IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 640 OF 2024

Mr. Sanjay Kumar Astha aged 61 years,]
Adult, Indian Inhabitant,]
Proprietor of M/s. Sarathi Enterprises]
1101, Udyan-II, near Ashok Nagar,]
Off. Marol Military Road, Sakinaka,]
Andheri (East), Mumbai 400072.]
Occupation : Business.] **...Appellant**.

Versus

1. Mumbai International Airport]
Pvt. Ltd. A private limited company]
formed and registered under the]
provisions of Companies Act, 1956,]
Having its registered office at]
Terminal B, 1st Floor, Chatrapati Shivaji]
International Airport, Santacruz (East),]
Mumbai 400099.]
]
2. Airport Authority of India,]
An authority constituted under the]
Provisions of Airport Authority of]
India Act, 1994, Having its]
Western Region Office at Porte Cabin,]
New Airport Colony, Opp. Parsiwada,]
Andheri Sahar Road, Vile Parle (E),]
Mumbai 400099.] **...Respondents.**

Mr. Atul Damle, Senior Advocate along with Ms. Meena Ruparel for the Appellant.

Mr. Vikram Nankani, Senior Advocate along with Mr. Mayur Khandeparkar, Ms. Shoma Maitra and Mr. Nipeksh Arvind Jain i/b Wadia Gandy & Co., for the Respondent No. 1.

Mr. Tejas Bhide and Shivani Pawle for the Respondent No. 2.

Coram : **Sharmila U. Deshmukh, J.**
Reserved on : **July 4, 2024**
Pronounced on : **July 29, 2024.**

Judgment :

1. ***Rule.*** Rule made returnable forthwith and taken up for final hearing with consent of learned counsel for the parties.

CHALLENGE:

2. The present appeal preferred under Section 28K of the Airports Authority of India Act 1994 [for short "**AAI Act**"] challenges the order dated 8th April 2024 passed by the Eviction Officer in Eviction Application No.1 of 2016 exercising powers under Section 28-D of AAI Act directing the Appellant to vacate the premises by holding the Appellant to be in unauthorised occupation of the airport premises specified in the Schedule of the eviction notice. For sake of convenience, parties are referred to by their status before the Eviction Officer.

PROCEEDINGS BEFORE EVICTION OFFICER:

3. Eviction Application No.1 of 2016 came to be filed by Mumbai International Airport Pvt Ltd and Airports Authority of India-the Applicants before the Eviction Officer appointed under Section 28-B of the AAI Act seeking *interalia* initiation of eviction proceedings against the Respondent under Sections 28-C, 28-D, 28-E, 28-F and 28-G of the AAI Act for vacant and peaceful possession of the Airport premises and the shed thereunder as mentioned in the Schedule and identified from the map annexed thereto.

The Schedule described the suit premises as land admeasuring 511.06 square meters together with the temporary shed(s) standing thereon and forming part of the larger land bearing Old Survey No.96, Hissa No.1(part) corresponding to CTS No.145A situated at village Sahar, Taluka Andheri.

4. The Eviction Officer upon perusal of the documents submitted by the Applicants formed an opinion that the premises including structure erected on the airport premises should be evicted/removed and issued notice dated 11th March 2016 to the Respondent under Section 28-C(2)(b)(i) of AAI Act calling upon the Respondent to show cause as to why an order of eviction should not be made.

5. Before filing his reply to the Eviction notice, the Respondent filed two applications raising *interalia* preliminary objection on limitation and jurisdiction of Eviction Officer and seeking dismissal of ground of mis-joinder of parties respectively. The applications came to be resisted by the Applicants. In view of the objections raised by the Respondent, the Eviction Officer vide order dated 7th February, 2017 exercised powers under Section 28-H of the AAI Act and directed the Applicant No.1 to carry out survey of the land admeasuring 511.06 square meters by the City Survey Officer to make it clear that the land is part of the larger land bearing Old Survey No. 96, Hissa No. 1 corresponding to CTS No.145A and to submit the survey report within three weeks from date of order. The Eviction Officer held that pursuant to the result of inquiry report, the interim order as regards jurisdiction and mis-joinder of party shall be passed.

6. In the additional reply dated 29th May, 2018 filed by the Applicants, it was stated that it had applied for the survey and demarcation of boundaries of CTS No.145A and CTS No. 333 of Village Sahar on 16th November, 2016 and survey was carried out from 4th January, 2017-31st January, 2017, 8th March, 2017-17th March, 2017 and 16th June, 2017-21st June, 2017. The copy of demarcation plan for CTS No.145A forwarded by the City Survey Office was annexed to the additional reply. It was also contended that by virtue of Deed of Exchange executed between Applicant No.2 and MCGM, CTS No.422 is now owned by the Applicant No.2 and constitutes Airport Premises under the AAI Act. Although objection was taken by the Respondent for taking the survey report on record, the objection came to be dismissed by the Eviction Officer. Against the said order the Respondent filed Writ Petition No 8011 of 2018 before this Court which came to be rejected vide order dated 10th August, 2018 as against which SLP was preferred before the Apex Court. The Apex Court vide order dated 5th October, 2018 dismissed the SLP, however, kept open the issue as regards jurisdiction of Eviction Officer.

7. On 26th July, 2018, the Respondent filed his reply to the Eviction Application contending that the Respondent is in occupation of land bearing CTS No.422 and not land bearing CTS No.145A and the land and tin shed structures constructed thereon admeasuring 511.06 square meters is situated adjacent to the Burial ground, Opposite to the IAAI Import Warehouse, IAAI Colony, Sahar, Mumbai-400 099, East side open, South side

IAAI Wall, North side open for entrance, West side Compound Wall having small pedestrian opening, which premises was purchased vide Agreement of Sale dated 8th December, 1991. It was contended that the premises was inside the Burial Ground and has become adjacent to the Burial Ground due to shifting of wall by the Applicant No 2 in the year 1992 with assurance that Respondent's possession will not be disturbed. It was contended that Eviction Officer does not have jurisdiction to identify and demarcate a particular piece of property as public premise. It was further contended that the Respondent has obtained the electricity connection, telephone connection in the said premises and its employees / labourers possess valid ration cards. Reference was made to the Civil Suit pending before the High Court contending that the issue of ownership and title of Respondent was pending in the civil suit.

<u>EVIDENCE:</u>

8. The Applicants examined its Manager, Land Affairs and Authorised Signatory of Applicant No.1 in support of its case and the Respondent examined himself and two witnesses i.e. Mazar Thakur and Thomas Zakaria.

9. The Respondent produced the following documentary evidence:

1) Certified true copy of the Agreement to Sale,
2) Certified true copy of the Affidavit of H.S Kohli,
3) Certified true copy of the Affidavit of Mr Raghubeer Singh,
4) Certified true copy of Letter No. AAB/CMD-III/202/526 from AAI to Sarathi Enterprises,
5) Certified true copy of Letter from Sarathi Enterprises to Sr. Manager Engg,
6) Certified true copy of the Order passed by Justice F.I Rebello of Bombay High Court,

7) Certified true copy of the Old Ration Card of Employees of Sarathi Enterprises,
8) Certified true copy of New Ration Card of Employees of Sarathi Enterprises,
9) Certified true copy of the Letter from Reliance Energy to Sarathi Enterprises granting the Electric Supply on the premises,
10) Original Bill of Reliance Energy,
11) Certified true copy of MTNL Application for Telephone Connection,
12) Certified true copy of Disconnection of Telephone Connection by the Respondent,
13) Certified true copy of the Electoral Roll of Employees of the Sarathi Enterprises,
14) Certified true copy of Voting Slips of Employees of Sarathi Enterprises,
15) Certified true copy of Affidavit in Reply of S.R Meena Sr Manager of IAAI in Bombay High Court,
16) Original Copies of Photographs old (2 Photos) new (Single Photo),
17) Certified true copy of Letter from AAI raising the bill for the Power Supply Connection from the period of 12/12/1995 to the year 2003,
18) Certified true copy of schedule of list of Encroachment annexed to the Lease Deed,
19) Certified true copy of 7/12 extracts of Survey No. 96/1,
20) Certified true copy of KGP of Survey No. 96/1 of CTS no.422,
21) Certified true copy of 7/12 extracts of CTS No. 422 Mutation no.577,
22) Certified true copy of PR Card of CTS No. 422,
23) Layout Plan received under RTI from AAI showing location of AAI Colony and Burial Ground,
24) Certified true copy of Applications under RTI Records received from CTS office showing No Survey was conducted for CTS No.145A between January 2017 to June 2017,
25) Certified true copy of Lease Deed between Hotel IQRA and MIAL,
26) Certified true copy of Letter addressed to the employee of Sarathi Enterprises staying at the address,
27) Certified true copy of the Canara Bank Pass Book of the employee of Sarathi Enterprises, and
28) Copy of the Downloaded details projects of MIAL

10. The certified true copy of letter from Applicants raising bill for power supply connection (Sr No 17), downloaded details projects of MIAL(Sr No 28) and Agreement for Sale (Sr No 1) were not marked as Exhibit.

11. The Applicants produced the following documents

1) Copy of Authority Letter dated 29th October 2014.
2) Copy of the OMDA,
3) Copy of the Lease Deed dated 26th April 2006.
4) Copy of the latest survey demarcation land issued by the O/o City Survey, Vile Parle vide letter dated 11th October 2017,
5) Photocopy of certified copy of the said section 4 notification dated 26th June 1941,
6) Certified copies of Section 6 Declaration,
7) Copy of the Possession Receipt dated 3rd January 2017
8) Certified copy of the Award Statement dated 15th March 1945,
9) Certified copy of the possession receipt dated 12th February 1945,
10) Certified copy of the 7/12 extract in respect of the larger land,
11) Certified copy of the Mutation Entry dated 15th April 1959,
12) Certified copy of Property Card of CTS No.145 A of Village Sahar,
13) Copy of latter dated 4th September 2003 addressed to the O/o Applicant no.2 by the Respondent,
14) Copy of Order dated 15th October 2003 passed by the Hon'ble Court in the Suit filed by the Respondent,
15) Copy of the Deed of Exchange dated 14th October 2016 executed between Applicant no.2 and MCGM, and
16) Copy of Supplemental Lease Deed dated 14th October 2016,

12. The copy of letter dated 4th September, 2003 (Sr No 13) addressed to the Applicant No.2 by the Respondent was not marked as Exhibit.

<u>FINDINGS OF EVICTION OFFICER:</u>

13. Broadly summarizing the findings of the Eviction Officer are thus:

<u>ON THE OCCUPATION OF RESPONDENT OF CTS NO 145A:</u>

(a) The Respondent has admitted that in respect of subject premises involved in present eviction i.e. CTS No.145A, the Respondent has filed civil suit which is pending.

(b) The Respondent has deposed that the premises in his occupation is adjacent to the burial ground in IAAI colony. Thus the Respondent's occupation is not on burial ground i.e. CTS NO 422 but on larger land i.e. CTS No 145-A.

(c)The Respondent has admitted in his cross-examination that the Respondent was in occupation of CTS No.145A for storing material and his labourers were staying there for execution of contract.

(d) The Respondent has admitted in cross examination that there is no documentary proof about the construction of wall by the Applicants in the year 1992.

(e) The Respondent has admitted that in the civil suit there is no mention of any CTS number.

(f) The documentary evidence produced by the Respondent shows the address of IAAI colony and not CTS No 422.

<u>ON PURCHASE OF STRUCTURE BY RESPONDENT:</u>

(a) The Agreement for Sale is an unregistered document and was not marked as Exhibit.

(b) The Respondent has admitted in answer to Question No 24 that it is not his case that the land claimed to be purchased by him in his Affidavit of Evidence is land bearing CTS No.422.

(c) The Respondent has admitted that his letter dated 2nd September, 2003 speaks about purchase of sheds from the previous owner and not the land underneath. He has admitted that there is no documentary evidence in form of registered agreement to prove his case of purchase of shed.

(c) There is no documentary evidence to prove that the vendors of the Respondent i.e Babanrao Kamble and his sons had title to the subject premises.

ISSUE OF TITLE PENDING IN CIVIL SUIT:

In the pending civil suit between the parties, the Respondent has not prayed for declaration of ownership, there is no mention of any CTS Number or Survey Number in the entire plaint *qua* the suit property and there is no question of title involved in the civil suit.

JURISDICTION OF EVICTION OFFICER AND LIMITATION:

(a) Section 28C of the AAI Act vests the jurisdiction in the Eviction Officer to decide whether the subject premises is public premises. The Respondent has not led evidence to show that the *lis* cannot be adjudicated by Eviction Officer.

(b) The witnesses examined by the Respondent have failed to prove that the Respondent is in occupation of CTS No.422 and not

CTS No.145A.

(c) The Respondent has failed to dislodge the case of the Applicants in the cross-examination either on the aspect of acquisition of larger land or on the aspect of unauthorised occupation by the Respondent of Airport Premises.

(d) The unauthorised occupation of Respondent creates continuous cause of action.

SUM AND SUBSTANCE OF FINDINGS OF EVICTION OFFICER:

The Respondent is in unauthorised occupation of CTS No. 145A. The Respondent has failed to prove his case of being in occupation of CTS No.422 in capacity as owner of the premises. The Respondent has failed to prove that he is owner of the sheds on the larger land. The evidence establishes that Respondent is on IAAI colony and has not vacated the same inspite of assurance in writing.

PREVIOUS LITIGATION BETWEEN THE PARTIES:

16. In the year 2003, the Respondent filed Suit No.2967 of 2003 against the Airport Authority of India *interalia* seeking a declaration of lawful, vacant and peaceful possession of the Respondent and that the notice of eviction dated 1st September, 2003 issued by the Defendant is bad in law. The suit is pending.

17. On 23rd February, 2005, upon the application of the Airport Authority of India, show cause notice was issued under the provisions of Public

Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction of the Respondent from the public premises described in the Schedule as Survey No 96, Hissa No.1 pt, CTS No. 145A admeasuring 511.06 square meters. Eviction Case No.9 of 2005 was initiated which proceeding vide order dated 22nd February, 2008 stood postponed until further notice. The impugned order notes the statement of the Applicant No 2 on oath that it will not prosecute the proceedings under the PPE Act.

SUBMISSIONS:

14. Mr. Atul Damle, learned Senior Advocate for the Appellant-original Respondent would submit that the Agreement of 8th December 1991 executed by the Respondent with the family members of Babanrao Kamble is proof of ownership. He submits that the Schedule to the Agreement of Sale identifies the location of property at Opposite to IAAI Import warehouse, IAAI colony on the burial ground. He submits that after receipt of notice of eviction dated 1st September 2003 issued by Applicants, the Respondent had preferred Suit No. 2967 of 2003 and drawing attention to the prayers in the said suit, he submits that specific prayer as regards the lawful and peaceful possession of the Plaintiff was sought alongwith challenge to the notice. He submits that by interim order passed by this Court in the said suit, possession of the Respondent was protected.

15. He would further submit that initially proceedings were initiated by the Applicants before the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which were thereafter not pursued by the Applicants and instead provisions of Section 28 of the AAI Act were invoked and fresh notice came to be issued on 11th March 2016. He submits that there is a dispute about the identity of suit premises as the case of the Appellant is that the suit premises is situated on CTS No.422 and not on CTS No.145A. He submits that the proceedings under Chapter V-A of the AAI Act are summary in nature and as there was a dispute as regards the identity as well as the title of the Applicants, the same cannot be decided in a summary inquiry under Section 28 of the AAI Act. He submits that in the civil suit by order dated 6th February 2003, preliminary issue of jurisdiction was framed and is pending. He submits that as the preliminary issue was framed by this Court the proceedings before the Eviction Officer ought to have been deferred as there was possibility of conflicting decrees being passed.

16. He submits that considering that the Eviction Officer had passed an order for survey of the premises, it was clear that there was a dispute about the identity of the location of premises which could not be decided in summary proceedings. He would further point out the affidavit filed by the Applicants in the Notice of Motion No. 2760 of 2003 in Suit No. 2967 of 2003 contending that the premises claimed to be occupied by the Respondent is stated to be either in the burial ground or just outside and adjacent to the burial ground, both of which belong to the Applicants.

17. He has drawn the attention of this Court to the findings of Eviction

Officer and would submit that the Eviction Officer has wrongly cast the burden upon the Respondent to prove that the subject premises is situated on CTS No.422. He submits that as the Applicants had come with the case that the Respondent is in unauthorised occupation of airport premises, the burden was upon the Applicants to prove that the subject premises was airport premises. He has taken this Court through the cross-examination of the Respondent and would submit that the Eviction Officer has mis-appreciated the evidence on record to hold that the Respondent has admitted that the subject premises is situated on CTS No.145A. He submits that upon a proper reading of the cross-examination of Respondent it is clear that there is no admission as regards the location of suit premises on CTS No.145A.

18. He submits the Eviction Officer has not rendered any specific finding on the issue of jurisdiction despite the order of Apex Court nor there is a specific finding that the suit premises is located on CTS No.145A. He submits that the Deed of Exchange by which CTS No.422 came to be handed over to the Applicants by the Municipal Corporation was executed during the pendency of proceedings on 14th October 2016. He relies upon the decision of the Supreme Court in the case of ***Government of Andhra Pradesh v. Valluri Kesava Rao [(1982) 2 SCC 135]***.

19. *Per Contra,* Mr. Nankani, learned Senior Advocate for the Respondent herein, i.e., the original Applicants, would submit that the undisputed facts are that the Applicants are the owners of CTS No.145A and now of CTS No 422, that there is no declaration of title sought by the Respondent in the suit filed before this Court and that the said suit does not give exact description of the property as to its CTS number. He would further submit that by order dated 15th October 2003, while protecting the possession of Respondent, this Court has held that the Applicants cannot dispossess the Respondent without following due process of law. He submits that the suit being simpliciter for possession, there is no requirement to defer the proceedings of Eviction Officer and there is no question of any conflicting decrees being passed in the suit and eviction proceedings. Pointing out to the notice issued by the Eviction Officer, he submits that the suit premises is specifically described as situated on CTS No.145A admeasuring 511.06 square metres. He submits that Respondent’s case as set out in the affidavit of evidence is that by an agreement of sale of the year 1991 he has purchased the suit premises and that in January 1992 the sheds and open area was taken inside the AAI colony. He submits that there are different stands taken by the Appellant in the suit, in the reply to the eviction notice and in the affidavit of evidence. He has taken this Court in detail through the cross-examination of Respondent and would submit that upon a complete reading of the cross-examination of the Respondent it is evident that the Respondent has admitted that the suit premises is situated on CTS

No.145A. He submits that the defence taken by the Respondent that the premises is situated on CTS No.422 is required to be established by the Respondent which he has failed to discharge. He submits that there is clear admission in the cross-examination of Respondent that the address mentioned in the electricity bill, the ration card and the telephone bills is of AAI colony, BH-37 building and that the documents do not mention CTS No.422. He submits that in view of this admission, it was further not necessary for the Applicants to prove that the suit premises is situated on CTS No.145A. He would further submit that the production of the deed of exchange executed in the month of October 2016 by which CTS No.422 also came to be handed over to the Applicants by the Municipal Corporation was only as an answer to the defence raised by the Respondent of their premises being situated on CTS No.422.

20. Pointing out to the affidavit of evidence of the witness for Applicants, he submits that it is specifically deposed that possession of the vacant land was handed over by the Municipal Corporation to the Applicants. He submits that there is no cross examination on this aspect and the deposition stands uncontroverted. He distinguishes judgment of the Apex Court in the case of ***Government of Andhra Pradesh vs Valluri Kesava Rao and Another*** (supra) and would submit that in that case the summary inquiry was held to be inadequate in view of the conflicting issues of title involved. He submits that in the present case there is no dispute about the title of Applicants either in CTS No.145A or CTS No.422. He submits that the documentary evidence on record in the form of survey report would indicate that the suit premises is situated on CTS No.145A. To emphasis the speedy recovery of airport premises from unauthorised occupants, Mr. Nankani draws attention of this Court to the Statement of Objects and Reasons for introduction of Chapter V-A of the AAI Act and would submit that the special procedure was introduced to obviate the menace of large scale encroachment and unlawful occupation of the airport premises. He submits that the object is sought to be achieved by providing an appeal directly to the High Court as opposed to the provisions of PPE Act, which provide for an appeal to the City Civil Court.

21. He submits that the Applicants have proved that the suit premises are airport premises situated on CTS No.145A and that the Respondent has failed to establish that the suit premises is situated on CTS No.422 and even if it is accepted that the suit premises is situated on CTS No.422, the same now constitutes the property of Applicants and the Respondent has rightly been evicted from Airport premises.

POINTS FOR DETERMINATION:

22. The following points arise for determination:

(1) Whether the evidence on record establishes that the premises in occupation of Respondent are airport premises as defined under Section 28-A(a) of AAI Act.

(2) Whether the Respondent is an unauthorised occupant of the airport premises.

(3) Whether the Eviction Officer had the jurisdiction under Chapter V-A of AAI Act to decide the issue of identity of Airport Premises.

REASONS AND ANALYSIS:

23. Before proceedings to analyse the evidence on record , it will be apposite to refer to the statutory scheme introduced in the year 2003 to the AAI Act. By Amendment Act No. 43 of 2003, with effect from 1st July 2004, Chapter V-A came to be introduced in the AAI Act for eviction of unauthorised occupants of the airport premises.

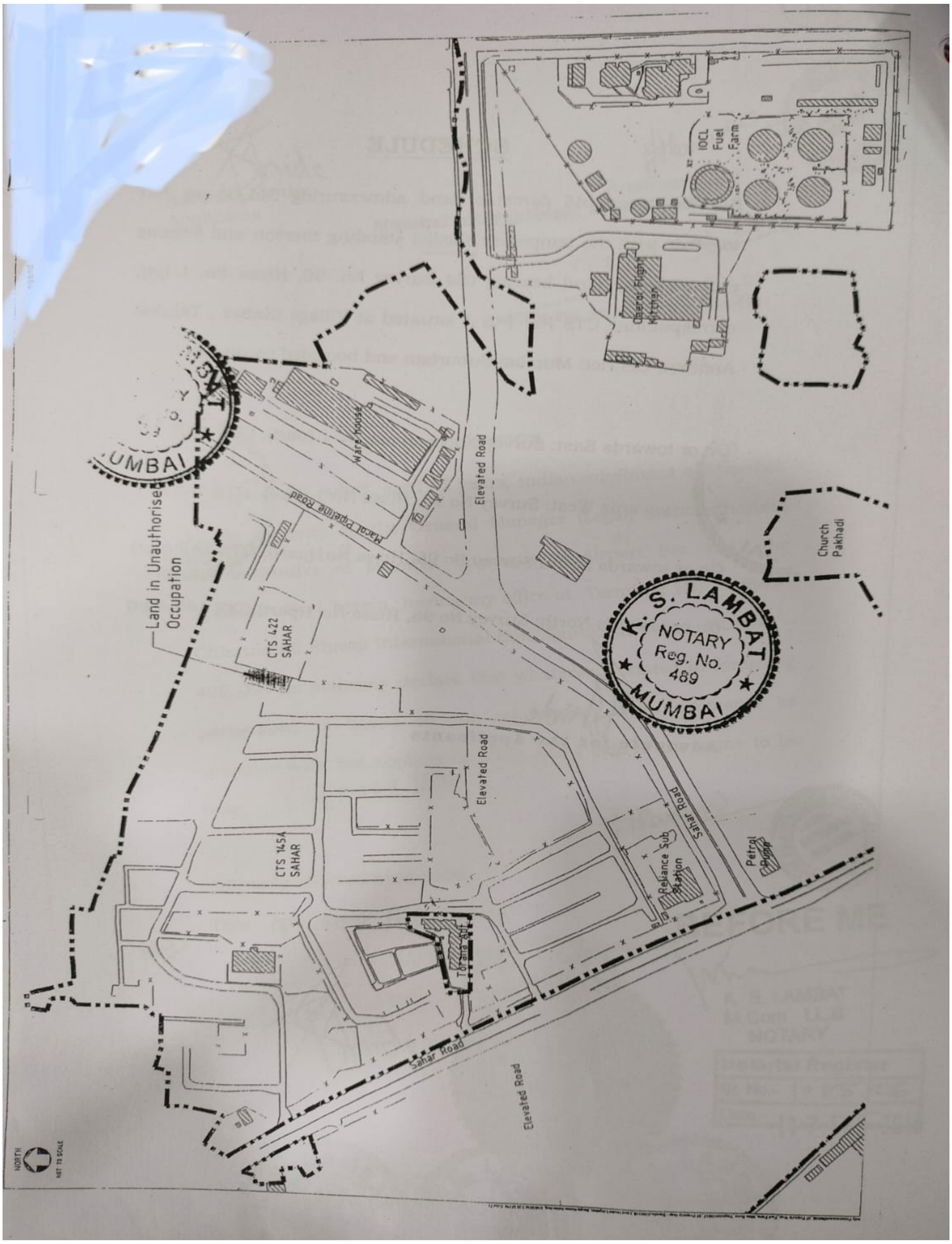
24. Section 28-A(a) of the AAI Act defines "airport premises" as any premises belonging to the airport; taken on lease for the purposes of airport; acquired for the Authority under the provisions of Land Acquisition Act, 1894 or any other corresponding law for the time being force.

25. Section 28-A(f) defines "Unauthorised occupant" in relation to any airport premises as the occupation of any person of the airport premises without the authority for such occupation and includes the continuance in occupation by any person of the airport premises after the authority (whether by way of grant or any other mode of transfer)under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

26. Section 28-B provides for appointment of Eviction Officers by the Authority to exercise the powers conferred under Chapter V-A. Under Section 28-C of the AAI Act, if the Eviction Officer is of the opinion that any person is in unauthorised occupation of the airport premises and that he should be evicted, the Eviction Officer is required to give show cause notice to the concerned person as to why the order of eviction should not be made. Under Section 28-D of the AAI Act, after considering the cause, if any, shown by the person in pursuance of the notice and any evidence produced by him upon a satisfaction reached that the airport premises are in unauthorised occupation, the Eviction Officer may make an order of eviction. Under Section 28-H, for purpose of holding an inquiry, the Eviction Officer is conferred with the same powers as are vested in Civil Court under Code of Civil Procedure, 1908 while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath, requiring the discovery and production of documents and any other matter as may be prescribed. An appeal is provided under Section 28-K of the AAI Act from the order of the Eviction Officer to the High Court.

AS TO POINT NO 1:

27. The subject premises is described in the Schedule to the Eviction Notice as land admeasuring 511.06 square meters together with the temporary shed(s) standing thereon forming part of larger land bearing CTS No.145A. For better understanding of the location of the subject premises, the map annexed to the Applicant's application is reproduced hereunder:


Land in Unauthorised Occupation
CTS 422 SAHAR
CTS 145A SAHAR
Elevated Road
Sahar Road
Marol Pipeline Road
Ware house
IOCL Fuel Farm
Church Pakhadi
Petrol Pump
Reliance Sub Station
K. S. LAMBAT
NOTARY
Reg. No.
489
MUMBAI
NORTH

28. Under Section 28-C and 28-D of the AAI Act, notice issued by the Eviction Officer calls upon the noticee to show cause, by leading evidence in support of the cause shown against the proposed order and if after considering the cause, if any, shown by the noticee and the evidence produced by him, the Eviction officer is satisfied that the airport premises are in unauthorised occupation, the order of eviction may be made.

29. The statutory scheme places burden upon the noticee to lead cogent evidence to establish that the noticee is not an unauthorised occupant of airport premises. The procedure prescribed under Chapter V-A of AAI Act is a departure from the general rule of evidence. In the present case, the occupation of Respondent inside the IAAI colony is admitted and the Respondent has to prove the additional facts asserted by him that he is in occupation of CTS No.422 and the sheds constructed thereon as owner and that the said structures were taken inside the IAAI colony by the Applicants. These additional facts are required to be proved by the Respondent to show cause against the proposed order of eviction. However as evidence has been led by both the parties on the issue of the premises being airport premises, the debate about the burden of proof pales in significance.

LOCATION OF SUBJECT PREMISES:

30. The record indicates that prior to the initiation of present proceedings under Chapter V-A of the AAI Act before the Eviction Officer, notice dated 1st September, 2003 was issued in the month of September 2003 stating that the Respondent was in unauthorised occupation of the airport premises and calling upon him to vacate the said premises. The Respondent filed Suit No.2967 off 2003 wherein the Respondent claimed to be in vacant and peaceful possession of the land and tin sheet structures situated adjacent to the burial ground opposite to the IAAI Import warehouse, IAAI Colony and described the location as adjacent and in the vicinity of land of Defendant No.1. The said suit does not identify the suit premises as being located on CTS No.422. The prayers in the suit was for a declaration of lawful and peaceful possession of the plaintiff and that the notice issued by the Applicant is illegal, void and bad in law. The contention in the suit was that the Applicants in the year 1992 had constructed a wall and the sheds in open area of the Respondent was taken inside the colony of defendant. Pertinently, in the suit there is no averment that the Respondent's structure is not situated on the land belonging to the Applicant and therefore no notice could have been issued. The tenor of the suit is that the Respondent was in possession of the subject premises since the year 1991 pursuant to the agreement of sale executed with the purported owners and that the Applicants had acknowledged the lawful possession and occupation of the Plaintiff. Notably, despite the notice calling upon the Respondent to handover vacant possession of the subject premises, terming them as unauthorised occupants, there was no declaration of title sought in the said suit. By order dated 15th October 2003 this Court had merely protected possession of the Respondent from dispossession without due process of law. Subsequently, the proceedings came to be initiated before the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in which the suit premises was described as structure standing on CTS No.145A. It has been the consistent stand of the Applicant that the subject premises are situated on CTS No.145A. There is no dispute that CTS No.145A is owned by the Applicant.

31. The Respondent has filed his affidavit of evidence in lieu of examination in chief and has deposed that by an agreement dated 8th December 1991 executed between Maruti Babanrao Kamble and Anandrao Banbarao Kamble and himself, he has purchased and is in vacant and peaceful possession of the land and tin shed structures admeasuring 511.06 square meters situated adjacent to the burial ground, IAAI colony. The Respondent has further deposed that after the purchase of shed attached to the cemetery wall in December 1991, a wall was constructed at site in January 1992 and the shed and open area was taken inside the colony. He has further deposed that the Applicants had issued him notice of eviction dated 1st September, 2003 and that the said notice was replied by him vide reply dated 2nd September, 2003. He has deposed that he has filed civil suit in the High Court. He has deposed that his employees are residing in the premises and he has electricity connection, telephone connection in the said premises.

32. In paragraph 2 of his Affidavit of Evidence, the Respondent has deposed that he has purchased from Maruti Babanrao Kamble and

Anandrao Babanrao Kamble land and Tin structures situated adjacent to burial ground, Opp: IAAI Import Ware House, IAAI colony. The Respondent has not specifically deposed that the property purchased by him under the agreement for sale is located on CTS No 422. In the cross examination, a new case was put forth by the Respondent that he is in possession of land which is balance land of 782.10 square meters which is the difference between the area mentioned in Kami Jasti Patrak and the PR Card. No such case was pleaded and thus the same was rightly not considered by the Eviction officer.

33. In the cross-examination, in response to Question No.6 whether in relation to the premises involved in the present eviction application suit has been filed in High Court, the Respondent has responded in the affirmative. The Eviction Officer has held that the Respondent while answering the Question No. 6 has admitted that in respect of the subject premises involved in the present eviction proceedings, i.e., CTS No.145A, the Respondent has filed a civil suit which is pending. This finding is sought to be assailed by Mr. Damle, learned Senior Advocate for the Appellant by contending that there is no such admission contained in the response given to Question No.6. For that reason, if we look at Question Nos.5 and 6 and the answers given in response thereto, the same reads :

Q5. Would it be correct to say that in relation to the premises involved in the present eviction application (subject premises) and earlier eviction proceedings was also initiated by AAI in the year 2005?

Ans. Yes. It is partially true but proceedings were initiated under the Public Premises Eviction Act.

Q6. Would it be correct to say that in relation to premises involved in the present eviction application (subject premises), a suit filed by you was initially in the Hon'ble Bombay High Court now transferred to City Civil Court is pending?

Ans. Yes, this case was filed in High Court in 2003.

34. Reading of the Question Nos.5 and 6 makes it clear that the question put was that the premises involved in the present eviction application is the subject matter of suit filed by the Respondent as well as the earlier proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The premises involved in the present case has been clearly specified in the show-cause notice as premises bearing CTS No.145A. Response of the Respondent is in the affirmative and therefore there is admission that the premises, i.e., CTS No.145A was also the subject matter of the suit which is pending.

35. In response to Question No.11, the Respondent has admitted that the subject premises was used by the Respondent for storing the materials and his labourers were staying there for execution of the contract. He has further admitted that he has not produced any documentary evidence to support the oral evidence that the wall was constructed at site in January 1992. He has admitted that since the year 1992, shed and open area were merged in IAAI colony. He has further admitted that he doesn't have any agreement in respect of the land taken inside the IAAI colony.

36. The Respondent has admitted that in the civil suit there is no CTS Number mentioned and there is no relief sought of declaration of ownership of suit land. He has further admitted that he has not deposed that the land purchased by him is CTS No.422. He has admitted that he has taken electricity supply from AAI for the subject premises. He has admitted that he has not produced registered agreement for sale in respect of sheds purchased by him.

37. The Manager of Land Affairs of Applicant No.1 examined on behalf of the Applicants has deposed in detail as regards the formation of the Applicant No.1-Company and execution of lease deed of all Mumbai Airport land by Applicant No.2 in favour of Applicant No 1. He has deposed that the property card in respect of CTS No.145A stands in the name of Applicant No.2 and the name of Applicant No. 1 has been entered as lessee of Applicant No. 2.

38. He has deposed that the Respondent is in unauthorised occupation of the land forming part of larger land bearing CTS No.145A which is airport premises and that the Respondent has constructed an illegal and unauthorised temporary shed on airport premises. He has deposed that the Respondent was a contractor of Applicant No. 2 for carrying out certain works at the airport and without any permission, the Respondent has illegally encroached upon the airport premises by constructing the shed. He has further deposed that Applicant No.2 issued notice dated 1st September 2003 calling upon the Respondent to vacate the airport premises and by letter dated 4th September 2003, the Respondent informed the Applicant No. 2 that he was executing the works awarded by Applicant No.2 and he shall remove all his material and will vacate the same once the work is completed.

39. He has further deposed that case of the Respondent that his occupation is on CTS No.422 now no longer survives as by a deed of exchange executed by the Applicant No. 2 with the Municipal Corporation for Greater Mumbai who were the erstwhile owner of CTS No.422, the CTS No.422 is also now owned by the Applicant No. 2 and their names are reflected in the property cards.

40. Nothing has been pointed out from the cross examination that the evidence of the Applicant's witness was shaken in respect of the deposition of Respondent being in unauthorised occupation of CTS No 145A and that when possession of CTS No 422 was handed over under the Deed of Exchange, the same is referred to as vacant land or that any material admissions were elicited from the witness.

41. Coming to the documentary evidence produced by the parties in respect of the location of the premises, no submissions have been advanced on the admissibility of the documents which were not marked as Exhibit. As far as the Respondent's documents which can be read in evidence, the ration cards produced shows the address at AAI Colony, the electricity bills shows the address as AAI Residential Colony, MTNL Bills and electoral rolls shows address at AAI Colony. The property card of CTS No 422 shows the name of MCGM as owner and does not reflect the name of either the vendors of the Respondent or the Respondent. The layout plan of AAI Colony does not indicate that the structures are located on CTS No 422. The Respondent has produced Affidavits of one Mr. H.S. Kohli and Mr. Ragubeer Singht who were witnesses to the Agreement for Sale dated 8th December, 1991. However they were not called as witnesses to prove the Agreement for Sale. Notably the Affidavits do not state that the premises is located on CTS No 422. The Respondent has admitted in the cross examination that the Affidavits were not signed in his presence.

42. The Applicant's witness has produced the latest survey demarcation plan issued by the Office of City Survey vide letter dated 11th October 2017 which showed the structures were erected on CTS No.145A. He has also produced the possession receipt executed in respect of CTS No.422 which mentions vacant possession being handed over. The survey plan issued by City Survey Office establishes the existence of the structure on CTS No 145A.

43. The burden was upon the Respondent to show cause against the proposed order of eviction by establishing that the premises was located on CTS NO 422 and does not constitute airport premises.

44. Airport Premises is defined as any premises belonging to airport or taken on lease for the purposes of airport. The Schedule to eviction notice issued under Section 28C of AAI Act described the airport premises as land and temporary shed(s) constructed thereon bearing CTS No.145A. It is an admitted position that CTS No.145A is owned by the Applicants. The defence of Respondent is that the structures are located on CTS No.422. The burden was upon the Respondent to show cause against the proposed eviction by leading cogent evidence to establish that he is owner of the land and the structures erected thereon and secondly that the said premises are located on CTS No.422,and, thirdly that the said premises and open land was taken inside IAAI Colony in the year 1991, the admitted position being that the notice premises were located in IAAI Colony.

45. The Respondent has failed to establish that they were in possession of the structures constructed on CTS No.422. On the contrary, the Respondent has admitted in various proceedings that their structures is located in IAAI colony. It is therefore clear that the Respondent has failed to prove his defence that his structures are situated on CTS No.422. That apart, the factual position is that during the pendency of proceedings even the CTS No.422 is now owned by the Applicants and forms part of the airport premises which position is not disputed by Mr. Damle, learned Senior Advocate for the Appellants.

46. The Respondent has also failed to demonstrate that the sheds which were constructed were taken in the IAAI colony in the year 1992. Even if there was a compound wall which was constructed by the Applicants in the year 1992, the same would not affect the CTS Number of land on which these sheds were erected. It was open for the Respondent to adduce necessary documentary evidence to demonstrate that the structures which were erected were in fact on land CTS No.422.

47. The Respondent has not produced any document to show the boundaries of CTS No 422 and CTS NO 145A. What is on record is the survey demarcation plan issued by City Survey Office produced by the Applicants which shows the location of the structures on CTS NO 145A. There is nothing in the cross examination of the Applicant's witness pointed out to this Court to dispute the authenticity of the survey plan. It is admitted by the Respondent that the premises in his occupation is located inside IAAI Colony. IAAI colony is located on CTS No 145A. There is no evidence produced by the Respondent to establish that the wall was constructed by Applicants in the year 1992 and the sheds and open area was taken inside IAAI Colony. It is an admitted position that CTS NO 145A is owned by the Applicants and constitutes airport premises. Upon appreciation the evidence on record, I find that the land and the structures in occupation of the Respondent is on CTS No 145A which is airport premises.

AS TO POINT NO 2:

48. The Respondent has deposed that by an agreement for sale dated 8th December, 1991 executed between one Maruti Babanrao Kamble and Anandrao Babanrao Kamble he has purchased land and Tin sheet structures admeasuring 511.06 square meters. The Respondent has admitted in the cross-examination that there is no registered agreement of sale. He has admitted that his name is not shown in the 7/12 extract of CTS No.422. In response to Question Nos.31 and 32, the Respondent has admitted that in

Exhibit-E which is reply to Sr Manager of Applicants, only purchase of sheds is stated and not the land underneath.

49. Two witnesses were examined by the Respondent in support of his case of being in occupation of CTS No.422 as owner. Both the witnesses have filed identical Affidavits of Evidence and deposed that the Respondent had purchased land alongwith tin sheds at CTS No.422 in the year 1991 from Maruti Babanrao Kamble and Anand Babanrao Kamble who were staying and cultivating vegetables on land sold to the Respondent. They have further deposed that the agreement for sale was executed in their presence. In the cross examination, Mazar Thakur has admitted that name of Maruti Babanrao Kamble and Anand Babanrao Kamble is not mentioned in property card of CTS No.422. He has further admitted that the agreement for sale is neither registered nor notarised. He has further admitted that he is not witness to the agreement for sale. Thomas Zakaria has admitted that in the agreement there is no mention of CTS number and he has assumed that the property is CTS No.422. He has also admitted that he is not a witness to the agreement for sale.

50. From the deposition of witnesses, only the factum of execution of an agreement between the Respondent and Maruti Babanrao Kamble and Anand Babanrao Kamble has been established. The witnesses though deposed that the Respondent had purchased land alongwith tin shed at CTS No.422, in the cross-examination it is admitted that the names of Marutirao Kamble and Babanrao Kamble are not mentioned in the property card of

CTS No.422. The vendors of the Respondent have not been shown to have any title in the land and the structures forming part of the agreement for sale. It has been admitted by the Respondent that the agreement for sale does not mention CTS No.422. The agreement of the year 1991 is the source of title of the Respondent and the admitted position is that the agreement itself does not describe the property as located on CTS No.422. The agreement for sale cannot be read in evidence as Section 49 of Registration Act, 1908 prohibits the reception of the unregistered document as evidence of any transaction affecting the property. I have already held that the land and structures in occupation of the Respondent are airport premises. The Respondent has failed to establish any right of the Respondent to occupy the airport premises and is thus an unauthorised occupant of the airport premises.

51. The Respondent has failed to prove that the land and premises was purchased under a valid registered document. The agreement for sale was not marked as Exhibit and could not be read in evidence. The source of title has not been proved by the Respondent. The Respondent has deposed that the property purchased by him is situated adjacent to the burial ground. The burial ground is bearing CTS No.422 and the Respondent has admitted that neither in the civil suit nor in the agreement for sale, there is mention of CTS No.422. On the other hand, the Applicant's witness has specifically deposed that the Respondent has encroached upon Airport Premises and illegally constructed the shed. He has specifically deposed that the

Respondent is in unauthorised occupation of CTS No.145A. From the cross examination nothing has been demonstrated to shake the evidence of the Applicants as regards the unauthorised occupation by the Respondent of CTS No.145A.

52. As far as the ownership of CTS No.145A is concerned, the evidence on record more than conclusively establishes that the land in question satisfies the definition of "airport premises" as given under Section 28A(a) of the AAI Act. As regards the ownership of Applicants over the CTS No.145A, even during the submissions Mr. Damle, learned Senior Advocate for the Appellant has not disputed the ownership of Applicants and what was only disputed was the location of Respondent's structure, as according to them the same was standing on CTS No.422 and not the CTS No.145A.

53. Upon cumulative appreciation of oral and documentary evidence adduced by both the parties, in my view, it is proved that the structures are erected on CTS No.145A which constitutes airport premises and not on CTS No.422. In any event, by virtue of Deed of Exchange dated 14th October, 2016 even CTS No.422 is now owned by the Applicants.

54. Even the suit filed by the Respondent in this Court for challenging the notice dated 1st September 2003 does not contain any specific pleading that the structures were constructed on CTS No.422, in which the Applicants do not have any ownership rights. As discussed above, the tenor of entire suit was that the Respondents are not in unauthorised occupation of the said premises. Pertinently, the prayers in the said suit do not seek any declaration of title and only seek declaration of possession of the Respondent and of the notice dated 1st September 2003 as being illegal and void.

AS TO POINT NO 3:

55. Mr. Damle has assailed the judgment of Eviction Officer on the ground that there is no finding of the Eviction Officer on the issue of jurisdiction, which issue was required to be decided as directed by the Apex Court. In the written arguments filed by the Respondent before the Eviction officer, the argument on the issue of jurisdiction was broadly as under:

(a) Earlier proceedings were initiated under the Public Premises Act and the same jurisdiction cannot be exercised under Chapter V-A of the AAI Act.

(b) After implied closure of proceedings by the Estate Officer, no fresh proceedings could be initiated.

(c) The Eviction Officer has no jurisdiction when issue pertains to the identification of land.

(d) The subject premises is not airport premises as it was not taken on lease but given on lease to Applicant No 1.

56. Before this Court, only argument advanced by Mr. Damle on the issue of jurisdiction was that by reason of earlier proceedings initiated under the Public Premises Act and that the identity of land was under dispute, it could not be decided by the Eviction officer. As far as the earlier proceeding before the Estate Officer is concerned, in the year 2008, the proceedings were postponed *sine die.* In the application under the AAI Act, the Applicants had undertaken not to proceed with or pursue the proceedings before the Estate Officer. Mr. Damle has not been able to demonstrate any jurisdictional error in the Eviction officer adjudicating the proceedings under the AAI Act. Admittedly, the case of Applicants is that the premises are airport premises and after the introduction of Chapter V-A in AAI Act, the Eviction Officer would have jurisdiction to evict an unauthorised occupant of airport premises.

57. Coming to the second objection as regards the dispute of identity of land, in ***Ashoka Marketing Ltd v. Punjab National Bank [(1990) 4 SCC 406]***, the Apex Court in the context of provisions of Public Premises Act was considering the submission whether a lease has been determined or not involves complicated questions of law and the Estate Officer, who is not required to be an officer well versed in law, cannot be expected to decide such questions and, therefore, it must be held that the provisions of Public Premises Act have no application to a case where the person sought to be evicted had obtained possession of the premises as a lessee. Repelling the aforesaid contention, the Apex Court held that though it is true that there is no requirement in the Public Premises Act that the Estate Officer must be a person well versed in law, but, that, by itself, cannot be a ground for excluding from the ambit of the said Act, the premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Moreover, Section 9 of the Act confers a right of appeal against the order of the Estate Officer and the said appeal has to be heard either by 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 10 years' standing as the District Judge may designate in that behalf. The final order that is passed is by a judicial officer in the rank of a District Judge. The wide amplitude of powers vested in the Estate Officer by the Act is thus offset by a provision in the Act providing for judicial scrutiny of the order of Estate Officer.

58. The Eviction officer has vast powers under Chapter V-A of AAI Act and can adjudicate and decide the issue as to whether the subject premises is airport premises. The provisions of Section 28C of the AAI Act permit the Respondent to lead evidence to show cause against the proposed order of eviction which is required to be considered by the Eviction officer before ordering eviction. In event, the evidence produced by noticee establishes that the premises are not airport premises, the consequence would be the dismissal of eviction proceedings. Merely because the Eviction Officer is called upon to adjudicate the issue of nature of premises being airport premises in the context of identity of land would not take away the proceedings out of the domain of Eviction Officer. In the present case, the Respondent has not been able to establish that the premises are located on CTS No.422, which if established, would have disabled the Eviction Officer from exercising any power of eviction, has led the Eviction Officer to hold that no evidence has been led on lack of jurisdiction.

59. Perusal of the order of Eviction Officer would indicate that as regards the issue of jurisdiction, the Eviction Officer has held that the party which raises the issue of lack of jurisdiction has to prove the same by leading cogent evidence. The Eviction Officer has thereafter scrutinized the evidence on record and has held that the Respondent is in unauthorised occupation of the larger land which is a public property and that the Respondent is in unauthorised occupation of CTS No.145A. There is, thus, a finding on jurisdiction by the Eviction Officer as what confers jurisdiction on the Eviction Officer is the unauthorised occupation of any airport premises by a third party.

60. The Eviction Officer having held that the Respondent is in unauthorised occupation of the airport premises would thus have the jurisdiction to issue necessary orders under section 25F of the AAI Act. I therefore do not find any substance in the contention of Mr. Damle that Eviction Officer has not ruled on its jurisdiction. The fallacy of the said submission is that the source of Eviction Officer's jurisdiction has not been considered by Mr. Damle. The Eviction Officer derives the jurisdiction from "unauthorised occupation" of the airport premises and once the evidence on record establishes that the Respondent is in unauthorised occupation of airport premises, jurisdiction vests in the Eviction Officer. It is not necessary that there has to be a specific finding in so many words that the Eviction Officer has jurisdiction, and the same can be culled out from the findings of Eviction Officer in paragraph No. 23 of the impugned judgment.

61. The next objection raised by Mr. Damle, learned Senior Advocate for the Appellant is that facts of the present case raise conflicting questions of title which could not have been adjudicated by the Eviction Officer while exercising the powers under Chapter V-A of the AAI Act. It needs to be noted that Section 28H of the AAI Act empowers the Eviction Officer to exercise the same powers as vested in the Civil Court under the Code of Civil Procedure 1908 for the purpose of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any documents and any other matter which may be prescribed. The statement of objects and reasons for introduction of Chapter V-A in the AAI Act, as rightly pointed out by Mr. Nankani, was to obviate the menace of large scale encroachment and unlawful occupation of the airport premises and to decide the cases related thereto speedily. However, in the present case it is not even necessary to determine as to whether the Eviction Officer had the power to determine the questions of title, for the simple reason that there is no dispute as far as the title of Applicants to the airport premises is concerned.

62. In the civil suit filed in the Bombay High Court by the Respondent there is no declaration of title in respect of the land and the structures sought by the Respondent. All that the Respondent claims in the said suit is that he is in possession of the structures since 1991. The suit filed by the Respondent for the purpose of protecting possessory right cannot come in the way of the Eviction Officer in exercising the powers conferred under

Chapter V-A of the AAI Act. The order of the learned Single Judge of this Court dated 15th October 2003 passed in the civil suit filed by the Respondent also makes it more than evident that what was protected is the dispossession of Respondent without following any due process of law. The eviction proceedings were therefore rightly filed by the Applicants seeking eviction in accordance with the procedure prescribed under the AAI Act. I therefore do not find any substance in the contention raised by Mr. Damle, learned Senior Advocate appearing for the Appellant. The Eviction Officer has rightly appreciated the material on record and has come to correct findings based on the material on record that the Respondent is in unauthorised occupation of the CTS No.145A and that he has failed to prove his defence of the structures being situated on CTS No.422.

63. The decision in the case of ***Government of Andhra Pradesh*** (supra) relied upon by Mr. Damle was rendered in the context of issue as to the title to the subject plot therein which could not be decided in summary inquiry contemplated under Sections 6 and 7 of the Andhra Pradesh Land Encroachment Act, 1905. Apart from the fact that Sections 6 and 7 of the concerned Act therein is not *pari materia* with Section 28C and 28D of AAI Act, in the present case there is no dispute as to title. The facts of the said case are clearly distinguishable as in that case there was a bonafide dispute regarding the title of Government to the subject property.

64. The Eviction Officer has rightly appreciated the evidence on record to hold that the Respondent is an unauthorised occupant of airport premises.

There is no merit in the appeal and the same stands dismissed.

65. In view of the dismissal of appeal, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]

66. At this stage, request is made by Mr. Damle, learned Senior Advocate appearing for the Appellant for extension of interim relief which was operating in favour of the Appellant for a period of six weeks. The request is opposed by learned counsel appearing for the Respondents. As interim relief has been operating in favour of the Appellant, I am inclined to extend the same for a period of six weeks from today.

[Sharmila U. Deshmukh, J.]