

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.22830 OF 2004

ORDER:

Heard Mr.P.R.Prasad for petitioner and Mr.Durga Reddy, learned Government Pleader (Revenue) for respondents.

Sri Samartha Hindu Kamadhenu Gorakshana Trust, Kulsumpura, Jiyaguda, Hyderabad, represented by its Mahanth, is the petitioner.

The petitioner prays for writ of Certiorari to call for the records pertaining to proceedings No.B1/8351/76 dated 16.07.2004 and notifications issued under Sections 10(3) and 10(5) dated 19.05.1984 and 18.06.1984 under the Urban Land (Ceiling & Regulation) Act, 1976 (for short 'the Act') and all other orders passed by 1st respondent in the declaration filed under Section 6 by Daulat Khatoon, are illegal, void and contrary to principles of natural justice, inoperative, insofar as the petitioner, for the property admeasuring Acs.6-03 gts, forming part of Sy.No.71, Kulsumpura, Jiyaguda, Hyderabad (for short, 'the subject matter of writ petition') and quash the orders accordingly.

AVERMENTS IN THE AFFIDAVIT FILED BY PETITIONER:

Narayan Aashram/petitioner was established at Jiyaguda by H.H.Sadguru Samartha Narayana Maharaj (for short 'the Maharaj'). The said Maharaj is the 11th Peetadipathi of Sri Samartha Ram Dasa Swami Vari Parampara. The petitioner claims origin of the guru parampara into a sampradaya called 'Sri Samartha Sampradaya'. The other details of parampara from time to time are not adverted

to except noting that the petitioner claims to be in settled possession of subject matter of writ petition for considerable length of time. The petitioner alleges that the mutt at the subject matter of writ petition was established about 300 years back in Sy.No.71 in large extent of land. The mutt had constructed temples and the Samadhi of one of the matadhipathi's was built in the subject matter of writ petition. In the year 1976, the Endowments Department sanctioned funds for renovation of the institutions in existence in the subject matter of writ petition. The petitioner claims to have large number of followers from Telangana and also from neighbouring States. The petitioner performs spiritual, charitable and religious activities in the temples and aashram located in the subject matter of writ petition. The petitioner is an institution registered under Section 38 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 17/66). In the year 1972, a trust in the name and style "Samartha Hindu Kamadhenu Gorakshana Trust" was established. The trust was registered as document No.2588/72. The main object of the trust is to promote gorakshana diary, farming, establishing and imparting vedic knowledge in society.

The petitioner further alleges that one Daulat Khatoon filed O.S.No.322 of 1969 on the file of II-Additional Judge, City Civil Court, Hyderabad against the associates of Maharaj and Samartha Kesava Swamy Memorial Committee for declaration of title and for injunction for an extent of Acs.6-03 gts in Sy.No.71 of Jiyaguda i.e., subject matter of writ petition. On 20.07.1974, O.S.No.322 of 1969 was dismissed and the claim of Daulat Khatoon either for title or

possession was rejected by the learned trial Judge. According to petitioner, the judgment and decree in O.S.No.322 of 1969 had become final and thereby the title claimed by Daulat Khatoon was not established or accepted by the Court of competent jurisdiction.

The petitioner further alleges that O.S.No.10 of 1974 on the file of Additional Chief Judge, City Civil Court, Hyderabad, was filed by Maharaj for himself and Gorakshana Samithi against Daulat Khatoon and others for declaration of title and for injunction. O.S.No.93 of 1975 for injunction was filed by Maharaj. O.S.Nos.10 of 1974 and 93 of 1975 were disposed of and the trial Court granted the relief of perpetual injunction and declined the prayer for title claimed by petitioner. O.S.No.93 of 1975 was dismissed as unnecessary. The common judgment was subject matter of appeal in CCCA.No.3 of 1981 filed by Maharaj and institutions against the refusal of prayer for declaration. CCCA.Nos.19 & 20 of 1980 were filed by Daulat Khatoon. The petitioner relies on an order passed by this Court in the appeal filed by Daulat Khatoon wherein the request of Daulat Khatoon for grant of temporary injunction pending appeal was negated. On 20.02.1988, CCCA.No.3 of 1981 was disposed of and the findings are relied on with great emphasis by the petitioner in support of settled possession of petitioner of subject matter of writ petition. Hence, the findings for convenience are reproduced hereunder:

“It is true as admitted by witnesses that fencing was put by the appellants and they are using the land for grazing the cattle and for performing Yagnams, but that by itself may not conclusively establish their title. May be, they are using the land for grazing the cattle and performing the Yagnams. The finding of the Court below

that the respondents have also not established their title to that land was allowed to become final”.

The petitioner relies on the findings of this Court in CCCA for twin purposes viz., that the actual, physical and uninterrupted possession of the subject matter of writ petition remained with petitioner and the petitioner has firstly constructed fencing around the subject matter of writ petition and used the vacant land for grazing cows etc. In short, the case of petitioner vis-à-vis Daulat Khatoon through whom the respondents claim is that the title of Daulat Khatoon was negated in O.S.No.322 of 1969, possession of Daulat Khatoon of any extent in the subject matter of writ petition was disbelieved by the trial Court as well as appellate Court and Daulat Khatoon by withdrawing the appeals filed by her, had for all purposes abandoned her contest vis-à-vis subject matter of litigation against petitioner. The perpetual injunction granted, protected the possession of petitioner firstly against Daulat Khatoon and secondly any person claiming through her.

The petitioner avers that in the month of September, 2004, the subordinates of 2nd respondent visited the subject matter of writ petition and questioned the title or possession of petitioner. On enquiries being made, it is alleged that the petitioner had come to know that Daulat Khatoon filed declaration under Section 6 of the Act and she was declared as surplus holder of an extent of 24156 square metres of vacant land in subject matter of writ petition. The petitioner complaining such attempts to take possession of subject matter from petitioner in purported implementation of the orders passed in the declaration filed

by Daulat Khatoon filed a detailed representation before 1st respondent. On the application made by petitioner, on 18.12.2004, the certified copy of declaration filed by Daulat Khatoon, numbered as proceedings No.B1/8351/76 and all orders therein were supplied to petitioner. The petitioner alleges that Daulat Khatoon filed declaration under the Act claiming title and also possession after the suit for declaration of title and injunction was dismissed in O.S.No.322 of 1969. In fact, according to petitioner, Daulat Khatoon was never in possession, much less had title to subject matter of writ petition. The declarant/Daulat Khatoon admitted possession of petitioner to an extent of 1800 sq.yards in the subject matter of writ petition by making a false statement, though the petitioner is in possession of entire subject matter of writ petition.

In the above background, the grounds of challenge against the threatened interference of petitioner's possession or eviction of petitioner from subject matter is that Daulat Khatoon cannot and could not file a declaration under the Act for the subject matter of writ petition. The declaration or orders passed under Section 8(1) up to Section 10(6) are not binding on petitioner who is a rival claimant. The respondents cannot claim vesting of subject matter of writ petition in Government under the Act on the strength of declaration of Daulat Khatoon whose title and possession were rejected by the Civil Court. The proceedings at the instance of Daulat Khatoon are third party proceedings and the respondents cannot and could not affect the possession and enjoyment of petitioner by referring to the orders passed in the declaration filed

by a rival claimant to title to the subject matter of writ petition. The petitioner refers to the acts undertaken, particularly providing sheds/shelter to cows etc., as part of gorakshna in the available vacant land in the subject matter. Therefore, the petitioner prays for setting aside the proceedings concerning subject matter of writ petition under the Act initiated at the instance of Daulat Khatoon and also not to disturb the possession or enjoyment of petitioner by referring to the proceedings in case No.B1/8351/76.

On 10.12.2004, this Court granted *status quo* as regards possession and enjoyment of the subject matter of writ petition. The interim order is subsisting as on date.

The 1st respondent filed two counter affidavits, sworn by one K.Prabhakara Sinivas, Special Deputy Collector in the office of 1st respondent and another sworn by M.Prashanthi, the District Collector, FAC and Joint Collector, Hyderabad. The counter affidavits are verbatim the same. Hence, the Court refers to counter affidavit dated 06.07.2017 filed by M.Prashanthi, the District Collector, FAC and Joint Collector, Hyderabad.

The case of respondents is that Daulat Khatoon filed declaration for subject matter of writ petition and an extent of 580 sq. mts house bearing No.10-1-127 under Section 6(1) of the Act, and taken on file as case No.B1/8351/76. The origin of title of Daulat Khatoon referred by respondents is that Daulat Khatoon purchased house bearing No.10-1-127 for an extent of 580 sq. mts through registered document No.858/1973 dated 19.09.1973 and the subject matter was gifted to her by her father Mehtab Ali Khan vide

registered document No.641/1969. On 31.01.1981, orders under Section 8(1) and notice under Section 8(3) were issued to Daulat Khatoon. An extent of 24165 sq. mts was provisionally declared as surplus held by Daulat Khatoon. On 10.05.1981, final statement under Section 9 of the Act was communicated. On 29.09.2004, under Section 10(6) of the Act possession of subject matter of writ petition was taken.

The 1st respondent alleges that O.S.No.322 of 1969 between Daulat Khatoon and defendants therein was a collusive suit and secondly the petitioner has to prove ownership to the subject matter of writ petition. The subject matter of writ petition is treated as vacant land and in accordance with the Act possession under panchanama dated 29.09.2004 was taken and handed over to the Mandal Revenue Officer, Asifnagar. The 1st respondent admits the detailed representation filed on 29.09.2004 and further submits that the protection granted by the civil Court in O.S.Nos.10 of 1974 and 93 of 1975 is not binding on the Government and the withdrawal of appeal by Daulat Khatoon cannot be put against the State/ respondents. The reply of respondents for alleged interference is that the petitioner does not have title.

The respondent further contends that the petitioner did not file declaration under Section 6(1) of the Act. The petitioner ought to have claimed exemption under Section 19(4) of the Act to retain possession of urban vacant land. The petitioner never bothered to file declaration till possession of land is taken over and vested in the Government.

On 19.07.2017, this Court directed filing of counter affidavit by respondents. The respondents filed counter affidavit, produced the record in file No.B1/8351/76 and also the status report dated 14.07.2017 along with photographs showing the structures and the cows etc., taken care by Aashram. At appropriate stage of this order, reference to the record and also the report filed by respondents would be made and considered.

Mr.P.R.Prasad contends that the action of respondents in interfering with the possession of petitioner or claiming dispossession of petitioner pursuant to orders passed in file No.B1/8351/76 against Daulat Khatoon is illegal, unauthorised, unconstitutional and such assertions amount to misuse of power conferred by the Act. He contends that Daulat Khatoon by filing O.S.No.322 of 1969 claimed right and title to the subject matter of writ petition under registered gift deed said to have been executed by father of Daulat Khatoon vide document No.641/1969 dated 07.11.1969. This document was the basis for filing the suit in O.S.No.322 of 1969. The trial Court while dismissing the suit recorded the following findings on the gift deed dated 07.11.1969:

“The plaintiff was not shown as pattadar in respect of Ac.6-03 gts under Column No.11. The name of occupant in respect of Ac.6-07 gts is shown as Aziz Ahmed Khan. P.W.1 who filed the documents did not explain anything regarding the entries in the documents. The competent person to explain is the patwari who prepared this document. But he was not examined. Therefore, the mere production of documents mentioned above is all (sic) not sufficient to establish the title of plaintiff. As already pointed by me earlier the plaintiff has

not placed any documentary proof to the title and possession of previous owner prior to Ex.A-1.

Therefore, he contends that Daulat Khatoon in the suit filed by her for title was non-suited for her failure to establish the antecedent, right, title and possession of her father/donor. According to him, these findings have become final. The findings of trial Court in O.S.No.322 of 1969 at the earliest are relevant in appreciating the claim of title by Daulat Khatoon. He further contends that the petitioner filed O.S.No.10 of 1974 for declaration of title and perpetual injunction for subject matter of writ petition against Daulat Khatoon. The schedule of property in all the three suits is the subject matter of writ petition. The trial Court through common judgment granted perpetual injunction and declined the prayer for title. The possession of petitioner is confirmed in CCCA.No.3 of 1981. Therefore, even assuming the petitioner is not granted the relief of declaration of title vis-à-vis Daulat Khatoon, still the possession of petitioner is accepted by civil Court and injunction granted. Daulat Khatoon has neither title nor possession on the date of filing declaration under Section 6 of the Act and it is inconceivable for respondents to claim vesting of property through such defected title of claim of Daulat Khatoon.

The petitioner was not put on notice at any stage of the proceedings in case No.B1/8351/76. The proceedings in case No.B1/8351/76 are void *ab initio* and injunction is granted against Daulat Khatoon and she could not interfere with the possession of petitioner. The declarant in file No.B1/8351/76 cannot and could not transfer what she did not have as on the date of filing of the

declaration. Therefore, the petitioner, a third party or rival claimant, claims possession independent to the claim of Daulat Khatoon, cannot be dispossessed by referring to the orders passed in declaration of Daulat Khatoon. Mr. Prasad relies on Section 19(4) of the Act and contends that the petitioner has exemption under Section 19(4) of the Act. Therefore, according to him, there was no obligation firstly to file declaration under the Act. With the repeal of Act and continuation of possession of the subject matter of writ petition with the petitioner, it is stated, the respondents have no right to interfere with the possession and enjoyment of petitioner vis-à-vis the subject matter of writ petition. In sum and substance, the case of petitioner is that by referring to proceedings/orders in case No.B1/8351/76 the petitioner cannot and could not be dispossessed or possession interfered with by respondents.

Mr. Durga Reddy contends that the petitioner, if claims to be in possession of the subject matter of writ petition, is under obligation to file declaration under Section 6(1) of the Act. The fact that no declaration is filed would go to show that the petitioner is not in possession of the subject matter of writ petition. Even assuming that Daulat Khatoon/declarant was not successful in establishing her title in O.S.No.322 of 1969, the petitioner is in no better position, for the petitioner does not have title. According to him, under Section 42 of the Act, the decrees and judgment in the suit referred to above are not binding on respondent. He places reliance on the decisions reported in *STATE OF ASSAM v. BHASKAR*

JYOTI SARMA AND OTHERS¹ and DIESEL LOCO SHED & SOUTH EASTERN RAILWAY HOUSE BUILDING COOP. SOCIETY LTD v. ATILI APPALA SWAMY² for the proposition that the irregularities if any in serving notice will not vitiate the possession claimed by respondents. According to him, under panchanama dated 29.09.2004, the possession was handed over to 2nd respondent.

Mr. Prasad by way of reply contends that even assuming without admitting that the petitioner did not file declaration under Section 6(1) of the Act, the procedure contemplated under Section 6(2) of the Act ought to be followed against a person in possession of vacant urban land. The respondents never inspected the subject matter. The declarant admitted possession and enjoyment of petitioner as a rival claimant but misstated the extent actually enjoyed by petitioner. The respondents cannot dispute what the declarant had admitted. The Act does not enable automatic vesting of land in Government even assuming that declaration under Section 6(1) of the Act is not filed by a person under obligation to file declaration. According to him, Section 19(2) is of complete answer and the non-filing of declaration does not facilitate taking possession from petitioner by referring to orders passed against Daulat Khatoon and the proceedings initiated and concluded against Daulat Khatoon cannot be relied upon. He prays for protecting the possession and restraining the respondents from interfering with petitioner's possession by referring to orders passed in file No.B1/8351/76. He relies on report dated

¹ 2015(5) SCC 321

² 2015(2) SCC 390

14.07.2017 filed by respondents to contend that the possession of petitioner is evident in subject matter and the panchanama dated 29.09.2004 is illusory and records state of affairs contrary to ground position.

I have perused the record and noted the submissions of learned counsel appearing for the parties. The following point arises for determination:

“Whether the action of respondents either in interfering with petitioner’s possession of subject matter and/or claiming possession pursuant to orders passed in declaration filed by Daulat Khatoon in file No.B1/8351/76 is valid, tenable, legal and constitutional?.

POINT:

The contentions of the parties, particularly, the plea of petitioner on physical possession in the writ affidavit and the reply of respondents are juxtaposed with the report dated 14.07.2017 of the Tahsildar, Asfnagar Tehsil to Collector. The petitioner asserts that it was and is in possession of the subject matter of writ petition and that the respondents during the month of September, 2004 visited the premises and questioned the title and possession of petitioner over subject matter. In other words, the petitioner contends that there was no dispossession of petitioner from subject land, either in fact or under law. The counter affidavit, on the other hand, alleges that on 29.09.2004 possession of subject matter was taken over by the subordinate officials of 1st respondent and handed over to 2nd respondent. For convenience, the reply is excerpted hereunder:

“The entire area is treated as vacant land and she (Daulat Khatoon) was declared as surplus land holder to an extent of 24156.00 sq. mts. After issuing the notices and

gazettee has been published and handed over to MRO, Asifnagar under a cover of panchanama on 29.09.2004”.

Therefore the respondents dispute possession of petitioner of subject matter and claim to have taken vacant possession of subject matter, resulting in vesting of property in Government.

The report of Tahsildar, Asifnagar, together with photographs filed, show that the possession of subject matter is with the petitioner even as on 15.07.2017. From the contents of report, the stand taken in the counter-affidavit is belied and leads to a confusion that possession of subject matter is with petitioner. The further details in the report are not necessary as the report goes to the root of possession claimed by respondents through panchanama dated 29.09.2004.

The perusal of record produced by 1st respondent discloses following details:

10.09.1976	Daulat Khatoon filed declaration
29.01.1978	Notice under clause (3) of Section 8 of the Urban Land Ceiling Act
26.03.1984	Notice under Section 9 of the Act was issued
08.05.1984	Notice under Section 10(3) is prepared without the name of addressee
19.05.1984	Gazettee publication under Section 10(1) was made
15.06.1984	Notice under Section 10(5) is stated to have been taken out to Daulat Khatoon and someone by name Janardhan endorses that on 23.06.1984 Section 10(5) notice is received by Daulat Khatoon

The declarant (Daulat Khatoon) admits possession of petitioner of a portion of land covered by declaration. At no stage

of the entire consideration, the petitioner is put on notice or heard to satisfy the requirements of law. The procedure followed by 1st respondent does not satisfy the requirement of law. The respondents in spite of knowledge of occupation of petitioner did not issue notice at any stage of matter to petitioner. Secondly, from the documents referred to above, the notice cannot be said to have been served even on Daulat Khatoon. The declarant by withdrawing CCCA.Nos.19 & 20 of 1980 on 12.06.1987 substantially abandoned her claim and most of the orders are behind the back of Daulat Khatoon as well. These proceedings are relied on to claim possession but this Court cannot treat the vesting of possession as conforming to the requirements of law. The decision in BHASKAR JYOTI SARMA's case (1 supra) is distinguishable on the facts detailed above. The contention of Mr.Durga Reddy that by applying the principle in BHASKAR JYOTI SARMA's case, the possession said to have been taken under panchanama dated 29.09.2004 ought to be treated as valid and legal, is merely noted to be rejected, for the petitioner who is in possession is not put on notice as well as the declarant, then who could be the party appearing before 1st respondent in the enquiry in file No.B1/8351/76. Let me now take up the independent ground of challenge to respondents' action.

Briefly reiterated, the case of petitioner is that the petitioner is in actual and physical possession of the subject matter of writ petition for several decades. Either the petitioner or its associates filed suits against declarant-Daulat Khatoon or resisted the suit filed

by Daulat Khatoon for right, title or possession of subject matter of writ petition. The petitioner further alleges that Daulat Khatoon in the suit filed by her was unsuccessful in establishing the right, title and possession of person through whom Daulat Khatoon was claiming, secondly the possession of petitioner for the subject matter was appreciated from the oral and documentary evidence and accepted by the trial Court. Therefore, the claim of petitioner vis-à-vis subject matter of writ petition is *de hors* the claim of Daulat Khatoon and also independent to the right, title and possession claimed by Daulat Khatoon. The 1st respondent cannot and could not ignore adjudication of Civil Court on right and title of Daulat Khatoon and possession of petitioner of subject matter of writ petition and proceed to presume title in favour of a declarant *de hors* the adjudication by the competent Court. Therefore, firstly by referring to the orders passed in the declaration filed by Daulat Khatoon, the possession of petitioner is not disturbed and secondly the possession could not be presumed to have been taken in the panchanama prepared in file No.B1/8351/76. Because either taking possession or transferring possession is appreciated by a Court of Law with reference to record and also ground position. Therefore, the petitioner prays for restraining the respondents from interfering with the possession and enjoyment of petitioner of subject matter by referring to proceedings under the ULC. On the other hand, the reply of respondents is that Daulat Khatoon filed declaration, the 1st respondent treated the subject matter as vacant land, issued notice to Daulat Khatoon and claims to have taken possession under panchanama. As regards adjudication

by the Civil Court, it is stated that it is not binding on 1st and 2nd respondents, firstly they are not parties and secondly Section 42 of the Act has overriding effect on the adjudication of the Civil Court. At the same time, the alternate plea of respondents is that the title of petitioner was rejected and hence the claim to possession of the subject matter of writ petition is untenable.

The circumstances referred to above are required to be appreciated in chronological order, for the respondents do not claim the subject matter as land belonging to the Government from the beginning, but subject matter becoming Government land by virtue of orders passed under the Act and vesting the property in the Government. Therefore, what is to be considered by the Court is - whether the respondents can claim vesting of property from the circumstances referred to above.

Daulat Khatoon filed O.S.No.322 of 1969 before the learned II-Additional Judge, City Civil Court, Hyderabad for declaration, eviction of defendants therein to an extent of 1866 sq. yards and for the relief of permanent injunction against defendants therein. The suit schedule property consisted of Acs.6-03 gts in Sy.No.71 of Jiyaguda. The learned trial Judge through his judgment dated 20.07.1974 on title and possession claimed by Daulat Khatoon vis-à-vis subject matter held thus:

“PW.1 (Daulat Khatoon) who filed the documents did not explain anything regarding the entries in the documents. The competent person to explain is the patwari who prepared this document. But he was not examined. Therefore, mere production of documents mentioned above is not at all sufficient to establish the title

of the plaintiffs. As already pointed out by me earlier the plaintiff has not placed any documentary proof to the title and possession of previous owner prior to Ex.A-1".

"On consideration of the other circumstances, I am constrained to think that this witness (PW.1) would not have gone to the site even after 2.8.69 not to speak of earlier period. Therefore, the plaintiffs miserably failed not only in proving her title to the property and also her possession on the date of the suit Ex.A-1 as rightly contended by the learned counsel for the defendant is a self-serving document, it has not conferred any title in the plaintiff. In the absence of clinching proof as to the title of Aziz Ahmed Khan and his possession within the statutory period by the date of Ex.A-1, such proof is lacking in the present suit. Therefore, these issues are found against the plaintiff". (emphasis added)

On 10.09.1976, Daulat Khatoon filed declaration under Section 6(1) of the Act. Daulat Khatoon relied on the very gift deed dated 09.05.1969 as source of title for subject matter of writ petition, which was disbelieved by the trial Court to claim title to the property. The petitioner filed O.S.No.10 of 1974 for declaration of title and perpetual injunction against Daulat Khatoon. The trial Court through its judgment dated 20.07.1974 in O.S.No.322 of 1969 held on possession of Daulat Khatoon as follows:-

"Therefore the plaintiffs miserably failed not only in proving her title to the property and also her possession on the date of the suit Ex.A1 is rightly contended by the learned counsel for the deft is a self serving documents and does not confer any title in the plaintiff. In absence of clinching proof as to the title of Aziz Ahmed Khan and his possession with in the statutory period by the date of Ex.A-1. Such proof is lacking in the present suit. Therefore these issues are found against the plaintiff."

CCCA.Nos.19 and 20 of 1980 filed by Daulat Khatoon against the said decree and judgment were dismissed as withdrawn. Thus,

the perpetual injunction granted in favour of petitioner vis-à-vis Daulat Khatoon had become final. This Court, while rejecting the application of Daulat Khatoon for temporary injunction during the pendency of CCCA.Nos.19 and 20 of 1980, held as follows:

“In the circumstances, I find it difficult to grant injunction in favour of the 1st defendant and it is not prima facie established that she is in possession of the suit land or any portion thereof”.

These findings on possession are recorded by the competent Civil Court and also this Court and they cannot be overlooked in appreciating the overall controversy between the parties. As already noted, the record in file No.B1/8351/76 is placed for perusal of this Court. The following endorsements have bearing on the appreciation of entitlement of Daulat Khatoon even by 1st respondent.

“The MRO Golconda has earlier refused to take over possession of the land on the ground that the land in Sy.No.71 of Kulsumpura Village is a paiga property. In the present report it is stated that the name of Daulath Khatoon is not found in the Revenue Records. As per the extract of pahani available in this office, land in SNo.71 to an extent of 27-00 acres was recorded patta in the name of Aziz Ahmed Khan. From whom the land was purchased is not known but the basis of compassing the land is by way of regd.partition deed. As per the details furnished by the present Surveyor, the land is recorded in the name of Daulat Khatoon, pattedar as per T.S.No.14, Block ‘K’.

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Kindly see the N.F para 93, 94 & 95 with ref. to above said paras we can not come to conclusion whether the land Sy.No.71 Kulsumhpura is Govt. (Paiga) property or private where as the declarant Smt.Daulath Khatoon has shown in her declarant stating that the land bearing Sy.No.71 measuring Ac.6-03 gts situated at Kulsumpura,

Ziaguda, Hyd is Sericultural Industrial and Agril. Land. The said property become to her share hereditary by Registered partition deed on 9.5.1969.

The 1st respondent without clarity on the right and title of Daulat Khatoon issued Section 10(1) notice dated 20.03.1984 and Section 10(3) notice and claims to have taken possession through panchanama dated 29.09.2004. The sequence of events establish that the respondents claim vesting of land from a person who could not establish title or possession before the competent Civil Courts.

The contention of respondents is that the petitioner if is in possession and enjoyment of subject matter ought to have filed declaration. The very fact that declaration was not filed by petitioner would go to show that the possession now claimed by petitioner is not anterior to cut off date under the Act and, therefore, the writ petition is liable to be rejected. The contention, in the considered view of this Court, is without merit, particularly after perusing file No.B1/8351/76, for at the earliest point of time Daulat Khatoon admitted possession of the petitioner and pendency of suit in O.S.Nos.10 of 1974 and 93 of 1975 filed by petitioner. The possession of plaintiff/petitioner herein in those suits was protected by the Civil Court. The possession of petitioner was accepted and upheld by this Court in CCCA.No.3 of 1981. Under Section 6(2) of the Act, notice on a person who failed to file declaration under the Act could be served. Admittedly, even to the extent of possession admitted by Daulat Khatoon with petitioner, no notice is served on the petitioner. It cannot be held that in respect of vacant land where no declaration is filed by a

person, still the property would automatically vest in the Government. What is important is - if the petitioner is claiming possession through Daulat Khatoon, the other objections raised by the respondents by referring to proceedings under the Act need to be considered. The petitioner claims possession independent of Daulat Khatoon's claim for entitlement.

The petitioner claims exemption under Section 19(4) of the Act. It is not disputed that the petitioner is an endowment and the report of 2nd respondent dated 14.07.2017 admits not only the ground position but also the possession of petitioner of subject matter. The proceedings initiated at the instance of Daulat Khatoon cannot be said to be operative or binding on petitioner who was a rival claimant to Daulat Khatoon vis-à-vis the subject matter of writ petition. The petitioner was not put on notice at any point of time and the respondents cannot and could not either disturb possession of petitioner by reference to various orders in file No.B1/8351/76 and the possession claimed through panchanama dated 29.09.2004 is not established in view of the report filed before this Court by respondents.

The respondents, as already noted, did not claim the subject matter as Government land but claimed the land vested in respondents through Daulat Khatoon vide orders in File No.B1/8351/76. In law, Daulat Khatoon can transfer and respondents can claim vesting of what Daulat Khatoon possessed or enjoyed. When Daulat Khatoon failed in establishing her title and possession to subject matter of writ petition, it cannot be said that

respondents get better than what Daulat Khatoon held. Incidentally, it can be commented that though Daulat Khatoon could not get declaration of right and title for any extent in subject matter, still after deciding the vacant land held by Daulat Khatoon the respondents propose to give Daulat Khatoon retainable area. The stand of respondents is untenable, arbitrary and unconstitutional. The respondents could not affect the possession of petitioner by reference to orders in file No.B1/8351/76, except in the manner known to law.

For the above reasons, the point is answered in favour of petitioner and against the respondents.

The writ petition is, accordingly, ordered as follows:

- (a) the proceedings in file No.B1/8351/76 are not operative against petitioner;
- (b) the petitioner established possession of subject matter of writ petition prior to coming into force of the Act and thereafter as well; and
- (c) the respondents cannot either interfere with petitioner's possession or claim possession through panchanama dated 29.09.2004.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

05th February, 2018

Lrkm