IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH:
AT HYDERABAD
THURSDAY THE FOURTEENTH DAY OF AUGUST
TWO THOUSAND AND THREE
PRESENT
THE HONOURABLE Mr. JUSTICE B. SUDERSHAN REDDY
AND
THE HONOURABLE Mr. JUSTICE P.S.NARAYANA
WRIT APPEAL Nos.936/99 and 890,1407/2001
And
W.P.NO.801 OF 2003

W.A.NO.936/99:

(Writ Appeal under Clause 15 of the Letter Patent against the Order Dt. 26-4-1999 in W.P.No.9381 of 1994.)

Between:

1. Union of India rep. by its Secretary, Ministry of Defence, New Delhi.
2. Director General of Defence Estates, Ministry of Defence, Government of India, New Delhi.
3. Defence Estate Officer, Secunderabad.

..Appellants/Respondents.

And

1. S.M.Hussain Rasheed.
2. State of A.P.rep. by the Mandal Revenue Officer, Thirumalagiri Mandal, Hyderabad Dist.

(Respondent 2 is impleaded as per Court Order dated 21-12-1999 in W.A.M.P.No.3386/99)

Respondents.

For the Appelants: Mr. B. Adinarayana Rao, Advocate. None appeared For the Respondents No.

1 Mr. M.R.K.Chowdhary Senior Counsel for
Mr. M.Sudheer Kumar, advocate.
For the Respondent No.

2 The Govt. Pleader for Revenue.

W.A.No. 890 of 2001:

(Writ Appeal under Clause 15 of the Letters Patent against the Order dt. 19-4-2001 in W.P.No. 12124 of 2000 on the file of the High Court.)

Between:

1. The Executive Officer, Secunderabad Cantonment Board, Secunderabad.
2. Secunderabad Cantonment Board, Secunderabad, rep. by its Executive Officer.

..Petitioner/Appellants.

And

1. Shir S.M.Hussain Rasheed.
2. Defence Estates Officer. A.P.Circle, Secunderabad.

.... Respondents/Respondents.

For the Appeliant : Mr. Deepak Bhattacharjee, Advocate.
For the Respondent No.1 M.R.K.Chowdhary, Senior Counsel.
For Mr.M.Sudheer Kumar, Advocate.
For the Respondent No.2 Mr.T.Suryakaran Reddy, S.C.for Central Govt.

W.A.No. 1407 of 2001:

(Writ Appeal under Clause 1s5 of the Letters Patent against the Order dt. 19-4-2001 in W.P.No.12124 of 2000 on the file of the High Court)

Between:

1. Defence Estates Officer, A.P.Circle, Secunderbad,
2. Executive Officer, Cantinment Board, Secunderabad,
3. Cantonment Board, Secunderabad, rep,by its Executive officer

...Appellants.

And

S.M.Hussain Rasheed ..... Respondent.

For the Appellant: Mr. T. Suryakaran Reddy, S.C. for Central Govt.

(None appeared)

For the Respondent : Mr. M.R.K.Chowdhary Senior Counsel for
The Respondent No.1 Mr.M.Sudheer Kumar, Advocate,
For the Respondent Nos :2,3 are not necessary parties.

W.P.No.801 of 2003

Between:

Sri.S.M.Hussain Rasheed, R/o H.No.23-2-442, Mogulpura, Hyderabad-2
(as G.P.A. Holder representing

1. Dr.M. Narasimha Rao
2. Sri.M. Seshagiri Rao
3. Smt. Indumathi ....Petitioner.

And

1. The Union of India rep. by its Secretary, Ministry of Defence, New Delhi.
2. The Director of Defence Estates, Ministry of Defence, Southern Command, Pune.
3. The Director General of Defence Estates, Ministry of Defence, Govt, of India, New Dehli.
4. The Defence Estate Officer, Court Compound, Secunderabad.
5. The Executive Officer, Contonment Board, Secunerabad.
6. The Andhra Sub-Area Commander, Bollaram, Secunderabad.

...Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an order or order, Writ or Writs more particularly one in the nature of Writ of MANDAMUS declaring the action of the Respondent No.5 in demolishing the shed without any notice as contemplated under the Cantonment Act as illegal, discriminatory, arbitrary and violative of principles of natural justice and consequently direct the Respondent No.5 to sanction the plan submitted by the petitioner on 30-4-2002

For the Petitioner: Mr.P.Badri Premnath, Advocate.

For the Respondents: 1to 4,6: Mr.T.Suryakaran Reddy, S.C.for Central Govt.

For the Respondent No.5: Mr. Deepak Bhattacharjee, Advocate.

The Court made the following Common Judgment:

Common Judgment:(Per.B.Sudershan Reddy,J)

This batch of writ appeals as well as the writ petition may be disposed of by a common judgment, since common questions of law and facts arise for consideration between the same parties.

W.A.No.936 of 1999 is filed by the Union of India and others against the order dated 26-4-1999 made in W.P.No.9381 of 1994 by a learned single Judge of this Court, whereas W.A.Nos.890 and 1407 of 2001 are filed against the order dated 19-4-2001 made by a learned single Judge of this Court in W.P.No.12124 of 2000, by the Executive Officer, Secunderabad Cantonment Board and Defence Estate Officer, A.P.Circle, Secunderabad respectively.

W.P.No.801 of 2003 is interconnected and, therefore, the same is also taken up for disposal along with these writ appeals.

W.A.No.936 of 1999

That one S.M.Hussain Rasheed (hereinafter referred to as 'the writ petitioner') filed W.P.No.9381 of 1994, out of which W.A.No.936 of 1999 has arisen, challenging the action of Union of India in holding that the ownership of the land on which Bungalow No.219 is situated rests with the Government. It would be just and necessary to notice the prayer in the said writ petition:

"For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court be pleased to issue a writ, order or direction more in the nature of mandamus declaring the action of the respondents in issuing the impugned proceedings dated 18-4-1994, served upon the petitioner on 27-4-1994 as illegal and void after declaring the entries made in the General Land Register, 1956 classifying the Bungalow No.219 as 'B'(3) land as unconstitutional, arbitrary, illegal and ab initio void being contrary to the provisions of the Cantonments Act and the rules made hereunder and consequently to direct the respondents to refrain from in any manner interfering with the possession and enjoyment of Bungalow No.219, situated at Secunderabad Cantonment by the Petitioner while ignoring the entry made in General Land Register and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case."

The writ petitioner (respondent in this writ appeal) earlier filed W.P.No.20839 of 1993 seeking a direction to the Union of India to alter the entry made in column B3 in General Land Register (GLR) and to convert the same into an entry in column B2 relating to Bungalow No.219 situated in Gymkhana Road, Cantonment area, Secunderabad. This Court by an order dated 18-1-1994 disposed of the said writ petition directing the Union of India to

dispose of the several representations made by the writ petitioner to the concerned anthorities for change of entries in the General Land Register of 1956 (GLR) within a period of three months from the date of receipt of a copy of the said order.

The Government of India having considered several representations of the writ petitioner by its letter dated 18th April, 1994 informed the writ petitioner as well as one M.Seshagiri Rao, G.P.A., that after a detailed examination "Government has come to the conclusion that the ownership of the land on which Bungalow No.219 is situated rests with the Government" The Government of India accordingly expressed its regrets for altering the entry in respect of the said property in General Land Register of Secunderabad as maintained by the Defence Estate Officer, Secunderabad, as prayed for by the writ petitioner.

It is that order dated 18-4-1994, which has been impugned in W.P.No.9381 of 1994 on various grounds with the prayer, which we have already noticed.

The affidavit filed in support of the writ petition makes a somewhat interesting reading. The averments do not reveal as to the interest of the writ petitioner in the said land. The representation dated 3-2-1987 purported to have been made by General Power of Attorney Holder of owners of Bungalow No.219 is sought to be relied upon with a prayer to read the same as a part and parcel of the affidavit filed by the writ petitioner. That a copy of the said representation dated 3-2-1987 made by the General Power of Attorney holder of owners of Bungalow No.219 was enclosed to the letter dated 28-1-1994 addressed by I.Koti Reddy, Advocate to the Secretary, Ministry of Defence, New Delhi for his consideration pursuant to the directions of this Court issued in W.P.No.20839 of 1993. We have already noticed that the said writ petition was filed by S.M.Hussain Rasheed (writ petitioner), whereas the representation dated 3-2-1987 has been made by one M.Seshagiri Rao claiming himself to be the General Power of Attorney holder of his grandmother Smt. Lalitha Bai who is stated to have purchased the said property together with the compound wall from one Smt. Barkatunnisa Begum and other legal heirs for a consideration of Rs.45,000/- under a registered sale deed dated 3-2-1967. The writ petitioner's interest in the subject matter, while tracing the title of bungalow in question and as to how it was treated as a private property, is required to be noted in his own words as stated in the affidavit:

"While so, on 3-2-67 Smt. Barkatunnisa Begum and three executed a sale deed in favour of Smt. Lalitha Bai. W/o. Madhusudan Rao. All these deeds are registered deeds. A copy of this Sale Deed dated 3-2-67 is filed in the material papers for ready reference as Exhibit P7. From the legal heirs of Smt. Lalitha Bai on whom the property in question was devolved, has executed a sale agreement in the year 1987. On receipt of consideration and

on execution of sale agreement in anticipation of obtaining necessary permission for alienating the same I was put in possession and enjoyment of the same on the date of agreement itself. I have been enjoying the same kind all through the property tax was paid to the Cantonment by my predecessors in title and mysalf after 1987. There is no dispute about the tax being paid by all of us.

That is all what has been stated in the affidavit filed in support of the writ petition.

A bare reading of the averments made in the affidavit filed in support of the writ petition at the most reveal that the legal heirs of Smt. Lalitha Bai on whom the property in question was devolved have executed the sale agreement in favour of the writ petitioner in the year 1987. The said agreement of sale, if any, purported to have been executed by the legal heirs of Smt. Lalitha Bai on whom the property alleged to have been devolved is not filed into the Court. There is no document and evidence made available by the writ petitioner in support of his case that he was put in possession and enjoyment of the same on the date of agreement itself. It is interesting to notice that the representation dated 3-2-1987 has been filed by one M.Seshagiri Rao claiming himself to be the General Power of Attorney holder of the owners of the property. It is not known as to on what basis this writ petitioner could have filed W.P.No.20839 of 1993, which was disposed of by this Court directing the Union of India to consider the representation made by him with a request to change the entries in the General Land Register. in the affidavit filed in support of earlier W.P.No.20839 of 1993, the very same writ petitioner stated on oath that he entered into an agreement of sale dated 12-12-1986 with the owner of bungalow No.219. In the said affidavit, it is inter alia stated that "Smt. Lalitha Bai, the grand-mother of M. Seshagiri Rao, Advocate, son of late Ram Mohan Rao, purchased the said property, together with the compound wall from Smt. Barkatunnissa Begum and General Power of Attorney deed dated 9th January, 1995 along with W.P.No.801 of 2003 purported to have been executed by one Dr. M.Narasimha Rao, M.Seshagiri Rao and Smt. Indumati, who are the sons and daughter respectively of late M.Ram Mohana Rao, Advocate, who died on 6th October, 1984 in his favour. There is no mention about this property in the said General Power of Attorney deed. The General Power of Attorney deed by the sons and daughter of Ram Mohana Rao, however, at all was executed only in the year 1995. It is not known as to how the writ petitioner claimed there being a General Power of Attorney deed in his favour in 1987 itself. There is nothing on record suggesting that the persons who executed the General Power of Attorney deed in favour of the writ petitioner are legal heirs of late Smt. Lalitha Bai.

The short question that falls for consideration is as to whether any relief could be

granted to a person invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. who does not reveal the complete, true and correct facts? Whether any relief could be granted to a person who does not make available any material evidence in proof of the facts alleged in the affidavit filed in support of the writ petition ?

That another question may also fall for consideration as to whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can undertake to examine the intricate questions of title and grant any relief?

First we shall take up the question as to whether this Court is justified in examining the legality of the impugned proceedings dated 18th April, 1994 at the instance of the writ petitioner, who claims to be the agreement holder from the legal heirs of one Smt. Lalitha Bai, who were the owners of the property, according to the writ petitioner.

It is a very well settled position in law that a petition challenging an action of the authority as arbitrary or unreasonable, must indicate how and in what manner it is arbitrary or unreasonable. Vague and general allegations are not sufficient. As per settled law, the party who invokes the extraordinary jurisdiction of the Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation and one cannot be permitted to pick and choose the facts he likes to disclose and to suppress or not to disclose other facts. The very basis of the writ jurisdiction of this Court rests on disclosure of true and complete facts. It is equally well settled that a petitioner who does not come with candid facts and clean hands cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is most reprehensible. In a writ proceeding, if the petitioner does not disclose all the material facts fairly and truly but states them in a distorted manner with a view to mislead or deceive the Court, the Court is bound to protect itself and to prevent an abuse of its process. Jugglery has no place in equitable and prerogative jurisdiction.

A party seeking to challenge the validity of a proceeding on a ground involving questions of fact should make necessary averments of fact before it can assail the same on that ground.

In this case, we are of the view that the question as to whether the writ petitioner has any right, title or interest in the property is essentially a question of fact. Half-truths in the affidavit filed in support of the writ petition would in no manner help the writ petitioner.

It is not clear from the averments made in the affidavit as to whether the writ petitioner claims right, title and interest in the property for himself or is acting for and on behalf of the alleged real owners of the property. The alleged real owners of the property are not the

petitioners in the case. On the other hand, the persons from whom the writ petitioner claims to have got the General Power of Attorney deed are shown as the petitioners in W.P.No.801 of 2003 filed seeking some other relief as against the Cantonment Board.

The Supreme Court in Bhagwan Dass v. State of U.P.observed, "the appellant cannot be heard to say in a writ petition filed for the assertion of his own individual rights that the action of the Government is calculated to prejudice somebody else's rights and should therefore be struck down."

In Bharat Singh v. State of Haryana, the Supreme Court had an occasion to consider the distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit and observed:

"In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point . In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

The writ petitioner in the instant case has gone to the extent of asserting his title on the basis of a sale agreement purported to have been executed by the alleged real owners of the property coupled with the General Power of Attoney deed. The alleged agreement of sale of the year 1987 has not seen the light of the day. Such alleged agreement of sale itself does not confer any right, title or interest in any immovable property upon any individual. There is no material or evidence made available on record in proof of possession of the bungalow in question by the writ petitioner.

However, Sri M.R.K. Chowdhary, learned Senior Counsel appearing on behalf of the writ petitioner, contended that the factum of execution or agreemant of sale by the real owners has not been put in issue by the appellants herein and, therefore, it is not necessary to go into that question.

We are not impressed by the submission made by the learned Senior Counsel. In a proceeding under Article 226 of the Constitution of India, which is a public law remedy

available to an aggrieved person. It is the duty of the person invoking the jurisdiction of the Court to specifically plead every material fact and produce evidence and produce the material facts so stated in the affidavit. Lack of denial on the part of the appellants herein in the counter affidavit filed them is of no consequence. Ultimately. it is the satisfaction of the Court that the person invoking the jurisdiction of the Court had revealed all material facts truthfully and produced proof in support thereof.

We have no doubt whatsoever in our mind that the writ petitioner is indulging in speculative litigation. The writ petition filed by him deserves dismissal on that simple ground.

The next question that falls for consideration is as to whether this Court on the ostensible ground of judicially reviewing the impugned letter dated 18th April, 1994 of the Government of India can go into the intricate questions of title relating to the property in question?

The averments made in the affidavit filed in support of the writ petition themselves reveal the nature of controversy. It is stated that one Sultani Begum purchased the land in dispute under a registered sale deed on 3-12-1868. She had leased out to Capt. H.C.Builder on 19-10-1911. On her demise her son Nawab Mir Parvarish Ali Khan succeeded to her and sold the property to Moulvi Abdul Hayi Sabeb Quadri under a registered sale deed dated 24-11-1922. That he has constructed another house in addition to Bungalow No. 219 and gifted the entire property in favour of his three daughters under a registered Gift Deed dated 1-10-1935. The donees under the Gift deed executed a sale deed in favour of one Lalitha Bai, wife of Madhusudan Rao under a registered deed dated 3-2-1967. After the death of Lalitha Bai, her legal heirs inherited the property and executed a sale agreement in favour of the writ petitioner in the year 1987. While so, it was noticed that an entry in GLR was changed in respect of bungalow No.219 thereby indicating that the property in question belonged to the Union of India. The writ petitioner claims to have made a request for changing the entry in the GLR maintained by the Military authorities from B3 to B2. The said request was rejected vide the impugned order dated 18th April, 1994 by the Government of India.

It is under those circumstances, the entries made in the General Land Register, 1956 classifying the Bungalow No.219 as the land under category B3 are challenged as illegal and unconstitutional being opposed to the Cantonments Act.

The allegations and averments made in the affidavit filed in support of the writ petition are denied by the Union of India in its counter affidavit. It is asserted that the entry made in the General Land Register treating the Bungaiow as Old Grant and classifying the same as category B3 is correct. It is further stated that the General Land Register was prepared for Secunderabad Cantonment in 1933 under the Secunderabad and Aurangabad Cantonment

Land Administrative Rules 1930 and in the said GLR, the land and the subject bungalow are classified under GLR Survey No. 507,Class B, under the management of Military Estate Officer and authority for occupation not known. The second GLR was prepared in 1956 under the Cantonment Land Administration Rules, 1937 and the land was described under Survey No.-465, Class B-3, Old Grant, under the management of Military Estate Officer. It is also stated that even in the State Government records. the land is shown as the government land.

In the counter affidavit, the Government of India has inter alia contended that mere fact that various documents have been executed by and between the parties conveying the rights in the property is not binding on the Government since no person can transfer greater rights than what were possessed by him. The vendors/transferers could have only transferred the occupancy rights in the sites as were granted to them. "Further the petitioner has to prove the authenticity of the documents (Ex.P3 and Ex.P7). It will be seen from Ex.P1 that "old title deeds are attached to and delivered to the above property" However, the petitioner has failed to produce the said original title deeds which are prior to 1968. Obviously, these original title deeds have not been furnished by the petitioners simply because they would clearly indicate that the subject land was Government land and not private land. Further the said Exhibit does not specifically mention the sale of land. It only mentioned "to certify that this day sold to Sultana Begum wife of Mizra Sabut Ali the bungalow and its houses No.224 for a consideration of Rs. H.S.4800/-" therefore no sale of land is conveyed through this alleged sale deed in favour of the then vendees. Further the sale documents have been got registered by the Venders in the office of the Quarter Master General, Hyderabad Subsidiary Force, Secunderabad subject to the condition "that the house to be kept in perfect state of repairs and to be rented to any officer who may be required it etc. etc., to be produced when required." It obviously shows that both the vendee and vendors are aware of the interest of the Subsidiary Forces in the land and the same was registered in the office of the Quarter Master General under the then prevailing rules regarding grant of land for building sites. Therefore, no conclusion other than that the land was of Government, can be derived from Exhibit P(1)"

We have referred to these pleadings only with a view to highlight the nature of controversy relating to the title in respect of the property in question.

The question that falls for consideration is as to wheher, in the factual matrix and having regard to the nature of controversy, this GLR have any effect of superseding the entries in the Survey and Settlement Register and the Record of Rights prepared and main-

tained under the provisions of the Land Revenue Act and the Record of Rights Regulations. The Court observed that they cannot have any offect of superseding the entries in the Survey and Settlement Register and hold that the GLR and the entries made therein are at the most can be construed as a record maintained by the Defence Estate Officer for its own purposes.

We fail to appreciate as to how the said judgment would render any assistance whatsoever to the point urged by the learned Senior Connsel appearing on behalf of the writ petitioner. The entries in the instant case remained in GLR ever since 1956. The Union of India is asserting its ownership, right, title and interest in the land. No survey or settlenent records are made available by the writ petitioner to show that the entries, if any, made therein disclose any private ownership. It is not as if there is any variance between the entries made in record of rights and the entries in GLR. On the other hand, the entries made in pahaai patrik produced by the appellants in clear and categorical terms reveal the nature of the land as the government land. The entries made in the revenue records are perfectly in conformity with the entries made in GLR.

Furthermore, the proceedings in Vasavi Cooperative Housing Society Limited (3 supra) have arisen in a regular appeal filed against the judgment and decree of the City Civil Court where the said Society sought for a relief of declaration of its title in respect of the lands mentioned therein in a civil suit before the Court of competent jurisdiction based upon the entries made in survey and settlement records and as well as entries made in record of rights. This Court considered the evidentiary value of the entries made in revenue/record of rights in respect of agricultural lands as against the entries made in GLR and in that context observed that the entries made in record of rights are to be preferred in comparison to that of entries in GLR. The Court took the view that the entries made in survey and settlement records coupled with the entries made in the record of rights constitute the evidence in support of plea of title. Such entries made after an elaborate enquiry in accordance with the procedure prescribed by various, statutes, under which they are prepared, are of great evidentiary value.

Therefore, the decision rendered by this Court in Vasavi Cooperative Housing Society Limited (3 supra) is not an authority for the preparation that a writ of Mandamus lies for changing the entries Court is justified in issuing any writ declaring the impugned proceedings dated 18th April, 1994 as illegal?

The very impugned proceedings disclose the assertion of ownership by the Government of India. Thus, essentially the dispute relates to the title of the immovable property in question.

No doubt, the learned Senior Counsel, Sri M.R.K.Chowdhary, appearing on behalf of the writ petitioner, contended that the writ petitioner is not seeking any declaration of title, but only seeking an appropriate direction as against the authorities to change the entries in the General Land Register.

Sri T.Suryakaran Reddy, learned Senior Central Government Standing Counsel, appearing on behalf of the Union of India, strenuously contended that under the guise of an innocuous plea for the change in the entries in General Land Register, the writ petitioner is actually seeking the relief of declaration of title in respect of the property in question. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot undertake to adjudicate such intrical questions of title with regard to the immovable property, is the submission made by the learned Senior Central Government Standing Counsel.

The learned Senior Counsel appearing on behalf of the writ petitioner, however, relied upon a Division Bench judgment of this Court in Union of India v.Vasavi Co-operative Housing Society Ltd, to which one of us is a member (B.Sudershan Reddy, J), in support of his submission that 1933 land register maintained by the Cantonment Authorities has no statutory base since the whole of the Cantonments Act, 1924 and the rules framed in 1925 are not applicable to the Secunderabad Cantonment and they were applicable only to the Cantonments located in British India. It is no doubt true that in the said judgment, this Court while considering the nature of entries in the General Land Register maintained under the Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930 observed that the said General Land Register cannot be said to be prepared and maintained in respect of the rights in or over land. The same cannot be equated to that of land record relating to survey for revenue purposes and record of rights. The said observations were so made in the context in order to decide as to whether the entries made in the GLR. This Court never held that the entries made in GLR are of no consequence.

In the instant case, the relief prayed for, for change of entries in the GLR, on the face of it may appear to be innocuous. But, in our considered opinion any such direction to alter the entries may have its own adverse impact on the right, title and interest claimed by the Union of India in the land in question.

In the instant case. the learned Judge declared that the change of entry with regard to Bungalow No.219 of Thokatta village of Secunderabad Cantonment area showing it as belonging to B3 category in the General Land Register prepared in 1956 as being without any authority of law and accordingly directed the Defence Estate Officer to change the entries in the General Land Register "as being the private property of the petitioner through

his predecessors-in-interest and not as a defence land of the Government of India." The learned Judge virtually declared the title of the writ petitioner and his predecessors-in-title in respect of the property in question. On what basis one can conclude the property in question to be a private property?

The short question that falls for consideration is as to whether such a relief at all could be granted by the Court in a judicial review proceeding under Article 226 of the Constitution of India ?

"It needs no restatement at our hands that where there is a dispute as to whether a particular property vests or not, in the state or in any private individual, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit and not in a proceeding under Article 226 of the Constitution of India. It is a well-recognised principle of law that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between the parties". The remedy under Article 226 shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged and in such a case, the Court will issue appropriate direction to the authority concerned "The Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly" (See for the proposition New Satgram Engineering Works v. Union of India; Mohan Pandey v. Usha Rani Rajgaria; and Lambadi Pedda Bhadru v. Mohd. Ali Hussain).

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

Sri M.R.K. Chowdhary, however, relied upon the decision of the Supreme Court in Govt of A.P.v.T.Krishna Rao and contended that the Government of India cannot unilaterally assume to itself that it has perfect title with regard to the property in question until it had succeeded in establishing its title to the property in a properly constituted suit. We express our inability to accede to the said submission made by the learned Senior Counsel. The said decision has no application whatsoever to the facts on hand. It is the writ petitioner who is asserting right, title and interest in the property in question and the Government of India through the impugned letter having rejected the claim of the writ petitioner asserted its own

title to the property. There is no action as such initiated by the Government of India against the writ petitioner or any one of his predecessors-in-title.

In T.Krishna Rao (7 supra), the Supreme Court observed that the summary remedy for eviction which is provided for by Section 6 of the A.P.Land Encroachment Act (3 of 1905) can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of Government. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an abjudication of complicated questions of title.

In the instant case, there is no such summary proceeding initiated by the Government of India against the writ petitioner or his predecessors-in-title. There is nothing on record suggesting that there is a bona fide dispute regarding the title of the Government to the property in question. It is the writ petitioner who raised the dispute asserting his right, title and interest in the property in question, which has been denied by the Central Government. There is nothing on record to establish and prove the continuous and uninterrupted possession of the writ petitioner being in possession of the property in question. On the other hand we have already observed that the claim of the writ petitioner herein is frivolous in its nature and he is merely indulging in speculative litigation.

In the circumstances we hold that the judgment in T.Krishna Rao (7 supra), upon which reliance has been placed, has no application to the facts on hand.

Viewed from any angle, we do not find any substance in the writ petition filed by the writ petitioner It is a clear case of abuse of judicial process by the writ petitioner for ulterior purposes.

We accordingly set aside the order under appeal. W.A.No.936 of 1999 is accordingly allowed with costs, quantified at Rs.5,000/-(Rupees five thousand only), as against the respondent-writ petitioner.

W.A.Nos.890 and 1407 of 2001

In the light of the foregoing reasons, both these writ appeals, prefered by the Cantonment Board and Union of India respectively against the order dated 19-1-2001 in W.P.No.12124 of 2000, are required to be allowed.

The order under appeals is based upon the order passed by a learned single Judge of

this Court in W.P.No.9381 of 1994, dated 26-4-1999 against which W.A.No.936 of 1999 has been preferred, which we have allowed.

The respondent-writ petitioner has filed W.P.No.12124 of 2000 challenging the action of the Cantonment Board in rejecting his application for construction of a building in Bungalow No.219 situated at Gymkhana Road, Secunderabad Cantonment on the ground that the Defence Estate Officer objected for such sanction. The writ petitioner prayed for consequential appropriate directions directing the Cantonment Board to consider his application on merits within a specified period and permit him to proceed with the construction of building in accordance with the plans submitted by him.

The learned Judge allowed the said writ petition and accordingly directed the Cantonment Board to make a scrutiny of the application of the petitioner as to whether it is in consonance with the building regulations of the Cantonment Board and without insisting upon the title being shown and without any reference to the claim of the Defence Estate Officer that the said land belongs to Government of India. Obviously, the said directions have been issued basing upon the order dated 26-4-1999 made in W.P.No.9381 of 1994 declaring the title of the writ petitioner.

The Cantonment Board having examined the application of the writ petitioner resolved to reject the same in view of the objections raised by the Defence Estate Officer, A.P.Circle, Secunderabad. The Defence Estate Officer expressed his definite objection against the building application submitted by the writ petitioner.

That as per Section 181 (3) of the Cantonments Act, 1924 (for short 'the Act') once the property in which a construction permission is sought for is recorded as Government property in the General Land Register, the building plan has necessarily to be referred to Defence Estate Officer and the Board has no right to accord permission without reference of the application to the Defence Estate Officer. Section 181 (3) of the Act reads as follows.

"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 Estates Officer shall return the application together with his report thereon to the Board within thirty days after it has been received by him"

That apart, a bare reading of whole of Section 181 of the Act, which deals with the power of Board to sanction or refuse to sanction the erection or re-erection as the case may be, of the building, makes it abundantly clear that the Board before sanctioning the erection

or re-erection of a building on land which is under the management of the Defence Estates Officer is bound to refer the application to the Defence Estates officer for ascertaining whether there is any objection on the part of Government to such erection or erection, and further when the land on which it is proposed to erect or-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, the Board is bound to refuse the sanction for erection or re-erection of any building. The Board cannot be compelled not to refer the matter to the Defence Estates Officer by way of a Mandamus by this Court since such directions, if any, from this Court would amount to compelling the Cantonment Board not to follow the provisions of the Act. Nor this Court can issue any writ of Mandamus directing the Cantonment Board to sanction the erection or re-erection of any building even in case of there being a dispute between the person applying for sanction and the Government. Such a direction, in our considered opinion, cannot be issued for the simple resson that no Mandamus lies compelling the statutory authorities not to follow the law. Such directions would be destructive of rule of law.

That in the face of the definite objection raised by the Defence Estate Officer, the Cantonment Board had no other option except to reject the application of the writ petitioner and it rightly did so accordingly.

For the aforesaid reasons, we do not find any merit in W.P.No.12124 of 2000 filed by the respondent-writ petitioner and the same deserves dismissal.

Consequently the order under appeals is set aside. W.A.Nos.890 and 1407 of 2001 are accordingly allowed with costs, quantified at Rs2,500/-(Rupees two thousand five hundred only) in each case as against the respondent-writ petitioner.

W.P.No.801 of 2003

The unauthorised constructions were demolished by the Cantonment Board following the due process of law after service of notice under Sections 185 and 256 of the Act. The writ petitioner is not entitled to raise any construction whatsoever in the land in question without any prior permission sanction from the Cantonment Board. The writ petitioner cannot be allowed to meddle with the property in question in whatsoever manner. In view of our finding in W.A.No.936 of 1999 supra, the writ petitioner is not entitled to maintain this writ petition.

The counter affidavit filed by the Cantonment Board reveals certain interesting aspects as to how the writ petitioner has been abusing the judicial process. The land owners on whose behalf the writ petitioner filed the writ petition got issued a legal notice through Sri

Ramesh Sagar, Advocate in which it is inter alia stated that the power of attorney under which the writ petitioner represented them was a fabricated document and they never appointed the writ petitioner herein as their attorney. Subsequently, the said persons filed a civil suit bearing No.155 of 2000 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad against writ petitioner Syed Mahboob Rasheed to declare the contract dated 19-2-1997 in respect of bungalow No.219 and the land admeasuring 23,000 square yards as rescinded. In the said suit, the Defence Estate Officer is also impleaded as one of the defendants, and a detailed counter affidavit and written statement have been filed by him in the said suit.

These facts speak for themselves. The deplorable conduct of the writ petitioner is writ large on its face. This writ petition, in view of our findings supra, is totally frivolous and deserves to be dismissed summarily.

The writ petition shall accordingly stand dismissed with costs, quantified at Rs.5000/- (Rupees five thousand only).

Sd/-
(B. SUDERSHAN REDDY)

Hyderabad
14.8.2003

Sd/-
(P. S. NARAYANA)