

Union of India and Another Vs. Mohammed MohiuddIn and Others

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Court : Andhra Pradesh

Decided On : Aug-11-2000

Reported in : 2000(6)ALD376; 2000(6)ALT551

Judge : N.Y. Hanumanthappa and;Vaman Rao, JJ.

Acts : [Cantonments Act, 1924](#) - Sections 3(1 and 2), 108, 178, 181, 274, 280, 282 and 283; [Constitution of India](#) - Articles 14, 226, 295(2) and 300-A; Urban Land (Ceiling and Regulation) Act, 1976 - Sections 6(1) and 15(2); Cantonment Land Administration (Amendment) Rules, 1937; Eviction of Unauthorised Occupants Act, 1971; Hyderabad Land Revenue Act, 1337 Fasli; [Evidence Act, 1872](#) - Sections 65 and 90; Municipalities Act - Sections 330; Cantonment Land Administration Rules, 1925 - Rules 1(A), 2, 3 and 6; Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930; Andhra Pradesh (Telangana Area) Land Revenue Act, 1317-F; Code of Civil Procedure (CPC), 1973 - Sections 11; Hyderabad Municipal Corporation Act - Sections 428, 433 and 450

Appeal No. : WA No. 1499 of 1997 and Batch

Appellant : Union of India and Another

Respondent : Mohammed MohiuddIn and Others

Advocate for Pet/Ap. : M/s. L. Narasimha Reddy SC for CG,;P. Vijaya Bhaskar Reddy,;Ch. Dhananjaya,;M. Srinivasa Choudary,;Deepak Bhattacharjee,;J.

Ashwini Kumar,;K. Raghavacharyulu,;M.V. Suresh Kumar and;D.V. Sitharam Murth

Judgement :

ORDER

N.Y. Hanumathappa, J.

1. Since the question involved in all the above writ appeals are common, they are clubbed together and disposed of by this common judgment.
2. All the writ appeals are filed challenging the order of the learned single Judge of this Court in WP No. 10804 of 1996, dated 14-11-1997 allowing the writ petition.
3. WP No. 10804 of 1996 was filed by 62 petitioners who were shown as respondent Nos. 1 to 62 in all the writ appeals seeking for the relief of writ of mandamus directing the Executive Officer, Secunderabad Cantonment, A.P. Circle, Secunderabad to issue sanction of lay out plan applied for by the writ petitioners in respect of Ac.8.00 of land in S.No.170 (part) of Tokatta village, Secunderabad Mandal and in conformity with the orders passed by this Court in WPNo.4250 of 1994 dated 30-9-1994 and WPNo.6012 of 1995, dated 6-12-1995. The Defence Estate Officer, A.P. Circle, Secunderabad; the Director of Defence Estate, Southern Command, Pune; Syed Sadiq Ali Khan; Mouzam Ali Khan and Syed Jafer Ali Khan were the other respondents in the writ petition.
4. WA No.1499 of 1997 has been filed by the Union of India represented by the Defence Estate Officer and the Director of Defence Estate, Southern Command, Pune who were 2nd and 3rd respondents in WP No. 10804 of 1996.
5. WA No.92 of 1998 has been filed by the Executive Officer, Secunderabad Cantonment Board, A.P. Circle, Secunderabad who was 1st respondent in WP No. 10804 of 1996.
6. Writ Appeal No.2004 of 1998 has been filed by the State of Andhra Pradesh which was impleaded itself as the party to the proceedings at this stage.

7. W.A. No.1996 of 1998 has been filed by one Syed Sadiq Ali Khan who was 4th respondent in WP No. 10804 of 1996.

8. WA No.538 of 1998 has been filed by Mouzam Ali Khan and Syed Jafer Ali Khan who were respondent Nos.5 and 6 in WPNo.10804 of 1996.

9. WP No.12490 of 1997 has been filed by Mir Mouzam Ali Khan and Syed Jafar Ali Khan seeking the relief for issuing a writ of certiorari by calling for the records relating to proceedings No.TT3/625/93, dated 5-3-1997 passed by the Special Commissioner, Land Revenue, Government of Andhra Pradesh, to the extent of holding that the land in Sy. No. 170/P to an extent of Ac.65.00 with bungalow No.215 situated atTokatta (v), Secunderabad, as Government land and declare the impugned proceedings as illegal, arbitrary, void ab initio besides violative of Articles 14 and 300-A of the [Constitution of India](#) and against the principles of natural justice and pass such other order or orders as the Court may deem fit and proper in the interest of justice and equity.

10. WP No.30880 of 1997 has been filed by Syed Sadiq Ali Khan seeking to quash G.O. Ms. No.73 5, Revenue (Assign.III) Department, dated 6-9-1997 issued rejecting the claim of the petitioner that the land in Sy. No.170/1 admeasuring 343-29 gts. is his patta land and for quashing of the consequent orders thereto,

11. WP No.7121 of 1997 has been filed by the alleged purchasers of the disputed land seeking to quash the proceeding in Proc. No.TT3/625/93, dated 5-3-1997, whereunder the land in question was declared as Government land/Military Estate.

12. The grievance made out in WANos.1499 of 1997, 92 of 1998, 538 of 1998 and 2004 of 1998 are almost similar. The grounds urged in WA No.1996 of 199S and WA No.538 of 1998 in addition to some of the grounds in the above first three writ appeals, are to the effect that the appellants have independent right over the schedule property.

13. The controversy involved in all these writ appeals revolves around Ac.8.00 of land situated in Sy.No.170 (Part) (Old Sy. No.37) of Tokatta village, Secunderabad Mandal.

14. A few facts which are necessary to dispose of these writ appeals and the writ petitions are as follows:

For the sake of convenience, the rank of the parties shall be referred to as arrayed in WP No.10804 of 1996 as writ petitioners and the respondents 1 to 6 in addition to the State of A.P.

15. The case of the writ petitioners reads as under:

16. An extent of Ac.65.00 of land including bungalow No.215 in Tokatta village was purchased in the name of Syed Sirazuddin Ali Khan, a minor represented by his father Syed Sadiq Ali Khan under a registered sale deed dated 21-9-1899. Syed Sirazuddin Ali Khan after attaining majority executed a relinquishment deed in favour of his father Syed Sadiq Ali Khan on 11-8-1911. Syed Sadiq Ali Khan, the father, informed the Salarjung authorities on 19th Azar 1330 Fasli (1920 A.D.) that he had allotted an extent of Ac.19.30 guntas of land to eleven persons and the same may be recorded in the village records. The Directorate and Secretariat of the Estate of Salarjung Bahadur informed Syed Sadiq Ali Khan on 27 Bahman, 1330 Fasli (1920 A.D.) that allotment was entered in the records on 15th Shehariwar 1333 Fasli (1923 AD). The said authority again informed Syed Sadiq Ali Khan that non-agricultural land tax was levied in respect of the land which he acquired by way of relinquishment deed at the rate of Rs.5/- per acre. Thus the authority called upon him to pay Rs.325/- in respect of the land in S.No.37 (new Sy.No.170 (Part)). The authority also informed one of the predecessors of Syed Sadiq Ali Khan that in revision Bandi (Settlement) the S.No.37 has been changed giving new number as S.No.170. The officers of the Cantonment Board to that effect gave necessary copies to the parties. The Cantonment authorities have been assessing and collecting tax in respect of the land in possession of the petitioners.

17. It is the further case of the petitioners that out of Ac.19-30 guntas of land, for Ac.8-00 the petitioner gave an application to the 1st respondent. Executive Officer, requesting him to sanction lay out submitted by them. The remaining extent of land is occupied by either the buildings or is in possession of the lessees or other encroachers. On 5-1-1994, the 1st respondent returned the petitioner's application

with an objection that the petitioners shall produce exemption certificate under the provisions of Urban Land (Ceiling and Regulation) Act, 1976, (hereinafter referred to as the 'Act 1976'). Aggrieved by the said order dated 5-1-1994, the petitioners filed WP No.4250 of 1994 before this Court. The same was allowed on 30-9-1994 holding that for Sanction of lay out submitted by the petitioners, exemption certificate under 1976 Act is not required. Thus observing this Court directed the authorities to issue lay out sanction as requested by the petitioners without insisting them for production of exemption certificate. Thereupon the petitioners resubmitted the lay out plan to the 1st respondent. On receipt of the said representation, the 1st respondent sought the advice of its Standing Counsel who in turn suggested that as per the order of this Court in WP No.4250 of 1994 on 30-9-1994 has to be complied with. The respondent instead of complying with the directions issued by the Court on 30-9-1994 again returned the papers to the petitioners on a fresh ground that Sy.No.170 (Part) of Tokatta village is 'Sarkari Abadi land'. The said action of the authorities made the petitioner to approach this Court again by filing WPNo.6012 of 1995 and this Court by its order dated 6-12-1995 allowed the writ petition directing the authorities to consider the documents produced by the writ petitioners to know whether they established a prima facie case as to their possession and also look into the documents and material produced by the Union of India by way of objections and pass appropriate orders. Instead of complying at least this time with the directions of this Court, the 1st respondent passed an order on 18-1-1996 refusing to grant sanction of lay out on the ground that the land has been shown to be in possession of the Government of India. Questioning the said order the petitioners filed Appeal No.2 of 1996 before the 3rd respondent. As no order was passed by the 3rd respondent, the petitioners filed by the third writ petition, viz., WP No.3606 of 1996 seeking a direction that the respondents shall not interfere with the petitioners possession and enjoyment of the land in question till the disposal of the appeal before the 3rd respondent. This Court allowed the said writ petition on 27-2-1996 directing the respondents not to disturb the petitioners possession and enjoyment of the land to an extent of Ac.19-30 guntas. As there was threat of dispossession by third parties the petitioners also filed WP No.6009 of 1996 seeking police protection. This Court allowed the same on 25-3-1996. The 1st respondent aggrieved by the order

passed in WP No.3606 of 1996 filed WA No.283 of 1996 wherein a Division Bench of this Court directed the parties to maintain status quo pending disposal of Appeal No.2 of 1996 before the 3rd respondent. The Division Bench also directed the 3rd respondent to dispose of the appeal expeditiously. The 3rd respondent by its order dated 10-5-1996 dismissed the appeal holding that the petitioners have no title to the land in question. Aggrieved by the stand taken by the official respondents in not sanctioning the lay out plan, though a direction was given earlier in WP Nos.4250 of 1994 dated 30-9-1994 and WP No.6012 of 1995 dated 6-12-1995 the petitioners filed WPNo.10804 of 1996.

18. On service of notice, the respondents put up appearance. The respondents 1 and 3 filed counter-affidavit admitting that the petitioners submitted their application to them seeking sanction of lay out plan but they could not accede to the request of the petitioners as the land in respect of which they sought lay out sanction was included in GLR Sy. Nos.661 and 662 as C and Class A-1 land under the possession and control of Ministry of Defence. In the revenue records namely in the Pahani for the year 1962-63 the land in question has been described as Sarkari Abadi. According to the respondents, as the land was shown as Sarkari Abadi in the revenue records, it is the Central Government which is the owner and occupant of the same since the formation of Cantonment Board of Secunderabad. According to them the land covered by Government buildings, workshops, stores, dobhigat, public garden etc., is classified as Government land in General Land Register. The respondents also stated that the land forming part of Moghalai village was entrusted to the Cantonment for municipal administration and it was given to the private individuals by the Government of India for construction of bungalows and houses retaining the ownership with the Government and the said property is resumable at the pleasure of the Government. As such no further construction be made over the disputed land. According to the respondents an extent of Ac.2.71 guntas with bungalow No.215 is held on old grant terms which bears GLR No.660. The same is maintained and supervised by the Defence Estate Officer as per the Cantonment Land Administration Rules 1937 which were framed under Section 280 of the [Cantonments Act, 1924](#), hereinafter referred to as the 1924 Act. Thus contending they sought the writ petition be dismissed.

19. In view of the rival contentions, the learned single Judge first took up for consideration to find out what was the extent that was purchased by Syed Sirazuddin Ali Khan on 21-9-1899. The learned single Judge found that though the said document dated 21-9-1899 is silent as to the extent, it was mentioned that the property was purchased with bungalow with all its appurtenants compound and hereditaments bounded by East: Staff Lines; West: Bazarof Royal Artillery; North : Sikh village and South Mudfort. Same boundaries were mentioned in the relinquishment deed dated 11-8-1911 executed by Syed Sirazuddin Ali Khan in favour of his father Syed Sadiq Ali Khan. Later on 9th Azar, 1330 Fasli (1920 AD) Syed Sadiq Ali Khan addressed a letter to the Director of Salarjung Bahadur Estate requesting to make entries in respect of Ac.19.05 guntas in the revenue records of Tokatta village. The same was replied to the applicant by the said Director in its letter 27 Bahman 1330 Fasli. The learned Judge observed that there is no denial as to the extent of land. It was mentioned therein that the lands are non-agricultural lands and as such revenue assessment cannot be made. The learned single Judge further observed that in another letter dated 15th Sharewar, 1333 Fasli (1923 AD) it was mentioned that the land in question is a non-agricultural land and tax was assessed at Rs.5/- per acre which supports the case of the petitioners that they are in possession of the land. Even in the letter dated 9th Azar, 1330 Fasli (1920 AD) there is a mention as to the extent of Ac.65-00 of land purchased by Syed Sirazuddin Ali Khan. The learned single Judge while referring to the orders passed in the earlier writ proceedings and also the order passed by the General Officer, Commanding in Chief, Southern Command, Pune, in Appeal No.2 of 1996, dated 10-5-1996, held that when a request was made for sanction of lay out, it was not the concern of the respondents to go into the question of title of the petitioners.

20. With regard to the contention of the respondents that the petitioners are not in possession of the property, the learned single Judge took into consideration the interim order passed by this Court in WP No.3606 of 1996 dated 27-2-1996 wherein this Court directed the respondents not to disturb the petitioner's possession pending appeal. The said interim order was supported by the tax paid in respect of non-agricultural land assessment. The learned Judge held that the petitioners are in possession of the property. Otherwise there would have been no

reason for them to seek for sanction of lay out. The learned single Judge took into consideration another contention of the respondents that the petitioners or their predecessors were in possession of the property in question only under old grant and therefore the occupant of such land is liable to be evicted by short notice of one month, held that the said grant merely confers right of occupancy, but not a right to title. The learned single Judge took into consideration the contention of the respondents that no permission can be granted under Section 181(a) of the Cantonments Act and the Government may refuse sanction if the right of the builder on the land is in dispute. The learned single Judge also took into consideration the contention made by the petitioners that as per the report obtained from India Office Library in England written by Sir William Barton's dated 10-10-1926. 13 villages around Secunderabad are known as Mugalai villages and the authority of the Cantonment is vested only in respect of buildings; that no land was granted to the Government of India by Nizam for military purpose; that on 14-9-1998, Nizam wrote a letter that the military occupied area of the Cantonment can be retained subject to the condition that the Inamdars and others who had lands in the area were not precluded from enjoying their existing rights on their respective buildings; that Government of India does not own any land in Secunderabad; that the land in occupation of Barracks, Parade Grounds only has been handed over for the Military Authorities, that permission to build over the land in areas other than in military occupation vests in the Cantonment who are only licensing authority; that the report also stated that there was no land in Secunderabad belonging to the Government of India; that most of the lands in civil area are private properties; that the control of the Cantonment Board is only an administrative control; that whatever the property that was handed over for military purposes will be reverted when once the purpose for which the land was handed over on lease expires; that the right if any conferred on the Cantonment Board is only to supervise the existing property and that right to control cannot be equated to the ownership. It was canvassed before the learned single Judge that the claim of the Cantonment Board on the basis of the entries will not confer any right on them. Any entry made in General Land Register do not bind the petitioners. The learned single Judge took into consideration the further plea of the petitioners that in earlier writ proceedings the respondents did not raise objection as to the title of

the petitioners. They also did not state that the respondent are in possession of the property in question. Now to take altogether a different plea by them in the subsequent proceedings is hit by constructive res judicata.

21. Considering the above contentions of both the parties, the learned single Judge allowed the writ petition directing the Cantonment authorities to sanction Jay out plan submitted by the petitioners.

22. On behalf of the appellants in Writ Appeal Nos.1499 of 1998, 92 of 1998 and 2004 of 1998, the learned advocate appearing for them attacked the order of the learned single Judge on several grounds. Most of the grounds urged by them are almost similar.

23. Sri B. Adinarayana Rao, learned Standing Counsel and later Sri L.N. Narasimha Reddy, appearing for the Central Government, Sir Deepak Bhattacharji, learned Standing Counsel appearing for the Cantonment Board and the learned Government Pleader for the State attacked the order of the learned single Judge and the grounds of their attack are almost similar. As such they have been referred jointly. According to the learned Counsel, the judgment and order of the learned single Judge is contrary to law as the same is not in accordance with the provisions of Section 181 of the Cantonments Act. They maintained that before according sanction for lay out, the Cantonment Board has to find out the nature of the land and whether the applicant seeking sanction of lay out proved prima facie title to the property for erecting or re-erecting a building. When the claimants claimed their right over Ac.8-00 of land out of Ac. 19-30 guntas which, according to them, they purchased from either by way of sale or got from the ancestors of Syed Sadiq Ali Khan with adjoining bungalow No.215 made the Cantonment Board to think why they were silent as to their possession or seeking sanction of lay out till 4-12-1993. The question whether the writ petitioners have title to the property in their possession is a disputed question and the same is the subject matter of OS No.288 of 1992 on the file of the Assistant Judge, City Civil Court, Secunderabad. Therefore, learned single Judge according to the respondents, should not have directed the Cantonment Board to accord sanction of lay out to the writ petitioners. The same is quite arbitrary and illegal. The Cantonment Board considered the

request of the writ petitioners and refused, as the writ petitioners had no title over the land in question. The learned single Judge should have noticed that the sanction sought by the petitioners in respect of the land in question forms part of GLR Nos.661 and 662 of Secunderabad Cantonment Board classified as Class C and A-1 defence land and the same was recorded in the revenue records as Sarkari Abadi. According of sanction or otherwise of lay out plan by the Cantonment Board is governed by the provisions of Lay Out Bye-Laws made under Sections 282 and 283 of the Cantonment Act and the Rules madethereunder. As per Clause 15 of the said Bye-Laws, the Cantonment Board has got power to refuse to sanction of lay out. The learned single Judge failed to notice that the land in question was always in possession of the Government of India through defence authority. The learned single Judge should not have made much about the opinion tendered by the Standing Counsel for the Defence Department. In view of the payments made by the writ petitioners towards land tax, this contention of the petitioners shows that they are prima facie in possession has no force in the eye of law. The learned single Judge committed a mistake in not noticing that the General Land Register says that the writ petitioners are in S.No.660 with bungalow No.215 in an area of Ac.2.71 cents and that the Dhobhighat is in an extent of Ac.8-62 guntas in S.No.661. The entries in the General Land Register maintained by the Defence Department are the conclusive proof of title suggesting that the same is vested with the Government of India unless contra is proved. In the absence of direct evidence as to their title, the writ petitioners are not entitled for seeking permission for sanction of lay out. The petitioners are not definite about the extent of the land in their possession. Before the Commissioner of Land Revenue they claimed that they are in possession of Ac.25-00 whereas before the Cantonment authorities they claimed that they are in possession of Ac.19-30 guntas. This inconsistent stand throws a doubt as to their possession over the land. The documents if any produced by the writ petitioners are only in respect of bungalow No.215 and the appurtenant land of Ac.2-71 guntas. As such, the learned single Judge should not have directed the Cantonment authorities to accord sanction in respect of some other land. It is also contended that the observation of the learned single Judge that when the petitioners are not in possession of the land, there was no necessity for them to

pay house tax is again incorrect. They further contended that during the year 1806 large track of land roughly about 16 sq. kms. called Secunderabad Cantonment area was acquired at different times for the use of military by the then Nizam of Hyderabad to station therein the subsidiary force permanently. 13 villages including Tokalta village forms part of the area and the land was assigned for military purpose. The said land was part of Survey done during 1929. As per the survey conducted, under Sy.No.170 an extent of Ac.315-16 guntas was shown as Military Sarkari area Col.7 of Tally Bazar. The further classification showing the said land as Abadi area is not mentioned. The said Ac.315-16 guntas was included in military estate records. The Central Government and the Ministry of Defence is the owner of all cantonment lands at all times for all purposes and the said ownership and possession is recited in the order of Resident of Hyderabad No.35 dated 6-3-1875 which extended the order of the Governor General in Council GGO No.179, dated 12-9-1836 and 700 dated 3-7-1955 to the Bolaram and Secunderabad cantonments of British Army and subsequently these were extended to the subsidiary force situated at Hyderabad at the instance of Nizam of Hyderabad. The land in Tokatta village classified as old grant assigned for military purposes. Construction of buildings alone is allowed that too with prior permission and the existing buildings are considered as old grants as the name of the grantor was not known. As per rules, the owners of the said buildings are to be compensated in the event of resumption and that the owners of the land and buildings have only occupancy right and the Central Government has absolute right over the said property as held by this Court in Jaya Rao v. Cantonment Board Secunderabad, : AIR 1961 AP113 . The finding of the learned single Judge that earlier there was a direction of this Court to accord sanction of lay out to the writ petitioners is misreading the earlier orders. The learned single Judge should not have held that the plea of the appellants is hit by the principles of constructive res judicata assuming that in earlier writ proceedings the respondents-appellants did not dispute the title of the writ petitioners in respect of the property in question. On the other hand the learned single Judge should have noticed that the question of title cannot be decided under Article 226 of the [Constitution of India](#). There is no explanation by the writ petitioners about the pendency of OS No.288 of 1992 before the I Asst. Judge, City Civil Court, Secunderabad. The learned single Judge

should have noticed that when the writ petitioners are in possession of the property nothing prevented them from filing declaration before the Urban Land Ceiling Authorities under the provisions of 1976 Act. Syed Sadiq Ali Khan filed OS No.288 of 1992 on the file of then I Asst. Judge, City Civil Court, Secunderabad for permanent injunction in respect of Ac.65.00 of land and bungalow No.215. When IA No.470 of 1992 filed by him along with OS No.288 of 1992 seeking temporary injunction was rejected by the Lower Court, the authorities are justified in not according sanction for layout as the question of possession is pending for adjudication in OS No.288 of 1992. 'In the absence of identifying the property by the petitioners, making a request to sanction lay out is not acceptable. The order of the authorities refusing to grant lay out is in accordance with Section 181(4)(b) of the Cantonment Act. The learned single Judge erred in not properly considering the purport of the report of William Barton dated 10-10-1926. There is no mention about the writ petitioners possession in respect of the disputed property in the General Land Register, which was finalised in 1933. The said register produced, before the Court in AS No.251 of 1989 and the same was not taken back. If the same were looked into the finding of the learned single Judge would have been different. The documents if any produced by the writpetitioners relate to Bangalow No.215 only and the appurtenant land of Ac.2-71 guntas. The learned single Judge should have noticed that the observations of the Assistant Judge, City Civil Court, Secunderabad in IA No.470 of 1992 in OS No.288 of 1992 were made against the claim of Syed Sadiq Ali Khan and his successors-in-interest. The documents sought to be produced by Syed Sadiq Ali Khan related only to the Bangalow No.215, but not in respect of Ac.65-00. The Court below erred in not taking into consideration the finding of the District Revenue Officer in his order dated 9-4-1992 with reference to the claim of Syed Sadiq Ali Khan for mutation or correction of the revenue record from Abadi to Patla to the extent of Ac.65-00 in S.No.170 of Tokatta village. The learned single Judge also should have taken into consideration the order of the Commissioner of Land Revenue dated 5-3-1997 confirming the order of the District Revenue Officer, dated 9-4-1992. The Commissioner of Land Revenue in the above order accepted the claim of Syed Sadiq Ali Khan only in respect of Bungalow No.215 along with appurtenant land of Ac.2-71 guntas and not for Ac.65-00. The petitioners did not claim that they are

the owners of the property till the initiation of proceedings by the Defence Authorities for their eviction under the provisions of Eviction of Unauthorised Occupants Act, 1971. The learned single Judge also should have taken note of the statement made by Syed Sadiq Ali Khan who got himself impleaded in WP No.10804 of 1996 by way of filing WP MP No.20554 of 1996 to the effect that the claim of the writ petitioners for an extent of Ac.19.30 guntas out of Ac.65-00 as baseless.

24. On behalf of the State in WA No.2004 of 1998, it is contended that neither Syed Sirazuddin Ali Khan nor Syed Sadiq Ali Khan traced their title at any time to the land in question. The learned single Judge erred in not noticing the pendency of OS No.288 of 1992 on the file of the 1st Assistant Judge, City Civil Court, Secunderabad. None of the documents produced by the writ petitioners discloses the actual extent of land. Neither the petitioners nor their predecessors-in-title were ever in possession and enjoyment of the land ever since the first survey conducted in 1311 Fasli (1902 AD). The boundaries mentioned by the writ petitioners are quite imaginary. The sale deed upon which reliance is placed has no bearing. After conducting of revision survey under Hyderabad Land Revenue Act, 1337 Fasli if the petitioners had aggrieved by the same they should have challenged it within the stipulated period. Revision survey did not suggest that the writ petitioners are the owners of the property. As such the entries made therein should have been noticed as conclusive proof against the claim of the petitioners. The right of the petitioners in respect of Bungalow No.215 and the appurtenant land of Ac.2-71 guntas is only occupancy right but not proprietary right because the said property is vested with the Cantonment authority. The learned single Judge should have taken notice of the order of the District Revenue Officer and the confirmation order of the Commissioner of Land Revenue as well as the Government on the application filed by Syed Sadiq Ali Khan. The so-called sale deed dated 21-9-1989 is a fictitious one. As such no importance should have been attached to it.

25. It is contended on behalf Syed Sadiq Ali Khan, appellant in WA No.1996 of 1998 that the learned single Judge committed a mistake in directing the authorities to accord sanction of lay out as requested by the petitioners. When the claim of

the writ petitioners was rejected by the appellate authority, the same is not challenged by the writ petitioners. In the absence of filing a suit for declaration of title by the writ petitioners in respect of the land in question, the learned single Judge should have dismissed the writ petition in limine as sanction of lay out depends upon the petitioner's valid title over the land which could not have been gone into by this Court under Article 226 of the [Constitution of India](#). The so-called General Power of Attorney had no authority to file the writ petition. The said GPA is a bogus one. The appellant herein and his predecessors are the real owners of Ac.65-00 of land in S.No.170 (Part) together with bungalow No.215 of Tokatta village, Secunderabad. The writ petitioners are in no way connected with the said property. The learned single Judge should have upheld the claim of the appellant herein. When the learned single Judge rejected the claim of the appellant herein on the ground that the question of succession cannot be gone into in the writ petition, the same finding should have been made in the case of the writ petitioners also. The learned single Judge should have held that only Md. Fareeduddin, son of Mohd Mohiuddin, alone has right title and interest over the property and non-else. Thus contending, the appellant sought the appeal be allowed and the impugned order of the learned single Judge be set aside.

26. On behalf Mouzam Ali Khan and Syed Jafer Ali Khan, appellants in WA No.538 of 1998 who were respondents 5 and 6 in the WP No. 10804 of 1996, it is contended that the finding of the learned single Judge as to the right of the writ petitioners and giving a direction to the cantonment authorities to accord sanction of lay out, is quite incorrect. It is further contended that originally the land in question belonged to Salarjung and after the death of last holder, the legal heirs and successors filed a civil suit namely CS No.13 of 1958 which establishes that the appellants herein are the legal heirs of the said Salarjung. The property in question is a part of the proclamation issued by the Commissioner of Atiyat (Grants), Government of Andhra Pradesh vide File No.2 of 1986, Gulbarga, 1955, dated 15-2-1956. As such it is only the successors of Salar Jung who are entitled to the said property. The learned single Judge should have noticed that the writ petitioners though aware of the appellants right over the property suppressed the same before the learned single Judge. The learned single Judge should not have enquired into the title of the property under Article 226 of the [Constitution of India](#).

27. Sri K. Raghava Charyulu, learned Counsel appearing for the appellant in WA No.1996 of 1998 and for the petitioners in WP No.30880 of 1997 submitted that the appellant is the real owner of the property. The order of the District Revenue Officer as confirmed by the Commissioner of Land Revenue and also by the Government are without jurisdiction. Because as on that day the Act was repealed and the Record of Rights came into force, according to which the hierarchy officers are the first authority will be the MRO, the appellate authority is RDO and the Revisional Authority is Collector. The order of the District Revenue Officer against the appellant is pre-determined and the same is hit by the principles of natural justice. The Government is not right in observing that the land in question is the property of the Government. During the year 1933 the Central Government was not the owner of the property. He also contended that though the extent of land is not properly mentioned but the boundaries given suggest the extent of land held by the petitioner is correct. Because it is always the boundaries that will prevail over the extent. According to him, the appellant is the owner. The learned single Judge should have considered his clients case before directing the authorities to grant sanction for lay out. Failure to do so made the order of the learned single Judge as arbitrary. As such the writ appeal deserve to be allowed and the matter be remanded to the learned single Judge for fresh disposal. Sri D. V. Sitarama Murthy, learned Counsel appearing in WP No.7121 of 1997 adopted the arguments advanced by Sri Raghavacharyulu.

28. Subsequently Sri L. Narasimha Reddy who came to be appointed as Senior Standing Counsel for the Central Government in the place of Sri B. Adinarayana Rao, with the permission of this Court, also advanced his arguments. According to him, the Cantonments are constituted for the maintenance of military areas. They are being administered with the participation of the Defence Department. Under Sec.181(3) of the Cantonment Act any application for seeking sanction to erect a building has to be submitted to the Defence Estate Officer to ascertain whether there is any objection on the part of the Government for such erection in the area. The land in question is situated in Secunderabad Cantonment area. As per Section 178 of the Cantonment Act, the Executive Officer of the Cantonment Board is competent to sanction permission for erection or re-erection of a building in an area other than civil area. He further submitted that the law relating to

sanction of lay out by a municipality is different from the law on Cantonments, which governs the application seeking sanction of lay out in respect of the land situated in cantonment area. The writ petitioners claimed their title to the land through Syed Sadiq Ali Khan. But in the suit OS No.288 of 1992 filed at the instance of Syed Sadiq Ali Khan, IA No.476 of 1992 filed seeking temporary injunction in respect of Ac.65 of land and the bungalow No.215 against the Defence Cantonment authority was rejected by the Court and the suit is still pending. The writ petitioners are claiming their property through Syed Sadiq Ali Khan and when his request for temporary injunction against the Defence authority was refused the petitioners cannot claim that they are in possession of the property. Even before the revenue authorities, the finding was that Syed Sadiq Ali Khan was not in possession of the property in question. The writ petitioners did not establish prima facie title over the disputed property. When the question of title in respect of the disputed property is still pending before the competent civil Court the authorities were right in rejecting the petitioner's application for sanction of lay out. Theory of allotment put forth by the petitioners has no substance. The appeal filed by them before the concerned authorities under Section 274 of the Cantonment Act was rejected but the same was not challenged. The question of res judicata pleaded by the petitioners would have arisen if in earlier writ proceedings both the parties fought on the question of title. On, the other hand, both the parties fought the case on the issues of law involved in the earlier writ proceedings. The petitioners did not file an application seeking exemption under the Land Ceiling Act. If for any reason, the Court comes to the conclusion that the Statutory authority rejected the petitioner's application seeking permission for sanction of layout without any jurisdiction, at best this Court can direct the authorities to consider the petitioner's request afresh. But no specific directions be issued to the statutory authorities to grant the request of the petitioners.

29. According to the appellants in writ appeals, the order passed by the learned single Judge is quite incorrect and without jurisdiction. Drawing our attention to Section 181 of [Cantonments Act, 1924](#), the learned Counsel appearing for the Cantonment Board submitted that as the Board has the power to suspend or cancel order of sanction, it surely has the power to reconsider or review its order. For this proposition he relied upon a decision of the Delhi High Court in

Cantonment Board Delhi Cantt. v. Mange Ram, : AIR1987 Delhi77 , wherein in Para 4 it is held as follows :

'Even though there is no power specifically conferred under the statutory provisions on the Cantonment Board, such a power has to be read in Section 181 of the said Act as it would advance the cause of justice. It is not desirable to read a limitation in to the provisions of Section 181 that the order of grant or refusal to sanction is not subject to review or modification. The principles that power to revise is not an inherent power and cannot be exercised unless given by a statute is limited to judicial or quasi judicial order only. It cannot be extended to the ministerial acts made by the Cantonment Board'.

30. He also relied upon a decision of the Bombay High Court in Shiolalsing Gannusingh Rajput v. Shankar Motiram, AIR 1984 Bom. 19, contending that no presumption can be drawn under Section 90 of the Indian Evidence Act even though the certified copy of the old original document of the executant was produced as the original document by the executant could not be said to be properly established. The Bombay High Court on this proposition held as follows:

'Both the Courts have realised the dubious nature of the evidence of this witness. Therefore, the trial Court decided to observe that since the original document has been executed in 1936 and the evidence was recorded in the year 1967, the original document was more than thirty years old and the presumption regarding old documents under Section 90 of the Indian Evidence Act was available. Now this was clearly an erroneous assumption, because the presumption under Section 90 of the Evidence Act, even were it to be applicable to certified copies, required the certified copy produced itself to be more than thirty years old and that was not the case in the present litigation, because the certified copy of the original sale deed Ex.105 produced in the trial Court had been obtained in the year 1965 and was not thirty years old. The Supreme Court has laid down that the presumption regarding old documents under Section 90 of the evidence Act is not available, where a certified copy of an old document is produced. Therefore, the trial Court was clearly in error in extending the presumption regarding old documents over thirty years 'old under Section 90 of the evidence Act to the certified copy

produced at Ex.105 to prove the execution of the original sale deed dated 23-4-1936 in favour of Gulabsa.'

31. The learned Counsel appearing for the Cantonment Board contended that Section 65 of Evidence Act completely bars any other kind of secondary evidence except a certified copy and as papers do not bear either of copy stamp or seal, the document will not come under the certified copy and, therefore, whatever the documents produced by the petitioners for sanction of lay out cannot be considered since Section 65 of the Evidence Act hits the very existence of so-called documents produced by the writ petitioners. For this proposition, he placed reliance on a decision of Allahabad High Court rendered in the case of Ganesh Prasad v. M/s. Badri Prasad Bholanath, : AIR1980 All361 , where, in Para 5 it is held as follows:

'Clause (f) to Section 65 Evidence Act completely bars any other kind of secondary evidence except a certified copy and as papers filed do not bear either any copying stamp folio or Seal of the Municipal Board as required by Section 330 of Municipalities Act they also do not come under the definition of certified copy as given by Section 65 of Evidence Act'.

Placing reliance on a decision of the Supreme Court in Chief Executive Officer v. Surendera Kumar Vakil, : [1999]2SCR118 , the learned Counsel contended that the General Land Register maintained by the Defence Estate Officer under the Cantonment Administration Rules are old documents maintained in the regular course coming from proper custody and that therefore the entries in the GLR can be believed. In that decision, the Supreme Court at Para 15 held as follows:

'It is true that the appellants were also required to maintain a file/register of grants. They have not produced the file. The appellants, however, have led evidence to show that the file concerned of grants was stolen in the year 1985. They were, therefore, unable to produce the file pertaining to this grant. They do, however, have in their possession General Land Registers maintained under the Cantonment Land Administration Rules of 1925 in which they are required by these Rules 'to maintain a record, inter alia, of the nature of the grant in respect of cantonment lands and the person in whose favour such grant is made. Both these

registers are very old registers. They bear the endorsement of the officer who has maintained these registers in the regular course, These registers also show any subsequent changes made in respect of the lands under the relevant columns. Both these registers clearly show that the land is held on grant basis by Mukherjee. The High Court seems to have rejected the record contained in the Land Grants Registers on the ground that the terms of the grant have not been established because the document of grant itself has not been produced. The terms of the grant, however, are statutorily regulated under Order No. 179 of the Governor General-in-Council of 1836. The administration of lands in cantonment areas is further regulated by the [Cantonments Act, 1924](#) and the Cantonment Lands Administration Rules of 1925. The 1836 Regulations expressly provide that the title to the land in cantonment areas cannot be transferred. But only occupancy rights can be given in respect of the land, which remains capable of being resumed by the Government in the manner set out therein. There is no evidence to the contrary led by the respondents. In fact, under the amendment/admission deeds executed on 4-8-1983/5-8-1983, the vendors as well as the purchasers have stated that the site is wrongly mentioned as lease hold site instead of 'old grant' site in the four sale deeds. The mistake is being rectified by the execution of the four amending deeds clarifying that of Banglow No.39 is held on 'old grant'. Undoubtedly this was later retracted when the cancellation deed was executed cancelling the amendment/admission deeds'.

32. The Cantonment Board's Counsel lastly contended that this Court exercising the jurisdiction under Article 226 of the Constitution cannot go into or adjudicate upon the matters in respect of the disputed questions relating to title and cannot grant declaration of title and placed reliance on a decision of the Supreme Court in *State of Rajasthan v. Bhavani Singh*, : AIR 1992 SC1018 , wherein the Supreme Court dealing with the case relating to non-entertaining the application before the municipal authorities for construction of a compound wall in a plot of land, held that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the plot. It was further held by the Supreme Court that it is evident from the facts stated that the title of the writ petitioner is very much in dispute and, therefore, the disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

33. None of the decisions relied upon by the appellants on facts supports their case except to say the same have academic importance.

34. Sri K. Pratap Reddy, learned senior Advocate appearing for the petitioners contended that originally Ac.65.00 of land including bungalow No.215 was purchased by Syed Sarajuddin Ali Khan a minor represented by his father Syed Sadiq Ali Khan under a registered sale deed dated 21-9-1899. On attaining majority the same was relinquished by the minor in favour of his father Syed Sadiq Ali Khan by a relinquishment Deed dated 11-8-1911. The correspondence between Syed Sadiq Ali Khan and the authorities of Salarjung on different dates discloses that the land in question is a non-agricultural land and they had to pay non-agricultural tax. According to him, in earlier writ proceedings, the respondents-authorities did not dispute the petitioners title over the property. The request of the petitioners is only for sanction of lay out plan which was refused on the ground that they failed to produce clearance certificate from Urban Land Ceiling Authorities and this Court in WP No.4250 of 1994 held that for obtaining lay out sanction such certificate is not required. In the subsequent writ petition, namely WP No.6012 of 1995 this Court clearly held that it is not the concern of the cantonment authorities to hold an enquiry as to the title of the petitioners when their request is only for sanction of lay out. As such the authorities are duty bound to consider whether the writ petitioners have made out a prima facie case of their possession of the property in question. The authorities instead of considering the petitioner's request for sanctioning by out on the basis whether they made out a prima facie case or not, they rejected the request on the basis of enquiry report dated 8-1-1996 dealing about the title. The order passed by the General Officer Commanding in Chief, Southern Command, Pune, runs contrary to the directions of this Court passed in WP No.6012 of 1995. Regarding possession of the writ petitioners, Sri Pratap Reddy contended that in WP No.3606 of 1996 this Court passed an interim order on 27-2-1996 directing the respondents-authorities not to interfere with the petitioner's possession in respect of Ac. 19.30 guntas of land in S.No.170 (Part) of Tokatta village and further ordered that the petitioner's possession shall not be disturbed pending appeal before the 3rd respondent in the WP No. 10804 of 1996. Thus, the petitioners were, according to Sri Pratap Reddy, in possession and enjoyment of the land in question as on the date of submitting their application. He

further contended that the tax receipts disclose the writ petitioner's prima facie case and there is no other material to disprove the correctness in tax receipts produced by either side. The learned Counsel further submitted that the report dated 10-10-1992 of Sir William Barton obtained from India Office Library, England, discloses that 13 villages around Secunderabad are known as Moghalai villages and the buildings thereon would vest in the authority of the Cantonment only as licensee but they do not have any title over the said land. The Nizam never assigned any land to the Government of India for military purpose. On 14-9-1908, the Nizam wrote a letter that military occupied area by the cantonment can be retained subject to the condition that the Inamdars and others who had lands in the area were not precluded from enjoying their existing land and the respective buildings. In Secunderabad, the Government of India does not own land at all. What was handed over to the Defence Department was only that which was in occupation of Barracks, Parade Ground. Permissions to build houses over the land in area in military occupation though vests in the Cantonment Board but they are only licensing authorities. Sri Pratap Reddy further submitted that most of the lands in civil area are private properties and the control of the Cantonment is an administrative control and whatever property that was handed over for military purposes reverted back to Nizam when the same was not required by military authorities. According to him, the area outside 13 villages and the control of buildings rests with the Cantonment authority. They can give permission to construct buildings. Such permission does not confer any title. All the rights of Nizam over the land in 13 villages including Tokatta villages vested in the Government of Hyderabad or Jagirdar who were owners and possessors of the above villages. But their names were not mentioned in Notification 13 due to amalgamation of villages. Whatever right the Cantonment Board has, is only a right to supervise the buildings. It is submitted that entries of possession made in the General Land Register and the entries made pursuant to the Record of Rights under the Land Revenue Code and their presumptive value are quite different. For this proposition he placed reliance on a decision reported in *P.T. Anklesaria v. H.C. Vashistha and others.*, : AIR1980 Bom9 , wherein it is held that there is no presumption in law that the entries made in the General Land Register are true until the contra is proved. He also placed reliance on another decision of the

Calcutta High Court in the case of Barrickpore CI Comm. v. Satish Chandra, AIR 1927 Cal. 786, wherein it is held that mere fact that certain lands are declared by the Government to be within the Cantonment area the ownership does not vest in the Government unless it is shown that the lands were acquired by the Government for some purpose. Entries made in the General Land Register without notice to the persons in possession of such property do not bind them. In support of this contention, he placed reliance on a decision of this Court in the case of Municipal Council v. Rangayakalu, : AIR 1955 AP107 . According to him before passing any order of eviction the person concerned shall be heard in the matter as held by the Supreme Court in Maneka Gandhi v. Union of India, : [1978]2SCR621 . He further submitted that it is well settled that the entries made by the Surveyor under the provisions of Survey and Boundaries Act are not the conclusive proof of title so as to bind the parties. Sri Pratap Reddy while contending that when the respondent authorities did not raise a dispute about the petitioners title over the property in earlier writ proceedings before this Court now they are estopped from raising such a plea as the same is barred by the principles of constructive res judicata. For this proposition he placed reliance on the decision of Supreme Court rendered in Keshoram and Co. v. Union of India, : [1989]2SCR1005 .

35. Sri Pratap Reddy also contended that as per Rule 2 of Rules regarding grant of pattadars rights in non-khalsa villages persons holdings jagir lands and paying revenue directly to the Jagirdars shall in all force be deemed to be the pattadar. The said rule is extracted hereunder:

'2. From the date of the coming into force of these rules persons who hold Jagir land and pay revenue direct to the Jagirdars shall, in all Jagirs, whether settled or unsettled for all purposes be deemed to be pattadars of the land held by them notwithstanding any oral or written agreement between the Jagirdar and such persons or any entry in the concerned village records to the contrary, and their rights and liabilities shall be the same as those of the Pattadars of Khalsa lands'.

36. Sri Pratap Reddy also maintained that the request of the writ petitioners seeking sanction of lay out is a just one and the learned single Judge is justified in directing the authorities to accord sanction. By virtue of the same the petitioners

are entitled to put up constructions as per the lay out submitted by them. Lastly and as an alternative, he submitted that in case either this Court or any other Courts declare that the property in question belongs to the Cantonment Board, the entire land which the writ petitioners are claiming and the construction of buildings, if any raised or going to be raised pursuant to the approved lay out plan, the same will be surrendered to the Cantonment Board without claiming any equities seeking compensation. Thus contending, he sought all the appeals be dismissed.

37. The request made in WP Nos.12490 of 1997, 30880 of 1997 and 7121 of 1997 have no much bearing on the issue involved in this writ appeals.

38. Though the Court is not concerned with the origin and establishment of the Secunderabad Cantonment Board and how the disputed area was allowed to have become part of the said Cantonment, but on the request made by the learned senior Standing Counsel Shri L. Narasimha Reddy appearing for the Union of India, some of the dates and history behind the establishment of the cantonment Board are mentioned as under:

39. During the year 1776 a treaty was arrived at between the British East India Company and the Nizam of Hyderabad whereby it was agreed to provide a subsidiary Force as required by the Nizam and by the Treaty of 1768 the British Government undertook to provide Nizam with two battalions and Sepoys. By a Treaty of 1788 a resident was appointed at Hyderabad; that during the year 1798 by a Treaty the subsidiary force was made permanent and the battalions were increased to six; that by the treaty of 1800 the battalions were increased to eight and that by 1806 British Government resolved to station the troops at Hyderabad. The Treaty of 1829 named the Cantonment in memory of Sikindar Jah who died in 1829. By 1853 Treaty both British Government and Nizam confirmed all the earlier treaties and it was agreed that the services of the subsidiary force and the contingent were to be placed at the disposal of the British Government in time of war. During the year 1903 the Bolaram cantonment was abolished and merged with the Cantonment of Secunderabad with a definite assignment of land by the Nizam, but was occupied by the Military authorities free of cost. There was no assignment of land by the Nizam to the Military authorities. On 14-9-1908, 13

Mughalai villages, including Thokatta village were-demarcated. In 1912. Nizam's Minister conveyed the approval to retain the demarcated land by the Military authorities. During the year 1916 an additional land to the extent of Ac.2059-35 gts. was made available to the Army. On 10-10-1926 on W.P. Barton, Secretary to the Resident made a recommendation to maintain a register of rights and exclusive rules for the Secunderabad Cantonment mentioning therein that Nizam's government pledge themselves to provide free of cost land required for the military purpose and the same would ordinarily be included in the delimited area. During the year 1928-29 military pillars were included in the Survey of India Map. In the year 1930 based on the recommendations contained in the study report, the Government notified the Secunderabad and Aurangabad cantonment area, Land Administration Rules, 1930 and Rules 3 and 6 envisage maintaining of a General Land Register (for short 'GLR') and division of delimited territory into classes A, B and C excluding the land held by the State, Sarf-Khas Paigah and private held lands. On 11-7-1932 the Nizam's Government addressed a letter to the Secretary to the resident mentioning that no private rights exist in the land and that all land in the cantonment is either State, Sarf-i-Khas or Paigah. State lands are those belonging to Hyderabad/Nizam's Government and Paigah lands were those lands given by the Nizam to Nawab for maintaining Army to be useful to Nizam and Jageers and Inams are estates gifted by Nizam to his Nobles, courtiers and members of his family. During the year 1933 GLR was finalised by amending the Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930 by notification dated 2-11-1932 and public notices were issued for all to bring title deeds relating to the properties, which they are holding. All lands where no title deeds were produced were classified as 'B' under the management of Military Estate Officer leaving the column of holders right as blank and noted in the remarks column that authority for occupation is not known as a policy. In the year 1934 one Capt. CM. James, an officer of the Military lands and cantonment in his report dated 5-2-1934 stated that in addition to the delimited area approved by the Nizam in 1912 additional lands also be included in the revised boundary of the delimited area. The GLR and the Maps prepared by Caption James were approved by resident on 5-3-1934. Class- A lands are those held for Government purposes, Military or Civil; Class-B lands are occupied by the public for purposes

subsidiary to cantonment administration and the vacant land in the delimited areas could be given on lease by the Cantonment authorities in furtherance of Military purpose. Class-C land belongs to cantonment authority or that was transferred under Section 108 of [Cantonments Act, 1924](#). During the year 1937 Cantonment Land Administration Rules, 1937 were promulgated by notification No.874, dated 20-11-1937. On 8-7-1950 Secunderabad was declared as a cantonment under Section 3(1)(2) of cantonment's Act, 1924 and on 2-12-1950 and on 2-12-1950 under Rule 1(A) notified by SRO 305, all the rules in Part B were repealed. Thus the Secunderabad and Aurangabad Cantonment Land Administration Rules were repealed and Cantonment Land Administration Rules, 1937 were made applicable. On 4-8-1954 in the meeting of the representatives of the State Government and the Union Defence Ministry and the Director of Military lands and Cantonments it was agreed that the lands which were in use or otherwise managed by the military authorities should continue to vest in Central Government while those lands such as Sarf-I-Khas, Paigah etc., should continue to vest in the State. As a result of this Class-A land in occupation of the Military became the property of the Central Government, Class-B lands which were occupied for purposes subsidiary to cantonment administration or vacant lands available for such occupation were also brought within the delimited boundary and the exclusive management of these lands entrusted to the Military Estates Officer. It was agreed to finalise the new general Land Register on the line indicated in the minutes of the said meeting. In the year 1956 the GLR finalised in the form prescribed in Schedule-I in accordance with Rule 3 of the cantonment land administration Rules, 1937 framed under Section 280 of the Cantonment Act constituted the basis for the claim of the Ministry of Defence in respect of lands and buildings comprised in GLR Survey Nos.1 to 781. Class-A1, A-2, B-3 and B-4 lands are in the management of Defence Estates Officer and Class-C lands are under the control of Cantonment Executive Officer. All the lands in the cantonment including those occupied by the private individuals vested in the Nizam's Government, according to the learned Standing Counsel for the Central Government, stood transferred to the Central Government as a result of Article 295(2) of the [Constitution of India](#).

40. The genesis of the petitioner's right to the property in question discloses that the disputed land in Sy.No.170 (part) of Tokatta village was transferred by

document No.578 of 1899 of Sub-Registrar, Secunderabad. One Dalwar Ali Mansabdar sold Bungalow No.215 situate in Mudfort, Secunderabad to Syed Sirazuddin Ali Khan for a consideration of Rs.13,300/- to liquidate the debt due to Mr. Samuel Lever incurred for construction of compound wall around the property. The said purchase was benami. On 4-8-1911 Sirajuddin Ali Khan released the property in favour of his father Syed Sadiq Ali Khan. On 9th Azar 1330-F Syed Sadiq Ali Khan transferred Ac. 19-05 gts. to eleven persons for residential purpose at the rate of Rs.300/- per acre having purchased through document No.578 of 1899, dated 21-9-1899 and released in his name vide document No.640 of 1911, dated 4-8-1911. On 24-5-1969 after the death of Syed Sadiq Ali Khan surviving son Hameeduddin Khan succeeded to the property and during his lifetime settled the same among his two sons Syed Mumtazuddin Khan and Syed Khairuddin Khan. Accordingly Syed Khaifuddin Ali Khan and Syed Mumtazuddin Khan have filed separately petitions in respect of Bungalow No.215 under the provisions of Section 6(1) of the Urban Land Ceiling Act, 1976. In the year 1992 Syed Sadiq Ali Khan filed Case No.132/576/ 92 before the District Revenue Officer under Section 15(2) of record of Rights Regulations 1358-F to correct the record relating to land in Survey No. 170 of Thokalta village for an extent of Ac.65-00 gts. along with Bungalow No.215 by deeming himself to be a patta holder. On 9-4-1992 District Revenue Officer having regard to the occupation by the Military authorities on the basis of Survey Map of 1929 and existence of structure for the last four decades rejected the claim for correction in the record of rights. Syed Sadiq Ali Khan filed a suit in OS No.288 of 1992 and IA No.470 of 1992 therein, for grant of perpetual injunction instead of declaration of title in respect of Ac.65-00 gts. and Bungalow No.215 before the I Assistant Judge, City Civil Court and the learned Assistant Judge by order dated 12-10-1992 in IA No.470 of 1992 in OS No.288 of 1992 rejected the claim for grant of temporary injunction as Syed Ali Khan failed to establish a prima facie case to the land of Ac.65-00 gts. and granted temporary injunction in respect of Bungalow No.215 and appurtenant land of Ac.2-71 gts., only. This Court in WP No.8676 of 1992 filed against the order dated 9-4-1992 passed by the District Revenue Officer while directing the writ petitioners to file an appeal before the authorities ordered status quo. Syed Sadiq AH Khan filed an appeal before the Commissioner of land Revenue under Section 158 of the A.P.

(Telangana Area) Land Revenue Act 1317-F as directed by this Court on 18-2-1993. The petitioners filed WP No.4250 of 1994 against the rejection for lay out by the Secunderabad Cantonment Board without impleading the Central Government being a necessary party as the land belonged to the Central Government. The said writ petition was disposed of on 30-9-1994 on the basis of the decision in Annapurna Builders v. Municipal Corporation of Hyderabad, 1987 (1) ALT 644 and directed to consider the application for construction of building without insisting upon the production of exemption certificate from urban land ceiling authorities. In WP No.4250 of 1994 this Court passed the following order:

'My attention is drawn to a decision of this Court reported in Annapurna Builders v. Municipal Corporation of Hyderabad, 1987 (1) ALT 644, wherein it is held that the Corporation cannot refuse to consider the application for construction of building or want of clearance of the Urban Land Ceiling Authority. In view of this decision, I direct the respondent to consider the application of the petitioner without insisting Urban Land Ceiling Exemption Certificate. With this direction, the writ petition disposed of. No costs.'

41. Pursuant to the order of this Court the writ petitioners submitted second application requesting the respondents to accord sanction of lay out. The authorities by the order dated 15-3-1995 returned the papers alleging that the land in question is classified as Class-C and Class-A1. In the Revenue Records the said land is shown as 'Sarkari Abadi' land and appeared to be a defence owned land as per the entries in GLR. Since the Defence Estate Officer raised an objection on behalf of the Government the plan submitted was returned and the sanction could not be accorded for the said lay out. The same was challenged by the writ petitioners in WP No.6012 of 1995 and this Court by order dated 6-12-1995 after considering the effect of Section 181(4)(b) of the Cantonment Act found that when a request for sanction of lay out for erecting or re-erecting of building, is made to the competent authority, it is not the duty of the competent authority to look into or adjudicate the question of title, but it is the duty of the competent authority to see whether the applicant prima facie has made out a case of possession. Thus observing the writ petition was allowed declaring the action of the respondent-Executive Officer as illegal with a further direction that the 1st

respondent shall consider whatever the documents the petitioners produced before him establishing the prima facie case of possession in respect of the property and also to consider the material produced by the Union of India by way of objections. This Court in WP MP No.36733 of 1995 in WP No.6012 of 1995 dated 29-12-1995 passed the following order:

'Consideration of this petition at this stage when the main writ petition itself is disposed of long back and enquiry officer is now holding the enquiry, the allegations made in the present petition do not require to be considered. If any one of the parties to the proceedings feel that the construction is going on illegally or without proper authority or they are cutting the trees standing on the land in question or they are in any way dealing with the disputed property, it is open to such party to approach the appropriate authority for necessary relief. It is also open to them to make a complaint to the police.

Mr. K. Pratap Reddy learned Counsel submits that his clients are not cutting any tress or they are proceeding with any further construction and on the other hand they are clearing shrubs. The same is recorded.'

42. During the pendency of the writ petition, the Central Government came on record as one of the parties to the proceedings. On 18-1-1996 the Executive Officer rejected the writ petitioners request on the ground that the documents produced by the writ petitioners cannot be construed as the documents of title and the other evidence is irrelevant. When the respondents sought to interfere with the possession of the petitioners for the third time the writ petitioners filed WP No.3606 of 1996 wherein this Court on 27-2-1996 directed the respondents-authorities not to interfere with the possession of the writ petitioners and on appeal against the said order in WA No.283 of 1996 by the respondents this Court on 2-4-1996 while dismissing the appeal ordered status quo. Against the order dated 8-1-1996 rejecting the sanction of lay out plan by the respondents the writ petitioners filed an appeal before the appellate authority as directed by the respondents. The appellate authority rejected the appeal filed by the writ petitioners on 10-5-1996. Thereafter the writ petitioners filed WP No.10804 of 1996 claiming lay out sanction of Ac.8-00 gts., in Sy.No.170, which was allowed by this Court. The learned single

Judge by his order dated 14-11-1997 allowed the writ petition holding that the respondents have neither the power to reject the petitioner's request for sanction of lay out nor they have right to interfere with their possession. According to the learned single Judge, all that the respondents require is whether the petitioners are in prima facie possession or not.

43. At the request of both the learned Counsel, this Court appointed Advocate-Commissioners by an order dated 21-7-2000 to find out the nature of the land and its actual extent and the structures thereon including the boundaries and as to where exactly the disputed land is situated. The report submitted by both the departmental officers and the Advocate Commissioners discloses the existence of houses, including Bungalow No.215, compound wall in a small portion etc.

44. What emerges from the above discussion is that mere declaration of inclusion of lands in cantonment limits does not create ownership in Cantonment as held by the Calcutta High Court in the case of Barrackpore CT. Comm. v. Satish Chandra, AIR 1927 Cal. 786, wherein it is held as follows:

'The mere fact that certain lands are declared by the Government to be within a Cantonment area does not vest their ownership in the Government unless it is shown that the lands were acquired by the Government for that purpose'.

45. There was no notice to the petitioners regarding demarcating the boundaries of the disputed land and as such the entries made pursuant thereto is illegal and against the principles of natural justice as held by the Madras High Court in the case of Kandasami v. Province of Madras, : AIR1953 Mad391 , which was later followed by this Court in State of A.P. v. Thinmappa, 1963 (2) An. WR 42 (NRC), wherein it is held as follows:

'When a Statute says that an order should be passed under Section so and so, it contemplates the fulfilment of all the necessary formalities which have to be completed under the section. Here the non-observance of the giving of a notice to the party would make the order passed not one correctly passed under the section. If the officer passes an order without complying with the requisites of the Section, it cannot be said that it is an order passed under the section. I am,

therefore, inclined to hold that the appellant is not bound to file 'a suit within three years to set aside the order of the Survey officer because he had no notice of the survey.'

46. The contention of the petitioners that the title of the writ petitioners is neither disputed nor set up title in themselves in earlier proceedings the respondents are estopped from such a plea as the same is hit by the principles of constructive res judicata appears to be correct in view of law laid down by the Supreme Court in Y.B. Patil v. Y.L Patil, AIR 1977 SC 392, wherein the Supreme Court interpreting the provisions of Section 11 of CPC observed as follows:

'Principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stages of the same proceedings. Once an order made in the course of a proceedings final, it would be binding at the subsequent stage of that proceedings. The High Court at the time of the decision of the earlier writ petition on December 18, 1964 recorded a finding and gave directions to the Revenue Appellate Tribunal not to reopen the questions of fact in revision. The Tribunal While passing the order dated September 12, 1967 complied with those directions of the High Court. Held that the Appellants were bound by the judgment of the High Court and it was not open to them to go behind that judgment in the appeal to the Supreme Court against the decision of the High Court in the subsequent writ petition. No appeal was filed against that judgment and it became final'

47. It is also correct to contend that principles of constructive res judicata are equally applicable to proceedings under Article 226 of the [Constitution of India](#) as held by the Supreme Court in Kesoram and Co. v. Union of India, : [1989]2SCR1005 . In that case the Supreme Court while considering the effect of the doctrine of principles of res judicata held as follows :

'Once validity of a provision or a notification is upheld by a Court all, grounds must be presumed to have been considered by the Court and fresh litigation challenging the validity of the same provision on some additional grounds would be barred by principle of res judicata'.

It further held as under:

'Once a point is finally decided by the Court it becomes binding and cannot be reopened on the ground that some arguments had not been raised or considered by the Court'.

48. The learned Counsel for the petitioners arguing that the Executive Officer while exercising the powers conferred under Section 181 of the [Cantonments Act, 1924](#), cannot go into title of the property of a person who seeks permission for sanction of lay out or licence to erect or re-erect the building, took us through Section 181 of the Act. Section 181 reads as under:

Section 181 Power of Board to sanction or refuse :--(1) The Board may either refuse to sanction the erection or re-erection, as the case may be, of the building or may sanction it either absolutely or object to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely:

- (a) the free passage or way to be left in front of the building;
- (b) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire;
- (c) the ventilation of the building, the minimum cubic area of the rooms and the number and height of the storeys of which the buildings may consist;
- (d) the provision and position of drains, latrines, urinals, cess pools or other receptacles for fifth;
- (e) the level and width of the foundation, the level of the lowest floor and stability of the structure;
- (f) the line of frontage with neighbouring buildings if the building abuts on a street;
- (g) the means to be provided for egress from the building in case of fire;
- (h) the materials and methods of construction to be used for external and party walls for rooms, floors, fire-places and chimneys;

(i) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on; and

(j) other matter affecting the ventilation and sanitation of the buildings;

and the person erecting or re-erecting the building shall obey all such written directions in every particular.

(2) the Board may refuse to sanction the erection or re-erection of any building on any grounds sufficient in the opinion of the Board affecting the particular building:

Provided that the Board shall refuse to accord sanction the erection or re-erection of any building if such erection or re-erection is not in conformity with any general scheme sanctioned under Section 181-A.

(3) The Board, before sanctioning the erection or re-erection of a building on land which is under the management of the Defence Estates Officer shall refer the application to the Defence Estates Officer for ascertaining whether there is any objection on the part of Government to such erection or re-erection and the Defence Estate Officer shall return the application together with the report thereon to the Board within thirty days after it has been received by him.

(4) The Board may refuse to sanction the erection or re-erection of any building:--

(a) when the land on which it is proposed to erect or re-erect the building is held on a lease from Government, if the erection or re-erection constitutes a breach of the terms of the lease, or

(aa) when the land on which it is proposed to erect or re-erect the building is entrusted to the management of the Board by the Government if the erection constitutes a breach of the terms of the entrustment or management or contravenes any of the instructions issued by the Government regarding the management of the land by the Board, or

(a) when the land on which it is proposed to erect or re-erect the building is not held on a lease from Government, if the right to build on such land is in dispute between the person applying for sanction and the Government'.

49. From a plain reading of Section 181, particularly sub-sections (3) and (4) to Section 181 it is clear that the authority has to see whether the objections raised by the Government are under the circumstances explained in sub-section (4)(a) to Section 181 of the Act viz., whether such erection or re-erection in the land for which sanction of lay out is sought for is held on a lease from Government.

50. It is abundantly clear that when the land on which the erection or re-erection of the building is entrusted to the management of the Board by the Government and if such erection or re-erection constitutes breach of terms of the entrustment or management of the land by the Board, the same is contrary to the instructions issued by the Government regarding the management of the land by the Board. The Board can also refuse to sanction lay out or issue licence where the land is not held on lease from the Government or where there is a dispute between the person applying for sanction and the Government.

51. Proper understanding of Section 181 thus suggests that the authority while considering the application for sanction of lay out or grant of licence for erection or re-erection of the building, is not authorised to enquire into the question of title to the land of the persons who are seeking such sanction or grant. All that it has to see is the nature of objection raised from the Government as mentioned in Section 181(4)(a)(b) of the Act and also to see whether the applicant has made a prima facie case of possession.

52. He placed reliance on a decision of this Court in *Mirza Waheed Ali Baig v. Spl Officer, MCH and another*, 1975 APHC Notes 1. In that case this Court while interpreting the provisions under Sections 428, 433 and 450 of the Hyderabad Municipal Corporation Act held as follows:

'It is beyond dispute that the Municipal Corporation is not empowered to adjudicate upon questions of title. The Special Officer should have left the matter to be decided in an appropriate civil suit by the aggrieved party. Section 450 enables the Commissioner to cancel permission on the ground of material misrepresentation by the applicant. Neither under Section 428 nor under Section 433 is an applicant for permission to construct a building required to mention who the owner of the land is. It was not for the municipality to go into the question of title and hold that

he made any misrepresentation on the question of title. The misrepresentation referred to under Section 450 must be about a matter which was relevant to enable the corporation to decide whether permission should be granted or not for constructing a building. The question of title is not a relevant matter to be considered by the municipality on the question whether the permission should or should not be granted.'

Even assuming that under Section 181(4)(b) of the Act, the dispute as to right to build mentioned therein encompasses a dispute as to title also which may form a ground for refusal to sanction, as pointed out by the learned single Judge the question of title was not raised in earlier writ petition, namely, WP No.4250 of 1994. The only ground on which permission was refused, which was challenged in the said writ petition was that the petitioner had not obtained exemption certificate under Urban Land Ceiling Act. The Court held by its order dated 30-9-1994 that such an exemption certificate under the said Act was not necessary and directed the respondents to consider the application.

However, when the application of the petitioner for sanction of lay out was considered by the concerned authorities in the light of the judgment in WP No.4250 of 1994, the said application was returned by order dated 15-3-1995 stating that the land in question was classified as Class-C of Class-A1 and that in the revenue records, the land was shown as 'Sarkari Abadi' and appeared to be defence owned lands as per the entries in the GLR. In view of this objection by the Defence Estate Officer, the petitioner's plan was returned and thus sanction for lay out was not granted.

This refusal was challenged by the writ petitioners in WP No.6012 of 1995 and the order passed therein dated 6-12-1995 would show that effect of Section 181(4)(b) of the Act was considered and the Court gave a clear finding that when the request for sanction for lay out for erecting or re-erecting of building was made to the competent authority, it was not the duty of the competent authority to look into or adjudicate the question of title. With these observations, the said petition was allowed declaring that the action of the respondent Executive Officer was illegal and further directed that the first respondent shall consider whatever the

documents the petitioner produced before him for establishing prima facie case of possession in respect of the property. A petition to review this judgment was also dismissed.

53. Thus, it is obvious that this Court has already held in a judgment inter se between the same parties that question of title was not relevant in considering the petitioner's application for sanction of lay out. No appeal was filed against this judgment and it became final. Even if the judgment is supposed to be contrary to the provisions of Section 181(4)(b) of the Act, it has become final and is binding on the respondents. It is well settled that even an erroneous previous judgment between the same parties on the same subject matter operates as res judicata and is binding on the parties. However, in this case, the principle of res judicata shall operate to the limited extent as to eligibility of the petitioner for sanction of lay out and as to grounds on which it could be refused. It does not cover the substantive rights of the parties in the property.

54. Thus, the issue whether the question of title can be looked into in considering the petitioners' application for sanction of lay out in view of the provisions of Section 181(4)(b) of the Act has already been decided. This cannot be reopened.

55. It has already been held in WP No.6012 of 1995 that application of the petitioners for sanction of lay out cannot be rejected on the ground of their failure to produce 'no objection certificate' from Urban Land Ceiling Authorities.

56. With regard to question of title, it is well settled that highly disputed questions of title cannot be entertained and adjudicated in a petition under Article 226 of the [Constitution of India](#). From the various contentions raised and arguments urged on behalf of the respective parties, it is apparent that there is a serious dispute of title among the various persons and authorities in respect of title to the property in question.

57. Several various contentions issues are raised in regard to title. On behalf of the Cantonment Board, it is claimed that all properties which have been made over to the cantonment by the Nizams, the predecessor of the State Government shall vest in the Board. On the other hand, the petitioners and other non official

respondents claim that the lands held by 'Sarefekhans and Paighas' and other private persons do lie in the cantonment area and that Cantonment Board has only administrative right in regard to management of such lands. The petitioner's claim of acquisition of title on the basis of sale deed obtained by their vendors on 21-9-1899 and subsequently under the relinquishment deed of 11-8-1911 mentioned elsewhere, the authenticity and the evidentiary and presumptive value of certain records like GLR and orders of various authorities, are questioned. The orders passed by certain revenue authorities, in respect of lands in question are also challenged by some of the respondents as being without jurisdiction. There is a dispute inter se between the petitioners and the respondents who claimed to be the descendants of the vendor of the petitioners. This is not the Forum to go into all these disputed questions of fact.

58. It also appears that the question of title is an issue in OS No.288 of 1992 filed by Syed Sadiq Ali Khan against the official respondents herein in the Court of the Assistant Civil Judge, City Civil Court, Secunderabad. However, the writ petitioners are not the parties in the said suit. Thus, the question of title has to be decided in the suit which is pending or in a suit any of the parties to these proceedings may file if so advised.

59. However, the grievance of the learned Counsel for the appellant is that the learned single Judge has virtually given a finding on the title of the petitioners. Such an impression does emerge from the observations of the learned Judge at page 22 of the judgment, like as authenticity of these documents cannot be doubted by the respondents, the same have to be given their weight, and when reliance is placed on those documents, the title of the petitioners cannot be disputed. We do not agree with the conclusions of the learned single Judge that the petitioners' title has been established.

60. It is made clear that this judgment under appeal shall not be construed as having decided the question of title in respect of the land involved in the said writ petition. We also hold the view that even the failure of respondents 1 and 2 to raise or set up the question of title in earlier writ petitions, namely, WP Nos.6012 of 1995, 3600 of 1996 and 6012 of 1996 as mentioned at page 21 of the judgment of

the learned single Judge, cannot be basis for invoking the principle of res judicata in respect of the question of title. The principle of res judicata as stated above would in this case be applicable only to the limited question as to the entitlement of the petitioner for sanction of lay out and as to the grounds on which such sanction can be refused.

61. The learned single Judge has referred to the judgment of this Court in WPNo.6012 of 1995 and held that the Cantonment Board need not go into the question of disputed title and that it has to decide on the basis of prima facie possession alone. Considering the judgment of this Court in WP No.6012 of 1995, no fault can be found with this observation of the learned single Judge in this case.

62. As to whether the petitioners have prima facie shown their possession over the land in question, the learned single Judge relied upon several circumstances. Firstly, it has been noted that the respondents never raised this objection as to possession of the petitioners at the earliest point of time and never asserted that the petitioners were not in possession. Secondly, the learned single Judge relied upon the judgment of this Court in WP No.3606 of 1996 dated 27-2-1996, which was filed specifically for the relief of direction to the respondents not to interfere with their possession and enjoyment of the land measuring 19 acres 30 guntas in survey No.170 pending appeal before the appellate authority under Cantonment Act. This Court in its judgment dated 27-2-1996 granted the said relief to the petitioners that their possession shall not be disturbed.

63. The judgment of this Court directing the respondents not to disturb the possession of the petitioners implies that this Court proceeded on the basis that the petitioners were in possession at the relevant time. The judgment has not been challenged and has become final. From this, a reasonable presumption ensues that the petitioners have been in possession of the land in question. The learned single Judge also relied on certain tax receipts upto 1992. The learned single Judge also observed that if the petitioners were not in possession of the land, they would not have made such efforts for sanction of lay out and that it is a circumstance showing their possession.

64. It is interesting to note that before the learned single Judge, the learned Advocate-General, as seen from page 13 of the Judgment, had himself argued that the land came under possession of the predecessors of the petitioners by virtue of the old grant terms and that occupants of the lands are liable to be evicted by short notice of one month. Thus, even the State Government, as apparent from the arguments of the learned Advocate-General, proceeded on the assumption that the petitioners were in possession of the land in question. What was disputed was the petitioners right to hold such land. The finding of the learned single Judge as to prima facie possession of the petitioners on the basis of the above material particularly in view of the judgment of this Court in WP No.3606 of 1996 cannot be found fault with for the limited purpose of sanction of lay out and not for any other purpose.

65. Thus, it would be seen that this Court in earlier judgment has held that sanction for lay out sought by the petitioners should not have been rejected on the ground that clearance from the Urban Land Ceiling Authorities has not been obtained. In another judgment, as observed above, it has been held that the question of title cannot be considered for the purpose of sanction of lay out. It also appears that at no stage, permission was opposed or sought to be refused on any grounds on which such permission could have been refused by virtue of any provisions in the Cantonment Act particularly under the provisions of Section 181 of the Act.

66. Normally, in a proceedings under Article 226 of the [Constitution of India](#), the High Court gives finding on the statutory violations or illegalities or other flaws in a decision of administrative or statutory authorities and declares their actions or the proceedings as invalid. Generally, this Court will not take upon the function of substituting its own order for the order which is required to be passed by the concerned authorities.

67. But, in this case, there are special features and circumstances. It may be mentioned that at one stage, the only objection raised for refusing permission was want of clearance certificate from the Urban Land Ceiling Authorities for which the petitioner was driven to this Court by filing WP No.6012 of 1995. This Court had to

intervene and declare the action of the concerned authorities of the cantonment Board as illegal. At another stage, the sanction was sought to be refused on the ground of existence of dispute as to title. The petitioners were again compelled to approach this Court in WP No.3606 of 1996 which resulted in an order in their favour. It is significant to note that at none of these stages, any objections for sanction of lay out on any grounds which are germane to or arise out of the statutory provisions in the Cantonment Act have been raised. The only objection which has any relevance under Section 181 of the Act was under subsection (3) of the said section relating to dispute of title. This question has already been decided by this Court in previous writ petition which has been held to be binding on the petitioner.

68. While parting with these appeals it is proper to refer once again a few more points. In *Annapurna Builders v. Municipal Corporation of Hyderabad*, 1987 (1) ALT 644 (supra), following its earlier decision in the case of *Subash Kumar Lohade v. MCH*, 1985 (1) APLJ 20, this Court held that for obtaining sanction of lay out, production of exemption certificate issued by the competent authority under the provisions Urban Land Ceiling Act is not required. The wordings in Section 181 of the Cantonment Act though slightly different from the provisions of the Municipal Corporation Act, but the power conferred on the authority in connection with sanction of lay out are almost similar. The disputed land was granted to the Cantonment Board by the Nizam with a condition that the same shall be reverted back after the purpose for which it was granted is completed. It is clear from the report of Barton and James that all lands held by Nizam, Paighas and other private persons shall not become the property of the military authority. Most of the lands in civil area are treated as private lands. Control, if any, the Cantonment Board has, is only for administrative purpose. Mere control to issue licence or supervise the property cannot be equated to ownership. The entries made in the General Land Register without serving notice to the persons concerned do not bind them. Further as to the presumptive value, the entries made in the General Land Register are different from that of the entries in the Revenue Records made under the provisions of Record of Rights Act. Since the petitioners are not the parties to the suit in OS No.288 of 1992 filed by Syed Sadiq Ali Khan against the official respondents in the Court of the Assistant Civil Judge,

City Civil Court, Secunderabad and the order passed by the said Court in IA No.470 of 1992 seeking temporary injunction does not bind the petitioners as they are not parties to the said proceedings. The decision rendered by the authorities constituted under the Record of Rights Act is also not binding on the writ petitioners as the said proceedings were initiated at the instance of Syed SadiqAli Khan. The contention of the official respondents that the relief sought by the writ petitioners should not have been granted by the learned single Judge as they did not challenge the order dated 10-5-1996 passed by the 3rd respondent has no substance for the reason that though the writ petitioners did not specifically challenge the order of the 3rd respondent dated 10-5-1996, but they challenged the action of the respondents authorities and their orders through out till the date of filing of other writ petitions referred to above and also WP No. 10804 of 1996. As such it has to be presumed that the relief sought in WP No.10804 of 1996 do suggest that the order dated 10-5-1996 was also under attack in WP No.10804 of 1996. In other words the learned single Judge while granting the relief in WP No.10804 of 1996 has indirectly disapproved the order of the 3rd respondent dated 10-5-1996. The entries made in the revenue records do not bind the writ petitioners as the same were made pursuant to the order passed by the authorities who had no jurisdiction. Because by the time the orders were passed, the new Act had come into force conferring powers on hierarchy of officers viz., the Mandal Revenue Officer as the original authority, the Revenue Divisional Officer as the Appellate Authority and the District Collector as the Revisional Authority. Sri Raghava Charyulu, learned Counsel was right in urging the above point.

69. Here it is proper to observe that an undertaking which has been given by Sri. K. Pratap Reddy, learned Counsel on behalf of the writ petitioners that the writ petitioners are not at all interested in getting their title declared in these proceedings in respect of the land in question. But they are claiming relief on the basis of their prima facie possession as evidenced from the documents maintained by the respondents and the true copies supplied to the petitioners deserve to be accepted. His further undertaking that the State Government or the Cantonment Authority at any time if they prove their title to the property, they may claim re-delivery of the property from the petitioners in which event the petitioners will not claim any equitable relief in respect of constructions made by them, suggests bona

fides on the part of the petitioners.

70. The observations made in these appeals do not bind the learned Assistant Civil Judge to decide the suit in OS No.288 of 1992 filed by Syed Sadiq Ali Khan. The said suit shall have to be disposed of on the evidence made available uninfluenced by the observations made in these proceedings. All other contentions are kept open to be urged in OS No.288 of 1992 if so desired by the parties therein.

71. Though a portion of prayer in WP Nos.12490 of 1997, 3088 of 1997 and 7121 of 1997 relates to the land which is the subject matter in these appeals, the challenge made and the relief sought in the writ petitions are altogether different. Hence, it is appropriate to deal with these writ petitions separately keeping open all the contentions to be urged by the parties instead of clubbing these writ petitions with the writ appeals. Accordingly WP Nos.12490 of 1997, 3088 of 1997 and 7121 of 1997 are ordered to be deleted from this Batch of writ appeals and the office is directed to post the above writ petitions for hearing at an early date.

72. Under these circumstances the discretion exercised by the learned single Judge in straight away directing the Cantonment Board for sanctioning lay out does not warrant any interference in these appeals.

73. In the light of the settled principles of law on various points raised; undertaking given on behalf of the writ petitioners; having regard to the facts and circumstances of the case and the observations made by us on several aspects referred to above the writ appeals are dismissed confirming the order of the learned single Judge in WP No.10804 of 1996, dated 14-11-1997, but, in the circumstances, there shall be no order as to costs.

74. Dismissal of WA No. 1996 of 1998 filed by Syed Sadiq Ali Khan and WA No.538 of 1998 filed by Moitzam Ali Khan and Syed Jafer Ali Khan shall not be construed that we have given a finding on the title to the property. It is open for them if they are so advised to establish their case before appropriate Forum.