

(2007) 10 AP CK 0091
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 887 of 2006

K.S.B. Ali

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38E
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Hyderabad (Telanga Area) Atiyath Enquiries Act, 1952 — Section 10, 11(1), 11(2), 11(3), 11(4)
Hyderabad Atiyat Enquiries (Amendment) Act, 1956 — Section 2(1), 3A
Hyderabad Enfranchised Inams Act, 1952 — Section 4

Citation : (2008) 1 ALD 548 : (2007) 6 ALT 647

Hon'ble Judges : G.S. Singhvi, C.J.; C.V. Nagarjuna Reddy, J

Bench : Division Bench

Advocate : T.S. Doabia, assisted by I.V.S. Rao and K. Ravinder Reddy, for the Appellant; C.V. Mohan Reddy, General, assisted by A. Satya Prasad, Spl. Government Pleader for respondent Nos. 1 to 5 and G.P. for Revenue for respondents 1 to 8, M. Ramu, for Respondent No. 9, G. Vidyasagar, for Respondent No. 10, S. Ravi, for Respondents 11, 12, 13, 17 and 18, E. Ajay Reddy, for Respondent No. 15 and Deepak Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ appeal is filed against order dated 14-7-2006 passed by a learned Single Judge of this Court in Writ Petition No.14439 of 2006, whereby he dismissed the same in limine.

2. The appellant for himself and in his representative capacity on behalf of 203 co-legal heirs of Nawab Nusarath Jung Bahadur-I, filed Writ Petition No.14439 of 2006 seeking a writ of mandamus to declare the tenders called for by the Hyderabad Urban Development Authority, 7th respondent herein, (for short "HUDA") for sale of Ac.100.00 guntas of land situated in Kokapet village,

Rajendranagar Mandal, Ranga Reddy District, as malafide, arbitrary, malicious, capricious and unconstitutional. The appellant also sought for a declaration that HUDA never had any title to the property in dispute and that their attempt to sell away the same in public auction, without following the due process of law, as null and void. The background facts:

3. Late Nawab Nusrat Jung Bahadur-I (for short "late Nusrat Jung") was the holder of the land admeasuring Ac.1635.35 guntas situated in Koutham Kunta (subsequently came to be known as Asad Nagar and presently as Kokapet). He died issueless in the year 1875 AD. He left behind his widow Smt.Rahimunnisa Begum, who appeared to have died on 10-10-1916. Late Nusrat Jung had two paternal first cousins, viz., Nawab Gulam Hussain and Nawab Md.Sardar. It is the case of the appellant, which is not disputed, that on 16-1-1916 the entire property of Late Nusrat Jung was taken over by SARF-E-KHAS MUBARAK (private secretariat) of the Nizam for supervision and succession enquiry was commenced in August, 1905 in the Court of Nizamat-E-Atiyat, the judicial branch of SARF-E-KHAS MUBARAK exercising the powers of civil and revenue court. The said enquiry was later transferred to the Court of Nazim Atiyath, which came into existence under the provisions of the Hyderabad (Telanga Area) Atiyath Enquiries Act, 1952 (for short "the 1952 Act"). On 15-2-1954 Nazim Atiyath Court passed an order in respect of the properties of Late Nusrat Jung situated in Koutham Kunta and Bagh-e-Asifnagar. It was held in the said order that the oral evidence and Hibanama show that Koutham Kunta first came to be known as Asad Nagar and later as Kokapet. Nazim Atiyath Court, after tracing the history of title, held that the lands included in Kokapet village deserve to be confirmed as Madad-E-Maash (grant-in-aid) in favour of the heirs of Late Nusrat Jung. It was also held that although the land enjoyed by the holders as Madad-E-Maash was subsequently constituted into a separate village, the Maash (the property) will be deemed to have continued only as Arazi (Inam lands) and it was confirmed as such and that Kokapet was regarded as a village only for administrative purposes. Nazim Atiyath Court further held that Kokapet was taken over by the Government under the Hyderabad (Abolition of Jagirs) Regulation 1358 Fasli (for short "the 1358 Fasli Regulation") and the said action was not challenged by Maashdars and that the question of appointing Qabiz for the lands included in the village does not arise. However, in respect of the lands in Bagh-e-Asifnagar, it was held that each of the Maashdars (holders of the property) is entitled to his respective shares and that since the extent of the property was small, the Collector should formulate proposals for the disposal of the land by sale or otherwise after obtaining the permission of the Government in the Atiyat Department, dispose of the same and distribute the money among the Maashdars.

4. The order of the Nazim Atiyath Court was submitted to the then Revenue Minister in the form of a note and the same was approved by him on 24-12-1954. In purported execution of the order of the Nazim Atiyath Court and that of the Revenue Minister, Muntakhab No.57 of 1955 dated 12-5-1955 was

issued. As the Sendhi (excise) trees standing on the land shown in the Muntakhab were not included and thereby the claimants were denied their Haq Malikana Rights, they made an application to the Assistant Nazim Atiyath to amend the Muntakhab. The said application having been rejected, the claimants approached Nazim Atiyath Court by way of an application, which was also rejected. As the claimants were unsuccessful before the Board of Revenue and the Revenue Minister, they filed Writ Petition No.227 of 1960 before this Court and the said writ petition was allowed on 1-4-1963, wherein it was held that the claimants were entitled to the inclusion of income from Sendhi trees in the Muntakhab.

5. The appellant started approaching the Government of Andhra Pradesh to release the lands situated in Kokapet village, covered by Muntakhab in favour of the legal heirs of Late Nusrat Jung (for short "the legal heirs"). The Principal Secretary to Government, Revenue (J.A) Department in Memo dated 15-4-2002, after elaborate consideration of the representation of the legal heirs, rejected the same. However, the said Memo was withdrawn by the successor Principal Secretary on 6-5-2004. This was followed by Memo dated 31-7-2004 passed by another Principal Secretary, wherein he requested the Special Chief Secretary and Chief Commissioner of Land Administration, Hyderabad, to take steps to hand over the property in dispute. However, the same Officer, after obtaining legal opinion and having examined the case, issued Memo No.1640/JAI/0303-9 dated 21-5-2005, wherein it was noted that the claim of the petitioner was already rejected by the Government in Memo No.68688/JA.1/99-20 dated 15-4-2002 and that the subsequent orders dated 6-5-2004 and 31-7-2004 issued in favour of the petitioner were without jurisdiction. The Principal Secretary to Government, Revenue Department also issued proceedings dated 6-6-2005 interdicting mutation proceedings by respondents 4 to 6. These Proceedings were challenged in Writ Petition No.10084 of 2006. When HUDA put to auction Ac.100.00 guntas of the disputed land, the appellant filed Writ Petition No.14439 of 2006.

6. The learned Single Judge by order dated 14-7-2006 dismissed the Writ Petition No.14439 of 2006 at the admission stage holding that the appellant raised a title dispute over immovable property and that in a proceeding under Article 226 of the Constitution of India an enquiry into such a dispute cannot be undertaken. The learned Single Judge, therefore, relegated the appellant to the civil court by filing an appropriate suit for declaration and injunction. In his order, the learned Single Judge also noted the fact that the land in dispute has already been handed over to HUDA for the purpose of developing industrial/commercial plots for Information Technology Industry.

7. Feeling aggrieved by the said order, the appellant filed the present Writ Appeal.

8. After the writ appeal was admitted and notices issued, all the respondents, including respondents 9 to 18 whose bids in the auction conducted by HUDA were accepted for sale of different parcels of land forming part of the disputed

property, filed separate counter affidavits. Thereafter, the appeal was heard on merits.

SUBMISSIONS:

Sri T.S.Doabia, learned Senior Counsel, assisted by Sri I.V.S.Rao and Sri K.Ravinder Reddy, Advocates, appearing for the appellant made the following submissions:

(1) The Nazim Atiyat Court, vide its order dated 15-2-1954 held that the legal heirs have succeeded to the property in dispute and the said order was approved by the Honourable Revenue Minister by order dated 22-12-1954.

(2) Following the orders dated 15-2-1954 and 22-12-1954 of the Nazim Atiyat and the Honourable Revenue Minister respectively, Muntakhab bearing No.57/55 dated 12-5-1955 was issued by the Atiyat Enquiries Branch, Revenue Department, Secretariat, Government of Andhra Pradesh, Hyderabad, releasing the land admeasuring Ac.1635.34 guntas situated in Kokapet village in favour of the legal heirs.

(3) In view of the orders of the Nazim Atiyat and the Honourable Revenue Minister and the Muntakhab issued in favour of the legal heirs, the Government is left with no option other than implementing the said orders, which have attained finality.

(4) Even if there is any defect in the order passed by the Honourable Revenue Minister, in view of the provisions of the Revenue Minister's Orders (Violation) Act, 1960 (for short "the 1960 Act"), the said order of the Honourable Revenue Minister stands validated and that, therefore, the respondents are not entitled to ignore the order of the Honourable Revenue Minister on the ground that the same is either not validly passed or that he has no jurisdiction to pass such an order.

(5) The judgment dated 1-4-1963 in Writ Petition No.227 of 1960 whereby this Court directed implementation of Muntakhab, has become final, and that the impugned action of respondent No.1 is in the teeth of the said judgment.

(6) The learned Single Judge committed an error in dismissing the Writ Petition in limine without going into the merits of the case on the ground that the writ petition involves a title dispute while, in fact, no such dispute exists in view of the Muntakhab, which, in effect, is the decree passed in pursuance of the order of Nazim Atiyat Court. Sri C.V.Mohana Reddy, the learned Advocate General, appearing for respondents 1 to 8 made the following submissions:

(1) Kokapet was a Jagir village and that with the abolition of Jagirs under the Hyderabad (Abolition of Jagirs) Regulation 1358 Fasali all the Jagir lands stood vested in the Government and that, therefore, the pre-existing rights of the legal heirs stood abolished.

(2) Under the provisions of the 1952 Act Nazim Atiyat had limited jurisdiction to

make enquiries into the Atiyat Grants as defined u/s 2(1)(b) of the said Act and it was not vested with the jurisdiction of granting property rights over the Jagir lands.

(3) Neither the Nazim Atiyat nor the Honourable Revenue Minister conferred any rights over the disputed land on the legal heirs and that the Muntakhab issued in their favour is contrary to the said two orders. Therefore, the Muntakhab is not enforceable.

(4) The judgment dated 1-4-1963 of the High Court in Writ Petition No.227 of 1960 had neither recognized nor declared the rights of the legal heirs over the immovable properties and, on the other hand, the said judgment operates as res judicata as the part of the relief of delivery of possession of the property claimed by the legal heirs was not granted by the High Court.

(5) The IV Additional Judge, City Civil Court, Hyderabad, in his elaborate judgment dated 30-6-1996 passed in O.S.No.512 of 1973 went into the scope of the order of the Nazim Atiyat and the Muntakhab and gave a categorical finding that the Nazim Atiyat had no jurisdiction to confer rights over the immovable property and the said judgment was confirmed by a Division Bench of this Court in its judgment dated 11-12-1985 in CCCA No.142 of 1976.

(6) When some legal heirs of Late Nusrat Jung raised claims over the land in dispute, the Nizam issued the Royal Farman, whereby it was clearly held that the issue regarding vesting of disputed land in the Khalsa (Government) had already been decided and that, therefore, it cannot be reopened as it operates as res judicata.

POINTS FOR CONSIDERATION:

Having regard to the respective submissions of learned Counsel for the parties, as noted above, the following points arise for consideration:

(1) What were the powers and jurisdiction of the Nazim Atiyat under the provisions of the 1952 Act?

(2) What is the scope and purport of the order dated 15-2-1954 of the Nazim Atiyat Court?

(3) What is the true purport of the order dated 24-12-1954 of the Honourable Revenue Minister and whether the said order falls within the scope of the 1960 Act and gets validated under the provisions of the said Act even if the Honourable Revenue Minister had no jurisdiction to pass the said order?

(4) Whether Muntakhab No.57 of 1955 dated 12-5-1955 is in conformity with the order dated 15-2-1954 of the Nazim Atiyat Court, and, if not, whether the same is enforceable in law?

(5) What is the scope of the order dated 1-4-1963 in Writ Petition No.227 of 1960 of this Court and whether this order operates as constructive res judicata

against the appellant?

(6) Whether the Royal Firman has a bearing on the relief claimed by the appellant in the present proceedings?

(7) What is the effect of the judgment dated 13-6-1976 in O.S.No.512 of 1973 on the file of the IV Additional Judge, City Civil Court, Hyderabad?

Re-Point No.1:

The sheet anchor of the case of the appellant is that the Nazim Atiyat Court in exercise of its powers under the provisions of the 1952 Act passed order dated 15-2-1954 and this was followed by order dated 12-5-1955 of the Honourable Revenue Minister and issue of Muntakhab No.57 of 1955 dated 12-5- 1955. As noted hereinabove, the contention of the learned Advocate General is that the Nazim Atiyat Court has no jurisdiction to confer property rights on Jagir lands as they are excluded from the definition of Atiyat grant. It is, therefore, necessary to examine the provisions of the 1952 Act.

9. Before the State of Hyderabad was merged in the State of Andhra Pradesh, it enacted the 1952 Act. Section 2(1)(a) defined "Atiyat Court" as under:

"Atiyat Court" means a Court or authority competent to make Atiyat enquiries as to claims to succession to and any right, title or interest in Atiyat grants and matter ancillary thereto.

10. Section 2(1)(b) defined "Atiyat grant" as:

"Atiyat grant" include Inams and cash grants known as Rusums, Yomias, Mamuls, Salianas Imtiyazi, Mahwars, Pensions and any other allowances granted by the State for the performance of certain duties, past and present or as charities without obligation of any service.

11. Clause (c) of Section 2(1) defined "Muntakhabs and Vasikas" as:

"Muntakhabs and Vasikas" means documents issued by competent authorities as a result of Inam or succession enquiries held under the Dastoor-ul-Amal Inams or other Government orders on the subject and issued by way of continuance or confirmation of Atiyat grants.

12. Section 3 which provides for continuance of Atiyat grants before and after its amendment reads as follows: Before amendment:

All Atiyat grants held immediately before the commencement of the Act, shall subject to the provisions of the Hyderabad Enfranchised Inams Act, 1952, continue to be held by the holders thereof and after them by their successors, if any, subject to conditions laid down in the Muntakhabs or Vasikas, if any, relating thereto and to the provisions of this Act.

13. After amendment under Act 28 of 1956:

All Atiyat grants shall, subject to the provisions of the A.P. (T.A) Abolition of Jagirs Regulation, 1358 Fasli (LXIX of 1358 F), the Hyderabad Abolition of Cash Grants Act, 1952 (XXXIII of 1952) and the Hyderabad Abolition of Inams Act, 1955 (VIII of 1955), continue to be held by the holders thereof subject to the conditions laid down in the Muntakhabs or Vasikas, if any, relating thereto and to the provisions of this Act.

14. Section 4 dealing with enquiries into Atiyat Grants in Jagir lands reads as under:

Notwithstanding anything contained in Section 3, continuance of Atiyat grants in the erstwhile Jagir areas or granted by erstwhile Jagirdars shall be subject to inquiries made for that purpose and for confirmation in accordance with rules made under this Act.

15. Section 8 classified Atiyat Courts as:

- (a) Atiyat Deputy Collectors;
- (b) Atiyat Collectors;
- (c) Nazim Atiyat; and
- (d) Board of Revenue.

Section 10 prescribes the jurisdiction of Atiyat Courts as specified in the Schedule. u/s 11(1) an appeal lies to Atiyat Collector against the original decision of Atiyat Deputy Collector; to the Nazim Atiyat against the original decision of the Atiyat Collector; and against the original decision of Nazim Atiyat to the Board of Revenue. Under Sub-Section (2) of Section 11 of the 1952 Act from the appellate decision of an Atiyat Collector an appeal shall lie to the Nazim Atiyat. Under Sub-section (3) of Section 11 of the 1952 Act from the appellate decision of Nazim Atiyat, an appeal shall lie to the Board of Revenue. Under Sub-section (4) of Section 11 of the 1952 Act the decision of Board of Revenue shall be final. Sub-section (1) of Section 13 of the 1952 Act prescribes finality to the decision of Atiyat Court, except as mentioned in the Act. The Schedule before its amendment providing for the original jurisdiction of the Atiyat Courts is shown hereunder:

SCHEDULE

ORIGINAL JURISDICTION OF ATIYAT COURTS Description of Atiyat grant Atiyat Deputy Collector Atiyat Collector Nazim Atiyat 1. Inams Total Assessment upto Rs.250/- Beyond the powers of Atiyat Deputy Collector and upto Rs.5,000/-. Beyond the powers of Atiyat Collector without any limit. 2.Cash rants UptoRs.100/- annually. Beyond the powers of Atiyat Deputy Collector and upto Rs.1000/- annually. Beyond the powers of the Atiyat Collector without any limit. S.M.Youmus Legal Secretary" The 1952 Act was amended by the Hyderabad Atiyat Enquiries (Amendment) Act, 1956 and the said amendment was given retrospective operation with effect from the date of the principal Act. The

definition of "Atiyat grant" has been amended by the said amendment Act by substituting the pre-existing definition in Section 2(1)(b), which reads as under:

"Atiyat grants" mean:

- (i) In the case of jagirs abolished under the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (LXIX of 1358 F), the commutation sums payable in respect thereof under the Hyderabad Jagirs (Commutation) Regulation, 1359 F (XXV of 1359 Fasli);
- (ii) Inams to which the Hyderabad Abolition of Inams Act 1954 (VIII of 1955) is not applicable;
- (iii) in the case of inams abolished under the Hyderabad Abolition of Inams Act, 1954 (VIII of 1955), the compensation payable under that Act;
- (iv) cash grants to which the Hyderabad Abolition of Cash Grants Act, 1952 (XXXIII of 1952) is not applicable;
- (v) cash grants temporarily continued under the Hyderabad Abolition of Cash Grants Act, 1952 (XXXIII of 1952);
- (vi) in the case of cash grants abolished under the Hyderabad Abolition of Cash Grants Act, 1952 (XXXIII of 1952), subject to payment of compensation, the compensation payable in respect thereof.

The Amendment Act, 1956 inserted Section 3-A regarding Enquiries as to Atiyat Grants, which reads:

3-A (1) In the case of Atiyat grants specified in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 2, Atiyat enquiries as to any right, title or interest therein shall, notwithstanding anything contained in the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulation, 1358 Fasli (LXIX of 1358 F) be held in Atiyat Courts in accordance with the provisions of this Act, and in the course of such enquiries, Atiyat Courts shall also be competent to enquire into claims to succession arising in respect of such grants:

Provided that claims to succession arising after the completion of Atiyat inquiry of any such grant shall not be entertained in any Atiyat Court and all such claims shall be filed in and decided by the competent Civil Court.

(2) In the case of Atiyat grants specified in Sub-clauses (ii) to (vi) of Clause (b) of Sub-section (1) of Section 2, all Atiyat enquiries, enquiries as to claims to succession to, or any right, title or interest therein and matters ancillary thereto shall be held in Atiyat Courts in accordance with the provisions of this Act.

16. Section 8, which deals with the classification of Atiyat Courts was amended by inserting a proviso and explanation after Clause (d), wherein it was provided that the Government may, by notification in the Official Gazette, appoint the date on which the Court of Nazim Atiyat shall cease to exist and as from that date the Courts mentioned in Clauses (a), (b) and (d) viz., Atiyat Deputy Collectors;

Atiyat Collectors; and Chief Commissioner of Land Revenue, shall constitute the Atiyat Courts.

17. Section 10, which provides for the jurisdiction and procedure of Atiyat Courts was amended and the schedule in that regard was also amended in conformity therewith by transferring the cases from Nazim Atiyat to the Court of the concerned Atiyat Collector etc. Eventually, the State of Andhra Pradesh, vide G.O.Ms.No.1085 dated 28-10-1968 abolished the Court of Nazim Atiyat with effect from 1-11-1968.

18. From a reading of the above referred/reproduced provisions of the 1952 Act, and as amended, it could be seen that the power and jurisdiction of Atiyat Court is confined to making enquiries into right, title or interest in Atiyat grants and also holding enquiry into the claims to succession arising in respect of such grants. u/s 3 (pre-amended provision) all Atiyat grants held before the commencement of the Act were continued subject to the provisions of the Hyderabad Enfranchised Inams Act. 1952. Section 4 made the grants in the Jagir areas or granted by the erstwhile Jagirdars subject to enquiries and confirmation in accordance with the 1952 Act.

19. As already noted above, the definition of Atiyat grants was amended by the 1956 Amendment Act and Section 2(1)(b)(i) specifically restricted the Atiyat grants in case of Jagir lands to the commutation sums payable under the 1359 Fasli Regulation.

20. While the pre-amended definition of Atiyat grants was inclusive in nature, the amended definition is made exhaustive. Sri Doabia, on the basis of this distinction, submitted that it is not proper to restrict the pre-amended definition to commutation amounts only on the basis of the amended definition. An analysis of the pre-amended definition of Atiyat grant reveals that it broadly comprises two categories, viz., (1) Inams, and (2) cash grants, known as Rusums, Yomias, Mamuls, Salianas Imtiyazi, Mahwars, Pensions and any other allowances granted by the State for the performance of such duties, past and present, or as charities without obligation of any service. The word "Inam" is explained in Clause (f) of Section 2 of the 1952 Act as "Inam has meaning assigned to the word in Section 2(a)(i) of the Hyderabad Enfranchised Inams Act, 1952". The definition of "Inam" under the said Act is as under:

(2)(a)(i) "Inam" means land held under a grant made by H.E.H. the Nizam or other competent grantor and continued or confirmed by virtue of a Muntakhab or other title deed coupled with the remission of the whole or part of the land revenue thereon either as a gift or a grant and with or without the condition of service.

21. It is, thus, clear that while the first part of Atiyat grant includes rights over the immovable property i.e., Inam lands, the other part relates to grants concerning cash. This position becomes clearer from the Schedule as originally provided to the 1952 Act. The Schedule divided the jurisdiction of Atiyat Courts

with reference to the Inams and Cash grants. It is, therefore, evident that though the word "include" was used in the original definition of Atiyat grant, the Schedule, which deals with the jurisdiction of Atiyat Courts has not referred to any grant other than Inams in respect of the immovable properties. As rightly pointed by Sri Doabia, though the inclusive definition clause contained in the Act has the effect of enlarging the scope of the meaning of Atiyat grant, the Schedule specifically restricted Atiyat Courts' jurisdiction to enquire into claims over Inam lands only, in addition to cash grants. The reason for this is obvious i.e., in the case of Jagir lands they were already covered by two Regulations, viz., Hyderabad (Abolition of Jagirs) Regulation 1358 Fasli and Hyderabad Jagirs (Commutation) Regulation 1359 Fasli. Under the 1358 Fasli Jagirs were abolished. u/s 6(1), from the appointed day, the Jagir lands shall be included in the "Diwani" and until they are included in a district constituted under the Hyderabad Land Revenue Act, 1317 Fasli, they shall be administered by the Jagir administrator. While the said Regulation provided for payment of a part of the revenue to the erstwhile Jagirdars and Hissedars, under the 1359 Fasli Regulation those interim allowances were terminated and payment of commutation amounts was provided for. These two Regulations thus provided for determination of payments to be made to the erstwhile Jagirdars and their continuance is made subject to further enquiry by the Atiyat Courts under the 1952 Act. It is, therefore, necessary that while considering the scope of the pre-amended definition of Atiyat grant the scheme of the said two Regulations governing the Jagir lands is required to be kept in mind.

22. Since all Jagir lands were vested in the "Diwani" and the erstwhile holders (Jagirdars and Hissedars) were only entitled to cash grants in whatever name they are called there was no question of granting property rights to them under the 1952 Act. If the definition of Atiyat grant is construed to comprehend even grant of property rights over Jagir lands, it frustrates the entire scheme and renders the provisions of the 1358 and 1359 Fasli Regulations nugatory.

23. Indeed if we closely analyze the pre and post amended definitions of Atiyat grant, read with the Schedule, we find that though in form, the two provisions vary, on a close examination there is not much difference in their content, except to the extent of Inam lands. Since we are concerned with the Jagir lands, even under the pre-amended provision there was no power conferred on the Atiyat Courts to make a grant regarding the Jagir lands. The Atiyat Courts have power to make cash grants except in the case of Inam lands, by whatever name the cash grants may be called i.e., rusums, yomias, Mamuls, Salianas Imtiyazi, Mahwars, Pensions etc., as mentioned in the pre-amended definition or commutation of sums as mentioned in the post-amended definition the remaining cash grants. From a closer scrutiny, it appears that what was implicit in the pre-amended definition of Atiyat grant was made explicit in the post-amended definition. There is, therefore, no escape from the conclusion that in case of erstwhile Jagir lands, Atiyat Courts could only make cash grants and they had no jurisdiction to confer property rights.

RE-POINT No.2:

A careful reading of the order of the Nazim Atiyat reveals that it has considered the claims of the legal heirs in respect of the property situated in Kokapet and Bagh-e-Asifnagar. Nazim Atiyat mainly referred to two documents, viz., Checknama dated 11th Rabi II, 43 Julius (corresponding to 1111 Hijri and 1701 AD) and Hibanama dated 17th Moharrum 1269 Hijri. It held that the Checknama was more than 250 years old a reading of which showed that Shah Rahi was the original holder of the lands and he was in possession of the said lands, the sons of Shah Rahi sold the lands to Asad Nawaz Jung, and his grandsons sold the lands to Late Nusrat Jung. The Court also gave a finding that the said lands were held by Shah Rahi as Madad-e-Maash and the title was transferred to Nusrat Jung. It, therefore, confirmed the lands in Kokapet as Madad-e-Maash in favour of the legal heirs. It is significant to note the conclusions of the Nazim Atiyat Court, which are extracted hereunder: "It is to be noted that although the lands enjoyed by the holders as Madad-e- Maash were subsequently constituted into a separate village, the mash will be deemed to have continued only as Arazi and is hereby confirmed as such Kokapet can be regarded as a village only for administrative purposes.

It is further observed:

Kokapet has been taken over by the Government under the Abolition of Jagirs Act and this action has not been challenged by the maashdars. Hence the question of appointing a qabiz for the lands included in the village does not arise

Having found that late Nusrat Jung derived title to the lands situated in Kokapet, the Nazim Atiyat declined to appoint a Qabiz in the light of the unequivocal finding given by it that Kokapet village was taken over by the Government under the 1358 Fasli Regulation. This approach of the Nazim Atiyat is keeping in view the law governing the erstwhile Jagir lands, as discussed above. Unlike in the case of Kokapet, in respect of the properties situated in Bagh-e- Asifnagar, Nazim Atiyat while holding that title over the said land vested in Late Nusrat Jung and his legal heirs succeeded to the said property, issued necessary direction to the District Collector to formulate proposal in consultation with the representatives of the two main branches of the family for the disposal of the land and distribution of the proceeds among the Maashdars in accordance with the shares as mentioned in the order. This arrangement was done in view of the fact that the extent of land was too small and the claimants were too large in number. From the above, it is clear that the Nazim Atiyat in its order dated 15-2-1954 held as under:

- (1) the land in Kokapet was originally held by Late Nusrat Jung,
- (2) Kokapet village was taken over by the Government as a part of abolition of Jagirs, and
- (3) in recognition of the said taking over, which were unchallenged, no relief

could be granted in favour of the legal heirs of late Nusrat Jung.

Re-Point No.3:

While meeting the contention of the learned Advocate General that Nazim Atiyat had no jurisdiction to confer rights in respect of Jagir lands, which stood abolished and vested in the Government under the Regulation 1358 Fasli, and that, consequently, no rights accrued to the legal heirs under orders dated 15-2-1954 of the Nazim Atiyat, Sri Doabia relied upon the provisions of the 1960 Act and contended that since the Honourable Revenue Minister approved the order of the Nazim Atiyat on 24-12-1954, the said order got validated under the said Act.

24. We have carefully examined the said order of the Hon''ble Revenue Minister. The file produced before us shows that a note was put up and signed by Md. Qutubuddin, Asst.Nazim and Syed Kaleemullah Quadri of Nazim Atiyat Court on 5- 12-1954 AD and 20-12-1954 respectively. The note dealt in detail the succession dispute between Gulam Dastagir (Nusrat Jung-II), Mohd.Bismilla and others, who claim to represent the estate of late Nusrat Jung as his successors. After tracing the different stages of proceedings taken place right from 1905 before the competent Fora, the note finally referred to the order dated 15-2-1954 of the Nazim Atiyat. It was also mentioned that questioning the said order of the Nazim Atiyat, the successors of Nusrat Jung-II viz., Gulam Ahmed and another preferred an appeal to the Board of Revenue, which was rejected by order dated 24-9-1954 and that against the said decision of Board of Revenue a revision was submitted before the Honourable Revenue Minister. It was proposed in the note as under:

After the completion of the whole case on behalf of Farkunda Begum and Moizuddin Mahmood was submitted a court's declaration decree.... The names of heirs of the deceased have been included.

This case has completed all stages and as per the income of the properties, the amount of Rs.3980/4/- -- Rs.3980/9/- is worthy to be sanctioned for the Hon''ble Minister.

On this note, the Honourable Minister signed on 22-12-1954. On a careful reading of the said order of the Honourable Minister, we do not find that he had conferred on the legal heirs anything more than what the Nazim Atiyat has granted in respect of rights over the land relating to Kokapet village. The only aspect contained in the said order of the Honourable Minister, which does not find a place in the order of Nazim Atiyat, is mentioning of the amounts of Rs.3980/4/- and Rs.3980/9/-.

Thus, the order of the Revenue Minister did not confer any rights on the legal heirs in respect of the lands in Kokapet. In the light of this finding, it may not be necessary for us to examine the provisions of the 1960 Act. But, since Sri Doabia devoted substantial time on advancing this contention, we deem it appropriate to

examine the scope of the provisions of the 1960 Act.

25. The long title of the Act indicates that it was passed "to validate certain orders passed by the Revenue Minister in appeal, revision or review during the period between the 1st March 1952 and 31st December, 1958. In Sub-section (1) of Section 2 of the said Act it is provided thus:

2(1). Notwithstanding anything contained in Sections 6 and 8 of the Andhra Pradesh (Telangana Area) Board of Revenue Regulations, 1358 F, the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulation, 1358 F, the Andhra Pradesh (Telangana Area) Jagirs (Commutation) Regulation, 1359 F or in any rule, notification, order or circular made or issued under the said Regulations, or in any Judgment, decree or orders of any Court, no order passed or purported to have been passed by the Revenue Minister during the period between the 1st March 1952 and the 31st December, 1958 in appeal or revision from any original or appellate order passed by the Board of Revenue, Chief Conservator of Forests or the Jagir Administrator, as the case may be, under the relevant provision of law aforesaid and no order passed or purported to have been passed by the Revenue Minister during the said period reviewing any order passed by him as aforesaid, shall be deemed to be invalid, or ever to have been invalid, merely by reason of the fact that the Revenue Minister had no jurisdiction to pass the said orders during the period aforesaid; and all such orders shall be deemed always to have been validly passed in accordance with law

26. In the instant case, as has been narrated, the Honourable Revenue Minister passed order dated 22-12-1954 on a revision purportedly filed against order dated 24-9-1954 passed by the Board of Revenue in an appeal filed under the provisions of the 1952 Act. The said Act is not one of the three Acts, which are mentioned in Section 2(1) of the 1960 Act. Therefore, the order passed under the provisions of the 1952 Act per se is not attracted by the provisions of the 1960 Act.

27. Sri Doabia, however, contended that by mere reference to the three Acts, Section 2 of the 1960 Act cannot be limited in its application only to the orders passed under the said three Acts. He submitted that the non-obstante clause contained in the said provision referred to the three enactments only because there was no provision, such as revision etc., in any of these three enactments for placing the matter before the Honourable Revenue Minister and, yet, he would have passed orders in many cases and that in order to validate those orders, the provision mentioned only those three Acts. He, however, submits that the said provision cannot be given a restrictive meaning to exclude the orders passed under other enactments. We have not inclined to accept this contention of the learned Counsel for the appellant. When the Act specifically referred to the three enactments, the scope of the said provision cannot be expanded beyond what the statutory provision envisaged. We see absolutely no basis in the contention of the learned Counsel for the appellant that absence of provision of a revision in the three enactments referred to in Section 2 of the 1960 Act was the

reason for mentioning of the three Acts in the said Section. If this were to be correct, even the Hyderabad Atiyat Enquiries Act, 1952 also would have found a mention in the 1960 Act, for, u/s 11(1), both before and after its amendment, the decision of the Board of Revenue was final and no revision was provided to the Honourable Minister. u/s 13 of the 1952 Act it is specifically mentioned that except as provided in the said Act, the decision of an Atiyat Court shall be final. Therefore, we reject the contention of the learned Counsel for the appellant that Section 2 of the 1960 Act is not restrictive in its operation and that the order passed under the 1952 Act is comprehended by the said Act.

28. In any case, in view of our finding that the order of the Honourable Revenue Minister is not at variance with the order of the Atiyat Court with regard to the Kokapet lands, even assuming that the order of the Honourable Revenue Minister got validated by the provisions of the 1960 Act, it creates no rights in the legal heirs over the Kokapet lands.

Re-Point No.4:

The words "Muntakhabs and Vasikas" were defined as documents issued by competent authorities as a result of Inam or succession enquiries held under the Dastoor-ul-Amal Inams or other Government orders on the subject and issued by way of continuance or confirmation of Atiyat grants. In otherwords, Muntakhab is considered a decree following the orders passed by competent authorities and confirmed by Atiyat Courts. In Syed Mohmood Ali Khan and Ors. v. State of A.P. ILR (1974) 367 a Division Bench of this Court upheld the decision of Board of Revenue and directed amendment of the Muntakhab in conformity with the judgment of the Nazim Atiyat by pointing out that the Muntakhab is not according to the judgment of the Nazim Atiyat. Even in Writ Petition No.227 of 1960 filed by some of the legal heirs to direct inclusion of Maash amount of Rs.3980-4-0 in the Muntakhab on the principle that the same should be in conformity with the order of the Nazim Atiyat and as confirmed by the Revenue Minister. There cannot, therefore, be any dispute on the proposition that the Muntakhab should always be in conformity with the decision of the Atiyat Courts. The Atiyat Enquiries Branch, Revenue Department, Secretariat, Government of Hyderabad, issued Muntakhab No.57 of 1955 in respect of two items of the property viz., Ac.1635.34 guntas situated in Kokapet village and 111/2 Bigas situated in Asifnagar village. Since we are concerned in the present case with the lands in Kokapet village, the final order contained in column No.8 of the Muntakhab is extracted herein below:

The Hon^{ble} Revenue Minister Govt. of Hyderabad, has directed in view of the adjudication of Nazim-e-Atiyat Court & Board of Revenue (Atiyat Appeal Section) that the lands claimed that are situated at Kokapet village are as per the Document dt.14th Jamadunnsani 1240 H., the Gift Deed of 1269 H. attested by the Civil & Revenue Office (Diwani and Mall) and the verification Deed (Checknama) of 1111H.(1701 AD), reveals the subject of Grant-in-Aid (Madad Maash) that implies to be a Royal Grant. The evidence presented proved the

possession & enjoyment of the claimants ancestors. Hence the lands mentioned in the Col.No.6 of this Muntakhab, situated at Kokapet, under the title of Madad Maash, are released to the holders.

Before advertng to the main issue, whether the final order contained in the Muntakhab is in conformity with the order of the Nazim Atiyat Court, it is necessary to point out that some of the legal heirs filed Writ Petition No.227 of 1960 before this Court against the orders of the Atiyat Court and the Revenue Minister declining to include in the Muntakhab the excise (Sendhi) trees standing on the lands in Kokapet and also for delivery of possession of the land in pursuance of the Muntakhab. The said Writ Petition was allowed to the extent of giving a direction to include the Sendhi trees in the Muntakhab. Accordingly, Muntakhab was corrected by adding the Maash revenue of Rs.3980-4-0 in column No.8, which is inclusive of the items of Excise revenue.

29. On a reading of the order dated 15-2-1954 of Nazim Atiyat and the Muntakhab dated 12-5-1955, we find a glaring contradiction between the two documents. As already held, the Nazim Atiyat declined to grant any relief to the legal heirs in respect of Kokapet lands. We are unable to comprehend as to how the Atiyat Enquiries Branch, which issued the Muntakhab, included therein the rights over the lands in Kokapet village. The final order mentioned in column No.8 referred to the order of the Honourable Revenue Minister. As held on Point No.3, the order of the Hon"ble Revenue Minister did not confer any rights on the legal heirs in respect of the lands in Kokapet. But, surprisingly, in the Muntakhab the property of Ac.1635.34 guntas, as mentioned column No.6, was purported to be released to the holders in the name of implementing the direction of the Honourable Revenue Minister on the strength of the adjudication made by Nazim Atiyat. Thus, ex facie, the Muntakhab is contrary to the decision of the Nazim Atiyat and the order of the Honourable Revenue Minister.

30. Sri Doabia relied upon a Division Bench judgment of this Court in *Narasayya v. Ganesh* ILR (1965) 442 in support of his contention that the High Court should not sit in appeal over the decision of the Nazim Atiyat. We have gone through the said judgment and find that it has no relevance whatsoever to the issues involved in the present case. The learned Counsel for the appellant also referred to and relied upon a Division Bench decision of this Court in *Shoukat Khan v. State* ILR (1970) 1151 wherein the vires of Section 38 E of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (XXI of 1950) and the validity of delegation of powers to issue G.O.Ms.No.1081, Revenue, dated 30-10-1967 was challenged. We do not, therefore, find any relevancy of the said judgment to the present case on hand.

31. Sri C.V. Mohan Reddy, learned Advocate General, relied upon the judgment of the Supreme Court in *Sunder Dass Vs. Ram Prakash*, , a Full Bench judgment of this Court in *Venkata Seshayya v. Virayya* AIR 1958 AP.1, a Full Bench decision of Punjab High Court in *Pritam Kaur Vs. State of Pepsu and Others*, and a Division Bench judgment of this Court in *V. Appannammanayuralu Vs. B. Sreeramulu*, in

support of his contention that the validity of a decree can be challenged in execution proceedings where the Court passing such decree was lacking in inherent jurisdiction. In view of our finding that the Nazim Atiyat and the Hon'ble Revenue Minister have not granted property rights in respect of Kokapet lands, there is no necessity to apply the said legal principle to the present case on hand.

32. In the light of the settled principles of law - that a decree cannot be at variance with the judgment and such a decree is not enforceable - the Muntakhab dated 12-12-5-1955 to the extent it relates to the release of the property at Kokapet in favour of the appellant is not enforceable and the appellant cannot claim any right on the basis of such a document.

Re-Point No.5:

The learned Counsel for the appellant contended that this Court in Writ Petition No.227 of 1960 upheld the validity of the order of the Nazim Atiyat and the Muntakhab and that, therefore, the said judgment operates as *res judicata*. We have carefully gone through the said judgment. Twelve persons claiming to be the successors of Nawab Nusarath Jung Bahadur-I filed the Writ Petition for a Writ of Mandamus to direct the Minister for Revenue and Excise to amend the Muntakhab dated 12-5-1955 in consonance with the enquiry proceedings as finally sanctioned and approved by the Minister on 22-2-1954. A further prayer was made to direct the Collector of Hyderabad to execute the Muntakhab, handover the income from the lands and deliver possession of the lands to the petitioners therein. The learned Single Judge, who disposed of the said Writ Petition, took notice of the rival claims for succession between the legal heirs of Late Nusarath Jung and Nusarat Jung-II and referred to the order of Nazim Atiyat as confirmed by the Honourable Revenue Minister and issue of Muntakhab. The learned Single Judge also referred to the application filed by the writ petitioners before the Nazim Atiyat for amendment of Muntakhab on the ground that the amount of Abkari (Excise revenue), to which the petitioners were entitled to in respect of the two villages, was not included in the Muntakhab and the writ petitioners' failure to convince the original and appellate authority as well as the Government in accepting the claims. The learned Single Judge negated the contention of the writ petitioners therein that the Government erroneously rejected their claim to amend the Muntakhab. He held that the Muntakhab should be in accordance with the decision of the Nazim Atiyat and that since Abkari rights were not mentioned in the Nazim Atiyat's decision, they could not be included by way of amending the Muntakhab. He, however, held that since the decision of the Nazim Atiyat as approved by the Honourable Revenue Minister held that the successors were entitled to Maash amount of 3980-4-0, the Muntakhab merely mentioned that the successors were entitled to Rs.300/- and Rs.230/- as income from the lands. It was, therefore, held that the Muntakhab should have been so prepared as to include the amount of Rs.3980-4-0 as payable to the successors. It is on that premise that the Writ Petition was allowed with a direction to amend the Muntakhab in accordance with the order of

the Nazim Atiyat by awarding Rs.3980-4-0 to the successors. It is significant to notice that the second part of the prayer, viz., to direct the Collector of Hyderabad to execute Muntakhab dated 12-5-1955, handover the income from the lands and deliver possession of the lands to the successors was not specifically granted. From the aforementioned discussion, it is quite evident that the judgment dated 1-4-1963 in Writ Petition No.227 of 1960 was confined to the amendment of Muntakhab to bring in line with the order of the Nazim Atiyat as confirmed by the Honourable Revenue Minister. It has not at all discussed about the rights of the successors over the lands of Kokapet. The relief granted was only confined to the inclusion of Maash amount of Rs.3980-4-0 in the Muntakhab. In our considered view, this judgment does not, in any manner, help the successors in establishing their rights over the lands of Kokapet. On the other hand, as rightly contended by the learned Advocate General, this order operates as constructive res judicata against them because, as already noted above, though specifically relief of delivery of possession of the lands was sought for, the petitioners therein could not succeed in convincing the Court to grant the said relief and they have not availed further remedies to claim the relief, which was not granted by this Court in the said writ petition.

33. Explanation V to Section 11 CPC provides that any relief claimed in the plaint, which is not expressly granted by the decree, shall be deemed to have been refused. In G.K. Dudani and Others Vs. S.D. Sharma and Others, the Supreme Court held that even though Section 11 does not in terms apply to proceedings under Article 226 of the Constitution of India, the principle of res judicata does apply to writ proceedings under Article 226. In Satyadhyay Ghosal and Others Vs. Sm. Deorajin Debi and Another, the Supreme Court held that the principle of res judicata is based on the need of giving finality to judicial decisions. It is further held that even where Section 11 CPC does not apply, this principle has been applied by the Courts for the purpose of achieving finality in litigation. The above mentioned decisions are only illustrative of the settled principle of law based on the principle of res judicata and we do not think it necessary to refer to the abundance of authority on this aspect, as the law is too well settled in this regard.

34. Some of the legal heirs having specifically sought for a relief and failed to get the same in Writ Petition No.227 of 1960 are, therefore, precluded from claiming similar relief in the present proceedings as the previous judgment operates as constructive res judicata. We further hold that the judgment dated 1-4-1963 passed in Writ Petition No.227 of 1960 has not declared the rights of the legal heirs over the immovable property situated in Kokapet.

Re-Point No.6:

When some of the legal heirs approached the Nizams' Government seeking restoration of the lands, a Firman (Royal Order) was issued on 4th Zeekada 1343- H. A translated copy of the said order reads as under: "Since this was already decided and settled during the time of the Late Mukhtarul Mulk I agree

with the opinion of the Revenue Minister to the effect that for enquiries in regard to this already decided and settled case cannot be initiated afresh and hence consign these proceedings to the records.

35. On an application, another Royal Firman (order) was passed and the translated order reads as under:

No claim made by any one can now be entertained regarding the Jagirs already assigned to Khalsa since this matter is a resjudicata one. Apart from this there are some distant relatives of the Late Nusrath Jung who are at present quite poor and indigent and who have been proved as the legitimate ones should be issued guzara merely on compassionate grounds as per the opinion of the Executive Council. That is to say seven male members whose names are entered in the Arzdaasht and among them each person shall be paid Rs.30/- per month till life time from the date of this order and three Ladies whose names have been mentioned and out of them each lady shall be paid a guzara of Rs.15/- per month till life time. The guzara of each person shall be saved to the government after his or her death and it shall not be issued in the name of his or her heir or successor since this is purely mahwar based on compassionate grounds.

36. The above reproduced two Royal Firmans put at rest the whole claim of the legal heirs for restoration of the lands. Both the orders in unequivocal terms held that the property was assigned to a "Khalsa" and that a dispute, already settled, cannot be reopened. In the latter order, it was even held that the earlier decision assigning the lands to Khalsa operates as res judicata.

37. The present claim of the legal heirs is, therefore, in the teeth of the said two orders and they are barred from making a claim contrary to the said two orders.

Re-Point No.7:

As regards the judgment dated 13-6-1976 in O.S.No.512 of 1973, the Civil Court in the said Judgment has undertaken a detailed examination of the orders of the appellate Court and the order dated 15-2-1954 of the Atiyat Court and the Muntakhab and held that since the Kokapet lands were taken over under the 1358 Fasali Regulation, the Atiyat Court had jurisdiction only to grant commutation amounts, which constitute Atiyat grants within the definition of Section 2(1)(b) of the 1952 Act. It further held that even if the lands were treated as Inam lands, as the Inams stood abolished under the Hyderabad Abolition of Inams Act, 1955 compensation payable under that Act alone will be an Atiyat grant and not the Inam lands. It was, therefore, held that the Nazim Atiyat had no jurisdiction to grant any rights over the immovable property. While referring to the Muntakhab, which was marked as Ex.B.4, the Civil Court held that what was or could have been released in favour of the successors was only the commutation sums payable in respect of those lands under the Regulation 1358 Fasali and not the lands. Though an appeal was filed in CCCA No.142 of 1976, a Division Bench of this Court dismissed the same by its judgment dated 11-12-1985 albeit without much discussion. Thus, the judgment of the Civil

Court in the said suit had become final.

38. After critically examining the judgment of the Civil Court, we find that its conclusions were mainly based on the post-amended definition of Section 2(1)(b) of the 1952 Act under which the power of Atiyat Court was confined to payment of commutation amounts in respect of Jagir lands covered by the Regulation 1358 Fasali or the compensation payable in respect of the Inam lands covered by the Hyderabad Inams Abolition Act, 1955. It is only the Inam lands, to which the 1955 Act is not applicable, are included in the definition of Atiyat grants. Evidently, the attention of the Civil Court was not invited to the pre-amended definition of Atiyat grant. In view of our finding on Point No.2 that in content there is no variation between the pre and post amendment definition of the Atiyat grant, we are in agreement with the conclusion drawn by the Civil Court in O.S.No.512 of 1973 that the Nazim Atiyat Court had no power to confer rights over the Jagir lands except to the extent of cash grants. This judgment, having become final, as already mentioned hereinabove, is binding on the legal heirs. We may state, at this stage, that at no point of time during the course of his argument the learned senior counsel advanced the contention that since the appellant is not a party to the said suit, the said judgment is not binding on him or other legal representatives. At any rate, whether the said judgment binds them or not, in view of the findings given by us independent of the said judgment, the appellant cannot succeed.

39. For all the reasons mentioned above, the Writ Appeal fails and the same is accordingly dismissed.