
(2002) 01 AP CK 0112
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3802 of 2000

Sri Fazal Ali

APPELLANT

Vs

State of A.P., Home Dept. and Others

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 6 ALT 600

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; Government Pleader for Respondent Nos. 1 and 2, P. Kishore Rao, SC for Hyderabad Metro Water Supply and Sewerage Board for Respondent No. 3 and, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—The petitioner is the owner and possessor of the property bearing No: 3-5-784, situated opposite to Judy Mosque, King Kothi, Hyderabad. The said property with various sub numbers including covered area and open area, admeasures about 2,426 square yards. The said property originally belonged to H.E.H., the Nizam of Hyderabad and the same was included in the "Blue Book" of the Nizam's property, and, the same was gifted to the petitioner in 1954 by the late H.E.H. the VII Nizam of Hyderabad being the petitioner as one of his adopted sons. The petitioner has sold the portion thereof, and is presently in possession of the main premises bearing No. 3-5-784/1. With a view to take up certain additions and alternations, he had applied for sanction to the Municipal Corporation of Hyderabad. Even though, the said plan is deemed to be the sanction, the M.C.H. still tried to interfere with the construction, as a result of which he filed OS. No. 123 of 1987 before the 1st Additional Judge, City Civil Court, Hyderabad and the same was decreed in favour of the petitioner declaring that he is entitled to take up construction as detailed in the plaint therein and consequently, restrained the M.C.H. from interfering with the

proposed construction of the petitioner in accordance with the said plan. The premises bearing No. 3-5-784/1/A was sold by the petitioner to one Habeeb Mohammed and the other sub numbers stood in the name of the petitioner. While so, a small residential portion comprising 125 square yards, which is part of premises No. 3-5-784/1 was obtained on rental basis by one L. Sri Ramulu who along with his family has been residing there for the last 25 years on a meagre rent to the petitioner. Meanwhile during the year 1999, it was found by the petitioner that the said Sriramulu allowed his son in law, the 4th respondent to reside in the said house. After lot of persuasion and on humanitarian grounds, on the request made by the said Sriramulu, the petitioner agreed to sell the said house to his son-in-law. On mutual settlement, the consideration was of Rs. 3,00,000/- was fixed and the 4th respondent entered into an agreement of sale dated 5-6-1999 with the petitioner and an amount of Rs. 75,000/- was paid as advance and the 4th respondent promised to pay the balance on or before 31-10-1999.

2. Meanwhile, the 4th respondent who was occupying the said premises vacated the entire premises and handed over possession to the petitioner on 15-2-2000 and then, the petitioner got the premises cleaned, painted and it was under his lock and key. While things stood thus, the 3rd respondent issued a letter addressed to the 2nd respondent vide No. SD4/NG/QTRS/2K, dated 28-2-2000 mentioning that as if the above said property in question is a staff quarter of the 3rd respondent and it is about to be vacated and it requires some police protection. In pursuance of the same, on 28-2-2000, respondents 3 and 4 and Sriramulu along with the Dy. Executive Engineer and staff and employees of Water Works Department descended on the petitioner's property and broke open the petitioner's lock and forcibly entered the said vacated portion and have been proclaiming that said premises is the property of the Water Works Department. Hence, the petitioner seeking for a direction in the nature of writ of mandamus to declare that the action of the respondents in high handedly dispossessing the petitioner purporting to be in pursuance of the letter of the 3rd respondent dated 28-2-2000 as registered by the 2nd respondent as "GD entry No. para 11 dated 28-2-2000", is illegal and also to direct the respondents to forthwith restore the said premises to the petitioner.

3. The 3rd respondent filed the counter. While denying the allegations in the affidavit filed in support of the writ petition, it is contended inter alia that neither Hyderabad Metropolitan Water Supply and Sewerage Board nor its employees are in any way concerned with the petitioner. At premises No. 3-5-784/I/A, King Koti, Hyderabad, an old water supply reservoir exists. This C.R.S. (Coarsed Rubble Stone) Masonary constructed reservoir was a part of water supply system under Hussain Sagar Lake as source. The said reservoir and its abutting space were used by Hyderabad Water-Works Department since 1910 AD and subsequently, it continued to be the property of Hyderabad Metropolitan Water Supply and Sewerage Board. The Judgment in O.S. No. 123 of 1987 on the file of the 1st Additional Judge, City Civil Court, has no relevance in as much as the Municipal

Corporation of Hyderabad was directed not to interfere with the proposed construction by the petitioner at premises bearing No. 3-5-784/1 and thus, the petitioner is trying to mislead the Court. The premises bearing No. 3-5-784/I/A belongs to Hyderabad Metropolitan Water Supply and Sewerage Board and the adjoining Government watchman quarters were allotted to one of its employees. The open place adjacent to the Reservoir was actually the pump room which has later become defunct. In the said place, an accommodation was provided for the watchman to operate the reservoir system. Later in the year 1974, the Executive Engineer, Hyderabad Water Works, Division No. 1, in his proceedings No. Even/HWW-I/26/72/74/345/9950, dt. 28-3-1984, has allotted the said Government Quarters, known as Watchman quarters, to one L. Sriramulu, U.D.C. who was working then in the Superintending Engineer, Water Works Circle Office. He continued his stay till his retirement i.e., on 31-1-1999 as General Manager and subsequently, the said quarter was allotted to his son viz., Sri L. Srinivasarao, working as Technician Grade I as per the proceedings dated 3-7-1999. The premises bearing No. 3-5-784/ I/A being a Government property and an essential services department, is exempted from payment of property tax. They have been paying the H.R.A. since the date of occupation. Apart from the allotment letters of the quarters to the said Sriramulu and Srinivasarao, the Board is having electricity Bills dated 3-7-1974 onwards and that the payment of telephone bills pertaining to Phone No. 211481, was made on behalf of Sriramulu by the Board. Subsequently, on 28-2-2000, one Srinivasarao vacated the quarter. Immediately, a Sewerage staff office has been established in the premises and in connection with the inauguration of the same, a police bandobast was requested on 28-2-2000. Therefore, this writ petition is liable to be dismissed.

4. Heard Mr. Vilas V. Afzalpurkar, the learned counsel for the petitioner and the learned Advocate General for the official respondents and Mr. P. Kishore Rao, the learned counsel for the 3rd respondent.

5. It is contended by the learned counsel for the petitioner that H.E.H., the Nizam was the owner of the entire property situate in and around King Koti, Hyderabad covering almost Ac.61.63 cents and the same was recognized as the private property of H.E.H. the Nizam by the Government of India and is listed under items 3 to 14 in the Blue Book. It is further contended that the property in question is form part of premises bearing No. 3-5-784/1, King Koti and the said property was gifted to the petitioner by H.E.H. the Nizam and it admeasures 2,426 Sq. yards. It is further contended that one Sriramulu, was given a small residential portion of about 125 Sq. yards which is a form part of premises bearing No. 3-5-784/1, on payment of monthly rent and he was residing for about 25 years, and subsequently during the year 1999, the said Sriramulu handed over the same to the petitioner, but surprisingly, the 3rd respondent with the aid of police occupied the said portion on the pretext that as it is a staff quarters belonging to the 3rd respondent. In this regard, in support of his contention that even the questions of fact can be determined by this Court under writ jurisdiction, and there is also no such bar that this Court shall not adjudicate

upon questions of fact, he relied on a decision of the Apex Court reported in *Bishan Das and Others Vs. The State of Punjab and Others*, , wherein it is held at paragraphs 11 and 13 as under:

"We consider that both these contentions are unsound and the petitioners have made out a clear case of the violation of their fundamental rights. There has been some argument before us as to the true legal effect of the sanction granted in 1909 to Ramji Das subject to the conditions adverted to earlier; whether it was a lease in favour of the firm Faquir Chand Bhagwan Das; whether it was a licence coupled with a grant or an irrevocable licence within the meaning of Section 60(b) of the Easements Act, 1882. These are disputed questions which we do not think that we are called upon to decide in the present proceeding. The admitted position, so far as the present proceeding is concerned, is that the land belonged to the State; with the permission of the State Ramji Das, on behalf of the joint family firm of Faquir Chand Bhagwan Das, built the dharmasala, temple and shops and managed the same during his life time. After his death the petitioners, other members of the joint family, continued the management. On this admitted position the petitioners cannot be held to be trespassers in respect of the dharmasala, temple and shops; nor can it be held that the dharmasala, temple and shops belonged to the State, irrespective of the question whether the trust created was of a public or private nature. A trustee even of a public trust can be removed only by procedure known to law. He cannot be removed by an executive fiat. It is by now well settled that the maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country; see *Thakoor Chunder Parmanick v. Ramdhone Bhattacharjee* (1); *Lala Beni Ram v. Kundan Lall* (2) and *Narayan Das Khettry v. Jatindranath* (3). These decisions show that a person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by the application of the maxim *quicquid plantatur solo, solo cedit*. It is, therefore, impossible to hold that in respect of the dharmasala, temples and shops, the State has acquired any rights whatsoever merely by reason of their being on the land belonging to the State. If the State thought that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose. Even if the State proceeded on the footing that the trust was a public trust it should have taken appropriate legal action for the removal of the trustee as was opined by the State's Legal Remembrance. It is well recognized that a suit u/s 92, Civil Procedure Code, may be brought against persons in possession of the trust property even if they claim adversely to the trust, that is, claim to be owners of the property, or against persons who deny the validity of the trust.

As to the second argument, it is enough to say that it is unnecessary in this case to determine any disputed questions of fact or even to determine what precise right the petitioners obtained by the sanction granted to their firm in 1909. It is enough to say that they are bona fide in possession of the constructions in

question and could not be removed except under authority of law. The respondents clearly violated their fundamental rights by depriving them of possession of the dharmasala by executive orders. Those orders must be quashed and the respondents must now be restrained from interfering with the petitioners in the management of the dharmasala, temple and shops. A writ will now issue accordingly.

6. He further relied on a decision of the Apex Court reported in *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, wherein it is held thus:

"The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

7. In *Century Spg. & Mfg. Co. v. Ulhasnagar Municipality*, AIR 1971 SC 1071, the Apex Court has held thus:

"The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any complicated questions of fact for determination and the claim could not be characterized as Frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the Court we are satisfied that the company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried.

The Company pleaded that the Ulhasnagar Municipality had "entered into a solemn arrangement" not to levy octroi duty for a period of seven years from the date of its imposition. The evidence relating to the undertaking was contained in public records. The Government of Maharashtra advised the Municipality that it was acting in violation of the terms of that undertaking. By its resolution the Municipality declined to abide by the undertaking of its predecessor.

There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon that representation. A representation that something will be done in the future may result in a contract, if another person to whom it is addressed acts upon it. A representation that something will be done in future is not a representation that it is true when made. But between a representation of a fact, which is untrue and a representation of a promise-express or implied to do something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law, if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereafter, but the law is not powerless to raise in appropriate cases on equity against him to compel performance of the obligation arising out of his representation.

Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise; when the law requires that a contract enforceable at law against a public body shall be in certain form or be, executed in the manner prescribed by statute, the obligation may be if the contract be not in that form be enforced against it in appropriate case in equity. In *Union of India and Ors. v. Indo-Afghan Agencies Ltd.*, this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the government. This Court held that the following observations made by Denning, J., in *Robertson v. Minister of Pension*" applied in India:

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action."

We are in this case not concerned to deal with the question whether Denning,

L.J., was right in extending the rule to a different class of cases as in *Falmouth Boat Construction Co. Ltd. v. Howell*" where he observed at p.542:

"Whenever government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it."

It may be sufficient to observe that in appeal from that judgment (*Howell v. Falmouth Boat Construction Co. Ltd.*) (supra) Lord Siroonds observed after referring to the observations of Denning, L.J.:

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy. XX

The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly; No."

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

In *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others*, , the Apex Court has held thus:

"It is not necessary for this case to express an opinion on the point as whether the various provisions of the CPC apply to petitions under Article 226 of the Constitution, Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any Court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the Court must take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petition, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasized, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under

Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see *Gunwant Kaur v. Bhatinda Municipality*). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect."

8. In *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, , wherein it is held thus:

"Next is the issue "maintainability of the writ petition" before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the civil law and thus the civil Court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law Courts exist for the society and they have an obligation to meet the social aspirations of citizens since law Courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court; the first in line is the decision in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, wherein this court relying upon the decision in *Rudul Sah Vs. State of Bihar and Another*, decried the illegality and impropriety in awarding compensation in a proceeding in which the Court's power under Articles 32 and 226 of the Constitution stands invoked and thus observed that it was a clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of the State's obligation, unless of course the State can also be termed to be a joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto."

9. On the other hand, it is contended by the learned Advocate General that the

zerox copy of certificate dated 5-5-1981 purporting to have been issued by the Power Attorney Holder of late Nizam, is inadmissible in evidence and it cannot be sacted upon. It is further contended that the no reliance can be placed upon the tax receipts which are discrepant and which contain other names as owners and that the exparte decree and judgment in OS. No. 123 of 1987 on the file of the 1st Addl. Judge, City Civil Court, Hyderabad, has no relevance to claim any title and possession. Relying on the third party affidavit filed by one L. Sriramulu, it is contended that the said Sriramulu was a tenant of the Board, but not the petitioner and that he was paying the rents earlier to the Government and thereafter to the Hyderabad Metropolitan Water Supply and Sewerage Board and Subsequently, he handed over the possession of the premises to the 3rd respondent. Lastly, it is contended that all these issues are pure questions of fact and they can only be decided in a Civil Court. In support of his contention that the issues relating to title and possession cannot be decided in a writ petition, he relied on a decision of the Apex Court reported in Union of India (UOI) Vs. T.R. Varma, , wherein it is held thus:

"At the very outset, we have to observe that a writ petition under Article 226 is not appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the relief's to which he may be entitled, including some which would not be admissible in a writ petition. It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court in Rashid Ahmed v. Municipal Board, Kairana (1), the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs,. Vide also K.S. Rashid and Son v. The Income Tax Investigation Commission And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor. None such appears in the present case. On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross examining the witnesses, who gave evidence in support of the charge. That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit. In this appeal, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made on 16-9-1954, an action to set it aside would now be time barred, as the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits".

10. In State of Rajasthan Vs. Bhawani Singh and others, , it is held thus:

"Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

We must, however, say that the land comprised in the plot concerned herein did not vest in the State under the provisions of the Rajasthan Act of 1963 (Act 11 of 1964 for more than one reason: (a) if the said land was or had become the property of the then Ruler of Jaipur and/or Maharaja Bhawani Singhji, it could not vest in the State for the simple reason that on 1-09-1964 it was not an agricultural land. The definition of "Land" in clause (f) of Section 2 expressly excludes "Forts, old buildings and building plots specified in the inventory "form the ambit of "Land". We may point out the judgments of the High Court do contain acceptable material to show that on 1-9-1964 the area included in the plot purchased by the writ petitioner was no longer an agricultural land but had become an abadi land. (A) If the said extent did not become the property of then Ruler, then the Act itself does not apply to it: there could have been no question of the same vesting in the State.

We make it clear that we express no opinion on the question of title put forward either by writ petitioner or his predecessor-in-interest Maharaja Bhawani Singhji, either in respect of the Plot No. A-9 or with respect to the said extent of 14.3 bighas (covered by Khasra Nos. 5, 6, 7, 93, 95, 92, 8, and 94 and delineated in red in Annexures B-4 and B-5 or for that matter, with respect to the total extent of 134.4 bighas. That question will have to be agitated and adjudicated in an appropriate forum if and when the occasion arises."

11. On Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, , it is held thus:

"Mr. Arun Jaitely, the learned counsel appearing on behalf of respondent 1 has supported the impugned judgment on the ground that prayer for issuing a direction against Delhi Administration and Commissioner of Police who were respondents 1 and 2 was also made. It has to be appreciated that the present appellants were respondents 3 and 4 before the High Court; and the High Court has by the impugned order, considered it fit to allow the prayer of the respondents against them for removal of the grills for access to the backyard. According to the stand of the landlord-respondent, since the police were taking a partisan attitude against her, the filing of a writ petition became necessary. We are unable to follow this argument. There is no doubt that the dispute is between two private persons with respect to an immovable property. Further, a suit covering either directly a portion of the house-property which is in dispute in the present case or in any event some other parts of the same property is already pending in the civil Court. The respondent justifies the step of her moving the

High Court with a writ petition on the ground of some complaint made by the appellants and the action by the police taken there on. We do not agree that on account of this development, the respondent was entitled to maintain a writ petition before the High Court. It has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such case, the Court will issue appropriate direction to the authority concerned. If the real grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the Criminal Procedure Code. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly. We, therefore, hold that the High Court was in error in issuing the impugned direction against the appellants by their judgment under appeal. The appeal is accordingly allowed, the impugned judgment is set aside and the writ petition of the respondents Filed in the High Court is dismissed. There will be no order as to costs".

12. I have perused the material papers filed on either side. The material paper at page 16, which is a copy of certificate issued by the office of the Financial Advisor and Constituted Attorney to H.E.H. the Nizam of Hyderabad, discloses that the house bearing No: 3-5-784/1 is the property of the petitioner and this is one of those houses gifted by His Exalted Highness Nawab Mir Osman Ali Khan Bahadur to the Khanazads. The zerox copy of the decree at page 19 of the material papers discloses that the suit in O.S. No. 123 of 1987 on the file of the 1st Additional Judge, City Civil Court, Hyderabad in accordance with the plans and application submitted by the petitioner and also for a permanent injunction restraining the Municipal Corporation of Hyderabad from interfering with the proposed construction at the above premises and the decree was passed as prayed for. Schedule attached to the decree simplifies the boundaries of the schedule property, without specifically mentioning House number or any other particulars of the boundary holders, as under:

East: Owners property West: Public Road North: Owners property and public road South: Owners property.

13. The zerox copies of tax receipts at page Nos. 25 to 27 ranging from 1993 to 1996 disclose that the tax has been paid by the petitioner and others in respect of the premises bearing No: 3-5-784/1,5 and 6, but not in respect of premises bearing No: 3-5-784/1/A. In the Additional material papers, the petitioner filed the zerox copy of certificate issued by the office of the Dy. Director, Survey and

Land Records, Hyderabad wherein it is mentioned that the land bearing M.C.H. Door No: 3-5-784/1 is not found recorded in Town Survey records and on inspection, the said premises is located in T.S. No. 8, Block "L" Ward 196 of Totaguda village, which is recorded in favour of Sri Mukaramjah Bahadur, s/o Nawab Mir Barkat Ali Khan. The petitioner also filed zerox copy of relevant portion of Assessment Register for property Tax, etc. issued by the Municipal Corporation of Hyderabad wherein against the premises No: 3-5-784/1/A, it is mentioned as "Newly assessed as per file 1C3/TC3/79, w.e.f. 1-4-1978", but the name of the tax payer is not mentioned therein.

14. I have also perused the material papers filed by the 3rd respondent, wherein the proceedings indicate that the Watchman quarter at King Koti has been allotted to one Sriramulu and the electricity bills and telephone bills indicate that the charges have been paid in respect of the said quarter.

15. It is the case of the petitioner that he has been dispossessed from a portion of the premises bearing No: 3-5-784/1 and the premises bearing No: 3-5-784/1/A was sold to one Habeeb Mohammed a couple of years back, where as it is the contention of the 3rd respondent that the premises in question bearing No: 3-5-784/1/A is a watchman quarter belonging to the 3rd respondent and it is not correct to state that the said premises was already sold away to one Habeeb Mohammed. At this juncture, it is pertinent to note that when there is controversy as to the identification and location of the property, the petitioner ought to have taken steps by seeking for appointment of any commissioner so as to elicit the truth or otherwise of the fact whether the premises from which he has alleged to have been dispossessed, and in which the office of the 3rd respondent has been started, form part of the premises bearing No: 3-5-784/1 or not. Apart from that, the facts on hand reflect the dispute as to the title of the premises in question, and, as such, in the absence of infringement of any fundamental right and violation of any statutory provision, this Court cannot exercise its discretion in this regard.

16. In this view of the background of the respective contentions of the parties, the dispute in question involved mixed and complicated question of facts and law, which may for their determination require evidence both oral and documentary and elaborate enquiry, and as such, it cannot be decided or enquired appropriately in the writ jurisdiction, in the absence of any material on record, in as much as the respective parties claims right over the property by raising their respective contentions and producing the documents, which are ambiguous. Though the exercise of the jurisdiction by this Court is a discretionary, the same should be sound and in conformity with judicial principles and that the disputed question relating to the title cannot be gone into or adjudicated at this stage of the proceedings. Therefore, the legal propositions relied on by the learned counsel for the petitioner, have no application to the facts of the case on hand.

17. Apart from that, the decisions relied on by the learned Advocate General,

lend support to the case of the 3rd respondent that the dispute involving mixed and complicated question of facts, cannot be gone into at this stage of the proceedings.

18. For the reasons in the foregoing paragraphs, I am of the considered view that this writ petition is misconceived and not maintainable.

19. Accordingly, this writ petition is dismissed. There will be no order as to costs. However, it is always open for the petitioner to move the appropriate forum for declaration of his title, if so advised.