
(2011) 08 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17165 of 2011

B.N. Manga Devi and Another

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 6, 7
Andhra Pradesh Survey and Boundaries Act, 1923 — Section 13, 14, 2(1), 2(2), 3(1)
Constitution of India, 1950 — Article 226

Citation : (2011) 6 ALT 34 : (2012) 1 CivCC 65

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : P. Roy Reddy, for the Appellant; G.P., for Revenue, for the Respondent

Judgement

Nooty Ramamohana Rao, J.—The two Petitioners in this writ petition mount a challenge to an order dated 07-06-2011 passed by the Tahasildar, Saidabad Mandal, Hyderabad District, in terms of Section 6 of the Andhra Pradesh Land Encroachment Act, 1905, (henceforth referred to as "the L.E.Act") for their eviction, from the land said to be belonging to the Government unauthorisedly occupied by them.

2. The case of the Petitioners is this; the 1st Petitioner purchased an extent of 108.69 square meters of land covered by premises No. 16-1-24/60/1, Saidabad Colony, Hyderabad, under a registered sale deed dated 29-07-1980 bearing document No. 775/81. The 2nd Petitioner purchased another extent of 309.35 square meters of land, which also forms part of the same premises, through another registered sale deed dated 29-07-1980, bearing document No. 8101/80. Both the Petitioners purchased the respective extents of land from Sri G. Balaiah, who, in turn, purchased the same from one Sri Lakshminarayan, under a registered sale deed dated 17-12-1977, bearing document No. 1449/80. The further case of the Petitioners is that the premises is covered by a residential structure assessed to municipal property tax and has been provided with

electricity, water and drainage connections. The land in question is situated in Revision Survey No. 32 and in Town Survey No. 5 of Saidabad Village, forming part of Hyderabad Municipal Corporation area. Therefore, the Petitioners claim lineage for their title to the sale deeds executed by Sri Lakshminarayan on 17-12-1977. The 3rd Respondent Tahasildar issued two separate notices to both the Petitioners on 28-04-2011 u/s 7 of the L.E. Act alleging that they were unauthorisedly in occupation of 180 square meters and 309 square meters of Government land. The Petitioners contested the veracity of the claim of the Tahasildar through their representations received by the Tahasildar on 06-06-2011. As is now noticed, on the very next day, the impugned order has been passed by the Tahasildar. When an attempt has been made by the Tahasildar to evict the Petitioners, they have earlier approached this Court and this Court has pointed out that even if the Petitioners were to be assumed to have encroached upon the Government land, without taking recourse to law, they cannot be evicted. Since, not much turns on the previous history of the litigation, I do not prefer to dwell upon such an issue in further detail.

3. It is now contended by Sri D.V. Seetharama Murthy, learned senior counsel appearing for the learned Counsel for the Petitioners that the Petitioners have been in occupation and enjoyment of the respective parcels of land in their own right, having purchased the same for valuable consideration. There is, therefore, an essential dispute with regard to the title of the property between the Petitioners on the one hand and the State on the other. Therefore, the summary proceedings initiated under the L.E. Act are ill suited for evicting the Petitioners. Where there is a genuine dispute between the State and a citizen with reference to the title of an immovable property, the normal recourse of securing a declaration from the competent civil court, ought to have been adopted by the 3rd Respondent Tahasildar, instead of falling back upon the summary eviction procedure under the L.E. Act. Further, even the procedure contemplated by the L.E. Act has not been faithfully followed by the Respondents and hence, the impugned order is liable to be declared as an illegal exercise.

4. Per contra, the learned Government Pleader for Revenue (Telangana Area) would submit that the land in question has been classified in the revenue records, namely, Pahani - Khasra Pahani from 1954-55 onwards as "Grave Yard". Further, the town survey was conducted between the years 1965-70 under the Andhra Pradesh Survey and Boundaries Act, 1923 and the findings of the survey have already been published in the Andhra Pradesh Gazette. As per the town survey land records, the land in Survey No. 32/2 of Saidabad Village is classified as "Sarkari" (Government Yard) in Column No. 10 and Column No. 20, it is noted as "G-Grave Yard". The land in the Revision Survey No. 32/2 of Saidabad Village now corresponds to Town Survey No. 5, Block-D, Ward-171, Saidabad Colony, Hyderabad City. It was also contended that even as per the Classer Register for Saidabad Village prepared for the year 1347 Falsi, which corresponds to 1938 A.D., land in Survey No. 32/2 of Saidabad Village is recorded as "Sarkari Kabharstan" (Grave Yard). It is, therefore, contended that the Petitioners have

encroached upon the Government land and they have removed all the traces of a graveyard with a view to put the land to private use of theirs. The learned Government Pleader would further contend that the Petitioners have failed to prove their title to the land in question in the face of the revenue record maintained for Saidabad Village and also in view of the findings of the town survey, result of which has been gazetted and which findings have not been challenged within the three year period of their publication, as is required by Section 14 of the Andhra Pradesh Survey and Boundaries Act, 1923. The Petitioners having been provided a fair and reasonable opportunity by the Tahasildar, the Competent Authority, No. exception can be taken to the order of eviction passed against them.

5. The important question, which engages the attention of this Court, is whether the entries in the Town Survey Land Record (TSLR) would confer a conclusive title or not.

6. The answer to this question is readily available in the judgment rendered by Justice B. Sudershan Reddy, as the learned Judge then was, in Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District and another, in the following manner:

13. However, the Mandal Revenue Officer in his counter-affidavit submits that TS No. 4/2, Block "B", Ward No. 66 of Bakaram Village admeasuring an extent of Ac.4.30 guntas equivalent to 19,214 square meters "is a gap area and it was not covered by survey at the time of initial survey." The petition schedule land is a gap area between Bakaram and Gagan Mahal villages. According to the Mandal Revenue Officer, initial survey in Bakaram village was conducted during1355-Fasli (1945 AD) and Gagan Mahal village was surveyed during1357-Fasli (1947 AD). On verification of these village maps, it is found that certain area is located between these two villages and remained unsurveyed and not accounted for in both the villages. Thereafter, a general survey was conducted in twin cities of Hyderabad and Secunderabad under the provisions of A.P. Survey and Boundaries Act, 1923 (for short "the Survey 1 Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District and another, A notification u/s 6(1) of the Survey Act was issued inviting all the persons to participate in the enquiry for determining the boundaries. The petition schedule lands was surveyed as TS No. 4/2, Block "B", Ward No. 66 of Bakaram village and is recorded as Government land in Column No. 20 of the Town Survey Land Record (TSLR).

14. It is submitted that after completing the survey, a notification was published u/s 13 of the Survey Act in District Gazette No. 43, dated 17-7-1976. No. objections were received. Accordingly, the entries recorded in Town Survey have become final and remained without any modification whatsoever.

16. In nutshell, it is the case of the Respondent District Collector that in TSLR the land in question is recorded as a Government land. The ownership of the Petitioner company is sought to be denied on the basis of simple entry alleged to

have been made in TSLR.

19. ...Sri N. Subba Reddy contends that the entries made in the TSLR have No. bearing on the question of title. The survey made under the provisions of the Survey Act was never intended to determine the right, title and interest of any person in any of the lands in twin cities of Hyderabad and Secunderabad. The survey was conducted for the purpose of fixing the boundaries of the land. The entries, if any, made in the TSLR itself would not be enough to deny the title of the owners.

20. ...Disputing the title for the sake of raising a dispute would not be enough to conclude that there is a dispute with regard to the title as such. As against the preponderance of evidence and material available on record, a mere entry in the TSLR cannot alter the right, title and interest of the Petitioner company in the land in question.

21. A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. There is No. provision under the Act intending to make any detail enquiries with regard to the right, title and interest of the persons in the lands. It is neither the object nor the scheme of the said Act. There is No. presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land Act, 1971. It is not a record of right. There is No. such provision in the Andhra Pradesh Survey and Boundaries Act, 1923.

22. The Privy Council in *Nirman Singh Lal Rudra Partab*, AIR 1926 PC 100, observed:

It is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind, as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

23. The question as to the nature and scope of entries in TSLR had fallen for consideration in W.A. Nos. 115 and 160 of 2000 before a Division Bench of this Court. The Division Bench observed that "the entries in TSLR are No. doubt relevant. But they are not conclusive. It is common knowledge that there may be many instances where the owners of land in urban areas will not be in a position to correlate the house numbers or ward numbers to the survey numbers or the entries may not be upto date and that may introduce some practical difficulties in obtaining TSLR extracts.... The TSLR cannot be regarded as a sole guiding factor."

24. Whether the Municipal Corporation is entitled to reject the application for grant of building permission solely on the ground of an adverse entry made in the TSLR? Justice P. Venkatrama Reddi, (as his Lordship then was) speaking for the Division Bench while adverting to the very question in WA Nos. 115 and 160 of 2000 observed:

The controversy does not rest there. Assuming that the TSLR extract is not available in respect of a particular property or TSLR entries do not go to substantiate the writ Petitioners' case, the question then is whether the building permission should be refused automatically. The answer in our view should be in the negative. We have to read the bye-laws in harmony with the relevant section viz., Section 429. What is stressed by Section 429(aa) is the document proving title to the property. TSLR may be one such document. There are also other documents which are mentioned in the bye-law No. 4(2)(v). The insistence on the production of these documents is only to facilitate the competent authority to satisfy itself that the application has prima facie title and legal authority to erect or re-erect the building. There can be no hard and fast rule as to how to establish the title or lawful authority of the applicant and the basis on which the prima facie satisfaction should be reached by the competent authority. Entries in TSLR are no doubt relevant. But they are not conclusive. It is common knowledge that there may be many instances where the owners of land in urban areas will not be in a position to correlate the house numbers or ward numbers to the survey numbers or the entries may not be upto date and that may introduce some practical difficulties in obtaining TSLR extracts. Therefore, the mere non-production of TSLR extract, if a valid reason could be given for such non-production, does not clinch the issue. The TSLR cannot be regarded as a sole guiding factor to the competent authority while dealing with the building applications. TSLR entries have to be considered in conjunction with other documents which the applicants would like to place reliance upon. The stand taken by the Municipal Corporation that the proof of ownership/possession in the form of TSLR is an essential pre-requisite cannot be upheld though as we have already observed, such document is a relevant piece of evidence. It will have to be considered in combination with other documents which will have bearing on the title and possession of the applicant for building permission. At best, it can be said that insistence on the extracts from TSLR register may be a rule of prudence. But, it cannot be a rule of rigid and mechanical application.

26. It is thus clear that an entry in TSLR itself cannot be the conclusive proof of title or lack of it, and the decision either to grant or refuse permission cannot be taken solely on the basis of an entry made in the TSLR. It may be one of the factors that may have to be taken into consideration along with the other material available on record. An entry made in TSLR per se could not create any doubt or cloud on the right, title and interest of a person in respect of any land.

7. Now, it is put beyond any pale of doubt by this Court that entries contained in Town Survey Land Record cannot be the fountainhead for doubting the right, title

and interest of any person in respect of any land. In spite of this clear pronouncement, I am not surprised in the least that the State Government, in its Revenue Establishment, is still raising the very same contentions, based upon the entries in the Town Survey Land Record, which did not find favour with this Court.

8. As to the procedure that has got to be followed u/s 7 of the L.E. Act, the learned senior counsel appearing for the Petitioners has rightly placed reliance upon the judgment of this Court rendered in Ravipudi Abbayya Vs. State of Andhra Pradesh and Others, wherein it was held as under:

18....

Section 6(1) of the Act declares the Liability of a person unauthorizedly occupying Government land to summary eviction and Section 6(2) of the Act prescribes the procedure to be followed in evicting the person in unauthorized occupation. Section 7 provides for giving prior notice to the person in occupation before taking action u/s 6, which is as follows:

7. Before taking proceedings u/s 5 or Section 6 the Collector (or Tahsildar, or Deputy Tahsildar, as the case may be) shall cause to be served on the person reputed to be in unauthorized occupation of land (being the property of Government) a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against u/s 5 or Section 6.

Such notice shall be served in the manner prescribed in Section 25 of the Madras Revenue Recovery Act, 1864, or in such other manner as the (State Government) by rules or orders u/s 8 may direct.

It may be seen from the above provisions that the Government could take one or more of the three steps provided for in the above sections: (1) levy of assessment u/s 3; (2) imposition of penal assessment u/s 5; and (3) eviction u/s 6(2). As has already been pointed out there is No. proof in this 2 Ravipudi Abbayya Vs. State of Andhra Pradesh and Others, case that either assessment u/s 3 has been recovered from or that any penal assessment has at any time been levied on the Plaintiff. I have therefore to consider whether any action by the Government against the Plaintiff has been taken u/s 6 of the Act.

It is clear from the reading of Sections 6 and 7 that the following conditions and steps of procedure have to be fulfilled and followed before a person could be legally evicted from the occupation of Government land. First the land must be shown to be Government property in which Government have a subsisting right on the date of the proposed eviction: (2) a notice should issue u/s 7 and should be served on the person concerned to show cause before a date to be fixed why he should not be proceeded against u/s 6 of the Act, and (3) on service of such notice and if sufficient cause is not shown serving a notice requiring him within such time as the Collector may deem reasonable to vacate the land and (4) if

such notice is not obeyed directing removal of the person from the land and (5) if such person in occupation resists or obstructs, a summary enquiry by the Collector shall be held and only after the Collector is satisfied that the resistance or obstruction is without any just cause, he could issue a warrant for his arrest and on his appearance commit him to close custody.

19. In this case the learned Counsel for the Appellant contends that none of the steps laid down by the Act have been taken in this case excepting service of notices periodically u/s 7 of the Act, and that such service is ineffective and does not give rise to a cause of action. (vide Secretary of State for India in Council v. Illikal Assan, ILR 39 Mad 727: (AIR 1917 Mad 480 (FB)). It is pointed out that any act or attempt at summary eviction without following the procedure is totally illegal and cannot be recognized as valid and that in this case according to the evidence of D.W. 7 the so-called delivery of possession on 4-3-1951 has No. legal effect whatsoever in view of the fact that the procedure under the Act had not been followed at all and that this so-called delivery of possession was in derogation of the stay order issued by the Collector of the District evening February, 1951 ordering stay of further proceedings and of delivery of possession, this order having been in force at least till 14-3-1951.

20. I am fully in agreement with the conclusions reached by the learned District Munsif which, in my opinion, are fully justified on the material placed on record in this case, that the so-called delivery of possession to the Village Munsif by the Deputy Tahsildar is both illegal and ineffective and cannot be given any recognition whatsoever and that the same cannot be regarded as eviction within the meaning of the Madras Land Encroachment Act. Even assuming that the so-called delivery said to have been effected by D.W.7 is true, it cannot, in my opinion, affect the Plaintiff's right to remain in possession of the suit properties,....

8. This legal principle has also been breached in the instant case.

9. Now, turning our attention to the principal question agitated by the Petitioners that the summary procedure is absolutely ill suited in a case of this nature, it is appropriate to notice that the Petitioners have set up their right, title and interest to the land through sale deeds executed in their favour by their predecessor-in-interest in 1980, who in turn, acquired the property by way of a registered sale deed executed in December 1977. They also asserted that they are in possession of this land for nearly 30 years. Therefore, the Petitioners herein could establish their right, title and interest in the land in question for sufficiently long period. They have genuinely disputed the title of the State with regard to the land in question and in somewhat similar circumstances in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, the Supreme Court has pointed out that where there is a bona fide dispute of title between the Government and the occupant of the land, the same must be adjudicated upon by the ordinary Courts of law and the summary procedure is ill-suited in such circumstances, in the following words:

5. On March 19, 1974, the Respondents filed writ petitions in the High Court of Andhra Pradesh challenging the order by which they were evicted from the plots summarily under the 3 Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, provisions of the Act of 1905. the learned Single Judge dismissed those writ petitions observing:

The question whether the lands with which we are concerned in the writ petition were acquired by the Government or not and the question whether the Government had transferred its title to the University or not are questions which cannot properly be decided by me in an application under Article 226 of the Constitution. The appropriate remedy of the Petitioners is to file a suit to establish their title. The learned Judge held that:

Though the title of the Government is not admitted by the alleged encroacher, there is a finding by the Civil Court that there was encroachment by the alleged encroacher. That is sufficient to entitle the Government to initiate action under the provisions of the Land Encroachment Act.

6. Three appeals were preferred to the Division Bench against the judgment of the learned Single Judge, two of them being by the Petitioners in one writ petition and the third by the Petitioner in the other writ petition. The Division Bench, while setting aside the judgment of the learned Single Judge, held:

The question whether the lands belong to Osmania University or not will have to be decided as and when the Government comes forward with a suit for the purpose. Even if we assume for the purpose of our judgment, as we are not pronouncing any conclusion as to whether the land vested in the Government or University, that the Government is the owner, the dispute going back from 1942 cannot be dealt with in summary proceedings u/s 7 of the Land Encroachment Act.

The summary remedy provided by Section 7, according to the Division Bench, cannot be resorted to "unless there is an attempted encroachment or encroachment of a very recent origin" and further, that it cannot be availed of in cases where complicated questions of title arise for decision.

7. We are in respectful agreement with the view taken by the Division Bench, subject however to the observations made herein below. The Andhra Pradesh Land Encroachment Act, 1905, was passed in order "to provide measures for checking unauthorized occupation of lands which are the property of Government". The Preamble to the Act says that it had been the practice to check unauthorized occupation of lands which are the property of the Government "by the imposition of penal or prohibitory assessment or charge" and since doubts had arisen whether such practice was authorized by law, it had become necessary to make statutory provisions for checking unauthorized occupations. Section 2(1) of the Act provides that all public roads, streets, lanes, paths, bridges, etc. shall be deemed to be the property belonging to Government, unless it falls under Clauses (a) to (e) of that section. Section 2(2)

provides that all public roads and streets vested in any public authority shall be deemed to be the property of the Government. By Section 3(1), any person who is in unauthorized occupation of any land which is the property of Government, is liable to pay assessment as provided in Clauses (i) and (ii) of that section. Section 5 provides that any person liable to pay assessment u/s 3 shall also be liable, at the discretion of the Collector, to pay an additional sum by way of penalty. Sections 6(1) and 7, which are relevant for our purpose, read thus:

6. (1) Any person unauthorizedly occupying any land for which he is liable to pay assessment u/s 3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct.

7. Before taking proceedings u/s 5 or Section 6 the Collector or Tahsildar, or Deputy Tahsildar, as the case may be shall cause to be served on the person reputed to be in unauthorized occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against u/s 5 or Section 6.

8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to property described in Sub-sections (1) and (2) of Section 2, there can be No. doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. a person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorized occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorized occupation of a land "for which he is liable to pay assessment u/s 3". Section 3, in turn, refers to unauthorized occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In

the instant case, there is unquestionably a genuine dispute between the State Government and the Respondents as to whether the three plots of land were the subject matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of Limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than 12 years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The Respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. The procedure is, therefore, not the due process of law for evicting the Respondents.

9. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned Single Judge himself in another case which is reported in *Meharunnisa Begum v. State of A.P.* (1970) 1 ALT 88, which was affirmed by a Division Bench. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

10. ...May be, that the Government may succeed in establishing its title to the property but, until that is done, the Respondents cannot be evicted summarily.

(Emphasis is mine)

10. It will also be appropriate to notice that a somewhat similar question has also engaged the attention of the Supreme Court in *State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others*, and it has been held as follows:

2. u/s 91 of the Act a person in occupation of Government land without lawful authority is to be regarded as a trespasser and he can be summarily evicted

from such land by the Tahsildar after serving on such person a notice requiring him to show cause why he should not be so evicted therefrom.

3. State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others, In the instant case, Section 91 of the Act has been invoked on the basis that the land is recorded as "Sawai Chak" in the revenue records for the year Samvat 2015 (1958 AD) and that in the Parcha Khatani dated 9-2-1953 that was given to Praduman Ojha, the husband of Respondent 1, there is No. mention of this land.

4. Respondent 1 has claimed her title over the land in dispute on the basis of patta executed by the Government of the former State of Jaipur on 10-10-1909 in respect of 70 bighas of land, including the land in dispute, whereby a lease for a period up to Samvat 1994 (1937-38 AD) was granted to her husband, Praduman Ojha. The case of Respondent 1 is that before the expiry of the period of the lease under the said patta the Government of the former State of Jaipur issued Tenancy Rules for Chakbandi Villages on 23-12-1931 which were brought into force with effect from 1-9-1931 and that under Rule 2 of the said rules a right was conferred on every tenant to occupy his holding for his lifetime and in view of Rule 4, on the death of a tenant, his heir was entitled to retain possession of the holding for a period of five years from the first day of September next following the date of the tenant's death, on payment of the rent payable by the deceased tenant and on the expiry of four out of the five years mentioned above, the Tahsildar was required to report for the order of the Nazim whether in his opinion the heir should or should not be permitted to retain the holding for his life. The case of Respondent 1 is further that by virtue of the said rules her husband, Praduman Ojha, was entitled to continue as a tenant during his lifetime and within his lifetime the Government of the former State of Jaipur issued a notification dated 17-9-1945 whereby all the tenants who had completed 12 years of possession in Samvat 2000(1943 AD) were deemed to be tenants of old standing and were not liable to ejectment....

6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorized occupation of Government land. The said provision cannot be invoked in a case where the person in occupation raises bona fide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, has laid down that the summary remedy for eviction provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorized occupation of any land which is the property of the Government and if the person in occupation has a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons, it can be said that summary remedy available u/s 91 of the Act is not the legal process which is suited for

adjudication of complicated questions of title where the person sought to be evicted as an unauthorized occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law.

7. In the present case, Respondent 1 has put forward a bona fide claim about her right to remain in occupation over the land. The said claim raises questions involving applicability and interpretation of various laws and documents as well as investigation into disputed questions of fact involving recording of evidence. These matters could not be satisfactorily adjudicated in summary proceedings u/s 91 of the Act and can be more properly considered in regular proceedings in the appropriate forum.

8. In view of the fact that these proceedings have been pending for the past 25 years, we were not disinclined to consider the claim of Respondent 1 that she is entitled to remain in occupation of the land. But we find that many of the questions that arise for such determination require an investigation into facts and in the absence of the factual foundation we are not in a position to deal with the same and record our findings. We, therefore, refrain from expressing our views on the said questions.

9. In the circumstances, it is held that proceedings u/s 91 of the Act could not be validly initiated against Respondent 1 and as a result the orders that have been passed in these proceedings by the Tahsildar, the Collector, the Revenue Appellate Authority and the Board of Revenue are set aside. The impugned judgment of the High Court, insofar as it quashes the order of the Board of Revenue dated 18-6-1973 is maintained but the further direction confirming the order of the Revenue Appellate Authority dated 1-1-1971 is set aside. The findings and observations of the High Court in the impugned judgment on the matters in controversy between the parties are also set aside. It will be open to the Appellant to pursue the appropriate remedy available in law before the competent forum for establishing its rights over the land in question.

(Emphasis is generated now)

11. The principles to be adopted even with regard to eviction of a person, who unauthorisedly occupied land, has fallen for consideration before the Supreme Court in RAME

Gowda (D) by LRs v. M. Varadappa Naidu (D) by LRs and Anr. AIR 2004 SC 4609. It was held therefore as follows: 5. Salmond states in Jurisprudence (Twelfth Edition), "few relationships are as vital to man as that of possession, and we may expect any system of law, however primitive, to provide rules for its protection....Law must provide for the safeguarding of possession. Human nature being what it is, men are tempted to prefer their own selfish and immediate interests to the wide and long-term interests of society in general. But since an attack on a man's possession is an attack on something which may be essential to him, it becomes almost tantamount to an assault on the man himself, and the

possessor may well be stirred to defend himself with force. The result is violence, chaos and disorder.

In English Law possession is a good title of right against anyone who cannot show a better. A wrongful possession has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simple on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law.

Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary, in the modern and medieval civil law the distinction is expressed by the contrasted terms *petitorium* (a proprietary suit) and *possessorium* (a possessory suit).

6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In *Midnapur Zamindary Company Ltd. v. Kumar Naresh Narayan Roy and Ors.* AIR 1924 PC 144, Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

7. The thought has prevailed incessantly till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya Vs. Anil Panjwani*, In between, to quote a few out of several, in *Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others*, , this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was No. rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The Court quoted with approval the law as stated by a Full Bench of Allahabad High Court in *Yar Muhammad and Another Vs. Lakshmi Das and Others*, , "Law respects possession even if there is No. title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No. person can be allowed to become a Judge in his own cause....

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner.

The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram and Others Vs. Delhi Administration*, *Puran Singh and Others Vs. The State of Punjab*, and *Ram Rattan and Others Vs. State of Uttar Pradesh*. The authorities need not be multiplied. In *Munshi Ram and Ors.*'s case (supra), it was held that No. one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the right owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.*'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt and concealment by the trespasser. The phrase settled possession does not carry any special charm of magic in it, nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as a agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession":

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period.

(ii) That the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case.

(iii) The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) That one of the usual tests to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has No. right to destroy the crop grown by the trespasser and take forcible possession.

(Emphasis is brought out)

12. In view of the well settled principles of law on the subject, all I need to do, is to leave it to the State to initiate appropriate legal proceedings for having its title declared and possession restored and until that is done, the Petitioners cannot be evicted from the lands in question pursuant to the summary procedure followed under the L.E. Act. Even if the 3rd Respondent Tahasildar has recorded to have taken possession of the land, the same shall be treated as ineffective and hence, possession has to be restored to the Petitioners.

13. With this, the writ petition stands disposed of. No. costs.