IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS, 6877-6881 OF 2000

Secunderabad Cantonment Board, Andhra Circle, Secunderabad rep by Executive Officer ..... Appellant

VERSUS

Mohammed Mohiuddin and Ors. ..... Respondents

WITH

CIVIL APPEAL NO. 753/ 2001

The State of Andhra Pradesh, rep.by Collector, Hyderabad Dist, Andhra Pradesh ..... Appellants

VERSUS

Mohammed Mohiuddin Ors ..... Respondents

WITH

CIVIL APPEAL NOS. 1107-1111/2001

Union of India .... Appellant

VERSUS

Mohammed mohiuddin & Ors. .... Respondents

WITH

CIVIL APPEAL NO. 753/ 2001

Secunderabad Cantonment Board, Court Compound, Secunderabad rep. By Execufive Officer ..... Appellants

VERSUS

Weavers represented by their Chairman, T.K.Kodandaram ..... Respondents

WITH

CIVIL APPEAL NOS. 9453-9456 of 2003
@ S.L.P.(c) NOS. 406-409/2002

M/s.Weavers Educational Advance Vocational Economic Rehabilitation Society, represented by its Chairman T.K.Kodandaram ..... Appellants

VERSUS

Union of India & Ors. ..... Respondents

AND

CIVIL APPEAL NO. 6376/ 2001

Syed Sadiq Ali Khan ..... Appellants
Versus
The Executive Officer & Ors. ..... Respondents

JUDGMENT

BRIJESH KUMAR J.

All the above noted appeals though filed by different parties, involve the same question relating to the legality of the order dated 11.8.2000 passed by the Division Bench of the Andhra Pradesh High Court as well as the Judgments later passed following the above said decision. The controversy revolves around the refusal to sanction the plan submitted by different parties to the Cantonment Board for construction of building over the land in question. The Central Government raised its claim over the land and filed objections to that effect through the Defence Estate Officer as provided under Section 181 of the Cantonment Act, 1924 (hereinafter referred to as the Act')

All the appeals have been heard together along with Special Leave Petition (C) Nos. 406-409/02 in which we grant leave. All these matters are being disposed of by this common judgment.

The facts in brief, relevant for purposes of disposing of these matters are that: the land over which the respondents proposed to raise construction and had submitted plans therefor, falls in the limits of Secunderabad Cantonment Board. There is a bungalow No. 215 in Thokatta Village, which is said to have been purchased in the name of Syed Sirajuddin Ali Khan, the minor, represented through his father Syed Sadiq Ali Khan, by means of a registered sale deed dated 21.9.1899. It is also the case of respondents that Syed Sirujdin Ali Khan on attaining majority relinquished his rights in favour of his father Syed Sadiq Ali Khan by means of a deed dated 11.8.1911. The case of the respondents further is that Sadiq Ali Khan had allotted land to 11 persons sometime in 1920 and made an application for making entries in the village records accordingly. The land S.No. 37 was changed to S.No. 170 on revision of settlement. According to the respondents, the cantonment authorities have been collecting tax in respect of the land which has been in their possession. The respondents moved application to the Executive Officer, Cantonment Board for sanction of lay out in respect of part of the land of S.No. 170, measuring 8 acres. The application for sanction of the plan was returned to the respondents with an objection that they were required to furnish exemption certificate under the provisions of Urban Land (Ceiling and Regulation) Act, 1976.

The respondents challenged the return of the layout plan and filed a writ petition 4250 of 1994, before the Andhra Pradesh High Court. The Writ petition was allowed on 30.9.94 and it was held that no such exemption certificate under the Urban Land (Ceiling and Regulation) Act, 1976 was required to be furnished. The authorities were directed to consider the sanction of the plan without insisting for exemption certificate. The lay out plan, however,

was again returned on the ground that S.No. 170 is in Sarkari Abadi Land. Another writ petition No. 6012/95 was filed, challenging the above order. The said writ petition was also allowed by order dated 6.12.95 with a direction to the authorities to find out as to whether the respondents had established a prima facie case as to their possession and also to consider the objection of the Union of India and to pass an appropriate order thereof. The application for sanction of plan was ultimately dismissed on 18.1.1996, refusing permission, as the land was found to have been in possession of Government of India. An appeal was preferred against that order. Since the appeal kept on pending, yet another writ petition No. 3606/96 was filed to restrain the authorities from interfering with the possession of the petitioners (in the writ petition) over the land, till disposal of their appeal. This prayer was granted on 27.2.1996. By means of yet another order passed in writ petition No. 6009/96 police protection was also provided to the writ petitioners (respondents here). Ultimately, the appeal was dismissed on 10.5.1996 holding that the respondents had no title to the land in question.

It gave rise to filing of yet another writ petition No. 10804/96 against the order dismissing the appeal. The learned Single Judge while allowing the writ petition held that the authorities were not required to go into the question of title of the applicants in the land. The writ petitioners, namely, the present respondents were held to be in possession over the property. The learned Single Judge also considered the case of the appellants that the land was covered under the old grant and found that no land was granted to the Government of India by Nizam for military purposes. The learned Single Judge found that in the earlier proceedings, the authorities did not raise objection claiming title, therefore, they could not take that stand in subsequent proceedings as it would be hit by principles of constructive res judicata. Possession of appellant was also not found. With such observation, the learned Single Judge while allowing the writ petition, directed the Cantonment Board to sanction the lay out plan. The appeal, preferred against the judgment of the learned Single Judge, has been dismissed, which is the subject matter of appeals in hand.

Some other developments also took place during all this period. According to the appellants, till the year 1992 the respondents extended no claim, whatsoever, to the land in question. However, the respondent Sadiq Ali Khan filed a petition under Section 15(2) of the Record of the Rights Regulation Act for correction of entries in the Revenue Records to the extent of 25 acres, on the basis of an unregistered sale deed. The said application was rejected by order dated 9.4.92 by the District Revenue officer, holding that land measuring only 2.71 acres out of the land of Bungalow No. 215 was in the private hands and the rest of the land was Government land which has been correctly shown to be so in the revenue records. An appeal was preferred against the said order before the Commissioner of Land

Revenue under Section 158 of the Land Revenue Act which was dismissed on 15.3.97. It may also be mentioned that according to the appellants, the respondents Nos. 1 to 62 had also got themselves impleaded as parties in the appeal which has been decided against them.

Sadiq Ali Khan filed a Civil Suit No. 288/92 also in the Court of Civil Judge. Secunderabad claiming ownership and possession of land measuring 65 acres in S.No. 170 in Tokketa Village. A prayer made for interim injunction was rejected by order dated 12 10.92. It was, however, found that the plaintiff in suit was in possession of land measuring 2.71 acres only and in respect thereof, he was entitled for injunction against dispossession, but so far the rest of the land is concerned measuring near about 63 acres it was in the ownership and possession of the Government of India.

The Division Bench took note of the finding of the learned Single Judge that the competent authority, while considering the question of sanction of the building plan, is only required to see the prima facie possession of the applicant, it has not to adjudicate upon the title of the applicants. The Division Bench also observed that the government authorities had not claimed title over-the land in the previous proceedings, therefore, they were estopped from raising such a plea later which is hit by the principles of constructive res judicata. Referring to a decision reported in AIR 1977 SC 392 Y.B. Patil Vs. Y.L. Patil, it observed that the principles of constructive res judicata could apply in subsequent stages of the same proceedings as well. Ultimately, it was held that principle of constructive res judicata in this case would apply to a limited extent as to the availability of the grounds on which layout plan could be refused. The Division Bench, however itself recorded finding that there is a serious dispute of title amongst various persons. The relevant part of the judgment may be quoted, which reads as follows:-

"With regard to question of title, it is well settled that highly disputed question 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".

In so far the objections of the appellants that the learned Single Judge has virtually given a finding on the title in favour of the petitioners, the Division Bench observed as follows :-

"Such an impression does emerge from the observarions of the learned Single 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.

The Division Bench has reiterated its view that question of title could not be decided before the competent authority nor such disputed question could be decided in writ proceedings. It, however, in the later part of discussion in the judgment, has clarified the extent to which it upholds the applicability of principles of constructive res judicata, not being totally in agreement with the finding of the learned Single Judge on the said point. The relevant observation in that regard may be perused, which are quoted below :-

"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 to raise or set up the question of the title in earlier writ petitions, namely, WP No. 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."

In so far the finding of the learned Single Judge in relation to the possession of the land by all the writ petitioners, it has been held by the Division Bench that the said finding is limited only for the purpose of sanction of lay out and not for any other purpose.

Before proceeding to discuss the submissions made before us by the respective, it may be beneficial to peruse the provisions regarding the sanction of the lay out plan. Section 181 of the Cantonment Act 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 absolutety or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters namely:-

(1) x x x x x x

(2) x x x x x x .....

(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 the Government to such erection or re-erection and the (Defence Estates Officer)

shall return the application together with his 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 the 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 or re-erection constitutes a breach of the terms of the entrustment of management or contravenes any of the instructions issued by the Government regarding the management of the land by the Board, or

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

(5) x x x x x x x

(6) x x x x x x x"

Bye law 15 reads as under:-

"15. Power of Cantt. Board to sanction, modify or reject:- The Cantonment Board may sanction the lay out plan submitted by the applicant if the same is in accordance with the bye-laws or sanction the same with such modifications as the Cantt. Board may consider fit, or may refuse to sanction any layout if proprietary rights on the land proposed to be laid out is claimed by the Government of India in the Ministry of Defence to be their land as shown in the General Land Register maintained for the purpose".

In our view, the main question which falls for consideration is about the ambit and scope of Section 181 of the Act, more particularly Clause (b) of sub-section 4 of Section 181. The above provision empowers the Board to refuse sanction of a building plan where the land on which a construction is proposed to be raised is not on lease from the Government and there exists any dispute between the applicant for sanction of the plan and the Government.

The respective parties have drawn our attention to certain facts and documents to show as to which of them is the rightful owner of the land. The other question which has been raised by the respondents is that ground for rejection of plan as contained in Clause (b) of Sub-section 4 of Section 181 is not open to be resorted to by the appellants since such a ground was not raised earlier while returning the plan, since in such a situation principle of constructive res judicata would be attracted. There are a few other peripheral questions which we shall be discussing later.

The application for sanction of plan was moved by the respondents on 4.12.93 addressed to the Cantonment Executive Officer. On 4/5 January, 1994 the Cantonment Executive Officer wrote that the ULSC exemption certificate in Form 19(V) form DEAPU Circle Secunderabad was not furnished. It was also indicated that Board was also examining the matter relating to entertaining new lay out plans. Hence the plan submitted by Nawab Mohd. Usuf Khan, the General Power of Attorney, was returned. We have already noted that a writ petition preferred namely, writ petition No. 4250 of 1994, against the return of the plan was allowed by the High Court by Judgment dated 30.9.94, holding that no exemption certificate under the provisions of the Urban (Land and Ceiling) Act was necessary. Hence the matter was required to be considered again without insisting upon a Urban Ceiling exemption certificate. The respondents then again seems to have approached for consideration of sanction of the plan on 10.1.1995. The Cantonment Executive Officer by means of his notification dated 15/3/99 informed to the General Power of Attorney Sh. Nawab Mohd Usuf Khan that the DEO (Defence Estates Officer) had raised definite objection on behalf of the Government against the lay out plan submitted by the respondents. It was also indicated that in the Revenue Records Sy. No.170 of Thokatta Village is shown as Sarkari Abadi which is defence owned land. The plan was thus again returned to the respondents. At this juncture, it may be relevant to take note of sub-section 181 of the Act, as quoted earlier.

We have already noted the findings recorded in the writ petition and the appeal in the earlier part of the judgment. The learned counsel for the appellant has laid great emphasis upon the old revenue record entries in favour of the appellant and the entries made in the General Land Register. It is submitted that Cantonment Land Administration Rules, 1937 have been framed by virtue of power vested under Section 280 of the Contonments Act, 1924. Rule 10 in Chapter III of the Cantonment Land Administration Rules deals with maintenance of General Land Register. The Military Estates. Officer (now Defence Estates Officer) is required to maintain General Land Register prepared under Rule 3 in respect of all land which has been entrusted to or vests in the Board. In this connection, a reference has also been made to a decision reported in 1999 (3) SCC page 555, Chief Executive Officer Vs. Surendra Kumar Vakil and Ors. Regarding General Land Registers, it has been observed that they are maintained under the Rules, in normal course of business and entries made in such registers were to be given due weight. It is therefore, submitted that it cannot be said that no value is to be attached to the entries made in the General Land Registers. It has also been submitted that there being a serious dispute about the title of the property as also found by the Division Bench, existence of the dispute in respect of the property in question cannot

be disputed.

The learned counsel appearing for the Union of India has referred to the proceedings which were initiated by Sadiq Ali Khan for correction of revenue records but that application was rejected on 9.4.92. The appeal, preferred against the said order passed by the District Revenue Officer in which 62 respondents also got themselves impleaded, was also dismissed. That is to say the entries in revenue records in favour of the Government were maintained and the attempt of the respondents for change of the entries claiming right over the land in question failed. The authorities of the Defence Depaartment were also heard. It was held that the claim advanced by the respondents was not substantiated by documents and it was without any basis. It was found that the land was Government land/military estate. The Special Commissioner, Land Revenue observed in his order that no proper documents were produced by the respondents. It is also indicated that in a suit filed by Sadiq Ali Khan(O.S.No.288/92) with a prayer for injunction on the basis of the possession, the prayer was rejected except in part relating to 2.7 acres.

Learned counsel appearing for the respondents tracing the history submitted that area of the village concerned belongs to the Nizam. It is also submitted that respondents have been paying tax in respect of the Bungalow No.215 which was purchased by Syed Sirajuddin Ali, a minorson of Sadiq Ali Khan in the year 1899 who, on attaining majority had relinquished his rights in favour of his father, Sadiq Ali Khan on 11/8/1911. He wrote to the authorities in 1920 that he had allotted the land to the extent of 19.05 gts. to different persons and the same was requested to be recorded in the village records. The fact was acknowledged by the Directorate and the Secretary of the Estate of Nawab Salarjung Bahadur saying that it was not agricultural land, therefore no assessment was made but later tax at the rate of Rs.5 per acre was levied. Therefore, a sum of Rs.325/-in respect of the land in Survey No.37 was held liable to be collected from Sadiq Ali Khan and his allottees. It was also indicated by the authorities of the Estate that on revision of the Bandobast (settlement) Sy.No.37 was given a new Sy. No.170. He has also drawn our attention to the fact that the land which was handed over by the Nizam to Government was only for the purposes of exercising criminal and police jurisdiction by the Government of India and Thokatta is one of such villages mentioned in the notification dated 28/9/1906. A copy of the aforesaid document has been provided to us by the learned Counsel for the respondents which does not seem to be a part of the record. He has also drawn our attention to the documents, namely, the sale deed dated 21/9/1899 regarding 64 acres and deeds pertaining to non-agricultural land. It has further been submitted that the dispute regarding the land, by reason of which permission to sanction the map can be refused, should be bonafide and a genuine dispute.

So far the question of investigating into the title of the parties is concerned, we feel that the view of the High Court to the extent that title is not required to be established by any of the parties before the competent authority is correct. So far possession is concernd, it may be indicated that there seems to be no such specific provision requiring to establish possession but it may depend upon facts of a given case and it may be considered as one of the relevant aspects to be kept in mind while considering the application for sanction of a plan. But so far the statutory requirement is concerned, it is evident from perusal of sub-section 4(b) of Section 181 that the competent authority dealing with the matter, has to see whether there is or not any dispute about the land between the person applying for sanction of the plan and the Government. In case the concerned authority is satisfied about the existence of such a dispute in terms of Section 181 of the Act, the request for sanction of the lay out plan is liable to be refused. In this connection, it will also be relevant to refer to sub-section 3 of Section 181 which provides that before sanctioning a plan the Board is required to refer the application to the Defence Estates Officer for ascertaining whether there was any objection on the part of the Government to such erection or re-erection over the land. The said provision casts a duty upon the sanctioning authority to refer the matter as pointed out above. Accordingly, it referred the matter to the DEO, who raised objections regarding sanction of the plan. The objection relates to the question of ownership of the land. The Government claims ownership of the land and in that regard reliance was placed upon entries in the Revenue Records and the General Land Register which are maintained in due course of official business. The respondents claimed their title through the sale deed executed in favour of son of Sadiq Ali Khan in the year 1899, who on attaining majority had relinquished his rights in favour of his father Sadiq Ali Khan on 11/8/1911 and then the alleged transfer of different parts of the land to eleven different persons. It has been pointed out earlier also that the respondents had moved for correction of the records before the Revenue Officer but they failed. The appeal also remained unsuccessful, in which all the 62 respondents had got impleaded themselves. A civil suit for injunction was filed by Sadiq Ali khan in 1992 but the prayer for injunction was refused except in respect of a part of the land measuring 2.71 acres since prima facie, their possession was not found over the rest of the land. It may be worth while to notice that the proceedings for correction of the recods and the Civil Suit for injunction were initiated in 1992 and the application for sanction of the plan was moved in 1994, that is to say, after the respondents remained unsuccessful in their attempts to obtain order in their fovour twice before. In such circumstances, it would be difficult to say that there would be no bonafide dispute about the land between the parties. In this background, we do not feel it necessary to

enter into the contents and merits of various documents relating to title relied upon by either side. That enquiry would be necessary only if question of title could be decided in these proceedings and not otherwise. But we find there enough material, on the basis of which an authority could reasonably come to the conclusion that there was a dispute, relating to the land, between the applicant and the Government in respect of which sanction of the plan to construct, was applied for. Such a dispute was brought to the notice of the competent authority by means of objection placed before it by the Defence Estates Officer under the statutory provision. We don't think that it would be possible to say that the authority concerned took a view about existence of dispute which was not sustainable.

We may then consider the question as raised regarding application of principles of constructive res judicata. The Division Bench has recorded a finding that the appellants were estopped, on the principle of constructive res judicata, from raising an objection relating to existence of dispute over the land, on the basis that no such plea was put forward at the stage when the map was returned first in the year 1994 saying that the exemption certificate under Urban Land and Ceiling Act was not filed by the applicants. Therefore, this plea of dispute over the land between applicants and the Government, which could have been raised earlier, but not raised, cannot be allowed to be taken up now. Learned counsel for the respondent has in this connection placed reliance upon a decision reported in 1970 SCR page 830, Mathura Prasad Bajoo Jaiswal and Ors. Vs. Dossibai N.B.Jeejeebhoy. Our attention has been particularly drawn to page 836 which is quoted below:-

"It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e.the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S.11 Code of Civil Procedure means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of

the land"

On the basis of above observation, it is submitted that decision between the parties, on the question of law, will bind the parties in subsequent proceedings. So far proposition of law is concerned, there would be no dispute to the same but we don't find that there has been any decision between the parties on the question of dispute in terms of sub-section 3 of Section 181 of the Act. No question for interpretation of any provision of law is involved. We, therefore, find that the above decision would be of no help to the respondents. A reference has also been made to 1977 (3) SCR 428 State of Uttar Pradesh Vs. Nawab Hussain parrticularly to the observation made at pages 431 and 434. On the basis of the above decision, it is submitted that doctrine of res judicata would be applicable even to the proceedings other than suits, as has been held in the above case that principle of constructive res judicata would be applicable proceedings under Article 226 of the Constitution of India. It is also submitted that a plea which could be raised in the earlier proceedings, if not raised by a party, it would not be permissible to raise the same subsequently between the same parties.

In connection with the above arguments, it would be worthwhile to notice that stage for raising an objection regarding a dispute between the Government and the applicant arises after the application is referred to the DEO by the sanctioning authority in terms of sub-section 3 of Section 181. So far the return of the first application is concerned, it may be noted that it was returned since the sanctioning authority thought it not to be entertainable, having not been accompanied by an exemption certiticate under the provisions of the Urban Land Ceiling Act. Apparently, it appears that the stage had not yet arrived for referring the application to the DEO for his objections. The competent authority is required to refer the application before sanctioning the plan. Nothing to the contrary has been indicated by the respondents to show that despite reference of the application to the DEO under Sub-section 3 of Section 181. The DEO had chosen not to file any objection in respect of the dispute or the claim over the land.On the basis of the above factual aspect, in our view, the question of failing to raise a plea in the earlier proceedings does not arise due to return of the first application. There is no reason to infer that the DEO had foregone his right to raise objection regarding the ownership of the land before sanction of the lay out plan. The argument therefore, raised is not applicable in the set of facts of this case. Learned counsel for the appellants has, however, placed reliance upon a decision reported in 1996 (6) SCC 424 Allahabad Development Authority Vs. Nasiruzzaman and Ors. particularly to paragraph 6; which reads as under:-

"In view of the above ratio, it is seen that when the legislature has directed to act in a particular manner and the failure to act results in a consequence, the question is whether the

previous order operates as res judicata or estoppel as against the persons in dispute. When the previous decision was found to be erroneous on its fact, this Court held in the above judgment that it does not operate as res judicata. We respectfully follow the ratio therein. The principle of estoppel or res judicata does not apply where to give effect to counter some statutory direction or prohibition. A statutory direction or prohibition cannot be overridden or defeated by a previous judgment between the parties....."

Yet another case referred to by the learned counsel for the appellant is reported in 1997 (9) SCC 191 Bansilal Farms Vs.Umarani Bose and Ors. On the basis of the above decision. it was submitted that the State's right would not be affected by any order or compromise by applying the principle of constructive res judicata.

We, however, find that facts of the case in which the above observations have been made by the Court were slightly different. Shri Altaf Ahamed, Learned Addl. Solicitor General, has then referred to Administrative Law" by Sir William Wade, eighth edition, page249, relevant part of which reads as under:-

" Like other forms of estoppel already discussed, res judicata plays a restricted role in administrative law, since it must yield to two fundamental principles of public law: that jurisdiction cannot be exceeded: and that statutory powers and duties cannot be fettered. Within those limits, however, it can extend to a wide variety of statutory tribunals and authorities which have power to give binding decisions, such as employment tribunals and commons commissioners....."

It is, therefore, submitted that generally, role of the principle of res judicata in administrative matters is restricted, and statutory powers and duties administratively performed cannot be thwarted by application of principles of res judicata. It may be remembered that the earlier order returning the lay out plan was on the ground of non-fulfillment of requirement of filing exemption certificate which the High Court in the writ petition held that there was no such requirement to submit exemption certificate under the Urban Land Ceiling Act. There was a direction to re-consider the matter, hence it was being scrutinized on the grounds other than requirements of filing of an exemption certificate. As indicated earlier, there is nothing to show that a reference was made to the DEO before returning the application earlier. As a matter of fact, no such occasion would have arisen then. In this background, the DEO would neither be denuded of his statutory responsibility to raise objection about Government's claim to the land or dispute about it nor the competent authority was absolved of his statutory duty to refer the matter to the DEO before considering the question of passing of the order of sanction of the plan. The return of lay out plan earlier, was in a way at the preliminary stage when it was found that the application did not accompany the

necessary documents eg. exemption certificate under ceiling laws, which was then considered to be necessary. Stage to file objection came later when the application may have been referred to the D.E.O. The observations referred to earlier made in the Administrative Law by Wade are certainly attracted to the facts of the case. In our view, the respondents just wanted to hold on by raising a flimsy and feeble plea of *constructive res judicata* which is not sustinable either on fact or in law. In the facts and circumstances indicated above, we, therefore, have no hesitation in holding that the learned Single Judge as well as the Division Bench fell into error in holding that the objection under Sub-section 3 of Section 181 of the Act could not be raised by the DEO by applying the doctrine of *constructive res judicata.*

We have already found that in the facts and circumstances discussed above, it cannot be said that a reasonable person would not come to a conclusion that there is a dispute in regard to the land in question so much so the respondents themselves had to move the authorities and the Court twice in connection thereof. Before the revenue authorities they failed and in the civil court some partial relief of injunction restricting to an area of 2.71 acres was granted. Therefore, it cannot be said that the land was free from dispute. As a matter of fact, we have already indicated that the Division Bench of the High Court itself has arrived at such a conclusion but found erroneously that it would not be entertainable being barred by principles of constructive *res judicata.*

There also seems to be some *inter se* dispute with one of the parties appearing in person who alleged that the writ petition was filed by third parties claiming themselves as allottee to the exent of 19.30 gt. In fact, it is submitted that land was given to his fore-fathers and the case of the petitioner-respondens is false and bogus. He further alleges forgery on the part of the holder of the Power of Attorney. Initially there were only 11 transferees which number swelled to 62. He made various allegations of forgery etc. committed in the matter. We however, find that such disputes are beyond the scope of the present controversy which is confined to the question as to whether the lay out plan could have been sanctioned or not.

An effort has also been made on behalf of the petitioner-respondents about the array of the parties in the proceedings. In this connection Section 79 and Order 27 Rule 3 of the Code of Civil Procedure have also been referred to contend that in a suit by or against the Government, Union of India is to be impleaded as a party and not the authority or any officer. The learned counsel for the Union of India submits that the appeal has been filed on behalf of the Union of India and the Defence Estates Officer is appellant No.2. It is submitted that proceedings in court were initiated by the respondents by filing writ petitions. Proper parties should have been impleaded by them. In the writ petition, the respondens did not

implead Union of India as a party, hence, it does not lie to them to raise any such objection. Again such an objection, in any case, should have been raised in the writ appellate court. We, however, also find that in the array of parties in the appeal proceedings before the High Court, Union of India is the appellant with Cantonment Board. So is the position here also, in as much as the Union of India is also impleaded as one of the respondents in the present proceedings. It is indicated that DEO has throughout been representing the Government of India. It is submitted that no such issue was raised earlier and the matter has been contested through out by the DEO and the Cantonment Board, it cannot be said that Union of India is not on the record as a party, it is also represented through counsel and submissions have been advanced on behalf of Union as well by Shri Anoop Choudhary, senior advocate and Shri Altaf Ahmad, Addl, Solicitor General of India has argued the case on behalf of the appellant. The Union of India supports the applicants in challenging the order of the High Court. Union of India has also filed appeals, Civil Appeal Nos.1107-1111 of 2001 impugning the judgment of the Division Bench. We are not favourably inclined to entertain this technical plea for the above reasons.

We also find no substance in the submission made on behalf of the respondents that the lis is between the Cantonment Board and the respondents and there is no lis between the Union of India and the respondents. The Cantonment Board through one of its designated officer, considers and passes appropriate order on the application for sanction of plan. At least it shall have right to defend its orders. Under the statutory provision, the plan is not to be sanctioned in case there is a dispute between the applicant and the Government. Under the statute again the matter is to be referred to the Defence Estates Officer to ascertain this fact and it is for him to raise objection, if any such dispute exists between the applicant and the Government of India Therefore, it cannot be said that there would be no reason for these authorities to contest the matter. The interest of Government of India is very much involved and it will have all the interest to see that the plan is not sanctioned in case it has a claim over the land.

While parting with the matter, we would like to clarify that the dispute and the orders thereon, in these proceedings, are confined only to the question of sanction of the plan for construction of building. We the have, therefore, refrained from taking note of vein efforts made by leamed counsel for the respondents to assure the Court about their title, which, as observed earlier, could not be subject matter of such proceeding. Any dispute regarding the title between the appellants and the respondents or the respondents inter se or with any other party may be a subject matter of any appropriate separate proceeding, which any of

the parties may initiate if advised in that regard, as that right would not be affected by this order.

For the discussion held obove, we find that the judgment and order passed by the High Court is not sustainable.

C.A.Nos.9453-9456 of 2003 @ SLP (C) Nos.406-09/2002

After having heard the appellants and perusing the judgment impugned in these appeals, we find no infirmity so as to call for any interference with the order passed. The High Court rightly held if the petitioner society wants to set up title,it may institute a separate suit for such a relief. The High Court rightly found that there was no occasion to reject the plaint or to claim any declaration to the effect that the Cantonment Board is not the owner of the suit properties. The appeals have no merit.

In the result, the appeals filed by the Secunderabad Cantonment Board (i.e.Civil Appeals No.6877-6881/2000 and C.A.No.6604/2001)and the Union of India (i.e.Civil Appeals No.1107-1111/2001) are allowed and the impugned judgments/orders passed by the High Court of Andhra Pradesh are set aside.

C.A.No.753/2001 and C.A.No.6376/2001

Since the appeals filed by the Secunderabad Cantonment Board and the Union of India have been allowed setting aside the impugned judgments/orders of the High Court of Andhra Pradesh, no further order is required to be passed in these appeals and they stand finally disposed of in view of the aforesaid judgment.

C.A.Nos.9453-9456/2003 @ SLP (C) Nos.406-09/02

In view of the position aforesaid and discussion held earlier, we find no merit in the appeals and the same are dismissed.

Costs easy.

Sd/-
(BRIJESH KUMAR)

New Delhi;
Dated the 28th November, 2003

Sd/-
(ARUN KUMAR)