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**(2011) 03 AP CK 0047**

**In the Andhra Pradesh High Court**

**Case No : Writ Appeal No. 900 of 2010**

Defence Estates Officer

APPELLANT

Vs

N. Rani Bai and Another and The Joint Collector and Another

RESPONDENT

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**Date of Decision : 11-03-2011**

**Acts Referred:**

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 1(3), 24, 4, 4(1), 5

**Citation : (2011) 8 RCR(Civil) 1752**

**Hon'ble Judges : V. Suri Appa Rao, J;B. Prakash Rao, J**

**Bench : Division Bench**

**Advocate : Ponnamm Ashok Goud, Assistant Solicitor General, for the Appellant; B. Adinarayana Rao, for Respondents 3 and 4 and Government Pleader for Revenue, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

V. Suri Appa Rao, J.—This writ appeal is filed under Clause 15 of the Letters Patent against the order dated 30-4-2009 passed by the learned single Judge in W.P. No. 6522 of 2008, whereby the learned single Judge set aside the impugned order dated 06-02-2007 in Case No. F1/7/2005 passed by the Joint Collector, Ranga Reddy district i.e., the 2nd Respondent and remanded the matter to the 2nd Respondent with certain directions.

2. Brief facts leading to this writ appeal are as follows:

One Narsinga Rao was the inamdar of Ac.50-00 of land in old Survey No. 279 of Alwal village, Malkajgiri Mandal, Ranga Reddy district. Late Namasivayam, father of the Petitioners, was the permanent tenant in respect of the lands of an extent of Ac.49-39 gts., pursuant to a perpetual lease granted in his favour on 27th Dai 1320 Fasli (corresponding year 1910) by late Narsinga Rao, inamdar. The Petitioners' father Namasivayam died in the year 1938. After his death, Smt. Kannamma, wife of Namasivayam, was in possession and enjoyment of the land. In the survey conducted in the year 1944, the land in Survey No. 279 was

divided into 6 Survey Nos. , viz., Survey Nos. 349, 350, 351 and 352 aggregating Ac.13-19 gts., in Survey Nos. 602 and 603 aggregating an extent of Ac.36-20 gts. After the abolition of the imams and conferment of occupancy rights in favour of the tenants, Smt. Kannamma, wife of late Namasivayam, who was in possession of the land, submitted an application for grant of occupancy of lands under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (hereinafter referred to as "the Act"). Similarly, Smt. Radhamma, wife of the Inamdar late Narsinga Rao, submitted an application in respect of the lands in Survey Nos. 602 and 603. The 1st Respondent-The Defence Estate Officer, A.P. Circle, Secunderabad hired an extent of Ac.32-55 gts., of land in Survey Nos. 602 and 603 with effect from 25-02-1963 for military purposes. The rest of the land in Survey Nos. 602 and 603 and other Survey numbers was in possession of Smt. Kannamma, mother of the Petitioners. The 3rd Respondent-The Revenue Divisional Officer, Chevella Division, Attapur, Rajendranagar Mandal, Ranga Reddy district rejected the claim of Smt. Kannamma, mother of the Petitioners, in his proceedings dated 30-11-1977 in File No. 1147/75 and granted occupancy rights in respect of Survey Nos. 602 and 603 in favour of Smt. Radhamma, wife of the Inamdar late Narsinga Rao. Aggrieved by the said orders, Smt. Kannamma, mother of the Petitioners, filed an appeal before the 2nd Respondent. The same was remanded to the 3rd Respondent. During the remand proceedings, the 1st Respondent also claimed the said land on the ground that the land is under their occupation. After enquiry, the 3rd Respondent passed an order dated 18-02-1980 in File No. A1/2720/79 rejecting the claim of the 1st Respondent in respect of the land in Survey Nos. 602 and 603. The 3rd Respondent rejected the claim of Smt. Kannamma, mother of the Petitioners, also and accepted the claim of Smt. Radhamma, wife of the Inamdar. Against the said order, Smt. Kannamma, mother of the Petitioners, filed an appeal before the 2nd Respondent who passed an order dated 13-10-1981 in favour of Smt. Kannamma for the entire extent of land and directed issuance of occupancy rights in respect of Survey Nos. 602 and 603. The 1st Respondent did not prefer any appeal against the orders of the 3rd Respondent. But, the orders passed by the 2nd Respondent were questioned in W.P. Nos. 8923 and 8870 of 1981 before this Court and by order dated 25-4-1982 this Court set aside the order passed by the 2nd Respondent and remanded the matter to him for consideration on the specific questions framed. Pursuant to the said order, the 2nd Respondent again passed an order dated 20-01-1987 rejecting the claim of Smt. Kannamma and accepting the claim of Smt. Radhamma, wife of the Inamdar, against which Smt. Kannamma filed W.P. No. 5094 of 1987 before this Court. By judgment dated 17-4-1990 the learned single Judge set aside the order passed by the 2nd Respondent and again remanded the matter to the 2nd Respondent for passing appropriate orders. Meanwhile, Smt. Kannamma, mother of the Petitioners, died on 03-10-1980. The legal heirs of Smt. Radhamma also filed W.A. No. 659 of 1990 aggrieved by the orders passed by the learned single Judge and a Division Bench of this Court by judgment dated 08-10-1993, confirmed the orders of the learned single Judge and directed the 2nd Respondent to pass orders strictly in

accordance with the findings given in the writ petition. An S.L.P., filed against the said judgment was also dismissed. Pursuant to the same, the 2nd Respondent again passed orders on 25-4-1994 upholding the claim of the Petitioners and rejecting the claim of the Inamdar. The Inamdar again filed W.P. No. 13412 of 1994 before this Court and a learned single Judge of this Court by judgment dated 27-01-1999 dismissed the writ petition confirming the orders passed by the 2nd Respondent. Against the said judgment, the legal representatives of the Inamdars filed W.A. No. 474 of 1999. During the pendency of the writ appeal, the Petitioners and the legal representatives of the Inamdars have compromised the matter, whereunder the Inamdars were given Ac.12-00 of land in Survey Nos. 602 and 603 and the Petitioners were given the balance extent of Ac.24-20 gts., in Survey Nos. 602 and 603. A Division Bench of this Court recorded the compromise on 20-4-1999. Pursuant to the said compromise, the 3rd Respondent herein passed occupancy rights in favour of the Petitioners in respect of Ac.24-20 gts., and Ac.12-00 in favour of the legal representatives of the Inamdars by proceedings dated 15-7-1999 in File No. 1/1299/99. While so, on 25-11-2002 the 2nd Respondent issued a Notice calling upon the Petitioners to appear before him in an appeal purportedly filed by the 1st Respondent against the orders passed by the 3rd Respondent granting Occupancy Rights Certificates on 15-7-1999, wherein the 2nd Respondent claimed an extent of Ac.3-94 gts., forming part of Survey Nos. 602 and 603 classified as defence land and as such grant of Occupancy Rights Certificate is illegal and sought for setting aside the orders passed by the 3rd Respondent by addressing a letter dated 13-6-2002. The said letter was treated as an appeal and notices were issued to the Petitioners, for which the Petitioners filed counter stating that the appeal is barred by time and claim of the 3rd Respondent was rejected way back in the year 1980 and the said rejection became final and the matter was being agitated only between the Petitioners and the legal representatives of the Inamdars. But, without considering all these aspects, by a cryptic order dated 15-11-2003 the 2nd Respondent set aside the orders on the sole ground that the 1st Respondent herein is not a party to the proceedings before this Court and as such the matter was remanded to the 3rd Respondent for inquiry. The 3rd Respondent passed an order in favour of the Petitioners on 09-12-2004 and confirmed the order dated 15-7-1999. Against the said order, the 1st Respondent filed an appeal before the 2nd Respondent. But, the 2nd Respondent without having regard to the judgment passed in W.P. No. 13412 of 1994 passed an order dated 06-02-2007 accepting the claim of the 1st Respondent. Aggrieved by the said order, the Petitioners filed this writ petition.

3. The 1st Respondent-Defence Estate Officer filed a counter in the writ petition stating that Namasivayam, father of the Petitioners, was not the permanent tenant in respect of the land in Survey No. 279 admeasuring Ac.49-39 gts., in Alwal village.

The said Namasivayam has no authority to claim for Occupancy Rights Certificate in old Survey No. 279. But, as per the enclosed Plan with the Tahsildar,

Hyderabad West letter dated 23-3-1963, except the land measuring Ac.6-07 gts., in Survey No. 349 (Ac.4-27 gts., and 313 (Ac.1-16 gts., the remaining land admeasuring Ac.37-12 gts., in Survey Nos. 602 and 603 belongs to the Government of India, Ministry of Defence and the Petitioners are nothing to do with the land in Survey Nos. 602 and 603 of Alwal village. The Government of Andhra Pradesh without giving proper notice to the 1st Respondent, entered the name of third parties as Khatadars in Survey Nos. 602 and 603 though the name of the Government has not been removed from the owner's column. Subsequently, the Petitioners have made one more change i.e., the Government land has been replaced as inam land and Khatadar replaced as Inamdar. Admittedly, the Military authorities had taken possession of the land in Survey Nos. 602 and 603 obviously for non-agricultural purposes long back and they were in occupation of the land. Hence, the question of issuance of Certificate of Occupancy Rights for the area covered by Survey Nos. 602 and 603 does not arise. Therefore, it is for the Military to prefer their claim under the provisions of the Act. But, the Revenue Divisional Officer, Chevella rejected the claim of the Respondent by order dated 18-02-1980 stating that the Military being the Government Department cannot claim Occupancy Rights Certificate. If it so, neither the Petitioners nor the Respondents herein are eligible for Occupancy Rights Certificate.

The competent authority had done a mistake by including the Government lands which were not categorized as inam lands and which belongs to the Government of India, Ministry of Defence. The land belongs to the Government of India, Ministry of Defence was changed into different colours without the consent of the Government of India, Ministry of Defence and many individuals and Smt. Radhamma played a vital role to categorize the defence land as inam land step by step. The 1st Respondent was made to hire the land measuring 32-55 acres in Survey Nos. 602 and 603 from Smt. Bongu Radhamma from 1963 and not from the Petitioners because the Revenue records in respect of the land in question were amended illegally by the Revenue authorities as inam land in place of sarkari and Smt. Radhamma was made an Inamdar without informing the Respondents. The remaining land admeasuring 3.95 acres in Survey Nos. 602 and 603, wherein the existing construction is allowed, belongs to the Government of India, Ministry of Defence. As per the Supplementary Sethwar, the actual landlord for the entire land is the Government of India, Ministry of Defence. Without adding it as a party the legal heirs of Namasivayam and Narsinga Rao obtained orders from the Revenue authorities. The order for issuance of Occupancy Rights Certificate was passed in the year 1977 without hearing the Respondents herein, who were in possession of the land from 1963 onwards.

As per the corrected record and Supplementary Sethwar Smt. Radhamma is a Khatadar and the Petitioners' names had not at all been mentioned in the Supplementary Sethwar in respect of the land in Survey Nos. 602 and 603. It is further contended that admittedly the Military authorities had already taken

possession of the land in Survey Nos. 602 and 603 long back and they were in occupation of the land. It is also contended that the Petitioners are not all cultivating the land personally. Therefore, Occupancy Rights Certificate cannot be issued to any other individual in respect of the land in Survey Nos. 602 and 603 of Alwal village, which is under the occupation and possession of the Government of India, Ministry of Defence. The 1st Respondent further contended that Smt. Radhamma, wife of the so-called Inamdar Narsinga Rao, herself claimed for the Occupancy Rights Certificate in respect of the entire land of Ac.36-20 gts., in Survey Nos. 602 and 603 of Alwal village.

Therefore, the question of perpetual lease granted to the Petitioners' father Namasivayam in the year 1910 does not arise. Therefore, any compromise made between the legal heirs of Narsinga Rao and Namasivayam and any order based on such compromise is not at all binding on the Respondent. Therefore, the order of to the 2nd Respondent in remanding the matter for enquiry is absolutely correct and the writ petition is liable to be dismissed.

4. The Respondents 2 and 3-Joint Collector, Ranga Reddy district and the Revenue Divisional Officer, Chevella did not choose to file any counter.

5. After hearing both the learned Counsel, the learned single Judge by order dated 30-4-2009 has passed the following order:

Hence, the writ petition is allowed, and the impugned order is set aside. The matter is remanded to the 2nd Respondent, directing that, he shall confine his consideration to the effect of inclusion of 3.95 acres of land in Sy. Nos. 602 and 603 of Alwal Village in the GLR and the consequences, if any, thereof on the ORC issued to the Petitioners. He shall take into account the various grounds, that may be urged by the Petitioners, on the one hand, and the 1st Respondent, on the other hand, and shall not at all deal with the balance of 20.55 acres of land, in any manner.

6. Aggrieved by the above order passed by the learned single Judge, the Defence Estate Officer, Government of India, A.P. Circle, Secunderabad filed this writ appeal.

7. Sri Ponnam Ashok Goud, learned Assistant Solicitor General, appearing for the Appellant submitted that the compromise deed entered into by the Respondents in W.A. No. 474 of 1999 dated 20-4-1999 is binding on the Appellant as the Appellant is not a party to the writ appeal. As on the date of vesting i.e., from 01-11-1973 the Defence authorities have been in possession and enjoyment of the land. In fact, the land in dispute belongs to the Cantonment, Ministry of Defence erected buildings.

The Respondents 1 and 2 are not entitled to be registered as occupants u/s 4 of the Act. It is further submitted that Namasivayam, the alleged tenant and father of the Respondents 1 and 2 was not in occupation by doing personal cultivation on the date of vesting of the lands in the Government i.e., on 01-11-1973.

Therefore, the above order passed by the learned single Judge is contrary to law and facts, and is liable to be set aside.

8. Sri B. Adinarayana Rao, learned Counsel for the Respondents 1 and 2, argued that the Appellant is claiming 3.95 acres of land only in Survey Nos. 602 and 603 while admitting the execution of lease deed in favour of Smt. Radhamma for the land admeasuring 32.55 acres in Survey Nos. 602 and 603. Therefore, the learned single Judge rightly passed the impugned order and there are no grounds to interfere with the said order.

9. The Respondents 1 and 2 Petitioners in the writ petition contended that an extent of 32.55 acres of land in Survey Nos. 602 and 603 was hired by the 1st Respondent i.e., the Defence Estate Officer, rest of the land in both the Survey numbers and other Survey numbers was in possession of their mother Kannamma. As seen from the averments of the writ petition, the first round of litigation regarding the granting of Occupancy Rights Certificate in respect of Survey Nos. 602 and 603 was started in the year 1975. When the 3rd Respondent granted occupancy rights in favour of Smt. Radhamma, wife of late Narsinga Rao, who is said to have been the Inamdar of the entire extent of land in Survey No. 279 of Alwal village. Thereafter, the purchasers from late Kannamma and Smt. Radhama came on record and several proceedings have been conducted in the Revenue records as well as in the High Court.

An SLP was also filed before the Hon"ble Supreme Court. Finally, during the pendency of W.A. No. 474 of 1999, the legal representatives of Smt. Kannamma i.e., the Petitioners and the legal representatives of the Inamdars compromised the matter and by an order dated 24-4-1999 a Division Bench of this Court recorded the compromise. Pursuant to the said compromise, the 3rd respondent - Revenue Divisional Officer, Chevella issued occupancy rights in respect of Ac.24-20 gts., in favour of the Petitioners and in respect of Ac.12-00 in favour of the Inamdars in the year 1999. It is an admitted fact that Smt. Kannamma, mother of the Petitioners, filed an appeal before the 2nd Respondent against the order dated 30-11-1977 when her claim was rejected by the 3rd Respondent. The 2nd Respondent after hearing, remanded the case to the 3rd Respondent. During that period, the Appellant herein made a claim before the 2nd Respondent stating that the land is under their occupation. It is also an admitted fact that after enquiry the 3rd Respondent had passed an order dated 18-02-1980 rejecting the claim of the Appellant in respect of the land in Survey Nos. 602 and 603. It seems after the 3rd Respondent issued occupancy rights in favour of the Petitioners and the legal representatives of the Inamdars in the year 1999, the 1st Respondent addressed a letter dated 13-6-2002 to the 3rd Respondent to set aside the orders dated 15-7-1999 issued by the 3rd Respondent in pursuance of the compromise recorded by the Division Bench of this Court. The Joint Collector, Ranga Reddy district treated the said letter as an appeal and issued notice to the Petitioners and others and passed the impugned order on 06-02-2007 accepting the claim of the Appellant, against which the

Respondents 1 and 2 filed the writ petition.

10. Before the learned single Judge, the learned Counsel for the Petitioners vehemently argued that the proceedings under the Act are governed by the relative provisions and a letter cannot be treated as an appeal u/s 24 of the Act. It appears that considering the nature of litigation and the extent of the land involved, the 2nd Respondent-Joint Collector, Ranga Reddy district taken up the letter as appeal. In the letter dated 13-6-2002 the Appellant contended that an extent of 32.55 acres comprising in Revenue Survey Nos. 602 and 603 of Alwal village is in the occupation of the Army for construction of Emergency Commissioned Officers quarters and possession of the said land was taken on 25-02-1963. The Petitioners at para 3 of the Affidavit in the writ petition also admitted that an extent of 32.55 acres of land in Survey Nos. 602 and 603 was hired by the Appellant herein w.e.f. 25-02-1963 for Military purposes and the rest of the land in the said Survey numbers and other Survey numbers was in possession of their mother Kannamma.

11. In order to appreciate the contentions urged in this case, it would be necessary to refer to the provisions of the Act. Section 4(1) of the Act reads as follows:

4. Registration of Inamdars as occupants:

(1) Every inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than-

(a) lands set apart for the village community, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers;

(b) lands in respect of which any person is entitled to be registered under Sections 5, 6, 7 and 8 of the Act;

(c) lands upon which have been erected buildings owned by any person other than the inamdar;

Which immediately before the date of vesting, were under his personal cultivation and which, together with any lands he separately owns and cultivates personally are equal to four and a half times the "family holding".

Provided that where imams are held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant under Sections 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all inam lands other than those specified in Clauses (a) and (c) above without restriction of extent to four and half times the family holding and without the condition of personal cultivation:

Provided further that where any person other than the concerned charitable or religious institution has been registered as an occupant under Sections 5, 6, 7 and 8 after the commencement of the Andhra Pradesh (Telangana Area) Abolition

of Inams (Amendment) Act, 1985 such registration shall and shall be deemed always to have been null and void and no effect shall be given to such registration.

13. Thus, by reading of the above provision i.e., Section 4(1)(c) of the Act, it is clear that the Inamdar cannot be registered as occupant, if any other person other than the Inamdar constructs buildings or structures in the land in question.

14. Admittedly, in this case an extent of 32.55 acres of land has been in possession of the Defence authorities since 1963. Section 4(1) of the Act clearly mandates that every Inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than the lands mentioned in Clauses (a), (b) and (c). Admittedly, the Respondents 1 and 2 were not in possession of these lands as on the date of vesting i.e., on 01-11-1973. Though the Act was published in the Official Gazette on 20-7-1955, on which date the Act came into force, with reference to the Sections contemplated u/s 1(3) of the Act, the Government appointed by notification in the Official Gazette on 01-11-1973 the date on which vesting come into force.

15. It is, therefore, clear from the averments of the proceedings right from 1975 onwards, the Appellant is in possession of 32.55 acres of land from 25-02-1963 and Respondents 1 and 2, the inamdars, are not in possession of the property by the date of vesting i.e., by 01-11-1973, which is the crucial requirement for grant of Occupancy Rights Certificate to the Inamdars, who are in possession of the lands covered by the Act. But, in this case, the 3rd Respondent issued occupancy rights in favour of the Respondents 1 and 2 and the legal representatives of the Inamdars in pursuance to the compromise recorded by a Division Bench of this Court in W.A. No. 474 of 1999. Admittedly, the Appellant herein is not a party to the compromise, on the basis of which occupancy rights have been issued by the 3rd Respondent, which were challenged by the Appellant before the 2nd Respondent and the 2nd Respondent passed the following order on 06-02-2007:

The appeal is allowed and the impugned order of the Revenue Divisional Officer passed in Procs. No. L/3901/2003, dt.9-12-2004 confirming Occupancy Rights Certificate granted in respect of Sy. No. 602 & 603 for an extent of Acs.19-39 & 16-21 gts respectively vide L/1299/1999 Dated 15-07-1999 is set aside. The land being inam land, vest with state, upon abolition of Inams. Defence authorities who have been in possession of the land as on crucial date can maintain an appropriate claim u/s 9 of Abolition of Inams Act, 1955.

16. As the Appellant is not a party to W.A. No. 474 of 1999 in which the Division Bench of this Court recorded compromise basing on which, the 3rd Respondent issued Occupancy Rights Certificate though the Respondents 1 and 2 and the legal heirs of the Inamdars are not in possession of the property in question. The property in dispute is in possession of the Appellant since 1963 onwards till today by constructing the buildings and structures. Considering the facts and

circumstances and long possession of the Appellant and basing on the provisions of the Act, the 2nd Respondent has passed the order dated 06-02-2007 mainly on the ground that the Appellant is not a party to the compromise, which is the basis for issuing the Occupancy Rights Certificate. Inams Abolition Act applies to Telangana area of Andhra Pradesh. In order to claim occupancy rights certificate holders of the land have to prove that on the date of vesting i.e., 01-11-1973 they were in occupation of inam land. The persons who were in possession of inams land as on 01-11-1973 are only entitled to occupancy rights certificate.

17. Respondent No. 3 herein, the Joint Collector, Ranga Reddy district allowed the appeal filed by the Appellant i.e., the Defence Estate Officer under the provisions of Section 24 of the Act and set aside the impugned order of the Revenue Divisional Officer confirming the occupancy rights certificate granted in respect of Survey Nos. 602 and 603 on the ground that the land being inam land, vest with the State, upon abolition of Inams and directed the Appellant-Defence authorities, who have been in possession of the land as on crucial date i.e., on 01-11-1973 can maintain an appropriate claim u/s 9 of the Act.

18. As per the provisions of Section 9 of the Act, every private building situated within an inam shall with effect from the date of vesting, vest in the person who owned it immediately before that date. If any inam land has been converted for any purpose unconnected with agriculture, the holder of such land shall be entitled to keep the land provided that such conversion was not void or illegal under any law in force.

19. The writ Petitioners at paragraph 3 of the Affidavit had clearly stated that an extent of 32.55 acres of land in Survey Nos. 602 and 603 was hired by the 1st Respondent with effect from 25-02-1963 for military purposes. The 1st Respondent-Defence Estate Officer i.e., the Appellant herein filed a Counter Affidavit stating that entire land in Survey Nos. 602 and 603 of Alwal village was not inam land and Smt. Radhamma was not an Inamdar as per the Supplementary Sethwar and the land is still recorded as Government land and that many developments have taken place and cooked up without the knowledge of the Government of India, Ministry of Defence. Thereafter, Smt. Radhamma was made an Inamdar and this is a classic example to state how the Government land can be changed without the knowledge of the Government of India.

20. The writ Petitioners thus clearly admitted in the Affidavit that the Appellant herein is in possession of 32.55 acres of land since 1963 onwards.

Considering the long possession and occupation of the land by constructing buildings and structures even by the crucial date of vesting i.e., 01-11-1973 after the Act came into force, the Joint Collector, Ranga Reddy district has rightly directed the Appellant to maintain an appropriate claim u/s 9 of the Act.

21. Therefore, we are of the opinion that when the Appellant is admittedly in the occupation of 32.55 acres of land by constructing the buildings and structures since 1963 onwards, the said fact was not at all mentioned in the compromise

petition filed by the legal representatives of the Inamdar and tenants. The said compromise is, therefore, not binding on the Appellant, who is in possession of large extent of land.

22. In view of the above facts and circumstances, the impugned order dated 30-4-2009 in W.P. No. 6522 of 2008 passed by the learned single Judge of this Court is not in accordance with the provisions of Sections 4 and 9 of the Act.

23. The writ appeal is, therefore, allowed and the impugned order dated 30-4-2009 in W.P. No. 6522 of 2008 passed by the learned single Judge is set aside. In the circumstances, no costs.