

(2000) 02 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 137 and 8053 of 1998

Soham Modi and another

APPELLANT

Vs

Special Court under A.P. Land Grabbing (Prohibition) Act and
others

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 6, 8(1)
Andhra Pradesh Survey and Boundaries Act, 1923 — Section 13, 14
Constitution of India, 1950 — Article 226

Citation : AIR 2000 AP 482 : (2000) 2 ALD 468 : (2000) 2 ALT 316

Hon'ble Judges : R. Ramanujam, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. Vedula Venkataramana and Mr. M.S.R. Somakonda Reddy, for the Appellant; Government Pleader, for LA and Mr. K. Somakonda Reddy, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—Writ Petition No.137 of 1998 is filed by Soham Modi and Sourabh Modi and Writ Petition No.8035 of 1998 is filed by M.B.S. Purushotham challenging the judgment and decree dated 19-12-1997 passed in LGC No. 144 of 1995 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982, hereinafter referred to as the "Special Court".

2. LGC No.144 of 1995 was filed by Smt. Dinmani K. Mehta, Girish K. Mehta, Subash K. Mehta and Balakrishna K. Mehta against M.B.S. Pursushotham, Sonam Modi, Sourabh Modi and Anil Rupani for the following reliefs : to (1) order eviction of the respondents 1 to 4, their legal heirs, successors and their agents from the application schedule property and restoration of possession of the said property to the applicants; (2) direct respondents 1 to 4 to demolish and remove all the unauthorised and illegal structures erected on the application schedule land; (3) declare the respondents 1 to 4 as land grabbers under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982, hereinafter referred to as the "Act, 1982" and launch criminal proceeding against them and punish them under

the provisions of 1982 Act; and (4) direct the respondents to pay compensation of Rs.50,000/- per month from the date when the respondents have illegally occupied and constructed the existing illegal structures on the application schedule property and for costs.

3. In Writ Petition No.I37 of 1998 the Special Court has been shown as 1st respondent and applicants in LGC No. 144 of 1995 have been shown as respondents 2 to 5. In Writ Petition No.8053 of 1998, the Special Court has been shown as the 1 st respondent and applicants 1 to 4 have been shown as respondents 2 to 5 and the petitioners in Writ Petition No. 137 of 1998, who were respondents 2 and 3 in LGC No.144 of 1995, have been shown as respondents 6 and 7.

4. Since both the writ petitions are directed against the single judgment of the Special Court and the issues involved in both the writ petitions are common, they are clubbed and disposed of by this common order.

5. For purpose of convenience, the parties have been referred to as applicants and the writ petitioners.

6. The case of the applicants before the Special Court as pleaded in their application filed u/s 8(1) of the Act, 1982 was as follows : The schedule property measuring to an extent of 605 sq. yards equivalent to 5 guntas in S.No.40 corresponding to TS No.10 of Begumpet village, Balanagar Mandal, Ranga Reddy district is situated within the Hyderabad and Secunderabad Municipal limits bearing Municipal Nos. 1-10-72/2/3, 1-10-72/2/3/A, 1-10-72/2/3/B, 1-10-72/2/3/C, bounded by North : Begumpet main road (SP Road); South : D.No. 1-10-72/2/2; East : 15 ft. wide road and West : D.No. 1-10-72/A. The schedule property was originally owned by one Chotalal Shivaram Vyas. Applicant No.1 is the daughter of the said Chotalal Shivaram Vyas. Applicants 2 to 4 are the sons of the applicant No.1. Chotalal Shivaram Vyas died at Rajkot on 10-10-1983. After his death, applicants succeeded to the properties of late Chotalal Shivaram Vyas including the schedule property as his legal heirs. On or about 20-11-1995, applicant No.3 read a news item in Deccan Chronicle newspaper wherein the schedule property was advertised for sale. When he visited the schedule premises advertised for sale, he found that the property surrounded by a compound wall has been encroached upon by the petitioners in Writ Petition No.137 of 1998 and a commercial complex, has been constructed thereon. On further enquiry, the applicant No.3 came to know that the petitioner in Writ Petition No.8053 of 1998 namely M.B.S. Purushotham by misrepresenting that the schedule property as his property, he obtained building sanction for construction of a complex. The petitioners in Writ Petition No.137 of 1998 are builders and developers of one Anil Rupani (respondent No.4 in LGC No. 144 of 1995). They have entered into an agreement with the said Rupani to purchase the schedule property. The writ petitioners even though have no title or interest over the schedule property, grabbed it. Further the petitioners in Writ Petition No.8053 of 1998 in collusion with the petitioners in Writ Petition No.137 of 1998

are on the schedule land. Thus, they are land grabbers. Hence the application u/s 8(1) of the Act, 1982.

7. On service of notice, M.B.S. Purushotham (petitioner in Writ Petition No.8053 of 1998) filed his counter before the Special Court contending that he purchased an extent of 411 sq. metres in S.No.41 of Begumpet village under a registered sale deed dated 9-7-1973 from Shivagri Mysaiah and others for a consideration of Rs.12,000/- and was put in possession of the schedule property. Chotalal Shivaram Vyas filed a suit OS No.36 of 1975 on the file of the IV Addl. Judge, City Civil Court, Hyderabad against Purushotham and others for declaration that he is the absolute owner and possessor of an extent of 800 sq. yards in S.No.40 of Begumpet village and for permanent injunction. Defendants I to 6 in the said suit were the Purushotham "s predecessors-in-interest. The said suit was resisted by Purushotham on the ground that he purchased 411 sq.metres in S.No.41 of Begumpet village. He never claimed any title to S.No.40 alleged to have been purchased by Chotalal Shivaram Vyas. On contest, the said suit was disposed of declaring that Chotala/ Shivaram Vyas was the owner and possessor of 5 guntas of land in S.No.40 (605 sq.yards) situated within the boundaries in the plaint schedule. The request of Chotalal Shivaram Vyas for injunction was rejected by the Court on the ground that the defendants therein stated that they have not encroached the disputed land,. In the said suit, Chotalal Shivaram Vyas did not get the land in question either identified or demarcated. He also did not establish that the land in possession and enjoyment of Purushotham was part and parcel of S.No.40 of Begumpet village. He also failed to establish that Purushotham"s claim that the land forms part of S.No.41 as not true. One more suit namely OS No.51 of 1981 was also filed on the file of the IV Addl. Judge, City Civil Court, Hyderabad. The boundaries mentioned in OS No. 51 of 1988 and OS No.36 of 1975 are altogether different. The boundaries given by the applicants in LGC No.144 of 1995 are again different from the boundaries given in OS Nos.36 of 1975 and 51 of 1988.

8. The further case of Purushotham was that he has been in continuous and uninterrupted possession and enjoyment of the said land ever since the date of his purchase on 9-7-1973. He applied for permission for construction of a compound wall and necessary permission was granted by the Municipal Corporation of Hyderabad. The Municipal Corporation also recognised his possession and obtained a registered agreement dated 11-3-1981 that he does not claim compensation for the land of 354 sq.yards acquired and taken possession from Purushotham for widening of Sardar Patel Road. The Corporation also obtained the consent letter on 24-12-1981 for taking possession of the above land. Purushotham also paid open land tax to the Corporation on 18-4-1981. The State Government in G.O. Ms. No,373 MA, dated 19-4-1982, passed an order relaxing zonal regulations in favour of Purushotham for construction of shopping complex in the remaining area after the land was taken away by the Corporation. On 27-3-1982, Purushotham delivered remaining portion of land to Mrs. Mangarla Kakadia for development of the land namely for

construction of a complex. Construction of ground floor was started in March, 1982 and completed in the year 1983. The request made on 7-11-1985 for according permission for construction of first and second floors was rejected by the Government in their letter dated 21-5-1986. The said action of the Government was challenged by Purushotham in Writ Petition No.16663 of 1986 which was allowed on 23-3-1990 by this Court quashing the order of the Government dated 21-5-1986. Thereafter, the Government gave permission to Purushotham to proceed with the construction of first and second floors. He has been in continuous and uninterrupted possession and enjoyment of the land since 1973. He denied the allegation that he is a land grabber. Thus contending, he requested the Special Court do dismiss the application filed u/s 8(1) of the Act, 1982.

9. Soham Modi and Sourabh Modi (petitioners in Writ Petition No. 147 of 1998) on service of notices filed their counter in LGC No.144 of 1995. Their stand was almost adopting the stand taken by M.B.S. Purushotham. In the statement filed before the Special Court, it is stated that M.B.S. Purushotham purchased an extent of 411 sq.metres of land in S.No.41 of Begumpet village under a registered sale deed dated 9-7-1973. Subsequent to this there was an agreement between Satish Modi and Purushotham. Purushotham entered into an agreement of sale of the said land in their favour and executed a sale deed on 24-7-1993 conveying 116 metres in the premises bearing No.1-10-72/2/3 (old S.No.41 of Begumpet village). By the time of the sale deed the 2nd floor of the premises was at the stage of completion. The writ petitioners applied for permission for construction of first and second floors. The Municipal Corporation of Hyderabad granted permission to Purushotham for construction of a compound wall. The writ petitioners constructed ground floor in the year 1982-83. But the request of the petitioners to the Municipal Corporation for grant of permission for construction of first and second floors was rejected. The said action was challenged in Writ Petition No.16663 of 1986 and the said writ petition was allowed. Thereafter, the Government issued G.O. Ms. No.905, in favour of Purushoiham relaxing the zonal regulations and to proceed with the construction. The writ petitioners constructed first and second floors and a commercial complex popularly known as "Modi Complex". Their further case was that they are the absolute owners of the land situated in S.No.41 of Begumpet village. Their property is situated in S.No.41 whereas the claim of the applicant is in respect of S.No.40. Thus, the claim of the applicants is not tenable. They also pleaded adverse possession on the ground that they have been in continuous and uninterrupted possession of schedule land for a period of more than 12 years. According to all the writ petitioners, the original owners of the schedule property situated in S.No.40 were "Cheekkot Family". As such the applicants cannot claim title over the schedule property. They further contended that the applicants have not made out a prima facie case so that the Special Court can take cognizance u/s 8(1) of the Act, 1982.

10. On the basis of the above pleadings, the Special Court framed the following

issues :

1. Whether the applicants are the owners of the application schedule property ?
2. Whether the rival title set up by the respondents is true and correct ?
3. Whether the respondents are land-grabbers within the meaning of Section 2(d) and 2(e) of the A.P. Land Grabbing (Prohibition) Act XII of 1982.
4. To what relief?

11. To prove their case, both parties adduced evidence both oral and documentary. On behalf of applicants, the 3rd applicant examined himself as PW1. Another two witnesses namely V. Ashok Kumar, MRO, Balanagar and B. Srinivas, Inspector of Survey, Office of the Assistant Director, SLR, Ranga Reddy, were examined as PWs.2 and 3. Exs.A1 to A22 were marked. On behalf of the writ petitioners, M.B.S. Purushotham (R1 in LC No.144 of 1995), examined himself as RW1 and the 3rd respondent Sourabh Modi, examined himself as RW2 and got marked 33 documents as Exs.B1 to B33. CWs.1 to 3 were examined as Court witnesses and Exs.C1 to C17 were marked by the Court. Exs.X1 to X6 were marked through third parties.

12. Ex.A1 is the notarised GPA, dated 27-6-1995 executed by applicants 1, 2 and 4 appointing PW1 as their agent to act on their behalf. Ex.A2 is the certified copy of sale deed dated 12-12-1964 executed by A.R. Muralidhar in favour of Chotalal Shivaram Vyas conveying S.No.40 of Begumpet village. Ex.A3 is the certified copy of sale deed 27-5-1961 executed by Syed Mohammed Azam in favour of A. Muralidhar conveying 5 guntas and Ac. 1.35 guntas in S.No.40 and S.No.37 of Begumpet village. Ex.A4 is the registered plan enclosed to Ex.A3 dated 30-4-1962. Ex.A5 is the death certificate dated 18-11-1983 issued in the name of Chotalal by the office of the Registrar, Births and Death, Rajkot Municipal Corporation, in Gujarathi Language. Ex.A6 is the English translation of Ex.A5. Ex.A7 is the special notice of property tax dated 15-5-1972 issued to Chotalal Shivram Vyas demanding property tax for the half year commencing from 1st April, 1972. Ex.A8 is the certified copy of judgment dated 29-3-1980 in OS No.36 of 1975 on the file of the IV Additional Judge, City Civil Court, Hyderabad. Ex.A9 is the certified copy of the decree passed in pursuance of judgment in OS No.36 of 1975 on the file of the IV Additional Civil Judge, Hyderabad. Ex.A10 is the true extract of G.O. Ms. No.212, dated 11-2-1981, issued by Government of A.P., Rev. (UCII), Dept., granting exemption u/s 20(1)(a) and 20(1)(b) of ULC Act. Ex.A11 is the true extract of pahani patrika for the year 1993-94 in respect of S.No.40 of Begumpet village, Balanagar Mandal, Ranga Reddy District. Ex.A12 is the order dated 11-4-1988 passed in CCCA No-61 of 1981 on the file of the High Court of A.P., filed by Chotalal Shivaram Vyas over the judgment in OS No.36 of 1975 on the file of the IV Additional Judge, City Civil Court, Hyderabad. Ex.A13 is the certified copy of the judgment dated 24-2-1994 in CCCA No.169 of 1980 on the file of the High Court of A.P. Exs.A14 to A16 are the encumbrance certificates for different periods. Ex.A17 is the paper publication in Dccan Chronicle newspaper

dated 11-1-1995 got issued by one Anil Rupani relating to schedule land. Ex.A18 is the paper publication dated 20-1-1995 got issued in Deccan Chronicle newspaper. Ex.A19 is the paper publication dated 26-1-1995 got issued by the applicants in Deccan Chronicle newspaper asserting their right over the application schedule property. Ex.A20 is the office copy of legal notice dated 24-1-1995 got issued by applicants to respondents. Ex.A21 is the reply notice dated 2-3-1995 got issued by respondent Nos.2 and 3 to Ex.A.20. Ex.A22 is the survey plan of land bearings No.40 of Begumpet village.

13. Ex.B1 is the registration extract of the sale deed dated 9-7-1973 executed by S. Maisaiah and three others in favour of respondent conveying in S.No.41 of Begumpet village. Ex.B2 is the plan attached to Ex.B1. Ex.B3 is the xerox copy of agreement dated 9-3-1981 executed by Purushotham in favour of Additional Commissioner, MCH, Secunderabad Division, agreeing not to claim compensation if the constructed portion is affected by road widening. Ex.B4 is the permission dated 24-3-1981 obtained by petitioner for construction of a compound wall in S.No.41 of Begumpet village. Ex.B5 is the xerox copy of letter dated 16-9-1981 addressed to 1st respondent by Special Officer, MCH, Ex.B6 is the plan showing the affected portion in red colour in SP Road widening of Begumpet. Ex.B7 is the notice dated 20-5-1982 issued to Purushotham demanding property tax from 1-10-1981 to 31-3-1982. Ex.B8 is the receipt dated 20-5-1982 showing the payment of property tax by respondent No.1 for S.No.41 of Begumpet village. Ex.B9 is the true extract of G.O. Ms. No.372 MA, dated 19-4-1982 issued by Government of Andhra Pradesh Municipal Administration and Urban Development Department, regarding construction of shops in S.No.41 of Begumpet village. Ex.B10 is the Memorandum No.3774/MI/85-2, MA, dated 21-5-1986 issued by Municipal Administration and Urban Development Department rejecting the application of Purushotham regarding relaxation of rules. Ex.B11 is the xerox copy of order dated 23-3-1990 in Writ Petition No. 16663 of 1986 on the file of the High Court of A.P., filed by Purushotham. Ex.B12 is the xerox copy of G.O. Rt. No.905 MA, dated 16-7-1991 issued by Government of Andhra Pradesh. Ex.B13 is the registration extract of the sale deed dated 24-7-1993 executed by M.B.S. Purushotham and Satish Modi in favour of 1st petitioner in Writ Petition No.137 of 1998 conveying 116 sq.mctres situated at 1-10-72/3, Begumpet village. Ex.B14 is the registration extract of the deed of partition executed by and between Cheekoli Eliah, Cheekoti Veeramma and Cheekoli Gangaiah. Ex.B15 is the registration extract of the sale deed dated 25-9-1961 executed by Cheekoli Lingaiah and others in favour of T. Shamanthakumar conveying land in S.Nos. 30, 39 and 40 of Begumpet village. Ex.B16 is the registration extract of the plan showing the land in S.Nos.30, 39 and 40 of Begumpet village belonging to Cheekoti Lingaiah and sons. Ex.B 17 is the articles of agreement made at Hyderabad on 1-4-1985 between M.B.S. Purushotham and Satish Modi regarding development of a portion of land in S.No.41 of Begumpet village. Ex.B18 is the invitation card got printed by the Purushotham on the occasion of "Gruhapravesham" at Bcgumpet. Ex.B19 is the registration extract of the sale

deed dated 1-4-1961 executed by Macharla Veerabhadrararo in favour of Satish Chandra, Mrs. Girijabai, Mrs. Kusumdevi conveying entire S.No.37 and part of S.No.38 of Begumpet village. Ex.B20 is the registration extract of the plan enclosed to Ex.B19. Ex.B21 is the registration extract of sale deed dated 26-10-1960 executed by Datla Annapurnamma in favour of C. Janardhana Reddy conveying 2210 sq.yards bearing Municipal No.2547/44/ward No.2, S.Nos.30, 38 to 40 of Begumpet village. Ex.B22 is the registration extract of the plan enclosed to Ex.B21, Ex.B23 is the notice issued to Purushotham u/s 452 of Hyderabad Municipal Corporation by MCH, Secunderabad Division dated 6-10-1982. Ex.B24 is the letter dated 26-2-1983 addressed by Additional Commissioner, MCH, Secunderabad Division to Purushotham regarding revised plan for construction of building on an open plot No.41 of Begunipet village. Ex.825 is the registration extract of sale deed dated 22-5-1958 executed by Nawab Azam Jung Bahadur in favour of Macharla Veerabhadra Rao conveying 8500 sq.yards in S.Nos.37 and 38 part of Begumpet village. Ex.B26 is the registration extract of the plan enclosed to Ex.B25. Ex.B27 is the sanctioned plan dated 29-5-1982 obtained by Purushotham from MCH regarding construction of building in ground floor in S.No.41 of Begunipet village. Ex.D28 is the sanction plan dated 15-2-1992 obtained by Purushotham from MCH regarding construction of building in first and second floors in premises No.1-10-72/1/3 of Begumpet village. Ex.B29 is the sale deed dated 24-7-1993 executed by Purushotham and Satish Modi in favour of 2nd petitioner in Writ Petition No.137 of 1998 conveying 155 sq.metres at H.No.1-10-72/2/3/A of Begnmpet, Hyderabad. Ex.B30 and Ex.B31 are the extracts from the assessment book of MCH, Secunderabad Division, for the year 1990-91 in respect of H.No.1-10-72/2/3/A of Begnmpet. Ex.B32 is the drainage connection permission obtained by Purushotham from MCH, Secunderabad for P.No.41 of Bcgumpet dated 22-5-1986. Ex.B33 is the receipt No.92, dated 22-5-1986 showing the payment of Rs.400/- to MCH for obtaining drainage permission.

14. Ex.C1 is the Commissioner warrant dated 26-8-1996 issued to Assistant Director, SLR, Ranga Reddy District, in IA No.744 of 1996 in LGC No.144 of 1995. Ex.C2 is Commissioner"s Report in LGC No.144 of 1995. Ex.C3 is the plan filed by the Commissioner along with Ex.C2 report. Ex.C4 is the objections filed by the applicants to the report of the Commissioner. Ex.C5 is the objections filed by the respondents 2 and 3 to the report of the Commissioner. Ex.C6 is remarks submitted by the Commissioner to the objections filed to Ex.C2 report. Ex.C7 is the true extract of Wasool Baqui in respect of S.No.39 of Begumpet village. Ex.C8 is tippan which was rebuilt by Commissioner with the help of pucca-book. Ex.C9 is the copy of Gazette notification dated 31-12-3976. Ex.C10 is the copy of Gazette notification dated 31-12-1976 page No.7. Ex.C11 is the xerox certified copy of Town Survey Register with regard to S.Nos. 11, 12, 13, 14, 15 and 16 of Begumpet village. Ex.C12 is the xerox certified copy of Town Survey Register (relevant portion) with regard to S.Nos.17, 18, 19 and 20. Ex.C13 is the xerox certified copy of Town Survey Register pertaining to S.Nos.21, 22, 23, 25, 26,

27, 28/1 and 28/2. Ex.C14 is the xerox copy of Town Survey Register with regard to S.Nos.29, 30, 31, 32 and 33. Ex.C15 is the xerox certified copy of Town Survey Register with regard to S.Nos.58, 59 and 60 of Begumpet village. Ex.C16 is the xerox certified copy of Town Survey Register with regard to S.Nos.61 to 66 of Begumpet village. Ex.C17 is the xerox certified copy of correlation sketch with regard to old S.Nos.39, 40 and 41 of old Begumpet village.

15. Ex.X1 is the report submitted by MRO, Balangar Mandal in LGC No.144 of 1995. Ex.X2 is the sketch showing the open land in S.No.40, Ward No.94, Block E, situated at Bcgumpet, Hyderabad. Ex.X3 is the true extract of TSL Register in respect of TS No. 10, Ward No.94, Block E of Begumpet village. Ex.X4 is the attested ROM in respect of TS No. 10, Ward No.94, Block E of Begumpet village. Ex.X5 is the true extract of TSL Register in respect of TS Nos.1 to 10 of Begumpet village. Ex.X6 is the true copy of ROM in respect of TS Nos.1 to 10 of Begumpet village.

16. The Special Court first took up Issues 1 and 2 for consideration which relate to the controversy as to the extents of land and the survey numbers owned by both parties including title and possession. The claim of the applicants was in respect of S.No.40 whereas the claim of the writ petitioners was in respect of S.No.41. In view of the above controversy between the parties the Special Court found that the identification of the property as necessary.

17. According to the Special Court, PW2 submitted his report under Ex.X1 dated 29-9-1995 which was prepared as per the provisions of Section 6 of the Act of 1982. PW2 stated that he inspected the schedule property along with the Mandal Surveyor. He mentioned the boundaries in Column No. 12. On verification, he found that the boundaries tally with the schedule property. According to PW2 in Ex.X1 the schedule property has been mentioned as situated in S.No.40 corresponding to TS No.10 of Begumpet village. The Special Court observed that: PW3 produced Town Survey Register of Begumpet village on 5-7-1996 and also produced Town Survey Plan of Ward No.94 of Begumpet village pursuant to the orders of this Court dated 28-6-1996; Ex.X5 is the true extract of the Town Survey Register of Begumpet village in respect of TS Nos.1 to 10 of Begumpet village; Ex.X6 is the true extract of Town Survey Plan of Ward No.94 of Begumpet village; PW3 stated that TS No. 10 bounded by the road on the north which is TS No.1, on the south by TS No.9, on the east road (minor) which is TS No. 12 and on the west TS No.7. In his cross-examination PW3 stated that there is a correlation sketch prepared by the Town Survey Department on the basis of village map. The Town Survey Plan is prepared on the basis of correlation sketch. According to him, the correlation sketch is superimposed on the village plan. He stated that he does not know whether the sketch is available with the Town Survey Department. He further stated that he did not verify the areas of sold S.Nos.40 and 41. According to him in Ex.X5 as against TS No.10 in Col.No.5 the area is mentioned as 5 guntas equivalent to 12 cents. Whereas the extent of old S.No.41 is Ac. 1.08 guntas equivalent to Ac.1.20 cents. To get the clear picture

about the demarcation of S.Nos.40 and 41, PW3 was examined on 28-11-1997 by the Court as CW3. He produced the Town Survey Register and the relevant xerox certified copies of Exs.C11 to C17 which were referred above. According to the Special Court, the old S.No.41 corresponds to TS Nos.5 to 9 of Begumpet village for which the claimants are not claiming any title. It further observed that Ex.C17 shows that old S.No.40 of Begumpet village is correlated to TS No.10. Ex.C17 also suggests that S.No.39 is correlated to new TS Nos.13 to 16, 26, 33, 60, 62 and 63. From the above information, the Special Court found that S.No.40 has got a separate identity.

18. As to the title pleaded by the applicants, the Special Court took into consideration the following facts, namely that originally the schedule property belonged to Syed Mohammed Azam who sold the schedule property, viz., 5 guntas in old S.No.40 of Begumpet village and Ac. 1.35 guntas in old S.No.37 of Begumpet village to one Muralidhar under a registered sale deed Ex.A3, dated 27-5-1961. Muralidhar who became the owner of 5 guntas of land by virtue of Ex. A3 sold the same to Chotalal Shivram Vyas under Ex.A2 registered sale deed dated 12-12-1964. The said Chotalal Shivram Vyas filed OS No.36 of 1975 on the file of the IV Additional Judge, City Civil Court, Hyderabad, against Purushotham as 7th defendant and others. The said suit was decreed declaring the title of Chotalal Shivram Vyas for an extent of 605 sq.yards out of 800 sq.yards. But the relief of injunction was refused. The defendants I to 6 in OS No.36 of 1975 were the vendors of the 7th defendant therein namely Purushotham. Ex.A8 is the certified copy of the judgment and Ex.A9 is the certified copy of the decree in OS No.36 of 1975. According to the Special Court, the boundaries mentioned in the suit schedule property and the application schedule property are one and the same. It found that the judgment in OS No.36 of 1975 will act as res judicata in respect of the claim put forth by the respondents 1 to 4. Placing reliance on Ex.C3 and the statement of RW1 including his alternative plea, the Special Court found that the disputed property is situated in S.No.40 and a major portion of Modi building is in old S.No.40 of Begumpet village. The Special Court observed that before making any claim for S.No.40, the writ petitioners should have got the schedule property surveyed and boundaries fixed. Special Court took into consideration Ex. A11 Pahani Patrika for the year 1993-94 in respect of old S.No.40 wherein the name of the original owner Syed Mohammed Azam is mentioned as pattedar of old S.No.40. The Special Court further found that Exs.A7 and A10 disclose that Chotalal Shivram Vyas was exercising the right of ownership over the schedule property till his death. CW1 is the Commissioner appointed by the Court to identify the application schedule property. CW1 taking into consideration the village map and correlated sketch prepared at the time of town survey, identified the schedule property. The Commissioner, CW1, submitted his report at Ex.C2. Ex.C3 is the plan. The Special Court after looking into Ex.C17, X5 and X6 found that no portion in old S.No.40 is correlated to TSNo.39 at the time of town survey. It considered Ex.CIO, copy of Gazette Notification dated 31-12-1996, and held that the records maintained by Survey

Department under Sections 13 and 14 of A.P. Survey and Boundaries Act, 1923 are conclusive proof that the boundaries determined and recorded therein have been done correctly. Exs.B19 and B26 produced at the instance of the writ petitioners show that the schedule property belongs to Cheekoli family, but Cheekoli family are not the parties before the Court. Making use of the above material the Special Court held that the applicants are the true owners of the schedule property. Thus point No.1 was answered in favour of the applicants.

19. Regarding plea of adverse possession set up by the writ petitioners, the Special Court found that the writ petitioners failed to establish their continuous and uninterrupted possession over the schedule property for more than 12 years. The documents produced by them namely Exs.B1 to B4 all refer to S.No.41 of Begumpet village. According to Special Court, Exs.B5 and 6 have no significance. Likewise Exs.B7 and B8 receipts dated 20-5-1982 which relate to demand to pay property tax for the period from 1-10-1981 to 31-3-1982, show that those receipts relate to S.No.41 and not S.No.40. The Special Court found that in Ex.B9 there is no reference to old S.No.40. The evidence of RW1 did not influence the Special Court to come to a conclusion that RW1 established his alternative plea, namely that he has perfected his title over the schedule property by way of adverse possession. The Special Court found that no construction was carried out prior to Ex.B17. The so called "Modi building" must have been constructed only after 1-4-1985, whereas LGC No.I44 of 1995 was filed on 10-7-1995. On the basis of the above material, the Special Court held that the writ petitioners failed to establish adverse possession over the schedule property. Thus accordingly answered point No.2.

20. Regarding Point No.3, the Special Court found that the writ petitioners have grabbed the land and as such they are land grabbers as defined u/s 2(e) of the Act, 1982. Finally, the Special Court ordered that the writ petitioners shall deliver vacant possession of the entire extent of land in S.No.40 corresponding to TS No.10 of Begumpet village.

21. Regarding payment of compensation at the rate of Rs.50,000 per month, the Special Court found that as no proper evidence was adduced by the applicants to determine the compensation, it is proper for them to file a separate application for determination of mesne profits from the date of filing of LGC No.144 of 1995 till the date of delivery of possession. The Special Court refused to grant permission to the applicants to prosecute the writ petitioners. All the above findings made the Special Court to pass a judgment and decree in favour of the applicants and against the writ petitioners to deliver whatever the extent of land available in S.No.40 of Begumpet village to the applicants after excluding the northern side road portion. It also ordered costs.

22. Aggrieved by the order of eviction and for mesne profits, the respondents in LGC No.144 of 1995 filed the above writ petitions stating that the judgment of the Special Court is quite illegal and arbitrary. The Special Court committed a mistake in not taking into consideration that the applicants failed to establish the

identity of the schedule property. The evidence given by the applicants did not establish that the applicants are entitled for schedule property. The relief sought by the applicants should not have been ordered as the application itself was not maintainable. Even if the writ petitioners were not in lawful possession of S.No.40, eviction should not have been ordered as they perfected their title by way of adverse possession as they are in continuous and uninterrupted possession of the schedule property right from the year 1973 or atleast from 1982, when construction of building was started. The Special Court committed a mistake in not properly considering Exs.B23 and B24. The Special Court committed a mistake in not deciding that S.No.40 belonged to Cheekoti family. The Special Court committed a mistake in not considering properly Exs.B19 to B26 which show that Cheekoti family were the actual owners of the schedule property. There was no necessity for correlating old S.No.40 with TS No. 10 when there was no dispute that old S.No.40 does not correlate to TS No. 10. No importance should have been attached to the report prepared under Rule 6 of the Act, 1982 as it was not preceded by serving of notice to the writ petitioners. The Special Court has not properly evaluated the evidence of CW1 and Exs.XI and C2. Exs.A8 and A9 the judgment and decree in OS No.36 of 1975 have not operated as res judicata as against the writ petitioners. Even if it is assumed that such a judgment and decree bind the writ petitioners, but they are not liable for eviction as they have established their title beyond, reasonable doubt over the schedule property by way of adverse possession. The Special Court failed to take into consideration the plan approved by the Municipal Corporation for construction of first and second floors, tax paid by the writ petitioners to the Corporation, construction of compound wall as early as on 23-4-1981. All this goes to show that the writ petitioners have proved their case. It is stated that they have discharged their burden that they are not land grabbers. But the Special Court blindly accepted the version of the applicants. According to the writ petitioners, the Special Court when found that the writ petitioners are in possession atleast from 1982 onwards till the date of filing of the land grabbing case in the year 1995, it should have held that the writ petitioners are entitled for equitable relief of allowing them to enjoy the schedule property by collecting from them a just compensation, Thus urging they sought the writ petitions be allowed and the impugned judgment and decree be set aside.

23. The learned Counsel appearing for the petitioners contended that the judgment and order of the Court below is arbitrary and perversive. The Court below committed a mistake in coming to the conclusion that the applicants were the owners of the property inherited by Chotalal Shivram Vyas and they proved the identity of the property in the absence of supporting evidence to that effect. The Special Court committed a mistake that the applicants established the identity of the property alleged to have been grabbed by the writ petitioners. In spite of voluminous evidence produced by the petitioners in support of their alternative plea that they have perfected their title over the schedule property by adverse possession, the Special Court committed a mistake in completely

ignoring the entire evidence. Thus, the judgment and order of the Special Court suffer from errors apparent on the face of the record. In the absence of establishing that the applicants are the owners of the schedule property and the writ petitioners have unlawfully occupied the land, it committed a grave error in holding that the writ petitioners have grabbed the schedule land and thus they are liable to be evicted under the provisions of the 1982 Act and liable to be punished. lie further contended that regarding ownership of the property, the applicants produced evidence including the judgment and decree passed in earlier proceedings in OS No.36 of 1975 filed by Chotalal Shivram Vyas on the file of the IV Additional Judge, City Civil Court, Hyderabad, as at Exs.A8 and A9. The claim of Cholalal Shivram Vyas in the said suit was that he is the owner of the land in respect of S.No.40, but the boundaries mentioned in OS No.36 of 1975 and LGC No.144 of 1995 do not tally. According to him, the petitioners were the owners of S.No.41. The constructions carried on by them in the schedule land was in the capacity of owners. If the theory of their ownership is not accepted by the Court, their possession and enjoyment over the schedule property continuously fore more than the statutory period namely 12 years is sufficient to accept their plea that they have perfected their title by adverse possession.

24. On the hand, Sri Somu Konda Reddy, learned Counsel appearing for the applicants contended that the writ petitions are not maintainable as the petitioners sought to reappreciate the factual possession which in fact was considered by the Special Court, a fact finding authority. The transaction between the petitioners in Writ Petition No.137 of 1998 and Writ Petition No.8053 of 1998 in respect of S.Nos.40 and 43 do not bind the applicants. According to him, the judgment of the Special Court is a well considered one and it does not call for interference of this Court.

25. Before going into the merits of the case, it is proper to extract the relevant provisions of 1982 Act. Section 2(d) deals about "land grabber" which reads as follows :

" "land grabber" means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking alleged possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts, and also includes the successors in interest."

26. Section 2(e) deals about "land grabbing" which reads as follows :

" "land grabbing" means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to

illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire or give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorised structures; and the term "to grab land" shall be construed accordingly."

27. Section 8 deals about the power of the Special Court which reads as follows :

"(1) The Special Court may, either suo motu or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit; (1-A) The Special Court shall, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter:

Provided that the Special Court shall not take cognizance of any such case without hearing the petitioner.

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) (the Code of Criminal Procedure, 1973) or in the Andhra Pradesh Civil Courts Act, 1972, (Act No.9 of 1972) any case in respect of an alleged act of land grabbing or the determination of questions of title and ownership to, or lawful possession of any land grabbed under this Act, shall, subject to the provisions of this Act be triable in the Special Court and the decision of the Special Court is final"

28. The Court below placed much reliance on Exs.A8 and A9, the judgment and decree dated 29-3-1980, tax receipts for the year 1972 Ex.A11 Pahani Patrika for the year 1993-94, Ex.A12 copy of the order of the High Court passed in CCCA No.61 of 1981 and Exs.A14 to A16 Encumbrance Certificates, Ex.A17 paper publication dated 11-1-1991 and exchange of notices.

29. Nature of evidence given by the applicants is not convincing and satisfactory to arrive at a conclusion that they established the identity of the property and thus continued to be in its possession and enjoyment as owners. Even assuming that the applicants established their title and identity of the property then we have to see whether the writ petitioners have made a case of their possession and if so to what period.

30. As mentioned above, the petitioners have alternatively pleaded that they have perfected their title over the schedule property by adverse possession.

31. Adverse possession is a mixed question of facts and law which has to be decided on the material placed by the parties. It commences in wrong and maintains against a right. To establish adverse possession, the burden of

prooflies on those who sets up adverse possession. Adverse possession means, is possession by a person holding the property on his own behalf or on behalf of some person other than the true owner having a right to immediate possession, provided the true owner is not under a disability of incapable of suing. The requirement of adverse possession are that "the possession must be *nee vi nec dam nec precario* which means the possession required must be adequate in continuity, in publicity and in extent which one must establish. It implies dominion and control and the consciousness in the mind of the person having dominion over an object that he has it and can exercise it. It contemplates hostile possession namely possession expressly or impliedly denying the title of the true owner. Here possessor must prove, that he is not acknowledging the right of others but denies the same. To make a claim on the basis of adverse possession, such possession shall be hostile, under a claim or colour of title, actual, open, notorious, exclusive and continued for the required period of time thereby giving an indefeasible right of possession or ownership to the possessor by the operation of the limitation of action. If an owner of the land having notice of the fact that his property is occupied by another who is claiming dominion over it, nevertheless stands-by during the entire statutory period and makes no effort to eject the claimant or otherwise protect his title, ought not to be permitted, for reasons of public policy, to maintain an action thereafter for the recovery of his property land. In other words the establishment of title by adverse possession is said to be on the basis of the theory of presumption that the owner has abandoned the land to the adverse possessor. It is sufficient that the possession should be overt and without any attempt at concealment so that the person against whom time is running ought if he exercise due vigilance to be aware what is happening.

32. Thus there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment to the knowledge of the other. In the matter of possession a mental element namely *animus possidendis* must be present. It is also relevant to state here that the party claiming adverse possession must establish that he was in such adverse possession for twelve years before the date of the suit and for computation of such period he can avail of the adverse possession of such person or persons through whom he claims but not the adverse possession of the independent trespassers as held by the Supreme Court and other High Courts in the following cases, namely *S.M. Karim Vs. Mst. Bibi Sakina*, , *Mohammed Sab Wallad Gafar Sab Vs. Abdul Gani Wallad Mohammed Hayath and Others*, and *Ram Krishna Granthagar and others Vs. Ahi Bhusan Ghosh and others*, .

33. The normal thinking is that, if a person who is in possession of the property belonging to other desires to set up a claim of adverse possession then he shall prove that he has been in possession of the property continuously without any break either by himself or claiming continuity from a person who was in possession of the same earlier to him for a period of 12 years prior to the filing of the suit. In other words, it can be proved by tacking. In several authorities it has

been laid down that even the trespassers can take the plea of adverse possession provided there is continuity in such possession for more than the statutory period, it is popularly known as "tacking". The petitioners in Writ Petition No.137 of 1998 are not claiming their right over the schedule property independently. But they are claiming their right and interest through M.B.S, Purushotham, the petitioner in Writ Petition No.8053 of 1998 on the ground that possession of Purushotham further continued by the petitioners in Writ Petition No.137 of 1998 for more than 20 to 22 years prior to the filing of an application by the applicants before the Special Court, without any break. Thus, they have invoked the protection that flows from the principles of "tacking". Here the nature of possession of persons setting up the plea of adverse possession shall be open with sufficient publicity so as to attract the notice and the knowledge of the other side. Only such acts of possession be public ones which would attract the notice of other side, but if the other side failed to take note of the same, time would continue to run against him. It is also recognised principle of law that even after the declaratory decree is obtained by a person unless he takes appropriate steps for recovery of possession, the declaratory decree by itself would not prevent running of time. Adverse possession prior to the suit can be tacked to the adverse possession continuing thereafter. Mere decree for declaration of title and recovery of possession would not interrupt the running of time. It remains a mere declaratory decree. However, if a decree for recovery of possession is followed by actual seizure of the property either in execution or by an amicable arrangement or compromise, then, a break in the running of time comes into operation from the date of seizure as held by Bombay High Court and High Court of Andhra Pradesh while deciding the suit filed for declaration of title and possession in *Dagababai v, Sakharam*, AIR 1948 Bom. 149, *Maidi Bhikashmiah and Another Vs. Venugopalrao and Others*, .

34. In *Jamuna Devi Vs. Girija Devi and Others*, , the Division Bench of Patna High Court in the matter of tacking by adverse possession held that one trespasser deriving interest from another trespasser can claim tacking of periods of possession by both the trespassers. Further adverse possession arises where the trespassers have no title.

35. In the case of *Wuntakal Yalpi Chenabasavana Gowd Vs. Rao Bahadur Y. Mahabaleswarappa and Another*, , the Supreme Court held that a mere mental act on the part of the person disposed unaccompanied by any change of possession cannot affect the continuity of adverse possession of the deseizor.

36. The oral and documentary evidence produced by the applicants did not establish that immediately after Ex.A8 and Ex.A9, either Chotalal Shivram Vyas or his successors came in possession and enjoyment of the property. None of the applicants' witnesses denied writ petitioners' possession and enjoyment of the schedule property. The village map, survey report and the evidence of official witnesses did not throw much light on the applicants possession and enjoyment of the property in question. Further all this evidence is subsequent to 1995.

37. In the light of the above discussion as to what is adverse possession and when it can be said as proved, now the Court has to examine whether the writ petitioners have established their plea that they have perfected their title over the schedule property by adverse possession. In support of this plea the writ petitioners gave evidence both oral and documentary. M.B.S. Purushotham and Sourabh Modi were examined as RWs.1 and 2 respectively and they marked 33 documents as Exs.B1 to B33. It is their specific plea that even after obtaining decree in OS No.36 of 1975 neither Chotalal Shivram Vyas nor his successors took steps to dispossess the writ petitioners. On the other hand, the writ petitioners continued to be in possession of the schedule property continuously and to the knowledge of Chotalal Shivram Vyas and subsequent to his successors, namely the applicants. If the applicants were sure that they are the owners of the property they would not have allowed the writ petitioners to enjoy the property for more than a statutory period and then to woke up in the year 1995 by filing an application on 10-7-1995. The writ petitioners produced evidence to prove that they have been in possession of the property without any break for a period of 12 years. They obtained permission from the Municipal Corporation of Hyderabad and constructed buildings. They also received notices from the Corporation calling upon them to forego the compensation in respect of that portion of the property which was acquired for road widening. There is evidence to show that the Corporation rejected the petitioners' request for further construction which was ultimately allowed by this Court. The entries in the revenue records maintained in accordance with law, and tax receipts all go to show that the writ petitioners have been in possession and enjoyment of the schedule property for more than 12 years. Ex.B1 is the sale deed and Ex.B2 is the plan. Ex.B3 dated 9-3-1981 is the agreement between the Additional Commissioner, Municipal Corporation of Hyderabad and Purushotham agreeing not to claim compensation. Ex.B4 is the permission obtained by Purushotham from the Corporation on 24-3-1981 to construct a compound wall in S.No.41 of Begumpet village. Ex.B5, dated 16-9-1981 is the letter addressed by the Corporation to the said Purushotham. Ex.B6 is the plan showing a portion of the property going to be affected for road widening. Exs.B7 and B8 are dated 20-5-1982 showing the payment of property tax for the year from 1-10-1981 to 31-3-1982. Ex.B9 is the G.O. Ms. No.372, dated 19-4-1982 which relates to construction of shops in S.No.41 of Begumpet village. Ex.B10 is the copy of the order of the Department of Municipal Administration and Urban Development rejecting the request of the writ petitioners for relaxing the zoning rules in respect of the schedule property. Ex.B11 dated 23-3-1990 is the order of the High Court of A.P. in Writ Petition No. 16663 of 1986. Ex.B12 is the order relaxing the zoning rules. Ex.B13 is the sale deed dated 24-7-1993 executed by M.B.S. Punishotham and Satish Modi in favour of Soham Modi. Ex.B17 which made the Special Court to disbelieve the theory of adverse possession, committed a mistake in reading excluding this with other exhibits. If all the exhibits read together it would have been shown that there was continuity of possession and enjoyment of the schedule property by Purushotham and

subsequently by the writ petitioners. There are other documents also produced by the writ petitioners to show that the property was actually belonged to Cheekoti family but not to Chotalal Shivram Vyas. Ex.B26 is the plan and Ex.B27 is the sanctioned plan dated 29-5-1982 obtained by Purushotham from the Municipal Corporation of Hyderabad for construction of building in ground floor in S.No.41. Ex.B28 is again a sanctioned plan dated 15-2-1992 for construction of building in the first floor. The other material produced by the applicants through CW1, A. Ranga Reddy, CW2, Kishore Kumar and CW3, B. Srinivas, at Exs.C1 to C17 and other documents marked as Exs.XI to X6, all relate subsequent to the filing of the application u/s 8 of the 1982 Act.

38. A scanning of the above evidence discloses that the writ petitioners established that they have been in possession and enjoyment of the schedule property for more than the statutory period prior to the filing of the application by the applicants. The applicants knew this possession, but at no time they raised any objection to such enjoyment by the writ petitioners. In spite of establishing the title by way of adverse possession by the writ petitioners, the Special Court gave a finding against them which is quite erroneous. We are aware that when once the Court below gave a finding on facts, this Court shall not interfere with the said finding by exercising its jurisdiction under Article 226 of the Constitution. The scope of Article 226 of the Constitution of India is very much limited in a matter of this type. But that does not mean that whenever it appears to the Court sitting under Article 226 of the Constitution that when a particular order has been called upon to be quashed by issuing writ of certiorari and while perusing that order if the Court finds that there is error apparent on the face of that order sought to be quashed, it can exercise its powers under Article 226 of the Constitution as held by the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, :

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by the Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal is a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it

may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if, it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be recorded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, . It is of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court, or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory" provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error, but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the fact of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

39. As the order of the Special Court is erroneous in law as to the finding on perfecting of title by the writ petitioners by way of adverse possession, there cannot be any hesitation for us to interfere with the impugned order and give a finding that the writ petitioners perfected their title over the schedule property by adverse possession.

40. When the writ petitioners have established that they have been in possession and enjoyment of the schedule property for more than a statutory period whether it is S.No.40 or 41, they cannot be termed as land grabbers nor they are in unlawful possession and liable for eviction. Thus, the finding of the Special Court that the writ petitioners are land grabbers and thus, liable for eviction is a clear case of non-application of mind to the provisions of Sections 2(d), 2(e) and 8 of 1982 Act.

41. The material available before the Special Court did not suggest that the writ petitioners are liable to be evicted. The Court before taking cognizance failed to notice whether the applicants made out a prima facie case. It has come in evidence that Chotalal Shivram Vyas purchased the schedule property under a registered sale deed dated 9-7-1973. In OS No.36 of 1975, the Court declared that the said Chotalal Shivram Vyas was the owner of the schedule property but refused to grant the relief of injunction. The said judgment was passed on 29-3-1980. From 29-3-1980 till the date of filing of the land grabbing case, no reliable evidence was placed by the applicants to infer that either the said Chotalal Shivram Vyas or his successors-in-interest have been in possession and enjoyment of the schedule property. When the request to grant injunction was rejected by the Court, it implies that the person sought injunction failed to establish that he is in possession of the property. The pleadings of the applicant suggested that Chotalal Shivram Vyas after obtaining a decree in the year 1980, kept away from the property till the filing of the application in the year 1995. So also the applicants who asserted that they have succeeded to the property held by Chotalal Shivram Vyas. On more than one occasion, the applicants admitted that they are not in possession of the schedule property and as such it is quite unbelievable that the applicants were not aware of the possession and enjoyment of the writ petitioners over the schedule property for more than 12 years that too when the writ petitioners constructed compound wall and other structures namely the ground and first floors. The applicants were not certain as to the identity of the schedule property because in OS Nos.36 of 1975 and 51 of 1988 the boundaries of the schedule property though differ but again the boundaries shown in these two suits differ from the boundaries shown in LGC No.144 of 1995. Refusing to grant injunction restraining the 1st respondent in OS No.36 of 1975 namely Purushotham implies that the 1st respondent therein was in possession and enjoyment of the schedule property as on the date of the filing of the suit and the date of passing of decree in the said suit. The petitioners are claiming that they have a right over the schedule property and also in possession of the same tracing the claim through Purushotham. There is no break in the continuity of possession of the schedule property first by the said Purushotham

and later by the writ petitioners.

42. From the above discussion it appears to our mind that applicants are neither sure of their rights over the schedule property nor had they any intention to dispossess the writ petitioners. They came with an application in the year 1995 after loosing their rights probably on a wrong advise. The Special Court proceeded with the case as if whatever that was stated by the applicants as gospel truth, ignoring the evidence that was given by the writ petitioners. The Special Court before taking cognizance of the application filed u/s 8(1) of the Act, 1982, should have applied its mind whether the applicants made out a prima facie case. Before taking cognizance, no notices were issued to the persons concerned to hear them in the matter. The Special Court did not weigh the evidence in its proper perspective.

43. Having reached this conclusion, we have to hold that the Court below committed an error in holding that the writ petitioners have not perfected their title over the schedule property by adverse possession and on the other hand they are land grabbers and liable to be evicted. We hold that the writ petitioners have perfected their title over the schedule property by way of adverse possession and as such they are not land grabbers. Thus they are not liable to be evicted from the suit schedule property. So also the demolition of the buildings in question.

44. Accordingly, both the writ petition are allowed and the judgment and decree dated 19-12-1997 passed by the Special Court in LGC No.144 of 1995 are set aside. There is no order as to costs.