, are still pending. Certainly, the interim orders obtained by the appellants would not clothe them with the right or title over the subject land at this stage as they are in the nature of interim prohibitory orders.
- (5) We are also of the considered view, that the appellants are not questioning infringement of any fundamental right guaranteed by the Constitution alleging as such in attacking the show cause notice or vires of any statutory provisions governing the issue covered by the show cause notice in the writ petition, and, therefore, the finding recorded by the learned Single Judge that the writ petition cannot be entertained is well reasoned and supported by the law declared in **Ramesh Kumar Singh¹**.

(6) The ruling in **Thummala Krishna Rao**³ and the ruling of this Court in **Dasari Narayana Rao v. Deputy Collector and Mandal Revenue officer**¹¹ would not render any assistance to the appellants for the reason, we find the fact situation occurring therein, reflects that the writ petitioners therein have replied to the show cause and suffered orders of the authorities concerned and then only approached the Constitutional Court, which is not so in the present case. Hence, we are not in agreement with the submission of the learned counsel for the appellants to interfere with the order under challenge.

35. Turning to the submission of the learned Senior counsel that the show cause notice is invalid as it is bereft of relevant particulars, vague and cryptic, in our view, it lacks merit. The ruling in **Thummala Krishna Rao**³ is of no assistance to the appellants' case as the lands therein were acquired by the Government of Nizam of Hyderabad under the Hyderabad Land Acquisition Act, 1309 Fasli, which was then under the Administration of Government and when the proceedings before the appellate authority under the A.P. Land Encroachment Act were pending, certain plots were purchased by the intending purchasers and the question for decision was, whether the summary proceedings under the Land Encroachment Act or a civil suit was the proper legal remedy. In the present case, such is not the

¹¹ 2010 (4) ALT 655

fact situation. Suffice it to say, the relevant facts have been shown in the show cause notice and, therefore, the show cause notice cannot be construed as vague or cryptic as sought to be viewed by the learned Senior Counsel.

36. We, therefore, have no hesitation in holding these two points against the appellants.

Point No.3:

37. In the context of official bias, the learned Single Judge referred to the order rendered by him in W.P. No.19401 of 2015, and even, extracted the relevant paragraphs in arriving at the conclusion that the letter of the District Collector dated 20.06.2015, is merely an assertion of the State Government's title to the subject land and since it was not appealed against by any of the parties, it has attained finality and as such it is to be considered as to whether the said letter by the District Collector would vitiate the statutory power exercised by the Tahsildar under Section 7 of the Act, 1905. The second aspect examined by the learned Single Judge was that the District Collector is admittedly, administratively superior to respondent No.4, and, therefore, the question whether the administrative superiority can be taken in to consideration while adjudicating upon discharging the statutory duty of respondent No.4, is, therefore, the matter which requires consideration. The third aspect examined by the learned Single Judge is the question of bias and reasonable apprehension of

bias which required to be understood in the context of facts set out in the case in hand. The learned Single Judge has also noted that except claiming possible official bias, the writ petitioners (appellants) have not levelled any other allegations against respondent No.4.

38. The learned Single Judge placed reliance in **Hindustan Petroleum Corporation Limited**⁴ wherein, it was held that under Section 10(1) of the Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, the compensation is to be determined by the competent authority only, in the first instance and the party is entitled to raise the ground of bias against the appointment of an officer as competent authority on sufficient material placed on record in this regard, but, not merely because such competent authority is an employee of the Corporation, it cannot be a ground for any disability or disqualification in appointment of such person as competent authority. It was further held that if the matter is taken to its logical conclusion, the result would be that, no employee of the State Government or the Central Government as the case may be will be appointed as competent authority, where petroleum and mineral pipelines have to be laid for a project initiated by the State Government or the Central Government respectively. It was further held that it would be too broad proposition to extend the theory of bias to exclude the person only because such persons draw the salary from the bodies like public Corporation, State Government or Central Government.

39. The decisions referred to in **A.K. Kraipak**⁵ and **Col. J. N. Sinha**⁶ relate to that the rules of natural justice can operate only in areas not covered by any law validly made, in other words, they do not supplant the law, but supplement it. The learned Single Judge has extracted paragraph No.20 in **A.K. Kraipak**⁵ and paragraph No.7 in **Col. J. N. Sinha**⁶.

40. In **Sanjay Jethi**⁷, the Hon'ble Supreme Court considered the tests in applying the principle of real likelihood of bias, reasonable apprehension of bias holding that such reasonable apprehension must be based on cogent material and must be in accordance with the thinking of a reasonable man and must be decided by adopting rational approach keeping in view, the basic concept of legitimacy of interdiction in such matters. The learned Single Judge has also referred to the decision in **Chandra Kumar Chopra v. Union of India** [(2012) 6 SCC 369] quoted by the Hon'ble Supreme Court in **Sanjay Jethi**⁷ in paragraph Nos.44 and 45 extracted by the learned Single Judge.

41. So also the decision in **G. Sarana**⁸ quoted in paragraph No.36, by extracting paragraph No.12 of the decision which the learned Single Judge has referred to. The learned Single Judge having examined 'assertion of title to the subject land as belonging to the State Government by the District Collector,' dealt with the question, whether such assertion would vitiate the intention of statutory

proceedings by respondent No.4. Observing that the District Collector is only administratively superior authority to respondent No.4 and statutory function or duty bestowed by the Act, 1905, on respondent No.4 cannot be put under the administrative control of any other superior authority, opined that it would be difficult to accept the contention of the appellants as it would amount to restraining a statutory authority from discharging its statutory duty merely because its administratively superior authority makes a claim over the subject land.

42. There cannot be any quarrel in regard to the law declared by the Hon'ble Supreme Court in the rulings relied on by both sides referred to hereinabove. When examined the letter of the District Collector dated 20.06.2015, the District Collector, while asserting title of the State Government over the subject land, made a request to the Chief Executive Officer, Cantonment Board not to accord sanction for making constructions by the appellants. It is true, the District Collector is the appellate authority under Section 10 of the Act, 1905, but, certainly, it is difficult to hold that respondent No.4 being a statutory authority would be swayed by the position, the Collector would hold. Respondent No.4 is duty bound to independently examine the issue and arrive at a just conclusion supported by reasons. In the present context, it would be apt to refer to the ruling in **D.N. Jeevaraj v. Chief Secretary, Government of Karnataka**¹².

¹² (2016) 2 SCC 653

While observing, whether discretion is required to be exercised by a statutory authority, it must be permitted to do so and it is not for the Courts to take over the discretion available to statutory authority and render a decision, the Hon'ble Supreme Court held in paragraph Nos.41 and 42, thus:

“41. This Court has repeatedly held that where discretion is required to be exercised by a statutory authority, it must be permitted to do so. It is not for the courts to take over the discretion available to a statutory authority and render a decision. In the present case, the High Court has virtually taken over the function of BDA by requiring it to take action against Sadananda Gowda and Jeevaraj. Clause 10 of the lease-cum-sale agreement gives discretion to the BDA to take action against the lessee in the event of a default in payment of rent or committing breach of the conditions of the lease-cum-sale agreement or the provisions of law.[8] This will, of course, require a notice being given to the alleged defaulter followed by a hearing and then a decision in the matter. By taking over the functions of the BDA in this regard, the High Court has given a complete go-bye to the procedural requirements and has mandated a particular course of action to be taken by the BDA. It is quite possible that if the BDA is allowed to exercise its discretion it may not necessarily direct forfeiture of the lease but that was sought to be pre-empted by the direction given by the High Court which, in our opinion, acted beyond its jurisdiction in this regard.

42. In [Mansukhlal Vithaldas Chauhan v. State of Gujarat](#)[9] this Court held that it is primarily the responsibility and duty of a statutory authority to take a decision and it should be enabled to exercise its discretion independently. If the authority does not exercise its mind independently, the decision taken by the statutory authority can be quashed and a direction given to take an independent decision. It was said: “Mandamus which is a discretionary remedy under [Article 226](#) of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words “shall” or “must”. But this is not conclusive as “shall” and “must” have, sometimes, been interpreted as “may”. What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the “duty” has been set out. Even if the “duty” is not set out clearly and specifically in the statute, it may be implied as correlative to a “right”.

In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion.”

43. Since, we have taken the view that respondent No.4 though, under the administrative control of respondent No.2, still, by mandate, he has to exercise the statutory function as primary authority and the letter of the District Collector dated 20.06.2015, would only reflect a mere assertion of title of the State Government by respondent No.2 addressed to the Chief Executive Officer with a request not to grant sanction to raise constructions by the appellants, it would be difficult to construe or infer official bias on the part of respondent No.4 in discharging his function as primary authority, more particularly, in the absence of convincing material being placed to view official bias on the part of respondent No.4. We are of the view, that the order under challenge is not susceptible for interference. We, therefore, have no hesitation in maintaining the order impugned granting six (6) weeks time to the appellants from the date of receipt of a copy of the judgment to file their reply to the impugned notice and on receipt of such reply, respondent No.4 shall fix a date of hearing, intimate the same to the appellants and afford an opportunity of personal hearing, in case, they so choose to examine the records and pass a reasoned order. We make it clear that the respondent No.4 would pass order uninfluenced by any of the observations made hereinbefore and the observations made by the learned Single Judge in the order under challenge herein.

44. Thus, we find no merit in the appeal and, therefore, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, stand disposed of.

RAMESH RANGANATHAN, ACJ

A. SHANKAR NARAYANA, J

28th April, 2017.
PV

After the judgment was pronounced, Sri D.Prakash Reddy, learned Senior Counsel appearing on behalf of the appellants, would request this Court to fix a time frame for the Original Authority to pass an order; and to direct the respondents not to take any coercive Steps for a period of 30 days after the order is passed, in case the Original Authority were to hold against the appellants.

We consider it appropriate, therefore, to direct the Original Authority to pass an order, as directed hereinabove, at the earliest and, in any event, not later than four months from the date of receipt of a copy of this order. As the appellants have a right of appeal under the Statute, and the period prescribed for preferring an appeal is 60 days, the respondents are directed not to take any coercive steps, in case an order is passed against the appellants herein, for a period of four weeks from the date of communication of the order. Needless to state that both the Original Authority and the Appellate Authority, in case

their jurisdiction is invoked, shall pass orders on merits uninfluenced by any observations made by us in this order.

RAMESH RANGANATHAN, ACJ

A. SHANKAR NARAYANA, J

28th April, 2017.
PV/JSU



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

WRIT APPEAL No.9 OF 2016**Between:**

T. Purushotham Rao and another

.. Appellants

AND

State of Telangana,
Rep. by its Principal Secretary,
Revenue Department, Secretariat,
Hyderabad and two others

.. Respondents

DATE OF JUDGMENT PRONOUNCED:**SUBMITTED FOR APPROVAL:****HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN****AND****HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be Marked to Law Reporters/Journals.
3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment?

Justice A. Shankar Narayana