

SUPREME COURT OF INDIA

State of Andhra Pradesh

Vs

Prameela Modi and Others

Appeal (Civil) 4604 of 2006 (Arising Out of Slp (C) Nos. 14045-14046/2005)

(Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ)

30.10.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

Leave granted.

This case has a chequered history. This is the sixth in series of litigation between the State of A.P. and the respondents herein. Both parties are in the legal battle field fighting for the five decades.

The facts leading to filing of these appeals by the State are tell tale. They are required to be noticed in detail. The lis between the State of A.P. and the respondents centers on a piece of land admeasuring acres 3-27 guntas situated in Khairatabad village in Hyderabad District. As rightly pointed out by the High Court the dispute that began prior to Hyderabad State attained its freedom still awaits its final resolution. Brief facts are as follows:- Survey No. 116 of Khairatabad village is admeasuring 55 acres classified as poramboke sarkari Government land. Prior to sub-division conducted in favour of Smt. Prameela Modi, four nos. were sub-divided and assigned survey nos. :

Sy. No	Extent (Areas)
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- 116/2 Ac. 6.01 gts Raja Ram Dev
- 116/3 Ac. 5.00 gts Moulvi Farhatullah
- 116/4 Ac. 7.35 gts Pingali Venkat Ram Reddy
- 116/5 Ac. 6.35 gts Rama Krishna Reddy

In view of the discrepancy in the survey nos. Smt. Prameela Modi approached the Sarfekhas Authorities for resolution of the dispute and after due enquiry, the matter was finally resolved by issuance of a supplementary sethwar in 1357 Fasli (1947) by which 3 acres of 27 guntas out of survey No. 116 was directed to be entered in the name of Smt. Prameela Modi and a map was also issued by the Superintendent of Survey to effect necessary entries in the survey records (Ex. B5 and B6). When the sub-division work was carried out and supplementary sethwar was issued in favour of Smt. Prameela Modi, the survey nos. assigned to her land was also 116/2 and 116/3. During the course of mutation in revenue records to overcome the discrepancy which has crept due to ignorance of the mutation of sub- division earlier assigned for Smt. Prameela Modi, the land was assigned survey Nos. 116/2 and 116/3. The same entries of pahani followed in town survey records which are marked as Ex. B-19, 20 and 21 and a town survey extract of the year 1994 is marked as Exh. B-28.

The Director of Settlements, Survey and Land Records, Andhra Pradesh in his proceedings bearing No. Ref. F1- 18556/64 dated 29.05.1964 had framed an issue as to where exactly this land is located with reference to the maps now available. The said issue was answered by the Director of Settlements, Survey and Land Records in the above referred proceedings which is extracted hereunder:

"The next question is with regard to the location of this number. Here again it was found that both the land record Officer as well as the petitioner Mrs.C.L. Modi are agreed upon the general location of this land, according to the revision survey map. According to both of them, this land is located along the line with the tank on the south and the road leading up to the Rock Castle Hotel on the eastern side. There is also therefore, no dispute as far as the second issue is concerned. The Board of Revenue upheld the said orders by judgment dated 24.04.1965 in AppealU2/1237/64."

The Gazette Notification of the Town Survey Record showing Blocks A-N in Ward No. 89 as Government land whereas the implementation of the order of the High Court in WP M.P. No. 6897 which is marked as Ex.B-36 was 28.08.1975 which was subsequent to Ex.A-1 on the basis of the entries in the town survey proceedings under the Land Encroachment Act were initiated on

16.11.1991 against Smt. Prameela Modi which were set aside on 28.08.1993 by the Joint Collector stating that the land belongs to Smt. Prameela Modi and that she is not an encroacher. The Joint Collector referred to the history of the case in this order. The Joint Collector directed Smt. Prameela Modi to approach the Collector for correction of revenue records including TSLR, which was ordered by the Commissioner, Survey Settlement on a reference by the District Collector. Accordingly, permission was accorded by the Commissioner, Survey Settlement and Land Records in file No. CSS and LR Ref. No.P5/316/94 dated 12.05.1994 for the correction of entries in the Town Survey Land register observing that since the lands under reference are prima facie patta lands as per survey settlement registers and village registers in favour of Smt. Prameela Modi before town survey was conducted and announced in 1976. The sub-division was carried out in Town Survey records vide proceedings in file No. G/TS/98/94 as T.S. No. 3/1/1A and 3/1/1B correlating to Survey No. 116/2 and 116/3. Further, the town survey plans prepared on 26.05.1994 in pursuance of the corrections carried out in Town Survey records in 1994 shows the physical location of the land of the first respondent with the town survey nos. which tallies exactly with the present location. Panchanama was conducted vide proceedings in File No. G./TS/107/94 dated 01.06.1994 by the Inspector of Survey and Land Records and boundaries of the lands in T.S.Nos.3/1/1A and 3/1/1B in Block K, Ward No.89, correlating to Survey No. 116/2 and 116/3 of the Khairatabad village were fixed with measurements. The extent and location of the lands belonging to 1st respondent tallies exactly with the present location.

The allocation of sub-division number SY. No. 116 which consists of private lands and also government lands was done by the Survey Officials connected to the State Government. Right from the year 1945 respondent's rights over the land in occupation is evident from the copy of the sethwar issued by the Sarfekhas authorities the then authorized department to issue the same. The sethwar clearly indicates that the land in Sy. No.116 was a compact Block but basing upon the respective recognition of rights of the private parties over the land in their occupation the Sub Divisional numbers carried out on 116 only.

The series of orders more so the proceedings of Director, Settlement Survey and Land Records, Andhra Pradesh, Hyderabad in reference No. F1/18556/64 dated 29.05.1964 the issue with regard to the possession of respondent and the location of the land in the possession of this Respondent was decided in the presence of the Land Records Assistant. On 29.10.1997 the District Collector, Hyderabad, rejected the application made by the Respondent Nos.2 to 7, who are the subsequent purchasers and who are claiming title through Smt. Prameela Modi, for grant of No Objection Certificate in order to enable them to submit building plans to Municipal Corporation of Hyderabad. The rejection memo was set aside by the High Court of Andhra Pradesh in W.P.No. 10159/1998 and the District Collector was directed to issue No Objection Certificate. The said judgment was confirmed by a Division Bench in Writ Appeal No. 2235/1998. The Special Leave Petition (Civil) No. 12103/2000 filed by the Government of Andhra Pradesh was dismissed by this Court by an order dated 18.08.2000.

After the dismissal of S.L.P. on 18.08.2000, the respondent No.7 herein filed a contempt case being C.C.No. 1061/2001 against the District Collector for not issuing the No Objection Certificate as directed by the High Court in W.P.No. 10159/98 as it attained finality with the dismissal of S.L.P. No.12103/2000. The State filed Land Grabbing Case against the respondents and issued No Objection Certificate to the respondents in respect of the subject property, stating that the same is

subject to outcome of the Land Grabbing Case. The contempt case was closed on 24.01.2002.

Land Grabbing Case LGC 10/2002 filed by the State against the Respondents was dismissed by judgment and decree dated 30.07.2004 with the following findings:

The applicant absolutely failed to prove that the application schedule property is located in Survey No. 116/1.

The respondents have proved that they are the owners and pattedars of the land located in survey Nos. 116/2 and 116/3.

The applicant with full knowledge that the respondents are the absolute owners of the land located in Survey Nos. 116/2 and 116/3 has filed the application as if the application schedule property is located in Survey No.116/1.

The application schedule property is located in Sy. Nos. 116/2 and 116/3 and that Mrs. Prameela Modi (predecessor in title of the petitioner No.1) is the owner of the application schedule property and she is in possession of the application schedule property as owner.

In view of the above said discussion, on the 1st issue we hold that the applicant is not the owner of the application schedule property.

In view of the above said discussion and in view of our findings on issue No.1, on the 2nd issue, we hold the rival title set up by the respondents is true and valid and binding on the applicant.

In view of the above said discussions and in view of our findings on issues 1 to 3 on the 4th issue, we hold that the Government recognized the title and interest of the 1st respondent in respect of land to an extent of Ac. 3.27 guntas located in Survey Nos.116/2 and 116/3 more than 33 years ago prior to filing of this L.G.C and Nizam Government recognized and conferred the title on the respondent in 1357 fasli in respect of an extent of Ac. 3.27 guntas of Sy. Nos. 116/2 and 116/3 and the same was confirmed by the Board of revenue stating that the 1st respondent is entitled to Ac. 3.27 gunta in Sy. Nos. 116/2 and 116/3 including the land which the 1st respondent sold in favour of two persons under registered sale deeds in Fasli 1357, the extent of which was 11200 sq. yards.

In the result the application is dismissed.

Aggrieved by the order of the special Court, the State filed writ petition No. 20537 of 2004 before the High Court. The State Government through Principal Secretary Government of A.P. issued a show cause notice to the respondents dated 25.10.2004 stating that why the orders of the Commissioner of Survey and Settlement Land Records in proceedings dated 12.05.1994 issued in BSO-34B(10) should not be cancelled and the entries made in town survey land records be deleted.

Being aggrieved by the issuance of show cause notice, the respondents filed writ Petition No. 20642 of 2004 before the High Court. Some of the respondents filed Writ Petition No. 19552 of 2004 praying inter alia for a declaration that the action of respondents 1 and 2 not to dis-possess the writ petitioners with aid of police from the property in survey Nos. 116/2 and 116/3 is illegal. By the impugned order dated 26.04.2005 the Division Bench of the High Court dismissed the writ petition filed by the State. The Division Bench has allowed the Writ Petition No. 19552 of 2004 and directed the Government not to interfere with the land in question and dismissed Writ Petition No. 20537 of 2004 filed by the State of A.P. Hence, the above two appeals.

We have heard Mr. A.K. Ganguly, learned senior counsel appearing for the appellant and Mr. Harish N. Salve, Mr. R.F. Nariman, Mr. L.N. Rao learned senior counsel and other counsel appearing for the respective respondents. Mr. A.K. Ganguly, learned senior counsel appearing for the appellant took us through the relevant records and also of the various proceedings and the judgments. According to Mr. Ganguly, the High Court has failed to appreciate that as per their own document No. 980 of Ist Farwardi 1355 F(1946) the land in question is situated at 115/2 and the supplementary Sethwar is as per their own contention was issued for the land situated at Sy. Nos. 116/2 and 116/3 and the respondents have grabbed the Government land situated at Sy. No. 116/1. He further contended that the supplementary Sethwar is not conclusive proof of title unless it is implemented and approved by the Nizam Jamabandi in Faisal Patti. According to him, the High Court has failed to appreciate that the lands in question are government lands and the respondents do not have any title over the lands in question and that the respondents have played fraud upon the courts by not producing the alleged supplementary Sethwar, the plan which as it transpires now, was never authenticated by the concerned Deputy Director of Survey & Land Records who is the custodian of the same on the fact of it. He further submitted that the originals in respect of these documents are not available with the office of the Deputy Director of Survey & Land Records, casting any amount of doubt on the veracity and genuineness of these documents. He further submitted that the High Court has failed to appreciate that the respondents concealed the fact before the Special Court and did not produce the sale deed even when the appellant herein filed the sale deed by way of additional affidavit, the High Court did not consider the same and passed the erroneous order. It was further submitted that the appellant has produced prima facie evidence on record to establish that Khasra Pahanis and Town Survey records to prove that the land in question in S.No.116/1 is a Government land and that the High Court has grossly overlooked the fact that the respondent is claiming the land in Sy. No. 116/1 instead of Sy. No. 116/2 without even producing the original documents before the Special Court. According to him, the High Court ought to have appointed a Court Commissioner duly assisted by the officer of survey department to determine the exact location of the land being claimed by respondent No.1 and rest of the respondents without which the High Court cannot arrive at a conclusion as to the location of the property in dispute. He also invited our attention to the provisions of Section 14 of the A.P. Survey & Boundaries Act, 1923 and also the judgment of this court in N. Srinivasa Rao vs. Special Court under the A.P. Land Grabbing (Prohibition) Act & Ors. 2006 (4) SCC 214. Concluding his arguments, Mr. Ganguly submitted that the impugned judgments and orders of the High Court are contrary to the principles laid down by this Court and the same are unsustainable in law and facts.

Mr. R.F. Nariman, learned senior counsel appearing for the respondents while replying to the arguments of learned senior counsel for the appellant first invited our attention to the proceeding of the Director of Settlements, Survey & Land Records, Board of Revenue, A.P. Hyderabad dated 29.5.1964. We have carefully perused the same. He placed before us three maps on record namely

of the year 1946 which is appended to Sethwar itself (page 65 of Vol.II), 1978 map by Survey Department and in this regard he invited our attention to pages 103 & 104 of Vol.II. M.C. Inspector, Hyderabad Urban Taluk to the Collector Land Records, Hyderabad - District by his letter dated 2.1.1976 addressed to the Collector Land Records Hyderabad informing the Collector as under: "With the help of the plans available in the file, S. Nos.116/2 and 116/3 have been inspected and boundaries, have been demarcated on the site, in presence of the representative of the party. No one has seen the demarcation, of the land in question. The said representative has also given in writing that he was present at the time of demarcation, and he has seen all the boundaries.

The statement of the representative along with the authorization letter of Dr. C.L. Modi the petitioner, are submitted herewith for perusal and necessary action." Map issued in the year 1978 by the authorities is available at page 104 of Vol.II. The third map was issued in the year 1994 by the Town survey which is at page 133 of Vol.II. A map dated 21.7.2005 signed by the Dy. Director, Survey and Land Record Records, Hyderabad was placed by Mr. Ganguly. We have perused the said plan placed before us at the time of hearing. The said plan is incomplete in regard to all other maps which were placed by the concerned authorities and also before the High Court. We cannot, therefore, give any credence to the map which was placed before us after the High Court judgment.

Mr. R.F. Nariman then drew our attention to the Andhra Pradesh Survey & Boundaries Act, 1923 and in particular, Section 9 of the Act. Section 9 of the Act reads thus:

"9. Power of survey officer to determine and record an undisputed boundary:- (1) The survey officer shall have power to determine and record undisputed any boundary in respect of which no dispute is brought to his notice.

(2) Notice to registered holders of lands affected:- Notice of every decision of the survey officer under section 9(1) shall be given in the prescribed manner to the registered holders of the lands the boundaries of which may be affected by the decisions."

The submission of Mr. Nariman was not controverted by learned senior counsel appearing for the appellants. Our attention was drawn to the proceedings of the Commissioner of Survey Settlement and Land Records, A.P. Hyderabad dated 12.5.1994 with regard to the correction of Town Survey Records in respect of 116/1, 116/2 and 116/3 of Khairatabad village which is corrected to Town Survey No. 3/1/Block-K, Ward-18. It is useful to reproduce few paragraphs in the concluding part of the said order: "That in the first instance the D.O.S. Hyderabad in his F1/18556/64 m Dt. 29-05-64 confirmed the entries of the supplementary Sethwar issued in F.1357 (1947) by the Surfekhas authorities. The same orders D.O.S. Hyderabad dated 29.05.1964 were confirmed Erstwhile Board of Revenue in U2/237/64 Dt. 24.04.65 and also the Government in the Memo No. 1547/R1/65 Dt. 27, Dt. 3.12.68. The Joint Collector in his order F4/9232/91 Dt.28.8.93 endorsed for correction of town surveyor crept in during town survey conducted and announced in the year 1976. Further the Hon'ble High Court of A.P. Hyderabad in W.P.M.P No. 6897/75 in W.P.M.P. No. 4526/75 Dt.28.08.75 directed the Revenue authorities to implement of the order of Revenue authorities who confirmed the supplementary Sethwar issued by the Surfekhas authorities.

As such the Collector Hyderabad incorporated the entries of supplementary Sethwar in the village by the Pahanies of 1980-81 but the entries in the town survey registers have not been corrected.

Since the land under reference are prima facie patta lands as per survey settlement registers and village registers in favour of Smt. Pramila Modi before town survey conducted and announced in 1976. The collector Hyderabad submitted the present proposals for correction of classification which was wrongly entered in town survey registers under B.S.O 34-B(10).

When the matter has been referred to the Director Survey Settlement and Land Records Hyderabad, the Deputy Director H.Qs stated that the correction proposals sent by the collector Hyderabad have been technically scrutinized and are found in order, that the detailed town survey of Hyderabad city was conducted under the provisions of A.P.S.B Act 1923 and has been validated U/S 13 of A.P.S.B Act, that the corrections can be carried out only under the provisions of B.S.O 3-4-B (10)."

In the circumstances reported by the Collector Hyderabad and as his proposals are found correct on technical scrutiny by the Head Qrs. Deputy Director of L.C.S. Officer, the Commissioner, Survey Settlement A.P. Hyderabad agrees with him and permit the Collector, Hyderabad under Rule 8 O 34-B (10) to correct the town survey records as proposed by him. "

He also invited our attention to the show cause notice dated 25.10.2004 by the Government of A.P., Revenue Department calling upon Smt. Prameela Modi & Ors. to show cause why the order of Commissioner of Survey and Settlement and Land Records in proceedings dated 12.5.1994 under BSO 34-B-10 should not be cancelled and to delete the entries made in Town Survey Records No. 3/1/1 of Block K Ward No. 89 of Khairatabad village in pursuance of the said order to submit their explanation. It was submitted that this notice was challenged by the Ist respondent herein in W.P.No. 20642 of 2004 and the High Court have entertained the same and is pending. The High court has also granted the stay of the proceedings.

Mr. Ganguly, learned senior counsel appearing for the appellant, submitted that the A.P. Land Grabbing (Prohibition) Act, 1982 has no jurisdiction to decide the question of title and ownership.

This submission was controverted by Mr. R.F. Nariman, learned senior counsel appearing for the respondents by inviting our attention to Section 8 of A.P. Land Grabbing (Prohibition) Act, 1982. Section 8 of the said Act reads as follows:

"8. Procedure and powers of the Special Courts:- (1) The Special Court may, either suo moto 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 , the Code of Criminal Procedure, 1973 or in the Andhra Pradesh Civil Courts Act, 1972, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, shall be triable only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the Special Court shall be final.

(2-A) If the Special Court is of the opinion that any case brought before it, is not a fit case to be taken cognizance of, it may return the same for presentation before the Special Tribunal:

Provided that if, in the opinion of the Special Court, any application filed before it, is prima facie frivolous or vexatious, it shall reject the same without any further enquiry:

Provided further that if on an application from an interested person to withdraw and try a case pending before any Special Tribunal the Special Court is of the opinion that it is a fit case to be withdrawn and tried by it, it may for reasons to be recorded in writing withdraw any such case from such Special Tribunal and shall deal with it as if the case was originally instituted before the Special Court.

(2-B) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act.

(2-C) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be competent witness for the defence and may give evidence or oath in disproof of the charge made against him or any person charged together with him in the criminal proceedings:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any parties or the Special Court or give to any presumption against himself or any person charged together with him at the same proceeding.

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6. *Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land.*

Provided that the Special court shall, by notification, specify the fact of taking cognizance of the case under this Act. Such notification, shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified herein will be considered by it:

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property;

Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

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8. *Any case, pending before any Court or other authority immediately before the Constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court (xxx) as if the cause of action on which such suit or proceedings is based and arisen after the Constitution of the Special Court."*

Section 8(1) authorizes the Special Court 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 the Act, and pass such orders as it deems fit.

Section 8(2) states that the Special Court determines the question of title and ownership to, or lawful possession of any land grabbed under this act and that the same shall be triable only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the

Special Court shall be final.

Section 8(6) states that every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land. It is thus seen that the Special Court can play the role of a Civil Court and decide the disputed question of title and possession. The extent of jurisdiction as is permitted by the statute, therefore, is rather wide in its application. Three specific situations have been noted namely,

i) Jurisdiction can be had in regard to a case in respect of an alleged act of land grabbing

ii) Jurisdiction can be had in a case where determination of question of title and ownership are involved and

iii) Jurisdiction can be had where lawful possession of any land grabbed under the Act is involved. All these three specific situations as envisaged by and under the Statute would be triable in the Special Court. The condition precedent for assuming jurisdiction by the Special Court is that the case must have arisen out of any alleged act of land grabbing and a District Judge while acting as a Special Court merely acts as a Presiding Officer of the Court. Having regard to the provisions of Section 8(2) read with Section 15 of the Act, no suit for title in respect of the disputed land which was alleged to be grabbed by the party could be entertained by the Civil Court. In other words, the Civil Court is barred from trying the matters which fall within the exclusive jurisdiction of the Special Court constituted under the Act.

The provisions of Code of Civil Procedure 1908, the Andhra Pradesh Civil Courts Act, 1972 and the Code of Criminal Procedure, 1973 shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court under Section 9.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a Court or any other tribunal or authority.

Thus it is seen that the arguments advanced by Mr. A.K. Ganguly is totally contradictory to the above provisions of the Act and that Special Court alone has the jurisdiction to try the matters with respect to the ownership, title and lawful possession.

Our attention was also drawn to the application filed before the Special Court by the State of A.P. The prayer (a) was to declare the applicant (State of A.P.) as owner of the Application Schedule land and to declare the respondents as land grabbers. In the Concise Statement, it has been averred

that the Special Court always got jurisdiction to decide all questions relating to title and other incidental questions including the other questions that may arise or falls under the jurisdiction of some other forum in order to give reliefs. It is also further stated in the concluding portion of the Concise Statement that no civil Suit pending before any Civil Court pertaining to the application schedule land. The Special Court on the pleadings in the application framed certain issues which included Issue Nos. 1 & 4 which relate to the State's ownership of the application Schedule property and as to whether the Government itself recognized the title and interest of respondent No.1 in respect of application schedule property and as such the said application is not maintainable. The Special Court in its detailed and well considered order categorically held that the first respondent herein proved her title and possession under Ex. B5 as early as in 1357 Fasli (1946) and when the first respondent was entitled to an extent of Acre 3.27 guntas in Sy. No. 116/2 and 116/3 of Khairtabad village, merely because, there is an entry in the Khasra Phani for the year 1954-55 (Ex. A5) does not affect the right, title of respondent No.1 in the land located in St. Nos. 116/2 and 116/3.

Mr. Harish N. Salve, learned senior counsel also advanced similar arguments and also invited our attention to the judgment of the Special Court. Relevant portion is reproduced hereunder:

"The title of the 1st respondent was decided and also it was decided that the 1st respondent is entitled to Ac.3.27 guntas in Sy. No. 116/2 and 116/3 by various government departments including the Board of Revenue and the government of A.P., dated 03.12.1968. The collector is not competent to question the various orders passed by the Director, Settlement and Land Records, the Board of Revenue and the government. The High Court also directed to implement the orders of the Board of Revenue dated 24.04.1965. In the Contempt petition the applicant herein undertook to implement the orders of the Board of Revenue. Ex.B3 sketch prepared dated 26.05.1994 whereas, in Ex. A3 is the sketch copy of TSLR in Ex.B3, the two survey No.3/1/1/A and 3/1/1/B whereas in Ex. A3 1/A and 1/B were erased at 4 places in Ex.A3. The applicant did not approach the court with clean hands the applicant has no respect for truth in filing Ex.A3 erasing 1/A and 1/B at 4 places in Ex.A3, Ex.B1 is the certified copy of TSLR wherein the TSLR was corrected and issued a copy of the same to the 1st respondent. Ex.B12 is the sketch prepared in 1971, wherein it is specifically mentioned Sy.No.116/1 is beyond the road. The Sy. No. 116/1 is on the north of the road and whereas Sy. No.116/2 and 116/3 as shown in Ex.B12. The applicant absolutely failed to prove that the properly located Sy. Nos. 116/2 and 116/3 is in 116/1, which is on the north of the road as shown in Ex. B.12, Ex. B12 was prepared by the Inspector of Survey and land Records and in pursuance of the orders of Ex.B3 was prepared and issued by the government authorities. Ex.A3 is also prepared by the government authorities. The applicant absolutely failed to prove that the respondents grabbed an extent of 14869 sq.mtrs. located in T.S.No.3/1 corresponding to Sy.No.116/1. The respondents, specifically, the 1st respondent is the absolute owner and pattedar of the land located in Sy. No. 116/2 and 116/3 as shown in Ex. B3 as shown in T.S.No. 3/1/1A and 3/1/1B.

The applicant did not take any steps to localize the land in Sy. No.116/1. The 1st respondent did not grab any land located in Sy. No.116/1. The applicant has no right, title to in Sy. No. 116/2 and 116/3 i.e. in T.S.No.3/1/1A and 3/1/1B. The applicant has not come to the court with clean hands erasing the T.S.No.1/A and 1/B at 4 places in Ex. A3 which amounts to production of false document in a judicial proceeding. The applicant absolutely failed to prove that the application schedule property is located in Sy. No.116/1. The respondents proved that the application schedule property is located

in Sy.No. 116/2 and 116/3."

He also drew our attention to I.A.Nos. 1-2 of 2005 - application filed by the State of A.P. in this Court seeking permission to urge additional evidence and to file additional documents. By the said application, the State of A.P. sought permission from this Court to present the said application for permission to urge additional documents as Annexure P-10 in the S.L.P. which, document, according to the State of A.P., has become necessary in the light of the confusion in respect of the identity and location of the application schedule land. This application was filed on 23.6.2005 along with Annexure P-10 (MAP).

Mr. L.N. Rao, learned senior counsel appearing for some of the respondents adopted largely the arguments of Mr. R.F. Nariman and Mr. Harish N. Salve.

We have given our anxious and thoughtful consideration to the rival submissions made by learned senior counsel appearing for the parties.

At the outset, it may be pointed out that the sheet anchor of the case of the Government of A.P. projected for the first time before this Court and not urged before any Courts below is the physical location of the land in dispute which is buttressed by a new map filed for the first time before this Court to bolster up the said new false plea set up for the first time. As pointed out by Mr. Harish N. Salve, learned senior counsel appearing for the respondents, no reason whatsoever have been given as to why the said map was not filed before any of the Courts below in a litigation which is five decades old. Nothing is stated as to where from the said site map has originated and on what survey and land record it is based. The said map, in our opinion, is directly contrary to the undisputed authenticated site map issued by the Collector himself which was Ex. B-12 before the trial Court. A true copy of which is also annexed to the special leave petition. A perusal of Ex. B-12 shows that Survey Nos. 116/2 and 116/3 in respect of which patta was admittedly granted in favour of the first respondent is at the same very place where for the first time now it is being projected before this Court as Survey No. 116/1. Ex. B-12 and its veracity issued by the Collector himself has not been challenged at any time before any of the Courts below during the last 50 years of litigation. It may surprise one's understanding as to how a new survey number can be projected by filing a new map for the first time in the place where survey Nos. 116/2 and 116/3 is shown situated. Absolutely no reasons were given for filing of the said new map showing different survey numbers contrary to the survey numbers as in Ex. B-12. In fact there are number of exhibits certified by the Collector himself which show Survey Nos. 116/2 and 116/3 situate at the very site where now Survey No. 116/1 is alleged to be situated. In fact Ex. B-12 issued by the office of the Collector showing Survey Nos. 116/2 and 116/3 abutting the main road has been drawn from the village map as existing in the revenue records. A perusal of the said village map annexed as Annexure to the S.L.P. also shows that Survey Nos. 116/2 & 116/3 are situated at the very same place where for the first time now it is being projected that Survey No. 116/1 is situated.

In our opinion, the Government has not explained as to why Annexure R-1 (new map) is filed for the first time in this Court in a litigation which is five decades old and as to why the State of A.P. has concealed and not filed Ex. B-12 which is part of the record below and on what revenue record

the said new site map filed for the first time is based?

There cannot conceivably be any satisfactory explanation to the aforesaid queries which arise naturally in the light of the blatant false site map projected for the first time and the submissions based thereon.

We have gone through the grounds of appeals seeking leave to appeal against the common judgment of the Division Bench of the High Court. The State, in our view, has raised inconsistent pleas/grounds before the High Court as well. There is no allegation much less any proof that the respondents have taken possession illegally and fully knowing that they were acting illegally while taking possession. There is also no allegation on any of the respondents unauthorisedly snatching the land belonging to the Government. On the other hand, the Special Court on an analysis of the evidence held that the State has failed to establish that the land in possession of the respondent forms part of Survey No. 116/1 and on the other hand the applicant schedule property is located in Survey Nos. 116/2 and 116/3 and that the first respondent is the owner of the property in dispute and is in possession of the said property as owner. It is also not the case of the appellant that the Special Court has either acted on evidence, which is legally inadmissible or has refused to admit admissible evidence. The evidence adduced by the respondents clearly established that the Sarfekhas administration i.e. the former Nizam's Government went into the title of this respondent and thereafter issued supplementary sethwar in her favour for an extent of Ac. 3.27 guntas and directed the sub-Division of Survey No. 116 into Survey Nos. 116/1, 116/2 and 116/3 as back as in the year 1946, thus patta was granted by Sarfekhas authorities in favour of Mrs. Pramila Modi over an extent of Ac. 2.21 guntas in Sy. No. 116/2 and Ac.1.06 guntas in Sy.No. 116/3. Survey No. 116/1 alone was treated as Government land and not Sy. No. 116/2 and Sy. No. 116/3. The said order was also implemented and the mutation was also effected in the revenue records. Mrs. Prameela Modi thus from the inception continued to be in possession and enjoyment of Ac. 3.27 guntas in Sy. Nos. 116/2 and 116/3 as its owner. It is also a matter of record that from out of the said extent, she alienated an extent of 11200 sq. yds. under registered sale deeds in favour of two persons namely, Dr. Roopkaran under Document No. 170/1357 Fasli dated 1st Khurdad 1357 Fasli and to Sri Basheruddin Ahmed Khan under Document No. 2871/1357 Fasli, dated 2nd Amardad, 1357 Fasli who subsequently sold to various persons from whom the respondents 2-8 purchased their respective plots.

A supplementary Sethwar issued by Sarfekhas authorities was marked before the Special Court as Ex. B-5 in Urdu and its true translation is Ex. B-6. A map was also marked as B-37 which clearly establishes that the land of the respondent which was in possession of the respondent since more than 6 decades, which location of the land was identified, confirmed and also certified by the Sarfekhas authorities by issuing copy of the map which was marked as Ex. B-37.

It was also submitted that the record of Sarfekhas Secretariat in file 99/1945 of 1356 Fasli contains the approved plan of Sy. No. 116/2 and 116/3 admeasuring Ac. 3.27 guntas. Though necessary corrections in the related records were not carried out, Mrs. Prameela Modi continued to be in possession of the land as the owner. But the said proceedings were taken cognizance by the revenue authorities including the Government and the title of Mrs. Prameela Modi to the land was never questioned either by the Government of Hyderabad or Government of Andhra Pradesh. In view of

this, the contention of the appellant that Mrs. Prameela Modi suppressed the sale deed before the Special Court is not correct. Her title as aforesaid is based on the supplementary Sethwar issued by the Surfekhas authorities of the erstwhile Nizam Government which was accepted by the Survey and Revenue authorities including the government of A.P. Since the orders of the Surfekhas authority are legally binding upon the statutory authorities of the successive Governments, i.e. the Government of Hyderabad and later Government of A.P. The issue cannot, therefore, be reopened either in facts or in law at this distance of time.

The Government of A.P. issued Memo No. 1547-R1/65-27 dated 3rd December, 1968 confirming the judgment of the Board of Revenue which is marked as Ex. B-10. The first respondent filed W.P. No. 4526 of 1975 before the High Court of A.P. and the High Court by its order dated 28.8.1975 in WPMP No. 6897/1975 in WP No. 4526/1975 directed the implementation of the orders of the Director, Survey Settlement and Land Records, the Board of Revenue and that of the Memo of the Government aforementioned. When the said orders were not implemented, a Contempt Case CC 44/1976 was filed by the first respondent wherein an undertaking was given on 7.2.1997 by the Government stating that Mrs. Prameela Modi is being informed that the supplementary Sethwar of 1356 Fasli was received and steps for the implementation of the same were being taken and the said mutation would be finalized during the Jamabandi.

It is seen from the records that the Town Survey was finalized and published on 25.9.1976 showing the land as Government land which was prior to the aforesaid proceedings and as such it is impermissible for the Government to state that the land is government land as per Town Survey Records. True copy of the Hyderabad District Gazette dated 25.9.1976 publishing that the Town Survey was finalized and published on 25.9.1976 showing the land as Government land is annexed and marked as Annexure R-14 in these appeals.

It was argued that the land of the respondents was demarcated by the Government through the M.C. Inspector, Hyderabad under taluk in File No. G6/2598/DM/0/75 dated 25.5.1976 and the same was informed to the Collector, Land Records, Hyderabad District through letter dated 2.1.1976 along with the demarcated map of the respondent. It is also clear that long back the issues of location of the scheduled property, the title of the first respondent, her long standing possession and subsequent sales made by her were settled once of all as evidenced by the proceedings at various levels including the Government. Therefore, after such a long time, it is not open to the government to re-agitate the same issue both on the principles of res judicata and estoppel. The matters which were concluded by the decisions of the competent statutory authorities cannot be re-opened and a citizen cannot be subjected to such repeated litigation. Therefore, the issue about the physical location raised by the government, for the first time before this Court, by filing a fabricated and unauthenticated sketch which has no basis whatsoever, with regard to the location of the land belonging to Mrs. Prameela Modi.

We have carefully perused the judgment rendered by the Division Bench of the High Court. There is no illegality or irregularity and infirmity on the face of the record by both the Courts below. The High Court has rightly held that the Special Court neither acted on evidence, which is legally inadmissible nor has refused to admit the admissible evidence and that the Special Court adverted itself to the correct issues that have fallen for its consideration. The High Court and the Special

Court have also rightly concluded that the land in Sy. Nos. 116/2 and 116/3 is not government land after perusing both oral and documentary evidence and rightly dismissed the petition filed by the State by holding that there is no error apparent on the face of the record and further holding that the findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and by holding that the High Court in exercise of its power under Art. 226 of the Constitution of India cannot convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of the evidence. The High Court also relied on a judgment of this Court in Ameer-un-Nissa Begum and Others vs. Mahboob Begum and Others, and Rajah S.V. Jagannath Rao vs. Commissioner of Income-tax, and held that the Nizam and his administration had every right to recognize or grant patta in favour of any individual of his choice in respect of Surfekhas properties. This apart there is ample evidence to show that the right and title to Mrs. Prameela Modi flows out of the supplementary sethwar, which was examined in detail by the Director of Settlements, Survey and Land Records, Hyderabad, the Board of Revenue and the State Government thereafter. This was also examined by the High Court in W.P. No. 4526/1975 and CC No. 44 of 1976 and also in W.P. No. 10159/1998 which was confirmed in W.A. No. 2235 of 1998 and further by this Court in S.L.P.(C) No. 12103 of 2000. In our view, the continuance of the name of Smt. Rabia Begum in revenue records against Sy. Nos. 115/2 and 115/3 has no relevance since the claim of the first respondent is not based on the sale deed but on the Sethwar issued by the Surfekhas.

In conclusion, we are of the view that the High Court has rightly upheld the findings of the Special Court that the State has failed to prove that the Scheduled property is located in Survey No. 116/1. There is no irregularity and infirmity in the judgment passed by the High Court as well as the Special Court in rejecting the claim of the State. The Special Court elaborately considered and concluded the title of the property in question in favour of the first respondent. Therefore there is no scope at all for this Court to interfere with the considered factual findings at this belated stage. As already noticed, the parties are litigating for the last 50 years and it is high time that the parties should realize the correct fact situation and close the lis once & for all.

We are in complete agreement with the view taken by the Special Court and also the view taken by the High Court that the respondents herein have not grabbed the land nor can be characterized as land grabbers. We further hold that the State of A.P. and its instrumentalities cannot be permitted to interfere with the peaceful enjoyment of the land in question by the respondents in any manner whatsoever. Accordingly, there shall be a direction to the appellant not to interfere with the peaceful possession and enjoyment of the land in question by the respondents in any manner whatsoever.

In the result, the appeals are dismissed. However, there shall be no order as to costs.