

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.18399 OF 2007

ORDER:

This writ petition is filed challenging the order dated 18.05.2006 in CMA.No.23 of 2006 passed by the Chief Judge, City Civil Court, Hyderabad/Appellate Authority under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, the Act of 1971), setting aside the order of the second respondent dated 03.02.2006 in Case No.21/188/EV/Sy.No.477/B.No.220.

2. It is the case of the petitioners that as per the revenue records, Bungalow No.220 falls in Sy.No.170 of Thokatta Village, which is recorded as Sarkari Adabi (Government land). As per the entries recorded in the General Land Register (GLR) of 1956 of Secunderabad Cantonment, prepared and maintained by the second petitioner under Rule 3 of the Cantonment Land Administration Rules, 1937 (for short, the Rules of 1937) and framed under Section 280 of the Cantonments Act, 1924 (for short, the Act of 1924), the land comprising GLR Sy.No.477 (comprising of Bungalow No.220), wherein the Secunderabad Club is situated, admeasuring Ac.20.18 guntas, situated outside the notified civil area, is classified as Class B(3) and placed under the management of the second petitioner. The landlord is the Central Government, first petitioner herein, and occupancy rights are vested with the Committee of Secunderabad Club and the nature of holder's right are governed under the old grants terms contained in CGO No.179 of 1836 and 700 of 1855 applicable to Secunderabad Cantonment

vide Residency Order No.35 of 1857. According to the Survey of India Map of 1929, the subject land is surrounded by Military Pillars and falls within the delimited area.

3. While so, it was brought to the notice of the second respondent that some constructions have been unauthorisedly carried out by the first respondent-Secunderabad Club authorities in the subject land without obtaining prior permission of the first petitioner. In those circumstances, the second respondent issued a show cause notice dated 23.09.2005. Challenging the same, the first respondent filed W.P.No.24714 of 2005 and this Court disposed of the same with a direction to the respondents therein to pass appropriate orders within a time frame, taking into consideration the explanation submitted by the first respondent. In pursuance of the said order, after consideration of the explanation, the second respondent issued order dated 03.02.2006 under Section 5-B(1) of the Act of 1971, directing the first respondent to demolish the works within 8 days from the date of publication of that order. Challenging the said order, the first respondent filed CMA.No.23 of 2006 before the Chief Judge, City Civil Court, Hyderabad (for short, the Court below), who allowed the same, by order dated 18.05.2006 on the ground that there is a bona fide and serious dispute regarding the title of the property and that the invocation of the provisions of the Act of 1971 is unjust and accordingly set aside the order of the second respondent dated 03.02.006. Challenging the same, the present writ petition came to be filed.

4. The first respondent filed a counter-affidavit stating that the General Land Register is not a statutory register maintained as per any rules and regulations, and it is not being maintained under Rule 3 of the Rules of 1937 and Section 280 of the Act of 1924. The entries in the said register do not have any sanctity of any statutory regulation. It is further stated that the subject land is not a Government land and that Thokatta Village is one of the 13 Moghlai Villages which were given for only a limited purpose, such as, judicial, civil, Ecclesiastical and revenue jurisdiction, which is apparent from the Gazette of India No.50, dated 22.12.1956, issued by the Ministry of Defence. The land in question does not conform to be public premises in terms of Section 2(e) of the Act of 1971 and hence invocation of the provisions of the Act is bad, when the title itself is in dispute.

5. Sri B.Narasimha Sarma, learned counsel for the petitioners, submitted that when the first respondent carried out some unauthorized constructions in the subject land without obtaining prior permission, the second respondent issued notice dated 23.09.2005. After considering each and every point in the explanation of the first respondent, the second respondent passed the order dated 03.02.2006, directing the first respondent to demolish the works within a time frame. The second respondent dealt the issue of title, official records and passed orders. He relied on a judgment reported in **Anamallai Club V. Government of Tamilnadu**¹, wherein the Apex Court held that resumption of

¹ (1997) 3 Supreme Court Cases 169

possession unilaterally after determination of the grant in the manner provided under the grant itself is invalid. He also relied on the judgment reported in **Kaikhosrou (Chick) Kavasji Framji V. The Union of India (UOI)**². He also argued that the first respondent filed declaration before the ULC Authorities earlier stating that the subject land belongs to the Government, which strengthens the case of the petitioners and therefore, the writ petition is liable to be allowed.

6. Sri Sunil B.Ganu, learned counsel for the first respondent, submitted that the subject land is a private property and that the first respondent purchased the same under registered sale deed dated 13.12.1888 for a valid sale consideration from its vendor, who purchased the same vide registered sale deed dated 12.01.1887. The first respondent has been in possession and enjoyment over the subject land for more than 100 years. At no point of time, the properties in the Secunderabad Cantonment belonged to the Government of India and the Government was never owner of any land therein. He further submitted that in matters of this nature where serious question of title and long standing possession are involved, invoking the provisions of the Act of 1971 by the second respondent is bad in law. He further submitted that filing of writ petition by the petitioners is bad, as the show cause notice was issued by one authority i.e., second respondent herein, and this writ petition was filed by other authority. The superior authority or any appellate authority cannot

² MANU/MH/0407/2009

act as an original authority and file the present writ petition and the second respondent herein, who initiated the show cause notice dated 03.02.2006, has not challenged the order of the Court below dated 18.05.2006 in CMA.No.23 of 2006. In reply to the argument of the learned counsel for the petitioners with regard to filing of declaration stating that the subject land belongs to the Government, the learned counsel for the first respondent submitted that the statement is a self-serving one and it does not have evidentiary value and such a declaration cannot help the petitioners. In that regard, he relied on **Venkatapathi V. Venkatanarasimha³, K.Ampaiah V. P.Alpuramma⁴**. He also relied on the judgments in **Roshan Minoo Patel V. Union of India⁵, Syed Yakoob V. K.S.Radhakrishnan⁶** and **Hari Vishnu Kamath V. Syed Ahmad Ishaque⁷**. Further, he represented that the first respondent made an application, which is pending, before the concerned Authority of the petitioners for compounding the unauthorized constructions, as the same are made within the premises to facilitate the members of the first respondent and they are not causing any inconvenience to the general public and prayed to dismiss the writ petition.

7. The second respondent issued show cause notice dated 23.09.2005 in Form AB under Section 5B(1) of the Act of 1971 indicating the following 22 unauthorised constructions.

³ AIR 1936 Privy Council 264

⁴ 1996 (2) ALD 1025

⁵ 2011 (5) ALD 626

⁶ AIR 1964 SC 477

⁷ AIR 1955 SC 233.

- “1. Children’s library – 55’-6” X 51’ = 3355 sft.
2. Portico – 20’ X 10’ = 200 sft.
3. Projection of existing building with RCC roof – 92” X 23” = 2116 sft.
4. Scooter stand – 50’ X 15’ = 750 sft.
5. RR Building – 23’ X 12’ = 276 sft.
6. Cycle stand – 40’ X 15’ = 600 sft.
7. Shed – 41’ X 30’ (-) 16’ X 9’ = 1196 sft.
8. Scooter parking – 12’ X 12’ = 144 sft.
9. Tennis court – 122’ X 60’ X 2 nos. = 13320 sft.
10. Lawn 63’ X 60’ = 3780 sft.
11. Shed – 17’ X 20’ = 340 sft.
12. Kitchen – 16’ X 16’ = 256 sft.
13. Staff rest room – 20’ X 8’ = 160 sft.
14. Bathroom – 9’ X 9’ = 81 sft.
15. Shed – 15’ X 10’ = 150 sft.
16. Workshop – 76’ X 39’ = 2964 sft.
17. Shops – 40’ X 40’ = 1600 sft.
18. Extension to main club – 85’ X 45’ = 3285 sft.
19. Shed – 10’ X 10’ = 100 sft.
20. Shed – 30’ X 17’ = 510 sft.
21. Lawn – 75’ X 23’ = 1725 sft.
22. Shed – 23’ X 12’ = 276 sft.”

8. The said show cause notice was challenged in W.P.No.24714 of 2005 and this Court by order dated 06.01.2006, disposed of the same. The operative portion of the said order reads as under:

“ It is matter of record that the petitioner submitted the explanation to the show cause notice in which case the petitioner has to receive the final order and choose the forum to challenge the same in accordance with law. In that view of the matter, I deem it appropriate to dispose of the writ petition with a direction to the respondents to pass appropriate orders, in pursuance of the show cause notice issued in Form-AB by the respondents, taking into consideration the explanation submitted by the petitioner within four weeks. Till passing of final orders in pursuance of the show cause notice, there shall be order of status quo with regard to nature and possession of the premises in dispute.

9. Thereafter, the second respondent, by confirming the show cause notice, passed an order dated 03.02.2006 in Form BB indicating the following 6 other unauthorized constructions, apart from 22 unauthorised constructions.

- “1. Shops having 40’ X 40
2. Staff Rest Room – 20’ X 8’
3. Guest House – 25’ X 70’

4. Function Hall – 70' X 35'
5. Function Hall – 8' X 30'
6. Workshop – 76' X 39"

10. Challenging the said order dated 03.02.2006, the first respondent filed CMA.No.23 of 2006 before the Court below and the Court below passed an elaborate order by taking into consideration the contentions of both the parties. The Court below, by order dated 18.05.2006, allowed the CMA holding that there is a *bona fide* and serious dispute regarding the title of the property and that the invocation of the provisions of the Act of 1971, therefore, are unjust, and accordingly set aside the order of the second respondent dated 03.02.2006. Challenging the said order, strangely the writ petition was not filed by the second respondent, but by the petitioners.

11. The show cause notice dated 23.09.2005, which was subject matter of the earlier round of litigation in W.P.No.24714 of 2005, and this writ petition clearly indicate that the cause of action arose by referring to Section 184 of the Act of 1924. Section 184 deals with illegal erection and re-erection and whereas Section 185 deals with power to stop erection or re-erection or to demolish and *provisos* to Section 185 provide for composition, and they read as under:

“184. Illegal erection and re-erection:- Whoever begins, continues or completes the erection or re-erection of a building:-

- (a) without having given a valid notice as required by sections 179 and 180, or before the building has been sanctioned or is deemed to have been sanctioned, or
- (b) without complying with any direction made under sub-section (1) of section 181, or

- (c) when sanction has been refused, or has ceased to be available or has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 52,

shall be punishable with fine which may extend to five thousand rupees.

185. Power to stop erection or re-erection or to demolish:- (1) Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under section 184, and may in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence under section 184, within twelve months of the completion of such erection or re-erection in like manner direct the alteration or demolition as it thinks necessary of the building or any part thereof, so erected or re-erected:

Provided that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable:

Provided further that the board shall not, without the previous concurrence of the Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the order under section 181 sanctioning the erection or re-erection has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 52, and shall in any such case in like manner direct the demolition or alteration, as the case may be, of the building or any part thereof so erected or re-erected where the Officer Commanding-in-Chief, the Command, thereafter directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him:

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the Officer Commanding-in-Chief, the Command, has been communicated to him.

12. The Act of 1924 was repealed and The Cantonments Act, 2006 (for short, the Act of 2006) came into force. Sections 184 and 185 of the Act of 1924 correspond to Sections 247 and 248 of the Act of 2006.

13. It is necessary to refer to Section 2(b) and (e) of the Act of 1971 which define 'estate officer' and 'public premises' and they read as under:

"2 (b) 'estate officer' means an officer appointed as such by the Central Government under Section 3;

2 (e) 'public premises' means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,—

- (i) any company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;
- (ii) any corporation (not being a company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], or a local authority) established by or under a Central Act and owned or controlled by the Central Government;
- (iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

Explanation.—For the purposes of this item, “metro railway” shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

- (iia) any University established or incorporated by any Central Act,
- (iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);
- (v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);
- (vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act,
- (vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,
- (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924)”

14. It is also necessary to refer to Section 5B(1) of the Act of 1971 which reads as under:

“5B. Order of demolition of unauthorized construction. –

(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorized by, such authority, then, the estate officer may, in additions to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order.

Provided that no order under this sub-section shall be made unless the person concerned has been given by means of notice of not less than seven days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.”

15. As against a notice under Section 5B(1) of the Act of 1971, an appeal lies to the District Judge under Section 9 of the Act. Section 9 of the Act of 1971 reads as under:

“9. Appeals.—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5B or section 5C or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,—
(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;
(b) in the case of an appeal from an order under section 5B or section 7, within twelve days from the date on which the order is communicated to the appellant; and
(c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible and every endeavour shall be made to dispose of the appeal finally within one month from the date of filing the appeal, after providing the parties an opportunity of being heard.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.”

16. It is necessary to refer to Section 2(o) of the Act of 2006 which defines 'Defence Estates Officer' and it reads as under:

"2(o) 'Defence Estates Officer' means the officer appointed by the Central Government to perform the duties of the Defence Estates Officer for the purpose of this Act and the rules made thereunder."

17. In **Venkatapathi's** case (3 supra), Privy Council held that it sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position; and it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue. In **K.Ampaiah's** case (4 supra), this Court held that a self-serving declaration made before the authorities under the Land Reforms Act cannot be relied on. Therefore, the argument of the learned counsel for the petitioners that the first respondent filed declarations before the ULC Authorities accepting that the subject land belongs to the Government, cannot be appreciated.

18. This Court in **Roshan Minoo Patel's** case (5 supra), had an occasion to deal with the power of Estate Officer in invoking the provisions of the Act of 1971, in similar circumstances, and held as follows:

"73. From the forgoing analyses it is clear that the premises in question must be public premises for exercise of jurisdiction under the 1971 Act. This is essentially a jurisdictional fact and must be affirmatively determined as a condition precedent to exercise of the substantive jurisdiction to proceed for eviction against unauthorized occupation; or for demolition or recovery of damages against unauthorized construction or unauthorized use and occupation, as the case may be.

74. From the provisions of the 1971 Act it is clear that the Parliament conferred on the Estate Officer a limited jurisdiction to determine whether an occupation is authorized or not so, and if the occupation or construction is

unauthorized, then to order eviction of the unauthorized occupation; to order demolition of unauthorized construction or levy of damages for unauthorized use or occupation. Before exercise of the above jurisdiction, however, the jurisdictional or precedent fact, whether the premises in respect of which proceedings are initiated is a public premises, must correctly be determined by the Estate Officer.”

19. In **Syed Yakoob**’s case (6 supra), the Apex Court, while dealing with the issue whether a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals, held that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.

20. In **Kaikhosrou (Chick) Kavasji Framji**’s case (2 supra), a division Bench of the Bombay High Court dealt with the issue of whether or not the Estate Officer, appointed under Section 3 of the Act of 1971, has a jurisdiction to entertain and try the eviction proceeding initiated by the respondents therein. Both the learned counsel relied on para 35 in the aforesaid judgment and it reads as under:

“35. What is required to be considered is: whether or not the Estate Officer, appointed under Section 3 of the Public Premises Act, has a jurisdiction to entertain and try the present eviction proceeding initiated by the respondents? Once the proceeding is initiated, the Estate Officer has to satisfy that the facts giving rise to its jurisdiction have been established. If the Tribunal appointed under the Act is vested with jurisdiction to try cases arising under the said Act, the Tribunal is also vested with powers to decide existence or non-existence of the facts giving rise to its jurisdiction, the findings of which can be assailed only before the higher authorities, if any, under the Act.

21 Learned counsel for the first respondent relied on paras 68 and 69 of the said judgment and they read as under:

“68. Once the basic facts are established it is open for the Estate Officer to assume jurisdiction. Not only that but their finding that such facts do exist and therefore give them the jurisdiction can only be challenged by the procedure laid down in the said Act and not in a separate proceeding. If a Tribunal appointed under an Act is vested with jurisdiction to try cases arising out of the said Act, the Tribunal is also vested with the power to decide the existence or non-existence of facts giving rise to such jurisdiction, and the Tribunal's finding thereon even if wrong can be assailed only before the authorities if any under the Act. We may, in this connection refer to few oldest relevant authorities.

In MANU/SC/0034/1950: [1950] 1 SCR 621 (Province of Bombay v. Khushaldas S.Advani) at Page 242 in para 78 of the judgment the Court has observed as follows:

‘One other question arises in this connection and that relates to the second and alternative contention raised by the learned Attorney- General. When the legislature delegates powers to an authority, and lays down that the powers could be exercised only if a certain state of facts exists, obviously the authority cannot act if the condition is not fulfilled. If it wrongly holds or assumes that the condition exists although it actually does not exist, its assumption of jurisdiction would be unsupportable, and could be removed by a writ of certiorari. The Legislature however may entrust the authority with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists. In such cases even if the authority makes a wrong decision either of facts or law, it can be corrected by an appellate tribunal if there is any, but not by a writ of certiorari, as every authority if it acts within the jurisdiction is competent to decide both rightly or wrongly, Per Esher L.J., in Queen v. Commrs. For Special Purposes of the Income -tax (1888) 21 QBD 313 at p.319’.

69. This authority therefore clearly lays down that where the Legislature entrusts an authority with a jurisdiction also to determine whether the preliminary state of facts exist, even if the authority makes a wrong decision whether of fact or law, it can be corrected by in Appellate Tribunal if there is any, but not by a Writ of Certiorari, as every authority is competent to decide both rightly or wrongly so long as it is given jurisdiction to do so.”

22. In **Government of A.P. Vs. T.Krishna Rao**⁸, the Apex Court held that the provisions of the A.P. Land Encroachment Act, 1905 cannot be resorted to where complicated questions of title arise for consideration. The Apex Court further held that if there is a bond dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour

⁸ AIR 1982 SC 1081

that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 of the A.P.Land Encroachment Act, 1905, for evicting the person who is in possession of the property under a bona fide claim or title.

23. Unless the dispute of title is resolved, the petitioners cannot unilaterally claim of ownership of the subject property. The first respondent has narrated the title of the property from the year 1887 and has been in possession since 1888 in support of its claim to say that the subject land is a private property and it does not belong to the Central Government. The Court below, in para 2 of the impugned order, formulated a point for consideration as to whether the disputed constructions are liable to be demolished by the appellant (second respondent herein). Thereafter, the Court below passed an elaborate order by taking into consideration the contentions of both the parties. The subject matter is nothing to do with declaration of any title, but the only issue involved is with regard to demolition of the unauthorized constructions, if any. The Court below carefully restricted to the point while passing the impugned order without expressing any opinion about the title of the property and there are no grounds to interfere with the order of the Court below under writ of Certiorari.

24. Admittedly, there is no authority designated as Defence Estate Officer in the Act of 1971. The second petitioner, who is the Defence Estates Officer, is only delegated with the powers under the Act of 2006, but not under the Act of 1971. This is a jurisdictional aspect. It can also be construed that the petitioners

have no *locus standi* to file the present writ petition, as the show cause notice dated 23.09.2005 and the order dated 03.02.2006 were issued by the second respondent herein, whereas this writ petition is filed by another authority. A superior authority or an appellate authority cannot act as an original authority and file the present writ petition; and the second respondent herein, who initiated the show cause notice dated 03.02.2006, has not challenged the order of the Court below dated 18.05.2006 in CMA.No.23 of 2006. Hence, the second petitioner has no jurisdiction to deal with the matter. The petitioners have not established before appropriate Court of law with regard to their jurisdiction upon the subject land under the Act of 1971 to say that the subject land belongs to Government. The issue of title cannot be gone into by the Court either under Section 9 of the Act of 1971 or under 226 of the Constitution of India and this Court cannot give any finding on that issue and thus the issue is left undecided. In the absence of declaration of title, invocation of powers under the Act of 1971, as self-declaratory, is unjust. The order of the Court below dated 18.05.2006 in CMA.No.23 of 2006 is sustained.

25. Insofar as the contention of the learned counsel for the first respondent with regard to pendency of compounding application is concerned, it is not for this Court to go into the merits of the same, as the first respondent cannot seek any relief in the writ petition filed by the petitioners. However, in view of the cause of action being initiated referring to Section 184 of the Act of 1924, it is

always open for the concerned authorities to consider such representation, if pending, in accordance with law.

26. With the above observations, the writ petition is disposed of. No costs. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date:12-10-2018
TJMR

